

CRIMES (CONFISCATION OF PROFITS) ACT

No. 60 of 1989

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 60 of 1989

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

[ASSENTED TO 12TH MAY, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Crimes (Confiscation of Profits) Act 1989*.

2. Commencement. (1) This section and sections 1 and 5 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such or so much of them as may be specified in the Proclamation shall commence on a day or days to be appointed by Proclamation for the commencement of those provisions.

3. Interpretation. (1) In this Act unless the contrary intention appears—

“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) a safety deposit box;

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

“appropriate officer” means—

(a) in any case, a prosecutor acting on behalf of the Crown;

(b) in relation to a function arising under Part III or exercised before or in relation to a Magistrates Court, the Commissioner of Police or any other member of the police force;

“benefit” includes service or advantage;

“corresponding law” means a law of another State or a Territory of the Commonwealth 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 1986-1989*;

“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 of the

Commonwealth—a constituent member of the body corporate;

(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 authorized 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;

“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 he 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;

(b) a bank within the meaning of the Banking Act 1959 of the Commonwealth (as amended and in force for the time being);

(c) a building society as defined in the *Building Societies Act 1985-1987*;

(d) a credit society as defined in the *Credit Societies Act 1986*;

(e) a person who carries on State banking within the meaning of section 51 (xiii) of the Commonwealth Constitution;

(f) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of section 51 (xx) of the Commonwealth Constitution;

or

(g) any other person or body that permits persons to deposit moneys with that other person or body for the purpose of use by, or at the direction of, those persons for gaming or betting;

“forfeiture order” means an order made under section 8 (1);

“interest”, in relation to property, means—

(a) a legal or equitable estate or interest in the property;

or

(b) a right, power or privilege over, or in connexion with, the property,

- whether present or future and whether vested or contingent;
- “interstate forfeiture order” means an order that is made under a corresponding law and is of a kind 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 of the Commonwealth, 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;
- “Magistrates Court” means a Magistrates Court constituted under the *Justices Act 1886-1988*;
- “member of the police force” means a member of the Police Force appointed under the *Police Act 1937-1987* except a special constable appointed under Part III of that Act;
- “officer” means any director, secretary, executive officer or employee;
- “pecuniary penalty order” means an order made under section 13 (1);
- “premises” includes—
- (a) any structure, building, aircraft, vehicle or vessel;
 - (b) a place (whether enclosed or built upon or not);
 - and
 - (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));
- “property” means real or personal property of every description wherever situated, whether tangible or intangible, and includes any interest in any such real or personal property;
- “property-tracking document”, in relation to an offence, means—
- (a) a document relevant to—
 - (i) identifying, locating or quantifying property of a person who committed the offence or a person whom a member of the police force has reasonable grounds for suspecting committed the offence;
 - or
 - (ii) identifying or locating any document necessary for the transfer of property of a person who committed the offence or a person whom a member of the police force has reasonable grounds for suspecting committed the offence;

or

(b) a document relevant to—

(i) identifying, locating or quantifying tainted property in relation to the offence;

or

(ii) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

“Public Trustee” means The Public Trustee of Queensland;

“relevant period” means the period of 6 months after—

(a) if the person is to be taken to have been convicted of the offence by reason of subsection (2) (a)—the day on which the person was convicted of the offence;

(b) if the person is to be taken to have been convicted of the offence by reason of subsection (2) (b)—the day on which the person was discharged without conviction;

(c) if the person is to be taken to have been convicted of the offence by reason of subsection (2) (c)—the day on which the offence was taken into account;

or

(d) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (d)—the day on which the person is to be taken to have absconded in connexion with the offence;

“restraining order” means an order made under section 17;

“search warrant” means a search warrant issued under Division 2 of Part V;

“serious offence” means—

(a) an indictable offence;

or

(b) any other offence that is prescribed by the regulations to be within this definition or is of a class of offence that is so prescribed;

“special forfeiture order” means an order made under section 60;

“tainted property” means—

(a) in relation to a serious offence—

(i) property used or intended to be used in, or in connexion with, the commission of the offence;

or

(ii) property derived or realized, directly or indirectly, by any person, as a result of the commission of the offence;

or

(b) in relation to a serious offence that is a conspiracy to commit a serious offence—

(i) property used or intended to be used in, or in connexion with, the conspiracy;

(ii) property intended to be used in the commission of the offence the subject of the conspiracy;

or

(iii) property derived or realized, directly or indirectly, by any person, as a result of the conspiracy,

and in Part V and sections 64 (3) and 65 includes property that—

(c) was used or intended to be used in, or in connexion with, the commission of an interstate serious offence;

or

(d) was derived or realized, directly or indirectly, by any person, as a result of the commission of an interstate serious offence.

(2) For the purposes of this Act, a person is to be taken to have been convicted of a serious offence if—

(a) the person has been convicted of the offence (whether or not the person's conviction is deemed not to be a conviction by section 252 of the *Corrective Services Act 1988*);

(b) the person has been charged with and found guilty of the offence but is discharged without conviction;

(c) the offence was taken into account by a court in sentencing the person for another offence;

or

(d) the person has been charged with the offence but, before the charge is finally determined, the person has absconded.

(3) For the purposes of this Act, a person's conviction is to be taken to have been quashed—

(a) where the person is to be taken to have been convicted by reason of subsection (2) (a)—if the conviction is quashed or set aside by a court or a free pardon is granted by the Governor;

(b) where the person is to be taken to have been convicted by reason of subsection (2) (b)—if the finding of guilt is quashed or set aside by a court;

(c) where the person is to be taken to have been convicted by reason of subsection (2) (c)—if the decision of the court to take the offence into account is quashed or set aside by a court;

or

- (d) where the person is to be taken to have been convicted by reason of subsection (2) (d)—if, after the person is subsequently brought before a court to be dealt with for the offence, the person is discharged or acquitted or, if convicted, the conviction is quashed or set aside by a court or a free pardon is granted by the Governor.

(4) For the purposes of this Act, a person is to be taken to have been charged with an offence if a complaint has been laid against the person for the offence whether or not—

- (a) a summons to require the attendance of the person to answer to the complaint;

or

(b) a warrant for the apprehension of the person, has been issued.

(5) For the purposes of this Act, a person shall be taken to abscond in connexion with an offence if, and only if—

- (a) a complaint is made alleging the commission of the offence by the person;

- (b) a warrant for the arrest of the person is issued in relation to that complaint;

and

- (c) one of the following occurs:—

- (i) the person dies without the warrant being executed;

- (ii) at the end of the period of 6 months commencing on the day on which the warrant is issued—

- (A) the court hearing the application is satisfied that although reasonable steps have been taken to execute the warrant it has not been executed;

or

- (B) the person is, for any other reason, not amenable to justice and, if the person is outside Australia, extradition proceedings are not on foot;

- (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued—

- (A) the person is, by reason of being outside Australia, not amenable to justice;

and

- (B) extradition proceedings are on foot,

- and subsequently those proceedings terminate without an order for the person's extradition being made.

(6) For the purposes of this Act, 2 offences are related to each other if the 2 offences comprise substantially the same acts or omissions.

(7) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act whether or not the person has—

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

(8) Without limiting the generality of any other provision of this Act, in determining—

- (a) whether or not property, or an interest in property, is subject to the effective control of a person;
- or
- (b) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of a person,

regard may be had to—

- (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (d) a trust that has a relationship to the property;
- and
- (e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

4. Act to bind Crown. (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.

5. Application. (1) Subject to subsection (2), Parts II and III 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 II—FORFEITURE ORDERS AND PECUNIARY PENALTY ORDERS

Division 1—Applications

6. Application for forfeiture or pecuniary penalty order. (1) If a person has been convicted of a serious offence, an appropriate officer may, subject to subsections (2) and (4), apply to the Supreme Court or the court before which the person was convicted of the offence for one or both of the following orders:—

- (a) a forfeiture order in respect of particular property;
- (b) a pecuniary penalty order.

(2) An application shall be made under subsection (1) before the end of the relevant period (if any) in relation to the conviction.

(3) If an application is made under subsection (1) to the court before which the person was convicted of the offence before that court has passed sentence for the offence, that court—

- (a) may make an order under that subsection at the time of passing sentence and for that purpose the court, if it thinks it necessary to do so, may defer the passing of sentence until it has determined the application;
- and

- (b) shall take into account in determining the application any evidence given in a proceeding against the person for the offence.

(4) If an application is made under subsection (1) to the court before which the person was convicted of the offence or the Supreme Court after the person has been convicted of the offence and sentence has been passed on him, that court shall take into account in determining the application any evidence given in a proceeding against the person for the offence.

(5) If an application under paragraph (a) or (b) of subsection (1) has been finally determined, no further application may be made under that paragraph in relation to the same conviction, except with the leave of the Supreme Court.

(6) A court may hear and determine at the same time—

- (a) an application under subsection (1);
- and
- (b) an application under a law of the Commonwealth that makes provision substantially similar to the provisions of this Part.

(7) Where—

- (a) a person is to be taken to have been convicted of an offence by reason of section 3 (2) (c);
- and
- (b) an application is made to a court for a forfeiture order or pecuniary penalty order in respect of the conviction,

the reference in subsections (3) and (4) to a proceeding against the person for the offence includes a reference to a proceeding against the person for the other offence referred to in section 3 (2) (c).

7. Limitation on power of Magistrates Court. (1) A Magistrates Court may not, in relation to the conviction of a person for a particular offence, make a forfeiture order in respect of property unless it is satisfied that the value of the property (together with the value of all other property that is the subject of all other undischarged forfeiture orders made by that court in relation to that conviction) does not exceed \$20 000 or such greater amount as is prescribed from time to time by section 4 (1) (a) of the *Magistrates Courts Act 1921-1988*.

(2) A Magistrates Court may not, in relation to the conviction of a person for a particular offence, make a pecuniary penalty order against that person unless it is satisfied that the amount payable under the order (together with the amount payable under all other undischarged pecuniary penalty orders made against that person by that court in relation to that conviction) does not exceed \$20 000 or such greater amount as is prescribed from time to time by section 4 (1) (a) of the *Magistrates Courts Act 1921-1988*.

(3) A Magistrates Court may not make a forfeiture order in respect of real property, except in such circumstances as are prescribed by the regulations.

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

Division 2—Forfeiture Orders

8. Forfeiture orders. (1) If an application is made to a court under section 6 (1) (a), the court, if it considers it appropriate, may order that the property be forfeited to the Crown if it is satisfied that the property is tainted property.

(2) In considering whether to make an order under subsection (1) in respect of particular property, the court may have regard to—

- (a) the use that is ordinarily made, or had been intended to be made, of the property;
- (b) any hardship that reasonably may be thought likely to be caused to any person by the order;
- and
- (c) the gravity of the offence concerned.

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

- (a) to the person in reliance on whose conviction the application is made;
- and
- (b) to any other person whom the applicant has reason to believe has an interest in the property.

(4) 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.

(5) The court may, at any time before the final determination of the application and whether or not the period for making the application has expired, amend the notice of application as it thinks fit, either at the request of the applicant or with the approval of the applicant.

(6) The person in reliance on whose conviction the application is made, and any other person who claims an interest in the property, are entitled to appear and to be heard at the hearing of the application.

(7) Where, at the hearing of an application made under section 6 (1), evidence is given that property to which the application relates was in the possession of the person at or immediately after the commission of the serious offence, then—

(a) if there is no evidence given tending to show that the property was tainted property, the court shall presume that the property was tainted property;

or

(b) in any other case, the court shall not make an order under this section in relation to the property unless it is satisfied, on the balance of probabilities, that the property was tainted property.

9. Effect of forfeiture order. (1) If a court makes a forfeiture order in respect of property then, immediately on the making of the order, the property vests absolutely in the Crown.

(2) A court may give all directions that are necessary to give effect to a forfeiture order made by it and such directions, if directed to a particular person, shall be binding on him.

(3) Except with the leave of the court which made the forfeiture order, the Crown shall not—

(a) dispose of, or otherwise deal with, the property;

or

(b) authorize any other person or body to dispose of, or otherwise deal with, the property,

before the end of the appeal period.

(4) If at the end of the appeal period the forfeiture order has not been discharged, the property may be disposed of, or otherwise dealt with, in accordance with the directions of the Attorney-General or of a person authorized by the Attorney-General for the purposes of this subsection.

(5) For the purposes of subsections (3) and (4) the appeal period ends when an appeal may no longer be lodged against either the forfeiture

order or the conviction in reliance on which the order was made or, if such an appeal is lodged, when the appeal lapses or is finally determined.

(6) A person who is in possession of property forfeited to the Crown under section 8 or of documents of title to such property shall deliver the property or the documents of title to a person authorized in that behalf by the Attorney-General, upon demand of that authorized person.

(7) Where a person has delivered property or documents of title to property in compliance with subsection (6) he shall thereby be discharged from any duty or obligation had by him to any other person in relation to the disposition of the property or documents of title and from all liability that, but for this subsection, might have arisen by reason of such delivery.

(8) The Registrar of Titles, Registrar of Dealings and any other person charged with the keeping of registers relating to property forfeited to the Crown pursuant to section 8 shall, upon request in that regard and upon production to him of sufficient evidence of the forfeiture, record—

- (a) the forfeiture to and vesting in the Crown of the property;
or
- (b) where the Minister so directs, the Public Trustee as being the holder upon trust for and on behalf of the Crown of the property,

in the register in his keeping and may do so notwithstanding—

- (c) any other Act to the contrary;
or
- (d) that any relevant document of title to the property is not produced to him.

(9) In all proceedings and for all purposes 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 a District Court where that court makes the order;
or
- (b) the clerk of the court at the place where a Magistrates Court or Children's Court makes the order,

as to the making of the order and the property to which the order relates shall be conclusive evidence of the matters contained therein.

(10) Where a certificate referred to in subsection (9) is duly produced to the registrar of the Supreme Court for registration he shall, without payment of any fees, register the certificate in the court and thereupon the certificate shall be a record of the court and the order to which it refers shall be deemed to be a judgment of the court, duly entered, obtained by the Crown as plaintiff in an action for the recovery of possession of the property to which the order relates against the person

from whom the property has been divested under subsection (1), and all such proceedings may be taken to recover the property as could be taken if the judgment had been given by the court in favour of the Crown.

10. Provisions relating to third parties. (1) Where an application is made for a forfeiture order against particular property, a person who claims an interest in the property may, subject to subsection (2), apply to that court for an order under subsection (5) or (6).

(2) If a forfeiture order has been made against particular property, an application under subsection (1) shall be made within the period of 6 months after the making of the forfeiture order.

(3) Notwithstanding subsection (2), the court which made the forfeiture order may permit a person to apply under subsection (1) outside that period if satisfied that the failure to apply within that period was not due to any neglect or delay on the part of that person.

(4) Without limiting the generality of subsection (3), the court may grant a person leave to apply if the court is satisfied that—

(a) the person, for a good reason, did not attend the hearing of the application for the forfeiture order although the person had notice of the application;

or

(b) particular evidence proposed to be adduced by the person in connexion with the application under subsection (3) was not available to the person at the time of the hearing of the application for the forfeiture order.

(5) If on an application under subsection (1) the court is satisfied—

(a) that the applicant was not a party to the commission of the offence in reliance on which the forfeiture order is sought or was made;

(b) that the applicant acquired the interest in the property in good faith and for sufficient consideration;
and

(c) that the applicant acquired the interest in the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property is tainted property,

the court shall make an order declaring the nature, extent and, if necessary for the purposes of the order, the value (as at the time of making the order) of the applicant's interest in the property and directing the Crown to transfer or grant the property to the applicant or to pay to the applicant the declared value of the applicant's interest in the property, whichever the order directs.

(6) If on an application under subsection (1) the court is satisfied—

(a) that the applicant was not a party to the commission of the offence in reliance on which the forfeiture order is sought or was made;

and

- (b) that the applicant acquired the interest in the property in good faith and for sufficient consideration before the commission of the offence in reliance on which the forfeiture order was made,

the court shall make an order declaring the nature, extent and, if necessary for the purposes of the order, the value (as at the time of making the order) of the applicant's interest in the property and directing the Crown to transfer or grant the property to the applicant or to pay to the applicant the declared value of the applicant's interest in the property, whichever the order directs.

(7) A person who makes an application under subsection (1) in respect of property shall give notice to the Attorney-General of the making of the application.

(8) The Attorney-General shall be a party to any proceedings upon an application under subsection (1).

(9) No stamp duty is payable under the *Stamp Act 1894-1988* in respect of the transfer of any property under this section.

11. Discharge of forfeiture order. (1) A forfeiture order is discharged if—

- (a) the conviction in reliance on which the order was made is subsequently quashed;
 (b) it is discharged by the court that hears an appeal against it under section 69;

or

- (c) a payment is made to discharge it in accordance with this section.

(2) If a court makes a forfeiture order in respect of property, the person who claims to be the person in whom the property was vested immediately before the making of the order may apply in writing to the Attorney-General to have the Attorney-General determine the value of the property.

(3) If an application is made under subsection (2) the Attorney-General, if satisfied—

- (a) that the property was vested in the applicant immediately before the making of the forfeiture order;
 (b) that the property is still vested in the Crown;
 and
 (c) that there is no reason (apart from the forfeiture order) why the property should not be returned to the applicant,

may determine the value (as at the time of the determination) of the property and notify the applicant of the value so determined.

(4) If the applicant, after being notified under subsection (3) and within the period of 60 days after that notification is forwarded, pays to the Crown the amount so notified, the forfeiture order is discharged.

(5) On discharge of the order the Attorney-General shall arrange for the property to be transferred or granted to the applicant and, for this purpose, the Attorney-General has power to do, or authorize the doing of, anything necessary to effect the transfer or grant.

(6) A determination or purported determination of the Attorney-General under subsection (3) shall not be called in question in any court.

12. Effect of discharge of forfeiture order. (1) If a forfeiture order is discharged in the manner referred to in section 11 (1) (a) or (b), the person who claims to be the person in whom the property was vested immediately before the making of the forfeiture order may—

(a) if the property is still vested in the Crown, by application in writing to the Attorney-General, request the return of the property;

or

(b) if the property is no longer so vested, apply to the court which made the forfeiture order for an order declaring the value (as at the time of making the order under this paragraph) of the property.

(2) On receipt of an application under subsection (1) (a), the Attorney-General shall, subject to subsection (3), arrange for the property to be transferred or granted to the applicant or such other person or body as the Attorney-General determines and, for this purpose, the Attorney-General has power to do, or authorize the doing of, anything necessary to effect the transfer or grant.

(3) If a payment has been made to any person under an order made under section 10 (5) or (6), the Attorney-General shall not arrange for the property to be transferred or granted as provided by subsection (2) until the proposed transferee or grantee pays to the Crown the total amount paid by it in respect of the property under an order or orders made under section 10 (5) or (6).

(4) On an application under subsection (1) (b) the court shall make an order declaring the value (as at the time of making the order) of the property.

(5) After an order is made under subsection (4) the applicant for the order may, by application in writing to the Attorney-General, request the payment of the amount declared by the order.

(6) The Crown, upon receipt of advice from the Attorney-General, shall pay to the applicant or to such other person or body as the Attorney-General determines the amount declared by the order made under subsection (4) less the total amount paid by the Crown in respect of the property under any order made under section 10 (5) or (6).

(7) No stamp duty is payable under the *Stamp Act 1894-1988* in respect of the transfer of any property under this section.

Division 3—Pecuniary Penalty Orders

13. Pecuniary penalty orders. (1) If an application is made to a court under section 6 (1) (b) for an order in respect of the benefits derived by the person as the result of committing the offence, the court may—

- (a) assess the value of those benefits;
- and
- (b) order the person to pay to the Crown a pecuniary penalty equal to the value as so assessed less—
 - (i) the value (as at the time of making the order under this subsection) of any property in respect of which a forfeiture order is made in reliance on the same conviction;
 - and
 - (ii) if the court thinks it desirable to take it into account, any amount payable by way of restitution or compensation in relation to the same conviction.

(2) An amount payable by a person to the Crown under a pecuniary penalty order, for all purposes, is to be taken to be a debt due and owing by that person to the Crown.

(3) A pecuniary penalty order made by a court may be enforced as if it were an order made by the court in civil proceedings instituted by the Crown against the person concerned to recover a debt due by that person to the Crown.

14. Assessment of benefits. (1) In this section—

“offence period”, in relation to an application under section 6 (1) made in relation to 2 or more offences, means the period commencing when the earlier or earliest of those offences was committed and ending when the later or latest of those offences was committed.

(2) For the purposes of an application for a pecuniary penalty order against a person (in this subsection called the “defendant”), the value of the benefits derived by the defendant from the commission of an

offence or offences shall be assessed by the court having regard to the evidence before it concerning all or any of the following:—

- (a) the money, or the value of the property other than money, that came into the possession or under the control of—
 - (i) the defendant;
 - or
 - (ii) another person at the request or direction of the defendant, by reason of the commission of the offence or any of the offences;
- (b) the value of any other benefit provided to—
 - (i) the defendant;
 - or
 - (ii) another person at the request or direction of the defendant, by reason of the commission of the offence or any of the offences;
- (c) if the offence or any of the offences consisted of the doing of 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 13 (1), the court shall, subject to paragraphs (b) and (c) and subsection (7), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the 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 13 (1), the court shall, subject to paragraphs (b) and (c) and to subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;
- (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offences, paragraph (a) does not apply to the excess;
- (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offences, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

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

- (a) all property of the person at the time the application is made;
and
- (b) all property of the person at any time—
 - (i) within the period between the day the offence, or the

earliest offence, was committed and the day on which the application is made;

or

(ii) within the period of 5 years immediately before the day on which the application is made,

whichever is the shorter,

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

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

(a) this Act;

(b) a law of the Commonwealth;

(c) a law of a Territory of the Commonwealth;

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 connexion with the commission of the offence or offences shall be disregarded.

(9) 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.

(10) At the hearing of an application for a pecuniary penalty order, a member of the police force 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.

15. Discharge of pecuniary penalty order. (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 69.

(2) If a pecuniary penalty order is registered under the Service and Execution of Process Act 1901 of the Commonwealth (as amended and in force for the time being), 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.

Division 4—Re-hearing

16. Re-hearing. (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 by reason of section 3 (2) (d), 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 re-hear the application for the order.

PART III—RESTRAINING ORDERS

17. Restraining orders. (1) If a person has been, or is about to be, charged with, or has been convicted of, a serious offence, an appropriate officer may apply to the Supreme Court for an order in respect of one or more of the following:—

- (a) specified property of that person;
 - (b) all the property of that person, including property acquired by that person after the making of the order;
- or
- (c) specified property of any other person that is tainted property.

(2) An application under subsection (1) made in respect of a person who has been, or is about to be, charged with a serious offence shall be supported by an affidavit of a member of the police force stating that the member believes—

- (a) that the person charged, or about to be charged, with the serious offence, committed the offence;
- (b) in the case of an application in respect of specified property—
 - (i) that a forfeiture order may be made in respect of the property if the person is convicted of the offence;

or

- (ii) that the property is the property of the person charged, or about to be charged, and that a pecuniary penalty order may be made if the person is convicted of the offence;

and

- (c) in the case of an application in respect of all the property of a person, that a pecuniary penalty order may be made if the person is convicted of the offence,

and setting out the grounds on which the member holds those beliefs.

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

(4) 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.

(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) 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.

(7) 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.

(8) On an application under subsection (1), the Supreme Court may, if it considers that, having regard to the matters contained in the affidavit referred to in subsection (2), there are reasonable grounds for holding those beliefs, or upon being satisfied that the person has been convicted of the serious offence, by order—

- (a) direct that the property specified in the order is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order;

or

- (b) direct the Public Trustee to take control of and manage the property specified in the order and that the applicant notify the Public Trustee of the order.

(9) If an application is made under subsection (1) in reliance on a person being charged with a serious offence, the Supreme Court shall not make a restraining order unless it is satisfied that the person is about to be charged with the offence or a related indictable offence within 48 hours.

(10) A restraining order against a person's property may be made subject to such conditions as the Supreme Court thinks fit and, without limiting the generality of this, may make provision for meeting, out of the property or a specified part of the property, one 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 he 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).

(11) The Supreme Court shall not make provision of a kind referred to in subsection (10) unless it is satisfied—

- (a) that the defendant cannot meet the expenses or debt concerned out of property that is not subject to a restraining order;
and
- (b) that the property, or a specified part of the property, was not derived or realized, directly or indirectly, by any person, as a result of the commission of the offence in reliance on which the application referred to in subsection (1) is made.

(12) The Supreme 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.

(13) 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.

18. Notice of restraining order to be given to persons affected. 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.

19. Further orders. (1) The Supreme Court may, when it makes a restraining order or at any later time—

- (a) on application made to it, make such orders in relation to the property to which the restraining order relates or with respect to the operation of the restraining order as it considers just;
- (b) on application made to it or without any application, make an order authorizing another court—
 - (i) to make an order setting aside the restraining order;
 - or
 - (ii) to make other orders in relation to the operation of the restraining order,

to the extent and in the circumstances specified in the order of the Supreme Court.

(2) An order under subsection (1) 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;
- (b) the person whose being charged with an offence was relied upon for the purpose of making the restraining order;
- (c) a person to whose property the restraining order relates;
- (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 Supreme Court to make application.

(3) The applicant for an order under subsection (1) shall give notice of the application to each other person who could have applied for the order.

(4) Without limiting the generality of subsection (1), the Supreme 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 Supreme Court, or such officer of the Supreme 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 17 (12) in relation to the restraining order;
- (e) if the restraining order is directed to the Public Trustee to take 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.

(5) Where a person is examined before the Supreme Court or an officer of the court pursuant to an order under subsection (1), 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.

(6) Where a person is examined before the Supreme Court or an officer of the court pursuant to an order under subsection (1), 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.

(7) For the purposes of subsection (6), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(8) A person who is ordered under subsection (1) to attend an examination referred to in subsection (4) (c) shall not—

- (a) without reasonable excuse, fail to attend as required by the order;
- (b) without reasonable excuse, fail to attend from day to day until the conclusion of the examination;
- (c) refuse or fail to take an oath or make an affirmation for the purpose of the examination;
- (d) subject to subsection (5), refuse or fail to answer a question that the person is directed to answer by the Supreme 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.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

20. Duration of restraining order. (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 authorized to do so by an order of the Supreme Court under section 19 (1) (b), 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;

- (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 his conviction for that offence;

or

- (b) gives undertakings satisfactory to the court concerning that person's property.

21. Contravention of restraining order. 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.

Penalty:

- (a) if the offender is a natural person—a fine of 350 penalty units or imprisonment for a period of 7 years, or both;
or
- (b) if the offender is a body corporate—a fine of 1 000 penalty units.

22. Charge on property subject to restraining order. (1) If—

- (a) in reliance on a person being charged with a serious offence, the Supreme Court has made a restraining order in respect of all or some of the property of that person;
and
- (b) in reliance on the conviction of that person for that offence a court subsequently makes a pecuniary penalty order against that person,

then there is created, on the making of the pecuniary penalty order, a charge on all the property to which the restraining order applies to secure the payment to the Crown of the pecuniary penalty.

(2) A charge created by the making of a pecuniary penalty order ceases to have effect if any of the following occurs:—

- (a) the pecuniary penalty order is discharged;
- (b) the pecuniary penalty is paid;
- (c) the property is disposed of under an order made under section 24;
- (d) the property is disposed of with the consent of the Supreme Court or, if the Public Trustee has been directed to take control of and manage the property, with the consent of the Public Trustee;
- (e) the property is sold to a purchaser in good faith for value who, at the time of the purchase, had no notice of the charge.

(3) A charge created by the making of a pecuniary penalty order—

- (a) is subject to every encumbrance to which the property so charged was subject immediately before the pecuniary penalty order was made but has priority over all other encumbrances;
and
- (b) subject to subsection (2), remains on the property despite any disposal of the property.

(4) A charge created on property by the making of a pecuniary penalty order may be registered under any law of Queensland that provides for registration of charges on property of that description.

(5) If the charge is registered under subsection (4), a person who purchases the property after the registration of the charge is, for the purposes of subsection (2) (e), to be taken to have had notice of the charge.

23. Registration of restraining order. (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 21.

PART IV—POWERS OF PUBLIC TRUSTEE

24. Liability under forfeiture order or pecuniary penalty order to be satisfied by Public Trustee. (1) If—

(a) the Public Trustee has taken control and management of property under a direction to do so contained in a restraining order;

and

(b) a forfeiture order or a pecuniary penalty order is made in reliance on the conviction of that person of that offence,

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 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) A determination or purported determination of the Attorney-General under subsection (2) (a) shall not be called in question in any court on any account.

(4) 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).

(5) Without limiting the generality of subsection (4), 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 authorized by paragraphs (a), (b) and (c) of subsection (6) should be paid.

(6) Proceeds realized by the Public Trustee from the disposal of, or otherwise in connexion 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 25 (1);
- (b) secondly, in payment of expenses incurred by the Public Trustee in disposing of, or otherwise in connexion 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 (5) (c), if such an order has been made, or otherwise to such person as appears to the Public Trustee to be entitled thereto.

(7) If the Public Trustee pays any money in satisfaction of the liability of a person under a forfeiture order or a pecuniary penalty order, the liability of that person under the order is, to the extent of the payment, discharged.

25. Provisions concerning the Public Trustee. (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 authorized under the *Public Trustee Act 1978-1988* 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 section 8 of the *Public Trustee Act 1978-1988* 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.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

(3) A certificate purporting to be under the hand of the person holding the appointment of the Public Trustee, Senior Deputy Public

Trustee or Acting 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 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 V—INFORMATION GATHERING POWERS

Division 1—Production Orders

26. Interpretation. (1) In this Part, unless the contrary intention appears, “serious offence” includes an interstate serious offence.

(2) The question of whether a person has been charged with or convicted of an interstate serious offence shall, for the purposes of this Part, be determined in accordance with the corresponding law of the State or Territory of the Commonwealth concerned.

27. Production orders. (1) Where—

(a) a person has been convicted of a serious offence and a member of the police force has reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence;

or

(b) a member of the police force has reasonable grounds for suspecting that—

(i) a person has committed a serious offence;

and

(ii) a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence,

the member may apply to the Supreme Court for an order under subsection (4) against the person suspected of having possession or control of the document or documents.

(2) Where an application under subsection (1) includes information on oath that the member of the police force has reasonable grounds to believe that—

(a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(b) property specified in the information is subject to the effective control of the person,

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

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Supreme Court may have regard to the matters referred to in section 14.

(4) Where an application is made under subsection (1) for an order against a person, the Supreme Court may, subject to subsections (5) and (8), make an order that the person—

(a) produce to a member of the police force any documents of the kind referred to in subsection (1) that are in the person's possession or control;

or

(b) make available to a member of the police force, for inspection, any documents of that kind that are in the person's possession or control.

(5) An order under subsection (4) (a) shall not be made in respect of bankers' books.

(6) The Supreme Court shall not make an order under this section unless—

- (a) the informant or some other person has given the Supreme Court, either orally or by affidavit, such information (if any) as the Supreme Court requires concerning the grounds on which the order is sought;
and
- (b) the Supreme Court is satisfied that there are reasonable grounds for making the order.

(7) An order that a person produce a document or documents to a member of the police force shall specify the time when and the place where the document is or the documents are to be produced.

(8) An order that a person make a document or documents available to a member of the police force for inspection shall specify the time or times when the document is or the documents are to be made available.

(9) Where a document is produced to a member of the police force pursuant to an order under this section, the member may do any one or more of the following:—

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document;
- (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(10) Where a document is made available to a member of the police force for inspection pursuant to an order under this section, the member may do any one or more of the following:—

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document.

(11) Where a member of the police force retains a document pursuant to an order under this section, the member, when requested to do so by the person to whom the order was addressed, shall—

- (a) give the person a copy of the document certified by the member and in writing to be a true copy of the document;
and
- (b) unless the person has received a copy of the document under paragraph (a)—permit the person to do any one or more of the following:—
 - (i) inspect the document;
 - (ii) take extracts from the document;
 - (iii) make copies of the document.

(12) A person is not excused from producing or making available a document when required to do so by an order under this section on the ground that—

- (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty;
- or
- (b) the production or making available of the document would be in breach of an obligation (whether imposed by any law or otherwise) of the person not to disclose the existence or contents of the document.

(13) Where a person produces or makes available a document pursuant to an order under this section, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 29.

(14) For the purposes of subsection (13), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(15) In this section—

“bankers’ books” means any accounting records used in the ordinary business of banking and includes ledgers, day-books, cash-books and account books.

28. Variation of production order. Where a court makes a production order requiring a person to produce a document to a member of the police force, the person may apply to the court for a variation of the order and if the court is satisfied that the document is essential to the business activities of the person, the court may vary the production order so that it requires the person to make the document available to a member of the police force.

29. Failure to comply with production order. Where a person is required by a production order to produce a document to a member of the police force or make a document available to a member of the police force for inspection any person who—

- (a) contravenes the order without reasonable excuse;
- or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without—
 - (i) indicating to the member of the police force to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading;

and

- (ii) providing correct information to the member of the police force if the person is in possession of, or can reasonably acquire, the correct information,

is guilty of a crime.

Penalty:

- (a) if the offender is a natural person—a fine of 350 penalty units or imprisonment for a period of 7 years, or both;
or
- (b) if the offender is a body corporate—a fine of 1 000 penalty units.

Division 2—Search Powers

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

A member of the police force may—

- (a) enter upon land, or upon or into premises;
- (b) search the land or premises for—
 - (i) any property-tracking document in relation to a serious offence;
 - or
 - (ii) any tainted property;
- and
- (c) seize any document or property found in the course of the search that the member of the police force believes, on reasonable grounds, to be—
 - (i) a property-tracking document in relation to an indictable offence;
 - or
 - (ii) tainted property,

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

- (d) with the consent of the occupier of the land or premises;
- (e) under a warrant issued under section 31;
- or
- (f) under section 32.

31. Search warrant for location, etc., of certain documents and property. (1) Where—

- (a) a person has been convicted of a serious offence and a member of the police force has reasonable grounds for suspecting that there is or may be upon any land, or upon

or in any premises, a property-tracking document in relation to the offence;

(b) a member of the police force has reasonable grounds for suspecting that—

(i) a person has committed an indictable offence;

and

(ii) there is or may be upon any land, or upon or in any premises, a property-tracking document in relation to the offence;

or

(c) a member of the police force has reasonable grounds for suspecting that there is or may be upon any land, or upon or in any premises, tainted property,

the member of the police force may apply to a stipendiary magistrate for a search warrant under subsection (4) in respect of the land or premises.

(2) Where a member of the police force applying for a warrant under this section in respect of an offence includes in the application under subsection (1) (a) or (b) information on oath that the member has reasonable grounds to believe that—

(a) the person who was convicted of the offence or who is believed to have committed the offence derived a benefit, directly or indirectly, from the commission of the offence;

and

(b) property specified in the application is subject to the effective control of the person,

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

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the stipendiary magistrate may have regard to the matters referred to in section 14.

(4) Where an application is made under subsection (1) for a search warrant in respect of land or premises, the stipendiary magistrate may, subject to subsections (6) and (9), issue a search warrant authorizing a member of the police force (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable—

(a) to enter upon the land or upon or into the premises;

(b) to search the land or premises for documents or property of the kind referred to in subsection (1);

(c) to seize any document or property found in the course of the search that the member believes, on reasonable grounds, to be a document or to be property of that kind;

and

- (d) to search any person found in or on the premises in accordance with section 43.

(5) A warrant shall not be issued under this Part in reliance on the commission of a serious offence unless a person has been charged with that offence or the stipendiary magistrate is satisfied that it is likely that a person will be charged within 48 hours with that offence or a related indictable offence.

(6) A stipendiary magistrate shall not issue a search warrant under subsection (4) in respect of documents of a kind referred to in subsection (1) unless he is satisfied that—

- (a) the document involved cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of the document;
- (b) a production order has been given in respect of the document and has not been complied with;
- (c) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with;

or

- (d) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the member of the police force does not gain immediate access to the document without notice to any person.

(7) If, in the course of searching, under a warrant issued under this section, for a property-tracking document in relation to a particular offence, a member of the police force finds—

- (a) any document that the member believes, on reasonable grounds, to be—

- (i) a property-tracking document in relation to the offence, although not of a kind specified in the warrant;

or

- (ii) a property-tracking document in relation to another serious offence;

or

- (b) any thing that the member believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,

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

(8) There shall be stated in a warrant—

- (a) the purpose for which the warrant is issued;
- (b) the nature of the serious offence in reliance on which the warrant is issued;

and

- (c) a description of the kind of documents or property authorized to be seized.

(9) Every warrant issued under subsection (2) shall be in the form prescribed by the regulations.

(10) Nothing in this Part limits any of the provisions of any other Act relating to search warrants.

32. Searches in emergencies. (1) A member of the police force may—

- (a) search a person for tainted property;

or

- (b) enter upon land, or upon or into premises, and search for tainted property,

and may seize tainted property that the member finds in the course of that search if—

- (c) the member believes, on reasonable grounds, that it is necessary to do so in order to prevent the concealment, loss or destruction of the tainted property;

and

- (d) the search, entry or seizure, as the case may be, is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or of a warrant issued under this Act.

(2) Subsection (1) does not apply in respect of particular tainted property unless a complaint has been laid in respect of the relevant offence.

(3) Where a person is searched under this section, the search shall, if it is practicable in the circumstances to do so, be carried out by—

- (a) a member of the police force of the same sex as the person;

or

- (b) a legally qualified medical practitioner acting at the direction of a member of the police force.

33. Application for warrant. (1) Subject to subsection (4), an application for a search warrant shall be made in writing.

(2) A stipendiary magistrate shall not issue a search warrant unless—

- (a) the application for the warrant sets out the grounds on which the warrant is being sought;

- (b) the applicant or some other person has given the stipendiary magistrate, either orally or in writing, such further

information (if any) as the stipendiary magistrate requires concerning the grounds on which the warrant is being sought;

- (c) the information given by the applicant is verified before the stipendiary magistrate on oath or affirmation or by affidavit, and
- (d) the stipendiary magistrate is satisfied that there are reasonable grounds for issuing the search warrant.

(3) A stipendiary magistrate may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

(4) For the purpose of making an application under subsection (1)—

- (a) the application and submissions concerning the application may be made;
- (b) any information concerning the application may be furnished; and
- (c) an oath may be administered and made,

in whole or in part by telephone, telex, radio, facsimile copy or other similar facility.

(5) Where an application for the issue of a search warrant is made pursuant to subsection (4) the following provisions apply:—

- (a) the applicant shall inform the stipendiary magistrate of his name, rank and number (if any) in the Police Force, and the stipendiary magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a member of the police force;
- (b) the applicant shall inform the stipendiary magistrate of the facts on which he seeks the issue of the search warrant;
- (c) if it appears to the stipendiary magistrate from the information furnished by the applicant that there are proper grounds for the issue of a search warrant, he shall inform the applicant of the facts on which he relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make a complaint in writing under oath verifying those facts;
- (d) if the applicant gives such an undertaking, the stipendiary magistrate may make out, and sign, a search warrant, noting on the warrant the facts on which he relies as grounds for the issue of the warrant;
- (e) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the stipendiary magistrate;
- (f) the stipendiary magistrate shall inform the applicant of the terms of the warrant;
- (g) the applicant shall, as soon as practicable after the issue of the search warrant, forward to the stipendiary magistrate a

complaint in writing under oath verifying the facts referred to in paragraph (b).

(6) When a warrant is issued by a stipendiary magistrate as the result of an application made pursuant to subsection (4), the stipendiary magistrate shall, unless otherwise requested by the applicant, send the warrant, within 7 days of its issue, to the Commissioner of Police.

(7) The failure of a stipendiary magistrate to send a warrant to the Commissioner of Police or an applicant to forward a complaint verifying the facts referred to in subsection (5) (b) does not affect the validity of the warrant.

34. Record of proceedings before stipendiary magistrate. (1) A stipendiary magistrate who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the stipendiary magistrate has relied on to justify the issue of the warrant.

(2) The stipendiary magistrate may decline to record any matter that might disclose the identity of a person if the stipendiary magistrate believes on reasonable grounds that to do so might jeopardize the safety of any person.

35. Duty to show warrant. (1) A member of the police force executing a search warrant shall produce the warrant for inspection by an occupier of, or a person who is in charge of, the premises if requested to do so.

(2) If a member of the police force, for reasonable cause, cannot at the time produce the warrant, he may produce a form of the warrant completed and endorsed in accordance with subsection (3) and that production shall be deemed to be a production of the warrant.

(3) To comply with subsection (2), a form of warrant—

(a) shall be completed substantially in the terms of the warrant issued by the stipendiary magistrate;

(b) shall specify—

(i) the name of the member of the police force who applied for the warrant;

(ii) the name of the stipendiary magistrate who issued the warrant;

(iii) the date and time when the warrant was issued and expires;

(iv) the address or other description of the premises that are the subject of the warrant;

and

(c) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

36. Use of force to enter premises, etc. (1) A person authorized to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorized to search premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of that search.

37. Use of assistants to execute warrant. A member of the police force may execute a search warrant with the aid of such assistants as the member considers necessary.

38. Expiry of warrant. A search warrant ceases to have effect—

- (a) at the end of the period of 1 month after its issue or such less time as the stipendiary magistrate may specify;
- (b) if it is withdrawn by the stipendiary magistrate who issued it;
- or
- (c) when it is executed,

whichever is the first to occur.

39. Report to stipendiary magistrate on execution of warrant, etc.

(1) The member of the police force to whom a search warrant is issued shall give a report in writing to the stipendiary magistrate who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of any thing seized);
- and
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed.

(2) A report shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever is the first to occur.

(3) A person may apply to the stipendiary magistrate to whom a report has been given under subsection (1) for an order authorizing the person to inspect the report if the person satisfies the stipendiary magistrate that he is—

- (a) the owner or occupier of premises upon which the warrant was executed;
- or
- (b) the owner of property seized and carried away in the execution of the warrant.

40. Death, absence, etc. of stipendiary magistrate who issued warrant.

If the stipendiary magistrate who issued a search warrant has died, has ceased to be a stipendiary magistrate or is absent, a report required to be given to that stipendiary magistrate under section 39 shall be given to any other stipendiary magistrate.

41. Defects in warrants. A search warrant is not invalidated by any defect other than a defect which affects the substance of the warrant in a material particular.

42. Seizure of property under search warrant. (1) A member of the police force executing a search warrant may seize property of the kind described in the warrant.

(2) A member of the police force executing a search warrant may also seize property that is not of the kind described in the warrant if—

(a) the member of the police force believes on reasonable grounds that the property is of a kind that could have been included in a search warrant issued under this Part;

and

(b) the member believes on reasonable grounds that it is necessary to seize that property in order to prevent its concealment, loss or destruction or its use in committing, continuing or repeating a serious offence.

(3) The power conferred by this section to seize property includes power—

(a) to remove the property from the premises where it is found;

(b) to guard the property in or on those premises;

and

(c) to make copies of the whole or any part of the property.

43. Search of persons under search warrant. (1) A member of the police force executing a search warrant may, if the search warrant authorizes him to do so, search any person found in or on the premises whom the member suspects on reasonable grounds of having property of the kind described in the warrant.

(2) A person shall not be searched under this section except by—

(a) a member of the police force of the same sex as the person;

or

(b) a legally qualified medical practitioner acting at the direction of a member of the police force.

44. Return of seized property. (1) If property has been seized under a warrant and—

(a) by the end of the period of 7 days after the property was seized, no person has been charged with the serious offence in reliance on the commission of which the warrant was issued, and an application for a forfeiture order has not been made in respect of the property;

(b) a person has been charged with and convicted of such an offence but by the end of the period of 6 months after the date of conviction or the end of the appeal period (if any)

an application for a forfeiture order has not been made in respect of the property;

or

- (c) a person has been charged with such an offence and discharged or acquitted,

then the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized or to such other person as the Attorney-General directs.

(2) For the purposes of subsection (1) the appeal period ends when an appeal may no longer be lodged against the conviction, discharge or acquittal, as the case requires, or, if such an appeal is lodged, when the appeal lapses or is finally determined.

(3) If—

- (a) property has been seized under a search warrant;
(b) an application has been made under this Act 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 or to such other person as the Attorney-General directs.

(4) If property to which this subsection applies has been seized under a search warrant, 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, if it considers it appropriate, make such an order on such terms and conditions (if any) as it thinks fit.

(5) The applicant for an order under subsection (4) 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 Police.

(6) This section applies to a search warrant issued in reliance on the commission of an interstate serious offence as if the references in it to a forfeiture order included references to an interstate forfeiture order.

(7) Subsection (4) applies to all property seized under a search warrant other than property that is tainted property.

Division 3—Monitoring Orders

45. Monitoring orders. (1) A member of the police force may apply to the Supreme Court for an order (in this Division called a “monitoring

order”) directing a financial institution to give information to a member of the police force.

(2) A monitoring order shall direct a financial institution to give information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(3) A monitoring order shall apply in relation to transactions conducted during the period specified in the order (being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the date of the order).

(4) The Supreme Court shall not make a monitoring order unless it is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought—

- (a) has committed, or is about to commit, a serious offence;
- (b) was involved in the commission, or is about to be involved in the commission, of a serious offence;

or

- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

(5) A monitoring order shall specify—

- (a) the name or names in which the account is believed to be held;
 - (b) the class of information that the institution is required to give;
- and

- (c) that the information is to be given to a member of the police force (who may be named in the order) and the manner in which the information is to be given.

(6) Where a financial institution that has been given notice of a monitoring order knowingly—

- (a) contravenes the order;

or

- (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this Act.

Penalty: 1 000 penalty units.

(7) A reference in this section to a transaction conducted through an account includes a reference to—

- (a) the making of a fixed term deposit;
- and

- (b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.

46. Existence and operation of monitoring order not to be disclosed.

(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—

- (a) a member of the police force;
- (b) an officer or agent of the institution, for the purpose of ensuring that the order is complied with;
- or
- (c) a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person of a kind referred to in subsection (1) (a), (b) or (c) to whom a disclosure of the existence or operation of a monitoring order has been made (whether in accordance with subsection (1) or a previous application of this subsection or otherwise) shall not—

- (a) while he is such a person—disclose the existence or operation of the order except to another person of a kind referred to in subsection (1) (a), (b) or (c) for the purposes of—
 - (i) if the disclosure is made by a member of the police force—the performance of that person's duties;
 - (ii) if the disclosure is made by an officer or agent of the institution—ensuring that the order is complied with or obtaining legal advice or representation in relation to the order;
 - or
 - (iii) if the disclosure is made by a barrister or solicitor—giving legal advice or making representations in relation to the order;
- or
- (b) when he is no longer such a person—make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Nothing in subsection (2) prevents the disclosure by a member of the police force of the existence or operation of a monitoring order—

- (a) for the purposes of, or in connexion with, legal proceedings;
- or
- (b) in the course of proceedings before a court.

(4) A member of the police force shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) is guilty of a crime.

Penalty:

- (a) if the person is a natural person—a fine of 350 penalty units or imprisonment for 7 years, or both;

or

- (b) if the person is a body corporate—a fine of 1 000 penalty units.

(6) For the purposes of this section, a person shall not be regarded as a director within the meaning of paragraph (c) of the definition of “director” by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the directors of the financial institution or the corporation, as the case may be.

(7) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

(8) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of sections 64 and 65 in relation to the institution.

Division 4—Obligations of Financial Institutions

47. Interpretation. In this Division—

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

(a) that relates to—

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

(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.

48. Retention of records by financial institutions. (1) A financial institution shall, subject to section 49, 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.

Penalty: a fine of 200 penalty units.

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

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

Penalty: a fine of 200 penalty units.

50. Communication of information by financial institutions to police.

(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 member of the police force.

(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 64 and 65, not to have been in possession of that information at any time.

PART VI—INTERSTATE ORDERS AND WARRANTS

51. Registration of interstate orders. (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.

(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.

52. Interim registration of facsimile copies. (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.

53. Effect of registration. (1) A registered interstate forfeiture order is, for the purposes of this Act (other than sections 9 (3), 10, 11, 12 and 69) to be taken to be a forfeiture order at the time of registration.

(2) A registered interstate restraining order is, for the purposes of this Act (other than sections 18, 19, 20, 22 and 24) to be taken to be a restraining order made under section 17.

54. Duration of registration. 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 of the Commonwealth in which it was made;

or

(b) its registration is cancelled under this Act.

55. Cancellation of registration. (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.

56. Charge on property subject to registered interstate restraining order. (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 1901 of

the Commonwealth (as amended and in force for the time being), 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) Subsections (3), (4) and (5) of section 22 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 22 (1).

57. Public Trustee may act as agent. 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.

58. Interstate orders and search warrants. (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 of the Commonwealth makes an order—

(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 of the Commonwealth under a search warrant issued under a corresponding law in reliance on the commission of a serious offence;

(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 of the Commonwealth 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 Police.

(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 connexion with, the commission of an interstate serious offence;
- or
- (b) was derived or realized, directly or indirectly, by any person, as a result of the commission of an interstate serious offence.

PART VII—SPECIAL FORFEITURE ORDERS

59. Application for special forfeiture order. If a person (in this Part referred to as the “defendant”)—

- (a) has been convicted of a serious offence;
 - (b) has been acquitted of a serious offence pursuant to section 647 of *The Criminal Code*;
 - or
 - (c) has been charged with a serious offence but pursuant to Part IV of the *Mental Health Services Act 1974-1988* has been found to be not fit for trial in respect of the alleged offence and proceedings in respect thereof have been discontinued,
- an appropriate officer may apply to the Supreme Court, at any time, for an order under section 60.

60. Special forfeiture order. (1) If an application is made under section 59 the Supreme Court, if it considers it appropriate, may make an order that the defendant forfeit to the Crown an amount equal to all or part of the proceeds received or to be received by him, or by any other person on his behalf, from a contract relating to—

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

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) The defendant, any other person referred to in subsection (1) and any person to whom a notice is given under subsection (4) are entitled to appear and to be heard at the hearing of the application.

61. Assessment of proceeds. (1) For the purposes of an application for a special forfeiture order against a defendant, the value of the proceeds referred to in section 60 (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 proceeds or benefits for the purposes of this section, may treat as the value of the proceeds or benefits received the value that the proceeds or benefits received would have had if 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 proceeds or 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 60 (1), the court shall, subject to paragraphs (b) and (c) treat the value of the proceeds 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 60 (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 proceeds received by a person from the contract referred to in section 60 (1), any expenses or outgoings of the person in connexion 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.

62. Effect of special forfeiture order. (1) The amount specified in an order made under section 60 (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 60 (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 60 (2), pays moneys to the Crown is thereby discharged from the terms of the contract referred to in that section.

63. Application of moneys paid to the Treasurer under this Part.

(1) Moneys paid to the Treasurer pursuant to an order made under section 60 (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 59.

(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 the Attorney-General that the order be satisfied out of moneys paid to the Crown pursuant to an order made under section 60 (1).

(3) After the expiration of 5 years from the date of making an order under section 60 (1) moneys paid to the Crown under that order shall be paid to Consolidated Revenue and any application by a person under subsection (2) shall be absolutely barred.

PART VIII—MISCELLANEOUS

64. Money laundering. (1) In this section “transaction” includes the receiving or making of a gift.

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

Penalty: (a) if the person is a natural person—3 000 penalty units or imprisonment for 20 years, or both;

or

(b) if the person is a body corporate—a fine of 10 000 penalty units.

(3) A person shall be taken to engage in money laundering if, and only if—

(a) the person engages, directly or indirectly, in a transaction that involves money, or other property, that is tainted property;

or

- (b) the person receives, possesses, conceals, disposes of or brings into Queensland any money, or other property, that is tainted property,

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

65. Possession, etc., of property suspected of being tainted property.

(1) A person who receives, possesses, conceals, disposes of or brings into Queensland any money, or other property, that may reasonably be suspected of being tainted property commits an offence against this Act.

Penalty: (a) if the person is a natural person—a fine of 100 penalty units or imprisonment for 2 years, or both;

or

- (b) if the person is a body corporate—a fine of 300 penalty units.

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

66. Conduct by directors, servants or agents. (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, servant or agent of the body corporate, being any director, servant or agent by whom the conduct was engaged in within the scope of his actual or apparent authority, had that state of mind.

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

- (a) by any director, servant or agent of the body corporate within the scope of his 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, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for 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 servant being any servant or agent by whom the conduct was engaged

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

shall be deemed, for 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 of the Commonwealth.

67. Standard of proof. (1) Subject to subsection (2), any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

(2) If a person is, by reason of section 3 (2) (d), to be taken to have been convicted of a serious offence, a court shall not make a forfeiture order, pecuniary penalty order or special forfeiture order in reliance on the person's conviction of the offence unless the person has been committed for trial for the offence or the court is satisfied—

(a) on the balance of probabilities, that the person has absconded; and

(b) having regard to all the evidence before it, that the evidence is of sufficient weight to support a conviction of the defendant of the offence.

68. Constitution of court. 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.

69. Appeals. (1) 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 Supreme Court sitting as the Full Court.

(2) The Full Court is hereby invested with jurisdiction to hear and dispose of all appeals made to it pursuant to subsection (1).

70. Operation of other laws not affected. Nothing in this Act limits or restricts the operation of any other law providing for the forfeiture of property.

71. Sentencing court not to have regard to forfeiture of property or pecuniary penalty. A court, in determining sentence for a serious offence, shall not have regard to the question of whether or not the defendant's property is, or could be, the subject of an application for forfeiture or a pecuniary penalty under this Act.

72. Court may lift corporate veil, etc. (1) In assessing the value of benefits derived by a person from the commission of an offence or offences or from a contract referred to in section 60 (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.

73. Pecuniary penalty, restraining and special forfeiture order to be registered. (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, Registrar of Dealings 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 of sufficient evidence of the order record in the register in his 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.

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

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

74. Interstate operation of forfeiture or restraining orders. (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 of the Commonwealth, 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 of the Commonwealth, 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.

75. Costs incurred on variation of forfeiture or restraining orders on application by third parties. (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 of the Commonwealth,

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.

76. Costs. Where—

(a) a person brings, or appears at, proceedings under this Act;

(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 connexion with the proceedings or such part of those costs as is determined by the court.

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

78. Power of arrest. A member of the police force may arrest without warrant any person if he believes on reasonable grounds that—

(a) the person has committed an offence against this Act;

and

(b) proceedings by way of summons would not be effective.

79. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters required or permitted by this Act to be prescribed and all matters that, in the opinion of the Governor in Council, are necessary or expedient for achieving the objects and purposes of this Act or that may be convenient for the proper administration of this Act.