

## CRIMES (CONFISCATION OF PROFITS) BILL 1985

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### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to provide for—

- (a) the making of forfeiture orders, under which money and any other property used in or derived from the commission of serious offences (including any indictable offence, certain drug offences and other offences prescribed by regulation) may be confiscated, whether or not the money or property belongs to the person who committed the offence;
  - (b) the making of pecuniary penalty orders, under which offenders are to pay pecuniary penalties equivalent to the estimated profits derived from the commission of offences;
  - (c) the making of restraining orders, under which money or property may not be disposed of or otherwise dealt with, where charges are pending in respect of offences; and
  - (d) the enactment of ancillary provisions (including provisions for the issue of search warrants authorising the seizure of money or property).
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### PART I—PRELIMINARY

Clause 1 specifies the short title to the proposed Act.

Clause 2 provides that the provisions of the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 (1) defines certain expressions for the purposes of the proposed Act. Important definitions include the following:

“appropriate officer” generally defines the persons who may apply for orders under the proposed Act. The Solicitor for Public Prosecutions may apply for forfeiture orders, pecuniary penalty orders or restraining orders in any court. The Commissioner of Police may apply for forfeiture orders or pecuniary penalty orders in proceedings in Local Courts. Provision is also made for the

prescription of other officers in respect of prescribed functions;

“property” includes real and personal property and any estate or interest in real or personal property, and money, and any debt, and any cause of action for damages (including damages for personal injury), and any other chose in action, and any other right or interest;

“relevant period” defines the period in which applications for forfeiture orders or pecuniary penalty orders may be made. Generally this is within 6 months after conviction for the offence or, where a person has absconded before a charge is dealt with, 6 months after the issue of an unsuccessful warrant of arrest;

“serious offence” means—

- (a) an indictable offence;
- (b) the offence of supplying a restricted substance prescribed under section 16 of the Poisons Act 1966; or
- (c) an offence prescribed by regulations;

“tainted property” means property that—

- (a) was used in, or in connection with, the commission of a serious offence; or
- (b) was derived or realised, directly or indirectly, by any person, as a result of the commission of a serious offence.

Clause 3 (2) provides that a person shall be taken to have been convicted of an offence where a section 556A order under the Crimes Act 1900 has been made, where the offence has been taken into account in passing sentence in respect of another offence or where the person has absconded (that is, 6 months after the issue of an unsuccessful warrant of arrest).

Clause 3 (3) amplifies clause 3 (2).

Clause 3 (4) provides that a person shall be taken to have been charged with an offence if an information has been laid.

Clause 3 (5) specifies the time at which a person is taken to have absconded.

Clause 3 (6)–(8) are machinery provisions.

Clause 4 states that the proposed Act will bind the Crown.

## PART II—FORFEITURE ORDERS

Clause 5 (1) provides for applications for, and the issue of, orders for the forfeiture of tainted property. Applications may be made to the court where the offender was convicted or to the Supreme Court. Before making an order the court must take into consideration the use that is ordinarily or had been intended to be made of the property and any hardship that may reasonably be likely to arise (on the part of any person) if the order were made.



Clause 5 (2) provides for the giving of notice to interested parties and gives interested parties a right of appearance in the application proceedings.

Clause 5 (3) requires a court to presume that (in the absence of evidence to the contrary) property in the possession of an offender at or immediately after the commission of the offence was used in, or in connection with, the commission of the offence. Where there is evidence that any such property was not so used the court shall not make an order unless it is satisfied, on the civil standard of proof, that the property was so used.

Clause 5 (4) provides for the specification by a court of the extent of the estate, interest, etc., in property to which an order is to apply.

Clause 6 vests in the Crown property which is subject to a forfeiture order and provides for the disposal of the property (after the hearing of any appeal).

Clause 7 makes provision for the recovery by an innocent third party of an interest (or its value) in property which is the subject of a forfeiture order where the third party, for special reasons, did not or was unable to claim the interest at the forfeiture proceedings.

Clause 8 operates to discharge a forfeiture order on the quashing of a conviction or on the payment to the State of the value of the forfeited property.

Clause 9 provides for the return of property where a forfeiture order is discharged.

### PART III—PECUNIARY PENALTY ORDERS

Clause 10 provides for applications for, and the issue of, orders for the payment of pecuniary penalties equal to the assessed value of the benefits derived from the commission of offences. Applications may be made to the court where the offender was convicted or to the Supreme Court. In each case the court assesses the value of the benefits derived.

Clause 11 specifies the matters which a court shall have regard to in assessing the amount of a pecuniary penalty. Included is the relative value of offender's property before and after the commission of an offence or a series of offences. Except where evidence is given to the contrary, where the value of an offender's property after the commission of an offence or a series of offences exceeds the value of the property before that commission, the value of the benefits derived shall be treated as not being less than that excess. The extent of the offender's involvement in the commission of the offence may also be taken into account. Expenses or outgoings in connection with the commission of the offence shall be disregarded. Benefits derived outside the State may be taken into account.

### PART IV—RESTRAINING ORDERS

Clause 12 provides for the making of applications to the Supreme Court for the issue of orders restraining the disposal of the property of persons who have been, or are about to be, charged with serious offences or directing the Public Trustee to take control of any such property. An application must be supported by an affidavit stating, amongst other things, that the property is tainted property or that the offender derived benefits

from the commission of the offence. Where a person has not been charged, the Court must be satisfied that the person is likely to be charged within 48 hours of the making of the order. In an order, the Court may make provision for meeting the reasonable living, etc., expenses of an offender out of the property. The Court may refuse to make an order unless the State undertakes to pay any damages or costs arising out of the making of the order.

Clause 13 provides for the giving of notices to interested parties and gives those parties a right of appearance in proceedings. An applicant is required to notify an offender of the making of a restraining order where the offender was not notified of the application for the order.

Clause 14 authorises the Court to make further orders varying restraining orders or in relation to matters ancillary to the making of restraining orders. Included is a power to order the examination of the offender or another person concerning the nature and location of the property of the offender.

Clause 15 authorises the Public Trustee to dispose of an offender's property for the purpose of complying with a court order to pay out of the property the amount due on any forfeiture order or pecuniary penalty order which is subsequently made.

Clause 16 imposes on property in respect of which a restraining order is in force a charge to secure the payment of the amount due under a pecuniary penalty order which is subsequently made.

Clause 17 requires restraining orders in respect of property to be registered in any register relevant to that property.

Clause 18 provides a penalty not exceeding \$5,000 or 2 years' imprisonment, or both, for contravention of a restraining order.

Clause 19 makes it an offence to hinder or obstruct the Public Trustee in the performance of the Public Trustee's obligations.

Clause 20 provides for the protection of the Public Trustee from liability in certain cases.

Clause 21 authorises the Public Trustee to charge fees in respect of functions exercised under the proposed Part.

Clause 22 authorises the Supreme Court to revoke restraining orders in certain circumstances.

Clause 23 provides that a restraining order ceases to be in force at the expiration of 48 hours after it is made if no charge is laid or, in any other case, at the expiration of 6 months after the order or a subsequent order is made. Provisions are also made for the extension, continuation or setting aside of restraining orders where the property is, or may be, affected by forfeiture orders or pecuniary penalty orders.

Clause 24 provides for the giving of notice of applications made under Part IV.

Clause 25 provides that a certificate by the Public Trustee is evidence of the Public Trustee's authority to act under the proposed Act.



## PART V—SEARCH WARRANTS

Clause 26 defines certain expressions for the purposes of the proposed Part.

Clause 27 provides for the issue of search warrants to members of the Police Force in respect of premises where there are grounds for believing there is tainted property of a particular kind in or on the premises.

Clause 28 authorises a member of the Police Force, in the course of a search, to seize property of the kind specified in a search warrant and any other property which the member believes on reasonable grounds to be tainted property in relation to the offence in respect of which the warrant was obtained or another offence.

Clause 29 authorises a member of the Police Force executing a warrant to search persons and arrest persons reasonably suspected of committing offences in respect of seized property.

Clause 30 provides that a search warrant may be issued whether or not an information has been laid in respect of the relevant offence, but the justice must be satisfied that a charge is likely to be laid within 48 hours.

Clause 31 provides that the Commissioner of Police is responsible for the keeping of seized property.

Clause 32 requires the Commissioner of Police to return seized property in specified circumstances. Generally, property has to be returned at the expiration of 7 days if no charge is laid or, if charge is laid and a conviction ensues, at the expiration of 6 months of conviction if no forfeiture order is made. A court may, on application, order the return of property at any time if it is satisfied that it would refuse to make a forfeiture order.

Clause 33 makes it an offence to obstruct or hinder a person executing a search warrant.

## PART VI—MISCELLANEOUS

Clause 34 bars the making, to different courts, of separate applications for forfeiture orders or pecuniary penalty orders in respect of the same matter.

Clause 35 contains machinery provisions relating to courts and imposes a monetary limit of \$5,000 on a Local Court's jurisdiction to make orders.

Clause 36 contains additional requirements to apply to courts when making orders in respect of persons who have absconded before being convicted.

Clause 37 provides that no stamp duty is payable in respect of the return of property on discharge of a forfeiture order.

Clause 38 provides rights of appeal against orders or the refusal to make orders.

Clause 39 saves other laws relating to forfeiture of property.

Clause 40 provides for the making of regulations and rules of court with respect to the giving of notices.

Clause 41 provides for offences to be dealt with summarily before a Local Court.



Clause 42 provides for the repeal of provisions of the Poisons Act 1966 which are replaced by provisions of the proposed Act and for the amendment of certain provisions of the proposed Act on the commencement of the Search Warrants Act 1985.

Clause 43 provides that the proposed Act applies to offences committed before its commencement where a charge has not yet been laid.

Clause 44 authorises the making of regulations for the purposes of the proposed Act.

#### SCHEDULE 1

Schedule 1 contains provisions relating to search warrants under the proposed Act. The Schedule will be repealed on the commencement of the Search Warrants Act 1985.

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# CRIMES (CONFISCATION OF PROFITS) BILL 1985

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NEW SOUTH WALES

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## TABLE OF PROVISIONS

### PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act to bind Crown

### PART II—FORFEITURE ORDERS

5. Forfeiture orders
6. Effects of forfeiture order
7. Effect of forfeiture order on third parties
8. Discharge of forfeiture order
9. Effect of discharge of forfeiture order

### PART III—PECUNIARY PENALTY ORDERS

10. Pecuniary penalty orders
11. Assessment of pecuniary penalty

### PART IV—RESTRAINING ORDERS

12. Restraining orders
13. Notice to be given of applications and orders
14. Court may make further orders
15. Public Trustee to discharge confiscation order
16. Charge on property subject to restraining order
17. Registration of restraining orders
18. Contravention of restraining orders
19. Hindering or obstructing Public Trustee
20. Protection of Public Trustee from liability in certain cases
21. Fees payable to Public Trustee
22. Court may revoke restraining orders

23. Time when restraining order ceases to be in force
24. Notice of applications under this Part
25. Certificate by Public Trustee

PART V—SEARCH WARRANTS

26. Interpretation
27. Search warrants
28. Seizure of property pursuant to warrant
29. Search and arrest of persons pursuant to warrant
30. Issue of warrant where charge not laid
31. Commissioner of Police responsible for seized property
32. Return of seized property
33. Obstruction, etc., of person executing warrant

PART VI—MISCELLANEOUS

34. Restriction on making applications
35. Provisions relating to courts
36. Making of confiscation orders where person has absconded
37. Stamp duty
38. Appeals
39. Operation of other laws not affected
40. Notices
41. Proceedings for offences
42. Repeals and amendments
43. Transitional provision
44. Regulations

SCHEDULE 1—PROVISIONS RELATING TO SEARCH WARRANTS ISSUED  
UNDER THIS ACT

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# **CRIMES (CONFISCATION OF PROFITS) BILL 1985**

No. , 1985

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## **A BILL FOR**

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

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*Crimes (Confiscation of Profits) 1985*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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PART I  
PRELIMINARY

**Short title**

1. This Act may be cited as the "Crimes (Confiscation of Profits) Act 1985".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation  
15 published in the Gazette.

**Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"appeal" includes a proceeding in the nature of an appeal;

20 "appropriate court" means—

(a) the Supreme Court; or

(b) in relation to—

- 25 (i) a forfeiture order made in reliance on the conviction of a person for a serious offence;
- (ii) a pecuniary penalty order against a person convicted of a serious offence; or
- (iii) an application for such a forfeiture order or pecuniary penalty order,

30 the court before which the person was convicted of the offence;

"appropriate officer" means—

*Crimes (Confiscation of Profits) 1985*

- (a) in any case—the Solicitor for Public Prosecutions;
- (b) in relation to a function exercised before or in relation to a Local Court (other than a function under Part IV)—the Commissioner of Police; or
- 5 (c) in relation to a function prescribed for the purposes of this paragraph by the regulations—a person so prescribed or a person of a class or description so prescribed;
- “confiscation order” means a forfeiture order or a pecuniary penalty order;
- 10 “forfeiture order” means an order made under section 5 (1);
- “interest”, in relation to property, means—
- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege over, or in connection with, the property;
- 15 “pecuniary penalty order” means an order made under section 10 (1);
- “penalty amount” means—
- (a) in relation to a forfeiture order made against a person, the amount specified in relation to the forfeiture order under section 8 (2); or
- 20 (b) in relation to a pecuniary penalty order made against a person, the amount that the person is, under the pecuniary penalty order, liable to pay to the State;
- “property” includes real and personal property and any estate or interest in real or personal property, and money, and any debt, and any cause of action for damages (including damages for personal injury), and any other chose in action, and any other right or interest;
- 25 “relevant period”, in relation to the conviction of a person for a serious offence, means the period of 6 months after—
- 30 (a) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (a)—the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (b)—the day on which the order in relation to the offence was made
- 35 pursuant to section 556A of the Crimes Act 1900;



*Crimes (Confiscation of Profits) 1985*

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(c) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (c)—the day on which the court took the offence into account pursuant to section 447B of the Crimes Act 1900; or

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(d) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (d)—the day on which the person is taken to have absconded under subsection (4);

“restraining order” means an order made under section 12 (2);

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“serious offence” means—

(a) an offence (including a common law offence) against the laws of New South Wales, being an offence that may be prosecuted on indictment;

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(b) the offence of supplying any restricted substance prescribed for the purposes of section 16 of the Poisons Act 1966 that arises under section 18A (1) of that Act; or

(c) an offence prescribed for the purposes of this paragraph by the regulations or an offence of a kind so prescribed;

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“State”, when not used in a geographical sense, means the Crown in right of New South Wales, and (except in relation to the payment of money to the State) includes a State authority;

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“State authority” means a Minister of the Crown, a statutory body representing the Crown, a member of the Police Force or a person or body prescribed for the purposes of this definition by the regulations or of a class or description so prescribed;

“tainted property” means property that—

(a) was used in, or in connection with, the commission of a serious offence; or

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(b) was derived or realised, directly or indirectly, by any person, as a result of the commission of a serious offence.

(2) For the purposes of this Act, a person shall be taken to have been convicted of a serious offence if—

(a) the person has been convicted, whether summarily or on indictment, of the offence;

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(b) the person has been charged with the offence and the court hearing

*Crimes (Confiscation of Profits) 1985*

the charge has made an order in relation to the offence pursuant to section 556A of the Crimes Act 1900;

- 5 (c) the person has been sentenced for another offence and the court has, in passing sentence upon the person, taken the offence into account pursuant to section 447B of the Crimes Act 1900; or
- (d) the person has been charged with the offence and, at any time before the determination of the charge, the person has absconded.

(3) Where, by virtue of subsection (2), a person is to be taken to have been convicted of a serious offence, then, for the purposes of this Act—

- 10 (a) the person shall, in a case to which paragraph (a) or (b) of that subsection applies, be taken to have been so convicted before the court referred to in the relevant paragraph; and
- (b) the conviction shall be taken to have been quashed—
- 15 (i) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (a)—when the conviction is quashed or set aside;
- (ii) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (b)—when the order made under section 556A of the Crimes Act 1900 is quashed or set aside;
- 20 (iii) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (c)—when the decision of the court under section 447B of the Crimes Act 1900 is quashed or set aside; or
- 25 (iv) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (d)—when, after the person is subsequently brought before a court in respect of the offence with which the person was charged, the person is discharged in respect of the offence or the conviction for the offence is quashed or set aside.
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(4) For the purposes of this Act, where an information has been laid alleging the commission of a serious offence by a person, the person shall be taken to have been charged with the offence (but nothing in this subsection limits any other way in which a person is to be taken to be charged with an offence).

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*Crimes (Confiscation of Profits) 1985*

(5) For the purposes of this Act (except section 36), a person shall be taken to have absconded if and only if—

- (a) an information has been laid alleging the commission of a serious offence by the person;
  - 5 (b) a warrant for the arrest of the person has been issued in relation to that information; and
  - (c) reasonable attempts to locate the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued,
- 10 and the person shall be taken to have so absconded on the last day of that period of 6 months.

(6) A reference in this Act, in relation to the conviction of a person for a serious offence, to the commission of the offence shall, where the person is to be taken to have been convicted of the offence by reason of subsection  
15 (2)(d), be read as a reference to the alleged commission of the offence by the person.

(7) In this Act—

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

(8) Where a form is prescribed by or under this Act, then, unless the contrary intention appears, strict compliance with the form is not required and substantial compliance is sufficient.

## 25 Act to bind Crown

4. (1) This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in any of its capacities liable  
30 to be prosecuted for an offence.

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**PART II**  
**FORFEITURE ORDERS**

**Forfeiture orders**

5     **5. (1)** Where a person has been convicted of a serious offence, an appropriate officer may, at any time before the expiration of the relevant period, apply to an appropriate court for an order under this section in relation to specified property and if—

- (a) the court is satisfied that the property is tainted property in relation to the offence; and
- 10     (b) the court has taken into consideration (having regard to information before the court)—
  - (i) the use that is ordinarily or had been intended to be made of the property; and
  - 15     (ii) any hardship that may reasonably be likely to arise (whether on the part of that or any other person) following the making of the order,

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

**(2)** Where an application has been made to a court under subsection (1) for the making of a forfeiture order in relation to particular property—

- 20     (a) the court may, if it thinks fit, require the officer making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property; and
- 25     (b) any person who has an interest in the property or part of the property is entitled to appear and to adduce evidence at the hearing of the application.

**(3)** Where, at the hearing of an application made under subsection (1) in reliance on the conviction of a person for a serious offence, evidence is given that property to which the application relates was in the possession of the  
30 person at or immediately after the commission of the offence, then—

- (a) if there is no evidence given tending to show that the property was not used in, or in connection with, the commission of the

*Crimes (Confiscation of Profits) 1985*

offence—the court shall presume that the property was used in, or in connection with, the commission of the offence; or

- 5 (b) in any other case—the court shall not make an order under this section in relation to the property unless it is satisfied, on the balance of probabilities, that the property was used in, or in connection with, the commission of the offence.

10 (4) A court making a forfeiture order in respect of property may specify in the order the extent of the estate, interest or rights in the property that are affected by the order and, where the order is to apply to land, the court shall do so.

**Effects of forfeiture order**

6. (1) Where a court makes a forfeiture order in respect of property—

- 15 (a) the property vests in the Crown in right of New South Wales (or in such State authority as is specified in the forfeiture order), to the extent of the estate, interest or rights (if any) specified in the forfeiture order;
- 20 (b) the property so vests subject to every charge or encumbrance to which the property was subject immediately before the forfeiture order was made and, in the case of land under the provisions of the Real Property Act 1900, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act; and
- (c) if the property is not already in the possession of the State, the State may take possession of the property.

25 (2) Nothing in subsection (1) affects the operation of section 86 of the Real Property Act 1900 in relation to a forfeiture order made in respect of land.

(3) Where a court makes a forfeiture order in respect of property—

- 30 (a) the property shall not, except with the leave of an appropriate court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the State, before the relevant time; and
- (b) if, at the relevant time, the forfeiture order has not been discharged, the property may be disposed of, or otherwise dealt with—
- 35 (i) in accordance with any direction of the Attorney General

*Crimes (Confiscation of Profits) 1985*

or of a person authorised by the Attorney General for the purposes of this subparagraph; or

(ii) in accordance with any other applicable law.

(4) In subsection (3)—

5 “relevant time”, in relation to property that is the subject of a forfeiture order, means—

(a) where—

10 (i) the period provided for the lodging of an appeal against the forfeiture order has expired without such an appeal having been lodged—the expiration of that period; or

(ii) an appeal against the forfeiture order has been lodged—the time when the appeal lapses or is finally determined, as the case requires; or

15 (b) where—

(i) the period provided for the lodging of an appeal against the conviction for the relevant serious offence has expired without such an appeal having been lodged—the expiration of that period; or

20 (ii) an appeal against the conviction has been lodged—the time when the appeal lapses or is finally determined, as the case requires,

whichever is the later.

**Effect of forfeiture order on third parties**

25 7. (1) Where, in reliance on the conviction of a person for a serious offence, a court makes a forfeiture order in respect of property, any other person (in this section referred to as the “applicant”) who claims an interest in the property may, at any time within the period of 6 months after the day on which the forfeiture order was made, apply to the court for an order  
30 under this section in respect of that interest and, if the court is satisfied, on the balance of probabilities, that the applicant was not in any way involved in the commission of the relevant serious offence, the court shall make an order declaring the nature, extent and value of the applicant’s interest in the property and—

35 (a) if the property is still in the possession of the State—directing that the property be transferred to the person or declare that there is



*Crimes (Confiscation of Profits) 1985*

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

- 5 (b) in any other case—declaring that there is payable to the person the amount specified in the order as the value of the person's interest in the property.

(2) In deciding, for the purpose of subsection (1) (a), whether to direct that property be transferred to a person or to declare that an amount is payable to a person, the court shall have regard to—

- 10 (a) the nature, extent and value of the person's interest in the property;
- (b) if the court is aware that any other person claims an interest in the property—the nature, extent and value of that claimed interest; and
- (c) any other matter that seems to the court to be relevant.

15 (3) A person who applies to a court for an order under subsection (1) shall give notice, as prescribed by the regulations or by rules of court, of the making of the application and of the date, time and place fixed for the hearing of the application.

20 (4) A court may not make an order under subsection (1) in respect of the interest of a person who—

- (a) has been given notice under section 5 (2) (a) in relation to the application for the forfeiture order; or
- (b) has appeared under section 5 (2) (b) at the hearing of the application for the forfeiture order,

25 unless the court is satisfied that the making of the order is justified on special grounds.

(5) Special grounds referred to in subsection (4) include such of the following as are relevant:

- 30 (a) that the applicant was unable to appear at the hearing of the application for the forfeiture order;
- (b) that the applicant did not appear at that hearing for a good reason;
- (c) that particular evidence adduced by the applicant in connection with the application under subsection (1) was not available to the

*Crimes (Confiscation of Profits) 1985*

applicant at the time of the hearing of the application for the forfeiture order.

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

**Discharge of forfeiture order**

8. (1) Where—

(a) in reliance on the conviction of a person for a serious offence, a court makes a forfeiture order in respect of property; and

(b) the conviction of the person is subsequently quashed,  
the quashing of the conviction operates to discharge the forfeiture order.

(2) Where a court makes a forfeiture order in respect of property, the court shall, in the order, specify the amount that it considers is the value of the property, and (except in so far as the court otherwise directs) the payment of that amount to the State operates to discharge the forfeiture order.

**Effect of discharge of forfeiture order**

9. (1) Where a forfeiture order in respect of property is discharged, whether on an appeal against the making of the forfeiture order or as provided by section 8, the person who had possession of the property before possession of it was taken by or on behalf of the State may, by application in writing to the Attorney General, request the return of the property and, on receipt of the application by the Attorney General—

(a) if the property is still in the possession of the State—subject to subsection (2), the Attorney General shall arrange for the property to be returned to the person; or

(b) in any other case—subject to subsections (3) and (4), there is payable to the person the amount specified in the forfeiture order as the value of the property.

(2) Where—

(a) a person applies to the Attorney General under subsection (1) for the return of property that is in the possession of the State; and

*Crimes (Confiscation of Profits) 1985*

(b) pursuant to section 7, an amount has been paid to another person in respect of that other person's interest in the property,

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

(3) Where—

10 (a) a person applies to the Attorney General under subsection (1) for return of property that is not in the possession of the State; and

(b) pursuant to section 7, an amount has been paid to another person in respect of that other person's interest in the property,

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

(4) In this section—

20 (a) a reference to the return of property includes, without limiting the meaning of that expression, the return of land or an estate or interest in land by a conveyance, transfer or other appropriate transaction; and

(b) a reference to a person who had possession of property includes a reference to any person who is entitled to the property.

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PART III

PECUNIARY PENALTY ORDERS

**Pecuniary penalty orders**

10. (1) Where a person has been convicted of a serious offence—

30 (a) an appropriate officer may, at any time before the expiration of the relevant period, apply to an appropriate court for an order under this section in respect of the offence; and



*Crimes (Confiscation of Profits) 1985*

(b) on the making of an application under paragraph (a), the court may—

- 5 (i) assess, in accordance with section 11, the value of the benefits derived by the person by reason of having committed the offence; and
- (ii) order the person to pay to the State a pecuniary penalty equal to the value as so assessed.

(2) An amount payable by a person to the State in accordance with an order made under subsection (1) shall, for all purposes, be deemed to be a  
10 civil debt due by the person to the State.

(3) An order made by a court under subsection (1) may be enforced as if it were an order made by the court in civil proceedings instituted by the State against the person to recover a debt due by the person to the State.

(4) An application may be made under this section in relation to one or  
15 more serious offences.

**Assessment of pecuniary penalty**

11. (1) In this section—

- 20 (a) a reference to the defendant, in relation to an application under section 10 (1) for an order that a person pay a pecuniary penalty to the State, shall be read as a reference to that person; and
- 25 (b) a reference to the offence period, in relation to an application under section 10 (1) made in reliance on the conviction of a person for 2 or more serious offences, is a reference to the period commencing when the earliest of those offences was committed and ending when the latest of those offences was committed.

(2) For the purposes of an application under section 10 (1), the value of the benefits derived by the defendant by reason of having committed a serious offence or serious offences shall be assessed by the court having regard to information before the court concerning all or any of the following  
30 matters:

- (a) the money, or the value of the property other than money, that came into the possession or under the control of—
- (i) the defendant; or

*Crimes (Confiscation of Profits) 1985*

- (ii) another person at the request or by the direction of the defendant,  
by reason of the defendant's having committed the offence or any of the offences;
- 5 (b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a), that was provided for—
- (i) the defendant; or
- (ii) another person at the request or by the direction of the defendant,
- 10 by reason of the defendant's having committed the offence or any of the offences;
- (c) the extent of the defendant's involvement in the commission of the offence or offences;
- (d) the value of the defendant's property—
- 15 (i) where the application relates to a single serious offence—before and after the commission of the offence; or
- (ii) where the application relates to 2 or more serious offences—before and after the offence period.

(3) Where, at the hearing of an application under section 10 (1) in  
20 relation to a serious offence or serious offences, evidence is given that the value of the defendant's property after the defendant committed the serious offence, or after the end of the offence period, as the case may be, exceeded the value of the defendant's property before the defendant committed the serious offence or before the commencement of the offence period, as the  
25 case may be, then, for the purposes of section 10 (1), the court shall, subject to subsection (4), treat the value of the benefits derived by the defendant by reason of having committed the offence or offences as being not less than the amount of the excess.

(4) Where, after evidence has been given at the hearing of an application  
30 under section 10 (1) in relation to a serious offence or serious offences that the value of the defendant's property after the defendant committed the serious offence, or after the end of the offence period, as the case may be, exceeded the value of the defendant's property before the defendant committed the serious offence or before the commencement of the offence  
35 period, as the case may be, the defendant satisfies the court that the whole or a part of the excess was due to causes unrelated to the commission of the offence or offences, as the case may be—

*Crimes (Confiscation of Profits) 1985*

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- (a) if the defendant so satisfies the court in respect of the whole of the excess—subsection (3) does not apply to the excess; or
- (b) if the defendant so satisfies the court in respect of a part of the excess—subsection (3) applies to the excess as if it were reduced by the amount of that part.

5  
10 (5) In calculating, for the purposes of an application under section 10 (1) in relation to a serious offence or serious offences, the value of benefits derived by the defendant by reason of having committed the offence or offences, any expenses or outgoings of the defendant in connection with the commission of the offence or offences shall be disregarded.

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

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## PART IV

## RESTRAINING ORDERS

**Restraining orders**

20 12. (1) Where a person (in this section referred to as the “defendant”) has been, or is about to be, charged with a serious offence, an appropriate officer may apply to the Supreme Court, ex parte, for an order under this section in respect of specified property of the defendant or in respect of all the property of the defendant.

(2) Where—

25 (a) an application made to the Supreme Court under subsection (1) in reliance on the charging, or the proposed charging, of the defendant with a serious offence is supported by an affidavit of a member of the Police Force stating that the member believes that—

- 30 (i) the defendant committed the offence;
- (ii) the property to which the application relates is tainted property in relation to the offence or the defendant



*Crimes (Confiscation of Profits) 1985*

obtained benefits by reason of having committed the offence; and

(iii) the property is the property of the defendant,

and setting out the grounds on which the member holds those beliefs; and

(b) the Court considers that, having regard to the matters contained in the affidavit, there are reasonable grounds for holding those beliefs,

the Court may, by order—

(c) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order; or

(d) if the Court considers that the circumstances so require—direct the Public Trustee to take control of the property, or such part of the property as is specified in the order.

(3) Where an application is made under subsection (1) in reliance on the proposed charging of a person with a serious offence, the Supreme Court shall not make a restraining order unless it is satisfied that the person is likely to be charged with the offence within 48 hours.

(4) A restraining order may be made subject to such conditions as the Supreme Court thinks fit and, without limiting the generality of the foregoing, may make provision for meeting the reasonable living and business expenses of the defendant out of the property, or a specified part of the property, to which the order applies.

(5) The Supreme Court may refuse to make a restraining order if the State refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(6) For the purposes of an application under subsection (1), an appropriate officer may, on behalf of the State, give to the Supreme Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

**Notice to be given of applications and orders**

*Crimes (Confiscation of Profits) 1985*

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13. (1) Where an application has been made to the Supreme Court under section 12 for a restraining order in respect of property—

- 5 (a) the Court may, if it thinks fit, require the officer making the application to give notice of the application to a person who the Court has reason to believe has an interest in the property or part of the property; and
- (b) a person to whom the Court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

10 (2) Where—

- (a) a restraining order has been made in respect of property of a person; and
- (b) the person was not notified of the application for the making of the restraining order,
- 15 the officer who made the application shall give notice to the person, as prescribed by the regulations or by rules of court, of the making of the order.

**Court may make further orders**

20 14. (1) Where the Supreme Court makes, or has made, a restraining order in respect of specified property, or of all the property, of a person (in this section referred to as the “defendant”), the Court may, at the time it makes the restraining order or at any later time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make one or more of the following orders:

- 25 (a) an order varying the restraining order in respect of the property to which it relates;
- (b) an order varying any condition to which the restraining order was subject;
- 30 (c) an order for the examination of the defendant, or another person, before the Court or a prescribed officer of the Court concerning the nature and location of the property of the defendant;
- (d) an order with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the State in connection with the making of the restraining order;
- 35 (e) where the restraining order directed the Public Trustee to take control of property—

*Crimes (Confiscation of Profits) 1985*

- (i) an order regulating the manner in which the Public Trustee may exercise his or her powers or perform his or her duties under the restraining order;
- 5 (ii) an order determining any question relating to the property, including any question relating to the liabilities of the defendant, and the exercise of the powers, or the performance of the duties, of the Public Trustee with respect to the property;
- 10 (iii) an order directing the defendant to furnish to the Public Trustee, within a period specified in the order, a statement, verified by the oath or affirmation of the defendant, setting out such particulars of the property of the defendant as the Court thinks proper.

(2) Without affecting the generality of subsection (1), where the Supreme  
15 Court makes, or has made, a restraining order, the Court may, at the time it makes the restraining order or at any later time, whether on application made to it or on its own motion, make an order authorising another court—

- (a) to make an order setting aside the restraining order in respect of the whole or a part of the property; or
- 20 (b) to make other orders in relation to the operation of the restraining order,

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

(3) An order under subsection (1) or (2) may be made on application—

- 25 (a) by an appropriate officer;
- (b) by the defendant;
- (c) where the restraining order directed the Public Trustee to take control of property—by the Public Trustee; or
- (d) with the leave of the Supreme Court—by any other person.

30 (4) Where a person is examined before the Supreme Court or an officer of the Supreme Court pursuant to an order under subsection (1), a statement or disclosure made by the person in answer to a question put in the course of the examination is not admissible against the person in any civil or criminal proceedings except in—



*Crimes (Confiscation of Profits) 1985*

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- (a) a proceeding for giving false testimony in the course of the examination;
- 5 (b) a proceeding for the making of a forfeiture order, for the purpose only of facilitating the identification of the property to be subject to the forfeiture order; or
- (c) a proceeding for the making of a pecuniary penalty order, for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.

**Public Trustee to discharge confiscation order**

10 15. (1) Where—

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

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

20 (2) For the purpose of enabling the Public Trustee to comply with the later order, an appropriate court may, by that order or by a subsequent order—

- (a) direct the Public Trustee to sell or otherwise dispose of such of the property that is under the control of the Public Trustee as the court specifies; and
- 25 (b) appoint an officer of the court or any other person to execute any deed or instrument in the name of the person who owns or has an estate, interest or right in the property and to do all acts and things necessary to give validity and operation to the deed or instrument.
- 30

(3) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person who owned or had an estate, interest or right in the property.

35 (4) As soon as practicable after the making of the later order, the Public Trustee—

*Crimes (Confiscation of Profits) 1985*

- 5 (a) shall apply the money which has come into the Public Trustee's possession or under the Public Trustee's control by reason of the sale or disposition of any of the property specified in the later order, or the subsequent order, or otherwise in the course of performing the Public Trustee's duties in respect of the property to which the restraining order relates, in payment of the fees payable in connection with, and the expenses incurred by the Public Trustee in or in connection with, the performance of the duties imposed on the Public Trustee under the restraining order, including the expenses incurred by the Public Trustee in or in connection with the sale or disposition of any of the property to which the restraining order relates; and
- 10
- 15 (b) shall, subject to subsection (5), pay the remainder of the money referred to in paragraph (a), after the payments referred to in that paragraph have been made, to the State.

(5) Where the money to which subsection (4) (b) applies exceeds the penalty amount, the Public Trustee shall—

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

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

## 25 Charge on property subject to restraining order

16. (1) Where—

- 30 (a) in reliance on the charging, or the proposed charging, of a person with a serious offence, the Supreme Court has made a restraining order in respect of particular property, or of all the property, of the person; and
- (b) in reliance on the conviction of the person for the offence, a court subsequently makes a pecuniary penalty order against the person,

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

*Crimes (Confiscation of Profits) 1985*

(2) Where a charge is created by subsection (1) on property of a person upon the making of a pecuniary penalty order, the charge ceases to have effect in respect of the property—

- 5 (a) upon the discharge of the pecuniary penalty order on the hearing of an appeal against the making of the pecuniary penalty order;
- (b) upon payment by the person to the State of the penalty amount;
- (c) upon the sale or other disposition of the property—
- 10 (i) pursuant to an order made by the Supreme Court under section 15;
- (ii) by the owner of the property with the consent of the Supreme Court; or
- (iii) where the restraining order directed the Public Trustee to take control of the property—by the owner of the property with the consent of the Public Trustee; or
- 15 (d) upon the sale of the property to a bona fide purchaser for value who, at the time of purchase, has no notice of the charge,
- whichever first occurs.

(3) A charge created on property by subsection (1) upon the making of a pecuniary penalty order—

- 20 (a) is subject to every charge or encumbrance to which the property was subject immediately before the pecuniary penalty order was made and, in the case of land under the provisions of the Real Property Act 1900, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act;
- 25 (b) has priority over all other encumbrances whatever; and
- (c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of New South Wales provide for the registration of title to, or charges over, property of that kind, the Public Trustee or an appropriate officer may or, in the case of land, shall cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of

35 subsection (2), be deemed to have notice of the charge.



*Crimes (Confiscation of Profits) 1985*

(5) Where a charge under this section relates to land under the provisions of the Real Property Act 1900, the charge has no effect until it is registered under that Act.

**Registration of restraining orders**

5 17. (1) Where a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions shall, on application by an appropriate officer, record on the register kept pursuant to those provisions the  
10 prescribed particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 18, be deemed to have notice of the restraining order.

15 (2) Where a restraining order applies to land under the provisions of the Real Property Act 1900, a caveat may be lodged under that Act in relation to the order.

**Contravention of restraining orders**

18. A person shall not knowingly contravene a restraining order by disposing of, or otherwise dealing with, property that is subject to the  
20 restraining order.

Penalty: \$5,000 or imprisonment for 2 years, or both.

**Hindering or obstructing Public Trustee**

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

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

(2) In this section—

“Public Trustee” includes the deputies, officers, servants and agents of the Public Trustee.

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

30 20. (1) Section 45 of the Public Trustee Act 1913 applies to and in respect of the functions of the Public Trustee under this Act in the same way as it applies to and in respect of the functions of the Public Trustee

*Crimes (Confiscation of Profits) 1985*

under that section, but nothing in this section shall be read as limiting the operation of that section.

(2) The Public Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of New South Wales upon or in respect of property of which the Public Trustee has been directed by a restraining order to take control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the restraining order, except to the extent, if any, of the rents and profits received by the Public Trustee in respect of that property on or after the date of the restraining order.

(3) Where the Public Trustee, having been directed by a restraining order to take control of a business carried on by a person, carries on that business, the Public Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Public Trustee in his or her capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of the restraining order.

(4) In this section—

“Public Trustee” includes the deputies, officers, servants and agents of the Public Trustee.

**Fees payable to Public Trustee**

21. Where the Public Trustee takes control of property in accordance with a restraining order, the Public Trustee is entitled to receive such fees, in respect of the exercise of his or her powers and the performance of his or her duties in relation to the property, as may be prescribed.

**Court may revoke restraining orders**

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

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

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

23. (1) Subject to this section and to any order made by a court pursuant to this section, a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence ceases to  
5 be in force—

- (a) if the restraining order was made in reliance on the proposed charging of a person and, at the expiration of the period of 48 hours after the making of the restraining order, the person has not been charged with the offence—at the expiration of that period;  
10 or
- (b) in any other case—at the expiration of the period of 6 months after the making of the restraining order or, if an order or orders has or have been made under section 14 in relation to the restraining order, at the expiration of the period of 6 months after the making of the order, or of the last of the orders, under section  
15 14.

(2) Where, by reason of subsection (1) (b), a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence would cease to be in force at the expiration  
20 of a particular period, an appropriate officer may apply to the Supreme Court for an order under subsection (3).

(3) If, on application under subsection (2), the Supreme Court is satisfied—

- (a) that a forfeiture order may still be made in respect of the property or part of the property; or  
25
- (b) that a pecuniary penalty order may still be made against the person,

the Supreme Court may—

- (c) by order, extend the period during which the restraining order remains in force; and  
30
- (d) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(4) Where the Supreme Court makes an order under subsection (3) in relation to a restraining order, then, notwithstanding subsection (1), the  
35 restraining order does not cease to be in force except as provided by the



*Crimes (Confiscation of Profits) 1985*

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order under subsection (3) or by an order subsequently made pursuant to this section.

5 (5) Where, while a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the Supreme Court may—

- 10 (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

15 (6) Where, while a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court (other than the Supreme Court) makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the court may—

- 20 (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order,

25 but the court may make an order under this subsection only if, and to the extent and in the circumstances, it is authorised to do so by an order of the Supreme Court under section 14 (2).

30 (7) Where, while a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court refuses to make a forfeiture order in respect of the property or refuses to make a pecuniary penalty order against the person, the Supreme Court may—

- (a) if it considers it appropriate, make an order in relation to the period for which the restraining order is to remain in force; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

35 (8) An order under subsection (5), (6) or (7) may be made so as—

*Crimes (Confiscation of Profits) 1985*

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(a) to set aside the restraining order wholly or in part; and

(b) to take effect—

(i) on the making of the first-mentioned order;

(ii) at a specified time;

5 (iii) where relevant, on the payment of a penalty amount to the State; or

(iv) on the happening of some other specified event,

and, when the first-mentioned order takes effect, the restraining order ceases to be in force to the extent to which it is set aside.

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

24. (1) A person who makes an application under section 14 in relation to a restraining order shall give notice of that application, as prescribed by the regulations or by rules of court, to each other person who is entitled, by virtue of section 14 (2), to make an application under section 14 in relation  
15 to the restraining order.

(2) A person who makes an application under section 22 or section 23 (2) in relation to a restraining order shall give notice of that application, as prescribed by the regulations or by rules of court.

#### **Certificate by Public Trustee**

20 25. Where a restraining order is made directing the Public Trustee to take control of property, a certificate under the hand of the Public Trustee or an officer referred to in section 50 of the Public Trustee Act 1913 and sealed with the Public Trustee's seal—

25 (a) certifying that the restraining order has been made and is in force; and

(b) stating the terms of the restraining order,

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

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## PART V

## SEARCH WARRANTS

**Interpretation**

26. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

5 “authorised justice” means—

(a) a Magistrate; or

(b) a justice of the peace employed in the Local Courts Administration, Attorney General’s Department;

10 “premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not), and any part thereof;

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

**15 Search warrants**

27. (1) A member of the Police Force may apply to an authorised justice for a search warrant to be issued under this Part if the member of the Police Force has reasonable grounds for believing that there is in or on any premises tainted property of a particular kind.

20 (2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force—

(a) to enter the premises; and

25 (b) to search the premises for tainted property of the particular kind referred to in subsection (1).

(3) There shall be stated in a warrant issued under this Part—

(a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the relevant serious offence; and

30 (b) a description of the kind of property authorised to be seized.



*Crimes (Confiscation of Profits) 1985*

(4) Nothing in this Part limits any of the provisions of the Crimes Act 1900 relating to search warrants under that Act.

(5) Schedule 1 has effect with respect to a search warrant issued under this Part.

### 5 Seizure of property pursuant to warrant

28. (1) A member of the Police Force executing a search warrant issued under this Part may seize property of the kind specified in the warrant.

(2) If, in the course of searching, in accordance with a warrant issued under this Part, for property that is tainted property in relation to a particular serious offence, being property of a kind specified in the warrant, a member of the Police Force finds any property that the member believes on reasonable grounds to be—

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

15 (b) tainted property in relation to another serious offence,

and the member believes on reasonable grounds that it is necessary to seize that property in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the serious offence or the other serious offence, the warrant shall be deemed to authorise the member to 20 seize that property.

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

(a) a power to remove the thing from the premises where it is found; and

(b) a power to guard the thing in or on those premises.

### 25 Search and arrest of persons pursuant to warrant

29. A member of the Police Force executing a search warrant issued under this Part—

(a) may search a person found in or on the premises whom the member of the Police Force reasonably suspects of having property of the kind specified in the warrant; and

30 (b) may arrest and bring before a justice of the peace any person found in or on the premises whom the member of the Police Force

*Crimes (Confiscation of Profits) 1985*

reasonably suspects of having committed an offence in respect of property seized pursuant to section 28.

**Issue of warrant where charge not laid**

5 **30.** A warrant may be issued under this Part in relation to property whether or not a person has been charged with the relevant serious offence, but an authorised justice shall not issue a warrant under this Part in relation to property where a person has not been charged with the relevant serious offence unless the authorised justice is satisfied—

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

**Commissioner of Police responsible for seized property**

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

**Return of seized property**

**32. (1)** Where—

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

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

30 **(2)** Where—

- (a) property has been seized pursuant to a warrant issued under this Part; and
- (b) either before the property was seized, or after it was seized but

*Crimes (Confiscation of Profits) 1985*

before the expiration of 7 days after it was seized, an information has been laid in respect of the relevant serious offence,

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

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

10 (3) Where—

- (a) property has been seized pursuant to a warrant issued under this Part; and
- (b) an appropriate court refuses to make a forfeiture order in respect of the property,

15 the court shall make an order directing that the property be returned to the person from whose possession the property was seized.

(4) Where property has been seized pursuant to a warrant under this Part, the person from whose possession the property was seized may apply to an appropriate court for an order under this subsection and, if the court is satisfied that it would refuse to make a forfeiture order in respect of the property, the court may make an order—

- (a) directing that the property be returned to that person; or
- (b) directing that the person be allowed access to the property,

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

25 (5) A person who applies to a court for an order under subsection (4) shall give notice, as prescribed by the regulations or by rules of court, of the making of the application and of the date, time and place fixed for the hearing of the application.

(6) In this section—

- 30 (a) a reference to a person from whose possession property was seized includes a reference to any person who is entitled to the property; and
- (b) a reference to the relevant time is a reference to—



*Crimes (Confiscation of Profits) 1985*

- (i) subject to subparagraph (ii), the date of the conviction, discharge or acquittal, or of the refusal to make the forfeiture order, as the case requires; or
- (ii) if there is a right of appeal—
- 5 (A) where the period provided for the lodging of the appeal has expired without such an appeal having been lodged—the expiration of that period; or
- (B) where an appeal has been lodged—the time when the appeal lapses or is finally determined, as the case requires.
- 10

**Obstruction, etc., of person executing warrant**

33. A person shall not, without reasonable excuse, obstruct or hinder a person executing a search warrant issued under this Part.

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

15

## PART VI

## MISCELLANEOUS

**Restriction on making applications**

34. Where an application for a confiscation order has been made to an appropriate court, no further application in relation to the same matter may

20 be made to another court, except with the leave of the Supreme Court or in such circumstances as may be prescribed.

**Provisions relating to courts**

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

25 (a) the application may be dealt with by that court; and

(b) any function may be exercised by that court in relation to the confiscation order,

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

*Crimes (Confiscation of Profits) 1985*

(2) A Local Court may not, in relation to the conviction of a person for a particular offence, make a forfeiture order in respect of property unless it is satisfied that the value of the property (together with the value of any other property the subject of any other undischarged forfeiture order made  
5 by the Local Court in relation to the same conviction of that person) does not exceed \$5,000.

(3) A Local Court may not make a pecuniary penalty order against a person unless it is satisfied that the amount payable under the order (together with the amount payable under any other undischarged pecuniary  
10 penalty order made against the person by the Local Court) would not exceed \$5,000.

(4) A Local Court may not make a forfeiture order in respect of land, except in such circumstances as may be prescribed.

(5) For the purposes of this section, the value of property shall be as  
15 determined by the Local Court.

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

36. (1) Where a person is, by reason of section 3 (2) (d), to be taken to have been convicted of a serious offence, an appropriate court shall not make a confiscation order in relation to the conviction of the person for  
20 that offence unless—

- (a) it is satisfied, on the balance of probabilities, that the person has absconded; and
- (b) it is of the opinion that, having regard to all the evidence before  
25 the court, the evidence is capable of satisfying a jury beyond reasonable doubt that the person committed the offence.

(2) In this section—

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

**Stamp duty**

37. No stamp duty is payable under the Stamp Duties Act 1920 in respect of—

*Crimes (Confiscation of Profits) 1985*

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

**Appeals**

5 **38. (1)** Without affecting any other right of appeal, a forfeiture order in relation to any property is appellable by any person who has an interest in the property —

- 10 (a) in the case of a person convicted of an offence in reliance on which the forfeiture order was made— in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence; or
- (b) in any other case—in the same manner as if the person had been convicted of a serious offence and the order were, or were part of, a sentence imposed in respect of the offence.

15 **(2)** Without affecting any other right of appeal, a pecuniary penalty order is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence in relation to which the order was made.

**(3)** On appeal, a forfeiture order or a pecuniary penalty order may be confirmed, discharged or varied.

20 **(4)** The Attorney General may appeal to the Court of Criminal Appeal against a refusal by a court to make a forfeiture order or a pecuniary penalty order, and the Court of Criminal Appeal may in its discretion make such order as could have been made in the first instance.

25 **(5)** A forfeiture order or a pecuniary penalty order made by the Court of Criminal Appeal under subsection (4) shall be deemed to have been made by the Supreme Court under this Act, but is not on that account subject to further appeal.

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

**30 Operation of other laws not affected**

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



*Crimes (Confiscation of Profits) 1985***Notices**

40. (1) The regulations may make provision for or with respect to the giving of notices under this Act.

(2) Rules of court may make provision for or with respect to the giving of notices under this Act.

(3) If a notice is required to be given under this Act and the regulations or rules of court make provision for or with respect to the giving of the notice, the notice shall be given in accordance with the relevant provisions.

(4) The regulations shall prevail to the extent of any inconsistency with the rules of court.

(5) A reference in this section to rules of court includes a reference to regulations made under the Justices Act 1902.

**Proceedings for offences**

41. Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Repeals and amendments**

42. (1) Sections 45AC and 45AD of the Poisons Act 1966 are repealed.

(2) On the commencement of this Act or on the commencement of the Search Warrants Act 1985 (whichever is the later), this Act is amended—

(a) by omitting section 27 (4) and (5) and by inserting instead the following subsections:

(4) Nothing in this Part limits the operation of Part III of the Search Warrants Act 1985.

(5) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this Part.

(b) by omitting Schedule 1.

(3) Section 8 of the Interpretation Act 1897 extends to the repeal of section 27 (4) and (5) by this section.

**Transitional provision**

*Crimes (Confiscation of Profits) 1985*

43. This Act applies to serious offences committed before the commencement of this Act, as well as to those committed after the commencement of this Act, but does not apply to an offence in respect of which a person has been charged before that commencement.

5 **Regulations**

44. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

10 (2) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind;  
or

15 (c) authorise any matter or thing to be determined, applied or regulated from time to time by any specified person or body,

or may do any combination of those things.

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SCHEDULE 1

(Sec. 27 (5))

20 **PROVISIONS RELATING TO SEARCH WARRANTS ISSUED  
UNDER THIS ACT**

**Interpretation**

1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

25 “authorised justice” has the same meaning as in section 26;

“occupier”, in relation to any premises, includes a person in charge of the premises;

“occupier’s notice” means an occupier’s notice referred to in clause 4;

“premises” has the same meaning as in section 26;

“search warrant” means a search warrant issued under Part V.

30 **Application for warrant**

2. (1) An application for a search warrant shall be made in writing.

*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued*

- (2) An authorised justice shall not issue a search warrant unless—
- (a) the application for the warrant sets out the grounds on which the warrant is being sought;
  - 5 (b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and
  - (c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

- 10 (3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

**Record of proceedings before authorised justice**

3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

- 15 (2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

**Notice to occupier of premises entered pursuant to warrant**

20 4. (1) An authorised justice shall prepare and furnish an occupier's notice to the person to whom the authorised justice issues a search warrant.

(2) An occupier's notice furnished in relation to a search warrant—

- (a) shall specify—
  - (i) the name of the person who applied for the warrant;
  - (ii) the name of the authorised justice who issued the warrant;
  - 25 (iii) the date and the time when the warrant was issued; and
  - (iv) the address or other description of the premises the subject of the warrant; and
- (b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

30 (3) A person executing a search warrant shall—

- (a) upon entry into or onto the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
- 35 (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.



*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued*

(4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.

5 (5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

**Duty to show warrant**

5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

10 **Use of force to enter premises, etc.**

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

15 (2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

**Use of assistants to execute warrant**

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night**

20 8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

25 “by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant**

9. A search warrant ceases to have effect—

(a) on the expiration of the period of 1 month after its issue;

(b) if it is withdrawn by the authorised justice who issued the warrant; or

30 (c) when it is executed,

whichever first occurs.

*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued***Report to authorised justice on execution of warrant, etc.**

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- 5 (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
- 10 (d) stating whether or not an occupier's notice has been served in connection with the execution of the warrant.

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

**Death, absence, etc., of authorised justice who issued warrant**

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
  - (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4),
- shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

**Defects in warrants**

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

**Telephone search warrant**

25 13. (1) In this section—

“telephone” includes radio, telex and any other communication device.

(2) A person may make application by telephone for a search warrant.

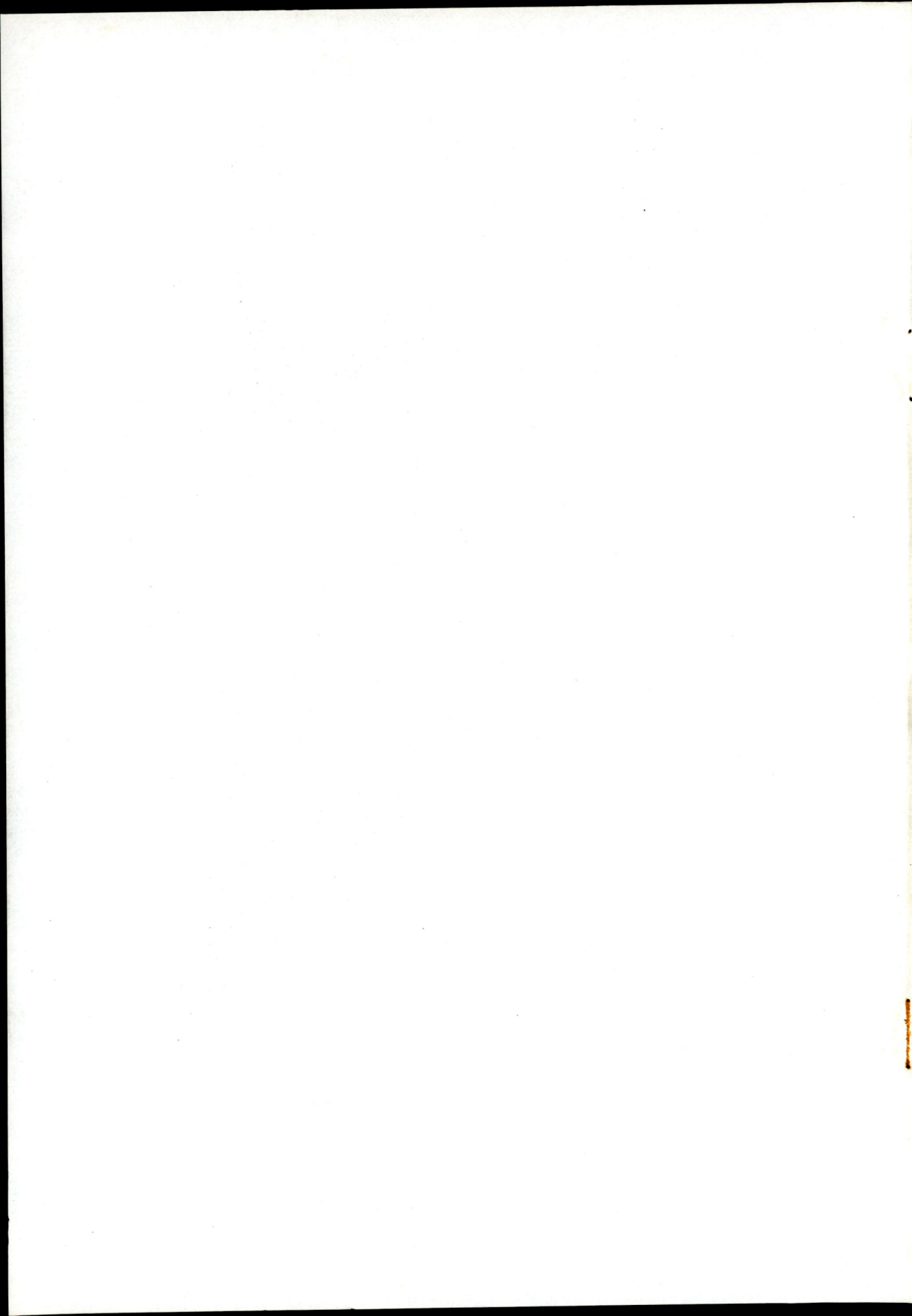
(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

(4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued*

- (5) An authorised justice who issues a search warrant upon an application made by telephone shall—
- (a) complete and sign the warrant;
  - 5 (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
  - (c) prepare and furnish an occupier's notice to the person who made the application or inform that person of the terms of an occupier's notice.
- (6) Where a search warrant is issued upon an application made by telephone, the applicant—
- 10 (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and
  - (b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).
  - 15
- (7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.





# CRIMES (CONFISCATION OF PROFITS) ACT 1985 No. 181

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NEW SOUTH WALES



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## TABLE OF PROVISIONS

### PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act to bind Crown

### PART II—FORFEITURE ORDERS

5. Forfeiture orders
6. Effects of forfeiture order
7. Effect of forfeiture order on third parties
8. Discharge of forfeiture order
9. Effect of discharge of forfeiture order

### PART III—PECUNIARY PENALTY ORDERS

10. Pecuniary penalty orders
11. Assessment of pecuniary penalty

### PART IV—RESTRAINING ORDERS

12. Restraining orders
13. Notice to be given of applications and orders
14. Court may make further orders
15. Public Trustee to discharge confiscation order
16. Charge on property subject to restraining order
17. Registration of restraining orders
18. Contravention of restraining orders
19. Hindering or obstructing Public Trustee
20. Protection of Public Trustee from liability in certain cases
21. Fees payable to Public Trustee
22. Court may revoke restraining orders

23. Time when restraining order ceases to be in force
24. Notice of applications under this Part
25. Certificate by Public Trustee

PART V—SEARCH WARRANTS

26. Interpretation
27. Search warrants
28. Seizure of property pursuant to warrant
29. Search and arrest of persons pursuant to warrant
30. Issue of warrant where charge not laid
31. Commissioner of Police responsible for seized property
32. Return of seized property
33. Obstruction, etc., of person executing warrant

PART VI—MISCELLANEOUS

34. Restriction on making applications
35. Provisions relating to courts
36. Making of confiscation orders where person has absconded
37. Stamp duty
38. Appeals
39. Operation of other laws not affected
40. Notices
41. Proceedings for offences
42. Repeals and amendments
43. Transitional provision
44. Regulations

SCHEDULE 1—PROVISIONS RELATING TO SEARCH WARRANTS ISSUED  
UNDER THIS ACT

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**CRIMES (CONFISCATION OF PROFITS) ACT 1985 No. 181**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

\* \* \* \* \*

**Act No. 181, 1985**

An Act to provide for the confiscation of the profits of crime and the forfeiture of property in certain circumstances, and for related purposes. [Assented to, 4th December, 1985.]

*Crimes (Confiscation of Profits) 1985*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**PART I**  
**PRELIMINARY**

**Short title**

1. This Act may be cited as the "Crimes (Confiscation of Profits) Act 1985".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"appeal" includes a proceeding in the nature of an appeal;

"appropriate court" means—

(a) the Supreme Court; or

(b) in relation to—

(i) a forfeiture order made in reliance on the conviction of a person for a serious offence;

(ii) a pecuniary penalty order against a person convicted of a serious offence; or

(iii) an application for such a forfeiture order or pecuniary penalty order,

the court before which the person was convicted of the offence;

"appropriate officer" means—

*Crimes (Confiscation of Profits) 1985*

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- (a) in any case—the Solicitor for Public Prosecutions;
- (b) in relation to a function exercised before or in relation to a Local Court (other than a function under Part IV)—the Commissioner of Police; or
- (c) in relation to a function prescribed for the purposes of this paragraph by the regulations—a person so prescribed or a person of a class or description so prescribed;

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

“forfeiture order” means an order made under section 5 (1);

“interest”, in relation to property, means—

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

“pecuniary penalty order” means an order made under section 10 (1);

“penalty amount” means—

- (a) in relation to a forfeiture order made against a person, the amount specified in relation to the forfeiture order under section 8 (2); or
- (b) in relation to a pecuniary penalty order made against a person, the amount that the person is, under the pecuniary penalty order, liable to pay to the State;

“property” includes real and personal property and any estate or interest in real or personal property, and money, and any debt, and any cause of action for damages (including damages for personal injury), and any other chose in action, and any other right or interest;

“relevant period”, in relation to the conviction of a person for a serious offence, means the period of 6 months after—

- (a) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (a)—the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (b)—the day on which the order in relation to the offence was made pursuant to section 556A of the Crimes Act 1900;



*Crimes (Confiscation of Profits) 1985*

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- (c) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (c)—the day on which the court took the offence into account pursuant to section 447B of the Crimes Act 1900; or
- (d) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (d)—the day on which the person is taken to have absconded under subsection (5);

“restraining order” means an order made under section 12 (2);

“serious offence” means—

- (a) an offence (including a common law offence) against the laws of New South Wales, being an offence that may be prosecuted on indictment;
- (b) the offence of supplying any restricted substance prescribed for the purposes of section 16 of the Poisons Act 1966 that arises under section 18A (1) of that Act; or
- (c) an offence prescribed for the purposes of this paragraph by the regulations or an offence of a kind so prescribed;

“State”, when not used in a geographical sense, means the Crown in right of New South Wales, and (except in relation to the payment of money to the State) includes a State authority;

“State authority” means a Minister of the Crown, a statutory body representing the Crown, a member of the Police Force or a person or body prescribed for the purposes of this definition by the regulations or of a class or description so prescribed;

“tainted property” means property that—

- (a) was used in, or in connection with, the commission of a serious offence; or
- (b) was derived or realised, directly or indirectly, by any person, as a result of the commission of a serious offence.

(2) For the purposes of this Act, a person shall be taken to have been convicted of a serious offence if—

- (a) the person has been convicted, whether summarily or on indictment, of the offence;
- (b) the person has been charged with the offence and the court hearing

*Crimes (Confiscation of Profits) 1985*

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the charge has made an order in relation to the offence pursuant to section 556A of the Crimes Act 1900;

- (c) the person has been sentenced for another offence and the court has, in passing sentence upon the person, taken the offence into account pursuant to section 447B of the Crimes Act 1900; or
- (d) the person has been charged with the offence and, at any time before the determination of the charge, the person has absconded.

(3) Where, by virtue of subsection (2), a person is to be taken to have been convicted of a serious offence, then, for the purposes of this Act—

- (a) the person shall, in a case to which paragraph (a) or (b) of that subsection applies, be taken to have been so convicted before the court referred to in the relevant paragraph; and

(b) the conviction shall be taken to have been quashed—

- (i) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (a)—when the conviction is quashed or set aside;
- (ii) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (b)—when the order made under section 556A of the Crimes Act 1900 is quashed or set aside;
- (iii) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (c)—when the decision of the court under section 447B of the Crimes Act 1900 is quashed or set aside; or
- (iv) where the person is to be taken to have been convicted of the offence by reason of subsection (2) (d)—when, after the person is subsequently brought before a court in respect of the offence with which the person was charged, the person is discharged in respect of the offence or the conviction for the offence is quashed or set aside.

(4) For the purposes of this Act, where an information has been laid alleging the commission of a serious offence by a person, the person shall be taken to have been charged with the offence (but nothing in this subsection limits any other way in which a person is to be taken to be charged with an offence).

*Crimes (Confiscation of Profits) 1985*

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(5) For the purposes of this Act (except section 36), a person shall be taken to have absconded if and only if—

- (a) an information has been laid alleging the commission of a serious offence by the person;
- (b) a warrant for the arrest of the person has been issued in relation to that information; and
- (c) reasonable attempts to locate the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued,

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

(6) A reference in this Act, in relation to the conviction of a person for a serious offence, to the commission of the offence shall, where the person is to be taken to have been convicted of the offence by reason of subsection (2)(d), be read as a reference to the alleged commission of the offence by the person.

(7) In this Act—

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

(8) Where a form is prescribed by or under this Act, then, unless the contrary intention appears, strict compliance with the form is not required and substantial compliance is sufficient.

**Act to bind Crown**

4. (1) This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

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PART II  
FORFEITURE ORDERS

**Forfeiture orders**

5. (1) Where a person has been convicted of a serious offence, an appropriate officer may, at any time before the expiration of the relevant period, apply to an appropriate court for an order under this section in relation to specified property and if—

- (a) the court is satisfied that the property is tainted property in relation to the offence; and
- (b) the court has taken into consideration (having regard to information before the court)—
  - (i) the use that is ordinarily or had been intended to be made of the property; and
  - (ii) any hardship that may reasonably be likely to arise (whether on the part of that or any other person) following the making of the order,

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

(2) Where an application has been made to a court under subsection (1) for the making of a forfeiture order in relation to particular property—

- (a) the court may, if it thinks fit, require the officer making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property; and
- (b) any person who has an interest in the property or part of the property is entitled to appear and to adduce evidence at the hearing of the application.

(3) Where, at the hearing of an application made under subsection (1) in reliance on the conviction of a person for a serious offence, evidence is given that property to which the application relates was in the possession of the person at or immediately after the commission of the offence, then—

- (a) if there is no evidence given tending to show that the property was not used in, or in connection with, the commission of the

*Crimes (Confiscation of Profits) 1985*

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offence—the court shall presume that the property was used in, or in connection with, the commission of the offence; or

- (b) in any other case—the court shall not make an order under this section in relation to the property unless it is satisfied, on the balance of probabilities, that the property was used in, or in connection with, the commission of the offence.

(4) A court making a forfeiture order in respect of property may specify in the order the extent of the estate, interest or rights in the property that are affected by the order and, where the order is to apply to land, the court shall do so.

**Effects of forfeiture order**

6. (1) Where a court makes a forfeiture order in respect of property—
- (a) the property vests in the Crown in right of New South Wales (or in such State authority as is specified in the forfeiture order), to the extent of the estate, interest or rights (if any) specified in the forfeiture order;
  - (b) the property so vests subject to every charge or encumbrance to which the property was subject immediately before the forfeiture order was made and, in the case of land under the provisions of the Real Property Act 1900, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act; and
  - (c) if the property is not already in the possession of the State, the State may take possession of the property.
- (2) Nothing in subsection (1) affects the operation of section 86 of the Real Property Act 1900 in relation to a forfeiture order made in respect of land.
- (3) Where a court makes a forfeiture order in respect of property—
- (a) the property shall not, except with the leave of an appropriate court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the State, before the relevant time; and
  - (b) if, at the relevant time, the forfeiture order has not been discharged, the property may be disposed of, or otherwise dealt with—
    - (i) in accordance with any direction of the Attorney General

*Crimes (Confiscation of Profits) 1985*

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or of a person authorised by the Attorney General for the purposes of this subparagraph; or

(ii) in accordance with any other applicable law.

(4) In subsection (3)—

“relevant time”, in relation to property that is the subject of a forfeiture order, means—

(a) where—

(i) the period provided for the lodging of an appeal against the forfeiture order has expired without such an appeal having been lodged—the expiration of that period; or

(ii) an appeal against the forfeiture order has been lodged—the time when the appeal lapses or is finally determined, as the case requires; or

(b) where—

(i) the period provided for the lodging of an appeal against the conviction for the relevant serious offence has expired without such an appeal having been lodged—the expiration of that period; or

(ii) an appeal against the conviction has been lodged—the time when the appeal lapses or is finally determined, as the case requires,

whichever is the later.

**Effect of forfeiture order on third parties**

7. (1) Where, in reliance on the conviction of a person for a serious offence, a court makes a forfeiture order in respect of property, any other person (in this section referred to as the “applicant”) who claims an interest in the property may, at any time within the period of 6 months after the day on which the forfeiture order was made, apply to the court for an order under this section in respect of that interest and, if the court is satisfied, on the balance of probabilities, that the applicant was not in any way involved in the commission of the relevant serious offence, the court shall make an order declaring the nature, extent and value of the applicant’s interest in the property and—

(a) if the property is still in the possession of the State—directing that the property be transferred to the person or declare that there is



*Crimes (Confiscation of Profits) 1985*

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

- (b) in any other case—declaring that there is payable to the person the amount specified in the order as the value of the person's interest in the property.

(2) In deciding, for the purpose of subsection (1) (a), whether to direct that property be transferred to a person or to declare that an amount is payable to a person, the court shall have regard to—

- (a) the nature, extent and value of the person's interest in the property;
- (b) if the court is aware that any other person claims an interest in the property—the nature, extent and value of that claimed interest; and
- (c) any other matter that seems to the court to be relevant.

(3) A person who applies to a court for an order under subsection (1) shall give notice, as prescribed by the regulations or by rules of court, of the making of the application and of the date, time and place fixed for the hearing of the application.

(4) A court may not make an order under subsection (1) in respect of the interest of a person who—

- (a) has been given notice under section 5 (2) (a) in relation to the application for the forfeiture order; or
- (b) has appeared under section 5 (2) (b) at the hearing of the application for the forfeiture order,

unless the court is satisfied that the making of the order is justified on special grounds.

(5) Special grounds referred to in subsection (4) include such of the following as are relevant:

- (a) that the applicant was unable to appear at the hearing of the application for the forfeiture order;
- (b) that the applicant did not appear at that hearing for a good reason;
- (c) that particular evidence adduced by the applicant in connection with the application under subsection (1) was not available to the

*Crimes (Confiscation of Profits) 1985*

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applicant at the time of the hearing of the application for the forfeiture order.

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

**Discharge of forfeiture order**

8. (1) Where—

(a) in reliance on the conviction of a person for a serious offence, a court makes a forfeiture order in respect of property; and

(b) the conviction of the person is subsequently quashed,

the quashing of the conviction operates to discharge the forfeiture order.

(2) Where a court makes a forfeiture order in respect of property, the court shall, in the order, specify the amount that it considers is the value of the property, and (except in so far as the court otherwise directs) the payment of that amount to the State operates to discharge the forfeiture order.

**Effect of discharge of forfeiture order**

9. (1) Where a forfeiture order in respect of property is discharged, whether on an appeal against the making of the forfeiture order or as provided by section 8, the person who had possession of the property before possession of it was taken by or on behalf of the State may, by application in writing to the Attorney General, request the return of the property and, on receipt of the application by the Attorney General—

(a) if the property is still in the possession of the State—subject to subsection (2), the Attorney General shall arrange for the property to be returned to the person; or

(b) in any other case—subject to subsections (3) and (4), there is payable to the person the amount specified in the forfeiture order as the value of the property.

(2) Where—

(a) a person applies to the Attorney General under subsection (1) for the return of property that is in the possession of the State; and

*Crimes (Confiscation of Profits) 1985*

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- (b) pursuant to section 7, an amount has been paid to another person in respect of that other person's interest in the property,

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

**(3) Where—**

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

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

**(4) In this section—**

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

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PART III

PECUNIARY PENALTY ORDERS

**Pecuniary penalty orders**

- 10. (1) Where a person has been convicted of a serious offence—**
- (a) an appropriate officer may, at any time before the expiration of the relevant period, apply to an appropriate court for an order under this section in respect of the offence; and



*Crimes (Confiscation of Profits) 1985*

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- (b) on the making of an application under paragraph (a), the court may—
- (i) assess, in accordance with section 11, the value of the benefits derived by the person by reason of having committed the offence; and
  - (ii) order the person to pay to the State a pecuniary penalty equal to the value as so assessed.

(2) An amount payable by a person to the State in accordance with an order made under subsection (1) shall, for all purposes, be deemed to be a civil debt due by the person to the State.

(3) An order made by a court under subsection (1) may be enforced as if it were an order made by the court in civil proceedings instituted by the State against the person to recover a debt due by the person to the State.

(4) An application may be made under this section in relation to one or more serious offences.

**Assessment of pecuniary penalty**

11. (1) In this section—

- (a) a reference to the defendant, in relation to an application under section 10 (1) for an order that a person pay a pecuniary penalty to the State, shall be read as a reference to that person; and
- (b) a reference to the offence period, in relation to an application under section 10 (1) made in reliance on the conviction of a person for 2 or more serious offences, is a reference to the period commencing when the earliest of those offences was committed and ending when the latest of those offences was committed.

(2) For the purposes of an application under section 10 (1), the value of the benefits derived by the defendant by reason of having committed a serious offence or serious offences shall be assessed by the court having regard to information before the court concerning all or any of the following matters:

- (a) the money, or the value of the property other than money, that came into the possession or under the control of—
  - (i) the defendant; or

*Crimes (Confiscation of Profits) 1985*

- (ii) another person at the request or by the direction of the defendant,  
by reason of the defendant's having committed the offence or any of the offences;
- (b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a), that was provided for—
  - (i) the defendant; or
  - (ii) another person at the request or by the direction of the defendant,  
by reason of the defendant's having committed the offence or any of the offences;
- (c) the extent of the defendant's involvement in the commission of the offence or offences;
- (d) the value of the defendant's property—
  - (i) where the application relates to a single serious offence—before and after the commission of the offence; or
  - (ii) where the application relates to 2 or more serious offences—before and after the offence period.

(3) Where, at the hearing of an application under section 10 (1) in relation to a serious offence or serious offences, evidence is given that the value of the defendant's property after the defendant committed the serious offence, or after the end of the offence period, as the case may be, exceeded the value of the defendant's property before the defendant committed the serious offence or before the commencement of the offence period, as the case may be, then, for the purposes of section 10 (1), the court shall, subject to subsection (4), treat the value of the benefits derived by the defendant by reason of having committed the offence or offences as being not less than the amount of the excess.

(4) Where, after evidence has been given at the hearing of an application under section 10 (1) in relation to a serious offence or serious offences that the value of the defendant's property after the defendant committed the serious offence, or after the end of the offence period, as the case may be, exceeded the value of the defendant's property before the defendant committed the serious offence or before the commencement of the offence period, as the case may be, the defendant satisfies the court that the whole or a part of the excess was due to causes unrelated to the commission of the offence or offences, as the case may be—

*Crimes (Confiscation of Profits) 1985*

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- (a) if the defendant so satisfies the court in respect of the whole of the excess—subsection (3) does not apply to the excess; or
- (b) if the defendant so satisfies the court in respect of a part of the excess—subsection (3) applies to the excess as if it were reduced by the amount of that part.

(5) In calculating, for the purposes of an application under section 10 (1) in relation to a serious offence or serious offences, the value of benefits derived by the defendant by reason of having committed the offence or offences, any expenses or outgoings of the defendant in connection with the commission of the offence or offences shall be disregarded.

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

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PART IV

## RESTRAINING ORDERS

**Restraining orders**

12. (1) Where a person (in this section referred to as the “defendant”) has been, or is about to be, charged with a serious offence, an appropriate officer may apply to the Supreme Court, *ex parte*, for an order under this section in respect of specified property of the defendant or in respect of all the property of the defendant.

(2) Where—

- (a) an application made to the Supreme Court under subsection (1) in reliance on the charging, or the proposed charging, of the defendant with a serious offence is supported by an affidavit of a member of the Police Force stating that the member believes that—
  - (i) the defendant committed the offence;
  - (ii) the property to which the application relates is tainted property in relation to the offence or the defendant



*Crimes (Confiscation of Profits) 1985*

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obtained benefits by reason of having committed the offence; and

(iii) the property is the property of the defendant,

and setting out the grounds on which the member holds those beliefs; and

(b) the Court considers that, having regard to the matters contained in the affidavit, there are reasonable grounds for holding those beliefs,

the Court may, by order—

(c) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order; or

(d) if the Court considers that the circumstances so require—direct the Public Trustee to take control of the property, or such part of the property as is specified in the order.

(3) Where an application is made under subsection (1) in reliance on the proposed charging of a person with a serious offence, the Supreme Court shall not make a restraining order unless it is satisfied that the person is likely to be charged with the offence within 48 hours.

(4) A restraining order may be made subject to such conditions as the Supreme Court thinks fit and, without limiting the generality of the foregoing, may make provision for meeting the reasonable living and business expenses of the defendant out of the property, or a specified part of the property, to which the order applies.

(5) The Supreme Court may refuse to make a restraining order if the State refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(6) For the purposes of an application under subsection (1), an appropriate officer may, on behalf of the State, give to the Supreme Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

**Notice to be given of applications and orders**

*Crimes (Confiscation of Profits) 1985*

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13. (1) Where an application has been made to the Supreme Court under section 12 for a restraining order in respect of property—

- (a) the Court may, if it thinks fit, require the officer making the application to give notice of the application to a person who the Court has reason to believe has an interest in the property or part of the property; and
- (b) a person to whom the Court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

(2) Where—

- (a) a restraining order has been made in respect of property of a person; and
- (b) the person was not notified of the application for the making of the restraining order,

the officer who made the application shall give notice to the person, as prescribed by the regulations or by rules of court, of the making of the order.

**Court may make further orders**

14. (1) Where the Supreme Court makes, or has made, a restraining order in respect of specified property, or of all the property, of a person (in this section referred to as the “defendant”), the Court may, at the time it makes the restraining order or at any later time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make one or more of the following orders:

- (a) an order varying the restraining order in respect of the property to which it relates;
- (b) an order varying any condition to which the restraining order was subject;
- (c) an order for the examination of the defendant, or another person, before the Court or a prescribed officer of the Court concerning the nature and location of the property of the defendant;
- (d) an order with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the State in connection with the making of the restraining order;
- (e) where the restraining order directed the Public Trustee to take control of property—

*Crimes (Confiscation of Profits) 1985*

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- (i) an order regulating the manner in which the Public Trustee may exercise his or her powers or perform his or her duties under the restraining order;
- (ii) an order determining any question relating to the property, including any question relating to the liabilities of the defendant, and the exercise of the powers, or the performance of the duties, of the Public Trustee with respect to the property;
- (iii) an order directing the defendant to furnish to the Public Trustee, within a period specified in the order, a statement, verified by the oath or affirmation of the defendant, setting out such particulars of the property of the defendant as the Court thinks proper.

(2) Without affecting the generality of subsection (1), where the Supreme Court makes, or has made, a restraining order, the Court may, at the time it makes the restraining order or at any later time, whether on application made to it or on its own motion, make an order authorising another court—

- (a) to make an order setting aside the restraining order in respect of the whole or a part of the property; or
- (b) to make other orders in relation to the operation of the restraining order,

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

(3) An order under subsection (1) or (2) may be made on application—

- (a) by an appropriate officer;
- (b) by the defendant;
- (c) where the restraining order directed the Public Trustee to take control of property—by the Public Trustee; or
- (d) with the leave of the Supreme Court—by any other person.

(4) Where a person is examined before the Supreme Court or an officer of the Supreme Court pursuant to an order under subsection (1), a statement or disclosure made by the person in answer to a question put in the course of the examination is not admissible against the person in any civil or criminal proceedings except in—



*Crimes (Confiscation of Profits) 1985*

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- (a) a proceeding for giving false testimony in the course of the examination;
- (b) a proceeding for the making of a forfeiture order, for the purpose only of facilitating the identification of the property to be subject to the forfeiture order; or
- (c) a proceeding for the making of a pecuniary penalty order, for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.

**Public Trustee to discharge confiscation order****15. (1) Where—**

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

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

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

- (a) direct the Public Trustee to sell or otherwise dispose of such of the property that is under the control of the Public Trustee as the court specifies; and
- (b) appoint an officer of the court or any other person to execute any deed or instrument in the name of the person who owns or has an estate, interest or right in the property and to do all acts and things necessary to give validity and operation to the deed or instrument.

(3) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person who owned or had an estate, interest or right in the property.

(4) As soon as practicable after the making of the later order, the Public Trustee—

*Crimes (Confiscation of Profits) 1985*

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- (a) shall apply the money which has come into the Public Trustee's possession or under the Public Trustee's control by reason of the sale or disposition of any of the property specified in the later order, or the subsequent order, or otherwise in the course of performing the Public Trustee's duties in respect of the property to which the restraining order relates, in payment of the fees payable in connection with, and the expenses incurred by the Public Trustee in or in connection with, the performance of the duties imposed on the Public Trustee under the restraining order, including the expenses incurred by the Public Trustee in or in connection with the sale or disposition of any of the property to which the restraining order relates; and
- (b) shall, subject to subsection (5), pay the remainder of the money referred to in paragraph (a), after the payments referred to in that paragraph have been made, to the State.

(5) Where the money to which subsection (4) (b) applies exceeds the penalty amount, the Public Trustee shall—

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

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

**Charge on property subject to restraining order**

16. (1) Where—

- (a) in reliance on the charging, or the proposed charging, of a person with a serious offence, the Supreme Court has made a restraining order in respect of particular property, or of all the property, of the person; and
- (b) in reliance on the conviction of the person for the offence, a court subsequently makes a pecuniary penalty order against the person,

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

*Crimes (Confiscation of Profits) 1985*

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(2) Where a charge is created by subsection (1) on property of a person upon the making of a pecuniary penalty order, the charge ceases to have effect in respect of the property—

- (a) upon the discharge of the pecuniary penalty order on the hearing of an appeal against the making of the pecuniary penalty order;
- (b) upon payment by the person to the State of the penalty amount;
- (c) upon the sale or other disposition of the property—
  - (i) pursuant to an order made by the Supreme Court under section 15;
  - (ii) by the owner of the property with the consent of the Supreme Court; or
  - (iii) where the restraining order directed the Public Trustee to take control of the property—by the owner of the property with the consent of the Public Trustee; or
- (d) upon the sale of the property to a bona fide purchaser for value who, at the time of purchase, has no notice of the charge,

whichever first occurs.

(3) A charge created on property by subsection (1) upon the making of a pecuniary penalty order—

- (a) is subject to every charge or encumbrance to which the property was subject immediately before the pecuniary penalty order was made and, in the case of land under the provisions of the Real Property Act 1900, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act;
- (b) has priority over all other encumbrances whatever; and
- (c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of New South Wales provide for the registration of title to, or charges over, property of that kind, the Public Trustee or an appropriate officer may or, in the case of land, shall cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of subsection (2), be deemed to have notice of the charge.



*Crimes (Confiscation of Profits) 1985*

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(5) Where a charge under this section relates to land under the provisions of the Real Property Act 1900, the charge has no effect until it is registered under that Act.

**Registration of restraining orders**

17. (1) Where a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions shall, on application by an appropriate officer, record on the register kept pursuant to those provisions the prescribed particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 18, be deemed to have notice of the restraining order.

(2) Where a restraining order applies to land under the provisions of the Real Property Act 1900, a caveat may be lodged under that Act in relation to the order.

**Contravention of restraining orders**

18. A person shall not knowingly contravene a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order.

Penalty: \$5,000 or imprisonment for 2 years, or both.

**Hindering or obstructing Public Trustee**

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

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

(2) In this section—

“Public Trustee” includes the deputies, officers, servants and agents of the Public Trustee.

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

20. (1) Section 45 of the Public Trustee Act 1913 applies to and in respect of the functions of the Public Trustee under this Act in the same way as it applies to and in respect of the functions of the Public Trustee

*Crimes (Confiscation of Profits) 1985*

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under that section, but nothing in this section shall be read as limiting the operation of that section.

(2) The Public Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of New South Wales upon or in respect of property of which the Public Trustee has been directed by a restraining order to take control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the restraining order, except to the extent, if any, of the rents and profits received by the Public Trustee in respect of that property on or after the date of the restraining order.

(3) Where the Public Trustee, having been directed by a restraining order to take control of a business carried on by a person, carries on that business, the Public Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Public Trustee in his or her capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of the restraining order.

(4) In this section—

“Public Trustee” includes the deputies, officers, servants and agents of the Public Trustee.

**Fees payable to Public Trustee**

21. Where the Public Trustee takes control of property in accordance with a restraining order, the Public Trustee is entitled to receive such fees, in respect of the exercise of his or her powers and the performance of his or her duties in relation to the property, as may be prescribed.

**Court may revoke restraining orders**

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

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

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

23. (1) Subject to this section and to any order made by a court pursuant to this section, a restraining order made in reliance on the charging, or proposed charging, of a person with a serious offence ceases to be in force—

- (a) if the restraining order was made in reliance on the proposed charging of a person and, at the expiration of the period of 48 hours after the making of the restraining order, the person has not been charged with the offence—at the expiration of that period; or
- (b) in any other case—at the expiration of the period of 6 months after the making of the restraining order or, if an order or orders has or have been made under section 14 in relation to the restraining order, at the expiration of the period of 6 months after the making of the order, or of the last of the orders, under section 14.

(2) Where, by reason of subsection (1) (b), a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence would cease to be in force at the expiration of a particular period, an appropriate officer may apply to the Supreme Court for an order under subsection (3).

(3) If, on application under subsection (2), the Supreme Court is satisfied—

- (a) that a forfeiture order may still be made in respect of the property or part of the property; or
- (b) that a pecuniary penalty order may still be made against the person,

the Supreme Court may—

- (c) by order, extend the period during which the restraining order remains in force; and
- (d) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(4) Where the Supreme Court makes an order under subsection (3) in relation to a restraining order, then, notwithstanding subsection (1), the restraining order does not cease to be in force except as provided by the



*Crimes (Confiscation of Profits) 1985*

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order under subsection (3) or by an order subsequently made pursuant to this section.

(5) Where, while a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the Supreme Court may—

- (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(6) Where, while a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court (other than the Supreme Court) makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the court may—

- (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order,

but the court may make an order under this subsection only if, and to the extent and in the circumstances, it is authorised to do so by an order of the Supreme Court under section 14 (2).

(7) Where, while a restraining order in respect of property made in reliance on the charging, or proposed charging, of a person with a serious offence is in force, a court refuses to make a forfeiture order in respect of the property or refuses to make a pecuniary penalty order against the person, the Supreme Court may—

- (a) if it considers it appropriate, make an order in relation to the period for which the restraining order is to remain in force; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(8) An order under subsection (5), (6) or (7) may be made so as—

*Crimes (Confiscation of Profits) 1985*

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- (a) to set aside the restraining order wholly or in part; and
- (b) to take effect—
  - (i) on the making of the first-mentioned order;
  - (ii) at a specified time;
  - (iii) where relevant, on the payment of a penalty amount to the State; or
  - (iv) on the happening of some other specified event,

and, when the first-mentioned order takes effect, the restraining order ceases to be in force to the extent to which it is set aside.

**Notice of applications under this Part**

**24. (1)** A person who makes an application under section 14 in relation to a restraining order shall give notice of that application, as prescribed by the regulations or by rules of court, to each other person who is entitled, by virtue of section 14 (2), to make an application under section 14 in relation to the restraining order.

**(2)** A person who makes an application under section 22 or section 23 (2) in relation to a restraining order shall give notice of that application, as prescribed by the regulations or by rules of court.

**Certificate by Public Trustee**

**25.** Where a restraining order is made directing the Public Trustee to take control of property, a certificate under the hand of the Public Trustee or an officer referred to in section 50 of the Public Trustee Act 1913 and sealed with the Public Trustee's seal—

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

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

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## PART V

## SEARCH WARRANTS

**Interpretation**

26. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Local Courts Administration, Attorney General’s Department;

“premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not), and any part thereof;

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

**Search warrants**

27. (1) A member of the Police Force may apply to an authorised justice for a search warrant to be issued under this Part if the member of the Police Force has reasonable grounds for believing that there is in or on any premises tainted property of a particular kind.

(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force—

- (a) to enter the premises; and
- (b) to search the premises for tainted property of the particular kind referred to in subsection (1).

(3) There shall be stated in a warrant issued under this Part—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the relevant serious offence; and
- (b) a description of the kind of property authorised to be seized.



*Crimes (Confiscation of Profits) 1985*

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(4) Nothing in this Part limits any of the provisions of the Crimes Act 1900 relating to search warrants under that Act.

(5) Schedule 1 has effect with respect to a search warrant issued under this Part.

**Seizure of property pursuant to warrant**

28. (1) A member of the Police Force executing a search warrant issued under this Part may seize property of the kind specified in the warrant.

(2) If, in the course of searching, in accordance with a warrant issued under this Part, for property that is tainted property in relation to a particular serious offence, being property of a kind specified in the warrant, a member of the Police Force finds any property that the member believes on reasonable grounds to be—

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

(b) tainted property in relation to another serious offence,

and the member believes on reasonable grounds that it is necessary to seize that property in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the serious offence or the other serious offence, the warrant shall be deemed to authorise the member to seize that property.

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

(a) a power to remove the thing from the premises where it is found; and

(b) a power to guard the thing in or on those premises.

**Search and arrest of persons pursuant to warrant**

29. A member of the Police Force executing a search warrant issued under this Part—

(a) may search a person found in or on the premises whom the member of the Police Force reasonably suspects of having property of the kind specified in the warrant; and

(b) may arrest and bring before a justice of the peace any person found in or on the premises whom the member of the Police Force

*Crimes (Confiscation of Profits) 1985*

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reasonably suspects of having committed an offence in respect of property seized pursuant to section 28.

**Issue of warrant where charge not laid**

30. A warrant may be issued under this Part in relation to property whether or not a person has been charged with the relevant serious offence, but an authorised justice shall not issue a warrant under this Part in relation to property where a person has not been charged with the relevant serious offence unless the authorised justice is satisfied—

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

**Commissioner of Police responsible for seized property**

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

**Return of seized property**

32. (1) Where—

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

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

(2) Where—

- (a) property has been seized pursuant to a warrant issued under this Part; and
- (b) either before the property was seized, or after it was seized but

*Crimes (Confiscation of Profits) 1985*

before the expiration of 7 days after it was seized, an information has been laid in respect of the relevant serious offence,

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

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

(3) Where—

- (a) property has been seized pursuant to a warrant issued under this Part; and
- (b) an appropriate court refuses to make a forfeiture order in respect of the property,

the court shall make an order directing that the property be returned to the person from whose possession the property was seized.

(4) Where property has been seized pursuant to a warrant under this Part, the person from whose possession the property was seized may apply to an appropriate court for an order under this subsection and, if the court is satisfied that it would refuse to make a forfeiture order in respect of the property, the court may make an order—

- (a) directing that the property be returned to that person; or
- (b) directing that the person be allowed access to the property,

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

(5) A person who applies to a court for an order under subsection (4) shall give notice, as prescribed by the regulations or by rules of court, of the making of the application and of the date, time and place fixed for the hearing of the application.

(6) In this section—

- (a) a reference to a person from whose possession property was seized includes a reference to any person who is entitled to the property; and
- (b) a reference to the relevant time is a reference to—



*Crimes (Confiscation of Profits) 1985*

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- (i) subject to subparagraph (ii), the date of the conviction, discharge or acquittal, or of the refusal to make the forfeiture order, as the case requires; or
- (ii) if there is a right of appeal—
  - (A) where the period provided for the lodging of the appeal has expired without such an appeal having been lodged—the expiration of that period; or
  - (B) where an appeal has been lodged—the time when the appeal lapses or is finally determined, as the case requires.

**Obstruction, etc., of person executing warrant**

33. A person shall not, without reasonable excuse, obstruct or hinder a person executing a search warrant issued under this Part.

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

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**PART VI****MISCELLANEOUS****Restriction on making applications**

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

**Provisions relating to courts**

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

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

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

*Crimes (Confiscation of Profits) 1985*

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(2) A Local Court may not, in relation to the conviction of a person for a particular offence, make a forfeiture order in respect of property unless it is satisfied that the value of the property (together with the value of any other property the subject of any other undischarged forfeiture order made by the Local Court in relation to the same conviction of that person) does not exceed \$5,000.

(3) A Local Court may not make a pecuniary penalty order against a person unless it is satisfied that the amount payable under the order (together with the amount payable under any other undischarged pecuniary penalty order made against the person by the Local Court) would not exceed \$5,000.

(4) A Local Court may not make a forfeiture order in respect of land, except in such circumstances as may be prescribed.

(5) For the purposes of this section, the value of property shall be as determined by the Local Court.

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

36. (1) Where a person is, by reason of section 3 (2) (d), to be taken to have been convicted of a serious offence, an appropriate court shall not make a confiscation order in relation to the conviction of the person for that offence unless—

- (a) it is satisfied, on the balance of probabilities, that the person has absconded; and
- (b) it is of the opinion that, having regard to all the evidence before the court, the evidence is capable of satisfying a jury beyond reasonable doubt that the person committed the offence.

(2) In this section—

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

**Stamp duty**

37. No stamp duty is payable under the Stamp Duties Act 1920 in respect of—

*Crimes (Confiscation of Profits) 1985*

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

**Appeals**

**38. (1)** Without affecting any other right of appeal, a forfeiture order in relation to any property is appellable by any person who has an interest in the property —

- (a) in the case of a person convicted of an offence in reliance on which the forfeiture order was made— in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence; or
- (b) in any other case—in the same manner as if the person had been convicted of a serious offence and the order were, or were part of, a sentence imposed in respect of the offence.

(2) Without affecting any other right of appeal, a pecuniary penalty order is appellable in the same manner as if it were, or were part of, a sentence imposed in respect of the offence in relation to which the order was made.

(3) On appeal, a forfeiture order or a pecuniary penalty order may be confirmed, discharged or varied.

(4) The Attorney General may appeal to the Court of Criminal Appeal against a refusal by a court to make a forfeiture order or a pecuniary penalty order, and the Court of Criminal Appeal may in its discretion make such order as could have been made in the first instance.

(5) A forfeiture order or a pecuniary penalty order made by the Court of Criminal Appeal under subsection (4) shall be deemed to have been made by the Supreme Court under this Act, but is not on that account subject to further appeal.

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

**Operation of other laws not affected**

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



*Crimes (Confiscation of Profits) 1985*

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**Notices**

40. (1) The regulations may make provision for or with respect to the giving of notices under this Act.

(2) Rules of court may make provision for or with respect to the giving of notices under this Act.

(3) If a notice is required to be given under this Act and the regulations or rules of court make provision for or with respect to the giving of the notice, the notice shall be given in accordance with the relevant provisions.

(4) The regulations shall prevail to the extent of any inconsistency with the rules of court.

(5) A reference in this section to rules of court includes a reference to regulations made under the Justices Act 1902.

**Proceedings for offences**

41. Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Repeals and amendments**

42. (1) Sections 45AC and 45AD of the Poisons Act 1966 are repealed.

(2) On the commencement of this Act or on the commencement of the Search Warrants Act 1985 (whichever is the later), this Act is amended—

(a) by omitting section 27 (4) and (5) and by inserting instead the following subsections:

(4) Nothing in this Part limits the operation of Part III of the Search Warrants Act 1985.

(5) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this Part.

(b) by omitting Schedule 1.

(3) Section 8 of the Interpretation Act 1897 extends to the repeal of section 27 (4) and (5) by this section.

**Transitional provision**

*Crimes (Confiscation of Profits) 1985*

43. This Act applies to serious offences committed before the commencement of this Act, as well as to those committed after the commencement of this Act, but does not apply to an offence in respect of which a person has been charged before that commencement.

**Regulations**

44. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be determined, applied or regulated from time to time by any specified person or body,

or may do any combination of those things.

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SCHEDULE 1

(Sec. 27 (5))

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED  
UNDER THIS ACT

**Interpretation**

1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

- “authorised justice” has the same meaning as in section 26;
- “occupier”, in relation to any premises, includes a person in charge of the premises;
- “occupier’s notice” means an occupier’s notice referred to in clause 4;
- “premises” has the same meaning as in section 26;
- “search warrant” means a search warrant issued under Part V.

**Application for warrant**

2. (1) An application for a search warrant shall be made in writing.

*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued*

- (2) An authorised justice shall not issue a search warrant unless—
- (a) the application for the warrant sets out the grounds on which the warrant is being sought;
  - (b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and
  - (c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

(3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

**Record of proceedings before authorised justice**

3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

(2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

**Notice to occupier of premises entered pursuant to warrant**

4. (1) An authorised justice shall prepare and furnish an occupier's notice to the person to whom the authorised justice issues a search warrant.

- (2) An occupier's notice furnished in relation to a search warrant—
- (a) shall specify—
    - (i) the name of the person who applied for the warrant;
    - (ii) the name of the authorised justice who issued the warrant;
    - (iii) the date and the time when the warrant was issued; and
    - (iv) the address or other description of the premises the subject of the warrant; and
  - (b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.
- (3) A person executing a search warrant shall—
- (a) upon entry into or onto the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
  - (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.



*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued*

(4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.

(5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

**Duty to show warrant**

5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**Use of force to enter premises, etc.**

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

**Use of assistants to execute warrant**

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night**

8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

“by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant**

9. A search warrant ceases to have effect—

(a) on the expiration of the period of 1 month after its issue;

(b) if it is withdrawn by the authorised justice who issued the warrant; or

(c) when it is executed,

whichever first occurs.

*Crimes (Confiscation of Profits) 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued***Report to authorised justice on execution of warrant, etc.**

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
- (d) stating whether or not an occupier's notice has been served in connection with the execution of the warrant.

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

**Death, absence, etc., of authorised justice who issued warrant**

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
- (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4),

shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

**Defects in warrants**

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

**Telephone search warrant**

13. (1) In this section—

“telephone” includes radio, telex and any other communication device.

(2) A person may make application by telephone for a search warrant.

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

(4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

*Crimes (Confiscation of Profits) 1985*

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SCHEDULE 1—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS  
ACT—*continued*

- (5) An authorised justice who issues a search warrant upon an application made by telephone shall—
- (a) complete and sign the warrant;
  - (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
  - (c) prepare and furnish an occupier's notice to the person who made the application or inform that person of the terms of an occupier's notice.
- (6) Where a search warrant is issued upon an application made by telephone, the applicant—
- (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and
  - (b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).
- (7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.



