

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL PROPERTY FORFEITURE ACT

As in force at 1 January 2013

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## ENDNOTES

# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 January 2013. Any amendments that commence after that date are not included.

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## CRIMINAL PROPERTY FORFEITURE ACT

**An Act to provide for the forfeiture in certain circumstances of property acquired as a result of criminal activity and property used for criminal activity, to provide for the reciprocal enforcement of certain Australian legislation relating to the forfeiture of proceeds of crime and forfeiture of other property, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Criminal Property Forfeiture Act*.

#### **2 Commencement**

The provisions of this Act come into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### **3 Objective**

The objective of this Act is to target the proceeds of crime in general and drug-related crime in particular in order to prevent the unjust enrichment of persons involved in criminal activities.

#### **4 Act binds Crown**

- (1) This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) This Act does not render the Territory, the Commonwealth, a State or another Territory liable to prosecution for an offence.

## 5 Definitions

In this Act:

***account*** means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for a fixed term deposit and a safety deposit box.

***conviction***, in relation to a forfeiture offence, has the meaning in section 161.

***corporation*** means any body corporate, however formed, and includes:

- (a) a financial institution; and
- (b) a corporation as defined in section 57A of the Corporations Act 2001; and
- (c) a corporation sole.

***corresponding law*** means a law of the Commonwealth, a State or another Territory that is prescribed in the Regulations as a law that corresponds to this Act.

***crime-derived***, in relation to property, see section 12.

***crime-used***, in relation to property, see section 11.

***crime-used property substitution declaration*** means a declaration under section 81.

***criminal benefit***, see section 74.

***criminal benefit declaration*** means a declaration under section 75 or 76.

***criminal use***, in relation to a person and property, see section 84.

***dangerous drug***, see section 3(1) of the *Misuse of Drugs Act*.

***deal***, in relation to property, see section 56.

***declared drug trafficker***, see section 8.

***dispose of***, in relation to a charge, means:

- (a) withdraw; or
- (b) file a no true bill; or



- (c) dismiss; or
- (d) file a nolle prosequi in relation to the offence.

**document** includes:

- (a) any of, or part of any of, the following things:
  - (i) paper or other material on which there is writing;
  - (ii) a book, map, plan, drawing or photograph;
  - (iii) paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
  - (iv) an article or any material from which sounds, images or writings are capable of being reproduced with or without the aid of another article or device;
  - (v) an article on which information has been stored or recorded, whether by mechanical or electronic means;
  - (vi) any other record or information; and
- (b) a copy, reproduction or duplicate of such a thing or a part of such a copy, reproduction or duplicate.

**DPP** means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act* or a person acting on the Director's behalf.

**effective control**, in relation to property, has the meaning in section 7.

**encumbrance**, in relation to property, includes any interest, mortgage, charge, right, claim or demand in respect of the property.

**examination** means an examination under an examination order.

**examination order** means an order under section 18(1).

**financial institution** means:

- (a) an ADI; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of section 51(xiii) of the Constitution of the Commonwealth; or

- (d) the Territory Insurance Office established under the *Territory Insurance Office Act*, or
- (e) a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth; or
- (f) a body corporate that would be a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth if the body had been incorporated in Australia.

***Fines Recovery Unit*** means the Fines Recovery Unit established under the *Fines and Penalties (Recovery) Act*.

***forfeitable property declaration*** means a declaration under section 92.

***forfeiture offence***, see section 6.

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

***innocent party***, see section 66.

***instrument***, in relation to a dealing with land, see section 4 of the *Land Title Act*.

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

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

***interstate forfeiture order*** means an order (however described) that is made by or under a corresponding law of a State or another Territory and that is prescribed by the Regulations for this definition.

***interstate restraining order*** means an order (however described) that is made by or under a corresponding law of a State or another Territory and that is prescribed by the Regulations for this definition.

***land*** includes an interest in land.

***land register***, see section 4 of the *Land Title Act*.

***lawfully acquired***, in relation to any property, service, advantage or benefit, see section 77.

***liable to forfeiture under this Act***, in relation to property, see section 10(5).

***monitoring order*** means an order under section 29(1).

***objection*** means an objection to the restraint of property filed under section 59.

***officer***, in relation to a corporation, means a director, secretary, executive officer, employee or agent of the corporation.

***owner***, in relation to property, means a person who has a legal or equitable interest in the property.

***premises*** includes a vessel, aircraft, vehicle, structure, building and any land or place whether built on or not.

***production order*** means an order under section 23.

***prohibited plant*** see section 3(1) of the *Misuse of Drugs Act*.

***property*** means:

- (a) real or personal property of any description, wherever situated and whether tangible or intangible; or
- (b) a legal or equitable interest in any property mentioned in paragraph (a).

***property-tracking document***, see section 27.

***registered***, in relation to an interstate restraining order or an interstate forfeiture order, means registered under section 123 or 127, respectively.

***registrar*** means the office (however described) of a registrar under an Act that provides for registration of property other than land.

***registration***, in relation to an instrument relating to a dealing in land, has the same meaning as in the *Land Title Act*.

***respondent*** means:

- (a) in relation to an application for an unexplained wealth declaration, a criminal benefit declaration or a crime-used property substitution declaration – the person against whom the declaration is sought; or
- (b) in relation to an unexplained wealth declaration, a criminal benefit declaration or a crime-used property substitution declaration – the person against whom the declaration is made.

***restraining order*** means an order made by a court under section 43 or 44 but does not include an interim restraining order under section 40.

***statutory charge***, see section 4 of the *Land Title Act*.

***statutory restrictions notice***, see section 35 of the *Land Title Act*.

***suspension order*** means an order under section 29(2).

***Territory taxes***, in relation to restrained property, means any rates, land tax, local government or other statutory charges imposed on the property under a law of the Territory.

***transaction***, in relation to an account with a financial institution, includes:

- (a) the making of a fixed term deposit; and
- (b) the transferring of the amount of a fixed term deposit, or any part of it, at the end of the term.

***unexplained wealth***, see section 68.

***unexplained wealth declaration*** means a declaration under section 71.

***valuable consideration***, in relation to the transfer of property, does not include:

- (a) any consideration for the transfer arising from the fact of a family relationship between the transferor and transferee; or
- (b) if the transferor is a spouse or de facto partner of the transferee – the making by the transferor of a deed in favour of the transferee; or
- (c) a promise by the transferee to become a spouse or de facto partner of the transferor; or
- (d) any consideration arising from the transferor's love or affection for the transferee; or
- (e) the transfer of the property as a result of the distribution of a deceased estate; or
- (f) the transfer of the property by way of gift.

***wealth***, see section 70.

**6 Forfeiture offence**

For this Act, a forfeiture offence is:

- (a) an offence against a law in force anywhere in Australia that is punishable by imprisonment for 2 years or more; or
- (b) any other offence that is prescribed for this section.

**7 Effective control of property**

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

**8 Declared drug trafficker**

- (1) In this Act:

***declared drug trafficker*** means:

- (a) a person who is declared to be a drug trafficker under section 36A of the *Misuse of Drugs Act*, or
- (b) a person who is taken to be a declared drug trafficker under subsection (2) or (3).

- (2) A person is taken to be a declared drug trafficker for this Act if:
  - (a) the person is charged with an offence specified in section 36A(6) of the *Misuse of Drugs Act*, and
  - (b) the person could be declared to be a drug trafficker under section 36A of that Act if he or she is convicted of the offence; and
  - (c) before the charge is disposed of or finally determined, the person absconds in connection with the offence.
- (3) A person is taken to be a declared drug trafficker for this Act if a declaration is made under section 9 in respect of the person.

## **9            Court may declare deceased person to be drug trafficker**

- (1) The DPP may apply to the Supreme Court for a declaration under this section that a deceased person is taken to be a declared drug trafficker for this Act.
- (2) An application under subsection (1) can only be made if:
  - (a) a person had been charged with an offence specified in section 36A(6) of the *Misuse of Drugs Act*, and
  - (b) the person could have been declared to be a drug trafficker under section 36A of that Act if he or she was convicted of the offence; and
  - (c) before the charge was disposed of or finally determined, the person died.
- (3) On hearing an application under subsection (1), if the court is satisfied that it is more likely than not that the deceased person, had he or she not died, would have been declared under section 36A of the *Misuse of Drugs Act* to be a drug trafficker, the court must make a declaration to that effect.

## **Part 2            Application**

### **10            Application**

- (1) This Act applies:
  - (a) to property:
    - (i) owned or effectively controlled; or
    - (ii) previously owned;

by persons who are involved in or taken to be involved in criminal activities; and

- (b) to property that is crime-used; and
  - (c) to property that is crime-derived.
- (2) The property (real or personal) of a person who is involved or taken to be involved in criminal activities is forfeit to the Territory to the extent provided in this Act to compensate the Territory community for the costs of deterring, detecting and dealing with the criminal activities.
- (3) Crime-used or crime-derived property (real or personal) is forfeit to the Territory to deter criminal activity and prevent the unjust enrichment of persons involved in criminal activities.
- (4) For this Act, a person is taken to be involved in criminal activities if:
- (a) the person is declared under section 36A of the *Misuse of Drugs Act* to be a drug trafficker; or
  - (b) an unexplained wealth declaration or a criminal benefit declaration is made in relation to the person; or
  - (c) the person is found guilty of a forfeiture offence.
- (5) Property is liable to forfeiture under this Act:
- (a) if the property is:
    - (i) owned or effectively controlled, or has at any time been given away, by a declared drug trafficker; or
    - (ii) owned or effectively controlled, or has at any time been given away, by a person who has unexplained wealth; or
    - (iii) owned or effectively controlled, or has at any time been given away, by a person who has acquired a criminal benefit; or
    - (iv) crime-used property; or
    - (v) crime-derived property; and
  - (b) whether the relevant forfeiture offence was committed:
    - (i) in the Territory or elsewhere; and
    - (ii) before or after the commencement of this Act; and

- (c) whether or not any person has been charged with, or found guilty of, the relevant forfeiture offence and, if a person has been found guilty of the offence, whether the finding of guilt was before or after the commencement of this Act; and
- (d) whether the property is in the Territory or outside the Territory.

## 11 **Crime-used property**

- (1) For this Act, property is *crime-used* if:
  - (a) the property is or was used, or intended for use, directly or indirectly, in or in connection with the commission of a forfeiture offence or in or in connection with facilitating the commission of a forfeiture offence; or
  - (b) the property is or was used for storing property that was acquired unlawfully in the course of the commission of a forfeiture offence; or
  - (c) an act or omission was done, omitted to be done or facilitated in or on the property in connection with the commission of a forfeiture offence.
- (2) Without limiting subsection (1), property described in that subsection is crime-used whether or not:
  - (a) the property is also used, or intended or able to be used, for another purpose; or
  - (b) any person who used or intended to use the property as mentioned in subsection (1) has been identified; or
  - (c) any person who did or omitted to do anything that constitutes all or part of the relevant forfeiture offence has been identified; or
  - (d) any person has been charged with or convicted of the relevant forfeiture offence.

## 12 **Crime-derived property**

- (1) Property that is wholly or partly derived or realised, directly or indirectly, from the commission of a forfeiture offence is crime-derived, whether or not:
  - (a) any person has been charged with or convicted of the offence; or



- (b) any person who directly or indirectly derived or realised the property from the commission of the offence has been identified; or
  - (c) any person who directly or indirectly derived or realised the property from the commission of the offence was involved in the commission of the offence.
- (2) Without limiting subsection (1), property of the following kinds is crime-derived:
  - (a) stolen property;
  - (b) property acquired by legitimate means that could not have been acquired if crime-derived property had not been used for other purposes;
  - (c) any thing of monetary value acquired, in Australia or elsewhere, from the commercial exploitation of any product, or of any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from a person's involvement in the commission of a forfeiture offence, whether or not the thing was lawfully acquired and whether or not any person has been charged with or convicted of the offence.
- (3) Property is also crime-derived if it is bought with or exchanged for, wholly or partly, crime-derived property (including property that acquired the status of crime-derived property because of a previous operation or previous operations of this subsection).
- (4) Once property becomes crime-derived property it remains crime-derived property even if it is disposed of, used to acquire other property or otherwise dealt with, unless it ceases under subsection (8) to be crime-derived property.
- (5) Property owned by 2 or more people, whether jointly or as tenants in common, is crime-derived if any part of the share of any of the owners is crime-derived, whether or not any of the owners is an innocent party in relation to the share or part-share that is crime-derived.
- (6) If:
  - (a) a person owns crime-derived property but is divested of the property in such a way that it ceases under subsection (8) to be crime-derived property; and
  - (b) the person acquires the property again;

the property becomes crime-derived property again.

- (7) For deciding whether property is crime-derived, the proceeds of a sale or other dealing do not lose their identity as those proceeds only as a result of being credited to an account.
- (8) Crime-derived property ceases to be crime-derived property:
  - (a) when it is acquired by an innocent party; or
  - (b) if it is restrained property – when the restraining order is set aside under section 64; or
  - (c) if it has been forfeited – when a court orders its release under section 121; or
  - (d) if it is money that has been forfeited or money that is the proceeds of the sale of forfeited property – when it is paid to the Public Trustee in accordance with section 148 or to the Territory; or
  - (e) if it has been forfeited, but is not money – when the property is disposed of in accordance with the Regulations; or
  - (f) in any other circumstances prescribed by the Regulations.

## **Part 3 Investigation and search**

### **Division 1 Preliminary inquiries**

#### **13 Information volunteered by financial institutions**

A financial institution that has information about a transaction with the institution may give the information to the DPP or a police officer if there are reasonable grounds for suspecting that the information:

- (a) may be relevant to the investigation of a forfeiture offence; or
- (b) may assist a court in deciding whether or not to make an unexplained wealth declaration, a criminal benefit declaration or a crime-used property substitution declaration; or
- (c) may otherwise facilitate the operation of this Act or the Regulations.

## 14 Preliminary inquiries from financial institutions

- (1) For any proceedings under this Act or where there are reasonable grounds for believing that the information is necessary to decide whether to apply for any order, declaration or warrant under this Act, the DPP or a police officer of or above the rank of Superintendent may serve a notice or cause a notice to be served on a financial institution requiring the institution to do one or more of the following:
  - (a) provide information about whether a person described in the notice holds an account with the institution;
  - (b) provide information about whether or not an account described in the notice is held with the institution;
  - (c) identify an account held with the institution;
  - (d) identify the holder of an account held with the institution;
  - (e) provide information about the existence of any other kind of transaction between the institution and a person described in the notice;
  - (f) provide information about whether a person described in the notice has applied to the institution to open an account, borrow money or enter into any other type of transaction or arrangement with the institution;
  - (g) if a transaction or arrangement mentioned in paragraph (e) or (f) has taken place, is taking place or is to take place – give the prescribed particulars.
- (2) In complying with a notice under subsection (1), a financial institution must provide the details in writing and must indicate the balance of any relevant account and whether the account is current or closed.
- (3) A notice under subsection (1) is to be in writing and specify the information required.
- (4) Service of the notice on the institution may be effected personally, by post, by facsimile transmission or in any other manner prescribed by the Regulations.
- (5) A financial institution that fails to comply with a requirement of a notice under subsection (1) within 7 days, or any further period that is specified in the notice, commits an offence.

Maximum penalty: 5 000 penalty units.

## **15 Protection for financial institutions**

- (1) An action, suit or proceeding in relation to the giving of information under section 13 does not lie against:
  - (a) the financial institution that gives the information; or
  - (b) an officer of the institution acting within his or her authority.
- (2) An action, suit or proceeding in relation to a financial institution's response to a requirement in a notice under section 14 does not lie against:
  - (a) the financial institution; or
  - (b) an officer of the financial institution who is acting within his or her authority.

## **16 Giving false or misleading information**

A financial institution commits an offence if the institution knowingly:

- (a) provides false or misleading information under section 13; or
- (b) provides false or misleading information in purported compliance with a requirement in a notice under section 14.

Maximum penalty: 5 000 penalty units.

## **Division 2 Examinations**

### **17 Applications for orders for examination**

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

### **18 Orders for examination**

- (1) The court that is hearing an application under section 17 may order a person to submit to an examination about any or all of the following:
  - (a) the nature, location and source of property that is subject to a restraining order;
  - (b) the nature, location and source of property that is not restrained but is suspected on reasonable grounds of being liable to forfeiture under this Act;

- (c) the wealth, liabilities, income and expenditure of a declared drug trafficker or a person who has been charged with an offence and who could, if convicted of the offence, be declared to be a drug trafficker;
  - (d) the wealth, liabilities, income and expenditure of a person who has been convicted of a forfeiture offence;
  - (e) the wealth, liabilities, income and expenditure of a person who is suspected on reasonable grounds of being involved in or of having been involved in the commission of a forfeiture offence;
  - (f) the wealth, liabilities, income and expenditure of a person who has, or is suspected on reasonable grounds of having, unexplained wealth;
  - (g) the nature, location and source of any property-tracking documents.
- (2) An examination order may do any or all of the following:
- (a) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about the property described in the order;
  - (b) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about the person's wealth, liabilities, expenditure or income;
  - (c) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about another person's wealth, liabilities, expenditure or income;
  - (d) require the person to give to the court any information in the person's possession or control that could help to locate, identify or quantify any property or property-tracking documents mentioned in subsection (1) or other documents or information about the matters mentioned in that subsection;
  - (e) require the person to give any required information by affidavit or require the person to attend the court for examination, or both;
  - (f) give any directions or make any ancillary orders that are necessary or convenient for giving effect to the examination order or for ensuring that the person to whom the order is directed complies with the order.

## **19 Service of orders for examination**

- (1) The applicant in relation to an examination order must arrange for a copy of the order to be served personally on the person to be examined.
- (2) A copy of the order is not to be served on anyone except the person to be examined.

## **20 Conduct of examinations**

- (1) An examination is to be held in camera.
- (2) A person who is being examined must attend the examination and answer the questions of the examiner personally but is entitled to have a legal advisor present during the examination.

## **21 Complying with examination orders**

- (1) If an owner of restrained property who is or is to be examined in connection with the property under an examination order fails to comply with the order or the examiner's requirements under the order:
  - (a) the owner is not entitled to file an objection to the restraint of the property; and
  - (b) if the owner has already filed an objection – the objection is of no effect; and
  - (c) the owner commits an offence.
- (2) A person convicted of an offence against subsection (1) is liable to a maximum penalty of 1 000 penalty units or an amount equal to the value of the property, whichever is greater, or imprisonment for 5 years.
- (3) If a person who is or is to be examined under an examination order in connection with another person's wealth, liabilities, income or expenditure fails to comply with the order or the examiner's requirements under the order, the person commits an offence.

Maximum penalty: 500 penalty units or imprisonment for 2 years.

- (4) Without limiting subsection (1) or (3), a person who is examined under an examination order fails to comply with the order for the respective subsection if:
  - (a) the person fails to disclose material information, or gives false information or a false document, in purported compliance with the order; and
  - (b) the person was aware, or could reasonably have been expected to have been aware, that the information was material or that the information or document was false.
- (5) A person is not excused from complying with an examination order or the examiner's requirements under the order on the grounds that complying with the order:
  - (a) would tend to incriminate the person or expose him or her to a penalty; or
  - (b) could result in the forfeiture of property.
- (6) A person is not excused from complying with an examination order on the grounds that complying with the order would be in breach of an obligation of the person not to disclose information, or not to disclose the existence or contents of a document, whether the obligation arose under an Act or otherwise.
- (7) A statement or disclosure made by a person in the course of complying with an examination order is admissible as evidence against the person:
  - (a) in a proceeding against the person for an offence against this section; and
  - (b) in any civil proceeding; and
  - (c) in any proceeding under this Act that could lead to the forfeiture of property owned, effectively controlled or given away by the person, but only for facilitating the identification of such property.

### **Division 3 Production of documents**

#### **22 Application for production orders**

- (1) The DPP may apply to the Supreme Court for a production order for a property-tracking document.
- (2) An application under subsection (1) may be made *ex parte*.

## **23 Production orders**

- (1) The court that is hearing an application under section 22 must order a person identified in the application to produce the property-tracking document described in the application if there are reasonable grounds for suspecting that the document is in the person's possession or control.
- (2) An order under subsection (1) may direct the person:
  - (a) to give the property-tracking document to the DPP or a police officer; or
  - (b) to make it available to the DPP or a police officer for inspection.
- (3) An order under subsection (1) is to specify the time and place for the document to be given or made available.

## **24 Inspection of property-tracking documents**

- (1) When a property-tracking document is given to the DPP or a police officer in accordance with a direction under section 23(2)(a), the DPP or member may do any or all of the following:
  - (a) inspect the document;
  - (b) take extracts from the document;
  - (c) make copies of the document;
  - (d) retain the document for as long as its retention is reasonably required for this Act.
- (2) If the DPP or police officer retains the property-tracking document, the DPP or member must, on the request of the person required by the order to produce the document:
  - (a) permit the person to inspect the document, take extracts from it or make copies of it; or
  - (b) give the person a copy of the document certified by the DPP or member in writing to be a true copy of the document.
- (3) When a property-tracking document is made available to the DPP or a police officer for inspection in accordance with a direction under section 23(2)(b), the DPP or police officer may do any or all of the following:
  - (a) inspect the document;



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

## **25 Complying with production orders**

- (1) A person who, without reasonable excuse, fails to comply with a production order commits an offence.

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

- (2) A person commits an offence if the person, in purported compliance with a production order, produces or makes available to the DPP or a police officer a document that the person knows, or could reasonably be expected to know, is false or misleading in a material particular.

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

- (3) Despite subsection (2), a person does not commit an offence if, as soon as practicable after becoming aware that a document produced is false or misleading, the person:

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

- (4) A person is not excused from complying with a production order on the grounds that complying with the order would tend to incriminate the person or expose him or her to a penalty.

- (5) A person is not excused from complying with a production order on the grounds that complying with the order would be in breach of an obligation of the person not to disclose the existence or contents of the document, whether the obligation arose under an Act or otherwise.

- (6) Any information contained in a property-tracking document produced under a production order, or any statement or disclosure made by a person in the course of complying with a production order, is admissible in evidence against the person:

- (a) in a proceeding against the person for an offence against this section; and

- (b) in any civil proceeding; and
- (c) in any proceeding under this Act that could lead to the forfeiture of property owned, effectively controlled or given away by the person, but only for facilitating the identification of such property.

## **26 Variation of production orders**

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

## **27 Property-tracking documents**

For this Act, a document is a property-tracking document if the document is relevant to:

- (a) identifying or locating crime-used property or crime-derived property; or
- (b) determining the value of any crime-used property or crime-derived property; or
- (c) identifying or locating any or all constituents of a person's wealth; or
- (d) determining the value of any or all constituents of a person's wealth; or
- (e) identifying or locating any document relating to the transfer of restrained or forfeited property.

## **Division 4 Monitoring financial transactions**

### **28 Applications for monitoring and suspension orders**

- (1) The DPP may apply to the Supreme Court for a monitoring order or a suspension order.
- (2) An application under subsection (1) may be made ex parte.

## 29 Monitoring and suspension orders

- (1) The court that is hearing an application under section 28 may order a financial institution to give to the DPP or a police officer information about any or all transactions carried out through an account held with the institution by a person named in the order.
- (2) The court that is hearing an application under section 28 may order a financial institution:
  - (a) to notify the DPP or a police officer immediately of any transaction that has been initiated in connection with an account held with the institution by a person named in the order; and
  - (b) to notify the DPP or a police officer immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account; and
  - (c) to refrain from completing or effecting the transaction for 48 hours.
- (3) The court may make a monitoring order or a suspension order if there are reasonable grounds for suspecting that the person named in the order:
  - (a) has been, or is about to be, involved in the commission of a forfeiture offence; or
  - (b) has acquired, or is about to acquire, directly or indirectly, any crime-derived property; or
  - (c) has benefited, or is about to benefit, directly or indirectly, from the commission of a forfeiture offence.
- (4) A monitoring order or a suspension order applies to all transactions carried out or to be carried out through the specified account during the monitoring period or suspension period specified in the order.
- (5) A monitoring order or a suspension order must specify:
  - (a) the financial institution to which the order applies; and
  - (b) the name or names in which the account is believed to be held; and
  - (c) the class of information that the institution is required to give; and
  - (d) the manner in which the information is to be given; and

- (e) the monitoring period or suspension period in accordance with subsection (6).
- (6) The monitoring period of a monitoring order or suspension period of a suspension order:
  - (a) is not to commence earlier than the day on which notice of the order is served on the financial institution; and
  - (b) is to end not more than 3 months after the date of the order.

### **30 Compliance with monitoring or suspension order**

A financial institution commits an offence if the institution knowingly:

- (a) fails to comply with a monitoring order or suspension order; or
- (b) provides false or misleading information in purported compliance with the order.

Maximum penalty: 5 000 penalty units.

## **Division 5 Secrecy requirements**

### **31 Disclosure not permitted**

- (1) A person must not, except as permitted under section 32, disclose to another person:
  - (a) the fact that a financial institution, or an officer of a financial institution, intends to give or has given information to the DPP or a police officer under section 13; or
  - (b) the nature of any information given under section 13; or
  - (c) the fact that a notice has been or is to be issued, or a response to a notice has been or is to be made, under section 14; or
  - (d) the content of a notice or response made under section 14; or
  - (e) the fact that he or she has been subject to a production order or an examination order in relation to another person's wealth, liabilities, expenditure or income; or
  - (f) the fact that another person is or has been subject to, or the subject of, a production order, an examination order, a monitoring order or a suspension order; or

- (g) the contents of any examination order, production order, monitoring order or suspension order.

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

- (2) Without limiting subsection (1), a person discloses information in contravention of that subsection if the person:
- (a) discloses information to another person from which the other person could reasonably be expected to infer that a notice under section 14 has been or is to be issued or a response to such a notice has been or is to be made; or
  - (b) discloses information to another person from which that person could reasonably be expected to infer anything about the nature or contents of a notice or response under section 14; or
  - (c) makes or keeps a record of any information about a notice or response under section 14, other than a copy for the person's own records of the notice or the information provided in response to the notice; or
  - (d) discloses information to another person about the existence or operation of an examination order, a production order, a monitoring order or a suspension order; or
  - (e) discloses information to another person from which that person could reasonably be expected to infer anything about the existence or operation of an examination order, a production order, a monitoring order or a suspension order; or
  - (f) makes or keeps a record of any information about the existence or operation of an examination order, a production order, a monitoring order or a suspension order, other than a copy for the person's own records of:
    - (i) an order directed to the person; or
    - (ii) the information provided by the person in response to the order.

## **32 Disclosing information**

- (1) A corporation or an officer of a corporation may disclose information to any one or more of the following without contravening section 31:
- (a) the DPP, a police officer or a member of the Australian Crime Commission;

- (b) an officer of the corporation, for giving information under section 13;
  - (c) an officer of the corporation, for ensuring that a requirement of a notice under section 14 is complied with;
  - (d) an officer of the corporation, for ensuring that an examination order, a production order, a monitoring order or a suspension order is complied with;
  - (e) a legal practitioner, for obtaining legal advice or representation in relation to giving information under section 13 or complying with a requirement under section 14;
  - (f) a legal practitioner, for obtaining legal advice or representation in relation to an examination order, a production order, a monitoring order or a suspension order.
- (2) An individual who is not acting in the capacity of an officer of a corporation or of a legal practitioner may disclose information to any one or more of the following without contravening section 31:
- (a) the DPP;
  - (b) a police officer;
  - (c) a member of the Australian Crime Commission;
  - (d) a legal practitioner, for obtaining legal advice or representation in relation to an examination order.
- (3) A legal practitioner to whom information is disclosed under subsection (1) or (2) may disclose the information to a person to whom it could have been disclosed under the respective subsection for giving legal advice or representing a person in relation to the matter disclosed.
- (4) Subject to subsection (5), a person (except a legal practitioner) to whom information is disclosed under subsection (1) or (2) may disclose the information to another person to whom it could have been disclosed under the respective subsection.
- (5) If information about a particular matter may only be disclosed under subsection (1) or (2) in particular circumstances or for a particular purpose, a person must not disclose the information under subsection (4) except in those circumstances or for that purpose.

- (6) If a person to whom information about a particular matter is disclosed under this section stops being a person of a kind to whom the information may be disclosed, he or she must not disclose the information to anyone except a police officer, the DPP or a member of the Australian Crime Commission.
- (7) A person who contravenes subsection (6) commits an offence.
- Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

## **Division 6 Detention, search and seizure**

### **33 Power to detain persons**

- (1) A police officer may at any time stop and detain a person if there are reasonable grounds for suspecting that the person has in his or her possession property liable to forfeiture under this Act or property-tracking documents.
- (2) A police officer may at any time stop and detain a person if there are reasonable grounds for suspecting that another person is holding property liable to forfeiture under this Act or property-tracking documents on behalf of the person to be detained.
- (3) For exercising his or her powers under subsection (1) or (2), a police officer may stop and detain a vehicle.
- (4) If a police officer detains a person under subsection (1) or (2), the member may:
- (a) search the person in accordance with section 35; and
  - (b) search any baggage, package, vehicle or anything else apparently in the possession or under the control of the person.
- (5) When exercising his or her powers under this section, a police officer may use any necessary force and any assistance the member thinks necessary.

### **34 Search warrants**

- (1) A police officer may apply to a Justice of the Peace for a search warrant.
- (2) An application for a search warrant under this section may be made by telephone or other electronic means and section 118 of the *Police Administration Act* applies, with the necessary changes, in respect of a warrant that is issued on such an application.

- (3) A Justice of the Peace may issue a warrant to search any premises if satisfied, by information on oath, that there are reasonable grounds for suspecting that any property liable to forfeiture under this Act or any property-tracking documents:
  - (a) is or are in or on the premises; or
  - (b) will be in or on the premises within the next 72 hours.
- (4) Subsection (3) applies also to property that is owned or effectively controlled by a person who has been charged with an offence and who could be declared to be a drug trafficker under section 36A of the *Misuse of Drugs Act* if he or she is convicted of the offence.
- (5) A search warrant under this section may authorise a police officer to do any or all of the following, using any necessary force and with any assistance the member thinks necessary:
  - (a) enter the premises described in the warrant;
  - (b) search the premises;
  - (c) search any baggage, package or other thing found in or on the premises;
  - (d) detain any person in or on the premises and search the person in accordance with section 35.
- (6) A search warrant under this section:
  - (a) may be executed at any time of night or day; and
  - (b) subject to section 37, continues in force for 30 days after the day on which it was issued.

### **35 Searching detained persons**

- (1) When a police officer exercises his or her power to detain a person under section 33 or under a warrant under section 34, the member must ensure that if the person is searched, he or she is searched by a person of the same sex or a medical practitioner.
- (2) If a suitable person is not available to search a detained person as required by subsection (1), the police officer may:
  - (a) detain the person for as long as is reasonably necessary for a suitable person to become available; and
  - (b) if appropriate, convey the person to a place where a suitable person is available.



### 36 Additional powers

- (1) When a police officer exercises any of his or her powers under section 33 or under a warrant under section 34, the member may do any or all of the following:
- (a) seize and detain any documents found in the course of exercising those powers if there are reasonable grounds for suspecting that they are property-tracking documents;
  - (b) take extracts from or make copies of, or download or print out, any property-tracking documents found in the course of exercising those powers;
  - (c) require a person who has control of any property-tracking documents found in the course of exercising those powers to make copies of, or download or print out, any property-tracking documents found in the course of exercising those powers;
  - (d) require a person to give to the member any information within the person's knowledge or control that is relevant to locating property that is reasonably suspected of being liable to forfeiture under this Act;
  - (e) require a person to give to the member any information within the person's knowledge or control that is relevant to determining whether or not property is liable to forfeiture under this Act;
  - (f) require a person to give the member, or arrange for the member to be given, any translation, codes, passwords or other information necessary to gain access to or to interpret and understand any property-tracking documents or information located or obtained in the course of exercising the member's powers under the warrant.
- (2) A person who fails to comply with a requirement under subsection (1) commits an offence.
- Maximum penalty: 1 000 penalty units or imprisonment for 5 years.
- (3) Without limiting subsection (2), a person fails to comply with a requirement under subsection (1) if the person:
- (a) does not disclose material information of which the person had knowledge, or gives false information or a false document, in purported compliance with the requirement; and

- (b) was aware, or could reasonably have been expected to have been aware, that the information was material or that the information or document was false.
- (4) A person is not excused from complying with a requirement under subsection (1) on the grounds that complying with it would tend to incriminate the person or expose him or her to a penalty, but any information given in compliance with the requirement is not admissible in evidence in proceedings against the person for any offence except an offence against subsection (2).

### **37            Later-produced documents**

If a warrant under section 34 authorises any action to be taken in relation to a document that was in existence at the time that the warrant was issued, but at the time that the warrant was executed it was physically impossible for the document to be produced, a police officer may take the action when the document becomes available even if the warrant has by then expired.

### **38            Warrants under other Acts**

This Act does not affect the operation of any other Act requiring or authorising a police officer to obtain a warrant to enter or search property.

## **Part 4            Ensuring property remains available for forfeiture**

### **Division 1        Seizure of property and interim restraining order**

#### **39            Seizure of crime-used or crime-derived property**

- (1) A police officer may seize any property if there are reasonable grounds for suspecting that the property:
  - (a) is crime-used property; or
  - (b) is crime-derived property; or
  - (c) is owned or effectively controlled by a person who has been charged with an offence and who could be declared to be a drug trafficker under section 36A of the *Misuse of Drugs Act* if he or she is convicted of the offence.
- (2) A police officer may:
  - (a) at any time remove the seized property from the place in which it was found and retain it; or

- (b) guard the property in the place in which it was found.
- (3) A police officer may retain or guard the property:
- (a) if an interim restraining order under section 40 or a restraining order under section 43 or 44 is or has been made in relation to the property, including within 72 hours after the property was seized – while the interim restraining order or restraining order is in force; or
  - (b) if no interim restraining order or restraining order is in effect in relation to the property – for not more than 72 hours after the property was seized.
- (4) Any income or other property derived from seized property while it is being retained or guarded is taken for all purposes to be part of the seized property.

#### **40            Interim restraining order**

- (1) The Local Court may, on application by a police officer or the DPP, make an interim restraining order in relation to:
- (a) the property of a person named in the application; or
  - (b) property specified in the application;
- if the applicant satisfies the court:
- (c) that an application is to be made under section 43 or 44 in relation to the person or the property as soon as reasonably practicable; and
  - (d) that the circumstances justify the making of the interim restraining order.
- (2) The court may make an interim restraining order under this section despite that the value of the restrained property may exceed the jurisdictional limit of the court set by section 135 or under another Act.
- (3) An application for an interim restraining order may be made to a magistrate in chambers or by telephone or other electronic means.
- (4) An interim restraining order has effect until the expiration of 3 working days after the order was made.

## **Division 2            Restraining orders in relation to property**

### **41            Applications for restraining orders**

- (1) A police officer or the DPP may apply to the Local Court for a restraining order under section 43(1).
- (2) The DPP may apply to the Supreme Court for a restraining order under this Division.
- (3) An application under subsection (1) or (2) may be made *ex parte*.

### **42            Proceedings for restraining orders**

In proceedings for a restraining order, the court that is hearing the application under section 41 may do any or all of the following:

- (a) order that the whole or any part of the proceedings is to be heard in closed court;
- (b) order that only persons or classes of persons specified by the court may be present during the whole or any part of the proceedings;
- (c) make an order prohibiting the publication of a report of the whole or any part of the proceedings or of any information derived from the proceedings.

### **43            Restraining order in relation to specified property**

- (1) Subject to section 135, the Local Court may, on application by a police officer or the DPP, make a restraining order in relation to property specified in the application if there are reasonable grounds for suspecting that the property is crime-used or crime-derived.
- (2) The Supreme Court may, on application by the DPP, make a restraining order in relation to property specified in the application in any of the following cases:
  - (a) if there are reasonable grounds for suspecting that the property is crime-used or crime-derived;
  - (b) if the property is a subject of an examination order, whether or not the person to whom the examination order is directed owns or effectively controls the property;
  - (c) if the property is funds held in an account that is a subject of a monitoring order;

- (d) if the property is funds held in an account to which a suspension order applies.
- (3) Subsection (2) also applies to property where the court is advised that an application has been made, or it is intended that within 21 days after the application for the restraining order an application will be made, for the examination order, monitoring order or suspension order (as the case may be).

#### **44            Restraining orders in relation to property of named persons**

- (1) The Supreme Court may, on application by the DPP, make a restraining order in relation to the property of a person named in the application if:
  - (a) the person has been charged, or it is intended that within 21 days after the application the person will be charged, with an offence that, if the person is convicted of the offence, could lead to the person being declared to be a drug trafficker under section 36A of the *Misuse of Drugs Act*, or
  - (b) an application has been made, or it is intended that within 21 days after the application for the restraining order an application will be made, for one or more of the following in relation to the person:
    - (i) a production order;
    - (ii) an unexplained wealth declaration;
    - (iii) a criminal benefit declaration;
    - (iv) a crime-used property substitution declaration; or
  - (c) an order or declaration mentioned in paragraph (b) has been made in relation to the person.
- (2) A restraining order under this section can apply to:
  - (a) all or any property that is owned or effectively controlled by the person at the time of the application for the restraining order, whether or not any of the property is described or identified in the application; and
  - (b) all property acquired:
    - (i) by the person; or
    - (ii) by another person at the request or direction of the person named in the application for the restraining order;

after the restraining order is issued.

- (3) The court must not refuse to make a restraining order under subsection (1)(b)(ii), (iii) or (iv) only because the value of the property subject to the restraining order exceeds, or could exceed, the amount that the person could be liable to pay to the Territory if the relevant declaration is made.

#### **45 Restraining order to specify grounds**

- (1) If an application is made under section 41 for a restraining order, the court that is hearing the application must:
  - (a) consider each matter that is alleged by the applicant, either in the application or in the course of the proceedings, as a ground for making the order; and
  - (b) if the order is made – set out in the order each ground that the court finds is a ground on which the order may be made.
- (2) If the court that is hearing an application under section 41 is satisfied that the release of information contained in an affidavit in support of the application may materially prejudice an ongoing investigation, the court may order that the information is not to be provided when a copy of the restraining order is served on any person.

#### **46 Scope of restraining order**

- (1) In a restraining order, the court that makes the order may do any or all of the following:
  - (a) direct that any income or other property derived from the property while the order is in force is to be treated as part of the property;
  - (b) if the property is moveable – direct that the property is not to be moved except in accordance with the order;
  - (c) appoint the Public Trustee or another person to manage the property while the order is in force;
  - (d) give any other directions necessary to provide for the security and management of the property while the order is in force;
  - (e) provide for meeting the reasonable living and business expenses of the owner of the property.
- (2) In subsection (1)(e), reasonable living and business expenses does not include legal expenses mentioned in section 154.

## 47 Service of restraining order

- (1) As soon as practicable after a restraining order is made, the applicant in relation to the order must arrange for a copy of the order and a notice that complies with subsection (5) to be served personally on each of the following persons:
  - (a) if property that is subject to the order was taken from a person or is in the custody of a person – that person;
  - (b) any person known to the applicant at the time the order was made who has, may have or claims to have an interest in the property subject to the order.
- (2) If property subject to the order is registrable under an Act other than the *Land Title Act*, the applicant must notify the appropriate registrar of the issue of the notice.
- (3) If, as a result of a statutory declaration made in accordance with section 48 by a person who was served under subsection (1) with a copy of the restraining order, the applicant becomes aware of another person who has, may have or claims to have an interest in the property subject to the order, the applicant must arrange for personal service of a copy of the order on the other person as soon as practicable.
- (4) Subsections (1) and (3) do not prevent the applicant from serving a copy of the restraining order and a notice at any time on any other person of whom the applicant becomes aware who has, may have or claims to have an interest in the property.
- (5) The notice mentioned in subsection (1) is to:
  - (a) summarise the effect of the order, including the period for which it applies; and
  - (b) advise the person on whom the order and the notice are served:
    - (i) that the property described in the order may be forfeited under this Act; and
    - (ii) that he or she can, within 28 days after being served with the copy of the order, file in the court that made the order an objection to the restraint of the property; and
    - (iii) of the person's obligation to make and lodge a statutory declaration in accordance with section 48.





- (4) In subsection (3), reasonable living and business expenses does not include legal expenses mentioned in section 154.

## **50        Setting aside of restraining order**

- (1) The applicant in relation to a restraining order under section 43(1) or (2)(a) must request the court that made the order to set the order aside if the grounds for suspecting that the property is crime-used or crime-derived no longer exist.
- (2) The applicant in relation to a restraining order under section 44(1)(a) must request the court that made the order to set the order aside if the person could not be declared to be a drug trafficker.
- (3) The applicant in relation to a restraining order may request the court that made the order to set the order aside for any other reason.
- (4) If a restraining order relating to property is set aside, the applicant in relation to the restraining order must ensure that:
- (a) notice of the setting aside is served personally, as soon as practicable, on each person on whom a copy of the restraining order was served under section 47; and
  - (b) any property subject to the restraining order that is being retained under section 39(2) is returned to the person from whom it was seized unless it is to be otherwise dealt with under this Act or another Act; and
  - (c) any property subject to the restraining order that is being guarded under section 39(2) is released from guard; and
  - (d) if the applicant is aware that the person to whom property is to be returned under paragraph (b) is not the owner of the property – the owner is notified, where practicable, of the setting aside of the restraining order and the return of the property.

## **51        Duration of restraining order**

- (1) A restraining order under section 43 or 44 has effect for the period set by the court when the order is made.
- (2) On application, the court that made a restraining order may extend the duration of the order for a further period.
- (3) The court that made a restraining order may extend the duration of the order on as many occasions as the court sees fit.

- (4) If the period of a restraining order is extended under this section, the applicant in relation to the order must serve a notice of the extension on each person on whom a notice was served under section 47.

## **52            Restraining order ceases to have effect**

- (1) If a restraining order has been made under section 43(1) or (2)(a) in relation to suspected crime-used or crime-derived property, the order ceases to have effect if within the period set (or extended) by the court under section 51 an application has not been made:
- (a) if the property is crime-derived – either under section 73 for a criminal benefits declaration or under Part 7 for forfeiture of the property; or
  - (b) if the property is crime-used – under Part 7 for forfeiture of the property.
- (2) If a restraining order has been made under section 44(1)(a) in relation to property of a person who was to be charged with an offence, the order ceases to have effect if within 21 days after the date of the order the person has not been charged with the offence indicated in the application for the order or an alternative offence.
- (3) If a restraining order has been issued under section 44(1)(a) in relation to property of a person who has been charged, or who was to be charged and a charge has been laid within 21 days after the date of the order, the order ceases to have effect:
- (a) if the charge is finally determined but the person is not declared under section 36A of the *Misuse of Drugs Act* to be a drug trafficker; or
  - (b) if the charge is disposed of without being determined.
- (4) If a restraining order has been made under section 43 on the basis that an application had been made or was to be made for another order, the restraining order ceases to have effect if:
- (a) within 21 days after the making of the restraining order an application has not been made for the other order; or
  - (b) the application for the other order is withdrawn; or
  - (c) the application for the other order is finally determined but the court that heard the application does not make the other order.

- (5) If a restraining order has been made under section 44(1)(b) on the basis that an application was to be made for a production order or a declaration, the restraining order ceases to have effect if:
- (a) within 21 days after the making of the restraining order an application has not been made for the production order or the declaration; or
  - (b) the application for the production order or declaration is withdrawn; or
  - (c) the application for the production order or declaration is finally determined but the court that heard the application does not make the production order or declaration; or
  - (d) if a declaration is made – the respondent's liability to pay to the Territory the amount ordered by the court that made the declaration (including any costs awarded against the respondent) is satisfied, whether or not all or any of the property subject to the restraining order was transferred to the Territory to satisfy the liability.
- (6) A restraining order made under section 43 or 44 ceases to have effect if the order is set aside under section 50 or Part 5.
- (7) Despite anything in this section, a restraining order that was issued under both sections 43 and 44 or on more than one ground under either section:
- (a) only ceases to have effect if set aside on all grounds; and
  - (b) if set aside on only some of the grounds – continues in effect on each remaining ground.
- (8) A restraining order ceases to have effect in relation to property if the property is forfeited to the Territory under Part 7, Division 3.

### **53            Real property**

- (1) If a restraining order is issued in relation to land:
- (a) the applicant in relation to the restraining order must lodge an instrument, together with a copy of the restraining order, with the Registrar-General; and
  - (b) the instrument has effect as a memorandum mentioned in section 35 of the *Land Title Act* and is taken to be lodged by the appropriate Minister; and

- (c) the restraining order takes effect in relation to the land when the instrument is registered under the *Land Title Act* and the Registrar-General enters a statutory restrictions notice in the land register.
- (2) If, in accordance with section 52, a restraining order ceases to have effect and the order relates wholly or in part to land:
- (a) the DPP must lodge an instrument with the Registrar-General advising that the order has ceased to have effect; and
  - (b) despite section 52, the restraining order only ceases to have effect in relation to the land when the instrument mentioned in paragraph (a) is registered under the *Land Title Act* and the statutory restrictions notice is removed from the land register.

**54            Property may be restrained under more than one order**

- (1) Property may be restrained under this Act under more than one order at the same time on the same or different grounds.
- (2) If a restraining order ceases to have effect in relation to property, the property remains restrained under any other restraining order in relation to the property while the other order remains in effect.

**Division 3            Dealing with seized or restrained property**

**55            Prohibited dealings**

- (1) A person must not deal with seized or restrained property in any way.

Maximum penalty:        1 000 penalty units or the value of the property (whichever is greater), or imprisonment for 5 years.

- (2) Subsection (1) does not apply to:
  - (a) a person acting in accordance with an order under section 46(1)(c), 109(2) or 111(2);
  - (b) for seized property – a police officer acting under section 39 or a person acting under the direction of a police officer who is acting in accordance with this Act; or
  - (c) for restrained property – a person acting in accordance with the restraining order.

- (3) It is a defence to a prosecution for an offence under subsection (1) in relation to seized property if the defendant establishes that he or she did not know, and cannot reasonably be expected to have known, that the property was seized under section 39 at the material time.
- (4) It is a defence to a prosecution for an offence under subsection (1) in relation to property subject to a restraining order if the respondent establishes that he or she did not know, and cannot reasonably be expected to have known, that the restraining order was in force at the material time.
- (5) Subsection (1) does not prevent a person from being dealt with for a contempt of the court that made a restraining order for a contravention of the order, but the person is not punishable for both a contempt and an offence under subsection (1) arising from the same contravention.

## **56 Dealing with property**

- (1) A reference in this Act to dealing with property includes a reference to doing or attempting to do any of the following:
  - (a) sell the property or give it away;
  - (b) dispose of the property in any other way;
  - (c) move or use the property;
  - (d) accept the property as a gift;
  - (e) take any profit, benefit or proceeds from the property;
  - (f) create, increase or alter any legal or equitable right or obligation in relation to the property;
  - (g) effect a change in the effective control of the property.
- (2) In subsection (1), a reference to the use of property does not include reasonable and necessary use for ordinary daily requirements of life.
- (3) Subsection (1) does not prevent:
  - (a) the renewal of a pre-existing lease agreement over land; or
  - (b) the issue of a notice of default by a landlord or mortgagee, and the exercise of the landlord or mortgagee's rights, under the terms of the lease or mortgage, as the case may be.

**57 Permitted dealings in mortgaged property**

If property that is mortgaged becomes subject to a restraining order, this Act does not:

- (a) prevent the mortgagor from making payments to the mortgagee in accordance with the mortgage if the payments are made with money that has not been seized or restrained; or
- (b) prevent the mortgagee from accepting payments from the mortgagor in accordance with the mortgage.

**58 Effect of dealing in property subject to restraining order**

Despite any other Act, any dealing with property that contravenes section 55 has no effect, whether at law, in equity or otherwise, on the rights of the Territory under this Act.

**Part 5 Objections to restraint of property****59 Objections to restraining of property**

- (1) A person may file in the court that made the relevant restraining order an objection to the restraint of the property.
- (2) An objection is to identify:
  - (a) the property to which the objection relates; and
  - (b) the grounds for objection against the property being restrained.

**60 Time for filing objection**

- (1) If a copy of the restraining order was served on the objector under section 47, the objection is to be filed:
  - (a) within 28 days after the day on which the copy of the order was served on the objector; or
  - (b) within any further time allowed by the court in which the objection is filed.
- (2) If a copy of the restraining order was not served on the objector under section 47, the objection is to be filed:
  - (a) within 28 days after the day on which the objector becomes aware, or could reasonably be expected to have become aware, that the property has been restrained; or

- (b) within any further time allowed by the court in which the objection is filed.
- (3) The court may allow further time under subsection (2) or (3) despite that the time for filing the objection has expired.

## **61 Parties to objection proceedings**

The Territory is a party to proceedings on an objection.

## **62 Setting aside restraining order**

- (1) The court that is hearing an objection to the restraint of property may set aside the relevant restraining order to the extent provided by section 63, 64 or 65.
- (2) Despite subsection (1), if the property was restrained on 2 or more grounds but the court does not set aside the restraining order in relation to all the grounds, the restraining order continues in force on each remaining ground.
- (3) If a court sets aside a restraining order under this Part, the court may make any necessary or convenient ancillary orders.

## **63 Setting aside restraining order – crime-used property**

- (1) The court that is hearing an objection to the restraint of property on the ground that the property is crime-used may set aside the restraining order if:
  - (a) the objector establishes that:
    - (i) the objector is a spouse, de facto partner or dependant of an owner of the property; and
    - (ii) the objector is an innocent party or is less than 18 years old; and
    - (iii) the objector was usually resident on the property at the time the relevant forfeiture offence was committed or is most likely to have been committed; and
    - (iv) the objector was usually resident on the property at the time the objection was filed; and
    - (v) the objector has no other residence at the time of hearing the objection; and
    - (vi) the objector would suffer undue hardship if the property is forfeited; and

- (vii) it is not practicable to make adequate provision for the objector by some other means; or
  - (b) the objector establishes that:
    - (i) the objector is the owner of the property or is one of 2 or more owners of the property; and
    - (ii) the property is not effectively controlled by a person who made criminal use of the property; and
    - (iii) the objector is an innocent party in relation to the property; and
    - (iv) each other owner (if there are more than one) is an innocent party in relation to the property; or
  - (c) the objector establishes that it is more likely than not that the property is not crime-used.
- (2) If the objector fails to establish for subsection (1)(b) that each other owner is an innocent party, the court that is hearing the objection may:
  - (a) order that, when the property is sold after forfeiture, the objector is to be paid an amount from the proceeds of the sale that is in proportion to the objector's share of the property; or
  - (b) set aside the restraining order in relation to the property if it also orders the objector to pay to the Territory the value of the share of the property that the court finds is attributable to the owner or owners who are not established to be innocent parties.
- (3) In an order under subsection (2), the court must specify:
  - (a) the proportion that it finds to be the objector's share of the property; and
  - (b) the proportion that it finds to be the share of any owner who is not established to be an innocent party.
- (4) On application by the DPP or an owner of the property, the court that made a restraining order on the ground that the relevant property is crime-used may set the order aside if the court also orders the objector to pay to the Territory the value of the property.



- (5) The court that is hearing the objection or application must assess the value of property:
- (a) for subsection (2)(b) – at the time of hearing the objection; and
  - (b) for subsection (4) – at the time of hearing the application;
- and must specify the assessed value in the order.

#### **64 Setting aside restraining order – crime-derived property**

- (1) The court that is hearing an objection to the restraint of property on the ground that the property is crime-derived may set aside the restraining order if:
- (a) the objector establishes that:
    - (i) the objector is the owner of the property or is one of 2 or more owners of the property; and
    - (ii) the property is not effectively controlled by a person who wholly or partly derived or realised the property, directly or indirectly, from the commission of a forfeiture offence; and
    - (iii) the objector is an innocent party in relation to the property; and
    - (iv) each other owner (if there are more than one) is an innocent party in relation to the property; or
  - (b) the objector establishes that it is more likely than not that the property is not crime-derived.
- (2) If the objector fails to establish for subsection (1)(a) that each other owner is an innocent party, the court that is hearing the objection may:
- (a) order that, when the property is sold after forfeiture, the objector is to be paid an amount from the proceeds of the sale that is in proportion to the objector's share of the property; or
  - (b) set aside the restraining order in relation to the property if it also orders the objector to pay to the Territory the value of the share of the property that the court finds is attributable to the owner or owners who are not established to be innocent parties.

- (3) In an order under subsection (2), the court must specify:
  - (a) the proportion that it finds to be the objector's share of the property; and
  - (b) the proportion that it finds to be the share of any owner who is not established to be an innocent party.
- (4) On application by the DPP or an owner of the property, the court that made a restraining order on the ground that the relevant property is crime-derived may set the order aside if the court also orders the objector to pay to the Territory the value of the property.
- (5) The court that is hearing the objection or application must assess the value of property:
  - (a) for subsection (2)(b) – at the time of hearing the objection; and
  - (b) for subsection (4) – at the time of hearing the application;and must specify the assessed value in the order.

#### **65      Setting aside restraining order – other property**

- (1) The court that made a restraining order under section 44(1)(a) may set the order aside if the court finds that it is more likely than not that the person who is or will be charged with the offence does not own or effectively control the property, and has not at any time given it away.
- (2) The court that made a restraining order under section 44(1)(b) or (c) may set the order aside if the court finds that it is more likely than not that the person who is or will be the respondent to the unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration does not own or effectively control the property, and has not at any time given it away.

#### **66      Innocent party**

- (1) A person is an innocent party in relation to crime-used property if:
  - (a) he or she did not know and had no reasonable grounds for suspecting:
    - (i) that the relevant forfeiture offence was being or would be committed; or

- (ii) that the property was being or would be used in or in connection with the commission of a forfeiture offence; or
- (b) he or she took all reasonable steps to prevent:
  - (i) the commission of the offence; or
  - (ii) the use of the property in or in connection with the commission of the offence;

and the person was not in any way involved in the commission of the relevant forfeiture offence.

- (2) A person who owns or effectively controls crime-used property is an innocent party in relation to the property if:
  - (a) the person did not acquire the property or its effective control before the time that the relevant forfeiture offence was committed or is likely to have been committed; and
  - (b) at the time of acquiring the property or its effective control, the person did not know and had no reasonable grounds for suspecting that the property was crime-used; and
  - (c) if the person acquired the property for valuable consideration – the consideration was lawfully acquired; and
  - (d) the person did not acquire the property or its effective control, whether by gift or for valuable consideration, with the intention of avoiding the operation of this Act.
- (3) A person is an innocent party in relation to crime-derived property if:
  - (a) the person acquired the property, or the person's share of it (if it is owned by more than one person), for valuable consideration; and
  - (b) the consideration was lawfully acquired; and
  - (c) before acquiring the property or share, the person made reasonable inquiries, and took all other action reasonable in the circumstances, to ascertain whether or not the property was crime-derived; and
  - (d) despite the inquiries made under paragraph (c), at the time of acquiring the property or share the person did not know and had no reasonable grounds for suspecting that the property was crime-derived; and

- (e) the person did not acquire the property or share with the intention of avoiding the operation of this Act.

## **Part 6 Proceedings for declarations**

### **Division 1 Unexplained wealth declaration**

#### **67 Application for unexplained wealth declaration**

- (1) The DPP may apply to the Supreme Court for an unexplained wealth declaration against a person.
- (2) An application under subsection (1) may be made in conjunction with an application under Part 4, Division 2 for a restraining order, in proceedings under Part 5 for the hearing of an objection to the restraining of property, or at any other time.

#### **68 Unexplained wealth**

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

#### **69 Assessing the value of unexplained wealth**

- (1) The respondent's unexplained wealth is the difference between:
  - (a) the respondent's total wealth; and
  - (b) the respondent's lawfully acquired wealth.
- (2) When assessing the respondent's wealth:
  - (a) the value of any property, service, advantage or benefit that is a constituent of the respondent's wealth is taken to be the greater of:
    - (i) its value at the time that it was acquired; and

- (ii) its value on the day that the application for the unexplained wealth declaration was made; and
- (b) the value of any property, service, advantage or benefit that was a constituent of the respondent's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of:
  - (i) its value at the time that it was acquired; and
  - (ii) its value immediately before it was given away, or was used, consumed or discarded, or stopped being available; and
- (c) the court that is hearing an application under section 67 must not take account of:
  - (i) any property that has been forfeited under this Act or any other Act; or
  - (ii) any property, service, advantage or benefit that was taken into account in making an earlier unexplained wealth declaration against the respondent; or
  - (iii) any property, service, advantage or benefit in relation to which a criminal benefits declaration has been made.

## **70 The constituents of a person's wealth**

The following property, services, advantages and benefits constitute a person's wealth:

- (a) all property that the person owns, whether the property was acquired before or after the commencement of this Act;
- (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Act;
- (c) all property that the person has given away at any time, whether before or after the commencement of this Act;
- (d) all other property acquired by the person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);

- (e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Act;
- (f) all property, services, advantages and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);
- (g) anything of monetary value acquired by the person or another person, in Australia or elsewhere, from the commercial exploitation of any product or any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from the person's involvement in the commission of a forfeiture offence, whether or not the thing was lawfully acquired and whether or not the person has been charged with or convicted of the offence.

## **71 Unexplained wealth declaration**

- (1) The court that is hearing an application under section 67 must declare that the respondent has unexplained wealth if it is more likely than not that the respondent's total wealth is greater than his or her lawfully acquired wealth.
- (2) Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.
- (3) Without limiting the matters to which a court may have regard in deciding whether the respondent has unexplained wealth, the court may have regard to the amount of the respondent's income and outgoings at any time or at all times.
- (4) When a court makes an unexplained wealth declaration, the court must:
  - (a) assess the respondent's unexplained wealth in accordance with section 69; and
  - (b) specify the assessed value of the unexplained wealth in the declaration; and
  - (c) order the respondent to pay to the Territory the amount specified in the declaration as the value of his or her unexplained wealth.

- (5) When making an unexplained wealth declaration, the court may make any necessary or convenient ancillary orders, including awarding costs as the court sees fit.

**72 Unexplained wealth payable to Territory**

- (1) If a court makes an unexplained wealth declaration, the respondent must pay to the Territory the amount ordered by the court.
- (2) The amount payable to the Territory may be satisfied, wholly or in part, by forfeiture under Part 7 of property that is subject to a restraining order under this Act.

**Division 2 Criminal benefit declaration**

**73 Application for criminal benefit declaration**

- (1) The DPP may apply to the Supreme Court for a criminal benefit declaration against a person.
- (2) An application under subsection (1) may be made in conjunction with an application under Part 4, Division 2 for a restraining order, in proceedings under Part 5 for the hearing of an objection to the restraining of property, or at any other time.

**74 Acquiring criminal benefit**

- (1) For this Act, a person has acquired a criminal benefit if:
- (a) any property, service, advantage or benefit that is a constituent of the person's wealth was directly or indirectly acquired as a result of the person's involvement in the commission of a forfeiture offence, (whether or not the property, service, advantage or benefit was lawfully acquired); or
  - (b) the person has been involved in the commission of a forfeiture offence, and any property, service, advantage or benefit that is a constituent of the person's wealth was not lawfully acquired, (whether or not the property, service, advantage or benefit was acquired as a result of the person's involvement in the commission of the offence).
- (2) Without limiting subsection (1), the person has acquired a criminal benefit:
- (a) whether the property, service, advantage or benefit was acquired before, during or after the forfeiture offence was or is likely to have been committed; and

- (b) whether the property, service, advantage or benefit was acquired before or after the commencement of this Act; and
- (c) whether the forfeiture offence was committed before or after the commencement of this Act.

**75 Criminal benefit declaration – crime-derived property**

- (1) A court that is hearing an application under section 73 must declare that the respondent has acquired a criminal benefit if it is more likely than not:
  - (a) that the property, service, advantage or benefit described in the application is a constituent of the respondent's wealth; and
  - (b) that the respondent is or was involved in the commission of a forfeiture offence; and
  - (c) that the property, service, advantage or benefit was wholly or partly derived or realised, directly or indirectly, as a result of the respondent's involvement in the commission of the forfeiture offence (whether or not the property, service, advantage or benefit was lawfully acquired).
- (2) The property, service, advantage or benefit mentioned in subsection (1) is presumed to have been directly or indirectly acquired as a result of the respondent's involvement in a forfeiture offence unless the respondent establishes otherwise.

**76 Criminal benefit declaration – unlawfully acquired property**

- (1) A court that is hearing an application under section 73 must declare that the respondent has acquired a criminal benefit if it is more likely than not that:
  - (a) the property, service, advantage or benefit described in the application is a constituent of the respondent's wealth; and
  - (b) the property, service, advantage or benefit was not lawfully acquired.
- (2) If the respondent has been convicted or is taken to have been convicted of a forfeiture offence, or it is more likely than not that the respondent is or has been involved in the commission of a forfeiture offence, it is presumed that the property, service, advantage or benefit was not lawfully acquired unless the respondent establishes the contrary.



## **77 Lawful acquisition of property**

- (1) Any property, service, advantage or benefit is lawfully acquired only if:
  - (a) the property, service, advantage or benefit was itself lawfully acquired; and
  - (b) any consideration given for the property, service, advantage or benefit was lawfully acquired; and
  - (c) any obligation in relation to the acquisition is or has been met by lawfully acquired means.
- (2) Any property, service, advantage or benefit is not lawfully acquired if the property, service, advantage or benefit is received as consideration under a contract, understanding or arrangement by which premises or services are provided in circumstances where it is more likely than not that the provider of the premises or services is aware, or ought to be aware, that the premises or services are used or intended to be used in relation to the commission of a forfeiture offence.
- (3) Property that is given to a person as a gift is only lawfully acquired property in the hands of the recipient if it was lawfully acquired property in the hands of the donor.

## **78 Criminal benefit declaration**

- (1) When making a criminal benefit declaration, the court must:
  - (a) assess, in accordance with section 79, the value of the criminal benefit acquired by the respondent; and
  - (b) specify in the declaration the assessed value of the criminal benefit; and
  - (c) order the respondent to pay to the Territory the amount specified in the declaration as the value of the criminal benefit the respondent has acquired.
- (2) A court must not make a criminal benefit declaration in relation to any property, service, advantage or benefit if:
  - (a) the property, service, advantage or benefit has been taken into account when making an unexplained wealth declaration against the respondent; or
  - (b) a criminal benefits declaration has already been made in relation to the property, service, advantage or benefit; or

- (c) the property, service, advantage or benefit (or its value) has been forfeited under this Act or any other Act.
- (3) When making a criminal benefit declaration, the court may make any necessary or convenient ancillary orders, including awarding costs as the court sees fit.

## **79 Assessing the value of criminal benefit**

When assessing the value of a criminal benefit for section 78(1):

- (a) the value of any property, service, advantage or benefit acquired by the respondent is taken to be the greater of:
  - (i) its value at the time that it was acquired; and
  - (ii) its value on the day that the application for the criminal benefits declaration was made; and
- (b) the value of any property, service, advantage or benefit that was acquired by the respondent but has been given away, used, consumed or discarded, or that is for any other reason no longer available when the application for the declaration was made, is taken to be the greater of:
  - (i) its value at the time that it was acquired; and
  - (ii) its value at the time that it was given away, or was used, consumed or discarded, or stopped being available.

## **80 Criminal benefits payable to Territory**

- (1) If a court makes a criminal benefit declaration, the respondent must pay to the Territory the amount ordered by the court.
- (2) The amount payable to the Territory may be satisfied, wholly or in part, by forfeiture under Part 7 of property that is subject to a restraining order under this Act.

## **Division 3 Crime-used property substitution declaration**

### **81 Application for crime-used property substitution declaration**

- (1) The DPP may apply to the Supreme Court for a crime-used property substitution declaration against a person.

- (2) On hearing an application under subsection (1), the court may declare that property of equivalent value owned or effectively controlled by the respondent is to be substituted for crime-used property if:
  - (a) it is more likely than not that the respondent has made criminal use of property so that the property is crime-used; and
  - (b) the crime-used property is not amenable to a restraining order or forfeiture under this Act for a reason or reasons mentioned in section 82.
- (3) An application under subsection (1) may be made in conjunction with an application under Part 4, Division 2 for a restraining order, in proceedings under Part 5 for the hearing of an objection to the restraining of property, or at any other time.
- (4) If the court makes a declaration under this section, the court must:
  - (a) assess the value of the crime-used property in accordance with section 85; and
  - (b) specify the assessed value of the crime-used property in the declaration; and
  - (c) order the respondent to pay to the Territory the amount specified in the declaration as the value of the crime-used property.
- (5) Crime-used property substitution declarations can be made against 2 or more respondents in respect of the same crime-used property, whether or not the applications for the respective declarations are heard in the same proceedings.
- (6) If a court makes a declaration under this section, the court may make any necessary or convenient ancillary orders, including awarding costs as the court sees fit.

## **82 Crime-used property not available**

For section 81, crime-used property is not available for forfeiture if:

- (a) the respondent does not own or have effective control of the property; or

- (b) the property was or is owned or effectively controlled by the respondent, and was or is restrained, but the restraining order has been or is to be set aside under section 63(1)(a) in favour of a spouse, de facto partner or dependant of the respondent; or
- (c) the property has been sold or otherwise disposed of, or cannot for any other reason be found for the purposes of this Act.

### **83 Burden of proof**

- (1) If the respondent has been convicted of the relevant forfeiture offence in respect of which property was used so that the property became crime-used, it is presumed that the respondent made criminal use of the property unless the respondent establishes the contrary.
- (2) If the respondent has not been convicted of the relevant forfeiture offence but the applicant establishes that it is more likely than not that crime-used property was in the respondent's possession at the time that the offence was committed or immediately afterwards, it is presumed that the respondent made criminal use of the property unless the respondent establishes the contrary.
- (3) In any circumstances except those set out in subsection (1) or (2), the applicant bears the onus of establishing that the respondent made criminal use of the property.

### **84 Criminal use of property**

For this Act, a person makes criminal use of property if the person, alone or with anyone else (who need not be identified), uses or intends to use the property in a way that brings the property within the definition of crime-used property.

### **85 Assessing the value of crime-used property**

- (1) When assessing the value of crime-used property for making a crime-used property substitution order, the value of the property is taken to be its value at the time that the relevant forfeiture offence was or is likely to have been committed.
- (2) The value of the crime-used property is taken to be its full value even if the respondent did not outlay any amount for obtaining or making criminal use of the property or did not outlay an amount equal to its full value for that purpose.

**86            Substituted property payable to Territory**

- (1) If a court makes a crime-used property substitution declaration under section 81, the respondent must pay to the Territory the amount ordered by the court.
- (2) If a crime-used property substitution declaration is made against 2 or more respondents in respect of the same crime-used property, the respondents are jointly and severally liable to pay to the Territory the amount ordered by the court.
- (3) The amount payable to the Territory may be satisfied, wholly or in part, by forfeiture under Part 7 of property that is subject to a restraining order under this Act.

**Part 7            Satisfaction of liability to territory**

**Division 1        General**

**87            Recovery of amount payable to Territory**

- (1) The amount payable under section 72, 80 or 86 by a respondent to the Territory is payable to the Fines Recovery Unit within one month after the date on which the relevant declaration was made.
- (2) If part or all of the amount payable to the Territory is not paid within the time specified in subsection (1), the unpaid amount is recoverable from the respondent by the Territory under the *Fines and Penalties (Recovery) Act*.
- (3) This section does not affect any other means by which the Territory may recover any unpaid amount of a person's liability under this Act.

**88            Use of restrained property to meet liability**

- (1) A person who is liable under Part 6 to pay an amount to the Territory may transfer property (whether or not the property is subject to a restraining order under this Act) to the Territory to satisfy the liability wholly or in part.
- (2) If part or all of the amount payable to the Territory is not paid within the time specified in section 87(1), any property that is subject to a restraining order under this Act and that is owned or effectively controlled by the person liable to the Territory is available for satisfying the person's liability to the extent possible.

**89            Proceeds from sale of restrained property**

If property that is subject to a restraining order is sold, the proceeds of the sale are available and may be forfeited under this Act:

- (a) to satisfy a person's liability under Part 6; or
- (b) if the property is ordered to be forfeited under section 96 or 97 – as if the proceeds were the property that has been sold.

**90            Nexus between restraint and forfeiture not necessary**

Property that is restrained under this Act is liable to forfeiture to satisfy an order under this Part despite that the grounds for the forfeiture order may be different to the grounds on which the restraining order was made.

**Division 2            Use of effectively controlled property or gift to meet liability**

**91            Forfeitable property declaration**

- (1) The DPP may apply to the Supreme Court for a forfeitable property declaration.
- (2) An application under subsection (1) may be made in the course of proceedings under Part 6, Division 1 for an unexplained wealth declaration, under Part 6, Division 2 for a criminal benefits declaration, under Part 6, Division 3 for a crime-used property substitution declaration, or at any other time.

**92            Property not owned by respondent available for forfeiture**

- (1) The court that is hearing an application under section 91 may declare that property specified in the application that is not owned by the respondent is available for forfeiture under this Part (whether or not the property is subject to a restraining order under this Act) to satisfy the respondent's liability to the Territory under Part 6 if it is more likely than not:
  - (a) that the respondent effectively controlled the property at the time that the application was made for a declaration under Part 6; or
  - (b) that the respondent had given the property away at a time before the application was made for a declaration under Part 6.

- (2) The property mentioned in subsection (1) is presumed to have been effectively controlled by the respondent or to have been given away by the respondent at the material time unless the respondent establishes the contrary.
- (3) If a court makes a declaration under this section, the court may make any necessary or convenient ancillary orders.

### **93            Limitation on forfeiture of effectively controlled property**

Property that is:

- (a) the subject of a forfeitable property declaration; or
- (b) the subject of a restraining order on the grounds of being effectively controlled by a person who is liable under Part 6 to pay an amount to the Territory;

is only to be called upon to satisfy the person's liability to the extent that property owned by the person is not available or is insufficient to satisfy the liability.

## **Division 3            Forfeiture of property**

### **Subdivision A    Property of declared drug trafficker**

#### **94            Forfeiture of declared drug trafficker's property**

- (1) If a person is declared to be a drug trafficker under section 36A of the *Misuse of Drugs Act*:
  - (a) all property subject to a restraining order that is owned or effectively controlled by the person; and
  - (b) all property that was given away by the person, whether before or after the commencement of this Act;

is forfeited to the Territory.

- (2) Subsection (1) applies also to a person who is taken under section 8 to be a declared drug trafficker.
- (3) The DPP may apply to the Supreme Court for a declaration that property has been forfeited by operation of this section.
- (4) If the court that is hearing an application under subsection (3) finds that property specified in the application has been forfeited to the Territory by operation of this section, the court must make a declaration to that effect.

## **Subdivision B    Crime-used property and crime-derived property**

### **95                    Application for forfeiture order**

- (1) A police officer or the DPP may apply to the Local Court for an order under this Subdivision in respect of property that was restrained under section 43(1).
- (2) The DPP may apply to the Supreme Court for an order under this Subdivision.
- (3) If an application under this section is for an order under section 96 or 97:
  - (a) the application is not to be made until after the objection period has expired for any persons served with a copy of the relevant restraining order under section 47(1) or (3); and
  - (b) the court to which the application is made must not hear the application until any objection under Part 5 by a person mentioned in paragraph (a) has been heard and determined.
- (4) If an objection under Part 5 is lodged by a person who was not served with a copy of the relevant restraining order under section 47(1) or (3), the court that is hearing an application under this section may stay or adjourn the hearing until the objection is determined.
- (5) An application for an order under section 97 cannot be made if the property has been taken into account for a criminal benefits declaration under section 75.
- (6) In this section, an objection is taken to have been heard and determined if it is withdrawn, discontinued or otherwise lapses through want of prosecution.

### **96                    Crime-used property**

- (1) A court that is hearing an application under section 95 in relation to property restrained on suspicion the property was crime-used must order that the property is forfeit to the Territory if the court is satisfied that it is more likely than not that the property is crime-used.
- (2) A court must order forfeiture of property under subsection (1) despite that no person has been identified as the owner or controller of the property.



**97            Crime-derived property**

A court that is hearing an application under section 95 in relation to property restrained on suspicion the property was crime-derived must order that the property is forfeit to the Territory if the court is satisfied that it is more likely than not that the property is crime-derived.

**Subdivision C    Criminal benefits, unexplained wealth and substituted property**

**98            DPP may apply for forfeiture order**

The DPP may apply to the Supreme Court for an order under this Subdivision that property is forfeit to the Territory.

**99            Criminal benefit**

A court that is hearing an application under section 98 may order that property subject to a restraining order is forfeit to the Territory if a criminal benefit declaration has been made under section 75 against the person who owned or effectively controlled the restrained property at the time the restraining order was made.

**100          Unexplained wealth**

A court that is hearing an application under section 98 may order that property subject to a restraining order is forfeit to the Territory if an unexplained wealth declaration has been made under section 71 against the person who owned or effectively controlled the restrained property at the time the restraining order was made.

**101          Substituted property**

A court that is hearing an application under section 98 may order that property subject to a restraining order is forfeit to the Territory if a crime-used property substitution declaration has been made under section 81 against the person who owned or effectively controlled the restrained property at the time the restraining order was made.

**Subdivision D    General**

**102          Notice of forfeiture of land or other registrable property**

- (1) If a court declares or orders under this Division that land has been forfeited, the DPP must lodge an instrument to that effect with the Registrar-General.

- (2) If a court declares or orders under this Division that property that is registrable under an Act other than the *Land Title Act* has been forfeited, the DPP must lodge with the appropriate registrar:
- (a) a copy of the declaration or order; and
  - (b) a notice giving particulars of the forfeiture.

### **103        Value of property sold by Territory**

- (1) If forfeited property is sold by or for the Territory under this Act, the value of the property is taken to be the remainder (if any) of the proceeds of the sale after the proceeds are applied to the following:
- (a) firstly, the costs, charges and expenses arising from the sale;
  - (b) secondly, if a restraining order is or was in force for the property – expenses incurred by the Territory or a person appointed to manage the property while the order was in force;
  - (c) thirdly, any expenses incurred by the Territory or a person appointed to manage the property after it was forfeited;
  - (d) fourthly, any bona fide charges or other encumbrances on the property.
- (2) If the property is security for a mortgage that is also secured by other property then, despite any other Act and any inconsistent term of the mortgage, the extent of the security in relation to the sold property is the proportion that the value of the sold property bore to the total value of all the properties securing the mortgage at the time that the mortgage was entered into.

### **104        Variation of declarations and orders**

The DPP may at any time apply to the court that made a declaration or order under this Part for a variation of the declaration or order, or for a further declaration or order, to give effect or to give better effect, to the previous declaration or order.

## **Part 8 Management of seized, restrained and forfeited property**

### **Division 1 Control and management of property**

#### **105 Management of seized property**

The Commissioner of Police has responsibility for the control and management of property seized under a warrant under section 34 or under section 39(1).

#### **106 Management of restrained or forfeited property**

- (1) The Public Trustee has responsibility for the control and management of property that is subject to a restraining order unless a court otherwise orders under section 46(1)(c) or 109(2).
- (2) The Public Trustee has responsibility for the control and management of forfeited property until it is disposed of.
- (3) The Public Trustee may appoint a person who owns property that is subject to a restraining order to manage the property.

#### **107 Financial institution to transfer restrained funds to Public Trustee**

- (1) A financial institution that is holding in an account funds that are restrained under this Act must, on demand by the Public Trustee, transfer the restrained funds to the Public Trustee.
- (2) The Public Trustee must hold on trust any funds received under this section and deal with the funds in accordance with the *Public Trustee Act*.

#### **108 Public Trustee's capacity to carry out transactions**

Property that is the responsibility of the Public Trustee under section 106 is subject to the provisions of Part VIII of the *Public Trustee Act* (except sections 59, 60(1)(b), 66, 67 and 67A) as if the Public Trustee had been appointed as manager of the property by the Supreme Court under section 59 of that Act.

#### **109 Applications by owner for control and management**

- (1) An owner of restrained property may apply to the court that made the relevant restraining order for an order under subsection (2) in relation to the property.

- (2) The court that is hearing an application under subsection (1) may, if it thinks fit, by order appoint the person:
  - (a) to control and manage the property while the restraining order is in force; or
  - (b) to sell or destroy the property.
- (3) If restrained property is sold in accordance with an order under subsection (2), the proceeds of the sale are taken to be restrained property that is subject to the restraining order made in respect of the sold property and must be transferred to the Public Trustee.

#### **110 Duties of responsible person**

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

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

### **Division 2 Disposal of deteriorating or undesirable property**

#### **111 Destruction of property on grounds of public interest**

- (1) A person who has responsibility for the control or management of seized, restrained or forfeited property may apply to the court that made the relevant order (or, for seized property, the court that has jurisdiction under section 135) for an order under subsection (2) that the property be destroyed.
- (2) The court that is hearing an application under subsection (1) may order that the property is to be destroyed if it would not be in the public interest to preserve the property.

## **112 Sale of deteriorating property**

- (1) A person who has responsibility for the control or management of restrained property may apply to the court that made the relevant restraining order for an order under subsection (2) that the property be sold.
- (2) The court that is hearing an application under subsection (1) may order that the property is to be sold if it is more likely than not that:
  - (a) the property is or will be subject to substantial waste or loss of value if it is retained until it is dealt with under another provision of this Act; or
  - (b) the cost of managing or protecting the property will exceed the value of the property if it is retained until it is dealt with under another provision of this Act.
- (3) If the Public Trustee has the control or management of property that is restrained under this Act and is not land, the Public Trustee may sell the property for and on behalf of the Territory in the circumstances mentioned in subsection (2) without obtaining a court order under that subsection if the Minister approves the sale in the circumstances.
- (4) Subsections (2) and (3) apply also to property where, despite that the market value of the property may not be diminishing, interest charges or the like are resulting in or are likely to result in a diminishing realisable equity in the property.
- (5) If restrained property is sold under an order under subsection (2) or under subsection (3) the proceeds of the sale are taken to be restrained property that is subject to the restraining order made in respect of the sold property.
- (6) If restrained property that is land is sold under an order under subsection (2), a copy of the order is to be lodged with the Registrar-General by the applicant for the order.

## **113 Valuation and inventory of restrained property**

A person who has the control or management of restrained property under this Act:

- (a) may do either or both of the following:
  - (i) arrange for the property to be valued by an appropriately qualified person;

- (ii) arrange for an inventory to be taken of any fittings, fixtures or moveable goods in, on or comprising the property; and
- (b) must, if an inventory is taken under paragraph (a)(ii), arrange for a copy of the inventory to be served on each person on whom a copy of the restraining order was served under section 47.

### **Division 3 Management of property by Public Trustee**

#### **114 Public Trustee's power to appoint manager**

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

#### **115 Public Trustee's liability for charges on restrained property**

- (1) If Territory taxes imposed on restrained or forfeited property fall due while the property is under the control or management of the Public Trustee, the Public Trustee is liable for the taxes only to the extent of any rents and profits received by the Public Trustee in respect of the property.
- (2) If the property is a business, the Public Trustee is not liable for:
  - (a) any payment in respect of long service leave for which the business or the owner of the business is liable; or
  - (b) any payment in respect of long service leave to which a person appointed by the Public Trustee to manage the business, or the legal personal representative of such a person, becomes entitled as a result of managing the business after the date of the restraining order.

#### **116 Managing interstate property**

- (1) The Public Trustee may make an agreement for the management of property restrained under a registered interstate restraining order with a person who is required under the order to take control of the property.

- (2) The Public Trustee may perform, in accordance with an agreement mentioned in subsection (1), the same functions in relation to property restrained under a registered interstate restraining order as the person who is required under the order to take control of the property would be able to perform if the property were in the State or other Territory in which the order was made.

### **117 Fees payable to Public Trustee**

The Public Trustee is entitled to receive the fees prescribed by or under the *Public Trustee Act* for performing its functions under this Act in relation to restrained or forfeited property.

### **118 Obstructing Public Trustee**

A person must not hinder or obstruct the Public Trustee or a Deputy Public Trustee, or an officer, servant or agent of the Public Trustee, in exercising the functions of the Public Trustee under this Act.

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

## **Part 9 Release of forfeited property**

### **119 Application for release of forfeited property**

- (1) A person may apply to the court that ordered the forfeiture of property under Part 7, Division 3 for the release of the property.
- (2) The application must be made within 28 days after the person became aware, or can reasonably be expected to have become aware, that the property has been forfeited.

### **120 Parties to proceedings**

The Territory is a party to proceedings on an application under section 119.

### **121 Order to release forfeited property**

- (1) The court that is hearing an application under section 119 may order the release of any property if the applicant establishes that:
- (a) immediately before the property was forfeited, the applicant was the owner of the property or was one of 2 or more owners of the property; and

- (b) the property was not effectively controlled by a person who made criminal use of the property or who wholly or partly derived or realised the property, directly or indirectly, from the commission of a forfeiture offence; and
  - (c) the applicant was not aware and could not reasonably be expected to have become aware, until after the property was forfeited, that the property was liable to forfeiture under Part 7, Division 3; and
  - (d) the applicant is an innocent party in relation to the property; and
  - (e) each other owner (if there are more than one) is an innocent party in relation to the property.
- (2) If a court orders the release of property under this section:
- (a) if the property is money – the money is to be paid to the applicant; and
  - (b) if the property is not money and has not been disposed of – the property is to be given to the applicant; and
  - (c) if the property is not money and has been sold – the proceeds of the sale are to be paid to the applicant.
- (3) If the applicant fails to establish for subsection (1) that each other owner is an innocent party, the court may order the release of the applicant's share of the property.
- (4) In an order under subsection (3), the court must specify:
- (a) the proportion that it finds to be the applicant's share of the property; and
  - (b) the proportion that it finds to be the share of any owner who is not established to be an innocent party.
- (5) If the court makes an order under subsection (3), the applicant is to receive:
- (a) if the property is money – the applicant's share of the money; and
  - (b) if the property is not money, has not been disposed of and is divisible – the applicant's share of the property; and



- (c) if the property is not money and is not divisible or has been disposed of – the amount of money that represents the applicant's share of the proceeds from the sale of the property (when sold).
- (6) If the applicant is entitled to the release of a share of forfeited property that is not money, is not divisible and has not been disposed of, the court may order that the property is to be given to the applicant if the court also orders that the applicant pay to the Territory the value of the share of the property that the court finds is attributable to the owner or owners who are not innocent parties.
- (7) If a court makes an order under this section, the court may make any necessary or convenient ancillary orders.

## **Part 10 Mutual recognition of restraining orders and forfeiture orders**

### **Division 1 Registration of Territory orders in other jurisdictions**

#### **122 Interstate registration of restraining orders**

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

- (ii) having been moved from the State or Territory – is once again located in the State or Territory.

## Division 2 Recognition of interstate restraining orders

### 123 Registration of interstate restraining order

- (1) If an interstate restraining order expressly applies to property that is in the Territory, the order may be registered under this Act.
- (2) An interstate restraining order is registered under this Act when a copy of the order, 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 may be registered in the same way, whether the amendments were made before or after the registration of the original order, but the amendments are of no effect until they are registered.
- (4) An application for registration may be made by the applicant in relation to the interstate order or amendments, by the DPP, or by any person affected by the order or amendments.
- (5) If an interstate restraining order that relates to land in the Territory (or an amendment to such an order) is registered under this section:
  - (a) the applicant for registration must lodge an instrument, together with a copy of the interstate restraining order or amendment, with the Registrar-General; and
  - (b) the instrument has effect as a memorandum mentioned in section 35 of the *Land Title Act* and is taken to be lodged by the appropriate Minister; and
  - (c) the registered interstate restraining order or amendment takes effect in relation to the land when the instrument is registered under the *Land Title Act* and the Registrar-General enters a statutory restrictions notice in the land register.
- (6) If an interstate restraining order that relates to property in the Territory that is registrable under an Act other than the *Land Title Act* (or an amendment of such an order) is registered under this section:
  - (a) the applicant for registration of the order or amendment; or
  - (b) the DPP; or
  - (c) the person having control and management of the property;

must lodge with the appropriate registrar a notice giving particulars of the forfeiture and a copy of the order or amendment.

**124 Effect of registration of interstate restraining order**

- (1) A registered interstate restraining order may be enforced in the Territory as if the order had been made under section 43 or 44.
- (2) This Act (except sections 41 and 47) applies to a registered interstate restraining order as if the order had been made under section 43 or 44.

**125 Duration of registration of interstate restraining order**

A registered interstate restraining order is enforceable in the Territory under this Act unless its registration is cancelled under section 126, despite that the order has already ceased to be in force under the law of the State or Territory under which the order was made.

**126 Cancellation of registration of interstate restraining order**

- (1) The Supreme Court may cancel the registration of an interstate restraining order if:
  - (a) registration was improperly obtained; or
  - (b) the order ceases to be in force under the law of the Commonwealth, or of the State or Territory, under which the order was made.
- (2) An application for the cancellation of the registration may be made by the person who applied for the registration, by the DPP, or by a person affected by the order.
- (3) If the registration of an interstate restraining order is cancelled under subsection (1) and the order relates wholly or in part to land:
  - (a) the applicant in relation to the cancellation must lodge an instrument with the Registrar-General advising that the registration order has been cancelled; and
  - (b) the restraining order only ceases to have effect in relation to the land when the instrument mentioned in paragraph (a) is registered under the *Land Title Act* and the statutory restrictions notice is removed from the land register.

### Division 3 Recognition of interstate forfeiture orders

#### 127 Registration of interstate forfeiture order

- (1) If an interstate forfeiture order expressly applies to property that is in the Territory, the order may be registered under this Act.
- (2) An interstate forfeiture order is registered under this Act when a copy of the order, 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 forfeiture order may be registered in the same way, whether the amendments were made before or after the registration of the original order, but the amendments are of no effect until they are registered.
- (4) An application for registration may be made by the applicant in relation to the interstate order or amendments, by the DPP, or by any person affected by the order or amendments.
- (5) If an interstate forfeiture order that relates to land in the Territory (or an amendment to such an order) is registered under this section:
  - (a) the applicant for registration of the interstate order or amendment; or
  - (b) the DPP; or
  - (c) the person having control and management of the property;must lodge an instrument to that effect, together with a copy of the interstate forfeiture order or amended order, with the Registrar-General.
- (6) If an interstate forfeiture order that relates to property in the Territory that is registrable under an Act other than the *Land Title Act* (or an amendment of such an order) is registered under this section:
  - (a) the applicant for registration of the order or amendment; or
  - (b) the DPP; or
  - (c) the person having control and management of the property;must lodge with the appropriate registrar a notice giving particulars of the forfeiture and a copy of the order or amendment.

### **128 Effect of registration of interstate forfeiture orders**

- (1) A registered interstate forfeiture order may be enforced in the Territory as if the property to which it relates had been forfeited under Part 7, Division 3.
- (2) If a registered interstate forfeiture order is enforced in the Territory under this Act, the forfeited property vests in the Territory.
- (3) Property cannot vest in the Territory under subsection (2) if the property subject to the registered interstate forfeiture order has already vested in the Commonwealth, a State or another Territory, or in some other person or entity.

### **129 Duration of registration of interstate forfeiture order**

A registered interstate forfeiture order is enforceable in the Territory under this Act unless its registration is cancelled under section 130, despite that the order has already ceased to be in force under the law of the Commonwealth, or of the State or Territory, under which the order was made.

### **130 Cancellation of registration of interstate forfeiture order**

- (1) The Supreme Court may cancel the registration of an interstate forfeiture order if:
  - (a) registration was improperly obtained; or
  - (b) the order ceases to be in force under the law of the Commonwealth, or of the State or Territory, under which the order was made.
- (2) An application for the cancellation of the registration may be made by the person who applied for the registration, by the DPP, or by a person affected by the order.
- (3) If the registration of an interstate forfeiture order is cancelled under subsection (1) and the order relates wholly or in part to land:
  - (a) the applicant in relation to the cancellation must lodge an instrument with the Registrar-General advising that the registration of the order has been cancelled; and
  - (b) the forfeiture order only ceases to have effect in relation to the land when the instrument mentioned in paragraph (a) is registered under the *Land Title Act* and the Registrar-General has made the appropriate amendments to the land register.

## Part 11 Interests in registrable property

### 131 Registration of interest in land

- (1) If, in accordance with this Act, an instrument relating to land is lodged with the Registrar-General, the Registrar-General must register the instrument under the *Land Title Act*.
- (2) When an instrument of:
  - (a) the transfer of land in accordance with section 88 is lodged; or
  - (b) the forfeiture of land, together with a copy of the forfeiture order, is lodged under section 102(1); or
  - (c) the forfeiture of land under a registered interstate forfeiture order, together with a copy of the interstate order, is lodged under section 123(5);in addition to registering the instrument the Registrar-General must:
  - (d) register the Territory as the proprietor of the property; and
  - (e) endorse the land register in relation to the land to the effect that, when the instrument was registered the property ceased to be subject to or affected by any interests recorded in the register, including caveats, mortgages, charges, obligations and estates but not including rights-of-way, easements and restrictive covenants, to which it was subject or by which it was affected immediately before the registration of the instrument.
- (3) To the extent that a provision of this Act relating to land is inconsistent with the *Land Title Act*, the provision of this Act prevails, but this Act does not otherwise affect the operation of the *Land Title Act* in relation to land dealt with under this Act.
- (4) This Act does not prevent:
  - (a) a person from lodging with the Registrar-General:
    - (i) a caveat relating to land subject to a restraining order; or
    - (ii) an instrument relating to a dealing or purported dealing in land that is subject to a restraining order at the time that the instrument is lodged; or
    - (iii) an instrument relating to a dealing or purported dealing in land that was subject to a restraining order at the time that the dealing or purported dealing was carried out; or

- (b) the Registrar-General from:
- (i) giving notice to a person that a caveat has been lodged in relation to land that is subject to a restraining order; or
  - (ii) accepting an instrument relating to a dealing or purported dealing in land that is subject to a restraining order at the time that the instrument is lodged; or
  - (iii) accepting an instrument of a dealing or purported dealing in land that was subject to a restraining order at the time that the dealing or purported dealing was carried out;

but the Registrar-General must not register an instrument in the land register in relation to land while the land is subject to a registered restraining order.

### **132 Registration of interests in other property**

If a registrar of property registered under an Act other than the *Land Title Act* is notified in accordance with this Act that a restraining order for the property has been made or has ceased to be in force or that the property has been forfeited, the registrar must enter the relevant particulars in the register.

### **133 Imputation of knowledge that property is restrained**

- (1) If an instrument relating to the making of a restraining order in relation to land has been registered under section 131(1), any person who deals with the land while the restraining order is in force is taken to have notice, for all purposes, that it is in force.
- (2) If particulars of a restraining order for property other than land have been entered in an appropriate register under section 132, any person who deals with the property while the restraining order is in force is taken to have notice, for all purposes, that it is in force.

### **134 Instruments lodged with Registrar-General**

An instrument lodged with the Registrar-General under or for this Act must be in a form approved by the Registrar-General.

## **Part 12 Court jurisdiction and evidentiary matters**

### **135 Courts' jurisdiction**

- (1) The Supreme Court has jurisdiction in any proceedings under this Act.

- (2) The Local Court has jurisdiction in any proceedings under this Act in connection with property if:
  - (a) the property is not land; and
  - (b) the value of the property is not more than \$100 000.
- (3) Despite subsection (2), the Local Court has no jurisdiction in proceedings for an unexplained wealth declaration or an examination order.
- (4) A declaration, order, finding or decision of a court under this Act in relation to property is not invalid only because the value of the property exceeds the maximum permitted to be dealt with by the court under this section.
- (5) This section does not affect the jurisdiction of a court in criminal proceedings under this Act.

### **136 Proceedings**

- (1) Proceedings on an application under this Act are taken to be civil proceedings for all purposes.
- (2) Except in relation to an offence under this Act:
  - (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act; and
  - (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Act; and
  - (c) the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Act; and
  - (d) a question of fact to be decided by a court in proceedings on an application under this Act is to be decided on the balance of probabilities.

### **137 Appearance by Attorney-General**

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



**138 Stay or adjournment of proceedings**

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

**139 Opinion evidence**

- (1) For making an unexplained wealth declaration or a criminal benefits declaration, despite any other Act or any practice relating to hearsay evidence, a court may receive evidence of the opinion of a person who is experienced in the relevant field of speciality or in the investigation of illegal activities involving prohibited plants or dangerous drugs about:
  - (a) the market value at a particular time of a particular kind of prohibited plant or dangerous drug; or
  - (b) the amount, or range of amounts, ordinarily paid at a particular time for doing anything in relation to a particular kind of prohibited plant or dangerous drug; or
  - (c) the relative quality of plant material; or
  - (d) any other matter on which the court may require guidance.
- (2) For subsection (1), persons who are experienced in the matters mentioned in that subsection include:
  - (a) a police officer; and
  - (b) a member of the Australian Federal Police or the Australian Crime Commission; and
  - (c) an officer of Customs as defined in section 4(1) of the *Customs Act 1901* (Cth); and
  - (d) the DPP; and
  - (e) a botanist or other plant specialist; and
  - (f) a person who uses a particular type of drug or grows a particular type of plant.

**140 Evidence that property is crime-used or crime-derived**

A finding that particular property is crime-used or crime-derived, or that there are reasonable grounds for suspecting that it is crime-used or crime-derived, and any decision, declaration or order based on such a finding:

- (a) need not be based on a finding as to the commission of a particular forfeiture offence, but may be based on a general finding that a forfeiture offence has been committed; and
- (b) may be made whether or not any person has been charged with or convicted of the relevant forfeiture offence; and
- (c) may be made whether or not any person who owns or effectively controls the property in question has been identified.

**141 Evidence of offence proceedings**

In any proceedings under this Act in relation to property:

- (a) if a person has been convicted of the relevant forfeiture offence, the court may have regard to any or all of the following:
  - (i) a transcript of the evidence given in any proceedings for the offence;
  - (ii) the sentencing transcript;
  - (iii) any statement, deposition, exhibit or other material before a court in any proceedings for the offence;
  - (iv) a copy of any statement relating to the offence that was served on the person; or
- (b) if a person is taken to have been convicted of the relevant forfeiture offence because the person absconded, the court may have regard to a copy of any statement relating to the offence that was served on the person or that would have been served on the person but for the absconding.

**142 Transcripts of examinations**

For section 21(7), the transcript of an examination of a person under an examination order is admissible in any proceedings under this Act or under any other law in force in the Territory as evidence of a statement or disclosure made by the person in the course of complying with the examination order.

**143 Hearsay evidence**

A decision under this Act, except under Part 5, about the existence of grounds for doing or suspecting anything may be based on hearsay evidence or hearsay information.

**144 Evidence of compliance with production orders**

When a person produces a document or makes a document available, under a production order, the production or making available of the document and any information, document or anything else acquired as a direct or indirect consequence of complying with the order is not admissible against the person in evidence in any criminal proceedings except proceedings for an offence under section 25.

**145 Certificates under *Misuse of Drugs Act***

In any proceedings under this Act, a certificate mentioned in section 29 of the *Misuse of Drugs Act* is sufficient evidence of the facts stated in the certificate.

**146 Consent orders**

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

**147 Enforcing compliance with Act or court order**

- (1) If a person fails to take any action necessary to comply with or give effect to this Act or an order under this Act:
  - (a) at the direction of the Supreme Court or a judge, a Registrar of the Supreme Court may take the necessary action; and
  - (b) the action of the Registrar has effect for all purposes as if it had been done by the person.
- (2) The person who failed to take an action is liable to pay any costs incurred as a result of the Registrar taking the action under subsection (1) and the costs are recoverable by the Territory as a debt due and payable.

## Part 13            Miscellaneous matters

### 148            Public Trustee common fund

- (1) The following are to be paid into a common fund established under the *Public Trustee Act* and maintained by the Public Trustee:
  - (a) funds that are restrained under this Act and are transferred to the Public Trustee in accordance with section 107;
  - (b) income from a business or property managed by the Public Trustee in accordance with this Act;
  - (c) the proceeds of sale under section 109 or 112 of restrained property;
  - (d) money that, under this Act, is paid to the Territory, recovered by the Territory or forfeited;
  - (e) proceeds of the disposal of forfeited property;
  - (f) income from forfeited property.
- (2) Money that has been paid into a common fund in accordance with subsection (1) may be paid out by the Public Trustee:
  - (a) to cover any costs of storing, seizing or managing restrained or forfeited property that are incurred by the Public Trustee or a person appointed under this Act to manage the property; or
  - (b) as fees payable to the Public Trustee for the management of property or performance of functions under this Act; or
  - (c) under an order of a court as property released from restraint or forfeiture; or
  - (d) to a bona fide mortgagee or encumbrancee of property sold under this Act; or
  - (e) if the money is proceeds from the sale of property under a registered interstate forfeiture order – to the State or Territory that made the interstate order; or
  - (f) as a co-owner's share of property forfeited or sold under this Act; or
  - (g) in any circumstances provided for by the *Public Trustee Act*, or
  - (h) to the Territory.

**149 Exemption from stamp duty**

An instrument by which property is transferred to the Territory (or agreed to be transferred to or vested in the Territory):

- (a) under section 88; or
- (b) in accordance with a forfeiture order under Part 7, Division 3; or
- (c) in accordance with a registered interstate forfeiture order,

is exempt from stamp duty under the *Stamp Duty Act*.

**150 Property protected from seizure and forfeiture**

- (1) Property of the following kinds is protected from seizure, the application of a restraining order and forfeiture if it is not crime-used property:

- (a) family photographs;
- (b) family portraits;
- (c) necessary food;
- (d) necessary clothing.

- (2) Property of the following kinds is protected from seizure, the application of a restraining order and forfeiture if it is not crime-used property or crime-derived property:

- (a) ordinary tools of trade;
- (b) professional instruments;
- (c) reference books.

- (3) If the Regulations prescribe an amount for subsection (2), property is protected under that subsection only to the extent that the value of the property does not exceed the prescribed amount.

- (4) Property that is protected under this section:

- (a) is not to be seized under this Act or under a warrant under this Act; and
- (b) is not to be restrained; and
- (c) is not available for the purpose of satisfying a person's liability under section 72, 80 or 86; and

(d) cannot be forfeited under Part 7, Division 3.

**151 Transfer of property for value**

For this Act:

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

**152 Person must deliver up forfeited property**

A person who fails to:

- (a) deliver up forfeited property to the Territory on demand; or
- (b) permit the Territory to take possession of forfeited property;

commits an offence.

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

**153 Co-owned property**

If property is or is to be restrained or forfeited under this Act and the respondent to the relevant order is one of 2 or more co-owners of the property, the court that is hearing the matter must order that the whole of the property is restrained or forfeited unless the property is divisible or it is otherwise practical for the respondent's share only to be restrained or forfeited and sold.

**154 Restrained property not available to meet legal costs**

- (1) Property that is subject to a restraining order under this Act:
  - (a) is not to be released to meet the legal expenses of a person, whether the expenses are in relation to proceedings under this Act that relate to the forfeiture of the property or criminal proceedings; and
  - (b) is not to be taken into account for the purposes of an application by the person for Legal Aid.

- (2) If:
- (a) the Northern Territory Legal Aid Commission or another legal aid organisation provides a person with legal aid in respect of proceedings under this Act or criminal proceedings; and
  - (b) property of the person that was restrained under this Act is released:
    - (i) in whole; or
    - (ii) in part as surplus to an amount forfeited to the Territory (and any order for costs);

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

- (3) A charge under subsection (2):
- (a) is subject to any prior encumbrances on the property that take priority; and
  - (b) if the property is land – takes effect when the charge is registered under the *Land Title Act*.

- (4) If:
- (a) legal aid is granted to a person whose property is restrained under this Act; and
  - (b) the restrained property is:
    - (i) released on grounds of hardship; or
    - (ii) forfeited;

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

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

**155 Liability for carrying out functions under this Act**

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

**156 Later applications, orders or findings**

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

**157 Orders relating to sham transactions**

- (1) The DPP may apply to the Supreme Court for an order under subsection (2).
- (2) If the court that is hearing an application under subsection (1) is satisfied that a person is carrying out or has carried out a sham transaction, in order to promote justice the court may:
  - (a) declare that the transaction is void in whole or in part; or
  - (b) by order, vary the operation of the transaction in whole or in part.
- (3) If a court makes an order under this section, the court may make any ancillary orders that are just in the circumstances for or with respect to any consequential or related matter, including orders relating to:
  - (a) dealing with property; and
  - (b) disposing of any proceeds from the sale of property; and
  - (c) making payments of money; and
  - (d) creating a charge on property in favour of any person and the enforcement of the charge.
- (4) For this Act, a person carries out a sham transaction if he or she carries out, makes, gives or designs:
  - (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or



- (b) any scheme, plan, proposal, action, course of action or course of conduct;

for the purpose of directly or indirectly defeating, avoiding, preventing or impeding the operation of this Act in any respect.

### **158 Proceedings against body corporate**

- (1) If a body corporate commits an offence against this Act and it is proved that the offence occurred with the knowledge and consent of an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits the offence.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.
- (3) If, in proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that:
  - (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) the officer had that state of mind.
- (4) If an officer of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual authority, for the purposes of proceedings under this Act, the body corporate is taken also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

### **159 Substituted service**

If personal service is specified in any proceedings under this Act, the court that is hearing the matter may on application:

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

if the court is satisfied that the person to be served has absconded or is avoiding service.

**160 Charged with offence**

For this Act, a person is taken to have been charged with an offence if a complaint has been made against the person for the offence, whether or not:

- (a) a summons requiring the attendance of the person to answer the complaint has been issued; or
- (b) a warrant for the arrest of the person has been issued.

**161 Conviction of forfeiture offence**

(1) For this Act, a person is taken to have been convicted of a forfeiture offence if:

- (a) the person has been charged with and found guilty of a forfeiture offence, but a conviction is not recorded; or
- (b) the forfeiture offence was taken into account by a court in sentencing the person for another forfeiture offence; or
- (c) the person was charged with a forfeiture offence but absconded before the charge is finally determined.

(2) For this Act, a person's conviction is taken to have been quashed:

- (a) where the person is taken under subsection (1)(a) to have been convicted – if the finding of guilt is quashed or set aside; or
- (b) where the person is taken under subsection (1)(b) to have been convicted – if the decision of the court to take the forfeiture offence into account is quashed or set aside; or
- (c) where the person is taken under subsection (1)(c) to have been convicted – if the person is brought before a court to answer the charge and the person is discharged in respect of the forfeiture offence.

**162 Absconding in connection with offence**

A person charged with an offence absconds in connection with the offence if:

- (a) a warrant for the person's arrest for the offence is in force or the person was arrested without warrant either before or after the person was charged with the offence; and

- (b) the charge has neither been disposed of nor finally determined; and
- (c) at least 6 months have passed since the warrant was issued; and
- (d) the person cannot be found.

### **163 Effect of person's death**

- (1) A reference in this Act to property of a person includes a reference to the property of a deceased person where the property was owned or effectively controlled by the person immediately before his or her death or given away by the person at any time before his or her death.
- (2) An order may be applied for and made under this Act:
  - (a) in respect of property that is or was owned or effectively controlled or given away by a person who died before the application or order is made; and
  - (b) on the basis of the activities of a person who died before the application or order is made.
- (3) If a person who owns property that is subject to a restraining order dies, this Act continues to apply to the property in all respects as if the person had not died, regardless of whether the administrator of the person's estate or any other person in whom the property vests as a result of the death is an innocent party in relation to the property.
- (4) Without limiting this section, if a person who is a joint tenant of property that is subject to a restraining order dies:
  - (a) the person's death does not operate to vest the property in the surviving joint tenant or tenants; and
  - (b) the restraining order continues to apply to the property as if the person had not died.

### **164 Obstructing member of Police Force**

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

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

- (2) A person commits an offence if the person wilfully fails to produce any property to, or wilfully conceals or attempts to conceal any property from, a police officer in the performance of the officer's functions under this Act or a person assisting a police officer in the performance of those functions.

Maximum penalty: 1 000 penalty units or imprisonment for 5 years.

### **165 Client legal privilege**

For the avoidance of doubt, client legal privilege applies in relation to proceedings under this Act.

### **166 Regulations**

- (1) The Administrator may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) The Regulations may:
- (a) provide for carrying out the destruction of property under an order under section 111; and
  - (b) provide for carrying out the sale of deteriorating property under an order under section 112; and
  - (c) provide for obtaining possession of forfeited property; and
  - (d) provide for the storage and management of forfeited property; and
  - (e) provide for the disposal of forfeited property that has vested in the Territory.
- (3) The Regulations may provide that contravention of a regulation is an offence, including a regulatory offence, and prescribe a penalty of not more than 500 penalty units.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

**2 LIST OF LEGISLATION*****Criminal Property Forfeiture Act 2002 (Act No. 34, 2002)***

Assent date	16 July 2002
Commenced	1 June 2003 ( <i>Gaz</i> G21, 28 May 2003, p 2)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date	7 January 2004
Commenced	17 March 2004 ( <i>Gaz</i> G11, 17 March 2004, p 8)

***Australian Crime Commission (Consequential Amendments) Act 2005 (Act No. 7, 2005)***

Assent date	17 March 2005
Commenced	18 May 2005 (s 2, s 2 <i>Australian Crime Commission Act 2005</i> (Act No. 6, 2005) and <i>Gaz</i> G20, 18 May 2005, p 2)

***Justice Legislation Amendment Act (No. 2) 2007 (Act No. 32, 2007)***

Assent date	12 December 2007
Commenced	8 January 2008 ( <i>Gaz</i> S2, 8 January, 2008)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date	20 May 2010
Commenced	1 July 2010 ( <i>Gaz</i> G24, 16 June 2010, p 2)

***Statute Law Revision Act 2011 (Act No. 30, 2011)***

Assent date	31 August 2011
Commenced	21 September 2011 ( <i>Gaz</i> G38, 21 September 2011, p 5)

***Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012 (Act No. 23, 2012)***

Assent date	21 November 2012
Commenced	1 January 2013 ( <i>Gaz</i> G51, 19 December 2012, p 4)

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**3 LIST OF AMENDMENTS**

pt 1 hdg	amd No. 30, 2011, s 3
s 4	amd No. 30, 2011, s 3
s 5	amd No. 1, 2004, s 62; No. 30, 2011, s 3
ss 6 – 13	amd No. 30, 2011, s 3
s 14	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 16	amd No. 12, 2010, s 3
s 18	amd No. 30, 2011, s 3
s 21	amd No. 12, 2010, s 3; No. 30, 2011, s 3
ss 23 – 24	amd No. 30, 2011, s 3
s 25	amd No. 12, 2010, s 3; No. 30, 2011, s 3
ss 26 – 27	amd No. 30, 2011, s 3
s 29	amd No. 30, 2011, s 3
ss 30 – 31	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 32	amd No. 7, 2005, s 3; No. 12, 2010, s 3; No. 30, 2011, s 3
ss 33 – 35	amd No. 30, 2011, s 3
s 36	amd No. 12, 2010, s 3; No. 30, 2011, s 3
ss 37 – 39	amd No. 30, 2011, s 3
s 40	amd No. 32, 2007, s 11; No. 30, 2011, s 3
s 41	amd No. 30, 2011, s 3
ss 43 – 44	amd No. 30, 2011, s 3
ss 46 – 47	amd No. 30, 2011, s 3
s 48	amd No. 12, 2010, s 3
ss 49 – 50	amd No. 30, 2011, s 3
s 51	amd No. 32, 2007, s 12
ss 52 – 53	amd No. 30, 2011, s 3
s 55	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 63	amd No. 1, 2004, s 62; No. 30, 2011, s 3
s 64	amd No. 30, 2011, s 3
s 66	amd No. 30, 2011, s 3
ss 68 – 69	amd No. 30, 2011, s 3
s 71	amd No. 30, 2011, s 3
ss 74 – 75	amd No. 30, 2011, s 3
ss 77 – 79	amd No. 30, 2011, s 3
s 81	amd No. 30, 2011, s 3
s 82	amd No. 1, 2004, s 62; No. 30, 2011, s 3
ss 83 – 85	amd No. 30, 2011, s 3
s 88	amd No. 30, 2011, s 3
ss 92 – 95	amd No. 30, 2011, s 3
ss 111 – 112	amd No. 30, 2011, s 3
s 118	amd No. 12, 2010, s 3; No. 30, 2011, s 3
s 121	amd No. 30, 2011, s 3
s 123	amd No. 30, 2011, s 3
ss 126 – 127	amd No. 30, 2011, s 3
ss 130 – 131	amd No. 30, 2011, s 3
s 134	amd No. 30, 2011, s 3
s 136	amd No. 30, 2011, s 3
s 138	amd No. 30, 2011, s 3
s 139	amd No. 7, 2005, s 3; No. 30, 2011, s 3
s 140	amd No. 30, 2011, s 3
s 142	amd No. 30, 2011, s 3
s 145	amd No. 30, 2011, s 3
pt 13 hdg	amd No. 30, 2011, s 3
ss 150 – 151	amd No. 30, 2011, s 3
s 152	amd No. 12, 2010, s 3; No. 30, 2011, s 3
ss 153 – 154	amd No. 30, 2011, s 3

## ENDNOTES

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- s 157            amd No. 30, 2011, s 3  
ss 160 – 162    amd No. 30, 2011, s 3  
s 164            amd No. 12, 2010, s 3; No. 30, 2011, s 3  
s 165            amd No. 23, 2012, s 32  
s 166            amd No. 30, 2011, s 3