



# **Criminal Proceeds Confiscation Act 2002**

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Queensland

# Criminal Proceeds Confiscation Act 2002

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# Criminal Proceeds Confiscation Act 2002

**An Act to provide for the confiscation of the proceeds of crime and property connected to persons convicted of particular serious drug offences, the payment to the State of unexplained wealth, and for other purposes**

## Chapter 1 Introduction

### 1 Short title

This Act may be cited as the *Criminal Proceeds Confiscation Act 2002*.

### 2 Commencement

- (1) This Act, other than the following provisions, commences on 1 January 2003—
  - (a) chapter 12, part 4;
  - (b) section 283 and schedule 3, items 49 and 50;
  - (c) section 339 and schedule 4, to the extent the schedule amends the *Trustee Companies Act 1968*.
- (2) Schedule 3, items 49 and 50 are taken to have commenced on 1 January 2002.
- (3) The following provisions commence on assent—
  - (a) chapter 12, part 4;
  - (b) section 283;
  - (c) section 339 and schedule 4, to the extent the schedule amends the *Trustee Companies Act 1968*.

### **3 Definitions**

The dictionary in schedule 6 defines particular terms used in this Act.

### **4 Objects**

- (1) The main object of this Act is to remove the financial gain and increase the financial loss associated with illegal activity, whether or not a particular person is convicted of an offence because of the activity.
- (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.
- (3) This Act provides for 3 separate schemes to achieve its objects.
  - (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.
  - (6) 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.
  - (7) Despite the similarities between the schemes, each is separate and none of the schemes are to be construed as limiting either of the other schemes, unless this Act otherwise expressly provides.

## **5 Act binds State**

- (1) This Act binds all persons, including the State and, as far as the legislative power of Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or the other States liable to be prosecuted for an offence.

## **5A Territorial application of Act**

- (1) This Act applies both within and outside Queensland.

- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

## **6 Notes**

A note in the text of this Act is part of this Act.

## **7 Examples in sch 1**

- (1) An example in schedule 1, part 1 is an example of the practical operation of the application of the definition *illegally acquired property*.

*Note—*

For the definition, see section 22.

The examples apply in the same way to the practical operation of the definition *serious crime derived property*.

- (2) An example in schedule 1, part 2 is an example of the practical operation of chapter 2, part 5.
- (3) An example in schedule 1, part 3 is an example of the practical operation of the application of the definition *tainted property*.

*Note—*

For the definition, see section 104.

- (4) An example in schedule 1, part 4 is an example of the practical operation of chapter 3, part 7, division 3.

## **8 Proceedings are civil, not criminal**

- (1) This section applies to a proceeding under this Act other than a prosecution for an offence against this Act.
- (2) The proceeding is not a criminal proceeding.
- (3) Questions of fact in the proceeding must be decided on the balance of probabilities.
- (4) The rules of evidence applying in civil proceedings apply to the proceeding.



- (5) The rules of construction applying only to the criminal law do not apply in the interpretation of this Act for the proceeding.
- (6) The *Uniform Civil Procedure Rules 1999*, to the extent that they are not inconsistent with this Act, apply to the proceeding.

## **9 Orders under this Act not a sentence**

An order under this Act requiring the payment of an amount or imposing a penalty, other than for a conviction for an offence against this Act, or restraining or forfeiting property, is not a punishment or sentence for any offence.

## **10 Operation of other laws not affected**

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

## **11 Interstate operation of particular orders**

- (1) For the purpose of enabling a restraining order, a forfeiture order or a serious drug offender confiscation order to be registered under the corresponding law of another State, the order may be expressed to apply to property in that State.
- (2) An order mentioned in subsection (1) does not apply to property in another State, unless—
  - (a) a corresponding law of the other State provides that the order has effect in the State after registration under that law; or
  - (b) the property was movable property and was located in Queensland or another State with a corresponding law when the order took effect.

## **12 Proceedings by the State and meaning of *appropriate officer***

- (1) If the State may start a proceeding under this Act, the proceeding may be started for the State as follows—
  - (a) for chapter 2 or 2A—
    - (i) by the commission; or
    - (ii) with the approval of the commission, by a police officer; or
  - (b) for chapter 3 or 4, by an appropriate officer; or
  - (c) for chapter 10, part 1, by an appropriate officer.
- (2) A proceeding taken by or for the State must be taken under the title “State of Queensland”.
- (3) The DPP is the solicitor on the record for the proceeding.
- (4) Without limiting subsection (2), any document of the State necessary for the proceeding under a provision of this Act may be signed by a person who is an appropriate officer for that provision.
- (5) For this Act, *appropriate officer*—
  - (a) for subsection (1)(c), chapter 2, chapter 2A or chapter 10, means—
    - (i) the chairperson; or
    - (ii) an authorised commission officer; or
    - (iii) the DPP, a deputy DPP, or a lawyer appointed to assist the DPP in the performance of the DPP’s functions; or
  - (b) for subsection (1)(b), chapter 3 or chapter 4—
    - (i) means a person mentioned in paragraph (a)(iii); or
    - (ii) for the purposes of an application to a Magistrates Court for a forfeiture order or pecuniary penalty order and related matters—includes the commissioner of the police service or another police officer.

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## Chapter 2      **Confiscation without conviction**

### Part 1              **Preliminary**

#### 13      **Explanation of ch 2**

- (1) This chapter enables proceedings to be started to confiscate property derived from illegal activity whether or not a person who engaged in the relevant activity has been convicted of any offence.
- (2) Also, this chapter enables proceedings to be taken to confiscate property derived from a serious crime related activity even though the person who engaged in the relevant activity has not been identified.
- (3) The chapter enables the Supreme Court, as a preliminary step, to make a restraining order preventing property, whether the property of the person who engaged in the relevant illegal activity or the serious crime derived property of someone else, being dealt with without the court's leave.
- (4) The court must make a forfeiture order confiscating the property (unless it is not in the public interest to make the order) if it finds it is more probable than not that—
  - (a) the person whose suspected serious crime related activity was the basis of the relevant restraining order engaged in a serious crime related activity; or
  - (b) the property is serious crime derived property because of a serious crime related activity of a person, even though a particular person suspected of having engaged in the serious crime related activity can not be identified.
- (5) The court may also make a proceeds assessment order against a person who has engaged in a serious crime related activity, requiring the person to pay to the State the amount the court decides is the value of proceeds derived from the person's

illegal activity over a period of up to 6 years before the application for the order is made.

- (6) 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).
- (7) The amount payable under the proceeds assessment order or unexplained wealth order may be recovered as a debt payable to the State.
- (8) The chapter contains other ancillary provisions including provisions giving persons opportunities to have lawfully acquired property excluded from the effect of restraining orders and forfeiture orders.

## 14 Application of ch 2

Subject to the limitation period imposed under section 58, this chapter applies in relation to illegal activity or serious crime related activity whether happening before or after the commencement of this section.

# Part 2 Interpretation

## Division 1 References to relevant offences

### 15 Meaning of *illegal activity*

An *illegal activity* is an activity that is—

- (a) a serious crime related activity; or
- (b) an act or omission that is an offence against the law of Queensland or the Commonwealth; or
- (c) an act or omission committed outside Queensland that—
  - (i) is an offence against the law of the place in which it is committed; and

- (ii) would be an offence mentioned in paragraph (b) if it were committed in Queensland.

*Note—*

This definition applies to the whole Act. See the dictionary.

## 16 **Meaning of *serious crime related activity* and *external serious crime related activity***

- (1) Anything done by a person that was, when it was done, a serious criminal offence, is a *serious crime related activity*.
- (2) Subsection (1) applies whether or not the person has been charged with the offence or, if charged—
- (a) has been tried; or
  - (b) has been tried and acquitted; or
  - (c) has been convicted, even if the conviction has been quashed or set aside.
- (3) An *external serious crime related activity* is a serious crime related activity arising out of an offence under the law of the Commonwealth or a place outside Queensland, including outside Australia, that, if the offence had been committed in Queensland, would be a serious criminal offence.

## 17 **Meaning of *serious criminal offence***

- (1) An offence is a *serious criminal offence* if it is any of the following—
- (a) an indictable offence for which the maximum penalty is at least 5 years imprisonment;
  - (b) an offence prescribed under a regulation for this definition;
  - (c) an offence under the law of the Commonwealth or a place outside Queensland, including outside Australia, that, if the offence had been committed in Queensland, would be an offence mentioned in paragraph (a) or (b);

- (d) an ancillary offence to an offence mentioned in paragraph (a), (b) or (c) including an offence that would be an ancillary offence to an offence mentioned in paragraph (c) if the offence had been committed in Queensland.
- (2) In this section—
- indictable offence* includes an indictable offence dealt with summarily.

## **Division 2                      References to proceeds, property and benefits**

### **18            Meaning of *proceeds***

*Proceeds*, in relation to an activity, includes property and another benefit derived because of the activity—

- (a) by the person who engaged in the activity; or
- (b) by another person at the direction or request, directly or indirectly, of the person who engaged in the activity.

### **19            Meaning of *property***

*Property* of a person—

- (a) includes—
  - (i) an interest the person has in a licence a person must hold to carry on a particular business; and
  - (ii) an interest the person has in the goodwill of a business; and
  - (iii) property of someone else that is under the effective control of the person; and
- (b) does not include property of the person that is under the effective control of someone else.

---

*Note—*

This provision is in addition to the definition of property given by the *Acts Interpretation Act 1954*, schedule 1.

## 20 Meaning of *effective control* of property

- (1) Property may be under a person's *effective control* even if—
  - (a) the person does not have a direct or indirect right, power or privilege over, or in relation to, the property; or
  - (b) the person does not otherwise have an interest in the property.
- (2) Regard may be had to all relevant matters in deciding—
  - (a) whether or not property is under a person's effective control; or
  - (b) whether or not there are reasonable grounds to suspect that property is under a person's effective control.
- (3) Matters to which regard may be had include, for example—
  - (a) shareholdings in, debentures over, or directorships of, a corporation that has a direct or indirect interest in the property; and
  - (b) a trust that has a relationship to the property; and
  - (c) family, domestic, business and other relationships between any of the following and other persons—
    - (i) persons having an interest in the property;
    - (ii) corporations that have a direct or indirect interest in the property;
    - (iii) trusts that have a relationship to the property.
- (4) However, property is under the effective control of a person (the *first person*) if the property—
  - (a) is held by another person for the ultimate benefit of the first person; or
  - (b) was a gift given by the first person to another person within 6 years before the making of an application for a

restraining order, whether or not the gift is still in the other person's possession.

- (5) Subsection (6) applies if—
- (a) a restraining order is made for particular property because a person to whom the restraining order relates has effective control of the property; and
  - (b) the restraining order directs the public trustee to take control of the property.
- (6) For the purposes of the Supreme Court's power to make further orders under this chapter in relation to the property in reliance, directly or indirectly, on a provision of this Act that mentions property that is, or is not, under the effective control of the person, the property is taken to continue to be under the effective control of the person.

*Note—*

This definition applies to the whole Act. See the dictionary.

## **21 Meaning of *benefit* and *benefit derived***

- (1) *Benefit* includes service and advantage.
- (2) A *benefit derived* by a person includes a benefit derived by someone else at the person's request or direction.

## **Division 3 References to illegally acquired property and serious crime derived property**

### **Subdivision 1 Meaning of particular property related terms**

## **22 Meaning of *illegally acquired property***

- (1) Property is *illegally acquired property* if it is all or part of the proceeds of an illegal activity.



- 
- (2) Property is also *illegally acquired property* if—
    - (a) it is all or part of the proceeds of dealing with illegally acquired property; or
    - (b) all or part of it was acquired using illegally acquired property.
  - (3) For subsection (2), it does not matter whether the property dealt with or used in the acquisition became illegally acquired property because of subsection (1) or subsection (2).
  - (4) Subsections (1) and (2) apply whether or not the activity, dealing or acquisition because of which the property became illegally acquired property happened before the commencement of this section.
  - (5) Also, if the proceeds of dealing with illegally acquired property are credited to or placed in an account, the proceeds do not lose their identity as proceeds because they are credited to or placed in an account.

*Note—*

Generally, illegally acquired property is used in this chapter, but some provisions, for example, section 28(3)(c), use the narrower expression *serious crime derived property*.

This definition applies to the whole Act. See the dictionary.

## **23 Meaning of *serious crime derived property***

- (1) Property is *serious crime derived property* if it is all or part of the proceeds of a serious crime related activity.
- (2) Property is also *serious crime derived property* if—
  - (a) it is all or part of the proceeds of dealing with serious crime derived property; or
  - (b) all or part of it was acquired using serious crime derived property.
- (3) For subsection (2), it does not matter whether the property dealt with or used in the acquisition became serious crime derived property because of subsection (1) or subsection (2).

[s 24]

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- (4) Subsections (1) and (2) apply whether or not the activity, dealing or acquisition because of which the property became serious crime derived property happened before the commencement of this section.
- (5) Also, if the proceeds of dealing with serious crime derived property are credited to or placed in an account, the proceeds do not lose their identity as proceeds because they are credited to or placed in an account.

## **Subdivision 2      Provisions about continuing application of subdivision 1 to illegally acquired property and serious crime derived property**

### **24      Definitions for sdiv 2**

In this subdivision—

*character* of property means its character as either illegally acquired property or serious crime derived property.

*property* means property that is either of the following because of subdivision 1—

- (a) illegally acquired property;
- (b) serious crime derived property.

### **25      Property retains its character despite disposal**

Illegally acquired property or serious crime derived property retains its character—even if it is disposed of, including by using it to acquire other property—until it stops being property of that character under section 26.

---

**26 When property stops being illegally acquired property or serious crime derived property**

Property stops being illegally acquired property or serious crime derived property—

- (a) when it is acquired by a person for sufficient consideration, without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was illegally acquired property or serious crime derived property; or
- (b) when it vests in a person on the distribution of the estate of a deceased; or
- (c) when it is disposed of under this Act, including when discharging a pecuniary penalty order, a proceeds assessment order or an unexplained wealth order; or
- (d) when it is the proceeds of the disposal of property under this Act other than by sale under a condition of a restraining order or by order of the Supreme Court under section 46, 93ZP or 138; or
- (e) when it is acquired by Legal Aid as payment of reasonable legal expenses payable because of an application under this Act or in defending a charge of an offence; or
- (f) in circumstances prescribed under a regulation.

**27 Property may again become illegally acquired property or serious crime derived property**

If property that was, but is no longer, illegally acquired property or serious crime derived property is again acquired by the person who owned it when it had that character, the property again becomes property of that character unless it is acquired by the person under an order under this Act.

*Note—*

For an example of the practical operation of this provision, see schedule 1, part 1, example 2.

## Part 3                      Restraining orders

### Division 1                  Application for restraining orders

#### 28      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) The application—
  - (a) must be supported by an affidavit of an authorised commission officer or a police officer; and
  - (b) may be made without notice to any person to whom it relates.
- (3) The application may relate to all or any of the following property—
  - (a) for property of a person suspected of having engaged in 1 or more serious crime related activities (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;
  - (c) stated property suspected of being serious crime derived property because of a serious crime related activity of a person, even though a particular person suspected of having engaged in the serious crime related activity can not be identified.

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- (4) An application for a restraining order that relates to property of a person suspected of having engaged in 1 or more external serious crime related activities may be made only if the person whose property it is lives in Queensland or the property is situated in Queensland.
  - (5) The court may refuse to consider the application until the State 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.

## **29 Affidavit**

- (1) The affidavit of the authorised commission officer or police officer must state—
  - (a) for property mentioned in section 28(3)(a) if the serious crime related activity involves an offence stated in schedule 2, part 1—the officer suspects the prescribed respondent—
    - (i) has engaged in 1 or more serious crime related activities; and
    - (ii) the reason for the suspicion; or
  - (b) for property mentioned in section 28(3)(a) if paragraph (a) does not apply—the officer suspects the prescribed respondent—
    - (i) has engaged in 1 or more serious crime related activities; and
    - (ii) has derived proceeds from engaging in 1 or more of these serious crime related activities; and
    - (iii) the reason for the suspicion; or
  - (c) for property mentioned in section 28(3)(b)—the officer suspects the property is serious crime derived property because of a serious crime related activity of a

prescribed respondent and the reason for the suspicion;  
or

- (d) for property mentioned in section 28(3)(c)—the officer suspects the property is serious crime derived property and the reason for the suspicion.
- (2) Also, for property of a person suspected of having engaged in 1 or more external serious crime related activities, the affidavit must state that the authorised commission officer or police 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 property of the prescribed respondent that is the subject of the application as a result of the external serious crime related activity.

### **30 Notice of application**

- (1) Subject to section 30A(2), the State must give notice of the application—
  - (a) to each person whose property the authorised commission officer or police officer whose affidavit supports the application reasonably believes is the subject of the application; and
  - (b) to anyone else the authorised commission officer or police officer whose affidavit supports the application considers has an interest in the property the subject of 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.

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## **Division 2                    Making restraining orders**

### **30A    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.
- (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.

### **31        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 there are reasonable grounds for the suspicion 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, for the State, give the court the undertakings the court requires.

- (4) A restraining order does not apply to property of a person acquired after the order is made unless the order expressly states it applies to the property.
- (5) Also, 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.

### **32 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 33 or 34.

### **33 Condition 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.

### **34 Condition 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 Supreme Court is satisfied—
  - (a) 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; and
  - (b) the property from which the expenses or debt are to be paid is not illegally acquired property.
- (4) Further, subsection (1) does not authorise the imposition of a condition providing for the payment of a person's legal expenses that are 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 conviction or sentence.

**35 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.

**36 Duration of restraining order**

- (1) A restraining order is in force for 28 days after it is made.
- (2) Despite subsection (1), a restraining order continues in force after the end of the 28 days if—
  - (a) before the end of the 28 days, an application for any of the following is made but the application has not been decided—
    - (i) a forfeiture order for the restrained property;
    - (ii) a proceeds assessment order against the person whose property is restrained under the restraining order;
    - (iii) an unexplained wealth order against the person whose property is restrained under the restraining order; or
  - (b) there is an unsatisfied proceeds assessment order or unexplained wealth order in force against the person whose suspected serious crime related activities were the basis of the restraining order; or
  - (c) the order continues in force because of an order of the Supreme Court under section 54.

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## **Division 3                      Making other orders**

### **37            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 38 and 38A.
- (2) However, section 38(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
  - (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) a person whose property is restrained under the restraining order;
  - (c) if the restraining order directs the public trustee to take control of 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)—
  - (a) to the person to whom the order is to be directed if the order is to be made under section 38A(1)(a), (b), or (c);  
or
  - (b) to the person whose property is to be seized if the order is made under section 38A(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 37A(2).

### **37A Hearing of application**

- (1) The Supreme Court must not hear an application for an order under section 37 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.

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### **38 Administration orders Supreme Court may make**

- (1) The court may make any of the following orders under section 37 (each an *administration order*)—
- (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;
  - (c) an order about the performance of an undertaking given in relation to the restraining order for the payment of damages or costs;
  - (d) if the restraining order directs the public trustee to take control of 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 the State;
  - (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 mentioned in subsection (1)(e).

Maximum penalty—100 penalty units or 2 years imprisonment.

### **38A Investigation orders Supreme Court may make**

- (1) Also, the court may make any of the following orders under section 37 (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;
    - (iii) the nature and location of any property restrained under the restraining order that the applicant for the order reasonably suspects is serious crime derived property;
  - (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 to 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;

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- (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 sections 43 and 44 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.
- (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 4            Provisions about particular orders**

### **Subdivision 1        Examination orders**

#### **39            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.

#### **39A        Time and place of examination**

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

### **39B 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) These people are entitled to be present at the examination—
  - (a) a lawyer of the person being examined; and
  - (b) an appropriate officer; and
  - (c) a commission officer; and
  - (d) a lawyer representing an appropriate officer or a commission officer; and
  - (e) any person who is entitled to be present because of a direction under subsection (2).

### **39C 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.

### **39D 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.
- (1A) 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



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direction given by the court in which, or judicial person before whom, the legal proceeding is being taken.

- (2) The court or court officer must authenticate and sign any deposition or other recording.
- (3) If evidence given at an examination is recorded in a deposition, it must—
  - (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 and 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.
- (4) 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.

#### **40 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 or imposes.

#### **41 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.

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#### **41A Use and dissemination of examination information**

- (1) This section applies to a statement, disclosure, document or other thing mentioned in section 40(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
  - (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 (*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 40 and subject to section 39B; 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**

### **42 Privilege—property particulars order**

- (1) A person directed under a property particulars order to give a statement to the commission or the public trustee 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 or the public trustee 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.

## **Subdivision 3 Property seizure orders**

### **42A 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.

### **43 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—

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- (a) is taken to be a search warrant issued by a Supreme Court judge under the *Crime and Corruption 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 Corruption 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 Corruption Act 2001*.
  - (4) The *Crime and Corruption Act 2001*, section 93 applies to the order as if the order were a search warrant.
  - (5) It is sufficient compliance with the *Crime and Corruption 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 Corruption Act 2001*, sections 113 and 114 do not apply to property seized under the order.

#### **44 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 5                      Notice of restraining order and other orders**

### **45                      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 3 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.
- (2A) However, under subsection (2) 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 38A(1)(a), (b) or (c) directed to another person.

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- (3) If the order directs the public trustee to take control of property, the commission must give the public trustee a copy of the order.
  - (4) 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 (3).
  - (5) A restraining order, or another order under division 3, does not stop having effect only because a person required to be served under subsection (2) has not been served with a copy of the order.

## **Division 6                      Sale of restrained property**

### **46            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 forfeiture order for the property and the application has not been decided.
- (2) The State may, when applying for the forfeiture 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—
  - (a) the application property may deteriorate or lose value before the forfeiture order application 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 a forfeiture order was made.
- (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 7                    Exclusion of property from restraining order**

### **Subdivision 1            Application by prescribed respondent**

#### **47            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 application must be made before the State applies for a forfeiture order to be made.

*Note—*

After the State applies for a forfeiture order, an application by a prescribed respondent may be made under section 65 or 66.

- (3) The prescribed respondent must give a 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.
- (3A) 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.

#### **48 When Supreme Court may exclude prescribed respondent's property**

- (1) The Supreme Court may exclude the prescribed respondent's property from the order if—
  - (a) it is satisfied it is more probable than not that the property to which the application relates is not illegally acquired property; and
  - (b) the property is unlikely to be required to satisfy a proceeds assessment order or unexplained wealth order.
- (2) Also, the Supreme Court may exclude the prescribed respondent'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 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**

### **49      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 a 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.
- (2A) The grounds for the application and the facts relied on must be stated fully in the notice.
- (3) The State must be a party to the application.
- (4) Anyone else who is given notice of the application may appear at the hearing of the application.
- (5) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- (6) The State must give the applicant notice of the grounds for opposing the application.
- (7) 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.
- (8) 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.

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## **50 When Supreme Court may exclude applicant's property**

- (1) The Supreme Court may exclude the applicant's property from the order if it is satisfied the applicant acquired the property—
  - (a) in good faith and for sufficient consideration; and
  - (b) without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was illegally acquired property.
- (2) The Supreme Court may make the order only to the extent to which the interest in the property concerned was not, when it first became illegally acquired property, acquired using the proceeds of an illegal activity.
- (3) 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.
- (4) The Supreme Court may require the applicant to give the undertakings about the applicant's property the court considers appropriate.

## **Division 7A Revocation of restraining order**

### **50A 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 to 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.

### **50B Notice of revocation of restraining order**

- (1) On the revocation of a restraining order under section 50A, 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 8 Other provisions about restraining orders**

### **51 Recording of restraining order**

- (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.

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- (4) Unless the contrary is proved, a person who later deals with property for which particulars are recorded under subsection (2) is taken to have had notice of the relevant 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 relevant restraining order stops having effect in relation to the property—
    - (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.

## **52 Contravention of restraining order**

- (1) A person who does, or attempts to do, an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime.

Maximum penalty—

- (a) for a financial institution—2500 penalty units or the value of the restrained property, whichever is the higher amount; or
- (b) otherwise—
  - (i) 1000 penalty units or the value of the restrained property, whichever is the higher amount; or
  - (ii) 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 the property was restrained under a restraining order and no reason to suspect it was.
- (3) However, the defence under subsection (2) is not available to the extent the restrained property is—
  - (a) a motor vehicle, boat or outboard motor the subject of a restraining order registered under the *Personal Property Securities Act 2009* (Cwlth); or
  - (b) land over which a caveat in relation to the restraining order is registered under the *Land Title Act 1994*.

*Note—*

See section 51(5) for the obligation of the registrar of titles to register the caveat.

- (4) Subsection (1) does not prevent the prosecution and punishment of a person who does, or attempts to do, an act or makes an omission mentioned in that subsection for contempt of court or another offence under this Act or another Act.
- (5) A dealing with property in contravention of subsection (1) is void unless the dealing was in favour of a person who—
  - (a) did not know, and could not reasonably be expected to have known, that the property was restrained under a restraining order; and
  - (b) acted in good faith; and
  - (c) provided sufficient consideration for the dealing.
- (6) Subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

### **53 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 a restraining order.

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**54 Effect of dismissal of particular applications on restraining order**

- (1) This section applies if, while a restraining order is in force over property, the Supreme Court dismisses an application for—
  - (a) a forfeiture order for the property; or
  - (b) a proceeds assessment order against the person whose property is restrained under the restraining order; or
  - (c) an unexplained wealth order against the person whose property is restrained under the restraining order.
- (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.

**55 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                      Forfeiture orders**

### **Division 1                      Making and effect of forfeiture orders**

#### **56                      Application for forfeiture order**

- (1) The State may apply to the Supreme Court for an order (*forfeiture order*) forfeiting to the State particular property restrained under a restraining order.
- (2) The application may include particulars of any encumbrance over the restrained property that an appropriate officer considers an encumbrancee took in good faith, for valuable consideration, and in the ordinary course of the encumbrancee's business.

#### **57                      Notice of application**

- (1) The commission or, if the application is made for the State by a police officer, the commissioner of the police service must give written notice of the application to each person whose property is restrained under the restraining order and anyone else the commission or the commissioner of the police service considers has an interest in the restrained property.
- (2) A person given notice under subsection (1) may appear at the hearing of the application.
- (3) Anyone else who claims any of the property may also appear at the hearing of the application.
- (4) The absence of a person given notice under subsection (1) does not prevent the court from making a forfeiture order.

#### **58                      Making forfeiture order**

- (1) The Supreme Court must make a forfeiture order if the court finds it is more probable than not that—



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- (a) for property restrained because of an application relating to property mentioned in section 28(3)(a) or (b)—the prescribed respondent mentioned in that application engaged during the limitation period in a serious crime related activity; or
  - (b) for property restrained because of an application relating to property mentioned in section 28(3)(c)—the property is serious crime derived property because of a serious crime related activity that happened during the limitation period.
- (2) Subsection (1)(b) applies whether or not the person who engaged in the serious crime related activity because of which the property became serious crime derived property has been identified.
  - (3) However, for property mentioned in subsection (1)(b), the court must also be satisfied the commissioner or, if the application is made for the State by a police officer, the commissioner of the police service, has taken reasonable steps to identify and notify anyone with an interest in the property.
  - (4) Also, the court may refuse to make the order if the court is satisfied it is not in the public interest to make the order.
  - (5) A finding of the court under subsection (1)—
    - (a) need not be based on a finding about the commission of a particular offence; and
    - (b) may be based on a finding that some offence that is a serious crime related activity was committed.
  - (6) Also, the raising of a doubt whether a person engaged in a serious crime related activity is not of itself enough to avoid a finding on which a forfeiture order may be made.
  - (7) The forfeiture order must state the property to which it applies.

*Note—*

Property may be excluded from the effect of a forfeiture order if it has been excluded under section 47, 49 or 68.

- (8) The court may make the ancillary orders the court considers appropriate when it makes a forfeiture order or at a later time.

*Example—*

ancillary orders for facilitating the transfer to the State of property forfeited to the State

- (9) In this section—

*limitation period—*

- (a) means the period of 6 years before the day the application for the order is made; and
- (b) includes periods before and after the commencement of this section.

### **58A Forfeiture order relating to external serious crime related activity**

- (1) An application for a forfeiture order that relates to property of a prescribed respondent suspected of having engaged in 1 or more external serious crime related activities may be made only if the prescribed respondent lives in Queensland or the property is situated in Queensland.
- (2) The Supreme Court may not make the forfeiture order unless it is satisfied that no action has been taken under a law of the Commonwealth or any place outside Queensland, including outside Australia, against the property of the prescribed respondent that is the subject of the application as a result of the external serious crime related activity.
- (3) For subsection (2), an affidavit of 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 property of the prescribed respondent that is the subject of the application as a result of the external serious crime related activity is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.

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## 59 Effect of forfeiture order

- (1) On the making of a forfeiture order the property the subject of the order—
  - (a) is forfeited to the State; and
  - (b) vests absolutely in the State.
- (2) 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.

## 60 Dealing with forfeited property prohibited

- (1) A person who does, or attempts to do, an act or makes an omission in relation to property that is the subject of a forfeiture order that directly or indirectly defeats the operation of the order commits a crime.

Maximum penalty—

- (a) for a financial institution—2500 penalty units or the value of the forfeited property, whichever is the higher amount; or
- (b) otherwise—
  - (i) 1000 penalty units or the value of the forfeited property, whichever is the higher amount; or
  - (ii) 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 the property was the subject of a forfeiture order and no reason to suspect it was.
- (3) However, the defence under subsection (2) is not available to the extent the property is—
  - (a) a motor vehicle, boat or outboard motor the subject of a forfeiture order registered under the *Personal Property Securities Act 2009* (Cwlth); or
  - (b) land over which a caveat in relation to the forfeiture order is registered under the *Land Title Act 1994*.

[s 61]

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- (4) Subsection (1) does not prevent the prosecution and punishment of a person who does, or attempts to do, an act or makes an omission mentioned in that subsection for contempt of court or another offence under this Act or another Act.
- (5) A dealing with property in contravention of subsection (1) is void unless the dealing was in favour of a person who—
  - (a) did not know, and could not reasonably be expected to have known, that the property was forfeited under a forfeiture order; and
  - (b) acted in good faith; and
  - (c) provided sufficient consideration for the dealing.
- (6) Subsection (5) applies whether or not any person is convicted of an offence in relation to the forfeiture order.

## **61 Effect of quashing of conviction on forfeiture order**

The quashing of a conviction for a serious crime related activity does not affect the validity of a forfeiture order made before or after the conviction was quashed and based on the serious crime related activity.

## **Division 2 Other orders**

### **Subdivision 1 Orders for relief from hardship**

#### **62 Relief from hardship for dependants**

- (1) If the Supreme Court is satisfied the operation of a forfeiture order will cause hardship to a dependant of the person who will forfeit property under the order, the court may—
  - (a) order the State to pay to the dependant out of the proceeds of the sale of the property the amount the court considers necessary to prevent hardship to the dependant; and

- (b) if the dependant is under 18 years old, make the ancillary orders the court considers necessary for ensuring the proper application of an amount to be paid to the dependant.
- (2) The court must not make an order under subsection (1) in favour of an adult dependant of a person whose serious crime related activity was the basis for the forfeiture order concerned unless the court is satisfied the dependant had no knowledge of any serious crime related activities of the person.

## **Subdivision 2 Orders about encumbrances**

### **63 Forfeiture order may provide for discharge of encumbrance**

- (1) If—
  - (a) the Supreme Court is satisfied an encumbrancee took an encumbrance over property to be forfeited under a forfeiture order in good faith, for valuable consideration, and 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;the court may make the orders about the encumbrance the court considers appropriate.
- (2) 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.

### **Subdivision 3      Releasing property from effect of forfeiture order**

#### **64      Order for release of property from forfeiture order**

- (1) The Supreme Court may order (*release order*) that a stated interest in property of a stated person that has been forfeited under a forfeiture order may be released from the forfeiture order on payment to the State of the amount the court decides is the value of the interest.
- (2) The order must state the nature, extent and value, when the order is made, of the person's interest in the forfeited property.
- (3) The court may make the order only if it is satisfied—
  - (a) the interest is still vested in the State; and
  - (b) it would not be against the public interest for the interest to be transferred to the person; and
  - (c) there is no other reason the interest should not be transferred to the person.

### **Subdivision 4      Exclusion of property from forfeiture under exclusion order**

#### **65      Exclusion of property from forfeiture order application**

- (1) This section applies if an application for a forfeiture order has been made but the application has not been decided.
- (2) A person, including a prescribed respondent, who claims an interest in property to which the application relates may apply to the Supreme Court for an exclusion order.
- (3) The applicant must give a 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.

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- (3A) 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 for the exclusion order.

## 66 Exclusion of property from forfeiture order

- (1) A person, including a prescribed respondent, who claims an interest in property that is forfeited under a forfeiture order may apply to the Supreme Court for an exclusion order.
- (2) Unless the court gives leave under section 67—
- (a) the application must be made within 6 months after the forfeiture order was made; and
  - (b) the following persons can not apply for an exclusion order—

- (i) a person who was given notice of the application for the forfeiture order;
  - (ii) a person who appeared at the hearing of the application for the forfeiture order.
- (3) For each application made under this section, including an application for leave, the applicant must give a 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.
- (3A) 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 for the exclusion order.



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**67 When Supreme Court may give leave for s 66**

- (1) The Supreme Court may give leave to apply for an exclusion order after the end of the 6 months mentioned in section 66(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the Supreme Court may give a person mentioned in section 66(2)(b) leave to apply for an exclusion order only if it considers there are special grounds, including, for example—
  - (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or
  - (b) particular evidence proposed to be presented by the person in the application was not available to the person when the application for the forfeiture order was heard.

**68 Making of exclusion order**

- (1) The Supreme Court, on an application under section 65 or 66, may make an exclusion order.
- (2) The Supreme Court must, and may only, make an exclusion order if it is satisfied—
  - (a) the applicant has or, apart from the forfeiture, would have, an interest in the property; and
  - (b) it is more probable than not that the property to which the application relates is not illegally acquired property.

**69 What is an *exclusion order***

- (1) An *exclusion order* is an order that—
  - (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the applicant's interest in the property; and
  - (b) if the application for the forfeiture order has not been decided, excludes the applicant's property from the application for the forfeiture order; and

- (c) if a forfeiture order has been made for the property, and the property is still vested in the State, directs the State to transfer the property to the applicant; and
  - (d) if a forfeiture order has been made for the property and the property is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.
- (2) However, if the applicant is the prescribed respondent and an application has been made for a proceeds assessment order or unexplained wealth order against the prescribed respondent, subsection (1)(b) applies only if the court is satisfied the property is unlikely to be required to satisfy any proceeds assessment order or unexplained wealth order the court may make against the person.

## **70 Effect of exclusion order**

On the making of an exclusion order excluding an interest in property from an application for a forfeiture order, the restraining order applying to the restrained property stops having effect in relation to the excluded interest.

## **Subdivision 5 Exclusion of interest from forfeiture under innocent interest exclusion order**

### **71 Exclusion of value of innocent interest from forfeiture order**

- (1) A person who has an interest in particular property to which a forfeiture order relates may apply to the Supreme Court for an innocent interest exclusion order.
- (2) Unless the court gives leave under section 72—
  - (a) the application must be made within 6 months after the forfeiture order was made; and

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- (b) the following persons can not apply for an innocent interest exclusion order—
    - (i) a person who was given notice of the application for the forfeiture order;
    - (ii) a person who appeared at the hearing of the application for the forfeiture order.
  - (3) For each application made under this section, including an application for leave, the applicant must give a 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.
  - (3A) 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 intends to oppose the application, the State must give the applicant—
    - (a) notice of intention to oppose the application; and
    - (b) the grounds for opposing the application.

## **72 When Supreme Court may give leave for s 71**

- (1) The Supreme Court may give leave to apply for an innocent interest exclusion order after the end of the 6 months mentioned in section 71(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the Supreme Court may give a person mentioned in section 71(2)(b) leave to apply for an innocent interest order only if it is satisfied there are special grounds, including, for example—
  - (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or

- (b) particular evidence proposed to be presented by the person in the application was not available to the person when the application for the forfeiture order was heard.

### **73 Making of innocent interest exclusion order**

- (1) The Supreme Court, on an application under section 71, may make an innocent interest exclusion order.
- (2) The Supreme Court must, and may only, make an innocent interest exclusion order if the applicant proves it is more probable than not that a stated proportion of the value of the interest in property forfeited under the forfeiture order is not attributable to the proceeds of an illegal activity.
- (3) The Supreme Court may make the order only to the extent to which the interest in the property concerned was not, when it first became illegally acquired property, acquired using the proceeds of an illegal activity.

### **74 What is an *innocent interest exclusion order***

An *innocent interests exclusion order* is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the interest mentioned in section 73(2); and
- (b) directs the State to pay to the applicant the value of the interest.

## **Division 3 Release and buying back interests**

### **75 Effect of payment under release order**

- (1) On the payment to the State of the amount stated in a release order as the value of an interest in forfeited property, while the interest is still vested in the State, the forfeiture order ceases to apply to the interest.

- (2) As soon as practicable after the amount is paid, the Attorney-General must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the State.
- (3) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.

## 76 Buying out other interests under court order

- (1) This section applies if—
  - (a) property that is forfeited to the State under a forfeiture order is still vested in the State; and
  - (b) the property or an interest in the property is required to be transferred to a person (the *buyer*) under an exclusion order or an innocent interest order or under section 75; and
  - (c) the buyer's interest in the property, immediately before the forfeiture, was not the only interest in the property.
- (2) If the buyer intends to buy the other interests in the property, the buyer must give written notice to any other person who had an interest in the property immediately before the forfeiture stating—
  - (a) the buyer intends to buy the other interests from the State; and
  - (b) within 21 days after receiving the notice, the person may give the Attorney-General a written objection to the sale of the person's interest to the buyer.
- (3) If—
  - (a) the person given the notice does not give a written objection to the buying of the interest to the Attorney-General within the 21 days; and
  - (b) the buyer pays to the State an amount equal to the value of the interest;

the Attorney-General must arrange for the interest to be transferred to the buyer.

- (4) The Attorney-General may do, or authorise the doing of, anything necessary or convenient to be done for the transfer.

## **Part 5                      Proceeds assessment orders**

### **Division 1                      Application for, and making of, proceeds assessment orders**

#### **77                      Application for proceeds assessment order**

- (1) The State may apply to the Supreme Court for an order (*proceeds assessment order*) requiring a person to pay to the State the value of the proceeds derived from the person's illegal activity that took place within 6 years before the day the application for the order is made.
- (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 a proceeds assessment order.
- (5) The 6 years mentioned in subsection (1) includes periods before and after the commencement of this section.

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## 78 Making of proceeds assessment order

- (1) The Supreme Court must make a proceeds assessment order against a person if the court finds it is more probable than not that, at any time within the 6 years before the application was made, the person engaged in a serious crime related activity (a *finding of serious crime related activity*).
- (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) need not be based on a finding about the commission of a particular offence; and
  - (b) may be based on a finding that some offence that is a serious crime related activity was committed.
- (4) The court may make the ancillary orders the court considers appropriate when it makes the proceeds assessment order or at a later time.
- (5) The Supreme Court may not make a proceeds assessment order on an application that relates wholly 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.
- (6) For subsection (5), 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.
- (7) The court may make a pecuniary penalty order and a proceeds assessment order in relation to the same serious crime related activity.

- (8) However, the court must take the amount of a pecuniary penalty order into account when making a later proceeds assessment order in relation to the same serious crime related activity.

## **79 Amount must be stated in proceeds assessment order**

- (1) A proceeds assessment order must state, as the amount required to be paid to the State, the value of the proceeds derived from the person's illegal activity.
- (2) The value of the proceeds must be assessed under division 2.
- (3) However, the Supreme Court may, if it considers it appropriate, deduct from the value of the proceeds the value of any property forfeited under a forfeiture order made in relation to a person's illegal activities or under a serious drug offender confiscation order.
- (4) In assessing the value of the proceeds, the Supreme Court is not limited to assessing the value of the serious crime related activity on which the application is based but must assess the value of other illegal activities of the person during the period to which the proceeds assessment order application relates.

## **80 Proceeds assessment order increase if forfeiture order discharged**

- (1) This section applies if—
  - (a) the Supreme Court makes a proceeds assessment order; and
  - (b) in deciding the value of the proceeds derived from a person's illegal activities, the court takes into account the value of property forfeited under a forfeiture order or serious drug offender confiscation order; and
  - (c) after the proceeds assessment order is made—
    - (i) the forfeiture ends because of an appeal; or



- (ii) an exclusion order or an innocent interest exclusion order is made in relation to any property forfeited under the forfeiture order.
- (2) The State may apply to the Supreme Court for a variation of the proceeds assessment 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 proceeds assessment order.

### **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.

## **Division 2                      Assessment of value of proceeds**

### **81            Application of div 2**

- (1) This division applies to—
  - (a) property in Queensland or elsewhere; and
  - (b) proceeds of an illegal activity, whether acquired in Queensland or elsewhere.
- (2) Also, this division applies for assessing the value of the proceeds derived from an illegal activity of a person (*relevant person*).

### **82            Matters to which Supreme Court must have regard**

- (1) The Supreme Court must have regard to the evidence before it about the following—
  - (a) the value of cash and other property that came into the possession or under the control of the relevant person or someone else at the request, or by the direction, of the relevant person, because of the illegal activity;
  - (b) the value of any benefit provided for the relevant person or someone else at the request, or by the direction, of the relevant person, because of the illegal activity;
  - (c) if the illegal activity involved a dangerous drug or controlled substance (the *illegal drug*)—
    - (i) the market value, when the illegal activity happened, of a dangerous drug or controlled substance similar, or substantially similar, to the illegal drug; and
    - (ii) the amount that was, or the range of amounts that were, ordinarily paid for an act similar, or substantially similar, to the illegal activity;
  - (d) the value of the relevant person's property before, during and after the illegal activity;

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- (e) the relevant person's income and expenditure before, during and after the illegal activity.
- (2) The court—
- (a) may treat as the value of the proceeds the value the proceeds would have had if derived when the valuation is being made; and
  - (b) without limiting paragraph (a), may have regard to any decline in the purchasing power of money between the time the proceeds were derived and the time the valuation is being made.

### **83 How particular amounts may be treated**

- (1) This section applies if the court makes a finding of serious crime related activity in relation to a person under section 78(1) and—
  - (a) evidence is given that the value of the relevant person's property at the end of the period of 6 years mentioned in section 78(1) was more than the value of the relevant person's property at the start of the period; or
  - (b) evidence is given of the amount of the relevant person's expenditure within the 6 years before the day the application for the order was made.
- (2) If subsection (1)(a) applies, the court must treat the difference as proceeds derived by the relevant person from illegal activity, other than to the extent the court is satisfied the reason for the difference was not related to illegal activity.
- (3) If subsection (1)(b) applies, the court must treat the amount as proceeds derived by the relevant person from illegal activity, other than to the extent the court is satisfied the expenditure was funded from income, or amounts from other sources, not related to illegal activity.
- (4) The court must not take expenditure into account under subsection (3) to the extent the court is satisfied it resulted in the acquisition of property the value of which is taken into account under subsection (2).

## 84 Particular amounts not to be deducted

For this division, any expenses or outgoings incurred by the relevant person in relation to the illegal activity must be disregarded.

*Example—*

For deciding the value of the proceeds derived by the relevant person from an illegal activity involving the sale of dangerous drugs the person's expenses paid in acquiring the drugs must be disregarded.

## 85 Evidence by prescribed officer

(1) Despite any rule of law or practice about hearsay evidence, the court may, for this division, receive evidence of the opinion of a prescribed officer who is experienced in the investigation of illegal activities involving dangerous drugs about—

- (a) the market value at a particular time of a particular kind of dangerous drug or controlled substance; or
- (b) the amount, or range of amounts, ordinarily paid at a particular time for the doing of anything in relation to a particular kind of dangerous drug or controlled substance.

(2) In this section—

***prescribed officer*** means—

- (a) a police officer; or
- (b) a member of the Australian Federal Police; or
- (c) an officer of customs within the meaning of the *Customs Act 1901* (Cwlth); or
- (d) an authorised commission officer.

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## Division 3                      Other provisions about proceeds assessment orders

### 86            **Proceeds assessment order amount is debt payable to State**

- (1) The amount a person is ordered to pay to the State under a proceeds assessment order is a debt payable by the person to the State.
- (2) The proceeds assessment 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 proceeds assessment order.

### 87            **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 a proceeds assessment 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 proceeds assessment order to the extent to which other property of the controlling person is not readily available for the purpose.

- (5) The proceeds assessment 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.

## **88 Charge on property**

- (1) On the making of a proceeds assessment 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 section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies.
- (3) The charge stops having effect if any of the following happens—
  - (a) the proceeds assessment order is discharged on the hearing of 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 under a condition of a restraining order under this chapter, chapter 2A or chapter 3 or 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.
- (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 proceeds assessment order that is unpaid.
  - (9) As soon as practicable after the amount payable under the proceeds assessment 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 proceeds assessment order is made.

## **89 Effect of other actions on proceeds assessment order**

- (1) The quashing of a conviction for a serious crime related activity does not affect the validity of a proceeds assessment order.
- (2) If a proceeds assessment 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**

### **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



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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—

(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.

## 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.

[s 89F]

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- (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.



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## 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;

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- (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.
- (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.
  - (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—

[s 89T]

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- (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—
- (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.

## Part 6                      General

### 90      **Serious crime related activity can form basis of a number of orders**

- (1) The fact that a restraining order or a forfeiture order has been made on the basis of a person's serious crime related activity does not prevent the making of another restraining order or forfeiture order on the basis of that activity.
- (2) Also, the fact that a forfeiture order has been made on the basis of a person's serious crime related activity does not prevent the making of a proceeds assessment order or an unexplained wealth order on the basis of that activity.
- (3) In addition, the fact that a proceeds assessment order or an unexplained wealth order has been made on the basis of a person's serious crime related activity does not prevent the making of a forfeiture order on the basis of that activity.

[s 91]

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- (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.

## **91 Effect of death of person involved**

- (1) 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.
- (2) 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.
- (3) 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.

## **92 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 forfeiture 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 forfeiture order being made in relation to the property, subsection (2) is taken not to have applied to the property.

### **93 No stay of proceedings**

The fact that a criminal proceeding has been started against a person, whether or not under this Act, is not a ground on which the Supreme Court may stay a proceeding against or in relation to the person under this chapter that is not a criminal proceeding.

## **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.

[s 93B]

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- (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.

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- (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.
- (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.



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## **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

[s 93T]

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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
  - (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;
  - (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;

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- (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.
- (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.



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## **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—
  - (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
  - (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.

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- (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—

[s 93ZH]

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- (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 Corruption 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 Corruption 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 Corruption Act 2001*.
- (4) The *Crime and Corruption Act 2001*, section 93 applies to the order as if it were a search warrant.
- (5) It is sufficient compliance with the *Crime and Corruption 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 Corruption Act 2001*, sections 113 and 114 do not apply to property seized under the order.

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### **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.



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## **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—

- (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 does, or attempts to do, an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime.

Maximum penalty—

- (a) for a financial institution—2500 penalty units or the value of the restrained property, whichever is the higher amount; or
  - (b) otherwise—
    - (i) 1000 penalty units or the value of the restrained property, whichever is the higher amount; or
    - (ii) 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 the property was restrained under a restraining order and no reason to suspect it was.
- (3) However, the defence under subsection (2) is not available to the extent the restrained property is—
- (a) a motor vehicle, boat or outboard motor the subject of a restraining order registered under the *Personal Property Securities Act 2009* (Cwlth); or

[s 93ZU]

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- (b) land over which a caveat in relation to the restraining order is registered under the *Land Title Act 1994*.

*Note—*

See section 93ZS(5) for the obligation of the registrar of titles to register the caveat.

- (4) Subsection (1) does not prevent the prosecution and punishment of a person who does, or attempts to do, an act or makes an omission mentioned in that subsection for contempt of court or another offence under this Act or another Act.
- (5) A dealing with property in contravention of subsection (1) is void unless the dealing was in favour of a person who—
  - (a) did not know, and could not reasonably be expected to have known, that the property was restrained under a restraining order; and
  - (b) acted in good faith; and
  - (c) provided sufficient consideration for the dealing.
- (6) Subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

### **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



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- (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

[s 93ZZ]

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- (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.

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- (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.

*Example—*

Assume a person has been convicted of the qualifying offence of trafficking in dangerous drugs and the Supreme Court has made an unexplained wealth order against the person because the court was satisfied there was a reasonable suspicion, based on the person's conviction, that the person had engaged in at least 1 serious crime related activity. The court may not make a serious drug offender confiscation order against the person based on the same conviction.

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- (4) Subsection (3) does not limit the value of the property that may be forfeited to the State under a serious drug offender confiscation order.
  - (5) 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

- (6) 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.
- (7) Subsection (6) 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;
  - (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—

[s 93ZZH]

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- (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 property forfeited under serious drug offender confiscation order prohibited**

- (1) A person who does, or attempts to do, an act or makes an omission in relation to property forfeited under a serious drug offender confiscation order that directly or indirectly defeats the operation of the order commits a crime.

Maximum penalty—

- (a) for a financial institution—2500 penalty units or the value of the forfeited property, whichever is the higher amount; or
  - (b) otherwise—
    - (i) 1000 penalty units or the value of the forfeited property, whichever is the higher amount; or
    - (ii) 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 the property was forfeited under a serious drug offender confiscation order and no reason to suspect it was.
- (3) However, the defence under subsection (2) is not available to the extent the property is—



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- (a) a motor vehicle, boat or outboard motor the subject of a serious drug offender confiscation order registered under the *Personal Property Securities Act 2009* (Cwlth); or
  - (b) land over which a caveat in relation to the serious drug offender confiscation order is registered under the *Land Title Act 1994*.
- (4) Subsection (1) does not prevent the prosecution and punishment of a person who does, or attempts to do, an act or makes an omission mentioned in that subsection for contempt of court or another offence under this Act or another Act.
- (5) A dealing with property in contravention of subsection (1) is void unless the dealing was in favour of a person who—
- (a) did not know, and could not reasonably be expected to have known, that the property was the subject of a serious drug offender confiscation order; and
  - (b) acted in good faith; and
  - (c) provided sufficient consideration for the dealing.
- (6) Subsection (5) applies whether or not any person is convicted of an offence in relation to the serious drug offender confiscation order.

### **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—

[s 93ZZJ]

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- (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

[s 93ZZO]

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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.

## **Chapter 3      Confiscation after conviction**

### **Part 1          Preliminary**

#### **94      Explanation of ch 3**

- (1) This chapter enables proceedings to be started against a person to recover property and benefits derived from, and

anything used for, or in the commission of, a confiscation offence, after the person has been charged with or convicted of the offence.

- (2) It does this by enabling a court, as a preliminary step in appropriate cases, to make a restraining order preventing the property being dealt with without the court's leave.
- (3) It also empowers the court to forfeit the following property to the State—
  - (a) property used, or intended to be used, in or for the commission of a confiscation offence;
  - (b) property derived from property mentioned in paragraph (a) or from the commission of a confiscation offence.

*Note—*

For matters that the court is to consider in deciding whether to forfeit property mentioned in paragraph (a), see section 151(2).

- (4) In addition, it provides a mechanism for—
  - (a) preventing the disposal or concealment of property and benefits derived from the commission of a confiscation offence; and
  - (b) depriving persons who have directly or indirectly benefited from the commission of a confiscation offence of the benefits derived from the offence.

## **95 Application of ch 3**

- (1) This chapter applies in relation to—
  - (a) a confiscation offence committed or suspected of having been committed at any time, whether before or after the commencement of this Act; and
  - (b) a person's conviction of a confiscation offence at any time, whether before or after the commencement of this Act.
- (2) Subsection (1) applies subject to section 96.

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**96 Matters ch 3 does not apply to**

- (1) This chapter does not apply to a person's conviction of an offence if the person was convicted of the offence before 12 May 1989.
- (2) Subsection (1) does not apply to interstate forfeiture orders, interstate pecuniary penalty orders or interstate restraining orders.

**97 Application may be made for more than 1 order**

Nothing in this chapter prevents a court hearing and deciding at the same time—

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

**98 Constitution of court**

- (1) This section applies—
  - (a) if an application for a forfeiture order, pecuniary penalty order or restraining order is made to a court before which a person was convicted of a confiscation offence; and
  - (b) whether or not the court is constituted in the same way as it was constituted when the person was convicted of the offence.
- (2) The court—
  - (a) may deal with the application; and
  - (b) may perform any function and exercise any power in relation to the forfeiture order, pecuniary penalty order or restraining order, that the court may perform or exercise under this Act.

## Part 2 Interpretation

### Division 1 References to relevant offences

#### 99 Meaning of *confiscation offence*

An offence is a *confiscation offence* if it is—

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

*Note—*

This definition applies to the whole Act. See the dictionary.

#### 100 Meaning of *serious criminal offence*

*Serious criminal offence* has the same meaning as in section 17.

### Division 2 References to property and benefits

#### 101 Meaning of *benefit*

*Benefit* includes service and advantage.

#### 102 Meaning of *benefit derived*

A *benefit derived* by a person includes a benefit derived by someone else at the person's request or direction.

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### 103 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*, schedule 1.

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

### 104 Meaning of *tainted property*

- (1) *Tainted property*, for a confiscation offence, means—
- (a) property used, or intended to be used, by a person in, or in connection with, the commission of the offence; or
  - (b) property or another benefit derived by a person from property mentioned in paragraph (a); or
  - (c) property or another benefit derived by a person from the commission of the offence; or
  - (d) if the offence is money laundering, property mentioned in section 250(2)(a); or
  - (e) if the offence is against section 252(1), property mentioned in that subsection.
- (2) Property mentioned in subsection (1)(a) includes property the use of which is, or the intended use of which would be, all or part of the confiscation offence.
- (3) Subsection (1)(d) and (e)—
- (a) do not limit subsection (1)(a) to (c); and
  - (b) apply even though an act done in relation to the property is all or part of the confiscation offence.
- (4) If the confiscation offence is conspiracy to commit a confiscation offence, the references to the confiscation offence in subsection (1)(a) and (c) are taken to include a reference to the confiscation offence the subject of the conspiracy.

*Note—*

An offence may be a conspiracy to commit a confiscation offence if it is an ancillary offence to a serious criminal offence, or another indictable offence that is a conspiracy to commit a crime under the Criminal Code, section 541.

- (5) For part 3, **property** mentioned in subsection (1) includes benefits that the prescribed respondent has derived, is deriving, or is to derive, under a contract formed on or after 12 May 1989 about either of the following—
- (a) a depiction of a confiscation offence or alleged confiscation offence in a movie, book, newspaper, magazine, radio, or television production, or in any other electronic form, or live or recorded entertainment of any kind;
  - (b) an expression of the prescribed respondent's thoughts, opinions or emotions about a confiscation offence.

## **Division 3                      References to relevant criminal proceedings**

### **105      Meaning of *charge* if complaint made**

- (1) This section applies if a proceeding for an offence is started against a person—
- (a) by complaint and summons under the *Justices Act 1886*;  
or
  - (b) by notice to appear under the *Police Powers and Responsibilities Act 2000*.
- (2) If the complaint is sworn, the person is charged when the complaint is made whether or not a justice has issued on the complaint—
- (a) a summons requiring the person's attendance before a court; or
  - (b) a warrant for the person's arrest.

- (3) If the complaint is not sworn, the person is charged when the summons is served on the person.
- (4) If the proceeding is started by notice to appear, the person is charged when the notice to appear is issued and served on the person.

## 106 Meaning of *convicted* of offence

- (1) A person must be treated as if *convicted* of an offence if—
  - (a) the person is found guilty of the offence, whether or not a conviction is recorded; or
  - (b) the offence is taken into account by a court in sentencing the person for another offence; or
  - (c) the person becomes unamenable to justice for the offence; or
  - (d) the person is acquitted of the offence because of unsoundness of mind.
- (2) However, if a person is treated as if convicted of a confiscation offence because—
  - (a) the person is unamenable to justice for the offence; or
  - (b) the person is acquitted of the offence because of unsoundness of mind;

a court may rely on the person being so treated to make a forfeiture order, pecuniary penalty order or special forfeiture order only if it is satisfied that, apart from paragraph (a) or (b), the evidence is of sufficient weight to support a conviction of the person for the offence.

## 107 Meaning of *quash* a conviction

- (1) *Quash* includes set aside and rescind.

*Editor's note—*

This definition covers various expressions used in the Criminal Code, section 668E (Determination of appeal in ordinary cases) and the *Justices Act 1886*, section 225 (Powers of judge on hearing appeal).

- (2) Also, a person's conviction is taken to be *quashed* if—
- (a) for a conviction because a person is found guilty of an offence, whether or not a conviction is recorded, the conviction is quashed by a court or a free pardon is granted by the Governor; or
  - (b) for a conviction because an offence is taken into account by a court in sentencing the person for another offence—
    - (i) the person's conviction of the other offence is quashed; or
    - (ii) the court's decision to take the offence into account is quashed by a court; or
  - (c) for a conviction because a person has become unamenable to justice, the person is afterwards brought before a court to be dealt with for the offence and—
    - (i) the proceeding is discontinued; or
    - (ii) the person is acquitted; or
    - (iii) the person is convicted, but the conviction is afterwards quashed by a court or a free pardon is granted by the Governor; or
    - (iv) the offence is taken into account by a court in sentencing the person for another offence, but the person's conviction of the other offence is quashed; or
    - (v) the offence is taken into account by a court in sentencing the person for another offence, but the court's decision to take the offence into account is quashed by a court; or
    - (vi) for a conviction because a person is acquitted of an offence because of unsoundness of mind, the acquittal because of unsoundness of mind is quashed by a court.



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**108 Meaning of *related* offence**

An offence is *related* to another offence if both offences consist substantially of the same acts or omissions or form part of the same series of acts or omissions.

**109 Meaning of *unamenable to justice***

- (1) A person becomes *unamenable to justice* for an offence only if—
  - (a) a proceeding for the offence is started against the person in a way mentioned in subsection (2); and
  - (b) the person is taken to become unamenable to justice under any of sections 110 to 115.
- (2) For subsection (1), a proceeding for an offence starts when—
  - (a) a person is charged as defined in section 105; or
  - (b) a Magistrates Court charges the person with the offence or commits the person for trial or sentence for the offence; or
  - (c) an indictment is presented against the person for the offence.

*Note—*

This definition applies to the whole Act. See the dictionary.

**110 *Unamenable to justice* if person absconds**

- (1) The person is taken to become unamenable to justice if any of the following decides the person has absconded from the proceeding for the offence—
  - (a) the Supreme Court;
  - (b) the court to which the person is committed for trial or sentence;
  - (c) the court in which the proceeding is waiting to be heard, or being heard.

- (2) The person is taken to become unamenable to justice when the court decides the person has absconded or on another day decided by the court.

### **111 Unamenable to justice if person dead**

- (1) The person is taken to become unamenable to justice if the person dies before the proceeding for the offence is finally decided.
- (2) The person is taken to become unamenable to justice when the person dies.

### **112 Unamenable to justice if person not fit for trial**

- (1) The person is taken to become unamenable to justice if—
  - (a) under the *Mental Health Act 2016*, chapter 5, part 3, the person is found to be not fit for trial on the charge of the offence; and
  - (b) the proceeding for the offence is discontinued because of the finding.
- (2) The person is taken to become unamenable to justice when the proceeding is discontinued.

### **113 Unamenable to justice if warrant issued but not executed**

- (1) The person is taken to become unamenable to justice if—
  - (a) a warrant is issued for the arrest of the person for the offence, whether because of a complaint and summons or otherwise; and
  - (b) the warrant has not been executed within 6 months after its issue even though all reasonable steps have been taken to execute it.
- (2) The person is taken to be unamenable to justice at the end of the last day of the 6 months mentioned in subsection (1)(b).
- (3) In this section—

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*arrest* includes apprehension.

**114 *Unamenable to justice if no extradition order at end of extradition proceeding***

- (1) The person is taken to become unamenable to justice if—
  - (a) 6 months after the proceeding for the offence is started the person is unamenable to justice because the person is outside Australia; and
  - (b) an extradition proceeding against the person for the offence has been started; and
  - (c) the extradition proceeding ends without an extradition order being made.
- (2) The person is taken to be unamenable to justice when the extradition proceeding ends.

**115 *Unamenable to justice for another reason***

- (1) The person is taken to become unamenable to justice if, 6 months after the proceeding for the offence is started—
  - (a) the person is unamenable to justice for another reason; and
  - (b) if the person is outside Australia, there is no extradition proceeding pending against the person.
- (2) The person is taken to be unamenable to justice at the end of the last day of the 6 months mentioned in subsection (1).

## **Part 3                      Restraining orders**

### **Division 1                Definitions**

**116      Definitions for pt 3**

In this part—

***prescribed respondent*** means a person who—

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

***relevant offence*** means the confiscation offence or confiscation offences to which an application for a restraining order, or a restraining order, under this part relates.

## **Division 2                      Application for restraining order**

### **117      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 relevant offence, the application may be made without notice to the prescribed respondent or another person to whom it relates.
- (3) The application must be supported by an affidavit of 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

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- (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.

## **118 Affidavit—general requirements**

The police officer's affidavit must state the following—

- (a) the confiscation offence on which the application is based;
- (b) if the confiscation offence is not a major drug offence and the police officer suspects the relevant property is the prescribed respondent's property, the police officer suspects—
  - (i) the property is tainted property and the reason for the suspicion; or
  - (ii) the prescribed respondent derived a benefit from the commission of the offence and the reason for the suspicion;
- (c) if the basis of the application is the conviction of the prescribed respondent of the confiscation offence, details of the conviction;
- (d) if the basis of the application is the fact that the prescribed respondent has been or is about to be charged with the confiscation offence, the police officer suspects the prescribed respondent committed the offence and the reason for the suspicion;
- (e) details of the property sought to be restrained;

- (f) the police officer suspects the property sought to be restrained is the property of the person mentioned in the affidavit and the reason for the suspicion.

### **119 Particular requirements for affidavit relating to relevant property that is not prescribed respondent's property**

- (1) This section applies only if a police officer's affidavit relates to property of someone other than the prescribed respondent.
- (2) This section is in addition to section 118.
- (3) If the relevant offence is a major drug offence, the police officer's affidavit must state—
  - (a) the police officer suspects that the property is tainted property and the reason for the suspicion; or
  - (b) the police officer suspects that the property is under the prescribed respondent's effective control and the reason for the suspicion.
- (4) If the relevant offence is not a major drug offence, the police officer's affidavit must state—
  - (a) the police officer suspects that the property is tainted property and the reason for the suspicion; or
  - (b) the police officer—
    - (i) suspects that the property is under the prescribed respondent's effective control; and
    - (ii) suspects that the prescribed respondent derived a benefit from the commission of the offence; and
    - (iii) the reason for the suspicion.

### **120 Notice of application for restraining order**

Subject to section 121(2), the State must give notice of the application to each person whose property is the subject of the application and anyone else the appropriate officer making the application for the State 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.

## **121 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.
- (2) Despite subsection (1), the court must consider the application 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 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 and other orders**

### **122 Making restraining order**

- (1) The Supreme Court may make a restraining order if, after considering the application and the relevant affidavit, it is satisfied that—
  - (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, if the confiscation offence is a serious criminal offence, the court must make a restraining order unless the

court is satisfied in the particular circumstances it is not in the public interest to make the order.

- (3) The court may make a restraining order in relation to a prescribed respondent who is about to be charged with a confiscation offence only if the court is satisfied the prescribed respondent will be charged with the confiscation offence or a related offence within the next 48 hours.
- (4) The court may refuse to make the restraining order if 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.
- (5) The DPP may give the court the undertakings the court requires.
- (6) Also, 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.

### **123 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.

### **124 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.



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- (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 125 or 126.

### **125 Conditions about dealing with property by agreement**

The Supreme Court may impose a condition authorising the DPP 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.

### **126 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—

- (a) the person can not meet the expense or debt out of property that is not restrained under the order; and
  - (b) the property from which the expenses or debt are to be paid is not tainted property and is not available substitute property.
- (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.

## **127 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.

## **128 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 of the proposed charging of the prescribed respondent with a confiscation 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.

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## **Division 4                    Making other orders**

### **129    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 130 and 130A.
- (2) However, section 130(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
  - (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 the person to whom the order is to be directed.
- (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 129A(2).

## **129A Hearing of application**

- (1) The Supreme Court must not hear an application for an order under section 129 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.

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### 130 Administration orders Supreme Court may make

- (1) The court may make any of the following orders under section 129, (each an *administration order*)—
- (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;
  - (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.

### **130A Investigation orders Supreme Court may make**

- (1) Also, the court may make any of the following orders under section 130 (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;
    - (iii) the nature and location of any property restrained under the restraining order that the applicant for the order reasonably suspects is tainted property;
  - (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 to the DPP 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.

- (2) Subsection (3) 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.
- (3) 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**

#### **131      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.

#### **131A    Time and place of examination**

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

#### **131B    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) These people are entitled to be present at the examination—
  - (a) a lawyer of the person being examined; and
  - (b) an appropriate officer; and

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

### **131C 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.

### **131D 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.
- (1A) 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.

- (2) The court or court officer must authenticate and sign any deposition or other recording.
- (3) 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.
- (4) 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.

### **132 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 forfeiture order; or
- (d) for a document or other thing, a proceeding about a right or liability it confers.

### **133 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.

### **133A Use and dissemination of examination information**

- (1) This section applies to a statement, disclosure, document or other thing mentioned in section 132(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 (*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 132 and subject to section 131B; 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

### 134 Privilege—property particulars order

- (1) A person directed under a property particulars order to give a statement to the DPP or the public trustee 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 DPP or the public trustee 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.

### **134A Offence to contravene property particulars order**

A person directed under a property particulars order to give a statement to the DPP 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.

## **Division 6 Notice of restraining orders**

### **135 Notice of restraining order**

- (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 DPP 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.
- (2A) However, under subsection (2), the DPP is not required to give a person whose property is restrained under a restraining order a copy of, or notice of, an investigation order directed to another person.
- (3) If the order directs the public trustee to take control of property, the DPP must give the public trustee a copy of the order.

- (4) The DPP must give the commissioner of the police service a copy of the order.
- (5) A restraining order, or another order under division 4, does not stop having effect only because a person required to be served under subsection (2) has not been served with a copy of the order.

## **Division 7                      Extension and setting aside of restraining orders**

### **136      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.

### **137      Restraining order may be set aside**

- (1) On the application of a person mentioned in subsection (2), the Supreme Court may make an order setting aside the restraining order.
- (2) The application may be made by—
  - (a) the State; or
  - (b) the prescribed respondent; or

- (c) a person whose property is restrained under the restraining order or who has an interest in the restrained property.
- (3) The applicant must give notice of the application to the DPP and anyone else the applicant considers has an interest in the restrained property.
- (4) A person given or entitled to be given notice under subsection (3) may appear at the hearing of the application.
- (5) Without limiting subsection (1), the court may set aside a restraining order on the application of a prescribed respondent if the prescribed respondent—
  - (a) gives security acceptable to the court for payment to satisfy any pecuniary penalty order that may be made against the prescribed respondent on the prescribed respondent's conviction for the offence; or
  - (b) gives undertakings satisfactory to the court about the prescribed respondent's property.

## **Division 8                      Sale of restrained property**

### **138      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 a court for a forfeiture order for the property and the application has not been decided.
- (2) The State may, when applying for the forfeiture 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*).

*Note—*

The forfeiture order application may have been made in another court because the prescribed respondent was convicted before that court.

- (3) The State must give notice of the application to each person who has an interest in the application property.

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- (4) The Supreme Court may make the order if the court is satisfied, on evidence of the public trustee or otherwise—
    - (a) the application property may deteriorate or lose value before the forfeiture order application 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 a forfeiture order was made.
  - (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 9                      Exclusion of particular property from restraining order**

### **139      Supreme Court may exclude prescribed respondent's property from restraining order**

- (1) A prescribed respondent whose property is restrained under a restraining order may apply to the court to amend the restraining order to exclude particular property of the prescribed respondent from the order.
- (2) The court may exclude the prescribed respondent's property from the order if it is satisfied—
  - (a) the property is not tainted property and is not available substitute property; and
  - (b) the relevant offence is not a serious criminal offence; and
  - (c) a pecuniary penalty order can not be made against the prescribed respondent.
- (3) Also, the court may exclude the prescribed respondent's property from the order if it is satisfied it is in the public interest to amend the order having regard to all the circumstances, including—

- (a) a financial hardship or other result of the property remaining restrained under the order; and
  - (b) the seriousness of the offence; and
  - (c) the likelihood that the interest will be—
    - (i) liable to forfeiture under a forfeiture order; or
    - (ii) automatically forfeited; or
    - (iii) required to satisfy a pecuniary penalty order.
- (4) 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.

#### **140 Supreme Court may exclude other property from restraining order**

- (1) A person, other than the prescribed respondent (the *applicant*), whose property is restrained under a restraining order may apply to the Supreme Court to amend the order to exclude the applicant's property from the order.
- (2) If the restraining order was made in relation to a serious criminal offence, the Supreme Court may exclude the applicant's property from the order if the court is satisfied—
  - (a) the property is not tainted property and is not available substitute property; and
  - (b) the property is not under the prescribed respondent's effective control; and
  - (c) the applicant was not in any way involved in the commission of the offence.
- (3) If the restraining order was made in relation to an offence that is not a serious criminal offence, the Supreme Court may exclude the applicant's property from the order if the court is satisfied—
  - (a) the interest is not tainted property and is not available substitute property; and
  - (b) either—



- (i) the applicant's property is not under the prescribed respondent's effective control; or
  - (ii) a pecuniary penalty order can not be made against the prescribed respondent.
- (4) Also, the Supreme Court may exclude the applicant's property from the restraining order if the court is satisfied—
  - (a) the applicant was not, in any way, involved in the commission of the offence; and
  - (b) if the applicant acquired the property at the time of or after the commission, or alleged commission, of the offence, the applicant acquired the property—
    - (i) in good faith and for sufficient consideration; and
    - (ii) without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property in relation to the offence.
- (5) In addition, the Supreme Court may exclude the applicant's property from the order if the court is satisfied it is in the public interest to amend the order having regard to all the circumstances, including—
  - (a) a financial hardship or other result of the property remaining restrained under the order; and
  - (b) the seriousness of the offence; and
  - (c) the likelihood that the interest will be—
    - (i) liable to forfeiture under a forfeiture order; or
    - (ii) automatically forfeited; or
    - (iii) required to satisfy a pecuniary penalty order.
- (6) The Supreme Court may require the applicant to give the undertakings about the applicant's property the court considers appropriate.

## **141 Supreme Court may declare restrained property is not subject to automatic forfeiture**

- (1) This section applies only if the confiscation offence a prescribed respondent has been charged with, is about to be charged with, or has been convicted of, is a serious criminal offence.
- (2) If the prescribed respondent has an interest in property restrained under a restraining order, the prescribed respondent may apply to the Supreme Court for a declaration that the property is not subject to automatic forfeiture.
- (3) The court may make the declaration sought if it is satisfied—
  - (a) the property was not used in, or in connection with, any illegal activity and was not derived by a person from illegal activity; and
  - (b) the prescribed respondent's interest in the property was lawfully acquired.

## **Division 10 Other provisions about restraining orders**

### **142 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 DPP, 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.

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- (5) If the *Land Title Act 1994* applies to the property, the DPP may lodge, and the registrar of titles must register, a caveat over the property under that Act.
  - (6) As soon as practicable after the relevant restraining order stops having effect in relation to the property—
    - (a) the DPP 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 DPP 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 DPP must withdraw the caveat.

### **143 Contravention of restraining order**

- (1) A person who does, or attempts to do, an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime.  
Maximum penalty—
  - (a) for a financial institution—2500 penalty units or the value of the restrained property, whichever is the higher amount; or
  - (b) otherwise—
    - (i) 1000 penalty units or the value of the restrained property, whichever is the higher amount; or
    - (ii) 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 the property was restrained under a restraining order and no reason to suspect it was.
- (3) However, the defence under subsection (2) is not available to the extent the restrained property is—

- (a) a motor vehicle, boat or outboard motor the subject of a restraining order registered under the *Personal Property Securities Act 2009* (Cwlth); or
- (b) land over which a caveat in relation to the restraining order is registered under the *Land Title Act 1994*.

*Note—*

See section 142(5) for the obligation of the registrar of titles to register the caveat.

- (4) Subsection (1) does not prevent the prosecution and punishment of a person who does, or attempts to do, an act or makes an omission mentioned in that subsection for contempt of court or another offence under this Act or another Act.
- (5) A dealing with property in contravention of subsection (1) is void unless the dealing was in favour of a person who—
  - (a) did not know, and could not reasonably be expected to have known, that the property was restrained under a restraining order; and
  - (b) acted in good faith; and
  - (c) provided sufficient consideration for the dealing.
- (6) Subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

#### **144 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 a restraining order.

#### **145 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.

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## Part 4                      Forfeiture orders

### Division 1                  Applications for forfeiture orders

#### 146      Application for forfeiture order

- (1) This section applies if a person is convicted of a confiscation offence.
- (2) The State may apply to the Supreme Court or the court before which the person is convicted for an order (*forfeiture order*) forfeiting particular property to the State.
- (3) The application may include particulars of any encumbrance over the restrained property that an appropriate officer considers an encumbrancee took in good faith, for valuable consideration, and in the ordinary course of the encumbrancee's business.
- (4) Unless the court gives leave, the application must be made within 6 months after the day the person is treated as if convicted of the offence because of section 106.
- (5) If the application has been finally decided on the merits, the State may apply to a court under subsection (2) for a further forfeiture order against property relying on a person's conviction of the confiscation offence to which the previous application relates only with the Supreme Court's leave.
- (6) The Supreme Court may give leave under subsection (5) only if it is satisfied—
  - (a) the property to which the new application relates was identified only after the first application was finally decided; or
  - (b) necessary evidence became available only after the first application was finally decided; or
  - (c) it is otherwise in the interests of justice to give the leave.

## **147 Notice of application**

- (1) The State must give written notice of the application for the forfeiture order to the person whose conviction is the basis for the application and anyone else the appropriate officer making the application for the State considers has an interest in the property to which the application relates.
- (2) A person given notice under subsection (1) may appear at the hearing of the application.
- (3) Anyone else who claims an interest in the property may also appear at the hearing of the application.
- (4) The absence of a person given notice under subsection (1) does not prevent the court from making a forfeiture order.

## **Division 2 Making and effect of forfeiture orders**

### **148 Amendment of application**

- (1) A court hearing an application for a forfeiture order may amend the application at the request, or with the agreement, of the State.
- (2) If the State applies for an amendment of an application for a forfeiture order and the proposed amendment would have the effect of including additional property in the application for the forfeiture order, the State must give written notice of the application for the amendment to—
  - (a) the person whose conviction is the basis for the application for the forfeiture order; and
  - (b) anyone else the appropriate officer making the application for the State considers may have an interest in property proposed to be included in the application for the forfeiture order.
- (3) A person given notice under subsection (2) and anyone else who claims to have an interest in the additional property may appear at the hearing of the application to amend.

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- (4) The court may amend an application under this section to include additional property in the application only if the court is satisfied—
- (a) the property was not reasonably capable of identification when the application was originally made; or
  - (b) necessary evidence became available only after the application was originally made.

#### **149 Procedure on application**

- (1) In deciding an application for a forfeiture order, the court must have regard to the evidence given in any proceeding against the person for the confiscation offence on which the application is based.
- (2) If—
- (a) the application is made to the court before which the person is convicted; and
  - (b) when the application is made, the court has not passed sentence on the person for the confiscation offence;
- the court may defer passing sentence until it has decided the application.
- (3) If a person is treated as if convicted under section 106 because the offence is taken into account in sentencing the person for another offence, the reference in subsection (1) to a proceeding against the person for the offence includes a reference to the proceeding for the other offence.

#### **150 Limitation on powers of Magistrates Courts**

- (1) A Magistrates Court may make a forfeiture order because of a conviction for an offence only if it is satisfied the total value of the property to be forfeited under the order and all other property forfeited under other undischarged forfeiture orders made by the court because of the conviction is not more than the limit of a Magistrates Court's civil jurisdiction.

- (2) A Magistrates Court may make a forfeiture order for real property only as permitted under a regulation.
- (3) For this section, the value of property is its value as decided by the court.
- (4) In this section—  
*Magistrates Court*, other than in relation to the limit of the court's civil jurisdiction, includes the Childrens Court constituted by a magistrate.

### **151 Making forfeiture order**

- (1) The court may make a forfeiture order in relation to particular property if—
  - (a) a person is convicted of a confiscation offence; and
  - (b) the conviction is the basis for the application for the forfeiture order against the property; and
  - (c) the court is satisfied the property, or an interest in the property, is tainted property; and
  - (d) the court, having regard to subsection (2), considers it appropriate to make the order.
- (2) For subsection (1)(d), the court may have regard to—
  - (a) any hardship that may reasonably be expected to be caused to anyone by the order; and
  - (b) the use that is ordinarily made, or was intended to be made, of the property; and
  - (c) the seriousness of the offence concerned; and
  - (d) anything else the court considers appropriate.
- (3) The court must presume that particular property is tainted property if—
  - (a) at the hearing of the application, evidence is presented that the property was in the person's possession at the time of, or immediately after, the commission of the offence concerned; and



- (b) no evidence is presented tending to show that the property is not tainted property.

## **152 Forfeiture order may provide for discharge of encumbrance**

- (1) If—
  - (a) the court is satisfied an encumbrancee took an encumbrance over property to be forfeited under a forfeiture order in good faith, for valuable consideration, and 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;

the court may make the orders about the encumbrance the court considers appropriate.

- (2) The DPP may give the undertaking for the State.

## **153 Effect of forfeiture**

- (1) On the making of a forfeiture order, the property the subject of the order—
  - (a) is forfeited to the State; and
  - (b) vests absolutely in the State.

*Note—*

Under section 213, the State may not dispose of forfeited property during the appeal period as defined in that section.

- (2) 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.
- (3) The court that makes the forfeiture order may give any necessary or convenient directions for giving effect to the forfeiture.

*Example—*

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

## **Division 2A                      Tainted property substitution declaration**

### **153A    Definitions for div 2A**

In this division—

*applicant* means a person who may apply for—

- (a) a forfeiture order; or
- (b) a restraining order for the purposes of forfeiture.

*convicted person* means a person convicted of a confiscation offence.

*prescribed respondent* see section 116.

*unavailable property* means property that is not available for forfeiture.

### **153B    References to property that is not available for forfeiture**

For this division, property is not available for forfeiture if the convicted person does not have an interest in the property.

### **153C    Application for tainted property substitution declaration**

- (1) If a person is convicted of a confiscation offence, the State may apply for a tainted property substitution declaration to the Supreme Court or the court before which the convicted person is convicted.
- (2) The application under subsection (1) must—
  - (a) be made in conjunction with an application for a forfeiture order; and

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- (b) state the details of property that the convicted person used or intended to use in, or in connection with, the commission of the confiscation offence; and
  - (c) state the details of property that is to be substituted for the property mentioned in paragraph (b) that—
    - (i) is property in which the person had an interest at the time the confiscation offence was committed; and
    - (ii) is of the same nature or description as the property mentioned in paragraph (b).

*Example—*

A person is convicted of a confiscation offence involving growing cannabis in a rented home unit. The prosecution may apply to the court for a declaration that a home unit owned by the person is tainted property even though the rented home unit and the defendant's home unit are not of equal value.

### **153D Court may make tainted property substitution declaration**

- (1) Subject to subsection (2), a court may make a tainted property substitution declaration if the court is satisfied—
  - (a) that the convicted person used, or intended to use, particular property in, or in connection with, the commission of the confiscation offence; and
  - (b) that the property mentioned in paragraph (a) is unavailable property; and
  - (c) that the property that is to be substituted for the property mentioned in paragraph (a)—
    - (i) is property in which the convicted person had an interest at the time that the confiscation offence was committed; and
    - (ii) is of the same nature or description as the property mentioned in paragraph (a).
- (2) The court may make a tainted property substitution declaration whether or not the value of the unavailable

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property is equal to the value of the property that is to be substituted for the unavailable property.

- (3) If the court makes a tainted property substitution declaration for property, the property—
  - (a) is substituted for the unavailable property; and
  - (b) is taken to be tainted property for this chapter.

**153E Restraining order for property that may become subject to a tainted property substitution declaration**

- (1) The State may apply under section 117 for a restraining order for available substitute property.
- (2) The application under subsection (1) must—
  - (a) state the details of property that the prescribed respondent used or intended to use in, or in connection with, the commission of the confiscation offence; and
  - (b) state the details of the property that may be substituted for the property mentioned in paragraph (a) under a tainted property substitution order that—
    - (i) is property in which the prescribed respondent had an interest at the time the confiscation offence was committed; and
    - (ii) is of the same nature or description as the property mentioned in paragraph (a).
- (3) For subsection (1), chapter 3, part 3 and any other provisions of this Act that relate to the operation of that part apply with necessary changes and changes prescribed by this section.
- (4) For subsection (3)—
  - (a) section 126 does not apply; and
  - (b) for section 118(b)(i), the affidavit of the police officer must state instead—
    - (i) the police officer suspects that—

- (A) stated property of the prescribed respondent is tainted property; and
- (B) other stated property of the prescribed respondent, that is the subject of the application, is available substitute property; and
- (ii) the reason for the suspicion; and
- (c) for section 119(3)(a), the affidavit of the police officer must state instead—
  - (i) the police officer suspects that—
    - (A) stated property of the other person is tainted property; and
    - (B) other stated property of the prescribed respondent, that is the subject of the application, is available substitute property; and
  - (ii) the reason for the suspicion; and
- (d) for section 119(4)(a), the affidavit of the police officer must state instead—
  - (i) the police officer suspects that—
    - (A) stated property of the other person is tainted property; and
    - (B) other stated property of the prescribed respondent, that is the subject of the application, is available substitute property; and
  - (ii) the reason for the suspicion; and
- (e) for section 130A(1)(a)(iii), the reference to tainted property is taken to be a reference to available substitute property; and
- (f) for section 139(2)(a), the court must instead be satisfied that either—

- (i) the prescribed respondent's property is not available substitute property; or
  - (ii) the property for which the available substitute property may be substituted under a tainted property substitution declaration is not tainted property; and
- (g) for section 140(2)(a) and section 140(3)(a), the court must instead be satisfied that either—
- (i) the prescribed respondent's property is not available substitute property; or
  - (ii) the property for which the available substitute property may be substituted under a tainted property substitution declaration is not tainted property.

### **Division 3                      Orders releasing or excluding property from effect of particular orders**

#### **154      Order for release of property from forfeiture order**

- (1) A court that makes a forfeiture order may make an order under this section (*release order*) that a stated interest in property of a stated person that has been forfeited under a forfeiture order may be released from the forfeiture order on payment to the State of the amount the court decides is the value of the interest.
- (2) The order must state the nature, extent and value, when the order is made, of the person's interest in the forfeited property.
- (3) The court may make the order only if it is satisfied—
  - (a) the interest is still vested in the State; and
  - (b) it would not be against the public interest for the interest to be transferred to the person; and

- (c) there is no other reason the interest should not be transferred to the person.

### **155 Exclusion of property from forfeiture order application**

- (1) A person, other than a person whose conviction is the basis for the application for the forfeiture order, who claims an interest in property included in an application for a forfeiture order may apply to the court to which the application for the forfeiture order is made for an innocent interest exclusion order.
- (2) The applicant must give the DPP notice of the making of the application.
- (3) The State must be a party to the application represented by the DPP.

### **156 Exclusion of property from forfeiture order**

- (1) A person, other than a person whose conviction is the basis for the application for the forfeiture order or the forfeiture order, who claims an interest in property forfeited under a forfeiture order may apply to the court that made the forfeiture order for an innocent interest exclusion order.
- (2) Unless the court gives leave under section 157—
  - (a) the application must be made before the end of the 6 months starting on the day the forfeiture order was made; and
  - (b) the following persons can not apply under this section for an innocent interest exclusion order—
    - (i) a person who was given notice of the application for the forfeiture order;
    - (ii) a person who appeared at the hearing of the application for the forfeiture order.
- (3) The applicant must give the DPP notice of the making of the application, including an application for leave.

- (4) The State must be a party to the application represented by the DPP.

### **157 When court may give leave for s 156**

- (1) The court may give leave to apply for an innocent interest exclusion order after the end of the 6 months mentioned in section 156(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the court may give a person mentioned in section 156(2)(b) leave to apply for an innocent interest exclusion order only if it is satisfied there are special grounds, including, for example—
  - (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or
  - (b) particular evidence proposed to be presented by the person in the application was not available to the person when the application for the forfeiture order was heard.

### **158 Making of innocent interest exclusion order**

- (1) The Supreme Court, on an application under section 155 or 156, may make an innocent interest exclusion order.
- (2) The court must, and may only, make an innocent interest exclusion order if it is satisfied—
  - (a) the applicant has or, apart from the forfeiture, would have, an interest in the property; and
  - (b) the applicant was not, in any way, involved in the commission of a relevant confiscation offence; and
  - (c) the applicant acquired the interest—
    - (i) in good faith and for sufficient consideration; and
    - (ii) if the applicant acquired the interest at the time of or after the commission of the relevant confiscation offence—without knowing, and in circumstances



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not likely to arouse a reasonable suspicion, that the property was tainted property or could become tainted property under a tainted property substitution declaration.

### **159 What is an *innocent interest exclusion order***

An *innocent interest exclusion order* is an order that—

- (a) states the nature, extent and, if necessary for the order, the value when the order is made, of the applicant's interest in the property; and
- (b) if the application for the forfeiture order has not been decided, excludes the applicant's property from the operation of any restraining order applying to the property and the application for the forfeiture order; and
- (c) if the applicant's property has been forfeited to the State and is still vested in the State, directs the State to transfer the property to the applicant; and
- (d) if the applicant's property has been forfeited to the State and is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.

## **Division 4 Discharge of forfeiture orders**

### **160 Discharge of forfeiture order**

A forfeiture order is discharged if any of the following happens—

- (a) the conviction because of which the order was made is quashed;
- (b) a payment is made under a release order in relation to all of the interests in forfeited property;
- (c) the order is set aside under section 177;
- (d) the order is discharged on appeal.

## Part 5 Automatic forfeiture

### 161 Definitions for pt 5

In this part—

*forfeiture period*, for a prescribed respondent, means the later of—

- (a) a period of 6 months starting on the day of the prescribed respondent's conviction of a serious criminal offence; or
- (b) the 6 months mentioned in paragraph (a) as extended under section 163; or
- (c) if the prescribed respondent appeals against the conviction and the appeal is not decided within the 6 months after conviction, the period ending when the appeal is finally decided.

*prescribed respondent* means a person who is treated as if convicted of a serious criminal offence, other than because the person is unamenable to justice.

### 162 Application of pt 5

This part applies if—

- (a) a restraining order is, or was, granted for property, whether the property of a prescribed respondent or someone else, because of—
  - (i) the prescribed respondent's conviction of the serious criminal offence; or
  - (ii) the charging, or proposed charging, of the prescribed respondent with the serious criminal offence or a related serious criminal offence; and
- (b) the Supreme Court has not made an order declaring that the property is not subject to automatic forfeiture; and

*Editor's note—*

See section 141 (Supreme Court may declare restrained property is not subject to automatic forfeiture).

- (c) the restraining order is still in force when the forfeiture period ends.

### **163 Automatic forfeiture of restrained property**

- (1) Property of the prescribed respondent that was acquired after the day that is 6 years before the commission of the serious criminal offence and is restrained under the relevant restraining order is forfeited to the State when the forfeiture period ends.
- (2) Property of another person that is restrained under the relevant restraining order is forfeited to the State when the forfeiture period ends.
- (3) The 6 years mentioned in subsection (1) includes periods before and after the commencement of this section.
- (4) However, before the end of the first 6 months of the forfeiture period, the prescribed respondent may apply to the Supreme Court for an extension of the forfeiture period for up to 3 months.
- (5) The Supreme Court may extend the forfeiture period by not more than 3 months if it is satisfied it is in the interests of the administration of justice to extend the period in the special circumstances of the case.

### **164 Effect of automatic forfeiture**

- (1) Property automatically forfeited under this part vests absolutely in the State on its forfeiture to the State.
- (2) On application, the Supreme Court may give any necessary or convenient directions for giving effect to the forfeiture.

## **165 Third party protection from automatic forfeiture**

- (1) A person, other than the prescribed respondent, who claims an interest in the property may apply to the Supreme Court for a third party order or a buy-back order.
- (2) Unless the court gives leave under section 166—
  - (a) the application must be made within 6 months after the property is forfeited to the State; and
  - (b) the following can not apply to the court for a third party order or a buy-back order—
    - (i) a person who was given notice of the application for the relevant restraining order;
    - (ii) a person who appeared at the hearing of the application for the relevant restraining order;
    - (iii) a person who was given notice of the relevant restraining order.

*Editor's note—*

Sections 139, 140 and 141 also provide rights to apply to the Supreme Court to exclude property from the effects of a restraining order.

- (3) The applicant must give the DPP notice of the making of an application under this section, including an application for leave to apply for a third party order or a buy-back order.
- (4) The State must be a party to the application represented by the DPP.

## **166 When Supreme Court may give leave for s 165**

- (1) The Supreme Court may give leave to apply for a third party order or a buy-back order after the end of the 6 months mentioned in section 165(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the Supreme Court may give leave for a person mentioned in section 165(2)(b) to apply for a third party order or a buy-back order only if it considers the failure of the applicant to apply, or apply successfully, to have the property

excluded from the relevant restraining order was not because of the applicant's neglect.

(3) In this section—

*relevant restraining order*, for property automatically forfeited, means the restraining order made in relation to the forfeited property.

### **167 When Supreme Court may make third party order**

(1) The Supreme Court, on an application under section 165, may make a third party order.

(2) The Supreme Court may make a third party order if it is satisfied—

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

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

(c) the applicant acquired the interest—

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

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

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

(3) Also, the Supreme Court may make a third party order if it is satisfied—

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

- (b) the property was not used in, or in connection with, any illegal activity and was not derived by anyone from any illegal activity; and
- (c) the applicant's interest in the property was lawfully acquired.

### **168 What is a *third party order***

A *third party order* is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the applicant's interest in the property; and
- (b) if the relevant property is still vested in the State, directs the State to transfer the property to the applicant; and
- (c) if the relevant property is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.

### **169 When Supreme Court may make buy-back order**

- (1) The Supreme Court, on an application under section 165, may make a buy-back order.
- (2) The Supreme Court may make a buy-back order if it is satisfied—
  - (a) the applicant, apart from the forfeiture, would have an interest in the property; and
  - (b) it would not be against the public interest for the relevant interest in the property to be transferred to the applicant; and
  - (c) there is no other reason why the interest should not be transferred to the applicant.

### **170 What is a *buy-back order***

A *buy-back order* is an order that states—

- (a) the nature, extent and value, when the order is made, of the interest; and
- (b) that the person may buy back the interest by paying to the State the amount stated as the value of the interest.

## Part 6                      Other provisions about forfeiture

### 171      Dealing with forfeited property prohibited

- (1) A person who does, or attempts to do, an act or makes an omission in relation to property that is the subject of a forfeiture order that directly or indirectly defeats the operation of the order commits a crime.

Maximum penalty—

- (a) for a financial institution—2500 penalty units or the value of the forfeited property, whichever is the higher amount; or
  - (b) otherwise—
    - (i) 1000 penalty units or the value of the forfeited property, whichever is the higher amount; or
    - (ii) 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 the property was the subject of a forfeiture order and no reason to suspect it was.
- (3) However, the defence under subsection (2) is not available to the extent the property is—
- (a) a motor vehicle, boat or outboard motor the subject of a forfeiture order registered under the *Personal Property Securities Act 2009* (Cwlth); or
  - (b) land over which a caveat in relation to the forfeiture order is registered under the *Land Title Act 1994*.

- (4) Subsection (1) does not prevent the prosecution and punishment of a person who does, or attempts to do, an act or makes an omission mentioned in that subsection for contempt of court or another offence under this Act or another Act.
- (5) A dealing with property in contravention of subsection (1) is void unless the dealing was in favour of a person who—
  - (a) did not know, and could not reasonably be expected to have known, that the property was forfeited under a forfeiture order; and
  - (b) acted in good faith; and
  - (c) provided sufficient consideration for the dealing.
- (6) Subsection (5) applies whether or not any person is convicted of an offence in relation to the forfeiture order.

## **172 Effect of payment under buy-back order or release order**

- (1) On the payment to the State of the amount stated in a buy-back order as the value of an interest in forfeited property, the effect of the forfeiture of the interest ends.
- (2) On the payment to the State of the amount stated in a release order as the value of an interest in forfeited property, the forfeiture order applying to the interest ceases to apply to the interest.
- (3) Subsections (1) and (2) have effect only if the payment is made while the interest is still vested in the State.
- (4) As soon as practicable after the amount mentioned in the buy-back order or release order is paid, the Attorney-General must arrange for the interest to be transferred to the person in whom it was vested immediately before it was forfeited to the State.
- (5) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.



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## 173 Buying out other interests under court order

- (1) This section applies if—
  - (a) property that is forfeited to the State under a forfeiture order or on automatic forfeiture is still vested in the State; and
  - (b) the property or an interest in the property is required to be transferred to a person (the *buyer*) under an innocent interest exclusion order or a third party order or under section 172 or 175; and
  - (c) the buyer's interest in the property, immediately before the forfeiture, was not the only interest in the property.
- (2) If the buyer intends to buy the other interests in the property, the buyer must give written notice to any other person who had an interest in the property immediately before the forfeiture stating—
  - (a) the buyer intends to buy the other interests from the State; and
  - (b) within 21 days after receiving the notice, the person may give the Attorney-General a written objection to the sale of the person's interest to the buyer.
- (3) If—
  - (a) a person given a notice under subsection (2) does not give the Attorney-General a written objection to the sale of the interest to the buyer within the 21 days; and
  - (b) the buyer pays to the State an amount equal to the value of the interest;the Attorney-General must arrange for the interest to be transferred to the buyer.
- (4) The Attorney-General may do, or authorise the doing of, anything necessary or convenient to be done for the transfer.

## **174 Notice after conviction quashed or forfeiture order discharged**

- (1) This section applies if a relevant event happens.
- (2) As soon as practicable after a relevant event happens, the DPP must give notice of the happening of the relevant event to each person the DPP considers may have had an interest in the property to which it relates immediately before it was vested in the State.
- (3) If required by a court, the DPP 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 for an order declaring the value of the property—
  - (a) if the property was forfeited under a forfeiture order—to the court that made the forfeiture order; or
  - (b) if the property was automatically forfeited—to the Supreme Court.
- (6) In this section—

***relevant event*** means—

  - (a) for property forfeited to the State under a forfeiture order—
    - (i) the discharge of the forfeiture order on appeal under section 263; or
    - (ii) the quashing of the conviction on which the forfeiture order was based; or

- (b) for automatically forfeited property—the quashing of the conviction because of which the property was automatically forfeited.

### **175 If Attorney-General asked to return property**

- (1) This section applies if a person is given a notice under section 174 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) However, if the State has paid an amount to the person in relation to the property under an innocent interest exclusion order or a third party order, the Attorney-General must not arrange for the transfer of the property until the person pays to the State the total amount paid by the State in relation to the property under the relevant order.
- (5) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.

### **176 If application for order declaring value of property**

- (1) This section applies if a person is given a notice under section 174 relating to property that is no longer vested in the State.
- (2) The person may apply for an order declaring the value of forfeited property—
  - (a) if the property was forfeited under a forfeiture order—to the court that made the forfeiture order; or
  - (b) if the property was automatically forfeited—to the Supreme Court.
- (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, by written application to the Attorney-General, ask 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 less the total amount paid by the State for the relevant property because of an innocent interest exclusion order or a third party order.

## **177 Rehearing**

- (1) This section applies if a forfeiture order has been made against a person who was charged with a confiscation offence on the ground that the person is treated as having been convicted of the offence because the person has become unamenable to justice for the offence.
- (2) The person or the State may apply to the court that made the forfeiture order to have the order set aside.
- (3) If the applicant is not the State, the applicant must give notice of the application to the Attorney-General.
- (4) The Attorney-General may appear to oppose the grant of the application.
- (5) The court may set aside the forfeiture order on the conditions about costs or otherwise the court considers appropriate.
- (6) If the court sets aside the order, the court may rehear the application for the forfeiture order immediately or at a later time fixed by the court.

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## Part 7 Pecuniary penalty orders

### Division 1 Application for pecuniary penalty order

#### 178 Pecuniary penalty order application

- (1) If a person is convicted of a confiscation offence, the State may apply to the Supreme Court or the court before which the person is convicted for an order (*pecuniary penalty order*) requiring the person to pay to the State the amount of the benefits derived from the commission of the confiscation offence.
- (2) Unless the court gives leave, the application must be made within 6 months after the day the person is treated as if convicted of the offence because of section 106.
- (3) The State may apply to a court for a further pecuniary penalty order for the benefits derived by the person from the commission of a confiscation offence to which an application for an earlier pecuniary penalty order relates (*first application*) only with the Supreme Court's leave.
- (4) The Supreme Court may give leave under subsection (3) only if it is satisfied—
  - (a) the benefit to which the new application relates was identified only after the first application was finally decided; or
  - (b) necessary evidence became available only after the first application was finally decided; or
  - (c) it is otherwise in the interests of justice to give the leave.

#### 179 Notice of application

The State must give written notice of the application for the pecuniary penalty order to the person named in the application.

## **180 Right to appear**

A person named in the application for the pecuniary penalty order may appear at the hearing of the application.

## **181 Amendment of application**

- (1) The court hearing the application for the pecuniary penalty order may amend the application at the request, or with the agreement, of the State.
- (2) If the State applies for an amendment of the application and the amendment would have the effect of including an additional benefit in the application, the State must give the person named in the application written notice of the application for the amendment.
- (3) The court may amend the application to include an additional benefit in the application only if the court is satisfied—
  - (a) the benefit was not reasonably capable of identification when the application was originally made; or
  - (b) necessary evidence became available only after the application was originally made.

## **182 Procedure on application**

- (1) In deciding an application for a pecuniary penalty order, the court must have regard to the evidence given in any proceeding against the person for the relevant confiscation offence.
- (2) If—
  - (a) the application is made to the court before which the person is convicted; and
  - (b) when the application is made, the court has not passed sentence on the person for the confiscation offence;the court may defer passing sentence until it has decided the application.

- (3) If a person is treated as if convicted under section 106 because the offence is taken into account in sentencing the person for another offence, the reference in subsection (1) to a proceeding against the person for the offence includes a reference to the proceeding for the other offence.

### **183 Limitation on powers of Magistrates Courts**

- (1) A Magistrates Court may make a pecuniary penalty order because of a conviction for an offence only if it is satisfied the total amount payable under the pecuniary penalty order and all other undischarged pecuniary penalty orders made by the court because of the conviction is not more than the limit of a Magistrates Court's civil jurisdiction.
- (2) In this section—  
*Magistrates Court*, other than in relation to the limit of the court's civil jurisdiction, includes the Childrens Court constituted by a magistrate.

## **Division 2 Making of pecuniary penalty order**

### **184 Pecuniary penalty orders**

- (1) On an application for a pecuniary penalty order against a person, the court may or, if the offence is a major drug offence, must—
- (a) assess the value of the benefits derived by the person under division 3; and
  - (b) order the person to pay to the State a pecuniary penalty equal to the assessed value of the benefits less the amounts deducted under subsections (2) and (3).
- (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.
- (3) The court may also deduct either of the following amounts, if the court considers it appropriate to take the amount into account—
  - (a) any amount payable for restitution or compensation for the same conviction;
  - (b) the value of any property forfeited under a forfeiture order under chapter 2 made in relation to a period including the day the offence to which the conviction relates was committed.
- (4) The amount payable by the person to the State under the pecuniary penalty order is a debt payable by the person to the State.
- (5) The order may be enforced as if it were a money order made by a court in a civil proceeding taken by the State against the person for the recovery of the amount payable under the pecuniary penalty order.

### **185 Discharge of pecuniary penalty order to the extent of automatic forfeiture**

- (1) This section applies to a person who has been convicted of a serious criminal offence and against whom a pecuniary penalty order has been made because of the conviction.
- (2) If property of the person is also automatically forfeited to the State because of the conviction, the debt payable under the pecuniary penalty order is discharged to the extent of—
  - (a) if the property is sold—the value of the proceeds of the sale; or
  - (b) if the property is not sold—the amount the Attorney-General decides is the reasonable value of the property.



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**186 Pecuniary penalty order increase if forfeiture order discharged**

- (1) This section applies if—
  - (a) a court makes a pecuniary penalty order; and
  - (b) in deciding the amount payable under the pecuniary penalty order, the court takes into account the value of property forfeited under a forfeiture order or under a serious drug offender confiscation order; and
  - (c) after the pecuniary penalty order is made—
    - (i) the forfeiture ends because of an appeal; or
    - (ii) an innocent interest exclusion order is made in relation to any property forfeited under the forfeiture order.
- (2) The State may apply to the court that made the pecuniary penalty order for a variation of the order to increase the amount payable under the order.
- (3) If the court considers an increase appropriate, it may vary the amount payable under the pecuniary penalty order.

**Division 3 Assessment of benefits**

**187 Assessment of benefits**

- (1) When assessing the value of benefits derived by a person from the commission of a confiscation offence for the purposes of making a pecuniary penalty order against a person (*relevant person*), the court must have regard to the evidence before it about the following—
  - (a) the value of cash and other property that came into the possession or under the control of the relevant person or someone else at the request, or by the direction, of the relevant person, because of the commission of the offence;

- (b) the value of any benefit provided for the relevant person or someone else at the request, or by the direction, of the relevant person because of the commission of the offence;
  - (c) if the offence consisted of the doing of an act or thing in relation to a dangerous drug or controlled substance (the *illegal drug*)—
    - (i) the market value, when the offence was committed, of a dangerous drug or controlled substance similar, or substantially similar, to the illegal drug involved in the offence; and
    - (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar, or substantially similar, act or thing;
  - (d) the value of the relevant person's property—
    - (i) if the application relates to a single offence—before, during and after the commission of the offence; or
    - (ii) if the application relates to 2 or more offences—before, during and after the offence period;
  - (e) the relevant person's income and expenditure—
    - (i) if the application relates to a single offence—before, during and after the commission of the offence; or
    - (ii) if the application relates to 2 or more offences—before, during and after the offence period.
- (2) The court—
- (a) may treat as the value of the benefit the value the benefit would have had if derived when the valuation is being made; and
  - (b) without limiting paragraph (a), may have regard to any decline in the purchasing power of money between the time the benefit was derived and the time the valuation is being made.

(3) In this section—

*offence period*, for an application for a pecuniary penalty order made in relation to 2 or more offences, means the period starting when the earlier or earliest of the offences was committed and ending when the later or latest of the offences was committed.

### **188 Procedure if application relating to 1 confiscation offence**

(1) This section applies if—

- (a) an application for a pecuniary penalty order relates to 1 confiscation offence; and
- (b) at the hearing of the application, evidence is given that the value of the person's property after the commission of the confiscation offence was more than the value of the property before the commission of the offence.

(2) The court must treat the difference as the benefits derived by the person from the commission of the offence, other than to the extent the court is satisfied the reason for the difference was not related to the commission of the offence.

### **189 Procedure if application relating to more than 1 confiscation offence**

(1) This section applies if—

- (a) an application for a pecuniary penalty order relates to more than 1 confiscation offence; and
- (b) at the hearing of the application, evidence is given that the value of the person's property at any time during or after the offence period was more than the value of the property before the start of the offence period.

(2) The court must treat the difference as the benefits derived by the person from the commission of the offences, other than to the extent the court is satisfied the difference was not related to the commission of the offences.

## **190 Property that may be taken into account for assessment**

- (1) For this division, the following property of a person is presumed, unless the contrary is proved, to be property that came into the possession or under the control of the person because of the commission of the offence or offences—
  - (a) all property of the person when the application for the pecuniary penalty order is made; and
  - (b) all property of the person at any time within the shorter of the following periods—
    - (i) the period between the day the offence, or the earliest offence, was committed and the day the application is made;
    - (ii) the period of 5 years immediately before the day the application is made.
- (2) For subsection (1), property of a person that vests in the official trustee in bankruptcy because of the person's bankruptcy is taken to continue to be the property of the person.

## **191 Property under effective control**

In assessing the value of benefits derived by a person from the commission of an offence, the court may treat as property of the person any property that, in the court's opinion, is under the person's effective control.

## **192 Particular benefits not to be taken into account**

The court must not take into account a benefit for the purposes of a pecuniary penalty order if a pecuniary penalty has already been imposed because of the benefit under this Act or a law of the Commonwealth or another State.

### 193 Expenses and outgoings

(1) For this division, any expenses or outgoings of the person in, or in connection with, the commission of the offence or offences must be disregarded.

(2) In this section—

*commit* an offence includes attempt, conspire, plan and prepare to commit the offence.

*expenses or outgoings*, of the person, includes all costs and expenses incurred by the person in, or in connection with, committing the offence or offences.

*Example of expenses or outgoings—*

the cost of acquiring or attempting to acquire something concerned in committing the offence

### 194 Evidence

(1) Despite any rule of law or practice about hearsay evidence, the court may, for this division, receive evidence of the opinion of a prescribed officer who is experienced in the investigation of illegal activities involving dangerous drugs about—

- (a) the market value at a particular time of a particular kind of dangerous drug or controlled substance; or
- (b) the amount, or range of amounts, ordinarily paid at a particular time for the doing of anything in relation to a particular kind of dangerous drug or controlled substance.

(2) In this section—

*prescribed officer* means—

- (a) a police officer; or
- (b) a member of the Australian Federal Police; or
- (c) an officer of customs within the meaning of the *Customs Act 1901* (Cwlth); or
- (d) an authorised commission officer.

## Division 4                      Other provisions

### 195      Discharge of pecuniary penalty order

- (1) A pecuniary penalty order is discharged if—
  - (a) the conviction because of which the order was made is quashed; or
  - (b) it is discharged on appeal.
- (2) If the pecuniary penalty order is registered under the *Service and Execution of Process Act 1992* (Cwlth), notice of the order's discharge must be given to the persons, in the way and within the time the court that quashed the conviction or upheld the appeal considers appropriate.

### 196      Charge on restrained property under restraining order if pecuniary penalty order made

- (1) This section applies if—
  - (a) a pecuniary penalty order is, or has been, made against a person convicted of a confiscation offence (the ***prescribed respondent***); and
  - (b) a restraining order is, or has been, made against the property of a person, whether the prescribed respondent or someone else, based on—
    - (i) the prescribed respondent's conviction of the confiscation offence; or
    - (ii) the charging, or proposed charging, of the prescribed respondent with the confiscation offence or a related indictable offence.
- (2) A charge on the property that secures the payment to the State of the amount payable under the pecuniary penalty order comes into existence on the making of whichever is the later of the pecuniary penalty order or the restraining order.

- (2A) The charge is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies.
- (3) The charge ceases to have effect if—
- (a) the pecuniary penalty order is discharged; or
  - (b) the pecuniary penalty is paid; or
  - (c) the property is disposed of under an order under section 219; or
  - (d) the property is disposed of with the approval of—
    - (i) the Supreme Court; or
    - (ii) if the public trustee has been directed to take control of the property—the public trustee; or
  - (e) the property is sold to a buyer in good faith for sufficient consideration and without notice of the charge.
- (4) The charge is subject to every encumbrance over the property that was in existence immediately before the pecuniary penalty order was made but has priority over all other encumbrances.
- (5) Subject to subsection (3), the charge remains on the property despite any disposal of the property.
- (6) The charge may be registered under a law that provides for the registration of charges on property of the type affected by the charge.
- (7) If the charge is registered under subsection (6), a person who buys the property after the registration of the charge is, for the purposes of subsection (3)(e), taken to have had notice of the charge.
- (8) Subsection (7) does not apply to a charge over personal property mentioned on the register kept under the *Personal Property Securities Act 2009* (Cwlth).

### **197 Pecuniary penalty order to be registered**

- (1) This section applies if a pecuniary penalty order has been made against a person.
- (2) The registrar of titles and any other person responsible for keeping registers relating to property must, on request and on production to the person of sufficient evidence of the order, record in the appropriate register a statement that the pecuniary penalty order has been made.
- (3) This section is to be given effect even though a relevant document of title is not produced to a registrar or any other person.
- (4) This section applies despite any other Act.

### **198 Application of property under effective control for satisfying pecuniary penalty order**

- (1) The State may apply to a court for an order declaring that particular property is under the effective control of a person against whom the court has made a pecuniary penalty order (the *controlling person*).
- (2) The State must give written notice of the application to—
  - (a) the controlling person; and
  - (b) anyone else the appropriate officer making the application for the State 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 pecuniary penalty order to the extent to which property of the controlling person is not readily available for the purpose.



- (5) The pecuniary penalty order may be enforced against the property, to the extent stated in the declaration, as if the property were the controlling person's property.
- (6) The court may also make a restraining order in relation to the property as if the property were the controlling person's property.
- (7) The absence of a person required to be given notice of the application does not prevent a court from making the order.

## **199 Rehearing**

- (1) This section applies if a pecuniary penalty order has been made against a person who was charged with a confiscation offence on the ground that the person is unamenable to justice.
- (2) The person or the State may apply to the court that made the order to have the order set aside.
- (3) If the applicant is the person against whom the order was made, the applicant must give notice of the application to the Attorney-General.
- (4) The Attorney-General may appear to oppose the grant of the application.
- (5) The court may set aside the order on the terms and conditions about costs or otherwise the court considers appropriate.
- (6) If the court sets aside the order, the court may rehear the application for the order immediately or at a later time fixed by the court.

## Chapter 4 Special forfeiture orders

### Part 1 Special forfeiture order application

#### 200 Application for special forfeiture order

- (1) This section applies if—
  - (a) a person (the *prescribed respondent*) has been convicted of a confiscation offence; and
  - (b) the prescribed respondent, or someone else for the prescribed respondent, has derived, is deriving, or is to derive, benefits (*benefits*) from a contract entered on or after 12 May 1989 (*relevant contract*) about either of the following—
    - (i) a depiction of the confiscation offence or alleged confiscation offence in a movie, book, newspaper, magazine, radio, or television production, or in any other electronic form, or live or recorded entertainment of any kind;
    - (ii) an expression of the prescribed respondent's thoughts, opinions or emotions about the confiscation offence.
- (2) The State may apply to the Supreme Court at any time for an order (*special forfeiture order*) that the prescribed respondent pay to the State an amount equal to all or part of the prescribed respondent's benefits under the relevant contract.
- (3) This section applies to a contract made before or after the prescribed respondent's conviction, whether in Queensland or elsewhere, including outside Australia.

#### 201 Notice of application

- (1) The State must give notice of the application to the prescribed respondent and anyone else mentioned in section 200(1)(b).

- (2) The Supreme Court may, at any time before finally deciding the application—
  - (a) direct the State to give notice of the application to the persons, in the way and within the time the court considers appropriate; or
  - (b) amend the notice of application as it considers appropriate, either at the State's request or with the State's approval.
- (3) Anyone given notice of the application may appear at the hearing of the application.

## **202 Making of special forfeiture order**

- (1) If the Supreme Court is satisfied the prescribed respondent has derived, is deriving or will derive benefits under the relevant contract, the court may make a special forfeiture order.
- (2) The order must—
  - (a) state, as the amount to be paid to the State, the amount assessed under part 2 as the value of the benefit derived under the relevant contract; and
  - (b) direct any person who, under the relevant contract, is required to pay amounts to the prescribed respondent or another person, at the request or by the direction of the prescribed respondent, to pay the amounts to the State.

## **Part 2 Assessment of benefits**

### **203 Assessment of benefits**

- (1) When assessing the value of benefits derived or to be derived under a relevant contract, the Supreme Court must have regard to the evidence before it about the following—
  - (a) the value of cash and other property that came into the possession or under the control of the prescribed

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- respondent or someone else at the request, or by the direction, of the prescribed respondent because of the relevant contract;
- (b) the value of any benefit provided for the prescribed respondent or someone else at the request or by the direction of the prescribed respondent because of the relevant contract;
  - (c) the value of the prescribed respondent's property before and after the making of the relevant contract;
  - (d) the prescribed respondent's income and expenditure before and after the making of the relevant contract.
- (2) The court—
- (a) may treat as the value of the benefit the value the benefit would have had if received when the valuation is being made; and
  - (b) without limiting paragraph (a), may have regard to any decline in the purchasing power of money between the time the benefit was received and the time the valuation is being made.

## **204 How particular amounts may be treated**

- (1) This section applies if, at the hearing of an application for a special forfeiture order, evidence is given that the value of the prescribed respondent's property after the making of the relevant contract was more than the value of the property before the making of the contract.
- (2) The Supreme Court must treat the difference as the value of the benefit received by the person from the contract, other than to the extent the court is satisfied the reason for the difference was not related to the making of the contract.

## **205 Property that may be taken into account for assessment**

- (1) For this part, the following property of a person is presumed, unless the contrary is proved, to be property that came into the

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possession or under the control of the person because of the making of the relevant contract—

- (a) all property of the prescribed respondent when the application for the special forfeiture order is made;
  - (b) all property of the prescribed respondent at any time within the shorter of the following periods—
    - (i) the period between the day the relevant contract was made and the day the application is made;
    - (ii) the 5 years immediately before the day the application is made.
- (2) For subsection (1), property of a person that vests in the official trustee in bankruptcy because of the person's bankruptcy is taken to continue to be the property of the person.

## **206 Property under effective control**

In assessing the value of benefits derived by a person from a relevant contract, the Supreme Court may treat as property of the person any property that, in the court's opinion, is under the effective control of the person.

## **207 Expenses and outgoings**

For this part, any expenses or outgoings of the person in connection with the relevant contract must be disregarded.

# **Part 3 Other provisions**

## **208 Application of property under effective control for satisfying special forfeiture order**

- (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 a special forfeiture order (the *controlling person*).

- (2) The State must give written notice of the application to—
  - (a) the controlling person; and
  - (b) anyone else the appropriate officer making the application for the State 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 special forfeiture order to the extent to which property of the controlling person is not readily available for the purpose.
- (5) The special forfeiture order may be enforced against the property, to the extent stated in the declaration, as if the property were the controlling person's property.
- (6) The court may also make a restraining order in relation to the property as if the property were the controlling person's property.
- (7) The absence of a person required to be given notice of the application does not prevent the court from making the order.

## **209 Effect of special forfeiture order**

- (1) The amount stated in a special forfeiture order is a debt payable by the prescribed respondent to the State.
- (2) The special forfeiture 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 special forfeiture order.
- (3) A person who pays an amount payable under a relevant contract to the State as directed under a special forfeiture order is discharged from the terms of the relevant contract.

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**210 Application of amounts paid to the State under this chapter**

- (1) The Governor in Council may direct that an amount paid to the State under a special forfeiture order must be applied to satisfy—
  - (a) an order made under the *Penalties and Sentences Act 1992* requiring the prescribed respondent to make restitution or pay compensation; or
  - (b) an order made by a court requiring the prescribed respondent to pay damages to a person for injury suffered by the person because of the commission of the confiscation offence or alleged confiscation offence to which the relevant contract relates.
- (2) If an order mentioned in subsection (1) has been made and has not been satisfied, the person in whose favour it was made may, within 5 years after the day the order was made, apply to the Attorney-General for the order to be satisfied out of money paid to the State under a special forfeiture order.
- (3) After the end of the 5 years, money paid to the State under a special forfeiture order must be paid to the consolidated fund and any application by a person under subsection (2) is absolutely barred.

**211 Special forfeiture order to be registered**

- (1) The registrar of titles and any other person responsible for keeping registers relating to property must, on request and on production to the person of sufficient evidence of a special forfeiture order record in the appropriate register a statement that the order has been made.
- (2) This section is to be given effect even though any relevant document of title is not produced to a registrar or any other person.
- (3) This section applies despite any other Act.

## Chapter 5 Particular provisions about forfeiture of property

### 212 Chapter does not apply to particular property

This chapter does not apply to forfeited property that may be dealt with under the *Police Powers and Responsibilities Act 2000*, chapter 21, part 3, division 7.

### 213 Forfeited property not to be disposed of during appeal period

- (1) Within the appeal period, the State must not, without the leave of the court that made the order forfeiting property or, for property that is automatically forfeited, the relevant restraining order—
  - (a) dispose of property forfeited to the State under this Act; or
  - (b) authorise anyone else to dispose of the property.

*Note—*

Under the *Police Powers and Responsibilities Act 2000*, section 720, forfeited property in the possession of the Police Service may not be dealt with until all proceedings for the offence or suspected offence for which the property was forfeited have been finally decided.

- (2) When the appeal period ends, the State may dispose of the property unless—
  - (a) if the property was forfeited under a forfeiture order or serious drug offender confiscation order—the relevant order has been discharged; or
  - (b) if the property was automatically forfeited because of the conviction of a person of a serious criminal offence—the conviction of the person of the offence has been quashed.

- (3) In this section—

*appeal period* means—



- (a) if the property was forfeited because of the conviction of a person of a confiscation offence—the period ending when all proceedings relating to the conviction are finally decided; or
- (b) 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
- (c) for an appeal that may be started under section 263—the period for starting the appeal or, if an appeal is started, the period ending when the appeal is finally decided.

## **214 Disposal of forfeited property by State**

- (1) The Attorney-General may give directions about how property forfeited under this Act is to be dealt with.

*Note—*

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

- (2) Also, the Attorney-General may authorise the chairperson, the DPP or a public service officer to give the directions for the Attorney-General.
- (3) Without limiting subsection (1) or (2), a direction may provide for the payment to Legal Aid out of forfeited property, or the proceeds of the disposal of forfeited property, of amounts payable to satisfy a charge over the property in favour of Legal Aid.
- (4) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for dealing with the property.
- (5) The net proceeds of the disposal of property forfeited under chapter 2 or chapter 2A must be paid to the consolidated fund.

## **215 Procedural matters about forfeiture**

- (1) A person who is in possession of property forfeited to the State under this Act or documents of title to forfeited property must give the property or documents of title to a person authorised by the Attorney-General on the authorised person's demand.
- (2) A person who gives property or documents of title to property to an authorised person under subsection (1) is discharged from any duty or obligation to anyone else for the disposal of the property or documents of title and from all liability that, apart from this subsection, might have arisen because of the giving of the property or documents of title.
- (3) The registrar of titles and anybody else who is required or permitted to keep a register about dealings with property must, if asked and given sufficient evidence of the forfeiture of property to the State under this Act, make in the register the entries necessary to record—
  - (a) the forfeiture to and vesting in the State of the property; or
  - (b) if the Attorney-General directs—the public trustee as the holder of the property on trust for the State.
- (4) Subsection (3) applies—
  - (a) despite any other Act; and
  - (b) even if the relevant document of title is not produced.

## **216 Filing of forfeiture certificate**

- (1) This section applies if—
  - (a) the registrar of the Supreme Court issues a forfeiture certificate; or
  - (b) a person produces a forfeiture certificate to the registrar of the Supreme Court.
- (2) The registrar must file the forfeiture certificate, without payment of fee.

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

## **Chapter 6            Provisions about particular                                  government entities**

### **Part 1                    Powers of public trustee**

#### **Division 1            Provisions for satisfying particular                                  orders**

##### **217    Definition for div 1**

In this division—

*relevant court* means—

- (a) the Supreme Court; or
- (b) if the confiscation order was made by another court—  
the court that made the order.

## **218 Application of div 1**

This part applies if the public trustee has taken control of restrained property because of a direction in a restraining order and—

- (a) a confiscation order is made against the person entitled to the restrained property; or
- (b) the property is automatically forfeited.

## **219 Public trustee may apply for order for satisfying liability because of confiscation order or automatic forfeiture**

- (1) The public trustee may apply to a relevant court for an order directing the public trustee to pay to the consolidated fund out of property under the control of the public trustee—
  - (a) the amount the Attorney-General decides is the value, as at the time of the decision, of—
    - (i) the property forfeited under a forfeiture order or a serious drug offender confiscation order; or
    - (ii) the automatically forfeited property; or
  - (b) the amount ordered to be paid under a proceeds assessment order, an unexplained wealth order or a pecuniary penalty order.
- (2) The relevant court may order the public trustee to pay a stated amount to the consolidated fund from the proceeds realised by the public trustee from the property or the disposal of the property.
- (3) The relevant court may make any other order the court considers necessary to enable the public trustee to comply with the order, including, but not limited to the following—
  - (a) an order directing the public trustee to dispose of stated property under the control of the public trustee;
  - (b) an order authorising a stated person to sign any document or to do anything else necessary to enable the public trustee to dispose of property under the control of the public trustee;

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- (c) an order specifying the person to whom the public trustee should pay any amount remaining after making the payments authorised under section 220(1)(a), (b) and (c).
  - (4) The relevant court may make an order under subsection (3) when it makes an order under subsection (2) or, on the application of the public trustee, at a later time.

## **220 Application of proceeds to satisfy order**

- (1) Proceeds realised by the public trustee from the property or the disposal of the property must be applied as follows—
  - (a) first, in payment of fees or charges payable to the public trustee under section 223;
  - (b) second, in payment of expenses incurred by the public trustee in disposing of the property;
  - (c) third, in payment to the consolidated fund of the amount stated in the order of the relevant court under section 219(1);
  - (d) fourth, if the relevant court makes an order of a kind mentioned in section 219(3)(c), in payment of any remainder to the person specified by the relevant court;
  - (e) fifth, in payment of any remainder to the person who appears to the public trustee to be entitled to the remainder of the proceeds.
- (2) For subsection (1), proceeds realised from the disposal of the property means the proceeds that remain after all registered or statutory encumbrances over the property have been discharged.
- (3) The interest of the public trustee in the proceeds realised from the property or the disposal of the property is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies.

## **221 Effect of payment under s 220**

On the payment of an amount to the consolidated fund under section 219, the liability of a person under a confiscation order or because of the automatic forfeiture of property to which the payment relates is, to the extent of the payment, discharged.

## **Division 2 Other provisions**

### **222 If public trustee directed to take control of restrained property**

A direction of a court requiring the public trustee to take control of restrained property is sufficient authority for the public trustee to do anything necessary or desirable to be done to give effect to the order.

### **223 Public trustee's fees and charges**

If the public trustee controls property under this Act, the public trustee may charge and receive, for controlling the property and any income from it, the fees or charges the public trustee may charge an estate under administration under the *Public Trustee Act 1978*.

### **224 Public trustee's liability for rates etc.**

- (1) On taking control of property under a restraining order, the public trustee becomes liable, to the extent of the rents and profits received by the public trustee from the property on or after that date, to pay any rates, land tax or municipal or other statutory charges that—
  - (a) are imposed under a law of the State on or in relation to the restrained property; and
  - (b) become payable on or after the date of the restraining order.

- (2) Also, if the public trustee takes control of a person's business under a restraining order and carries on that business, the public trustee is not personally liable for—
- (a) any payment for long service leave for which that person was liable; or
  - (b) any payment for long service leave to which a person employed by the public trustee to manage the business, or the legal personal representative of that person, becomes entitled after the date of the restraining order; or
  - (c) any debts incurred by the person in relation to the business that the person was liable to pay.

## 225 Agents for public trustee

- (1) If the public trustee controls property under a restraining order, the public trustee may appoint a person as agent of the public trustee for this Act only with the leave of the Supreme Court.
- (2) The appointment must specify the powers of the public trustee that the agent may perform in relation to property.
- (3) This section applies despite the *Public Trustee Act 1978*.

## 226 Obstruction

- (1) A person must not hinder or obstruct the public trustee or an officer of the public trustee in the performance of the public trustee's functions under a restraining order.

Maximum penalty—25 penalty units or 6 months imprisonment.

- (2) In this section—

*officer*, of the public trustee, means a public service employee whose duties include performing functions for the public trustee under this Act.

## **Part 2                      Legal aid**

### **227      Legal Aid Act**

- (1) This part applies despite the Legal Aid Act.
- (2) Also, this part applies only to an application for legal assistance under the Legal Aid Act in relation to—
  - (a) a proceeding under this Act; or
  - (b) a criminal proceeding, including any proceeding on appeal against conviction or sentence.

### **228      Matters not to be taken into account in deciding application for legal assistance**

- (1) This section applies to an application for legal assistance under the Legal Aid Act by a person whose property is restrained under a restraining order under this Act.
- (2) In applying the criteria under the Legal Aid Act to the application for legal assistance, Legal Aid must not take the restrained property into account.

### **229      Legal Aid may require charge over property**

- (1) It is not a contravention of a restraining order for Legal Aid to impose a condition on an approval to give legal assistance requiring the person to be assisted to give Legal Aid a charge over restrained property.
- (2) If Legal Aid takes a charge over restrained property, Legal Aid must give the DPP notice of the charge.

### **230      Effect of forfeiture on charge**

On the forfeiture of property under this Act, a charge that is enforceable under the Legal Aid Act continues to have effect and may be satisfied out of the proceeds of the disposal of the forfeited property.



*Note—*

The Legal Aid Act contains provisions allowing Legal Aid to enforce charges over property that is not forfeited under this Act.

## Chapter 7 Interstate orders and warrants

### Part 1 Interpretation

#### 231 Definitions for ch 7

In this chapter—

*relevant order* means—

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

*sealed*, of a copy of a relevant order, means sealed by the court that made the order.

### Part 2 Provisions about filing interstate orders

#### 232 Filing of interstate orders

- (1) An appropriate person may file in the Supreme Court a sealed copy of a relevant order.

- (2) Also, an appropriate person may file in the Supreme Court a sealed copy of an amendment made to a relevant order, whether the amendment was made before or after the filing of the relevant order.
- (3) If a relevant order is filed under subsection (1), an amendment made to the order has no effect under this Act until it is filed.
- (4) The Supreme Court may refuse to file a relevant order to the extent that the order would not, on filing, be capable of enforcement in Queensland.
- (5) In this section—  
*appropriate person*, for filing a relevant order, means—
  - (a) the applicant for the order; or
  - (b) the Attorney-General; or
  - (c) a person prescribed under a regulation as an appropriate person for this section.

### **233 Interim filing of facsimile copies**

- (1) This section applies if—
  - (a) an appropriate person mentioned in section 232 files in the Supreme Court a facsimile copy of a sealed copy of a relevant order or an amendment made to a relevant order; and
  - (b) the facsimile copy otherwise complies with any requirements for filing orders under the *Uniform Civil Procedure Rules 1999*.
- (2) The Supreme Court must treat the facsimile copy as a sealed copy of the relevant order or the amendment made to the relevant order.
- (3) However, if the sealed copy of the relevant order or amendment is not filed within 10 days after the facsimile copy is filed, the effect of filing the facsimile copy ends.
- (4) If the sealed copy of the relevant order or amendment is filed within 10 days after the facsimile copy is filed, the sealed

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copy is taken to have been filed on the day the facsimile copy was filed.

- (5) Despite the effect of filing a facsimile copy of a relevant order or amendment ending in circumstances mentioned in subsection (3), any forfeiture already made in relation to the order is not affected.

### **234 Effect of filing interstate forfeiture order**

- (1) An interstate forfeiture order that is filed under this chapter is taken for this Act to be a forfeiture order under this Act until—
- (a) it ceases to be in force in the State in which it was made; or
  - (b) its filing is cancelled under this Act.
- (2) However—
- (a) a person may not apply for, and a court may not make the following orders under this Act in relation to the property—
    - (i) an exclusion order;
    - (ii) an innocent interest exclusion order;
    - (iii) a third party order;
    - (iv) a buy-back order;
    - (v) a release order;
    - (vi) an order under section 176; and
  - (b) the order may not be discharged under this Act; and
  - (c) the DPP is not required to give notice as required under section 174; and
  - (d) the State may not dispose of the property under this Act; and
  - (e) the Attorney-General may not give directions under this Act about the disposal of forfeited property; and

- (f) an appeal against the order does not lie under this Act.

### **235 Effect of filing interstate restraining order**

- (1) An interstate restraining order that is filed under this chapter is taken for this Act to be a restraining order made under this Act until—
- (a) it ceases to be in force in the State in which it was made; or
  - (b) its filing is cancelled under this Act.
- (2) However—
- (a) a condition may not be imposed on the restraining order under this Act; and
  - (b) the public trustee can not be directed under this Act to take control of the property; and
  - (c) notice of the making of the restraining order is not required to be given under this Act; and
  - (d) a person may not apply to a court for, and a court may not make, an order under this Act excluding the property from the interstate restraining order; and
  - (e) a person may not apply for, and the Supreme Court may not make, an order under this Act that the property be sold; and
  - (f) a court may not make any other orders in relation to the restrained property; and
  - (g) the duration of the restraining order must not be decided under this Act; and
  - (h) the property is not charged in favour of the State; and
  - (i) the public trustee may not apply under chapter 6, part 1, division 1 for orders about satisfying a person's liability under this Act; and
  - (j) an appeal does not lie against the order under this Act.
- (3) Subsection (2)(h) is subject to section 237.

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**236 Cancellation of filing**

- (1) The Supreme Court may cancel the filing of a relevant order if the court is satisfied—
  - (a) filing was improperly obtained; or
  - (b) particulars of any amendments made to the order, or of any ancillary orders or directions made by a court, are not given to the Supreme Court under the *Uniform Civil Procedure Rules 1999*.
- (2) Also, the Supreme Court may cancel the filing of a relevant order to the extent that the order is not capable of enforcement in Queensland.

**237 Charge on property subject to filed interstate restraining order or interstate pecuniary penalty order**

- (1) This section applies if—
  - (a) an interstate restraining order is filed under this Act; or
  - (b) an interstate pecuniary penalty order is filed under the *Service and Execution of Process Act 1992* (Cwlth).
- (2) On the filing of the interstate restraining order or the pecuniary penalty order, a charge on the property restrained under the restraining order is created to secure the payment of the pecuniary penalty.
- (2A) The charge is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies.
- (3) The charge ceases to have effect when under the relevant corresponding law the charge created on the making of the pecuniary penalty order ceases to have any effect.
- (4) Section 196(4), (5) and (6) apply to the charge in the same way and to the same extent as they apply to a charge created by section 196(2).

## **Part 3**                              **Provisions about property seized under interstate orders and search warrants**

### **238**      **Pt 3 does not affect particular provisions**

This part does not affect or otherwise limit—

- (a) the *Crime and Corruption Act 2001*, chapter 3, part 5; or
- (b) the *Police Powers and Responsibilities Act 2000*, chapter 21, part 3, division 2; or
- (c) the *Justices Act 1886*, section 39.

### **239**      **Interstate order about return of seized property**

- (1) If property has been seized under a search warrant issued in reliance on the commission of an interstate confiscation offence and a court of the other State makes either of the following orders, the order must, as far as possible, be given effect in Queensland—
  - (a) an order directing that the property be returned to the person from whose possession it was seized;
  - (b) an order directing that the person be allowed access to the property.
- (2) The order has effect as if it were an order for the return of the property made under either of the following—
  - (a) for property in the possession of the commission—the *Crime and Corruption Act 2001*, section 114;
  - (b) for property in the possession of the police service—the *Police Powers and Responsibilities Act 2000*, section 696.

### **240**      **Order about property seized in another State for which court refuses to make forfeiture order**

- (1) This section applies if—

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- (a) property has been seized in another State under a search warrant issued under a corresponding law in reliance on the commission of a confiscation offence; and
  - (b) an application has been made to a court for a forfeiture order in relation to the property; and
  - (c) the court refuses to make the forfeiture order.
- (2) The court must make an order directing that the property be returned to the person from whose possession it was seized.
- (3) In this section—
- property* seized under a search warrant does not include—
- (a) property used or intended to be used in, or in connection with, the commission of an interstate confiscation offence; or
  - (b) property derived by anyone from the commission of an interstate confiscation offence.

**241 Application by person for return of property seized in another State**

- (1) This section applies if property has been seized in another State under a search warrant issued under a corresponding law in reliance on the commission of a confiscation offence.
- (2) The person from whose possession the property was seized may apply to a Magistrates Court for an order—
  - (a) directing that the property be returned to that person; or
  - (b) directing that the person be allowed access to the property.
- (3) The applicant must give notice of the application and when and where the application will be heard to the Attorney-General and the commissioner of the police service.
- (4) The court may make the order on the conditions the court considers appropriate.
- (5) In this section—

*property* seized under a search warrant does not include—

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

## Part 4 Other provisions

### 242 Public trustee may act as agent

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

## Chapter 8 Obligations of financial institutions

### Part 1 Interpretation

#### 243 Meaning of *customer-generated financial transaction document*

A *customer-generated financial transaction document*, of a financial institution, is a financial transaction document of the institution—

- (a) that relates to—
  - (i) the opening or closing by a person of an account with the institution; or
  - (ii) the operation by a person of an account with the institution; or



- (iii) the opening or use by a person of a deposit box held by the institution; or
  - (iv) the telegraphic or electronic transfer of funds by the institution for a person to another person; or
  - (v) the transmission of funds between Australia and a foreign country or between foreign countries for a person; or
  - (vi) an application by a person for a loan from the institution (if a loan is made to the person under the application); and
- (b) that is given to the institution by or for the person, whether or not the document is signed by or for the person.

**244 Meaning of *essential customer-generated financial transaction document***

An *essential customer-generated financial transaction document*, of a financial institution, is a customer-generated financial transaction document other than a document that relates to the operation of an account held with the institution.

**245 Meaning of *financial transaction document***

A *financial transaction document*, of a financial institution, is a document, other than a cheque or payment order, that relates to a financial transaction carried out by the institution in its capacity as a financial institution, including, but not limited to, a document relating to—

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

## **246 Meaning of *minimum retention period***

The *minimum retention period*, for a financial transaction document of a financial institution, is—

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

# **Part 2 Provisions applying to financial institutions**

## **Division 1 Records**

### **247 Retention of records by financial institutions**

- (1) A financial institution must, subject to section 248, keep each essential customer-generated financial transaction document in its original form for the minimum retention period for the document.

Maximum penalty—200 penalty units.

- (2) A financial institution must keep the following documents, or a copy of the following documents, for the minimum retention period for the relevant documents—
  - (a) each customer-generated financial transaction document that is not an essential customer-generated financial transaction document;
  - (b) each financial transaction document—
    - (i) that is not a customer-generated financial transaction document; and

- (ii) whose retention is necessary to preserve a record of the financial transaction concerned.

Maximum penalty—200 penalty units.

- (3) Subsection (2) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money of not more than \$200 or a higher amount prescribed under a regulation for this subsection.
- (4) A financial institution must retain and store documents required to be kept under subsection (1) or (2) in a way that makes retrieval of the documents reasonably practicable.

Maximum penalty—200 penalty units.

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

## **248 Register of original documents**

- (1) If a financial institution is required by law to release an original of an essential customer-generated financial transaction document before the minimum retention period for the document ends, the institution must keep a complete copy of the document until the period has ended or the original is returned, whichever happens first.

Maximum penalty—200 penalty units.

- (2) The financial institution must keep a register of documents released under subsection (1).

Maximum penalty—200 penalty units.

## **Division 2                    Information volunteered by financial institutions**

### **249    Communication of information by financial institutions to particular officers**

- (1) This section applies if a financial institution has information about an account held, or a transaction conducted, with the institution and the institution has reasonable grounds for believing that—
  - (a) the information may be relevant to—
    - (i) an investigation of, or the prosecution of a person for, an offence against a law of the State; or
    - (ii) an investigation of a serious crime related activity or another matter for which an order may be made under chapter 2; or
    - (iii) a matter for which an order may be made under chapter 2A; or
  - (b) the information would otherwise be of assistance in the enforcement of this Act.
- (2) The institution may give the information to a police officer.
- (3) The institution may give the information to a commission officer if the information relates to—
  - (a) an investigation of a serious crime related activity or another matter for which an order may be made under chapter 2; or
  - (b) a matter for which an order may be made under chapter 2A.
- (4) No action, suit or proceeding lies against—
  - (a) a financial institution; or
  - (b) an officer or agent of the institution acting in the course of the person's employment or agency;

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in relation to any action taken by the institution or person under subsection (2) or (3).

- (5) If a financial institution, or an officer or agent of the institution, gives information under subsection (2) or (3) as soon as practicable after forming the belief mentioned in subsection (1), the institution or person is taken, for the purposes of sections 250 and 252, not to have been in possession of that information at any time.
- (6) A person must not, other than as permitted under subsection (2) or (3), disclose to anyone—
- (a) that a financial institution, or an officer of a financial institution, intends to give or has given information to a police officer under subsection (2); or
  - (b) that a financial institution, or an officer of a financial institution, intends to give or has given information to a commission officer under subsection (3); or
  - (c) the nature of any information given under subsection (2) or (3).

Maximum penalty—10 penalty units.

- (7) In this section—

*officer* includes director, secretary, executive officer or employee.

## **Division 3                      Notices to financial institutions**

### **249A Definition for div 3**

In this division—

*officer* includes director, secretary, executive officer or employee.

## **249B Giving notice to financial institution**

- (1) A police officer of or above the rank of inspector, or an authorised commission officer, may give a written notice to a financial institution requiring the financial institution to advise a police officer or commission officer 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) 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

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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.
- (3) The notice may state any other details that may help the financial institution identify the account to which the advice relates.
- (4) The police officer or commission officer must not give the notice unless the police officer or commission officer reasonably believes that giving the notice is required—
- (a) to decide whether to take any action under this Act; or
  - (b) in relation to proceedings under this Act.
- (5) 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).
- (6) To remove doubt, it is declared that the notice may relate to an account held in more than 1 name.

### **249C Prohibition on disclosure**

A person must not, other than as required under section 249B, disclose to anyone that—

- (a) a financial institution, or an officer of a financial institution, intends to give or has given information to a police officer, or commission officer, under section 249B; or
- (b) a financial institution is required to give information to a police officer, or commission officer, under section 249B.

Maximum penalty—100 penalty units.

**249D Protection from suits etc. in relation to action taken under s 249B**

- (1) No action, suit or proceeding lies against—
  - (a) a financial institution; or
  - (b) an officer or agent of the institution acting in the course of the officer's or agent's employment or agency;in relation to any action taken by the institution, officer or agent under a notice under section 249B or in the mistaken belief that action was required under the notice.
- (2) If a financial institution, or an officer or agent of the institution, gives information under section 249B, the institution, officer or agent is taken, for the purposes of sections 250 and 252, not to have been in possession of that information at any time.

**249E Financial institution must comply with a notice**

- (1) A financial institution must comply with a notice given to it under section 249B.  
Maximum penalty—2500 penalty units.
- (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.



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## Chapter 9 Offences

### 250 Money laundering

- (1) A person who engages in money laundering commits a crime.  
Maximum penalty—
- (a) for knowingly engaging in money laundering—3000 penalty units or 20 years imprisonment; or
  - (b) for recklessly engaging in money laundering—1500 penalty units or 10 years imprisonment.
- (2) A person engages in money laundering if the person knowingly or recklessly—
- (a) engages, directly or indirectly, in a transaction involving money or other property that is tainted property; or
  - (b) receives, possesses, disposes of or brings into Queensland money or other property that is tainted property; or
  - (c) conceals or disguises the source, existence, nature, location, ownership or control of tainted property.
- (2A) For subsection (2), a person knowingly does an act mentioned in subsection (2)(a), (b) or (c) in relation to property (*knowingly engaging in money laundering*) if the person knows, or ought reasonably to know, that the property is tainted property or is derived from some form of unlawful activity.
- (2B) For subsection (2), a person recklessly does an act mentioned in subsection (2)(a), (b) or (c) in relation to property (*recklessly engaging in money laundering*) if—
- (a) the person is aware there is a substantial risk the property is tainted property or derived from some form of unlawful activity; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable for the person to take the risk.

- (2C) The question whether taking a risk is unjustifiable is one of fact.
- (3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order or a suspension order must be disregarded.
- (3A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (3B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (4) In this section—  
*tainted property* includes property that is tainted property because of an interstate confiscation offence.

## **251 Charging of money laundering**

- (1) A charge of money laundering may be about—
  - (a) an act, or 2 or more acts committed at the same time or different times; or
  - (b) tainted property relating to an offence, or 2 or more offences committed by the same person or different persons.
- (2) A person may be convicted of money laundering even though the tainted property concerned related to an offence committed by the person.

## **252 Possession etc. of property suspected of being tainted property**

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

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Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) If a person is charged with an offence against this section, it is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting that the property mentioned in the charge was either tainted property or derived from any form of unlawful activity.
- (3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order or a suspension order must be disregarded.
- (4) In this section—  
*tainted property* includes property that is tainted property because of an interstate confiscation offence.

### **253 Responsibility for acts or omissions of representatives**

- (1) This section applies to a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken also to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—  
*representative* of a person means—
  - (a) for a corporation—an executive officer, employee or agent of the corporation; or

- (b) for an individual—an employee or agent of the individual.

*state of mind* of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

## Chapter 10 Miscellaneous provisions

### Part 1 Arrangements to defeat operation of act

#### 254 Definitions for part 1

In this part—

*defeat* the operation of this Act includes avoid, prevent and impede.

*scheme* means—

- (a) any agreement, arrangement, promise, understanding or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any action, course of action, course of conduct, plan or proposal.

#### 255 Arrangements to defeat operation of Act

- (1) The State may apply to the Supreme Court for an order declaring that a scheme carried out by a particular person was

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carried out for the purpose of directly or indirectly defeating the operation of this Act.

- (2) The State must give written notice of the application to the person against whom the order is sought and anyone else the appropriate officer making the application for the State considers has an interest in the property to which the scheme relates.
- (3) At any time before it finally decides the application, the Supreme Court may direct the State to give notice of the application to the persons, in the way and within the time, the court considers appropriate.

## **256 Orders for defeating arrangements**

- (1) If the Supreme Court is satisfied the person carried out a scheme for the purpose of directly or indirectly defeating the operation of this Act in any way, the court may for defeating that purpose—
  - (a) make an order declaring all or part of the scheme void; or
  - (b) make an order varying the operation of all or part of the scheme.
- (2) The court may make the other orders the court considers appropriate in the circumstances for a consequential or related matter or for giving effect to any order of the court under this section, including, for example, orders about the following—
  - (a) any disposal of property;
  - (b) the payment of money;
  - (c) the sale or other realisation of property and the disposal of the proceeds;
  - (d) the creation of a charge on property in favour of any person and the enforcement of the charge created;
  - (e) the rights of a person who acquired an interest in the property after the scheme was carried out and before the declaration was made.

- (3) A charge on property created under an order of the court under subsection (2)(d) is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies.

## Part 2 Other provisions

### 256A Consent orders

- (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) The court may make an order under subsection (1) if—
  - (a) a person mentioned in subsection (1)(b) or (c) withholds consent but the court considers it appropriate to make the order; or
  - (b) the consent of a person mentioned in subsection (1)(b) or (c) could not be obtained but the court considers it appropriate to make the order.
- (3) The order may be made without consideration of the matters the court would otherwise consider in the proceeding.
- (4) This section does not apply to an order made on sentence for a criminal offence.

### 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.

## **258 Publication of proceedings**

If a proceeding is started under this Act, the Supreme Court may make the orders it considers appropriate about the publication of any matter arising under this Act.

## **259 Requirements to give notice**

- (1) A regulation may prescribe the way a notice authorised or required by this Act to be given to a person must be given, including by substituted service.
- (2) A person must be considered to have been given notice if all reasonable efforts were made to give the notice whether or not the person actually received notice.

## **260 Sentencing court not to have regard to property forfeiture or pecuniary penalty**

In deciding the sentence to be imposed on a person (the *defendant*) for a confiscation offence, the court must not have regard to the question of whether or not—

- (a) the defendant's property is, or may become, the subject of a forfeiture order, serious drug offender confiscation order or automatic forfeiture; or
- (b) the defendant has been or may be ordered to pay an amount under a pecuniary penalty order, an unexplained wealth order or a proceeds assessment order or to forfeit an amount to the State under a special forfeiture order.

*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.

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

- (1) This section applies if—
  - (a) the Supreme Court makes an order under this Act varying a forfeiture order or restraining order that is registered under a corresponding law; and
  - (b) the variation is made on the application of a third party and affects the interests of the third party in relation to property in the other State.
- (2) The Supreme Court may, in relation to the costs the third party incurred in applying for and obtaining the variation—
  - (a) order that the third party's actual costs be paid to the third party; or
  - (b) if it is satisfied special circumstances exist, order that part only of the third party's costs be paid to the third party.
- (3) The costs must be paid by a person or authority specified by the Supreme Court.
- (4) The Supreme Court may direct how the costs are to be decided.
- (5) This section does not limit the powers of the Supreme Court to award costs under any other law.
- (6) In this section—

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

*vary* includes limit the way in which an order applies.

## **262 Costs**

If—

- (a) a person brings, or appears at, a proceeding under this Act, other than under chapter 2; and
- (b) the person is successful in the proceeding; and



- (c) the court is satisfied that the person was not involved in any way in the commission of the offence to which the proceeding related;

the court may order the State to pay all costs incurred by the person in connection with the proceeding or the part of the costs decided by the court.

*Note—*

In civil proceedings, the court decides costs and the costs are assessed under the *Uniform Civil Procedure Rules 1999*.

## 263 Appeals

Without affecting any other right of appeal, any person aggrieved by an order or the refusal of a court to make an order under this Act may appeal against the order or refusal to the Court of Appeal.

## 264 Registration fees

- (1) No fee is payable by the State for—
- (a) filing in a registry any order or instrument under this Act or any instrument filed to transfer property to the State under this Act; or
- (b) anything else for which registry fees are fixed.

*Example of paragraph (b)—*

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

- (2) In this section—

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

**registry** means—

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

## **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.

## **Chapter 11 General**

### **265 Admissibility of evidence obtained under Crime and Corruption Act 2001**

- (1) An answer, document, thing or statement mentioned in the *Crime and Corruption Act 2001*, section 197(1) is admissible as evidence in a proceeding, other than a proceeding for the prosecution of an offence, under this Act only with the court's leave.

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*Note—*

See the *Crime and Corruption Act 2001*, section 395(2) in relation to the answers, documents, things and statements, and proceedings, to which this section applies.

- (2) The court may give the leave unless the court considers the unfairness to the respondent in a criminal proceeding that may be caused by admitting the evidence outweighs its probative value in the proceeding under this Act.
- (3) In deciding whether admitting the evidence may cause unfairness to the respondent in a criminal proceeding, the court must consider—
  - (a) whether the use of the evidence in the proceeding under this Act may prejudice a fair trial of the respondent for an offence for which the respondent has been, or may be, charged; and
  - (b) whether there is any action it can take to prevent or limit the unfairness to the respondent.

*Examples of action court may take—*

- holding the proceeding, or a part of it, in private
  - making an order prohibiting or restricting the publication of all or part of the records of the proceeding, or the whole or part of the judgment in the proceeding
- (4) Subsection (3) does not limit the matters the court may consider in deciding whether admitting the evidence may cause unfairness to the respondent.

## **266 Other evidentiary matters**

- (1) For this Act, each of the following certificates is evidence of what it states—
  - (a) a certificate apparently signed by the chairperson and stating a stated person was or was not an authorised commission officer or a commission officer at a stated time;
  - (b) a certificate apparently signed by the public trustee and stating—

- (i) the public trustee is in control of stated property under a direction in a restraining order or another order made under chapter 2, chapter 2A or chapter 3 that is in force; and
    - (ii) the terms of the relevant order;
  - (c) a certificate (*forfeiture certificate*) apparently signed by any of the following about a forfeiture order made under chapter 2 or chapter 3, or a serious drug offender confiscation order, or the automatic forfeiture of property and identifying the property to which the forfeiture order, serious drug offender confiscation order or forfeiture relates—
    - (i) the registrar or a deputy registrar of the Supreme Court;
    - (ii) a registrar or a deputy registrar of the District Court;
    - (iii) a registrar or a deputy registrar of the Childrens Court constituted by a judge;
    - (iv) the clerk of the court at the place where a Magistrates Court, or the Childrens Court constituted by a magistrate, makes the order;
  - (d) a serious drug offence certificate.
- (2) Also, in a proceeding on an application for an order under this Act—
- (a) a certificate under the *Drugs Misuse Act 1986*, section 128 is evidence of the matters of which it is evidence in a proceeding under that Act, without proof of the signature, employment or appointment of the person who apparently signed the certificate; and
  - (b) a certificate under the Criminal Code, section 635 of a conviction of an offence is evidence of the commission of the offence by the person to whom it relates; and
  - (c) the court may, in deciding an application, have regard to the transcript of any proceeding against a person for an

offence to which the application relates and to the evidence given in that proceeding; and

- (d) the transcript of an examination under an examination order is evidence of the answers given by a person to a question put to the person in the examination.

## 267 Regulation-making power

The Governor in Council may make regulations under this Act.

# Chapter 12 Transitional provisions and repeal provision

## Part 1 Transitional provisions for Act No. 68 of 2002

### 268 Definitions for ch 12

In this chapter—

*new forfeiture order* means a forfeiture order made under chapter 3.

*new order* means each of the following orders—

- (a) a new forfeiture order;
- (b) a new pecuniary penalty order;
- (c) a new restraining order;
- (d) a new special forfeiture order.

*new pecuniary penalty order* means a pecuniary penalty order made under chapter 3.

***new restraining order*** means a restraining order made under chapter 3.

***new special forfeiture order*** means a special forfeiture order made under chapter 3.

***old Act*** means the repealed *Crimes (Confiscation) Act 1989*.

***old forfeiture order*** means a forfeiture order made under the old Act and in force immediately before the commencement of this part.

***old order*** means any of the following orders—

- (a) an old forfeiture order;
- (b) an old pecuniary penalty order;
- (c) an old restraining order;
- (d) an old special forfeiture order.

***old pecuniary penalty order*** means a pecuniary penalty order made under the old Act and in force immediately before the commencement of this part.

***old restraining order*** means a restraining order made under the old Act and in force immediately before the commencement of this part.

***old special forfeiture order*** means a special forfeiture order made under the old Act and in force immediately before the commencement of this Act.

## **269 Incomplete proceedings for old orders**

- (1) A proceeding started under the old Act for an old order and not finally decided immediately before the commencement of this section may be continued and decided under this Act as if it were a proceeding started under this Act for a corresponding new order.
- (2) Any step taken in the proceeding for the old order is as valid and effective as if it had been taken in a proceeding for the new order.

- (3) The court hearing the proceeding may make the orders under this Act the court considers appropriate.
- (4) However, if the proceeding was started in a court other than the Supreme Court and the proceeding is a proceeding that may only be started in the Supreme Court under this Act, the proceeding may be continued under the old Act as if this Act had not been enacted.

## **270 Incomplete rehearing proceedings**

- (1) A rehearing started under section 39 of the old Act in relation to an old forfeiture order and not finally decided immediately before the commencement of this Act may be continued and decided under this Act as if it were a proceeding for a rehearing started under section 177 of this Act.
- (2) A rehearing started under section 39 of the old Act in relation to an old pecuniary penalty order and not finally decided immediately before the commencement of this Act may be continued and decided under this Act as if it were a proceeding for a rehearing started under section 199 of this Act.
- (3) A court rehearing a proceeding mentioned in subsection (1) or (2) may make the orders a court rehearing a proceeding of the same kind may make under this Act.

## **271 Interstate orders**

- (1) An interstate forfeiture order registered under the old Act continues to have effect as if it had been filed under this Act and, to the extent it has not been enforced under the old Act, may be enforced under this Act according to its terms.
- (2) An interstate pecuniary penalty order registered under the old Act continues to have effect as if it had been filed under this Act and, to the extent it has not been enforced under the old Act, may be enforced under this Act according to its terms.
- (3) An interstate restraining order registered under the old Act continues to have effect as if it had been filed under this Act

and, to the extent it has not been enforced under the old Act, may be enforced under this Act according to its terms.

## **272 Automatic forfeiture**

- (1) Property that is liable to automatic forfeiture under the old Act is taken to be liable to automatic forfeiture under this Act and any step necessary to be taken for enforcing the forfeiture may be taken under this Act.
- (2) For working out when property liable to automatic forfeiture under the old Act is forfeited to the State, section 163 of this Act applies to the property as if it had commenced on the day section 25 of the old Act first applied to the property.
- (3) However, if, before the commencement of this section, the forfeiture period under the old Act has been extended and the extended forfeiture period ends after the commencement of this section—
  - (a) the property is forfeited to the State when the forfeiture period as extended under the old Act ends; and
  - (b) the person may not apply for an extension of the forfeiture period under this Act; and
  - (c) the Supreme Court may not extend the forfeiture period under this Act.

## **273 Old forfeiture orders**

- (1) An old forfeiture order in force immediately before the commencement of this section is taken to be a new forfeiture order and any step necessary to be taken for enforcing the order may be taken under this Act.
- (2) Any proceeding, including an appeal, that may be started by a person because of the making of an old forfeiture order may, if the time for starting the proceeding has not ended, be started under this Act as if this Act had commenced on the day the old forfeiture order was made.



## **274 Old pecuniary penalty orders**

- (1) An old pecuniary penalty order is taken to be a new pecuniary penalty order made by the court that made the old pecuniary penalty order on the conditions stated in the old pecuniary penalty order and may be enforced under this Act.
- (2) Any proceeding, including an appeal, that may be started by a person because of the making of an old pecuniary penalty order may, if the time for starting the proceeding has not ended, be started under this Act as if this Act had commenced on the day the old pecuniary penalty order was made.

## **275 Old restraining orders**

- (1) An old restraining order is taken to be a new restraining order made by the court that made the old restraining order on the conditions stated in the old restraining order and may be enforced under this Act.
- (2) The new restraining order has effect only for the balance of the term for which the old restraining order would have had effect if this Act had not been enacted.
- (3) Any proceeding, including an appeal, that may be started by a person because of the making of an old restraining order may, if the time for starting the proceeding has not ended, be started under this Act as if this Act had commenced on the day the old restraining order was made.
- (4) If the old restraining order was made in a court other than the Supreme Court, the Supreme Court may extend the period for which the restraining order is to remain in force as if the order had been made under this Act.

## **276 Particular orders about buying back interests in property**

- (1) An order made under section 24 of the old Act and not given effect immediately before the commencement of this section is taken to be a release order made under section 154 of this Act.

[s 277]

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- (2) An order made under section 29(11) of the old Act and not given effect immediately before the commencement of this section is taken to be a buy-back order made under section 169 of this Act.
- (3) Anything remaining to be done to give effect to an order mentioned in subsection (1) or (2) may be done in accordance with this Act after the commencement.

### **277 Property under the control of the public trustee**

Property under the control of the public trustee because of a direction in an old restraining order is taken to be under the control of the public trustee because of a direction in a new restraining order and may be dealt with under this Act.

### **278 Persons unamenable to justice under old Act**

- (1) If a person who was unamenable to justice under the old Act becomes amenable to justice after the commencement of this section, a provision of this Act applying to a person who later becomes amenable to justice applies to the person.
- (2) Also, a person who, immediately before the commencement of this section, was unamenable to justice under the old Act because the person was found unfit for trial under the repealed *Mental Health Act 1974*, part 4 is taken to be unamenable to justice because of section 109 of this Act.
- (3) In addition, if a proceeding under the old Act had not been started against a person who became unamenable to justice before the commencement of this section, a proceeding may be started against the person under this Act.

### **279 Application for chapter 2 restraining order if property restrained under old restraining order**

- (1) This Act does not prevent the State from applying to the Supreme Court for a chapter 2 restraining order in relation to property that includes property that is restrained under an old restraining order.

- (2) If the Supreme Court makes a chapter 2 restraining order in relation to the property to which the application relates, the Supreme Court must also set aside the old restraining order.
- (3) In this section—  
*chapter 2 restraining order* means a restraining order under chapter 2 of this Act.

## **280 Other directions, orders and requirements**

- (1) A direction given, or an order or requirement made, in a proceeding under the old Act, that has not yet been complied with or given effect continues to have effect under this Act as if it were given or made under this Act.
- (2) If a time was specified for compliance with the direction, order or requirement, the time for complying with the requirement starts when the direction, order or requirement was given or made under the old Act.
- (3) This section does not apply to an order for which provision is otherwise made under this part.

## **281 References to Crimes (Confiscation) Act 1989**

In an Act or document, a reference to the *Crimes (Confiscation) Act 1989* may, if the context otherwise permits, be a reference to this Act.

# **Part 2 Repeal**

## **282 Repeal of Crimes (Confiscation) Act 1989**

The *Crimes (Confiscation) Act 1989* No. 60 is repealed.

## **Part 3**

# **Transitional provisions for the Criminal Proceeds Confiscation and Other Acts Amendment Act 2009**

### **283 Definition for this part**

In this part—

*amendment Act* means the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*.

### **284 Property controlled by public trustee**

This Act as amended by the amendment Act, section 7 applies in relation to property whether the public trustee was directed to take control of the property before or after the commencement of the section.

### **285 Proceeds assessment order relating to an external serious crime related activity**

This Act as amended by the amendment Act, section 29 applies in relation to external serious crime related activity happening before or after the commencement of the section.

### **286 Charges on property**

This Act as amended by the amending Act section 32, applies in relation to all proceeds assessment orders made after the commencement of the section.

### **287 Orders under ss 37 and 129**

- (1) This section applies if a person makes an application for a particular type of order under section 37 or 129 before the commencement and the Supreme Court has not dealt with the application on the commencement.

- (2) The application remains valid despite the amendment Act and the Supreme Court, on the application, may make an order of the same type after the commencement under the Act as amended by the amendment Act.

## 288 Exclusion of property from orders

- (1) This section applies if—
- (a) a person gave a notice under old section 47(3), 49(2), 65(3), 66(3) or 71(3); and
  - (b) the Supreme Court has not made an order on the application of which notice was given in the notice.
- (2) The person is taken to comply with the following provisions in relation to the application—
- if the notice was given under old section 47(3)—section 47(3) and (3A)
  - if the notice was given under old section 49(2)—section 49(2) and (2A)
  - if the notice was given under old section 65(3)—section 65(3) and (3A)
  - if the notice was given under old section 66(3)—section 66(3) and (3A)
  - if the notice was given under old section 71(3)—section 71(3) and (3A).
- (3) In this section—
- old section 47(3), 49(2), 65(3), 66(3) or 71(3)* means section 47(3), 49(2), 65(3), 66(3) or 71(3) as in force immediately before the commencement of this section.

## 289 Transitional provision for amendment of definition of dealing

To remove doubt, it is declared that the transaction described in schedule 6, definition *dealing*, paragraph (da), inserted into the definition by the amendment Act, section 66, was, from

the commencement of the definition, always a dealing with property.

## **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.

**Part 5**

**Transitional provision for  
Serious and Organised Crime  
Legislation Amendment Act  
2016**

**295 Relevant money laundering proceedings started before commencement**

- (1) This section applies if—

- (a) a relevant money laundering proceeding was started but not decided before the commencement; and
  - (b) the Attorney-General's written consent for the proceeding had not been obtained under section 251(3) as in force before the commencement.
- (2) The proceeding may be heard and decided without the Attorney-General's written consent.
- (3) In this section—
- relevant money laundering proceeding* means a proceeding for money laundering started other than by complaint under the *Justices Act 1886*.

## Part 6 Transitional provisions for Criminal Law Amendment Act 2017

### 296 Definition for part

In this part—

*amendment Act* means the *Criminal Law Amendment Act 2017*.

### 297 Restraining orders made before commencement

For sections 52, 93ZT and 143, as inserted by the amendment Act—

- (a) a reference to restrained property is a reference to property restrained under a restraining order, whether before or after the commencement; and
- (b) a reference to a restraining order is a reference to a restraining order, whether made before or after the commencement.



**298 Forfeiture orders made before commencement**

For sections 60 and 171, as inserted by the amendment Act—

- (a) a reference to forfeited property is a reference to property forfeited, whether before or after the commencement; and
- (b) a reference to a forfeiture order is a reference to a forfeiture order, whether made before or after the commencement.

**299 Serious drug offender confiscation orders made before commencement**

For section 93ZZH, as inserted by the amendment Act—

- (a) a reference to forfeited property is a reference to property forfeited, whether before or after the commencement; and
- (b) a reference to a serious drug offender confiscation order is a reference to a serious drug offender confiscation order, whether made before or after the commencement.

## **Schedule 1      Examples**

section 7

### **Part 1                      Illegally acquired property examples**

#### **1            Example 1**

- (1) A acquires \$40,000 as the proceeds of an illegal activity.
- (2) A uses the \$40,000 to buy land from B.
- (3) The land is illegally acquired property.
- (4) The money paid to B for the property continues to be illegally acquired property.
- (5) A sells the land to C for \$50,000.
- (6) The land continues to be illegally acquired property.
- (7) The \$50,000 C paid for the land is illegally acquired property.
- (8) A uses the \$50,000 paid for the land by C to buy a car from D.
- (9) The car becomes illegally acquired property and the \$50,000 A used to buy it continues to be illegally acquired property, unless the purchase was for sufficient consideration from an innocent person.

#### **2            Example 2**

- (1) A acquires \$25,000 as the proceeds of an illegal activity.
- (2) A uses the \$25,000 to buy a car.
- (3) The car is illegally acquired property.
- (4) A sells the car to B for its market value of \$22,000.
- (5) B does not know, and has no reason to suspect, the car is illegally acquired property.

- (6) The car, now in the hands of B, stops being illegally acquired property.
- (7) The money B paid to A for the car is illegally acquired property.
- (8) B sells the car to C, a used car dealer, who then sells it to A.
- (9) When A buys the car from C, the car again becomes illegally acquired property.

## Part 2 Proceeds assessment example

### 3 Example 1

- (1) A is found to have engaged in the serious crime related activity of procuring another person to engage in prostitution over 5 years.
- (2) Money from engaging in the serious crime related activity was used by A—
  - (a) to lead a flamboyant lifestyle costing, on average, \$60,000 for each year; and
  - (b) to pay off a mortgage on the mansion A lives in and a block of income producing home units.
- (3) The mansion and home units were bought in the 5 years.
- (4) A—
  - (a) had no assets at the start of the 5 years; and
  - (b) can not show a source of property gained in the 5 years other than income from the units, which produced an annual net income of \$20,000.
- (5) The mansion and units are worth \$1m.
- (6) Under sections 82(1) and 83—
  - (a) the \$1m current value of the mansion and units is derived proceeds; and
  - (b) the amount of \$400,000, made up of the \$60,000 mentioned in subsection (2)(a), and the \$20,000

mentioned in subsection (4)(b), for each year, is derived proceeds.

## **Part 3                      Tainted property examples**

### **4                      Example 1**

- (1) A is convicted of the confiscation offences of producing and possessing a dangerous drug.
- (2) A owned lot 1 and grew the dangerous drug on adjacent lot 2. A gained access to lot 2 through lot 1.
- (3) A camped on lot 1 while working at growing the dangerous drug and was found on lot 1 in possession of 5kg of the dangerous drug.
- (4) Lot 1 was used in connection with the commission of the confiscation offence of producing a dangerous drug.
- (5) Lot 1 is tainted property under section 104(1)(a).
- (6) Lot 2 was used in the commission of the confiscation offence of producing a dangerous drug.
- (7) Lot 2 is also tainted property under section 104(1)(a).

### **5                      Example 2**

- (1) A is convicted of the confiscation offences of—
  - (a) supplying a dangerous drug; and
  - (b) carrying on the business of unlawfully trafficking in a dangerous drug.
- (2) A used a motor vehicle to transport the drug to a proposed buyer.
- (3) Whether the drug was on A or in A's motor vehicle, the motor vehicle was used in connection with the commission of each offence mentioned in subsection (1).
- (4) The motor vehicle is tainted property under section 104(1)(a).

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**6 Example 3**

- (1) A is convicted of the confiscation offence of official corruption.
- (2) A gave B, an officer of the public service, a race horse valued at \$150,000 for B to destroy an official file.
- (3) Because of the destruction of the file, A was able to have A's lawfully acquired land rezoned.
- (4) Before the rezoning the land was valued at \$200,000. After the rezoning the land was valued at \$1m.
- (5) The race horse is derived by B from the commission of the confiscation offence of official corruption.
- (6) The race horse is tainted property under section 104(1)(a) or (c).
- (7) If the land is sold by A for \$1m, \$800,000 is tainted property under section 104(1)(c).

**7 Example 4**

- (1) A is convicted of the confiscation offence of concealing property reasonably suspected of being tainted property.
- (2) A came into possession of motor vehicle parts (the *stolen parts*) that A knew or had reason to suspect were stolen.
- (3) A used the stolen parts to build 2 complete motor vehicles after later buying the rest of the necessary parts with the intention of combining them with the stolen parts.
- (4) All parts were used in, or in connection with, the commission of the confiscation offence of which A was convicted.
- (5) Before A was charged with the offence, A sold 1 motor vehicle for \$30,000 and banked the money.
- (6) A was still in possession of the other motor vehicle.
- (7) The motor vehicle kept in A's possession is derived from property used in, or in connection with, the commission of the confiscation offence and is tainted property under section 104(1)(b).

- (8) The vehicle is also derived directly from the commission of the confiscation offence and is tainted property under section 104(1)(c).
- (9) The banked \$30,000 and its accrued interest is property derived by A from property used in, or in connection with, the commission of the confiscation offence and is tainted property under section 104(1)(b).
- (10) The \$30,000 (and interest) is also derived from the commission of the confiscation offence and is tainted property under section 104(1)(c).
- (11) If A uses the \$30,000 (and interest) to buy another vehicle, the other vehicle is derived from the commission of the confiscation offence and is tainted property under section 104(1)(c).

## **8 Example 5**

- (1) A is convicted of the confiscation offence of producing a dangerous drug.
- (2) A used A's warehouse to produce the dangerous drug.
- (3) A sells the warehouse and uses the proceeds to buy a house.
- (4) The house is property derived by A from property used in, or in connection with, the commission of the confiscation offence of producing a dangerous drug.
- (5) The house is tainted property under section 104(1)(b).

## **9 Example 6**

- (1) A is convicted of the confiscation offence of carrying on the business of trafficking in a dangerous drug.
- (2) On A's arrest, police seized \$100,000 in cash derived by A from the commission of the serious offence.
- (3) The police deposit the \$100,000 in a bank account in the name of the commissioner of the police service pending the outcome of the trial.

- (4) The banked \$100,000 and its accrued interest is derived from the commission of the confiscation offence.
- (5) The property is tainted property under section 104(1)(c).

## **Part 4**

### **Assessment of benefits examples**

#### **10 Example 1**

- (1) A and B are separately convicted of confiscation offences of carrying on the business of unlawfully trafficking in a dangerous drug.
- (2) C bought the dangerous drug from B on 5 occasions for \$2,000—a total of \$10,000.
- (3) B gave the money to A.
- (4) A paid B a total of \$1,000.
- (5) B acted solely as an agent or courier of A.
- (6) A is—
  - (a) the supplier of the dangerous drug; and
  - (b) the principal with whom C, through B, dealt.
- (7) Under sections 187(1)(a) and (b) and 193, the benefit derived by A is \$10,000.
- (8) Under section 187(1)(a), the benefit derived by B is \$1,000.

#### **11 Example 2**

- (1) A is convicted of the confiscation offence of carrying on unlawful bookmaking over 5 years.
- (2) In the 5 years, A—
  - (a) received a total of \$1m from punters placing bets; and
  - (b) paid a total of \$400,000 to winning punters.

- (3) Under section 187(1)(a) and 193, the benefit derived by A is \$1m.

## **12 Example 3**

- (1) A is convicted of the confiscation offence of carrying on unlawful bookmaking over 5 years.
- (2) Money from the business of unlawful bookmaking was used by A—
  - (a) to lead a flamboyant lifestyle costing, on average, \$60,000 for each year; and
  - (b) to pay off a mortgage on the mansion A lives in and a block of income producing home units.
- (3) The mansion and home units were bought in the 5 years.
- (4) A—
  - (a) had no assets at the start of the 5 years; and
  - (b) can not show a source of property gained in the 5 years other than income from the units, which produced an annual net income of \$20,000.
- (5) The mansion and units are worth \$1m.
- (6) Under sections 187(1), 188, 189 and 190—
  - (a) the \$1m current value of the mansion and units is a derived benefit; and
  - (b) the amount of \$400,000, made up of the \$60,000 mentioned in subsection (2)(a), and the \$20,000 mentioned in subsection (4)(b), for each year, is derived proceeds.

## **13 Example 4**

- (1) A is convicted of the confiscation offence of carrying on unlawful bookmaking over 5 years.
- (2) A carried on the business by—
  - (a) taking all bets on credit; and



- 
- (b) paying all winning bets and receiving all losing bets at the end of each week.
  - (3) The total value of all bets placed with A in the 5 years was \$1m.
  - (4) The total value of all losing bets received by A in the 5 years was \$600,000.
  - (5) Under section 187(1)(a), the benefit derived by A is \$600,000.

#### 14 Example 5

- (1) A is convicted of producing a dangerous drug, that is, cannabis.
- (2) A had grown and sold 1,000 marijuana plants.
- (3) Each cannabis plant, on average, yielded 0.5kg of saleable material.
- (4) The market value of the cannabis in the form sold was \$2,500 for 0.5kg.
- (5) Under section 187(1)(c)(i), the benefit derived by A was \$2.5m.

#### 15 Example 6

- (1) A is convicted of the confiscation offence of concealing property reasonably suspected of being tainted property.
- (2) A came into possession of motor vehicle parts (the *stolen parts*) that A knew or had reason to suspect were stolen.
- (3) A used the stolen parts to build 2 complete motor vehicles after later buying the rest of the necessary parts with the intention of combining them with the stolen parts.
- (4) Before A was charged with the offence, A sold 1 motor vehicle for \$30,000 and banked the money.
- (5) A was still in possession of the other motor vehicle.
- (6) Under section 187(1)(a) and 192, the benefit derived by A is—

Schedule 1

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

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## Schedule 2      Offences

sections 29 and 99

### Part 1                      Section 29 offences

- 1 Any offence punishable by imprisonment for 5 years or more and involving any of the following—
  - (a) murder;
  - (b) piracy;
  - (c) kidnapping for ransom;
  - (d) extortion;
  - (e) bribery;
  - (f) a secret commission;
  - (g) loss of revenue to the State;
  - (h) corruption;
  - (i) stealing, receiving, fraud or other dishonesty;
  - (j) conspiracy to obstruct, prevent, pervert or defeat the course of justice;
  - (k) money laundering;
  - (l) prostitution;
  - (m) gambling;
  - (n) child pornography;
  - (o) a dangerous drug as defined under the *Drugs Misuse Act 1986*;
  - (p) trafficking in weapons.
- 2 An ancillary offence, to an offence mentioned in item 1, punishable by imprisonment for 5 years or more.



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## Schedule 6      Dictionary

### section 3

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

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

**activity** includes activities.

**ancillary**, offence to an offence, means—

- (a) an offence of conspiring to commit the offence; or
- (b) an offence of receiving or assisting someone else to enable the other person to escape punishment for the offence; or
- (c) an offence of attempting to commit the offence.

*Note for paragraph (b)—*

See the Criminal Code, section 10.

**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 3, part 4, division 2A—section 153A.

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

**appropriate officer** see section 12.

**authorised commission officer** means an authorised commission officer under the *Crime and Corruption Act 2001*, section 272.

***automatic forfeiture*** means forfeiture to the State of property because of the conviction of a person for a serious criminal offence.

***available substitute property*** means property that may become substituted for other property under a tainted property substitution declaration.

***benefit***—

- (a) for chapter 2—see section 21; or
- (b) for chapter 3—see section 101.

***benefit derived***—

- (a) for chapter 2—see section 21; or
- (b) for chapter 3—see section 102.

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

***buy-back order*** see section 170.

***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.

***chairperson*** means the chairperson of the commission.

***charge***, of an offence, see section 105.

***civil jurisdiction*** in relation to an amount that is the limit of a Magistrates Court's civil jurisdiction, means an amount equal to the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

***commission*** means the Crime and Corruption Commission.

***commission officer*** means a commission officer under the *Crime and Corruption Act 2001*.

***conceal*** includes attempt to conceal.

***confiscation offence*** see section 99.

***confiscation order*** means—

- 
- (a) a forfeiture order; or
  - (b) a pecuniary penalty order; or
  - (c) a serious drug offender confiscation order; or
  - (d) a proceeds assessment order; or
  - (e) an unexplained wealth order.

**control**, property under a direction under an order under this Act, includes manage property.

**controlled substance** see the *Drugs Misuse Act 1986*.

**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.

**convicted person** for chapter 4, part 4, division 2A, see section 153A.

**corresponding entity** means an entity that has a function of enforcing a corresponding law.

**corresponding law** means a law of another State that is prescribed under a regulation to be a law that corresponds to this Act.

**court officer** means an officer of the Supreme Court appointed by the principal registrar.

**current or previous wealth** see section 89E.

**dangerous drug** see the *Drugs Misuse Act 1986*, section 4.

**dealing** with property includes—

- (a) acquiring the property; and
- (b) disposing of the property; and
- (c) encumbering the property; and
- (d) if property is a debt—making a payment to anyone to reduce the amount of the debt; and

- (da) engaging in a transaction that has the direct or indirect effect of changing the value of a person's interest in the property; and
- (e) removing the property from Queensland; and
- (f) receiving or making a gift of the property; and
- (g) vesting the property in a person while administering the estate of a deceased; and
- (h) dealing with the property in another way; and
- (i) attempting to do a thing mentioned in paragraph (a), (b), (c), (d), (da), (e), (f) or (g) or to deal with property in another way.

***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.

***derived*** includes—

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

***director*** of a corporation—

- (a) includes—
  - (i) if the corporation is incorporated for a public purpose by a law of the Commonwealth or a State—a member of the body corporate; and
  - (ii) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy or properly authorised to act in the position; and
  - (iii) other than as provided by paragraph (b), any person under whose directions or instructions the directors of the corporation are accustomed to act; but
- (b) does not include a person under whose directions or instructions the directors of the corporation are accustomed to act only because the directors act on



advice given by that person in the proper performance of functions attaching to the person's professional capacity.

**DPP** means the director of public prosecutions under the *Director of Public Prosecutions Act 1984*.

**effective control** see section 20.

**encumbrance** over property includes any interest, mortgage, charge, right, claim or demand in relation to the property.

**examination order** see—

- (a) for chapter 2—section 38A(1)(a) or (b); or
- (b) for chapter 2A—section 93W; or
- (c) for chapter 3—section 130A(1)(a) or (b).

**exclusion order** see section 69.

**executive officer** of a corporation means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

**external serious crime related activity** see section 16(3).

**file** a document or order includes register the document or order.

**financial institution** includes—

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

**finding of serious crime related activity** see section 78(1).

**forfeiture certificate** see section 265.

**forfeiture order** means—

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

- (b) for chapter 3—a forfeiture order made under chapter 3;  
or
- (c) otherwise—a forfeiture order made under chapter 2 or chapter 3.

**gift**, of property includes a transfer for consideration considerably below the higher of—

- (a) the prevailing market price for the property; or
- (b) the consideration the transferor paid for the property.

**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.

**illegal activity** see section 15.

**illegally acquired property** see section 22.

**innocent interest exclusion order** see—

- (a) for chapter 2—section 74; or
- (b) for chapter 3—section 159.

**interstate confiscation offence** means an offence against the law, including the common law, of another State, in relation to which an interstate forfeiture order or an interstate pecuniary penalty order may be made under a corresponding law of that State.

**interstate forfeiture order** means an order made under a corresponding law that is declared under a regulation to be an interstate forfeiture order for this definition.

**interstate pecuniary penalty order** means an order made under a corresponding law that is declared under a regulation to be an interstate pecuniary penalty order for this definition.

**interstate restraining order** means an order made under a corresponding law that is declared under a regulation to be an interstate restraining order for this definition.

**investigation order** see—

- (a) for chapter 2—section 38A(1); or
- (b) for chapter 2A—section 93W; or
- (c) for chapter 3—section 130A(1).

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

**Legal Aid** means Legal Aid Queensland.

**Legal Aid Act** means the *Legal Aid Queensland Act 1997*.

**major drug offence** means any of the following, whether dealt with on indictment or summarily—

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

**money** means money in the form of cash.

**money laundering** means an offence against section 250.

**money order** see the *Supreme Court of Queensland Act 1991*, schedule 5.

**monitoring order** means a monitoring order under either of the following—

- (a) the *Crime and Corruption Act 2001*, section 119C;
- (b) the *Police Powers and Responsibilities Act 2000*, section 199.

**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.

**officer**, for chapter 8, part 2, division 3, see section 249A.

**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.

**owner** of an interest in property includes a person who has effective control of the interest.

**pecuniary penalty order** see section 178.

**pre-qualifying offence** see section 93F.

**prescribed respondent** see—

- (a) for chapter 2, part 3—section 28; or
- (b) for chapter 2A, part 3—section 93G; or
- (c) for chapter 2A, part 4—section 93ZZ(1); or
- (d) for chapter 3, part 3—section 116; or
- (e) for chapter 3, part 5—section 161; or
- (f) for chapter 4, other than part 4, division 2A—section 200; or
- (g) for chapter 4, part 4, division 2A—section 116.

**principal registrar** means the person appointed as the principal registrar of the Supreme Court.

**proceeds**, in relation to an activity, see section 18.

**proceeds assessment order** see section 77.

**property** includes—

- (a) generally—property whether situated in Queensland or elsewhere, including outside Australia; and
- (b) for chapter 2 or 2A—see section 19.

*Note—*

For the meaning of property generally, see the *Acts Interpretation Act 1954*, sections 32AB (Terms defined both in this Act and another Act) and 36 (Meaning of commonly used words and expressions), which defines property as follows—

**property** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

**property particulars order** see—

- (a) for chapter 2—section 38A(1)(c); or
- (b) for chapter 2A—section 93W; or
- (c) for chapter 3—section 130A(1)(c).

**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.

**reasonably suspect** means suspect on grounds that are reasonable in the circumstances.

**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.

**related**, of an offence, see section 108.

**release order** see—

- (a) for chapter 2—section 64; or
- (b) for chapter 3—see section 154.

***relevant contract*** see section 200.

***relevant person*** see—

- (a) for chapter 2, part 5, division 2—section 81; or
- (b) for chapter 3, part 7, division 3—section 187.

***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 crime derived property*** see section 23.

***serious crime related activity*** see section 16.

***serious criminal offence*** see section 17.

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

***serious drug offender confiscation order*** see section 93ZY.

***special forfeiture order*** see section 200(2).

**spouse** includes a former spouse.

**sufficient consideration** in relation to property means a consideration that, having regard solely to commercial considerations, reflects the value of the interest.

**suspects**, for chapters 2, 2A, 3 and 4, includes—

- (a) believes; and
- (b) knows.

**suspension order** means a suspension order under either of the following—

- (a) the *Crime and Corruption Act 2001*, section 119I;
- (b) the *Police Powers and Responsibilities Act 2000*, section 205.

**tainted property** see section 104.

**tainted property substitution declaration** means a tainted property substitution declaration made under section 153C.

**third party order** see section 168.

**transaction** in property includes any kind of dealing with property whether in Queensland or otherwise.

*Example—*

receiving a gift

**transfer** of property includes—

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

**unamenable to justice** see section 109.

**unavailable property** for chapter 4, part 4, division 2A, see section 153A.

**unexplained wealth** see section 89L.

**unexplained wealth order** see section 89F.

**weapon** see the *Weapons Act 1990*, schedule 2.