Crimes Legislation Amendment Act (No. 2) 2011

No. 174, 2011

An Act to amend various Acts relating to the enforcement of the criminal law and proceeds of crime, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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No. 174, 2011

An Act to amend various Acts relating to the enforcement of the criminal law and proceeds of crime, and for related purposes

[*Assented to 5 December 2011*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment Act (No. 2) 2011*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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 this Act receives the Royal Assent.	5 December 2011
2. Schedule 1	The day after this Act receives the Royal Assent.	6 December 2011
3. Schedule 2, items 1 to 154	The later of: (a) 1 January 2012; and (b) the day after this Act receives the Royal Assent.	1 January 2012
4. Schedule 2, items 155 to 194	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Schedule 2, items 195 to 242	The later of: (a) 1 January 2012; and (b) the day after this Act receives the Royal Assent.	1 January 2012
6. Schedule 2, Part 2	The day after this Act receives the Royal Assent.	6 December 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Australian Commission for Law Enforcement Integrity amendments

Customs Administration Act 1985

1 After paragraph 16(2)(c)

Insert:

(ca) for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* or regulations under that Act; or

Law Enforcement Integrity Commissioner Act 2006

2 Subsection 5(1) (after paragraph (b) of the definition of *head*)

Insert:

(ba) if the agency is Customs—the Chief Executive Officer of Customs; or

3 Subsection 5(1) (after paragraph (b) of the definition of *law enforcement agency*)

Insert:

(ba) Customs; or

4 After subsection 10(2)

Insert:

Customs staff members

(2A) The following are ***staff members*** of Customs for the purposes of this Act:

(a) the Chief Executive Officer of Customs;

(b) a member of the staff referred to in subsection 15(1) of the *Customs Administration Act 1985*;

(c) a person authorised by the Chief Executive Officer of Customs, in writing, to perform a function of a person employed in Customs.

5 After paragraph 10(5)(b)

Insert:

(ba) a person referred to in paragraph (2A)(c) is a ***secondee*** to Customs; and

6 Application

(1) The amendments made by items 1 to 5 of this Schedule apply in relation to corrupt conduct, whether engaged in before or after the commencement of the *Law Enforcement Integrity Commissioner Act 2006*.

(2) However, the requirement for the Chief Executive Officer of Customs to notify a corruption issue to the Integrity Commissioner under that Act only applies on and after this item commences.

(3) To avoid doubt, the amendments made by items 1 to 5 apply in relation to corrupt conduct even if the conduct was engaged in at a time when Customs was known as the Australian Customs Service.

(4) In this item:

corrupt conduct has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

corruption issue has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

Schedule 2—Proceeds of crime amendments

Part 1—Responsible authorities for proceeds of crime: the DPP and the AFP

Division 1—Main amendments

Australian Federal Police Act 1979

1 At the end of section 69C

Add:

(3) The Commissioner may, in writing, delegate to the Deputy Commissioner or a senior executive AFP employee all or any of the Commissioner's powers, functions or duties as a proceeds of crime authority under the *Proceeds of Crime Act 2002* or any other Act.

Note: As a proceeds of crime authority, the Commissioner may conduct proceedings under the *Proceeds of Crime Act 2002*, and has related powers, functions and duties under that Act and other Acts (see the definitions of ***proceeds of crime authority*** and ***responsible authority*** in section 338 of that Act).

2 Application of amendment—the *Australian Federal Police Act 1979*

(1) The amendment of the *Australian Federal Police Act 1979* made by item 1 of this Schedule applies as set out in this item.

(2) The amendment applies in relation to the Commissioner's powers, functions or duties as a proceeds of crime authority in relation to orders (or applications or proceedings for orders) under the *Proceeds of Crime Act 2002* made or (in the case of proceedings) started before, at or after the commencement of item 1.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those orders (or applications or proceedings for orders) occurred, or is suspected to have occurred, before, at or after the commencement of item 1.

Proceeds of Crime Act 2002

3 After section 315A

Insert:

315B Transfer of responsibility for principal orders and applications

Transfer

(1) A *proceeds of crime authority (the ***transferor authority***) may, with the consent of the other proceeds of crime authority (the ***transferee authority***), transfer to the other authority responsibility for:

(a) an application for a *principal order (if the order has not been made); or

(b) a principal order.

Note 1: The proceeds of crime authority is the Commissioner of the Australian Federal Police, or the DPP (see the definition of ***proceeds of crime authority*** in section 338). Either authority may start and conduct proceedings under this Act.

Note 2: The proceeds of crime authority that applies for a principal order under this Act, or to which responsibility is transferred under this section, is referred to in this Act as the ***responsible authority*** (see the definition in section 338).

Note 3: The principal orders under this Act are restraining orders, forfeiture orders, pecuniary penalty orders, literary proceeds orders and unexplained wealth orders (see the definitions of ***principal order*** and the individual orders in section 338).

(2) The transferee authority must give a written notice of transfer of responsibility for an application for a *principal order, or for a principal order, to:

(a) in the case of a transfer of responsibility for an application for a principal order:

(i) the court before which proceedings on the application are being heard (or are to be heard); and

(ii) each party (if any) to those proceedings; and

(iii) any court in which proceedings related to the application are being heard, or are to be heard, if the transferee authority considers it appropriate; and

(iv) any person to whom notice of the application has been given; and

(v) the Family Court of Australia, if an application has been made to that court by a *proceeds of crime authority for a stay of proceedings because of the application for the principal order, or that court has given notice to a proceeds of crime authority of a stay having been granted; or

(b) in the case of a transfer of responsibility for a principal order:

(i) the court that made the order; and

(ii) each party (if any) to the proceedings in that court on the application for the order; and

(iii) any court in which proceedings related to the order are being heard, or are to be heard, if the transferee authority considers it appropriate; and

(iv) any person to whom notice of the order, or of the application for the order, has been given; and

(v) the Family Court of Australia, if an application has been made to that court by a proceeds of crime authority for a stay of proceedings because of the order or the application for the order, or that court has given notice to a proceeds of crime authority of a stay having been granted.

Note: Notice is not required to be given in the circumstances mentioned in subsection (4).

(3) It is sufficient compliance with a requirement under subsection (2) to give a person (other than a court) a notice of transfer if the transferee authority takes reasonable steps to give the notice to the person.

(4) The transferee authority for an application for a *restraining order or a *forfeiture order is not required to give any notice of the transfer (other than to the court before which proceedings on the application are being heard):

(a) in the case of an application for a restraining order:

(i) if the court has been requested under subsection 26(4) to consider the application without notice having been given to the person; or

(ii) during a period ordered by the court under subsection 33(3) (delay in giving notice to protect integrity of an investigation or prosecution); or

(b) in the case of an application for a forfeiture order—if the court has, under section 63 (person has absconded), dispensed with the requirement to give notice to the person under subsections 61(1) and 62(3).

Day of effect

(5) A transfer takes effect on the day the following court receives the notice of transfer given under subsection (2):

(a) in the case of a transfer of responsibility for an application for a *principal order—the court before which proceedings on the application are being heard (or are to be heard);

(b) in the case of a transfer of responsibility for a principal order—the court that made the order.

Effects of transfer—proceedings etc.

(6) On and after the day of effect of a transfer of responsibility for an application for a *principal order, or a principal order:

(a) the transferee authority replaces the transferor authority as a party to any applications or proceedings (***related applications or proceedings***) under this or any other Act in relation to, or arising out of, the application or order, or to which the application or order is relevant; and

(b) the transferee authority may (subject to this Act and any other Act) initiate, conduct or respond to any related applications or proceedings; and

(c) the transferee authority is responsible for any functions, powers and duties under this Act, or any other Act, to be performed or exercised by a *responsible authority in relation to all of the following:

(i) the application or the order;

(ii) any related applications or proceedings;

(iii) any order (including a principal order, or another principal order) arising out of related applications or proceedings.

Effects of transfer—as between transferee and transferor authorities

(7) On and after the day of effect of the transfer, the following paragraphs have effect in relation to the application or order and any related applications or proceedings:

(a) the functions, powers and duties of the transferor authority are extinguished (subject to subsection (8));

(b) the transferee authority is bound by the actions of the transferor authority while it was the *responsible authority;

(c) without limiting paragraph (b), the transferee authority is:

(i) bound by any undertakings with respect to the payment of damages or costs, or both, entered into by the transferor authority while it was the responsible authority; and

(ii) liable for any damages or costs awarded by any court against the transferor authority on or after that day, whether or not the damages or costs result from any action (or failure to act) of the transferor authority while it was the responsible authority.

(8) However, the transferor authority continues to be liable on and after the day of effect of the transfer for any damages or costs that had been awarded against the authority, while it was the *responsible authority, in relation to the application or order and any related applications or proceedings.

4 Section 338

Insert:

principal order means any of the following orders:

(a) a *restraining order;

(b) a *forfeiture order;

(c) a *pecuniary penalty order;

(d) a *literary proceeds order;

(e) an *unexplained wealth order.

5 Section 338

Insert:

proceeds of crime authority means:

(a) the Commissioner of the Australian Federal Police; or
(b) the *DPP.

Note 1: Section 69C of the *Australian Federal Police Act 1979* provides for the delegation of the functions, powers and duties of the Commissioner of the Australian Federal Police under this Act.

Note 2: Section 31 of the *Director of Public Prosecutions Act 1983* provides for the delegation of the functions of the DPP.

Note 3: If an application for a principal order, or a principal order, has already been made, the proceeds of crime authority responsible for the application or the order is referred to as the ***responsible authority*** (see the definition in this section).

6 Section 338

Insert:

responsible authority, in relation to an application for a *principal order, or a principal order, or to an application, proceedings, function, order, power or duty related to, or arising out of, such an application or order, means:

(a) in the case of an application for a principal order:
  (i) the *proceeds of crime authority that made the application; or
  (ii) if responsibility for the application has been transferred under section 315B—the proceeds of crime authority to which responsibility has been transferred (or has been latest transferred) under that section; or
(b) in the case of a principal order:
  (i) the proceeds of crime authority that made the application for the order; or
  (ii) if responsibility for that application, or the order, has been transferred under section 315B—the proceeds of crime authority to which responsibility has been transferred (or has been latest transferred) under that section.

Note 1: The proceeds of crime authority is the Commissioner of the Australian Federal Police, or the DPP (see the definition of ***proceeds of crime authority*** in this section). Either authority may start and conduct proceedings under this Act.

Note 2: Section 315B provides that responsibility for an application for a principal order, or for a principal order, may be transferred between the 2 proceeds of crime authorities.

Division 2—Substituted references to proceeds of crime authority

Proceeds of Crime Act 2002

7 Multiple amendments

The specified provisions of the *Proceeds of Crime Act 2002* listed in items 8 to 30 of this Division are amended by:

(a) omitting "the *DPP" (wherever occurring) and substituting "a *proceeds of crime authority"; and

(b) omitting "The *DPP" (wherever occurring) and substituting "A *proceeds of crime authority"; and

(c) omitting "the DPP" (wherever occurring) and substituting "a proceeds of crime authority".

8 Paragraph 17(1)(c)

9 Paragraph 18(1)(c)

10 Paragraph 19(1)(c)

11 Paragraph 20(1)(c)

12 Paragraph 20A(1)(c)

13 Section 25

Note: The heading to section 25 is altered by omitting "**DPP**" and substituting "**Proceeds of crime authority**".

14 Section 27

Note: The heading to section 27 is altered by omitting "**DPP**" and substituting "**Proceeds of crime authority**".

15 Paragraphs 48(1)(a) and (2)(a)

16 Section 50 (note)

17 Paragraph 54(a)

18 Subsection 59(1)

Note: The heading to section 59 is altered by omitting "**DPP**" and substituting "**Proceeds of crime authority**".

19 Subsection 60(1)

20 Paragraphs 60(3)(a) and (b)

21 Paragraph 116(1)(a)

22 Subsection 134(1)

Note: The heading to section 134 is altered by omitting "**DPP**" and substituting "**Proceeds of crime authority**".

23 Subsection 135(1)

24 Paragraphs 152(1)(a) and (2)(a)

25 Subsection 162(1)

Note: The heading to section 162 is altered by omitting "**DPP**" and substituting "**Proceeds of crime authority**".

26 Paragraph 179B(1)(a)

27 Section 179M

Note: The heading to section 179M is altered by omitting "**DPP**" and substituting "**Proceeds of crime authority**".

28 Subsection 179N(1)

29 Subsection 179P(1)

30 Paragraph 307(4)(c)

Division 3—Substituted references to responsible authority

Proceeds of Crime Act 2002

31 Multiple amendments

The specified provisions of the *Proceeds of Crime Act 2002* listed in items 32 to 114 of this Division are amended by:

(a) omitting "*DPP" (wherever occurring) and substituting "*responsible authority"; and

(b) omitting "DPP" (wherever occurring) and substituting "authority"; and

(c) omitting "*DPP's" (wherever occurring) and substituting "*responsible authority's".

32 Subsection 21(2)

33 Paragraph 24(2)(b)

34 Subsections 24A(3) and (4)

35 Subsections 26(1), (2), (4) and (5)

36 Subsections 30(2), (3) and (4)

37 Subsections 31(4), (5) and (6)

38 Paragraph 32(b)

Note: The heading to section 32 is altered by omitting "**DPP**" and substituting "**responsible authority**".

39 Subsections 33(1) to (4)

40 Subsections 36(1) and (2)

41 Paragraphs 39(2)(a) and (3A)(a)

42 Subsections 39(4A) and (4B)

43 Subsections 42(2) and (4)

44 Section 43

45 Paragraphs 44(1)(d) and (2)(d)

46 Paragraph 49(1)(e)

Note: Subsection 49(1) is also amended by item 122 of this Schedule.

47 Subsections 61(1) and (2)

48 Paragraphs 62(1)(a) and (b)

49 Subsection 62(3)

50 Section 63

51 Paragraph 67(1)(b)

52 Subsection 67(2)

53 Subparagraph 68(1)(b)(i)

54 Subsections 75(1), (2) and (3)

Note: Subsection 75(1) is also amended by item 123 of this Schedule.

55 Section 76

56 Subsections 79(1), (2) and (3)

Note: Subsection 79(1) is also amended by item 124 of this Schedule.

57 Section 79A

58 Paragraphs 81(1)(b) and (2)(b)

59 Subsection 82(1) (including the note)

60 Subsection 82(2)

61 Paragraphs 84(1)(a) and (b)

62 Subsections 87(2) and (3)

63 Subsection 92A(2)

64 Subsection 93(4)

65 Subsections 94(3) to (6)

66 Subsections 94A(6) to (9)

67 Paragraph 95(a)

68 Subsection 97(2)

69 Subsections 104(4) to (7)

70 Paragraphs 107(1)(c) and (2)(b)

71 Subsection 108(1) (including the note)

72 Subsection 108(2)

73 Paragraph 110(1)(b)

Note: Subsection 110(1) is also amended by item 127 of this Schedule.

74 Subsection 113(3)

75 Subsections 133(1) and (4)

76 Subsections 136(1), (2) and (3)

77 Paragraphs 137(1)(a) and (b)

78 Subsection 137(3)

79 Paragraph 141(1)(b)

80 Subsection 141(4)

81 Paragraphs 146(1)(b) and (2)(b)

82 Subsection 146(2A)

83 Section 147 (including the note)

84 Section 149

85 Paragraph 149A(1)(b)

86 Subsections 161(1) and (5)

87 Subsections 163(1) and (2)

88 Paragraphs 164(1)(a) and (b)

89 Subsection 164(3)

90 Paragraph 168(1)(b)

91 Subsection 168(4)

92 Paragraphs 173(1)(b) and (2)(b)

93 Section 174 (including the note)

94 Section 176

95 Subsection 178(2)

96 Subsection 179B(3)

97 Subsections 179CA(3), (4) and (5)

98 Section 179D

99 Subsection 179EA(2)

100 Subsections 179K(1) and (4)

101 Subsections 179N(2) and (3)

102 Subsections 179Q(2) and (3)

103 Paragraph 179S(1)(b)

104 Subsection 179S(4)

105 Subsection 182(2)

106 Subsection 183(1)

107 Paragraph 187(1)(b)

108 Paragraph 188(3)(c)

109 Subsection 189(1)

110 Paragraphs 191(1)(b) and (c)

111 Paragraph 192(b)

112 Paragraph 193(1)(b)

113 Paragraph 194(2)(b)

114 Paragraph 322(5)(b)

Note: Subsection 322(5) is also amended by item 138 of this Schedule.

Division 4—Other references to the Director of Public Prosecutions

Proceeds of Crime Act 2002

115 Paragraph 15Q(2)(b)

Repeal the paragraph, substitute:

(b) the person has given written notice of the application and the grounds for the application to the *enforcement agency mentioned in the paragraph of the definition of ***authorised officer*** in section 338 that describes the *authorised officer who applied for the freezing order; and

116 Subsection 29(1) (note)

Omit “DPP”, substitute “responsible authority”.

117 Section 29A (note)

Omit “DPP”, substitute “responsible authority”.

118 Subsection 34(2)

Omit “*DPP”, substitute “*responsible authority for the *restraining order”.

119 Subsection 35(1)

Omit "If the *DPP has previously applied to a *registration authority under section 34 for the recording in a register of particulars of a *restraining order covering particular property, the DPP", substitute "If the *responsible authority for a *restraining order covering particular property has previously applied to a *registration authority under section 34 for the recording in a register of particulars of the order, the responsible authority".

120 Section 46

Omit "the DPP", substitute "a proceeds of crime authority (the Commissioner of the Australian Federal Police or the DPP)".

121 Paragraphs 47(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) the *responsible authority for a *restraining order under section 18 that covers the property applies for an order under this subsection; and

(b) the restraining order has been in force for at least 6 months; and

122 Paragraphs 49(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) the *responsible authority for a *restraining order under section 19 that covers the property applies for an order under this subsection; and

(b) the restraining order has been in force for at least 6 months; and

123 At the end of subsection 75(1)

Add:

Note: The responsible authority in relation to an application for an exclusion order is the authority responsible for the forfeiture order or forfeiture application referred to in section 73 (making exclusion orders).

124 At the end of subsection 79(1)

Add:

Note: The responsible authority in relation to an application for a compensation order is the authority responsible for the forfeiture order or forfeiture application referred to in section 77 (making compensation orders).

125 Subsection 92A(1)

Omit "*DPP", substitute "*responsible authority for the *restraining order referred to in paragraph 92(1)(b)".

126 Subsection 92A(1)

Omit "DPP", substitute "authority".

127 Paragraphs 97(1)(b) and 110(1)(a)

Omit "*DPP", substitute "*responsible authority for the *restraining order referred to in paragraph 92(1)(b)".

128 Subsection 113(2)

Omit "*DPP", substitute "*responsible authority for the *restraining order referred to in paragraph 92(1)(b)".

129 Subsection 113(2)

Omit "DPP", substitute "authority".

130 Subsection 116(4) (note)

Omit "the DPP applying for", substitute "applications".

131 Subsection 143(1)

Omit "*DPP", substitute "*responsible authority for the *pecuniary penalty order or *restraining order referred to in that section".

132 Subsection 170(1)

Omit "*DPP", substitute "*responsible authority for the *literary proceeds order or *restraining order referred to in that section".

133 At the end of subsection 170(1)

Add:

Note: A charge is created under section 169 if both a literary proceeds order and a restraining order have been made in relation to an indictable offence (or related offence).

134 Subsection 182(1)

Omit "*DPP", substitute "*responsible authority for the *principal order, or the application for a principal order, in relation to which the examination order is sought".

135 Subsections 282(4) and 282A(4)

Omit "*DPP", substitute "*responsible authority for the relevant order".

136 Section 294

Omit "*DPP", substitute "*responsible authority for the *restraining order referred to in section 293".

137 Paragraph 297(ga)

Omit "*DPP", substitute "*responsible authority for the *principal order, or application for a principal order, in relation to which the examination was conducted".

138 Subsection 322(5)

Omit "*DPP", substitute "*responsible authority for the targeted order".

Division 5—Application of amendments of the Proceeds of Crime Act 2002

139 Application of amendments—Divisions 1 to 4 of this Schedule

(1) The amendments of the *Proceeds of Crime Act 2002* made by items 3 to 138 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to orders (or applications or proceedings for orders) under the *Proceeds of Crime Act 2002* made or (in the case of proceedings) started before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those orders (or applications or proceedings for orders) occurred, or is suspected to have occurred, before, at or after the commencement of those items.

Division 6—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

140 Paragraphs (ya) and (yb) of Schedule 1

Omit "the DPP", substitute "a proceeds of crime authority".

141 After paragraph (yb) of Schedule 1

Insert:

(yc) decisions of a proceeds of crime authority to transfer to another proceeds of crime authority responsibility for an application for a principal order, or a principal order, under section 315B of the *Proceeds of Crime Act 2002*;

Bankruptcy Act 1966

142 Subsection 5(1)

Insert:

Commonwealth proceeds of crime authority means a proceeds of crime authority within the meaning of the *Proceeds of Crime Act 2002*.

Note: Under that Act, the proceeds of crime authority is either the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definition of ***proceeds of crime authority*** in section 338 of that Act). Responsibility can be transferred between these authorities (see section 315B of that Act).

143 Paragraph 12(1C)(a)

Omit "the Director of Public Prosecutions", substitute "the Commonwealth proceeds of crime authority that is the responsible authority, or that is proposed to be the responsible authority, for the application or proposed application under the *Proceeds of Crime Act 2002*".

144 Subsection 58A(3)

After "Director of Public Prosecutions", insert "(or the Commissioner of the Australian Federal Police, if the Commissioner is the Commonwealth proceeds of crime authority that is the responsible authority for the order under the *Proceeds of Crime Act 2002*)".

145 Section 114C

After "Director of Public Prosecutions", insert "(or the Commissioner of the Australian Federal Police, if the Commissioner is the Commonwealth proceeds of crime authority that is the responsible authority for the order under the *Proceeds of Crime Act 2002*)".

Note: The heading to section 114C is altered by inserting "**or Commissioner of the Australian Federal Police**" after "**Director of Public Prosecutions**".

146 Paragraph 154(6)(a)

Repeal the paragraph, substitute:

(a) an application is made for an order under this subsection by a person mentioned in subsection (6A); and

147 After subsection 154(6)

Insert:

(6A) For the purposes of paragraph (6)(a), the application may be made by:

(a) in the case of pending proceedings in relation to a forfeiture order or a pecuniary penalty order under the *Proceeds of Crime Act 2002*—the Commonwealth proceeds of crime authority that is, or that is proposed to be, the responsible authority for the application for the order under that Act; or

(b) in the case of pending proceedings under a corresponding law—a person who is entitled to apply for an interstate confiscation order under the corresponding law.

148 Paragraph 231A(2)(a)

Repeal the paragraph, substitute:

(a) an application is made for an order under this subsection by a person mentioned in subsection (2A); and

149 After subsection 231A(2)

Insert:

(2A) For the purposes of paragraph (2)(a), the application may be made by:

(a) in the case of pending proceedings in relation to a forfeiture order or a pecuniary penalty order under the *Proceeds of Crime Act 2002*—the Commonwealth proceeds of crime authority that is, or that is proposed to be, the responsible authority for the application for the order under that Act; or

(b) in the case of pending proceedings under a corresponding law—a person who is entitled to apply for an interstate confiscation order under the corresponding law.

150 Application of amendments—the *Bankruptcy Act 1966*

(1) The amendments of the *Bankruptcy Act 1966* made by items 142 to 149 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to proceeds of crime orders (or applications, proceedings or pending proceedings for proceeds of crime orders), or proceedings under the *Bankruptcy Act 1966*, made or (in the case of proceedings) started before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those orders (or applications or proceedings for orders) occurred, or is suspected to have occurred, before, at or after the commencement of those items.

Crimes Act 1914

151 Paragraph 15YU(4)(a)

Omit "Director of Public Prosecutions", substitute "responsible authority for the proceeding under that Act".

152 At the end of subsection 15YU(4)

Add:

Note: Under that Act, the responsible authority is the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definitions of ***responsible authority*** and ***proceeds of crime authority*** in section 338 of that Act). Responsibility can be transferred between these authorities (see section 315B of that Act).

153 Application of amendments—the *Crimes Act 1914*

(1) The amendments of the *Crimes Act 1914* made by items 151 and 152 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to proceedings under the *Proceeds of Crime Act 2002* started before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those proceedings occurred, or is suspected to have occurred, before, at or after the commencement of those items.

Crimes Legislation Amendment (Serious and Organised Crime) Act 2010

154 Paragraphs 107(2)(b) and (c) of Schedule 2

Omit "DPP", substitute "responsible authority".

Family Law Act 1975

155 Subsection 4(1) (definition of *DPP*)

Repeal the definition.

156 Subsection 4(1) (definition of *forfeiture application*)

Omit "under the *Proceeds of Crime Act 2002*".

157 Subsection 4(1) (definition of *forfeiture order*)

Repeal the definition, substitute:

forfeiture order means:

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

(b) an order that is made under a State or Territory proceeds of crime law and that is of a kind declared by the regulations to be a forfeiture order for the purposes of this paragraph.

158 Subsection 4(1)

Insert:

freezing order means:

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

(b) an order that is made under a State or Territory proceeds of crime law and that is of a kind declared by the regulations to be a freezing order for the purposes of this paragraph.

159 Subsection 4(1)

Insert:

proceeds of crime authority has the meaning given by section 4C.

Note: Section 4C provides for different proceeds of crime authorities in relation to orders under the *Proceeds of Crime Act 2002* and State or Territory proceeds of crime laws.

160 Subsection 4(1) (paragraphs (aa), (a) and (b) of the definition of *proceeds of crime order*)

Omit "under the *Proceeds of Crime Act 2002*".

161 Subsection 4(1)

Insert:

restraining order means:

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

(b) an order that is made under a State or Territory proceeds of crime law and that is of a kind declared by the regulations to be a restraining order for the purposes of this paragraph.

162 Subsection 4(1)

Insert:

State or Territory proceeds of crime law means a law in force in a State or Territory that is declared by the regulations to be a law that corresponds to the *Proceeds of Crime Act 2002*.

163 After section 4B

Insert:

4C Meaning of *proceeds of crime authority*

Scope

(1) This section sets out the meaning of ***proceeds of crime authority*** in relation to:

(a) a restraining order or a forfeiture order, or an application for a forfeiture order, under the *Proceeds of Crime Act 2002* (or any proceedings, orders, powers, functions or duties under this Act related to, or arising out of, such an order or application); and

(b) a freezing order under the *Proceeds of Crime Act 2002* (or any proceedings, orders, powers, functions or duties under this Act related to, or arising out of, such a freezing order); and

(c) a proceeds of crime order, or an application for a forfeiture order, under a State or Territory proceeds of crime law (or

any proceedings, orders, powers, functions or duties under this Act related to, or arising out of, such an order or application).

Note: Freezing orders, restraining orders and forfeiture orders made under the *Proceeds of Crime Act 2002* or a State or Territory proceeds of crime law are ***proceeds of crime orders*** (see subsection 4(1)).

Commonwealth proceeds of crime authorities

(2) For the purposes of paragraph (1)(a), ***proceeds of crime authority*** means the responsible authority for the relevant restraining order, forfeiture order or forfeiture application under the *Proceeds of Crime Act 2002*.

Note: Under that Act, the responsible authority is the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definitions of ***responsible authority*** and ***proceeds of crime authority*** in section 338 of that Act). Responsibility can be transferred between these authorities (see section 315B of that Act).

(3) For the purposes of paragraph (1)(b), ***proceeds of crime authority*** means:

(a) the Commissioner of the Australian Federal Police; or

(b) the Director of Public Prosecutions.

State or Territory proceeds of crime authorities

(4) For the purposes of paragraph (1)(c), in relation to a provision of this Act, ***proceeds of crime authority*** means a person or body prescribed by the regulations to be the proceeds of crime authority for that provision in relation to:

(a) a class of proceeds of crime order, under the relevant State or Territory proceeds of crime law, prescribed by the regulations, that includes the relevant proceeds of crime order; or

(b) a class of forfeiture application, under the relevant State or Territory proceeds of crime law, prescribed by the regulations, that includes the relevant forfeiture application.

Note: The regulations may prescribe a proceeds of crime authority in relation to a proceeds of crime order under a State or Territory proceeds of crime law by reference to any matter, including (for example) by reference to who applied for the order.

164 Paragraph 79B(3)(b)

Omit “DPP”, substitute “proceeds of crime authority”.

165 Subsection 79B(3)

Omit all the words from and including “the person must”, substitute:

the person must:

(c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and

(d) give the Registry Manager:

(i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and

(ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or application).

166 Subsections 79C(1A), (2), (3) and(4)

Omit “DPP”, substitute “proceeds of crime authority”.

167 Paragraphs 79D(1)(a) and (b)

Omit “DPP”, substitute “proceeds of crime authority”.

168 Subsection 79D(2)

Omit “DPP”, substitute “proceeds of crime authority”.

169 Subsection 79D(3)

Omit “the DPP’s”, substitute “the proceeds of crime authority’s”.

170 Subsection 79D(3)

Omit “the DPP” (wherever occurring), substitute “the authority”.

171 Subsection 79E(1)

Omit “The DPP”, substitute “The proceeds of crime authority”.

Note: The heading to section 79E is altered by omitting “**DPP**” and substituting “**proceeds of crime authority**”.

172 Subsection 79E(1)

Omit “the DPP”, substitute “the authority”.

173 Subsection 79E(2)

Omit “DPP intervenes, the DPP”, substitute “proceeds of crime authority intervenes, the authority”.

174 Paragraph 90M(3)(b)

Omit “DPP”, substitute “proceeds of crime authority”.

175 Subsection 90M(3)

Omit all the words from and including “the person must”, substitute:

the person must:

(c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and

(d) give the Registry Manager:

(i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and

(ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or application).

176 Subsections 90N(1A), (2), (3) and (4)

Omit “DPP”, substitute “proceeds of crime authority”.

177 Paragraphs 90P(1)(a) and (b)

Omit “DPP”, substitute “proceeds of crime authority”.

178 Subsection 90P(2)

Omit “DPP”, substitute “proceeds of crime authority”.

179 Subsection 90P(3)

Omit “DPP’s”, substitute “proceeds of crime authority’s”.

180 Subsection 90P(3)

Omit “DPP” (wherever occurring), substitute “authority”.

181 Subsection 90Q(1)

Omit “The DPP”, substitute “The proceeds of crime authority”.

Note: The heading to section 90Q is altered by omitting “**DPP**” and substituting “**proceeds of crime authority**”.

182 Subsection 90Q(1)

Omit “the DPP”, substitute “the authority”.

183 Subsection 90Q(2)

Omit “DPP intervenes, the DPP”, substitute “proceeds of crime authority intervenes, the authority”.

184 Paragraph 90VA(3)(b)

Omit “DPP”, substitute “proceeds of crime authority”.

185 Subsection 90VA(3)

Omit all the words from and including “the person must”, substitute:

the person must:

(c) notify the Registry Manager in writing of the proceeds of crime order or forfeiture application; and

(d) give the Registry Manager:

(i) a copy of the notification referred to in paragraph (b) (if the notification is in writing); and

(ii) a copy of the proceeds of crime order or forfeiture application (if the notification is accompanied by a copy of the order or application).

186 Subsections 90VB(2), (3), (4) and (5)

Omit “DPP”, substitute “proceeds of crime authority”.

187 Paragraphs 90VC(1)(a) and (b)

Omit “DPP”, substitute “proceeds of crime authority”.

188 Subsection 90VC(2)

Omit “DPP”, substitute “proceeds of crime authority”.

189 Subsection 90VC(3)

Omit “DPP’s”, substitute “proceeds of crime authority’s”.

190 Subsection 90VC(3)

Omit “DPP” (wherever occurring), substitute “authority”.

191 Subsection 90VD(1)

Omit “The DPP”, substitute “The proceeds of crime authority”.

Note: The heading to section 90VD is altered by omitting "**DPP**" and substituting "**proceeds of crime authority**".

192 Subsection 90VD(1)

Omit "the DPP", substitute "the authority".

193 Subsection 90VD(2)

Omit "DPP intervenes, the DPP", substitute "proceeds of crime authority intervenes, the authority".

194 Application of amendments—the *Family Law Act 1975*

(1) The amendments of the *Family Law Act 1975* made by items 155 to 193 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to proceeds of crime orders (or applications for forfeiture orders) if the orders (or applications) are made at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item in relation to proceedings under the *Family Law Act 1975* regardless of whether:

(a) the proceedings started before, at or after the commencement of those items; or

(b) the conduct giving rise to the proceeds of crime orders (or applications for forfeiture orders) occurred, or is suspected to have occurred, before, at or after the commencement of those items.

Foreign Evidence Act 1994

195 Paragraph 25A(2)(a)

Omit "Director of Public Prosecutions", substitute "responsible authority (under that Act) in relation to the proceeding".

196 At the end of subsection 25A(2)

Add:

Note: Under that Act, the responsible authority is the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definitions of ***responsible authority*** and ***proceeds of crime authority*** in section 338 of that Act). Responsibility can be transferred between these authorities (see section 315B of that Act).

197 Application of amendments—the *Foreign Evidence Act 1994*

(1) The amendments of the *Foreign Evidence Act 1994* made by items 195 and 196 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to proceedings under the *Proceeds of Crime Act 2002* started before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those proceedings occurred, or is suspected to have occurred, before, at or after the commencement of those items.

International Criminal Court Act 2002

198 Section 4

Insert:

> ***proceeds of crime authority*** has the same meaning as in the Proceeds of Crime Act.
>
> Note: Under that Act, the proceeds of crime authority is either the Commissioner of the Australian Federal Police or the DPP (see the definition of ***proceeds of crime authority*** in section 338 of that Act).

199 Subsection 82(1)

Omit “the DPP”, substitute “a proceeds of crime authority”.

200 Subsection 82(3)

Omit “the DPP”, substitute “a proceeds of crime authority”.

201 Paragraph 82(5)(b)

Omit “DPP’s”.

202 Subsections 155(2) and 156(1)

Omit “the DPP”, substitute “a proceeds of crime authority”.

203 Subsection 156(2)

Omit “The DPP”, substitute “The proceeds of crime authority”.

204 Paragraph 156(2)(a)

Omit “DPP”, substitute “authority”.

205 Subsection 156(3)

Omit “DPP”, substitute “proceeds of crime authority”.

206 Paragraph 157(2)(a)

Omit “the DPP having applied for the order were a reference to the DPP”, substitute “a proceeds of crime authority having applied for the order were a reference to the authority”.

207 Subsection 158(8)

Omit “DPP”, substitute “proceeds of crime authority authorised under subsection 155(2)”.

208 Subsection 158(9)

Omit “The DPP”, substitute “That proceeds of crime authority”.

209 Application of amendments—the *International Criminal Court Act 2002*

(1) The amendments of the *International Criminal Court Act 2002* made by items 198 to 208 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to requests by the ICC (within the meaning of that Act) to the Attorney-General under that Act made before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those requests occurred, or is suspected to have occurred, before, at or after the commencement of those items.

International War Crimes Tribunals Act 1995

210 Section 4

Insert:

> ***proceeds of crime authority*** has the same meaning as in the *Proceeds of Crime Act 2002*.

Note: Under that Act, the proceeds of crime authority is either the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definition of ***proceeds of crime authority*** in section 338 of that Act).

211 Subsection 44(1)

Omit "the Director of Public Prosecutions", substitute "a proceeds of crime authority".

212 Subsection 45(1)

Omit "If the Director of Public Prosecutions", substitute "If a proceeds of crime authority".

213 Subsection 45(1)

Omit "direct the Director of Public Prosecutions:", substitute "direct the authority:".

214 Paragraph 46(1A)(a)

Omit "the Director of Public Prosecutions having applied for the order were a reference to the Director of Public Prosecutions", substitute "a proceeds of crime authority having applied for the order were a reference to the authority".

215 Subsection 46A(8)

Omit "Director of Public Prosecutions", substitute "proceeds of crime authority authorised under subsection 45(1)".

216 Subsection 46A(9)

Omit "The DPP", substitute "That proceeds of crime authority".

217 Application of amendments—the *International War Crimes Tribunals Act 1995*

(1) The amendments of the *International War Crimes Tribunals Act 1995* made by items 210 to 216 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to requests by a Tribunal to the Attorney-General under that Act made before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those requests occurred, or is

suspected to have occurred, before, at or after the commencement of those items.

Mutual Assistance in Criminal Matters Act 1987

218 Subsection 3(1) (definition of *DPP*)

Repeal the definition.

219 Subsection 3(1)

Insert:

> ***proceeds of crime authority*** has the same meaning as in the Proceeds of Crime Act.
>
> Note: Under that Act, the proceeds of crime authority is either the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definition of ***proceeds of crime authority*** in section 338 of that Act).

220 Subsections 34(1), (2) and (3) and 34A(1)

Omit “the DPP”, substitute “a proceeds of crime authority”.

221 Subsection 34A(2)

Omit “The DPP”, substitute “The proceeds of crime authority”.

222 Paragraph 34A(2)(a)

Omit “DPP”, substitute “authority”.

223 Subsection 34A(3)

Omit “DPP”, substitute “proceeds of crime authority”.

224 Paragraph 34B(2)(a)

Omit “the DPP”, substitute “a proceeds of crime authority”.

225 Paragraph 34B(2)(b)

Omit “DPP”, substitute “authority”.

226 Subsection 34C(8)

Omit “DPP”, substitute “proceeds of crime authority authorised under section 34”.

227 Subsection 34C(9)

Omit “The DPP”, substitute “That proceeds of crime authority”.

228 Subsection 34G(1)

Omit “DPP”, substitute “proceeds of crime authority authorised under section 34”.

229 Subsection 34G(3)

Omit “the DPP”, substitute “a proceeds of crime authority”.

230 Subsections 34J(1) and 34K(1)

Omit “the DPP”, substitute “a proceeds of crime authority”.

231 Paragraph 34K(3)(b)

Omit “DPP’s”.

232 Paragraph 34M(1)(b)

Omit “DPP”, substitute “proceeds of crime authority authorised under section 34J”.

233 Paragraph 35(a)

Omit “DPP”, substitute “proceeds of crime authority authorised under section 34”.

234 Subsection 35A(1)

Omit “The DPP must give written notice of an application for an order under section 35 in respect of property to”, substitute “A proceeds of crime authority that applies for an order under section 35 in respect of property must give written notice of the application to”.

235 Paragraph 35A(1)(b)

Omit “DPP”, substitute “authority”.

236 Subsection 35A(2)

Omit “DPP”, substitute “proceeds of crime authority”.

237 Section 35E

Omit "by the DPP on behalf of the Commonwealth", substitute "on behalf of the Commonwealth by the proceeds of crime authority authorised under section 34".

238 Subsection 35L(2)

Omit "DPP", substitute "proceeds of crime authority authorised under section 34".

239 Application of amendments—the *Mutual Assistance in Criminal Matters Act 1987*

(1) The amendments of the *Mutual Assistance in Criminal Matters Act 1987* made by items 218 to 238 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to requests by a foreign country to the Attorney-General under that Act, to foreign orders and to proceedings under that Act that are made, registered (in the case of foreign orders) or started (in the case of proceedings) before, at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to those requests or proceedings occurred, or is suspected to have occurred, before, at or after the commencement of those items.

Trade Marks Act 1995

240 Subsection 159(1)

Omit "the Director of Public Prosecutions" (second occurring), substitute "a proceeds of crime authority (or a responsible authority)".

241 Subsection 159(2) (paragraphs (a) and (b) of the definition of *forfeiture order provisions*)

Repeal the paragraphs.

242 Application of amendments—the *Trade Marks Act 1995*

(1) The amendments of the *Trade Marks Act 1995* made by items 240 and 241 of this Schedule apply as set out in this item.

(2) Subject to subitem (3) of this item, the amendment made by item 240 applies in relation to proceedings for the prosecution of a person in respect of an indictable offence against Part 14 of that Act instituted before, at or after the commencement of that item.

(3) However, if Divisions 1 and 2 of Part II of the *Proceeds of Crime Act 1987* apply immediately before the commencement of items 240 and 241 of this Schedule in relation to proceedings for the prosecution of a person in respect of an indictable offence against Part 14 of the *Trade Marks Act 1995* instituted before that commencement, the Divisions continue to apply in relation to the proceedings as if the amendments made by those items had not been made.

(4) The amendment made by item 241 of this Schedule applies in relation to proceedings for the prosecution of a person in respect of an indictable offence against Part 14 of the *Trade Marks Act 1995* instituted at or after the commencement of that item.

(5) The amendments apply under subitems (2) and (4) of this item regardless of whether the conduct giving rise to those proceedings occurred, or is suspected to have occurred, before, at or after the commencement of items 240 and 241.

Part 2—Other proceeds of crime amendments

Proceeds of Crime Act 2002

243 Subsection 131(1)

After "has paid", insert "before the application for the order is made".

Note: The following heading to subsection 131(1) is inserted "*Tax paid before application for order is made*".

244 After subsection 131(1)

Insert:

Tax paid after application for order is made

(1A) The court may, if it considers that it is in the interests of justice to do so, reduce the *penalty amount under a *pecuniary penalty order against a person by an amount that, in the court's opinion, represents the extent to which tax that the person has paid at or after the time the application for the order is made is attributable to the *benefits to which the order relates.

245 Subsection 131(2)

Omit "The tax", substitute "Tax covered by this section".

Note: The following heading to subsection 131(2) is inserted "*Tax covered by this section*".

246 Application of amendments—taking tax into account in pecuniary penalty orders

(1) The amendments of the *Proceeds of Crime Act 2002* made by items 243 to 245 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to pecuniary penalty orders under that Act if the applications for the orders are made at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to the applications for the pecuniary penalty orders occurred, or is suspected to have occurred, before, at or after the commencement of those items.

247 Paragraph 202(5)(ea)

Omit "the property of a person", substitute "property that constitutes part of a person's *wealth".

248 Paragraph 202(5)(ea)

Omit "the total value of the person's *wealth", substitute "the person's *total wealth".

249 Application of amendments—property-tracking documents

(1) The amendments of the *Proceeds of Crime Act 2002* made by items 247 and 248 of this Schedule apply as set out in this item.

(2) The amendments apply in relation to production orders under that Act if the applications for the production orders are made at or after the commencement of those items.

(3) The amendments apply under subitem (2) of this item regardless of whether the conduct giving rise to the applications for the production orders occurred, or is suspected to have occurred, before, at or after the commencement of those items.

[*Minister's second reading speech made in—*
House of Representatives on 23 March 2011
Senate on 14 June 2011]