

## **Confiscation of Proceeds of Crime Amendment Bill 2005**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the *Confiscation of Proceeds of Crime Act 1989*, the *Civil Liability Act 2002*, the *Crimes Act 1900* and the *Forfeiture Act 1995* as follows:

- (a) to include offences relating to drug precursors and the ongoing supply of prohibited drugs as offences on which confiscation orders under the Principal Act may be based,
- (b) to limit the circumstances in which certain drug offences may be offences on which a confiscation order may be based to offences involving more than a small quantity of a prohibited plant or prohibited drug,
- (c) to make procedures relating to applications for penalty orders based on drug offences (**drug proceeds orders**) consistent with those for orders based on other offences (**pecuniary penalty orders**) and to also make assessments of proceeds of such offences for the purposes of drug proceeds orders consistent with those for the purposes of pecuniary penalty orders,
- (d) to provide for a new procedure for freezing and dealing with property that is or may be tainted property in relation to a serious offence or benefits derived from a serious offence or drug offences proceeds, being a process initiated by a notice issued by an authorised justice and confirmed by a court dealing with the relevant offence,
- (e) to provide for the recognition and enforcement of additional interstate instruments relating to confiscation of property,
- (f) to provide for the supervision of and control by the Public Trustee of damages awarded to offenders suffering from mental illness, being damages arising out of conduct or in circumstances that would (but for that illness) have constituted a serious offence,
- (g) to enact new money laundering offences,
- (h) to enable the Supreme Court to apply the forfeiture rule (that is, the rule that prevents a person who is found guilty of murder from benefiting from the victim's estate) to persons found not guilty of murder by reason of mental illness,
- (i) to make other consequential amendments and provisions of a savings and transitional nature.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Confiscation of Proceeds of Crime Act 1989* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Civil Liability Act 2002* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 3.

**Clause 6** is a formal provision that gives effect to the amendments to the *Forfeiture Act 1995* set out in Schedule 4.

#### **Schedule 1 Amendment of Confiscation of Proceeds of Crime Act 1989**

##### **Drug trafficking offences**

**Schedule 1 [6]** substitutes the definition of **drug trafficking offence** in section 4 of the *Confiscation of Proceeds of Crime Act 1989* (the **Principal Act**). On conviction for an offence included in this definition, a person may be made the subject of a drug proceeds order or a forfeiture order under the Principal Act. The new definition includes an additional offence relating to possession of precursors for prohibited drugs and also limits the application of the Principal Act to offences involving more than a small quantity of a prohibited plant or prohibited drug.

#### **Drug proceeds orders**

The provisions of the Principal Act relating to drug proceeds orders have not yet commenced. Currently, they provide that a drug proceeds order must be granted by a court if a person is convicted of a drug trafficking offence and the court determines that the person has received a payment or reward in connection with drug trafficking. In assessing those payments or rewards and making an order, a court may order that the amount payable is the amount that may be realised at the time the order is made rather than the amount of the payments or rewards received. The amendments will now require the court to make a drug proceeds order against a person convicted of a drug trafficking offence if the prosecution applies for such an order and if the court determines that the person has derived a benefit from drug trafficking at any time. The amount of the order will be the amount assessed as the benefits derived. This aligns drug proceeds orders with pecuniary penalty orders with respect to assessment of property that may be confiscated.

**Schedule 1 [19]** amends section 13 of the Principal Act to make the procedures for applying for drug proceeds orders the same as those currently applying to pecuniary penalty orders. **Schedule 1 [5] and [20]–[22]** make consequential amendments.

**Schedule 1 [25]** substitutes sections 29 and 30 of the Principal Act. Proposed section 29 requires a court that convicts a person of a drug trafficking offence to order the person to pay a pecuniary penalty equal to the benefits the person derived in connection with drug trafficking if it believes the person has derived a benefit in connection with drug trafficking and if an application is made for the order. The previous requirement for a court to take any such order into account before imposing a fine has been removed. Proposed section 30 sets out procedures for the assessment of benefits derived in connection with drug trafficking. The court is to have regard to the same kind of matters considered in relation to pecuniary penalty orders, that is, property that came into the possession or control of the person because of drug trafficking, benefits provided as a result of any public promotion, the market value of similar prohibited plants or prohibited drugs and usual payments for doing the acts constituting the offence and the value of the person's property and income and expenditure within the previous 6 years. **Schedule 1 [26]** makes a consequential amendment.

**Schedule 1 [27]** amends section 31 of the Principal Act to remove provisions relating to amounts that may be realised from payments or rewards in connection with drug trafficking, as these are no longer relevant to the assessment process. The amendment also omits provisions relating to evidence as to the value of substances, which are re-enacted by **Schedule 1 [28]**.

**Schedule 1 [28]** inserts proposed section 31A which contains provisions of general application relating to evidence that may be given in proceedings for drug proceeds orders as to the market value of substances involved in drug trafficking offences.

**Schedule 1 [29]** repeals sections of the Principal Act that are no longer relevant to the assessment of benefits from drug trafficking. The amendment also inserts proposed section 32 which contains provisions, similar to those relating to pecuniary penalty orders, setting out the circumstances when a court may treat property subject to the effective control of the defendant as property of the defendant. The proposed section also provides for notice to be given to persons having an interest in the property and confers a right on such persons to appear and give evidence at the

proceedings for the drug proceeds order. **Schedule 1 [15]** makes a consequential amendment.

### **Freezing notices**

Currently, a restraining order may be obtained under the Principal Act in the Supreme Court against property of a person (the **defendant**) who has been, or is about to be, charged with a serious offence. An order may relate to specified property or property of the defendant generally. The proposed Act provides for an additional procedure to restrain dealings in specified property by offenders pending the hearing of criminal proceedings and the outcome of an application for a confiscation order.

The new procedure enables authorised justices to issue freezing notices which must be confirmed by a court dealing with the relevant offence and also provides for orders to be made in relation to the property pending the outcome of proceedings.

**Schedule 1 [33]** inserts proposed Division 1A (proposed sections 42A–42V) of Part 3.

Proposed section 42A defines expressions used in the proposed Division.

Proposed section 42B enables an authorised officer to apply to an authorised justice for a freezing notice in respect of specified property if the officer has reasonable grounds to believe that a person has committed a serious offence and the property is tainted property in respect of the offence or the person has derived benefits from committing the offence. (Property is **tainted property** if it is used in the commission of an offence or is derived or realised from such property or is derived or realised as a result of the commission of an offence or as a result of a public promotion.) A freezing notice may also be applied for in relation to property of a person other than the person who committed the offence.

Proposed section 42C enables an authorised justice to issue a freezing notice if the authorised justice is satisfied that the person has been convicted of, or charged with, an offence or is likely to be so charged and there are reasonable grounds for the beliefs of the authorised officer set out in the application.

Proposed section 42D provides for the form of a freezing notice.

Proposed section 42E enables applications for freezing notices to be made by telephone or facsimile in urgent circumstances.

Proposed section 42F requires notice of the issue of a freezing notice to be given by the applicant to the defendant, the owner of affected property and any other person subject to the freezing notice.

Proposed section 42G makes it an offence to give false or misleading information in, or in connection with, an application for a freezing notice.

Proposed section 42H requires records to be kept of the grounds for issuing a freezing notice but does not require the identity of a person to be recorded if an authorised justice is satisfied that the safety of the person might be jeopardised.

Proposed section 42I requires a person who obtains a freezing notice to apply to an appropriate court for confirmation of the notice within 14 days after it is issued.

Proposed section 42J provides for notice to be given to third parties of an application to confirm a freezing notice.

Proposed section 42K enables a defendant, an authorised officer or a person who has an interest in property affected by a freezing notice to apply to an appropriate court to have the notice set aside or varied. Any such application may be heard before the day set down for the confirmation application.

Proposed section 42L sets out the circumstances in which an appropriate court may confirm a freezing notice. The notice may be confirmed if there has been a conviction or proceedings have been commenced and there are reasonable grounds to believe the matters set out in the affidavit supporting the application. The affidavit must contain a statement as to belief relating to the defendant's guilt and a statement that the property is tainted property or that the defendant derived benefits because of committing the offence. In the case of property of another person, the affidavit must

contain a statement that the property is tainted property or is subject to the effective control of the defendant who has derived benefits from the offence. A court that confirms a freezing notice must also make property orders under proposed section 42M.

Proposed section 42M requires an appropriate court that confirms a freezing notice to make an order directing the Commissioner of Police (the **Commissioner**) to take control of the property, to dispose of it in a specified manner and to retain any proceeds. The court may also instead, if it thinks it appropriate in the circumstances of the case, make other orders in relation to the property, including orders that the defendant not dispose of the property or the Public Trustee or Commissioner retain or take control of the property. Orders may also be made providing for the payment of reasonable living expenses to the defendant and regulating other matters relating to the control of the property.

Proposed section 42N enables the appropriate court to refuse to confirm a freezing notice unless the State gives undertakings with respect to the payment of damages or costs in relation to the notice.

Proposed section 42O makes it an offence to knowingly contravene a freezing notice. It also enables an application to be made to have a disposition of or dealing with property set aside if it is made or done in contravention of a freezing notice.

Proposed section 42P sets out the circumstances when a freezing notice ceases to have effect, including if the defendant is not charged with a serious offence at the end of the period of 48 hours after the issuing of the notice.

Proposed section 42Q enables a court to set aside or vary a freezing notice if it makes a forfeiture order in respect of property subject to the notice or a pecuniary penalty order or drug proceeds order against the defendant concerned.

Proposed section 42R enables a freezing notice to be discharged by the payment to the State of an amount equal to the value of the property subject to the notice.

Proposed section 42S provides for the return of property, or payment of the proceeds of property, on a freezing notice ceasing to be in force.

Proposed section 42T provides for the Commissioner to enter into arrangements with the Public Trustee or any other person with respect to the management of property under the control of the Commissioner under a freezing notice.

Proposed section 42U enables an appeal to be made against a refusal to confirm a freezing notice by the Attorney General, the Director of Public Prosecutions or the Commissioner.

Proposed section 42V enables an appropriate court to vary a freezing notice or to set it aside, or to make an order with respect to the carrying out of an undertaking with respect to the payment of costs or damages by the State. An application may be made by an appropriate officer, the owner of the property, a person directed to take control of the property or any other person given leave by the court.

**Schedule 1 [1]** defines **appropriate court** for the purposes of an application for a freezing notice.

**Schedule 1 [2]** amends the definition of **appropriate officer** in section 4 of the Principal Act to make the Commissioner for the Independent Commission Against Corruption an appropriate officer for the purposes of freezing notices.

**Schedule 1 [3]** defines **authorised officer** for the purposes of an application for a freezing notice.

**Schedule 1 [24]** amends section 27 of the Principal Act to enable property declared by a court to be under the effective control of a person to be made subject to a freezing notice for the purpose of using the property to satisfy a pecuniary penalty order.

**Schedule 1 [40]** inserts a new heading, as a result of the application of provisions of general application to both restraining orders and freezing notices.

**Schedule 1 [41]** substitutes section 46 of the Principal Act so as to apply provisions

that currently enable the Public Trustee to have the expenses of defending a criminal charge of a defendant who is subject to a restraining order taxed to the Commissioner in respect of any such expenses of a defendant who is subject to a freezing notice.

**Schedule 1 [42]–[48]** amend section 47 of the Principal Act to confer on the Commissioner and the Public Trustee, in relation to property subject to a freezing notice, the power to apply for a direction to pay to the State an amount under a pecuniary penalty order out of property subject to a freezing notice. This power is already conferred on the Public Trustee in relation to property subject to a restraining order.

**Schedule 1 [49]–[52]** amend section 48 of the Principal Act to make property subject to a freezing notice subject to a charge to secure payment of an amount under a pecuniary penalty order or a drug proceeds order if such an order is made against the person subject to the notice.

**Schedule 1 [53]–[58]** amend section 49 of the Principal Act to enable particulars of a freezing notice to be recorded on registers of title to, or charges over, property that is subject to the notice.

**Schedule 1 [59]** amends section 51 of the Principal Act to make it an offence to hinder or obstruct the Public Trustee or the Commissioner in the performance of obligations under a freezing notice.

**Schedule 1 [60]** inserts proposed section 51A which removes the right of a person to rely on the privilege against self-incrimination if the person is required to furnish a statement to the Public Trustee or the Commissioner giving particulars of property but prevents any such statement from being used in criminal proceedings.

**Schedule 1 [61] and [62]** amend section 52 of the Principal Act to extend protection against liability currently given to the Public Trustee in relation to liability for charges for property subject to a restraining order to property subject to a freezing notice. Protection is also extended to the Commissioner when the Commissioner has control of property under a freezing notice.

**Schedule 1 [63] and [64]** amend section 53 of the Principal Act to enable the Public Trustee and the Commissioner to receive fees for the exercise of functions in relation to property subject to a freezing notice.

**Schedule 1 [65]–[67]** amend section 54 of the Principal Act to enable a court to revoke a freezing notice if the defendant concerned gives satisfactory security for the payment of any pecuniary penalty that may be imposed or gives other undertakings satisfactory to the court.

**Schedule 1 [68]** omits a section containing provisions relocated by another amendment.

**Schedule 1 [69] and [70]** amend section 57 of the Principal Act to extend evidentiary provisions relating to the Public Trustee's right to act under a restraining order to the Public Trustee and the Commissioner in relation to the right to act under a freezing notice.

**Schedule 1 [71]** amends section 62 of the Principal Act to apply to proceedings relating to freezing notices provisions preventing non-disclosure of documents on grounds of self-incrimination or breach of an obligation.

**Schedule 1 [76]** amends section 74 of the Principal Act to restrict the jurisdiction of Local Courts dealing with offences relating to the contravention of freezing notices to matters involving property not exceeding \$10,000 in value.

**Schedule 1 [77]** amends section 74 of the Principal Act to confer on the Supreme Court jurisdiction to deal with offences relating to the contravention of freezing notices to matters involving property exceeding \$10,000 in value.

**Schedule 1 [96] and [97]** amend section 89 of the Principal Act to enable freezing notices to be applied to property in another State for the purposes of the registration of the notice in the other State.

**Schedule 1 [98]–[101]** amend section 90 of the Principal Act to apply provisions for

payment of costs on variation of an order registered in another State to freezing notices registered in another State.

**Schedule 1 [104]** makes a consequential amendment.

#### **Restraining orders**

**Schedule 1 [34]** amends section 43 of the Principal Act to enable an application to be made for a restraining order after a person has been convicted of a serious offence, in addition to before or after a person has been charged. **Schedule 1 [35]** makes a consequential amendment.

**Schedule 1 [36]** amends section 43 of the Principal Act to prohibit a restraining order from being made in respect of property affected by a freezing notice or an application for a freezing notice.

**Schedule 1 [37]** amends section 45 of the Principal Act to insert a provision requiring notice to be given of an application for a further order relating to a restraining order.

**Schedule 1 [68]** makes a consequential amendment.

**Schedule 1 [38]** renumbers section 50, relating to contravention of restraining orders, as a result of the application of certain provisions to both restraining orders and freezing notices.

**Schedule 1 [39]** renumbers section 55, relating to the duration of restraining orders, as a result of the application of certain provisions to both restraining orders and freezing notices.

**Schedule 1 [82]** makes an amendment consequential on the renumbering of provisions.

#### **Recognition of interstate instruments**

**Schedule 1 [7] and [9]–[11]** amend section 4 of the Principal Act to insert a new definition of *interstate crime related property declaration* and to extend other existing definitions of interstate instruments to instruments other than orders. (In some jurisdictions restraining orders and confiscation orders take the form of declarations or other kinds of instruments.)

**Schedule 1 [14]** amends section 4 of the Principal Act to include the Australian Capital Territory as a State for the purposes of the Act. This has the effect of extending recognition provisions relating to laws of other States to the Australian Capital Territory.

**Schedule 1 [79] and [80]** amend section 77 of the Principal Act to enable the registration of interstate crime related property declarations under the Act.

**Schedule 1 [81]** amends section 77 of the Principal Act to provide that a sealed copy of an interstate instrument is not required for registration if it is not the practice of the issuing court or body to seal copies of the instrument concerned.

**Schedule 1 [82]** inserts proposed section 78A which provides for registered interstate crime related property declarations to be enforced as interstate forfeiture orders, subject to the regulations.

**Schedule 1 [84] and [85]** amend section 80 of the Principal Act to prevent a State court from revoking, varying or limiting an interstate crime related property declaration.

**Schedule 1 [86] and [87]** amend section 81 of the Principal Act to provide for the duration of registration of interstate crime related property declarations.

**Schedule 1 [88] and [89]** amend section 82 of the Principal Act to enable the Supreme Court to cancel the registration of interstate crime related property declarations if registration was improperly obtained or the declaration ceases to be in force in the State in which it was made.

**Schedule 1 [90]–[94]** amend section 85 of the Principal Act to provide for the interim registration of facsimile copies of interstate crime related property declarations.

#### **Other amendments**

**Schedule 1 [4]** omits the definitions of *bank*, *building society* and *credit union* from section 4 of the Principal Act. Those terms are no longer used in the definition of

**financial institution**, which is to be amended by **Schedule 1 [8]** to refer to authorised deposit-taking institutions.

**Schedule 1 [12]** amends section 4 of the Principal Act to include as tainted property for the purposes of the Principal Act property that is substantially derived from property used in the commission of a serious offence or from a serious offence or a public promotion related to a serious offence. **Schedule 1 [30]** amends section 35 of the Principal Act to make a similar amendment.

**Schedule 1 [13]** amends section 4 of the Principal Act to recognise that court attendance notices may not be able to be served.

**Schedule 1 [16] and [17]** amend section 6 of the Principal Act to update references to informations.

**Schedule 1 [18], [72], [73] and [78]** amend sections 7, 69, 72 and 74 of the Principal Act to replace references to the money laundering offence currently contained in the Principal Act with references to new offences to be inserted by Schedule 3 to the proposed Act into the *Crimes Act 1900*.

**Schedule 1 [23]** amends section 18 of the Principal Act to require a court considering any hardship likely to arise from a forfeiture order to take into account responsibilities arising from an Aboriginal person or Torres Strait Islander's ties to extended family and kinship.

**Schedule 1 [31]** amends section 35 of the Principal Act to include as property that may be the subject of search and seizure powers property substantially derived from a public promotion involving the depiction of a serious offence or the expression of the offender's thoughts, opinions or emotions regarding a serious offence.

**Schedule 1 [32]** amends section 41 of the Principal Act to update references to the commencement of proceedings.

**Schedule 1 [74]** omits Division 1 of Part 5 of the Principal Act, which contains the money laundering offence. **Schedule 1 [75]** makes a consequential amendment.

**Schedule 1 [95]** amends section 87 of the Principal Act to limit the amount of property that may be the subject of a forfeiture order to property the value of which does not exceed the maximum amount that may be awarded by a Local Court when exercising its general civil jurisdiction.

**Schedule 1 [103]** amends section 91 of the Principal Act to update an outdated reference.

**Schedule 1 [106]** enables regulations to be made containing savings and transitional provisions as a result of the enactment of the proposed Act.

**Schedule 1 [107]** inserts savings and transitional provisions into Schedule 1 to the Principal Act as a result of the enactment of the proposed Act. **Schedule 1 [105]** makes a consequential amendment.

## **Schedule 2 Amendment of Civil Liability Act 2002**

### **Damages arising out of criminal conduct by persons suffering from mental illness**

Damages payable to persons who are injured as a result of engaging in criminal conduct are limited by the *Civil Liability Act 2002*. Damages payable to a person in respect of injury or damage arising from the criminal conduct of the person, being a person who was suffering mental illness at the time of the conduct, are limited to damages other than damages for non-economic loss or loss of earnings. The amendments insert proposed Division 2 of Part 7 (proposed sections 54B–54H) into the *Civil Liability Act 2002* which provides for any damages awarded to such a person to be subject to control by the Public Trustee.

**Schedule 2 [2]** inserts proposed Division 2 of Part 7.

Proposed section 54B contains definitions of terms used in the proposed Division. Proposed section 54C applies the proposed Division to damages awarded in respect of injury or damage to a person that occurred at the time of, or following, conduct that, on the balance of probabilities, would have constituted a serious offence if the

person had not been suffering from a mental illness, being conduct that contributed materially to the injury or damage or risk of injury or damage to the person. The Division will not apply to damages awarded against certain public sector defendants that are required to be paid into a victim trust fund.

Proposed section 54D requires a court that awards the damages to make an order (a **damages supervision order**) that the Public Trustee take control of the amount of damages. The order must be made if the court is satisfied that it is an award of damages to which the proposed Division applies and that it is in the best interests of the person to make the order. The Public Trustee must ensure that the amount of damages is used to cover past, present and future costs of treatment, rehabilitation and care.

Proposed section 54E contains additional matters that may be included in a damages supervision order.

Proposed section 54F provides that a damages supervision order may be made even though the estate of the person concerned is under the supervision of the Protective Commissioner and excludes the operation of the *Protected Estates Act 1983* if a damages supervision order is made.

Proposed section 54G makes it an offence to hinder or obstruct the Public Trustee in the exercise of the Public Trustee's obligations under a damages supervision order.

Proposed section 54H provides for the proof of the entitlement of the Public Trustee to act in relation to property subject to the order.

**Schedule 2 [1]** makes a consequential amendment.

**Schedule 2 [3]** enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act.

### **Schedule 3 Amendment of Crimes Act 1900**

**Schedule 3** inserts proposed Division 1A (proposed sections 193A–193G) of Part 4 into the *Crimes Act 1900*. The proposed Division contains offences relating to proceeds derived from crime.

Proposed section 193A contains definitions of terms used in the proposed Division.

It defines **dealing with** property to include receiving, possessing, concealing or disposing of property, bringing property into New South Wales and engaging directly or indirectly in a transaction and also defines **instrument of crime, proceeds of crime** and **serious offence**.

Proposed section 193B replaces the money laundering offence formerly contained in the *Confiscation of Proceeds of Crime Act 1989*. The proposed section makes it an offence to deal with proceeds of crime (that is, proceeds of a serious offence) knowing that it is proceeds of crime and intending to conceal that it is proceeds of crime (maximum penalty 20 years imprisonment), to deal with proceeds of crime knowing that it is proceeds of crime (maximum penalty 15 years imprisonment) and to deal with proceeds of crime being reckless as to whether it is proceeds of crime (maximum penalty 10 years imprisonment).

Proposed section 193C makes it a summary offence to deal with property, that is property there are reasonable grounds to suspect is proceeds of an unlawful activity, (maximum penalty 50 penalty units or imprisonment for 2 years, or both). It will be a defence if a defendant proves that he or she had no reasonable grounds for suspecting that the property was proceeds of an offence.

Proposed section 193D makes it an offence to deal with property (being money or other valuables) intending that the property will become an instrument of crime if the property subsequently becomes such an instrument (maximum penalty 15 years imprisonment). It will also be an offence to deal with property being reckless as to whether or not the property subsequently will become an instrument of crime if the property subsequently becomes such an instrument (maximum penalty 10 years imprisonment). Proceedings for the offences may not be commenced without the consent of the Director of Public Prosecutions.



Proposed section 193E enables alternative verdicts to be reached.

Proposed section 193F contains evidentiary provisions.

Proposed section 193G inserts a transitional provision.

#### **Schedule 4 Amendment of Forfeiture Act 1995**

The forfeiture rule is a rule at common law that prevents a person who has unlawfully killed another person from acquiring a benefit as a result of the killing. Under the *Forfeiture Act 1995* (the **Principal Act**), a person who would otherwise be subject to the forfeiture rule may apply to the Supreme Court to modify the rule to enable the person to acquire a benefit if the Court is satisfied that justice requires the effect of the rule to be modified. However, the Principal Act provides that the power to modify the forfeiture rule does not apply to unlawful killings that constitute murder. Such killings are still subject to the common law. At common law the rule does not apply in the case of a person suffering from mental illness at the time of killing another person, and found not guilty or who would have been found not guilty, because of that illness.

**Schedule 4 [5]** inserts proposed Part 3 (proposed sections 10–14) into the Principal Act to enable the Supreme Court to apply the forfeiture rule in a case where a killer has been found not guilty by reason of mental illness.

Proposed section 10 contains definitions of terms used in the proposed Part.

Proposed section 11 enables the Supreme Court to make an order (a **forfeiture application order**) applying the forfeiture rule to a person who has killed another person and who is found not guilty of murder by reason of mental illness, if an application is made by an interested person. The Court may make an order if satisfied that justice requires the rule to be applied as if the offender had been found guilty of murder. On an order being made, the forfeiture rule is to apply for all purposes as if the offender had been found guilty of murder.

Proposed section 12 requires applications for the application of the forfeiture rule to be made within 6 months of the person being found not guilty of murder.

Proposed section 13 enables the Supreme Court to revoke a forfeiture application order on the application of an interested person.

Proposed section 14 enables a forfeiture application order to be made in relation to a killing occurring before or after the commencement of the proposed Part and certain proceedings.

**Schedule 4 [3]** amends section 3 of the Principal Act to insert a definition of **forfeiture application order**.

**Schedule 4 [1], [2] and [4]** make consequential amendments.