



New South Wales

Criminal Assets Recovery Amendment Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Criminal Assets Recovery Act 1990* (the *Principal Act*) as follows:

- (a) to include additional offences under the laws of this State as serious criminal offences in relation to which assets may be confiscated,
- (b) to include, as such serious criminal offences, offences under the law of the Commonwealth or other places outside the State (including outside Australia), being offences of a kind that would be such serious criminal offences if committed in this State,
- (c) to make it clear that property that was subject to a mortgage or other charge repaid with the proceeds of crime is to be treated as property derived from crime,
- (d) to enable property held in a false name and acquired using false identity documents or the identity documents of another person to be the subject of restraining orders and assets forfeiture orders if the interest in property is illegally acquired property,

- (e) to extend the time within which a person must be charged before a restraining order ceases to be in force from 48 hours to 2 working days,
- (f) to clarify the circumstances in which restraining orders and assets forfeiture orders may be obtained in relation to property outside the State,
- (g) to enable applications for restraining orders to be made by telephone, radio, facsimile, email or other form of communication instead of in person in certain urgent circumstances,
- (h) to enable a proceeds assessment order to be made against a person aged 18 years or over who derives proceeds from the illegal activities of another person and who knew or ought reasonably to have known that the proceeds were so derived,
- (i) to provide for the forfeiture of property not disclosed by a defendant in evidence or a warranty or representation given or made in proceedings for an assets forfeiture order or proceeds assessment order,
- (j) to require hard copies of electronic documents and data to be provided in response to production orders,
- (k) to enable the New South Wales Crime Commission (the *Crime Commission*) to request a financial institution to give the Crime Commission information about financial transactions and to provide an indemnity if the information is supplied,
- (l) to provide for the recognition and enforcement of interstate instruments,
- (m) to enable arrangements to be made between the Minister and Ministers of other States for the transmittal of evidence of offences committed in other States that is seized under the Principal Act,
- (n) to make other minor and consequential amendments and to provide for savings and transitional provisions consequential on the enactment of the proposed Act.

Outline of provisions

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

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

Clause 3 is a formal provision that gives effect to the amendments to the *Criminal Assets Recovery Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Additional serious criminal offences

The Principal Act provides for property of a person to be forfeited (under an *assets forfeiture order*), or an order (a *proceeds assessment order*) to be made requiring a

person to pay an amount, in circumstances where the person or another person has engaged in serious crime related activity and the property is illegally acquired property. Serious crime related activity is activity that is a serious criminal offence within the meaning of the Principal Act, whether or not the person concerned has been charged with the offence and regardless of the outcome of any proceedings. The amendments extend the offences that are serious criminal offences for the purposes of the Principal Act.

Schedule 1 [6] and [7] amend section 6 of the Principal Act to insert additional offences in the definition of *serious criminal offence*, including firearms offences, sexual servitude offences, child prostitution offences and offences outside this State that would be serious criminal offences if committed in this State.

Schedule 1 [8] amends section 6 of the Principal Act to insert the offence of possessing precursors for manufacture or production of prohibited drugs as a drug trafficking offence that is a serious criminal offence for the purposes of the Principal Act. **Schedule 1 [9]** makes a consequential amendment.

Serious crime derived property

Schedule 1 [10] amends section 9 of the Principal Act to expressly provide that property that is or has been subject to a mortgage, lien, charge, security or other encumbrance wholly or partly discharged using all or part of the proceeds of serious crime related activity or serious crime derived property (that is, the proceeds of serious criminal offences or derived from such offences) is taken to have been acquired using serious crime derived property. The effect of this is to make such property clearly available for forfeiture and other remedies under the Principal Act.

Forfeiture of fraudulently acquired property

The proposed Act provides for property acquired using false identity documents or the identity documents of another person (*fraudulently acquired property*) to be liable for assets forfeiture orders or to be the basis of proceeds assessment orders under the Principal Act.

Schedule 1 [11] inserts proposed section 9A which defines fraudulently acquired property. This is an interest in property that is held in a false name and is knowingly acquired by using a false instrument or signature or a birth certificate or identity document of another person.

Schedule 1 [12] amends section 10 of the Principal Act to enable the Crime Commission to apply to the Supreme Court for a restraining order in respect of interests in property held in a false name. **Schedule 1 [13]** makes a consequential amendment.

Schedule 1 [14] amends section 10 of the Principal Act to require the Supreme Court to make a restraining order in relation to property held in a false name if the application is supported by an affidavit of an authorised officer stating that the officer suspects the property is fraudulently acquired property and the grounds for the suspicion and the Court considers, having regard to the affidavit, that there are reasonable grounds for the suspicion.

Schedule 1 [21] amends section 22 of the Principal Act to require the Supreme Court to make an assets forfeiture order if it finds it more probable than not that interests in property subject to an application are fraudulently acquired property that is also illegally acquired property (that is, derived from illegal activity). **Schedule 1 [24]–[26], [28] and [29]** make consequential amendments.

Schedule 1 [22] amends section 22 of the Principal Act to make it clear that the finding that fraudulently acquired property is illegally acquired property need not be based on a finding as to the commission of a particular offence but can be based on a finding that some offence or other constituting illegal activity was committed.

Schedule 1 [23] amends section 22 of the Principal Act to provide that the raising of a doubt as to whether a person engaged in an illegal activity is not of itself sufficient to avoid a finding that fraudulently acquired property is illegally acquired property.

Schedule 1 [30] amends section 25 of the Principal Act to provide that an order excluding interests in property from the operation of an assets forfeiture order may not be made by the Supreme Court unless it is proved that it is more probable than not that the interest in property is not fraudulently acquired property or is not illegally acquired property.

Schedule 1 [31] amends section 26 of the Principal Act to enable a declaration to be made by the Supreme Court, together with an order for payment of the proceeds of sale of forfeited property, if it is proved that it is more probable than not that the interest in property is not fraudulently acquired property or is not illegally acquired property. **Schedule 1 [32]** makes a consequential amendment.

Schedule 1 [1] amends section 3 of the Principal Act to extend the objects of the Principal Act to cover the confiscation of illegally acquired property held in a false name.

Schedule 1 [44] amends section 48 of the Principal Act to enable a monitoring order, that is, an order requiring a financial institution to provide information about transactions conducted by a person with the institution, to be made on the grounds that the person concerned has acquired, or is about to acquire, fraudulently acquired property.

Restraining orders generally

Schedule 1 [15] amends section 10 of the Principal Act to extend from 48 hours to 2 working days the period for which a restraining order can remain in force without there being a pending application for an assets forfeiture order or proceeds assessment order, an unsatisfied proceeds assessment order or other order being in force.

Schedule 1 [16] inserts proposed section 10B into the Principal Act. The proposed section enables restraining orders to be applied for and granted by telephone, radio, facsimile, email or other means of communication where it is necessary to do so to prevent funds held in a financial institution from being withdrawn or transferred to a place outside New South Wales.

Orders relating to crimes committed outside New South Wales

The amendments made to the Principal Act extend the serious criminal offences that may be the basis of remedies available under the Act to crimes committed outside New South Wales.

Schedule 1 [16] inserts proposed section 10A. Proposed section 10A sets out the circumstances when an application for a restraining order may be made in respect of interests in property derived from serious crime related activity arising from offences under the law of a place outside New South Wales (including outside Australia).

Schedule 1 [27] inserts proposed section 22A. Proposed section 22A sets out the circumstances when an application for an assets forfeiture order may be made in respect of interests in property derived from serious crime related activity arising from offences under the law of a place outside New South Wales (including outside Australia).

Schedule 1 [35] amends section 27 of the Principal Act to set out the circumstances when a proceeds assessment order may be made in relation to the proceeds of serious crime related activity arising from offences under a law of a place outside New South Wales (including outside Australia).

Extension of proceeds assessment orders to third parties

A proceeds assessment order must be made under the Principal Act against a person in respect of proceeds derived from an illegal activity or illegal activities of the person if the person is found to have engaged in a serious crime related activity involving an indictable quantity of drugs or an offence punishable by imprisonment for 5 years or more within the preceding 6 years.

Schedule 1 [35] amends section 27 of the Principal Act to enable a proceeds assessment order to be made against a person who is over 18 and who derived proceeds from an illegal activity or illegal activities of another person within the preceding 6 years if the other person is found to have engaged in a serious crime related activity involving an indictable quantity of drugs or an offence punishable by imprisonment for 5 years or more. **Schedule 1 [33], [34], [36] and [37]** make consequential amendments.

Schedule 1 [38] and [39] amend section 28 of the Principal Act to extend that section (which relates to assessment of proceeds of illegal activity for the purposes of a proceeds assessment order) to orders relating to a person other than the offender.

Orders on failure to declare interests in property in proceedings

Schedule 1 [40] inserts proposed Division 2A of Part 3 (proposed sections 31A–31C) into the Principal Act. The proposed Division enables assets forfeiture orders and proceeds assessment orders to be made if a person fails to declare an interest in property in proceedings under the Principal Act for an assets forfeiture order or proceeds assessment order or examination proceedings (*forfeiture proceedings*).

Proposed section 31A enables the Supreme Court, on the application of the Crime Commission, to make an order forfeiting to and vesting in the Crown a specified interest in property (*undeclared property*), if the interest is not specified in evidence or a warrant or representation given or made as to the defendant's interests in property in forfeiture proceedings. The order will extend to property that has been disposed of but not property subsequently acquired by a person for sufficient consideration in good faith or vested in a person on distribution of an estate. Specified provisions of the Act applicable to assets forfeiture orders will apply to orders made under the proposed section.

Proposed section 31B enables the Supreme Court, on the application of the Crime Commission, to make an order requiring a person to pay to the Treasurer the value of undeclared property subsequently acquired by a person for sufficient consideration in good faith or vested in a person on distribution of an estate. Specified provisions of the Act applicable to proceeds assessment orders will apply to orders made under the proposed section.

Proposed section 31C enables an interest forfeited to the Crown, or money paid, under the proposed Division to be vested in the original owner or repaid by order of the Supreme Court if the Court finds that property is not attributable to the proceeds of illegal activity and the offender did not know of the property at the time of the failure to disclose.

Information about financial transactions

Schedule 1 [45] amends section 51 of the Principal Act to enable the Crime Commission to request a financial institution to give to the Crime Commission information about a transaction that might be of assistance in the enforcement of the Principal Act or regulations under the Principal Act.

Schedule 1 [46] amends section 51 of the Principal Act to extend the protection against actions, suits or proceedings given to financial institutions that volunteer information to the Crime Commission to financial institutions that give information in response to a request by the Crime Commission.

Recognition of interstate instruments

The amendments provide for the registration and enforcement in New South Wales of orders and other instruments made under legislation of other States and Territories or the Commonwealth that is similar to the Principal Act. The provisions reflect those contained in the *Confiscation of Proceeds of Crime Act 1989*.

Schedule 1 [4] inserts definitions of *corresponding law*, *interstate assets forfeiture order*, *interstate crime related property declaration*, *interstate proceeds assessment order*, *interstate restraining order* and *interstate serious offence* into section 4 of the Principal Act. The definitions of *corresponding law* and of the various declarations and orders rely on the regulations to specify the particular laws and instruments of other States and Territories or the Commonwealth that will fall within the definitions.

Schedule 1 [47] inserts proposed Part 4A (proposed sections 52A–52I).

Proposed section 52A provides for the registration, in accordance with the rules of the Supreme Court, of interstate assets forfeiture orders, interstate crime related property declarations and interstate restraining orders (*interstate instruments*) that apply to property in New South Wales.

Proposed section 52B enables an interstate restraining order to be enforced in New South Wales in the same way as a restraining order made under the Principal Act.

Proposed section 52C enables an interstate assets forfeiture order to be enforced in New South Wales in the same way as an assets forfeiture order made under the Principal Act. The property concerned is to be vested in the Crown in right of New South Wales.

Proposed section 52D enables an interstate crime related property declaration to be enforced in New South Wales in the same way as a registered interstate assets forfeiture order, subject to the regulations.

Proposed section 52E provides for a registered interstate instrument to remain in force until the registration is cancelled even if it ceases to be in force under the law under which it was made.

Proposed section 52F enables the Supreme Court, on application, to cancel the registration of an interstate instrument if the registration was improperly obtained or the instrument ceases to be in force under the law under which it was made.

Proposed section 52G creates a charge on property subject to an interstate restraining order if an interstate proceeds assessment order has been made in relation to the property and both orders are registered.

Proposed section 52H enables the Public Trustee, under an agreement with an official of another State, Territory or the Commonwealth under the law of which an interstate restraining order was made, to take control of property that the official was directed to control under the order.

Proposed section 52I enables interim registration of an interstate instrument pending provision of a sealed copy for registration under the Principal Act.

Schedule 1 [2] extends the definition of *authorised officer* to cover persons authorised to act as such officers for the purposes of proposed Part 4A.

Other amendments

Schedule 1 [3] omits definitions from section 4 of the Principal Act as a result of the updating of the definition of *financial institution*.

Schedule 1 [5] amends the definition of *financial institution* in section 4 of the Principal Act to refer to authorised deposit-taking institutions rather than building societies, banks and credit unions, as those terms are no longer used in State legislation referring to financial institutions.

Schedule 1 [19] inserts proposed section 13A. The proposed section provides that a person may not rely on the privilege against self-incrimination if required to answer a question, or produce a document or other thing, in an examination on oath under

the Principal Act. However, such an answer, document or thing is not admissible in criminal proceedings against the person if the person objected on that ground or was not warned that the person could make such an objection. The proposed section also applies to a requirement to furnish a statement to the Public Trustee or the Crime Commission. Currently, under section 13 of the Principal Act, such an answer or document is not admissible in civil or criminal proceedings, except in limited circumstances. **Schedule 1 [17] and [18]** make consequential amendments.

Schedule 1 [20] amends section 22 of the Principal Act to enable an application to be made for an assets forfeiture order before an application is made for a restraining order, as well as after a restraining order is made, but prevents the application for an assets forfeiture order from being determined before a restraining order is granted.

Schedule 1 [41] amends section 33 of the Principal Act to require a person complying with a production order to produce an electronic document to make available the hard copy form of the document, including the generation of reports or the extraction of data.

Schedule 1 [42] amends section 41 of the Principal Act to prevent the return of property seized pursuant to a search warrant if an order (other than a restraining order) affecting the interest in property has been granted previously or within 7 days after the property is seized. Currently, return is prevented only if a restraining order is in force.

Schedule 1 [43] amends section 47 of the Principal Act to empower an authorised officer to seize a document or other thing under a search warrant issued under the Principal Act if the officer believes, on reasonable grounds, that it will afford evidence of a criminal offence under a law of another State or Territory or the Commonwealth.

Schedule 1 [48] amends section 54 of the Principal Act to enable a certificate by a judicial officer, registrar or other proper officer of a court as to a plea of guilt to be admissible as evidence of the commission of the offence by the person who pleaded guilty.

Schedule 1 [49] amends section 54 of the Principal Act to enable a court, in proceedings under the Principal Act, to have regard to transcripts of proceedings that have not been determined, have been discharged or have not been proceeded with for any reason.

Schedule 1 [50] inserts proposed section 59A into the Principal Act. The proposed section empowers the Minister administering the Principal Act to enter into agreements with a Minister of another State or Territory or the Commonwealth for the transfer and disposal of things seized under the Principal Act that may be relevant to offences of the other State or Territory or the Commonwealth.

Schedule 1 [51] amends Schedule 1 to the Principal Act to enable regulations containing savings and transitional provisions to be made consequential on the enactment of the proposed Act.

Schedule 1 [52] amends Schedule 1 to the Principal Act to insert savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

Criminal Assets Recovery Amendment Bill 2005

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New South Wales

Criminal Assets Recovery Amendment Bill 2005

No. , 2005

A Bill for

An Act to amend the *Criminal Assets Recovery Act 1990* to make further provision with respect to the seizure, restraint and forfeiture of property derived from crime related activity and the mutual recognition of interstate instruments; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Assets Recovery Amendment Act 2005</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Criminal Assets Recovery Act 1990 No 23	6
The <i>Criminal Assets Recovery Act 1990</i> is amended as set out in Schedule 1.	7
	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Principal objects	3
	Insert after section 3 (b):	4
	(b1) to provide for the confiscation, without requiring a conviction, of property of a person that is illegally acquired property held in a false name or is not declared in confiscation proceedings, and	5 6 7 8
[2]	Section 4 Definitions	9
	Insert “or Part 4A (Recognition of interstate instruments)” after “powers)” in paragraph (c) of the definition of <i>authorised officer</i> in section 4 (1).	10 11
[3]	Section 4 (1), definitions of “bank”, “building society” and “credit union”	12
	Omit the definitions.	13
[4]	Section 4 (1)	14
	Insert in alphabetical order:	15
	<i>corresponding law</i> means a law of the Commonwealth, another State or a Territory that is prescribed by the regulations as a law that corresponds to this Act.	16 17 18
	<i>external serious crime related activity</i> means serious crime related activity arising out of an offence under the law of the Commonwealth or a place outside this State (including outside Australia) which, if the offence had been committed in this State, would be a serious criminal offence.	19 20 21 22 23
	<i>fraudulently acquired property</i> means an interest in property that is fraudulently acquired property as provided by section 9A.	24 25
	<i>interstate assets forfeiture order</i> means an order or other instrument that is made under a corresponding law and is of a kind declared by the regulations to be within this definition.	26 27 28
	<i>interstate crime related property declaration</i> means a declaration or other instrument that is made under a corresponding law and is of a kind declared by the regulations to be within this definition.	29 30 31 32
	<i>interstate proceeds assessment order</i> means an order or other instrument that is made under a corresponding law and is of a kind declared by the regulations to be within this definition.	33 34 35

	<i>interstate restraining order</i> means an order or other instrument that is made under a corresponding law and is of a kind declared by the regulations to be within this definition.	1 2 3
	<i>interstate serious offence</i> means an offence (including a common law offence, where relevant) against the laws of another State, being an offence in relation to which an interstate assets forfeiture order, interstate crime related property declaration, interstate restraining order or interstate proceeds assessment order may be made under a corresponding law of the State.	4 5 6 7 8 9
	<i>serious criminal offence</i> —see section 6.	10
	<i>working day</i> means any day that is not a Saturday, Sunday or a public holiday.	11 12
[5]	Section 4 (1), definition of “financial institution”	13
	Omit paragraphs (a)–(c). Insert instead:	14
	(a) an authorised deposit-taking institution, or	15
[6]	Section 6 Meaning of “serious crime related activity”	16
	Omit section 6 (2) (e). Insert instead:	17
	(e) an offence under section 50A, 51, 51B, 51BA or 51BB of the <i>Firearms Act 1996</i> , or	18 19
[7]	Section 6 (2) (f)–(j)	20
	Omit section 6 (2) (f). Insert instead:	21
	(f) an offence under section 80D or 80E of the <i>Crimes Act 1900</i> , or	22 23
	(g) an offence under Division 15 of Part 3 of the <i>Crimes Act 1900</i> (other than an offence under section 91D (1) (b) or 91H (3) of that Act), or	24 25 26
	(h) an offence under section 197 of the <i>Crimes Act 1900</i> , being an offence involving the destruction of or damage to property having a value of more than \$500, or	27 28 29
	(i) an offence under the law of the Commonwealth or a place outside this State (including outside Australia) which, if the offence had been committed in this State, would be a serious criminal offence referred to in paragraphs (a)–(h), or	30 31 32 33 34
	(j) an offence of attempting to commit, or of conspiracy or incitement to commit, or of aiding or abetting, an offence referred to in any other paragraph of this subsection.	35 36 37

[8] Section 6 (3)	1
Insert after paragraph (b) of the definition of <i>drug trafficking offence</i> :	2
(b1) section 24A (Possession of precursors for manufacture or production of prohibited drugs),	3 4
[9] Section 6 (3)	5
Insert “(b1),” after “(b),” wherever occurring in paragraphs (d)–(f) of the definition of <i>drug trafficking offence</i> .	6 7
[10] Section 9 Meaning of “serious crime derived property” and “illegally acquired property”	8 9
Insert after section 9 (2):	10
(2A) Without limiting subsection (1), an interest in property is taken to be wholly or partly acquired using serious crime derived property if it is, or has been, subject to a mortgage, lien, charge, security or other encumbrance wholly or partly discharged using all or part of the proceeds of a serious crime related activity or serious crime derived property.	11 12 13 14 15 16
[11] Section 9A	17
Insert after section 9:	18
9A Meaning of “fraudulently acquired property”	19
(1) An interest in property is fraudulently acquired property if the interest is held in a false name and any of the following was knowingly used for the purposes of acquiring, or dealing with, that property:	20 21 22 23
(a) a false instrument (including a birth certificate or other identity document) or signature,	24 25
(b) a birth certificate or other identity document of another person.	26 27
(2) In this section:	28
<i>false instrument</i> has the same meaning as it has in Division 2 (False instruments) of Part 5 of the <i>Crimes Act 1900</i> .	29 30
<i>identity document</i> includes any document that may be used for the purposes of an identity verification procedure under the <i>Financial Transaction Reports Act 1988</i> of the Commonwealth.	31 32 33

[12] Section 10 Restraining orders	1
Insert before section 10 (2A):	2
(2AA) The Commission may apply to the Supreme Court, ex parte, for a restraining order in respect of specified interests, or a specified class of interests, in property that are held in a false name.	3 4 5
[13] Section 10 (3)	6
Insert “under subsection (2)” after “order applied for”.	7
[14] Section 10 (3A)	8
Insert after section 10 (3):	9
(3A) The Supreme Court must make the order applied for under subsection (2AA) if:	10 11
(a) the application is supported by an affidavit of an authorised officer stating that the authorised officer suspects that the interest is fraudulently acquired property that is illegally acquired property and stating the grounds on which that suspicion is based, and	12 13 14 15 16
(b) the Court considers that having regard to the matters contained in any such affidavit there are reasonable grounds for any such suspicion.	17 18 19
[15] Section 10 (9)	20
Omit “48 hours”. Insert instead “2 working days”.	21
[16] Sections 10A and 10B	22
Insert after section 10:	23
10A Restraining orders relating to external serious crime related activity	24 25
(1) An application for a restraining order that relates to interests in property derived from external serious crime related activity may be made only if the person who has the interests is domiciled in New South Wales or the property is situated in New South Wales.	26 27 28 29
(2) The Supreme Court may grant such an application only if it is supported by an affidavit of an authorised officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside this State (including outside Australia)	30 31 32 33 34

	against any interests in property of the person concerned that are the subject of the application as a result of the external serious crime related activity.	1 2 3
10B	Telephone applications for restraining orders	4
(1)	An authorised officer may apply by telephone for a restraining order under section 10 (a <i>telephone restraining order</i>).	5 6
(2)	The Supreme Court must make the order applied for if, in addition to the matters required under sections 10 and 10A (if applicable), the application is supported by a statement by the authorised officer that:	7 8 9 10
	(a) the interest in property relates to funds held in a specified financial institution, and	11 12
	(b) the order is required urgently as there is a risk that the funds may be withdrawn or transferred to a place outside New South Wales (including outside Australia), and	13 14 15
	(c) it is not practicable for the authorised officer to appear in person.	16 17
(3)	If it is not possible for an application for a telephone restraining order to be made directly by telephone to the Supreme Court by the applicant, the application may be transmitted to the Supreme Court by another person on behalf of the applicant.	18 19 20 21
(4)	The Supreme Court may give notice of a telephone restraining order by telephone.	22 23
(5)	If an application for a telephone restraining order is made, it must be supported by evidence on affidavit, as required under sections 10 and 10A (if applicable), as soon as practicable after the making of the application and not later than 2 working days after the order is made.	24 25 26 27 28
(6)	In this section, <i>telephone</i> includes radio, facsimile, email or other means of communication.	29 30
[17]	Section 13 Privilege	31
	Omit section 13 (1) (a).	32
[18]	Section 13 (3) and (4)	33
	Omit the subsections.	34

[19] Section 13A	1
Insert after section 13:	2
13A Privilege against self-incrimination	3
(1) A person being examined under section 12 is not excused from answering any question, or from producing any document or other thing, on the ground that the answer or production might incriminate, or tend to incriminate, the person or make the person liable to forfeiture or penalty.	4 5 6 7 8
(2) However, any answer given or document produced by a natural person being examined under section 12 is not admissible in criminal proceedings (except proceedings for an offence under this Act or the regulations) if:	9 10 11 12
(a) the person objected at the time of answering the question or producing the document on the ground that the answer or document might incriminate the person, or	13 14 15
(b) the person was not advised that the person might object on the ground that the answer or document might incriminate the person.	16 17 18
(3) Further information obtained as a result of an answer being given or the production of a document in an examination under section 12 is not inadmissible in criminal proceedings on the ground:	19 20 21
(a) that the answer had to be given or the document had to be produced, or	22 23
(b) that the answer given or document produced might incriminate the person.	24 25
(4) A person directed by an order under section 12 to furnish a statement to the Public Trustee or the Commission is not excused from:	26 27 28
(a) furnishing the statement, or	29
(b) setting out particulars in the statement,	30
on the ground that the statement or particulars might incriminate, or tend to incriminate, the person or make the person liable to forfeiture or penalty.	31 32 33
(5) If a person furnishes a statement to the Public Trustee or the Commission in accordance with an order under section 12, the statement is not admissible against the person in any criminal proceedings except proceedings in respect of the false or misleading nature of the statement.	34 35 36 37 38

[20] Section 22 Making of assets forfeiture order	1
Omit section 22 (1). Insert instead:	2
(1) The Commission may apply to the Supreme Court for an order forfeiting to, and vesting in, the Crown all or any of the interests in property that are, or are proposed to be, subject to a restraining order when the assets forfeiture order takes effect.	3 4 5 6
(1A) An application may be made under subsection (1) before or after or at the same time as an application for the relevant restraining order but may not be determined before the restraining order is granted.	7 8 9 10
[21] Section 22 (2A)	11
Insert after section 22 (2):	12
(2A) The Supreme Court must make an assets forfeiture order if the Court finds it more probable than not that interests in property subject to an application are fraudulently acquired property that is also illegally acquired property.	13 14 15 16
[22] Section 22 (3A)	17
Insert after section 22 (3):	18
(3A) A finding of the Supreme Court for the purposes of subsection (2A) need not be based on a particular finding as to the commission of a particular offence and can be based on a finding that some offence or other constituting illegal activity was committed.	19 20 21 22 23
[23] Section 22 (6A)	24
Insert after section 22 (6):	25
(6A) The raising of a doubt as to whether a person engaged in an illegal activity is not of itself sufficient to avoid a finding by the Supreme Court under subsection (2A).	26 27 28
[24] Section 22 (7)	29
Insert “or illegal activity” after “serious crime related activity” where firstly occurring.	30 31
[25] Section 22 (7)	32
Omit “serious crime related” where secondly occurring.	33
[26] Section 22 (8)	34
Insert “or illegal activity” after “serious crime related activity”.	35

[27] Section 22A	1
Insert after section 22:	2
22A Assets forfeiture orders relating to external serious crime related activity	3 4
(1) An application for an assets forfeiture order that relates to interests in property derived from external serious crime related activity may be made only if the person who has the interests is domiciled in New South Wales or the property is situated in New South Wales.	5 6 7 8 9
(2) The Supreme Court may not make an assets forfeiture order on any such application unless it is satisfied that no action has been taken under a law of the Commonwealth or any place outside this State (including outside Australia) against any interests in property of the person concerned that are the subject of the application as a result of the external serious crime related activity.	10 11 12 13 14 15 16
(3) For the purposes of subsection (2), an affidavit of an authorised officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside this State (including outside Australia) against any interests in property of the person concerned that are the subject of the application as a result of the external serious crime related activity is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.	17 18 19 20 21 22 23 24
[28] Section 24 Relief from hardship—spouses and dependants	25
Insert “or illegal activity” after “serious crime related activity” in section 24 (2).	26 27
[29] Section 24 (2)	28
Insert “or illegal activities” after “activities”.	29
[30] Section 25 Exclusion of property from restraining order and assets forfeiture order	30 31
Omit section 25 (2). Insert instead:	32
(2) The Supreme Court must not make the exclusion order applied for unless it is proved that it is more probable than not that:	33 34
(a) in the case of an order relating to fraudulently acquired property—the interest in property to which the application relates is not fraudulently acquired property or is not illegally acquired property, or	35 36 37 38

	(b) in any other case—the interest in property to which the application relates is not illegally acquired property.	1 2
[31]	Section 26 Exclusion of the value of innocent interests from assets forfeiture order	3 4
	Insert after section 26 (1):	5
	(1A) If it is proved that it is more probable than not that a specified proportion of the value of an interest in property that has been forfeited under an assets forfeiture order on the ground that it was fraudulently acquired property was not fraudulently acquired property or is not attributable to the proceeds of an illegal activity, the Supreme Court may:	6 7 8 9 10 11
	(a) make a declaration to that effect, and	12
	(b) order that the person who has forfeited the interest is entitled to be paid the proportion of the proceeds of sale of the interest that is specified in the declaration.	13 14 15
[32]	Section 26 (2)	16
	Omit “Any such declaration”.	17
	Insert instead “A declaration that an interest in property is not attributable to the proceeds of an illegal activity”.	18 19
[33]	Section 27 Making of proceeds assessment order	20
	Omit “derived from an illegal activity, or illegal activities, of the person” from section 27 (1).	21 22
	Insert instead “derived by the person from an illegal activity, or illegal activities, of the person or another person”.	23 24
[34]	Section 27 (1)	25
	Insert “or (2A)” after “subsection (2)”.	26
[35]	Section 27 (2A) and (2B)	27
	Insert after section 27 (2):	28
	(2A) The Supreme Court must make a proceeds assessment order against a person who is 18 years or older if the Court finds it more probable than not that:	29 30 31
	(a) the person derived proceeds from an illegal activity or illegal activities of another person, and	32 33
	(b) the person knew or ought reasonably to have known that the proceeds were derived from an illegal activity or illegal activities of another person, and	34 35 36

(c)	the other person was, at any time not more than 6 years before the making of the application for the order, engaged in:	1
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		3
(i)	a serious crime related activity involving an indictable quantity, or	4
		5
(ii)	a serious crime related activity involving an offence punishable by imprisonment for 5 years or more.	6
		7
(2B)	The Supreme Court may not make a proceeds assessment order in an application that relates wholly to external serious crime related activity, unless it is satisfied that no action has been taken under a law of the Commonwealth or any other place outside this State (including outside Australia) in relation to the proceeds of the external serious crime related activity.	8
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(2C)	For the purposes of subsection (2B), an affidavit by an authorised officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside this State (including outside Australia) against any interests in property in relation to the proceeds of the external serious crime related activity is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.	14
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[36]	Section 27 (3)	22
	Insert “or (2A)” after “(2)”.	23
[37]	Section 27 (4A)	24
	Insert after section 27 (4):	25
(4A)	The reference in subsection (2A) to a period of 6 years includes a reference to a period that began before the commencement of that subsection.	26
		27
		28
[38]	Section 28 Assessment of proceeds of serious crime related activity	29
	Omit “an illegal activity, or illegal activities, of a person (in this section called <i>the defendant</i>)” from section 28 (1).	30
		31
	Insert instead “the proceeds derived by a person (in this section called <i>the defendant</i>) from an illegal activity, or illegal activities, of the person or another person”.	32
		33
		34
[39]	Section 28 (2)	35
	Insert “of the defendant” after “activities” where firstly occurring.	36

[40] Part 3, Division 2A	1
Insert after Division 2 of Part 3:	2
Division 2A Further orders if interests in property not disclosed	3 4
31A Assets forfeiture orders after interests in property not disclosed	5
(1) This section applies if:	6
(a) an assets forfeiture order or proceeds assessment order is made, and	7 8
(b) evidence or a warranty or other representation was given or made in proceedings for the order, or examination proceedings under this Act, by a person against whom the order is made (the <i>defendant</i>) as to the defendant's interests in property.	9 10 11 12 13
(2) The Commission may apply to the Supreme Court for an order forfeiting to, and vesting in, the Crown a specified interest in property of the defendant at the time the evidence, warranty or representation was given or made that was not disclosed in the evidence, warranty or representation.	14 15 16 17 18
(3) The Supreme Court must make the order if the Court finds it more probable than not that the interest in property was an interest of the defendant at the time the evidence, warranty or representation was given or made.	19 20 21 22
(4) An order may be made even if the interest in property was disposed of after the evidence, warranty or representation was given or made but may not extend to an interest in property if:	23 24 25
(a) the whole or part of that interest was subsequently acquired by a person for sufficient consideration without knowing, and in circumstances that would not arouse a reasonable suspicion, that the interest was, at the time of acquisition, serious crime derived property or illegally acquired property, or	26 27 28 29 30 31
(b) the whole or part of that interest subsequently vested in a person as a result of the distribution of the estate of a deceased person.	32 33 34
(5) An order may be made despite the terms of any orders previously made by consent.	35 36

(6)	Notice of an application under this section is to be given to the defendant and any person having an interest in property to which the application relates and the defendant or person may appear, and adduce evidence, at the hearing of the application.	1 2 3 4
(7)	The absence of a person entitled to be given notice of an application for an order under this section does not prevent the Court from making the order.	5 6 7
(8)	This Act (other than sections 25 and 26) applies to an order made under this section in the same way that it applies to an order made under section 22.	8 9 10
(9)	An application under this section may be made together with an application under section 31B.	11 12
31B	Proceeds assessment orders after interests in property not disclosed	13 14
(1)	This section applies if:	15
(a)	an assets forfeiture order or proceeds assessment order is made, and	16 17
(b)	evidence or a warranty or other representation is given or made in proceedings for the order, or examination proceedings under this Act, by a person against whom the order is made (the <i>defendant</i>) as to the defendant's interests in property.	18 19 20 21 22
(2)	The Commission may apply to the Supreme Court for an order requiring the defendant to pay to the Treasurer the value of the whole or part of an interest in property of the defendant at the time the evidence, warranty or representation was given or made, that was not disclosed in the evidence, warranty or representation, if:	23 24 25 26 27 28
(a)	the whole or part of that interest was subsequently acquired by a person for sufficient consideration without knowing, and in circumstances that would not arouse a reasonable suspicion, that the interest was, at the time of acquisition, serious crime derived property or illegally acquired property, or	29 30 31 32 33 34
(b)	the whole or part of that interest subsequently vested in a person as a result of the distribution of the estate of a deceased person.	35 36 37
(3)	An order may be made despite the terms of any orders previously made by consent.	38 39

(4)	The Supreme Court must make an order under this section if it finds it more probable than not that:	1
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(a)	an interest in property was an interest of the defendant at the time the evidence, warranty or representation was given or made, and	3
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(b)	the interest was subsequently disposed of as referred to in subsection (2) (a) or (b).	6
		7
(5)	Notice of an application under this section is to be given to the defendant and any person having an interest in property to which the application relates and the defendant or person may appear, and adduce evidence, at the hearing of the application.	8
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(6)	The absence of a person entitled to be given notice of an application for an order under this section does not prevent the Court from making the order.	12
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(7)	The amount a defendant is required to pay under an order under this section is recoverable as a debt payable by the defendant to the Crown.	15
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(8)	Sections 29, 30 and 31 apply to an order made under this section in the same way as they apply to a proceeds assessment order.	18
		19
(9)	An application under this section may be made together with an application under section 31A.	20
		21
31C	Exclusion of the value of interests from orders	22
(1)	If it is proved that it is more probable than not that a specified proportion of the value of an interest in property forfeited or paid under this Division is not attributable to the proceeds of an illegal activity and that, at the time of the failure to disclose the interest, the defendant did not know of his or her interest in the property, the Supreme Court may:	23
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(a)	make a declaration to that effect, and	29
(b)	in the case of an interest forfeited to the Crown—order that the Crown vest the interest in the applicant, and	30
		31
(c)	in any other case—order that the person who has forfeited the interest or paid the amount is entitled to be paid the proportion of the proceeds of sale, or the amount paid, as the case requires, specified in the declaration.	32
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(2)	An application for an order under this section must be made not later than 6 months after the order under section 31A or 31B was made, or with the leave of the Supreme Court.	36
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(3)	Notice of an application for an order under this section is to be given to the Commission and any other person required by the regulations to be given notice.	1 2 3
(4)	A person entitled to be given notice of an application for an order under this section may appear, and adduce evidence, at the hearing of the application.	4 5 6
(5)	The applicant for an order under this section must give the Commission notice of the grounds on which the order is sought.	7 8
(6)	If the Commission proposes to contest an application for an order under this section it must give the applicant notice of the grounds on which the application is to be contested.	9 10 11
[41]	Section 33 Making of production order	12
	Insert after section 33 (2):	13
(2A)	A requirement to produce a document that is in electronic form, or to make any such document available for inspection, includes a requirement to produce, or make available, a hard copy form of the document, including the generation of reports or the extraction of data.	14 15 16 17 18
[42]	Section 41 Return of certain seized property	19
	Insert “or other order under this Act” after “restraining order” wherever occurring in section 41 (1).	20 21
[43]	Section 47 Other documents and evidence may be seized	22
	Insert “(whether under the law of this State or the Commonwealth or another State or a Territory)” after “offence” in section 47 (a).	23 24
[44]	Section 48 Monitoring orders	25
	Insert at the end of section 48 (2) (b):	26
	, or	27
(c)	has acquired, or is about to acquire, any fraudulently acquired property.	28 29
[45]	Section 51 Communication of information by financial institutions to prescribed authorities	30 31
	Insert after section 51 (1):	32
(1A)	The Commission may at any time request a financial institution to give information to the Commission about a transaction with the institution that might be of assistance in the enforcement of this Act or the regulations.	33 34 35 36

[46] Section 51 (2)	1
Omit “this section”. Insert instead “subsection (1) or (1A)”.	2
[47] Part 4A	3
Insert after Part 4:	4
Part 4A Recognition of interstate instruments	5
52A Registration of interstate orders	6
(1) If an interstate assets forfeiture order, interstate crime related property declaration or interstate restraining order expressly, or by operation of the law of the Commonwealth, another State or a Territory, applies to property in New South Wales, the order may be registered under this Act.	7 8 9 10 11
(2) An order or declaration is registered under this Act when a copy of the order or declaration, sealed by the court or body that issued the order or declaration, is registered in accordance with the rules of the Supreme Court.	12 13 14 15
(3) A sealed copy of an interstate assets forfeiture order, interstate crime related property declaration or interstate restraining order is not required for the purposes of registration if it is not the practice of the court or body that issued the order or declaration to seal copies of a declaration.	16 17 18 19 20
(4) Any amendments made to an interstate assets forfeiture order, interstate crime related property declaration or interstate restraining order (before or after registration) may be registered in the same way. Any such amendment has no effect for the purposes of this Act until it is registered.	21 22 23 24 25
(5) An application for registration may be made by the person on whose application the order or declaration or amendments were made, by an authorised officer or by a person affected by the order or declaration or amendments.	26 27 28 29
52B Effect of registration of interstate restraining orders	30
(1) A registered interstate restraining order may be enforced in New South Wales as if it were a restraining order made under section 10 (3) at the time of registration.	31 32 33
(2) This Act (other than section 10) applies to a registered interstate restraining order in the same way as it applies to a restraining order made under section 10 (3).	34 35 36

52C	Effect of registration of interstate assets forfeiture orders	1
(1)	A registered interstate assets forfeiture order may be enforced in New South Wales as if it were an assets forfeiture order made under section 22 (2) at the time of registration.	2 3 4
(2)	This Act (other than sections 22 and 25) applies to a registered interstate assets forfeiture order in the same way as it applies to an assets forfeiture order made under section 22 (2).	5 6 7
(3)	A registered interstate assets forfeiture order does not operate so as to vest property (or any estate, interest or right in property) otherwise than in the Crown in right of New South Wales.	8 9 10
(4)	A registered interstate assets forfeiture order does not operate so as to vest property in the Crown in right of New South Wales if the order has already operated to vest the property in the Crown in some other capacity or in some other person or entity.	11 12 13 14
52D	Effect of registration of interstate crime related property declarations	15 16
(1)	A registered interstate crime related property declaration is, subject to the regulations, to be enforced as if it were a registered interstate assets forfeiture order and this Part applies accordingly.	17 18 19
(2)	Regulations may be made for or with respect to the circumstances in which a registered interstate crime related property declaration is to be treated as a registered interstate assets forfeiture order.	20 21 22
52E	Duration of registration	23
	A registered interstate assets forfeiture order, registered interstate crime related property declaration or registered interstate restraining order is enforceable in this State under this Act until its registration is cancelled under section 52F, even if the order or declaration has already ceased to be in force under the law under which the order or declaration was made.	24 25 26 27 28 29
52F	Cancellation of registration	30
(1)	The registration of an interstate assets forfeiture order, interstate crime related property declaration or interstate restraining order may be cancelled by the Supreme Court if:	31 32 33
(a)	the registration was improperly obtained, or	34
(b)	the order or declaration ceases to be in force under the law of the Commonwealth, another State or a Territory under which the order or declaration was made.	35 36 37

(2)	An application for cancellation of the registration may be made by the person on whose application the order or declaration was made, by an authorised officer or by a person affected by the order or declaration.	1 2 3 4
52G	Charge on property subject to interstate restraining order	5
(1)	A charge is created on property subject to an interstate restraining order to secure payment of the amount due under an interstate proceeds assessment order if:	6 7 8
(a)	the order was made in connection with an interstate serious offence committed or alleged to be committed by the owner of the property, and	9 10 11
(b)	an interstate proceeds assessment order is made in connection with that offence, and	12 13
(c)	the interstate proceeds assessment order is registered in a court in New South Wales under the <i>Service and Execution of Process Act 1992</i> of the Commonwealth.	14 15 16
(2)	The charge is created as soon as both the interstate restraining order and the interstate proceeds assessment order are registered.	17 18
(3)	The charge ceases to have effect as soon as any of the following events occurs:	19 20
(a)	the interstate proceeds assessment order ceases to have effect,	21 22
(b)	the interstate proceeds assessment order is discharged by a court hearing an appeal against the making of the order,	23 24
(c)	the amount due under the interstate proceeds assessment order is paid,	25 26
(d)	the owner of the property becomes bankrupt,	27
(e)	the property is sold or disposed of:	28
(i)	under an order made by a court under the corresponding law of the State in which the interstate proceeds assessment order was made, or	29 30 31
(ii)	by the owner of the property with the consent of the court that made the interstate proceeds assessment order, or	32 33 34
(iii)	if the interstate restraining order directed a person to take control of the property—by the owner of the property with the consent of that person.	35 36 37

(4)	A charge created on property under this section:	1
(a)	is subject to every encumbrance on property that came into existence before the charge and that would, apart from this subsection, have priority over the charge, and	2 3 4
(b)	has priority over all other charges, and	5
(c)	subject to subsection (3), is not affected by any change of ownership of the property.	6 7
(5)	If a charge is created under this section on property of a particular kind and the provisions of any law of New South Wales provide for the registration of title to, or charges over, property of that kind:	8 9 10 11
(a)	the Public Trustee or an authorised officer may or, in the case of land, must cause the charge to be registered under the provisions of that law, and	12 13 14
(b)	a person who purchases or otherwise acquires an interest in the property after the registration of the charge is, for the purposes of this section, taken to have notice of the charge at the time of the purchase or acquisition.	15 16 17 18
(6)	A charge under this section on land under the <i>Real Property Act 1900</i> has no effect until it is registered under that Act.	19 20
52H	Powers of Public Trustee in relation to interstate restraining orders	21 22
	If an interstate restraining order registered under this Act directs an official of the jurisdiction in which it was made to take control of the property, the Public Trustee may, in accordance with an agreement between the Public Trustee and the official, exercise the same powers in relation to the property as the official would have been able to exercise if the property were located in that State.	23 24 25 26 27 28 29
52I	Interim registration of facsimile or other electronic copies	30
(1)	A facsimile or other electronic copy of:	31
(a)	a sealed copy of an interstate assets forfeiture order, interstate crime related property declaration or interstate restraining order, or	32 33 34
(b)	a sealed copy of any amendments made to any such order,	35
	is regarded for the purposes of this Act as the same as the sealed copy, if the copy is certified in accordance with the requirements of the court or body that issued it.	36 37 38

(2)	Registration effected by means of a facsimile or other electronic copy ceases to have effect at the end of the period of 5 days commencing on the day of registration unless a sealed copy that is not a facsimile or other electronic copy has been registered by that time.	1 2 3 4 5
(3)	Registration of the sealed copy before the end of the period referred to in subsection (2) has effect as from the day of registration of the facsimile or other electronic copy.	6 7 8
(4)	Although registration of a facsimile or other electronic copy of an interstate assets forfeiture order ceases to have effect in the circumstances mentioned in subsection (2), any forfeiture already made in relation to the order is not affected.	9 10 11 12
[48]	Section 54 Proof of certain matters	13
	Insert after section 54 (2):	14
(2A)	A document certified by a judicial officer, registrar or other proper officer of a court stating that a specified person pleaded guilty to a specified offence on a specified day, and that the plea of guilty was not withdrawn, is admissible in any civil proceedings under this Act and is evidence of the commission of the offence by the person to whom it relates.	15 16 17 18 19 20
[49]	Section 54 (6)	21
	Insert after section 54 (5):	22
(6)	In subsection (4), a reference to proceedings is a reference to proceedings regardless of their outcome, and includes proceedings that have not been determined or that were discharged or not proceeded with for any reason.	23 24 25 26
[50]	Section 59A	27
	Insert after section 59:	28
59A	Ministerial arrangements for things seized in connection with extra-territorial offences	29 30
(1)	The Minister may enter into arrangements with a Minister of another State or a Territory or the Commonwealth under which things seized under this Act that may be relevant to the investigation of an offence against the law of that State or Territory or the Commonwealth:	31 32 33 34 35

(a)	are to be transmitted to the appropriate authority in that State or Territory or the Commonwealth for the purposes of the investigation of, or proceedings in respect of, that offence, and	1 2 3 4
(b)	when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by order or direction of a court or Magistrate) to be returned to the Commissioner of Police.	5 6 7 8
(2)	This section has effect despite section 41.	9
(3)	In this section: <i>appropriate authority</i> means:	10 11
(a)	in relation to another State or Territory (other than the Australian Capital Territory)—an authority exercising, in relation to the police force of that State or Territory, functions corresponding to those of the Commissioner of Police in relation to NSW Police, or	12 13 14 15 16
(b)	in relation to the Commonwealth or the Australian Capital Territory—the Commissioner of the Australian Federal Police.	17 18 19
[51]	Schedule 1 Savings and transitional provisions	20
	Insert at the end of clause 1 (1):	21
	<i>Criminal Assets Recovery Amendment Act 2005</i>	22
[52]	Schedule 1, Part 3	23
	Insert after Part 2:	24
	Part 3 Criminal Assets Recovery Amendment Act 2005	25 26
	9 Meaning of “2005 amending Act”	27
	In this Part:	28
	<i>2005 amending Act</i> means the <i>Criminal Assets Recovery Amendment Act 2005</i> .	29 30
	10 Application of amendments to earlier activities	31
	An amendment made to this Act by the 2005 amending Act extends to serious crime related activities or illegal activities that took place before the commencement of that amendment.	32 33 34

11	Application of amendments to previous fraudulently acquired property	1 2
	This Act applies to fraudulently acquired property that was acquired before the commencement of section 9A (as inserted by the 2005 amending Act).	3 4 5
12	Application of amendments to property in custody or under control of Commission or Commissioner of Police	6 7
	The amendments made to this Act by the 2005 amending Act extend to property in the custody or under the control of the Commission or the Commissioner of Police immediately before the commencement of this clause.	8 9 10 11
13	Forfeiture of undeclared assets	12
	Sections 31A and 31B, as inserted by the 2005 amending Act, do not apply to or in respect of assets forfeiture orders made before the commencement of section 31A.	13 14 15
14	Mutual recognition of interstate orders	16
	Part 4A (as inserted by the 2005 amending Act) extends to interstate restraining orders, interstate crime related property declarations and interstate assets forfeiture orders in force immediately before the commencement of that Part.	17 18 19 20