Queensland

CRIMES (CONFISCATION OF PROFITS) AMENDMENT BILL 1994

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TABLE OF PROVISIONS

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1994

A BILL

FOR

An Act to amend the *Crimes (Confiscation of Profits) Act 1989*

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Crimes (Confiscation of Profits) Amendment Act 1994*.

Commencement

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

Amended Act

3. This Act amends the *Crimes (Confiscation of Profits) Act 1989*.

Amendment of s 1 (Short title)

4. Section 1, '*Crimes (Confiscation of Profits) Act 1989*'—

omit, insert—

'*Crimes (Confiscation) Act 1989*'.

Insertion of new s 2A

5. After section 2—

insert—

'Object of Act

'**2A.(1)** The main object of this Act is to deter the commission of serious offences by removing the financial gain, and increasing the financial loss, associated with their commission.

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

(a) forfeiture of property—

(i) used, or intended to be used, in or in connection with the commission of serious offences; or

(ii) derived from property mentioned in subparagraph (i) or from the commission of serious offences; and

(b) deprivation of benefits derived from the commission of serious offences; and

(c) tracing of the property and benefits and prevention of their dissipation or concealment; and

(d) enforcement in the State of forfeiture and restraining orders made under corresponding laws.

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

(a) to ensure that property rights may be affected by forfeiture or other orders only through just procedures; and

(b) to protect from forfeiture or other orders property rights honestly acquired by persons innocent of unlawful activity.’.

Amendment of s 3 (Interpretation)

6.(1) Section 3(1), definitions **“appropriate officer”**, **“financial institution”**, **“interest”**, **“member of the police force”**, **“Public Trustee”**, **“relevant period”**, **“serious offence”** and **“tainted property”**—

omit.

(2) Section 3(1)—

insert—

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

(a) an offence of conspiring to commit the serious drug offence; or

(b) an offence of receiving[1] or assisting another person in order to enable the other person to escape punishment for the serious drug offence; or

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

(c) an offence of attempting to commit the serious drug offence.[2]

“appropriate officer” see section 3B.

“benefit” includes service and advantage.

“benefit derived” see section 3C.

“charge” a person, for a proceeding started by a complaint under the *Justices Act 1886*, see section 3D.

“convicted” of a serious offence, see section 3E.

“derived” includes—

(a) directly or indirectly derived; and

(b) realised.

“effective control” see section 3F.

“financial institution” means—

(a) the Reserve Bank of Australia; or

(b) a bank, building society or credit union; or

(c) a building society to which the *Building Societies Act 1985* applies; or

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

(e) another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting.

“money laundering” means the offence against section 64.

“police officer” does not include a special constable under the *Police Service Administration Act 1990*.

“quash” a conviction, see section 3G.

“related offence”, to another offence, see section 3H.

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

“serious drug offence” means—

(a) an offence against Part 2 of the *Drugs Misuse Act 1986* for which a person is liable on conviction to imprisonment for 20 years or more; or

(b) money laundering committed in relation to property that is tainted property in relation to an offence mentioned in paragraph (a); or

(c) an ancillary offence to an offence mentioned in paragraph (a) or (b).

“serious offence” means—

(a) a serious drug offence; or

(b) another indictable offence, whether dealt with on indictment or summarily; or

(c) an offence against this Act for which an offender is liable to imprisonment; or

(d) an offence against an Act or a provision specified in Schedule 2; or

(e) another offence prescribed by regulation.

“tainted property” see section 3I.

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

“transfer” of property includes—

(a) for an interest in land to be transferred from the State—grant; and

(b) if the property is an object—give.

“unamenable to justice”, in connection with an offence, has the meaning given by section 3J.

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

(3) Section 3(2) to (8)—

omit.

Insertion of new ss 3A–3J

7. After section 3—

insert—

‘**Examples in Sch 1**

‘**3A.** An example in Schedule 1 is an example of the operation of the provision or provisions mentioned in or in relation to the example.

‘**Meaning of “appropriate officer”**

‘**3B.** An **“appropriate officer”** means—

(a) in every case—the Director of Prosecutions, a Deputy Director of Prosecutions or a legal practitioner appointed to assist the Director of Prosecutions in the discharge of the Director’s functions; or

(b) for an application to a Magistrates Court for a forfeiture or pecuniary penalty order—the Commissioner of the Police Service or another police officer.

‘**Meaning of “benefit derived” (Cwlth[3] s 4(3))**

‘**3C.** A **“benefit derived”** by a person includes a benefit derived by someone else at the person’s request or direction.

‘**Meaning of “charge” if complaint made**

‘**3D.(1)** This section applies if a proceeding for an offence is started against a person by a complaint and summons under the *Justices Act 1886*.

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

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

3 This type of bracketed reference in a heading is to the nearest corresponding section of the *Proceeds of Crime Act 1987* (Cwlth).

‘Meaning of “convicted” of offence (Cwlth s 5)

‘**3E.** A person must be treated as if **“convicted”** of an offence if—

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

(b) the offence is taken into account by a court in sentencing the person for another offence; or

(c) the person becomes unamenable to justice in connection with the offence; or

(d) the person is acquitted of the offence because of unsoundness of mind.

‘Meaning of “effective control” (Cwlth s 9A)

‘**3F.(1)** Property[4] may be under a person’s **“effective control”** even if—

(a) the person does not have a direct or indirect right, power or privilege over, or in relation to, the property; or

(b) the person does not otherwise have an interest in the property.

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

(a) whether or not property is under a person’s effective control; or

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

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

(a) shareholdings in, debentures over or directorships of a corporation that has an interest (whether direct or indirect) in the property; and

(b) a trust that has a relationship to the property; and

(c) family, domestic and business relationships between persons having an interest in the property, or in corporations of the type mentioned in paragraph (a) or trusts of the type mentioned in paragraph (b), and other persons.

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

‘**Meaning of “quash” a conviction (Cwlth s 5(2))**

‘**3G.(1)** A person’s conviction is taken to be **“quashed”** if—

(a) for a conviction mentioned in section 3E(a)—the conviction is quashed by a court or a free pardon is granted by the Governor; or

(b) for a conviction mentioned in section 3E(b)—

(i) the person’s conviction of the other offence mentioned in the paragraph is quashed; or

(ii) the court’s decision to take the offence into account is quashed by a court; or

(c) for a conviction mentioned in section 3E(c)—the person is afterwards brought before a court to be dealt with for the offence and—

(i) the proceeding is discontinued; or

(ii) the person is acquitted; or

(iii) the person is convicted, but the conviction is afterwards quashed by a court or a free pardon is granted by the Governor; or

(iv) the offence is taken into account by a court in sentencing the person for another offence, but—

(A) the person’s conviction of the other offence is quashed; or

(B) the court’s decision to take the offence into account is quashed by a court; or

(d) for a conviction mentioned in section 3E(d)—the acquittal because of unsoundness of mind is quashed by a court.

‘**(2)** In this section—

“quash” includes set aside and rescind.[5]

5 This definition covers various expressions used in the Criminal Code, section 668E and the Justices Act, sections 213 and 225.

‘Meaning of “related offence” (Cwlth s 8)

‘**3H.** An offence is a **“related offence”** 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.

‘Meaning of “tainted property” (Cwlth s 4(1))

‘**3I.(1) “Tainted property”**, in relation to a serious offence, means property—

(a) used, or intended to be used, by a person in, or in connection with, the commission of the serious offence; or

(b) derived by a person from property mentioned in paragraph (a); or

(c) derived by a person from the commission of the serious offence.

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

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

- section 64 (Money laundering)
- section 65 (Possession etc. of property suspected of being tainted property).

‘Meaning of “unamenable to justice” (Cwlth s 6)

‘**3J.(1)** A person becomes **“unamenable to justice”** in connection with an offence only if—

(a) a proceeding for the offence has started against the person in a way mentioned in subsection (2); and

(b) subsection (3), (4), (5), (6), (7) or (8) applies.

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

(a) a person is charged as defined in section 3D; or

(b) a Magistrates Court charges the person with the offence or commits the person for trial or sentence for the offence; or

(c) an indictment is presented against the person for the offence.

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

(a) the Supreme Court; or

(b) the court to which the person is committed for trial or sentence; or

(c) the court in which the proceeding is waiting to be heard, or being heard;

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

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

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

(a) under Part 4 of the *Mental Health Act 1974*, the person is found to be not fit for trial on the charge of the offence; and

(b) the proceeding is discontinued because of the finding.

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

(a) a warrant is issued for the arrest of the person for the offence (which may be the same warrant as the warrant mentioned in section 3D(2)); 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.

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

(a) 6 months after the proceeding has started the person is unamenable to justice because the person is outside Australia; and

(b) an extradition proceeding against the person for the offence has been started; and

(c) subsequently the extradition proceeding ends without an extradition order being made.

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

(a) the person is unamenable to justice for another reason; and

(b) if the person is outside Australia—there is no extradition proceeding pending against the person.

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

(a) under subsection (3)—the day the court is satisfied as mentioned in the subsection or on another day decided by the court;

(b) under subsection (4)—the day the person dies;

(c) under subsection (5)—on the day the proceeding on the charge is discontinued;

(d) under subsection (6)—the last day of the 6 months mentioned in the subsection;

(e) under subsection (7)—the day the extradition proceeding ends;

(f) under subsection (8)—the last day of the 6 months mentioned in the subsection.’.

Amendment of heading to Pt 2 (Forfeiture orders and pecuniary penalty orders)

8. Part 2, heading, after ‘FORFEITURE ORDERS’—

insert—

‘, AUTOMATIC FORFEITURE’.

Replacement of Pt 2, Divs 1 and 2

9. Part 2, Divisions 1 and 2—

omit, insert—

‘***Division 1—Applications for forfeiture and pecuniary penalty orders***

‘**Application for forfeiture or pecuniary penalty order (Cwlth s 14)**

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

(a) a forfeiture order against particular property;

(b) a pecuniary penalty order.

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

(a) if the person is taken to have been convicted because of section 3E(a)—the day the person is convicted of the serious offence; or

(b) if the person is taken to have been convicted because of section 3E(b)—the day the serious offence is taken into account; or

(c) if the person is taken to have been convicted because of section 3E(c)—the day the person is taken, under section 3J(9), to become unamenable to justice in connection with the serious offence; or

(d) if the person is taken to have been convicted because of section 3E(d)—the day the person was acquitted of the serious offence because of unsoundness of mind.

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

‘**(4)** If—

(a) an application has been made to a court under subsection (1) for a forfeiture order against property in relation to a person’s conviction of a serious offence; and

(b) the application has been finally decided on the merits;

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

‘**(5)** If—

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

(b) the application has been finally decided on the merits;

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

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

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

(b) necessary evidence became available only after the first application was finally decided; or

(c) it is otherwise in the interests of justice to give the leave.

'**Notice of application (Cwlth s 15)**

'**6A.(1)** If an appropriate officer applies for a forfeiture order against property in relation to a person's conviction for an offence—

(a) the appropriate officer must give written notice of the application to the person and anyone else the appropriate officer has reason to believe has an interest in the property; and

(b) at any time before the court finally decides the application, the court may direct the appropriate officer to give notice of the application to the persons, and in the way and within the time, the court considers appropriate.

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

'**Right to appear and present evidence (Cwlth s 15(1)(b) and (2)(b))**

'**6B.(1)** The person in relation to whose conviction an application for a forfeiture order against property is made may appear and present evidence at the hearing of the application.

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

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

‘Amendment of application (Cwlth s 16)

‘**6C.(1)** If an appropriate officer applies for a forfeiture or pecuniary penalty order, the court hearing the application may amend the application at the request, or with the agreement, of the appropriate officer.

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

(a) to include additional property in an application for a forfeiture order; or

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

only if the court is satisfied—

(c) that the property or benefit was not reasonably capable of identification when the application was originally made; or

(d) that necessary evidence became available only after the application was originally made.

‘**(3)** If—

(a) an appropriate officer applies to amend an application for a forfeiture order; and

(b) the amendment would have the effect of including additional property in the application for the forfeiture order;

then—

(c) the appropriate officer must give written notice of the application to amend to—

(i) the person (the **“defendant”**) in relation to whose conviction the application for the forfeiture order is made; and

(ii) anyone else who the appropriate officer has reason to believe may have an interest in property to be included in the application for the forfeiture order; and

(d) the defendant and anyone else who claims an interest in property to be included in the application for the forfeiture order may appear and present evidence at the hearing of the application to amend.

‘**(4)** If—

(a) an appropriate officer applies to amend an application for a pecuniary penalty order against a person; and

(b) the amendment would have the effect of including an additional benefit in the application for the pecuniary penalty order;

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

‘Procedure on application (Cwlth s 18)

‘**6D.(1)** If an application is made to a court for a forfeiture or pecuniary penalty order in relation to a person’s conviction for an offence, in deciding the application the court must have regard to the evidence given in any proceeding against the person for the offence.

‘**(2)** If—

(a) an application is made for a forfeiture or pecuniary penalty order in relation to a person’s conviction for an offence; and

(b) the application is made to the court before which the person is convicted; and

(c) when the application is made, the court has not passed sentence on the person for the offence;

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

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

(a) an application for a forfeiture or pecuniary penalty order; and

(b) an application under a Commonwealth law that makes provision substantially similar to this Part.

‘**(4)** If—

(a) a person is taken to have been convicted because of section 3E(b) (which deals with offences taken into account in sentencing); and

(b) an application is made to a court for a forfeiture or pecuniary penalty order for the conviction;

the reference in subsection (1) to a proceeding against the person for the offence includes a reference to a proceeding against the person for the other offence mentioned in section 3E(b).

‘Limitation on powers of Magistrates Courts

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

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

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

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

‘**(5)** In this section—

“Magistrates Court” includes the Childrens Court constituted by a Magistrate.

‘*Division 2—Forfeiture orders and automatic forfeiture of restrained property*

‘Forfeiture orders (Cwlth s 19(1), (3), (4) and (6))

‘**8.(1)** If—

(a) a person is convicted of a serious offence; and

(b) an application is made to a court under section 6 for an order under this subsection (a **“forfeiture order”**) against particular property in relation to the offence; and

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

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

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

(a) any hardship that may reasonably be expected to be caused to anyone by the order; and

(b) the use that is ordinarily made, or was intended to be made, of the property.

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

‘**(4)** If—

(a) an appropriate officer applies for a forfeiture order against particular property in relation to a person’s conviction of an offence; and

(b) at the hearing of the application evidence is presented that the property was in the person’s possession at the time of, or immediately after, the commission of the offence;

then—

(c) if no evidence is presented tending to show that the property is not tainted property—the court must presume that the property is tainted property; or

(d) in any other case—the court may make a forfeiture order against the property only of it is satisfied that the property is tainted property.

‘Order permitting s 11A buy back (Cwlth s 19(5))

‘**8A.(1)** A court that makes a forfeiture order may, by order, declare that the forfeiture order may be discharged under section 11A(1) to the extent the order relates to a specified interest of a specified person.

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

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

(a) it would not be contrary to the public interest for the interest to be transferred to the person; and

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

‘Automatic forfeiture of restrained property in relation to serious drug offence (Cwlth s 30)

‘**8B.(1)** If—

(a) a person (the **“defendant”**) is taken to be convicted of a serious drug offence, other than because of section 3E(c) (which deals with persons becoming unamenable to justice); and

(b) a restraining order is, or was, granted for property (whether the property of the defendant or someone else) in relation to—

(i) the defendant’s conviction of the serious drug offence; or

(ii) the charging, or proposed charging, of the defendant with the serious drug offence or a related serious drug offence; and

(c) the restraining order, to the extent to which it relates to the property, is not the subject of a declaration under section 18B(3); and

(d) the restraining order is in force at the end of—

(i) the period (the **“forfeiture period”**) of 6 months starting on the day of conviction; or

(ii) if the forfeiture period is extended under subsection (2)—the forfeiture period as extended;

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

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

‘**(3)** This section only applies to restraining orders made after the commencement of this section.

‘**(4)** Subsection (3) and this subsection expire at the end of 1 year after the subsections commence.[6]

‘Effect of forfeiture under s 8 or 8B (Cwlth ss 19(7) and 20)

‘**9.(1)** Forfeited property vests absolutely in the State—

(a) if the forfeiture is under section 8—on the making of the forfeiture order under the section; or

(b) if the forfeiture is under section 8B (after the making of a restraining order)—on forfeiture to the State under the section.

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

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

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

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

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

(a) for property subject to forfeiture order—the forfeiture order has

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6 Their transitional effect is preserved by the *Acts Interpretation Act 1954,* section 20A(1).

not been discharged; or

(b) for property subject to forfeiture under section 8B—the conviction has not been quashed;

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

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

‘**(6)** In this section—

“appeal period” means the period ending—

(a) if the period provided for starting an appeal against the conviction, or under section 69, has ended without an appeal having been started—at the end of the period; or

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

‘Procedural matters about forfeiture

‘**9A.(1)** A person who is in possession of property forfeited to the State under section 8 or 8B, or documents of title to forfeited property, must give the property or documents of title to a person authorised by the Attorney-General on the authorised person’s demand.

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

‘**(3)** The Registrar of Titles and anybody else who is required or permitted to keep a register about dealings with property must, if asked and given sufficient evidence of the forfeiture of property to the State under section 8 or 8B, make in the register all entries necessary to record—

(a) the forfeiture to and vesting in the State of the property; or

(b) if the Attorney-General directs—the Public Trustee as the holder of the property on trust for the State.

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

‘**(5)** A certificate purporting to be by—

(a) the registrar or a deputy registrar of the Supreme Court or a registrar or a deputy registrar of a District Court or the Childrens Court constituted by a Judge; or

(b) the clerk of the court at the place where a Magistrates Court, or the Childrens Court constituted by a Magistrate, makes the order;

about the making of the forfeiture order or the forfeiture of property under section 8B and identifying the property to which the forfeiture order or forfeiture relates is evidence of the matters certified.

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

‘**(7)** On registration—

(a) the certificate is a record of the Supreme Court; and

(b) the order it mentions is taken to be a judgment of the Supreme Court, properly entered, obtained by the State as plaintiff in an action for the recovery of the property to which the order relates against the person from whom the property has been divested under subsection (1); and

(c) all proceedings may be taken to recover the property that could be taken if the judgment had been given in favour of the State.

‘Third party protection from forfeiture order (Cwlth s 21)

‘**10.(1)** In this section—

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

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

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

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

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

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

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

(a) was given notice of the application for the forfeiture order; or

(b) appeared at the hearing of the application for the forfeiture order;

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

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

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

(b) particular evidence proposed to be presented by the person in the application was not available to the person at the time of the hearing of the application for the forfeiture order.

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

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

(b) directing the State—

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

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

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

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

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

(c) the applicant acquired the interest—

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

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

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

(a) the applicant must give notice to the Director of Prosecutions of the making of the application; and

(b) the Director of Prosecutions must be a party.

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

‘Third party protection from forfeiture under s 8B (Cwlth s 31)

‘**10A.(1)** In this section—

“defendant” means the person because of whose conviction of a serious drug offence the property is forfeited under section 8B.

“relevant restraining order”, for property forfeited under section 8B, means the restraining order because of which the property was forfeited.

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

“the court” means the Supreme Court.

‘**(2)** If property is forfeited under section 8B, a person (other than the defendant) who claims an interest in the property may apply to the court for an order under subsection (7) or (11).

‘**(3)** Unless the court gives leave, the application must be made within 6 months after the property is forfeited under section 8B.

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

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

(a) was given notice of the application for the relevant restraining order; or

(b) appeared at the hearing of the application for the relevant restraining order; or

(c) was given notice of the relevant restraining order;[7]

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

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

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

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

(b) directing the State—

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

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

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

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

7 Sections 18A and 18B also provide rights to apply to the Supreme Court to exclude property from the effects of a restraining order.

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

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

(c) the applicant acquired the interest—

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

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

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

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

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

(b) the property was not used in, or in connection with, any unlawful activity and was not derived by anyone from any unlawful activity; and

(c) the applicant's interest in the property was lawfully acquired.

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

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

(b) it would not be contrary to the public interest for the interest in property to be transferred to the applicant; and

(c) there is no other reason why the interest should not be transferred to the applicant;

the court may make an order—

(d) declaring the nature, extent and value (when the declaration is made) of the interest; and

(e) that section 8B stops applying to the interest if the person pays to the State, under section 11A(2), the amount of the value of the interest while it is vested in the State.

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

(a) the applicant must give notice to the Director of Prosecutions of the making of the application; and

(b) the Director of Prosecutions must be a party.

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

‘Discharge of forfeiture order

‘**11.** A forfeiture order is discharged if—

(a) the conviction in relation to which the order was made is quashed; or

(b) a payment is made to discharge the forfeiture order under section 11A(1); or

(c) the order is set aside under section 16; or

(d) the forfeiture order is discharged by the Court of Appeal under section 69.

‘Person with interest in forfeited property may buy back the interest (Cwlth s 33)

‘**11A.(1)** If—

(a) property is forfeited under a forfeiture order; and

(b) a court makes an order under section 8A about an interest in the property; and

(c) while the property is still vested in the State, there is paid to the State the amount declared in the order under section 8A as the value of the interest;

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

‘**(2)** If—

(a) property is forfeited under section 8B; and

(b) a court makes an order under section 10A(11) about an interest in the property; and

(c) while the property is still vested in the State, there is paid to the State the amount declared in the order under section 10A(11) as the value of the interest;

section 8B stops applying to the interest.

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

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

‘**Buying out other interests under court order (Cwlth s 34)**

‘**11B.(1)** This section applies if—

(a) property is forfeited to the State under section 8 or 8B; and

(b) the property or an interest in the property is required to be transferred to a person (the **“buyer”**) under section 10(7), 10A(7), 11A or 12(6); and

(c) the buyer’s interest in the property, immediately before the forfeiture, was not the only interest in the property.

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

(a) the buyer gives written notice to everyone else who had an interest in the property immediately before the forfeiture to the effect that—

(i) the buyer intends to buy the other interests from the State; and

(ii) within 21 days after receiving the notice, a person who is given the notice may give the Attorney-General a written objection to the buying of the person’s interest; and

(b) the person given notice under paragraph (a) about the relevant interest does not give a written objection to the buying of the interest to the Attorney-General within the 21 days; and

(c) while the relevant interest is still vested in the State, the person pays to the State an amount equal to the value of the interest.

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

‘Effect of quashing of conviction or discharge of forfeiture order (Cwlth ss 22 and 32)

‘**12.(1)** This section applies if—

(a) property is forfeited under section 8 and the forfeiture order is discharged in the way mentioned in section 11(a) or (d); or

(b) property is forfeited under section 8B and the conviction because of which the property was forfeited is later quashed.

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

‘**(3)** The Director of Prosecutions must—

(a) as soon as practicable after the discharge or quashing give notice of it to everyone whom the Director of Prosecutions has reason to believe may have had an interest in the property immediately before it was vested in the State; and

(b) if required by a court, give notice of the discharge or quashing to the persons, and in the way and within the time, the court considers appropriate.

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

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

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

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

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

‘**(7)** However, if a payment has been made for the property to a person under an order made under section 10(7)(b)(ii) or 10A(7)(b)(ii), the Attorney-General must not arrange for the property to be transferred until the proposed transferee pays to the State the total amount paid by the State for the property under orders made under section 10(7)(b)(ii) or 10A(7)(b)(ii).

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

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

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

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

Replacement of s 13 (Pecuniary penalty orders)

10. Section 13—

omit, insert—

‘**Pecuniary penalty orders (Cwlth s 26)**

‘**13.(1)** If an application is made to a court under section 6(1)(b) for a pecuniary penalty order against a person for the benefits derived by the person from the commission of a serious offence, the court may or, if the offence is a serious drug offence, must—

(a) assess the value of the benefits under section 14 (Assessment of benefits); and

(b) order the person to pay to the State a pecuniary penalty equal to the assessed value less—

(i) the value, at the time the order is made, of any property for which a forfeiture order is made in relation to the same conviction; and

(ii) if the court considers it desirable to take it into account, any amount payable by way for restitution or compensation for the same conviction.

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

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

‘**Discharge of pecuniary penalty order to the extent of automatic forfeiture**

‘**13A.(1)** This section applies to a person against whom a pecuniary penalty order has been made for the benefits derived by the person from the commission of a serious offence.

‘**(2)** If property of the person is forfeited under section 8B because of the person’s conviction for the offence, the debt payable under the pecuniary penalty order is discharged to the extent of—

(a) if the property is sold—the value of the proceeds of the sale; or

(b) if the property is not sold—the reasonable value.

‘**Pecuniary penalty order increase if forfeiture order discharged (Cwlth s 26(6))**

‘**13B.(1)** This section applies if—

(a) a court makes a pecuniary penalty order for a serious offence; and

(b) in deciding the amount of the pecuniary penalty (the **“penalty**

amount"), the court takes into account a forfeiture of property; and

(c) after the pecuniary penalty order is made, the forfeiture ends because of an appeal.

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

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

Amendment of s 14 (Assessment of benefits)

11.(1) Section 14(8), 'in connection with'—

omit, insert—

'in, or in connection with,'.

(2) After section 14(8)—

insert—

'**(8A)** In subsection (8)—

"expenses or outgoings" of the person includes all costs and expenses incurred by the person in, or in connection with, committing, or attempting, conspiring, planning or preparing to commit, the offence or offences, including, for example, the cost of acquiring, or attempting to acquire, something concerned in committing, or attempting, conspiring, planning or preparing to commit the offence or offences.'.

Amendment of s 15 (Discharge of pecuniary penalty order)

12. Section 15(2), from '1902 of the Commonwealth' to 'being)'—

omit, insert—

'1992 (Cwlth)'.

Amendment of s 16 (Re-hearing)

13. Section 16(1), ‘by reason of section 3(2)(d)’—

omit, insert—

‘because of section 3E(c)’.

Amendment of s 17 (Restraining orders)

14.(1) Section 17(1) and (2)—

omit, insert—

‘**17.(1)** In this section—

“the court” means—

(a) in any case—the Supreme Court; or

(b) the court before which the defendant appears charged with, or is convicted of, the serious offence.

‘**(1A)** This section applies if a person (the **“defendant”**) has been, or is about to be, charged with, or has been convicted of, a serious offence.

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

(a) specified property of the defendant;

(b) all the property of the defendant, including property acquired after the order is made;

(c) specified property of the defendant and all other property of the defendant, including property acquired after the order is made;

(d) all the property of the defendant, including property acquired after the order is made, other than specified property;

(e) specified property of someone else.

‘**(2A)** The application must be supported by an affidavit of a police officer stating the matters mentioned in subsections (2B) to (2F).

‘**(2B)** If the conviction of the defendant of a serious offence is the basis of the application, the affidavit must state details of the conviction.

‘**(2C)** If the fact that the defendant has been or is about to be charged is the basis of the application, the affidavit must state the police officer's belief, and grounds for the belief, that the defendant committed the offence.

'**(2D)** If specified property of a person, whether the defendant or someone else, is the subject of the application, the affidavit must—

(a) state details of the property; and

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

'**(2E)** If the defendant's property is the subject of the application, the affidavit must state the police officer's belief, and grounds for the belief—

(a) that the property is tainted property in relation to the offence; or

(b) that the defendant derived a benefit from the commission of the offence.

'**(2F)** If specified property of someone else is the subject of the application, the affidavit must state the police officer's belief, and grounds for the belief—

(a) that the property is tainted property in relation to the offence; or

(b) that—

(i) the property is under the defendant's effective control; and

(ii) if the offence is not a serious drug offence—the defendant derived a benefit from the commission of the offence.'.

(2) Section 17(3) and (5), 'Supreme Court'—

omit, insert—

'court'.

(3) Section 17(8) and (9)—

omit, insert—

'**(8)** If the court is satisfied on an application that—

(a) the defendant must be treated as having been convicted of a serious offence stated in an affidavit required by subsection (2B); or

(b) there are reasonable grounds for holding the beliefs stated in an affidavit required by subsections (2C) to (2F);

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

(c) an order directing that specified property must not be disposed of or otherwise dealt with;

(d) an order directing that specified property be disposed of, or otherwise dealt with only in a specified way or circumstance;

(e) an order directing the Public Trustee to take control of specified property;

(f) an order directing the applicant to notify the Public Trustee of the order.

‘**(8A)** If the serious offence is a serious drug offence, the Supreme Court must, subject to subsections (2B) to (2F) and (12), make the order or orders mentioned in subsection (8) unless the Supreme Court is satisfied that it is not in the public interest to make the order or orders.

‘**(9)** If an application is made under subsection (2) to the Supreme Court in reliance on the proposed charging of the defendant with a serious offence, the Supreme Court may make a restraining order only if the Supreme Court is satisfied that the defendant will be charged with the serious offence, or a related indictable offence, within 48 hours.’.

(4) Section 17(10), ‘Supreme Court’—

omit, insert—

‘court’.

(5) Section 17(11)—

omit, insert—

‘**(11)** The court may make provision of a type mentioned in subsection (10) only if it is satisfied that—

(a) the defendant cannot meet the expenses or debt concerned out of property not subject to a restraining order; and

(b) the property, or a specified part of the property, was not derived by anyone from the commission of the offence in reliance on which the application under subsection (2) is made.’.

(6) Section 17(12), ‘Supreme Court’—

omit, insert—

'court'.

Insertion of new s 17A

15. After section 17—

insert—

'**Limitation on power of Magistrates Court**

'**17A.(1)** A Magistrates Court may make a restraining order in connection with a charge or conviction for an offence only if it is satisfied that the value of the property subject to the order (together with the value of all other property subject to other undischarged restraining orders made by the court in connection with the charge or conviction) is not more than the monetary jurisdiction of Magistrates Courts specified in section 4(a) of the *Magistrates Courts Act 1921.*

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

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

'**(4)** In this section—

"Magistrates Court" includes the Childrens Court constituted by a Magistrate.'.

Insertion of new ss 18A and 18B

16. After section 18—

insert—

'**Supreme Court may order that property be excluded from restraining order (Cwlth s 48(3))**

'**18A.(1)** This section applies if a court makes a restraining order against property in reliance on the conviction, charging or proposed charging of a person (the **"defendant"**).

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

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

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

(a) the interest is not tainted property in relation to the offence; and

(b) a pecuniary penalty order cannot be made against the defendant.

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

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

(a) the interest is not tainted property in relation to the offence; and

(b) if the restraining order was made because of an affidavit mentioned in section 17(2F)(b)—

(i) the pecuniary penalty order cannot be made against the defendant; or

(ii) the applicant's interest in the property is not under the defendant's effective control.

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

(a) if the restraining order was made because of an affidavit mentioned in section 17(2F) and the court is satisfied—

(i) the applicant was not in any way involved in the commission of the offence; and

(ii) the property is not tainted property in relation to the offence; and

(iii) the applicant's interest in the property is not under the defendant's effective control; or

(b) in another case—the court is satisfied—

(i) the applicant was not, in any way, involved in the commission of the offence; and

(ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest—

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

(B) without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property in relation to the offence.

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

(a) a financial hardship or other result of the interest remaining subject to the order; and

(b) the seriousness of the offence; and

(c) the likelihood that the interest will be—

(i) subject to a forfeiture order; or

(ii) subject to section 8B; or

(iii) required to satisfy a pecuniary penalty order.

'Supreme Court may declare that restrained property be disregarded for purposes of s 8B (Cwlth s 48(4))

'**18B.(1)** This section applies if—

(a) a person (the **"defendant"**) has been convicted of, or has been charged or is about to be charged with, a serious drug offence; and

(b) a court makes a restraining order against property in reliance on the conviction, charging or proposed charging; and

(c) the defendant has an interest in the property.

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

‘**(3)** If the Supreme Court is satisfied that—

(a) the property was not used in, or in connection with, any unlawful activity and was not derived by a person from unlawful activity; and

(b) the defendant’s interest in the property was lawfully acquired;

the Supreme Court may, by order, declare that the restraining order, to the extent to which it relates to the property, must be disregarded for the purposes of section 8B.’.

Amendment of s 19 (Further orders)

17.(1) Section 19(1)—

omit, insert—

‘**(1)** In this section—

“court” means a court that may make an order under subsection (1A) or (1B).

‘**(1A)** On application, a court, when it makes a restraining order or at a later time, may make orders it considers just about the property to which the order relates or the operation of the order.

‘**(1B)** On application or on its own initiative, the Supreme Court may make, or authorise another court to make—

(a) an order setting aside the restraining order; or

(b) orders about the property to which the restraining order relates; or

(c) orders about the operation of the restraining order.’.

(2) Section 19(2), from ‘An order’ to ‘application of—’—

omit, insert—

‘An application for an order may be made by—’.

(3) Section 19(2)(e), ‘Supreme Court’—

omit, insert—

'court'.

(4) Section 19(3), 'under subsection (1)'—

omit.

(5) Section 19(4), from 'Without limiting' to 'may make'—

omit, insert—

'Without limiting subsection (1A), a court may make'.

(6) Section 19(4)(c), 'Supreme Court'—

omit, insert—

'court'.

(7) Section 19(5), 'the Supreme Court'—

omit, insert—

'a court'.

(8) Section 19(5), 'under subsection (1)'—

omit.

(9) Section 19(6), 'the Supreme Court'—

omit, insert—

'a court'.

(10) Section 19(6), 'under subsection (1)'—

omit.

(11) Section 19(7)—

omit.

(12) Section 19(8), 'under subsection (1)'—

omit.

(13) Section 19(8)(d), 'Supreme Court'—

omit, insert—

'court'.

Amendment of s 21 (Contravention of restraining order)

18. Section 21, penalty—

omit, insert—

'Maximum penalty—350 penalty units or imprisonment for 7 years.'.

Replacement of s 22 (Charge on property subject to restraining order)

19. Section 22—

omit, insert—

'**Charge on property subject to restraining order (Cwlth s 50)**

'**22.(1)** If, for a serious offence—

(a) a pecuniary penalty order is, or has been, made against a person (the **"defendant"**); and

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

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

'**(2)** The charge ceases to have effect if—

(a) the pecuniary penalty order is discharged; or

(b) the pecuniary penalty is paid; or

(c) the property is disposed of under an order under section 24; or

(d) the property is disposed of—

(i) with the Supreme Court's consent; or

(ii) if the Public Trustee has been directed to take control of and manage the property—the Public Trustee's consent; or

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

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

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

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

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

Amendment of s 24 (Liability under forfeiture order or pecuniary penalty order to be satisfied by Public Trustee)

20.(1) Section 24, heading—

omit, insert—

‘**Liability under forfeiture or pecuniary penalty order or forfeiture under s 8B to be satisfied by Public Trustee**’.

(2) Section 24(1)(b)—

omit, insert—

‘(b) a forfeiture or pecuniary penalty order is made, or property is forfeited under section 8B, because of the conviction of the person of the offence for which the restraining order was made;’.

(3) Section 24(2)(a), after ‘forfeiture order’—

insert—

‘or a forfeiture under section 8B—’.

(4) Section 24(3)—

omit.

(5) Section 24(7), ‘, the liability of that person under the order’—

omit, insert—

‘or a forfeiture under section 8B, the liability of the person under the order or for the property forfeited under section 8B’.

Amendment of s 27 (Production orders)

21.(1) Section 27(2)(a), ‘, directly or indirectly,’—

omit.

(2) Section 27(14)—

omit.

Amendment of s 29 (Failure to comply with production order)

22. Section 29, penalty—

omit, insert—

‘Maximum penalty—350 penalty units or imprisonment for 7 years.’.

Amendment of s 31 (Search warrant for location etc. of certain documents and property)

23. Section 31(2)(a), ‘, directly or indirectly,’—

omit.

Amendment of s 33 (Application for warrant)

24. Section 33(6), ‘as the result’—

omit, insert—

‘because’.

Amendment of s 46 (Existence and operation of monitoring order not to be disclosed)

25. Section 46(5), penalty—

omit, insert—

‘Maximum penalty—350 penalty units or imprisonment for 7 years.’.

Replacement of s 53 (Effect of registration)

26. Section 53—

omit, insert—

‘**Effect of registration**

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

- section 9(4) (Effect of forfeiture order under s 8 or 8B)
- section 10 (Third party protection from forfeiture order)
- section 10A (Third party protection from forfeiture under section 8B)
- section 11 (Discharge of forfeiture order)
- section 11A (Person with interest in forfeited property may buy back the interest)
- section 11B (Buying out other interests under court order)
- section 12 (Effect of quashing of conviction or discharge of forfeiture order)
- section 69 (Appeals).

‘**(2)** A registered interstate restraining order is taken to be a restraining order made under section 17 for the purposes of this Act other than—

- section 18 (Notice of restraining order to be given to persons affected)
- section 19 (Further orders)
- section 20 (Duration of restraining order)
- section 22 (Charge on property subject to restraining order)
- section 24 (Liability under forfeiture order or pecuniary penalty order to be satisfied by Public Trustee).’.

Amendment of s 58 (Interstate orders and search warrants)

27. Section 58(5)(b)—

omit, insert—

‘(b) was derived by anyone from the commission of an interstate serious offence.’.

Replacement of s 59 (Application for special forfeiture order)

28. Section 59—

omit, insert—

‘**Application for special forfeiture order**

‘**59.** If a person (the **“defendant”**) has been convicted of a serious offence, an appropriate officer may apply to the Supreme Court, at any time, for an order under section 60.’.

Amendment of s 60 (Special forfeiture order)

29. Section 60(1)—

omit, insert—

‘**60.(1)** On application under section 59, the Supreme Court may make an order that the defendant forfeit to the State an amount equal to all or part of the benefits derived, or to be derived, by the defendant, or by someone else for the defendant, from a contract about—

(a) a depiction of the serious offence or alleged serious offence in a movie, book, newspaper, magazine, radio, or television production, or live or recorded entertainment of any kind; or

(b) an expression of the defendant’s thoughts, opinions or emotions about the serious offence or alleged serious offence.

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

Amendment of s 61 (Assessment of proceeds)

30.(1) Section 61, heading—

omit, insert—

‘**Assessment of benefits**’.

(2) Section 61(1), ‘a defendant’—

omit, insert—

‘the defendant’.

(3) Section 61(1), ‘proceeds’—

omit, insert—

‘benefits’.

(4) Section 61(2), ‘proceeds or’—

omit.

(5) Section 61(3) and (4), ‘proceeds’—

omit, insert—

‘benefits’.

Replacement of ss 64 and 65

31. Sections 64 and 65—

omit, insert—

‘**Money laundering (Cwlth s 81)**

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

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

‘**(2)** A person engages in money laundering if—

(a) the person—

(i) engages, directly or indirectly, in a transaction involving money or other property that is tainted property; or

(ii) receives, possesses, disposes of or brings into Queensland money or other property that is tainted property; or

(iii) conceals or disguises the source, existence, nature, location, ownership or control of the tainted property; and

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

‘Charging of money laundering

‘**64A.(1)** This section applies to a proceeding against a person for money laundering, including a committal proceeding.

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

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

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

(a) an act, or 2 or more acts committed at the same time or different times; or

(b) tainted property relating to an offence, or 2 or more offences committed by the same person or different persons.

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

‘Possession etc. of property suspected of being tainted property (Cwlth s 82)

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

Maximum penalty—100 penalty units or imprisonment for 2 years.

‘**(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.’.

Replacement of s 67 (Standard of proof)

32. Section 67—

omit, insert—

‘**Proceeding on application for order not criminal proceeding etc.**

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

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

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

Amendment of s 69 (Appeals)

33.(1) Section 69(1), ‘Supreme Court sitting as the Full Court’—

omit, insert—

‘Court of Appeal’.

(2) Section 69(2)—

omit.

Replacement of s 71 (Sentencing court not to have regard to forfeiture of property or pecuniary penalty)

34. Section 71—

omit, insert—

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

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

(a) the defendant’s property is, or may become, the subject of a forfeiture order or a forfeiture under section 8B; or

(b) the defendant has been or may be ordered to pay a pecuniary penalty or to forfeit an amount to the State under section 60.’.

Insertion of new s 72A

35. After section 72—

insert—

‘**Sham transactions etc.**

‘**72A.(1)** The Supreme Court may declare that the whole, or a part, of a transaction to dispose of, or otherwise deal with, property is void if it is satisfied that a person entered into or carried out, or arranged for the transaction to be entered into or carried out, for all or any of the following purposes, or purposes that include all or any of the following purposes—

(a) to defeat the objects of this Act;

(b) to avoid or change the application of this Act to all or some of the property or other property;

(c) to avoid or change the application of this Act in any respect to the person or someone else.

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

(a) the person acquired the interest in property—

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

(ii) not for all or any of the purposes mentioned in subsection (1)(a) to (c) or purposes that include all or any of the purposes; and

(b) the person was not a party to the commission of a serious offence that is relied on in an application made under this Act.

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

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

(a) the person mentioned in subsection (1); and

(b) anyone else the authorised person has reason to believe has an interest in the property disposed of or otherwise dealt with under the transaction.

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

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

Amendment of s 73 (Pecuniary penalty, restraining and special forfeiture order to be registered)

36. Section 73(1), ‘, Registrar of Dealings’—

omit.

Insertion of new s 76A

37. After section 76—

insert—

‘**Registration fees**

‘**76A.(1)** In this section—

“register” means a register kept at a registry.

“registry” means—

(a) the land registry; or

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

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

(a) lodging in a registry any order or instrument under this Act or any instrument lodged to transfer property to the State under this Act; or

(b) anything else for which registry fees are fixed.

Example of paragraph (b)—

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

Replacement of s 79 (Regulations)

38. Section 79—

omit, insert—

‘**Regulations**

‘**79.** The Governor in Council may make regulations under this Act.

‘**Numbering and renumbering of Act**

‘**80.** In the first reprint of the Act produced under the *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions) of that Act must be used.’.

Insertion of new Schedules

39. After section 79—

insert—

‘SCHEDULE 1

‘EXAMPLES

section 3A

‘PART 1—EXAMPLES OF SECTION 3I (MEANING OF “TAINTED PROPERTY”)

‘**Example 1**

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

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

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

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

‘**(5)** Lot 1 is tainted property under section 3I(1)(a).

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

‘**(7)** Lot 2 is also tainted property under section 3I(1)(a).

‘Example 2

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

(a) supplying a dangerous drug; and

(b) carrying on the business of unlawfully trafficking in a dangerous drug.

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

‘**(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 subclause (1).

‘**(4)** The motor vehicle is tainted property under section 3I(1)(a).

‘Example 3

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

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

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

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

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

‘**(6)** The race horse is tainted property under section 3I(1)(a) or (c).

‘**(7)** If the land is sold by A for $1 000 000, $800 000 is tainted property under section 3I(1)(c).

‘Example 4

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

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

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

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

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

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

‘**(7)** The motor vehicle kept in A’s possession is derived from property used in, or in connection with, the commission of the serious offence and is tainted property under section 3I(1)(b).

‘**(8)** The vehicle is also derived directly from the commission of the serious offence and is tainted property under section 3I(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 serious offence and is tainted property under section 3I(1)(b).

‘**(10)** The $30 000 (and interest) is also derived from the commission of the serious offence and is tainted property under section 3I(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 serious offence and is tainted property under section 3I(1)(c).

‘Example 5

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

‘**(2)** A used A’s warehouse to produce the dangerous drug.

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

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

‘**(5)** The house is tainted property under section 3I(1)(b).

‘Example 6

‘**6.(1)** A is convicted of the serious 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 serious offence.

‘**(5)** The property is tainted property under section 3I(1)(c).

‘PART 2—EXAMPLES OF SECTION 14 (ASSESSMENT OF BENEFITS)

‘Example 1

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

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

‘**(3)** B gave the money to A.

‘**(4)** A paid B a total of $1 000.

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

‘**(6)** A is—

(a) the supplier of the dangerous drug; and

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

‘**(7)** Under section 14(2)(a) and (b) and (8), the benefit derived by A is $10 000.

‘**(8)** Under section 14(2)(a), the benefit derived by B is $1 000.

‘Example 2

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

‘**(2)** In the 5 years, A—

(a) received a total of $1 000 000 from punters placing bets; and

(b) paid a total of $400 000 to winning punters.

‘**(3)** Under section 14(2)(a) and (8), the benefit derived by A is $1 000 000.

‘Example 3

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

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

(a) to lead a flamboyant lifestyle costing, on average, $60 000 for each year; and

(b) to pay off a mortgage on the mansion A lives in and a block of income producing home units.

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

‘**(4)** A—

(a) had no assets at the start of the 5 years; and

(b) cannot show a source of property gained in the 5 years other than income from the units, which produced an annual net income of $20 000.

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

‘**(6)** Under section 14(2), (4) and (6)—

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

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

‘Example 4

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

‘**(2)** A carried on the business by—

(a) taking all bets on credit; and

(b) paying all winning bets and receiving all losing bets at the end of each week.

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

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

‘**(5)** Under section 14(2)(a), the benefit derived by A is $600 000.

‘Example 5

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

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

‘**(3)** Each marijuana plant, on average, yielded $^1/_2$ kg of saleable material.

‘**(4)** The market value of the marijuana in the form sold was $2 500 for $^1/_2$ kg.

‘**(5)** Under section 14(2)(c)(i), the benefit derived by A was $2 500 000.

‘**Example 6**

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

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

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

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

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

‘**(6)** Under section 14(2)(a)(i) and (8), the benefit derived by A is—

(a) the banked $30 000 and its accrued interest; and

(b) the value of the motor vehicle still in A’s possession.

‘SCHEDULE 2

‘SERIOUS OFFENCES

section 3

1. *Drugs Misuse Act 1986*, section 10A

2. *Fauna Conservation Act 1974*

3. *Fishing Industry Organisation and Marketing Act 1982*

4. *Liquor Act 1992*, Part 6 (Obligatory Provisions and Offences), Division 3 (Provisions concerning sale of liquor by unlicensed persons or on unlicensed premises)

5. *National Parks and Wildlife Act 1975*

6. *Native Plants Protection Act 1930*

7. *Nature Conservation Act 1992*

8. *Poisons Regulation 1973*, section D1 or H1

9. *Weapons Act 1990*’.