



Queensland

Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013

Act No. 21 of 2013



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Queensland

**Criminal Proceeds Confiscation (Unexplained Wealth
and Serious Drug Offender Confiscation Order)
Amendment Act 2013**

Act No. 21 of 2013

**An Act to amend the Crime and Misconduct Act 2001, the Criminal Proceeds
Confiscation Act 2002, the Penalties and Sentences Act 1992 and the Police
Powers and Responsibilities Act 2000 for particular purposes**

[Assented to 14 May 2013]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Crime and Misconduct Act 2001

3 Act amended

This part amends the *Crime and Misconduct Act 2001*.

4 Amendment of s 4 (Act's purposes)

Section 4(2), from 'the investigation'—
omit, insert—

'a confiscation related investigation.'

5 Amendment of s 5 (How Act's purposes are to be achieved)

Section 5(4), 'investigations into confiscation related activities'—

omit, insert—

‘confiscation related investigations’.

6 Amendment of s 26 (How commission performs its crime function)

Section 26(b)—

insert—

‘(iii) the recovery of other property liable to forfeiture, or a person’s unexplained wealth, under the Confiscation Act; and’.

7 Amendment of s 86 (Search warrant applications)

(1) Section 86(1)(b), ‘in relation to a confiscation related activity’—

omit.

(2) Section 86(4)(c)—

insert—

‘(iii) the qualifying offence, or suspected qualifying offence, to which the application relates.’.

8 Amendment of s 91 (What search warrant must state)

Section 91(1)(b)—

omit, insert—

‘(b) brief particulars of the major crime, misconduct, confiscation related activity, qualifying offence or suspected qualifying offence for which the warrant is issued; and’.

9 Amendment of s 92 (Powers under search warrants)

(1) Section 92(1)(f), ‘or the confiscation related activity’—

omit, insert—

‘, the confiscation related activity or the qualifying offence’.

(2) Section 92(4)—

insert—

‘**qualifying offence**, for a search warrant, means the qualifying offence, or suspected qualifying offence, to which the warrant relates.’.

10 **Amendment of s 110A (General power to seize evidence—confiscation related investigation)**

Section 110A(1)(a)(i)—

omit, insert—

‘(i) confiscation related evidence for any confiscation related investigation being conducted by the commission; or’.

11 **Amendment of s 166 (Register of warrants, warrant applications etc.)**

Section 166(4)(a)—

omit, insert—

‘(a) for an investigation into major crime or misconduct, or a confiscation related investigation, for which information in the register may be relevant; or’.

12 **Amendment of sch 2 (Dictionary)**

(1) Schedule 2, definitions *confiscation order* and *confiscation related evidence*—

omit.

(2) Schedule 2—

insert—

‘**confiscation order** means—

-
- (a) any of the following orders under the Confiscation Act, chapter 2—
 - (i) a restraining order;
 - (ii) a forfeiture order;
 - (iii) a proceeds assessment order;
 - (iv) an unexplained wealth order; or
 - (b) any of the following orders under the Confiscation Act, chapter 2A—
 - (i) a restraining order;
 - (ii) a serious drug offender confiscation order.

confiscation related evidence—

- 1 *Confiscation related evidence* means a thing or evidence of an activity that may be or provide evidence of something for which a proceeding for a confiscation order may be started under the Confiscation Act, chapter 2 and includes each of the following—
 - (a) a thing in which a person has an interest that is serious crime derived property;
 - (b) a thing in which a person has an interest that is illegally acquired property of a person reasonably suspected of having engaged in a serious crime related activity;
 - (c) evidence of a serious crime related activity;
 - (d) evidence of illegal activity of a person reasonably suspected of having engaged in a serious crime related activity;
 - (e) property that is restrained under a restraining order under the Confiscation Act.
- 2 The following are also *confiscation related evidence*—
 - (a) a thing that may be or provide evidence of a suspected qualifying offence for which a

proceeding for a confiscation order may be started
under the Confiscation Act, chapter 2A;

- (b) evidence of property that may be subject to
restraint or forfeiture under a confiscation order for
which a proceeding may be started under the
Confiscation Act, chapter 2A.

qualifying offence see the Confiscation Act, section 93F’.

- (3) Schedule 2, definition *confiscation related activity*, after
‘Act’—
insert—
‘, chapter 2’.
- (4) Schedule 2, definition *confiscation related investigation*, after
‘2’—
insert—
‘or 2A’.

Part 3

Amendment of Criminal Proceeds Confiscation Act 2002

13 Act amended

This part amends the *Criminal Proceeds Confiscation Act
2002*.

14 Amendment of long title

Long title, ‘crime,’—
omit, insert—

‘crime and property connected to persons convicted of particular serious drug offences, the payment to the State of unexplained wealth,’.

15 Amendment of s 4 (Objects)

(1) Section 4(2)—

omit, insert—

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

(a) to deprive persons of the following—

(i) illegally acquired property, tainted property and benefits derived from the commission of offences;

(ii) the benefits derived from contracts about confiscation offences;

(iii) wealth that persons can not satisfy a court was lawfully acquired; and

(b) to deter persons from committing serious criminal offences, including by increasing the financial risk associated with committing serious criminal offences; and

(c) to prevent the reinvestment of financial gain from illegal activity in further illegal activity; and

(d) to assist law enforcement agencies to effectively trace—

(i) property acquired by persons who engage in illegal activity; and

(ii) tainted property; and

(iii) benefits derived from the commission of offences; and

(iv) amounts of unexplained wealth; and

(e) to forfeit to the State property of, or associated with, persons who commit qualifying offences, and against whom serious drug offender confiscation orders are

- made, in recognition of the impact of qualifying offences on the community and the justice system; and
- (f) to ensure orders of other States restraining or forfeiting property under corresponding laws may be enforced in Queensland; and
 - (g) to protect property honestly acquired for sufficient consideration by persons innocent of illegal activity from forfeiture and other orders affecting property.’.
- (2) Section 4(3), ‘2’—
omit, insert—
‘3’.
 - (3) Section 4(4) and (5)—
omit, insert—
‘(4) The scheme in chapter 2 does not depend on a charge or conviction and is administered by the commission.
(5) The scheme in chapter 2A relates to the charge or conviction of particular serious offences involving drugs and is administered by the commission.
(5A) The scheme in chapter 3 relies on a person being charged and convicted (as defined in this Act) of a confiscation offence and is administered by the DPP.’.
 - (4) Section 4(6), ‘neither scheme is’—
omit, insert—
‘none of the schemes are’.
 - (5) Section 4(6), ‘the other’—
omit, insert—
‘either of the other schemes’.
 - (6) Section 4(5A) and (6)—
renumber as section 4(6) and (7).

16 Amendment of s 11 (Interstate operation of particular orders)

- (1) Section 11(1), ‘a forfeiture order or a restraining order’—
omit, insert—
‘a restraining order, a forfeiture order or a serious drug offender confiscation order’.
- (2) Section 11(2), ‘A forfeiture order or restraining order’—
omit, insert—
‘An order mentioned in subsection (1)’.

17 Amendment of s 12 (Proceedings by the State and meaning of *appropriate officer*)

- (1) Section 12(1)(a), after ‘2’—
insert—
‘or 2A’.
- (2) Section 12(5)(a), after ‘2’—
insert—
‘, chapter 2A’.

18 Amendment of s 13 (Explanation of ch 2)

- (1) Section 13—
insert—
(5A) The chapter also enables the court to make an unexplained wealth order against a person, requiring the person to pay to the State an amount worked out under section 89L(2) or (3).’.
- (2) Section 13(6), after ‘proceeds assessment order’—
insert—
‘or unexplained wealth order’.
- (3) Section 13(5A) to (7)—

renumber as section 13(6) to (8).

19 Amendment of s 26 (When property stops being illegally acquired property or serious crime derived property)

(1) Section 26(c), ‘or a proceeds assessment order;’—

omit, insert—

‘, a proceeds assessment order or an unexplained wealth order;’.

(2) Section 26(d), after ‘46’—

insert—

‘, 93ZP’.

20 Amendment of s 28 (Application for restraining order)

Section 28(4), ‘derived from external serious crime related activity’—

omit, insert—

‘of a person suspected of having engaged in 1 or more external serious crime related activities’.

21 Amendment of s 29 (Affidavit)

Section 29(2), ‘derived from external serious crime related activity’—

omit, insert—

‘of a person suspected of having engaged in 1 or more external serious crime related activities’.

22 Amendment of s 30A (Hearing of application)

Section 30A(2), ‘the DPP’—

omit, insert—

‘an appropriate officer’.

23 Amendment of s 33 (Condition about dealing with property by agreement)

Section 33, ‘a pecuniary penalty order or a proceeds assessment order’—

omit, insert—

‘another order made under this Act’.

24 Amendment of s 34 (Condition about particular payments out of restrained property)

Section 34(3)(a), after ‘order’—

insert—

‘and the person has no source of income to meet the expenses or debt’.

25 Amendment of s 36 (Duration of restraining order)

(1) Section 36(2)(a), ‘either or both’—

omit, insert—

‘any’.

(2) Section 36(2)(a)(ii), ‘a person’—

omit, insert—

‘the person’.

(3) Section 36(2)(a)—

insert—

‘(iii) an unexplained wealth order against the person whose property is restrained under the restraining order; or’.

(4) Section 36(2)(b), after ‘assessment order’—

insert—

‘or unexplained wealth order’.

26 Amendment of s 48 (When Supreme Court may exclude prescribed respondent's property)

Section 48(1)(b), after 'order'—

insert—

'or unexplained wealth order'.

27 Amendment of s 52 (Contravention of restraining order)

Section 52(5)—

omit.

28 Amendment of s 54 (Effect of dismissal of particular applications on restraining order)

Section 54(1)—

insert—

'(c) an unexplained wealth order against the person whose property is restrained under the restraining order.'

29 Amendment of s 58A (Forfeiture order relating to external serious crime related activity)

Section 58A(1), 'derived from external serious crime related activity'—

omit, insert—

'of a prescribed respondent suspected of having engaged in 1 or more external serious crime related activities'.

30 Amendment of s 62 (Relief from hardship for dependants)

Section 62(3)—

omit.

31 Amendment of s 69 (What is an *exclusion order*)

Section 69(2), after ‘order’—

insert—

‘or unexplained wealth order’.

32 Amendment of s 77 (Application for proceeds assessment order)

Section 77(2)—

omit, insert—

‘(2) The State must give notice of the application to—

(a) the person against whom the order is sought; and

(b) anyone else who the commission, or if the application is made for the State by a police officer, the commissioner of the police service reasonably suspects may be affected by the order.’.

33 Amendment of s 79 (Amount must be stated in proceeds assessment order)

Section 79(3), after ‘activities’—

insert—

‘or under a serious drug offender confiscation order’.

34 Amendment of s 80 (Proceeds assessment order increase if forfeiture order discharged)

Section 80(1)(b), after ‘order’—

insert—

‘or serious drug offender confiscation order’.

35 Insertion of new s 80A

Chapter 2, part 5, division 1—

insert—

‘80A Notice of proceeds assessment order

- ‘(1) Within 28 days after a proceeds assessment order is made, the commission or, if the application for the order was made for the State by a police officer, the commissioner of the police service must give the following persons the documents mentioned in subsection (2)—
- (a) all known dependants of the person against whom the order is made;
 - (b) anyone else the commission or the commissioner of the police service reasonably suspects may be affected by the order.
- ‘(2) For subsection (1), the documents are—
- (a) a copy of the proceeds assessment order; and
 - (b) a written notice stating that a dependant of the person against whom the order is made may apply to the Supreme Court, within 3 months after the day the order is made, for a hardship order under section 89A.
- ‘(3) If required by the court, the commission or the commissioner of the police service must also give notice of the making of the order to the persons the court considers appropriate, in the way and within the time the court considers appropriate.’.

36 Amendment of s 83 (How particular amounts may be treated)

Section 83(2) and (3), ‘an’—

omit.

37 Amendment of s 87 (Enforcement of order against property under effective control)

- (1) Section 87(2)—

omit, insert—

-
- ‘(2) The commission or, if the application is made for the State by a police officer, the commissioner of the police service must give the following persons written notice of the application—
- (a) the controlling person;
 - (b) anyone else the commission or the commissioner of the police service considers may have an interest in the property.’.
- (2) Section 87—
insert—
- ‘(8) Subsection (5) does not apply to property that is the subject of a hardship order.’.

38 Amendment of s 88 (Charge on property)

- (1) Section 88(3)(d), after ‘this chapter’—
insert—
‘, chapter 2A’.
- (2) Section 88(3)(d), after ‘46’—
insert—
‘, 93ZP’.
- (3) Section 88(3)—
insert—
‘(f) a hardship order is made excluding property from the operation of the charge.’.
- (4) Section 88(9), after ‘paid’—
insert—
‘or the charge otherwise stops having effect under subsection (3)’.
- (5) Section 88(11), definitions *appropriate form* and *registrar—*
omit.

39 Insertion of new ch 2, pt 5, div 4

Chapter 2, part 5—

insert—

‘Division 4 Hardship orders

‘89A Application for hardship order

- ‘(1) A dependant of the person against whom a proceeds assessment order is made may apply to the Supreme Court for a hardship order.
- ‘(2) Unless the court gives leave under section 89B, the application must be made within 3 months after—
 - (a) for property the subject of an order under section 87(4)—the day the order is made; or
 - (b) for property the subject of a charge under section 88—the day the proceeds assessment order is made.
- ‘(3) For each application under this section, including an application for leave, the applicant must give the State and anyone else who has an interest in the property written notice of—
 - (a) the making of the application; and
 - (b) the grounds for the application, including, for an application for a hardship order, a description of the property the subject of an order under section 87(4) or a charge under section 88 that the application relates to; and
 - (c) the facts relied on.
- ‘(4) The grounds for the application and the facts relied on must be stated fully in the notice.
- ‘(5) The notice must be given at least 28 days before the day set for hearing the application.
- ‘(6) The written notice must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.

-
- ‘(7) The State must be a party to the application.
 - ‘(8) Anyone else who is given notice of the application may appear at the hearing of the application.
 - ‘(9) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
 - ‘(10) The State must give the applicant notice of the grounds for opposing the application.

‘89B When Supreme Court may give leave for s 89A

‘The Supreme Court may give leave to apply for a hardship order after the end of the period mentioned in section 89A(2) if it is satisfied the delay in applying was not because of the applicant’s neglect.

‘89C Making of hardship order

- ‘(1) The Supreme Court may, on an application under section 89A, make an order (*hardship order*) excluding special property from the operation of an order under section 87(4) or a charge under section 88 if it is satisfied—
 - (a) the applicant is a dependant of the person against whom the proceeds assessment order was made; and
 - (b) the operation of the order under section 87(4) or charge under section 88 will cause hardship to the dependant.
- ‘(2) However, the court must not make a hardship order in favour of an adult dependant of the person against whom a proceeds assessment order was made unless the court is satisfied the dependant had no knowledge of the serious crime related activity which formed the basis of the proceeds assessment order.
- ‘(3) In this section—
special property means—

[s 39]

- (a) any property, if the last change of ownership resulted from the death of someone other than the person against whom the proceeds assessment order was made; or

Example—

property given under a will

- (b) property that is or was the dependant's principal place of residence, if—
- (i) the last change of ownership of the property was at least 6 years before the serious crime related activity which formed the basis of the proceeds assessment order started happening; and
- (ii) the property was occupied by the dependant as his or her principal place of residence for a consecutive period of 2 years during the 6-year period mentioned in subparagraph (i).

'89D Property not to be disposed of during hardship order period

- '(1) During the hardship order period, the State must not, without the leave of the Supreme Court—
- (a) dispose of—
- (i) property the subject of an order under section 87(4); or
- (ii) property the subject of a charge under section 88; or
- (b) authorise anyone else to dispose of property mentioned in paragraph (a).

- '(2) In this section—

hardship order period means the period of 3 months starting on the later of—

- (a) the day the following order was made—
- (i) for property the subject of an order under section 87(4)—that order;

- (ii) for property the subject of a charge under section 88—the proceeds assessment order; or
- (b) the day on which all proceedings relating to hardship orders are finally decided.’.

40 Insertion of new ch 2, pt 5A

Chapter 2—

insert—

‘Part 5A Unexplained wealth orders

‘Division 1 Application for, and making and variation of, unexplained wealth orders

‘89E Meaning of *current or previous wealth*

- ‘(1) The *current or previous wealth*, of a person, is the amount that is the total value of the following—
 - (a) all of the person’s property, including property that the person has, at any time, disposed of, whether by gift, sale or any other means;
 - (b) all benefits provided to, and benefits derived by, the person;
whether acquired, disposed of, provided or derived before or after the commencement of this section and whether within or outside Queensland.
- ‘(2) However, the *current or previous wealth*, of a person, does not include the value of any of the following—
 - (a) any property that has been forfeited under this or any other Act;
 - (b) any property, benefit or benefit derived that was taken into account for making an earlier unexplained wealth order against the person;

- (c) any property, benefit or benefit derived that was taken into account for making a tainted property substitution declaration against the person.

'89F Application for unexplained wealth order

- '(1) The State may apply to the Supreme Court for an order (*unexplained wealth order*) requiring a person to pay to the State an amount assessed by the court to be the value of the person's unexplained wealth.
- '(2) The State must give notice of the application to—
 - (a) the person against whom the order is sought; and
 - (b) anyone else who the commission, or if the application is made for the State by a police officer, the commissioner of the police service reasonably suspects may be affected by the order.
- '(3) A person given notice under subsection (2) may appear at the hearing of the application.
- '(4) The absence of a person required to be given notice of the application does not prevent the Supreme Court from making an unexplained wealth order.

'89G Making of unexplained wealth order

- '(1) The Supreme Court must, on an application under section 89F, make an unexplained wealth order against a person if it is satisfied there is a reasonable suspicion that—
 - (a) the person—
 - (i) has engaged in 1 or more serious crime related activities; or
 - (ii) has acquired, without giving sufficient consideration, serious crime derived property from a serious crime related activity of someone else, whether or not the person knew or suspected the property was derived from illegal activity; and

-
- (b) any of the person's current or previous wealth was acquired unlawfully.
- '(2) However, the court may refuse to make the order if the court is satisfied it is not in the public interest to make the order.
- '(3) A finding of the court under subsection (1)(a)—
- (a) need not be based on a reasonable suspicion that a particular offence was committed; and
- (b) may be based on a reasonable suspicion that some offence that is a serious crime related activity was committed.
- '(4) The court may not make an unexplained wealth order on an application that relates only to external serious crime related activity unless it is satisfied that no action has been taken under a law of the Commonwealth or any other place outside Queensland, including outside Australia, in relation to the proceeds of the external serious crime related activity.
- '(5) For subsection (4), an affidavit by an appropriate officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside Queensland, including outside Australia, against any property in relation to the proceeds of the external serious crime related activity is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.
- '(6) The court may make the ancillary orders the court considers appropriate when it makes the unexplained wealth order or at a later time.

'89H Amount payable under unexplained wealth order

- '(1) An unexplained wealth order must state, as the amount required to be paid to the State, the value of the person's unexplained wealth.
- '(2) The value of the person's unexplained wealth must be assessed by the Supreme Court under division 2.

- ‘(3) However, the court may reduce the amount that would otherwise be payable as assessed under division 2 if it is satisfied it is in the public interest to do so.

‘89I Unexplained wealth order increase if forfeiture ends etc.

- ‘(1) This section applies if—
- (a) the Supreme Court makes an unexplained wealth order against a person; and
 - (b) in deciding the value of the person’s unexplained wealth, the court did not take into account the value of property mentioned in section 89E(2); and
 - (c) after the unexplained wealth order is made, the forfeiture of the property, or the earlier unexplained wealth order or the tainted property substitution declaration, ends because of an appeal.
- ‘(2) The State may apply to the Supreme Court for a variation of the unexplained wealth order to increase the amount payable under the order.
- ‘(3) If the Supreme Court considers an increase appropriate, it may vary the amount payable under the unexplained wealth order.

‘89J Notice of unexplained wealth order

- ‘(1) Within 28 days after an unexplained wealth order is made, the commission or, if the application for the order was made for the State by a police officer, the commissioner of the police service must give the following persons the documents mentioned in subsection (2)—
- (a) all known dependants of the person against whom the order is made;
 - (b) anyone else the commission or the commissioner of the police service reasonably suspects may be affected by the order.
- ‘(2) For subsection (1), the documents are—

- (a) a copy of the unexplained wealth order; and
 - (b) a written notice stating that a dependant of the person against whom the order is made may apply to the Supreme Court, within 3 months after the day the order is made, for a hardship order under section 89Q.
- ‘(3) If required by the court, the commission or the commissioner of the police service must also give notice of the making of the order to the persons the court considers appropriate, in the way and within the time the court considers appropriate.

‘Division 2 **Assessment of value of unexplained wealth**

‘89K **Application of div 2**

‘This division applies to property in Queensland or elsewhere.

‘89L **Assessment for unexplained wealth order**

- ‘(1) The *unexplained wealth* of a person is the amount mentioned in subsection (2) or (3).
- ‘(2) For subsection (1), the amount may be the amount equivalent to—
- (a) the person’s current or previous wealth of which the State has given evidence; less
 - (b) any of the current or previous wealth mentioned in paragraph (a) that the person proves was lawfully acquired.
- ‘(3) Alternatively, for subsection (1), the amount may be the amount equivalent to the person’s expenditure for a period of which the State has given evidence less the income for that period that the person proves was lawfully acquired.
- ‘(4) For subsection (2), the value of a thing included as current or previous wealth is—
- (a) if the wealth has been disposed of, the greater of—

- (i) the value when the wealth was acquired; or
 - (ii) the value immediately before the wealth was disposed of; or
 - (b) otherwise, the greater of—
 - (i) the value when the wealth was acquired; or
 - (ii) the value when the application for the unexplained wealth order was made.
- ‘(5) However, the court may—
- (a) treat, as the value of the person’s current or previous wealth, the value it would have had if it had been acquired at the time the court decides the application; and
 - (b) without limiting paragraph (a), have regard to any decline in the purchasing power of money between the time the current or previous wealth was acquired and the time the court decides the application.
- ‘(6) In this section—
- acquired* includes provided or derived.

‘Division 3 Operation of unexplained wealth orders

‘89M Unexplained wealth order amount is debt payable to State

- ‘(1) The amount a person is ordered to pay to the State under an unexplained wealth order is a debt payable by the person to the State.
- ‘(2) The unexplained wealth order may be enforced as if it were a money order made by the Supreme Court in a civil proceeding taken by the State against the person for the recovery of the amount payable under the unexplained wealth order.

‘89N Enforcement of order against property under effective control

- ‘(1) The State may apply to the Supreme Court for an order declaring that particular property is under the effective control of a person against whom the court has made an unexplained wealth order (the *controlling person*).
- ‘(2) The commission or, if the application is made for the State by a police officer, the commissioner of the police service must give the following persons written notice of the application—
 - (a) the controlling person;
 - (b) anyone else the commission or the commissioner of the police service considers may have an interest in the property.
- ‘(3) The controlling person, and anyone else who claims an interest in the property, may appear at the hearing of the application.
- ‘(4) If the court is satisfied that the property is under the effective control of the controlling person, the court may make an order declaring that the property is available to satisfy the unexplained wealth order to the extent to which other property of the controlling person is not readily available for the purpose.
- ‘(5) The unexplained wealth order may be enforced against the property to the extent stated in the declaration.
- ‘(6) The court may also make a restraining order in relation to the property.
- ‘(7) The absence of a person required to be given notice of the application does not prevent the court from making the order.
- ‘(8) Subsection (5) does not apply to property that is the subject of a hardship order.

‘89O Charge on property

- ‘(1) On the making of an unexplained wealth order against a person, all the interests of the person in property are, while the

amount payable under the order remains unpaid, charged in favour of the State to the extent necessary to secure payment of the amount.

- ‘(2) A charge created under subsection (1)—
- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this paragraph, have priority over the charge; and
 - (b) has priority over all other encumbrances; and
 - (c) is not affected by any change of ownership of the interest charged, unless the charge stops having effect under subsection (3); and
 - (d) is declared to be a statutory interest to which the *Personal Property Securities Act 2009* (Cwlth), section 73(2) applies.
- ‘(3) The charge stops having effect if any of the following happens—
- (a) the unexplained wealth order is discharged on an appeal against the making of the order;
 - (b) the amount payable to the State is paid;
 - (c) the relevant person becomes bankrupt;
 - (d) the interest charged is sold or otherwise disposed of under this Act other than—
 - (i) under a condition of a restraining order under this chapter, chapter 2A or chapter 3; or
 - (ii) by order of the Supreme Court under section 46, 93ZP or 138;
 - (e) the interest charged is sold to a purchaser for sufficient consideration who, at the time of purchase, had no notice of the charge;
 - (f) a hardship order is made excluding property from the operation of the charge.

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- ‘(4) If a law, whether or not a law of the State, provides for the registration of title to, interests in, or charges over, property charged under subsection (1), the public trustee or an appropriate officer may cause the charge to be registered under that law.
- ‘(5) For subsection (4), it is declared that the charge may be registered under the *Land Act 1994* or the *Land Title Act 1994* over the property of the relevant person.
- ‘(6) The public trustee or the appropriate officer may lodge a request with the registrar for the registration of the charge.
- ‘(7) The request must be in the appropriate form.
- ‘(8) The registrar must register the charge over the land on lodgement of—
- (a) the request; and
 - (b) a certificate of the public trustee or the appropriate officer stating there is a charge over the land under this section for the amount payable under the unexplained wealth order that is unpaid.
- ‘(9) As soon as practicable after the amount payable under the unexplained wealth order has been paid or the charge otherwise stops having effect under subsection (3), the public trustee or the appropriate officer must lodge a request with the registrar in the appropriate form to release the charge.
- ‘(10) The registrar must register the release of the charge over the land.
- ‘(11) In this section—
- relevant person* means the person against whom the unexplained wealth order is made.

‘89P Effect of other actions on unexplained wealth order

- ‘(1) The quashing of a conviction of a serious criminal offence in relation to the serious crime related activity that formed the basis of an unexplained wealth order does not affect the validity of the order.

- ‘(2) If an unexplained wealth order is made against a deceased, the order has effect before final distribution of the estate as if the person had died the day after the making of the order.

‘Division 4 Hardship orders

‘89Q Application for hardship order

- ‘(1) A dependant of the person against whom an unexplained wealth order is made may apply to the Supreme Court for a hardship order.
- ‘(2) Unless the court gives leave under section 89R, the application must be made within 3 months after—
- (a) for property the subject of an order under section 89N(4)—the day the order is made; or
 - (b) for property the subject of a charge under section 89O—the day the unexplained wealth order is made.
- ‘(3) For each application under this section, including an application for leave, the applicant must give the State and anyone else who has an interest in the property written notice of—
- (a) the making of the application; and
 - (b) the grounds for the application, including, for an application for a hardship order, a description of the property the subject of an order under section 89N(4) or a charge under section 89O that the application relates to; and
 - (c) the facts relied on.
- ‘(4) The grounds for the application and the facts relied on must be stated fully in the notice.
- ‘(5) The notice must be given at least 28 days before the day set for hearing the application.
- ‘(6) The written notice must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.

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- ‘(7) The State must be a party to the application.
 - ‘(8) Anyone else who is given notice of the application may appear at the hearing of the application.
 - ‘(9) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
 - ‘(10) The State must give the applicant notice of the grounds for opposing the application.

‘89R When Supreme Court may give leave for s 89Q

‘The Supreme Court may give leave to apply for a hardship order after the end of the period mentioned in section 89Q(2) if it is satisfied the delay in applying was not because of the applicant’s neglect.

‘89S Making of hardship order

- ‘(1) The Supreme Court may, on an application under section 89Q, make an order (*hardship order*) excluding special property from the operation of an order under section 89N(4) or a charge under section 89O if it is satisfied—
 - (a) the applicant is a dependant of the person against whom the unexplained wealth order was made; and
 - (b) the operation of the order under section 89N(4) or charge under section 89O will cause hardship to the dependant.
- ‘(2) However, the court must not make a hardship order in favour of an adult dependant of the person against whom an unexplained wealth order was made unless the court is satisfied the dependant had no knowledge of the serious crime related activity which formed the basis of the unexplained wealth order.
- ‘(3) In this section—
special property means—

[s 40]

- (a) any property, if the last change of ownership resulted from the death of someone other than the person against whom the unexplained wealth order was made; or

Example—

property given under a will

- (b) property that is or was the dependant's principal place of residence, if—
- (i) the last change of ownership of the property was at least 6 years before the serious crime related activity which formed the basis of the unexplained wealth order started happening; and
- (ii) the property was occupied by the dependant as his or her principal place of residence for a consecutive period of 2 years during the 6-year period mentioned in subparagraph (i).

'89T Property not to be disposed of during hardship order period

- '(1) During the hardship order period, the State must not, without the leave of the Supreme Court—
- (a) dispose of—
- (i) property the subject of an order under section 89N(4); or
- (ii) property the subject of a charge under section 89O; or
- (b) authorise anyone else to dispose of property mentioned in paragraph (a).

- '(2) In this section—

hardship order period means the period of 3 months starting on the later of—

- (a) the day the following order was made—
- (i) for property the subject of an order under section 89N(4)—that order;

- (ii) for property the subject of a charge under section 89O—the unexplained wealth order; or
- (b) the day on which all proceedings relating to hardship orders are finally decided.’.

41 Amendment of s 90 (Serious crime related activity can form basis of a number of orders)

- (1) Section 90(2) and (3), after ‘assessment order’—
insert—
‘or an unexplained wealth order’.
- (2) Section 90—
insert—
- ‘(4) However, a proceeds assessment order and an unexplained wealth order can not both be made on the basis of the same serious crime related activity of a person.
- ‘(5) If the State has unsuccessfully applied—
 - (a) for a proceeds assessment order on the basis of a person’s serious crime related activity—the State can not apply for an unexplained wealth order against the person on the basis of the same serious crime related activity; or
 - (b) for an unexplained wealth order on the basis of a person’s serious crime related activity—the State can not apply for a proceeds assessment order against the person on the basis of the same serious crime related activity.’.

42 Insertion of new ch 2A

After chapter 2—

insert—

‘Chapter 2A Serious drug offender confiscation order scheme

‘Part 1 Preliminary

‘93A Explanation of ch 2A

- ‘(1) This chapter enables proceedings to be started for the forfeiture of particular property of, or gifts given to someone else during a particular period by, a person who has been convicted of a qualifying offence for which a serious drug offence certificate has been issued.
- ‘(2) It does this by enabling the Supreme Court, as a preliminary step, to make a restraining order preventing particular property being dealt with without the court’s leave.
- ‘(3) Also, it allows—
 - (a) the person against whom a serious drug offender confiscation order is made to keep protected property; and
 - (b) a dependant of the person against whom a serious drug offender confiscation order is made to seek relief from the Supreme Court on the basis of hardship resulting from the order.

‘93B Application of ch 2A

- ‘(1) This chapter applies in relation to a qualifying offence, or a pre-qualifying offence, for which a person is charged after the commencement, whether the offence was committed before or after the commencement.
- ‘(2) In this section—
commencement means the commencement of this section.

‘Part 2 Interpretation

‘93C Definitions for ch 2A

‘In this chapter—

cancelled, in relation to a serious drug offence certificate, means cancelled under the *Penalties and Sentences Act 1992*, section 161K.

category A offence see the *Penalties and Sentences Act 1992*, section 161F.

category B offence see the *Penalties and Sentences Act 1992*, section 161F.

category C offence see the *Penalties and Sentences Act 1992*, section 161F.

convicted, of a qualifying offence or a pre-qualifying offence, means convicted of the offence within the meaning of the *Penalties and Sentences Act 1992*, section 4.

effective control, of property, see section 93D.

issued, in relation to a serious drug offence certificate, means issued under the *Penalties and Sentences Act 1992*, section 161G.

pre-qualifying offence see section 93F.

prescribed respondent see—

- (a) for part 3—section 93G; or
- (b) for part 4—section 93ZZ(1).

protected property, of a person, see section 93E.

qualifying offence see section 93F.

serious drug offence certificate see the *Penalties and Sentences Act 1992*, section 161G.

serious drug offender confiscation order see section 93ZY.

‘93D Meaning of *effective control*

- ‘(1) *Effective control*, of property, has the same meaning as in section 20.

Note—

The definition of property is given by the *Acts Interpretation Act 1954*, section 36.

- ‘(2) For subsection (1), a reference in section 20 to chapter 2 is taken to be a reference to this chapter.

‘93E Meaning of *protected property*

- ‘(1) For this chapter, *protected property*, of a person, means property of the person of a kind mentioned in a relevant provision that would not, if the person became a bankrupt under the *Bankruptcy Act 1966* (Cwlth), be divisible amongst the person’s creditors.

- ‘(2) A regulation may make provision for how the *Bankruptcy Act 1966* (Cwlth), section 116(2) is to apply for the purpose of subsection (1).

- ‘(3) In this section—

relevant provision means the following provisions of the *Bankruptcy Act 1966* (Cwlth)—

- (a) section 116(2)(b)(i);
- (b) section 116(2)(ba);
- (c) section 116(2)(c)(i);
- (d) section 116(2)(ca);
- (e) section 116(2)(g).

- ‘(4) For subsection (3), definition *relevant provision*, paragraph (b), section 116(2)(ba)(iii) is to be disregarded.

‘93F Meaning of *qualifying offence* and *pre-qualifying offence*

- ‘(1) A category A offence is a *qualifying offence*.

-
- ‘(2) Also, a category B offence or category C offence is a **qualifying offence** if—
- (a) the offence is committed by a person within 7 years after committing the following offences (**pre-qualifying offences**)—
 - (i) 2 category B offences;
 - (ii) 2 category C offences;
 - (iii) 1 category B offence and 1 category C offence; and
 - (b) a serious drug offence certificate is issued and has not been cancelled for each pre-qualifying offence.
- ‘(3) For subsection (2), if an offence has been committed over a period of time, the offence is taken to have been committed on the day the person starts committing the offence.
- ‘(4) Subsection (5) applies if—
- (a) an offence (a **relevant offence**) is a qualifying offence or pre-qualifying offence on the basis of which a serious drug offender confiscation order has been made; and
 - (b) the serious drug offender confiscation order has not been discharged under part 4, division 5.
- ‘(5) Despite subsections (1) and (2), the relevant offence can not be a qualifying offence or pre-qualifying offence for the purposes of a later serious drug offender confiscation order.

‘Part 3 Restraining orders

‘Division 1 Interpretation

‘93G Definition for pt 3

‘In this part—

prescribed respondent means a person who—

- (a) is about to be, or has been, charged with the qualifying offence to which an application for a restraining order or a restraining order relates; or
- (b) has been convicted of a qualifying offence.

‘Division 2 Making and hearing of application for restraining order

‘93H Application for restraining order

- ‘(1) The State may apply to the Supreme Court for an order (*restraining order*) restraining any person from dealing with property stated in the order (the *restrained property*) other than in a stated way or in stated circumstances.
- ‘(2) If the application is made in urgent circumstances or the prescribed respondent is about to be charged with a qualifying offence, the application may be made without notice to the prescribed respondent or anyone else to whom it relates.
- ‘(3) The application must be supported by an affidavit of an authorised commission officer or a police officer.
- ‘(4) The application may relate to all or any of the following property—
 - (a) for property of a prescribed respondent—
 - (i) stated property; or
 - (ii) a stated class of property; or
 - (iii) all property; or
 - (iv) all property other than stated property; or
 - (v) all or stated property acquired after the restraining order is made;
 - (b) stated property, or a stated class of property, of a stated person, other than a prescribed respondent.

- ‘(5) The court may refuse to consider the application until the applicant gives the court all the information the court requires about the application in the way the court requires.

Example—

The court may require additional information supporting the application to be given by affidavit or statutory declaration.

‘93I **Affidavit—general requirements**

‘The affidavit of the authorised commission officer or police officer must state the following—

- (a) the qualifying offence on which the application is based;
- (b) the officer suspects the prescribed respondent committed the qualifying offence and the reason for the suspicion;
- (c) if the qualifying offence is a category B offence—details of the pre-qualifying offences;
- (d) if the qualifying offence is a category C offence—
 - (i) details of the pre-qualifying offences; and
 - (ii) the officer suspects the prescribed respondent committed the qualifying offence with a commercial purpose and the reason for the suspicion;
- (e) details of the property sought to be restrained;
- (f) the officer suspects the property sought to be restrained is the property of the person mentioned in the affidavit and the reason for the suspicion.

‘93J **Particular requirements for affidavit relating to relevant property that is not prescribed respondent’s property**

- ‘(1) This section applies only if an authorised commission officer’s or a police officer’s affidavit relates to property of someone other than the prescribed respondent.
- ‘(2) This section is in addition to section 93I.

- ‘(3) The officer’s affidavit must state—
- (a) the officer suspects that the property is either—
 - (i) under the prescribed respondent’s effective control;
or
 - (ii) a gift given by the prescribed respondent to someone else within 6 years before the prescribed respondent was charged with the qualifying offence; and
 - (b) the reason for the suspicion.

‘93K Notice of application for restraining order

- ‘(1) Subject to section 93L(2), the State must give the following persons notice of the application—
- (a) each person whose property is the subject of the application;
 - (b) anyone else the authorised commission officer or police officer whose affidavit supports the application considers has an interest in the property.

Note—

Under the *Uniform Civil Procedure Rules 1999*, an application filed in a court must be served on each respondent at least 3 business days before the day set for hearing the application.

- ‘(2) Notice given under subsection (1)(a) must be accompanied by a copy of the affidavit supporting the application.
- ‘(3) Notice given under subsection (1)(b) must include a statement informing the person that if the person asks, the person will be given a copy of the affidavit supporting the application.

‘93L Hearing of application

- ‘(1) The Supreme Court must not hear an application for a restraining order unless satisfied the person whose property is the subject of the application has received reasonable notice of the application.

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- ‘(2) Despite subsection (1), the court must consider the application without notice having been given if an appropriate officer asks the court to do so.
 - ‘(3) However, the Supreme Court may, at any time before finally deciding the application, direct the State to give notice of the application to a stated person or class of persons in the way and within the time the court considers appropriate.
 - ‘(4) A person whose property is the subject of the application, and anyone else who claims to have an interest in the property, may appear at the hearing of the application.

‘Division 3 Making restraining orders

‘93M Making restraining order

- ‘(1) The Supreme Court must make a restraining order in relation to property if, after considering the application and the relevant affidavit, it is satisfied—
 - (a) the application relates to a prescribed respondent; and
 - (b) there are reasonable grounds for the suspicions on which the application is based.
- ‘(2) However, the court may refuse to make the order if—
 - (a) the court is satisfied in the particular circumstances it is not in the public interest to make the order; or
 - (b) the State fails to give the court the undertakings the court considers appropriate for the payment of damages or costs, or both, in relation to the making and operation of the order.
- ‘(3) The commission or, if the application is made by a police officer, the commissioner of the police service may give the court the undertakings the court requires.
- ‘(4) The court may make a restraining order in relation to a prescribed respondent who is about to be charged with a qualifying offence only if the court is satisfied the prescribed

respondent will be charged with the qualifying offence within the next 48 hours.

- ‘(5) The making of a restraining order does not prevent the person whose property is restrained under the order from giving Legal Aid a charge over the property as a condition of an approval to give legal assistance under the Legal Aid Act in relation to—
- (a) a proceeding under this Act; or
 - (b) a criminal proceeding in which the person is a defendant, including any proceeding on appeal against conviction or sentence.

‘93N Absence of risk does not prevent making of order

‘The Supreme Court may make a restraining order against property whether or not there is a risk of the property being dealt with in a way that would defeat the operation of this Act.

‘93O Conditions of restraining order

- ‘(1) It is a condition of every restraining order that the person whose property is restrained under the order must preserve the property.
- ‘(2) The Supreme Court may impose the other conditions the court considers appropriate, including, but not limited to, the following—
- (a) a condition about who is to have possession of the property;
 - (b) a condition of a kind mentioned in section 93P or 93Q.

‘93P Conditions about dealing with property by agreement

‘The Supreme Court may impose a condition authorising the commission or, if the application is made by a police officer, the commissioner of the police service to agree to—

-
- (a) the disposal of the property restrained under the restraining order by its owner to enable the proceeds of the disposal to be applied to satisfy all or part of a debt payable under another order made under this Act; or
 - (b) the application of the property by its owner to satisfy all or part of a debt payable under another order made under this Act.

‘93Q Conditions about particular payments out of restrained property

- ‘(1) The Supreme Court may impose a condition providing for all or any of the following to be paid out of the property of a particular person, or a stated part of the person’s property, restrained under the restraining order—
 - (a) the person’s reasonable living expenses and reasonable business expenses;
 - (b) the reasonable living expenses of any of the person’s dependants;
 - (c) a stated debt incurred in good faith by the person.
- ‘(2) Subsection (1) is the only provision of this chapter under which provision may be made for the payment of expenses or a debt mentioned in subsection (1).
- ‘(3) Also, subsection (1) applies only if the court is satisfied the person can not meet the expenses or debt out of property that is not restrained under the order and the person has no source of income to meet the expenses or debt.
- ‘(4) Further, subsection (1) does not authorise the imposition of a condition providing for the payment of a person’s legal expenses that are expenses payable because—
 - (a) the person is a party to a proceeding under this Act; or
 - (b) the person is a defendant in a criminal proceeding, including any proceeding on appeal against a conviction or sentence.

‘93R Restraining order may direct public trustee to take control of property

‘If the Supreme Court considers the circumstances require it, the court may, in a restraining order or a later order, direct the public trustee to take control of some or all of the property restrained under the order.

‘93S Duration of restraining order

- ‘(1) A restraining order made on an application made without notice to the person to whom it relates is in force for the period of not more than 7 days stated in the order or, if no period is stated, 7 days after it is made.
- ‘(2) However, a restraining order made on the basis that the prescribed respondent is about to be charged with a qualifying offence lapses if the person is not charged with the offence or a related offence within 48 hours after the order is made.
- ‘(3) Otherwise, a restraining order is in force for the period stated in the order or, if no period is stated, for 1 year after it is made.
- ‘(4) This section applies subject to division 8.
- ‘(5) In this section—
related offence means an offence that would have been a qualifying offence when the restraining order was made.

‘Division 4 Making other orders

‘93T Supreme Court may make other orders

- ‘(1) The Supreme Court may make the other orders in relation to a restraining order the court considers appropriate, including, but not limited to, orders mentioned in sections 93V and 93W.
- ‘(2) However, section 93V(1)(f) is the only provision of this chapter under which provision may be made for the payment of legal expenses that are expenses payable because—
- (a) the person is a party to a proceeding under this Act; or

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- (b) the person is a defendant in a criminal proceeding, including any proceeding on appeal against a conviction or sentence.
- ‘(3) The court may make an order under this section—
- (a) when making the restraining order or, on application, at a later time; and
- (b) whether or not it affects a person whose property is restrained under the restraining order.
- ‘(4) Any of the following may apply for an order, other than an investigation order, under this section—
- (a) the State;
- (b) the prescribed respondent;
- (c) a person whose property is restrained under the restraining order;
- (d) if the restraining order directs the public trustee to take control of the restrained property under the restraining order—the public trustee.
- ‘(5) Another person may apply for an order, other than an investigation order, under this section with the Supreme Court’s leave.
- ‘(6) An applicant under subsection (4) must give notice of the making of the application to each other person who may apply under subsection (4) for an order under this section.
- ‘(7) An applicant under subsection (5) must give notice of the making of the application to each person who may apply under subsection (4) for an order under this section.
- ‘(8) The State may apply for an investigation order.
- ‘(9) The State must give notice of an application under subsection (8) to—
- (a) the person to whom the order is to be directed if the order is to be made under section 93W(1)(a), (b), or (c);
or

- (b) the person whose property is to be seized if the order is made under section 93W(1)(d).
- ‘(10) Subsections (6), (7) and (9) do not apply to an application for an order under this section made in a proceeding on an application for a restraining order that is made without notice to any person to whom it relates.
- ‘(11) Also, subsection (9) does not apply to an application for an investigation order of which notice does not have to be given because of section 93U(2).

‘93U Hearing of application

- ‘(1) The Supreme Court must not hear an application for an order under section 93T unless satisfied the person who is, or whose property is, the subject of the application has received reasonable notice of the application.
- ‘(2) Despite subsection (1), the court must consider an application for an investigation order without notice having been given if the DPP asks the court to do so.
- ‘(3) However, the Supreme Court may, at any time before finally deciding the application, direct the State to give notice of the application to a stated person or class of persons in the way, and within the time, the court considers appropriate.
- ‘(4) A person who is, or whose property is, the subject of the application, and anyone else who claims to have an interest in the property, may appear at the hearing of the application.

‘93V Administration orders Supreme Court may make

- ‘(1) The court may make any of the following orders under section 93T—
 - (a) an order varying the property restrained under the restraining order;
 - (b) an order imposing additional conditions on the restraining order or varying a condition of the order;

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- (c) an order about the performance of an undertaking for the payment of damages or costs given for the restraining order;
 - (d) if the restraining order directs the public trustee to take control of the property, an order—
 - (i) regulating the way the public trustee may perform functions under the restraining order; or
 - (ii) deciding any question about the property, including a question affecting the liabilities of the owner of the property or the functions of the public trustee;
 - (e) an order requiring a person whose property is restrained under the restraining order to do anything necessary or convenient to bring the property within Queensland;
 - (f) an order for the payment to Legal Aid, from property restrained under the restraining order, of expenses payable by the person whose property is restrained because—
 - (i) the person is a party to a proceeding under this Act; or
 - (ii) the person is a defendant in a criminal proceeding, including any proceeding on appeal against conviction or sentence.
- ‘(2) A person must not contravene an order made under subsection (1)(e).
- Maximum penalty—100 penalty units or 2 years imprisonment.

‘93W Investigation orders Supreme Court may make

- ‘(1) Also, the court may make any of the following orders under section 93T (each an *investigation order*)—
- (a) an order (*examination order*) requiring a person whose property is restrained under the restraining order or a stated person to attend for examination on oath before the court or a court officer about the following—

- (i) the affairs of any person whose property is restrained under the restraining order;
 - (ii) the nature and location of any property of a person whose property is restrained under the restraining order;
- (b) an order (also an *examination order*) requiring the spouse of a person whose property is restrained under the restraining order to attend for examination on oath before the court or a court officer about the spouse's affairs, including the nature and location of property in which the spouse or the person has an interest;
- (c) an order (*property particulars order*) directing any of the following to give the commission, within a stated time, a sworn statement of particulars of, or of dealings with, any property (whether or not the restrained property) as the court considers appropriate—
 - (i) a person whose property is restrained under the restraining order;
 - (ii) a person whose property the restrained property was at any time before the restraining order was made;
 - (iii) if the person mentioned in subparagraph (i) or (ii) is or was a corporation—an executive officer of the corporation;
- (d) an order (*property seizure order*) requiring or authorising a commission officer or a police officer to seize property restrained under the restraining order.

Note—

See division 5, subdivision 3 for the general effect of a property seizure order.

- (2) An order mentioned in subsection (1)(d) may state the powers the commission officer or police officer may exercise for giving effect to the order.

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- ‘(3) Subsection (4) applies if an examination order is made without notice of the application for the order being given to a person required to attend for examination.
 - ‘(4) The examination must not be conducted less than 7 days after the day on which the examination order is made, unless the court considers it appropriate for the examination to be conducted at an earlier time.

‘Division 5 Provisions about particular orders

‘Subdivision 1 Examination orders

‘93X Court officer’s power to conduct examinations

- ‘(1) This section applies if a court officer conducts an examination under an examination order.
- ‘(2) The court officer constitutes, and may exercise all the jurisdiction and powers of, the court.
- ‘(3) However, the court officer may not exercise any power of the court to punish for contempt.

‘93Y Time and place of examination

‘The examination of a person must be conducted at the time and place stated in the examination order.

‘93Z Examination to take place in private

- ‘(1) The examination must take place in private.
- ‘(2) The court or court officer may give directions about who may be present during the examination, or during a part of it.
- ‘(3) The following people are entitled to be present at the examination—
 - (a) a lawyer of the person being examined;

- (b) an appropriate officer;
- (c) a commission officer;
- (d) a police officer;
- (e) a lawyer representing an appropriate officer, commission officer or police officer;
- (f) any person who is entitled to be present because of a direction under subsection (2).

‘93ZA Role of the examinee’s lawyer

‘The lawyer of the person being examined may, at the times during the examination that the court or court officer decides—

- (a) address the court or court officer about matters on which the person has been examined; and
- (b) examine the person about matters on which the person has been examined.

‘93ZB Recording evidence

‘(1) The court or court officer must ensure that, if practicable, evidence given at an examination in Queensland is recorded under the *Recording of Evidence Act 1962* or recorded in another way and authenticated by the court or court officer.

‘(2) Subsection (1) applies despite the *Recording of Evidence Act 1962*, section 5.

Note—

The *Recording of Evidence Act 1962*, section 5, requires evidence given in a legal proceeding to be recorded under that Act, subject to any direction given by the court in which, or judicial person before whom, the legal proceeding is being taken.

‘(3) The court or court officer must authenticate and sign any deposition or other recording.

‘(4) If evidence given at an examination is recorded in a deposition, it must—

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- (a) contain, in question and answer form, the evidence of the person examined; and
 - (b) be transcribed and read over by or to the person in the court's or court officer's presence and in the presence of the parties who wish to attend; and
 - (c) be signed by the person, or, if the person refuses to sign the deposition, by the court or court officer for the person.
- ‘(5) The court or court officer may impose on the person being examined the conditions (if any) that the court or court officer reasonably considers necessary to prevent improper disclosure of the record.

‘93ZC Privilege—examination order

- ‘(1) A person examined under an examination order is not excused from answering a question, or from producing a document or other thing, on the ground that—
- (a) answering the question or producing the document may tend to incriminate the person or make the person liable to a forfeiture or penalty; or
 - (b) producing the document would be in breach of an obligation, whether imposed by an enactment or otherwise, of the person not to disclose the existence or contents of the document; or
 - (c) answering the question or producing the document would disclose information that is the subject of legal professional privilege.
- ‘(2) A statement or disclosure made by a person in answer to a question asked in an examination under an examination order, or a document or other thing produced in the examination, is not admissible against the person in any civil or criminal proceeding, other than—
- (a) a proceeding about the false or misleading nature of the statement or disclosure; or

- (b) a proceeding on an application under this Act; or
- (c) a proceeding for the enforcement of a confiscation order; or
- (d) for a document or other thing, a proceeding about a right or liability it confers.

‘93ZD Offence to contravene examination order

‘A person who is required to attend an examination under an examination order under this part must not—

- (a) fail to attend as required by the order, unless the person has a reasonable excuse; or
- (b) fail to attend from day to day until the conclusion of the examination, unless the person has a reasonable excuse; or
- (c) fail to take an oath for the purpose of the examination; or
- (d) fail to answer a question that the person is directed to answer by the court or court officer; or
- (e) make a statement in the examination that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

‘93ZE Use and dissemination of examination information

- ‘(1) This section applies to a statement, disclosure, document or other thing mentioned in section 93ZC(2) (*examination information*).
- ‘(2) The DPP or the commission may give the examination information to—
 - (a) a corresponding entity to help the entity to obtain other evidence or other information (*derived evidence*) that may be relevant to the enforcement of a corresponding law; or

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- (b) an entity of the State, another State or the Commonwealth that has a function of investigating or prosecuting offences to help the entity to obtain other evidence or other information (also *derived evidence*) that may be relevant to the investigation or prosecution of an offence.
- ‘(3) The giving of examination information under subsection (2), its use to obtain derived evidence or the admissibility of the derived evidence in a proceeding, including a prosecution for an offence, is unaffected by—
- (a) the fact that the examination information was obtained because of section 93ZC and subject to section 93Z; or
 - (b) any duty of confidentiality owed to the person from whom the examination information was obtained; or
 - (c) the objects of this Act or the particular purpose for which the examination information was obtained.
- ‘(4) In this section—
- entity*, of the State, another State or the Commonwealth, includes a law enforcement agency established under a law of the State, another State or the Commonwealth.

‘Subdivision 2 Property particulars orders

‘93ZF Privilege—property particulars order

- ‘(1) A person directed under a property particulars order to give a statement to the commission is not excused from giving the statement or including particulars in the statement on the ground that the statement or particulars may tend to incriminate the person or make the person liable to a forfeiture or penalty.
- ‘(2) If a person gives a statement to the commission under a property particulars order, the statement is not admissible against the person in any criminal proceeding other than a

proceeding about the false or misleading nature of the statement.

‘93ZG Offence to contravene property particulars order

‘A person directed under a property particulars order to give a statement to the commission within a stated period of time—

- (a) must comply with the direction unless the person has a reasonable excuse; and
- (b) must not make a statement that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

‘Subdivision 3 Property seizure orders

‘93ZH If property seizure order directed to commission officer

- ‘(1) This section applies if the Supreme Court makes a property seizure order that is directed to a commission officer.
- ‘(2) The order—
 - (a) is taken to be a search warrant issued by a Supreme Court judge under the *Crime and Misconduct Act 2001* in relation to confiscation related evidence as defined under that Act; and
 - (b) is taken to authorise a commission officer to exercise search warrant powers under the *Crime and Misconduct Act 2001*, section 92, including search warrant powers mentioned in section 92(2) and (3) or stated in the order, to the extent necessary for giving effect to the order.
- ‘(3) Property seized under the order is taken to have been seized under the *Crime and Misconduct Act 2001*.
- ‘(4) The *Crime and Misconduct Act 2001*, section 93 applies to the order as if it were a search warrant.

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- ‘(5) It is sufficient compliance with the *Crime and Misconduct Act 2001*, section 93(1) for the commission officer to give the occupier of the place a copy of the order or, if the occupier of the place is not present, to leave the copy in a conspicuous place.
- ‘(6) The *Crime and Misconduct Act 2001*, sections 113 and 114 do not apply to property seized under the order.

‘93ZI If property seizure order directed to police officer

- ‘(1) This section applies if the Supreme Court makes a property seizure order that is directed to a police officer.
- ‘(2) The order—
- (a) is taken to be a search warrant issued by a Supreme Court judge under the *Police Powers and Responsibilities Act 2000* in relation to confiscation related evidence as defined under that Act; and
 - (b) is taken to authorise a police officer to exercise search warrant powers under the *Police Powers and Responsibilities Act 2000*, section 157, including search warrant powers mentioned in section 157(2) and (3), to the extent necessary for giving effect to the order.
- ‘(3) Property seized under the order is taken to have been seized under the *Police Powers and Responsibilities Act 2000*.
- ‘(4) The *Police Powers and Responsibilities Act 2000*, section 158 applies to the order as if it were a search warrant.
- ‘(5) It is sufficient compliance with the *Police Powers and Responsibilities Act 2000*, section 158(1) for the police officer to give the occupier of the place a copy of the order or, if the occupier of the place is not present, to leave the copy in a conspicuous place.

Note—

The *Police Powers and Responsibilities Act 2000* provisions about applications for the return of things in the possession of the police service generally do not apply to things seized under a property seizure order.

‘Division 6 Notice of restraining orders and other orders

‘93ZJ Notice of restraining order and other orders

- ‘(1) This section applies if the Supreme Court—
 - (a) makes a restraining order; or
 - (b) makes another order under division 4 in relation to a restraining order.
- ‘(2) As soon as practicable after the order is made, the commission must give each person whose property is restrained under the order and anyone else who is affected by the order a copy of the order.
- ‘(3) However, the commission is not required to give a person whose property is restrained under a restraining order a copy of, or notice of, an investigation order made under section 93W(1)(a), (b) or (c) directed to another person.
- ‘(4) If the order directs the public trustee to take control of property, the commission must give the public trustee a copy of the order.
- ‘(5) However, if the application was made for the State by the commissioner of the police service, the commissioner of the police service—
 - (a) must give the commission a copy of the order; and
 - (b) must give the notice required to be given under subsection (2) or (4).
- ‘(6) A restraining order, or another order under division 4, does not stop having effect only because a person required to be given a copy of the order under subsection (2) has not been given a copy of the order.

**‘Division 7 Exclusion of property from
restraining order**

**‘Subdivision 1 Application by prescribed
respondent**

**‘93ZK Supreme Court may exclude prescribed respondent’s
property from restraining order**

- ‘(1) The prescribed respondent under the restraining order may apply to the Supreme Court to amend the order to exclude particular property of the prescribed respondent from the order.
- ‘(2) The prescribed respondent must give written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the property.
- ‘(3) The grounds for the application and the facts relied on must be stated fully in the notice.
- ‘(4) The State must be a party to the application.
- ‘(5) Anyone else who is given notice of the application may appear at the hearing of the application.
- ‘(6) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- ‘(7) The State must give the applicant notice of the grounds for opposing the application.
- ‘(8) However—
 - (a) the State is not required to give the notice; and
 - (b) the application may not be heard;until the DPP has had a reasonable opportunity to examine the applicant or a relevant person under an examination order, whether or not an examination order has already been made.

‘(9) In this section—

relevant person means a person other than the applicant who, on examination under an examination order, may be able to give evidence relevant to the application.

‘93ZL When Supreme Court may exclude prescribed respondent’s property

- ‘(1) The Supreme Court may exclude the prescribed respondent’s property from the restraining order if it is satisfied it is in the public interest to amend the order in the particular circumstances.
- ‘(2) The Supreme Court may require the prescribed respondent to give security satisfactory to the court to meet any liability that may be imposed on the prescribed respondent under this Act.

‘Subdivision 2 Application by person other than prescribed respondent

‘93ZM Supreme Court may exclude other property from restraining order

- ‘(1) If the Supreme Court makes a restraining order, a person other than the prescribed respondent (the *applicant*) whose property is restrained under the order may apply to the court to amend the order to exclude the applicant’s property from the order.
- ‘(2) The applicant must give written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the property.
- ‘(3) The grounds for the application and the facts relied on must be stated fully in the notice.
- ‘(4) The State must be a party to the application.
- ‘(5) Anyone else who is given notice of the application may appear at the hearing of the application.

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- ‘(6) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- ‘(7) The State must give the applicant notice of the grounds for opposing the application.
- ‘(8) However—
- (a) the State is not required to give the notice; and
 - (b) the application may not be heard;
- until the DPP has had a reasonable opportunity to examine the applicant or a relevant person under an examination order, whether or not an examination order has already been made.
- ‘(9) In this section—
- relevant person* means a person other than the applicant who, on examination under an examination order, may be able to give evidence relevant to the application.

‘93ZN When Supreme Court may exclude applicant’s property

- ‘(1) The Supreme Court may exclude the applicant’s property from the restraining order if it is satisfied that the property—
- (a) is not under the effective control of the prescribed respondent; and
 - (b) is not a gift that was given to the applicant by the prescribed respondent within 6 years before the prescribed respondent was charged with the qualifying offence to which the restraining order relates.
- ‘(2) In addition, the Supreme Court may exclude the applicant’s property from the order if it is satisfied it is in the public interest to amend the order in the particular circumstances.
- ‘(3) The Supreme Court may require the applicant to give the undertakings about the applicant’s property the court considers appropriate.

‘Division 8 Extension of restraining orders

‘93ZO Extension of restraining order

- ‘(1) On the application of the State, the Supreme Court may extend the period for which a restraining order is to remain in force.
- ‘(2) The State must give notice of the application to—
 - (a) the prescribed respondent; and
 - (b) anyone else whose property is restrained under the restraining order; and
 - (c) anyone else the applicant considers may have an interest in the restrained property.
- ‘(3) A person given or entitled to be given notice under subsection (2) may appear at the hearing of the application.

‘Division 9 Sale of restrained property

‘93ZP Supreme Court may order sale of restrained property

- ‘(1) This section applies to restrained property under a restraining order only if the State applies to the Supreme Court for a serious drug offender confiscation order against the prescribed respondent and the application has not been decided.
- ‘(2) The State may, when applying for the serious drug offender confiscation order or at a later time, apply to the Supreme Court for an order directing the public trustee to sell all or part of the restrained property (*application property*).
- ‘(3) The State must give notice of the application to each person who has an interest in the application property.
- ‘(4) The Supreme Court may make the order if the court is satisfied, on evidence of the public trustee or otherwise—

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- (a) the application property may deteriorate or lose value before the application for the serious drug offender confiscation order is decided; or
 - (b) the cost of controlling the application property would be more than the value of the property if it were disposed of after the making of a serious drug offender confiscation order.
- ‘(5) The proceeds of a sale under an order under this section are taken to be restrained under the restraining order applying to the application property.

‘Division 10 Revocation of restraining orders

‘93ZQ Application to revoke restraining order

- ‘(1) A person whose property is the subject of a restraining order and who was not given notice of the application for the restraining order may apply to the Supreme Court to revoke the order.
- ‘(2) The application must be made within 28 days or, with the approval of the court, the further period of not more than 3 months, after the person is notified of the making of the restraining order.
- ‘(3) The applicant must give the State written notice of the making of the application and the grounds for the application.
- ‘(4) The restraining order remains in force until the court revokes the order or the order otherwise stops having effect.
- ‘(5) The State may present additional material to the court relating to the application to revoke the restraining order.
- ‘(6) After considering the application, the court may revoke the restraining order if satisfied, on the facts before the court, there would be no basis for making a restraining order in relation to the property.

‘93ZR Notice of revocation of restraining order

- ‘(1) On the revocation of a restraining order under section 93ZQ, the State must give notice of the revocation to—
 - (a) each person whose property was restrained under the order, if known; and
 - (b) anyone else who was affected by the order.
- ‘(2) Subsection (1) does not require the State to notify the applicant for the revocation of the restraining order of the revocation of the order.

‘Division 11 Other provisions about restraining orders

‘93ZS Restraining order to be registered

- ‘(1) This section applies if a restraining order applies to property of a particular kind and a law, whether or not a law of the State, provides for the registration of title to, an interest in, or a charge over, property of that kind.
- ‘(2) On the application of the commission or the commissioner of the police service, the authority responsible for administering the law must record the particulars of the relevant restraining order in the register kept under the law.
- ‘(3) Subsection (2) applies even though a relevant document of title is not produced to a registrar or any other person.
- ‘(4) Unless the contrary is proved, a person who deals with property affected by a registered restraining order is taken to know of the restraining order.
- ‘(5) If the *Land Title Act 1994* applies to the property, the commission or the commissioner of the police service may lodge, and the registrar of titles must register, a caveat over the property under that Act.
- ‘(6) As soon as practicable after the restraining order stops having effect in relation to the property—

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- (a) the commission or the commissioner of the police service must apply for cancellation of the record of the order; and
 - (b) the authority responsible for administering the relevant law must take the steps necessary to cancel the record.
- ‘(7) Also, if the commission or the commissioner of the police service lodged a caveat over the property under subsection (5), as soon as practicable after the relevant restraining order stops having effect in relation to the property, the commission or the commissioner of the police service must withdraw the caveat.

‘93ZT Contravention of restraining order

- ‘(1) A person who conceals restrained property or does another act or makes another omission in relation to restrained property with the intention of directly or indirectly defeating the operation of the restraining order commits a crime.
- Maximum penalty—350 penalty units or 7 years imprisonment.
- ‘(2) It is a defence to a charge of an offence against subsection (1) for the person to prove that the person had no notice that the property was restrained under a restraining order and no reason to suspect it was.
- ‘(3) A dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.
- ‘(4) Subsection (2) does not apply to a charge in relation to a motor vehicle, boat or outboard motor restrained under a restraining order that is registered under the *Personal Property Securities Act 2009* (Cwlth).

‘93ZU Restraining order does not prevent other action under this Act

‘A restraining order does not prevent the enforcement of any other order made under this Act against restrained property under the restraining order.

‘93ZV Effect of dismissal of particular applications on restraining order

- ‘(1) This section applies if, while a restraining order is in force—
- (a) the Supreme Court dismisses an application for a serious drug offender confiscation order based on the qualifying offence to which the restraining order relates; or
 - (b) the charge for the qualifying offence is withdrawn or dismissed.
- ‘(2) The Supreme Court may—
- (a) if the court considers it appropriate, make an order extending the operation of the restraining order for a stated period or in stated circumstances; or
 - (b) make another order the court considers appropriate about the operation of the restraining order.
- ‘(3) An order under subsection (2) may be made to take effect immediately, at a stated time, or when a stated event happens.

‘93ZW Authority under restraining order

‘A restraining order is sufficient authority for a person to whom the order is directed to take all steps necessary or desirable to give effect to the order.

‘Part 4 Serious drug offender confiscation orders

‘Division 1 Interpretation

‘93ZX Definition for pt 4

‘In this part—

prescribed respondent see section 93ZZ(1).

‘93ZY Meaning of *serious drug offender confiscation order*

- ‘(1) A *serious drug offender confiscation order* is an order that forfeits to the State—
- (a) all property, other than protected property, of the prescribed respondent; and
 - (b) all property that was a gift given by the prescribed respondent to someone else within 6 years before the prescribed respondent was charged with the qualifying offence on which the order is based.
- ‘(2) Despite subsection (1), property is not forfeited if it has been acquired by a person for sufficient consideration, without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the prescribed respondent has committed a category A offence, category B offence or category C offence.
- ‘(3) This section applies subject to sections 11, 93ZZC and 93ZZF.
- ‘(4) For this Act, the property forfeited under the order is the property that is the subject of the order.

‘Division 2 Applications for serious drug offender confiscation orders

‘93ZZ Application for serious drug offender confiscation order

- ‘(1) This section applies if—
- (a) a person (the *prescribed respondent*) is convicted of a qualifying offence; and
 - (b) a serious drug offence certificate for the qualifying offence has been issued and has not been cancelled.
- ‘(2) The State may apply to the Supreme Court for a serious drug offender confiscation order against the prescribed respondent.
- ‘(3) The application must be made within 6 months after the issue of the serious drug offence certificate for the qualifying offence.
- ‘(4) The application must not be set down for hearing less than 28 days after the filing of the application.
- ‘(5) The commission or, if the application is made for the State by a police officer, the commissioner of the police service must give reasonable notice of the application to—
- (a) the prescribed respondent; and
 - (b) anyone else who the commission or the commissioner of the police service reasonably suspects has an interest in the property that is likely to become the subject of the order sought.
- ‘(6) A person given notice under subsection (5) may appear at the hearing of the application.
- ‘(7) The absence of a person required to be given notice of the application does not prevent the Supreme Court from making a serious drug offender confiscation order.
- ‘(8) The application must include particulars of any encumbrance over property that an appropriate officer considers is likely to become the subject of the order.

-
- ‘(9) The application must state that a response to the application may be filed under section 93ZZA.

‘93ZZA Response by prescribed respondent

- ‘(1) The prescribed respondent may file a response to the application under section 93ZZ.
- ‘(2) The response must state—
- (a) details of any property the prescribed respondent believes is protected property; and
 - (b) the reasons why the prescribed respondent believes the property is protected property; and
 - (c) details of any public interest considerations the prescribed respondent will ask the court to take into account.
- ‘(3) The prescribed respondent must file the response in the Supreme Court and give a copy of it to the State at least 14 days before the hearing date of the application.
- ‘(4) The response must be accompanied by any affidavit the prescribed respondent intends to rely on at the hearing of the application.

‘Division 3 Making and effect of serious drug offender confiscation order

‘93ZZB Making of serious drug offender confiscation order

- ‘(1) Subject to subsection (3), the Supreme Court must make a serious drug offender confiscation order against the prescribed respondent if the court is satisfied—
- (a) the prescribed respondent has been convicted of a qualifying offence for which a serious drug offence certificate has been issued and has not been cancelled; and

- (b) the application for the order was made within 6 months after the issue of the certificate.
- ‘(2) However, the court may refuse to make the serious drug offender confiscation order if the court is satisfied it is not in the public interest to make the order.
- ‘(3) If a proceeds assessment order, unexplained wealth order or pecuniary penalty order has been made on the basis of illegal activity constituting the qualifying offence, a serious drug offender confiscation order can not be made on the basis of the qualifying offence.
- ‘(4) The court may make the ancillary orders the court considers appropriate when it makes the serious drug offender confiscation order.

Example—

ancillary orders facilitating the transfer of forfeited property to the State

- ‘(5) The serious drug offender confiscation order must contain a list of all property the court has found—
 - (a) is subject to the order and is forfeited to the State; or
 - (b) is protected property and is not forfeited to the State.
- ‘(6) Subsection (5) does not limit the property that is forfeited under section 93ZZF or is protected property.

‘93ZZC Particular property forfeited only if listed in serious drug offender confiscation order

- ‘(1) The following property is forfeited under the serious drug offender confiscation order only if it is listed in the order—
 - (a) property of a person other than the prescribed respondent that is under the effective control of the prescribed respondent;
 - (b) property mentioned in section 93ZY(1)(b).
- ‘(2) As part of an application under section 93ZZ, the State may ask the court to decide that particular property is property mentioned in subsection (1)(a) or (b).

-
- ‘(3) If the court is satisfied the property is property mentioned in subsection (1)(a) or (b), the court must list the property in the serious drug offender confiscation order.
 - ‘(4) The serious drug offender confiscation order may be enforced against the property to the extent stated in the order.

‘93ZZD Serious drug offender confiscation order may provide for discharge of encumbrance

- ‘(1) This section applies if—
 - (a) the court is satisfied an encumbrancee took an encumbrance over property to be forfeited under a serious drug offender confiscation order—
 - (i) in good faith; and
 - (ii) for valuable consideration; and
 - (iii) in the ordinary course of the encumbrancee’s business; and
 - (b) the State gives an undertaking to apply the proceeds of disposing of the forfeited property towards discharging the encumbrance.
- ‘(2) The court may make the orders about the encumbrance the court considers appropriate.
- ‘(3) The commission or, if the application is made by a police officer, the commissioner of the police service may give the undertaking for the State.

‘93ZZE Notice of serious drug offender confiscation order

- ‘(1) Within 28 days after a serious drug offender confiscation order is made, the commission or, if the application for the order was made by a police officer, the commissioner of the police service must give the following persons the documents mentioned in subsection (2)—
 - (a) all known dependants of the person against whom the order is made;

[s 42]

- (b) each person the commission or the commissioner of the police service considers may have had an interest in the property the subject of the order immediately before the property was vested in the State under section 93ZZF.
- ‘(2) For subsection (1), the documents are—
- (a) a copy of the serious drug offender confiscation order; and
 - (b) a written notice stating that a dependant of the person against whom the order is made may apply to the Supreme Court, within 3 months after the day the order is made, for a hardship order under section 93ZZO.
- ‘(3) If required by the court, the commission or the commissioner of the police service must also give notice of the making of the order to the persons the court considers appropriate, in the way and within the time the court considers appropriate.

‘93ZZF Effect of serious drug offender confiscation order

- ‘(1) On the making of a serious drug offender confiscation order, the property the subject of the order—
- (a) is forfeited to the State; and
 - (b) vests absolutely in the State.
- ‘(2) However, the Supreme Court may exclude property that would otherwise be forfeited if the court is satisfied it is not in the public interest to include the property in the order.
- ‘(3) Subsection (1)(b) is subject to the provisions of this Act under which the Supreme Court may make orders about the property vested or to be vested in the State.
- ‘(4) The Supreme Court may give any necessary or convenient directions for giving effect to the forfeiture.

Example—

If the person forfeiting the property is in possession of it, the court may give directions about who is to have possession of the property.

‘93ZZG Forfeited property not to be disposed of during hardship order period

- ‘(1) During the hardship order period, the State must not, without the leave of the Supreme Court—
- (a) dispose of property forfeited to the State under a serious drug offender confiscation order; or
 - (b) authorise anyone else to dispose of the property mentioned in paragraph (a).
- ‘(2) This section does not limit section 213.
- ‘(3) In this section—
- hardship order period* means the later of the following periods to end—
- (a) 3 months after the serious drug offender confiscation order is made;
 - (b) the period ending when all proceedings relating to hardship orders are finally decided.

‘93ZZH Dealing with forfeited property prohibited

- ‘(1) A person who conceals property that is the subject of a serious drug offender confiscation order or does another act or makes another omission in relation to property the subject of the order with the intention of directly or indirectly defeating the operation of the order commits a crime.
- Maximum penalty—350 penalty units or 7 years imprisonment.
- ‘(2) It is a defence to a charge of an offence against subsection (1) for the person to prove that the person had no notice that the property was the subject of a serious drug offender confiscation order and no reason to suspect it was.
- ‘(3) A dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

‘93ZZI Effect of death

- ‘(1) If a serious drug offender confiscation order is made against a deceased, the order has effect before final distribution of the estate as if the person had died the day after the making of the order.
- ‘(2) A notice authorised or required to be given under this chapter to a person who is dead is taken to have been given if it is given to the person’s legal personal representative.
- ‘(3) A reference in this chapter to an interest in property of a person who is dead is a reference to an interest in the property the person had immediately before death.
- ‘(4) An order may be applied for and made under this chapter—
 - (a) in relation to a person’s interest in property even if the person is dead; and
 - (b) on the basis of the previous activities of a person who is dead.

‘93ZZJ Effect of death of joint owner of restrained property

- ‘(1) This section applies only if a person who is a joint owner of restrained property under a restraining order dies while the restraining order is in force.
- ‘(2) The death of the person does not, while the order is in force, operate to vest the deceased’s interest in the surviving joint owner or owners.
- ‘(3) Also, the restraining order continues to apply to the interest as if the person had not died.
- ‘(4) A serious drug offender confiscation order applying to the interest applies as if the order took effect immediately before the person died.
- ‘(5) If a restraining order stops applying to property without a serious drug offender confiscation order being made in relation to the property, subsection (2) is taken not to have applied to the property.

‘93ZZK Effect of appeal against conviction

- ‘(1) If an appeal is started against the conviction of a person of a qualifying offence or pre-qualifying offence—
- (a) an application for a serious drug offender confiscation order may still be made under section 93ZZ; and
 - (b) section 93ZZ(3) must be complied with.
- ‘(2) However, the court must adjourn the proceeding for the serious drug offender confiscation order until the appeal is decided or otherwise ends.

Note—

In relation to the discharge of a serious drug offender confiscation order, see division 5. In relation to consent orders, see section 256A.

‘93ZZL Effect of amendment of serious drug offence certificate after serious drug offender confiscation order made

- ‘(1) This section applies if, after a serious drug offender confiscation order is made, the serious drug offence certificate for the qualifying offence or a pre-qualifying offence on which the order is based is amended under the *Penalties and Sentences Act 1992*, section 161I or 161J.

Note—

If the serious drug offence certificate is amended under the *Penalties and Sentences Act 1992*, section 161K, the serious drug offender confiscation order is discharged under division 5.

- ‘(2) The validity of the serious drug offender confiscation order is not affected.

‘93ZZM Ch 2A restraining order does not prevent making of ch 2 or 3 restraining order

- ‘(1) The making of a restraining order under this chapter on the basis of a person being, or about to be, charged with or convicted of a qualifying offence does not prevent the making of a restraining order under chapter 2 or chapter 3 on the basis of the illegal activity that constitutes the qualifying offence.

‘(2) This section does not limit section 257.

‘93ZZN Restriction on orders if serious drug offender confiscation order is applied for or made

- ‘(1) Subsection (3) applies if an application for a serious drug offender confiscation order against a person is dismissed, struck out or otherwise disposed of by the court without the order being made, except if the application is dismissed because the conviction of the person of the qualifying offence or a pre-qualifying offence on which the application is based is quashed on appeal.
- ‘(2) For the removal of doubt, it is declared that subsection (3) does not apply if the application is withdrawn.
- ‘(3) The State can not apply for another order under this Act on the basis of the illegal activity constituting the qualifying offence that was the basis of the application, other than an order under chapter 3, part 3, 4 or 7.
- ‘(4) If a serious drug offender confiscation order is made on the basis of the conviction of a person of a qualifying offence, no other order may be made under this Act on the basis of the illegal activity constituting the qualifying offence.

‘Division 4 Hardship orders

‘93ZZO Application for hardship order

- ‘(1) A dependant of the person against whom the serious drug offender confiscation order is made may apply to the Supreme Court for a hardship order.
- ‘(2) Unless the court gives leave under section 93ZZP, the application must be made within 3 months after the day the serious drug offender confiscation order is made.
- ‘(3) For each application under this section, including an application for leave, the applicant must give the State and

anyone else who has an interest in the property the subject of the order written notice of—

- (a) the making of the application; and
 - (b) the grounds for the application, including, for an application for a hardship order, a description of the property the subject of the serious drug offender confiscation order that the application relates to; and
 - (c) the facts relied on.
- ‘(4) The grounds for the application and the facts relied on must be stated fully in the notice.
- ‘(5) The notice must be given at least 28 days before the day set for hearing the application.
- ‘(6) The written notice must be accompanied by any affidavit the applicant intends to rely on at the hearing of the application.
- ‘(7) The State must be a party to the application.
- ‘(8) Anyone else who is given notice of the application may appear at the hearing of the application.
- ‘(9) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- ‘(10) The State must give the applicant notice of the grounds for opposing the application.

‘93ZZP When Supreme Court may give leave for s 93ZZO

‘The Supreme Court may give leave to apply for a hardship order after the end of the period mentioned in section 93ZZO(2) if it is satisfied the delay in applying was not because of the applicant’s neglect.

‘93ZZQ Making of hardship order

- ‘(1) The Supreme Court may, on an application under section 93ZZO, make an order mentioned in section 93ZZR(1) (a

hardship order) in relation to special property if it is satisfied—

- (a) the applicant is a dependant of the person against whom the serious drug offender confiscation order was made; and
- (b) the operation of the serious drug offender confiscation order will cause hardship to the dependant.

‘(2) However, the court must not make a hardship order in favour of an adult dependant of the person against whom the serious drug offender confiscation order was made unless the court is satisfied the dependant had no knowledge of the relevant qualifying offence or a relevant pre-qualifying offence.

‘(3) In this section—

relevant, in relation to a qualifying offence or pre-qualifying offence, means the qualifying offence or a pre-qualifying offence on the basis of which the serious drug offender confiscation order was made.

special property means—

- (a) any property, if the last change of ownership resulted from the death of someone other than the person against whom the serious drug offender confiscation order was made; or

Example—

property given under a will

- (b) property that is or was the dependant’s principal place of residence, if—
 - (i) the last change of ownership of the property was at least 6 years before the relevant qualifying offence was committed; and
 - (ii) the property was occupied by the dependant as his or her principal place of residence for a consecutive period of 2 years during the 6-year period mentioned in subparagraph (i).

- ‘(4) For subsection (3), if an offence has been committed over a period of time, the date of commission of the offence is the date the person started committing the offence.

‘93ZZR Hardship orders court may make

- ‘(1) Subject to subsection (2), the court may make any of the following hardship orders—
- (a) if the special property is still vested in the State—an order—
 - (i) directing the State to transfer the property to the dependant; or
 - (ii) directing the State to sell the property and pay an amount to the dependant from the proceeds of sale;
 - (b) if the special property is no longer vested in the State—an order directing the State to pay to the dependant the value of the special property or a lesser amount.
- ‘(2) The court may only make a hardship order the court considers is necessary to prevent hardship to the dependant.
- ‘(3) If the dependant is under 18 years, the court may also make an ancillary order the court considers necessary for ensuring the proper transfer of property, or application of an amount to be paid, to the dependant.
- ‘(4) In this section—
special property see section 93ZZQ.

‘Division 5 Discharge of serious drug offender confiscation order

‘93ZZS Circumstances in which serious drug offender confiscation order is discharged

‘A serious drug offender confiscation order made against a person is discharged if—

- (a) the person's conviction of the qualifying offence or a pre-qualifying offence on which the order is based is quashed; or
- (b) the order is discharged on appeal; or
- (c) the order was based on a qualifying offence or a pre-qualifying offence that was a category B offence or category C offence and, following an appeal, the offence is no longer either a category B offence or a category C offence.

'93ZZT Notice after discharge of serious drug offender confiscation order

- '(1) This section applies if a relevant event happens.
- '(2) As soon as practicable after the relevant event happens, the commission must give notice of the happening of the relevant event to each person the commission considers may have had an interest in the property vested in the State under the serious drug offender confiscation order immediately before it was vested in the State.
- '(3) If required by the Supreme Court, the commission must also give notice of the happening of the relevant event to the persons the court considers appropriate, in the way and within the time the court considers appropriate.
- '(4) If the property is still vested in the State, the notice must include a statement to the effect that a person who had an interest in the property immediately before the property was vested in the State may, by written notice given to the Attorney-General, ask for the return of the property.
- '(5) If the property is no longer vested in the State, the notice must include a statement to the effect that a person who had an interest in the property immediately before the property was vested in the State may apply to the Supreme Court for an order declaring the value of the property.
- '(6) In this section—

relevant event means an event mentioned in section 93ZZS.

‘93ZZU Request for Attorney-General to return property

- ‘(1) This section applies if a person is given a notice under section 93ZZT relating to property that is still vested in the State.
- ‘(2) The person may, in writing, ask the Attorney-General to return the property to the person.
- ‘(3) As soon as practicable after receiving the notice, the Attorney-General must arrange for the property to be transferred to the applicant or someone else nominated by the applicant.
- ‘(4) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.

‘93ZZV Application for order declaring value of property

- ‘(1) This section applies if a person is given a notice under section 93ZZT relating to property that is no longer vested in the State.
- ‘(2) The person may apply to the Supreme Court for an order declaring the value of the forfeited property.
- ‘(3) The court must make an order declaring the value, at the time of the declaration, of the property.
- ‘(4) The court may make the other orders the court considers appropriate.
- ‘(5) After the court makes the order, the applicant for the order may, in writing, ask the Attorney-General for payment of the amount declared by the order to be the value of the property.
- ‘(6) The Attorney-General must arrange for payment to the applicant, or someone else nominated by the applicant, of the amount declared by the order.’.

43 Amendment of s 118 (Affidavit—general requirements)

Section 118(b), ‘serious’—

omit, insert—

‘major’.

44 Amendment of s 119 (Particular requirements for affidavit relating to relevant property that is not prescribed respondent’s property)

Section 119(3) and (4), ‘serious’—

omit, insert—

‘major’.

45 Amendment of s 125 (Conditions about dealing with property by agreement)

Section 125, ‘a pecuniary penalty order or a proceeds assessment order’—

omit, insert—

‘another order made under this Act’.

46 Amendment of s 143 (Contravention of restraining order)

Section 143(5)—

omit.

47 Amendment of s 184 (Pecuniary penalty orders)

(1) Section 184(1), ‘serious’—

omit, insert—

‘major’.

(2) Section 184(2)—

omit, insert—

‘(2) The value, when the pecuniary penalty order is made, of any of the following property must be deducted—

(a) property for which a forfeiture order is made for the same conviction;

(b) property forfeited under a serious drug offender confiscation order.’.

48 Amendment of s 186 (Pecuniary penalty order increase if forfeiture order discharged)

(1) Section 186(1)(b), after ‘forfeiture order’—

insert—

‘or under a serious drug offender confiscation order’.

(2) Section 186(1)(c)(i), ‘against the forfeiture order’—

omit.

49 Amendment of s 213 (Forfeited property not to be disposed of during appeal period)

(1) Section 213(2)(a), after ‘forfeiture order’—

insert—

‘or serious drug offender confiscation order’.

(2) Section 213(3), definition *appeal period*, after paragraph (a)—

insert—

‘(aa) if the property was forfeited under a serious drug offender confiscation order made against a person—the period ending when all proceedings relating to the person’s conviction of the qualifying offence and any pre-qualifying offence on which the order is based are finally decided; or’.

(3) Section 213(3)(aa) and (b)—

renumber as section 213(3)(b) and (c).

50 Amendment of s 214 (Disposal of forfeited property by State)

(1) Section 214(1)—

insert—

Note—

See also section 264A in relation to payments out of forfeited property under an equitable sharing program.’

- (2) Section 214(5), after ‘2’—

insert—

‘or chapter 2A’.

51 Amendment of s 219 (Public trustee may apply for order for satisfying liability because of confiscation order or automatic forfeiture)

- (1) Section 219(1)(a)(i), after ‘order’—

insert—

‘or a serious drug offender confiscation order’.

- (2) Section 219(1)(b), ‘assessment order’—

omit, insert—

‘assessment order, an unexplained wealth order’.

52 Amendment of s 249B (Giving notice to financial institution)

- (1) Section 249B(1), from ‘whether’ —

omit, insert—

‘of the following—

- (a) if the notice states a name in which an account is suspected to be held—
- (i) whether an account is held with the financial institution in the name of the stated person; and
 - (ii) if an account is held with the institution in that name—the account number and the balance of the account;
- (b) if the notice states an account number—

-
- (i) the name in which the account is held; and
 - (ii) the balance of the account.’.
 - (2) Section 249B(2)—
omit, insert—
 - ‘(2) The notice must state each of the following—
 - (a) the name of the police officer or authorised commission officer who gave the notice;
 - (b) the police officer or authorised commission officer reasonably believes the notice is required—
 - (i) to decide whether to take any action under this Act;
or
 - (ii) in relation to proceedings under this Act;
 - (c) the notice is given under this section and a description of the advice the financial institution is required to give under subsection (1);
 - (d) the financial institution must give the advice—
 - (i) in writing; and
 - (ii) within a stated reasonable time or, if the police officer or authorised commission officer reasonably believes there is a significant risk of imminent dissipation of funds held in an account with the institution, immediately;
 - (e) how and to whom the advice is to be given;
 - (f) a description of the offences under sections 249C and 249E.
 - ‘(2A) The notice may state any other details that may help the financial institution identify the account to which the advice relates.’.
 - (3) Section 249B—
insert—

[s 53]

- ‘(4) The police officer or authorised commission officer must make a written record of the reasons the officer reasonably believes that giving the notice is required as mentioned in subsection (4).
- ‘(5) To remove doubt, it is declared that the notice may relate to an account held in more than 1 name.’.
- (4) Section 249B(2A) to (5)—
renumber as section 249B(3) to (6).

53 Amendment of s 249E (Financial institution must comply with a notice)

- (1) Section 249E, penalty—
omit, insert—
‘Maximum penalty—2500 penalty units.’.
- (2) Section 249E—
insert—
- ‘(2) It is a defence to a prosecution for an offence against subsection (1) for the financial institution to prove it—
 - (a) could not reasonably comply with the notice within the time stated in the notice; and
 - (b) took reasonable steps to comply with the notice; and
 - (c) gave the advice stated in the notice as soon as practicable after the financial institution was required to give the advice as stated in the notice.’.

54 Amendment of s 256A (Consent orders)

- (1) Section 256A(1)—
omit, insert—
- ‘(1) Subject to subsection (2), the court may make an order in a proceeding under chapter 2, chapter 2A or chapter 3 with the consent of—

-
- (a) the applicant in the proceeding; and
 - (b) the respondent in the proceeding; and
 - (c) everyone whom the court has reason to believe has an interest in the property that is the subject of the proceeding.’.
- (2) Section 256A(2), after ‘(1)(b)’—
insert—
‘or (c)’.

55 Replacement of s 257 (Restriction on functions)

Section 257—

omit, insert—

‘257 Restriction on functions

‘A restraining order under chapter 2, chapter 2A or chapter 3 may not be made to be in force at the same time in relation to the same property as another restraining order under chapter 2, chapter 2A or chapter 3.’.

56 Amendment of s 260 (Sentencing court not to have regard to property forfeiture or pecuniary penalty)

- (1) Section 260(a), after ‘order’—
insert—
‘, serious drug offender confiscation order’.
- (2) Section 260(b), after ‘penalty order’—
insert—
‘, an unexplained wealth order’.
- (3) Section 260—
insert—
Note—

This section applies for deciding the sentence to be imposed on a person for a qualifying offence because the offence is a confiscation offence.’.

57 Insertion of new s 264A

Chapter 10, part 2—

insert—

‘264A Payment of amount under equitable sharing program

- ‘(1) The Attorney-General may give a direction for the payment, under an equitable sharing program, to another participating jurisdiction of an amount—
- (a) out of property forfeited under this Act or the proceeds of the disposal of forfeited property; or
 - (b) paid to the State under an order made under this Act.
- ‘(2) This section does not limit section 214.
- ‘(3) In this section—

equitable sharing program means an arrangement under which the State shares with another jurisdiction a proportion of property forfeited, or an amount payable, to the State under this Act if, in the Attorney-General’s opinion, the participating jurisdiction has made a significant contribution to the recovery of the property or amount, including, for example, by investigating or prosecuting the illegal activity associated with the property or amount.

participating jurisdiction, for an equitable sharing program, means the Commonwealth or a State or another jurisdiction participating in the program.’.

58 Amendment of s 265 (Evidentiary provision)

- (1) Section 265(1)(b)(i), after ‘2’—
- insert—*
- ‘, chapter 2A’.
- (2) Section 265(1)(c), after ‘3’—

insert—

‘, or a serious drug offender confiscation order.’

- (3) Section 265(1)(c), after ‘the forfeiture order’—

insert—

‘, serious drug offender confiscation order’.

- (4) Section 265(1)—

insert—

‘(d) a serious drug offence certificate.’.

59 Insertion of new ch 12, pt 4

Chapter 12—

insert—

‘Part 4 Transitional provisions for Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013

‘290 Definitions for pt 4

‘In this part—

amendment Act means the *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013*.

commencement means the commencement of this section.

‘291 Transitional provision for ss 28, 29 and 58A

‘Sections 28(4), 29 and 58A as amended by the amendment Act do not apply to an application for a restraining order or forfeiture order made before the commencement.

‘292 Hardship order provisions do not apply in relation to existing proceeds assessment orders etc.

- ‘(1) This section applies if, before the commencement—
- (a) an application for a proceeds assessment order is made but has not been decided; or
 - (b) a proceeds assessment order has been made.
- ‘(2) The following provisions as inserted or amended by the amendment Act do not apply in relation to the application or order—
- (a) section 77(2);
 - (b) section 80A;
 - (c) chapter 2, part 5, division 4.
- ‘(3) Section 77(2) as in force immediately before the commencement continues to apply to the application.

‘293 Transitional provision for s 90

- ‘(1) For section 90(4), a reference to a proceeds assessment order includes a proceeds assessment order made before the commencement.
- ‘(2) For section 90(5), a reference to an unsuccessful application includes an application unsuccessfully made before the commencement.

‘294 Transitional provision for unexplained wealth orders

‘An unexplained wealth order may be applied for, and made, in relation to—

- (a) a serious crime related activity engaged in by a person whether before or after the commencement; or
- (b) serious crime derived property acquired by a person from someone else whether before or after the commencement.’.

60 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions *applicant*, *convicted*, *quash*, *restrained property* and *restraining order*—
omit.
- (2) Schedule 6—
insert—
‘applicant see—
 - (a) for chapter 2, part 3, division 7, subdivision 2—section 49; or
 - (b) for chapter 2A, part 3, division 7, subdivision 2—section 93ZM; or
 - (c) for chapter 4, part 4, division 2A—section 153A.

appropriate form means the appropriate form under the *Land Act 1994* or the *Land Title Act 1994*.

boat means a ship within the meaning of the *Transport Operations (Marine Safety) Act 1994* that—

- (a) is registrable under that Act; and
- (b) has a unique alphanumeric identifier, of at least 14 characters, that is—
 - (i) assigned to the ship by the ship’s manufacturer or under a law of a State; and
 - (ii) permanently attached to, or marked on, the hull of the ship.

cancelled, for chapter 2A, see section 93C.

category A offence, for chapter 2A, see section 93C.

category B offence, for chapter 2A, see section 93C.

category C offence, for chapter 2A, see section 93C.

convicted—

- (a) for chapter 2A—see section 93C; or
- (b) otherwise—in relation to a confiscation offence, means convicted of the offence within the meaning of section 106.

current or previous wealth see section 89E.

dependant, of a person, means a spouse or child of the person, or a member of the household of the person, dependent for support on the person.

hardship order see—

- (a) for chapter 2, part 5—section 89C; or
- (b) for chapter 2, part 5A—section 89S; or
- (c) for chapter 2A—section 93ZZQ.

issued, for chapter 2A, see section 93C.

motor vehicle, for chapter 2, chapter 2A and chapter 3—

- (a) means a land vehicle that moves on wheels and is propelled by a motor that is part of the vehicle; and
- (b) includes a caravan or trailer designed to be attached to, or drawn by, a motor vehicle of a type mentioned in paragraph (a); and
- (c) does not include the following—
 - (i) a vehicle designed for use primarily in the mining industry;
 - (ii) farm machinery;
 - (iii) a vehicle designed for use on a railway or tramway.

outboard motor means an internal combustion engine that—

- (a) has a propeller and an engine number; and

-
- (b) is designed to be attached to the stern of a boat and used to propel a boat.

pre-qualifying offence see section 93F.

property seizure order see—

- (a) for chapter 2—section 38A(1)(d); or
(b) for chapter 2A—section 93W(1)(d).

protected property, of a person for chapter 2A, see section 93E.

qualifying offence see section 93F.

quash—

- 1 *Quash*, a conviction, has the meaning given in section 107.
2 However, for chapter 2A, section 107(2)(b) and (c) does not apply.

registrar means—

- (a) for registration under the *Land Act 1994*—the chief executive under that Act; or
(b) for registration under the *Land Title Act 1994*—the registrar of titles.

restrained property means—

- (a) for chapter 2—property restrained under a restraining order under chapter 2; or
(b) for chapter 2A—property restrained under a restraining order under chapter 2A; or
(c) for chapter 3—property restrained under a restraining order under chapter 3; or
(d) otherwise—property restrained under a restraining order made under chapter 2, chapter 2A or chapter 3.

restraining order means—

- (a) for chapter 2—a restraining order made under chapter 2; or

- (b) for chapter 2A—a restraining order made under chapter 2A; or
- (c) for chapter 3—a restraining order made under chapter 3; or
- (d) otherwise—a restraining order made under chapter 2, chapter 2A or chapter 3.

serious drug offence certificate see the *Penalties and Sentences Act 1992*, section 161G.

serious drug offender confiscation order see section 93ZY.

unexplained wealth see section 89L.

unexplained wealth order see section 89F.’.

- (3) Schedule 6, definition *confiscation order*—
insert—
‘(ba) a serious drug offender confiscation order; or
(d) an unexplained wealth order.’.
- (4) Schedule 6, definition *confiscation order*, paragraphs (ba) to (d)—
renumber as paragraphs (c) to (e).
- (5) Schedule 6, definition *examination order*—
insert—
‘(aa) for chapter 2A—section 93W; or’.
- (6) Schedule 6, definition *examination order*, paragraphs (aa) and (b)—
renumber as paragraphs (b) and (c).
- (7) Schedule 6, definition *investigation order*—
insert—
‘(aa) for chapter 2A—section 93W; or’.
- (8) Schedule 6, definition *investigation order*, paragraphs (aa) and (b)—
renumber as paragraphs (b) and (c).

- (9) Schedule 6, definition *prescribed respondent*—
insert—
‘(aa) for chapter 2A, part 3—section 93G; or
(ab) for chapter 2A, part 4—section 93ZZ(1); or’.
- (10) Schedule 6, definition *prescribed respondent*, paragraphs (aa) to (e)—
renumber as paragraphs (b) to (g).
- (11) Schedule 6, definition *property*, paragraph (b), after ‘2’—
insert—
‘or 2A’.
- (12) Schedule 6, definition *property particulars order*—
insert—
‘(aa) for chapter 2A—section 93W; or’.
- (13) Schedule 6, definition *property particulars order*, paragraphs (aa) and (b)—
renumber as paragraphs (b) and (c).
- (14) Schedule 6, definition *serious drug offence*, ‘*serious*’—
omit, insert—
‘*major*’.
- (15) Schedule 6, definition *suspects*, after ‘2,’—
insert—
‘2A,’.

Part 4 **Amendment of Penalties and Sentences Act 1992**

61 **Act amended**

This part amends the *Penalties and Sentences Act 1992*.

62 **Amendment of s 4 (Definitions)**

(1) Section 4—

insert—

‘*authorised officer*, for part 9C, means the director of public prosecutions, a deputy director of public prosecutions, or a lawyer appointed to assist the director of public prosecutions in the performance of the functions of the director of public prosecutions under part 9C.

category A offence see section 161F.

category B offence see section 161F.

category C offence see section 161F.

most serious related offence see section 161G.

related offences see section 161G.

serious drug offence means a category A offence, category B offence or category C offence.

serious drug offence certificate see section 161G.’.

(2) Section 4, definition *proper officer*, after ‘made’—

insert—

‘or certificate issued’.

63 **Insertion of new pt 9C**

After part 9B—

insert—

‘Part 9C Serious drug offences

‘Division 1 Interpretation

‘161F Meaning of *category A offence*, *category B offence* and *category C offence*

- ‘(1) An offence is a *category A offence* if the offence is against a provision listed in schedule 1B, part 1, column 1.
- ‘(2) An offence is a *category B offence* if the offence is—
 - (a) against a provision listed in schedule 1B, part 2, column 1; and
 - (b) either—
 - (i) no relevant circumstance is listed in column 3; or
 - (ii) the relevant circumstance listed for the provision in column 3 applies in relation to the offence.
- ‘(3) An offence is a *category C offence* if—
 - (a) the offence is against a provision listed in schedule 1B, part 3, column 1; and
 - (b) the relevant circumstance listed for the provision in column 3 applies in relation to the offence.
- ‘(4) Column 2 of schedule 1B gives the headings of the provisions mentioned in column 1 of the schedule, and is for information only.

‘Division 2 Issue of serious drug offence certificates

‘161G Issue of serious drug offence certificate

- ‘(1) When a court is imposing a sentence on an offender who is convicted of a serious drug offence, the court must issue a certificate (a *serious drug offence certificate*) for each serious drug offence of which the offender is convicted.

Notes—

- 1 For provisions about the use of serious drug offence certificates in relation to forfeiture of property, see the *Criminal Proceeds Confiscation Act 2002*, chapter 2A.
- 2 Section 161M provides for the process to be followed by the proper officer of the court on the issue of a serious drug offence certificate.

‘(2) Subsection (3) applies if—

- (a) the court is sentencing the offender for 2 or more serious drug offences (*related offences*); and
- (b) the court is satisfied on the balance of probabilities that the offences arise out of a single course of conduct.

Example for subsection (2)—

An offender is convicted of producing a dangerous drug, possessing a dangerous drug and possessing things used in connection with the production of a dangerous drug and the 3 offences arise from the production of the same dangerous drug.

‘(3) Despite subsection (1), the court must issue a serious drug offence certificate only for the most serious related offence of which the person is convicted.

‘(4) For subsection (3), the *most serious related offence* of which the person is convicted is—

- (a) the related offence that belongs to the highest category mentioned in schedule 1B, with category A being the highest; or
- (b) if more than 1 related offence belongs to the same category mentioned in schedule 1B—the offence that was committed first.

‘(5) For subsection (4)(b), if an offence has been committed over a period of time, the date of commission of the offence is the date the person started committing the offence.

‘(6) The court must hear any submission made by the offender or an authorised officer about the issue of the serious drug offence certificate.

‘(7) If the court has made a finding of fact that the offender committed a category C offence with a commercial purpose—

-
- (a) the court must record this finding on the certificate; and
 - (b) a sentencing judge or magistrate must sign the certificate to confirm the finding.
- ‘(8) This section applies subject to section 161I.

Note—

Section 161I applies if a court is later sentencing the offender for a serious drug offence and the court is satisfied that the offence is a related offence in relation to an offence for which a serious drug offence certificate has already been issued. The later offence is taken to be a related offence. Instead of issuing a further serious drug offence certificate for the later offence, the court must amend the serious drug offence certificate.

‘161H Content of serious drug offence certificate

‘A serious drug offence certificate must be in the approved form and must state the following—

- (a) the name of the offender;
- (b) the serious drug offence for which the certificate is issued;
- (c) whether the offence was a category A offence, category B offence or category C offence;
- (d) the date the certificate was issued;
- (e) a list of any related offences for which the court did not issue a serious drug offence certificate under section 161G(3) or section 161I(2), in the order of seriousness of the related offences.

‘161I Amendment of certificate by court to include related offence for which offender is sentenced later

- ‘(1) This section applies if—
- (a) a court is imposing a sentence on an offender for a serious drug offence (the *later offence*); and

- (b) a serious drug offence certificate has already been issued by a court for a serious drug offence (the *earlier offence*) of which the person is convicted; and
 - (c) the court is satisfied on the balance of probabilities the later offence would be a related offence in relation to the earlier offence if the offender had been sentenced for both offences at the same time.
- ‘(2) The later offence is taken to be a related offence in relation to the earlier offence and any other related offences for which a serious drug offence certificate was not issued under section 161G(3).
- ‘(3) The court must amend the serious drug offence certificate issued for the earlier offence—
- (a) if the later offence is the most serious related offence—so the certificate is issued for the later offence and to list the earlier offence as a related offence for which a serious drug offence certificate is not issued under subsection (2); or
 - (b) otherwise—to list the later offence as a related offence for which a serious drug offence certificate is not issued under subsection (2).
- ‘(4) The court must hear any submission made by the offender or an authorised officer about whether the later offence is a related offence and how the serious drug offence certificate should be amended.

‘161J Amendment of certificate by proper officer to correct minor error

- ‘(1) The proper officer of the court that issued a serious drug offence certificate may amend the certificate if the amendment is necessary to correct a minor error.
- ‘(2) The proper officer may refer the matter to the court for a decision on whether the certificate should be amended and how.

Note—

Section 161M provides for the process to be followed by the proper officer of the court on the amendment of a serious drug offence certificate.

‘161K Amendment by proper officer, or cancellation, of certificate on quashing of conviction or appeal

- ‘(1) This section applies if—
- (a) a conviction of the serious drug offence for which a serious drug offence certificate is issued is quashed; or
 - (b) a category B offence or a category C offence for which a serious drug offence certificate is issued is, following an appeal, no longer either a category B offence or a category C offence.

Example for paragraph (b)—

Because of a finding made by an appeal court, a relevant circumstance mentioned in schedule 1B, column 3 no longer applies to a category B offence or category C offence.

- ‘(2) Subject to subsection (4), the serious drug offence certificate is taken to be cancelled and can not be used in a proceeding under the *Criminal Proceeds Confiscation Act 2002*.
- ‘(3) Subsection (4) applies if—
- (a) related offences for which a serious drug offence certificate was not issued under section 161G(3) or section 161I(2) are listed on the serious drug offence certificate; and
 - (b) the offender’s conviction of 1 or more of the related offences has not been quashed.
- ‘(4) The proper officer of the court that issued the serious drug offence certificate must, on an application by an authorised officer, amend the certificate so it is issued for the next most serious related offence for which the conviction of the offender has not been quashed.

Note—

Section 161M provides for the process to be followed by the proper officer of the court on the amendment of a serious drug offence certificate.

- ‘(5) The proper officer may refer the matter to the court for a decision on how the certificate should be amended.

‘161L Effect of amendment of certificate on date of issue

- ‘(1) This section applies if a certificate is amended under section 161I or section 161K.
- ‘(2) The certificate is taken to have been issued on the date the certificate is most recently amended.

‘161M Process for issuing or amending certificate

- ‘(1) This section applies if a court, or the proper officer of a court, issues a serious drug offence certificate under section 161G or amends a serious drug offence certificate under section 161I, 161J or 161K.
- ‘(2) The proper officer must as soon as reasonably practicable—
- (a) place a copy of the issued or amended certificate on the court file; and
 - (b) give a copy of the issued or amended certificate to the offender; and
 - (c) give 2 copies of the issued or amended certificate to the director of public prosecutions.
- ‘(3) The director of public prosecutions must give 1 copy of the issued or amended certificate to the Crime and Misconduct Commission.
- ‘(4) A copy of a certificate required to be given under subsection (2) or (3) may be given electronically.’.

64 Insertion of new pt 14, div 5

Part 14—

insert—

**‘Division 5 Transitional provision for Criminal
Proceeds Confiscation
(Unexplained Wealth and Serious
Drug Offender Confiscation Order)
Amendment Act 2013**

**‘226 Retrospective application of pt 9C in particular
circumstances**

‘(1) Part 9C applies in relation to a serious drug offence if the offender is charged with the offence on or after the commencement, regardless of whether the offence was committed before or after the commencement.

‘(2) In this section—

commencement means the commencement of this section.’.

65 Insertion of new sch 1B

After schedule 1A—

insert—

‘Schedule 1B Serious drug offences

section 161F

‘Drugs Misuse Act 1986

‘Part 1 Category A offences

Column 1	Column 2
Section	Section heading
5	Trafficking in dangerous drugs

omit, insert—

‘(b) to obtain evidence that may be confiscation related evidence; or’.

(2) Section 150(5)(b)—

omit, insert—

‘(b) include information required under the responsibilities code about any search warrants issued within the previous year in relation to—

(i) for an application relating to SDOCO related evidence—the person convicted of the qualifying offence to which the application relates; or

(ii) for another application—

(A) the place or a person suspected of being involved in the commission of the offence or suspected offence to which the application relates; or

(B) the confiscation related activity to which the application relates.’.

68 Amendment of s 180 (Production notices)

(1) Section 180(1)—

insert—

‘(c) SDOCO related evidence.’.

(2) Section 180(3)(b)—

omit, insert—

‘(b) include information required under the responsibilities code about any production notices issued within the previous year in relation to—

(i) for an application relating to SDOCO related evidence—the person convicted of the qualifying offence to which the application relates; or

- (ii) for another application—the person suspected of being involved in the commission of the offence or suspected offence or confiscation related activity to which the application relates.’.

69 Amendment of s 190 (Making of production orders)

Section 190(4)(b) after ‘82’—

insert—

‘or 89L’.

70 Amendment of s 351 (Definitions for div 1)

Section 351, definition *relevant proceeding*, paragraph (f), from ‘for the’—

omit, insert—

‘for—

- (i) the confiscation, forfeiture or restraint of property or for a pecuniary penalty order, an unexplained wealth order or a proceeds assessment order in connection with a serious crime related activity as defined under that Act; or
- (ii) a serious drug offender confiscation order; or
- (iii) a special forfeiture order;’.

71 Insertion of new ch 24, pt 14

Chapter 24—

insert—

‘Part 14 **Transitional provision for
Criminal Proceeds
Confiscation (Unexplained
Wealth and Serious Drug
Offender Confiscation Order)
Amendment Act 2013**

‘877 **Application of amendments about confiscation related
evidence etc.**

- ‘(1) This section applies if, before the commencement—
- (a) an application for a relevant order is made but has not been decided; or
 - (b) a relevant order has been made.
- ‘(2) This Act, as in force immediately before the commencement, continues to apply in relation to the application or order.
- ‘(3) In this section—
- commencement* means the commencement of this section.
- relevant order* means—
- (a) a search warrant under section 150; or
 - (b) a production notice under section 181; or
 - (c) a production order under section 192.’.

72 **Amendment of sch 3 (Relevant offences for chapter 13
disclosure of information provisions)**

Schedule 3, entry for Criminal Proceeds Confiscation Act 2002—

insert—

- section 93ZD (Offence to contravene examination order)’.

73 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions *confiscation order* and *confiscation related evidence*—

omit.

- (2) Schedule 6—

insert—

‘confiscation order means a confiscation order or special forfeiture order under the Confiscation Act.

confiscation related evidence—

- 1 *Confiscation related evidence* means a thing or evidence of an activity that may be or provide evidence of something for which a proceeding for a confiscation order may be started under the Confiscation Act, chapter 2, chapter 3 or chapter 4 and includes—

- (a) a thing in which a person has an interest that is serious crime derived property; and
- (b) a thing in which a person has an interest that is illegally acquired property of a person reasonably suspected of having engaged in a serious crime related activity; and
- (c) evidence of a serious crime related activity; and
- (d) evidence of illegal activity of a person reasonably suspected of having engaged in a serious crime related activity; and
- (e) evidence of a contract—
 - (i) about a depiction of a confiscation offence or alleged confiscation offence; and
 - (ii) from which a person convicted of the offence, or someone else for that person, derives benefits; and
- (f) evidence of a contract—

- (i) about the expression of thoughts, opinions or emotions about a confiscation offence of a person who has been convicted of the offence; and
- (ii) from which that person, or someone else for that person, derives benefits; and
- (g) property that is restrained under a restraining order under the Confiscation Act.

2 The term also includes SDOCO related evidence.

qualifying offence see the Confiscation Act, section 93F.

SDOCO related evidence means evidence of property that may be subject to forfeiture under a confiscation order for which a proceeding may be started under the Confiscation Act, chapter 2A.’.

- (3) Schedule 6, definition *confiscation related activity*, after ‘Act’—
insert—
‘other than chapter 2A’.