

# **NORTHERN TERRITORY OF AUSTRALIA**

## **CRIMES (FORFEITURE OF PROCEEDS) ACT**

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 1996

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## CRIMES (FORFEITURE OF PROCEEDS) ACT

An Act to provide for the confiscation of the profits of crime and the forfeiture of property in certain circumstances, and for related purposes

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Crimes (Forfeiture of Proceeds) Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

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

***appropriate court*** means:

- (a) the Supreme Court; or
- (b) in relation to:
  - (i) a confiscation order made in reliance on the conviction of a person for a serious offence; or
  - (ii) an application for such a confiscation order,the court before which the person was found guilty of the offence.

***appropriate officer*** means:

- (a) in any case – the Director of Public Prosecutions; or
- (b) in relation to a function prescribed for the purposes of this paragraph – a person so prescribed or a person of a class or description so prescribed.

**confiscation order** means a forfeiture order or a pecuniary penalty order.

**corresponding law** means a law of the Commonwealth or a State or of another Territory of the Commonwealth that is for the time being prescribed to be a law that corresponds to this Act.

**forfeiture order** means an order made under section 5(1).

**interest**, in relation to property, means:

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

**interstate forfeiture order** means an order that is made under a corresponding law and is of a kind prescribed to be within this definition.

**interstate pecuniary penalty order** means an order that is made under a corresponding law and is of a kind prescribed to be within this definition.

**interstate restraining order** means an order that is made under a corresponding law and is of a kind prescribed to be within this definition.

**interstate serious offence** means an offence (including a common law offence) against the laws of the Commonwealth or a State or another Territory of the Commonwealth, being an offence in relation to which an interstate forfeiture order or interstate pecuniary penalty order may be made under a corresponding law of that State or Territory.

**narcotic substance** means a dangerous drug within the meaning of the *Misuse of Drugs Act*.

**pecuniary penalty order** means an order made under section 10(1).

**penalty amount** means, in relation to:

- (a) a forfeiture order, the amount specified in relation to the forfeiture order under section 8(2); or
- (b) a pecuniary penalty order, the amount that the person to whom the order relates is, under the order, liable to pay to the Territory.

**proceeds of an offence** means property derived or realised, directly or indirectly, by a person from an act or omission that constitutes an indictable offence against a law in force in the Territory, the Commonwealth or a State or another Territory of the Commonwealth.

**production order** means an order under section 48.

**property** includes real and personal property, an estate or interest in real or personal property, money, a debt, a cause of action for damages (including damages for personal injury) and any other chose in action, right or interest.

**property-tracking document**, in relation to a serious offence, means a document relevant to:

- (a) identifying, locating or quantifying property of a person who committed the offence;
- (b) identifying or locating any document necessary for the transfer of property of a person who committed the offence;
- (c) identifying, locating or quantifying tainted property in relation to the offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to the offence.

**Public Trustee** means the Public Trustee appointed under the *Public Trustee Act*.

**relevant period**, in relation to the conviction of a person for a serious offence, means the period of 6 months after, where the person is to be taken to have been found guilty of the offence by reason of:

- (a) subsection (2)(a) – the day on which the person was found guilty of the offence;
- (b) subsection (2)(b) – the day on which the order in relation to the offence was made pursuant to section 392 of the Criminal Code or section 4 of the *Criminal Law (Conditional Release of Offenders) Act*;
- (c) subsection (2)(c) – the day on which the court took the offence into account pursuant to section 396 of the Criminal Code or section 104 of the *Sentencing Act*; or
- (d) subsection (2)(d) – the day on which the person is taken to have absconded under subsection (5).

***restraining order*** means an order made under section 14(2).

***serious offence*** means an offence:

- (a) against a law of the Territory, being an offence that may be prosecuted on indictment; or
- (b) prescribed for the purposes of this paragraph or an offence of a kind so prescribed.

***tainted property*** means property:

- (a) used in or in connection with; or
- (b) derived or realized, directly or indirectly, by a person as a result of,

the commission of a serious offence.

***unlawful activity*** means an act or omission that constitutes an offence against a law in force in the Territory, the Commonwealth or a State or another Territory of the Commonwealth.

- (2) For the purposes of this Act, a person shall be taken to have been convicted of a serious offence if the person has been:
  - (a) found guilty, whether summarily or on indictment, of the offence;
  - (b) charged with the offence and the court hearing the charge has made an order in relation to the offence pursuant to section 392 of the Criminal Code or section 4 of the *Criminal Law (Conditional Release of Offenders) Act*;
  - (c) sentenced for another offence and the court has, in passing sentence on the person, taken the offence into account pursuant to section 396 of the Criminal Code or section 104 of the *Sentencing Act*; or
  - (d) charged with the offence and, at any time before the determination of the charge, the person has absconded.
- (3) Where, by virtue of subsection (2), a person is to be taken to have been convicted of a serious offence, then, for the purposes of this Act:
  - (a) the person shall, in a case to which paragraph (a) or (b) of that subsection applies, be taken to have been so convicted before the court referred to in the relevant paragraph; and



- (b) the conviction shall be taken to have been quashed where the person is to be taken to have been convicted of the offence by reason of:
  - (i) subsection (2)(a) – when the finding of guilt is quashed or set aside;
  - (ii) subsection (2)(b) – when the order made under section 392 of the Criminal Code or section 4 of the *Criminal Law (Conditional Release of Offenders) Act* is quashed or set aside;
  - (iii) subsection (2)(c) – when the decision of the court under section 396 of the Criminal Code or section 104 of the *Sentencing Act* is quashed or set aside;
  - (iv) subsection (2)(d) – when, after the person is subsequently brought before a court in respect of the offence with which the person was charged, the person is discharged in respect of the offence or the conviction for the offence is quashed or set aside.
- (4) For the purposes of this Act, where an information has been laid alleging the commission of a serious offence by a person, the person shall be taken to have been charged with the offence (but nothing in this subsection limits any other way in which a person is to be taken to be charged with an offence).
- (5) For the purposes of this Act (other than section 58), a person shall be taken to have absconded if and only if:
  - (a) an information has been laid alleging the commission of a serious offence by the person;
  - (b) a warrant for the arrest of the person has been issued in relation to that information; and
  - (c) reasonable attempts to locate the person pursuant to the warrant have been unsuccessful during the period of 3 months commencing on the day the warrant was issued,and the person shall be taken to have so absconded on the last day of that period of 3 months.
- (6) A reference in this Act, in relation to the conviction of a person for a serious offence, to the commission of the offence, where the person is to be taken to have been convicted of the offence by reason of subsection (2)(d), shall be read as a reference to the alleged commission of the offence by the person.

(7) A reference in this Act to:

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4                      Act to bind Crown**

- (1) This Act binds the Crown not only in right of the Territory but, so far as is legislatively possible, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

## **Part II                      Forfeiture orders**

### **5                      Forfeiture orders**

- (1) Where a person has been convicted of a serious offence, an appropriate officer may, at any time before the expiration of the relevant period, apply to an appropriate court for an order under this section in relation to specified property and if the court:
  - (a) is satisfied that the property is tainted property in relation to the offence; and
  - (b) has taken into consideration (having regard to information before it):
    - (i) the use that is ordinarily or had been intended to be made of the property; and
    - (ii) any hardship that may reasonably be likely to arise (whether on the part of that or any other person) following the making of the order,

it may order that the property is forfeited to the Territory.

- (2) Where an application has been made to an appropriate court under subsection (1):
  - (a) the court may, if it thinks fit, require the appropriate officer making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property; and

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- (b) any person who has an interest in the property or part of the property is entitled to appear and to adduce evidence at the hearing of the application.
- (3) Where, at the hearing of an application made under subsection (1), evidence is given that property to which the application relates was in the possession of the person at or immediately after the commission of the serious offence, then:
- (a) if there is no evidence given tending to show that the property was not used in, or in connection with, the commission of the offence – the court shall presume that the property was used in, or in connection with, the commission of the offence; or
  - (b) in any other case – the court shall not make an order under this section in relation to the property unless it is satisfied, on the balance of probabilities, that the property was used in, or in connection with, the commission of that offence.
- (4) A court making a forfeiture order in respect of property may specify in the order the extent of the estate, interest or rights in the property that are affected by the order and, where the order is to apply to land, the court shall do so.

## **6 Effects of forfeiture order**

- (1) Where property is forfeited to the Territory under a forfeiture order:
- (a) the property vests in the Territory (or in such Territory authority as is specified in the order) to the extent of the estate, interest or rights (if any) specified in the order;
  - (b) the property vests subject to every charge or encumbrance to which the property was subject immediately before the order was made and, in respect of land under the *Real Property Act*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act; and
  - (c) if the property is not already in the possession of the Territory, the Territory may take possession of the property.
- (2) Where a court makes a forfeiture order in respect of property:
- (a) the property shall not, except with the leave of an appropriate court and in accordance with any directions of that court, be disposed of or otherwise dealt with by or on behalf of the Territory before the relevant time; and

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- (b) if, at the relevant time, the order has not been discharged, the property may be disposed of or otherwise dealt with in accordance with:
    - (i) the directions, if any, of the Minister or of a person authorized by the Minister for the purposes of this subparagraph; or
    - (ii) any other applicable law.
  - (3) In subsection (2) **relevant time** means:
    - (a) where:
      - (i) the period provided for the lodging of an appeal against the forfeiture order has expired without an appeal having been lodged – the expiration of that period; or
      - (ii) an appeal against the forfeiture order has been lodged – the time when the appeal lapses or is finally determined, as the case requires; or
    - (b) where:
      - (i) the period provided for the lodging of an appeal against the conviction for the relevant serious offence has expired without an appeal having been lodged – the expiration of that period; or
      - (ii) an appeal against the conviction has been lodged – the time when the appeal lapses or is finally determined, as the case requires,

whichever is the later.

## **7 Effect of forfeiture order on third parties**

- (1) Where a court makes a forfeiture order, a person who claims an interest in the property in respect of which the order was made may, at any time within 6 months after the day on which the order was made, apply to the court for an order under this section in respect of that interest and, if the court is satisfied, on the balance of probabilities, that the person was not in any way involved in the commission of the relevant serious offence, the court shall make an order declaring the nature, extent and value of that person's interest in the property and:
  - (a) if the property is still in the possession of the Territory – directing that the property be transferred to that person or

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declare that there is payable to that person the amount specified in the order as the value of that person's interest in the property; or

- (b) in any other case – declaring that there is payable to that person the amount specified in the order as the value of that person's interest in the property.
- (2) In deciding, for the purpose of subsection (1)(a), whether to direct that property be transferred to a person or to declare that an amount is payable to a person, the court shall have regard to:
  - (a) the nature, extent and value of the person's interest in the property;
  - (b) if the court is aware that any other person claims an interest in the property – the nature, extent and value of that claimed interest; and
  - (c) such other matters as the court considers relevant.
- (3) A person who applies to a court for an order under subsection (1) shall 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.
- (4) A court shall not make an order under subsection (1) in respect of the interest of a person who has under:
  - (a) section 5(2)(a) been given notice; or
  - (b) section 5(2)(b) appeared at the hearing,of the application for the forfeiture order unless it is satisfied that the making of the order is justified on special grounds.
- (5) For the purposes of subsection (4), special grounds are:
  - (a) the applicant was unable to appear at the hearing of the application for the forfeiture order;
  - (b) the applicant did not appear at that hearing for a good reason; or
  - (c) evidence adduced by the applicant in connection with the application under subsection (1) was not available to the applicant at the time of the hearing of the application for the forfeiture order.

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- (6) A reference in this section to the transfer of property includes, without limiting the meaning of that expression, the transfer of land or an estate or interest in land by a conveyance, transfer or other appropriate transaction.

## **8 Discharge of forfeiture order**

- (1) A forfeiture order is discharged on the quashing of a conviction of a person of the serious offence upon which the order was made.
- (2) Where a court makes a forfeiture order, it shall, in the order, specify the amount that it considers is the value of the property in respect of which the order is made, and (except in so far as it otherwise directs) the payment of that amount to the Territory operates to discharge the forfeiture order.

## **9 Effect of discharge of forfeiture order**

- (1) Where a forfeiture order is discharged, the person who had possession of the property in respect of which the order was made before it was forfeited to the Territory may, by application in writing to the Minister, request the return of the property and, on receipt of the application by the Minister:
- (a) if the property is still in the possession of the Territory, the Minister shall, subject to subsection (2), arrange for it to be returned to the person; or
- (b) in any other case – subject to subsections (3) and (4), there is payable to the person the amount specified in the order as the value of the property.
- (2) Where:
- (a) a person applies to the Minister under subsection (1) for the return of property forfeited to the Territory; and
- (b) in pursuance of section 7, an amount has been paid to another person in respect of that other person's interest in the property,

then, notwithstanding subsection (1), the Minister shall inform the first-mentioned person that the property will be returned to that first-mentioned person on payment to the Territory of an amount equal to the amount paid referred to in paragraph (b) and, where that amount is paid to the Territory, the Minister shall arrange for the property to be returned to that first-mentioned person.

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(3) Where:

- (a) a person applies to the Minister under subsection (1) for the return of property that is not in the possession of the Territory; and
- (b) in pursuance of section 7, an amount has been paid to another person in respect of that other person's interest in the property,

then, notwithstanding subsection (1), there is payable to the first-mentioned person the amount specified in the forfeiture order as the value of the property, reduced by an amount equal to the amount paid referred to in paragraph (b).

(4) A reference in this section to:

- (a) the return of property includes, without limiting the meaning of that expression, the return of land or an estate or interest in land by a conveyance, transfer or other appropriate transaction; and
- (b) a person who had possession of property includes a reference to any person who is entitled to the property.

## **Part III                      Pecuniary penalty orders**

### **10                      Pecuniary penalty orders**

(1) Where a person has been convicted of a serious offence:

- (a) an appropriate officer may, at any time before the expiration of the relevant period, apply to an appropriate court for a pecuniary penalty order under this section in respect of the offence; and
- (b) on the making of an application under paragraph (a), the court may:
  - (i) assess, in accordance with section 11, the value of the benefits derived by the person by reason of having committed the offence; and
  - (ii) order the person to pay to the Territory a pecuniary penalty equal to the value as so assessed.

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- (2) An amount payable by a person to the Territory under a pecuniary penalty order shall, for all purposes, be deemed to be a civil debt due by the person to the Territory.
  - (3) A pecuniary penalty order may be enforced as if it were an order made by the court in civil proceedings instituted by the Territory against the person to recover a debt due by the person to the Territory.
  - (4) An application may be made under this section in respect of one or more serious offences.

## **11 Assessment of pecuniary penalty**

- (1) A reference in this Part to:
  - (a) the defendant, in relation to an application under section 10(1) for an order that a person pay a pecuniary penalty to the Territory, shall be read as a reference to that person; and
  - (b) the offence period, in relation to an application under section 10(1) made in reliance on the conviction of a person for 2 or more serious offences, is a reference to 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 under section 10(1), the value of the benefits derived by the defendant by reason of having committed a serious offence or serious offences shall be assessed by the court having regard to information before the court concerning all or any of the following matters:
  - (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) any other person at the request or by the direction of the defendant,by reason of the defendant having committed the offence or any of the offences;
  - (b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a), that was provided for:
    - (i) the defendant; or



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- (ii) any other person at the request or by the direction of the defendant,  
  
by reason of the defendant having committed the offence or any of the offences;
  - (c) the extent of the defendant's involvement in the commission of the offence or offences; or
  - (d) the value of the defendant's property where the application relates to:
    - (i) a single serious offence – before and after the commission of the offence; or
    - (ii) 2 or more serious offences – before and after the offence period.
  - (3) Where, at the hearing of an application under section 10(1), evidence is given that the value of the defendant's property after the defendant committed the serious offence, or after the end of the offence period, as the case may be, exceeded the value of the defendant's property before the defendant committed the serious offence or before the commencement of the offence period, as the case may be, then, for the purposes of section 10(1), the court shall, subject to subsection (4), treat the value of the benefits derived by the defendant by reason of having committed the offence or offences as being not less than the amount of the excess.
  - (4) Where, after evidence has been given at the hearing of an application under section 10(1) that the value of the defendant's property after the defendant committed the serious offence, or after the end of the offence period, as the case may be, exceeded the value of the defendant's property before the defendant committed the serious offence or before the commencement of the offence period, as the case may be, the defendant satisfies the court that the whole or a part of the excess was due to causes unrelated to the commission of the offence or offences, as the case may be, if the defendant so satisfies the court in respect of:
    - (a) the whole of the excess – subsection (3) does not apply to the excess; or
    - (b) a part of the excess – subsection (3) applies to the excess as if it were reduced by the amount of that part.
  - (5) In assessing, for the purposes of an application under section 10(1), the value of benefits derived by the defendant by

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reason of having committed the serious offence or offences, any expenses or outgoings of the defendant in connection with the commission of the offence or offences shall be disregarded.

- (6) At a hearing of an application under section 10(1), a member of the Police Force who is experienced in the investigation of offences referred to in paragraph (b) of the definition of serious offence in section 3 may testify, to the best of the member's information, knowledge and belief:
- (a) with respect to the amount that was the market value of a narcotic substance at a particular time or during a particular period; or
  - (b) with respect to the amount, or the range of amounts, that was the amount, or range of amounts, ordinarily paid at a particular time, or during a particular period for the doing of an act or thing in relation to a narcotic substance,

notwithstanding any rule of law or practice relating to hearsay evidence, and the testimony is prima facie evidence of the matters testified to.

- (7) This section applies to and in relation to property that comes into the possession or under the control of a person, either within or outside the Territory, and to benefits that are provided for a person either within or outside the Territory.

## **12 Court may lift corporate veil, &c.**

- (1) In assessing, for the purposes of an application under section 10(1), the value of benefits derived by the defendant by reason of having committed the serious offence or offences, an appropriate court may treat as property of the defendant any property that, in the opinion of the court, is subject to the effective control of the defendant whether or not the defendant has:
- (a) any legal or equitable estate or interest in; or
  - (b) any right, power or privilege in connection with,
- the property.
- (2) Without limiting the generality of subsection (1), an appropriate court may have regard to:
- (a) shareholdings in, debentures over or director – ships of any company that has an interest (whether direct or indirect) in the property;

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- (b) any trust that has a relationship to the property; and
  - (c) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b) and any other persons.
- (3) Where an appropriate court, for the purposes of making a pecuniary penalty order against a defendant, treats particular property as the defendant's property pursuant to subsection (1), the court may, on application by an appropriate officer, make an order declaring that the property is available to satisfy the order.
- (4) Where an appropriate 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 defendant 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 defendant against whom the order is made.
- (5) Where an appropriate officer makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a defendant:
- (a) the appropriate officer shall give written notice of the application to the defendant and to any person who the appropriate officer has reason to believe may have an interest in the property; and
  - (b) the defendant and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

## Part IV                      Restraining orders

### 13                      Definition

In this Part, unless the contrary intention appears, **defendant** means a person charged or about to be charged with, or convicted of, a serious offence.

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**14        Restraining orders**

- (1) An appropriate officer may apply to the Supreme Court, *ex parte*, for an order under this section in respect of:
  - (a) specified property of a defendant;
  - (b) all the property of a defendant (including property acquired after the making of the order);
  - (c) all the property of a defendant (including property acquired after the making of the order) other than specified property; or
  - (d) specified property of a person other than a defendant.
- (2) Where an appropriate officer applies for an order under this section, the Supreme Court may, subject to section 15, by order:
  - (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 the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order; or
  - (b) if the Court considers that the circumstances so require – direct the Public Trustee to take control of the property, or such part of the property as is specified in the order.
- (3) A restraining order may be made subject to such conditions as the Supreme Court thinks fit and, without limiting the generality of this subsection, 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; or
  - (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 shall not 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 is not subject to a restraining order.

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- (5) Where the Public Trustee is given a direction under subsection (2)(b) in relation to property, the Public Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:
- (a) becoming a party to any civil proceedings affecting the property;
  - (b) ensuring that the property is insured; and
  - (c) if the property consists, in whole or in part, of a business – employing, or terminating the employment of, persons in the business.
- (6) Where an appropriate officer applies to the Supreme Court for an order under subsection (2), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

## **15 Grounds for making restraining order**

- (1) The Supreme Court shall, subject to subsections (2), (3), (4), (5), (6) and (9), make a restraining order unless it is satisfied that it is not in the public interest to make such an order.
- (2) Where a defendant has not been convicted of a serious offence, the Supreme Court shall not make a restraining order unless:
- (a) the application for the order is supported by an affidavit of a member of the Police Force stating that the member 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.
- (3) Where an application is made under section 14(1) in reliance on the proposed charging of a defendant with a serious offence, the Supreme Court shall not make a restraining order unless it is satisfied that the defendant is likely to be charged with the offence or a related offence within 48 hours of the making of the application.

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- (4) Where an application under section 14(1) seeks a restraining order against specified property of a defendant, the Supreme Court shall not make the restraining order against the property unless:
- (a) the application is supported by an affidavit of a member of the Police Force stating that the member believes that:
    - (i) the property is tainted property in relation to the serious offence to which the application relates; or
    - (ii) the defendant derived a benefit, directly or indirectly, from the commission of 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.
- (5) Where an application under section 14(1) seeks a restraining order against all the property of a defendant or against all the property of a defendant other than specified property, the Supreme Court shall not make a restraining order against the property unless:
- (a) the application is supported by an affidavit of a member of the Police Force stating that the member believes that the defendant derived a benefit, directly or indirectly, from the commission of the serious offence to which the application relates; 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) Where an application under section 14(1) seeks a restraining order against specified property of a person other than the defendant, the Supreme Court shall not make a restraining order against the property unless:
- (a) the application is supported by an affidavit of a member of the Police Force stating that:
    - (i) the member believes that the property is tainted property in relation to the serious offence to which the application relates; or
    - (ii) the member believes that:
      - (A) the property is subject to the effective control of the defendant; and

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- (B) the defendant derived a benefit, directly or indirectly, from the commission of the serious offence to which the application relates; and
  - (b) the Court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
  - (7) In determining whether there are reasonable grounds to believe that property is in the effective control of a defendant the Supreme Court may have regard to the matters referred to in section 12(2).
  - (8) The Supreme Court may make a restraining order in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.
  - (9) The Supreme Court may refuse to make a restraining order if the Territory refuses or fails to give to the Court such undertakings as the Court thinks appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.
  - (10) For the purposes of an application under subsection (1), an appropriate officer may, on behalf of the Territory, give to the Supreme Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.
  - (11) An affidavit made by a member of the Police Force for the purposes of this section that states that the member believes a particular matter shall set out the grounds on which the member holds that belief.

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

- (1) Subject to subsection (2), an appropriate officer shall give written notice of an application for a restraining order against property to:
  - (a) the owner of the property; and
  - (b) any other person the Supreme Court has reason to believe may have an interest in the property.
- (2) The Supreme Court may make a restraining order where notice of the application has not been given in accordance with subsection (1), if the Court is satisfied that:
  - (a) there are circumstances of urgency requiring the making of such an order; or

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- (b) it would be contrary to the public interest to give notice of the application,

but, subject to subsection (3), a restraining order made by virtue of this subsection shall cease to have effect at the end of such period (not exceeding 14 days) as is specified by the Court in the restraining order.

- (3) The Supreme Court may, on application made by an appropriate officer before the end of the period referred to in subsection (2), extend the period of operation of a restraining order granted by virtue of that subsection if the Court is satisfied that there are circumstances justifying the extension.
- (4) An appropriate officer shall give written notice of an application under subsection (3) for the extension of the period of operation of a restraining order to:
  - (a) the owner of the property against which the restraining order was made; and
  - (b) any other person the Supreme Court has reason to believe may have an interest in the property.
- (5) The Supreme Court may, at any time before the final determination of an application for:
  - (a) a restraining order; or
  - (b) an extension of the period of operation of a restraining order,direct an appropriate officer to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the Court considers appropriate.

## **17 Persons who may appear and adduce evidence**

- (1) Where:
  - (a) an appropriate officer applies for a restraining order against property; and
  - (b) notice of the application is given in accordance with section 16(1),any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.



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- (2) Where an appropriate officer applies for the extension of the period of operation of a restraining order that has been made in respect of property, any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

## **18 Notice of restraining orders**

- (1) Subject to subsection (2), where a restraining order is made against a person's property, an appropriate officer shall give the person written notice of the order.
- (2) Where:
- (a) the Supreme Court makes a restraining order; and
  - (b) the Court is satisfied that it would be in the public interest to delay giving notice of the order to a person,

the Court may order that giving the person notice of the restraining order be delayed for such period as is specified in the order and the appropriate officer shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

## **19 Court may make further orders**

- (1) Where the Supreme Court makes a restraining order, it may, at the time when it makes the restraining order or at any later time, make any ancillary orders that it considers appropriate and, without limiting the generality of this section, it may make 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) another person,before the Court or the Master of the Court concerning the affairs of the owner, including the nature and location of any property of the owner;

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- (d) an order with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Territory in connection with the making of the restraining order;
  - (e) where 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 any powers or perform any duties under the restraining order;
    - (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:
      - (A) the owner; or
      - (B) if the owner is a body corporate – a director of the body corporate specified by the Court,to furnish to the Public Trustee, within a period 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 as the Court thinks proper.
- (2) Without limiting the generality of subsection (1), where the Supreme Court makes, or has made, a restraining order, the Court may, at the time it makes the restraining order or at any later time, whether on application made to it or on its own motion, make an order authorizing another court:
  - (a) to make an order setting aside the restraining order in respect of the whole or a part of the property; or
  - (b) to make other orders in relation to the operation of the restraining order,

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

- (3) An order under subsection (1) may be made on application by:
- (a) an appropriate officer;
  - (b) the owner;
  - (c) where 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.
- (4) Where the Supreme Court makes a restraining order against property and a person having an interest in the property applies to the Court for a variation of the order to exclude the person's interest from the order, the Court shall grant the application if:
- (a) where the applicant is not the defendant:
    - (i) if the restraining order was made against the property by virtue of section 15(6)(ii) – the Court is satisfied that the interest is not tainted property and that:
      - (A) a pecuniary penalty order cannot be made against the defendant; or
      - (B) the applicant's interest in the property is not subject to the effective control of the defendant; or
    - (ii) in any other case – the Court is satisfied that the interest is not tainted property;
  - (b) where the applicant is the defendant – the Court is satisfied that:
    - (i) the interest is not tainted property; and
    - (ii) a pecuniary penalty order cannot be made against the defendant;
  - (c) in any case – the Court is satisfied that it is in the public interest to do so having regard to all the circumstances, including:
    - (i) any financial hardship or other consequence of the interest remaining subject to the order;
    - (ii) the seriousness of the offence; and

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- (iii) the likelihood that the interest will be:
    - (A) subject to a forfeiture order; or
    - (B) required to satisfy a pecuniary penalty order.
  - (5) Where a person is examined before the Supreme Court or the Master of the Court pursuant to an order under subsection (1), the person is not excused from answering a question when required to do so by the Court or the Master, as the case may be, on the ground that the answer to the question might tend to incriminate the person or make the person liable to a forfeiture or penalty.
  - (6) Where a person is examined before the Supreme Court or the Master 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, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.
  - (7) For the purposes of subsection (6), proceedings on an application for a restraining order or confiscation order are not criminal proceedings.
  - (8) Where an appropriate officer applies to the Supreme Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

## **20 Public Trustee to discharge confiscation order**

- (1) Where:
  - (a) the Public Trustee has, pursuant to a restraining order, taken control of particular property, or of all the property, of a defendant; and
  - (b) a confiscation order has been made in reliance on the conviction of the defendant,

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 Territory, out of that property, an amount equal to the penalty amount.

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- (2) For the purpose of enabling the Public Trustee to comply with the later order, an appropriate court may, by that order or by a subsequent order:
- (a) direct the Public Trustee to sell or otherwise dispose of such of the property that is under the control of the Public Trustee as the court specifies; and
  - (b) appoint an officer of the court or any other person to execute any deed or instrument in the name of the person who owns or has an interest in the property and to do all acts and things necessary to give validity and operation to the deed or instrument.
- (3) The execution of a deed or instrument by the person appointed 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 shall:
- (a) apply the money which 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 the 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 the fees payable in connection with, and 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), pay the remainder of the money referred to in paragraph (a), after the payments referred to in that paragraph have been made, to the Territory.
- (5) Where the money to which subsection (4)(b) applies exceeds the penalty amount, the Public Trustee shall pay:
- (a) to the Territory, out of that money, an amount equal to the penalty amount; and
  - (b) the balance of that money to the person out of whose property the money came.

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- (6) Where the Public Trustee pays, in accordance with the later order, money to the Territory in respect of the liability of a person under a confiscation order, the liability of the person under the confiscation order shall, to the extent of the payment, be deemed to be discharged.

## **21 Charge on property subject to restraining order**

- (1) Where:

- (a) a restraining order is made in reliance on the charging or proposed charging of a defendant with a serious offence; and
- (b) on the subsequent conviction of the defendant for the offence, a court makes a pecuniary penalty order against the person,

then, on the making of the pecuniary penalty order, there is created, by force of this section, a charge on all the property to which the restraining order applies to secure the payment to the Territory of the penalty amount.

- (2) Where a charge is created by subsection (1) on property of a person the charge ceases to have effect in respect of the property on:

- (a) the discharge of the pecuniary penalty order on the hearing of an appeal against the making of the order;
- (b) payment by the person to the Territory of the penalty amount;
- (c) the sale or other disposition of the property:
  - (i) pursuant to an order made by the Supreme Court under section 20;
  - (ii) by the owner of the property with the consent of the Supreme Court; or
  - (iii) where the restraining order directs the Public Trustee to take control of the property – by the owner of the property with the consent of the Public Trustee; or
- (d) the sale of the property to a bona fide purchaser for value who, at the time of purchase, has no notice of the charge,

whichever first occurs.

- (3) A charge created by subsection (1):
- (a) is subject to every charge or encumbrance to which the property was subject immediately before the pecuniary penalty order was made and, in the case of land under the *Real Property Act*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act;
  - (b) has priority over all other encumbrances whatever; and
  - (c) subject to subsection (2), is not affected by any change of ownership of the property.
- (4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Territory provide for the registration of title to, or charges over, property of that kind, the Public Trustee or an appropriate officer may or, in the case of land, shall 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 the property after the registration of the charge shall, for the purposes of subsection (2), be deemed to have notice of the charge.
- (5) Where a charge under this section relates to land under the *Real Property Act* the charge has no effect until it is registered under that Act.

## **22 Registration of restraining orders**

- (1) Where a restraining order applies to property of a particular kind and the provisions of any law of the Territory provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions shall, on application by an appropriate officer, record on the register kept pursuant to those provisions the prescribed particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 23, be deemed to have notice of the restraining order.
- (2) Where a restraining order applies to land under the *Real Property Act* a caveat may be lodged under that Act in relation to the order.

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**23 Contravention of restraining orders**

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order is guilty of an offence.

Penalty: Where the offender is a natural person – \$10,000 or imprisonment for 5 years.

Where the offender is a body corporate – \$50,000.

- (2) Where:

- (a) a restraining order is made against property;
- (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 appropriate officer may apply to the Supreme Court for an order that the disposition or dealing be set aside.

- (3) Where an appropriate 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 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.

**24 Hindering or obstructing Public Trustee**

- (1) A person shall not hinder or obstruct the Public Trustee in the performance of the Public Trustee's obligations under a restraining order.

Penalty: \$2,000 or imprisonment for 6 months.

- (2) In this section, **Public Trustee** includes the deputies, officers, servants and agents of the Public Trustee.



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**25      Protection of Public Trustee from liability in certain cases**

- (1) Section 97 of the *Public Trustee Act* 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 section, but nothing in this section shall be read as limiting the operation of that section.
- (2) The Public Trustee is not personally liable for any rates, land tax or local government or other statutory charges imposed by or under a law of the Territory on or in respect of property of which the Public Trustee has been directed by a restraining order to take control, being rates, land tax or local government or other statutory charges that fall due on or after the date of the restraining 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 restraining order.
- (3) Where the Public Trustee, having been directed by a restraining order to take control of a business carried on by a person, carries on that business, the Public Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Public Trustee in the Public Trustee's capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of the restraining order.
- (4) In this section **Public Trustee** includes the deputies, officers, servants and agents of the Public Trustee.

**26      Fees payable to Public Trustee**

- (1) Where the Public Trustee takes control of property in accordance with a restraining order, the Public Trustee is entitled to receive, in respect of the exercise and the performance of the powers and duties of the Public Trustee in relation to the property, a fee determined in accordance with subsection (2).
- (2) The fee the Public Trustee is entitled to receive under subsection (1) is:
  - (a) 2% of the gross capital value of any property transferred in specie;
  - (b) 4% of the gross capital value of any realized property; and
  - (c) 4% of the gross income obtained from any property.

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**27 Court may revoke restraining orders**

Where, on application made in reliance on the charging, or the proposed charging, of a person with a serious offence, the Supreme Court has made a restraining order, the Court may, on application made to it by the person, revoke the order if the person gives:

- (a) security satisfactory to the Court for the payment of any pecuniary penalty that may be imposed on the person under this Act in respect of the person's conviction for the offence; or
- (b) undertakings satisfactory to the Court concerning the person's property.

**28 Time when restraining order ceases to be in force**

- (1) Subject to this section and to any order made by a court pursuant to this section, a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence ceases to be in force:
  - (a) if the restraining order was made in reliance on the proposed charging of a person and, at the expiration of the period of 48 hours after the making of the restraining order, the person has not been charged with the offence – at the expiration of that period; or
  - (b) in any other case – at the expiration of 6 months after the making of the restraining order or, if an order or orders has or have been made under section 19 in relation to the restraining order, at the expiration of 6 months after the making of the order, or of the last of the orders, under section 19.
- (2) Where, by virtue of subsection (1)(b), a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence would cease to be in force at the expiration of a particular period, an appropriate officer may apply to the Supreme Court for an order under subsection (3).
- (3) Where, on application under subsection (2), the Supreme Court is satisfied that:
  - (a) a forfeiture order may still be made in respect of the property or part of the property; or
  - (b) a pecuniary penalty order may still be made against the person,

the Supreme Court may:

- (c) by order, extend the period during which the restraining order remains in force; and
  - (d) make such other order or orders as it thinks fit in relation to the operation of the restraining order.
- (4) Where the Supreme Court makes an order under subsection (3), then, notwithstanding subsection (1), the restraining order does not cease to be in force except as provided by the order under subsection (3) or by an order subsequently made pursuant to this section.
- (5) Where, while a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the Supreme Court may:
  - (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property in respect of which the order was made; and
  - (b) make such other order or orders as it thinks fit in relation to the operation of the restraining order.
- (6) Where, while a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court (other than the Supreme Court) makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the court may:
  - (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property in respect of which the order was made; and
  - (b) make such other order or orders as it thinks fit in relation to the operation of the restraining order,but the court may make an order under this subsection only if, and to the extent and in the circumstances, it is authorized to do so by an order of the Supreme Court under section 19(2).
- (7) Where, while a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court refuses to make a forfeiture order in respect of the property or refuses to make a pecuniary penalty order against the person, the Supreme Court may:

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- (a) if it considers it appropriate, make an order in relation to the period for which the restraining order is to remain in force; and
  - (b) make such other order or orders as it thinks fit in relation to the operation of the restraining order.
- (8) An order under subsection (5), (6) or (7) may be made so as:
- (a) to set aside the restraining order wholly or in part; and
  - (b) to take effect:
    - (i) on the making of the first-mentioned order;
    - (ii) at a specified time;
    - (iii) where relevant, on the payment of a penalty amount to the Territory; or
    - (iv) on the happening of some other specified event,
- and, when the first-mentioned order takes effect, the restraining order ceases to be in force to the extent to which it is set aside.

## **29 Notice of applications under this Part**

- (1) A person who makes an application under section 19 in relation to a restraining order shall give notice of that application, as prescribed by the Regulations or by rules of court, to each other person who is entitled, by virtue of section 19(3), to make an application under section 19 in relation to the restraining order.
- (2) A person who makes an application under section 27 or section 28(2) in relation to a restraining order shall give notice of that application, as prescribed by the Regulations or by rules of court.

## **30 Certificate by Public Trustee**

Where a restraining order is made directing the Public Trustee to take control of property, a certificate under the hand of the Public Trustee and sealed with the Public Trustee's seal:

- (a) certifying that the restraining order has been made and is in force; and
- (b) stating the terms of the restraining order,

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shall be accepted by all courts, officers and other persons, whether acting under any Act or not, as evidence of the matters so certified and stated, and of the Public Trustee's right to act pursuant to the restraining order, without production of any other proof.

## **Part V Interstate orders**

### **31 Registration of interstate orders**

- (1) If an interstate restraining order or interstate forfeiture order expressly applies to property in the Territory it may be registered under this Act.
- (2) An interstate restraining order or interstate forfeiture order shall be regarded as 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) Any amendments made to an interstate restraining order or interstate forfeiture order (before or after registration) may be registered in the manner prescribed in subsection (2), and any such amendments do not, for the purposes of this Act, have effect until they are registered.
- (4) An application for registration under this section may be made by the person on whose application the order was, or amendments were, made, by an appropriate officer or by a person effected by the order or amendments.

### **32 Effect of registration of interstate restraining order**

- (1) A registered interstate restraining order may be enforced in the Territory as if it were a restraining order.
- (2) This Act (other than sections 7, 14, 16(1), 21, 27, 28 and 29(2)) applies to a registered interstate restraining order as it applies to a restraining order.

### **33 Effect of registration of interstate forfeiture order**

- (1) A registered interstate forfeiture order may be enforced in the Territory as if it were a forfeiture order.
- (2) This Act (other than section 60) applies to a registered interstate forfeiture order as it applies to a forfeiture order.

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- (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 the Territory.
  - (4) A registered interstate forfeiture order does not operate so as to vest property in the Crown in right of Territory if the order has already operated to vest the property in the Crown in some other capacity or in some other person or entity.

#### **34 Revocation or variation of registered orders**

A court of the Territory may not revoke or vary a registered interstate restraining order or registered interstate forfeiture order, or limit the manner in which such an order applies.

#### **35 Duration of registration**

Where an interstate forfeiture order or interstate restraining order is registered under this Act and the order ceases to be in force in the State in which it was made, the registered order continues to be enforceable in the Territory (as if the order were still in force in the State in which it was made) until the registration is cancelled under section 36.

#### **36 Cancellation of registration**

- (1) The registration of an interstate restraining order or interstate forfeiture order may be cancelled by the Supreme Court where:
  - (a) registration was improperly obtained; or
  - (b) the order ceases to be in force in the State in which it was made.
- (2) An application for cancellation of the registration of an order may be made by the person on whose application the order was made, an appropriate officer or a person affected by the order.

#### **37 Charge on property subject to registered interstate restraining order**

- (1) Where:
  - (a) an interstate restraining order is made in reliance on a person's conviction of an interstate serious offence or in reliance on the charging, or proposed charging, of a person with an interstate serious offence;

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- (b) an interstate pecuniary penalty order is made against the person in reliance on the person's conviction of that offence;
  - (c) the interstate restraining order is registered under this Act; and
  - (d) the interstate pecuniary penalty order is registered in a court of the Territory under the *Service and Execution of Process Act 1992* of the Commonwealth,

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

- (2) Where a charge is created by subsection (1) it ceases to have effect on:
  - (a) the quashing of the conviction in reliance on which the interstate pecuniary penalty order was made;
  - (b) the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order;
  - (c) the payment of the amount due under the interstate pecuniary penalty order;
  - (d) the person referred to in the order becoming bankrupt;
  - (e) 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;
    - (ii) by the owner of the property with the consent of the court that made the interstate pecuniary penalty order; or
    - (iii) where 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) the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge,

whichever first occurs.

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- (3) A charge created by subsection (1):
- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;
  - (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) Where a charge is created by subsection (1) on property of a particular kind and a law of the Territory provides for the registration of title to, or charges over, property of that kind:
- (a) the Public Trustee or the Solicitor for the Northern Territory may cause the charge so created to be registered under 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 shall, for the purposes of subsection (2)(f), be deemed to have notice of the charge at the time of the purchase or acquisition.
- (5) Where a charge created by subsection (1) relates to land under the *Real Property Act*, the charge has no effect until registered under that Act.

### **38 Powers of Public Trustee in relation to interstate restraining orders**

Where an interstate restraining order:

- (a) is registered under this Act; and
- (b) directs a government official to take control of property,

the Public Trustee may, in accordance with an agreement between the Public Trustee and the government official, exercise the same powers in relation to the property that the government official would have been able to exercise if the property were located in that State.

### **39 Interim registration of facsimile copies**

- (1) A facsimile copy of a sealed copy of an interstate restraining order or interstate forfeiture order or any amendments made to such an order, shall be regarded, for the purposes of this Act, as the same



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as the sealed copy, if the facsimile copy is certified in accordance with the Rules of the Supreme Court.

- (2) Registration under this Act effected by means of a facsimile copy ceases to have effect at the end of 5 days after the date, commencing on the day of registration unless a sealed copy, that is not a facsimile copy, has been registered by that time.
- (3) Registration under this Act of a sealed copy before the end of the period referred to in subsection (2) has effect as from the day of registration of the facsimile copy.
- (4) In this section **facsimile copy** means a copy obtained by facsimile transmission.

## Part VI                      Search warrants

### 40                      Interpretation

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

**forfeiture order** includes an interstate forfeiture order.

**premises** includes any structure, building, aircraft, vehicle, vessel or place (whether built on or not) and any part thereof.

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

**search warrant** means a search warrant issued under section 42.

**serious offence** includes an interstate serious offence.

**tainted property** includes property:

- (a) used in or in connection with; or
- (b) 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, whether a person has been charged with or convicted of an interstate serious offence shall be determined in accordance with the corresponding law of the jurisdiction concerned.

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**41 Powers to search for, and seize, tainted property**

(1) A member of the Police Force may:

- (a) search a person for tainted property; and
- (b) seize any property found in the course of the search that the member believes, on reasonable grounds, to be tainted property,

but only if the search or seizure is made:

- (c) with the consent of the person;
- (d) under a warrant issued under section 42; or
- (e) under section 44.

(2) A member of the Police Force may:

- (a) enter on land, or on or into premises;
- (b) search the land or premises for tainted property; and
- (c) seize any property found in the course of the search that the member believes, on reasonable grounds, to be tainted property,

but only if the entry, search or seizure is made:

- (d) with the consent of the occupier of the land or premises;
- (e) under a warrant issued under section 42; or
- (f) under section 44.

(3) Where a member of the Police Force searches a person under this Part, the member may also search:

- (a) the clothing that is being worn by the person; and
- (b) any property in, or apparently in, the person's immediate control.

(4) Nothing in this Part shall be taken to authorize a member of the Police Force to carry out a search by way of an examination of a body cavity of a person.

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**42 Search warrants in relation to tainted property**

- (1) Where a member of the Police Force has reasonable grounds for suspecting that there is, or may be within the following 7 days, tainted property of a particular kind:
  - (a) on a person;
  - (b) in the clothing that is being worn by a person; or
  - (c) otherwise in a person's immediate control,the member may:
  - (d) lay before a magistrate an information on oath setting out those grounds; and
  - (e) apply for the issue of a warrant to search the person for tainted property of that kind.
- (2) Where an application is made under subsection (1) for a warrant to search a person, the magistrate may, subject to subsection (6), issue a warrant authorizing a member of the Police Force (whether or not named in the warrant) with such assistance, and by such force, as is necessary and reasonable:
  - (a) to search the person for tainted property of that kind; and
  - (b) to seize property found in the course of the search that the member believes, on reasonable grounds, to be tainted property of that kind.
- (3) Where a member of the Police Force has reasonable grounds for suspecting that there is, or may be within the following 7 days, on any land, or on or in any premises, tainted property of a particular kind, the member may:
  - (a) lay before a magistrate an information on oath setting out those grounds; and
  - (b) apply for the issue of a warrant to search the land or premises for tainted property of that kind.
- (4) Where an application is made under subsection (3) for a warrant to search land or premises, the magistrate may, subject to subsection (6), issue a warrant authorizing a member of the Police Force (whether or not named in the warrant) with such assistance, and by such force, as is necessary and reasonable:
  - (a) to enter on the land, or on or into the premises;

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- (b) to search the land or premises for tainted property of that kind; and
    - (c) to seize property found in the course of the search that the member believes on reasonable grounds to be tainted property of that kind.
  - (5) A warrant may be issued under subsection (2) or (4) in relation to tainted property whether or not an information has been laid in respect of the relevant serious offence.
  - (6) A magistrate shall not issue a warrant under subsection (2) or (4) unless:
    - (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought;
    - (b) where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made – the magistrate is satisfied that:
      - (i) the property is tainted property; and
      - (ii) an information will be laid in respect of the relevant serious offence within 48 hours; and
    - (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
  - (7) There shall be included in a warrant issued under this section:
    - (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant serious offence;
    - (b) a description of the kind of property authorized to be seized; and
    - (c) a date, not being a date later than 21 days after the date of the issue of the warrant, upon which the warrant ceases to have effect.
  - (8) There shall also be stated in a warrant issued under subsection (4) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night.

- (9) If, in the course of searching, under a warrant issued under this section, for tainted property in relation to a particular serious offence, a member of the Police Force finds:
- (a) property that the member believes, on reasonable grounds, to be:
    - (i) tainted property in relation to the offence, although not of a kind specified in the warrant; or
    - (ii) tainted property in relation to another serious offence; or
  - (b) any thing that the member believes, on reasonable grounds, will afford evidence as to the commission of an offence,
- and the member believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant shall be deemed to authorize the member to seize that property or thing.
- (10) A member of the Police Force acting in accordance with a warrant issued under subsection (2) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant.
- (11) A person shall not be searched under this section except by a person of the same sex.

#### **43 Search warrants may be granted by telephone**

- (1) Where, by reason of circumstances of urgency, a member of the Police Force considers it necessary to do so, the member may make application for a search warrant under section 42 to a magistrate, by telephone, in accordance with this section.
- (2) Before making the application under subsection (1), the member of the Police Force shall prepare an information of a kind referred to in section 42(1) or (3), but may, if necessary to do so, make the application before the information has been sworn.
- (3) Where a magistrate is, on application made under subsection (1), satisfied:
  - (a) after having considered the terms of the information prepared in accordance with subsection (2); and

- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the search warrant is being sought,

that there are reasonable grounds for issuing the search warrant, the magistrate shall complete and sign such a search warrant as the magistrate would have issued under section 42 if the application had been made to the magistrate in accordance with that section.

- (4) Where a magistrate signs a search warrant under subsection (3):
  - (a) the magistrate shall inform the member of the Police Force of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for granting the search warrant; and
  - (b) the member shall complete a form of search warrant in the terms furnished to the member by the magistrate and write on it the name of the magistrate and the date on which and the time at which the search warrant was issued.
- (5) Where a member of the Police Force completes a form of search warrant in accordance with subsection (4), the member shall, not later than the day next following the date of the execution of the search warrant or the expiry of the search warrant, whichever is earlier, give the magistrate who signed the search warrant the form of a search warrant completed by the member and the application prepared in connection with the search warrant.
- (6) On receipt of the documents referred to in subsection (5), the magistrate shall attach to them the search warrant signed by the magistrate and deal with the documents in the manner in which the magistrate would have dealt with them if the application for the search warrant had been made in accordance with section 42.
- (7) A form of search warrant duly completed by a member of the Police Force in accordance with subsection (4) is, if it is in accordance with the terms of the search warrant signed by the magistrate, authority for any search, entry or seizure that the search warrant so signed authorizes.
- (8) Where it is material, in any proceedings, for a court to be satisfied that a search, entry or seizure was authorized in accordance with this section, and the search warrant signed by a magistrate in accordance with this section authorizing the search, entry or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the search, entry or seizure was not authorized by such a search warrant.

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**44 Searches in emergencies**

- (1) Where a member of the Police Force suspects, on reasonable grounds, that particular property is tainted property, the member may:
  - (a) search a person for the property and, if the property is found in the course of the search, seize the property; or
  - (b) enter on land, or on or into premises, and search for the property and, if the property is found in the course of the search, seize the property.
- (2) A member of the Police Force shall not exercise a power under subsection (1) unless:
  - (a) the member believes, on reasonable grounds, that it is necessary to exercise the powers in order to prevent the concealment, loss or destruction of the property; and
  - (b) the circumstances are so serious and urgent that they require the immediate exercise of the power without the authority of an order of a court or of a warrant issued under this Act.
- (3) Subsection (1) does not apply in respect of particular property unless an information has been laid in respect of the serious offence that the member of the Police Force believes, on reasonable grounds, to be the offence by reason of the commission of which the property is tainted property.
- (4) If, in the course of searching, in accordance with subsection (1), for tainted property in relation to a particular serious offence, a member of the Police Force finds:
  - (a) property that the member believes, on reasonable grounds, to be tainted property in relation to another serious offence; or
  - (b) any thing that the member believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,and the member believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the member may seize that property or thing.
- (5) Where a person is searched under this section, the search shall, if it is practicable in the circumstances to do so, be carried out by a person of the same sex as the person to be searched.

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**45 Commissioner of police responsible for seized property**

Where property is seized under this Part, the Commissioner of Police shall arrange for the property to be kept until it is dealt with in accordance with this Act, and shall ensure that all reasonable steps are taken to preserve the property while it is so kept.

**46 Return of seized property****(1) Where:**

- (a) property has been seized under this Part;
- (b) at the time when the property was seized, a person has not been charged with the relevant serious offence; and
- (c) before the expiration of 7 days after the property was seized, a person has not been charged with that offence,

then, unless an application for a forfeiture order is made in respect of the property, the Commissioner of Police shall arrange for the property to be returned, at the expiration of that period, to the person from whose possession it was seized.

**(2) Where:**

- (a) property has been seized under this Part; and
- (b) either before the property was seized, or after it was seized but before the expiration of 7 days after it was seized, an information has been laid in respect of the relevant serious offence (or criminal proceedings have been otherwise 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 of Police shall arrange for the property to be returned to the person from whose possession it was seized if the person is:

- (c) convicted of the offence – at the expiration of the period of 6 months after the relevant time; or
- (d) discharged or acquitted of the offence – as soon as possible after the relevant time.

**(3) Where:**

- (a) property has been seized under a search warrant; and



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- (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 of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as possible after the relevant time.

- (4) Where property has been seized under this Part, a person from whose possession the property was seized may apply to an appropriate court for an order under subsection (5).
- (5) Where a 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 directing that:
- (a) the property be returned to the person from whose possession it was seized; or
- (b) the person be allowed access to the property,
- on such terms and conditions (if any) as the court thinks fit.
- (6) A person who applies to a court for an order under subsection (5) shall 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.
- (7) In this section a reference to:
- (a) a person from whose possession property was seized includes a reference to any person who is entitled to the property; and
- (b) the relevant time is a reference to:
- (i) subject to subparagraph (ii), the date of the conviction, discharge or acquittal, or of the refusal to make the forfeiture order, as the case requires; or
- (ii) if there is a right of appeal:
- (A) where the period provided for the lodging of the appeal has expired without such an appeal having been lodged – the expiration of that period; or
- (B) where an appeal has been lodged – the time when the appeal lapses or is finally determined, as the case requires.

**47            Obstruction, &c., of member executing warrant**

A person shall not, without reasonable excuse, obstruct or hinder a member of the Police Force executing a search warrant under this Act.

Penalty:        \$2,000 or imprisonment for 2 years.

**Part VII            Information gathering powers**

**Division 1        Production Orders**

**48            Production orders**

(1) Where:

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

the member may lay before the Supreme Court an information on oath setting out those grounds and apply:

- (c) to the Court for an order under subsection (4) against the person suspected of having possession or control of the document; and
  - (d) for an order under subsection (4) against a person referred to in paragraph (b).
- (2) Where a member of the Police Force applying for an order under this section in respect of a serious offence includes in the information under subsection (1) information on oath that the member has reasonable grounds to believe that:
- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
  - (b) property specified in the information is subject to the effective control of the person,

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

- (3) In determining whether to treat a document under subsection (2) as a property-tracking document in relation to an offence, the Supreme Court may have regard to the matters referred to in section 12(2).
- (4) Where an application is made under subsection (1) for an order against a person the Supreme Court may, subject to subsections (5) and (6), make an order that the person:
  - (a) produce to a member of the Police Force any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
  - (b) make available to a member of the Police Force for inspection, any documents of that kind that are in the person's possession or control.
- (5) An order under subsection (4)(a) shall not be made in respect of bankers' books.
- (6) The Supreme Court shall not make an order under this section unless:
  - (a) the informant or some other person has given the Court, either orally or by affidavit, such information (if any) as the Court requires concerning the grounds on which the order is sought; and
  - (b) the Court is satisfied that there are reasonable grounds for making the order.
- (7) An order that a person produce a document to a member of the Police Force shall specify the time when, and the place where, the document is to be produced.
- (8) An order that a person make a document available to a member of the Police Force for inspection shall specify the time or times when the document is to be made available.
- (9) Where a document is produced to a member of the Police Force pursuant to an order under this section, the member may do any one or more of the following:
  - (a) inspect the document;
  - (b) take extracts from the document;

- (c) make copies of the document; or
  - (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.
- (10) Where a document is made available to a member of the Police Force for inspection pursuant to an order under this section, the member may do any one or more of the following:
  - (a) inspect the document;
  - (b) take extracts from the document; or
  - (c) make copies of the document.
- (11) Where a member of the Police Force retains a document pursuant to an order under this section, the member shall, on request by the person to whom the order was addressed:
  - (a) give the person a copy of the document certified by the member in writing to be a true copy of the document; and
  - (b) unless the person has received a copy of the document under paragraph (a) – permit the person to do any one or more of the following:
    - (i) inspect the document;
    - (ii) take extracts from the document; or
    - (iii) make copies of the document.
- (12) A person is not excused from producing or making available a document when required to do so by an order under this section on the ground that:
  - (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or
  - (b) the production or making available of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.
- (13) Where a person produces or makes available a document pursuant to an order under this section, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available

of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 50.

- (14) For the purposes of subsection (13), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.
- (15) In this section **bankers' books** means any accounting records used in the ordinary business of banking and includes ledgers, day-books, cash-books and account books.

#### **49            Variation of production order**

Where the Supreme Court makes a production order requiring a person to produce a document to a member of the Police Force, the person may apply to the Court for a variation of the order and if the Court is satisfied that the document is essential to the business activities of the person, the Court may vary the production order so that it requires the person to make the document available to a member for inspection.

#### **50            Failure to comply with production order**

Where a person is required by a production order to produce a document to a member of the Police Force or make a document available to a member for inspection, the person is guilty of an offence against this subsection if the person:

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

Penalty:        Where the offender is a natural person – \$10,000 or imprisonment for 5 years.

Where the offender is a body corporate – \$50,000.

## **Division 2      Search Powers**

### **51      Powers to search for, and seize, documents relevant to locating, &c., property**

A member of the Police Force may:

- (a) enter on land, or on or into premises;
- (b) search the land or 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 member 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 land or premises; or
- (e) under a warrant issued under section 52.

### **52      Search warrant for location, &c., of property**

(1) Where:

- (a) a person has been convicted of a serious offence and a member of the Police Force has reasonable grounds for suspecting that there is, or may be within the following 7 days, on any land, or on or in any premises, a property-tracking document in relation to the offence; or
- (b) a member of the Police Force has reasonable grounds for suspecting that:
  - (i) a person has committed a serious offence; and
  - (ii) there is, or may be within the following 7 days, on any land, or on or in any premises, a property-tracking document in relation to the offence,

the member may:

- (c) lay before the Supreme Court an information on oath setting out those grounds; and
- (d) apply to the Court for a search warrant under subsection (4) in respect of the land or premises.

(2) Where a member of the Police Force applying for a warrant under this section in respect of a serious offence includes in the information under subsection (1) information on oath that the member has reasonable grounds for believing that:

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

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

(3) In determining whether to treat a document under subsection (2) as a property-tracking document in relation to a serious offence, the Supreme Court may have regard to the matters referred to in subsection 12(2).

(4) Where an application is made under subsection (1) for a search warrant in respect of land or premises, the Supreme Court may, subject to subsections (5) and (6), issue a search warrant authorizing a member of the Police Force (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter on the land or on or into the premises;
- (b) to search the land or 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 member believes, on reasonable grounds, to be a document of that kind.

(5) The Supreme Court shall not issue a search warrant under this section unless it is satisfied that:

- (a) the document involved cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of the document;
- (b) a production order has been given in respect of the document and has not been complied with;

- (c) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with; or
  - (d) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the member of the Police Force does not gain immediate access to the document without notice to any person.
- (6) The Supreme Court shall not issue a search warrant under this section unless:
  - (a) the informant or some other person has given the Court, either orally or by affidavit, any further information that the Court requires concerning the grounds on which the search warrant is sought; and
  - (b) the Court is satisfied that there are reasonable grounds for issuing the search warrant.
- (7) There shall be stated in a search warrant issued under this section:
  - (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the serious offence that has been or is believed to have been committed;
  - (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
  - (c) a description of the kind of documents authorized to be seized; and
  - (d) a date, being not later than one month after the date of issue of the warrant, on which the warrant ceases to have effect.
- (8) If, in the course of searching under a warrant issued under this section for a property-tracking document in relation to a particular offence, a member of the Police Force finds:
  - (a) any document that the member believes, on reasonable grounds, to be:
    - (i) a property-tracking document in relation to the offence, although not of a kind specified in the warrant; or
    - (ii) a property-tracking document in relation to another serious offence; or



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

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

## **Part VIII                      Miscellaneous**

### **53                      Possession, &c., of property suspected of being proceeds of crime**

- (1) A person who receives, possesses, conceals, disposes of or brings into the Territory money or any other property that may reasonably be suspected of being the proceeds of an offence is guilty of an offence.

Penalty:            Where the offender is a natural person – \$5,000 or imprisonment for 2 years.

Where the offender is a body corporate – \$15,000.

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

### **54                      Restriction on making applications**

Where an application for a confiscation order has been made to an appropriate court, no further application in relation to the same matter may be made to another court, except with the leave of the Supreme Court or in such circumstances as may be prescribed.

### **55                      Provisions relating to courts**

- (1) Where an application is made for a confiscation order to a court before which a person was convicted of a serious offence:

- (a) the application may be dealt with by that court; and
- (b) any function may be exercised 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.

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- (2) The Court of Summary Jurisdiction may not, in relation to the conviction of a person for a particular offence, make a forfeiture order in respect of property unless it is satisfied that the value of the property (together with the value of any other property the subject of any other undischarged forfeiture order made by the Court in relation to the same conviction of that person) does not exceed \$20,000.
  - (3) The Court of Summary Jurisdiction may not make a pecuniary penalty order against a 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 the person by the Court) would not exceed \$20,000.
  - (4) The Court of Summary Jurisdiction may not make a forfeiture order in respect of land, except in such circumstances as may be prescribed.
  - (5) For the purposes of this section, the value of property shall be as determined by the Court of Summary Jurisdiction.

## **56 Interstate operation of forfeiture or restraining orders**

- (1) For the purpose of enabling a forfeiture order or restraining order to be registered under the corresponding law of a State, the order may be expressed to apply to property in that State.
- (2) For the purpose of enabling a forfeiture order or restraining order to be registered under a law in force in another Territory of the Commonwealth, the order may be expressed to apply to property in that Territory.
- (3) A forfeiture order or restraining order does not apply to property in a corresponding State or in another Territory of the Commonwealth, 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;
  - (b) a law in force in that other Territory of the Commonwealth provides that the order has effect in that Territory following registration under that law; or
  - (c) the property was moveable property and was located elsewhere than in a corresponding State or in another Territory of the Commonwealth when the order took effect.
- (4) In this section, **corresponding State** means a State for which a declaration of a corresponding law is in force under this Act.

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**57 Costs incurred on variation of interstate restraining orders on application by third parties**

(1) Where:

- (a) the Supreme Court makes an order under this Act varying a forfeiture order or a restraining order that is registered under a corresponding law of a State; and
- (b) the variation is made on the application of a third party and affects the interests of the third party in relation to property in that State,

the Supreme Court may order that the actual costs, or where it is satisfied that circumstances warrant it, may order that a part of those costs, incurred by the third party in applying for and obtaining the variation be paid to the third party.

- (2) Costs ordered to be paid under subsection (1) shall be paid by the person specified by the Supreme Court.
- (3) The Supreme Court may direct in what manner the costs ordered to be paid under subsection (1) are to be ascertained.
- (4) Nothing in this section limits the powers of the Supreme Court to award costs under any other law.
- (5) In this section:

**third party**, in relation to a restraining order, means a person who is not specified in the order as a person whose property is the subject of the order.

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

**58 Making of confiscation orders where person absconded**

- (1) Where a person is, by virtue of section 3(2)(d), to be taken to have been convicted of a serious offence, an appropriate court shall not make a confiscation order in relation to the conviction of the person for that offence unless it is:
  - (a) satisfied, on the balance of probabilities, that the person has absconded; and
  - (b) of the opinion that, having regard to all the evidence before the court, the evidence is capable of satisfying a jury beyond reasonable doubt that the person committed the offence.

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- (2) In this section, a reference to:
- (a) evidence includes a reference to other information of a prescribed kind which the court in its discretion takes into consideration; and
  - (b) a jury is a reference to a reasonable jury properly instructed.

## **59 Stamp duty**

No stamp duty is payable under the *Stamp Duty Act* in respect of:

- (a) the transfer of any property under section 7; or
- (b) the return of any property under section 9.

## **60 Appeals**

- (1) Without affecting any other right of appeal, a forfeiture order is appellable by any person who has an interest in the property in respect of which the order was made:
  - (a) in the case of a person convicted of an offence in reliance on which the forfeiture order was made – in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence; or
  - (b) in any other case – in the same manner as if the person had been convicted of a serious offence and the order were, or were part of, a sentence imposed in respect of the offence.
- (2) Without affecting any other right of appeal, a pecuniary penalty order is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence in relation to which the order was made.
- (3) On appeal, a forfeiture order or a pecuniary penalty order may be confirmed, discharged or varied.
- (4) The Attorney-General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against a refusal by a court to make a forfeiture order or a pecuniary penalty order, and the Court of Criminal Appeal may, as it thinks fit, make such order as could have been made in the first instance.
- (5) A forfeiture order or a pecuniary penalty order made by the Court of Criminal Appeal under subsection (4) shall be deemed to have been made by the Supreme Court under this Act, but is not on that account subject to further appeal.

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- (6) Nothing in this section confers a right of appeal to the Court of Criminal Appeal from a decision of the Supreme Court, except where the rules of the Supreme Court provide that such an appeal lies.

**61      Operation of other laws not affected**

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

**62      Notices**

- (1) The Regulations or rules of court may make provision for or with respect to the giving of notices under this Act.
- (2) Where a notice is required to be given under this Act and the Regulations or rules of court make provision for or with respect to the giving of the notice, the notice shall be given in accordance with the relevant provisions.
- (3) The Regulations shall prevail to the extent of any inconsistency with the rules of court.
- (4) A reference in this section to rules of court includes a reference to Regulations made under the *Justices Act*.

**63      Conduct by directors, servants or agents**

- (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by:
- (a) a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

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- (3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate by:
- (a) a servant or agent of the person within the scope of his or her actual or apparent authority; or
  - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,
- shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.
- (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose.

#### **64 Court may have regard to transcript**

Where an application is made to an appropriate court for a confiscation order in respect of a person's conviction of an offence, the court may, in determining the application, have regard to the transcript of any proceeding against the person for the offence.

#### **65 Application of Act**

This Act applies to serious offences committed before the commencement of this Act, as well as to those committed after the commencement of this Act.

**66 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors;
  - (b) apply differently according to different factors of a specified kind; or
  - (c) authorize any matter or thing to be determined, applied or regulated from time to time by any specified person or body,or may do any combination of those things.
- (3) A regulation declaring a kind of order to be within a definition may do so by reference to the interstate serious offences involved.
- (4) A regulation declaring a law to be a law that corresponds to this Act may provide that the declaration applies only for prescribed provisions of this Act.

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## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Crimes (Forfeiture of Proceeds) Act 1988 (Act No. 65, 1988)***

Assent date	22 December 1988
Commenced	16 January 1989 ( <i>Gaz</i> S2, 13 January 1989)

***Crimes (Forfeiture of Proceeds) Amendment Act 1990 (Act No. 16, 1990)***

Assent date	12 April 1990
Commenced	1 November 1990 (s 2, s 2 <i>Misuse of Drugs Act 1990</i> (Act No. 15, 1990) and <i>Gaz</i> G40, 10 October 1990, p 3)

***Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)***

Assent date	11 June 1990
Commenced	21 January 1991 (s 2, s 2 <i>Director of Public Prosecutions Act 1990</i> (Act No. 35, 1990) and <i>Gaz</i> G2, 16 January 1991, p 9)

***Statute Law Revision Act 1991 (Act No. 31, 1991)***

Assent date	25 June 1991
Commenced	25 June 1991

***Crimes (Forfeiture of Proceeds) Amendment Act 1992 (Act No. 20, 1992)***

Assent date	2 June 1992
Commenced	2 June 1992

***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date	31 December 1993
Commenced	1 June 1994 (s 2, s 2 <i>Local Government Act 1993</i> (Act No. 83, 1993) and <i>Gaz</i> S35, 20 May 1994)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	s 7 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz</i> S15, 13 June 1996)



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**LIST OF AMENDMENTS**

s 3	amd No. 16, 1990, s 3; No. 29, 1990, s 7; No. 31, 1991, s 14; No. 20, 1992, s 2; No. 17, 1996, s 6
s 25	amd No. 84, 1993, s 6
s 37	amd No. 17, 1996, s 6
s 38	amd No. 31, 1991, s 14
s 40	amd No. 31, 1991, s 14
s 60	amd No. 29, 1990, s 7