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Robyn Webb
Chief Parliamentary Counsel
Dated 18 March 2019



TASMANIA

CRIME (CONFISCATION OF PROFITS) ACT 1993

No. 20 of 1993

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CRIME (CONFISCATION OF PROFITS) ACT 1993

No. 20 of 1993

An Act to provide for the confiscation of the proceeds of crime and the forfeiture of property in certain circumstances, for the reciprocal enforcement of certain Australian legislation relating to the confiscation of the proceeds of crime and the forfeiture of property and for related purposes

[Royal Assent 3 June 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Crime (Confiscation of Profits) Act 1993*.

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2. Commencement

This Act commences on a day to be proclaimed.

3. Act to bind Crown

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) Nothing in this Act renders the Crown, in any of its capacities, liable to be prosecuted for an offence.

4. Interpretation

- (1) In this Act, unless the contrary intention appears

—

account means a facility or arrangement through which a financial institution accepts deposits or allows withdrawals, including a facility or arrangement for —

(a) a fixed term deposit; or

(b) a safety deposit box;

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

authorized officer means —

- (a) in any case — the DPP or an Australian legal practitioner, acting on behalf of the DPP; or

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- (b) in relation to a function exercised before or in relation to a court of summary jurisdiction – the Commissioner or a police officer;

benefit includes service or advantage;

commencement day means the day proclaimed under section 2;

commercial benefit – see section 4B;

commercial exploitation includes exploitation by any of the following means:

- (a) publishing any material in written or electronic form;
- (b) the use of media from which visual images, words or sounds can be produced;
- (c) any live entertainment, representation or interview;

Commissioner means the Commissioner of Police;

confiscation order means a forfeiture order or a pecuniary penalty order;

corresponding law means a law of another State that is declared by the regulations to be a law that corresponds to this Act;

court of summary jurisdiction means a court constituted by a magistrate;

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Crime (Confiscation of Profits) Account
means the account of that name
established under section 79;

director, in relation to a financial institution or
corporation, includes –

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

DPP means the person for the time being
holding, or acting in, the office of the
Director of Public Prosecutions
established by section 3(1) of the
Director of Public Prosecutions Act
1973;

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encumbrance, in relation to property, includes an interest or a mortgage, charge, right, claim or demand in respect of the property;

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

facsimile copy means a copy obtained by facsimile transmission;

financial institution means –

- (a) the Reserve Bank of Australia; or
- (b) an authorised deposit-taking institution; or
- (d) a body corporate that is, or had it been incorporated in Australia would be, a financial corporation within the meaning of section 51 (xx) of the Constitution of the Commonwealth;

fixed term deposit means an interest bearing deposit lodged for a fixed period;

forfeiture order means an order under section 16(1);

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instrument of crime means property that is used in the commission of, in connection with, or to facilitate the commission of, a serious offence;

interest, in relation to property, means –

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege over, or in connection with, the property –

whether present or future and whether vested or contingent;

interstate forfeiture order means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

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

interstate restraining order means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

interstate serious offence means an offence against a law of another State in relation to which an interstate forfeiture order or interstate pecuniary penalty order may be

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made under a corresponding law of that State;

land has the same meaning as in the *Land Titles Act 1980*;

literary proceeds – see section 4C;

oath means oath or affirmation;

offence means an offence against a law of Tasmania;

officer means a director, secretary, executive officer or employee;

pecuniary penalty order means an order under section 21(1);

penalty amount means –

- (a) in relation to a forfeiture order made against a person – the amount specified in relation to the forfeiture order under section 16(4); or
- (b) in relation to a pecuniary penalty order made against a person – the amount that the person is, under the pecuniary penalty order, liable to pay to the State;

premises includes –

- (a) land, whether or not covered by buildings; and

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(b) any structure, whether or not attached to land; and

(c) a means of transport;

proceeds, in relation to an offence, means property that is derived or realized, directly or indirectly, by any person from the commission of the offence;

proceeds of crime means proceeds of a serious offence;

production order means an order under section 49(5);

property means real or personal property of every description, wherever situated and whether tangible or intangible, including an interest in such property;

property-tracking document – see section 4A;

Public Trustee means The Public Trustee;

regulations means regulations made and in force under this Act;

relevant application period, in relation to a person's conviction of a serious offence, means –

(a) in the case of a person who is taken to have been convicted of the offence by reason of section 5(1)(a) – the period of 6 months immediately following the day on

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which the person was convicted
of the offence; or

- (b) in the case of a person who is taken to have been convicted of the offence by reason of section 5(1)(b) – the period of 6 months immediately following the day on which the person was discharged without conviction; or
- (c) in the case of a person who is taken to have been convicted of the offence by reason of section 5(1)(c) – the period of 6 months immediately following the day on which the court took the offence into account in passing sentence for the other offence referred to in that section; or
- (d) in the case of a person who is taken to have been convicted of the offence by reason of section 5(1)(d) – the period of 6 months immediately following the day on which the person is to be taken to have absconded in connection with the offence;

restraining order means an order under section 26(2);

serious offence means –

- (a) an offence against a law of Tasmania which may be dealt

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with as an indictable offence even though it may, in some circumstances, be dealt with summarily; or

- (b) an offence against a law of another State, a Territory, the Commonwealth or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had been committed in Tasmania;

State –

- (a) when used other than in a geographical sense – means the Crown in right of Tasmania; and
- (b) when used in a geographical sense – includes the Australian Capital Territory and the Northern Territory;

tainted property, in relation to an offence, means –

- (a) an instrument of crime; or
- (b) proceeds of the offence; or
- (c) property that constitutes a commercial benefit in relation to the offence –

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and when used without reference to a particular offence means tainted property in relation to a serious offence;

telephone includes radio;

unexplained wealth – see section 139;

unexplained wealth declaration means a declaration under section 142;

unlawful activity means an act or omission that constitutes an offence against a law of –

- (a) Tasmania; or
- (b) another State; or
- (c) the Commonwealth;

wealth – see section 138.

- (2) For the purposes of this Act, a person is taken to have been charged with an offence if a complaint has been made against the person for the offence, whether or not –
 - (a) a summons to require the attendance of the person to answer the complaint has been issued; or
 - (b) a warrant for the apprehension of the person has been issued.
- (3) A reference in this Act to a benefit derived by a person includes a reference to –

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- (a) a benefit derived directly or indirectly by that person; and
 - (b) a benefit derived directly or indirectly by another person at the request or direction of that person.
- (4) A reference in this Act to acquiring property, or an interest in property, for sufficient consideration is a reference to acquiring the property or the interest for a consideration that is sufficient and, having regard solely to commercial considerations, reflects the value of the property or the interest.
- (5) For the purposes of this Act, a person is not taken to be a director within the meaning of paragraph (c) of the definition of *director* in subsection (1) by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the directors of the financial institution or corporation.

4A. Meaning of *property-tracking document*

For the purposes of this Act, a ***property-tracking document*** is a document relevant to –

- (a) identifying, locating or quantifying the property of a person who committed an offence; or

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- (b) identifying or locating a document relating to the transfer of the property of a person who committed an offence; or
- (c) identifying, locating or quantifying tainted property in relation to an offence; or
- (d) identifying or locating a document relating to the transfer of tainted property in relation to an offence; or
- (e) identifying, locating or quantifying the constituents of commercial benefits derived by a person in respect of an offence; or
- (f) identifying or locating a document relating to the transfer of the constituents of commercial benefits derived by a person in respect of an offence; or
- (g) identifying, locating or quantifying the constituents of a person's wealth; or
- (h) identifying or locating a document relating to the transfer of the constituents of a person's wealth; or
- (i) identifying or locating a document relating to the transfer of property that may be used to satisfy an unexplained wealth declaration or a proposed unexplained wealth declaration.

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4B. Meaning of *commercial benefit*

For the purposes of this Act, *commercial benefits* include –

- (a) benefits obtained from the publication or prospective publication of material in relation to the commission of an offence; and
- (b) benefits obtained from the commercial exploitation in any other way of notoriety gained by any person from the commission of an offence; and
- (c) literary proceeds within the meaning of section 4C.

4C. Meaning of *literary proceeds*

- (1) For the purposes of this Act, *literary proceeds* are any benefits that a person derives from the commercial exploitation of –
 - (a) the notoriety of the person as a result, either directly or indirectly, of the person committing an offence; or
 - (b) the notoriety of the person as a result of his or her involvement, whether directly or indirectly, in the commission of an offence by another person.
- (2) In determining whether or not a person has derived literary proceeds, or determining the value of literary proceeds that a person has derived, an appropriate court may treat as the

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property of the person any property that, in the court's opinion –

- (a) is subject to the person's effective control; or
- (b) was not received by the person, but was transferred or paid to another person –
 - (i) at the direction of the first-mentioned person; or
 - (ii) as a result of a transaction involving the first-mentioned person; or
 - (iii) as payment for an act or omission of the first-mentioned person.

5. Meaning of “convicted”, &c.

- (1) For the purposes of this Act, a person is taken to have been convicted of an offence if –
 - (a) the person has been charged with and found guilty and convicted of the offence; or
 - (b) the person has been charged with and found guilty of the offence but the court hearing the charge has not proceeded to conviction; or
 - (c) the offence has been taken into account by a court in sentencing the person for another offence; or

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- (d) the person has absconded in connection with the offence.
- (2) For the purposes of this Act, a person's conviction is taken to have been quashed if –
 - (a) in the case of a person who is taken to have been convicted of the offence by reason of subsection (1)(a) – the conviction has been quashed or set aside; or
 - (b) in the case of a person who is taken to have been convicted of the offence by reason of subsection (1)(b) – the finding of guilt has been quashed or set aside; or
 - (c) in the case of a person who is taken to have been convicted of the offence by reason of subsection (1)(c) – either of the following events has occurred:
 - (i) the person's conviction of the other offence referred to in that subsection has been quashed or set aside;
 - (ii) the decision of the court to take the offence into account in passing sentence for that other offence has been quashed or set aside; or
 - (d) in the case of a person who is taken to have been convicted of the offence by reason of subsection (1)(d) – the person, after being brought before a court in

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respect of the offence, has been discharged in respect of the offence or a conviction of the person for the offence has been quashed or set aside.

- (3) A reference in this Act in relation to a person's conviction of an offence to the commission of the offence is, if the person is taken to have been convicted of the offence by reason of subsection (1)(d), to be taken to be reference to the alleged commission of the offence by that person.

5A. Person may be dealt with as if convicted in certain circumstances

For the purposes of this Act, an authorized officer or appropriate court may deal with a person under this Act as if the person has been convicted of a serious offence if the person –

- (a) has been convicted of an offence in respect of the same events that were the basis of another person being convicted of a serious offence; and
- (b) derived literary proceeds in respect of either offence.

6. Meaning of “absconded”

For the purposes of this Act, a person is taken to have absconded if and only if –

- (a) the person has been charged with a serious offence; and

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- (b) a warrant for the arrest of the person has been issued in relation to the offence; and
- (c) reasonable attempts to locate the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued –

and the person is taken to have so absconded on the last day of that period of 6 months.

7. Meaning of “dealing with property or proceeds”

For the purposes of this Act, dealing with the property of a person or the proceeds of crime includes –

- (a) receiving, possessing or disposing of the property or proceeds; and
- (b) bringing the property or proceeds, or causing the property or proceeds to be brought, into Tasmania, or removing the property or proceeds from Tasmania including transferring the property or proceeds, or causing the property or proceeds to be transferred, by electronic communication; and
- (c) engaging, directly or indirectly, in a transaction involving the property or proceeds, including receiving or making a gift of the property or proceeds; and

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- (d) if a debt is owed by the person, making a payment of the property or proceeds in reduction of the amount of the debt.

8. Effective control of property

- (1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act, other than Part 9, whether or not the person has—
 - (a) a legal or equitable estate or interest in the property; or
 - (b) a right, power or privilege in connection with the property.
- (2) Without limiting the generality of any other provision of this Act, in determining –
 - (a) whether or not any property, or any interest in any property, is subject to the effective control of a person; or
 - (b) whether or not there are reasonable grounds to believe that any property, or any interest in any property, is subject to the effective control of a person –

regard may be had to –

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

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

9. Meaning of “appropriate court”

For the purposes of this Act, a reference to an appropriate court is a reference to –

- (a) in any case – the Supreme Court; or
- (b) in relation to the conviction of a person by a court of summary jurisdiction – either that court or the Supreme Court.

10. Application of provisions of Act

- (1) Parts 2, 3 and 4 of this Act do not apply to a person’s conviction of an offence if the person was convicted of the offence before the commencement day.
- (2) Subsection (1) does not apply in relation to interstate forfeiture orders, interstate pecuniary penalty orders or interstate restraining orders.
- (3) Subject to this section, this Act applies to –
 - (a) an offence committed, or believed to have been committed, at any time

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(whether before or after the commencement day); and

- (b) a person's conviction at any time of an offence (whether before or after the commencement day).

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Division 1 – Applications for confiscation orders

11. Applications

- (1) If a person is convicted of a serious offence, an authorized officer may apply to an appropriate court for either or both of the following orders:
 - (a) a forfeiture order against property that is tainted property in respect of the offence;
 - (b) a pecuniary penalty order against the person in respect of benefits, including any commercial benefits, derived by the person from the commission of the offence.
- (2) Except as provided by subsection (3), an application under subsection (1) is to be made before the end of the relevant application period in relation to the conviction.
- (3) An application under subsection (1) may be made at any time after the end of the relevant application period in relation to the conviction if the application relates exclusively to commercial benefits.
- (4) An application under subsection (1)(b) may be made in relation to one or more serious offences.
- (5) If an application under subsection (1) has been finally determined, no further application is to be made under that subsection in relation to the

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same conviction except with the leave of the Supreme Court.

- (6) The Supreme Court is not to grant leave under subsection (5) unless it is satisfied that –
- (a) the tainted property or the benefit to which the further application relates was identified only after the first application was finally determined; or
 - (b) necessary evidence became available only after the first application was finally determined; or
 - (c) it is otherwise in the interests of justice to grant the leave.

12. Notice of applications

- (1) If an authorized officer applies for a forfeiture order against property in respect of a person's conviction of an offence –
- (a) the authorized officer is to give written notice of the application to that person and to any person who the authorized officer has reason to believe may have an interest in the property; and
 - (b) the person convicted of the offence and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and

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- (c) the court may, at any time before the final determination of the application, direct the authorized officer to give or publish notice of the application to a specified person or class of persons in such manner and within such time as the court considers appropriate.
- (2) If an authorized officer applies for a pecuniary penalty order against a person –
 - (a) the authorized officer is to give the person written notice of the application; and
 - (b) the person may appear and adduce evidence at the hearing of the application.

13. Amendment of applications

- (1) A court may, at any time before making a confiscation order, amend the application for the order at the request of, or with the consent of, the authorized officer who made the application.
- (2) A court is not to exercise the power referred to in subsection (1) so as to –
 - (a) include additional property in an application for a forfeiture order; or
 - (b) include an additional benefit in an application for a pecuniary penalty order–

unless the court is satisfied that –

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- (c) the property or benefit was not reasonably capable of being identified when the application was originally made; or
 - (d) necessary evidence became available only after the application was originally made.
 - (3) If the amendment of an application for a forfeiture order would have the effect of including additional property in the application for the forfeiture order –
 - (a) the applicant for the amendment is to give written notice of the application to amend to each person who the applicant has reason to believe may have an interest in the additional property; and
 - (b) a person so notified and any person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application to amend.
 - (4) If the amendment of an application for a pecuniary penalty order against a person would have the effect of including an additional benefit in the application for the pecuniary penalty order, the applicant for the amendment is to give the person written notice of the application to amend.

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14. Making of confiscation order if person absconded

If a person is taken to have been convicted of a serious offence by reason of section 5(1)(d), a court is not to make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied, on the balance of probabilities, that the person has absconded and –

- (a) the person has been committed for trial for the offence; or
- (b) the court is satisfied, having regard to all the evidence before it, that a reasonable and properly instructed jury could lawfully find the person guilty of the offence.

15. Procedure on applications

- (1) A court to which an application is made for a confiscation order in respect of a person's conviction of an offence may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.
- (2) If –
 - (a) an application is made for a confiscation order in respect of a person's conviction of an offence; and
 - (b) the application is made to the court before which the person was convicted; and

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- (c) the court has not passed sentence on the person for the offence –

the court may, if it is satisfied that it is reasonable to do so, defer passing sentence until it has determined the application for the confiscation order.

- (3) If –

- (a) a person is taken to have been convicted of an offence by reason of section 5(1)(c); and
- (b) an application is made to a court for a confiscation order in respect of the conviction –

the reference in subsection (1) to proceedings against the person for the offence is to be taken to include a reference to proceedings against the person for the other offence referred to in section 5(1)(c).

Division 2 – Forfeiture orders

16. Forfeiture orders

- (1) If a person has been convicted of a serious offence, and an application is made to a court under section 11(1)(a) in relation to particular property, the court may, if it is satisfied that the property is tainted property in relation to the offence, order that the property is forfeited to the State.

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- (2) In considering whether to make a forfeiture order a court is, having regard to the information before it, to consider –
 - (a) the use that is ordinarily made, or was intended to be made, of the property; and
 - (b) any hardship that is likely to be caused to any person by making the order.
- (3) In considering any hardship that is likely to be caused to a person convicted of a serious offence by the making of a forfeiture order, a court is not to take into account the sentence imposed for the offence.
- (4) If a court orders that property other than money is forfeited to the State under a forfeiture order, the court is to specify in the order the amount that it considers to be the value of the property at the time the order is made.
- (5) If, at the hearing of an application made under section 11(1)(a) in reliance on the conviction of a person of a serious offence, evidence is given that property to which the application relates was in the possession of the person at, or immediately after, the time the offence was committed, then –
 - (a) if there is no evidence given tending to show that the property was not used in, or in connection with, the commission of the offence – the court is to presume that the property was used in, or in connection with, the commission of the offence; or

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- (b) in any other case – the court is not to make an order under this section in relation to the property unless it is satisfied that the property was used in, or in connection with, the commission of the offence.
 - (6) A court that makes a forfeiture order in reliance on a person's conviction of a serious offence may declare in the order the extent of the person's estate, interest or rights in the property affected by the order and, if the order applies to land, the court must do so.

17. Effect of forfeiture orders

- (1) If a court makes a forfeiture order in respect of property –
 - (a) the property vests in the State; and
 - (b) if the property is land under the *Land Titles Act 1980* – the State is entitled to be registered as the owner of the land; and
 - (c) the property vests subject to every charge or encumbrance to which the property was subject immediately before the forfeiture order was made and, in the case of land under the *Land Titles Act 1980*, subject to every mortgage, lease or other interest recorded in the register kept under that Act; and

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- (d) the Attorney-General has power, on behalf of the State, to do or authorize the doing of anything necessary or convenient to obtain the registration of the State as owner of the property; and
 - (e) if the property is not already in the possession of the State – the State may take possession of the property; and
 - (f) if the property is money – the State is entitled to pay the money into the Crime (Confiscation of Profits) Account in accordance with section 79.
- (2) Except with the leave of the court that made the forfeiture order, the State is not to –
 - (a) dispose of, or otherwise deal with, property that has vested in the State under the order; or
 - (b) authorize any person to dispose of, or otherwise deal with, such property –before the end of the greater of the following periods:
 - (c) the appeal period;
 - (d) the period of 6 months immediately following the making of the order.
- (3) If a court makes a forfeiture order in respect of property and, at the end of the greater of the 2 periods referred to in subsection (2) the

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forfeiture order has not been discharged, the property may –

- (a) in the case of money – be paid into the Crime (Confiscation of Profits) Account in accordance with section 79 if it has not previously been paid into that account; and
 - (b) in the case of property other than money – be disposed of, or otherwise dealt with, in accordance with any directions of the Attorney-General or of a person authorized by the Attorney-General for the purposes of this subsection and any proceeds deposited in the Crime (Confiscation of Profits) Account.
- (4) For the purposes of subsections (2) and (3), the appeal period ends when an appeal may no longer be lodged against either the forfeiture order or the conviction in reliance on which the order was made or, if such an appeal is lodged, when the appeal lapses or is finally determined.

18. Provisions relating to third parties

- (1) If an application is made to a court for a forfeiture order against particular property, a person who claims an interest in the property may, subject to subsection (2), apply to that court for an order under subsection (5).
- (2) If a forfeiture order has been made, an application under subsection (1) is, subject to subsection (3), to be made within the period of 6

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months immediately following the making of the order.

- (3) A court that has made a forfeiture order may grant a person leave to apply under subsection (1) outside the 6 month period specified in subsection (2) if the court is satisfied that the failure to apply within that period was not due to any neglect or delay on the part of that person.
- (4) Without limiting the generality of subsection (3), a court may grant a person leave to apply under subsection (1) if the court is satisfied that –
 - (a) although the person had notice of the application for the forfeiture order, he or she was unable, for a good reason, to attend the hearing of the application; or
 - (b) evidence proposed to be adduced by the person in connection with the application under subsection (3) was not available to the person at the time of the hearing of the application for the forfeiture order.
- (5) If, on an application under subsection (1), a court is satisfied that the applicant –
 - (a) was not a party to the commission of the offence in reliance on which the forfeiture order is sought or was made; and
 - (b) acquired the interest in the property in good faith and for sufficient consideration; and

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(c) acquired the interest in the property –

(i) before the commission of the offence in reliance on which the forfeiture order was made; or

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property had become tainted property –

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

(6) A person who makes an application under subsection (1) is to give notice to the Attorney-General of the making of the application.

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

(8)

19. Discharge of forfeiture orders

(1) In this section –

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- (a) a reference to the return of property includes, without limiting the meaning of that expression, the return of land, or the return of an estate or interest in land, by a conveyance, transfer or other appropriate transaction; and
 - (b) a reference to a person who had possession of property includes a reference to a person who is entitled to the property.
- (2) A forfeiture order is discharged if –
 - (a) the conviction in reliance on which the order is made is subsequently quashed; or
 - (b) the order is discharged by the court that hears an appeal against it under section 72.
- (3) The payment to the State of the amount specified in a forfeiture order as the value of the property in respect of which the forfeiture order is made operates, except in so far as a court otherwise directs, to discharge the forfeiture order.
- (4) If a forfeiture order in respect of property is discharged, whether on an appeal against the making of the forfeiture order or as provided by this section, the person who had possession of the property before it was taken by or on behalf of the State may apply in writing to the Attorney-General for the return of the property.

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(5) On receipt of an application from a person for the return of property under subsection (4), the Attorney-General is –

- (a) if the property is still in the possession of the State – to arrange for the property to be returned to the person; or
- (b) in any other case – to pay the person the amount realized on disposal of the property by the State.

(6) If –

- (a) a person applies to the Attorney-General under subsection (4) for the return of property that is in the possession of the State; and
- (b) under section 18, an amount has been paid to another person in respect of that other person's interest in the property –

then, notwithstanding subsection (5), the Attorney-General is to inform the applicant that the property will be returned to the applicant on payment to the State of an amount equal to the amount paid as mentioned in paragraph (b) and, if that amount is paid to the State, the Attorney-General is to arrange for the property to be so returned.

(7) If –

- (a) a person applies to the Attorney-General under subsection (4) for the return of

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property that is not in the possession of the State; and

- (b) under section 18, an amount has been paid to another person in respect of that other person's interest in the property –

then, notwithstanding subsection (5), there is payable to the applicant the amount realized on disposal of the property by the State, reduced by an amount equal to the amount referred to in paragraph (b).

Division 3 – Pecuniary penalty orders

20. Application of Division

This Division applies to –

- (a) property that comes into the possession or under the control of a person, whether in Tasmania or elsewhere and whether before or after the commencement day; and
- (b) benefits, including commercial benefits, that are provided to a person, whether in Tasmania or elsewhere and whether before or after the commencement day.

21. Pecuniary penalty orders

- (1) If a person has been convicted of a serious offence and an application is made to a court under section 11(1)(b) for an order in respect of the offence, the court may –

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- (a) assess in accordance with section 22 the value of the benefits, including any commercial benefits, derived by the person from the commission of the offence; and
 - (b) order the person to pay to the State a pecuniary penalty equal to the value so assessed.

(2) If –

- (a) property that constitutes the proceeds of the serious offence referred to in subsection (1) has been forfeited under this Act or a law of another State or the Commonwealth; or
- (b) a forfeiture order is proposed to be made against property that constitutes the proceeds of that serious offence –

a pecuniary penalty to be paid in respect of that offence under this section is to be taken to be reduced by an amount equal to the value (as at the time of the making of the order) of the property forfeited, or to be forfeited.

(3) If –

- (a) a court makes a pecuniary penalty order in relation to an offence; and
- (b) in calculating the penalty amount, the court took into account a proposed forfeiture order in respect of property; and

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- (c) an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made –

an authorized officer may apply to the court for a variation of the pecuniary penalty order to increase the penalty amount by an amount equal to the value of the property that was to have been forfeited and the court may, if it considers it appropriate to do so, vary the pecuniary penalty order accordingly.

- (3A) The penalty amount payable under a pecuniary penalty order is to be paid within 28 days after the order is made unless the order specifies another time or period for payment.
- (4) An amount payable by a person to the State under a pecuniary penalty order made under this section is, for all purposes, taken to be a fine enforceable under the *Monetary Penalties Enforcement Act 2005*.
- (5) If the pecuniary penalty payable under a pecuniary penalty order has been deemed uncollectable in full or in part under section 109 of the *Monetary Penalties Enforcement Act 2005*, the amount so deemed uncollectable is taken to be a civil debt due by that person to the State and may be enforced as if it were an order made by the court in civil proceedings instituted by the State against that person to recover a debt due by that person to the State and the debt

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arising from the order is taken to be a judgment debt.

21A. Certain pecuniary penalty orders to be fines

Where a pecuniary penalty order was made before 1 June 2011 and has not been paid within 60 days after the commencement of section 28 of the *Justice and Related Legislation (Miscellaneous Amendments) Act 2013*, the order is to be taken to be a fine within the meaning of the *Monetary Penalties Enforcement Act 2005* and is enforceable as such.

22. Assessment of pecuniary penalties

(1) In this section –

controlled substance means a controlled substance within the meaning of the *Misuse of Drugs Act 2001*;

offence period, in relation to an application under section 11(1)(b) made in relation to 2 or more serious offences, means the period commencing when the earliest of those offences was committed and ending when the latest of those offences was committed.

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

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

- (a) the money, or the value of the property other than money, that came into the possession or under the control of –

- (i) the defendant; or

- (ii) another person at the request or direction of the defendant –

by reason of the commission of the offence or any of the offences;

- (b) the value of any other benefit provided to –

- (i) the defendant; or

- (ii) another person at the request or direction of the defendant –

by reason of the commission of the offence or any of the offences;

- (c) if the offence or any of the offences consisted of the doing of an act or thing in relation to a raw narcotic, narcotic substance, prohibited substance or prohibited plant –

- (i) the market value, as at the time of the offence, of similar or substantially similar narcotics, substances or plants; and

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- (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing;
 - (d) the value of the defendant's property –
 - (i) if the application relates to a single offence – before 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 defendant's income and expenditure –
 - (i) if the application relates to a single offence – before 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.
 - (3) If, at the hearing of an application for a pecuniary penalty order against a defendant in relation to a serious offence or serious offences, evidence is given that the value of the defendant's property –
 - (a) after the defendant committed the offence; or
 - (b) during and after the end of the offence period –

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exceeded the value of the defendant's property before the defendant committed the offence or before the commencement of the offence period then, for the purposes of section 21, the court is, subject to subsection (4), to treat the value of the benefits derived by the defendant from the commission of the offence or offences as being not less than the amount of the excess.

- (4) If evidence has been given at the hearing of an application for a pecuniary penalty order against a defendant in relation to a serious offence or serious offences that –
- (a) after the defendant committed the offence or offences, the value of the defendant's property exceeded the value of the defendant's property before the offence was, or the offences were, committed; or
 - (b) after the end of the offence period, the value of the defendant's property exceeded the value of the defendant's property before the commencement of the offence period –

but the defendant satisfies the court that the whole or part of the excess was due to causes unrelated to the commission of the offence or offences then –

- (c) if the defendant so satisfies the court in respect of the whole of the excess – subsection (3) does not apply to the excess; or

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- (d) if the defendant so satisfies the court in respect of a part of the excess – subsection (3) applies to the excess as if it were reduced by the amount of that part.
- (5) A benefit is not to be taken into account for the purposes of this section if a pecuniary penalty has been imposed in respect of the benefit under –
- (a) this Act; or
 - (b) another law of the State; or
 - (c) a law of another State; or
 - (d) the *Proceeds of Crime Act 1987* of the Commonwealth; or
 - (e) Division 3 of Part XIII of the *Customs Act 1901* of the Commonwealth.
- (6) In calculating, for the purposes of an application for a pecuniary penalty order, the value of benefits derived by a person from the commission of a serious offence or serious offences, any expenses or outgoings of the person in connection with the commission of the offence or offences are to be disregarded.
- (7) At the hearing of an application for a pecuniary penalty order, an inspector within the meaning of the *Poisons Act 1971* or a police officer who is experienced in the investigation of narcotics offences may give evidence –

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- (a) with respect to the amount that, to the best of his or her information, knowledge and belief, was the market value of a controlled substance at a particular time or during a particular period; and
 - (b) with respect to the amount, or the range of amounts, that, to the best of his or her information, knowledge and belief, was the amount, or range of amounts, ordinarily paid at a particular time or during a particular period for the doing of an act or thing in relation to a controlled substance.
- (8) Subsection (7) has effect notwithstanding any rule of law or practice relating to the admission of hearsay evidence.

23. Court may lift corporate veil, &c.

- (1) In assessing the value of commercial or other benefits derived by a person from the commission of an offence, a court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person.
- (2) On an application by an authorized officer a court may, if it is satisfied that particular property is subject to the effective control of a person against whom the court has made a pecuniary penalty order, make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

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- (3) If a court declares that property is available to satisfy a pecuniary penalty order –
- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
 - (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (4) If an authorized officer makes an application for an order under subsection (2) that property is available to satisfy a pecuniary penalty order made against a person –
- (a) the authorized officer is to give written notice of the application to the person and to each person who the officer has reason to believe may have an interest in the property; and
 - (b) the person and each person so notified, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.

24. Discharge of pecuniary penalty orders

- (1) A pecuniary penalty order is discharged if –

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- (a) the conviction in reliance on which the order was made is subsequently quashed; or
 - (b) the order is discharged by the court that hears an appeal against it under section 72.
- (2) If a pecuniary penalty order registered under the *Service and Execution of Process Act 1992* of the Commonwealth is discharged the Registrar or other proper officer of the Supreme Court is to give notice of the discharge of the order to the Registrar or other proper officer of the court in which the order was registered.

Division 4 – Re-hearings

25. Re-hearings

- (1) If –
 - (a) a forfeiture order or pecuniary penalty order has been made in respect of a person charged with a serious offence but before the charge was finally determined the person absconded; and
 - (b) after the making of the order the person surrenders to a police officer –

the person may apply to the court that made the order to have the order set aside.
- (2) An applicant under subsection (1) is to give notice of the application to the Attorney-General

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who may appear to oppose the grant of the application.

- (3) On an application under subsection (1) the court may set aside the order subject to such terms and conditions with respect to costs or otherwise as it thinks fit.
- (4) If the court sets aside an order it is to re-hear the application for the order and may confirm, revoke or vary the order.
- (5) If an order is revoked under subsection (4), the revocation does not prevent the making of another order in respect of the person under this Part.

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Part 3 – Restraining Orders

PART 3 – RESTRAINING ORDERS

26. Restraining orders

(1) If a person (in this section, and in sections 27 and 30, called “the defendant”) –

- (a) has been convicted of a serious offence;
or
- (b) has been, or is about to be, charged with a serious offence –

an authorized officer may apply to the Supreme Court for an order under subsection (2) against any one or more of the following:

- (c) specified property of the defendant;
 - (d) all the property of the defendant, including property acquired after the making of the order;
 - (e) all the property of the defendant, including property acquired after the making of the order, other than specified property;
 - (f) specified property of a person other than the defendant.
- (2) If an authorized officer applies to the Supreme Court for an order under this subsection against property, the court may, subject to section 27, by order –

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- (a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of or otherwise dealt with by any person except in such manner and in such circumstances, if any, as are specified in the order; and
 - (b) if the court is satisfied that the circumstances so require – direct the Public Trustee to take custody and control of the property, or of such part of the property as is specified in the order.
 - (3) A restraining order against a person's property may be made subject to such conditions as the Supreme Court thinks fit and, without limiting the generality of this, may make provision for meeting out of the property, or a specified part of the property, all or any of the following:
 - (a) the person's reasonable living expenses, including the reasonable living expenses of the person's dependants, if any, and reasonable business expenses;
 - (b) the person's reasonable expenses in defending a criminal charge;
 - (c) a specified debt incurred by the person in good faith, being a debt to which neither paragraph (a) nor (b) applies.
 - (4) The Supreme Court is not to make provision of a kind referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that

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has not been brought under the custody and control of the Public Trustee.

- (5) 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.

27. Grounds for making restraining orders

- (1) The Supreme Court is not to make a restraining order in respect of a defendant who has not been convicted of the offence to which the application for the order relates unless –
- (a) the application for the order is supported by an affidavit of a police officer stating that the police officer believes that the defendant committed the offence; and
 - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (2) The Supreme Court is not to make a restraining order in respect of a defendant who has not been charged with the offence to which the application for the order relates unless the court is satisfied that the defendant will be charged with the offence, or a related offence, within 48 hours.
- (3) For the purposes of subsection (2), offences are taken to be related to each other if the elements

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of the offences are substantially the same acts or omissions.

- (4) The Supreme Court is not to make a restraining order against the property of a defendant unless –
- (a) the application for the order is supported by an affidavit of a police officer stating that the police officer believes that –
 - (i) the property to which the application relates is tainted property in relation to the offence concerned; or
 - (ii) the defendant derived a benefit, directly or indirectly, from the commission of the offence concerned; and
 - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (5) The Supreme Court is not to make a restraining order against specified property of a person other than a defendant unless –
- (a) the application for the order is supported by an affidavit of a police officer stating that the police officer believes that –
 - (i) the property is tainted property in relation to the offence concerned; or

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- (ii) the property is subject to the effective control of the defendant and the defendant derived a benefit, directly or indirectly, from the commission of the offence concerned; and
 - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (6) The Supreme Court may make a restraining order in respect of property whether or not there is a risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.
 - (7) The Supreme Court may refuse to make a restraining order if the DPP on behalf of the State refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.
 - (8) For the purposes of an application under section 26, an authorized officer may, on behalf of the State, give to the Supreme Court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.
 - (9) An affidavit made by a police officer for the purposes of this section, stating that the police officer believes a particular matter, is to set out

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the grounds on which the police officer holds that belief.

28. Notice of applications for restraining orders

- (1) The Supreme Court may, at any time before the final determination of an application under section 26, direct the applicant to give or publish notice of the application to such persons, in such manner and within such time, as the court considers appropriate.
- (2) Any person whose property is the subject of the application, and any person who claims an interest in any such property, may appear and adduce evidence at the hearing of the application.
- (3) The Supreme Court may, in an urgent case, make a restraining order on an application made without notice, but such an order has effect only for a maximum period of 14 days.

29. Notice of restraining orders to be given to affected persons

If a restraining order is made in respect of property of a person and notice was not given to that person of the application for the order, the applicant must give notice of the making of the order to that person.

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30. Court may make further orders

- (1) If the Supreme Court makes a restraining order, it may, at the time it makes the order or at any later time, make any ancillary orders that it considers appropriate and, without limiting the generality of this, may make any one or more of the following orders:
 - (a) an order varying the property to which the restraining order relates;
 - (b) an order varying any condition to which the restraining order is subject;
 - (c) an order for the examination on oath of –
 - (i) a person (in this section called “the owner”) whose property is subject to the restraining order; or
 - (ii) the defendant –before the court or the Registrar of the court concerning the affairs of the owner or the defendant, or both of them, including the nature and location of any property of the owner or the defendant or of them both;
 - (d) an order with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the State in connection with the making of the restraining order;
 - (e) an order directing –

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- (i) the owner; or
- (ii) if the owner is not the defendant – the defendant; or
- (iii) if the owner or the defendant is a corporation – a director of the corporation specified by the court –

to give to –

- (iv) if the restraining order is, or includes, an order made under section 26(2)(b) – the Public Trustee; and
- (v) in any other case – the applicant for the order or such other person as the court directs –

within such period as is specified in the order, a statement verified by the oath of the person making the statement setting out such particulars of the property or dealings with the property of the owner or defendant, as the case may be, as the court thinks proper;

- (f) if the restraining order directed the Public Trustee to take custody and control of property –
 - (i) an order regulating the manner in which the Public Trustee may exercise the Public Trustee's powers or perform the Public

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Trustee's duties under the restraining order; or

- (ii) an order determining any question relating to the property to which the restraining order relates, including any question relating to –

- (A) the liabilities of the owner; or

- (B) the exercise of the powers or the performance of the duties of the Public Trustee –

with respect to the property to which the restraining order relates; or

- (iii) an order directing the owner, or another person, to do any act or thing necessary or convenient to be done to enable the Public Trustee to take custody and control of the property in accordance with the restraining order.

- (2) An order under subsection (1) may be made by the Supreme Court on its own motion or on the application of –

- (a) an authorized officer; or

- (b) the owner; or

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- (c) if the restraining order directed the Public Trustee to take custody and control of property – the Public Trustee; or
 - (d) with the leave of the Supreme Court – any other person.
 - (3) A person who is examined before the Supreme Court or the Registrar of the court pursuant to an order under subsection (1) is not excused from answering a question when required to do so by the court or Registrar, as the case may be, on the ground that the answer to the question might tend to incriminate the person or render the person liable to a forfeiture or penalty.
 - (4) If a person is examined before the Supreme Court or the Registrar of the court pursuant to an order under subsection (1), a statement or disclosure made by the person in answer to a question put in the course of the examination is not admissible against the person in any criminal proceedings other than a proceeding for giving false testimony in the course of the examination.
 - (5) A person who is directed to furnish a statement to the Public Trustee pursuant to an order under subsection (1) is not excused from –
 - (a) furnishing the statement; or
 - (b) setting out particulars in the statement –on the ground that the statement or particulars, as the case may be, might tend to incriminate the

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person or render the person liable to a forfeiture or penalty.

- (6) If a person furnishes a statement to the Public Trustee pursuant to an order under subsection (1), the statement is not admissible against the person in any criminal proceedings other than a proceeding in respect of the falsity of the statement.
- (7) For the purposes of subsections(4) and (6), proceedings on an application for a restraining order, forfeiture order or pecuniary penalty order are not criminal proceedings.
- (8) A person who makes an application under this section in relation to a restraining order is to give written notice of the application to each other person who is entitled, by virtue of subsection (2), to make an application under this section in relation to the restraining order.
- (9) A person who is ordered to attend an examination referred to in subsection (1)(c) must not –
 - (a) without reasonable excuse – fail to attend as required by the order; or
 - (b) without reasonable excuse – fail to attend from day to day until the conclusion of the examination; or
 - (c) refuse or fail to take an oath or make an affirmation for the purpose of the examination; or

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- (d) refuse or fail to answer a question that the person is directed by the Supreme Court or the Registrar of the court to answer; or
- (e) make a statement in the course of the examination that is false or misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

31. Public Trustee to discharge pecuniary penalty orders

(1) If –

- (a) the Public Trustee has taken custody and control of all or some of the property of a person under a restraining order; and
- (b) a pecuniary penalty order has been made in reliance on the conviction of the person –

an appropriate court may, on application by the Public Trustee, make an order (in this section referred to as “the later order”) directing the Public Trustee to pay to the State, out of that property, an amount equal to the penalty amount.

- (2) For the purpose of enabling the Public Trustee to comply with the later order, the appropriate court may, by the later order or a subsequent order –

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- (a) direct the Public Trustee to sell or otherwise dispose of such of the property under the custody and control of the Public Trustee as the court specifies; and
 - (b) appoint an officer of the court or another person to execute any deed or instrument in the name of the person who owns or has an estate, interest or right in the property and to do all acts and things necessary to give validity and operation to such deed or instrument.
- (3) The execution of a deed or instrument by a person appointed for the purpose under subsection (2)(b) has the same force and validity as if it had been executed by the person who owned or had an estate, interest or right in the property.
- (4) As soon as practicable after the making of the later order, the Public Trustee is –
 - (a) to apply the money that has come into the Public Trustee’s possession or under the Public Trustee’s control by reason of the sale or disposition of any of the property specified in the later order or subsequent order or otherwise in the course of performing the Public Trustee’s duties in respect of the property to which the restraining order relates, in payment of –
 - (i) the fees payable in connection with; and

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- (ii) the expenses incurred by the Public Trustee in or in connection with –

the performance of the duties imposed on the Public Trustee under the restraining order, including the expenses incurred by the Public Trustee in or in connection with the sale or disposition of any of the property to which the restraining order relates; and

- (b) subject to subsection (5) and after the payments referred to in paragraph (a) have been made – to pay the remainder of the money referred to in that paragraph to the State.

- (5) If the money to which subsection (4)(b) applies exceeds the penalty amount, the Public Trustee is –

- (a) to pay to the State, out of that money, an amount equal to the penalty amount; and
- (b) to pay the balance of that money to the person referred to in subsection (1).

- (6) If, in accordance with the later order, the Public Trustee pays money to the State in respect of the liability of a person under a pecuniary penalty order, the liability of the person under the pecuniary penalty order is, to the extent of the payment, taken to be discharged.

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32. Charges on property subject to restraining orders

(1) If –

- (a) a pecuniary penalty order is made against a person in reliance on the person's conviction of an offence; and
- (b) a restraining order in relation to the offence or a related offence is or has been made against all or some of the property of that person –

there is created, on the making of the later of the orders, a charge on the property to which the restraining order applies to secure the payment to the State of the penalty amount.

(2) If a charge is created under subsection (1) on property of a person, the charge ceases to have effect in respect of the property –

- (a) upon the discharge of the pecuniary penalty order; or
- (b) upon payment to the State of the penalty amount in satisfaction of the pecuniary penalty order; or
- (c) upon the sale or other disposition of the property –
 - (i) under an order under section 31; or
 - (ii) by the owner of the property with the consent of the court that made the pecuniary penalty order; or

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- (iii) if the restraining order directed the Public Trustee to take custody and control of the property – by the owner of the property with the consent of the Public Trustee; or
 - (d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, had no notice of the charge –
 - whichever occurs first.
 - (3) A charge created on property under subsection (1) upon the making of a pecuniary penalty order –
 - (a) is subject to every charge or encumbrance to which the property was subject immediately before the later order under section 31 was made and, in the case of land under the *Land Titles Act 1980*, is subject to every mortgage, lease or other interest recorded in the register kept under that Act; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2) – is not affected by any change of ownership of the property.
 - (4) If a charge is created under subsection (1) on property of a particular kind and a law of Tasmania provides for the registration of title to,

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or charges over, property of that kind, the Public Trustee or an authorized officer may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge is, for the purposes of subsection (2)(d), taken to have had notice of the charge at the time of the purchase or acquisition.

- (5) If a charge under this section relates to land under the *Land Titles Act 1980*, the charge is of no effect until it is registered under that Act.

33. Registration of restraining orders

- (1) If a restraining order applies to property of a particular kind and a law of Tasmania provides for the registration of title to, or charges over, property of that kind, the authority responsible for administering that law is, on the application of an authorized officer, to record on the register kept pursuant to that law the particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property is, for the purposes of section 34, taken to have had notice of the restraining order at the time of the dealing.
- (2) If a restraining order applies to land under the *Land Titles Act 1980*, a caveat may be lodged under that Act in relation to the order.

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34. Contravention of restraining orders

- (1) A person must not knowingly contravene a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order.

Penalty: –

- (a) in the case of a body corporate – a fine not exceeding 500 penalty units; or
- (b) in any other case – a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (2) If –

- (a) a restraining order is made against property; and
- (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and
- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith –

an authorized officer may apply to the Supreme Court for an order that the disposition or dealing be set aside.

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- (3) If an authorized officer makes an application under subsection (2) in relation to a disposition of, or dealing with, property –
 - (a) the authorized officer is to give written notice of the application to each person who the authorized officer has reason to believe may have acquired an interest in the property on or after the day on which the disposition or dealing took place; and
 - (b) a person so notified, and any person who claims to have acquired an interest in the property on or after the day on which the disposition or dealing took place, may appear and adduce evidence at the hearing of the application; and
 - (c) the court may, at any time before the final determination of the application, direct the authorized officer to give or publish notice of the application to a specified person or class of persons in such manner and within such time as the court considers appropriate.
- (4) If an authorized officer makes an application under subsection (2) in relation to a disposition or dealing, the Supreme Court may make an order –
 - (a) setting the disposition or dealing aside as from the day on which the disposition or dealing took place; or
 - (b) setting the disposition or dealing aside as from the day of the order under this

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subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

35. Obstruction of Public Trustee

- (1) In this section *Public Trustee* includes the officers, servants and agents of the Public Trustee.
- (2) A person must not, without reasonable excuse, obstruct or hinder the Public Trustee in –
 - (a) the exercise of the Public Trustee’s powers under this Act; or
 - (b) the performance of the Public Trustee’s duties in relation to property that the Public Trustee has taken custody and control of under a restraining order.

Penalty: –

- (a) in the case of a body corporate – a fine not exceeding 100 penalty units; or
- (b) in any other case – a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 2 years, or both.

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36. Limitation on liability of Public Trustee

- (1) In this section *Public Trustee* includes the officers, servants and agents of the Public Trustee.
- (2) Section 71 of the *Public Trustee Act 1930* applies to, and in respect of, the functions of the Public Trustee under this Act in the same way as it applies to, and in respect of, the functions of the Public Trustee under that Act, but nothing in this section is to be taken as limiting the operation of that section.
- (3) The Public Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed under a law of Tasmania in respect of property that the Public Trustee has been directed by a restraining order to take custody and control of, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the order, except to the extent, if any, of the rents and profits received by the Public Trustee in respect of that property on or after the date of the order.
- (4) If the Public Trustee, having been directed by a restraining order to take custody and control of a business carried on by a person, carries on that business, the Public Trustee is not personally liable for –
 - (a) any payment in respect of long service leave or extended leave for which that person was liable; or

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- (b) any payment in respect of long service leave or extended leave to which a person employed by the Public Trustee in the Public Trustee's capacity as custodian and controller of the business or as legal personal representative of such a person becomes entitled after the date of the order.

37. Costs payable to Public Trustee

If the Public Trustee takes custody and control of property in accordance with a restraining order, the Public Trustee is entitled to receive such fees in respect of –

- (a) the exercise of the Public Trustee's powers; and
- (b) the performance of the Public Trustee's duties –

in relation to the property as may be prescribed by or under the *Public Trustee Act 1930*.

38. Duration of restraining orders

- (1) Subject to this section, a restraining order remains in force for the period of 6 months immediately following the day on which it is made or for such other period as is specified in the order.
- (2) A restraining order made in reliance on the proposed charging of a person with a serious offence ceases to be in force at the expiration of

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the period of 48 hours immediately following the time at which it is made if the person is not, within that period of time, charged with the offence or a related offence.

- (3) The Supreme Court may, on application made to it, make an order –
 - (a) extending the period for which a restraining order is to remain in force; or
 - (b) setting aside a restraining order.
- (4) An application for an order under subsection (3) may be made by –
 - (a) an authorized officer; or
 - (b) the person in respect of whom the restraining order was made; or
 - (c) any person whose property the restraining order relates to; or
 - (d) any person who has an interest in the property that the restraining order relates to.
- (5) An applicant for an order under subsection (3) is to give written notice of the application to each other person who the applicant has reason to believe could have applied for the order.
- (6) Any person who is given or entitled to be given notice under subsection (5) may appear and adduce evidence at the hearing of the application.

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- (7) Without limiting the generality of subsection (3), the Supreme Court may make an order setting aside a restraining order on the application of a person referred to in subsection (4)(b) if the person –
- (a) gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed on the person under section 21(1); or
 - (b) gives undertakings satisfactory to the court concerning the person's property.

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PART 4 – SEARCH WARRANTS

39. Interpretation

- (1) In this Part, unless the contrary intention appears –

forfeiture order includes an interstate forfeiture order;

relevant serious offence in relation to tainted property, means the serious offence by reason of the commission of which the property is tainted property;

serious offence includes an interstate serious offence;

tainted property includes property that –

- (a) was used in, or in connection with, the commission of an interstate serious offence; or
 - (b) was derived or realized, directly or indirectly, by any person as a result of the commission of an interstate serious offence.
- (2) For the purposes of this Part, the question of whether a person has been charged with, or convicted of, an interstate serious offence is to be determined in accordance with the relevant corresponding law.

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40. Search warrants

- (1) A police officer may apply to a magistrate for a search warrant to be issued under this Part if the police officer has reasonable grounds for believing that there is on any premises tainted property of a particular kind.
- (2) A magistrate to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorizing a police officer –
 - (a) to enter premises; and
 - (b) to search those premises for tainted property of the particular kind referred to in subsection (1); and
 - (c) to seize any property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property of the kind specified in the warrant.
- (3) A search warrant issued under this Part is of no effect unless –
 - (a) it states the purpose for which the warrant has been issued, including a reference to the nature of the relevant serious offence; and
 - (b) it specifies whether entry is authorized to be made at any time of the day or night, or only during specified hours of the day or night; and

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- (c) it contains a description of the kind of property authorized to be seized under the warrant; and
 - (d) it specifies a date, being a date not later than one month after the day on which the warrant is issued, on which the warrant ceases to have effect.
- (4) Nothing in this Part limits any other statutory law relating to search warrants.
- (5) Schedule 1 has effect with respect to a search warrant issued under this Part.

41. Telephone warrants in respect of tainted property

- (1) Subject to this section –
 - (a) an application under section 40(1) may be made by telephone if the applicant is of or above the rank of sergeant; and
 - (b) a magistrate may, under section 40(2), issue a search warrant that has been applied for by telephone.
- (2) A magistrate issues a search warrant that has been applied for by telephone by stating the terms of the warrant.
- (3) A magistrate is not to issue a search warrant under section 40 that has been applied for by telephone if the magistrate is of the opinion that it would be practicable in the circumstances for the police officer to apply to a magistrate for the warrant in person.

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- (4) A magistrate who issues a search warrant under section 40 that has been applied for by telephone is to cause a record to be made in writing of –
- (a) the name and rank of the police officer who applied for the warrant; and
 - (b) the location of that police officer at the time the application was made; and
 - (c) the reasons given by the applicant as to why it was not practicable in the circumstances for the applicant to apply to a magistrate for a warrant in person; and
 - (d) the terms of the warrant as stated to the police officer to whom it was issued; and
 - (e) the date and time the warrant was issued.
- (5) A police officer perfects a search warrant issued to the officer by telephone by –
- (a) causing a record to be made in writing setting out the terms of the warrant; and
 - (b) endorsing the record with the name of the magistrate by whom, and the date and time when, the warrant was issued.

42. Seizure of property pursuant to warrants

- (1) A police officer who executes a search warrant issued under this Part may seize property of the kind specified in the warrant.

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(2) If, in the course of executing a search warrant issued under this Part, a police officer finds any property that the police officer believes on reasonable grounds to be –

- (a) tainted property in relation to the relevant serious offence, although not of a kind specified in the warrant; or
- (b) tainted property in relation to another serious offence –

and the police officer believes, on reasonable grounds, that it is necessary to seize that property to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the relevant serious offence or the other serious offence, the warrant is taken as authorizing the police officer to seize that property.

(3) The power conferred by this section to seize a thing includes –

- (a) a power to remove the thing from the premises where it is found; and
- (b) a power to guard the thing on those premises.

43. Search and arrest of persons pursuant to warrants

A police officer who executes a search warrant issued under this Part may –

- (a) search any person found on the premises who the police officer reasonably

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suspects of having property of the kind specified in the warrant; and

- (b) arrest any person found on the premises who the police officer reasonably suspects of having committed an offence in respect of property seized pursuant to section 42.

44. Issue of warrants if charges not laid

A search warrant may be issued under this Part in relation to property whether or not a person has been charged with the relevant serious offence, but a magistrate is not to issue a search warrant under this Part in relation to property if a person has not been charged with the relevant serious offence unless the magistrate is satisfied –

- (a) that the property is tainted property; and
- (b) that it is likely that a person will be charged within 48 hours with the relevant serious offence.

45. Commissioner responsible for seized property

If property is seized pursuant to a search warrant issued under this Part, the Commissioner is –

- (a) to arrange for the property to be kept until it is dealt with in accordance with another provision of this Act; and

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- (b) to ensure that all reasonable steps are taken to preserve the property while it is so kept.

46. Return of seized property

- (1) A reference in this section to the relevant time is –

- (a) subject to paragraph (b) – a reference to the date of the conviction, discharge or acquittal or of the refusal to make the forfeiture order, as the case requires; or
- (b) if there is a right of appeal and the period for lodging the appeal has expired without an appeal having been lodged – a reference to the expiration of that period; or
- (c) if there is a right of appeal and an appeal has been lodged – a reference to the time when the appeal lapses or is finally determined.

- (2) If –

- (a) property has been seized pursuant to a search warrant issued under this Part; and
- (b) at the time the property was seized a person had not been charged with the relevant serious offence; and
- (c) before the expiration of the period of 7 days immediately after the property was

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seized a person had not been charged
with that offence –

then, unless an application for a forfeiture order
is made in respect of the property, as soon as
practicable after the expiration of that 7 day
period the Commissioner is to arrange for the
property to be returned to the person from whose
possession it was seized.

(3) If –

- (a) property has been seized pursuant to a
search warrant issued under this Part; and
- (b) either before the property was seized, or
after it was seized but before the
expiration of the period of 7 days
immediately after it was seized, a person
has been charged in respect of the
relevant serious offence, or criminal
proceedings have otherwise been
commenced in respect of the relevant
serious offence –

then, unless an application for a forfeiture order
is made in respect of the property, the
Commissioner is to arrange for the property to
be returned to the person from whose possession
it was seized –

- (c) if the person is convicted of the offence –
as soon as practicable after the expiration
of 6 months after the relevant time; or

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- (d) if the person is discharged or acquitted of the offence – as soon as practicable after the relevant time.
- (4) If –
 - (a) property has been seized pursuant to a search warrant issued under this Part; and
 - (b) a court having jurisdiction to do so refuses to make a forfeiture order in respect of the property in relation to the relevant serious offence –

the Commissioner is to arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the relevant time.
- (5) If property has been seized pursuant to a search warrant under this Part, a person from whose possession the property was seized may apply to an appropriate court for an order under subsection (6).
- (6) If the court is satisfied that neither it nor any other court having jurisdiction to do so would make a forfeiture order in respect of the property, the court may make an order –
 - (a) directing that the property be returned to the person from whose possession it was seized; or
 - (b) directing that the person be allowed access to the property –

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on such terms and conditions, if any, as the court thinks fit.

- (7) A person who applies to a court for an order under subsection (6) is to give notice, as prescribed by the regulations or by rules of court, of the making of the application and of the date, time and place fixed for the hearing of the application.
- (8) A reference in this section to a person from whose possession property was seized includes a reference to any person who is entitled to the property.

47. Obstruction of persons executing search warrants

A person must not, without reasonable excuse, obstruct or hinder a police officer who is executing a search warrant issued under this Part.

Penalty: –

- (a) in the case of a body corporate – a fine not exceeding 100 penalty units; or
- (b) in any other case – a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 2 years, or both.

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PART 5 – INFORMATION GATHERING POWERS

Division 1 – Interpretation

48. Interpretation

- (1) In this Part, unless the contrary intention appears *serious offence* includes an interstate serious offence.
- (2) For the purposes of this Part, the question of whether a person has been charged with, or convicted of, an interstate serious offence is to be determined in accordance with the relevant corresponding law.

Division 2 – Production orders

49. Production orders

- (1) In this section *bankers books* means any accounting records used in the ordinary business of banking, including ledgers, day-books, cash-books and account books.
- (2) If a police officer has reasonable grounds for suspecting that –
 - (a) a person has committed a serious offence and that that person or any other person has possession or control of a property-tracking document in relation to the offence; or
 - (b) a person has possession or control of a property-tracking document in relation to

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a serious offence for which that person or
any other person has been convicted –

the police officer may –

- (c) lay before a magistrate information on oath setting out those grounds; and
 - (d) apply to the magistrate for an order under subsection (5) against the person suspected of having possession or control of the document.
- (3) If a police officer who applies for an order under this section in respect of an offence includes in the information under subsection (1) information on oath that the police officer has reasonable grounds to believe that –
- (a) the person who is believed to have committed the offence or who was convicted of the offence derived a commercial or other benefit, directly or indirectly, from the commission of the offence; and
 - (b) property specified in the information is subject to the effective control of that person –

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

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- (4) A magistrate may have regard to the matters referred to in section 8(2) in determining whether to treat a document as a property-tracking document in relation to an offence.
- (5) If an application is made under subsection (2) for an order against a person, the magistrate may, subject to subsections (6), (7), (8) and (9), make an order that the person –
 - (a) produce to a police officer any document of the kind referred to in subsection (2) that is in the person's possession or under the person's control; or
 - (b) make available to a police officer, for inspection, any document of that kind that is in the person's possession or under the person's control.
- (6) A magistrate is not to make an order under subsection (5)(a) in respect of bankers books.
- (7) A magistrate is not to make an order under subsection (5) unless –
 - (a) the informant or some other person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the order is sought; and
 - (b) the magistrate is satisfied that there are reasonable grounds for making the order.

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- (8) An order that a person produce a document to a police officer is to specify the time when, and the place where, the document is to be produced.
 - (9) An order that a person make a document available to a police officer for inspection is to specify the time, or times, when the document is to be made available.
 - (10) If a document is produced to a police officer pursuant to an order under this section, the police officer may do any one or more of the following:
 - (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document;
 - (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.
 - (11) If a document is made available to a police officer for inspection pursuant to an order under this section, the police officer may do any one or more of the following:
 - (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document.
 - (12) If a police officer retains a document pursuant to an order under this section, the police officer is,

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on request by the person to whom the order is addressed –

- (a) to give the person a copy of the document that has been certified by the police officer in writing to be a true copy of the document; and
 - (b) unless the person has been given a copy of the document under paragraph (a) – to permit the person to do any one or more of the following:
 - (i) inspect the document;
 - (ii) take extracts from the document;
 - (iii) make copies of the document.
- (13) A person is not excused from producing or making available a document when required to do so by an order under this section on the ground that –
- (a) the production or making available of the document might tend to incriminate the person or render the person liable to a penalty; or
 - (b) the production or making available of the document would be in breach of an obligation, whether imposed by enactment or otherwise, of the person not to disclose the existence or contents of the document.

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- (14) If a person produces or makes available a document pursuant to an order under this section, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings other than a proceeding for an offence against section 51.
- (15) For the purposes of subsection (14), proceedings on an application for a restraining order, forfeiture order or pecuniary penalty order are not criminal proceedings.

50. Variation of production orders

If a magistrate makes a production order requiring a person to produce a document to a police officer, that person may apply to the magistrate or another magistrate for a variation of the order and, if the magistrate hearing the application is satisfied that the document is essential to the business activities of that person, the magistrate may vary the production order so that it requires that person to make the document available to a police officer for inspection.

51. Failure to comply with production orders

A person who is required by a production order to produce a document to a police officer, or make a document available to a police officer for inspection, must not –

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- (a) contravene the order without reasonable excuse; or
- (b) in purported compliance with the order – produce or make available a document known to the person to be false or misleading in a material particular without –
 - (i) indicating to the police officer to whom the document is produced or made available that it is false or misleading and the respect in which it is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

Penalty: –

- (a) in the case of a body corporate – a fine not exceeding 500 penalty units; or
- (b) in any other case – a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

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Division 3 – Search powers

52. Powers to search for, and seize, certain documents

A police officer may –

- (a) enter premises; and
- (b) search those premises for any property-tracking document in relation to a serious offence; and
- (c) seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document in relation to a serious offence –

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

- (d) with the consent of the occupier of the premises; or
- (e) under a search warrant issued under section 53.

53. Search warrants for location, &c., of property

(1) If –

- (a) a person has been convicted of a serious offence and a police officer has reasonable grounds for suspecting that there is on any premises a property-

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tracking document in relation to the offence; or

- (b) a police officer has reasonable grounds for suspecting that a person has committed a serious offence and that there is on any premises a property-tracking document in relation to the offence –

the police officer may apply to a magistrate for a search warrant to be issued under subsection (4) in respect of those premises.

- (2) If a police officer who applies for a search warrant under this section in respect of an offence includes in the application information that the police officer has reasonable grounds for believing that –

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a commercial or other benefit, directly or indirectly, from the commission of the offence; and
- (b) property specified in the information is subject to the effective control of that person –

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

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- (3) A magistrate may have regard to the matters referred to in section 8(2) in determining whether to treat a document as a property-tracking document in relation to an offence.
- (4) Subject to subsection (7), a magistrate to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorizing a police officer –
- (a) to enter premises; and
 - (b) to search those premises for documents of the kind referred to in subsection (1); and
 - (c) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a document of that kind.
- (5) Nothing in this section limits any other statutory law relating to search warrants.
- (6) Schedule 1 has effect with respect to a search warrant issued under this section.
- (7) A magistrate is not to issue a search warrant under this section unless the magistrate is satisfied that –
- (a) the relevant document cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of the document; or

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- (b) a production order made in respect of the relevant document has not been complied with; or
 - (c) a production order in respect of the relevant document would be unlikely to be effective because there are reasonable grounds to suspect that such an order would not be complied with; or
 - (d) the investigation in connection with which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the relevant document without notice to any person.
- (8) A search warrant issued under this section is of no effect unless –
 - (a) it states the purpose for which the warrant has been issued, including a reference to the nature of the relevant serious offence; and
 - (b) it specifies whether entry is authorized to be made at any time of the day or night, or only during specified hours of the day or night; and
 - (c) it contains a description of the kind of documents authorized to be seized under the warrant; and
 - (d) it specifies a date, being a date not later than one month after the day on which

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the warrant is issued, on which the
warrant ceases to have effect.

- (9) If, in the course of executing a search warrant issued under this section a police officer finds a document that the police officer believes on reasonable grounds to be –
- (a) a property-tracking document in relation to the relevant serious offence, although not of a kind specified in the warrant; or
 - (b) a property-tracking document in relation to another serious offence –

and the police officer believes, on reasonable grounds, that it is necessary to seize that document in order to prevent its concealment, loss or destruction, the warrant is taken as authorizing the police officer to seize that document.

- (10) The power conferred by this section to seize a document includes –
- (a) a power to remove the document from the premises where it is found; and
 - (b) a power to guard the document on those premises.

54. Telephone warrants in respect of property-tracking documents

- (1) Subject to this section –

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- (a) an application under section 53(1) may be made by telephone if the applicant is of or above the rank of sergeant; and
 - (b) a magistrate may, under section 53(4), issue a search warrant that has been applied for by telephone.
- (2) A magistrate issues a search warrant that has been applied for by telephone by stating the terms of the warrant.
- (3) A magistrate is not to issue a search warrant under section 53 that has been applied for by telephone if the magistrate is of the opinion that it would be practicable in the circumstances for the police officer to apply to a magistrate for the warrant in person.
- (4) A magistrate who issues a search warrant under section 53 that has been applied for by telephone is to cause a record to be made in writing of –
 - (a) the name and rank of the police officer who applied for the warrant; and
 - (b) the location of that police officer at the time the application was made; and
 - (c) the reasons given by the applicant as to why it was not practicable in the circumstance for the applicant to apply to a magistrate for a warrant in person; and
 - (d) the terms of the warrant as stated to the police officer to whom it was issued; and

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- (e) the date and time the warrant was issued.
 - (5) A police officer perfects a search warrant issued to the officer by telephone by –
 - (a) causing a record to be made in writing setting out the terms of the warrant; and
 - (b) endorsing the record with the name of the magistrate by whom, and the date and time when, the warrant was issued.

55. Obstruction of persons executing search warrants

A person must not, without reasonable excuse, obstruct or hinder a police officer who is executing a search warrant issued under section 53.

Penalty: –

- (a) in the case of a body corporate – a fine not exceeding 100 penalty units; or
- (b) in any other case – a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 2 years or both.

Division 4 – Monitoring orders

55A. Interpretation

In this Division –

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monitoring order means an order under section 56(1).

56. Monitoring orders

- (1) A magistrate may, on the application of a police officer, make an order directing a financial institution to give to a police officer information obtained by the institution about transactions conducted through an account held by a particular person with the institution.
- (2) A magistrate is not to make a monitoring order unless the magistrate is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought –
 - (a) has committed, or is about to commit, a serious offence; or
 - (b) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
 - (c) has derived or is about to derive, directly or indirectly, a commercial or other benefit from the commission of a serious offence.
- (3) A monitoring order is to specify –
 - (a) the name, or names, in which the account is believed to be held; and
 - (b) the kind of information that the institution is required to give; and

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(c) the manner in which the information is to be given.

- (4) A monitoring order is to apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months immediately after the date of the order.
- (5) If a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made is to be disregarded for the purposes of the application of section 67 in relation to that institution.
- (6) A financial institution that has been given notice of a monitoring order must not knowingly contravene, or knowingly provide false or misleading information in purported compliance with, the order.

Penalty: Fine not exceeding 1 000 penalty units.

- (7) A reference in this section to a transaction conducted through an account includes a reference to –
- (a) the making of a fixed term deposit; and
- (b) in relation to a fixed term deposit – the transfer of the amount deposited, or any part of it, at the end of the term.

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57. Confidentiality of monitoring orders

- (1) In this section a reference to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.
- (2) A financial institution that is, or has been, subject to a monitoring order must not disclose the existence or operation of the order to any person other than –
 - (a) the Commissioner or a police officer; or
 - (b) an officer or agent of the institution for the purpose of ensuring that the order is complied with; or
 - (c) an Australian legal practitioner for the purpose of obtaining legal advice or representation in relation of the order.

Penalty: Fine not exceeding 1 000 penalty units.

- (3) A person referred to in subsection (2) to whom a disclosure of the existence or operation of a monitoring order has been made must not –
 - (a) while he or she is such a person – disclose the existence or operation of the order other than to another person referred to in subsection (2) for the purposes of –

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- (i) if the disclosure is made by the Commissioner or a police officer – the performance of that person's duties; or
 - (ii) if the disclosure is made by an officer or agent of the institution – ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or
 - (iii) if the disclosure is made by an Australian legal practitioner – giving legal advice or making representations in relation to the order; or
- (b) when he or she is no longer such a person – make a record of, or disclose, the existence or operation of the order.

Penalty: A fine not exceeding 200 penalty units or imprisonment for a term not exceeding 10 years, or both.

- (4) A person referred to in subsection (2)(a) or (b) is not required to disclose to any court the existence or operation of a monitoring order.
- (5) Nothing in subsection (3) prevents the disclosure by a person referred to in subsection (2)(a) or (b) of the existence or operation of a monitoring order –
 - (a) for the purposes of, or in connection with, legal proceedings; or

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- (b) in the course of proceedings before a court.

PART 6 – INTERSTATE ORDERS

58. Registration of interstate orders

- (1) An interstate forfeiture order or interstate restraining order that expressly applies to property in Tasmania may be registered under this Act.
- (2) An order is taken to be registered under this Act when a copy of the order, being a copy sealed by the court that made the order, is registered in accordance with the rules of the Supreme Court.
- (3) An amendment made to an interstate forfeiture order or interstate restraining order before or after registration of the order may be registered in the same way as the order, and any such amendment is of no effect for the purposes of this Act until it is registered.
- (4) An application for registration may be made by –
 - (a) an authorized officer; or
 - (b) the person on whose application the order or amendment was made; or
 - (c) a person affected by the order or amendment.

59. Effect of registration of interstate forfeiture orders

- (1) A registered interstate forfeiture order may be enforced in Tasmania as if it were a forfeiture

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order made under section 16(1) at the time of registration.

- (2) This Act, other than section 72, applies to a registered interstate forfeiture order as if it were a forfeiture order made under section 16(1).
- (3) A registered interstate forfeiture order does not operate so as to vest property, or any estate, interest or right in property, otherwise than in the Crown in right of Tasmania.
- (4) A registered interstate forfeiture order does not operate so as to vest property in the Crown in right of Tasmania if the order has already operated to vest the property in the Crown in some other capacity, or in some other person or entity.

60. Effect of registration of interstate restraining orders

- (1) A registered interstate restraining order may be enforced in Tasmania as if it were a restraining order made under section 26(2) at the time of registration.
- (2) This Act, other than sections 26, 29, 32 and 38, applies to a registered interstate restraining order as if it were a restraining order made under section 26(2).

61. Revocation or variation of registered orders

A court of this State is not to –

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- (a) revoke or vary a registered interstate forfeiture order or registered interstate restraining order; or
 - (b) limit the manner in which any such order applies.

62. Duration of registration

An interstate forfeiture order or interstate restraining order ceases to be registered under this Act if –

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

63. Cancellation of registration

- (1) The Supreme Court is to cancel the registration of an interstate forfeiture order or interstate restraining order if the registration was improperly obtained.
- (2) The Supreme Court may cancel the registration of an interstate forfeiture order or interstate restraining order to the extent that the order is not capable of enforcement in this State.

64. Charges on property subject to registered interstate restraining orders

- (1) If –

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- (a) an interstate restraining order is made against property of a person in connection with an interstate serious offence committed, or alleged to have been committed, by that person; and
- (b) an interstate pecuniary penalty order is made against that person in connection with that offence; and
- (c) the interstate restraining order is registered under this Act; and
- (d) the interstate pecuniary penalty order is registered in a court of Tasmania under the *Service and Execution of Process Act 1992* of the Commonwealth –

then, upon the registration referred to in paragraph (c) or (d), whichever last occurs, a charge is created on the property to secure payment of the amount due under the interstate pecuniary penalty order.

- (2) If a charge is created under subsection (1) on property of a person to secure payment of the amount due under an interstate pecuniary penalty order, the charge ceases to have effect in respect of the property –
 - (a) upon the interstate pecuniary penalty order ceasing to have effect; or
 - (b) upon the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order; or

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- (c) upon payment of the amount due under the interstate pecuniary penalty order; or
 - (d) upon the person becoming bankrupt; or
 - (e) upon the sale or other disposition of the property –
 - (i) under an order made by a court under the corresponding law of the State in which the interstate pecuniary penalty order was made; or
 - (ii) by the owner of the property with the consent of the court that made the interstate pecuniary penalty order; or
 - (iii) if the interstate restraining order directed a person to take control of the property – by the owner of the property with the consent of that person; or
 - (f) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, had no notice of the charge –

whichever first occurs.

- (3) A charge created on property under subsection (1) –
 - (a) is subject to every encumbrance on the property that came into existence before

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- the charge and that would, apart from this subsection, have priority over the charge; and
- (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.
- (4) If a charge is created under subsection (1) on property of a particular kind and a law of Tasmania provides for the registration of title to, or charges over, property of that kind –
- (a) the Public Trustee or an authorized officer may cause the charge so created to be registered under the provisions of that law; and
 - (b) if the charge is so registered – a person who purchases or otherwise acquires an interest in the property after the registration of the charge is, for the purposes of subsection (2)(f), taken to have had notice of the charge at the time of the purchase or acquisition.
- (5) If a charge under this section relates to land under the *Land Titles Act 1980*, the charge is of no effect until it is registered under that Act.

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65. Powers of Public Trustee in relation to interstate restraining orders

If –

- (a) an interstate restraining order is registered under this Act; and
- (b) the order directs an official of the State in which it was made to take control of property –

the Public Trustee may, by agreement with that official, exercise the same powers in relation to the property as that official would have been able to exercise if the property were located in that State.

66. Interim registration of facsimile copies

(1) A facsimile copy of –

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

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

(2) Registration effected by means of a facsimile copy ceases to have effect at the end of the period of 5 days commencing on the day of

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registration unless a sealed copy that is not a facsimile copy has been registered by that time.

- (3) Registration of the sealed copy before the end of the period referred to in subsection (2) has effect on and from the day of registration of the facsimile copy.
- (4) Although registration of a facsimile copy of an interstate forfeiture order ceases to have effect in the circumstances mentioned in subsection (2), any forfeiture already made in relation to the order is not affected.

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Part 6A – Money laundering

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PART 6A – MONEY LAUNDERING

66A. Dealing with proceeds of crime

- (1) A person must not deal with proceeds of crime –
- (a) knowing that it is proceeds of crime; and
 - (b) intending to conceal that it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 20 years.

- (2) A person must not deal with proceeds of crime knowing that it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 15 years.

- (3) A person must not deal with proceeds of crime being reckless as to whether or not it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 10 years.

- (4) A person must not deal with proceeds of crime being negligent as to whether or not it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 5 years.

- (5) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that he or she dealt with the property in

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order to assist the enforcement of a law of the
Commonwealth, a State or a Territory.

**66B. Dealing with property suspected of being proceeds
of crime**

- (1) A person who deals with property, if there are reasonable grounds to suspect that the property is proceeds of crime, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding
2 years.

- (2) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the property was substantially derived or realised, directly or indirectly, from an act or omission constituting an offence against a law in force in the Commonwealth, a State or a Territory.

**66C. Dealing with property which subsequently becomes
an instrument of crime**

- (1) If –
- (a) the person deals with property intending that the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime –

the person is guilty of an offence.

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Penalty: Imprisonment for a term not exceeding
15 years.

(2) If –

- (a) the person deals with property being reckless as to whether or not the property will become an instrument of crime; and
- (b) the property subsequently becomes an instrument of crime –

the person is guilty of an offence.

Penalty: Imprisonment for a term not exceeding
10 years.

(3) If –

- (a) the person deals with property being negligent as to whether or not the property will become an instrument of crime; and
- (b) the property subsequently becomes an instrument of crime –

the person is guilty of an offence.

Penalty: Imprisonment for a term not exceeding
5 years.

- (4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that he or she dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

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66D. Alternative verdicts

- (1) If, on the trial of a person for an offence under section 66A(1), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66A(2), (3) or (4), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.
- (2) If, on the trial of a person for an offence under section 66A(2), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66A(3) or (4), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.
- (3) If, on the trial of a person for an offence under section 66A(3), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66A(4), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.
- (4) If, on the trial of a person for an offence under section 66C(1), the jury is not satisfied that the defendant is guilty of the offence with which he

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or she is charged, but is satisfied that the defendant is guilty of an offence under section 66C(2) or (3), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.

- (5) If, on the trial of a person for an offence under section 66C(2), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66C(3), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.
- (6) This section has effect despite anything to the contrary in section 332 of the *Criminal Code*.

66E. Proof of other offences not required

- (1) To avoid doubt, it is not necessary, in order to prove for the purposes of an offence under this Part that property is proceeds of crime, to establish that –
 - (a) a particular offence was committed in relation to the property; or
 - (b) a particular person committed an offence in relation to the property.
- (2) To avoid doubt, it is not necessary, in order to prove for the purposes of an offence under this

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Part that property will become an instrument of crime, to establish –

- (a) an intention or risk that a particular offence will be committed in relation to the property; or
- (b) an intention or risk that a particular person will commit an offence in relation to the property.

66F. Transitional provision

This Part applies to or in respect of acts or omissions in relation to proceeds of crime arising from serious offences committed before or after the commencement of this Part.

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PART 7 – OFFENCES

67.

68. Prosecution of offences

- (1) An offence against section 34, 51, 56, 57, 66A, 66B, 66C, 67, or 70 is an indictable offence.
- (2) Notwithstanding that the offences referred to in subsection (1) are indictable offences, a court of summary jurisdiction may hear and determine proceedings in respect of an offence against section 34, 51, 56, 57, or 70 if –
 - (a) the court is satisfied that it is appropriate to do so; and
 - (b) the defendant and prosecutor consent.
- (3) A court of summary jurisdiction that convicts a person of an offence referred to in subsection (2) may –
 - (a) if the offence is against section 56 – impose a fine not exceeding 100 penalty units; or
 - (b) if the offence is against section 34, 51, 57, or 70 – impose a fine not exceeding 100 penalty units in the case of a body corporate, and a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both, in any other case.

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69. Conduct by directors, servants and agents

- (1) If it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show –
 - (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is for the purposes of this Act, taken to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If it is necessary to establish, for the purposes of this Act, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show –
 - (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.

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- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of the servant's or agent's apparent authority is, for the purposes of this Act, taken to have been engaged in also by the first-mentioned person unless the first-mentioned person established that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If –
- (a) a person other than a body corporate is convicted of an offence under this Act; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted –
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to –
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

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70. Dealings with forfeited property

(1) In this section *registrable property* means property, title to which is passed by registration on a register kept under a law of Tasmania.

(2) A person who knows that a forfeiture order has been made in respect of registrable property must not, unless the forfeiture order has been discharged, dispose of or otherwise deal with the property before the State's interest has been registered on the appropriate register.

Penalty: (a) in the case of a body corporate
– a fine not exceeding 500
penalty units; or

(b) in any other case – a fine not
exceeding 100 penalty units or
imprisonment for a term not
exceeding 5 years, or both.

(3) If property has been disposed of or otherwise dealt with contrary to subsection (2), the disposal or dealing is of no effect.

71. Standard of proof

Subject to section 14, a court is to decide any question of fact on an application under this Act on the balance of probabilities.

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72. Appeals

- (1) A person who has an interest in property that is subject to a forfeiture order may appeal against the order –
 - (a) in the case of a person convicted of the offence in reliance on which the order was made – in the same manner as if the order were the sentence, or part of the sentence, imposed on the person in respect of the offence; or
 - (b) in any other case – in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were the sentence, or part of the sentence, imposed on the person in respect of the offence.
- (2) A person against whom a pecuniary penalty order is made may appeal against the order in the same manner as if it were the sentence, or part of the sentence, imposed on the person in respect of the offence in reliance on which the order was made.
- (3) If a court –
 - (a) makes a pecuniary penalty order; and
 - (b) makes an order under section 23(2) declaring that particular property is available to satisfy the order –

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a person who has an interest in the property may appeal against the order under section 23(2) in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were the sentence, or part of the sentence, imposed on the person in respect of the offence.

(4) On an appeal against –

- (a) a forfeiture order; or
- (b) a pecuniary penalty order; or
- (c) an order made under section 23(2) –

the order may be confirmed, discharged or varied.

(5) An authorized officer may appeal against –

- (a) a forfeiture order; or
- (b) a pecuniary penalty order; or
- (c) an order under section 23(2); or
- (d) the refusal of a court to make such an order –

in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence in reliance on which the order was made.

(6) Nothing in this section restricts or affects any right of appeal that a person would have apart from this section.

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73. Constitution of court

If an application for a confiscation order in respect of a person's conviction of a serious offence is made to the court before which the person was convicted of the offence –

- (a) the application may be dealt with by that court; and
- (b) any function or power may be exercised and any duty may be performed by that court in relation to the confiscation order –

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

74. Limitation on powers of courts of summary jurisdiction

- (1) In this section *specified amount* means –
 - (a) \$20 000; or
 - (b) if another amount is prescribed – the prescribed amount.
- (2) A court of summary jurisdiction is not, in relation to the conviction of a person for a particular offence, to make a forfeiture order in respect of property unless it is satisfied that the value of the property, together with the value of any other property that is the subject of any other undischarged forfeiture order made by that court

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in relation to that conviction, does not exceed the specified amount.

- (3) A court of summary jurisdiction is not, in relation to the conviction of a person for a particular offence, to make a pecuniary penalty order against that person unless it is satisfied that the amount payable under the order, together with the amount payable under any other undischarged pecuniary penalty order made against that person by that court in relation to that conviction, does not exceed the specified amount.
- (4) A court of summary jurisdiction is not to make a forfeiture order in respect of real property, except in such circumstances as may be prescribed.
- (5) For the purposes of this section, the value of property is its value as determined by the court of summary jurisdiction.

75. Interstate operation of forfeiture or restraining orders

- (1) In this section, *corresponding State* means a State for which a declaration of a corresponding law is in force under this Act.
- (2) For the purpose of enabling a forfeiture order or restraining order to be registered under a corresponding law of another State, the order may be expressed to apply to property in that State.

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- (3) A forfeiture order or restraining order does not apply to property in a corresponding State except in so far as –
- (a) a corresponding law of that State provides that the order has effect in that State following registration under that law; or
 - (b) the property was movable property and was located outside that State when the order took effect.

76. Costs incurred on variation of forfeiture or restraining orders on applications by third parties

- (1) In this section –

person includes the State;

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

vary includes limit the manner in which an order applies.

- (2) 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 of another State; and
- (b) the variation is made on the application of a third party and affects the interests

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of the third party in relation to property
in that other State –

the Supreme Court may, having regard to any matters it considers appropriate, order that all the costs incurred by the third party in applying for and obtaining the variation, or such part of those costs as is determined by the Court, be paid to the third party.

- (3) The costs are to be paid by the person specified by the Supreme Court.
- (4) The Supreme Court may direct in what manner the costs are to be ascertained.
- (5) Nothing in this section restricts or affects the powers of the Supreme Court to award costs under any other law.

77. Operation of other laws not affected

Nothing in this Act restricts or affects –

- (a) the operation of any other law of Tasmania providing for the forfeiture of property or the imposition of pecuniary penalties; or
- (b) the remedies available to the State, apart from this Act, for the enforcement of its rights and the protection of its interests.

78. Costs

If –

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-
- (a) a person brings, or appears at, proceedings under this Act before a court in order –
 - (i) to prevent a forfeiture order or restraining order from being made against any property of that person; or
 - (ii) to have any property of that person excluded from a forfeiture order or restraining order; and
 - (b) that person is successful in those proceedings; and
 - (c) the court is satisfied that that person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made –

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

79. Crime (Confiscation of Profits) Account

- (1) In this section –

account means the Crime (Confiscation of Profits) Account established under subsection (2);

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equitable sharing arrangement means an arrangement under which either or both of the following happen:

- (a) this State pays to another State or the Commonwealth a proportion of the proceeds of any unlawful activity recovered by this State under this Act by reason of a contribution made by that other State or the Commonwealth, as the case may be, to the recovery of those proceeds or to the investigation or prosecution of that unlawful activity;
 - (b) another State or the Commonwealth pays to this State a proportion of the proceeds of any unlawful activity recovered by that other State or the Commonwealth, as the case may be, by reason of a contribution made by this State to the recovery of those proceeds or to the investigation or prosecution of that unlawful activity.
- (2) There is to be established in the Special Deposits and Trust Fund an account to be called the Crime (Confiscation of Profits) Account.
- (3) Subject to subsection (4), there is to be paid into the account –

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-
- (a) all money that vests contingently in the State under this Act; and
 - (b) all money recovered by the State under this Act; and
 - (c) all money received by the State under the equitable sharing arrangement.
- (4) The Treasurer may, after consulting the Attorney-General, direct that any money recovered by the State under this Act is to be dealt with otherwise than in accordance with subsection (3) if that money –
- (a) is in the form of coins or banknotes that have historical, numismatic or other special significance; or
 - (b) is in the form of foreign currency; or
 - (c) is in such other form as may be prescribed –
- but if, in accordance with a direction given under this subsection, any such money is sold or, as the case may be, converted into Australian currency, the net proceeds of the sale or conversion are to be paid into the account.
- (5) The Treasurer, on the advice of the Attorney-General, may authorize the making of such payments from the account as –
- (a) will enable the State to comply with any order to pay a person the declared value

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- of an interest in property under section 18(5); and
- (b) will enable the Attorney-General to make any payment required under section 19; and
 - (c) will enable the State to carry out any undertaking given on its behalf under section 27(7); and
 - (d) the Treasurer considers appropriate under the equitable sharing arrangement; and
 - (e) are required for any prescribed purpose.
- (6) If there is insufficient money in the account to enable the State to –
- (a) carry out an undertaking given on its behalf under section 27(7); or
 - (b) make any other payment that the State is required or obliged to make under this Act other than Part 9–
- there is to be paid into the account from the Consolidated Fund, without further appropriation than this subsection, such amount as will enable the undertaking to be carried out or the payment to be made.
- (7) The money standing to the credit of the account from time to time is, subject to subsection (5) and the approval of the Treasurer, to be paid into the Criminal Injuries Compensation Fund

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established under the *Victims of Crime Assistance Act 1976*.

PART 9 – UNEXPLAINED WEALTH

Division 1 – Interpretation of Part

80. Interpretation

(1) In this Part –

at risk of forfeiture, in relation to property –
see section 82(1);

document production order means an order
under section 97;

effective control, of property – see section 81;

examination order means an order under
section 92;

financial organisation includes –

- (a) a financial institution; and
- (b) a person who carries on State banking within the meaning of section 51(xiii) of the Constitution of the Commonwealth; and
- (c) a body corporate that is, or had it been incorporated in Australia would be, a trading corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth; and

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- (d) a person who, as part of his or her business, holds property in trust for another person;

forfeitable property declaration means a declaration under section 151(1);

forfeited property means property that –

- (a) is transferred to the State under section 146(1) to satisfy an unexplained wealth declaration; or
- (b) is the subject of a wealth forfeiture order;

give, in relation to property, includes transfer for consideration that is significantly less than the market value of the property at the time of transfer;

interim wealth-restraining order means an order under section 116(3);

lawfully acquired – see section 84;

monitoring order means an order under section 103;

proceeds, in relation to the sale of property, means the value of the property calculated in accordance with section 158;

Recorder has the same meaning as in the *Land Titles Act 1980*;

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Register has the same meaning as in the *Land Titles Act 1980*;

respondent, in respect of an unexplained wealth declaration, means the person against whom the declaration is made;

restrained property means property that is subject to a wealth-restraining order;

specified restraining order means an interim wealth-restraining order or a wealth-restraining order;

suspension order means an order under section 105;

unexplained wealth liability – see section 143;

unexplained wealth proceedings means any proceedings under this Part;

wealth forfeiture order means an order under section 152;

wealth-restraining order means an order under section 118.

- (2) In this Part, a reference to reasonable living and business expenses does not include a reference to any legal expenses mentioned in section 193.
- (3) For the avoidance of doubt, if under this Part a requirement is made of, or an obligation is held by, a body of persons, whether corporate or unincorporated, the requirement is made of, or obligation is held by, each person within that

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body of persons, in so far as that person can fulfil the requirement, or satisfy the obligation, in his or her actual, or apparent, authority as a member of that body of persons.

81. Meaning of *effective control*

- (1) For the purposes of this Part, a person has effective control of property if, although the person may not have a legal interest in the property, the property is –
 - (a) directly or indirectly subject to the control of the person; or
 - (b) held for the ultimate benefit of the person.
- (2) Without limiting subsection (1), when determining whether or not a person has effective control of any property, the following matters may be taken into account:
 - (a) any shareholdings in, debentures over or directorships of any corporation that has a direct or indirect interest in the property;
 - (b) any trust that has a relationship to the property;
 - (c) family, domestic and business relationships between persons having an interest in –
 - (i) the property; or

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- (ii) a corporation that has a direct or indirect interest in the property;
or
- (iii) a trust that has a relationship to the property;
- (d) any other relevant matters.

82. When property is at risk of forfeiture or taken to be property of a person

- (1) For the purposes of this Part, property is at risk of forfeiture under this Part if the property is owned or effectively controlled, or has at any time been given away, by a person who has unexplained wealth.
- (2) For the purposes of this Part, property is taken to be the property of a person if the property is owned or effectively controlled by the person.

83. Dealing with land under this Part

- (1) A notice, declaration, order or instrument made under this Part in respect of land is taken to be a dealing, within the meaning of the *Land Titles Act 1980*, in respect of that land.
- (2) Any dealing lodged under the *Land Titles Act 1980* in respect of land for the purposes of this Part (an *unexplained wealth dealing*) has priority over any other dealing lodged or registered under that Act in respect of the land regardless of whether or not the other dealing

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was lodged, or registered, before the unexplained wealth dealing.

- (3) The Recorder may determine the form or content of any thing lodged with the Recorder under this Part.

84. Meaning of *lawfully acquired*

- (1) For the purposes of this Part, property or a benefit is lawfully acquired only if –
- (a) the property or benefit was acquired in a legal manner; and
 - (b) the property or benefit, or each part of the property or benefit, was lawfully acquired property in the hands of the person from whom it was acquired; and
 - (c) any consideration given for the property or benefit was lawfully acquired; and
 - (d) any obligation in relation to the acquisition of the property or benefit is, or has been, satisfied by lawfully acquired means.
- (2) For the purposes of this Part, property that is given to a person as a gift, or has been bequeathed to a person, is only lawfully acquired property of the recipient if it was lawfully acquired property of the donor.

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85. Presumption that wealth is not lawfully acquired

For the purposes of this Part, any property or benefit that is a constituent of a person's wealth is presumed not to have been lawfully acquired by the person unless the person proves otherwise.

Division 2 – Investigation and search

Subdivision 1 – Preliminary inquiries into unexplained wealth

86. Information volunteered by financial organisations

A financial organisation may provide information to the DPP about a transaction that involves the organisation if the organisation suspects, on reasonable grounds, that the information may be of assistance, at any time –

- (a) to the DPP in commencing or investigating unexplained wealth proceedings in respect of a person; or
- (b) to the Supreme Court in deciding whether or not to make an unexplained wealth declaration; or
- (c) in any unexplained wealth proceedings.

87. Notice to financial organisations to provide information

- (1) The DPP, by written notice, may require a financial organisation, or an officer of a financial

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organisation, to do one or more of the following in respect of unexplained wealth proceedings or to assist in deciding whether or not to apply for any order, declaration or warrant in relation to unexplained wealth under this Act:

- (a) provide all information the organisation has about whether or not a person specified in the notice holds an account with the organisation;
- (b) provide all information the organisation has about whether or not an account, or deposit box, described in the notice is held with the organisation;
- (ba) provide each record, information, material or thing in the custody or possession, or under the control, of the organisation that may be relevant to unexplained wealth proceedings, or persons, specified in the notice;
- (c) identify each account, or deposit box, held with the organisation, if any, that may be relevant to unexplained wealth proceedings, or persons, specified in the notice;
- (d) identify the holder of an account or deposit box, specified or described in the notice, held with the organisation;
- (e) provide all information the organisation has about the existence of any other kind of transaction between the organisation and a person specified in the notice;

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- (f) provide all information the organisation has about whether or not a person described in the notice has applied to the organisation to open an account, borrow money or enter into any other type of transaction or arrangement with the organisation;
 - (g) if a transaction or arrangement mentioned in paragraph (e) or (f) has taken place, is taking place or is to take place, give the particulars, as specified in the notice, in respect of the transaction or arrangement.
- (2) In complying with a notice under subsection (1), a financial organisation must –
 - (a) provide the details in writing; and
 - (b) indicate the balance of any relevant account and whether the account is current or closed.
- (2A) In requiring a financial organisation to provide a record, information, material or thing in the custody or possession, or under the control, of the organisation, the DPP may direct that the record, information, material or thing be delivered –
 - (a) at a place specified in the notice; and
 - (b) to the DPP or any other person specified in the notice; and

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- (c) in person, by certified mail or in another specified manner.
- (2B) If the DPP has required a financial organisation to provide a record, information, material or thing in the custody or possession, or under the control, of the organisation –
- (a) the DPP may retain that record, information, material or thing for so long as is necessary for the purposes of this Part; and
- (b) if possible and on the request of a person who would be entitled to possession of that record, information, material or thing if it were not in the possession of the DPP, the DPP must provide that person with a certified copy of the record, information, material or thing as soon as practicable.
- (2C) A certified copy of a record, information, material or thing provided under subsection (2B)(b) is to be received in all courts and elsewhere as evidence of the matters contained in the copy as if it were the original.
- (3) Service of a notice under subsection (1) on the financial organisation may be effected personally, by post, by facsimile transmission, by electronic means or by any other prescribed means.
- (4) Any record, information, material or thing obtained by the DPP under this section may be used for the purposes of unexplained wealth

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proceedings or to assist in deciding whether or not to apply for any order, declaration or warrant in relation to unexplained wealth under this Act.

- (5) A financial organisation must comply with a requirement of a notice under subsection (1) within –
- (a) 7 days of receipt of the notice; or
 - (b) such longer period as is specified in the notice.

Penalty: Fine not exceeding 5 000 penalty units.

88. Notice to other organisations to provide information

- (1) In this section, a reference to an organisation is a reference to –
- (a) a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*; or
 - (b) an organisation that has a legislative requirement to comply with Treasurer's Instructions issued under section 114 of the *Government Business Enterprises Act 1995*; or
 - (c) any other organisation, or class of organisations, prescribed for the purposes of this section.
- (2) The DPP, by written notice, may require an organisation, or an officer of an organisation, to

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do one or more of the following in respect of unexplained wealth proceedings or to assist in deciding whether or not to apply for any order, declaration or warrant in relation to unexplained wealth under this Act:

- (a) provide the DPP with any information or explanation the DPP requests;
 - (b) monitor any interaction between the organisation and a person, or any dealing with a thing, specified in the notice, and provide the DPP with all information in respect of that interaction or dealing as soon as practicable after a person with knowledge of the notice becomes aware of the interaction or dealing;
 - (c) produce to the DPP any record, information, material or thing in the custody or possession, or under the control, of the organisation.
- (3) Under subsection (2), the DPP may require –
- (a) information, an explanation or an answer to a question to be given orally or in writing, as the DPP requires; and
 - (b) an officer of the organisation to –
 - (i) verify the information, explanation or answer to a question; or

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- (ii) give an oath or affirmation that the information, explanation or answer is true.
- (4) In respect of any record, information, material or thing produced under subsection (2), the DPP may –
 - (a) inspect and take copies of, or take extracts from, any such record, information, material or thing; and
 - (b) require or direct any person to give such assistance as may be required.
- (5) Service of the notice on the organisation may be effected personally, by post, by facsimile transmission, by electronic means or by any other prescribed means.
- (6) Any record, information, material or thing obtained by the DPP under this section may be used for the purposes of unexplained wealth proceedings or to assist in deciding whether or not to apply for any order, declaration or warrant in relation to unexplained wealth under this Act.
- (7) An organisation must comply with a requirement of a notice under subsection (2) within –
 - (a) 7 days of receipt of the notice; or
 - (b) such longer period as is specified in the notice.

Penalty: Fine not exceeding 5 000 penalty units.

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89. Protection for organisations that provide information, &c.

- (1) This section applies to the following organisations:
- (a) a financial organisation –
 - (i) providing information under section 86; or
 - (ii) complying with a notice under section 87;
 - (b) an organisation complying with a notice under section 88.
- (2) To the extent that an organisation to which this section applies, or an officer of such an organisation, provides information, or complies with a notice, in good faith –
- (a) the organisation, or the officer of the organisation, does not incur any civil or criminal liability in respect of the provision of the information or compliance with the notice; and
 - (b) the organisation, or the officer of the organisation, cannot be held to have done any of the following in respect of the provision of the information or compliance with the notice:
 - (i) breached any code of professional etiquette or ethics;

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(ii) departed from any accepted standard of professional conduct;

(iii) contravened any Act.

90. Giving false or misleading information

(1) An organisation, or an officer of an organisation, must not knowingly –

(a) provide false or misleading information under section 86; or

(b) provide false or misleading information in purported compliance with a notice under section 87; or

(c) provide false or misleading records, information, materials or things in purported compliance with a notice under section 87 or 88.

Penalty: Fine not exceeding 5 000 penalty units.

(2) Subsection (1) does not apply to an organisation, or an officer of an organisation, if, at the time the organisation or officer provides the information, record, material or thing, or as soon as practicable after becoming aware that the information, record, material or thing is false or misleading, the organisation or officer –

(a) informs the DPP that the information, record, material or thing is false or misleading; and

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- (b) indicates the respects in which it is false or misleading; and
 - (c) provides the DPP with any correct information, record, material or thing that is in the possession or control of the organisation or officer; and
 - (d) provides the DPP with any information the organisation or officer has concerning who had access to the information, record, material or thing that is false or misleading.

Subdivision 2 – Examinations

91. Applications for examination orders

- (1) The DPP may apply to the Supreme Court for an order for the examination of a person under this Subdivision.
- (2) An application under subsection (1) may be made ex parte.

92. Examination orders

- (1) On hearing an application under section 91, the Supreme Court may make an order for a person to be examined under this Subdivision if satisfied that the examination is relevant to assessing whether or not the person's, or another person's, wealth is lawfully acquired.
- (2) An examination order may specify that the person to be examined under the examination

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order (the *person to be examined*) must submit to an examination about one or more of the following:

- (a) the wealth, liabilities, income and expenditure of a person who has, or is suspected on reasonable grounds of having, wealth that is not lawfully acquired;
- (ab) the nature, location and source of property that forms, or may form, part of the wealth, liabilities, income and expenditure of a person who has, or is suspected on reasonable grounds of having, wealth that is not lawfully acquired;
- (b) the nature, location and source of any property-tracking documents;
- (ba) the identity of any person who may have possession, control, custody or management of –
 - (i) the wealth, liabilities, income and expenditure of a person who has, or is suspected on reasonable grounds of having, wealth that is not lawfully acquired; and
 - (ii) the wealth, liabilities, income and expenditure of the person to be examined; and
 - (iii) any property-tracking documents;

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- (c) any ancillary matters, including the wealth, liabilities, income and expenditure of the person to be examined, if relevant to assessing whether or not the person's, or another person's, wealth is lawfully acquired or the extent of that wealth.
- (3) An examination order may specify one or more of the following:
- (a) that the person to be examined is to give to the Supreme Court any documents (including property-tracking documents) or information, in his or her possession or control, about property specified or described in the examination order;
 - (b) that the person to be examined is to give to the Supreme Court any documents (including property-tracking documents) or information, in his or her possession or control, about the wealth, liabilities, income or expenditure of the person specified or described in the examination order;
 - (c) that the person to be examined is to give to the Supreme Court any documents (including property-tracking documents) or information, in his or her possession or control, about his or her wealth, liabilities, income or expenditure if relevant to assessing whether or not the person's, or another person's, wealth is

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lawfully acquired or the extent of that wealth;

- (d) that the person to be examined is to give to the Supreme Court any information in his or her possession or control that may help to locate, identify or quantify any –
 - (i) property, or property of a class, specified or described in the examination order; or
 - (ii) property-tracking documents, or other documents or information, specified or described in the examination order;
 - (e) that the person to be examined is to do either or both of the following:
 - (i) give any information, required under the examination order, by affidavit;
 - (ii) attend the Supreme Court for the examination;
 - (f) any directions, or ancillary orders, that are necessary or convenient for giving effect to the examination order or for ensuring compliance with the examination order.
- (4) Before an examination is conducted under an examination order, or in the course of the examination, the Supreme Court may do anything it considers necessary or expedient to

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give effect to the examination order, or to ensure compliance with the examination order, while having regard to the purpose of the examination.

93. Service of examination orders

- (1) The DPP must arrange for a copy of an examination order to be served personally on the person to be examined under the examination order.
- (2) Unless the Supreme Court specifies otherwise, a copy of the examination order is not to be served on anyone except the person to be examined under the examination order.

94. Complying with examination orders

- (1) If an owner of restrained property is to be examined under an examination order, the owner must comply with –
 - (a) the examination order; and
 - (b) any requirements made as part of an examination held under the examination order.

Penalty: Fine not exceeding 1 000 penalty units or an amount equal to the value of the property, whichever is greater, or imprisonment for a term not exceeding 5 years, or both.

- (2) In addition to subsection (1), if an owner of restrained property is to be examined under an

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examination order and fails to comply with the examination order, or any requirements made as part of an examination held under the examination order –

- (a) the owner is not entitled to file under Division 4 an objection to the restraint of the property; and
 - (b) if the owner has already filed an objection under Division 4, the objection is of no effect.
 - (3) A person to be examined under an examination order, other than a person to whom subsection (1) applies, must comply with –
 - (a) the examination order; and
 - (b) any requirements made as part of an examination held under the examination order.
- Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (4) Without limiting the generality of subsection (1), (2) or (3), a person fails to comply with the examination order if –
 - (a) the person fails to disclose material information that the person was aware, or could reasonably have been expected to have been aware, was material; or

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- (b) the person gives information or a document that is false or misleading, in purported compliance with the examination order, that the person was aware, or could reasonably have been expected to have been aware, was false or misleading.
- (5) Subsection (4)(b) does not apply to a person if, at the time the person gives the information or a document or as soon as practicable after becoming aware that the information or document given is false or misleading, the person –
- (a) informs the DPP that the information or document is false or misleading; and
 - (b) indicates the respects in which it is false or misleading; and
 - (c) gives the DPP any correct information that is in the person's possession or control; and
 - (d) provides the DPP with any information the person has concerning who had access to the information or document that is false or misleading.
- (6) A person is not excused from complying with an examination order, or any requirements made as part of an examination held under the examination order, on the grounds that complying –

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- (a) would tend to incriminate the person or expose him or her to a penalty; or
 - (b) may result in the forfeiture of property; or
 - (c) would be in breach of an obligation on the person not to disclose information, or not to disclose the existence or contents of a document, whether the obligation arose under an Act or otherwise.
- (7) A statement or disclosure made by a person in the course of complying with an examination order is only admissible as evidence in any of the following proceedings:
 - (a) a proceeding against the person for an offence against this section;
 - (b) any civil proceeding against the person;
 - (c) any proceeding under this Act that may lead to the forfeiture of property.
- (8) Despite subsection (7), the transcript of an examination of a person under an examination order is admissible in any proceedings under this Act or under any other law in force in the State as evidence of a statement or disclosure made by the person in the course of complying with the examination order.

95. Conduct of examinations

- (1) In this section –

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judicial officer means a person having authority by law to hear and determine any question or matter, or to hold any inquiry, necessary for proceedings in the Supreme Court.

- (2) An examination under an examination order is to be held as a proceeding before a judge in chambers or another judicial officer otherwise specified in the examination order.
- (3) A person to be examined under an examination order must attend the examination and answer any questions asked during the examination personally but is entitled to have an Australian legal practitioner present to give legal advice during the examination.

Subdivision 3 – Production of documents

96. Application for document production orders

- (1) The DPP may apply to the Supreme Court for a production order for a property-tracking document.
- (2) An application under subsection (1) –
 - (a) is to identify –
 - (i) the property-tracking document sought; and
 - (ii) the person or persons who the DPP suspects has possession or control of the document; and

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(b) may be made ex parte.

97. Document production orders

- (1) On hearing an application under section 96, the Supreme Court is to make an order in relation to the person or persons to whom the application relates if satisfied that –
 - (a) the property-tracking document is relevant to assessing whether or not a person's wealth is lawfully acquired; and
 - (b) there are reasonable grounds for suspecting that the document is in the possession or control of a person (the *order recipient*) specified in the application.
- (2) A document production order may –
 - (a) require the order recipient to produce the property-tracking document specified in the order; or
 - (b) direct the order recipient –
 - (i) to give the property-tracking document to the DPP; or
 - (ii) to make the property-tracking document available to the DPP for inspection.
- (3) An order under subsection (1) is to specify the time and place for the document to be produced, given or made available.

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98. Inspection of property-tracking documents

- (1) If a property-tracking document is given to the DPP in accordance with a direction under section 97(2)(b)(i), the DPP may do one or more of the following:
 - (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document;
 - (d) retain the document for as long as its retention is reasonably required for the purposes of this Part.
- (2) If the DPP retains the property-tracking document under subsection (1)(d), the DPP must, on the request of the person who gave the document to the DPP –
 - (a) permit the person to inspect the document, take extracts from it or make copies of it; or
 - (b) give the person a copy of the document certified by the DPP in writing to be a true copy of the document.
- (3) If a property-tracking document is made available to the DPP for inspection in accordance with a direction under section 97(2)(b)(ii), the DPP may do one or more of the following:
 - (a) inspect the document;

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

99. Complying with document production orders

- (1) A person must not, without reasonable excuse, fail to comply with a document production order.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (2) A person must not knowingly produce, or make available to the DPP, a document that is false or misleading in a material particular when complying with a document production order.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (3) Subsection (2) does not apply to a person if, at the time the document is produced or as soon as practicable after becoming aware that a document produced is false or misleading, the person –

- (a) informs the DPP that the document is false or misleading; and
- (b) indicates the respects in which it is false or misleading; and
- (c) gives the DPP any correct information about the document that is in the person's possession or control; and

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- (d) provides the DPP with any information the person has concerning who had access to the document that is false or misleading.
 - (4) A person is not excused from complying with a document production order on the grounds that complying with the document production order would –
 - (a) tend to incriminate the person or expose him or her to a penalty; or
 - (b) be in breach of an obligation of the person to not disclose the existence or contents of the document, whether the obligation arose under an Act or otherwise.
 - (5) Any information contained in a property-tracking document produced under a document production order, or any statement or disclosure made by a person in the course of complying with a document production order, is only admissible in evidence in any of the following proceedings:
 - (a) a proceeding against the person for an offence against this section;
 - (b) any civil proceeding against the person;
 - (c) any proceeding under this Act that may lead to the forfeiture of property.

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100. Variation of document production orders

- (1) If a document production order requires a person to give a property-tracking document to the DPP, the person may apply to the Supreme Court to vary the document production order so that it requires the person to make the document available to the DPP for inspection.
- (2) The Supreme Court may vary the document production order accordingly if it finds that the document is essential to the lawful business activities of the person.

101. Compliance with document production orders not admissible as evidence in certain circumstances

If a person produces a document, or makes a document available, under a document production order –

- (a) the production or making available of the document; and
- (b) any information, document or anything else acquired by the DPP as a direct or indirect consequence of the person's compliance with the document production order –

is not admissible against the person in evidence in any criminal proceedings except proceedings for an offence under section 99.

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Subdivision 4 – Monitoring financial transactions

102. Applications for monitoring orders

- (1) The DPP may apply to the Supreme Court for a monitoring order.
- (2) An application under subsection (1) –
 - (a) is to specify each of the following to which the application relates:
 - (i) the account to be monitored under the monitoring order;
 - (ii) the person whose transactions are to be monitored under the monitoring order;
 - (iii) the financial organisation in respect of which the monitoring order is to be made; and
 - (b) may be made ex parte.

103. Monitoring orders

On hearing an application under section 102, the Supreme Court may make a monitoring order, in relation to a financial organisation specified in the application, that requires that financial organisation to give to the DPP information about transactions carried out through an account –

- (a) specified in the order; or

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- (b) held with the organisation by a person specified in the order.

104. Application for suspension orders

- (1) The DPP may apply to the Supreme Court for a suspension order.
- (2) An application under subsection (1) –
 - (a) is to specify each of the following to which the application relates:
 - (i) the account or transaction to be suspended under the order;
 - (ii) the person whose transactions are to be suspended under the order;
 - (iii) the financial organisation in respect of which the suspension order is to be made; and
 - (b) may be made ex parte.

105. Suspension orders

On hearing an application under section 104, the Supreme Court may make a suspension order, in relation to a financial organisation specified in the application, that requires that financial organisation to do one or more of the following:

- (a) to notify the DPP immediately of any transaction that has been initiated in connection with an account –

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- (i) specified in the order; or
 - (ii) held with the organisation by a person specified in the order;
 - (b) to notify the DPP immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with an account –
 - (i) specified in the order; or
 - (ii) held with the organisation by a person specified in the order;
 - (c) to refrain from completing or effecting a transaction referred to in paragraph (a) or (b) for 48 hours.

106. Monitoring orders and suspension orders generally

- (1) The Supreme Court may only make a monitoring order, or suspension order, if satisfied that there are reasonable grounds for suspecting –
 - (a) if a person is to be specified in the order, that the person –
 - (i) has unexplained wealth or is about to be the subject of an unexplained wealth declaration; or
 - (ii) is, or is about to be, the person named in a specified restraining order; or

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- (b) if an account is to be specified in the order, that the account directly, or indirectly, relates to a person who –
 - (i) has unexplained wealth or is about to be the subject of an unexplained wealth declaration; or
 - (ii) is, or is about to be, the person named in a specified restraining order.
- (2) A monitoring order or suspension order applies to all transactions carried out or to be carried out through –
 - (a) an account held with the organisation by a person specified in the order; or
 - (b) an account specified in the order –during the monitoring period, or suspension period, specified in the order.
- (3) A monitoring order or suspension order is to specify –
 - (a) the financial organisation to which the order applies; and
 - (b) the name or names in which the account is believed to be held; and
 - (c) the class or type of information that the organisation is required to give; and

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- (d) the manner in which the information is to be given to the DPP; and
 - (e) the period of monitoring, or suspension, in accordance with subsection (4) that does not exceed 3 months.
 - (4) A period of monitoring under a monitoring order or a period of suspension under a suspension order is to commence –
 - (a) on such a day as is specified in the relevant order, being a day after the day on which a copy of the relevant order is served on the financial organisation; or
 - (b) if no such day is specified in the order, on the day on which a copy of the relevant order is served on the financial organisation.
 - (5) Despite subsection (3)(e), the Supreme Court may –
 - (a) extend a period of monitoring or suspension on as many occasions as the Supreme Court sees fit; and
 - (b) in extending the period under paragraph (a), enable the period of monitoring or suspension to exceed 3 months from the commencement of the monitoring order or suspension order.

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107. Compliance with monitoring orders or suspension orders

- (1) A financial organisation must not knowingly –
- (a) fail to comply with a monitoring order or suspension order; or
 - (b) provide false or misleading information in purported compliance with the order.

Penalty: Fine not exceeding 5 000 penalty units.

- (2) Subsection (1)(b) does not apply to an organisation if, at the time the information is provided or as soon as practicable after becoming aware that some or all of the information provided is false or misleading, the organisation –
- (a) informs the DPP that the information is false or misleading; and
 - (b) indicates the respects in which it is false or misleading; and
 - (c) gives the DPP any correct or relevant information that is in the organisation's possession or control; and
 - (d) provides the DPP with any information the organisation has concerning who had access to the information that is false or misleading.

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Subdivision 5 – Secrecy requirements

108. Disclosure not permitted

- (1) A person must not, except as permitted under section 109, disclose to another person –
- (a) the fact that a financial organisation, or an officer of the organisation, intends to give or has given information to the DPP under section 86; or
 - (b) the nature of any information given under section 86; or
 - (c) the fact that a requirement has been or is to be made by notice, or that an organisation or officer of the organisation has complied, or is to comply, with the notice, under section 87; or
 - (d) the content of a notice, or response made to a notice, under section 87; or
 - (e) the fact that a requirement has been or is to be made by notice, or that an organisation or officer of the organisation has complied, or is to comply, with the notice, under section 88; or
 - (f) the content of a notice, or response made to a notice, under section 88; or
 - (g) the fact that the person disclosing the information has been subject to a document production order, examination order, monitoring order or suspension

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order, in relation to a person's wealth, liabilities, income or expenditure; or

- (h) the fact that a person other than the person disclosing the information is or has been subject to, or the subject of, a document production order, examination order, monitoring order or suspension order; or
- (i) the contents of any document production order, examination order, monitoring order or suspension order; or
- (j) any information obtained under this Part, or that came to the disclosing person's knowledge during, or as a result of, an investigation under this Part.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (2) Without limiting subsection (1), a person discloses information in contravention of that subsection if the person –
 - (a) discloses information to another person from which the other person could reasonably be expected to infer information the disclosure of which would contravene subsection (1); or
 - (b) makes or keeps a record of any information about a notice, or response, under section 87, or a requirement or response under section 88, other than a

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copy for the person's own records of the notice or the information provided in response to the notice; or

- (c) makes or keeps a record of any information about the existence or operation of a document production order, examination order, monitoring order or suspension order, other than a copy for the person's own records of –
 - (i) an order directed to the person; or
 - (ii) the information provided by the person in response to the order.

109. Disclosing information

- (1) An organisation, or an officer of an organisation, may disclose information to any one or more of the following without contravening section 108:
 - (a) the DPP, a police officer or a member of the Australian Crime Commission;
 - (b) an officer of the organisation, for the purposes of giving information under section 86 or section 88;
 - (c) an officer of the organisation, for the purposes of ensuring that –
 - (i) a requirement of a notice under section 87 is complied with; or
 - (ii) a notice under section 88 is complied with;

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- (d) an Australian legal practitioner, for the purposes of obtaining legal advice in relation to –
 - (i) giving information under section 86; or
 - (ii) complying with a notice under section 87; or
 - (iii) complying with a notice under section 88;
 - (e) an officer of the organisation, for the purposes of ensuring that a document production order, examination order, monitoring order or suspension order is complied with;
 - (f) an Australian legal practitioner, for the purposes of obtaining legal advice in relation to a document production order, examination order, monitoring order or suspension order.
- (2) An individual who is not acting in the capacity of an officer of an organisation, or in the capacity of an Australian legal practitioner, may disclose information to any one or more of the following without contravening section 108:
- (a) the DPP, a police officer or a member of the Australian Crime Commission;
 - (b) an Australian legal practitioner, for the purposes of obtaining legal advice in relation to a document production order,

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examination order, monitoring order or suspension order.

- (3) An Australian legal practitioner to whom information is disclosed under subsection (1) or (2) may disclose the information, without contravening section 108, to a person to whom it may have been disclosed under that subsection for the purpose of giving legal advice in relation to the matter disclosed.
- (4) Subject to subsection (5), a person (except an Australian legal practitioner) to whom information is disclosed under subsection (1) or (2) may disclose the information to another person to whom it might have been disclosed under that subsection.
- (5) If information about a particular matter may only be disclosed under subsection (1) or (2) in particular circumstances or for a particular purpose, a person must not disclose the information under subsection (4) except in those circumstances or for that purpose.
- (6) A person to whom information about a particular matter is disclosed under this section must not disclose the information to anyone, other than a police officer, the DPP or a member of the Australian Crime Commission, if the person ceases to be a person of a kind to whom the information may be disclosed.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

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Subdivision 6 – Detention, search and retention

110. Power to detain persons

- (1) A police officer may at any time stop or detain a person if there are reasonable grounds for suspecting that the person has in his or her possession –
 - (a) property that is not lawfully acquired; or
 - (b) property of a person that is named in a specified restraining order; or
 - (c) property that is at risk of forfeiture; or
 - (d) property-tracking documents relating to wealth.
- (2) In addition to subsection (1), a police officer may at any time stop or detain a person (the *detainee*) if there are reasonable grounds for suspecting that another person is holding, on behalf of the detainee –
 - (a) property that is at risk of forfeiture; or
 - (b) property-tracking documents.
- (3) A police officer may, for the purposes of exercising a power under subsection (1) or (2), stop or detain any thing being used as a means of transportation.
- (4) If a police officer stops or detains a person under subsection (1) or (2), the police officer may –

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- (a) search the person in accordance with this Part; and
 - (b) search any baggage, package, electronic device, animal, vehicle or any other property apparently in the possession or under the control of the person.
- (5) When exercising his or her powers under this section, a police officer may use any reasonable force and any assistance the police officer thinks reasonable.
- (6) In this section, a power to stop or detain includes the power to stop and detain.

111. Search warrants

- (1) A police officer may apply to a magistrate or judge for a search warrant authorising a search of any premises or property.
- (2) An application for a search warrant under this section may be made by telephone or other electronic means and section 15 of the *Search Warrants Act 1997* applies, with the necessary modifications, in respect of a warrant that is issued on such an application.
- (3) A magistrate or judge may issue a search warrant if satisfied, by information on oath, that there are reasonable grounds for suspecting that any property that is suspected of not being lawfully acquired or any property-tracking document –

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- (a) is in or on the premises, or property, that is the subject of the search warrant; or
 - (b) will be in or on the premises, or property, within the next 72 hours.
- (4) A search warrant issued under this section may authorise a police officer to do one or more of the following, using any reasonable force and with any assistance the police officer thinks reasonable:
 - (a) enter the premises, or property, described in the warrant;
 - (b) search the premises or property;
 - (c) search any baggage, package, electronic device, animal, vehicle or any other property found in or on the premises or property;
 - (d) detain any person in or on the premises or property and search the person in accordance with this Part.
- (5) A search warrant issued under this section –
 - (a) may be executed at any time of night or day; and
 - (b) subject to section 113, continues in force for 30 days from the day on which it was issued.
- (6) If, in the course of executing a search warrant issued under this section –

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- (a) a police officer finds any property that the police officer believes on reasonable grounds to be property that is at risk of forfeiture; and
- (b) the police officer believes on reasonable grounds that it is necessary to seize that property to prevent its concealment, loss or destruction –

the search warrant is taken as authorising the police officer to seize that property.

- (7) Schedule 1 applies, with the necessary modifications, to a search warrant issued under this section to the extent that the Schedule is not inconsistent with this section.
- (8) Nothing in this Part limits any other statutory law relating to search warrants.

112. Additional powers

- (1) If a police officer exercises any of his or her powers under section 110 or under a search warrant issued under section 111, the police officer may do one or more of the following:
 - (a) seize and retain any documents found in the course of exercising those powers if there are reasonable grounds for suspecting that the documents are property-tracking documents;
 - (b) take extracts from or make copies of, or download or print out, any property-

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tracking documents found in the course of exercising those powers;

- (c) require a person who has control of any property-tracking documents found in the course of exercising those powers to make copies of, or download or print out, any property-tracking documents found in the course of exercising those powers;
- (d) require a person to give to the police officer any information within the person's knowledge or control that is relevant to locating property that is reasonably suspected of being at risk of forfeiture under this Part;
- (e) require a person to give to the police officer any information within the person's knowledge or control that is relevant to assessing whether or not property is at risk of forfeiture under this Part;
- (f) require a person to give the police officer, or arrange for the police officer to be given, any translation, codes, passwords or other information necessary to gain access to or to interpret and understand any property-tracking documents or information located or obtained in the course of exercising the police officer's powers under the warrant.

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- (2) A person must comply with a requirement imposed on him or her under subsection (1).

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (3) Without limiting subsection (2), a person fails to comply with a requirement under subsection (1) if the person –

- (a) does not disclose material information of which the person has knowledge, or gives false information, or a false document, in purported compliance with the requirement; and
- (b) is aware, or could reasonably be expected to be aware, that the information is material or that the information or document is false; and
- (c) in the case of false information or documents, does not inform the police officer that the information or document is false or is reasonably likely to be false –
 - (i) at the time of giving the information or document; or
 - (ii) as soon as reasonably practicable after becoming aware that the information or document was false or was reasonably likely to be false.

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- (4) A person is not excused from complying with a requirement under subsection (1) on the grounds that complying with the requirement would tend to incriminate the person or expose him or her to a penalty.
- (5) Any evidence, information, document or thing obtained as a direct or indirect consequence of complying with a requirement under subsection (1) is not admissible in evidence in proceedings against the person for any offence except an offence against subsection (2).

113. Later-produced documents

If –

- (a) a search warrant issued under section 111 enables action to be taken in relation to a document that was in existence at the time that the warrant was issued; but
- (b) at the time that the search warrant was executed it was physically impossible for the document to be produced –

a police officer may take the action in respect of the document when the document becomes available even if the search warrant has by then expired.

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Division 3 – Restraining of property

Subdivision 1 – Retention of property generally and interim wealth-restraining order

114. Removal of seized or retained property generally

A police officer may, at any time, remove property seized under this Division from the place at which it was seized and retain it at another location.

115. Retention of property not subject to an order under this Division

If there is no specified restraining order in place in respect of property, a police officer may seize, retain or guard property he or she suspects is not lawfully acquired, or arrange for such property to be secured by any other means, for not more than 72 hours.

116. Interim wealth-restraining orders

- (1) The DPP may apply for an interim wealth-restraining order to be made –
 - (a) in respect of the property of a person named in the application; or
 - (b) in respect of the property specified in the application.
- (2) An application under subsection (1) may be made –

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- (a) to the Magistrates Court or the Supreme Court; and
 - (b) in chambers, by telephone or by electronic means; and
 - (c) ex parte.
- (3) On hearing an application under subsection (1), the Magistrates Court or the Supreme Court may make an order specifying –
 - (a) that the property of a person named in the order may be seized, retained or guarded under the order; or
 - (b) that property specified in the order may be seized, retained or guarded under the order.
- (4) The Magistrates Court or Supreme Court may only make an interim wealth-restraining order under subsection (3) if satisfied that –
 - (a) an application is to be made for a wealth-restraining order, in relation to the property of the person named in the application for the interim wealth-restraining order, as soon as reasonably practicable; and
 - (b) the circumstances justify the making of the interim wealth-restraining order before the application for the wealth-restraining order can be heard.

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- (4A) The Magistrates Court or Supreme Court may refuse to make an interim wealth-restraining order under subsection (3) if the DPP, on behalf of the State, refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.
- (5) The Magistrates Court may make an interim wealth-restraining order under subsection (3) even though the value of the property specified in, or affected by, the interim wealth-restraining order exceeds the jurisdictional money limit set for the Magistrates Court under the *Magistrates Court (Civil Division) Act 1992*.
- (6) An interim wealth-restraining order has effect until the expiration of –
- (a) 3 days after it was made, excluding any Saturdays, Sundays or statutory holidays as defined in the *Statutory Holidays Act 2000*; or
 - (b) such further period as is specified in the interim wealth-restraining order by the court making the order.
- (7) An interim wealth-restraining order authorises the DPP to seize, retain or guard property affected by the interim wealth-restraining order, or for the property to be secured by other means, for the duration of the interim wealth-restraining order.

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Subdivision 2 – Wealth-restraining orders in relation to property

117. Applications for wealth-restraining orders

- (1) The DPP may apply to the Supreme Court for a wealth-restraining order to be made in relation to the property of a person named in the application.
- (2) An application under subsection (1) may be made ex parte.

118. Wealth-restraining orders

- (1) On hearing an application under section 117(1), the Supreme Court may make an order in relation to the property of a person named in the application.
- (2) The Supreme Court may only make a wealth-restraining order in relation to the property of a person named in an application if satisfied that –
 - (a) an unexplained wealth declaration has been made against the person; or
 - (b) an application has been made for –
 - (i) an unexplained wealth declaration to be made against the person; or
 - (ii) a document production order that is likely to result in the disclosure of a document that is evidence

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that the person owns or
effectively controls the property;
or

- (c) the Supreme Court is satisfied that the DPP intends to make an application referred to in paragraph (b) within a reasonable period that is not less than 21 days after the wealth-restraining order is made.

- (2A) The Supreme Court may refuse to make a wealth-restraining order under this section if the DPP, on behalf of the State, refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

- (3) A wealth-restraining order may specify that it applies –

- (a) to all or any property, or class of property, that is owned or effectively controlled by a person named in the wealth-restraining order at the time of the application, whether or not the property is described or identified in the application; and

- (b) to all or any property or class of property acquired, after the wealth-restraining order is made, by –

- (i) a person named in the wealth-restraining order; or

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- (ii) another person at the request or direction of a person named in the wealth-restraining order; and
- (c) to all or any property that –
 - (i) is retained under section 115 or is the subject of an interim wealth-restraining order; and
 - (ii) is the property of a person named in the wealth-restraining order.

119. Wealth-restraining orders to specify grounds

If an application is made under section 117 for a wealth-restraining order, the Supreme Court is to –

- (a) consider each matter that is alleged by the DPP, either in the application or in the hearing of the application, as a ground for making the wealth-restraining order; and
- (b) if the wealth-restraining order is made, set out in the wealth-restraining order each ground that the Supreme Court finds is a ground on which the wealth-restraining order may be made.

120. Non-disclosure of information

Despite section 119, the Supreme Court is not to include information in a wealth-restraining order, if the Court is satisfied that the release of

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the information may materially prejudice an ongoing investigation by the DPP.

121. Scope of wealth-restraining orders

As part of proceedings for a wealth-restraining order, the Supreme Court may do any one or more of the following in respect of property that is affected by the wealth-restraining order:

- (a) if the property is moveable, direct that the property is not to be moved except in accordance with the wealth-restraining order;
- (b) appoint the Public Trustee or another person to manage the property while the wealth-restraining order is in force;
- (c) give any directions necessary to provide for the security and management of the property while the wealth-restraining order is in force;
- (d) provide for the reasonable living and business expenses of the owner of the property to be met while the wealth-restraining order is in force.

122. Service of wealth-restraining orders

- (1) As soon as practicable after a wealth-restraining order is made, the DPP must arrange for a copy of the wealth-restraining order and a notice that complies with subsection (2) to be served personally on each of the following persons:

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- (a) the person named in the wealth-restraining order;
 - (b) if, under the authority of the wealth-restraining order, property is, or has been, taken from a person or is in the custody of a person, that person;
 - (c) any person known to the DPP at the time the wealth-restraining order was made who has, may have or claims to have an interest in property affected by the wealth-restraining order.
- (2) The notice referred to in subsection (1) must –
- (a) summarise the effect of the wealth-restraining order, including the period for which it applies; and
 - (b) advise the person on whom the wealth-restraining order and the notice are served –
 - (i) that the property affected by the wealth-restraining order may be forfeited under this Part; and
 - (ii) that, within 28 days after being served with the copy of the wealth-restraining order, the person may file in the Supreme Court an objection to the restraint of the property; and
 - (iii) that the person is required to make and lodge a statutory

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declaration in accordance with
section 123.

- (3) If, as a result of a statutory declaration made in accordance with section 123, the DPP becomes aware of another person who has, may have or claims to have an interest in the property affected by the wealth-restraining order, the DPP must arrange for personal service of a copy of the wealth-restraining order and notice, in accordance with subsection (2), on that other person as soon as practicable.
- (4) Subsections (1) and (3) do not prevent the DPP from serving, at any time, a copy of the wealth-restraining order and a notice on any other person of whom the DPP becomes aware who has, may have or claims to have an interest in the property.
- (5) The DPP must ensure that –
 - (a) an affidavit of service is endorsed on a copy of each copy of the wealth-restraining order that is served; and
 - (b) each endorsed copy is filed in the registry of the Supreme Court.

123. Statutory declaration required from persons served with wealth-restraining orders

- (1) A person who is served under section 122(1) or (3) with a copy of a wealth-restraining order must –

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- (a) make a statutory declaration as to the matters set out in subsection (2); and
- (b) file the declaration in the Supreme Court within 7 days after being served with the copy.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A statutory declaration under subsection (1) is to include –
 - (a) the name and, if known, the address of any other person of whom the declarant is aware who has, may have or claims to have an interest in property affected by the wealth-restraining order; or
 - (b) if the declarant is not aware of another such person, a statement to that effect.

124. Effect of wealth-restraining orders

- (1) While a wealth-restraining order is in effect in relation to property –
 - (a) subject to Subdivision 3, a person is not entitled to deal with the property; and
 - (b) subject to section 121(a), the DPP may arrange for a police officer to seize, retain or guard the property, or for the property to be secured by other means, for the duration of the wealth-restraining order; and

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- (c) the DPP may apply under this Part to the Supreme Court for an order that all or some of the property, or a class of property, be forfeited to the State under Subdivision 3 of Division 6.
 - (2) Income or other property that is derived from restrained property is taken to be part of the restrained property.
 - (3) The owner, or the person with effective control, of restrained property may apply to the Supreme Court for the release of all or some of the restrained property to meet reasonable living and business expenses of the applicant.

125. Co-owned restrained property

If property is, or is to be, restrained property and the person named in the wealth-restraining order is one of the co-owners of the property, the Supreme Court is to order that the whole of the property is restrained property unless –

- (a) the property is divisible; or
- (b) it is otherwise practicable for only the share of the person named in the wealth-restraining order to be restrained.

126. Duration of wealth-restraining orders

- (1) Subject to this Part, a wealth-restraining order has effect for the period specified in it.

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- (2) On application, the Supreme Court may extend the duration of the wealth-restraining order on as many occasions as the Supreme Court sees fit.
- (3) If the period of a wealth-restraining order is extended under this section, the DPP must serve a notice of the extension on each person on whom a copy of the wealth-restraining order was served under section 122.

127. Wealth-restraining orders cease to have effect

- (1) If a wealth-restraining order has been made on the ground that an application had been made, or was to be made, for a document production order or an unexplained wealth declaration, the wealth-restraining order ceases to have effect if –
 - (a) within 21 days from the making of the wealth-restraining order, an application has not been made for the document production order or the unexplained wealth declaration; or
 - (b) the application for the document production order or the unexplained wealth declaration is withdrawn for any reason; or
 - (c) the application for the document production order or unexplained wealth declaration is finally determined but a document production order or unexplained wealth declaration is not made as a result of the application; or

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- (d) in the case where an unexplained wealth declaration is made, the respondent has satisfied his or her unexplained wealth liability under the unexplained wealth declaration, whether or not all or any of the restrained property was transferred to, or vested in, the State to satisfy the liability.
- (2) A wealth-restraining order also ceases to have effect in respect of property –
- (a) if the wealth-restraining order is set aside under Division 4; or
 - (b) if that property is forfeited to the State under Subdivision 3 of Division 6.
- (3) If a wealth-restraining order ceases to have effect, the DPP is to ensure that –
- (a) notice that the wealth-restraining order has ceased to have effect is served personally, as soon as practicable, on each person on whom a copy of the wealth-restraining order was served under section 122; and
 - (b) any property that is being retained under section 115 is returned to the person from whom it was taken unless it is to be otherwise dealt with under this Act or another Act; and
 - (c) any property that is being guarded under section 115 is released from guard unless

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it is guarded for another reason under this Act or another Act; and

- (d) if the DPP is aware that the person to whom property is to be returned under paragraph (b) is not the owner of the property, the owner is notified, where practicable, of the setting aside of the wealth-restraining order and the return of the property.

128. Land restrained under wealth-restraining order

- (1) If land is to be restrained property under a wealth-restraining order –
 - (a) the DPP must lodge with the Recorder a sealed copy of the wealth-restraining order; and
 - (b) if the land is not registered under the *Land Titles Act 1980*, the Recorder is to –
 - (i) bring the land under the *Land Titles Act 1980* as if an application had been made under section 11 of that Act; and
 - (ii) register the wealth-restraining order against the relevant folio of the Register; and
 - (c) if the land is registered under the *Land Titles Act 1980*, the Recorder is to

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register the wealth-restraining order
against the relevant folio of the Register.

- (2) Land only becomes restrained property under a wealth-restraining order once the wealth-restraining order is registered under subsection (1)(b)(ii) or (1)(c).
- (3) If, in accordance with section 127, a wealth-restraining order registered under subsection (1) ceases to have effect and restrained property under the wealth-restraining order includes land –
 - (a) the DPP must lodge notification with the Recorder that the wealth-restraining order has ceased to have effect; and
 - (b) the Recorder is to register the notification against the relevant folio of the Register.
- (4) A wealth-restraining order registered under subsection (1) ceases to have effect in relation to the restrained property that is land when evidence that the wealth-restraining order has ceased to have effect is registered under subsection (3)(b).

129. Property may be restrained under more than one order

- (1) A restraining order, and a specified restraining order, may both apply to restrained property at the same time on the same, or different, grounds.

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- (2) If a restraining order and a specified restraining order both apply to property, the fact that one of the orders ceases to have effect in respect of the property does not affect any other order still in effect in respect of the property.

Subdivision 3 – Dealing with restrained property

130. Dealing with property

- (1) In addition to section 7, a reference in this Part to dealing with property includes a reference to doing or attempting to do any of the following:
- (a) sell the property or give it away;
 - (b) dispose of the property in any other way;
 - (c) move or exhaust the property;
 - (d) accept the property as a gift;
 - (e) take any profit, benefit or proceeds from the property;
 - (f) create, increase or alter any legal or equitable right or obligation in relation to the property;
 - (g) effect a change in the effective control of the property.
- (2) In subsection (1), a reference to dealing with property does not include reasonable and necessary use for the ordinary daily requirements of living.

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131. Permitted dealings in respect of mortgaged or leased property

- (1) If property that is mortgaged is subject to a specified restraining order, this Part does not prevent –
 - (a) the mortgagor from making payments to the mortgagee in accordance with the mortgage if the payments are made with money that is not subject to a specified restraining order; or
 - (b) the mortgagee from accepting payments from the mortgagor in accordance with the mortgage; or
 - (c) the issue of a notice of default by a mortgagee, and the exercise of the mortgagee's rights, under the terms of the mortgage or as specified in legislation.
- (2) If property that is leased is subject to a specified restraining order, this Part does not prevent –
 - (a) the tenant from making payments to the landlord in accordance with the lease if the payments are made with money that is not subject to a specified restraining order; or
 - (b) the landlord from accepting payments from the tenant in accordance with the lease; or

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- (c) the renewal of a pre-existing lease agreement over land; or
- (d) the issue of a notice of default by a landlord, and the exercise of the landlord's rights, under the terms of the lease or as specified in legislation.

132. Persons must not deal with restrained property

(1) A person must not, in any way, deal with –

- (a) restrained property; or
- (b) property that is subject to an interim wealth-restraining order.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

(2) Subsection (1) does not apply to –

- (a) the forfeiture of the property under this Part; or
- (b) a person acting in accordance with the specified restraining order under which the property is restrained; or
- (c) a person acting in accordance with an order under section 121(b), 162(2) or 164(2); or
- (d) a person acting in accordance with a demand of the Public Trustee under section 161.

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- (3) It is a defence to a prosecution for an offence under subsection (1) if the person establishes that he or she did not know, and could not reasonably be expected to have known, that a specified restraining order was in force when dealing with the property.
 - (4) Subsection (1) does not prevent a person from being found guilty of contempt of court for a contravention of the specified restraining order under which the property is restrained, but the person is not punishable for both contempt and an offence under subsection (1) arising from the same contravention of the specified restraining order.

133. Effect of dealing with properties subject to wealth-restraining orders

Despite any other Act, any dealing with property that contravenes section 132 has no effect, whether at law, in equity or otherwise, on the rights of the State under this Part.

Division 4 – Objections to restraint of property

134. Objections to restraining of property

- (1) A person may file an objection in the Supreme Court to property, owned or effectively controlled by the person, being restrained property.
- (2) An objection is to identify –

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- (a) the property to which the objection relates; and
- (b) the grounds for objection against the property being restrained property.

135. Time for filing objections

- (1) If the person who intends to file an objection under section 134(1) was served with a copy of the order under section 122, the objection is to be filed within 28 days from the day on which the copy was served on the person.
- (2) If the person who intends to file an objection under section 134(1) was not served with a copy of the order under section 122, the objection is to be filed within 28 days from the day on which the person becomes aware, or could reasonably be expected to have become aware, that the property has been restrained.
- (3) The Supreme Court may, if it thinks fit, hear an objection under subsection (1) or (2) that is filed outside of the time frame specified in the relevant subsection.

136. Parties to objection proceedings

The State is a party to proceedings on the filing of an objection under section 134.

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137. Setting aside or varying restraining orders

- (1) On hearing an objection under this Division to property being restrained property under a wealth-restraining order, the Supreme Court may set aside or vary all, or any part, of the wealth-restraining order as it applies to the restrained property, or class of restrained property, specified in the application.
- (2) The Supreme Court may only set aside or vary the wealth-restraining order as it applies to the restrained property if satisfied that it is more likely than not that the person who is, or will be, the subject of an unexplained wealth declaration does not own or effectively control the property.
- (3) If the Supreme Court sets aside or varies a specified restraining order under this Division, the Supreme Court may make any necessary or convenient ancillary orders.

Division 5 – Unexplained wealth declaration

138. What constitutes a person's wealth

For the purposes of this Act, the following property and benefits constitute a person's wealth:

- (a) all property that the person owns, whether the property was acquired before or after the commencement of this Part;
- (b) all property that the person effectively controls, whether the person acquired

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effective control of the property before or after the commencement of this Part;

- (c) all property that the person has given away at any time, whether before or after the commencement of this Part;
- (d) all other property acquired by the person at any time, whether before or after the commencement of this Part, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for the ordinary daily requirements of living);
- (e) all benefits, including commercial benefits, that the person has acquired at any time, whether before or after the commencement of this Part;
- (f) all property and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Part, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for the ordinary daily requirements of living).

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139. Unexplained wealth

- (1) For the purposes of this Act, a person may have unexplained wealth if the value of the person's total wealth as described in subsection (2) is greater than the value of the person's lawfully acquired wealth as described in subsection (3).
- (2) The value of the person's total wealth is the total value of all the items of property and benefits that together constitute the person's wealth.
- (3) The value of the person's lawfully acquired wealth is the total value of all the items of property and benefits that –
 - (a) constitute the person's wealth; and
 - (b) were lawfully acquired.

140. Assessing the value of unexplained wealth

- (1) A person's unexplained wealth is the difference in value between –
 - (a) the value of a person's total wealth; and
 - (b) the value of a person's lawfully acquired wealth.
- (2) When assessing the value of a person's wealth –
 - (a) the value of any property or benefit that is a constituent of the person's wealth is taken to be the greater of –

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- (i) its value at the time that it was acquired; or
 - (ii) its value on the day that the application for the unexplained wealth declaration was made; and
- (b) the value of any property or benefit that was a constituent of the person's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of –
 - (i) its value at the time that it was acquired; or
 - (ii) its value immediately before it was given away, or was used, consumed or discarded, or ceased being available; and
- (c) the Supreme Court is not to take account of –
 - (i) any property that has been forfeited under this Act or any other Act; or
 - (ii) any property or benefit that was taken into account in making an earlier unexplained wealth declaration against the person; or
 - (iii) any property or benefit in relation to which a pecuniary penalty order has been made.

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141. Application for unexplained wealth declaration

- (1) The DPP may apply to the Supreme Court for an unexplained wealth declaration to be made against a person.
- (2) An application under subsection (1) may be made –
 - (a) in conjunction with an application under Part 2 of this Act; or
 - (b) in proceedings, under Division 4, for the hearing of an objection to the application of a specified restraining order in respect of property; or
 - (c) at any other time.

142. Unexplained wealth declaration

- (1) On hearing an application under section 141, the Supreme Court may make an unexplained wealth declaration against a person named in the application.
- (2) The Supreme Court must make an unexplained wealth declaration if satisfied that it is more likely than not that the value of the person's total wealth is greater than the value of his or her lawfully acquired wealth.
- (3) Without limiting the matters to which the Supreme Court may have regard in determining the value of a respondent's total wealth, the Supreme Court may have regard to the amount

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of the respondent's income and outgoings at any time or at all times.

- (4) On making an unexplained wealth declaration against a respondent, the Supreme Court –
- (a) is to specify in the declaration the assessed value of the respondent's unexplained wealth as determined by the Court; and
 - (b) is to order, in the declaration, that the respondent pay to the State the amount specified in the declaration as the value of his or her unexplained wealth; and
 - (c) may make any necessary or convenient ancillary orders, including awarding costs as it sees fit.

143. Unexplained wealth liability

The unexplained wealth liability of a respondent is the total of –

- (a) the amount the respondent is ordered to pay under section 142(4)(b) in respect of an unexplained wealth declaration; and
- (b) any costs awarded under section 142(4)(c) in respect of the unexplained wealth declaration or the respondent.

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144. Unexplained wealth payable to State

- (1) If the Supreme Court makes an unexplained wealth declaration, the respondent to the declaration must pay to the State the respondent's unexplained wealth liability.
- (2) An unexplained wealth liability may be satisfied, wholly or in part, by forfeiture under Division 6 of restrained property.

Division 6 – Satisfaction of unexplained wealth liability to State

Subdivision 1 – General

145. Recovery of amount payable to State

- (1) A respondent must pay his or her unexplained wealth liability –
 - (a) before the date specified in the unexplained wealth declaration, being a date that is at least 31 days after the day on which that declaration was made; or
 - (b) if no such date is specified, within 31 days after the day on which that declaration was made.
- (2) If all, or part, of an unexplained wealth liability is not paid within the relevant time specified in subsection (1), the DPP may refer the unpaid amount for collection under section 41 of the *Monetary Penalties Enforcement Act 2005* as if –

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- (a) the DPP were a court; and
 - (b) the unexplained wealth declaration, that resulted in the unexplained wealth liability, were an order imposing a fine.
- (3) This section does not affect any other means, under this Part, by which the State may recover any unpaid amount of an unexplained wealth liability.

146. Use of restrained property to meet unexplained wealth liability

- (1) To satisfy an unexplained wealth liability wholly or in part, the person who has the liability may transfer to the State any property wholly owned, or effectively controlled solely, by the person, whether or not the property is restrained property.
- (2) Nothing in subsection (1) authorises a person to transfer property other than in accordance with this Act or any other Act.
- (3) If a person who has an unexplained wealth liability has not satisfied the liability under subsection (1) within the relevant time specified in section 145(1), any property of the person that is subject to a specified restraining order and is wholly owned, or effectively controlled solely, by the person may –
 - (a) be used by the respondent to satisfy his or her liability under section 144; or

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- (b) be forfeited to the State under this Part to satisfy his or her liability under section 144.

147. Proceeds from sale of restrained property

If property of a person named in a specified restraining order is restrained property and is sold under this Part, the proceeds of the sale –

- (a) are the property of that person; and
- (b) are restrained property; and
- (c) are available and may be used, or are at risk of forfeiture, under this Act to satisfy the unexplained wealth liability of that person.

148. Nexus between restraint and forfeiture not necessary

Restrained property, that is owned or effectively controlled by a respondent, is at risk of forfeiture under a wealth forfeiture order to satisfy an unexplained wealth declaration against the respondent despite the grounds for the wealth forfeiture order being different from the grounds for the wealth-restraining order that affects the property.

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***Subdivision 2 – Use of effectively controlled property or gift
to meet unexplained wealth liability***

149. Limitation on use of effectively controlled property

Property that is the subject of –

- (a) a forfeitable property declaration made on the basis of the property being effectively controlled, or given away, by a respondent; or
- (b) a wealth-restraining order made on the basis of the property being effectively controlled by a respondent –

is only to be called upon to satisfy the respondent's unexplained wealth liability if property owned by the respondent is not available or is insufficient to satisfy the liability.

150. Property not owned by respondent at risk of forfeiture

- (1) The DPP may apply to the Supreme Court for a forfeitable property declaration to be made in relation to property specified in the application.
- (2) An application under subsection (1) may only be made in respect of property that –
 - (a) is not owned, but the DPP suspects is effectively controlled or was given away, by a respondent to an unexplained wealth declaration; and

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- (b) is not restrained property.
 - (3) An application under subsection (1) may be made –
 - (a) in the course of proceedings under Division 5 for an unexplained wealth declaration; or
 - (b) at any other time.

151. Forfeitable property declarations

- (1) On hearing an application under section 150 or 157(1)(a), the Supreme Court may make a forfeitable property declaration in respect of property specified in the application.
- (2) The Supreme Court may only make a forfeitable property declaration in relation to property if satisfied that it is more likely than not that –
 - (a) the respondent to an unexplained wealth declaration effectively controlled all or part of the property at the time that the application was made under Division 5 for the unexplained wealth declaration made against the respondent; or
 - (b) before an application was made under Division 5 for an unexplained wealth declaration against the respondent, the respondent to the unexplained wealth declaration –
 - (i) owned or effectively controlled the property; and

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(ii) gave the property away.

(3) For the purposes of making a forfeitable property declaration under subsection (2), the Supreme Court may presume the property specified in the application for the declaration was –

(a) at the relevant time, effectively controlled by the respondent to the relevant unexplained wealth declaration; or

(b) before the relevant time, given away by the respondent to the relevant unexplained wealth declaration –

unless the respondent, or another person, proves otherwise.

(4) A forfeitable property declaration enables the Supreme Court to make a wealth forfeiture order in respect of the property specified in the forfeitable property declaration.

(5) If the Supreme Court makes a forfeitable property declaration under this section, it may make any necessary or convenient ancillary orders.

Subdivision 3 – Forfeiture of property

152. Wealth forfeiture orders

(1) The DPP may apply to the Supreme Court for a wealth forfeiture order to be made in respect of property that –

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- (a) is restrained property; or
 - (b) subject to section 149, is specified in a forfeitable property declaration.
 - (2) On hearing an application under subsection (1) or section 157(1)(b), the Supreme Court may make an order declaring that property specified in the order is forfeit to the State.
 - (3) The Supreme Court may only make an order under subsection (2) in relation to property if satisfied that the forfeiture of the property to the State is necessary to satisfy an unexplained wealth declaration.

153. Co-owned forfeited property

- (1) If property is, or is to be, forfeited property and the respondent to the unexplained wealth declaration in respect of which the property is, or is to be, forfeited is one of the co-owners of the property, the Supreme Court is to order that the whole of the property is forfeited property unless –
 - (a) the property is divisible; or
 - (b) another co-owner pays out the proportion that the Court finds to be the respondent's share of the property; or
 - (c) it is otherwise practical for only the respondent's share to be forfeited.
- (2) Property used to make a payment under subsection (1)(b) is taken to be forfeited property

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on the same terms as the forfeited property, the share of which was paid out.

154. Forfeiture of land under this Act

- (1) If the Supreme Court makes a wealth forfeiture order in relation to land –
 - (a) the land vests in the State; and
 - (b) the DPP is to lodge a sealed copy of the wealth forfeiture order with the Recorder.
- (2) On receipt of a sealed copy of the wealth forfeiture order under subsection (1)(b) –
 - (a) in respect of land that is not registered under the *Land Titles Act 1980*, the Recorder is to –
 - (i) bring the land under the *Land Titles Act 1980* as if an application had been made in relation to the land under section 11 of that Act; and
 - (ii) register the wealth forfeiture order against the relevant folio of the Register; and
 - (b) in respect of land that is registered under the *Land Titles Act 1980*, the Recorder is to register the wealth forfeiture order against the relevant folio of the Register.

155. Forfeiture of other registrable property

If the Supreme Court makes a wealth forfeiture order in relation to property, other than land, that is registrable under an Act, the DPP must lodge with the appropriate registrar –

- (a) a copy of the wealth forfeiture order; and
- (b) a notice giving particulars of the forfeiture of the property.

156. Person must deliver up property subject to a wealth forfeiture order

A person who has possession or control of property must, if the property is the subject of a wealth forfeiture order –

- (a) deliver up the property to the State on demand; and
- (b) permit the State to take possession of the property.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

Subdivision 4 – Miscellaneous

157. Variation of forfeitable property declarations and wealth forfeiture orders

- (1) The DPP may at any time apply to the Supreme Court –

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(a) for –

(i) a variation of a forfeitable property declaration; or

(ii) a further forfeitable property declaration –

to give effect, or to give better effect, to a previous forfeitable property declaration; or

(b) for –

(i) a variation of a wealth forfeiture order; or

(ii) for a further wealth forfeiture order –

to give effect, or to give better effect, to a previous wealth forfeiture order.

(2) On hearing an application under subsection (1), the Supreme Court may –

(a) vary the forfeitable property declaration or wealth forfeiture order in any manner the Court thinks appropriate; or

(b) make a further forfeitable property declaration under section 151; or

(c) make a further wealth forfeiture order under section 152.

(3) A variation of a wealth forfeiture order or forfeitable property declaration under this

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section is to be made, registered, and otherwise dealt with, in the same manner as the wealth forfeiture order or forfeitable property declaration it varies.

Division 7 – Value of property used to satisfy unexplained wealth declaration

158. Value of property sold by State

- (1) Forfeited property has no value in respect of satisfying an unexplained wealth liability until it is sold by or on behalf of the State.
- (2) If forfeited property is sold by or on behalf of the State, the value of the property is taken to be the remainder (if any) of the proceeds of the sale after the proceeds are applied to the following:
 - (a) firstly, any payment under section 172 in respect of the property, unless the value of such a payment has been removed or deducted from the property in some other way;
 - (b) secondly, the costs, charges and expenses arising from the sale of the property;
 - (c) thirdly, if a specified restraining order is or was in force for the property, expenses incurred in respect of the property by –
 - (i) the State, the DPP, the Commissioner of Police or police officers while the specified restraining order was in force; or

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- (ii) a person appointed under this Part to manage the property while the specified restraining order was in force;
 - (d) fourthly, any expenses incurred in respect of the property by –
 - (i) the State, the DPP, the Commissioner of Police or police officers after the property was forfeited; or
 - (ii) a person appointed to manage the property after it was forfeited;
 - (e) fifthly, any *bona fide* charges or other encumbrances on the property.
- (3) If the property is security for a mortgage that is also secured by other property then, despite any other Act and any inconsistent term of the mortgage, the extent of the security in relation to the sold property is the proportion that the value of the sold property bore to the total value of all the properties securing the mortgage at the time when the mortgage was entered into.
- (4) The value of forfeited property calculated under subsection (2) is –
- (a) taken to be the value of the forfeited property; and
 - (b) to be deducted from the unexplained wealth liability of the respondent in

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respect of which the property was
forfeited.

- (5) For the avoidance of doubt, the conversion of foreign currency is taken to be the sale of that currency.

Division 8 – Management of restrained property or forfeited property

Subdivision 1 – Control and management of property

159. Management of property

The Commissioner of Police has responsibility for the control and management of property retained or seized as a consequence of a search warrant issued under section 111.

160. Management of restrained property or forfeited property

- (1) The Public Trustee has responsibility for the control and management of –
- (a) restrained property, unless the Supreme Court otherwise orders under section 121(b) or section 162(2); and
 - (b) forfeited property until it is disposed of.
- (2) The Public Trustee may appoint a person to manage property that the Public Trustee has control or management of by virtue of this section.

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161. Financial organisation to transfer restrained funds to Public Trustee

- (1) The Public Trustee may demand that a financial organisation transfer to the Public Trustee any funds that are restrained property.
- (2) A financial organisation is to comply with a demand made by the Public Trustee under subsection (1).
- (3) The Public Trustee must hold on trust any funds received under this section and deal with the funds in accordance with the *Public Trustee Act 1930*.

162. Applications by owner for control and management of property

- (1) An owner of restrained property may apply to the Supreme Court for an order to be made under subsection (2) in relation to the property.
- (2) On hearing an application under subsection (1), the Supreme Court may, if it thinks fit, by order appoint the applicant –
 - (a) to control and manage the property while the wealth-restraining order is in force;
or
 - (b) to sell or destroy the property.
- (3) If restrained property is sold in accordance with an order under subsection (2), the proceeds of the sale –

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- (a) are taken to be property that is affected by the wealth-restraining order that was in effect in respect of the sold property; and
 - (b) must be transferred to the Public Trustee.

163. Duties of person responsible for restrained property or forfeited property

A person who has responsibility for the control or management of property under this Part, or under an order made under this Part, must take reasonable steps to ensure that the property is appropriately stored or managed, and that it is appropriately maintained, until one of the following happens in accordance with this Part:

- (a) the property is returned to the person from whom it was seized or to a person who owns it;
- (b) another person becomes responsible for the control and management of the property;
- (c) the property is sold or destroyed;
- (d) the property is otherwise disposed of.

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Subdivision 2 – Disposal of undesirable or deteriorating property

164. Destruction of property on grounds of public interest

- (1) A person may apply to the Supreme Court for an order to be made under subsection (2) that restrained property, or forfeited property, be destroyed, if the person –
 - (a) has responsibility for the control or management of the restrained property;
or
 - (b) has responsibility for the control or management of the forfeited property for and on behalf of the State.
- (2) On hearing an application under subsection (1), the Supreme Court may order that the property be destroyed if satisfied that it would not be in the public interest to preserve the property.

165. Sale of deteriorating property

- (1) A person who has control or management of restrained property may apply to the Supreme Court for an order to be made under subsection (2) that the property be sold.
- (2) On hearing an application under subsection (1), the Supreme Court may order that the property be sold if satisfied that it is more likely than not that –

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- (a) the property is or will be subject to substantial waste or loss of value if it is retained until it is dealt with under another provision of this Part; or
 - (b) the cost of managing, maintaining or protecting the property will exceed the value of the property if it is retained until it is dealt with under another provision of this Part; or
 - (c) despite the market value of the property not diminishing, interest charges or the like are resulting in or are likely to result in a diminishing realisable equity in the property.
 - (3) The Public Trustee may sell the property for and on behalf of the State in the circumstances mentioned in subsection (2) without obtaining an order under that subsection if –
 - (a) the property –
 - (i) is subject to a wealth-restraining order; and
 - (ii) is not land; and
 - (b) the Minister approves the sale in the circumstances.
 - (4) If restrained property is sold under an order under subsection (2) or under Ministerial approval under subsection (3), the proceeds of the sale are taken to be property that is subject to

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the wealth-restraining order that was in effect in respect of the sold property.

- (5) If land that is restrained property is sold under an order under subsection (2) –
- (a) a sealed copy of the order is to be lodged with the Recorder by the applicant for the order; and
 - (b) the Recorder is to make such recordings, cancellations and corrections in the Register as he or she considers necessary to give effect to the order and to register the person who purchased the land under the order as proprietor of the land.

166. Valuation and inventory of restrained property

A person who has the control or management of restrained property under this Part –

- (a) may do either or both of the following:
 - (i) arrange for the property to be valued by an appropriately qualified person;
 - (ii) arrange for an inventory to be taken of any fittings, fixtures or moveable goods in, on or comprising the property; and
- (b) must, if an inventory is taken under paragraph (a)(ii), arrange for a copy of the inventory to be served on each person on whom a copy of the wealth-

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restraining order was served under
section 122.

167. Compensation

- (1) A person may apply to the Supreme Court for an order to be made in respect of compensation in respect of restrained property or forfeited property that –
 - (a) was owned or effectively controlled by the applicant; and
 - (b) was destroyed or sold under this Subdivision; and
 - (c) the applicant was entitled under this Part to have returned to him or her if the property had not been so destroyed or sold.
- (2) In considering an application under subsection (1), the Supreme Court is to consider the following circumstances:
 - (a) whether the application for the relevant wealth-restraining order, or wealth forfeiture order, was made in good faith;
 - (b) whether the evidence as a whole would support the unexplained wealth declaration to which the specified restraining order, or forfeiture order, relates but the unexplained wealth declaration has not been made under this Part due to a technicality;

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- (c) whether the applicant was found not to have unexplained wealth;
 - (d) any other circumstances the Supreme Court thinks relevant.
- (3) The Supreme Court may order that the State is liable to pay the applicant an amount, as specified in the order, that does not exceed an amount equal to –
 - (a) if the property was destroyed, the market value of the property less the costs of destroying the property; or
 - (b) if the property was sold, the proceeds of the sale.
- (4) For the purposes of subsection (3)(a), the market value of property is the market value of the property at the time the property was restrained or forfeited.

Subdivision 3 – Management of property by Public Trustee

168. Public Trustee’s power to appoint manager

If the Public Trustee has responsibility under this Part for the control or management of property, the Public Trustee may appoint a person to perform all or any of the Public Trustee’s functions in relation to the property.

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169. Application of Act to property held by Public Trustee under this Part

- (1) Section 35 applies to the exercise of the Public Trustee's powers under this Part and the performance of the Public Trustee's duties under this Part, as if the reference in that section to a restraining order were a reference to this Part.
- (2) Section 36 applies to restrained property or forfeited property as if the reference in that section –
 - (a) to a restraining order were a reference to this Part; and
 - (b) to the date of the restraining order were a reference to the date the Public Trustee took custody and control of the property under this Part.
- (3) Section 37 applies to any costs incurred in respect of the exercise of the Public Trustee's powers and the performance of the Public Trustee's duties under this Part, as if the reference in that section to a restraining order were a reference to this Part.
- (4) Section 65 applies to an interstate restraining order that relates to unexplained wealth, as if a reference in that section to an interstate restraining order were a reference to an interstate restraining order in respect of unexplained wealth.
- (5) For the purpose of this section, a reference in section 35, 36 or 37 to the Public Trustee having

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custody and control of property under a restraining order is taken to be a reference to the Public Trustee having control or management of property under this Part.

Division 9 – Return of forfeited property

170. Application for return of forfeited property

- (1) A person may apply to the Supreme Court for forfeited property to be returned to the applicant.
- (2) The application must be made within 28 days after the person becomes aware, or could reasonably be expected to have become aware, that the property has become forfeited property.
- (3) The Supreme Court may, if it thinks fit, hear an application under this section that is filed outside of the time frame specified in subsection (2).

171. Parties to proceedings

The State is a party to proceedings on an application under section 170.

172. Order to return forfeited property

- (1) On hearing an application under section 170, the Supreme Court may order the return to the applicant of his or her share of any forfeited property if the applicant establishes to the satisfaction of the Court that –

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- (a) immediately before the property was forfeited, the applicant was the owner of the property or was one of the owners of the property; and
 - (b) the share of the property was not effectively controlled by the person whose unexplained wealth liability the property had been forfeited to satisfy; and
 - (c) the applicant was not aware and could not reasonably be expected to have become aware, until after the property was forfeited, that the property may become subject to a wealth forfeiture order under Subdivision 3 of Division 6.
- (2) If the Supreme Court orders the return of property under this section –
- (a) if the property is money, the money is to be paid to the applicant; and
 - (b) if the property is land, the property is to be transferred under the *Land Titles Act 1980* to the applicant if –
 - (i) the Court has ordered the return of the land in its entirety; and
 - (ii) the land has not been disposed of; and
 - (c) if the property is not money or land and has not been disposed of, the property is to be given to the applicant; and

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- (d) if the property is not money and has been sold, the proceeds of the sale are to be paid to the applicant.
- (3) If the applicant is one of the owners of the property, the Supreme Court may –
 - (a) order the return of the applicant's share of the property; and
 - (b) order the return of another owner's share of the property if that owner is not the person whose unexplained wealth liability the property had been forfeited to satisfy.
- (4) In an order under subsection (3), the Supreme Court is to specify –
 - (a) the proportion that it finds to be the applicant's share of the property; and
 - (b) if the Supreme Court makes an order under subsection (3)(b), the proportion that it finds to be the other owner's share of the property; and
 - (c) the proportion that it finds to be the share of the person whose unexplained wealth liability the property had been forfeited to satisfy.
- (5) If the Supreme Court makes an order under subsection (3) but has not made an order under subsection (6), the applicant is to receive –

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- (a) if the property is money, the applicant's share of the money; and
 - (b) if the property is not money, has not been disposed of and is divisible, the applicant's share of the property; and
 - (c) if the property is –
 - (i) not money; and
 - (ii) is not divisible or has been disposed of –

the amount of money that represents the applicant's share of the proceeds from the sale of the property (when sold).

- (6) If the applicant is entitled to the return of a share of forfeited property under subsection (5)(c) that has not been disposed of, the Supreme Court may order that the property is to be given to the applicant if the Court also orders that the applicant pay to the State the value of the share of the property that the Court does not order under subsection (3) to be returned to the applicant or another owner.
- (7) If the Supreme Court makes an order under this section, it may make any necessary or convenient ancillary orders.

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***Division 10 – Mutual recognition of restraining orders and
forfeiture orders***

***Subdivision 1 – Registration of State orders in other
jurisdictions***

**173. Interstate registration of restraining orders,
forfeiture orders, &c.**

- (1) If a corresponding law of another State provides for the registration and enforcement in that State of a wealth-restraining order, wealth forfeiture order or other order under this Part, the order may be expressed to apply to property in that State.
- (2) An order expressed in accordance with subsection (1) to apply to property in another State may be registered under the law of that State.
- (3) An order registered in accordance with subsection (2) has effect in that State to the extent provided by the law of that State.
- (4) If the property to which an order referred to in subsection (1) relates is movable property, the order has effect in the other State to the extent that –
 - (a) the property was located in that State when the order was registered; and
 - (b) the property –
 - (i) remains located in that State; or

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- (ii) having been moved from that State, is once again located in that State.

Subdivision 2 – Recognition of interstate orders

174. Registration of interstate orders relating to unexplained wealth

- (1) If an interstate restraining order, or interstate forfeiture order, in respect of unexplained wealth is registered under section 58 and relates to land in Tasmania –
 - (a) the person who made the application under that section must lodge with the Recorder a sealed copy of that order with an application for the order to be registered; and
 - (b) if the land is not registered under the *Land Titles Act 1980*, the Recorder is to –
 - (i) bring the land under the *Land Titles Act 1980* as if an application had been made in relation to the land under section 11 of that Act; and
 - (ii) register that order against the relevant folio of the Register; and
 - (c) if the land is registered under the *Land Titles Act 1980*, the Recorder is to

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register that order against the relevant folio of the Register.

- (2) An interstate restraining order, or interstate forfeiture order, takes effect in relation to the land when the order is registered under subsection (1)(b)(ii) or (1)(c).

175. Effect of registration of interstate restraining orders relating to unexplained wealth

- (1) Despite section 60, an interstate restraining order that is registered under section 58 and relates to unexplained wealth may be enforced in Tasmania as if the order had been made under section 118 at the time it was registered.
- (2) This Part (except sections 117 and 122) applies to an interstate restraining order enforced under subsection (1) as if it were a wealth-restraining order under section 118.

176. Effect of registration of interstate forfeiture orders relating to unexplained wealth

- (1) Despite section 59, an interstate forfeiture order that is registered under section 58 and relates to unexplained wealth may be enforced in Tasmania as if the property to which it relates were forfeited property.
- (2) If an interstate forfeiture order is enforced in the State under this Act, the forfeited property vests in the State.

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- (3) Property cannot vest in the State under subsection (2) if the property subject to the interstate forfeiture order has already, by reason of the order, vested in the Commonwealth, in another State or in some other person or entity.

177. Duration of registration of interstate orders relating to unexplained wealth

Unless its registration is cancelled under section 178, an interstate restraining order, or interstate forfeiture order, that is registered under section 58 and relates to unexplained wealth is enforceable in the State under this Act despite the order having already ceased to be in force under the law of the Commonwealth, or of the State, under which the order was made.

178. Cancellation of registration of interstate orders relating to unexplained wealth

- (1) The Supreme Court is to cancel the registration under section 58 of an interstate restraining order, or interstate forfeiture order, that relates to unexplained wealth if registration of the order was improperly obtained.
- (2) The Supreme Court may cancel the registration under section 58 of an interstate restraining order, or interstate forfeiture order, that relates to unexplained wealth if the order ceases to be in force under the law of the Commonwealth, or of the State, under which the order was made.

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- (3) An application under this section for the cancellation of the registration of an order may only be made by the person who applied for the registration, by the DPP or by a person affected by the order.
- (4) If the registration of an interstate restraining order, or interstate forfeiture order, is cancelled under subsection (1) or (2) and the order relates wholly or in part to land –
 - (a) the applicant under subsection (3) must lodge with the Recorder a certified copy of the order cancelling the registration of the interstate restraining order or interstate forfeiture order; and
 - (b) the Recorder is to register the certified copy of the order cancelling the registration against the relevant folio of the Register.
- (5) The registration under section 58 of an interstate restraining order, or interstate forfeiture order, ceases to have effect in relation to land when a certified copy of an order cancelling the registration of the interstate restraining order, or interstate forfeiture order, is registered under subsection (4)(b).

Division 11 – Interests in registrable property

179. Registration of interest in land

- (1) Subsection (2) applies to the registration of the following under the *Land Titles Act 1980*:

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- (a) a document transferring land for the purpose of section 146;
 - (b) a sealed copy of the wealth forfeiture order under section 154(1);
 - (c) a sealed copy of a registered interstate forfeiture order under section 58.
 - (2) On lodgement of a document or sealed copy under subsection (1), the Recorder must –
 - (a) register the instrument against the relevant folio of the Register; and
 - (b) register the State as the proprietor of the property in the relevant folio of the Register.
 - (3) To the extent that a provision of this Part relating to land is inconsistent with the *Land Titles Act 1980*, the provision of this Part prevails, but this Part does not otherwise affect the operation of the *Land Titles Act 1980* in relation to land dealt with under this Part.
 - (4) This Part does not prevent –
 - (a) a person from lodging with the Recorder –
 - (i) a caveat relating to land that is restrained property; or
 - (ii) an instrument relating to a dealing or purported dealing in land that is restrained property at

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the time when the instrument is
lodged; or

- (iii) an instrument relating to a dealing or purported dealing in land that was restrained property at the time when the dealing or purported dealing was carried out; or

(b) the Recorder from –

- (i) giving notice to any person that a caveat has been lodged in relation to land that is restrained property; or
- (ii) accepting an instrument relating to a dealing or purported dealing in land that is restrained property at the time when the instrument is lodged; or
- (iii) accepting an instrument relating to a dealing or purported dealing in land that was restrained property at the time when the dealing or purported dealing was carried out –

but the Recorder must not register a dealing in the Register in relation to land while the land is restrained property.

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180. Registration of interests in other property

If –

- (a) property is registered under an Act other than the *Land Titles Act 1980* or the *Registration of Deeds Act 1935*; and
- (b) the relevant registering authority under that Act is notified in accordance with this Part that –
 - (i) a wealth-restraining order for the property has been made, or has ceased to be in force, in respect of the property; or
 - (ii) that the property has been forfeited under this Part –

the relevant registering authority must make such amendments to the register as the case requires.

181. Imputation of knowledge that property is restrained

- (1) If a wealth-restraining order in relation to land has been registered on the relevant folio under this Part, any person who deals with the land is taken to have notice, for all purposes, that the land is restrained property.
- (2) If particulars of a wealth-restraining order for property other than land have been entered in an appropriate register under section 180, any person who deals with the property while the wealth-restraining order is in force is taken, for

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all purposes, to have notice that the property is restrained property.

Division 12 – Court jurisdiction and evidentiary matters

182. Courts' jurisdiction

- (1) The Supreme Court has jurisdiction in any proceedings under this Part.
- (2) In addition to subsection (1), the Magistrates Court also has jurisdiction in respect of interim wealth-restraining orders and search warrants.
- (3) A declaration, order, finding or decision of a court under this Part in relation to property is not invalid only because the value of the property exceeds the maximum value permitted to be dealt with by the court that made the declaration, order, finding or decision.
- (4) This section does not affect the jurisdiction of a court in criminal proceedings under this Part.

183. Proceedings under this Part

- (1) Proceedings on an application under this Part are taken to be civil proceedings for all purposes.
- (2) A court dealing with proceedings under this Part may do one or more of the following:
 - (a) order that the whole or any part of the proceedings is to be heard in closed court;

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- (b) order that only persons, or classes of persons, specified by the court may be present during the whole or any part of the proceedings;
 - (c) order that the publication of a report of the whole or any part of the proceedings, or of any information derived from the proceedings, is prohibited.
 - (3) Except in relation to an offence under this Part –
 - (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Part; and
 - (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Part; and
 - (c) the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Part; and
 - (d) a question of fact to be decided by a court in proceedings on an application under this Part is to be decided on the balance of probabilities.
 - (4) A decision under this Part, except under Division 4, about the existence of grounds for doing or suspecting anything may be based on hearsay evidence or hearsay information.

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184. Appearance by Attorney-General

The Attorney-General may appear in any proceedings under this Part in which the State has an interest, whether or not the DPP or the State is also a party to the proceedings.

185. Stay or adjournment of proceedings

Proceedings under this Part are not to be stayed or adjourned for the purpose of awaiting the outcome of any criminal proceedings that have commenced, or are to commence, involving a person whose property is, or may be, affected by the proceedings under this Part.

186. Consent orders

In any proceedings under this Part, a court may at any time make an order that is agreed to by the parties.

187. Enforcing compliance with Part or court order

- (1) If a person fails to take any action necessary to comply with, or give effect to, this Part or an order under this Part –
 - (a) at the direction of the Supreme Court or a judge, the Assistant Judge or a Registrar of the Supreme Court may take the necessary action; and

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- (b) the action of the Assistant Judge or Registrar has effect for all purposes as if it had been done by the person.
- (2) The person who failed to take an action referred to in subsection (1) is liable to pay any costs incurred as a result of the Assistant Judge or Registrar taking that action and the costs are recoverable by the State as a debt due and payable.

Division 13 – Miscellaneous matters

188. Certain money to be paid into Consolidated Fund

- (1) In this section –

equitable sharing arrangement means an arrangement under which either or both of the following happen:

- (a) this State pays to another State or the Commonwealth a proportion of any unexplained wealth liability recovered by this State under this Act by reason of a contribution made by the other State or the Commonwealth, as the case may be, to the investigation, securing or recovery of that unexplained wealth;
- (b) another State or the Commonwealth pays to this State a proportion of any unexplained

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wealth liability recovered by the other State or the Commonwealth, as the case may be, by reason of a contribution made by this State to the investigation, securing or recovery of that unexplained wealth.

- (2) The following sums of money are to be paid into the Consolidated Fund:
- (a) all money forfeited to the State under this Part;
 - (b) all proceeds of forfeited property sold under this Part;
 - (c) all money received by the State in relation to this Part under the equitable sharing arrangement.

189. Public Trustee common fund

- (1) The following are to be paid into the common fund of the Public Trustee created under the *Public Trustee Act 1930*:
- (a) funds that are restrained under this Part and are transferred to the Public Trustee in accordance with section 161;
 - (b) income from a business or property managed by the Public Trustee in accordance with this Part;

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- (c) the proceeds of sale under section 162 or 165 of restrained property.
- (2) Money that has been paid into the common fund in accordance with subsection (1) may be paid out of the common fund by the Public Trustee –
- (a) to cover any costs of storing or managing restrained property or forfeited property that are incurred by the Public Trustee or a person appointed under this Part to manage the property; or
 - (b) as fees payable to the Public Trustee for the management of property or performance of functions under this Part; or
 - (c) under an order of a court as restrained property that is to be returned; or
 - (d) to a *bona fide* mortgagee or encumbrancee of property sold under this Part; or
 - (e) if the money is proceeds from the sale of property under a registered interstate forfeiture order, to the State that made the interstate order; or
 - (f) as a co-owner's share of property sold under this Part; or
 - (g) in any circumstances provided for by the *Public Trustee Act 1930*; or

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- (h) to the State, including money that becomes forfeited property; or
 - (i) as otherwise prescribed.
- (3) Money required to be paid out by the Public Trustee under this Part is to be paid out as soon as practicable after the Public Trustee becomes aware that payment is due.

190. Exemption from stamp duty and other costs

The following dealings by which property is transferred to, or vested in, the State (or is agreed to be transferred to or vested in the State) are exempt from stamp duty under the *Duties Act 2001* and fees that, but for this section, would be payable under the *Land Titles Act 1980*:

- (a) dealings under section 146;
- (b) dealings in accordance with a wealth forfeiture order under Subdivision 3 of Division 6;
- (c) dealings in accordance with a registered interstate forfeiture order.

191. Property protected from restraint or forfeiture

- (1) The following kinds of property are not to be made subject to a wealth-restraining order or wealth forfeiture order:
 - (a) family photographs;

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- (b) family portraits;
 - (c) necessary food;
 - (d) necessary clothing.
 - (2) Subject to subsection (3), the following kinds of property are not to be made subject to a wealth-restraining order or wealth forfeiture order:
 - (a) ordinary tools of trade;
 - (b) professional instruments;
 - (c) reference books.
 - (3) For the purposes of subsection (2) –
 - (a) a maximum value of property to be protected under that subsection may be prescribed per person, per order, or as otherwise prescribed; and
 - (b) property is protected under that subsection only to the extent that the aggregate value of that property does not exceed the prescribed amount.
 - (4) Property that, under this section, is not to be made subject to a wealth-restraining order or wealth forfeiture order –
 - (a) is not to be retained or guarded under this Part or under a search warrant issued under this Part; and
 - (b) is not to be restrained; and

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- (c) is not available for the purpose of satisfying a person's unexplained wealth liability; and
- (d) cannot be forfeited under Subdivision 3 of Division 6.

192. Transfer of property for value

For the purposes of this Part –

- (a) property transferred under a will or administration of an intestate estate is not taken to be transferred for value; and
- (b) property transferred in the course of proceedings in the Family Court of Western Australia or the Family Court of Australia is taken to be transferred for value.

193. Restrained property not available to meet legal costs

(1) Restrained property –

- (a) is not to be released to meet the legal expenses of a person, whether the expenses are in relation to proceedings under this Part, that relate to the forfeiture of the property or to any other civil or criminal proceedings; and
- (b) is not to be taken into account for the purposes of an application by the person for legal aid.

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(2) If –

- (a) the Tasmanian Legal Aid Commission or another legal aid organisation provides a person with legal aid in respect of proceedings under this Act or any other civil or criminal proceedings; and
- (b) property of the person that was restrained property is no longer restrained –
 - (i) in whole; or
 - (ii) in part as surplus to an amount forfeited to the State (and any order for costs) –

the person is liable to the Commission or other organisation for his or her legal costs and the property released is charged as security for those costs.

(3) A charge under subsection (2) –

- (a) is subject to any prior encumbrances on the property that take priority; and
- (b) if the property is land, takes effect when the charge is registered in accordance with the *Land Titles Act 1980*.

(4) If –

- (a) legal aid is granted to a person whose property is restrained under this Act; and
- (b) the restrained property is forfeited –

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the Commission or other organisation may apply to the Minister for reimbursement of the legal costs incurred in providing legal aid to the person.

- (5) On application by the Commission or other organisation, the Minister may reimburse the Commission or organisation out of funds realised from the forfeited property, having regard to –
- (a) the value of the property forfeited; and
 - (b) the legal costs incurred by the Commission or organisation in the matter; and
 - (c) the state of the legal aid fund.

194. Liability for carrying out functions under this Part

A person on whom this Part confers a function is not personally liable in civil proceedings, and the State is not liable, for anything done or any default made by the person in good faith for the purpose of carrying this Part into effect.

195. Later applications, orders or findings

Subject to this Part, the fact that an application, order or finding has been made under this Part in relation to any property or person does not prevent another such application, order or finding, or a different application, order or finding, from being made under this Act in relation to the property or the person.

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196. Orders relating to sham transactions

- (1) For the purposes of this section, a person carries out a sham transaction if he or she carries out, makes, gives or designs, for the purpose of directly or indirectly defeating, avoiding, preventing or impeding the operation of this Part in any respect –
 - (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether enforceable, or intended to be enforceable, by legal proceedings; or
 - (b) any scheme, plan, proposal, action, course of action or course of conduct.
- (2) If the DPP suspects that a person has carried out, is carrying out or may carry out a sham transaction, the DPP may apply to the Supreme Court for an order to be made under subsection (3).
- (3) On hearing an application under subsection (2) and in order to promote justice, the Supreme Court may make an order –
 - (a) declaring that the transaction is void in whole or in part; or
 - (b) preventing the transaction from being carried out; or
 - (c) varying the operation of the transaction in whole or in part.

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- (4) The Supreme Court may only make an order under subsection (2) if satisfied that a person named in the application has carried out, is carrying out or may carry out a sham transaction.
- (5) If the Supreme Court makes an order under this section, it may make any ancillary orders that are necessary or convenient in the circumstances for or in respect of any consequential or related matter, including orders relating to –
 - (a) dealing with property; and
 - (b) disposing of any proceeds from the sale of property; and
 - (c) making payments of money; and
 - (d) creating a charge on property in favour of any person and the enforcement of the charge.

197. Proceedings against corporations

- (1) If a corporation commits an offence against this Part and it is proved that the offence occurred with the knowledge and consent of an officer of the corporation, or a person purporting to act as an officer of the corporation, that person, as well as the corporation, commits the offence.
- (2) If the affairs of a corporation are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the corporation.

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198. Substituted service

If personal service is specified in any proceedings under this Part, the court that requires service may, on application, if satisfied that the person to be served is avoiding service –

- (a) make an order for substituted service (and stipulate the method of service); or
- (b) order that service or any notice requirements be dispensed with.

199. Delegation by DPP

The DPP may delegate, in writing, any of his or her functions or powers under this Part, other than this power of delegation.

200. Effect of person's death

- (1) A reference in this Part to property of a person includes a reference to the property of a deceased person where the property was owned or effectively controlled by the person immediately before his or her death or given away by the person at any time before his or her death.
- (2) An order may be applied for and made under this Part –
 - (a) in respect of property that is or was owned or effectively controlled or given away by a person who died before the application or order is made; and

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- (b) on the basis of the activities of a person who died before the application or order is made.
- (3) If a person who owns restrained property dies, this Part continues to apply to the property in all respects as if the person had not died.
- (4) Without limiting this section, if a person who is a joint tenant of restrained property dies –
 - (a) the person's death does not operate to vest the property in the surviving joint tenant or tenants; and
 - (b) the wealth-restraining order continues to apply to the property as if the person had not died.

201. Obstructing a police officer

- (1) A person commits an offence if the person wilfully delays or obstructs a police officer in the performance of the police officer's functions under this Part, or wilfully delays or obstructs a person assisting a police officer in the performance of those functions.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (2) A person must not knowingly or wilfully fail to produce any property to, or conceal or attempt to conceal any property from, a police officer in the performance of the officer's functions under this

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Part or a person assisting a police officer in the performance of those functions.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

202. Legal professional privilege

For the avoidance of doubt, the common law rules (including the exceptions) relating to legal professional privilege apply in relation to proceedings under this Part.

203. Regulations relating to unexplained wealth declarations

- (1) Regulations under section 205 may prescribe matters –
 - (a) required or permitted by this Part to be prescribed; or
 - (b) necessary or convenient to be prescribed for giving effect to this Part.
- (2) Without limiting subsection (1), the regulations may –
 - (a) provide for carrying out the destruction of property under an order under section 164; and
 - (b) provide for carrying out the sale of deteriorating property under an order under section 165; and

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- (c) provide for obtaining possession of forfeited property; and
- (d) provide for the storage and management of forfeited property; and
- (e) provide for the disposal of forfeited property that has vested in the State.

204. Review of Part

- (1) The Minister is to cause an independent review of the operation of this Part to be undertaken as soon as practicable after the third anniversary of its commencement.
- (2) The Minister is to cause a report on the outcome of the review to be tabled in each House of Parliament within 10 sitting-days of that House after the review is completed.

PART 10 – MISCELLANEOUS

205. Regulations generally

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to –
 - (a) apply generally or be limited in their application by reference to specified exceptions or factors; or
 - (b) apply differently according to different factors of a specified kind.
- (3) Regulations declaring a kind of order to be within a definition may do so by reference to the interstate serious offences involved.
- (4) Regulations declaring a law to be a corresponding law may provide that the declaration applies only in respect of prescribed provisions of this Act.

206. Further amendment of regulations not prevented

The amendment, by the *Crime (Confiscation of Profits) Amendment Act 2018*, of a provision of the regulations made under this Act does not prevent that, or any other, provision of those regulations from being amended or rescinded by a later regulation.

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**SCHEDULE 1 – PROVISIONS RELATING TO SEARCH
WARRANTS**

Sections 40(5) and 53(6)

1. Applications for warrants

- (1) Except as provided by sections 41 and 54, an application for a search warrant is to be made in writing.
- (2) A magistrate is not to issue a search warrant unless –
 - (a) the application for the warrant sets out the grounds for seeking the warrant; and
 - (b) the applicant has given the magistrate, either orally or in writing, any further information the magistrate requires concerning the grounds for seeking the warrant; and
 - (c) the information given by the applicant is –
 - (i) if the application is made by the applicant in person – verified before the magistrate on oath or by affidavit; or
 - (ii) if the application is made by the applicant by telephone – verified by a statement to the magistrate that the information is true.

2. Record of proceedings before magistrate

- (1) A magistrate who issues a search warrant is to cause a record to be made of all relevant particulars of the grounds the magistrate has relied on to justify the issue of the warrant.
- (2) Any matter that might disclose the identity of a person is not to be recorded pursuant to this clause if the magistrate is satisfied that the safety of any person might thereby be jeopardized.

3. Duty to show warrants

- (1) In this clause *occupier* includes a person in charge of premises.
- (2) A person executing a search warrant is to produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

4. Use of force to enter premises, &c.

- (1) A person authorized to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.
- (2) A person authorized to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open anything on the premises in which any property or any document, as the case may be, may be stored or concealed.

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5. Use of assistants to execute warrants

A person may execute a search warrant using such assistance as the person considers necessary.

6. Expiry of warrants

A search warrant ceases to have effect –

- (a) on the date specified in the warrant as the date on which it ceases to have effect; or
- (b) if it is withdrawn before that date by the magistrate who issued the warrant; or
- (c) when it is executed –

whichever first occurs.

7. Reports to magistrates on execution of warrants, &c.

- (1) The person to whom a search warrant is issued is to furnish a report in writing to the magistrate who issued the warrant –
 - (a) stating whether or not the warrant has been executed; and
 - (b) if the warrant has been executed – setting out briefly the result of the execution of the warrant, including a brief description of anything seized; and

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(c) if the warrant has not been executed –
setting out briefly the reasons why the
warrant has not been executed.

(2) A report with respect to a search warrant is to be
made within the period of 10 days immediately
after the execution of the warrant or the expiry
of the warrant, whichever first occurs.

**8. Death, absence, &c., of magistrate who issued
warrant**

If the magistrate who issued a search warrant has
died, has ceased to be a magistrate, or is absent,
a report required to be furnished to that
magistrate pursuant to clause 7 is to be furnished
to any other magistrate.

9. Defects in warrants

A search warrant is not invalidated by any
defect, other than a defect that affects the
substance of the warrant in a material particular.

NOTES

The foregoing text of the *Crime (Confiscation of Profits) Act 1993* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 10 December 2018 are not specifically referred to in the following table of amendments.

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Act	Number and year	Date of commencement
<i>Crime (Confiscation of Profits) Act 1993</i>	No. 20 of 1993	1.10.1993
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Government Business Enterprises (Consequential Amendments) Act 1995</i>	No. 20 of 1995	1.7.1995
<i>Sentencing Act 1997</i>	No. 59 of 1997	1.8.1998
<i>Financial Sector Reform (Tasmania) (Miscellaneous Amendments) Act 1999</i>	No. 74 of 1999	1.1.2000
<i>Duties Act 2001</i>	No. 15 of 2001	1.7.2001
<i>Misuse of Drugs (Consequential Amendments) Act 2001</i>	No. 95 of 2001	1.6.2002
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Crime (Confiscation of Profits) Amendment Act 2007</i>	No. 53 of 2007	13.12.2007
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2009</i>	No. 23 of 2009	16.6.2009
<i>Monetary Penalties Enforcement (Miscellaneous Amendments) Act 2011</i>	No. 4 of 2011	1.6.2011
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2013</i>	No. 20 of 2013	20.6.2013
<i>Crime (Confiscation of Profits) Amendment (Unexplained Wealth) Act 2013</i>	No. 60 of 2013	1.3.2014
<i>Crime (Confiscation of Profits) Amendment Act 2018</i>	No. 30 of 2018	10.12.2018
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	not commenced

TABLE OF AMENDMENTS

Provision affected	How affected
Section 4	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 20 of 1995, s. 5 and Sched. 3, No. 74 of 1999, Sched. 2, No. 76 of 2003, Sched. 1, No. 53 of 2007, s. 4, No. 66 of

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Provision affected	How affected
	2007, Sched. 1 and No. 60 of 2013, s. 4
Section 4A	Inserted by No. 60 of 2013, s. 5
Section 4B	Inserted by No. 60 of 2013, s. 5
Section 4C	Inserted by No. 60 of 2013, s. 5
Section 5	Amended by No. 59 of 1997, Sched. 1
Section 5A	Inserted by No. 60 of 2013, s. 6
Section 7	Substituted by No. 53 of 2007, s. 5
Section 8	Amended by No. 60 of 2013, s. 7
Section 18	Amended by No. 15 of 2001, Sched. 2
Section 21	Amended by No. 4 of 2011, s. 38
Section 21A	Inserted by No. 20 of 2013, s. 28
Section 22	Amended by No. 95 of 2001, Sched. 2
Section 27	Amended by No. 23 of 2009, s. 6 and No. 60 of 2013, s. 8
Section 35	Amended by No. 20 of 1995, s. 5 and Sched. 3
Section 36	Amended by No. 20 of 1995, s. 5 and Sched. 3
Section 37	Amended by No. 20 of 1995, s. 5 and Sched. 3
Section 55A	Inserted by No. 60 of 2013, s. 9
Section 57	Amended by No. 66 of 2007, Sched. 1
Section 66A	Inserted by No. 53 of 2007, s. 6
Section 66B	Inserted by No. 53 of 2007, s. 6
Section 66C	Inserted by No. 53 of 2007, s. 6
Section 66D	Inserted by No. 53 of 2007, s. 6
Section 66E	Inserted by No. 53 of 2007, s. 6
Section 66F	Inserted by No. 53 of 2007, s. 6
Section 67	Repealed by No. 53 of 2007, s. 7
Section 68	Amended by No. 53 of 2007, s. 8
Section 79	Amended by No. 20 of 2013, s. 29 and No. 60 of 2013, s. 11
Part 9	Inserted by No. 60 of 2013, s. 12
Division 1 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 80	Substituted by No. 60 of 2013, s. 12 Amended by No. 30 of 2018, s. 5
Section 81	Substituted by No. 60 of 2013, s. 12
Section 82	Repealed by No. 20 of 1995, s. 5 and Sched. 3 Substituted by No. 60 of 2013, s. 12
Section 83	Inserted by No. 60 of 2013, s. 12
Section 84	Inserted by No. 60 of 2013, s. 12
Section 85	Inserted by No. 60 of 2013, s. 12
Division 2 of Part 9	Inserted by No. 60 of 2013, s. 12
Subdivision 1 of Division 2 of Part 9	Amended by No. 60 of 2013, s. 12
Section 86	Inserted by No. 60 of 2013, s. 12
Section 87	Inserted by No. 60 of 2013, s. 12 Amended by No. 30 of 2018, s. 6
Section 88	Inserted by No. 60 of 2013, s. 12

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Provision affected	How affected
Section 89	Inserted by No. 60 of 2013, s. 12
Section 90	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 7
Subdivision 2 of Division 2 of Part 9	Amended by No. 60 of 2013, s. 12
Section 91	Inserted by No. 60 of 2013, s. 12
Section 92	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 8
Section 93	Inserted by No. 60 of 2013, s. 12
Section 94	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 9
Section 95	Inserted by No. 60 of 2013, s. 12
Subdivision 3 of Division 2 of Part 9	Amended by No. 60 of 2013, s. 12
Section 96	Inserted by No. 60 of 2013, s. 12
Section 97	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 10
Section 98	Inserted by No. 60 of 2013, s. 12
Section 99	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 11
Section 100	Inserted by No. 60 of 2013, s. 12
Section 101	Inserted by No. 60 of 2013, s. 12
Subdivision 4 of Division 2 of Part 9	Amended by No. 60 of 2013, s. 12
Section 102	Inserted by No. 60 of 2013, s. 12
Section 103	Inserted by No. 60 of 2013, s. 12
Section 104	Inserted by No. 60 of 2013, s. 12
Section 105	Inserted by No. 60 of 2013, s. 12
Section 106	Inserted by No. 60 of 2013, s. 12
Section 107	Inserted by No. 60 of 2013, s. 12
Subdivision 5 of Division 2 of Part 9	Amended by No. 60 of 2013, s. 12
Section 108	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 12
Section 109	Inserted by No. 60 of 2013, s. 12
Subdivision 6 of Division 2 of Part 9	Amended by No. 60 of 2013, s. 12
Section 110	Inserted by No. 60 of 2013, s. 12
Section 111	Inserted by No. 60 of 2013, s. 12
Section 112	Inserted by No. 60 of 2013, s. 12
Section 113	Inserted by No. 60 of 2013, s. 12
Division 3 of Part 9	Inserted by No. 60 of 2013, s. 12

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Provision affected	How affected
Subdivision 1 of Division 3 of Part 9	Amended by No. 60 of 2013, s. 12
Section 114	Inserted by No. 60 of 2013, s. 12
Section 115	Inserted by No. 60 of 2013, s. 12
Section 116	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 13
Subdivision 2 of Division 3 of Part 9	Amended by No. 60 of 2013, s. 12
Section 117	Inserted by No. 60 of 2013, s. 12
Section 118	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 14
Section 119	Inserted by No. 60 of 2013, s. 12
Section 120	Inserted by No. 60 of 2013, s. 12
Section 121	Inserted by No. 60 of 2013, s. 12
Section 122	Inserted by No. 60 of 2013, s. 12
Section 123	Inserted by No. 60 of 2013, s. 12
Section 124	Inserted by No. 60 of 2013, s. 12
Section 125	Inserted by No. 60 of 2013, s. 12
Section 126	Inserted by No. 60 of 2013, s. 12
Section 127	Inserted by No. 60 of 2013, s. 12
Section 128	Inserted by No. 60 of 2013, s. 12
Section 129	Inserted by No. 60 of 2013, s. 12
Subdivision 3 of Division 3 of Part 9	Amended by No. 60 of 2013, s. 12
Section 130	Inserted by No. 60 of 2013, s. 12
Section 131	Inserted by No. 60 of 2013, s. 12
Section 132	Inserted by No. 60 of 2013, s. 12
Section 133	Inserted by No. 60 of 2013, s. 12
Division 4 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 134	Inserted by No. 60 of 2013, s. 12
Section 135	Inserted by No. 60 of 2013, s. 12
Section 136	Inserted by No. 60 of 2013, s. 12
Section 137	Inserted by No. 60 of 2013, s. 12
Division 5 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 138	Inserted by No. 60 of 2013, s. 12
Section 139	Inserted by No. 60 of 2013, s. 12
Section 140	Inserted by No. 60 of 2013, s. 12
Section 141	Inserted by No. 60 of 2013, s. 12
Section 142	Inserted by No. 60 of 2013, s. 12
Section 143	Inserted by No. 60 of 2013, s. 12
Section 144	Inserted by No. 60 of 2013, s. 12
Division 6 of Part 9	Inserted by No. 60 of 2013, s. 12

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Provision affected	How affected
Subdivision 1 of Division 6 of Part 9	Amended by No. 60 of 2013, s. 12
Section 145	Inserted by No. 60 of 2013, s. 12
Section 146	Inserted by No. 60 of 2013, s. 12
Section 147	Inserted by No. 60 of 2013, s. 12
Section 148	Inserted by No. 60 of 2013, s. 12
Subdivision 2 of Division 6 of Part 9	Amended by No. 60 of 2013, s. 12
Section 149	Inserted by No. 60 of 2013, s. 12
Section 150	Inserted by No. 60 of 2013, s. 12
Section 151	Inserted by No. 60 of 2013, s. 12
Subdivision 3 of Division 6 of Part 9	Amended by No. 60 of 2013, s. 12
Section 152	Inserted by No. 60 of 2013, s. 12
Section 153	Inserted by No. 60 of 2013, s. 12
Section 154	Inserted by No. 60 of 2013, s. 12
Section 155	Inserted by No. 60 of 2013, s. 12
Section 156	Inserted by No. 60 of 2013, s. 12
Subdivision 4 of Division 6 of Part 9	Amended by No. 60 of 2013, s. 12
Section 157	Inserted by No. 60 of 2013, s. 12
Division 7 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 158	Inserted by No. 60 of 2013, s. 12
Division 8 of Part 9	Inserted by No. 60 of 2013, s. 12
Subdivision 1 of Division 8 of Part 9	Amended by No. 60 of 2013, s. 12
Section 159	Inserted by No. 60 of 2013, s. 12
Section 160	Inserted by No. 60 of 2013, s. 12
Section 161	Inserted by No. 60 of 2013, s. 12
Section 162	Inserted by No. 60 of 2013, s. 12
Section 163	Inserted by No. 60 of 2013, s. 12
Subdivision 2 of Division 8 of Part 9	Amended by No. 60 of 2013, s. 12
Section 164	Inserted by No. 60 of 2013, s. 12
Section 165	Inserted by No. 60 of 2013, s. 12
Section 166	Inserted by No. 60 of 2013, s. 12
Section 167	Inserted by No. 60 of 2013, s. 12
Subdivision 3 of Division 8 of Part 9	Amended by No. 60 of 2013, s. 12

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Provision affected	How affected
Section 168	Inserted by No. 60 of 2013, s. 12
Section 169	Inserted by No. 60 of 2013, s. 12
	Amended by No. 30 of 2018, s. 15
Division 9 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 170	Inserted by No. 60 of 2013, s. 12
Section 171	Inserted by No. 60 of 2013, s. 12
Section 172	Inserted by No. 60 of 2013, s. 12
Division 10 of Part 9	Inserted by No. 60 of 2013, s. 12
Subdivision 1 of Division 10 of Part 9	Amended by No. 60 of 2013, s. 12
Section 173	Inserted by No. 60 of 2013, s. 12
Subdivision 2 of Division 10 of Part 9	Amended by No. 60 of 2013, s. 12
Section 174	Inserted by No. 60 of 2013, s. 12
Section 175	Inserted by No. 60 of 2013, s. 12
Section 176	Inserted by No. 60 of 2013, s. 12
Section 177	Inserted by No. 60 of 2013, s. 12
Section 178	Inserted by No. 60 of 2013, s. 12
Division 11 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 179	Inserted by No. 60 of 2013, s. 12
Section 180	Inserted by No. 60 of 2013, s. 12
Section 181	Inserted by No. 60 of 2013, s. 12
Division 12 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 182	Inserted by No. 60 of 2013, s. 12
Section 183	Inserted by No. 60 of 2013, s. 12
Section 184	Inserted by No. 60 of 2013, s. 12
Section 185	Inserted by No. 60 of 2013, s. 12
Section 186	Inserted by No. 60 of 2013, s. 12
Section 187	Inserted by No. 60 of 2013, s. 12
Division 13 of Part 9	Inserted by No. 60 of 2013, s. 12
Section 188	Inserted by No. 60 of 2013, s. 12
Section 189	Inserted by No. 60 of 2013, s. 12
Section 190	Inserted by No. 60 of 2013, s. 12
Section 191	Inserted by No. 60 of 2013, s. 12
Section 192	Inserted by No. 60 of 2013, s. 12
Section 193	Inserted by No. 60 of 2013, s. 12
Section 194	Inserted by No. 60 of 2013, s. 12
Section 195	Inserted by No. 60 of 2013, s. 12
Section 196	Inserted by No. 60 of 2013, s. 12
Section 197	Inserted by No. 60 of 2013, s. 12
Section 198	Inserted by No. 60 of 2013, s. 12

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Provision affected	How affected
Section 199	Inserted by No. 60 of 2013, s. 12
Section 200	Inserted by No. 60 of 2013, s. 12
Section 201	Inserted by No. 60 of 2013, s. 12
Section 202	Inserted by No. 60 of 2013, s. 12
Section 203	Inserted by No. 60 of 2013, s. 12
Section 204	Inserted by No. 60 of 2013, s. 12
Part 10	Inserted by No. 60 of 2013, s. 12
Section 205	Inserted by No. 60 of 2013, s. 12
Section 206	Inserted by No. 30 of 2018, s. 16
