

Queensland



CRIMES (CONFISCATION) ACT 1989

**Reprinted as in force on 6 October 2000
(includes amendments up to Act No. 16 of 2000)**

Warning—see last endnote for uncommenced amendments

Reprint No. 4

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Information about this reprint

This Act is reprinted as at 6 October 2000. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use different spelling consistent with current drafting practice (s 26(2)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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CRIMES (CONFISCATION) ACT 1989

[as amended by all amendments that commenced on or before 6 October 2000]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Crimes (Confiscation) Act 1989*.

Object of Act

3.(1) The main object of this Act is to deter the commission of serious offences by removing the financial gain, and increasing the financial loss, associated with their commission.

(2) This object is mainly to be achieved by providing for—

- (a) forfeiture of property—
 - (i) used, or intended to be used, in or in connection with the commission of serious offences; or
 - (ii) derived from property mentioned in subparagraph (i) or from the commission of serious offences; and
- (b) deprivation of benefits derived from the commission of serious offences; and
- (c) tracing of the property and benefits and prevention of their dissipation or concealment; and
- (d) enforcement in the State of forfeiture and restraining orders made under corresponding laws.

(3) It is also an important object of this Act—

- (a) to ensure that property rights may be affected by forfeiture or other orders only through just procedures; and
- (b) to protect from forfeiture or other orders property rights honestly acquired by persons innocent of unlawful activity.

Definitions

4. In this Act—

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

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

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

“**ancillary offence**”, to a serious drug offence, means—

- (a) an offence of conspiring to commit the serious drug offence; or
- (b) an offence of receiving¹ or assisting another person in order to enable the other person to escape punishment for the serious drug offence; or
- (c) an offence of attempting to commit the serious drug offence.²

“**appropriate officer**” see section 6.

“**benefit**” includes service and advantage.

“**benefit derived**” see section 7.

“**charge**” a person, for a proceeding started by a complaint under the *Justices Act 1886*, see section 8.

¹ In this context, ‘receiving’ is a reference to the same word in the Criminal Code, section 10.

² This definition does not contain the equivalent of paragraph (b) of the corresponding definition in the Commonwealth Act because of the Criminal Code, section 7.

“convicted” of a serious offence, see section 9.

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

“dangerous drug” means a dangerous drug as defined in the *Drugs Misuse Act 1986*.

“derived” includes—

- (a) directly or indirectly derived; and
- (b) realised.

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

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

“effective control” see section 10.

“encumbrance”, in relation to property, includes any interest, mortgage, charge, right, claim or demand which is or may be had, made or set up in, to, on or in respect of the property.

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

“facsimile copy” means a copy obtained by facsimile transmission.

“financial institution” means—

- (a) the Reserve Bank of Australia; or
- (b) an authorised deposit-taking institution within the meaning of the

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Banking Act 1959 (Cwlth), section 5;³ or

- (c) a body corporate that is (or that, if it had been incorporated in Australia, would be) a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx); or
- (d) another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting.

“forfeiture order” means an order made under section 23(1).

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

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

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

“interstate serious offence” means an offence (including a common law offence where relevant) against the laws of another State or a Territory, being an offence in relation to which an interstate forfeiture order or an interstate pecuniary penalty order may be made under a corresponding law of that State or Territory.

“money laundering” means the offence against section 90.

“monitoring order” means a monitoring order under the *Police Powers and Responsibilities Act 2000*.

“officer” means any director, secretary, executive officer or employee.

“pecuniary penalty order” means an order made under section 34(1).

“quash” a conviction, see section 11.

“related offence”, to another offence, see section 12.

“restraining order” means an order made under section 40.

³ *Banking Act 1959* (Cwlth), section 5—

“authorised deposit-taking institution” means a body corporate in relation to which an authority under subsection 9(3) is in force.

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“search warrant” means a search warrant under the *Police Powers and Responsibilities Act 2000*.

“serious drug offence” means—

- (a) an offence against the *Drugs Misuse Act 1986*, part 2 for which a person is liable on conviction to imprisonment for 20 years or more; or
- (b) money laundering committed in relation to property that is tainted property in relation to an offence mentioned in paragraph (a); or
- (c) an ancillary offence to an offence mentioned in paragraph (a) or (b).

“serious offence” means—

- (a) a serious drug offence; or
- (b) another indictable offence, whether dealt with on indictment or summarily; or
- (c) an offence against this Act for which an offender is liable to imprisonment; or
- (d) an offence against an Act or a provision specified in schedule 2; or
- (e) another offence prescribed by regulation.

“special forfeiture order” means an order made under section 86.

“tainted property” see section 13.

“transaction” includes the receiving or making of a gift.

“transfer” of property includes—

- (a) for an interest in land to be transferred from the State—grant; and
- (b) if the property is an object—give.

“unamenable to justice”, in connection with an offence, has the meaning given by section 14.

“unlawful activity” means an act or omission that is an offence against a law of the Commonwealth or a State or Territory.

Examples in sch 1

5. An example in schedule 1 is an example of the operation of the provision or provisions mentioned in or in relation to the example.

Meaning of “appropriate officer”

6. An “appropriate officer” means—

- (a) in every case—the director of public prosecutions, a deputy director of public prosecutions or a legal practitioner appointed to assist the director of public prosecutions in the discharge of the director’s functions; or
- (b) for an application to a Magistrates Court for a forfeiture or pecuniary penalty order—the commissioner of the police service or another police officer.

Meaning of “benefit derived”

7. A “benefit derived” by a person includes a benefit derived by someone else at the person’s request or direction.

Meaning of “charge” if complaint made

8.(1) This section applies if a proceeding for an offence is started against a person by a complaint and summons under the *Justices Act 1886*.

(2) If the complaint is sworn, the person is charged when the complaint is made whether or not a justice has issued on the complaint a summons requiring the person’s attendance before a court or a warrant for the person’s arrest.

(3) If the complaint is not sworn, the person is charged when the summons is served on the person.

Meaning of “convicted” of offence

9. A person must be treated as if “convicted” of an offence if—

- (a) the person is found guilty of the offence, whether or not a conviction is recorded; or

- (b) the offence is taken into account by a court in sentencing the person for another offence; or
- (c) the person becomes unamenable to justice in connection with the offence; or
- (d) the person is acquitted of the offence because of unsoundness of mind.

Meaning of “effective control”

10.(1) Property⁴ may be under a person’s “**effective control**” even if—

- (a) the person does not have a direct or indirect right, power or privilege over, or in relation to, the property; or
- (b) the person does not otherwise have an interest in the property.

(2) Regard may be had to all relevant matters in deciding—

- (a) whether or not property is under a person’s effective control; or
- (b) whether or not there are reasonable grounds to believe that property is under a person’s effective control.

(3) Matters to which regard may be had include, for example—

- (a) shareholdings in, debentures over or directorships of a corporation that has an interest (whether direct or indirect) in the property; and
- (b) a trust that has a relationship to the property; and
- (c) family, domestic and business relationships between persons having an interest in the property, or in corporations of the type mentioned in paragraph (a) or trusts of the type mentioned in paragraph (b), and other persons.

Meaning of “quash” a conviction

11.(1) A person’s conviction is taken to be “**quashed**” if—

⁴ “**Property**” has the meaning given by the *Acts Interpretation Act 1954*, section 36, and includes an interest in property.

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- (a) for a conviction mentioned in section 9(a)—the conviction is quashed by a court or a free pardon is granted by the Governor; or
- (b) for a conviction mentioned in section 9(b)—
 - (i) the person’s conviction of the other offence mentioned in the paragraph is quashed; or
 - (ii) the court’s decision to take the offence into account is quashed by a court; or
- (c) for a conviction mentioned in section 9(c)—the person is afterwards brought before a court to be dealt with for the offence and—
 - (i) the proceeding is discontinued; or
 - (ii) the person is acquitted; or
 - (iii) the person is convicted, but the conviction is afterwards quashed by a court or a free pardon is granted by the Governor; or
 - (iv) the offence is taken into account by a court in sentencing the person for another offence, but—
 - (A) the person’s conviction of the other offence is quashed; or
 - (B) the court’s decision to take the offence into account is quashed by a court; or
- (d) for a conviction mentioned in section 9(d)—the acquittal because of unsoundness of mind is quashed by a court.

(2) In this section—

“quash” includes set aside and rescind.⁵

Meaning of “related offence”

12. An offence is a “related offence” to another offence if both offences

⁵ This definition covers various expressions used in the Criminal Code, section 668E and the *Justices Act 1886*, section 225.

consist substantially of the same acts or omissions or form part of the same series of acts or omissions.

Meaning of “tainted property”

13.(1) “Tainted property”, in relation to a serious offence, means property—

- (a) used, or intended to be used, by a person in, or in connection with, the commission of the serious offence; or
- (b) derived by a person from property mentioned in paragraph (a); or
- (c) derived by a person from the commission of the serious offence; or
- (d) mentioned in section 90(2)(a), if the offence is against section 90(1); or
- (e) mentioned in section 92(1), if the offence is against that subsection.

(1A) Property mentioned in subsection (1)(a) includes property the use of which is, or the intended use of which would be, all or part of the serious offence.

(1B) Subsection (1)(d) and (e)—

- (a) do not limit subsection (1)(a) to (c); and
- (b) apply even though an act done in relation to the property is all or part of the serious offence.

(2) If the serious offence is conspiracy to commit a serious offence, the references to the serious offence in subsection (1)(a) and (c) are taken to include a reference to the serious offence the subject of the conspiracy.

(3) A reference to a serious offence in this section is taken to include a reference to an interstate serious offence when tainted property is used in the following sections—

- section 90 (Money laundering)
- section 92 (Possession etc. of property suspected of being tainted property).

Meaning of “unamenable to justice”

14.(1) A person becomes “**unamenable to justice**” in connection with an offence only if—

- (a) a proceeding for the offence has started against the person in a way mentioned in subsection (2); and
- (b) subsection (3), (4), (5), (6), (7) or (8) applies.

(2) For the purposes of this section, a proceeding for an offence starts when—

- (a) a person is charged as defined in section 8;⁶ or
- (b) a Magistrates Court charges the person with the offence or commits the person for trial or sentence for the offence; or
- (c) an indictment is presented against the person for the offence.

(3) The person is taken to become unamenable to justice if—

- (a) the Supreme Court; or
- (b) the court to which the person is committed for trial or sentence; or
- (c) the court in which the proceeding is waiting to be heard, or being heard;

decides that the person has absconded in relation to the proceeding.

(4) The person is taken to become unamenable to justice if the person dies before the proceeding is finally decided.

(5) The person is taken to become unamenable to justice if—

- (a) under the *Mental Health Act 1974*, part 4, the person is found to be not fit for trial on the charge of the offence; and
- (b) the proceeding is discontinued because of the finding.

(6) The person is taken to become unamenable to justice if—

- (a) a warrant is issued for the arrest of the person for the offence (which may be the same warrant as the warrant mentioned in section 8(2)); and

⁶ Section 8 (Meaning of “charge” if complaint made)

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- (b) the warrant has not been executed within 6 months after its issue even though all reasonable steps have been taken to execute it.

(7) The person is taken to become unamenable to justice if—

- (a) 6 months after the proceeding has started the person is unamenable to justice because the person is outside Australia; and
- (b) an extradition proceeding against the person for the offence has been started; and
- (c) subsequently the extradition proceeding ends without an extradition order being made.

(8) The person is taken to become unamenable to justice if, 6 months after the proceeding has started—

- (a) the person is unamenable to justice for another reason; and
- (b) if the person is outside Australia—there is no extradition proceeding pending against the person.

(9) For deciding the particular day on which a person becomes unamenable to justice under subsections (3) to (8), the person is taken to become unamenable to justice on the following day—

- (a) under subsection (3)—the day the court is satisfied as mentioned in the subsection or on another day decided by the court;
- (b) under subsection (4)—the day the person dies;
- (c) under subsection (5)—on the day the proceeding on the charge is discontinued;
- (d) under subsection (6)—the last day of the 6 months mentioned in the subsection;
- (e) under subsection (7)—the day the extradition proceeding ends;
- (f) under subsection (8)—the last day of the 6 months mentioned in the subsection.

Act to bind Crown

15.(1) This Act binds the Crown not only in right of Queensland but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

Application

16.(1) Subject to subsection (2), parts 2 and 3 do not apply to a person's conviction of an offence if the person was convicted of the offence before the commencement of this section.

(2) Subsection (1) does not apply in relation to interstate forfeiture orders, interstate pecuniary penalty orders or interstate restraining orders.

(3) Subject to subsection (1), this Act applies to—

- (a) an offence committed or believed to have been committed at any time whether before or after the commencement of this Act; and
- (b) a person's conviction at any time of an offence, whether before or after the commencement of this Act.

PART 2—FORFEITURE ORDERS, AUTOMATIC FORFEITURE AND PECUNIARY PENALTY ORDERS

Division 1—Applications for forfeiture and pecuniary penalty orders

Application for forfeiture or pecuniary penalty order

17.(1) If a person is convicted of a serious offence, an appropriate officer may apply to the Supreme Court or the court before which the person is convicted for 1 or both of the following orders—

- (a) a forfeiture order against particular property;
- (b) a pecuniary penalty order.

(2) The application must be made within 6 months after—

- (a) if the person is taken to have been convicted because of section 9(a)—the day the person is convicted of the serious offence; or

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- (b) if the person is taken to have been convicted because of section 9(b)—the day the serious offence is taken into account; or
- (c) if the person is taken to have been convicted because of section 9(c)—the day the person is taken, under section 14(9), to become unamenable to justice in connection with the serious offence; or
- (d) if the person is taken to have been convicted because of section 9(d)—the day the person was acquitted of the serious offence because of unsoundness of mind.

(3) However, the application may also be made after the period mentioned in subsection (2), if the court to which the application is made gives leave.

(4) If—

- (a) an application has been made to a court under subsection (1) for a forfeiture order against property in relation to a person's conviction of a serious offence; and
- (b) the application has been finally decided on the merits;

an appropriate officer may make an application to a court under subsection (1) for a further forfeiture order against the property in relation to the offence only with the Supreme Court's leave.

(5) If—

- (a) an application has been made to a court under subsection (1) for a pecuniary penalty order against a person for the benefits derived by the person from the commission of a serious offence; and
- (b) the application has been finally decided on the merits;

an appropriate officer may make an application to a court under subsection (1) for a further pecuniary penalty order for the benefits derived by the person from the commission of the offence only with the Supreme Court's leave.

(6) The Supreme Court may give leave under subsection (4) or (5) only if it is satisfied—

- (a) the relevant property or benefit to which the new application relates was identified only after the first application was finally

decided; or

- (b) necessary evidence became available only after the first application was finally decided; or
- (c) it is otherwise in the interests of justice to give the leave.

Notice of application

18.(1) If an appropriate officer applies for a forfeiture order against property in relation to a person's conviction for an offence—

- (a) the appropriate officer must give written notice of the application to the person and anyone else the appropriate officer has reason to believe has an interest in the property; and
- (b) at any time before the court finally decides the application, the court may direct the appropriate officer to give notice of the application to the persons, and in the way and within the time, the court considers appropriate.

(2) If an appropriate officer applies for a pecuniary penalty order against a person, the appropriate officer must give written notice of the application to the person.

Right to appear and present evidence

19.(1) The person in relation to whose conviction an application for a forfeiture order against property is made may appear and present evidence at the hearing of the application.

(2) Anyone else who claims an interest in the property may also appear and present evidence at the hearing of the application.

(3) The person against whom an application for a pecuniary penalty order is made may appear and present evidence at the hearing of the application.

Amendment of application

20.(1) If an appropriate officer applies for a forfeiture or pecuniary penalty order, the court hearing the application may amend the application at the request, or with the agreement, of the appropriate officer.

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(2) However, the court may amend the application—

- (a) to include additional property in an application for a forfeiture order; or
- (b) to include additional benefit in an application for a pecuniary penalty order;

only if the court is satisfied—

- (c) that the property or benefit was not reasonably capable of identification when the application was originally made; or
- (d) that necessary evidence became available only after the application was originally made.

(3) If—

- (a) an appropriate officer applies to amend an application for a forfeiture order; and
- (b) the amendment would have the effect of including additional property in the application for the forfeiture order;

then—

- (c) the appropriate officer must give written notice of the application to amend to—
 - (i) the person (the “**defendant**”) in relation to whose conviction the application for the forfeiture order is made; and
 - (ii) anyone else who the appropriate officer has reason to believe may have an interest in property to be included in the application for the forfeiture order; and
- (d) the defendant and anyone else who claims an interest in property to be included in the application for the forfeiture order may appear and present evidence at the hearing of the application to amend.

(4) If—

- (a) an appropriate officer applies to amend an application for a pecuniary penalty order against a person; and
- (b) the amendment would have the effect of including an additional benefit in the application for the pecuniary penalty order;

the appropriate officer must give the person written notice of the application to amend.

Procedure on application

21.(1) If an application is made to a court for a forfeiture or pecuniary penalty order in relation to a person's conviction for an offence, in deciding the application the court must have regard to the evidence given in any proceeding against the person for the offence.

(2) If—

- (a) an application is made for a forfeiture or pecuniary penalty order in relation to a person's conviction for an offence; and
- (b) the application is made to the court before which the person is convicted; and
- (c) when the application is made, the court has not passed sentence on the person for the offence;

the court may defer passing sentence until it has decided the application.

(3) A court may hear and decide at the same time—

- (a) an application for a forfeiture or pecuniary penalty order; and
- (b) an application under a Commonwealth law that makes provision substantially similar to this part.

(4) If—

- (a) a person is taken to have been convicted because of section 9(b)⁷ (which deals with offences taken into account in sentencing); and
- (b) an application is made to a court for a forfeiture or pecuniary penalty order for the conviction;

the reference in subsection (1) to a proceeding against the person for the offence includes a reference to a proceeding against the person for the other offence mentioned in section 9(b).

⁷ Section 9 (Meaning of "convicted" of offence)

Limitation on powers of Magistrates Courts

22.(1) A Magistrates Court may make a forfeiture order in connection with a conviction for an offence only if it is satisfied that the value of the property subject to the forfeiture order (together with the value of all other property subject to other undischarged forfeiture orders made by the court in connection with the conviction) is not more than the monetary jurisdiction of Magistrates Courts specified in the *Magistrates Courts Act 1921*, section 4(a).⁸

(2) A Magistrates Court may make a pecuniary penalty order in connection with a conviction for an offence only if it is satisfied that the amount payable under the pecuniary penalty order (together with the amount payable under all other undischarged pecuniary penalty orders made by the court in connection with the conviction) is not more than the monetary jurisdiction of Magistrates Courts specified in the *Magistrates Courts Act 1921*, section 4(a).

(3) A Magistrates Court may make a forfeiture order for real property only as permitted under a regulation.

(4) For the purposes of this section, the value of property is its value decided by the Magistrates Court.

(5) In this section—

“**Magistrates Court**” includes the Childrens Court constituted by a magistrate.

Division 2—Forfeiture orders and automatic forfeiture of restrained property

Forfeiture orders

23.(1) If—

- (a) a person is convicted of a serious offence; and
- (b) an application is made to a court under section 17⁹ for an order

⁸ *Magistrates Court Act 1921*, section 4 (Jurisdiction of Magistrates Courts)

⁹ Section 17 (Application for forfeiture or pecuniary penalty order)

under this subsection (a “**forfeiture order**”) against particular property in relation to the offence; and

- (c) the court is satisfied that the property, or an interest in the property, is tainted property in relation to the offence;

the court may order that the tainted property is forfeited to the State.

(2) In considering whether it is appropriate to make a forfeiture order for particular property, the court may, for example, have regard to—

- (a) any hardship that may reasonably be expected to be caused to anyone by the order; and
- (b) the use that is ordinarily made, or was intended to be made, of the property.

(3) In considering whether it is appropriate to make a forfeiture order for particular property, the court may also have regard to the gravity of the offence concerned.

(4) If—

- (a) an appropriate officer applies for a forfeiture order against particular property in relation to a person’s conviction of an offence; and
- (b) at the hearing of the application evidence is presented that the property was in the person’s possession at the time of, or immediately after, the commission of the offence;

then—

- (c) if no evidence is presented tending to show that the property is not tainted property—the court must presume that the property is tainted property; or
- (d) in any other case—the court may make a forfeiture order against the property only if it is satisfied that the property is tainted property.

Order permitting s 31 buyback

24.(1) A court that makes a forfeiture order may, by order, declare that the forfeiture order may be discharged under section 31(1) to the extent the order relates to a specified interest of a specified person.

(2) The order must declare the nature, extent and value, when the declaration is made, of the specified interest.

(3) A court may make the order only if it is satisfied—

- (a) it would not be contrary to the public interest for the interest to be transferred to the person; and
- (b) there is no other reason the interest should not be transferred to the person.

Automatic forfeiture of restrained property in relation to serious drug offence

25.(1) If—

- (a) a person (the “**defendant**”) is taken to be convicted of a serious drug offence, other than because of section 9(c) (which deals with persons becoming unamenable to justice); and
- (b) a restraining order is, or was, granted for property (whether the property of the defendant or someone else) in relation to—
 - (i) the defendant’s conviction of the serious drug offence; or
 - (ii) the charging, or proposed charging, of the defendant with the serious drug offence or a related serious drug offence; and
- (c) the restraining order, to the extent to which it relates to the property, is not the subject of a declaration under section 44(3);¹⁰ and
- (d) the restraining order is in force at the end of—
 - (i) the period (the “**forfeiture period**”) of 6 months starting on the day of conviction; or
 - (ii) if the forfeiture period is extended under subsection (2)—the forfeiture period as extended;

the property is forfeited to the State at the end of the forfeiture period or the forfeiture period as extended.

¹⁰ Section 44 (Supreme Court may declare that restrained property be disregarded for purposes of s 25)

(2) On application made to the Supreme Court within the forfeiture period, the Supreme Court may extend the forfeiture period by not more than 3 months if it is satisfied it is in the interests of the administration of justice to extend the period in the special circumstances of the case.

Effect of forfeiture under s 23 or 25

26.(1) Forfeited property vests absolutely in the State—

- (a) if the forfeiture is under section 23—on the making of the forfeiture order under the section; or
- (b) if the forfeiture is under section 25 (after the making of a restraining order)—on forfeiture to the State under the section.

(2) The court that makes the forfeiture or restraining order may give the directions necessary or convenient to give effect to the forfeiture.

(3) Within the appeal period, the State must not, without the leave of the court that makes the order—

- (a) dispose of, or otherwise deal with, the property; or
- (b) authorise anyone else to dispose of, or otherwise deal with, the property.

(4) At the end of the appeal period, if—

- (a) for property subject to forfeiture order—the forfeiture order has not been discharged; or
- (b) for property subject to forfeiture under section 25—the conviction has not been quashed;

the property may be disposed of, or otherwise dealt with, as directed by the Attorney-General or a person authorised by the Attorney-General for this subsection.

(5) The Attorney-General has power to do or authorise the doing of anything necessary or convenient to dispose of, or otherwise deal with, the property.

(6) In this section—

“appeal period” means the period ending—

- (a) if the period provided for starting an appeal against the conviction,

or under section 96,¹¹ has ended without an appeal having been started—at the end of the period; or

- (b) if an appeal mentioned in paragraph (a) has been started—when the appeal lapses or is finally decided.

Procedural matters about forfeiture

27.(1) A person who is in possession of property forfeited to the State under section 23 or 25, or documents of title to forfeited property, must give the property or documents of title to a person authorised by the Attorney-General on the authorised person's demand.

(2) If a person gives property or documents of title to property to an authorised person under subsection (1), the person is discharged from any duty or obligation to anyone else for the disposition of the property or documents of title and from all liability that, apart from this subsection, might have arisen because of the giving of the property or documents of title.

(3) The registrar of titles and anybody else who is required or permitted to keep a register about dealings with property must, if asked and given sufficient evidence of the forfeiture of property to the State under section 23 or 25, make in the register all entries necessary to record—

- (a) the forfeiture to and vesting in the State of the property; or
- (b) if the Attorney-General directs—the public trustee as the holder of the property on trust for the State.

(4) Subsection (3) applies despite any other Act and even if the relevant document of title is not produced.

(5) A certificate purporting to be by—

- (a) the registrar or a deputy registrar of the Supreme Court or a registrar or a deputy registrar of the District Court or the Childrens Court constituted by a judge; or
- (b) the clerk of the court at the place where a Magistrates Court, or the Childrens Court constituted by a magistrate, makes the order;

¹¹ Section 96 (Appeals)

about the making of the forfeiture order or the forfeiture of property under section 25 and identifying the property to which the forfeiture order or forfeiture relates is evidence of the matters certified.

(6) If a certificate mentioned in subsection (5) is properly produced to the registrar of the Supreme Court for registration, the registrar must register the certificate in the court without payment of fee.

(7) On registration—

- (a) the certificate is a record of the Supreme Court; and
- (b) the order it mentions is taken to be a judgment of the Supreme Court, properly entered, obtained by the State as plaintiff in an action for the recovery of the property to which the order relates against the person from whom the property has been divested under subsection (1); and
- (c) all proceedings may be taken to recover the property that could be taken if the judgment had been given in favour of the State.

Third party protection from forfeiture order

28.(1) In this section—

“defendant” means the person because of whose conviction of a serious offence the application for a forfeiture order is made.

“relevant serious offence” means the serious offence of which the defendant was convicted.

“the court” means the court to which the application for the forfeiture order is made.

(2) If an application is made to a court for a forfeiture order against particular property, a person (other than the defendant) who claims an interest in the property may apply to the court, before or after the forfeiture order is made, for an order under subsection (7).

(3) Unless the court gives leave, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.

(4) The court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant’s neglect.

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(5) Unless the court gives leave, a person who—

- (a) was given notice of the application for the forfeiture order; or
- (b) appeared at the hearing of the application for the forfeiture order;

can not apply to the court for an order under subsection (7) after the forfeiture order is made.

(6) The court may give leave under subsection (5) only if it considers there are special grounds, including, for example—

- (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or
- (b) particular evidence proposed to be presented by the person in the application was not available to the person at the time of the hearing of the application for the forfeiture order.

(7) On an application, an order may be made—

- (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the property; and
- (b) directing the State—
 - (i) if the property is still vested in the State—to transfer the property to the applicant; or
 - (ii) if the property is no longer vested in the State—to pay to the applicant the value of the applicant's interest in the property.

(8) The court must, and may only, make the order if it is satisfied—

- (a) the applicant has or, apart from the forfeiture, would have an interest in the property; and
- (b) the applicant was not, in any way, involved in the commission of the relevant serious offence; and
- (c) the applicant acquired the interest—
 - (i) in good faith and for sufficient consideration; and
 - (ii) if the applicant acquired the interest at the time of or after the commission of the relevant serious offence—without knowing, and in circumstances not likely to arouse a

reasonable suspicion, that the property was tainted property.

(9) For all applications, including applications for leave to apply—

- (a) the applicant must give notice to the director of public prosecutions of the making of the application; and
- (b) the director of public prosecutions must be a party.

(10) Stamp duty is not payable under the *Stamp Act 1894* for the transfer of property under this section.

Third party protection from forfeiture under s 25

29.(1) In this section—

“**defendant**” means the person because of whose conviction of a serious drug offence the property is forfeited under section 25.

“**relevant restraining order**”, for property forfeited under section 25, means the restraining order because of which the property was forfeited.

“**relevant serious drug offence**” means the serious drug offence of which the defendant was convicted.

“**the court**” means the Supreme Court.

(2) If property is forfeited under section 25, a person (other than the defendant) who claims an interest in the property may apply to the court for an order under subsection (7) or (11).

(3) Unless the court gives leave, the application must be made within 6 months after the property is forfeited under section 25.

(4) The court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant’s neglect.

(5) Unless the court gives leave, a person who—

- (a) was given notice of the application for the relevant restraining order; or
- (b) appeared at the hearing of the application for the relevant restraining order; or

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(c) was given notice of the relevant restraining order;¹²

can not apply to the court for an order under subsection (7) or (11).

(6) The court may give leave under subsection (5) only if it considers that the failure of the applicant to apply, or apply successfully, to have the property excluded from the relevant restraining order was not because of the applicant's neglect.

(7) On an application, an order may be made—

(a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the property; and

(b) directing the State—

(i) if the property is still vested in the State—to transfer the property to the applicant; or

(ii) if the property is no longer vested in the State—to pay to the applicant the value of the applicant's interest in the property.

(8) The court may make the order under subsection (7) only if it is satisfied as mentioned in subsection (9) or (10).

(9) The court may make the order under subsection (7) if it is satisfied—

(a) the applicant, apart from the forfeiture, would have an interest in the property; and

(b) the applicant was not, in any way, involved in the commission of the relevant serious drug offence; and

(c) the applicant acquired the interest—

(i) in good faith and for sufficient consideration; and

(ii) if the applicant acquired the interest at the time of or after the commission of the relevant serious drug offence—without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property; and

¹² Sections 43 and 44 also provide rights to apply to the Supreme Court to exclude property from the effects of a restraining order.

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- (d) the applicant's interest in the property was not under the defendant's effective control before it was forfeited.

(10) The court may also make the order under subsection (7) if it is satisfied—

- (a) the applicant, apart from the forfeiture, would have an interest in the property; and
- (b) the property was not used in, or in connection with, any unlawful activity and was not derived by anyone from any unlawful activity; and
- (c) the applicant's interest in the property was lawfully acquired.

(11) On an application, if the court is satisfied—

- (a) the applicant, apart from the forfeiture, would have an interest in the property; and
- (b) it would not be contrary to the public interest for the interest in property to be transferred to the applicant; and
- (c) there is no other reason why the interest should not be transferred to the applicant;

the court may make an order—

- (d) declaring the nature, extent and value (when the declaration is made) of the interest; and
- (e) that section 25 stops applying to the interest if the person pays to the State, under section 31(2), the amount of the value of the interest while it is vested in the State.

(12) For all applications, including applications for leave to apply—

- (a) the applicant must give notice to the director of public prosecutions of the making of the application; and
- (b) the director of public prosecutions must be a party.

(13) Stamp duty is not payable under the *Stamp Act 1894* for the transfer of property under this section.

Discharge of forfeiture order

30. A forfeiture order is discharged if—

- (a) the conviction in relation to which the order was made is quashed; or
- (b) a payment is made to discharge the forfeiture order under section 31(1); or
- (c) the order is set aside under section 39;¹³ or
- (d) the forfeiture order is discharged by the Court of Appeal under section 96.¹⁴

Person with interest in forfeited property may buy back the interest

31.(1) If—

- (a) property is forfeited under a forfeiture order; and
- (b) a court makes an order under section 24¹⁵ about an interest in the property; and
- (c) while the property is still vested in the State, there is paid to the State the amount declared in the order under section 24 as the value of the interest;

the forfeiture order is discharged to the extent it relates to the interest.

(2) If—

- (a) property is forfeited under section 25;¹⁶ and
- (b) a court makes an order under section 29(11) about an interest in the property; and
- (c) while the property is still vested in the State, there is paid to the State the amount declared in the order under section 29(11) as the

¹³ Section 39 (Rehearing)

¹⁴ Section 96 (Appeals)

¹⁵ Section 24 (Order permitting s 31 buyback)

¹⁶ Section 25 (Automatic forfeiture of restrained property in relation to serious drug offence)

value of the interest;

section 25 stops applying to the interest.

(3) If subsection (1) or (2) takes effect on an interest in property, the Attorney-General must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the State.

(4) The Attorney-General has power to do or authorise the doing of anything necessary or convenient for the transfer.

Buying out other interests under court order

32.(1) This section applies if—

- (a) property is forfeited to the State under section 23¹⁷ or 25; and
- (b) the property or an interest in the property is required to be transferred to a person (the “**buyer**”) under section 28(7), 29(7), 31 or 33(6);¹⁸ and
- (c) the buyer’s interest in the property, immediately before the forfeiture, was not the only interest in the property.

(2) The Attorney-General must arrange for an interest (the “**relevant interest**”) other than the buyer’s interest to be transferred to the buyer if—

- (a) the buyer gives written notice to everyone else who had an interest in the property immediately before the forfeiture to the effect that—
 - (i) the buyer intends to buy the other interests from the State; and
 - (ii) within 21 days after receiving the notice, a person who is given the notice may give the Attorney-General a written objection to the buying of the person’s interest; and

¹⁷ Section 23 (Forfeiture orders)

¹⁸ Sections 28 (Third party protected from forfeiture order), 29 (Third party protected from forfeiture under s 25), 31 (Person with interest in forfeited property may buy back the interest) and 33 (Effect of quashing of conviction or discharge of forfeiture order)

- (b) the person given notice under paragraph (a) about the relevant interest does not give a written objection to the buying of the interest to the Attorney-General within the 21 days; and
- (c) while the relevant interest is still vested in the State, the person pays to the State an amount equal to the value of the interest.

(3) For the purposes of subsection (2), the Attorney-General has power to do, or authorise the doing of, anything necessary or convenient for the transfer.

Effect of quashing of conviction or discharge of forfeiture order

33.(1) This section applies if—

- (a) property is forfeited under section 23 and the forfeiture order is discharged in the way mentioned in section 30(a) or (d); or
- (b) property is forfeited under section 25 and the conviction because of which the property was forfeited is later quashed.

(2) The person in whom the property was vested immediately before it was vested in the State may make a request or application under subsection (5).

(3) The director of public prosecutions must—

- (a) as soon as practicable after the discharge or quashing give notice of it to everyone whom the director of public prosecutions has reason to believe may have had an interest in the property immediately before it was vested in the State; and
- (b) if required by a court, give notice of the discharge or quashing to the persons, and in the way and within the time, the court considers appropriate.

(4) A notice under subsection (3) must include a statement to the effect that a person who had an interest in the property immediately before the property was vested in the State may make application under subsection (5).

(5) A person mentioned in subsection (2) may—

- (a) if the property or interest is still vested in the State—by written notice to the Attorney-General, ask for the return of the property or interest; or

(b) if the property or interest is no longer vested in the State—apply to the court that made the forfeiture order or the relevant restraining order for an order declaring the value of the property or interest.

(6) On receiving a notice under subsection (5)(a), the Attorney-General must arrange for the property to be transferred to the applicant (or someone else nominated by the applicant) and, for this purpose, the Attorney-General has power to do or authorise the doing of anything necessary or convenient for the transfer.

(7) However, if a payment has been made for the property to a person under an order made under section 28(7)(b)(ii) or 29(7)(b)(ii), the Attorney-General must not arrange for the property to be transferred until the proposed transferee pays to the State the total amount paid by the State for the property under orders made under section 28(7)(b)(ii) or 29(7)(b)(ii).

(8) On an application under subsection (5)(b), the court must make an order declaring the value (at the time of the declaration) of the property.

(9) After an order is made under subsection (8), the applicant for the order may, by written application to the Attorney-General, ask for payment of the amount declared by the order.

(10) The Attorney-General must arrange for payment to the applicant (or someone else nominated by the applicant) of the amount declared by the order less the total amount paid by the State for the relevant property under orders made under section 28(7)(b)(ii) or 29(7)(b)(ii).

(11) No stamp duty is payable under the *Stamp Act 1894* for the transfer of property under this section.

Division 3—Pecuniary penalty orders

Pecuniary penalty orders

34.(1) If an application is made to a court under section 17(1)(b)¹⁹ for a pecuniary penalty order against a person for the benefits derived by the

¹⁹ Section 17 (Application for forfeiture or pecuniary penalty order)

person from the commission of a serious offence, the court may or, if the offence is a serious drug offence, must—

- (a) assess the value of the benefits under section 37 (Assessment of benefits); and
- (b) order the person to pay to the State a pecuniary penalty equal to the assessed value less—
 - (i) the value, at the time the order is made, of any property for which a forfeiture order is made in relation to the same conviction; and
 - (ii) if the court considers it desirable to take it into account, any amount payable by way for restitution or compensation for the same conviction.

(2) The amount payable by the person to the State under the pecuniary penalty order is a debt payable by the person to the State.

(3) The pecuniary penalty order may be enforced as if it were an order made by the court in a civil proceeding taken by the State against the person to recover a debt payable by the person to the State.

Discharge of pecuniary penalty order to the extent of automatic forfeiture

35.(1) This section applies to a person against whom a pecuniary penalty order has been made for the benefits derived by the person from the commission of a serious offence.

(2) If property of the person is forfeited under section 25²⁰ because of the person's conviction for the offence, the debt payable under the pecuniary penalty order is discharged to the extent of—

- (a) if the property is sold—the value of the proceeds of the sale; or
- (b) if the property is not sold—the reasonable value.

²⁰ Section 25 (Automatic forfeiture of restrained property in relation to serious drug offence)

Pecuniary penalty order increase if forfeiture order discharged

36.(1) This section applies if—

- (a) a court makes a pecuniary penalty order for a serious offence; and
- (b) in deciding the amount of the pecuniary penalty (the “**penalty amount**”), the court takes into account a forfeiture of property; and
- (c) after the pecuniary penalty order is made, the forfeiture ends because of an appeal.

(2) An appropriate officer may apply to the court for a variation of the pecuniary penalty order to increase the penalty amount.

(3) If the court considers an increase appropriate, it may vary the amount of the pecuniary penalty order.

Assessment of benefits

37.(1) In this section—

“**offence period**”, in relation to an application under section 17(1)²¹ made in relation to 2 or more offences, means the period commencing when the earlier or earliest of those offences was committed and ending when the later or latest of those offences was committed.

(2) For the purposes of an application for a pecuniary penalty order against a person (the “**defendant**”), the value of the benefits derived by the defendant from the commission of an offence or offences shall be assessed by the court having regard to the evidence before it concerning all or any of the following—

- (a) the money, or the value of the property other than money, that came into the possession or under the control of—
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant;
- by reason of the commission of the offence or any of the offences;

²¹ Section 17 (Application for forfeiture or pecuniary penalty order)

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- (b) the value of any other benefit provided to—
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant;by reason of the commission of the offence or any of the offences;
- (c) if the offence or any of the offences consisted of the doing of any act or thing in relation to a dangerous drug—
 - (i) the market value, at the time of the offence, of similar or substantially similar dangerous drugs; and
 - (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing;
- (d) the value of the defendant's property—
 - (i) where the application relates to a single offence—before and after the commission of the offence; or
 - (ii) where the application relates to 2 or more offences—before, during and after the offence period;
- (e) the defendant's income and expenditure—
 - (i) where the application relates to a single offence—before and after the commission of the offence; or
 - (ii) where the application relates to 2 or more offences—before, during and after the offence period.

(3) The court, in quantifying the value of a benefit for the purposes of this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting the generality of this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made.

(4) Where an application is made for a pecuniary penalty order against a person in respect of a single serious offence, the following provisions have effect—

- (a) if, at the hearing of the application, evidence is given that the value

of the person's property after the commission of the offence exceeded the value of the person's property before the commission of the offence, then, for the purposes of section 34(1),²² the court shall, subject to paragraphs (b) and (c) and subsection (7), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the excess;

- (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offence, paragraph (a) does not apply to the excess;
- (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offence, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

(5) Where an application is made for a pecuniary penalty order against a person in respect of 2 or more serious offences, the following provisions have effect—

- (a) if, at the hearing of the application, evidence is given that the value of the person's property at any time during or after the offence period exceeded the value of the person's property before the offence period, then, for the purposes of section 34(1), the court shall, subject to paragraphs (b) and (c) and to subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;
- (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offences, paragraph (a) does not apply to the excess;
- (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offences, paragraph (a)

²² Section 34 (Pecuniary penalty orders)

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applies to the excess as if it were reduced by the amount of that part.

(6) Where an application is made for a pecuniary penalty order against a person in relation to a serious offence or serious offences—

- (a) all property of the person at the time the application is made; and
- (b) all property of the person at any time—
 - (i) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of 5 years immediately before the day on which the application is made;

whichever is the shorter;

shall be presumed, unless the contrary is proved, to be property that came into the possession or under the control of the person by reason of the commission of the offence or offences.

(7) A benefit shall not be taken into account for the purposes of this section if a pecuniary penalty has been imposed in respect of the benefit under—

- (a) this Act; or
- (b) a law of the Commonwealth; or
- (c) a law of a Territory; or
- (d) a law of another State.

(8) In calculating, for the purposes of an application for a pecuniary penalty order, the value of benefits derived by a person from the commission of an offence or offences, any expenses or outgoings of the person in, or in connection with, the commission of the offence or offences shall be disregarded.

(9) In subsection (8)—

“expenses or outgoings”, of the person, includes all costs and expenses incurred by the person in, or in connection with, committing, or attempting, conspiring, planning or preparing to commit, the offence or offences, including, for example, the cost of acquiring, or attempting to

acquire, something concerned in committing, or attempting, conspiring, planning or preparing to commit the offence or offences.

(10) For the purposes of this section, where property of a person vests in the official trustee in bankruptcy by reason of the person's bankruptcy, the property shall be taken to continue to be the property of the person.

(11) At the hearing of an application for a pecuniary penalty order, a police officer who is experienced in the investigation of dangerous drug offences may testify, to the best of the officer's information, knowledge and belief—

- (a) with respect to the amount that was the market value of a dangerous drug at a particular time or during a particular period; or
- (b) with respect to the amount, or the range of amounts, that was the amount, or range of amounts, ordinarily paid at a particular time, or during a particular period for the doing of an act or thing in relation to a dangerous drug;

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

Discharge of pecuniary penalty order

38.(1) A pecuniary penalty order is discharged if—

- (a) the conviction in reliance on which the order was made is subsequently quashed; or
- (b) it is discharged by the court which hears an appeal against it under section 96.²³

(2) If a pecuniary penalty order is registered under the *Service and Execution of Process Act 1992* (Cwlth), notice of the discharge of that order shall be given to such persons, in such manner and within such time as the court thinks fit.

²³ Section 96 (Appeals)

Division 4—Rehearing**Rehearing**

39.(1) If a forfeiture order or a pecuniary penalty order has been made in respect of a person who was charged with a serious offence on the ground that that person is to be taken to have been convicted of the offence because of section 9(c), that person or an appropriate officer may apply to the court that made the order to have the order set aside.

(2) An applicant under subsection (1), other than an appropriate officer, shall give notice of the application to the Attorney-General who may appear to oppose the grant of the application.

(3) On an application under subsection (1) the court may set aside the order subject to such terms and conditions with respect to costs or otherwise as it thinks fit.

(4) If the court sets aside an order it may then and there or subsequently rehear the application for the order.

PART 3—RESTRAINING ORDERS**Restraining orders**

40.(1) In this section—

“the court” means—

- (a) in any case—the Supreme Court; or
- (b) the court before which the defendant appears charged with, or is convicted of, the serious offence.

(2) This section applies if a person (the **“defendant”**) has been, or is about to be, charged with, or has been convicted of, a serious offence.

(3) An appropriate officer may apply to the court for an order about 1 or more of the following—

- (a) specified property of the defendant;

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- (b) all the property of the defendant, including property acquired after the order is made;
- (c) specified property of the defendant and all other property of the defendant, including property acquired after the order is made;
- (d) all the property of the defendant, including property acquired after the order is made, other than specified property;
- (e) specified property of someone else.

(4) The application must be supported by an affidavit of a police officer stating the matters mentioned in subsections (5) to (9).

(5) If the conviction of the defendant of a serious offence is the basis of the application, the affidavit must state details of the conviction.

(6) If the fact that the defendant has been or is about to be charged is the basis of the application, the affidavit must state the police officer's belief, and grounds for the belief, that the defendant committed the offence.

(7) If specified property of a person, whether the defendant or someone else, is the subject of the application, the affidavit must—

- (a) state details of the property; and
- (b) state the police officer's belief, and grounds for the belief, that it is the property of the person.

(8) If the defendant's property is the subject of the application, the affidavit must state the police officer's belief, and grounds for the belief—

- (a) that the property is tainted property in relation to the offence; or
- (b) that the defendant derived a benefit from the commission of the offence.

(9) If specified property of someone else is the subject of the application, the affidavit must state the police officer's belief, and grounds for the belief—

- (a) that the property is tainted property in relation to the offence; or
- (b) that—
 - (i) the property is under the defendant's effective control; and
 - (ii) if the offence is not a serious drug offence—the defendant derived a benefit from the commission of the offence.

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(10) The court may make a restraining order in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(11) The applicant for an order under this section shall give notice of the application—

- (a) to any person whose property is the subject of the application; and
- (b) to any other person whom the applicant has reason to believe has an interest in any property that is the subject of the application.

(12) The court may, at any time before the final determination of the application, direct the applicant to give or publish notice of the application to such persons, in such manner and within such time as the court thinks fit.

(13) Any person whose property is the subject of the application, and any other person who claims an interest in any such property, are entitled to appear and to be heard at the hearing of the application.

(14) In an urgent case, the Supreme Court may make an order under this section on an application made without notice but that order only has effect for a maximum of 7 days.

(15) If the court is satisfied on an application that—

- (a) the defendant must be treated as having been convicted of a serious offence stated in an affidavit required by subsection (5); or
- (b) there are reasonable grounds for holding the beliefs stated in an affidavit required by subsections (6) to (9);

the court may make 1 or more of the following orders—

- (c) an order directing that property mentioned in the order must not be disposed of or otherwise dealt with;
- (d) an order directing that property mentioned in the order be disposed of, or otherwise dealt with only in a specified way or circumstance;
- (e) an order directing the public trustee to take control of property mentioned in the order;
- (f) an order directing the applicant to notify the public trustee of the order.

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(16) If the serious offence is a serious drug offence, the Supreme Court must, subject to subsections (5) to (9) and (20), make the order or orders mentioned in subsection (15) unless the Supreme Court is satisfied that it is not in the public interest to make the order or orders.

(17) If an application is made under subsection (3) to the Supreme Court in reliance on the proposed charging of the defendant with a serious offence, the Supreme Court may make a restraining order only if the Supreme Court is satisfied that the defendant will be charged with the serious offence, or a related indictable offence, within 48 hours.

(18) A restraining order against a person's property may be made subject to such conditions as the court thinks fit and, without limiting the generality of this, may make provision for meeting, out of the property or a specified part of the property, 1 or more of the following—

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;
- (b) the person's reasonable expenses in defending a criminal charge or proceedings under this Act to which the person is a party;
- (c) a specified debt incurred by the person in good faith (being a debt to which neither paragraph (a) nor (b) applies).

(19) The court may make provision of a type mentioned in subsection (18) only if it is satisfied that—

- (a) the defendant can not meet the expenses or debt concerned out of property not subject to a restraining order; and
- (b) the property, or a specified part of the property, was not tainted property in relation to the offence in reliance on which the application under subsection (3) is made.

(19A) Despite sections 43 and 45, subsection (18) is the only provision of this Act under which provision may be made for meeting out of property that is the subject of a restraining order expenses mentioned in subsection (18)(b).

(20) The court may refuse to make a restraining order if the Crown, or the applicant on behalf of the Crown, refuses or fails to give to the court such undertakings as the court thinks appropriate concerning the payment of damages or costs, or both, in relation to the making and operation of the

order.

(21) A restraining order shall be sufficient authority for a person to whom the order is directed to take all steps necessary or desirable to give effect to the order.

Limitation on power of Magistrates Court

41.(1) A Magistrates Court may make a restraining order in connection with a charge or conviction for an offence only if it is satisfied that the value of the property subject to the order (together with the value of all other property subject to other undischarged restraining orders made by the court in connection with the charge or conviction) is not more than the monetary jurisdiction of Magistrates Courts specified in the *Magistrates Courts Act 1921*, section 4(a).²⁴

(2) A Magistrates Court may make a restraining order for real property only as permitted under a regulation.

(3) For the purposes of this section, the value of property is its value as decided by the Magistrates Court.

(4) In this section—

“**Magistrates Court**” includes the Childrens Court constituted by a magistrate.

Notice of restraining order to be given to persons affected

42. If—

- (a) a restraining order is made in respect of property of a person; and
- (b) notice had not been given to that person of the application for the order;

the applicant shall give notice of the making of the order to that person.

²⁴ *Magistrates Court Act 1921*, section 4 (Jurisdiction of Magistrates Courts)

Supreme Court may order that property be excluded from restraining order

43.(1) This section applies if a court makes a restraining order against property in reliance on the conviction, charging or proposed charging of a person (the “**defendant**”).

(2) A person (the “**applicant**”) who has an interest in the property may apply to the Supreme Court to amend the restraining order to exclude the applicant’s interest from the order.

(3) If the applicant is the defendant, the Supreme Court may amend the restraining order to exclude the defendant’s interest from the order only if it is satisfied as mentioned in subsection (4) or (8).

(4) If the applicant is the defendant and the offence is not a serious drug offence, the Supreme Court may exclude the defendant’s interest if it is satisfied—

- (a) the interest is not tainted property in relation to the offence; and
- (b) a pecuniary penalty order can not be made against the defendant.

(5) If the applicant is not the defendant the Supreme Court may amend the restraining order to exclude the other person’s interest only if it is satisfied as mentioned in subsection (6), (7) or (8).

(6) If the applicant is not the defendant and the offence is not a serious drug offence, the Supreme Court may exclude the applicant’s interest if it is satisfied—

- (a) the interest is not tainted property in relation to the offence; and
- (b) if the restraining order was made because of an affidavit mentioned in section 40(9)(b)—
 - (i) the pecuniary penalty order can not be made against the defendant; or
 - (ii) the applicant’s interest in the property is not under the defendant’s effective control.

(7) If the applicant is not the defendant and the offence is a serious drug offence, the Supreme Court may exclude the applicant’s interest—

- (a) if the restraining order was made because of an affidavit mentioned in section 40(9) and the court is satisfied—

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- (i) the applicant was not in any way involved in the commission of the offence; and
 - (ii) the property is not tainted property in relation to the offence; and
 - (iii) the applicant's interest in the property is not under the defendant's effective control; or
- (b) in another case—the court is satisfied—
- (i) the applicant was not, in any way, involved in the commission of the offence; and
 - (ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest—
 - (A) in good faith and for sufficient consideration; and
 - (B) without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property in relation to the offence.

(8) For an application under this section, the Supreme Court may exclude the applicant's interest if it is satisfied that it is in the public interest to amend the restraining order having regard to all the circumstances, including—

- (a) a financial hardship or other result of the interest remaining subject to the order; and
- (b) the seriousness of the offence; and
- (c) the likelihood that the interest will be—
 - (i) subject to a forfeiture order; or
 - (ii) subject to section 25;²⁵ or
 - (iii) required to satisfy a pecuniary penalty order.

²⁵ Section 25 (Automatic forfeiture of restrained property in relation to serious drug offence)

Supreme Court may declare that restrained property be disregarded for purposes of s 25

44.(1) This section applies if—

- (a) a person (the “**defendant**”) has been convicted of, or has been charged or is about to be charged with, a serious drug offence; and
- (b) a court makes a restraining order against property in reliance on the conviction, charging or proposed charging; and
- (c) the defendant has an interest in the property.

(2) The defendant may apply to the Supreme Court for a declaration under subsection (3).

(3) If the Supreme Court is satisfied that—

- (a) the property was not used in, or in connection with, any unlawful activity and was not derived by a person from unlawful activity; and
- (b) the defendant’s interest in the property was lawfully acquired;

the Supreme Court may, by order, declare that the restraining order, to the extent to which it relates to the property, must be disregarded for the purposes of section 25.

Further orders

45.(1) In this section—

“**court**” means a court that may make an order under subsection (2) or (3).

(2) On application, a court, when it makes a restraining order or at a later time, may make orders it considers just about the property to which the order relates or the operation of the order.

(3) On application or on its own initiative, the Supreme Court may make, or authorise another court to make—

- (a) an order setting aside the restraining order; or
- (b) orders about the property to which the restraining order relates; or
- (c) orders about the operation of the restraining order.

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(4) An application for an order may be made by—

- (a) the applicant for the restraining order or any other person who could have applied for the restraining order; or
- (b) the person whose being charged with an offence was relied upon for the purpose of making the restraining order; or
- (c) a person to whose property the restraining order relates; or
- (d) the public trustee—if the restraining order directed the public trustee to take control of and manage property; or
- (e) any other person who obtains the leave of the court to make application.

(5) The applicant for an order shall give notice of the application to each other person who could have applied for the order.

(6) Without limiting subsection (2), a court may make—

- (a) an order varying the property to which the restraining order relates;
- (b) an order varying any condition to which the restraining order is subject;
- (c) an order for the examination before the court, or such officer of the court as is directed by the court, of any person to whose property the restraining order relates or any other person concerning—
 - (i) the affairs of any person to whose property the restraining order relates; or
 - (ii) the nature and location of—
 - (A) any property of any person to whose property the restraining order relates; or
 - (B) any property to which the restraining order relates that the applicant for the order believes, on reasonable grounds, is tainted property;
- (d) an order relating to the carrying out of any undertaking given under section 40(20) in relation to the restraining order;
- (e) if the restraining order is directed to the public trustee to take

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control of and manage property—

- (i) an order regulating the manner in which the public trustee may exercise powers or perform duties under the restraining order;
- (ii) an order determining any question relating to the property;
- (iii) an order directing the person of whose property the public trustee has taken control to furnish to the public trustee, within the period specified in the order, a statement, verified by the oath or affirmation of that person, setting out such particulars of the property of that person as the court thinks proper.

(7) Where a person is examined before a court or an officer of the court pursuant to an order, the person is not excused from answering a question when required to do so by the court or the officer of the court, as the case may be, on the ground that the answer to the question might tend to incriminate the person or make the person liable to a penalty.

(8) Where a person is examined before a court or an officer of the court pursuant to an order, a statement or disclosure made by a person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.

(9) A person who is ordered to attend an examination referred to in subsection (6)(c) shall not—

- (a) without reasonable excuse, fail to attend as required by the order; or
- (b) without reasonable excuse, fail to attend from day to day until the conclusion of the examination; or
- (c) refuse or fail to take an oath or make an affirmation for the purpose of the examination; or
- (d) subject to subsection (7), refuse or fail to answer a question that the person is directed to answer by the court or an officer of the court; or

- (e) make a statement in the course of the examination that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

Duration of restraining order

46.(1) A restraining order made in reliance on a person being charged with a serious offence ceases to be in force 48 hours after it is made if the person by then has not been charged with the offence or a related indictable offence.

(2) Except as provided by subsection (1) and subject to this section, a restraining order shall remain in force for the period specified in the order or, if no period is specified, for 12 months after it is made.

(3) The Supreme Court, or any other court authorised to do so by an order of the Supreme Court under section 45(3)(a) or (c), on application made to it, may make an order—

- (a) extending the period for which a restraining order is to remain in force; or
- (b) setting aside a restraining order.

(4) An order under subsection (3) may be made on the application of—

- (a) the applicant for the restraining order or any other person who could have applied for the restraining order; or
- (b) the person whose being charged with an offence was relied on for the purpose of making the restraining order; or
- (c) any person to whose property the restraining order relates or who has an interest in that property.

(5) The applicant for an order under subsection (3) shall give notice of the application to each other person who the applicant has reason to believe could have applied for the order.

(6) Any person given or entitled to be given notice under subsection (5) is entitled to appear and to be heard on the application.

(7) Without limiting the generality of subsection (3), a court referred to in that subsection may make an order setting aside a restraining order on the application of a person referred to in subsection (4)(b) if that person—

- (a) gives security acceptable to the court for payment to satisfy any pecuniary penalty order that may be made against that person upon the person's conviction for that offence; or
- (b) gives undertakings satisfactory to the court concerning that person's property.

Contravention of restraining order

47. A person who knowingly contravenes a restraining order by concealing, disposing of, or otherwise dealing with, property to which the order relates is guilty of a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

Charge on property subject to restraining order

48.(1) If, for a serious offence—

- (a) a pecuniary penalty order is, or has been, made against a person (the “**defendant**”); and
- (b) a restraining order is, or has been, made against the property of a person, whether the defendant or someone else, in reliance on the defendant's conviction of the serious offence or on the charging, or proposed charging, of the defendant with the serious offence or a related indictable offence;

a charge on the property that secures the payment to the State of the pecuniary penalty comes into existence on the making of the later of the orders.

(2) The charge ceases to have effect if—

- (a) the pecuniary penalty order is discharged; or
- (b) the pecuniary penalty is paid; or
- (c) the property is disposed of under an order under section 50; or
- (d) the property is disposed of—
 - (i) with the Supreme Court's consent; or
 - (ii) if the public trustee has been directed to take control of and

manage the property—the public trustee’s consent; or

- (e) the property is sold to a buyer in good faith for value who, at the time of buying, had no notice of the charge.

(3) The charge is subject to every encumbrance to which the property was subject immediately before the pecuniary penalty order was made but has priority over all other encumbrances.

(4) Subject to subsection (2), the charge remains on the property despite any disposal of the property.

(5) The charge may be registered under a law that provides for the registration of charges on property of the type affected by the charge.

(6) If the charge is registered under subsection (5), a person who buys the property after the registration of the charge is, for the purposes of subsection (2)(e), taken to have had notice of the charge.

Registration of restraining order

49.(1) A restraining order made in relation to property may be registered under any law of Queensland that provides for registration of title to property of that description and that registration shall have effect for the duration of the restraining order.

(2) A person who deals with property affected by a restraining order so registered shall be taken to know of the restraining order for the purposes of section 47.²⁶

PART 4—POWERS OF PUBLIC TRUSTEE

Liability under forfeiture or pecuniary penalty order or forfeiture under s 25 to be satisfied by public trustee

50.(1) If—

- (a) the public trustee has taken control and management of property

²⁶ Section 47 (Contravention of restraining order)

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under a direction to do so contained in a restraining order; and

- (b) a forfeiture or pecuniary penalty order is made, or property is forfeited under section 25, because of the conviction of the person of the offence for which the restraining order was made;

the public trustee may apply to the Supreme Court or the court before which the person was convicted of the offence for an order under subsection (2).

(2) On an application under subsection (1), the court may make an order directing the public trustee to pay to the Crown out of the property of which the public trustee has taken control and management—

- (a) in the case of a forfeiture order or a forfeiture under section 25—such amount as the Attorney-General determines to be the value (as at the time of the determination) of that property; or
- (b) in the case of a pecuniary penalty order—the amount of the pecuniary penalty.

(3) The court that makes an order under subsection (2), at that time or at any later time on the application of the public trustee, may make any other order that is necessary to enable the public trustee to comply with the order made under subsection (2).

(4) Without limiting the generality of subsection (3), a court may make—

- (a) an order directing the public trustee to dispose of such of the property that is under the control of the public trustee as the court specifies;
- (b) an order empowering a person to execute any document or to do anything else necessary to enable the public trustee to dispose of property under the control of the public trustee;
- (c) an order specifying the person to whom any money remaining after making the payments authorised by subsection (5)(a), (b) and (c) should be paid.

(5) Proceeds realised by the public trustee from the disposal of, or otherwise in connection with, property of which the public trustee was directed by a restraining order to take control and manage shall be applied—

- (a) firstly, in payment of fees duly charged by the public trustee pursuant to section 51(1);

- (b) secondly, in payment of expenses incurred by the public trustee in disposing of, or otherwise in connection with, that property;
- (c) thirdly, in accordance with an order made under subsection (2);
- (d) lastly, to the person specified in an order of a kind referred to in subsection (4)(c), if such an order has been made, or otherwise to such person as appears to the public trustee to be entitled thereto.

(6) If the public trustee pays any money in satisfaction of the liability of a person under a forfeiture order or a pecuniary penalty order or a forfeiture under section 25, the liability of the person under the order or for the property forfeited under section 25 is, to the extent of the payment, discharged.

Provisions concerning the public trustee

51.(1) The public trustee is entitled to charge and receive in respect of control and management of property, and any income therefrom, under a restraining order such fees or charges as the public trustee is authorised under the *Public Trustee Act 1978* to charge in respect of an estate under administration.

(2) A person shall not hinder or obstruct the public trustee or a person appointed under the *Public Trustee Act 1978*, section 8²⁷ in the exercise of powers or the performance of duties by the public trustee in relation to property of which the public trustee has taken control under a restraining order.

Maximum penalty—25 penalty units or 6 months imprisonment.

(3) A certificate purporting to be under the hand of the person holding the appointment of the public trustee and sealed with the common seal of the public trustee—

- (a) certifying that a restraining order has been made directing the public trustee to take control of property and that the restraining order is in force; and
- (b) stating the terms of the restraining order;

is for all purposes evidence and, until the contrary is proved, conclusive

²⁷ *Public Trustee Act 1978*, section 8 (Corporation sole of public trustee)

evidence of the matters contained therein.

(4) The public trustee is liable for any rates, land tax or municipal or other statutory charges that—

- (a) are imposed by or under a law of Queensland on or in respect of property of which the public trustee has taken control under a restraining order; and
- (b) fall due on or after the date of the restraining order;

only to the extent of the rents and profits received by the public trustee in respect of that property on or after that date.

(5) If the public trustee, having taken control under a restraining order of a business carried on by a person, carries on that business, the public trustee is not personally liable for—

- (a) any payment in respect of long service leave for which that person was liable; or
- (b) any payment in respect of long service leave to which a person employed by the public trustee to manage the business, or the legal personal representative of such a person, becomes entitled after the date of the restraining order.

(6) With the leave of the Supreme Court or the court before which the person was convicted of the offence, the public trustee may appoint a person as agent to exercise all or any of the powers or perform all or any of the duties conferred or imposed on the public trustee by this Act in relation to property of which the public trustee has taken control under a restraining order.

PART 5—OBLIGATIONS OF FINANCIAL INSTITUTIONS

Interpretation

73. In this part—

“**customer-generated financial transaction document**”, in relation to a

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financial institution, means a financial transaction document of the institution—

- (a) that relates to—
 - (i) the opening or closing by a person of an account with the institution; or
 - (ii) the operation by a person of an account with the institution; or
 - (iii) the opening or use by a person of a deposit box held by the institution; or
 - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person; or
 - (v) the transmission of funds between Australia and a foreign country or between foreign countries on behalf of a person; or
 - (vi) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); and
- (b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person).

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

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

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

but does not include a cheque or payment order.

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

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

Retention of records by financial institutions

74.(1) A financial institution shall, subject to section 75, retain each essential customer-generated financial transaction document in its original form for the minimum retention period applicable to the document.

(2) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each customer-generated financial transaction document that is not an essential customer-generated financial transaction document for the minimum retention period applicable to the document.

(3) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each financial transaction document—

- (a) that is not a customer-generated financial transaction document; and
- (b) whose retention is necessary to preserve a record of the financial transaction concerned;

for the minimum retention period applicable to the document.

(4) Subsections (2) and (3) do not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$200 or such higher amount as is prescribed by the regulations for the purposes of this subsection.

(5) A financial institution required to retain documents under this section shall retain and store them in a way that makes retrieval of the documents reasonably practicable.

(6) A financial institution that contravenes subsection (1), (2), (3) or (5) commits an offence against this Act.

Maximum penalty—200 penalty units.

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

Register of original documents

75.(1) Where a financial institution is required by law to release an original of an essential customer-generated financial transaction document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original is returned, whichever is the first to occur.

(2) The financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) commits an offence against this Act.

Maximum penalty—200 penalty units.

Communication of information by financial institutions to police

76.(1) Where a financial institution has information about an account held, or a transaction conducted, with the institution and the institution has reasonable grounds for believing that—

- (a) the information may be relevant to an investigation of, or the prosecution of a person for, an offence against a law of the State; or
- (b) the information would otherwise be of assistance in the enforcement of this Act;

the institution may give the information to a police officer.

(2) No action, suit or proceeding lies against—

- (a) a financial institution; or
- (b) an officer, employee or agent of the institution acting in the course of the person's employment or agency;

in relation to any action taken by that institution or person pursuant to subsection (1).

(3) Where a financial institution, or a person who is an officer, employee or agent of the institution, gives information pursuant to subsection (1) as soon as practicable after forming the belief referred to in that subsection, the institution or person shall be taken, for the purposes of sections 90 and 92,²⁸ not to have been in possession of that information at any time.

PART 6—INTERSTATE ORDERS AND WARRANTS

Registration of interstate orders

77.(1) If—

- (a) an interstate forfeiture order expressly applies to specified property in Queensland; or
- (b) an interstate restraining order expressly applies to—
 - (i) specified property in Queensland; or
 - (ii) all property in Queensland of a specified person, including property acquired by that person after the making of the order;

a copy of the order, sealed by the court that made it, may be registered in the Supreme Court by the applicant for the order or by the Attorney-General or by a person who is prescribed by the regulations for the purposes of this subsection or a person of a class of person so prescribed.

(2) A copy of any amendments made to an interstate forfeiture order or interstate restraining order (whether those amendments were made before or after its registration in the Supreme Court), sealed by the court which made the amendments, may be registered in the same way as the order, and the amendments do not, for the purposes of this Act, have effect until they are registered.

²⁸ Sections 90 (Money laundering) and 92 (Possession etc. of property suspected of being tainted property)

(3) Registration of an interstate forfeiture order or interstate restraining order may be refused to the extent that the order would not, on registration, be capable of enforcement in Queensland.

(4) Registration is to be effected in accordance with the rules of the Supreme Court.

Interim registration of facsimile copies

78.(1) A facsimile copy of—

- (a) a sealed copy of an interstate forfeiture order or interstate restraining order; or
- (b) a sealed copy of any amendments made to such an order;

shall be regarded for the purposes of this Act as the same as the sealed copy, if the facsimile copy is itself certified in accordance with the rules of the Supreme Court.

(2) Registration effected by means of a facsimile copy ceases to have effect at the end of the period of 10 days commencing on the day of registration unless a sealed copy that is not a facsimile copy has been registered by that time.

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

(4) Notwithstanding that registration of a facsimile copy of an interstate forfeiture order ceases to have effect in the circumstances mentioned in subsection (2), any forfeiture already made in relation to the order is not affected.

Effect of registration

79.(1) A registered interstate forfeiture order is taken, from the time of registration, to be a forfeiture order for the purposes of this Act other than—

- section 26(4) (Effect of forfeiture order under s 23 or 25)
- section 28 (Third party protection from forfeiture order)
- section 29 (Third party protection from forfeiture under s 25)

- section 30 (Discharge of forfeiture order)
- section 31 (Person with interest in forfeited property may buy back the interest)
- section 32 (Buying out other interests under court order)
- section 33 (Effect of quashing of conviction or discharge of forfeiture order)
- section 96 (Appeals).

(2) A registered interstate restraining order is taken to be a restraining order made under section 40 for the purposes of this Act other than—

- section 42 (Notice of restraining order to be given to persons affected)
- section 45 (Further orders)
- section 46 (Duration of restraining order)
- section 48 (Charge on property subject to restraining order)
- section 50 (Liability under forfeiture or pecuniary penalty order or forfeiture under s 25 to be satisfied by public trustee).

Duration of registration

80. An interstate forfeiture order or an interstate restraining order ceases to be registered under this Act if—

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

Cancellation of registration

81.(1) The registration of an interstate forfeiture order or an interstate restraining order may be cancelled by the Supreme Court or an officer of the Supreme Court prescribed by the rules of the Supreme Court if—

- (a) registration was improperly obtained; or
- (b) particulars of any amendments made to the order, or of any ancillary orders or directions made by a court, are not given to the

Supreme Court in accordance with the requirements of the rules of the Supreme Court.

(2) The registration of an interstate forfeiture order or an interstate restraining order may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in Queensland.

Charge on property subject to registered interstate restraining order

82.(1) If—

- (a) in reliance on the charging, or the proposed charging, of a person with an interstate serious offence, an interstate restraining order has been made; and
- (b) in reliance on the conviction of that person for that offence, an interstate pecuniary penalty order is made;

then there is created, on the registration of the interstate restraining order under this Act or the registration in Queensland of the pecuniary penalty order under the *Service and Execution of Process Act 1992* (Cwlth), whichever is the later, a charge on all the property to which the restraining order applies to secure the payment of the pecuniary penalty.

(2) A charge created by subsection (1) on property ceases to have any effect when under the corresponding law the charge created on the making of the pecuniary penalty order ceases to have any effect.

(3) Section 48(3), (4) and (5) apply to a charge created by subsection (1) of this section in the same manner and to the same extent as they apply to a charge created by section 48(1).

Public trustee may act as agent

83. The public trustee may enter into an agreement to act as the agent of a person directed by an interstate restraining order to take control of property.

Interstate orders and search warrants

84.(1) If property has been seized under a search warrant issued in reliance on the commission of an interstate serious offence and a court of the other State or the Territory makes an order—

Crimes (Confiscation) Act 1989

- (a) directing that the property be returned to the person from whose possession it was seized; or
- (b) directing that that person be allowed access to the property;

the order shall, as far as possible, be given effect to in Queensland.

(2) If—

- (a) property to which this subsection applies has been seized in another State or a Territory under a search warrant issued under a corresponding law in reliance on the commission of a serious offence; and
- (b) an application has been made to a court for a forfeiture order in respect of the property; and
- (c) the court refuses to make the forfeiture order;

the court shall make an order directing that the property be returned to the person from whose possession it was seized.

(3) If property to which this subsection applies has been seized in another State or a Territory under a search warrant issued under a corresponding law in reliance on the commission of a serious offence, the person from whose possession the property was seized may apply to a Magistrates Court for an order—

- (a) directing that the property be returned to that person; or
- (b) directing that the person be allowed access to the property;

and the court may make such an order on such terms and conditions (if any) as it thinks fit.

(4) The applicant for an order under subsection (3) shall give notice of the application and of the date, time and place fixed for the hearing of it to the Attorney-General and the commissioner of the police service.

(5) Subsections (2) and (3) apply to all property seized under a search warrant other than property that—

- (a) was used or intended to be used in, or in connection with, the commission of an interstate serious offence; or
- (b) was derived by anyone from the commission of an interstate serious offence.

PART 7—SPECIAL FORFEITURE ORDERS

Application for special forfeiture order

85. If a person (the “**defendant**”) has been convicted of a serious offence, an appropriate officer may apply to the Supreme Court, at any time, for an order under section 86.

Special forfeiture order

86.(1) On application under section 85, the Supreme Court may make an order that the defendant forfeit to the State an amount equal to all or part of the benefits derived, or to be derived, by the defendant, or by someone else for the defendant, from a contract about—

- (a) a depiction of the serious offence or alleged serious offence in a movie, book, newspaper, magazine, radio, or television production, or live or recorded entertainment of any kind; or
- (b) an expression of the defendant’s thoughts, opinions or emotions about the serious offence or alleged serious offence.

(2) Subsection (1) applies to a contract made before or after the defendant’s conviction and in Queensland or elsewhere, including outside Australia.

(3) An order under subsection (1) may direct that any person who, in accordance with the terms of the contract referred to in that subsection, is required to pay moneys to the defendant or another person, at the request or by the direction of the defendant, pay those moneys to the Treasurer on behalf of the Crown.

(4) The applicant for an order under subsection (1) shall give notice of the application—

- (a) to the defendant; and
- (b) to any other person referred to in that subsection.

(5) The Supreme Court may, at any time before the final determination of the application, direct the applicant to give or publish notice of the application to such persons, in such manner and within such time as the court thinks fit.

(6) The Supreme Court may, at any time before the final determination of the application, amend the notice of application as it thinks fit, either at the request of the applicant or with the approval of the applicant.

(7) The defendant, any other person referred to in subsection (1) and any person to whom a notice is given under subsection (5) are entitled to appear and to be heard at the hearing of the application.

Assessment of benefits

87.(1) For the purposes of an application for a special forfeiture order against the defendant, the value of the benefits referred to in section 86(1) shall be assessed by the court having regard to the evidence before it concerning all or any of the following—

- (a) the money, or the value of the property other than money, that came into the possession or under the control of—
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant; by reason of the contract referred to in that section;
- (b) the value of any other benefits provided to—
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant; by reason of the contract;
- (c) the value of the defendant's property before and after the making of the contract;
- (d) the defendant's income and expenditure before and after the making of the contract.

(2) The court, in quantifying the value of any benefits for the purposes of this section, may treat as the value of the benefits received the value that the benefits received would have had if received at the time when the valuation is being made and, without limiting the generality of this, may have regard to any decline in the purchasing power of money between the time when the benefits were received and the time when the valuation is being made.

(3) For the purposes of an application for a special forfeiture order

against a defendant, the following provisions have effect—

- (a) if, at the hearing of the application, evidence is given that the value of the defendant's property after the making of the contract exceeded the value of the defendant's property before the making of the contract, then, for the purposes of section 86(1),²⁹ the court shall, subject to paragraphs (b) and (c) treat the value of the benefits received by the person from the contract as being not less than the amount of the excess;
- (b) if, after evidence of the kind referred to in paragraph (a) is given, the defendant satisfies the court that the whole of the excess was due to causes unrelated to the making of the contract, paragraph (a) does not apply to the excess;
- (c) if, after evidence of the kind referred to in paragraph (a) is given, the defendant satisfies the court that a part of the excess was due to causes unrelated to the making of the contract, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

(4) Where an application is made for a special forfeiture order against a defendant in relation to a contract referred to in section 86(1)—

- (a) all property of the defendant at the time the application is made; and
- (b) all property of the defendant at any time—
 - (i) within the period between the date of making of the contract and the date on which the application is made; or
 - (ii) within the period of 5 years immediately before the date on which the application is made;

whichever is the shorter;

shall be presumed, unless the contrary is proved, to be property that came into the possession or under the control of the defendant by reason of the contract.

(5) In calculating, for the purposes of an application for a special forfeiture order, the value of the benefits received by a person from the

²⁹ Section 86 (Special forfeiture order)

contract referred to in section 86(1), any expenses or outgoings of the person in connection with the contract shall be disregarded.

(6) For the purposes of this section, where property of a person vests in the official trustee in bankruptcy by reason of the person's bankruptcy, the property shall be taken to continue to be the property of the person.

Effect of special forfeiture order

88.(1) The amount specified in an order made under section 86(1), for all purposes, is to be taken to be a debt due and owing by the defendant to the Crown.

(2) An order made under section 86(1) upon its being filed in the registry of a court of competent jurisdiction shall have the same force and effect and all proceedings and remedies for the enforcement thereof may be taken as if the order were a judgment of that court ordering the defendant to pay to the Treasurer on behalf of the Crown the amount specified therein.

(3) Any person who, as provided by section 86(3), pays moneys to the Crown is thereby discharged from the terms of the contract referred to in that section.

Application of moneys paid to the Treasurer under this part

89.(1) Moneys paid to the Treasurer pursuant to an order made under section 86(1) may, if so directed by the Governor in Council on the recommendation of the Attorney-General, be applied to satisfy—

- (a) an order made under the Criminal Code that the defendant make restitution or pay compensation; or
- (b) an order made by a court that the defendant pay damages to a person for injury suffered by that person by reason of the commission of the serious offence or alleged serious offence referred to in section 85.³⁰

(2) Where an order referred to in subsection (1) has been made and has not been satisfied the person in whose favour it has been made may, within the period of 5 years after the date of making the order make application to

³⁰ Section 85 (Application for special forfeiture order)

the Attorney-General that the order be satisfied out of moneys paid to the Crown pursuant to an order made under section 86(1).

(3) After the expiration of 5 years from the date of making an order under section 86(1) moneys paid to the Crown under that order shall be paid to the consolidated fund and any application by a person under subsection (2) shall be absolutely barred.

PART 8—MISCELLANEOUS

Money laundering

90.(1) A person who engages in money laundering is guilty of a crime.

Maximum penalty—3 000 penalty units or 20 years imprisonment.

(2) A person engages in money laundering if—

(a) the person—

- (i) engages, directly or indirectly, in a transaction involving money or other property that is tainted property; or
- (ii) receives, possesses, disposes of or brings into Queensland money or other property that is tainted property; or
- (iii) conceals or disguises the source, existence, nature, location, ownership or control of tainted property; and

(b) the person knows, or ought reasonably to know, that the property is tainted property or is derived from some form of unlawful activity.

(3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order must be disregarded.

Charging of money laundering

91.(1) This section applies to a proceeding against a person for money laundering, including a committal proceeding.

(2) The Attorney-General's written consent must be obtained before a proceeding is started by complaint under the *Justices Act 1886*.

(3) If the proceeding is not started by complaint under the *Justices Act 1886*, the Attorney-General's written consent must be obtained before the proceeding progresses to a hearing and decision.

(4) A charge of money laundering may be about—

- (a) an act, or 2 or more acts committed at the same time or different times; or
- (b) tainted property relating to an offence, or 2 or more offences committed by the same person or different persons.

(5) A person may be convicted of money laundering even though the tainted property concerned related to an offence committed by the person.

Possession etc. of property suspected of being tainted property

92.(1) A person must not receive, possess, dispose of, bring into Queensland, conceal or disguise property that may reasonably be suspected of being tainted property.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) If a person is charged with an offence against this section, it is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting that the property mentioned in the charge was either tainted property or derived from any form of unlawful activity.

(3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order must be disregarded.

Conduct by directors, employees or agents

93.(1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that any director, employee or agent of the body corporate, being any director, employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had

that state of mind.

(2) Any conduct engaged in on behalf of a body corporate—

- (a) by any director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of any director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a employee being any employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by any employee or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction of or with the consent or agreement (whether express or implied) of any employee or agent of the firstmentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

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

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reason for the person's intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a

public purpose by a law of this or another State or of the Commonwealth or of a Territory.

Proceeding on application for order not criminal proceeding etc.

94.(1) A proceeding on an application for a restraining, forfeiture, pecuniary penalty or special forfeiture order is not a criminal proceeding.

(2) Without limiting subsection (1), questions of fact on the application must be decided on the balance of probabilities.

(3) However, if a person is, because of section 9(c) or (d),³¹ treated as having been convicted of a serious offence, a court may make a forfeiture, pecuniary penalty or special forfeiture order in reliance on the conviction only if it is satisfied that the evidence is of sufficient weight to support a conviction of the person other than because of section 9(c) or (d).

Constitution of court

95. If an application for a forfeiture order, pecuniary penalty order or restraining order is made to a court before which a person was convicted of a serious offence—

- (a) the application may be dealt with by that court; and
- (b) any function or power may be exercised and any duty may be performed by that court in relation to the forfeiture order, pecuniary penalty order or restraining order;

whether or not that court is constituted in the same way as it was constituted when the person was convicted of the offence.

Appeals

96. Without affecting any other right of appeal, any person aggrieved by any forfeiture order, pecuniary penalty order, restraining order or special forfeiture order or the refusal of a court to make such an order may appeal against such order or refusal to the Court of Appeal.

³¹ Section 9 (Meaning of “convicted” of offence)

Operation of other laws not affected

97. Nothing in this Act limits or restricts the operation of any other law providing for the forfeiture of property.

Sentencing court not to have regard to property forfeiture or pecuniary penalty

98. In deciding the sentence to be imposed on a person (the “defendant”) for a serious offence, the court must not have regard to the question of whether or not—

- (a) the defendant’s property is, or may become, the subject of a forfeiture order or a forfeiture under section 25; or
- (b) the defendant has been or may be ordered to pay a pecuniary penalty or to forfeit an amount to the State under section 86.

Court may lift corporate veil, etc.

99.(1) In assessing the value of benefits derived by a person from the commission of an offence or offences or from a contract referred to in section 86(1), the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person.

(2) On application by an appropriate officer, a court may, if in its opinion particular property is subject to the effective control of a person against whom the court has made a pecuniary penalty order, make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

(3) Where a court declares that property is available to satisfy a pecuniary penalty order or a special forfeiture order—

- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
- (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(4) Where an application for an order under subsection (2) is made that

property is available to satisfy a pecuniary penalty order or special forfeiture order against a person—

- (a) the appropriate officer shall give written notice of the application to the person and to any person whom the appropriate officer has reason to believe may have an interest in the property; and
- (b) the person and any person who claims an interest in the property are entitled to appear and to be heard at the hearing of the application.

Sham transactions etc.

100.(1) The Supreme Court may declare that the whole, or a part, of a transaction to dispose of, or otherwise deal with, property is void if it is satisfied that a person entered into or carried out, or arranged for the transaction to be entered into or carried out, for all or any of the following purposes, or purposes that include all or any of the following purposes—

- (a) to defeat the objects of this Act;
- (b) to avoid or change the application of this Act to all or some of the property or other property;
- (c) to avoid or change the application of this Act in any respect to the person or someone else.

(2) However, the Supreme Court must not make a declaration under subsection (1) affecting a person's interest in property if it is satisfied that—

- (a) the person acquired the interest in property—
 - (i) in good faith and for sufficient consideration; and
 - (ii) not for all or any of the purposes mentioned in subsection (1)(a) to (c) or purposes that include all or any of the purposes; and
- (b) the person was not a party to the commission of a serious offence that is relied on in an application made under this Act.

(3) An application for a declaration under subsection (1) may be made by an appropriate officer.

(4) The applicant must give written notice of the application to—

- (a) the person mentioned in subsection (1); and
- (b) anyone else the authorised person has reason to believe has an interest in the property disposed of or otherwise dealt with under the transaction.

(5) At any time before it finally decides the application, the Supreme Court may direct the applicant to give notice of the application to the persons, and in the way and within the time, the court considers appropriate.

(6) If a declaration is made under subsection (1), the Supreme Court may also declare the rights of a person who acquired an interest in the property after the transaction was entered into or carried out and before the declaration was made.

Pecuniary penalty, restraining and special forfeiture order to be registered

101.(1) Where a pecuniary penalty order or a special forfeiture order has been made against a person or a restraining order has been made in respect of all or some of the property of a person the registrar of titles and any other person charged with the keeping of registers relating to property of the person shall, upon request in that regard and upon production to him or her of sufficient evidence of the order record in the register in his or her keeping a memorial that the pecuniary penalty order or special forfeiture order has been made or, in the case of a restraining order, that the property specified in the order is the subject of the restraining order.

(2) This section shall be given effect notwithstanding that any relevant document of title is not produced to a registrar or any other person.

(3) A memorial referred to in subsection (1) may be recorded notwithstanding any other Act to the contrary.

Interstate operation of forfeiture or restraining orders

102.(1) For the purpose of enabling a forfeiture order or restraining order to be registered under the corresponding law of another State or a Territory, the order may be expressed to apply to property in that State or Territory.

(2) A forfeiture order or restraining order does not apply to property in another State or in a Territory, except in so far as—

- (a) a corresponding law of the State or Territory provides that the order has effect in the State or Territory following registration under that law; or
- (b) the property was movable property and was located elsewhere than in the State or Territory when the order took effect.

Costs incurred on variation of forfeiture or restraining orders on application by third parties

103.(1) If—

- (a) the Supreme Court makes an order under this Act varying a forfeiture order or restraining order that is registered under a corresponding law; and
- (b) the variation is made on the application of a third party and affects the interests of the third party in relation to property in that other State or Territory;

the Supreme Court may order that the actual costs incurred by the third party in applying for and obtaining the variation be paid to the third party.

(2) The Supreme Court may instead order that part only of those costs be paid, if it is satisfied that special circumstances warrant such an order.

(3) The costs shall be paid by a person or authority specified by the Supreme Court.

(4) The Supreme Court may direct in what manner the costs are to be ascertained.

(5) Nothing in this section limits the powers of the Supreme Court to award costs under any other law.

(6) In this section—

“third party”, in relation to a forfeiture order or restraining order, means a person who is not the subject of the order.

“vary” includes limit the manner in which an order applies.

Costs

104. Where—

- (a) a person brings, or appears at, proceedings under this Act; and
- (b) the person is successful in those proceedings; and
- (c) the court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the proceedings are related;

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

Registration fees

105.(1) In this section—

“**register**” means a register kept at a registry.

“**registry**” means—

- (a) the land registry; or
- (b) the office of anybody required or authorised under an Act to keep a register about dealings with property.

(2) No fee is payable by the State for—

- (a) lodging in a registry any order or instrument under this Act or any instrument lodged to transfer property to the State under this Act; or
- (b) anything else for which registry fees are fixed.

Example of paragraph (b)—

If fees are fixed for register searches or copies of anything in a register, the State need not pay the fees.

Jurisdiction

106. Jurisdiction is conferred on a court to hear and determine applications under this Act and to make orders authorised by this Act.

Regulation-making power

110. The Governor in Council may make regulations under this Act.

References to Crimes (Confiscation of Profits) Act 1989

111. In an Act or document, a reference to the *Crimes (Confiscation of Profits) Act 1989* is a reference to this Act.

SCHEDULE 1**EXAMPLES**

section 5

**PART 1—EXAMPLES OF SECTION 13 OF THE ACT
(MEANING OF “TAINTED PROPERTY”)****Example 1**

1.(1) A is convicted of the serious offences of producing and possessing a dangerous drug.

(2) A owned lot 1 and grew the dangerous drug on adjacent lot 2. A gained access to lot 2 through lot 1.

(3) A camped on lot 1 while working at growing the dangerous drug and was found on lot 1 in possession of 5 kg of the dangerous drug.

(4) Lot 1 was used in connection with the commission of the serious offence of producing a dangerous drug.

(5) Lot 1 is tainted property under section 13(1)(a) of the Act.

(6) Lot 2 was used in the commission of the serious offence of producing a dangerous drug.

(7) Lot 2 is also tainted property under section 13(1)(a) of the Act.

Example 2

2.(1) A is convicted of the serious offences of—

- (a) supplying a dangerous drug; and
- (b) carrying on the business of unlawfully trafficking in a dangerous drug.

(2) A used a motor vehicle to transport the drug to a proposed buyer.

SCHEDULE 1 (continued)

(3) Whether the drug was on A or in A's motor vehicle, the motor vehicle was used in connection with the commission of each offence mentioned in subsection (1).

(4) The motor vehicle is tainted property under section 13(1)(a) of the Act.

Example 3

3.(1) A is convicted of the serious offence of official corruption.

(2) A gave B, an officer of the public service, a race horse valued at \$150 000 for B to destroy an official file.

(3) Because of the destruction of the file, A was able to have A's lawfully acquired land rezoned.

(4) Before the rezoning the land was valued at \$200 000. After the rezoning the land was valued at \$1 000 000.

(5) The race horse is derived by B from the commission of the serious offence of official corruption.

(6) The race horse is tainted property under section 13(1)(a) or (c) of the Act.

(7) If the land is sold by A for \$1 000 000, \$800 000 is tainted property under section 13(1)(c) of the Act.

Example 4

4.(1) A is convicted of the serious offence of concealing property reasonably suspected of being tainted property.

(2) A came into possession of motor vehicle parts (the "stolen parts") that A knew or had reason to suspect were stolen.

(3) A used the stolen parts to build 2 complete motor vehicles after later buying the rest of the necessary parts with the intention of combining them with the stolen parts.

(4) All parts were used in, or in connection with, the commission of the serious offence of which A was convicted.

SCHEDULE 1 (continued)

(5) Before A was charged with the offence, A sold 1 motor vehicle for \$30 000 and banked the money.

(6) A was still in possession of the other motor vehicle.

(7) The motor vehicle kept in A's possession is derived from property used in, or in connection with, the commission of the serious offence and is tainted property under section 13(1)(b) of the Act.

(8) The vehicle is also derived directly from the commission of the serious offence and is tainted property under section 13(1)(c) of the Act.

(9) The banked \$30 000 and its accrued interest is property derived by A from property used in, or in connection with, the commission of the serious offence and is tainted property under section 13(1)(b) of the Act.

(10) The \$30 000 (and interest) is also derived from the commission of the serious offence and is tainted property under section 13(1)(c) of the Act.

(11) If A uses the \$30 000 (and interest) to buy another vehicle, the other vehicle is derived from the commission of the serious offence and is tainted property under section 13(1)(c) of the Act.

Example 5

5.(1) A is convicted of the serious offence of producing a dangerous drug.

(2) A used A's warehouse to produce the dangerous drug.

(3) A sells the warehouse and uses the proceeds to buy a house.

(4) The house is property derived by A from property used in, or in connection with, the commission of the serious offence of producing a dangerous drug.

(5) The house is tainted property under section 13(1)(b) of the Act.

Example 6

6.(1) A is convicted of the serious offence of carrying on the business of trafficking in a dangerous drug.

SCHEDULE 1 (continued)

(2) On A's arrest, police seized \$100 000 in cash derived by A from the commission of the serious offence.

(3) The police deposit the \$100 000 in a bank account in the name of the commissioner of the police service pending the outcome of the trial.

(4) The banked \$100 000 and its accrued interest is derived from the commission of the serious offence.

(5) The property is tainted property under section 13(1)(c) of the Act.

PART 2—EXAMPLES OF SECTION 37 OF THE ACT (ASSESSMENT OF BENEFITS)

Example 1

1.(1) A and B are separately convicted of serious offences of carrying on the business of unlawfully trafficking in a dangerous drug.

(2) C bought the dangerous drug from B on 5 occasions for \$2 000—a total of \$10 000.

(3) B gave the money to A.

(4) A paid B a total of \$1 000.

(5) B acted solely as an agent or courier of A.

(6) A is—

(a) the supplier of the dangerous drug; and

(b) the principal with whom C, through B, dealt.

(7) Under section 37(2)(a) and (b) and (8) of the Act, the benefit derived by A is \$10 000.

(8) Under section 37(2)(a) of the Act, the benefit derived by B is \$1 000.

SCHEDULE 1 (continued)

Example 2

2.(1) A is convicted of the serious offence of carrying on unlawful bookmaking (under the *Racing and Betting Act 1980*, section 214) over 5 years.

(2) In the 5 years, A—

- (a) received a total of \$1 000 000 from punters placing bets; and
- (b) paid a total of \$400 000 to winning punters.

(3) Under section 37(2)(a) and (8) of the Act, the benefit derived by A is \$1 000 000.

Example 3

3.(1) A is convicted of the serious offence of carrying on unlawful bookmaking (under the *Racing and Betting Act 1980*, section 214) over 5 years.

(2) Money from the business of unlawful bookmaking was used by A—

- (a) to lead a flamboyant lifestyle costing, on average, \$60 000 for each year; and
- (b) to pay off a mortgage on the mansion A lives in and a block of income producing home units.

(3) The mansion and home units were bought in the 5 years.

(4) A—

- (a) had no assets at the start of the 5 years; and
- (b) can not show a source of property gained in the 5 years other than income from the units, which produced an annual net income of \$20 000.

(5) The mansion and units are worth \$1 000 000.

(6) Under section 37(2), (4) and (6) of the Act—

- (a) the \$1 000 000 current value of the mansion and units is a derived benefit; and

SCHEDULE 1 (continued)

- (b) the amount of \$200 000, made up of the \$60 000 mentioned in subsection (2)(a) less the \$20 000 mentioned in subsection (4)(b) for each year is a derived benefit.

Example 4

4.(1) A is convicted of the serious offence of carrying on unlawful bookmaking (under the *Racing and Betting Act 1980*, section 214) over 5 years.

(2) A carried on the business by—

- (a) taking all bets on credit; and
(b) paying all winning bets and receiving all losing bets at the end of each week.

(3) The total value of all bets placed with A in the 5 years was \$1 000 000.

(4) The total value of all losing bets received by A in the 5 years was \$600 000.

(5) Under section 37(2)(a) of the Act, the benefit derived by A is \$600 000.

Example 5

5.(1) A is convicted of producing a dangerous drug, that is, marijuana.

(2) A had grown and sold 1 000 marijuana plants.

(3) Each marijuana plant, on average, yielded 0.5 kg of saleable material.

(4) The market value of the marijuana in the form sold was \$2 500 for 0.5 kg.

(5) Under section 37(2)(c)(i) of the Act, the benefit derived by A was \$2 500 000.

SCHEDULE 1 (continued)

Example 6

6.(1) A is convicted of the serious offence of concealing property reasonably suspected of being tainted property.

(2) A came into possession of motor vehicle parts (the “**stolen parts**”) that A knew or had reason to suspect were stolen.

(3) A used the stolen parts to build 2 complete motor vehicles after later buying the rest of the necessary parts with the intention of combining them with the stolen parts.

(4) Before A was charged with the offence, A sold 1 motor vehicle for \$30 000 and banked the money.

(5) A was still in possession of the other motor vehicle.

(6) Under section 37(2)(a)(i) and (8) of the Act, the benefit derived by A is—

- (a) the banked \$30 000 and its accrued interest; and
- (b) the value of the motor vehicle still in A’s possession.

SCHEDULE 2**SERIOUS OFFENCES**

section 4

1. *Classification of Computer Games and Images Act 1995*
2. *Classification of Films Act 1991*
3. *Classification of Publications Act 1991*, other than part 2A
4. *Drugs Misuse Act 1986*, section 10A
5. *Fair Trading Act 1989*, part 3, divisions 1 and 2³²
6. *Fauna Conservation Act 1974*³³
7. *Fisheries Act 1994*
8. *Health (Drugs and Poisons) Regulation 1996*
9. *Liquor Act 1992*, part 6, division 3³⁴
10. *National Parks and Wildlife Act 1975*³⁵
11. *Native Plants Protection Act 1930*³⁶
12. *Nature Conservation Act 1992*
13. *Poisons Regulation 1973*, section D1 or H1³⁷
14. *Weapons Act 1990*.

³² Part 3 (Trade practices), division 1 (General rules) and division 2 (Unsolicited goods and services)

³³ Now see *Nature Conservation Act 1992*, section 181.

³⁴ Part 6 (Obligatory provisions and offences), division 3 (Provisions concerning sale of liquor by unlicensed persons or on unlicensed premises)

³⁵ Now see *Nature Conservation Act 1992*, section 181.

³⁶ Now see *Nature Conservation Act 1992*, section 181.

³⁷ Now see *Health (Drugs and Poisons) Regulation 1996* SL No. 414, section 310 (as made).

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 October 2000. Future amendments of the Crimes (Confiscation) Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 3 of 1995	1 April 1995
2	to Act No. 58 of 1995	21 December 1995
2A	to Act No. 79 of 1996	7 March 1997
2B	to Act No. 9 of 1997	4 July 1997
2C	to Act No. 82 of 1997	9 December 1997
3	to Act No. 82 of 1997	4 September 1998
3A	to Act No. 16 of 1999	23 April 1999
3B	to Act No. 27 of 1999	27 October 1999

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

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Changed names and titles	1
Comparative legislation	1
Corrected minor errors	1, 2
Obsolete and redundant provisions	1, 2
Renumbered provisions	1

6 List of legislation

Crimes (Confiscation) Act 1989 No. 60 (prev Crimes (Confiscation of Profits) Act 1989)

date of assent 12 May 1989

ss 1–2 and 16 commenced on date of assent

remaining provisions commenced 19 June 1989 (proc pubd gaz 17 June 1989 p 1224)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch

date of assent 6 December 1990

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2

date of assent 17 December 1991

commenced on date of assent

Queensland Office of Financial Supervision Act 1992 No. 12 ss 1–2, 66 sch

date of assent 6 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 29 May 1992 (1992 SL No. 109)

Penalties and Sentences Act 1992 No. 48 ss 1–2, 207 sch

date of assent 24 November 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 27 November 1992 (1992 SL No. 377)

Prostitution Laws Amendment Act 1992 No. 65 pts 1–2

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1993 (1993 SL No. 11)

Crimes (Confiscation of Profits) Amendment Act 1995 No. 3

date of assent 3 March 1995

ss 1–2 commenced on date of assent
remaining provisions commenced 1 April 1995 (1995 SL No. 65)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 6

date of assent 12 December 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 28 February 1997 (1997 SL No. 35)

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9
ss 1, 2(5) pt 6**

date of assent 15 May 1997
ss 1, 2(5) commenced on date of assent
remaining provisions commenced 20 June 1997 (1997 SL No. 155)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82
ss 1–2 pt 8**

date of assent 5 December 1997
commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1999 No. 16 pt 3

date of assent 22 April 1999
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999
commenced on date of assent

**Financial Sector Reform (Queensland) Act 1999 No. 27 ss 1–2(1), (4), 76 sch 1
pt 3**

date of assent 16 June 1999
ss 1–2, 76 commenced on date of assent
remaining provisions commenced 1 July 1999 (see s 2(1) and proc pubd Cwlth
of Australia gaz 29 June 1999, No. S283)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3

date of assent 23 March 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000
SL No. 174)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000
ss 1–2, 590 commenced on date of assent (see s 2(1))
remaining provisions not yet proclaimed into force

7 List of annotations

Short title

s 1 amd 1995 No. 3 s 4

Commencement

s 2 om R2 (see RA s 37)

Object of Act

s 3 ins 1995 No. 3 s 5

Definitions

prov hdg sub 1995 No. 58 s 4 sch 1

s 4 amd 1991 No. 97 s 3 sch 2; 1992 No. 12 s 66 sch; 1992 No. 48 s 207 sch;
1992 No. 65 s 4; 1995 No. 3 s 6(3)

def “**ancillary offence**” ins 1995 No. 3 s 6(2)

def “**appropriate officer**” sub 1995 No. 3 s 6(1), (2)

def “**approved form**” ins 1995 No. 58 s 4 sch 1
om 2000 No. 5 s 461 sch 3

def “**benefit**” ins 1995 No. 3 s 6(2)

def “**benefit derived**” ins 1995 No. 3 s 6(2)

def “**charge**” ins 1995 No. 3 s 6(2)

def “**convicted**” ins 1995 No. 3 s 6(2)

def “**derived**” ins 1995 No. 3 s 6(2)

def “**effective control**” ins 1995 No. 3 s 6(2)

def “**financial institution**” amd 1992 No. 12 s 66 sch
sub 1995 No. 3 s 6(1), (2)

amd 1999 No. 27 s 76 sch 1 pt 3

def “**interest**” om 1995 No. 3 s 6(1)

def “**Magistrates Court**” om 1991 No. 97 s 3 sch 2

def “**member of the police force**” om 1995 No. 3 s 6(1)

def “**money laundering**” ins 1995 No. 3 s 6(2)

def “**monitoring order**” ins 2000 No. 5 s 461 sch 3

def “**police officer**” ins 1995 No. 3 s 6(2)
om 1996 No. 79 s 22

def “**premises**” om 2000 No. 5 s 461 sch 3

def “**property**” om 1991 No. 97 s 3 sch 2

def “**property-tracking document**” om 2000 No. 5 s 461 sch 3

def “**Public Trustee**” om 1995 No. 3 s 6(1)

def “**quash**” ins 1995 No. 3 s 6(2)

def “**related offence**” ins 1995 No. 3 s 6(2)

def “**relevant period**” om 1995 No. 3 s 6(1)

def “**search warrant**” sub 2000 No. 5 s 461 sch 3

def “**serious drug offence**” ins 1995 No. 3 s 6(2)

def “**serious offence**” amd 1992 No. 65 s 4
sub 1995 No. 3 s 6(1), (2)

def “**tainted property**” sub 1995 No. 3 s 6(1), (2)

def “**transaction**” ins 1995 No. 3 s 6(2)

def “**transfer**” ins 1995 No. 3 s 6(2)

def “**unamenable justice**” ins 1995 No. 3 s 6(2)
 def “**unlawful activity**” ins 1995 No. 3 s 6(2)

Examples in sch 1

s 5 ins 1995 No. 3 s 7

Meaning of “appropriate officer”

s 6 ins 1995 No. 3 s 7

Meaning of “benefit derived”

s 7 ins 1995 No. 3 s 7

Meaning of “charge” if complaint made

s 8 ins 1995 No. 3 s 7

Meaning of “convicted” of offence

s 9 ins 1995 No. 3 s 7

Meaning of “effective control”

s 10 ins 1995 No. 3 s 7

Meaning of “quash” a conviction

s 11 ins 1995 No. 3 s 7

Meaning of “related offence”

s 12 ins 1995 No. 3 s 7

Meaning of “tainted property”

s 13 ins 1995 No. 3 s 7
 amd 1999 No. 16 s 7

Meaning of “unamenable to justice”

s 14 ins 1995 No. 3 s 7
 amd 2000 No. 16 s 590 sch 1 pt 2

**PART 2—FORFEITURE ORDERS, AUTOMATIC FORFEITURE AND
 PECUNIARY PENALTY ORDERS**

pt hdg amd 1995 No. 3 s 8

Division 1—Applications for forfeiture and pecuniary penalty orders

div hdg sub 1995 No. 3 s 9

Application for forfeiture or pecuniary penalty order

s 17 sub amd 1995 No. 3 s 9

Notice of application

s 18 ins 1995 No. 3 s 9

Right to appear and present evidence

s 19 ins 1995 No. 3 s 9

Amendment of application

s 20 ins 1995 No. 3 s 9

Procedure on application

s 21 ins 1995 No. 3 s 9

Limitation on powers of Magistrates Courts

s 22 sub 1995 No. 3 s 9

Division 2—Forfeiture orders and automatic forfeiture of restrained property

div hdg sub 1995 No. 3 s 9

Forfeiture orderss 23 amd 1990 No. 88 s 3 sch
sub 1995 No. 3 s 9**Order permitting s 31 buyback**

s 24 ins 1995 No. 3 s 9

Automatic forfeiture of restrained property in relation to serious drug offences 25 ins 1995 No. 3 s 9
(3)–(4) exp 1 April 1996 (see s 25(4))
(3)–(4) AIA s 20A applies (see s 25(4))**Effect of forfeiture under s 23 or 25**

s 26 sub 1995 No. 3 s 9

Procedural matters about forfeitures 27 ins 1995 No. 3 s 9
amd 1999 No. 19 s 3 sch**Third party protection from forfeiture order**

s 28 sub 1995 No. 3 s 9

Third party protection from forfeiture under s 25

s 29 ins 1995 No. 3 s 9

Discharge of forfeiture order

s 30 sub 1995 No. 3 s 9

Person with interest in forfeited property may buy back the interest

s 31 ins 1995 No. 3 s 9

Buying out other interests under court order

s 32 ins 1995 No. 3 s 9

Effect of quashing of conviction or discharge of forfeiture order

s 33 sub 1995 No. 3 s 9

Pecuniary penalty orders

s 34 sub 1995 No. 3 s 10

Discharge of pecuniary penalty order to the extent of automatic forfeiture

s 35 ins 1995 No. 3 s 10

Pecuniary penalty order increase if forfeiture order discharged

s 36 ins 1995 No. 3 s 10

Assessment of benefits

s 37 amd 1995 No. 3 s 11

Discharge of pecuniary penalty order

s 38 amd 1995 No. 3 s 12

Rehearing

s 39 amd 1995 No. 3 s 13

Restraining orders

s 40 amd 1995 No. 3 s 14; 1997 No. 9 s 20; 1999 No. 16 s 8

Limitation on power of Magistrates Court

s 41 ins 1995 No. 3 s 15

Supreme Court may order that property be excluded from restraining orders 43 ins 1995 No. 3 s 16
amd 1999 No. 16 s 9**Supreme Court may declare that restrained property be disregarded for purposes of s 25**

s 44 ins 1995 No. 3 s 16

Further orders

s 45 amd 1995 No. 3 s 17

Contravention of restraining order

s 47 amd 1995 No. 3 s 18

Charge on property subject to restraining order

s 48 sub 1995 No. 3 s 19

Liability under forfeiture or pecuniary penalty order or forfeiture under s 25 to be satisfied by public trusteeprov hdg sub 1995 No. 3 s 20
s 50 amd 1995 No. 3 s 20**Provisions concerning the public trustee**

s 51 amd 1997 No. 82 s 24

PART 5—OBLIGATIONS OF FINANCIAL INSTITUTIONS

pt hdg sub 2000 No. 5 s 461 sch 3

Division 1—Production orders

div hdg om 2000 No. 5 s 461 sch 3

Interpretation

s 52 om 2000 No. 5 s 461 sch 3

Production orderss 53 amd 1995 No. 3 s 21
om 2000 No. 5 s 461 sch 3**Variation of production order**

s 54 om 2000 No. 5 s 461 sch 3

Failure to comply with production orders 55 amd 1995 No. 3 s 22
om 2000 No. 5 s 461 sch 3**Division 2—Search powers**

div hdg om 2000 No. 5 s 461 sch 3

Powers to search for, and seize, certain documents and property

s 56 om 2000 No. 5 s 461 sch 3

Search warrant for location etc. of certain documents and property

s 57 amd 1990 No. 88 s 3 sch; 1995 No. 3 s 23; 1995 No. 58 s 4 sch 1
om 2000 No. 5 s 461 sch 3

Searches in emergencies

s 58 om 2000 No. 5 s 461 sch 3

Application for warrant

s 59 amd 1995 No. 3 s 24; 1995 No. 58 s 4 sch 1
om 2000 No. 5 s 461 sch 3

Record of proceedings before magistrate

s 60 amd 1995 No. 58 s 4 sch 1
om 2000 No. 5 s 461 sch 3

Duty to show warrant

s 61 om 2000 No. 5 s 461 sch 3

Use of force to enter premises etc.

s 62 om 2000 No. 5 s 461 sch 3

Use of assistants to execute warrant

s 63 om 2000 No. 5 s 461 sch 3

Expiry of warrant

s 64 om 2000 No. 5 s 461 sch 3

Report to magistrate on execution of warrant etc.

s 65 amd 1995 No. 58 s 4 sch 1
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s 66 om 2000 No. 5 s 461 sch 3

Defects in warrants

s 67 om 2000 No. 5 s 461 sch 3

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s 68 om 2000 No. 5 s 461 sch 3

Search of persons under search warrant

s 69 om 2000 No. 5 s 461 sch 3

Return of seized property

s 70 om 2000 No. 5 s 461 sch 3

Division 3—Monitoring orders

div hdg om 2000 No. 5 s 461 sch 3

Monitoring orders

s 71 om 2000 No. 5 s 461 sch 3

Existence and operation of monitoring order not to be disclosed

s 72 amd 1995 No. 3 s 25
 om 2000 No. 5 s 461 sch 3

Division 4—Obligations of financial institutions

prov hdg om 2000 No. 5 s 461 sch 3

Interpretation

s 73 amd 2000 No. 5 s 461 sch 3

Effect of registration

s 79 sub 1995 No. 3 s 26

Interstate orders and search warrants

s 84 amd 1995 No. 3 s 27

Application for special forfeiture order

s 85 sub 1995 No. 3 s 28

Special forfeiture order

s 86 amd 1995 No. 3 s 29

Assessment of benefits

prov hdg amd 1995 No. 3 s 30

s 87 amd 1991 No. 97 s 3 sch 2; 1995 No. 3 s 30; 1995 No. 58 s 4 sch 1

Money laundering

s 90 sub 1995 No. 3 s 31
 amd 1999 No. 16 s 10; 2000 No. 5 s 461 sch 3

Charging of money laundering

s 91 ins 1995 No. 3 s 31

Possession etc. of property suspected of being tainted property

s 92 sub 1995 No. 3 s 31
 amd 2000 No. 5 s 461 sch 3

Proceeding on application for order not criminal proceeding etc.

s 94 sub 1995 No. 3 s 32

Appeals

s 96 amd 1995 No. 3 s 33

Sentencing court not to have regard to property forfeiture or pecuniary penalty

s 98 sub 1995 No. 3 s 34

Sham transactions etc.

s 100 ins 1995 No. 3 s 35

Pecuniary penalty, restraining and special forfeiture order to be registered

s 101 amd 1995 No. 3 s 36

Registration fees

s 105 ins 1995 No. 3 s 37

Power of arrest

s 107 om 2000 No. 5 s 461 sch 3

Approval of forms

s 108 sub 1995 No. 3 s 38; 1995 No. 58 s 4 sch 1
om 2000 No. 5 s 461 sch 3

Transitional provision about forms

s 109 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 109(3))

Regulation-making power

s 110 ins 1995 No. 58 s 4 sch 1

References to Crimes (Confiscation of Profits) Act 1989

s 111 ins 1995 No. 58 s 4 sch 1

Numbering and renumbering of Act

s 80 ins 1995 No. 3 s 38
om R1 (see RA s 37)

SCHEDULE 1—EXAMPLES

ins 1995 No. 3 s 39

SCHEDULE 2—SERIOUS OFFENCES

ins 1995 No. 3 s 39
amd 1997 No. 82 s 25

8 Table of renumbered provisions

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under the Reprints Act 1992 s 43 as required by Crimes (Confiscation of Profits)
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9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Mental Health Act 2000 No. 16 s 590 sch 1 pt 2 reads as follows—

CRIMES (CONFISCATION) ACT 1989

1. Section 14(5)(a), after ‘part 4’—

insert—

‘, or the *Mental Health Act 2000*, chapter 7, part 6’.