Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002

Act No. 86 of 2002 as amended

This compilation was prepared on 15 January 2002

[This Act was amended by Act No. 125 of 2002]

Amendments from Act No. 125 of 2002

[Schedule 3 (item 15) repealed heading before item 33 of Schedule 6;
Schedule 3 (item 16) repealed items 33 to 39 of Schedule 6
Schedule 3 (items 15 and 16) commenced on 1 January 2003]

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An Act to deal with consequential and transitional matters arising from the enactment of the *Proceeds of Crime Act 2002*, and for other purposes

[*Assented to 11 October 2002*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	11 October 2002
2. Schedules 1 to 4	At the same time as sections 3 to 338 of the *Proceeds of Crime Act 2002* commence	1 January 2003 (*Gazette* 2002, No. GN44)
3. Schedule 5, items 1 to 9	At the same time as sections 3 to 338 of the *Proceeds of Crime Act 2002* commence	1 January 2003 (*Gazette* 2002, No. GN44)

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
4. Schedule 5, item 10	The later of: (a) the commencement of sections 3 to 338 of the *Proceeds of Crime Act 2002*; or (b) immediately after the commencement of section 5 of the *Family Law Legislation Amendment (Superannuation) Act 2001*	1 January 2003 (*Gazette* 2002, No. GN44)
5. Schedules 6 and 7	At the same time as sections 3 to 338 of the *Proceeds of Crime Act 2002* commence	TBP or 11 April 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Money laundering

Criminal Code Act 1995

1 The Schedule (before Part 10.5 of the *Criminal Code*)

Insert:

Part 10.2—Money laundering

Division 400—Money laundering

400.1 Definitions

(1) In this Division:

ADI (authorised deposit-taking institution) means:

(a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

deals with money or other property has the meaning given by section 400.2.

instrument of crime: money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

proceeds of crime means any money or other property that is derived or realised, directly or indirectly, by any person from the commission of an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

property means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property.

(2) To avoid doubt, a reference in this Division to ***money or other property*** includes a reference to financial instruments, cards and other objects that represent money or can be exchanged for money, whether or not they have intrinsic value.

400.2 Meaning of *dealing with money or other property*

(1) For the purposes of this Division, a person ***deals with money or other property*** if:

(a) the person does any of the following:

(i) receives, possesses, conceals or disposes of money or other property;

(ii) imports money or other property into, or exports money or other property from, Australia;

(iii) engages in a banking transaction relating to money or other property; and

(b) the money or other property is proceeds of crime, or could become an instrument of crime, in relation to an offence that is a Commonwealth indictable offence or a foreign indictable offence.

(2) For the purposes of this Division, a person ***deals with money or other property*** if:

(a) the person does any of the following:

(i) receives, possesses, conceals or disposes of money or other property;

(ii) imports money or other property into, or exports money or other property from, Australia;

(iii) engages in a banking transaction relating to money or other property; and

(b) the person does any of the matters referred to in paragraph (a):

(i) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or

(ii) by means of a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(xx) of the Constitution; or

(iii) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).

(3) In this section:

banking transaction includes:

(a) any transaction made at an ADI; and

(b) any transaction involving a money order.

Commonwealth indictable offence means an offence against a law of the Commonwealth, or a law of a Territory (other than the Australian Capital Territory and the Northern Territory), that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

export money or other property, from Australia, includes transfer money or other property from Australia by an electronic communication.

foreign indictable offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

(a) a law of the Commonwealth; or

(b) a law of a State or Territory connected with the offence;

that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Note: See subsection (4) for when a law of a State or Territory is connected with the offence.

import money or other property, into Australia, includes transfer money or other property to Australia by an electronic communication.

(4) For the purposes of the definition of ***foreign indictable offence*** in subsection (3), a State or Territory is connected with the offence if:

(a) a dealing in money or property takes place in the State or Territory; and

(b) the money or property would be proceeds of crime, or could become an instrument of crime, in relation to the offence if the offence were a foreign indictable offence.

400.3 Dealing in proceeds of crime etc.—money or property worth $1,000,000 or more

(1) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

(2) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

(3) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.4 Dealing in proceeds of crime etc.—money or property worth $100,000 or more

(1) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

(2) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk

that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

(3) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.5 Dealing in proceeds of crime etc.—money or property worth $50,000 or more

(1) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $50,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

(2) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $50,000 or more.

Penalty: Imprisonment for 7 years, or 420 penalty units, or both.

(3) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $50,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.6 Dealing in proceeds of crime etc.—money or property worth $10,000 or more

(1) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $10,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

(2) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $10,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(3) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $10,000 or more.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.7 Dealing in proceeds of crime etc.—money or property worth $1,000 or more

(1) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
- (b) either:
  - (i) the money or property is, and the person believes it to be, proceeds of crime; or
  - (ii) the person intends that the money or property will become an instrument of crime; and
- (c) at the time of the dealing, the value of the money and other property is $1,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(2) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
- (b) either:
  - (i) the money or property is proceeds of crime; or
  - (ii) there is a risk that the money or property will become an instrument of crime; and
- (c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
- (d) at the time of the dealing, the value of the money and other property is $1,000 or more.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(3) A person is guilty of an offence if:
- (a) the person deals with money or other property; and
- (b) either:
  - (i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and

(d) at the time of the dealing, the value of the money and other property is $1,000 or more.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

(4) Absolute liability applies to paragraphs (1)(c), (2)(d) and (3)(d).

Note: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

400.8 Dealing in proceeds of crime etc.—money or property of any value

(1) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

(2) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: Imprisonment for 6 months, or 30 penalty units, or both.

(3) A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is proceeds of crime; or

(ii) there is a risk that the money or property will become an instrument of crime; and

(c) the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

Penalty: 10 penalty units.

400.9 Possession etc. of property reasonably suspected of being proceeds of crime etc.

(1) A person is guilty of an offence if:

(a) the person:

(i) receives, possesses, conceals or disposes of money or other property; or

(ii) imports money or other property into, or exports money or other property from, Australia; and

(b) it is reasonable to suspect either or both of the following:

(i) the money or property is proceeds of crime in relation to a Commonwealth indictable offence or a foreign indictable offence;

(ii) the money or property is proceeds of crime, and the person's conduct referred to in paragraph (a) takes place in circumstances referred to in subsection (3).

Penalty: Imprisonment for 2 years, or 50 penalty units, or both.

(2) Without limiting paragraph (1)(b), that paragraph is taken to be satisfied if:

(a) the conduct referred to in paragraph (1)(a) involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Financial Transaction Reports Act 1988* that would otherwise apply to the transactions; or

(b) the conduct involves using one or more accounts held with ADIs in false names; or

(c) the value of the money and property involved in the conduct is, in the opinion of the trier of fact, grossly out of proportion to the defendant's income and expenditure; or

(d) the conduct involves a significant cash transaction within the meaning of the *Financial Transaction Reports Act 1988*, and the defendant:

(i) has contravened his or her obligations under that Act relating to reporting the transaction; or

(ii) has given false or misleading information in purported compliance with those obligations; or

(e) the defendant:

(i) has stated that the conduct was engaged in on behalf of or at the request of another person; and

(ii) has not provided information enabling the other person to be identified and located.

(3) Subparagraph (1)(b)(ii) applies if the conduct in question takes place:

(a) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or

(b) by means of a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(xx) of the Constitution; or

(c) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).

(4) Absolute liability applies to paragraph (1)(b).

(5) This section does not apply if the defendant proves that he or she had no reasonable grounds for suspecting that the money or property was derived or realised, directly or indirectly, from some form of unlawful activity.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4).

400.10 Mistake of fact as to the value of money or property

(1) A person is not criminally responsible for an offence against section 400.3, 400.4, 400.5, 400.6 or 400.7 in relation to money or property if:

(a) at or before the time of dealing with the money or property, the person considered what was the value of the money or property, and was under a mistaken but reasonable belief about that value; and

(b) had the value been what the person believed it to be, the person's conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Example: Assume that a person deals with money or property that is the proceeds of crime. While the person believes it to be proceeds of crime, he or she is under a mistaken but reasonable belief that it is worth $90,000 when it is in fact worth $120,000.

That belief is a defence to an offence against subsection 400.4(1) (which deals with money or property of a value of $100,000 or more). However, the person would be guilty of an offence against subsection 400.5(1) (which deals with money or property of a value of $10,000 or more). Section 400.14 allows for an alternative verdict of guilty of an offence against subsection 400.5(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3)).

(2) A person may be regarded as having considered what the value of the money or property was if:

(a) he or she had considered, on a previous occasion, what the value of the money or property was in the circumstances surrounding that occasion; and

(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

400.11 Proof of certain matters relating to kinds of offences not required

In a prosecution for an offence against a provision of this Division, it is not necessary to prove the existence of any fault element in relation to any of the following:

(a) whether an offence may be dealt with as an indictable offence;

(b) whether an offence is an indictable offence;

(c) whether an offence is a Commonwealth indictable offence;

(d) whether an offence is a foreign indictable offence.

400.12 Combining several contraventions in a single charge

(1) A single charge of an offence against a provision of this Division may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Division.

(2) If:

(a) a single charge is about 2 or more such instances; and

(b) the value of the money and other property dealt with is an element of the offence in question;

that value is taken to be the sum of the values of the money and other property dealt with in respect of each of those instances.

400.13 Proof of other offences is not required

(1) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of crime, to establish:

(a) a particular offence was committed in relation to the money or property; or

(b) a particular person committed an offence in relation to the money or property.

(2) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division an intention or risk that money or property will be an instrument of crime, to establish that:

(a) an intention or risk that a particular offence will be committed in relation to the money or property; or

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

400.14 Alternative verdicts

If, on a trial for an offence against a provision of this Division (the ***offence charged***), the trier of fact:

(a) is not satisfied that the defendant is guilty of the offence charged; but

(b) is otherwise satisfied that the defendant is guilty of another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged;

the trier of fact may find the defendant not guilty of the offence charged but guilty of the other offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

400.15 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Division.

400.16 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Proceeds of Crime Act 1987

2 Subsection 4(1) (definition of *proceeds of crime*)

Repeal the definition.

3 Division 1 of Part V

Repeal the Division.

Telecommunications (Interception) Act 1979

4 Paragraph 5D(4)(a)

Repeal the paragraph, substitute:

(a) Part 10.2 of the *Criminal Code* (other than section 400.9);

Schedule 2—Foreign proceeds of crime orders and requests by Australia for orders in foreign countries

International War Crimes Tribunals Act 1995

1 Subsection 46(1)

Omit "*Proceeds of Crime Act 1987*", substitute "*Proceeds of Crime Act 2002*".

2 After subsection 46(1)

Insert:

(1A) In particular, section 68 of the *Proceeds of Crime Act 2002* applies in relation to the forfeiture order as if:

(a) the reference in subparagraph 68(1)(b)(i) of that Act to the Director of Public Prosecutions having applied for the order were a reference to the Director of Public Prosecutions having applied for registration of the order under section 45 of this Act; and

(b) subparagraph 68(1)(b)(ii) of that Act were repealed.

3 Subsection 46(3)

Repeal the subsection, substitute:

(3) Subject to section 46A, property that is subject to an order registered under this Part may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing for the purposes of this subsection.

(4) Sections 69 to 71, Divisions 5 to 7 of Part 2-2, Part 4-2 and sections 322 and 323 of the *Proceeds of Crime Act 2002* do not apply in relation to an order registered under this Part.

4 At the end of Part 6

Add:

46A Effect on third parties of registration of forfeiture orders

Applications by third parties

(1) If a court registers under section 45 a forfeiture order against property, a person who:

(a) claims an interest (within the meaning of the *Proceeds of Crime Act 2002*) in the property; and

(b) was not convicted of an offence in respect of which the order was made;

may apply to the court for an order under subsection (2).

Orders by the court

(2) If, on an application for an order under this subsection, the court is satisfied that:

(a) the applicant was not, in any way, involved in the commission of an offence in respect of which the forfeiture order was made; and

(b) if the applicant acquired the interest in the property at the time of or after the commission of such an offence—the property was neither:

(i) proceeds (within the meaning of the *Proceeds of Crime Act 2002*) of such an offence; nor

(ii) an instrument (within the meaning of that Act) of such an offence;

the court must make an order:

(c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest in the property; and

(d) either:

(i) directing the Commonwealth to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

Certain people need leave to apply

(3) A person who was given notice of, or appeared at, the hearing held in connection with the making of the forfeiture order is not entitled to apply under subsection (1) unless the court gives leave.

(4) The court may give leave if satisfied that there are special grounds for doing so.

(5) Without limiting subsection (4), the court may grant a person leave if the court is satisfied that:

(a) the person, for a good reason, did not attend the hearing referred to in subsection (3) although the person had notice of the hearing; or

(b) particular evidence that the person proposes to adduce in connection with the proposed application under subsection (1) was not available to the person at the time of the hearing referred to in subsection (3).

Period for applying

(6) Unless the court gives leave, an application under subsection (1) is to be made before the end of 6 weeks beginning on the day when the forfeiture order is registered in the court.

(7) The court may give leave to apply outside that period if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the person's part.

Procedural matters

(8) A person who applies under subsection (1) must give to the Director of Public Prosecutions and the Attorney-General notice, as prescribed, of the application.

(9) The Director of Public Prosecutions is to be a party to proceedings on an application under subsection (1). The Attorney-General may intervene in the proceedings.

5 Continued application of certain regulations made under the *Proceeds of Crime Act 1987*

If:

(a) immediately after the commencement of this Schedule, regulations for the purposes of subsection 46A(8) of the *International War Crimes Tribunals Act 1995* are not in force; and

(b) immediately before that commencement, regulations for the purposes of subsection 23A(10) of the *Proceeds of Crime Act 1987* were in force;

subsection 46A(8) of the *International War Crimes Tribunals Act 1995* has effect, until regulations for the purposes of that subsection come into force, as if the regulations referred to in paragraph (b) were regulations for the purposes of that subsection.

Mutual Assistance in Criminal Matters Act 1987

6 Subsection 3(1)

Insert:

account has the same meaning as in the Proceeds of Crime Act.

7 Subsection 3(1)

Insert:

agent has the same meaning as in the Proceeds of Crime Act.

8 Subsection 3(1) (definition of *ancillary offence*)

Repeal the definition, substitute:

ancillary offence, in relation to an offence (in this definition called the ***main offence***), means:

(a) an offence of conspiring to commit the main offence; or

(b) an offence of aiding, abetting, inciting, counselling or procuring, or being in any way knowingly concerned in, the commission of the main offence; or

(c) an offence of receiving or assisting another person in order to enable the person to escape punishment for, or to dispose of the proceeds of, the main offence; or

(d) an offence of attempting to commit the main offence.

9 Subsection 3(1) (paragraph (a) of the definition of *Australian forfeiture order*)

Omit "the Proceeds of Crime Act;", substitute "a proceeds of crime law; or".

10 Subsection 3(1) (after paragraph (a) of the definition of *Australian forfeiture order*)

Insert:

(aa) a declaration made under section 95 of the Proceeds of Crime Act; or

11 Subsection 3(1) (paragraph (ab) of the definition of *Australian forfeiture order*)

Omit "Proceeds of Crime Act", substitute "*Proceeds of Crime Act 1987*; or".

12 Subsection 3(1)

Insert:

Australian literary proceeds order means:

(a) a literary proceeds order within the meaning of the Proceeds of Crime Act; or

(b) an order, made under Australian law, that:

(i) imposes a pecuniary penalty on a person in respect of an offence against Australian law; and

(ii) is, in accordance with the regulations, to be taken to be an Australian literary proceeds order for the purposes of this Act.

13 Subsection 3(1) (paragraph (a) of the definition of *Australian pecuniary penalty order*)

Omit "the Proceeds of Crime Act;", substitute "a proceeds of crime law; or".

14 Subsection 3(1) (paragraph (a) of the definition of *Australian restraining order*)

Repeal the paragraph, substitute:

(a) a restraining order within the meaning of a proceeds of crime law (other than a restraining order made by virtue of section 59 of the *Proceeds of Crime Act 1987* or section 34K of this Act); or

15 Subsection 3(1)

Insert:

authorised officer has the same meaning as in the Proceeds of Crime Act.

16 Subsection 3(1)

Insert:

Confiscated Assets Account means the account established under section 295 of the Proceeds of Crime Act.

17 Subsection 3(1)

Insert:

enforcement agency has the same meaning as in the Proceeds of Crime Act.

18 Subsection 3(1)

Insert:

foreign confiscation proceedings means proceedings in a foreign country in respect of the making of a foreign forfeiture order or a foreign pecuniary penalty order.

19 Subsection 3(1)

Insert:

foreign order means:

(a) a foreign forfeiture order; or

(b) a foreign pecuniary penalty order; or

(c) a foreign restraining order.

20 Subsection 3(1) (definition of *foreign organised fraud offence*)

Repeal the definition.

21 Subsection 3(1)

Insert:

instrument, in relation to an offence, has the same meaning as in the Proceeds of Crime Act.

22 Subsection 3(1)

Insert:

interest, in relation to property, has the same meaning as in the Proceeds of Crime Act.

23 Subsection 3(1)

Insert:

narcotic substance has the same meaning as in the Proceeds of Crime Act.

24 Subsection 3(1)

Insert:

officer, in relation to a financial institution, has the same meaning as in the Proceeds of Crime Act.

25 Subsection 3(1)

Insert:

Official Trustee means the Official Trustee in Bankruptcy.

26 Subsection 3(1) (definition of *proceeds*)

Repeal the definition, substitute:

proceeds, in relation to an offence, has the same meaning as in the Proceeds of Crime Act.

27 Subsection 3(1)

Insert:

proceeds jurisdiction has the same meaning as in the Proceeds of Crime Act.

28 Subsection 3(1) (definition of *Proceeds of Crime Act*)

Omit "*1987*", substitute "*2002*".

29 Subsection 3(1)

Insert:

proceeds of crime law means:

(a) the *Proceeds of Crime Act 2002*; or

(b) the *Proceeds of Crime Act 1987*.

30 Subsection 3(1)

Insert:

related foreign serious offence: a foreign serious offence is related to another foreign serious offence if the physical elements of the 2 offences are substantially the same acts or omissions.

31 Subsection 3(1) (definition of *serious narcotics offence*)

Repeal the definition.

32 Subsection 3(1) (definition of *tainted property*)

Repeal the definition.

33 Paragraph 32(b)

After "pecuniary penalty order", insert ", or an Australian literary proceeds order,".

34 Paragraph 33(a)

Repeal the paragraph.

35 Paragraphs 33(c) and (d)

Omit "in respect of a property-tracking document".

36 Division 2 of Part VI

Repeal the Division, substitute:

Division 2—Requests by foreign countries

Subdivision A—Enforcement of foreign orders

34 Requests for enforcement of foreign orders

(1) If:

(a) a foreign country requests the Attorney-General to make arrangements for the enforcement of:

(i) a foreign forfeiture order, made in respect of a foreign serious offence, against property that is reasonably suspected of being located in Australia; or

(ii) a foreign pecuniary penalty order, made in respect of a foreign serious offence, where some or all of the property available to satisfy the order is reasonably suspected of being located in Australia; and

(b) the Attorney-General is satisfied that:

(i) a person has been convicted of the offence; and

(ii) the conviction and the order are not subject to further appeal in the foreign country;

the Attorney-General may authorise the DPP, in writing, to apply for the registration of the order in a specified court.

(2) If a foreign country that is specified in regulations made for the purposes of this subsection requests the Attorney-General to make arrangements for the enforcement of:

(a) a foreign forfeiture order that:

(i) has the effect of forfeiting a person's property on the basis that the property is, or is alleged to be, the proceeds or an instrument of a foreign serious offence (whether or not a person has been convicted of that offence); and

(ii) is made against property that is reasonably suspected of being located in Australia; or

(b) a foreign pecuniary penalty order in respect of which both of the following apply:

(i) the order has the effect of requiring a person to pay an amount of money on the basis that the money is, or is

alleged to be, the benefit derived from a foreign serious offence (whether or not the person has been convicted of that offence);

(ii) some or all of the property available to satisfy the order is reasonably suspected of being located in Australia;

the Attorney-General may authorise the DPP, in writing, to apply for the registration of the order in a specified court.

(3) If a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, against property that is reasonably suspected of being located in Australia, that is:

(a) in any case—made in respect of a foreign serious offence for which a person has been convicted; or

(b) if the foreign country is specified in regulations made for the purposes of subsection (2)—made in respect of the alleged commission of a foreign serious offence (whether or not the identity of the person who committed the offence is known);

the Attorney-General may authorise the DPP, in writing, to apply for the registration of the order in a specified court.

(4) The court that the Attorney-General specifies under subsection (1), (2) or (3) must be a court with proceeds jurisdiction in a State or Territory in which the property, or some or all of the property, is reasonably suspected of being located.

34A Registration of foreign orders

(1) If the DPP applies to a court for registration of a foreign order in accordance with an authorisation under this Subdivision, the court must register the order accordingly.

(2) The DPP must give notice of the application:

(a) to specified persons the DPP has reason to suspect may have an interest in the property; and

(b) to such other persons as the court directs.

(3) However, the court must consider the application without notice having been given if the DPP requests the court to do so.

(4) If a foreign pecuniary penalty order or a foreign restraining order is registered in a court under this Subdivision:

(a) a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order; and

(b) the amendments do not, for the purposes of this Act and the Proceeds of Crime Act, have effect until they are registered.

(5) An order or an amendment of an order is to be registered in a court by the registration, in accordance with the rules of the court, of:

(a) a copy of the appropriate order or amendment sealed by the court or other authority making that order or amendment; or

(b) a copy of that order or amendment duly authenticated in accordance with subsection 43(2).

34B Enforcement of foreign forfeiture orders

(1) A foreign forfeiture order registered in a court under this Subdivision has effect, and may be enforced, as if it were a forfeiture order made by the court under the Proceeds of Crime Act at the time of registration.

(2) In particular, section 68 of the *Proceeds of Crime Act 2002* applies in relation to the forfeiture order as if:

(a) the reference in subparagraph 68(1)(b)(i) of that Act to the DPP having applied for the order were a reference to the foreign forfeiture order having been made; and

(b) subparagraph 68(1)(b)(ii) of that Act did not apply if the person in question died after the DPP applied for registration of the order under section 34A of this Act.

(3) Subject to section 34C, property that is subject to a foreign forfeiture order registered under this Subdivision may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing for the purposes of this subsection.

(4) Sections 69 and 70 and Divisions 5 to 7 of Part 2-2 of the Proceeds of Crime Act do not apply in relation to a foreign forfeiture order registered under this Subdivision.

34C Effect on third parties of registration of foreign forfeiture orders

Applications by third parties

(1) If a court registers under section 34A a foreign forfeiture order against property, a person who:

(a) claims an interest in the property; and

(b) either:

(i) if the registration relates to an authorisation given under subsection 34(1)—was not convicted of a foreign serious offence in respect of which the order was made; or

(ii) if the registration relates to an authorisation given under subsection 34(2)—is not a person whom the court has reason to believe committed a foreign serious offence in respect of which the order was made;

may apply to the court for an order under subsection (2).

Orders by the court

(2) If, on an application for an order under this subsection, the court is satisfied that:

(a) the applicant was not, in any way, involved in the commission of a foreign serious offence in respect of which the foreign forfeiture order was made; and

(b) if the applicant acquired the interest in the property at the time of or after the commission of such an offence—the property was neither proceeds nor an instrument of such an offence;

the court must make an order:

(c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest in the property; and

(d) either:

(i) directing the Commonwealth to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

Certain people need leave to apply

(3) A person who was given notice of, or appeared at, the hearing held in connection with the making of the foreign forfeiture order is not entitled to apply under subsection (1) unless the court gives leave.

(4) The court may give leave if satisfied that there are special grounds for doing so.

(5) Without limiting subsection (4), the court may grant a person leave if the court is satisfied that:

(a) the person, for a good reason, did not attend the hearing referred to in subsection (3) although the person had notice of the hearing; or

(b) particular evidence that the person proposes to adduce in connection with the proposed application under subsection (1) was not available to the person at the time of the hearing referred to in subsection (3).

Period for applying

(6) Unless the court gives leave, an application under subsection (1) is to be made before the end of 6 weeks beginning on the day when the foreign forfeiture order is registered in the court.

(7) The court may give leave to apply outside that period if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the person's part.

Procedural matters

(8) A person who applies under subsection (1) must give to the DPP notice, as prescribed, of the application.

(9) The DPP is to be a party to proceedings on an application under subsection (1). The Attorney-General may intervene in the proceedings.

34D Enforcement of foreign pecuniary penalty orders

(1) A foreign pecuniary penalty order registered in a court under this Subdivision has effect, and may be enforced, as if it were a pecuniary penalty order that:

(a) was made by the court under the Proceeds of Crime Act at the time of registration; and

(b) requires the payment to the Commonwealth of the amount payable under the order.

(2) Any amount paid (whether in Australia, in the foreign country in which the order was made or elsewhere) in satisfaction of the foreign pecuniary penalty order is taken to have been paid in satisfaction of the debt that arises because of the registration of the foreign pecuniary penalty order in that court.

(3) Division 5 of Part 2-4 of the Proceeds of Crime Act does not apply in relation to a foreign pecuniary penalty order registered under this Subdivision.

34E Enforcement of foreign restraining orders

(1) A foreign restraining order registered in a court under this Subdivision has effect, and may be enforced, as if it were a restraining order that:

(a) was made by the court under the Proceeds of Crime Act at the time of the registration; and

(b) directed that the property specified in the order is not to be disposed of or otherwise dealt with by any person.

(2) In particular:

(a) section 288 of that Act applies as if:

(i) the reference in that section to the Official Trustee's exercise of powers under that Act included a reference to the Official Trustee's exercise of those powers in relation to a foreign restraining order so registered; and

(ii) the reference in that section to the Official Trustee's performance of functions or duties under that Act included a reference to the Official Trustee's

performance of those functions or duties in relation to such a foreign restraining order; and

(b) section 289 of that Act applies as if the reference in that section to controlled property included a reference to property that is subject to an order under section 35; and

(c) section 290 of that Act applies as if the reference in that section to the controlled property were a reference to the property that is subject to an order under section 35.

(3) Divisions 1, 2 and 3 of Part 2-1, section 33, Divisions 5 and 6 of Part 2-1 and sections 142, 143, 169, 170 and 282 to 287 of the Proceeds of Crime Act do not apply in relation to a foreign restraining order registered under this Subdivision.

Note: Division 3 of this Part contains further provisions relating to registered foreign restraining orders.

34F Faxed copies of foreign orders

(1) A faxed copy of a sealed or authenticated copy of a foreign order or an amendment of a foreign order is to be regarded for the purposes of this Act as the same as the sealed or authenticated copy.

(2) However, if registration of the order under this Subdivision is effected by means of the faxed copy, the registration ceases to have effect at the end of 21 days unless the sealed or authenticated copy has been filed by then in the court that registered the order.

34G Cancelling registration

(1) The Attorney-General may direct the DPP to apply to a court in which:

(a) a foreign pecuniary penalty order; or

(b) a foreign restraining order;

has been registered under this Subdivision for cancellation of the registration.

(2) Without limiting subsection (1), the Attorney-General may give a direction under that subsection in relation to an order if the Attorney-General is satisfied that:

(a) the order has ceased to have effect in the foreign country in which the order was made; or

(b) cancellation of the order is appropriate having regard to the arrangements entered into between Australia and the foreign country in relation to the enforcement of orders of that kind.

(3) The court to which the DPP applies in accordance with a direction under subsection (1) must cancel the registration accordingly.

34H Certain provisions of the Proceeds of Crime Act not to apply

Part 4-2 and sections 322 and 323 of the Proceeds of Crime Act do not apply to a foreign order registered under this Subdivision.

Subdivision B—Restraining orders relating to foreign criminal proceedings

34J Requests for restraining orders

(1) If:

(a) either:

(i) a criminal proceeding has commenced, or there are reasonable grounds to suspect that a criminal proceeding is about to commence, in a foreign country in respect of a foreign serious offence; or

(ii) a foreign country is specified in regulations made for the purposes of subsection 34(2), and foreign confiscation proceedings have commenced, or there are reasonable grounds to suspect that such proceedings are about to commence, in the foreign country; and

(b) there are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Australia; and

(c) the foreign country requests the Attorney-General to obtain the issue of a restraining order against the property;

the Attorney-General may authorise the DPP to apply to a specified court for a restraining order against that property in respect of the offence.

(2) The court specified must be a court with proceeds jurisdiction in a State or Territory in which the property, or some or all of the property, is reasonably suspected of being located.

34K Applying for and making restraining orders

(1) If so authorised, the DPP may apply for such a restraining order against that property in respect of the offence.

(2) Part 2-1 of the Proceeds of Crime Act applies to the application, and to any restraining order made as a result.

(3) It applies as if:

(a) references in that Part to an indictable offence were references to the foreign serious offence; and

(b) references in that Part to a court with proceeds jurisdiction were references to the court specified in the DPP's authorisation under section 34J of this Act; and

(c) in a case to which subparagraph 34J(1)(a)(i) applies:

(i) references in that Part to a person charged with an indictable offence were references to a person against whom a criminal proceeding in respect of a foreign serious offence has commenced in a foreign country; and

(ii) references in that Part to it being proposed to charge a person with an indictable offence were a reference to it being reasonably suspected that criminal proceedings are about to commence in respect of a foreign serious offence against the person in a foreign country; and

(iii) paragraphs 17(1)(e) and (f), subsections 17(3) and (4) and sections 18 to 20, 29, 44 and 45 of that Act were omitted; and

(d) in a case to which subparagraph 34J(1)(a)(ii) applies in relation to a foreign country:

(i) references in that Part to reasonable grounds to suspect that a person has committed a serious offence were references to reasonable grounds to suspect that such proceedings have commenced, or are about to commence, in the foreign country; and

(ii) section 17, paragraphs 18(1)(e) and (f), subsection 18(3) and sections 19, 20, 29, 44 and 45 of that Act were omitted.

34L Excluding property from restraining orders

If:

(a) a person (the ***defendant***) has been alleged, in a criminal proceeding in a foreign country, to have committed a foreign serious offence; and

(b) a court makes a restraining order under Part 2-1 of the Proceeds of Crime Act against property in respect of the offence; and

(c) a person having an interest in the property applies to the court under Division 3 of Part 2-1 of that Act for an order varying the restraining order to exclude the person's interest from the restraining order;

the court must grant the application if the court is satisfied that:

(d) in a case where the applicant is not the defendant:

(i) the applicant was not, in any way, involved in the commission of the offence; and

(ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the property was neither proceeds nor an instrument of the offence; or

(e) in any case—it is in the public interest to do so having regard to any financial hardship or other consequence of the interest remaining subject to the order.

34M Cessation of restraining orders

(1) A restraining order made in respect of a foreign serious offence as a result of an application under subsection 34K(1) ceases to have effect:

(a) at the end of the period of 30 days commencing on the day on which the order is made; or

(b) if the court that made the restraining order, on application made by the DPP before the end of the period referred to in

paragraph (a), extends the period of operation of the order—at the end of the period as so extended.

(2) However, the restraining order ceases to have effect upon the registration of a foreign restraining order against the property under Subdivision A if that registration occurs before the end of the period referred to in paragraph (1)(a) or (b) (as the case requires).

Subdivision C—Production orders relating to foreign serious offences

34N Requests for production orders

(1) If:

(a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a foreign serious offence; and

(b) a property-tracking document in relation to the offence is reasonably suspected of being located in Australia; and

(c) the foreign country requests the Attorney-General to obtain the issue of a production order requiring that the document be produced or made available for inspection in accordance with Australian law;

the Attorney-General may authorise an authorised officer of an enforcement agency to apply to a magistrate of a specified State or Territory for a production order under the Proceeds of Crime Act in respect of the offence for the purpose of obtaining possession of the property-tracking document.

(2) The State or Territory specified must be a State or Territory in which the document is, or some or all of the documents are, reasonably suspected of being located.

34P Applying for and making production orders

(1) If so authorised, the authorised officer may apply for such a production order against that property in respect of the offence.

(2) Part 3-2 of the Proceeds of Crime Act applies to the application, and to any production order made as a result.

(3) It applies as if:

(a) references in that Part to an indictable offence or to a serious offence were references to the foreign serious offence; and

(b) references in that Part to a magistrate were references to a magistrate of the State or Territory specified in the authorised officer's authorisation under subsection 34N(1); and

(c) subparagraphs 202(5)(a)(ii) and (iii) and (c)(ii) and (iii), paragraph 202(5)(e) and subsection 205(1) of that Act were omitted.

34Q Retaining produced documents

(1) An authorised officer who takes possession of a document under a production order made in respect of a foreign serious offence may retain the document pending a written direction from the Attorney-General as to how to deal with the document.

(2) Directions from the Attorney-General may include a direction that the document be sent to an authority of the foreign country that requested the obtaining of the production order.

Subdivision D—Notices to financial institutions

34R Giving notices to financial institutions

(1) The Attorney-General or a senior Departmental officer may give a written notice to a financial institution requiring the institution to provide to an authorised officer any information or documents relevant to any one or more of the following:

(a) determining whether an account is held by a specified person with the financial institution;

(b) determining whether a particular person is a signatory to an account;

(c) if a person holds an account with the institution, the current balance of the account;

(d) details of transactions on such an account over a specified period of up to 6 months;

(e) details of any related accounts (including names of those who hold those accounts);

(f) a transaction conducted by the financial institution on behalf of a specified person.

(2) The Attorney-General or the senior Departmental officer must not issue the notice unless he or she reasonably believes that giving the notice is required:

(a) to determine whether to take any action under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division; or

(b) in relation to proceedings under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division.

(3) In this section:

senior Departmental officer has the same meaning as in the Proceeds of Crime Act.

34S Contents of notices to financial institutions

The notice must:

(a) state that the officer giving the notice believes that the notice is required:

(i) to determine whether to take any action under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division; or

(ii) in relation to proceedings under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division;

(as the case requires); and

(b) specify the name of the financial institution; and

(c) specify the kind of information or documents required to be provided; and

(d) specify the form and manner in which that information or those documents are to be provided; and

(e) state that the information or documents must be provided within 14 days of the notice; and

(f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 34V (disclosing existence or nature of a notice); and

(g) set out the effect of section 34W (failing to comply with a notice).

34T Protection from suits etc. for those complying with notices

(1) No action, suit or proceeding lies against:

(a) a financial institution; or

(b) an officer, employee or agent of the institution acting in the course of that person's employment or agency;

in relation to any action taken by the institution or person under a notice under section 34R or in the mistaken belief that action was required under the notice.

(2) A financial institution, or person who is an officer, employee or agent of a financial institution, who provides information under a notice under section 34R is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

34U Making false statements in applications

A person is guilty of an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, a notice under section 34R.

Maximum penalty: Imprisonment for 12 months or 60 penalty units, or both.

34V Disclosing existence or nature of notice

A person is guilty of an offence if:

(a) the person is given a notice under section 34R; and

(b) the notice specifies that information about the notice must not be disclosed; and

(c) the person discloses the existence or nature of the notice.

Maximum penalty: Imprisonment for 2 years or 120 penalty units, or both.

34W Failing to comply with a notice

A person is guilty of an offence if:

(a) the person is given a notice under section 34R; and

(b) the person fails to comply with the notice.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

Subdivision E—Monitoring orders relating to foreign serious offences

34X Requests for monitoring orders

(1) If:

(a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a foreign serious offence referred to in subsection (2); and

(b) information about transactions conducted through an account with a financial institution in Australia is reasonably suspected of being relevant to the proceeding or investigation; and

(c) the foreign country requests the Attorney-General to obtain the issue of an order directing the financial institution to give information about transactions conducted through the account;

the Attorney-General may authorise an authorised officer of an enforcement agency to apply to a judge of a specified court for a monitoring order under the Proceeds of Crime Act in respect of the offence for the purpose of obtaining the information requested by the foreign country.

(2) These are foreign serious offences to which paragraph (1)(a) applies:

(a) an offence punishable by imprisonment for 3 or more years that:

(i) involves unlawful conduct relating to a narcotic substance; or

(ii) is a money laundering offence; or

(iii) involves unlawful conduct by a person that causes, or is intended to cause, a benefit to the value of at least $10,000 for that person or another person; or

(iv) involves unlawful conduct by a person that causes, or is intended to cause, a loss to the foreign country in question or another person of at least $10,000;

(b) an offence involving the smuggling of migrants;

(c) an offence involving failure to report financial transactions;

(d) an ancillary offence in respect of an offence referred to in paragraph (a), (b) or (c).

(3) The court specified must be a court of a State or Territory that has jurisdiction to deal with criminal matters on indictment.

34Y Applying for and making monitoring orders

(1) If so authorised, the authorised officer may apply for such a monitoring order against that property in respect of the offence.

(2) Part 3-4 of the Proceeds of Crime Act applies to the application, and to any monitoring order made as a result.

(3) It applies as if:

(a) references in that Part to a serious offence were references to an offence of the kind referred to in paragraph 34X(1)(a); and

(b) disclosing the existence or the operation of the order for the purpose of complying with a person's obligations under section 34Z of this Act were a purpose specified in subsection 223(4) of the Proceeds of Crime Act.

34Z Passing on information given under monitoring orders

If an enforcement agency is given information under a monitoring order made in relation to a foreign serious offence, the enforcement agency must, as soon as practicable after receiving the information, pass the information on to:

(a) the Attorney-General; or

(b) an officer of the Attorney-General's Department specified by the Attorney-General by written notice to the enforcement agency.

Subdivision F—Search warrants relating to foreign serious offences

34ZA Requests for search warrants

(1) If:

(a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a foreign serious offence; and

(b) proceeds or an instrument of the offence, or a property-tracking document in relation to the offence, is reasonably suspected of being located in Australia; and

(c) the foreign country requests the Attorney-General to obtain the issue of a search warrant relating to the proceeds, instrument or document;

the Attorney-General may authorise an authorised officer of an enforcement agency to apply to a magistrate of a specified State or Territory for a search warrant under the Proceeds of Crime Act in relation to the proceeds, instrument or document.

(2) The State or Territory specified must be a State or Territory in which:
  (a) the proceeds, or some or all of the proceeds, are reasonably suspected of being located; or
  (b) the instrument is, or some or all of the instruments are, reasonably suspected of being located; or
  (c) the document is, or some or all of the documents are, reasonably suspected of being located.

34ZB Applying for and issuing search warrants

(1) If so authorised, the authorised officer may apply for such a search warrant, in relation to those proceeds, that instrument or that document, in respect of the offence.

(2) Part 3-5 of the Proceeds of Crime Act applies to the application, and to any search warrant issued as a result.

(3) It applies as if:
  (a) references in that Part to a property-tracking document were references to a property-tracking document relating to the offence; and
  (b) references in that Part to a magistrate were references to a magistrate of the State or Territory specified in the authorised officer's authorisation under subsection 34ZA(1); and
  (c) paragraph 228(1)(d) and sections 256 to 258 of that Act were omitted.

34ZC Seizure of other property and documents

(1) A search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a foreign serious offence authorises an authorised officer to seize property or a thing that he or she finds and that he or she believes on reasonable grounds to be:
  (a) proceeds or an instrument of the offence or a property-tracking document in relation to the offence, although not of the kind specified in the warrant; or
  (b) proceeds or an instrument of, or a property-tracking document in relation to, another foreign serious offence in

relation to which a search warrant issued under that Part is in force; or

(c) something that:

(i) is relevant to a criminal proceeding in the foreign country in respect of the foreign serious offence; or

(ii) will afford evidence as to the commission of an Australian criminal offence.

(2) However, this section only applies if the authorised officer believes on reasonable grounds that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction or its use in committing an offence.

34ZD Return of seized property to third parties

(1) A person who claims an interest in property (other than a property-tracking document) that has been seized under a search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a foreign serious offence may apply to a court for an order that the property be returned to the person.

(2) The court must be a court of the State or Territory in which the warrant was issued that has proceeds jurisdiction.

(3) The court must order the head of the authorised officer's enforcement agency to return the property to the applicant if the court is satisfied that:

(a) the applicant is entitled to possession of the property; and

(b) the property is not proceeds or an instrument of the relevant foreign serious offence; and

(c) the person who is believed or alleged to have committed the relevant foreign serious offence has no interest in the property.

(4) If the court makes such an order, the head of the authorised officer's enforcement agency must arrange for the property to be returned to the applicant.

(5) This section does not apply to property that has been seized because it may afford evidence as to the commission of an Australian criminal offence.

34ZE Dealing with seized property (other than property-tracking documents)

Property covered by this section

(1) Property (other than a property-tracking document) must be dealt with in accordance with this section if:

(a) it has been seized under a search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a foreign serious offence; and

(b) it has not been seized under paragraph 34ZC(1)(c).

General rule—property to be returned after 30 days

(2) If, at the end of the period of 30 days after the day on which the property was seized:

(a) neither a foreign restraining order, nor a foreign forfeiture order, in relation to the property has been registered in a court under Subdivision A; and

(b) a restraining order has not been made under Subdivision B in respect of the property in relation to the foreign serious offence;

the head of the enforcement agency whose authorised officer seized the property must, unless subsection (3), (5) or (7) applies, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

Effect of restraining orders being registered or obtained

(3) If, before the end of that period:

(a) a foreign restraining order in relation to the property is registered in a court under Subdivision A; or

(b) a restraining order is made under Subdivision B in respect of the property in relation to the foreign serious offence;

the head of the enforcement agency whose authorised officer seized the property:

(c) if there is in force, at the end of that period, a direction by a court that the Official Trustee take custody and control of the

property—must arrange for the property to be given to the Official Trustee in accordance with the direction; or

(d) if there is in force at the end of that period an order under subsection (6) in relation to the property—must arrange for the property to be retained until it is dealt with in accordance with another provision of this Act or the Proceeds of Crime Act.

(4) If the property is subject to a direction of a kind referred to in paragraph (3)(c), the Proceeds of Crime Act applies to the property as if it were controlled property within the meaning of that Act.

Retaining property despite restraining orders

(5) If, at a time when the property is in the possession of the head of the enforcement agency whose authorised officer seized the property:

(a) a foreign restraining order in respect of the property has been registered in an Australian court under Subdivision A; or

(b) a restraining order has been made under Subdivision B in respect of the property in relation to the foreign serious offence;

the head of the enforcement agency may apply to the court in which the restraining order was registered, or by which the restraining order was made, for an order that the head of the enforcement agency retain possession of the property.

(6) If the court is satisfied that the head of the enforcement agency requires the property to be dealt with in accordance with:

(a) a request under section 34 that the restraining order be registered; or

(b) a request under section 34J that the restraining order be obtained;

the court may make an order that the head of the enforcement agency may retain the property for so long as the property is so required.

Effect of foreign forfeiture orders being registered or obtained

(7) If, while the property is in the possession of the head of the enforcement agency whose authorised officer seized it, a foreign forfeiture order in respect of the property is registered in a court under Subdivision A, the head of the enforcement agency must deal with the property as required by the forfeiture order.

34ZF Dealing with seized property-tracking documents

(1) An authorised officer who takes possession of a property-tracking document under a warrant issued in respect of a foreign serious offence may retain the document for a period not exceeding one month pending a written direction from the Attorney-General as to how to deal with the document.

(2) Directions from the Attorney-General may include a direction that the document be sent to an authority of the foreign country that requested the issue of the warrant.

Division 3—Provisions relating to registered foreign restraining orders

35 Court may order Official Trustee to take custody and control of property

The court that registers a foreign restraining order under Subdivision A of Division 2 may order the Official Trustee to take custody and control of all or a specified part of property covered by the restraining order if:

(a) the DPP applies for the order; and

(b) the court is satisfied that it is required in the circumstances.

35A Procedural matters

(1) The DPP must give written notice of an application for an order under section 35 in respect of property to:

(a) the owner of the property; and

(b) any other person the DPP has reason to believe may have an interest in the property.

(2) The court may, at any time before finally determining the application, direct the DPP to give or publish notice of the application:

(a) to a specified person or class of persons; and

(b) in the manner and within the time that the court considers appropriate.

(3) A person who claims an interest in property in respect of which the application is made may appear and adduce evidence at the hearing of the application.

35B Ancillary orders

The court that makes an order under section 35 in relation to property may at any time make orders ancillary to the order, including any one or more of the following:

(a) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the order;

(b) an order determining any question relating to the property, including a question relating to the liabilities of the owner of the property or the exercise of the powers or the performance of the duties of the Official Trustee in relation to the property;

(c) an order directing the owner to give to the Official Trustee, within a specified period, a statement, verified by the oath of the owner, setting out such particulars of the property as the court considers appropriate.

35C Dealing with restrained property

(1) Division 3 of Part 4-1 of the Proceeds of Crime Act applies to the property as if the property were controlled property within the meaning of that Act.

(2) However, the Official Trustee must, before exercising a power under section 278 of the Proceeds of Crime Act in relation to the property, consult with the foreign country that made the request

under section 34 relating to the foreign restraining order covering the property.

35D Money not to be paid into the Common Investment Fund

Money that is in the custody or control of the Official Trustee because of a foreign restraining order must not be paid into the Common Investment Fund under section 20B of the *Bankruptcy Act 1966* (despite anything in that Act).

35E Undertakings

The court that:

(a) registers a foreign restraining order against property under Subdivision A of Division 2; or

(b) makes an order under section 35 in relation to property;

may, upon application of a person who claims an interest in the property, make an order as to the giving or carrying out of an undertaking, by the DPP on behalf of the Commonwealth, with respect to payment of damages or costs relating to the registration, making or operation of the order.

35F Order to discharge certain registered foreign pecuniary penalty orders

(1) If:

(a) a foreign restraining order is made against property of a person in reliance on the person's conviction, or alleged commission, of a foreign serious offence; and

(b) the foreign restraining order is registered under Subdivision A of Division 2; and

(c) a foreign pecuniary penalty order has been made against the person in relation to the person's conviction, or alleged commission, of the offence or a related foreign serious offence; and

(d) the foreign pecuniary penalty order has been registered under Subdivision A of Division 2; and

(e) an order has been made under section 35 ordering the Official Trustee to take control of the property;

the court in which the foreign pecuniary penalty order is registered may, by order, direct the Official Trustee to pay to the Commonwealth an amount out of that property.

(2) The amount is to be the amount that would be the penalty amount under the Proceeds of Crime Act if the foreign pecuniary penalty order were a pecuniary penalty order under that Act.

(3) For the purposes of enabling the Official Trustee to comply with the order under subsection (1), the court may, in that order or by a subsequent order:

(a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the court specifies; and

(b) appoint an officer of the court or any other person:

(i) to execute any deed or instrument in the name of a person who owns or has an interest in the property; and

(ii) to do any act or thing necessary to give validity and operation to the deed or instrument.

(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the interest in the property.

35G Official Trustee to carry out orders

(1) As soon as practicable after an order is made under subsection 35F(1) covering property that is money, the Official Trustee must:

(a) apply the money in payment of the costs payable to the Official Trustee, under section 288 of the Proceeds of Crime Act, in respect of the order under section 35 in respect of the property; and

(b) subject to subsection (3), credit the remainder of the money to the Confiscated Assets Account as required by section 296 of that Act.

(2) As soon as practicable after an order is made under subsection 35F(1) covering property that is not money, the Official Trustee must:

(a) sell or otherwise dispose of the property;

(b) apply the proceeds of the sale or disposition in payment of the costs payable to the Official Trustee, under section 288 of the Proceeds of Crime Act, in respect of the order in respect of the property (including expenses incurred in connection with selling or disposing of the property); and

(c) subject to subsection (3), credit the remainder of the proceeds to the Confiscated Assets Account as required by section 296 of the Proceeds of Crime Act.

(3) If the money or proceeds to which paragraph (1)(b) or (2)(c) applies exceeds the amount payable to the Commonwealth under the order under subsection 35F(1):

(a) the amount to be credited under that paragraph is the amount payable to the Commonwealth under the order; and

(b) the Official Trustee must pay an amount equal to the excess to the person whose property was covered by the order under section 35.

35H Discharge of person's liability under foreign pecuniary penalty order

A person's liability under a foreign pecuniary penalty order is taken to be discharged to the extent that the Official Trustee credits money to the Confiscated Assets Account, as required by section 296 of the Proceeds of Crime Act, in satisfaction of the person's liability under the order.

35J Creation of charge on property

(1) If:

(a) a foreign restraining order against property has been registered under Subdivision A of Division 2; and

(b) a foreign pecuniary penalty order has been made against the person in reliance on the person's conviction, or alleged commission, of:

(i) the foreign serious offence in relation to which the foreign restraining order was made; or

(ii) a related foreign serious offence; and

(c) the foreign pecuniary penalty order has been registered under Subdivision A of Division 2;

the registration of the foreign restraining order or the foreign pecuniary penalty order (whichever last occurs) creates, by force of this section, a charge on the property to secure the payment of an amount to the Commonwealth.

(2) The amount is to be the amount that would be the penalty amount under the Proceeds of Crime Act if the foreign pecuniary penalty order were a pecuniary penalty order under that Act.

(3) The charge:

(a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority; and

(b) has priority over all other encumbrances; and

(c) subject to section 35K, is not affected by any change of ownership of the property.

35K When the charge ceases to have effect

The charge ceases to have effect in respect of the property on the earliest of the following events:

(a) the payment to the Commonwealth of the amount under subsection 35J(2) in relation to the foreign pecuniary penalty order;

(b) the sale or other disposition of the property:

(i) under an order under subsection 35F(3); or

(ii) by the owner of the property with the consent of the court in which the foreign pecuniary penalty order is registered; or

(iii) if an order under section 35 ordered the Official Trustee to take control of the property—by the owner of the property with the consent of the Official Trustee;

(c) the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

(d) the cancellation of the registration of the relevant foreign restraining order or foreign pecuniary penalty order under section 34G.

35L Registering charges

(1) A registration authority that keeps a register of property of a particular kind may record in the register a charge created by section 35J on property of that kind.

(2) The registration authority may only do so on the application of the DPP or the Official Trustee.

(3) Each person who subsequently deals with the property is taken to have notice of the charge for the purposes of paragraph 35K(c).

(4) In this section:

registration authority means an authority responsible for administering a law of the Commonwealth, a State or a Territory providing for registration of title to, or charges over, property of a particular kind.

35M When order ceases to be in force

A foreign restraining order registered under Subdivision A of Division 2 ceases to be in force when the registration is cancelled under section 34G.

37 Subsections 43(1) and 43A(1)

Omit “the Proceeds of Crime Act”, substitute “a proceeds of crime law”.

Schedule 3—Retaining financial transaction documents

Financial Transaction Reports Act 1988

1 Subsection 3(1) (definition of *account*)

After “means”, insert “(except in Part VIA)”.

2 Subsection 3(1) (at the end of the definition of *account*)

Add:

Note: Section 40C defines ***account*** for the purposes of Part VIA.

3 Subsection 3(1)

Insert:

customer-generated financial transaction document has the meaning given by section 40D.

4 Subsection 3(1) (at the end of the definition of *financial institution*)

Add:

; and, in Part VIA, includes:

(c) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51(xx) of the Constitution; and

(d) a person who carries on a business of operating a casino; and

(e) a totalisator agency board.

5 Subsection 3(1)

Insert:

minimum retention period has the meaning given by section 40E.

6 After Part VI

Insert:

Part VIA—Retaining financial transaction documents

Division 1—Meaning of key terms used in this Part

40C Definitions

In this Part:

account means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals, and includes a facility or arrangement for:

(a) an interest bearing deposit lodged for a fixed period; and

(b) a safety deposit box.

financial transaction document, in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document relating to:

(a) the opening, operating or closing of an account held with the institution; and

(b) the opening or use of a safety deposit box held with the institution.

40D Meaning of *customer-generated financial transaction document*

In this Part:

customer-generated financial transaction document, in relation to a financial institution, means a financial transaction document of the institution:

(a) that relates to one or more of the following financial transactions:

(i) the opening or closing by a person of an account with the institution;

(ii) the operation by a person of an account with the institution;

(iii) the opening or use by a person of a safety deposit box held by the institution;

(iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;

(v) the transmission of funds between Australia and a foreign country or between foreign countries on behalf of a person;

(vi) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); and

(b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person).

40E Meaning of *minimum retention period*

The ***minimum retention period***, in relation to a financial transaction document of a financial institution, is:

(a) if the document relates to the opening of an account with the institution—the period of 7 years after the day on which the account is closed; or

(b) if the document relates to the opening by a person of a safety deposit box held by the institution—the period of 7 years after the day on which the safety deposit box ceases to be used by the person; or

(c) in any other case—the period of 7 years after the day on which the transaction takes place.

Division 2—Retaining financial transaction documents

40F Customer-generated financial transaction documents not relating to operation of accounts

(1) A financial institution is guilty of an offence if:

(a) it does not retain, for the minimum retention period, the original of a customer-generated financial transaction document; and

(b) the document does not relate to the operation of an account held with the institution; and

(c) the document is not a cheque or payment order; and

(d) the financial institution is not required by law to release the original before the end of the minimum retention period.

Penalty: 100 penalty units.

(2) An offence against this section is an offence of strict liability.

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: This section does not apply to documents relating to certain transferred accounts (see sections 40L and 40P).

40G Releasing original documents if required by law

(1) A financial institution is guilty of an offence if:

(a) before the end of the minimum retention period, it releases the original of a document that, but for paragraph 40F(1)(d), it would be obliged by section 40F to retain; and

(b) it does not retain a complete copy of the document until one of the following occurs:

(i) the period ends;

(ii) the original is returned.

Penalty: 100 penalty units.

(2) A financial institution is guilty of an offence if it does not maintain a register of documents released as mentioned in paragraph (1)(a).

Penalty: 100 penalty units.

(3) An offence against this section is an offence of strict liability.

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: This section does not apply to documents relating to certain transferred accounts (see sections 40L and 40P).

40H Customer-generated financial transaction documents relating to operation of accounts

(1) A financial institution is guilty of an offence if:

(a) it does not retain, for the minimum retention period, either the original or a copy of a customer-generated financial transaction document; and

(b) the document relates to the operation of an account held with the institution; and

(c) the document is not a cheque or payment order.

Penalty: 100 penalty units.

(2) Subsection (1) does not apply to a document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount not exceeding:

(a) $200; or

(b) such higher amount as is specified in the regulations for the purposes of this subsection.

Note 1: A defendant bears an evidential burden in relation to the defence in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Subsection (1) also does not apply to documents relating to certain transferred accounts (see sections 40L and 40P).

(3) An offence against this section is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

40J Retaining other financial transaction documents

(1) A financial institution is guilty of an offence if:

(a) it does not retain, for the minimum retention period, either the original or a copy of a financial transaction document that is not a customer-generated financial transaction document; and

(b) retaining the document is necessary to preserve a record of the transactions concerned; and

(c) the document is not a cheque or payment order.

Penalty: 100 penalty units.

(2) Subsection (1) does not apply to a document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount not exceeding:

(a) $200; or

(b) such higher amount as is specified in the regulations for the purposes of this subsection.

Note 1: A defendant bears an evidential burden in relation to the defence in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Subsection (1) also does not apply to documents relating to certain transferred accounts (see sections 40L and 40P).

(3) An offence against this section is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Division 3—Obligations relating to active ADI accounts transferred to another ADI

40K Transferor ADI must give documents to transferee ADI

An ADI (the ***transferor ADI***) is guilty of an offence if:

(a) a document is in its possession in fulfilment of an obligation imposed on it by section 40F, subsection 40G(1) or section 40H or 40J; and

(b) the document relates to an active account that has been, or is proposed to be, transferred to another ADI (the ***transferee ADI***) under:

(i) a law of the Commonwealth or of a State or Territory; or

(ii) an arrangement between the transferor ADI and the transferee ADI; and

(c) the transferor ADI intentionally fails to give the relevant document to the transferee ADI within the 120-day period beginning 30 days before the transfer of the account.

Penalty: 10 penalty units.

40L Compliant transferor ADIs released from retention obligations

Sections 40F to 40J do not apply to the transferor ADI, in relation to the document, if it gave the original and all copies of the document to the transferee ADI within the 120-day period beginning 30 days before the transfer of the account.

Note: A defendant bears an evidential burden in relation to the defence in this section (see subsection 13.3(3) of the *Criminal Code*).

40M Retention obligations of transferee ADIs

If the transferee ADI is given the original and all copies of the document within the 120-day period beginning 30 days before the transfer of the account, this Part applies to the transferee ADI in relation to the document as follows:

(a) if the document was covered by paragraphs 40F(1)(a) to (d)—as if the document were covered by those paragraphs in relation to the transferee ADI;

(b) if the document was covered by subsection 40H(1)—as if the document were covered by that subsection in relation to the transferee ADI;

(c) if the document was covered by subsection 40J(1)—as if the document were covered by that subsection in relation to the transferee ADI;

(d) in any case—as if the minimum retention period applicable to the document were the period of 7 years after the day on which the transferred account is closed.

Division 4—Obligations relating to closed ADI accounts transferred to another ADI

40N Transferor ADI may give documents to transferee ADI

An ADI (the ***transferor ADI***) may give the original and copies of a document (the ***second document***) relating to an account to another ADI (the ***transferee ADI***) if:

(a) the transferor ADI has given another document (the ***first document***) relating to the same account to the transferee ADI in accordance with section 40K; and

Note: Paragraph 40K(1)(c) requires the document to have been given during a 120-day period.

(b) the second document is in the transferor ADI's possession in fulfilment of an obligation imposed on it by section 40F, subsection 40G(1) or section 40H or 40J; and

(c) the second document relates to a closed account; and

(d) the transferor ADI and the transferee ADI agree in writing that the second document should be given by the transferor ADI to the transferee ADI within the 120-day period relating to the giving of the first document.

40P Compliant transferor ADIs released from retention obligations

Sections 40F to 40J do not apply to the transferor ADI, in relation to the second document, if it gave the original or a copy of that document to the transferee ADI within the 120-day period relating to the giving of the first document.

Note: A defendant bears an evidential burden in relation to the defence in this section (see subsection 13.3(3) of the *Criminal Code*).

40Q Retention obligations of transferee ADIs

If the transferee ADI is given the original or a copy of the second document within the 120-day period relating to the giving of the first document, this Part applies to the transferee ADI in relation to the second document as follows:

(a) if the second document was covered by paragraphs 40F(1)(a) to (d)—as if the second document were covered by those paragraphs in relation to the transferee ADI;

(b) if the second document was covered by subsection 40H(1)—as if the second document were covered by that subsection in relation to the transferee ADI;

(c) if the document was covered by subsection 40J(1)—as if the document were covered by that subsection in relation to the transferee ADI;

(d) in any case—as if the minimum retention period applicable to the second document were the period of 7 years after the day on which the account was closed.

Division 5—Miscellaneous

40R Retrieving documents must be reasonably practicable

(1) A financial institution is guilty of an offence if:

(a) it is required to retain documents under this Part; and

(b) does not retain and store them in a way that makes their retrieval reasonably practicable.

Penalty: 100 penalty units.

(2) An offence against this section is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

40S This Part does not limit any other retention obligations

This Part does not limit any other obligation of a financial institution to retain documents.

Proceeds of Crime Act 1987

7 Division 4 of Part IV

Repeal the Division.

Schedule 4—Bankruptcy

Part 1—Effect of proceeds of crime orders

Bankruptcy Act 1966

1 Subsection 5(1) (definition of *forfeiture order*)

Repeal the definition, substitute:

> ***forfeiture order*** means a forfeiture order made under a proceeds of crime law.

2 Subsection 5(1) (definition of *pecuniary penalty order*)

Repeal the definition, substitute:

> ***pecuniary penalty order*** means:
>
> (a) a pecuniary penalty order made under a proceeds of crime law; or
>
> (b) a literary proceeds order within the meaning of the *Proceeds of Crime Act 2002*.

3 Subsection 5(1)

Insert:

> ***proceeds of crime order*** means:
>
> (a) a restraining order; or
>
> (b) a forfeiture order; or
>
> (c) a pecuniary penalty order.

4 Subsection 5(1)

Insert:

> ***restraining order*** means a restraining order made under a proceeds of crime law.

5 At the end of Part IA

Add:

6C Interpretive provisions relating to proceeds of crime orders

When property is covered by a restraining order or a forfeiture order

(1) For the purposes of this Act, property is covered by a restraining order or a forfeiture order during the period:
  (a) starting when the order comes into force in relation to the property; and
  (b) ending when the earliest of the following occurs:
    (i) the order ceases to be in force;
    (ii) a court excludes the property from the order;
    (iii) if the order is a restraining order—a court excludes the property from forfeiture that would or may result from conviction for an offence.

Satisfaction of pecuniary penalty orders

(2) Without limiting the circumstances in which a pecuniary penalty order ceases to be in force, a pecuniary penalty order ceases to be in force if it is satisfied.

When applications for proceeds of crime orders are finally determined

(3) For the purposes of this Act, an application for a proceeds of crime order is taken to be finally determined when:
  (a) the application is withdrawn; or
  (b) if the application is successful—the resulting proceeds of crime order comes into force; or
  (c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

6 Paragraph 40(1)(hd)

Omit “or 185Q”, substitute “, 185Q or 185QA”.

7 At the end of subsection 58(1)

Add:

Note: This subsection has a limited application if there are orders in force under the proceeds of crime law: see section 58A.

Note: The heading to section 58 is altered by adding at the end "**—general rule**".

8 Subsection 58(5A)

Omit all the words from and including "bankrupt under", substitute:

bankrupt under:

(a) a maintenance agreement; or

(b) a maintenance order;

whether entered into or made, as the case may be, before or after the commencement of this subsection.

9 After section 58

Insert:

58A Vesting of property upon bankruptcy—effect of orders in force under the proceeds of crime law

If a restraining order or forfeiture order is in force

(1) If property of a bankrupt is covered by a restraining order, or a forfeiture order, made before the date of the bankruptcy, subsection 58(1) does not apply to property that is covered by the order while that property is so covered.

If a pecuniary penalty order is in force

(2) If a pecuniary penalty order is made against a bankrupt before the date of the bankruptcy, subsection 58(1) does not apply to any of the property of the bankrupt while the order is in force.

Note: For proceeds of crime orders made on or after the date of the bankruptcy, and applications for proceeds of crime orders, see sections 114A to 114C.

Notifying the trustee of grounds for subsection 58(1) to apply to property

(3) If circumstances arise as a result of which this section no longer prevents subsection 58(1) applying to property of the bankrupt, the Director of Public Prosecutions must, as soon as practicable, give the trustee written notice of the existence of the circumstances.

10 Subsection 82(3)

Omit “Subject to subsection (3A), penalties”, substitute “Penalties”.

11 Subsection 82(3A)

Repeal the subsection, substitute:

(3A) An amount payable under an order made under a proceeds of crime law is not provable in bankruptcy.

12 Application—existing proceeds of crime orders

(1) The amendments of section 82 of the *Bankruptcy Act 1966* made by this Schedule apply, in relation to any bankruptcy for which the date of bankruptcy is not before the commencement of this Schedule, to any orders made under a proceeds of crime law before or after that commencement.

(2) In applying that section for the purposes of subsection 231(2) of that Act, in relation to any deed of assignment that was not executed before the commencement of this Schedule, that section as so amended applies to any orders made under a proceeds of crime law before or after that commencement.

(3) In applying that section for the purposes of subsection 237(2) of that Act, in relation to any deed of arrangement that was not executed before the commencement of this Schedule, that section as so amended applies to any orders made under a proceeds of crime law before or after that commencement.

(4) In applying that section for the purposes of subsection 243(1) of that Act, in relation to any composition that was not accepted before the commencement of this Schedule, that section as so amended applies to any orders made under a proceeds of crime law before or after that commencement.

13 Before section 108

Insert:

Subdivision A—General

14 At the end of section 108

Add:

Note: The rules under this Subdivision for payments of debts can be affected by proceeds of crime orders and applications for proceeds of crime orders: see Subdivision B.

15 At the end of Division 2 of Part VI

Add:

Subdivision B—The effect of proceeds of crime orders and applications for proceeds of crime orders

114A The effect of proceeds of crime orders

(1) If property of a bankrupt is covered by a restraining order, or a forfeiture order, made on or after the date of the bankruptcy, proceeds of property that is covered by the order must not be applied under Subdivision A while that property is so covered.

(2) If a pecuniary penalty order is made against a bankrupt on or after the date of the bankruptcy, proceeds of any of the property of the bankrupt must not be applied under Subdivision A while the order is in force.

Note: For proceeds of crime orders made before the date of the bankruptcy, see section 58A.

114B The effect of applications for proceeds of crime orders

(1) If:

(a) an application is made under a proceeds of crime law for a restraining order or a forfeiture order; and

(b) if the order were made, it would cover property of a bankrupt (whether the application is made before, on or after the date of the bankruptcy);

proceeds of any of the property of the bankrupt that would be covered by the order must not be applied under Subdivision A before the application is finally determined.

(2) If:

(a) an application is made under a proceeds of crime law for a pecuniary penalty order; and

(b) the person against whom the order would be made is, or later becomes, a bankrupt;

proceeds of any of the property of the bankrupt must not be applied under Subdivision A before the application is finally determined.

114C Director of Public Prosecutions must notify the trustee of certain matters

If circumstances arise as a result of which:

(a) this Subdivision prevents Subdivision A from being applied to the proceeds of property of a bankrupt; or

(b) this Subdivision no longer prevents Subdivision A from being applied to the proceeds of property of a bankrupt;

the Director of Public Prosecutions must, as soon as practicable, give the trustee written notice of the existence of the circumstances.

16 Application—existing bankruptcies

Subdivision B of Division 2 of Part VI of the *Bankruptcy Act 1966* applies, in relation to:

(a) a proceeds of crime order; or

(b) an application for a proceeds of crime order;

made after the commencement of this Schedule, to any bankruptcy, even if the date of bankruptcy is before that commencement.

17 At the end of paragraphs 153(2)(a) to (b)

Add “or”.

18 Paragraph 153(2)(c)

Omit “or” (last occurring).

19 Paragraph 153(2)(d)

Repeal the paragraph.

20 At the end of subsection 153(2)

Add:

Note: A discharged bankrupt remains liable under any pecuniary penalty order because such liabilities are not provable in bankruptcy, see subsection 82(3A).

21 Paragraph 185J(2)(a)

After “185Q”, insert “, 185QA”.

22 Subsection 185K(2)

Omit all the words from and including “for a liability”, substitute:

for a liability under one or more of the following:

(a) a maintenance agreement;

(b) a maintenance order;

(c) a proceeds of crime law.

23 Subsection 185N(1)

After “185Q”, insert “, 185QA”.

24 After section 185Q

Insert:

185QA Terminating a debt agreement by special resolution of creditors

(1) A debt agreement is terminated by the passing of a special resolution to that effect by a meeting of creditors called for the purpose if:

(a) property of the debtor is covered by a restraining order or a forfeiture order; or

(b) a pecuniary penalty order made against the debtor is in force.

(2) However:

(a) paragraph (1)(a) does not apply if, when the debt agreement was made, the restraining order or forfeiture order already covered the property in question; and

(b) paragraph (1)(b) does not apply if, when the debt agreement was made, the pecuniary penalty order was already in force against the debtor.

25 Section 185S

After “185Q”, insert “, 185QA”.

26 Subsection 190(5)

After “Part VI”, insert “(other than Subdivision B of Division 2)”.

27 At the end of section 237

Add:

(6) Nothing in this Division empowers the Court to stay any proceedings under a proceeds of crime law.

28 At the end of section 241

Add:

(2) The creditors may, by special resolution at a meeting called for the purpose, terminate the composition if:

(a) property of the debtor is covered by a restraining order or a forfeiture order; or

(b) a pecuniary penalty order made against the debtor is in force.

(3) However:

(a) paragraph (2)(a) does not apply if, when the composition was made, the restraining order or forfeiture order already covered the property in question; and

(b) paragraph (2)(b) does not apply if, when the composition was made, the pecuniary penalty order was already in force against the debtor.

29 At the end of section 243

Add:

(5) Nothing in this Division empowers the Court to stay any proceedings under a proceeds of crime law.

Proceeds of Crime Act 1987

30 Paragraph 50(2)(d)

Repeal the paragraph.

31 Section 53

Repeal the section.

32 Paragraph 59(1)(f)

Omit “53,”.

33 Paragraph 90(2)(d)

Repeal the paragraph.

Part 2—Other amendments

Bankruptcy Act 1966

34 Subsection 5(1) (definition of *confiscation order*)

Omit "*Proceeds of Crime Act 1987*", substitute "*Proceeds of Crime Act 2002*".

35 Subsection 5(1) (definition of *corresponding law*)

Omit "*Proceeds of Crime Act 1987*", substitute "*Proceeds of Crime Act 2002*".

36 Subsection 5(1) (definition of *interstate forfeiture order*)

Omit "*Proceeds of Crime Act 1987*", substitute "*Proceeds of Crime Act 2002*".

37 Subsection 5(1) (definition of *interstate pecuniary penalty order*)

Omit "*Proceeds of Crime Act 1987*", substitute "*Proceeds of Crime Act 2002*".

38 Subsection 5(1)

Insert:

proceeds of crime law means:

(a) the *Proceeds of Crime Act 2002*; or

(b) the *Proceeds of Crime Act 1987*; or

(c) a corresponding law.

39 Subsection 60(4A)

Omit "the *Proceeds of Crime Act 1987* or a corresponding law", substitute "a proceeds of crime law".

40 Subparagraph 154(6)(b)(i)

Omit "the *Proceeds of Crime Act 1987* or a corresponding law", substitute "a proceeds of crime law".

41 Subsection 189AA(2)

Omit "the *Proceeds of Crime Act 1987* or a corresponding law", substitute "a proceeds of crime law".

42 Subparagraph 231A(2)(b)(i)

Omit "the *Proceeds of Crime Act 1987* or a corresponding law", substitute "a proceeds of crime law".

43 Subparagraph 237AA(2)(b)(i)

Omit "the *Proceeds of Crime Act 1987* or a corresponding law", substitute "a proceeds of crime law".

44 Subparagraph 243AA(2)(b)(i)

Omit "the *Proceeds of Crime Act 1987* or a corresponding law", substitute "a proceeds of crime law".

Schedule 5—Property settlement and spousal maintenance proceedings

Family Law Act 1975

1 Subsection 4(1)

Insert:

DPP means the Director of Public Prosecutions.

2 Subsection 4(1)

Insert:

forfeiture application means an application for a forfeiture order under the *Proceeds of Crime Act 2002*.

2A Subsection 4(1)

Insert:

forfeiture order means a forfeiture order under the *Proceeds of Crime Act 2002*.

3 Subsection 4(1)

Insert:

proceeds of crime order means:

(a) a restraining order under the *Proceeds of Crime Act 2002*; or

(b) a forfeiture order under the *Proceeds of Crime Act 2002*.

4 Subsection 4(1)

Insert:

property settlement or spousal maintenance proceedings means proceedings with respect to:

(a) the property of the parties to a marriage or either of them; or

(b) the maintenance of a party to a marriage.

5 Subsection 4(1)

Insert:

Registry Manager means:

(a) in relation to the Family Court—the Registry Manager of a Registry of the Court; and

(b) in relation to a court other than the Family Court—the principal officer of the court or any other appropriate officer of the court.

6 At the end of paragraphs 79A(1)(a), (b) and (d)

Add "or".

7 After paragraph 79A(1)(d)

Insert:

(e) a proceeds of crime order has been made covering property of the parties to the marriage or either of them, or a proceeds of crime order has been made against a party to the marriage;

8 After section 79A

Insert:

79B Notification of proceeds of crime orders etc.

(1) If:

(a) a person makes an application for an order, under this Part, with respect to:

(i) the property of the parties to a marriage or either of them; or

(ii) the maintenance of a party to a marriage; and

(b) the person knows that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(ii) a forfeiture application;

the person must:

(c) disclose in the application the proceeds of crime order or forfeiture application; and

(d) give to the court a sealed copy of that order or application.

(2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

(a) a person is a party to property settlement or spousal maintenance proceedings under this Part; and

(b) the person is notified by the DPP that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(iii) a forfeiture application;

the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.

(4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

79C Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.

(1) A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 79B in relation to the proceedings.

(1A) The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.

(2) A court must, on the application of the DPP, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:

(a) a proceeds of crime order; or

(b) a forfeiture application.

(3) A court must notify the DPP if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).

(4) The DPP must notify the Registry Manager if:

(a) a proceeds of crime order ceases to be in force; or

(b) a forfeiture application is finally determined.

(5) For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:

(a) the application is withdrawn; or

(b) if the application is successful—the resulting forfeiture order comes into force; or

(c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

79D Lifting a stay

(1) A court that stayed the property settlement or spousal maintenance proceedings under section 79C must wholly or partially lift the stay if:

(a) either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or

(b) the DPP makes an application for the stay to be lifted.

(2) A court that stayed the property settlement or spousal maintenance proceedings under section 79C may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.

(3) Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

79E Intervention by DPP

(1) The DPP may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 79B, or in any proceedings under section 79C or 79D in which the DPP is not already a party.

(2) If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

9 At the end of Part VIIIA

Add:

90M Notification of proceeds of crime orders etc.

(1) If:

(a) a person makes an application for an order, under this Part, with respect to:

(i) the property of the parties to a marriage or either or them; or

(ii) the maintenance of a party to a marriage; and

(b) the person knows that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(ii) a forfeiture application;

the person must:

(c) disclose in the application the proceeds of crime order or forfeiture application; and

(d) give to the court a sealed copy of that order or application.

(2) A person who does not comply with subsection (1) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

(3) If:

(a) a person is a party to property settlement or spousal maintenance proceedings under this Part; and

(b) the person is notified by the DPP that the property of the parties to the marriage or either of them is covered by:

(i) a proceeds of crime order; or

(iii) a forfeiture application;

the person must notify the Registry Manager in writing of the proceeds of crime order or forfeiture application.

(4) A person who does not comply with subsection (3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

90N Court to stay property or spousal maintenance proceedings affected by proceeds of crime orders etc.

(1) A court in which property settlement or spousal maintenance proceedings are pending must stay those proceedings if notified under section 90M in relation to the proceedings.

(1A) The court may, before staying proceedings under subsection (1), invite or require the DPP to make submissions relating to staying the proceedings.

(2) A court must, on the application of the DPP, stay property settlement or spousal maintenance proceedings under this Part if the property of the parties to the marriage or either of them is covered by:

(a) a proceeds of crime order; or

(b) a forfeiture application.

(3) A court must notify the DPP if the court stays property settlement or spousal maintenance proceedings under subsection (1) or (2).

(4) The DPP must notify the Registry Manager if:

(a) a proceeds of crime order ceases to be in force; or

(b) a forfeiture application is finally determined.

(5) For the purposes of subsection (4), a forfeiture application is taken to be finally determined when:

(a) the application is withdrawn; or

(b) if the application is successful—the resulting forfeiture order comes into force; or

(c) if the application is unsuccessful—the time within which an appeal can be made has expired and any appeals have been finally determined or otherwise disposed of.

90P Lifting a stay

(1) A court that stayed the property settlement or spousal maintenance proceedings under section 90N must wholly or partially lift the stay if:

(a) either party to the proceedings makes an application for the stay to be lifted and the DPP consents to such an application; or

(b) the DPP makes an application for the stay to be lifted.

(2) A court that stayed the property settlement or spousal maintenance proceedings under section 90N may, on its own motion, wholly or partially lift the stay if the DPP consents to such a motion.

(3) Giving the Registry Manager written notice of the DPP's consent under this section is taken to be the giving of that consent, unless the court requires the DPP to appear in the proceedings. The notice may be given by the DPP or by a party to the proceedings.

90Q Intervention by DPP

(1) The DPP may intervene in any property settlement or spousal maintenance proceedings in relation to which a court is notified under section 90M, or in any proceedings under section 90N or 90P in which the DPP is not already a party.

(2) If the DPP intervenes, the DPP is taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

Family Law Legislation Amendment (Superannuation) Act 2001

10 Subsection 5(3)

Omit "paragraph 79A(1)(a), (b), (c) or (d)", substitute "paragraph 79A(1)(a), (b), (c), (d) or (e)".

Schedule 6—Other amendments

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (y) of Schedule 1

Insert:

(z) decisions of the DPP or an approved examiner under Part 3-1 of the *Proceeds of Crime Act 2002*;

Australian Federal Police Act 1979

2 After paragraph 8(1)(bc)

Insert:

(bd) to perform functions under the *Proceeds of Crime Act 2002*; and

Crimes Act 1914

3 Subparagraph 3(2)(a)(ii)

Repeal the subparagraph, substitute:

(ii) by a pecuniary penalty order or a literary proceeds order made under the *Proceeds of Crime Act 2002*; or

(iia) by a pecuniary penalty order made under the *Proceeds of Crime Act 1987*; or

4 After subparagraph 3E(6)(a)(ii)

Insert:

; or (iii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act);

5 After subparagraph 3E(7)(a)(ii)

Insert:

; or (iii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act);

6 After subparagraph 3F(1)(d)(ii)

Insert:

; or (iii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act);

7 After subparagraph 3F(2)(c)(ii)

Insert:

; or (iii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act);

8 Paragraph 9A(c)

Omit "Confiscated Assets Reserve as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

9 Subsection 9B(3)

Omit "section 55 of the *Proceeds of Crime Act 1987*" (wherever occurring), substitute "section 288 of the *Proceeds of Crime Act 2002*".

10 Subsection 21E(4) (definition of *confiscation proceedings*)

Repeal the definition, substitute:

confiscation proceedings includes:

(a) proceedings for forfeiture orders, pecuniary penalty orders, literary proceeds orders and restraining orders under the *Proceeds of Crime Act 2002*; and

(b) proceedings for forfeiture orders, pecuniary penalty orders and restraining orders under the *Proceeds of Crime Act 1987*; and

(c) proceedings for restraining orders and pecuniary penalty orders under Part XIII of the *Customs Act 1901*.

11 Subsection 22(7)

Insert:

narcotic substance has the same meaning as in the *Proceeds of Crime Act 2002*.

12 Subsection 22(7)

Insert:

possession includes possession for supply.

13 Subsection 22(7)

Insert:

production includes growing and manufacture.

14 Subsection 22(7) (definition of *serious narcotics offence*)

Repeal the definition, substitute:

serious narcotics offence means an offence:

(a) constituted by the production, possession, supply, importation or export of a narcotic substance; and

(b) involving a quantity of the narcotic substance that is equal to or greater than the trafficable quantity applicable to the narcotic substance.

15 Subsection 22(7)

Insert:

trafficable quantity, in relation to a narcotic substance, means:

(a) if paragraph (b) does not apply—a trafficable quantity of the substance within the meaning of the *Customs Act 1901*; or

(b) if the law against which the offence is committed is not the *Customs Act 1901* and that law includes references to trafficable quantity—a trafficable quantity of the substance within the meaning of that law.

16 Subsection 22A(2) (definition of *serious narcotics offence*)

Omit "section 7 of the *Proceeds of Crime Act 1987*", substitute "section 22".

Customs Act 1901

17 Subparagraph 198(4)(a)(i)

After "another offence", insert ", or to be evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act)".

18 Subparagraph 199(1)(d)(i)

After "another offence", insert ", or to be evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act)".

19 Paragraph 208DA(3)(a)

Omit "Confiscated Assets Reserve as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

20 Subparagraph 208DA(3)(b)(iii)

Omit "Confiscated Assets Reserve as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

21 Subparagraph 219A(2)(c)(iii)

After "warrant under", insert "the *Proceeds of Crime Act 2002* or".

22 Subparagraph 243G(6)(a)(ii)

Omit "Confiscated Assets Reserve as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

23 Subparagraph 243G(6)(b)(iii)

Omit "Confiscated Assets Reserve as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

24 Paragraph 243G(7)(a)

Omit "Confiscated Assets Reserve as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

25 Subsection 243G(8)

Omit "Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987*", substitute "Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*".

26 Subsection 243P(3)

Omit "section 55 of the *Proceeds of Crime Act 1987*" (wherever occurring), substitute "section 288 of the *Proceeds of Crime Act 2002*".

Director of Public Prosecutions Act 1983

27 After paragraph 6(1)(ma)

Insert:

(mb) for the purpose of enforcing orders under Chapter 2 of the *Proceeds of Crime Act 2002*:

(i) to institute proceedings; or

(ii) to carry on proceedings (whether or not instituted by the Director); or

(iii) to co-ordinate or supervise the institution or carrying on of proceedings;

28 Paragraph 6(1)(n)

Omit "paragraphs (a) to (ma)", substitute "paragraphs (a) to (mb)".

29 Subsection 9(6A) (paragraph (d) of the definition of *specified proceedings*)

After "out of", insert "the *Proceeds of Crime Act 2002*,".

30 After subsection 16A(1A)

Insert:

(1AB) If the Director applies to a court under section 25 of the *Proceeds of Crime Act 2002* for a restraining order under that Act, the court may, at any time after the making of the application and before the

application is determined, make an order prohibiting or restricting the publication of all or any of the matters:

(a) that are referred to in subsection 17(3) or 18(3), paragraph 19(1)(e) or subsection 20(3) (whichever is applicable) of that Act; and

(b) that were contained in an affidavit made in support of the application;

if it appears to the Court to be necessary to make the order in order to prevent prejudice to the administration of justice.

31 Subsection 16A(2)

After "(1A)", insert ", (1AB)".

Foreign Evidence Act 1994

32 Subsection 3(1) (paragraph (a) of the definition of *related civil proceeding*)

After "under", insert "the *Proceeds of Crime Act 2002* or".

National Environment Protection Measures (Implementation) Act 1998

40 At the end of subsection 14(4)

Add:

; (e) the *Proceeds of Crime Act 2002*.

41 At the end of subsection 19(4)

Add:

; (e) the *Proceeds of Crime Act 2002*.

Sea Installations Act 1987

42 Schedule (after the reference to the *Proceeds of Crime Act 1987*)

Insert:

Proceeds of Crime Act 2002

Service and Execution of Process Act 1992

43 Subsection 3(1) (definition of *proceeds of crime legislation*)

Repeal the definition, substitute:

proceeds of crime legislation means:

(a) the *Proceeds of Crime Act 1987*; or

(b) the *Proceeds of Crime Act 2002*; or

(c) a law of a State that is a corresponding law within the meaning of the *Proceeds of Crime Act 2002*.

Taxation Administration Act 1953

44 Subsection 3E(10)

Omit "(within the meaning of section 5 of the *Proceeds of Crime Act 1987*)", substitute "(within the meaning of section 331 of the *Proceeds of Crime Act 2002*)".

45 Subsection 3E(11) (definition of *proceeds of crime order*)

Repeal the definition, substitute:

proceeds of crime order means an order, relating to a person's commission of a serious offence, under:

(a) Chapter 2 or Division 1 of Part 3-1 of the *Proceeds of Crime Act 2002*; or

(b) Part II or III of the *Proceeds of Crime Act 1987*; or

(c) a law of a State or Territory corresponding to paragraph (a) or (b); or

(d) Division 3 of Part XIII of the *Customs Act 1901*.

Telecommunications (Interception) Act 1979

46 Subparagraph 6K(c)(i)

Repeal the subparagraph, substitute:

(i) the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*".

47 Paragraph 6L(2)(a)

Repeal the paragraph, substitute:

(a) in the case of the Authority—a reference to:

(i) a proceeding by way of a prosecution for a prescribed offence to which a prescribed investigation relates or related; or

(ii) a proceeding under a law of the Commonwealth or a State for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence to which a prescribed investigation relates or related; or

Trade Marks Act 1995

48 Subsection 159(2) (at the end of the definition of *forfeiture order provision*)

Add:

; and (c) Part 2-2 of the *Proceeds of Crime Act 2002*; and

(d) Part 2-3 of the *Proceeds of Crime Act 2002*.

Note: The heading to section 159 is altered by omitting "***Proceeds of Crime Act 1987***" and substituting "**proceeds of crime legislation**".

Witness Protection Act 1994

49 Subsection 23(2)

After "*Proceeds of Crime Act 1987*," insert "the *Proceeds of Crime Act 2002*,".

Schedule 7—Transitional and related matters

Part 1—Application of the Proceeds of Crime Act 1987

Proceeds of Crime Act 1987

1 Subsection 4(1)

Insert:

commencement of the Proceeds of Crime Act 2002 means the commencement of sections 3 to 338 of the *Proceeds of Crime Act 2002*.

2 Subsection 14(2)

Repeal the subsection, substitute:

(2) The DPP:

(a) is not empowered to make an application after the end of the relevant application period in relation to the conviction; and

(b) is not empowered to make an application after the commencement of the *Proceeds of Crime Act 2002* unless some or all of the property which could be used to satisfy the order is property in respect of which a restraining order is in force.

3 After subsection 22(1)

Insert:

(1A) This section does not apply if the conviction is quashed after the commencement of the *Proceeds of Crime Act 2002*.

Note: Division 6 of Part 2-2 of the *Proceeds of Crime Act 2002* applies in relation to convictions quashed after that commencement: see subitem 21(1) of Schedule 7 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.

4 Paragraph 30(1)(b)

Before “a restraining order”, insert “before the commencement of the *Proceeds of Crime Act 2002*,”.

5 After subsection 32(1)

Insert:

(1A) This section does not apply if the conviction is quashed after the commencement of the *Proceeds of Crime Act 2002*.

Note: Division 4 of Part 2-3 of the *Proceeds of Crime Act 2002* applies in relation to convictions quashed after that commencement: see subitem 21(2) of Schedule 7 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.

6 After subsection 35(2)

Insert:

(2A) A police officer is not empowered to do anything under this section after the commencement of the *Proceeds of Crime Act 2002* unless it is done under a warrant issued under section 36 of this Act for which an application was made under that section before that commencement.

7 After subsection 43(2)

Insert:

(2A) The DPP is not empowered to make an application under this section after the commencement of the *Proceeds of Crime Act 2002*.

8 Paragraph 57(2)(d)

Repeal the paragraph, substitute:

(d) if, within the relevant period in relation to the restraining order, the person is acquitted of the charge and the person is not charged with a related indictable offence by the time of the acquittal, the restraining order ceases to be in force:

(i) in a case where the acquittal occurs after the commencement of the *Proceeds of Crime Act 2002*—at the end of the period of 28 days after the day of the acquittal; or

(ii) otherwise—when the acquittal occurs;

Note: After the commencement of the *Proceeds of Crime Act 2002*, an application can be made under that Act (but not section 17) for a restraining order in relation to the offence, despite the acquittal.

9 After subsection 66(1)

Insert:

(1A) A police officer is not empowered to make an application under this section after the commencement of the *Proceeds of Crime Act 2002*.

10 At the end of section 70

Add:

(2) A police officer is not empowered to do anything under this section after the commencement of the *Proceeds of Crime Act 2002* unless it is done under a search warrant issued under section 71 of this Act for which an application was made under that section before that commencement.

11 After subsection 73(1)

Insert:

(1A) A police officer is not empowered to make an application under this section after the commencement of the *Proceeds of Crime Act 2002*.

12 Subsection 86(1)

After "interstate restraining order", insert "made before the commencement of the *Proceeds of Crime Act 2002*".

13 Subsection 92(1)

After "interstate forfeiture order", insert "made before the commencement of the *Proceeds of Crime Act 2002*".

14 Effect on existing applications and orders

The amendments made by this Part of this Schedule do not affect:

(a) applications made under the *Proceeds of Crime Act 1987* before the commencement of the *Proceeds of Crime Act 2002*; or

(b) orders made, or warrants or search warrants issued, under the *Proceeds of Crime Act 1987* before or after that commencement.

15 Use of property etc. for purposes of the *Proceeds of Crime Act 2002*

To avoid doubt, the fact that property, documents or information have:

(a) been seized or otherwise obtained under the *Proceeds of Crime Act 1987*; or

(b) been obtained as a direct or indirect result of action taken under that Act;

does not prevent the property, documents or information being used for the purposes of the *Proceeds of Crime Act 2002*.

16 Obligations of financial institutions

Despite the repeal of Division 4 of Part IV of the *Proceeds of Crime Act 1987* by Schedule 3 to this Act:

(a) that Division continues to apply in relation to any document in relation to which it applied immediately before the commencement of sections 3 to 338 of the *Proceeds of Crime Act 2002*; and

(b) Part VIA of the *Financial Transaction Reports Act 1988* does not apply to any such document.

Part 2—Application of the Proceeds of Crime Act 2002

17 References to the commencement of the *Proceeds of Crime Act 2002*

References in this Part to the commencement of the Proceeds of Crime Act 2002 are taken to be references to the commencement of sections 3 to 338 of the *Proceeds of Crime Act 2002*.

18 Offences committed before the commencement of the *Proceeds of Crime Act 2002*

(1) An order made under Chapter 2 of the *Proceeds of Crime Act 2002* may, subject to this Part, relate to an offence committed before the commencement of that Act.

(2) However, property cannot be forfeited under Part 2-3 of the *Proceeds of Crime Act 2002* in relation to an offence of which a person is convicted before the commencement of that Act.

19 Applying for restraining orders

(1) The DPP must not apply for a restraining order under Part 2-1 of the *Proceeds of Crime Act 2002* covering property in respect of an offence if:

(a) an application has been made under section 43 of the *Proceeds of Crime Act 1987* for an order in respect of some or all of the property in respect of the offence; and

(b) the application under section 43 of that Act is still pending.

(2) The DPP must not apply for a restraining order under section 17 of the *Proceeds of Crime Act 2002* covering property in respect of an offence if an application under section 43 of the *Proceeds of Crime Act 1987* for an order in respect of some or all of the property in respect of the offence has been refused.

(3) The fact that an application has been made under section 43 of the *Proceeds of Crime Act 1987* for an order does not in any other case prevent the DPP applying for a restraining order under Part 2-1 of the *Proceeds of Crime Act 2002*.

20 Applying for forfeiture orders

(1) The DPP must not apply for a forfeiture order under Part 2-2 of the *Proceeds of Crime Act 2002* covering property in respect of an offence if:

(a) an application has been made under section 14 of the *Proceeds of Crime Act 1987* for an order for the forfeiture of some or all of the property in respect of the offence; and

(b) the application under section 14 of that Act is still pending.

(2) The DPP must not apply for a forfeiture order under section 48 of the *Proceeds of Crime Act 2002* covering property in respect of an offence if an application under section 14 of the *Proceeds of Crime Act 1987* for the forfeiture of some or all of the property in respect of the offence has been refused.

(3) The fact that an application has been made under section 14 of the *Proceeds of Crime Act 1987* for an order for the forfeiture of property in respect of an offence does not in any other case prevent the DPP applying for a forfeiture order under Part 2-2 of the *Proceeds of Crime Act 2002* covering property in respect of the offence.

21 The effect on forfeiture under the *Proceeds of Crime Act 1987* of convictions being quashed

(1) If:

(a) before or after the commencement of the *Proceeds of Crime Act 2002*, an order was made under Division 2 of Part II of the *Proceeds of Crime Act 1987*, in relation to a person's conviction of an offence, for the forfeiture of property; and

(b) after the commencement of the *Proceeds of Crime Act 2002*, the conviction is subsequently quashed;

Division 6 of Part 2-2 of the *Proceeds of Crime Act 2002* applies in relation to the order in the same way that it would apply if the order had been made under Part 2-2 of the *Proceeds of Crime Act 2002*.

(2) If:

(a) before or after the commencement of the *Proceeds of Crime Act 2002*, property was forfeited under section 30 of the *Proceeds of Crime Act 1987* in relation to a person's conviction of an offence; and

(b) after the commencement of the *Proceeds of Crime Act 2002*, the conviction is subsequently quashed;

Division 4 of Part 2-3 of the *Proceeds of Crime Act 2002* applies in relation to the forfeiture in the same way that it would apply if the property had been forfeited under Part 2-3 of the *Proceeds of Crime Act 2002*.

22 Applying for pecuniary penalty orders

(1) The DPP must not apply for a pecuniary penalty order under Part 2-4 of the *Proceeds of Crime Act 2002* in respect of an offence if:

(a) an application has been made under section 14 of the *Proceeds of Crime Act 1987* for an order for the payment of a pecuniary penalty in respect of the offence; and

(b) the application under section 14 of that Act is still pending.

(2) The DPP must not apply for a pecuniary penalty order under section 116 of the *Proceeds of Crime Act 2002* covering property in respect of an offence if:

(a) the application is made on the ground that a person has been convicted of the offence; and

(b) an application under section 14 of the *Proceeds of Crime Act 1987* for an order for the payment of a pecuniary penalty in respect of the offence has been refused.

(3) The fact that an application has been made under section 14 of the *Proceeds of Crime Act 1987* for an order for the payment of a pecuniary penalty in respect of the offence does not in any other case prevent the DPP applying for a pecuniary penalty order under Part 2-4 of the *Proceeds of Crime Act 2002* in respect of the offence.

23 The effect on pecuniary penalty orders under the *Proceeds of Crime Act 1987* of convictions being quashed

If:

(a) before or after the commencement of the *Proceeds of Crime Act 2002*, an order was made under section 26 of the *Proceeds of Crime Act 1987* in relation to a person's conviction of an offence; and

(b) after the commencement of the *Proceeds of Crime Act 2002*, the conviction is subsequently quashed;

Division 5 of Part 2-4 of the *Proceeds of Crime Act 2002* applies in relation to the order in the same way that it would apply if the order had been made under Division 1 of that Part.

24 Registering interstate restraining orders

Division 1 of Part 4-5 of the *Proceeds of Crime Act 2002* does not apply in relation to an interstate restraining order that has been registered under Division 1 of Part VI of the *Proceeds of Crime Act 1987*.

25 Registering interstate forfeiture orders

Division 2 of Part 4-5 of the *Proceeds of Crime Act 2002* does not apply in relation to an interstate forfeiture order that has been registered under Division 2 of Part VI of the *Proceeds of Crime Act 1987*.

26 Continued application of regulations made under the *Proceeds of Crime Act 1987*

If:

(a) immediately after the commencement of the *Proceeds of Crime Act 2002*, regulations for the purposes of a provision of the *Proceeds of Crime Act 2002* specified in an item of the second column of the following table are not in force; and

(b) immediately before that commencement, regulations for the purposes of a provision of the *Proceeds of Crime Act 1987* specified in a corresponding item of the second column of the following table were in force;

the *Proceeds of Crime Act 2002* has effect, until regulations for the purposes of that provision of the *Proceeds of Crime Act 2002* come into force, as if the regulations referred to in paragraph (b) were regulations for the purposes of that provision.

Continued application of regulations

Item	Provisions of the *Proceeds of Crime Act 2002*	Corresponding provisions of the *Proceeds of Crime Act 1987*
1.	Subsection 144(1)	Subsection 98(5)
2.	Subsection 144(2)	Subsection 98(5A)

Continued application of regulations		
Item	**Provisions of the *Proceeds of Crime Act 2002***	**Corresponding provisions of the *Proceeds of Crime Act 1987***
3.	Subsection 288(1)	Subsection 55(1)
4.	Subsection 288(2)	Subsection 55(2)
5.	Subsection 296(2)	Subsection 34B(2)
6.	Paragraph 297(1)(f)	Subparagraph 34C(1)(a)(iv)
7.	Paragraph 297(2)(a)	Definition of ***suspended funds*** in subsection 4(1)
8.	Paragraph 299(7)(a)	Definition of ***distributable funds*** in subsection 4(1)
9.	Definition of ***appropriate officer*** in section 338	Definition of ***appropriate officer*** in subsection 4(1)
10.	Definition of ***corresponding law*** in section 338	Definition of ***corresponding law*** in subsection 4(1)
11.	Definition of ***interstate forfeiture order*** in section 338	Definition of ***interstate forfeiture order*** in subsection 4(1)
12.	Definition of ***interstate pecuniary penalty order*** in section 338	Definition of ***interstate pecuniary penalty order*** in subsection 4(1)
13.	Definition of ***interstate restraining order*** in section 338	Definition of ***interstate restraining order*** in subsection 4(1)
14.	Paragraph (b) of the definition of ***narcotic substance*** in section 338	Paragraph (b) of the definition of ***narcotic substance*** in subsection 4(1)

[*Minister's second reading speech made in—*
House of Representatives on 13 March 2002
Senate on 20 August 2002]

(77/02)