

Passed by both Houses



New South Wales

Confiscation of Proceeds of Crime Legislation Amendment Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Confiscation of Proceeds of Crime Legislation Amendment Bill 2022

Act No _____, 2022

*An Act to amend the *Confiscation of Proceeds of Crime Act 1989*, the *Crime Commission Act 2012* and the *Criminal Assets Recovery Act 1990*, including to implement recommendations resulting from the statutory review of the *Crime Commission Act 2012* and the *Criminal Assets Recovery Act 1990*.*

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Confiscation of Proceeds of Crime Legislation Amendment Act 2022*.

2 Commencement

This Act commences on 1 February 2023.

Schedule 1 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90

[1] Section 4 Definitions

Omit section 4(1), definitions of *account*, *appropriate court* and *financial institution*.

Insert in alphabetical order—

account means a facility or arrangement through which a financial institution accepts deposits or allows withdrawals, and includes a facility or arrangement for the following—

- (a) a fixed term deposit or safety deposit box,
- (b) the deposit or withdrawal of, or a transaction involving, digital currency, including a registrable digital currency exchange service.

appropriate court means—

- (a) the Supreme Court, or
- (b) for a freezing notice—the court in which proceedings, including committal proceedings, for a serious offence on which the freezing notice is based are held, or
- (c) otherwise—the court in which a person is convicted of a drug trafficking offence, a serious offence or a serious drug offence.

digital currency has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.

drug trafficker declaration has the same meaning as in section 34(1).

financial institution means the following, and includes a registrable digital currency exchange service—

- (a) an authorised deposit-taking institution,
- (b) a body corporate that is, or if it had been incorporated in Australia would be, a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx).

registrable digital currency exchange service has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.

unlawfully acquired has the same meaning as in section 34A(7).

[2] Section 4(1), definition of “forfeiture order”

Insert “or 34A” after “section 18”.

[3] Section 4(1), definition of “property-tracking document”

Omit “quantifying” wherever occurring in paragraphs (a)(i) and (b)(i).

Insert instead “determining”.

[4] Section 4(1), definition of “restraining order”

Insert “or 43A” after “section 43”.

[5] Section 12 Application

Insert after section 12(3)—

- (4) This section is subject to Schedule 1.

[6] Section 13 Applications for confiscation orders

Insert after section 13(6)—

- (7) Section 34A prevails over this section to the extent of an inconsistency.

[7] Part 2, Division 1A

Insert after Division 1—

Division 1A Forfeiture of certain property if person convicted of serious offence

17A Definitions

In this Division—

exclusion order—see section 17D(1).

forfeiture notice—see section 17C(1).

relevant authority means the authority that applied for the restraining order or the confirmation of the freezing notice in relation to the relevant property.

relevant court means the court that made the restraining order or confirmed the freezing notice in relation to the relevant property.

relevant property of a person means the following, excluding property the subject of a restraining order made or freezing notice confirmed after the relevant conviction of the person—

- (a) property the subject of a restraining order made in relation to a serious offence for which the person has been convicted,
- (b) property the subject of a freezing notice confirmed under section 42L in relation to a serious offence for which the person has been convicted,
- (c) property the subject of a restraining order or freezing notice revoked under section 54 if the security or undertaking given in relation to the revocation is in force.

17B Forfeiture of relevant property

- (1) The relevant property of a person is forfeited to the Crown—
 - (a) at the end of the relevant period, or
 - (b) if an application for an exclusion order is made—on the day on which the application is finally dismissed, including an appeal, if any, or
 - (c) if an application to vary or set aside the restraining order or confirmed freezing notice is made—on the day on which the application is finally dismissed, including an appeal, if any.
- (2) The forfeiture takes effect in the same way as if a court had made a forfeiture order in relation to the relevant property.
- (3) Sections 19 and 21 apply to relevant property forfeited under this Division in the same way as the sections apply to property forfeited under a forfeiture order made under section 18.

17C Notification of forfeiture

- (1) The relevant authority must give a notice of intention to forfeit relevant property (a *forfeiture notice*) in accordance with this section.
- (2) The relevant authority must, as soon as reasonably practicable, give the notice—

- (a) to each person the relevant authority knows or reasonably suspects has a beneficial interest in the relevant property, and
 - (b) no later than 28 days before the end of the relevant period.
- (3) The notice must include the following—
- (a) a description of the relevant property,
 - (b) the date on which the relevant period will end,
 - (c) the way in which, and time within which, a person may apply for an exclusion order.
- (4) Failure to give a notice in accordance with this section does not affect the forfeiture of relevant property under this Division if reasonable steps were taken to give the notice.

17D Exclusion orders

- (1) A person may, during the relevant period, apply to the relevant court for an order excluding some or all of the relevant property from forfeiture under this Division (an *exclusion order*).
- (2) The person must give written notice to the relevant authority of—
- (a) the making of the application, and
 - (b) the grounds on which the application is made.
- (3) The relevant authority may appear and adduce evidence at the hearing of the application.
- (4) On hearing the application for the exclusion order, the court may—
- (a) direct that the relevant property be returned to the applicant if the court is satisfied, on the balance of probabilities, that—
 - (i) the applicant has an interest in the property, and
 - (ii) the interest in the property is not—
 - (A) tainted property, or
 - (B) if the relevant property relates to a restraining order made under section 43A—unlawfully acquired property, or
 - (b) otherwise—dismiss the application.
- (5) The court must not make an order under this section if the relevant property has been forfeited under this Division.

17E Appeal against dismissal of application for exclusion order

- (1) A person may apply to the Supreme Court for the recovery of the person's interest in relevant property the subject of an application for an exclusion order—
- (a) made by the person, and
 - (b) dismissed by a court other than the Supreme Court or the Court of Criminal Appeal.
- (2) The appeal must be made within 6 months of the applicant receiving notice of the dismissal.
- (3) The relevant authority may appear and adduce evidence at the hearing.
- (4) On hearing the appeal, the Supreme Court must—

- (a) make an order that ownership in the interest in the property vests in the applicant and the interest in the property must be returned to the applicant, or
 - (b) otherwise—dismiss the appeal.
- (5) The Supreme Court must not make an order under subsection (4)(a) unless the Court is satisfied it is more probable than not that—
- (a) the applicant has an interest in the property, and
 - (b) the interest in the property is not—
 - (i) tainted property, or
 - (ii) if the relevant property relates to a restraining order made under section 43A—unlawfully acquired property.

17F Court may declare relevant property forfeited under this Division

The relevant court may declare that relevant property has been forfeited under this Division if—

- (a) the relevant authority applies to the court for the declaration, and
- (b) the court is satisfied the relevant property is forfeited under this Division.

17G Recovery of forfeited property

- (1) A person may, within 6 months after relevant property is forfeited under this Division, apply to the relevant court for an order to recover the person's interest in the property.
- (2) The person must give written notice to the relevant authority of—
 - (a) the making of the application, and
 - (b) the grounds on which the application is made.
- (3) The person must apply for the leave of the court to make the application if a forfeiture notice was given, or reasonable steps were taken to give a forfeiture notice, to the person.
- (4) The court may grant leave to make the application if the court is satisfied—
 - (a) if the person did not make an application for an exclusion order during the relevant period—the person had a reasonable excuse for failing to make the application, or
 - (b) if the person made an application for an exclusion order and appeared at the hearing of the application—the applicant has new evidence relevant to the application that was not available during the hearing, or
 - (c) there are special grounds for granting the leave.
- (5) The relevant authority may appear and adduce evidence at the hearing.
- (6) On hearing the application, the court must—
 - (a) make an order—
 - (i) if the interest in the property has been sold or otherwise disposed of—that the Crown pay an amount to the applicant determined by the court to be the value, on the day of the determination, of the applicant's former interest in the property, or
 - (ii) otherwise—that ownership of the interest in the property vests in the applicant and the interest in the property must be returned to the applicant, or

- (b) otherwise—dismiss the application.
- (7) The court must not make an order under subsection (6)(a) unless the court is satisfied, on the balance of probabilities, of the following—
 - (a) the applicant was not involved in the commission of the serious offence in relation to which the relevant property was forfeited,
 - (b) if the applicant acquired the interest at the time of or after the commission of the offence—the applicant acquired the interest—
 - (i) for sufficient consideration, and
 - (ii) without knowing, and in circumstances that would not arouse a reasonable suspicion, that the property was, at the time of the acquisition—
 - (A) for property that relates to a restraining order made under section 43A—unlawfully acquired, or
 - (B) otherwise—tainted.

17H Relief from hardship—dependants

- (1) A dependant of a person who has an interest in relevant property forfeited under this Division may, within 6 months after the forfeiture of the relevant property, apply to the Supreme Court for an order under this section.
- (2) If the Supreme Court is satisfied the forfeiture has caused hardship to the dependant, the Court may—
 - (a) order that the dependant is entitled to be paid a specified amount out of the proceeds of sale of the interest, being an amount the Court thinks necessary to prevent hardship to the dependant, and
 - (b) if the dependant is under 18 years of age—make ancillary orders to ensure the proper application of the amount.
- (3) The Court must not make an order under subsection (2) unless the Court is satisfied the dependant had no knowledge of the serious offence in relation to which the relevant property was forfeited.
- (4) Subsection (3) does not apply if the dependant is under 18 years of age.

[8] Section 22 Orders pending forfeiture

Insert “or 34A” after “section 13” in section 22(1).

[9] Part 2, Division 6

Insert after Part 2, Division 5—

Division 6 Drug trafficker declarations

34 Drug trafficker declaration

- (1) The Director of Public Prosecutions or a police prosecutor may apply to an appropriate court for a declaration against a person convicted of a serious drug offence (a *drug trafficker declaration*).
- (2) The application may be made—
 - (a) during sentencing proceedings for the serious drug offence, or
 - (b) at another time.

- (3) The court must, on the application being made, make a drug trafficker declaration against a person if the court is satisfied the person has been convicted of—
 - (a) at least 3 serious drug offences in the previous 10 years, or
 - (b) a serious drug offence involving a commercial quantity of a prohibited drug or prohibited plant, or
 - (c) a serious drug offence and the court is satisfied the person is or was a member of a criminal group.
- (4) A drug trafficker declaration is taken to be revoked if the conviction in reliance on which the declaration was made is quashed or set aside.
- (5) A drug trafficker declaration expires 5 years after the day on which the declaration is made.
- (6) In this section—

commercial quantity, prohibited drug and *prohibited plant* have the same meanings as in the *Drug Misuse and Trafficking Act 1985*.

criminal group has the same meaning as in the *Crimes Act 1900*, Part 3A, Division 5.

serious drug offence has the same meaning as in the *Drug Supply Prohibition Order Pilot Scheme Act 2020*, section 5(2).

34A Application for forfeiture order

- (1) An appropriate officer may apply to the appropriate court for a forfeiture order in relation to the property belonging to, or in the effective control of, a person against whom a drug trafficker declaration is made.
- (2) An application must be made no later than 12 months after the drug trafficker declaration is made against the person.
- (3) The appropriate court must, on the application being made, make a forfeiture order in relation to the property unless the court is satisfied the property was lawfully acquired.
- (4) The onus is on the person to prove the person's property was lawfully acquired.
- (5) If an application under this section has been finally determined, no further application may be made under this section in relation to the same drug trafficker declaration, except with the leave of the Supreme Court.
- (6) The Supreme Court must not grant leave unless satisfied—
 - (a) the property to which the new application relates was identified only after the first application was determined, or
 - (b) necessary evidence became available only after the first application was determined, or
 - (c) it is otherwise in the interests of justice to grant the leave.
- (7) Property is *unlawfully acquired* if the property—
 - (a) is all or part of the proceeds of unlawful activity, or
 - (b) is all or part of the proceeds of the disposal of, or other dealing in, property derived from unlawful activity, or
 - (c) was wholly or partly acquired using property derived from unlawful activity.

- (8) Property is *lawfully acquired* if it is not unlawfully acquired.
- (9) Sections 14–17 and 19–22 apply to a forfeiture order made under this section in the same way as the provisions apply to a forfeiture order made under section 18.

[10] Section 36 Search warrants

Omit section 36(1)–(3). Insert instead—

- (1) A member of the Police Force may apply to an authorised officer for the issue of a search warrant if the member has reasonable grounds for believing there is or, within 72 hours, there will be in or on premises—
 - (a) tainted property, or
 - (b) property the member reasonably suspects is unlawfully acquired and belonging to, or in the effective control of, a person—
 - (i) against whom a drug trafficker declaration has been made, or
 - (ii) charged with a serious drug offence and against whom an application for a drug trafficker declaration may be made if the person were to be convicted of the offence.
- (2) The authorised officer may, if satisfied there are reasonable grounds, issue a search warrant authorising a member of the Police Force to—
 - (a) enter the premises, and
 - (b) search the premises for the property.
- (3) The search warrant must—
 - (a) set out a statement of the purpose for which the warrant is issued, including a description of the relevant serious offence or serious drug offence, and
 - (b) include a description of the kind of property authorised to be seized, and
 - (c) if the warrant relates to a person against whom a drug trafficker declaration has been made—include a copy of the drug trafficker declaration.

[11] Section 36(6)

Insert after section 36(5)—

- (6) In this section—
authorised officer has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[12] Section 37

Omit the section. Insert instead—

37 Seizure of property under warrants

- (1) A member of the Police Force executing a search warrant issued under this Part may seize property of the kind specified in the warrant.
- (2) A search warrant issued under this Part authorises the seizure of property if, in executing the warrant, a member of the Police Force—
 - (a) finds property the member believes on reasonable grounds to be seizable property, and

- (b) believes on reasonable grounds it is necessary to seize the property to prevent the property's—
 - (i) concealment, loss or destruction, or
 - (ii) use in committing, continuing or repeating a serious offence or serious drug offence.
- (3) The power conferred by this section to seize property includes a power to—
 - (a) remove the property from the premises where it is found, and
 - (b) guard the property in or on those premises.
- (4) In this section—

seizable property means—

 - (a) tainted property, or
 - (b) property a member of the Police Force reasonably suspects is unlawfully acquired and belonging to, or in the effective control of, a person—
 - (i) against whom a drug trafficker declaration has been made, or
 - (ii) charged with a serious drug offence and against whom an application for a drug trafficker declaration may be made if the person were to be convicted of the offence.

[13] Section 42

Omit the section.

[14] Section 43A

Insert after section 43—

43A Restraining orders—drug trafficker declarations

- (1) An appropriate officer or a member of the Police Force may apply, ex parte, to the Supreme Court for a restraining order in relation to property the officer or member reasonably suspects belongs to, or is in the effective control of, a person (the *defendant*)—
 - (a) against whom a drug trafficker declaration has been made, or
 - (b) charged with a serious drug offence and against whom an application for a drug trafficker declaration may be made if the person were to be convicted of the offence.
- (2) The application must be supported by—
 - (a) for an application under subsection (1)(a)—a copy of the drug trafficker declaration, and
 - (b) for an application under subsection (1)(b)—an affidavit prepared by the officer or member setting out the grounds on which the officer or member reasonably suspects an application for a drug trafficker declaration may be made if the person were to be convicted of the offence, and
 - (c) an affidavit prepared by the officer or member setting out the grounds on which the officer or member reasonably suspects the property belongs to, or is in the effective control of, the defendant.
- (3) The Court must not make a restraining order against the property of a person under this section unless the Court—

- (a) has considered the declaration, if any, the affidavit and evidence adduced under section 44(1)(b), and
 - (b) is satisfied there are reasonable grounds for the officer or member reasonably suspecting the property belongs to, or is in the effective control of, the defendant.
- (4) The Court may, by order—
- (a) direct that the property, or part of the property, must not be disposed of, or otherwise dealt with, by the defendant or by another person, except in the way and in the circumstances specified in the order, and
 - (b) if the Court considers the circumstances require the direction—direct the NSW Trustee and Guardian to take control of the property or part of the property specified in the order.
- (5) Section 43(5)–(9) applies to an application for, and the making of, a restraining order under this section in the same way as the provisions apply to an application for, and the making of, a restraining order under section 43.

[15] Section 66 Application for search warrant for location etc of property

Omit “quantifying” from section 66(2). Insert instead “determining”.

[16] Sections 67A–67C

Insert after section 67—

67A Application for search warrant for location of property-tracking document

- (1) If an authorised officer reasonably suspects a property-tracking document is, or may be within 72 hours, in the possession of a person, the officer may—
- (a) lay before the Supreme Court an information on oath setting out the grounds, and
 - (b) apply to the Court for the issue of a search warrant in relation to the person.
- (2) The Supreme Court may issue a search warrant authorising an authorised officer, with necessary and reasonable assistance, and by the use of necessary and reasonable force to—
- (a) stop, search and detain the person, and
 - (b) seize and detain all or part of a thing—
 - (i) found as a result of the search, and
 - (ii) that the officer reasonably suspects is, or contains, a property-tracking document.
- (3) The Supreme Court must not issue a search warrant under this section unless the Court is satisfied—
- (a) the document cannot be identified or described with sufficient particularity to obtain a production order in relation to the document, or
 - (b) a production order has been given in relation to the document and has not been complied with, or
 - (c) a production order in relation to the document would be unlikely to be effective because there are reasonable grounds to suspect that the production order would not be complied with, or

- (d) the investigation in relation to which the search warrant is being sought might be seriously prejudiced if the authorised officer does not gain immediate access to the document without notice to any person.
- (4) The Supreme Court must not issue a search warrant under this section unless—
 - (a) the informant or another person has given the Court, either orally or by affidavit, further information the Court requires concerning the grounds on which the search warrant is sought, and
 - (b) the Court is satisfied there are reasonable grounds for issuing the search warrant.
- (5) The following provisions apply to a search warrant issued under this section—
 - (a) section 67(4) and (5),
 - (b) the *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 4, Division 4.

67B Seizure of property-tracking documents

- (1) An authorised officer executing a search warrant under this Division in relation to a property-tracking document may—
 - (a) make copies of, and take extracts from, the document, and
 - (b) for a document that is, or that might reasonably be suspected of being, held in or accessible from, a computer—give a direction to a person to give the authorised officer—
 - (i) information or assistance that is reasonable and necessary to enable the officer to access data held in, or accessible from, the computer, or
 - (ii) information or assistance reasonably necessary to allow the officer to—
 - (A) copy data from the computer to another computer, or
 - (B) convert the data into documentary form or another form intelligible to a computer used by the officer.
- (2) Without limiting subsection (1)(b), the authorised officer may require the person to provide assistance in accessing data on a computer secured by biometric means, including, for example, fingerprints or retina scans.
- (3) A search warrant issued under this Division is taken to authorise the seizure of a document or thing that the authorised officer executing the search warrant reasonably believes—
 - (a) will afford evidence of a criminal offence, whether under the law of this State or the Commonwealth or another State or a Territory, and
 - (b) is necessary to seize to prevent the concealment, loss or destruction of the document or thing.
- (4) Self-incrimination is not a reasonable excuse for refusing to comply with a direction given under subsection (1)(b).
- (5) To avoid doubt—
 - (a) information provided by a specified person under subsection (1) to access data held in or accessible from a computer may be used only for that purpose and no other purpose, and

- (b) this section is subject to any other provision of this Act or another Act that provides for how a police officer may take particulars that are necessary to identify a person.
- (6) In this section—
computer means an electronic device for storing, processing or transferring information.

67C Obstruction of persons executing a search warrant

A person who, without reasonable excuse, obstructs or hinders a person executing a search warrant under Part 3, Division 1 or this Division is guilty of an offence.

Maximum penalty—1,000 penalty units or imprisonment for 5 years, or both.

[17] Sections 71A–72

Omit section 72. Insert instead—

71A Giving notices to financial institutions

- (1) The Commissioner of Police may give a written notice to a financial institution requiring the institution to provide to an authorised officer information or documents relevant to one or more of the following—
 - (a) determining whether an account is or was held by a specified person with the financial institution,
 - (b) determining whether a person is or was a signatory to an account,
 - (c) if a person holds an account with the institution—the current balance of the account,
 - (d) details of transactions involving an account over a specified period of up to 6 months,
 - (e) details of all accounts held by a specified person, including the name of each other person who also holds or held the accounts,
 - (f) details of all accounts for which a specified person is an authorised signatory,
 - (g) a transaction conducted by the financial institution on behalf of a specified person,
 - (h) the name of the person who holds a safety deposit box with the financial institution and the dates on which the safety deposit box has been accessed.
- (2) The Commissioner of Police must not give the notice unless the Commissioner reasonably believes the notice is required—
 - (a) to determine whether to take action under this Act, or
 - (b) in relation to proceedings under this Act.

71B Content of notices to financial institutions

- (1) The notice must—
 - (a) state that the Commissioner of Police believes the notice is required—
 - (i) to determine whether to take an action under this Act, or
 - (ii) for proceedings under this Act, and
 - (b) specify the name of the financial institution, and

- (c) specify the kind of information or documents required to be provided, and
 - (d) specify the way in which the information or documents must be provided, and
 - (e) specify that the information or documents must be provided no later than—
 - (i) 14 days after the notice is given, or
 - (ii) if the Commissioner of Police thinks it appropriate—another day, no earlier than 3 business days after the notice is given, specified in the notice, and
 - (f) if the notice specifies that information about the notice must not be disclosed—set out the offence of disclosing the existence or nature of the notice, and
 - (g) set out the offence of failing to comply with the notice.
- (2) For subsection (1)(e)(ii), the Commissioner of Police must consider the following in deciding whether to specify a day earlier than 14 days after the notice is given—
- (a) the urgency of the situation,
 - (b) hardship that may be caused to the financial institution in complying with the notice.
- (3) A financial institution that is given a notice under section 71A may request an extension of the period within which the information or documents must be provided.
- (4) The Commissioner of Police may, by further written notice on the request of the financial institution or on the Commissioner's own initiative, vary the notice to specify that the information or documents must be provided by a later day.

71C Offences relating to notices

- (1) A financial institution commits an offence if—
- (a) the financial institution makes a statement, whether orally, in a document or in another way, and
 - (b) the statement—
 - (i) is false or misleading, or
 - (ii) omits a matter or thing without which the statement is misleading, and
 - (c) the statement is made in connection with a notice given to the financial institution under section 71A.
- (2) A financial institution commits an offence if—
- (a) the financial institution is given a notice under section 71A, and
 - (b) the notice specifies that information about the notice must not be disclosed, and
 - (c) the financial institution discloses the existence or nature of the notice.
- (3) A financial institution commits an offence if—
- (a) the financial institution is given a notice under section 71A, and
 - (b) the financial institution fails to comply with the notice.

- (4) A financial institution does not commit an offence under this section if the financial institution discloses the existence or nature of the notice to a law enforcement agency monitoring an account specified in the notice.
- (5) It is a defence to an offence against subsection (3) if—
- (a) the financial institution fails to comply with the notice only because the financial institution does not provide the information or a document within the period specified in the notice, and
 - (b) the financial institution took all reasonable steps to provide the information or document within the period, and
 - (c) the financial institution provides the information or document as soon as practicable after the end of the period.
- (6) In this section—
financial institution includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.
law enforcement agency has the same meaning as in the *Crime Commission Act 2012*.
Maximum penalty—1,000 penalty units.

72 Protection for financial institutions

- (1) For the *Crimes Act 1900*, Part 4AC—
- (a) the fact that a financial institution is, or has been, subject to a monitoring order must be disregarded, and
 - (b) a financial institution that, under section 71, gives information as soon as practicable after forming the belief referred to in the section, must be taken not to have been in possession of the information.
- (2) An action, suit or proceeding does not lie against a financial institution in relation to the following—
- (a) the giving of information by the financial institution under section 71 or 71A,
 - (b) compliance with a monitoring order.
- (3) In this section—
financial institution includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.

[18] Section 91 Duty not payable

Insert “section 17G (recovery of forfeited property),” before “section 21” in section 91(b).

[19] Section 97

Omit the section. Insert instead—

97 Review of certain provisions relating to restrained property and drug trafficker declarations

- (1) The Minister must conduct a review of the reviewable provisions to determine whether—
- (a) the policy objectives of the reviewable provisions remain valid, and
 - (b) the terms of the reviewable provisions remain appropriate for securing the objectives.
- (2) The review must be commenced as soon as practicable after 1 February 2025.

- (3) A report on the outcome of the review must be tabled in each House of Parliament by 1 February 2026.
- (4) In this section—
 - reviewable provisions* means—
 - (a) Part 2, Divisions 1A and 6, and
 - (b) sections 36, 37, 43A, 66, 67A–67C and 71A–71C.

[20] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

**Part Provisions consequent on enactment of
Confiscation of Proceeds of Crime Legislation
Amendment Act 2022**

Definition

In this Part—

amending Act means the *Confiscation of Proceeds of Crime Legislation Amendment Act 2022*.

Automatic forfeiture of relevant property

Part 2, Division 1A, as inserted by the amending Act, does not apply to, or in relation to, a conviction made before 1 February 2023.

Applications for drug trafficker declarations

Section 34(1), as inserted by the amending Act, does not apply to, or in relation to, a conviction made before 1 February 2023.

Schedule 2 Amendment of Crime Commission Act 2012 No 66

[1] Section 3 Object

Insert “prevent, disrupt and” before “reduce”.

[2] Section 10 Principal functions of Commission

Insert after section 10(1)(g)—

- (h) to apply for orders under the *Crimes (Serious Crime Prevention Orders) Act 2016*.

[3] Section 30 Refusal or failure of person to produce document or thing

Omit section 30(3)(a). Insert instead—

- (a) the Commissioner will, under section 47C, serve the person with a summons requiring the person to appear before the Commissioner to show cause as to why the person should not be dealt with under section 47B for alleged contempt, and

[4] Section 30(3)(b) and (5)

Omit “pending the hearing” wherever occurring. Insert instead “pending the appearance”.

[5] Section 30(4)(a)

Omit the paragraph. Insert instead—

- (a) the Commissioner must, in accordance with section 47C, summon the person to appear before the Commissioner, and

[6] Section 31, heading

Omit “**Hearing**”. Insert instead “**Appearance**”.

[7] Section 31(1)

Omit “a hearing referred to in section 30(4), the Commission”.

Insert instead “an appearance referred to in section 30(4), the Commissioner”.

[8] Section 39 Privilege concerning answers and documents

Omit section 39(2). Insert instead—

- (2) An answer made, or document or thing produced, by a witness at a hearing before the Commission is not admissible in evidence against the person in civil, criminal or disciplinary proceedings other than a proceeding for—
- (a) the falsity of evidence given by the witness, or
- (b) a relevant order unless the proceedings for the order have commenced or are imminent.

[9] Section 39(7)

Insert after section 39(6)—

- (7) In this section—
- imminent** has the same meaning as in section 45AA(4).
- relevant order** means the following orders, within the meaning of the *Criminal Assets Recovery Act 1990*—
- (a) a confiscation order,

- (b) an interstate assets forfeiture order,
- (c) an interstate proceeds assessment or unexplained wealth order,
- (d) an interstate restraining order,
- (e) a non-disclosure order,
- (f) a restraining order.

[10] Section 45AA

Insert after section 45—

45AA Disclosure of evidence to certain agencies

- (1) The Commission may direct evidence, including derivative evidence, given before the Commission by a witness to be disclosed to one or more of the following—
 - (a) an agency responsible for making an application for a relevant order,
 - (b) a court to which the Commission or another agency makes an application for a relevant order,
 - (c) a defendant in proceedings for a relevant order.
- (2) The Commission must, in determining whether to give a direction under subsection (1), consider the real risk of prejudice to the fair criminal trial of the person whose property is subject to the relevant order.
- (3) Subsection (1) does not apply to evidence or derivative evidence obtained or given after proceedings for the relevant order have commenced or during the period when the proceedings are imminent.
- (4) Proceedings are *imminent* if a person authorised to commence the proceedings has provided written approval for the commencement of the proceedings and the proceedings have not yet commenced.
- (5) A direction given under this section prevails to the extent of an inconsistency with a direction given under section 45(1) or 45A(3) or (4).
- (6) In this section—
 - derivative evidence* has the same meaning as in section 39A(1).
 - evidence* includes a matter specified in section 45(1)(a), (b), (c) or (d).
 - relevant order* has the same meaning as in section 39.

[11] Part 2, Divisions 9 and 10

Omit Part 2, Division 9. Insert instead—

Division 9 Contempt

47 Definitions

In this Division—

contemnor means a person alleged to be guilty of contempt of the Commission.

contempt of the Commission—see section 47A(1).

contempt of the Commission certificate—see section 47B(2).

47A Contempt of the Commission

- (1) A person is guilty of *contempt of the Commission* if the person, without a reasonable excuse—
 - (a) if served with a summons to appear as a witness before the Commission—fails to attend—
 - (i) as required by the summons, or
 - (ii) from day to day unless excused or released from further attendance by an executive officer, or
 - (b) if appearing as a witness at a hearing before the Commission—refuses or fails to—
 - (i) comply with a requirement to take an oath or make an affirmation under section 24(7), or
 - (ii) answer a question the person is required to answer by the executive officer presiding at the hearing, or
 - (iii) produce a document or thing the person was required to produce at the hearing, or
 - (iv) produce a document or thing the person was required to produce by a summons served on the person, or
 - (c) in relation to proceedings before the Commission, wilfully threatens or insults—
 - (i) the Commissioner, an Assistant Commissioner or an officer of the Commission, or
 - (ii) a witness or person summoned to attend before the Commission, or
 - (iii) an Australian legal practitioner appointed to assist the Commission as counsel, or
 - (iv) an Australian legal practitioner or other person authorised to appear before the Commission, or
 - (d) obstructs or hinders the Commission or an officer of the Commission in the exercise of the functions of the Commission, or
 - (e) disrupts a hearing before the Commission, or
 - (f) when released by order under section 36(5) on condition the person appear before the Commission—fails to appear before the Commission, or
 - (g) refuses or fails to produce a document or thing to an officer of the Commission in accordance with a production notice under section 28 or 29, or
 - (h) does another thing that, if the Commission were a court of law having power to commit for contempt, would be contempt of the court.
- (2) For subsection (1), self-incrimination is not a reasonable excuse.

47B Procedure for alleged contempt

- (1) This section applies to alleged contempt of the Commission.
- (2) The Commissioner may give the Supreme Court a certificate (a *contempt of the Commission certificate*) in which the Commissioner sets out the facts of the alleged contempt.
- (3) A contempt of the Commission certificate is prima facie evidence of the matters certified.

- (4) If the Commissioner gives a contempt of the Commission certificate to the Supreme Court, the Supreme Court must, without delay, inquire into the alleged contempt.
- (5) The Supreme Court must hear—
 - (a) witnesses who may be produced against or on behalf of the person charged with the contempt, and
 - (b) statements offered in defence.
- (6) If satisfied the person is guilty of the contempt, the Supreme Court may exercise its powers in the same way and to the same extent as if the person had committed contempt in or in relation to proceedings in the Supreme Court.
- (7) The *Supreme Court Act 1970* and the rules of court of the Supreme Court, with the necessary modifications, apply and extend to this section.

47C Powers of Commissioner in relation to alleged contempt

- (1) The Commissioner may summon a contemnor to appear before the Commissioner at a time and place specified in the summons to show cause as to why the contemnor should not be dealt with under section 47B for the contempt.
- (2) The summons must set out the details of the alleged contempt.
- (3) The Commissioner may, on proof of the service of the summons—
 - (a) issue a warrant to arrest the contemnor, and
 - (b) bring the contemnor before the Commissioner to show cause as to why the contemnor should not be dealt with under section 47B for the contempt.
- (4) Subsection (3) applies if—
 - (a) the contemnor fails to attend before the Commissioner as required by the summons, and
 - (b) no reasonable excuse to the satisfaction of the Commissioner is offered for the failure.
- (5) If contempt of the Commission is committed in the face or hearing of the Commissioner, the Commissioner may direct that the contemnor—
 - (a) be taken into custody in a correctional centre or elsewhere—
 - (i) by a member of the NSW Police Force, or
 - (ii) by an officer of the Commission authorised by the Commissioner, and

Note— A person in custody may be given into the keeping of a correctional officer—see the *Crimes (Administration of Sentences) Act 1999*, section 250.
 - (b) be called on to show cause as to why the contemnor should not be dealt with under section 47B for the contempt.
- (6) The Commissioner may issue a warrant—
 - (a) to arrest the contemnor while the contemnor, whether or not already in custody, is before the Commissioner, and
 - (b) to bring the contemnor before the Supreme Court as soon as practicable.
- (7) The warrant is sufficient authority—
 - (a) for a member of the NSW Police Force to arrest the contemnor, and

- (b) to deliver the contemnor into the custody of the governor of the correctional centre specified in the warrant, and
 - (c) for the governor of the correctional centre to detain the contemnor in the correctional centre until the contemnor is brought before the Supreme Court.
- (8) The warrant must be accompanied by—
- (a) the contempt of the Commission certificate, or
 - (b) a written statement setting out the details of the alleged contempt.
- (9) The Commissioner may revoke the warrant at any time before the contemnor is brought before the Supreme Court.
- (10) When the contemnor is brought before the Supreme Court, the Court may, until the determination of the matter, direct that the contemnor—
- (a) be kept in custody as determined by the Court, or
 - (b) be released.

47D Conditional release of contemnor

- (1) The Commissioner may, by order, release a contemnor detained under section 47C at any time before the contemnor is brought before the Supreme Court.
- (2) The release must be subject to the condition that the contemnor appear before the Supreme Court.
- (3) The release may be made subject to other conditions, as determined by the Commissioner, including the following, to ensure the appearance of the contemnor before the Supreme Court—
- (a) the provision of sureties by the contemnor,
 - (b) the surrender of a passport held by the contemnor,
 - (c) a requirement relating to the residence of the contemnor and regular reporting by the contemnor to the Commissioner.
- (4) The Commissioner may, from time to time, make an order to amend, revoke or add to the conditions.
- (5) A contemnor who, without reasonable excuse, fails to comply with a condition to which the release of the contemnor is subject is guilty of an offence.
Maximum penalty—20 penalty units or imprisonment for 2 years, or both.

47E Review by Supreme Court

- (1) A contemnor who has not been released by the Commissioner under section 47D, or whose release is subject to conditions, may apply to the Supreme Court for a review of—
- (a) the decision not to release, or the failure to release, the contemnor, or
 - (b) the terms of the conditions.
- (2) The Supreme Court may affirm or set aside the following—
- (a) a decision by the Commissioner not to release the contemnor,
 - (b) a condition imposed by the Commissioner on the release of the contemnor.
- (3) The Supreme Court may make an order that the Commissioner may make in relation to the detention or release of the contemnor, including if the

Commissioner has not made a decision about the release of the contemnor within a reasonable time.

- (4) An order made under subsection (3) is taken to be an order of the Commissioner.

47F Act or omission that is both an offence and contempt

- (1) An act or omission may be heard as contempt of the Commission even though it may also be dealt with as an offence.
- (2) An act or omission may be dealt with as an offence even though it may be heard as contempt of the Commission.
- (3) If an act or omission constitutes both an offence and contempt of the Commission, the contemnor is not liable for both the offence and the contempt.

Division 10 Miscellaneous

47G Obstruction or disruption of Commission

A person must not—

- (a) obstruct or hinder the Commission or an officer of the Commission in the exercise of the functions of the Commission, or
- (b) disrupt a hearing before the Commission.

Maximum penalty—100 penalty units or imprisonment for 2 years, or both.

48 Protection from liability

- (1) An executive officer has, in the exercise of functions as an executive officer in relation to a hearing before the Commission, the same protection and immunity as a Judge of the Supreme Court.
- (2) An Australian legal practitioner assisting the Commission or representing a person at a hearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) A person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings in the Supreme Court.
- (4) No criminal or civil liability attaches to a person for compliance, or purported compliance in good faith, with a requirement made under this Act.
- (5) If a person produces a document or other thing under section 29, no civil liability attaches to the person for producing the document or thing, whether the liability would arise under a contract or otherwise.

[12] Sections 80 and 80AA

Omit section 80. Insert instead—

80 Secrecy

- (1) A relevant person must not, directly or indirectly, make a record of, or disclose, including to a court, information acquired because of, or in connection with, the Commission's activities unless the information relates only to the Commission acting solely in its corporate capacity.
- Maximum penalty—50 penalty units or imprisonment for 12 months, or both.

- (2) The Commission is not taken to act solely in its corporate capacity only because the Commission—
- (a) enters into a contract or agreement for the purpose of acquiring—
 - (i) intelligence, or
 - (ii) other information for an investigation, or
 - (b) acquires or uses technology for the purpose of the Commission’s investigative functions.
- (3) A relevant person must not be required—
- (a) to produce in a court a document or other thing that has come into the person’s possession, custody or control because of, or during, the exercise of the person’s functions under this Act, or
 - (b) to disclose to a court a matter or thing that has come to the person’s attention in the exercise of the person’s functions under this Act.
- (4) Proceedings for an offence under this section may be commenced within, but not later than, 3 years after the date on which the offence is alleged to have been committed.
- (5) In this section—
- court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.
- disclose* includes communicate.
- produce* includes permit access to or inspection of.
- relevant person* means the following—
- (a) an executive officer,
 - (b) a member of staff of the Commission,
 - (c) a person involved in an investigation or in the exercise of the Commission’s functions under this Act,
 - (d) an Australian legal practitioner who assists, or performs services for or on behalf of, the Commission,
 - (e) a member of a task force assisting the Commission in accordance with an arrangement under section 58,
 - (f) an authority or a person to whom information is disclosed under section 80AA, and a person or employee under the control of the authority or person,
 - (g) a person conducting a review under section 78B in relation to the person’s functions under the section,
 - (h) a person who was previously a person referred to in paragraphs (a)–(g).

80AA Secrecy—defences

- (1) A relevant person does not commit an offence under section 80 if the record or disclosure is made or done—
- (a) for the purposes of, and in accordance with, this Act or otherwise in connection with the exercise of the person’s functions under this Act, or
 - (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of the Commission’s functions, or
 - (c) in accordance with a direction of the Commissioner or Management Committee, if the Commissioner or Chairperson of the Management

- Committee certifies it is necessary, in the public interest, for the information to be disclosed, or
- (d) in accordance with a requirement under the *Law Enforcement Conduct Commission Act 2016*.
- (2) A relevant person does not commit an offence under section 80 if the disclosure is—
- (a) to an authority or a person prescribed by the regulations, or
 - (b) to a medical practitioner or psychologist for the purposes of the health practitioner providing medical or psychiatric care, treatment or counselling, including psychological counselling, to the person.
- (3) In this section—
disclose includes communicate.
relevant person has the same meaning as in section 80.

[13] Section 82 Annual report

Insert after section 82(2)(g)—

- (h) in relation to forfeitures under the *Criminal Assets Recovery Act 1990*, Part 3, Division 1A, the following information—
 - (i) the number of assets forfeiture notices issued,
 - (ii) the number of forfeitures,
 - (iii) the number of dispute claims made, including whether each claim was dismissed or approved,
 - (iv) the number of court proceedings in relation to the forfeitures,
 - (v) the amount realised by the forfeitures,
- (i) a description of the use of freezing notices under the *Criminal Assets Recovery Act 1990*, including the number of freezing notices issued.

[14] Schedule 1 Provisions relating to Commissioner and Assistant Commissioners

Omit clause 6(1)(f).

[15] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provision relating to Confiscation of Proceeds of Crime Legislation Amendment Act 2022

Secrecy

- (1) Sections 80 and 80AA, as inserted by the amending Act, extend to—
 - (a) anything to which the repealed Act, section 29 applied immediately before its repeal, and
 - (b) information acquired before 1 February 2023.
- (2) A reference in section 80 or 80AA—
 - (a) to a provision of this Act includes a reference to the corresponding provision of the repealed Act, and
 - (b) to the exercise of functions under this Act includes a reference to the exercise of functions under the repealed Act.
- (3) In this clause—

amending Act means the *Confiscation of Proceeds of Crime Legislation Amendment Act 2022*.

repealed Act means the *New South Wales Crime Commission Act 1985* as in force immediately before its repeal.

Schedule 3 Amendment of Criminal Assets Recovery Act 1990 No 23

[1] Section 3 Principal objects

Omit section 3(a1). Insert instead—

- (a1) to enable the current and past wealth of a person to be recovered as a debt due to the Crown if the Supreme Court finds there is a reasonable suspicion of one or more of the following, unless the person can establish the wealth was lawfully acquired—
- (i) the person has engaged in a serious crime related activity,
 - (ii) the person has acquired proceeds from the serious crime related activity of another person,
 - (iii) the person's current or previous wealth significantly exceeds the value of the person's lawfully acquired wealth, and

[2] Section 4 Definitions

Omit the definitions of *financial institution*, *money* and *property-tracking document* from section 4(1).

Insert in alphabetical order—

account means a facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for the following—

- (a) a fixed term deposit or safety deposit box,
- (b) the deposit or withdrawal of, or a transaction involving, digital currency, including a registrable digital currency exchange service.

assets forfeiture notice has the same meaning as in section 21C(1).

current or previous wealth, of a person, means the amount equal to the sum of the values of the following, whether held within or outside New South Wales—

- (a) all interests in property of the person,
- (b) all interests in property subject to the effective control of the person,
- (c) all interests in property that the person has expended, consumed or otherwise disposed of, whether by gift, sale or otherwise,
- (d) a service, advantage or benefit provided for the person or, at the person's request or direction, to another person.

dependant in relation to a person means—

- (a) a spouse or a de facto partner of the person, or
- (b) a child, or a member of the household, of the person, dependent for support on the person.

digital currency has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.

engaging in includes having been engaged in.

financial institution means the following, and includes a registrable digital currency exchange service—

- (a) an authorised deposit-taking institution,
- (b) a body corporate that is, or if it had been incorporated in Australia would be, a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx).

money means money held by, or in the effective control of, a person, including in the form of cash or digital currency.

property-tracking document means a document, including a document in digital or electronic form, relevant to determining, identifying or locating one or more of the following—

- (a) an interest in property of a person who might reasonably be suspected of engaging in a serious crime related activity,
- (b) a document necessary for the transfer of an interest in property of a person who might reasonably be suspected of engaging in a serious crime related activity,
- (c) an interest in property that might reasonably be suspected of being an interest that is serious crime derived property,
- (d) a document necessary for the transfer of an interest in property that might be reasonably suspected of being an interest that is serious crime derived property,
- (e) the current or previous wealth of a person that might reasonably be suspected of being unexplained wealth.

registrable digital currency exchange service has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.

unexplained wealth, of a person, means the whole or any part of the current or previous wealth of the person that is or was—

- (a) illegally acquired property, or
- (b) the proceeds of an illegal activity.

[3] Section 6 Meaning of “serious crime related activity”

Omit section 6(2)–(4). Insert instead—

(2) In this section—

drug trafficking offence means an offence under the following provisions of the *Drug Misuse and Trafficking Act 1985*—

- (a) section 23—offences relating to prohibited plants,
- (b) section 23A—offences relating to enhanced indoor cultivation of prohibited plants in the presence of children,
- (c) section 24—offences relating to the manufacture and production of prohibited drugs,
- (d) section 24A—offences relating to the possession of precursors for the manufacture or production of prohibited drugs,
- (e) section 25—offences relating to the supply of prohibited drugs,
- (f) section 25A—offence of supplying prohibited drugs on an ongoing basis.

serious criminal offence means the following offences—

- (a) the following offences referred to in the *Poisons and Therapeutic Goods Act 1966*, section 45A, immediately before its repeal—
 - (i) the offence of supplying a drug of addiction or prohibited drug,
 - (ii) the offence of cultivating, supplying or possessing a prohibited plant,
 - (iii) the offence of permitting premises, as owner, occupier or lessee of the premises, to be used for the purpose of the cultivation or

- supply of a prohibited plant or of being concerned in the management of the premises,
- (b) a drug trafficking offence,
 - (c) a prescribed indictable offence, or an indictable offence of a prescribed kind, that is of a similar nature to a drug trafficking offence, including in either case an offence under a law of the Commonwealth, another State or a Territory,
 - (d) an offence punishable by imprisonment for 5 years or more involving theft, fraud, obtaining financial benefit from the crime of another person, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery or homicide,
 - (e) an offence under the *Firearms Act 1996*, section 50A, 51, 51B, 51BA or 51BB,
 - (f) a second or subsequent offence under the *Drug Misuse and Trafficking Act 1985*, section 36Y,
 - (g) an offence under the following provisions of the *Crimes Act 1900*—
 - (i) section 80D or 80E,
 - (ii) Part 3, Division 15 or 15A, other than section 91D(1)(b),
 - (iii) section 93T or 93TA,
 - (iv) section 197, to the extent the offence involves the destruction of or damage to property having a value of more than \$500,
 - (v) section 308C, to the extent the offence involves the intention of committing an offence referred to in this paragraph or paragraphs (a)–(f),
 - (vi) section 308D or 308E,
 - (h) an offence under the law of the Commonwealth or a place outside this State, including outside Australia, that, if the offence had been committed in this State, would be an offence referred to in paragraphs (a)–(g),
 - (i) an offence of attempting to commit, or of conspiracy or incitement to commit, or of aiding or abetting, an offence referred to in paragraphs (a)–(h).

[4] Section 10A Proceedings for restraining orders

Insert at the end of section 10A(5)(a)(iv)—

- , or
- (v) the person's unexplained wealth is at least—
 - (A) for unexplained wealth that is money—\$250,000, or
 - (B) otherwise—\$2,000,000,

[5] Section 10D Duration of restraining orders

Omit section 10D(1)(b). Insert instead—

- (b) there is an unsatisfied proceeds assessment order or unexplained wealth order in force against the person whose suspected serious crime related activities, value of unexplained wealth or acquisition of serious crime derived property formed the basis of the restraining order, or

[6] **Sections 18, 19, 21, 24(4) and 28B(4)**

Omit the provisions.

[7] **Part 3, Division 1A**

Insert before Division 1—

Division 1A Administrative forfeiture of certain property

Subdivision 1 Preliminary

21A Definitions

In this Division—

claimant—see section 21G(3).

dispute period of an assets forfeiture notice means—

- (a) a period of 60 days after the publication of the notice, or
- (b) a longer period specified in the notice by the Commission.

final notice—see section 21F(2).

investigative agency has the same meaning as in the *Crime Commission Act 2012*.

property means—

- (a) property seized or otherwise in the possession of an investigative agency, or held on behalf of an investigative agency, in connection with an investigation carried out by the investigative agency or another investigative agency, and
- (b) does not include real property.

21B Review of Division

- (1) The Minister must review this Division to determine whether—
 - (a) the policy objectives of the provisions remain valid, and
 - (b) the terms of the provisions remain appropriate for securing those objectives.
- (2) The review must be undertaken as soon as possible after the period of 3 years from the commencement of this Division.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Subdivision 2 Issue of assets forfeiture notice

21C Commission may issue assets forfeiture notice

- (1) The Commission may issue a notice of intention to forfeit property (an *assets forfeiture notice*) if reasonably satisfied the interest in the property is one or more of the following kinds—
 - (a) an interest in property of a person suspected of engaging in serious crime related activity, whether or not a particular person is suspected of engaging in the serious crime related activity,
 - (b) an interest in property suspected of being serious crime derived property because of serious crime related activity,

- (c) an interest in property held in a false name and suspected to be fraudulently acquired property that is illegally acquired property,
 - (d) an interest in property suspected of being—
 - (i) an available interest relating to serious crime use property, or
 - (ii) an interest capable of being the subject of a substituted serious crime use property declaration in relation to the serious crime related activity concerned.
- (2) The Commission must give the notice—
- (a) to each person the Commission knows or reasonably suspects has a beneficial interest in the property, and
 - (b) in accordance with the regulations.
- (3) The notice must include the following information—
- (a) a description of the property,
 - (b) the grounds on which the property is held by the relevant investigative agency, including the details of the seizure,
 - (c) the grounds on which the Commission has issued the notice,
 - (d) information about how to dispute the forfeiture, including the dispute period.
- (4) The notice must be published, as soon as practicable after the notice is issued—
- (a) in the Gazette, and
 - (b) in a daily newspaper circulating throughout New South Wales, and
 - (c) in the way approved by the Commission.
- (5) In this section—
substituted serious crime use property declaration has the same meaning as in section 22AA(2).

21D Commission must notify investigative agency in possession of property

- (1) The Commission must, as soon as practicable after issuing an assets forfeiture notice in relation to property, give written notice to—
- (a) the investigative agency in possession of the property, and
 - (b) if the property is being held by another person on behalf of the investigative agency—the other person.
- (2) The notice must direct the investigative agency or the other person—
- (a) to continue to hold the property, or
 - (b) to transfer the property to the NSW Trustee and Guardian.
- (3) A notice directing the investigative agency or other person to hold the property has the effect of authorising the agency or other person to hold the property until—
- (a) the forfeiture occurs, or
 - (b) the property is required to be returned under this Division.
- (4) If the Commission directs the investigative agency or other person to transfer the property to the NSW Trustee and Guardian, the Commission must, by written notice, direct the NSW Trustee and Guardian to take control of the property until—

- (a) the forfeiture occurs, or
- (b) the property is required to be returned under this Division.

21E Commission may order sale during dispute period

- (1) The Commission may, during the dispute period of an assets forfeiture notice, direct the person or investigative agency in possession of the property to which the notice relates to sell an interest in the property if—
 - (a) the property is subject to waste or substantial loss of value, or
 - (b) in the opinion of the NSW Trustee and Guardian, the cost of controlling the interest during the dispute period would exceed the value of the interest, or
 - (c) the retention of the property would constitute a danger to—
 - (i) public health and safety, or
 - (ii) the health of other animals, plants or agricultural produce because the property is a live animal, or
 - (iii) public health because the property is perishable or a live animal.
- (2) The proceeds of the sale of an interest in the property must be held by the person or investigative agency until—
 - (a) the forfeiture occurs, or
 - (b) the property is required to be returned under this Division.

21F Effect of assets forfeiture notice

- (1) An assets forfeiture notice takes effect—
 - (a) immediately after the end of the dispute period, or
 - (b) if a dispute claim is made—on the day the dispute claim is finally dismissed and the right of appeal under section 21I is exhausted.
- (2) The Commission must, as soon as practicable after an assets forfeiture notice takes effect, give written notice of the forfeiture (a *final notice*) to—
 - (a) each person who was given a notice under section 21C, and
 - (b) a person who made a dispute claim in relation to the notice.
- (3) On an assets forfeiture notice taking effect in relation to an interest in property—
 - (a) the interest is forfeited to the Crown and vests in the NSW Trustee and Guardian on behalf of the Crown, and
 - (b) if the person forfeiting the interest was in, or entitled to, possession of the property—the NSW Trustee and Guardian may take possession of the property on behalf of the Crown.
- (4) An interest forfeited under this section must be disposed of by the NSW Trustee and Guardian in accordance with the directions of the Treasurer.
- (5) The proceeds must be—
 - (a) paid to the Treasurer, and
 - (b) credited to the Proceeds Account.
- (6) The Treasurer may delegate the power to give directions under this section.

Subdivision 3 Dispute claims and appeals

21G Making of dispute claim

- (1) A person may make a dispute claim in relation to an assets forfeiture notice during the dispute period of the notice.
- (2) The dispute claim must be made in writing to the Commission.
- (3) The dispute claim must include the following information—
 - (a) the name, date of birth and address of the person making the claim (the *claimant*),
 - (b) the basis of the claim, including the following and evidence, if any, supporting the following—
 - (i) a description of the claimant's interest in the property,
 - (ii) how the interest in the property was acquired,
 - (iii) why the interest in the property is not illegally acquired property,
 - (c) a statutory declaration supporting the information in the claim.

21H Commission must assess dispute claim

- (1) The Commission must assess a dispute claim in accordance with this section.
- (2) The Commission must—
 - (a) direct that the property or, if the interest in the property has been sold, the amount held under section 21E(2) be returned to the claimant if the Commission reasonably believes it is more probable than not that—
 - (i) the claimant has an interest in the property, and
 - (ii) the interest in the property is not illegally acquired property, or
 - (b) otherwise—dismiss the claim.
- (3) The Commission must give written notice to the claimant of the following—
 - (a) the outcome of the assessment,
 - (b) the reasons for the outcome,
 - (c) if the claim is dismissed—the way in which the claimant may appeal the dismissal.

Subdivision 4 Powers of Supreme Court

21I Appeal against dismissal of dispute claim

- (1) A claimant may apply to the Supreme Court for the recovery of the claimant's interest in property the subject of a dispute claim—
 - (a) made by the claimant, and
 - (b) dismissed by the Commission.
- (2) The appeal must be made within 60 days of the applicant receiving notice of the dismissal.
- (3) The Supreme Court may—
 - (a) make an order for the following—
 - (i) if the interest in the property has not been sold or otherwise disposed of—that ownership of the interest in the property vests in the claimant and the interest in the property must be returned to the claimant,

- (ii) if the interest in the property has been sold or otherwise disposed of—that the Crown pay to the claimant the amount held under section 21E(2), or
 - (b) otherwise—dismiss the appeal.
- (4) The Supreme Court must not make an order under subsection (3)(a) unless the Court is satisfied it is more probable than not that—
 - (a) the claimant has an interest in the property, and
 - (b) the interest in the property is not illegally acquired property.

21J Application to Supreme Court for recovery of forfeited property

- (1) A person may, within 60 days after the issue of a final notice, apply to the Supreme Court for the recovery of the property to which the notice relates.
- (2) The Supreme Court may grant leave to make the application up to 6 months after the issue of the final notice.
- (3) The Supreme Court may—
 - (a) make an order for the following—
 - (i) if the interest in the property has not been sold or otherwise disposed of—that ownership of the interest in the property vests in the applicant and the interest in the property must be returned to the applicant,
 - (ii) if the interest in the property has been sold or otherwise disposed of—that the Crown pay an amount to the applicant determined by the Court to be the value, on the day of the determination, of the applicant’s former interest in the property, or
 - (b) otherwise—dismiss the appeal.
- (4) The Supreme Court must not make an order under subsection (3)(a) unless the Court is satisfied of the following—
 - (a) it is more probable than not that—
 - (i) the applicant has an interest in the property, and
 - (ii) the interest is not illegally acquired property,
 - (b) the applicant has a reasonable excuse for failing to make a dispute claim in accordance with this Division,
 - (c) the applicant commenced the application as soon as reasonably practicable.

21K Relief from hardship—dependants

- (1) A dependant of a person who will forfeit an interest in property under this Division may, within 60 days after the issue of the final notice in relation to the property, apply to the Supreme Court for an order under this section.
- (2) The Supreme Court may grant leave to make the application up to 6 months after the issue of the final notice.
- (3) If the Supreme Court is satisfied the forfeiture of the property will cause hardship to the dependant, the Court—
 - (a) may order that the dependant is entitled to be paid a specified amount out of the proceeds of sale of the interest, being an amount the Court thinks necessary to prevent hardship to the dependant, and

- (b) if the dependant is under 18 years of age—may make ancillary orders for the purpose of ensuring the proper application of the amount.
- (4) The Court must not make an order under this section in favour of the dependant unless the Court is satisfied the dependant had no knowledge of serious crime related activities or illegal activities that formed the basis of the forfeiture.
- (5) Subsection (4) does not apply if the dependant is under 18 years of age.

[8] Section 28A Making of unexplained wealth order

Omit section 28A(2). Insert instead—

- (2) The Supreme Court must make an unexplained wealth order against a person if the Court finds there is a reasonable suspicion—
 - (a) the person has, before the day the application is made—
 - (i) engaged in a serious crime related activity, or
 - (ii) acquired serious crime derived property from another person’s serious crime related activity, whether or not the person knew or suspected the property was derived from illegal activities, or
 - (b) the person’s current or previous wealth exceeds the value of the person’s lawfully acquired wealth by—
 - (i) for money—\$250,000, or
 - (ii) otherwise—\$2,000,000.

[9] Section 28A(6)

Insert after section 28A(5)—

- (6) An amount payable under an unexplained wealth order must not be taken into account in determining a person’s entitlement to legal aid under the *Legal Aid Commission Act 1979*.

[10] Section 28B Assessment for unexplained wealth order—unexplained wealth

Omit section 28B(2). Insert instead—

- (2) The Supreme Court must assess the unexplained wealth of the person as the whole or any part of the current or previous wealth of the person that the Supreme Court is not satisfied on the balance of probabilities is not or was not—
 - (a) illegally acquired property, or
 - (b) the proceeds of an illegal activity.

[11] Section 28C General provisions applying to proceeds assessment and unexplained wealth orders

Insert “or under Part 2, Division 1A of that Act” after “*Confiscation of Proceeds of Crime Act 1989*” in section 28C(1)(c).

[12] Section 28C(1A)

Insert after section 28C(1)—

- (1A) In assessing the amount payable under an unexplained wealth order, the Supreme Court may, if the Supreme Court considers it necessary, deduct from the amount assessed under section 28B the reasonable necessities of life of—
 - (a) the person subject to the order, and

- (b) the person's dependants, if any.

[13] Part 3, Division 2B

Omit the Division. Insert instead—

Division 2B Ancillary orders

31D Additional orders if application made for certain other orders

- (1) This section applies if an application is made for the following orders—
- (a) a confiscation order,
 - (b) an order under section 31A(2) or 31B(2) (a *non-disclosure order*),
 - (c) an order under Division 1A, Subdivision 4.
- (2) The Supreme Court may, on the application of the Commission, make the following orders—
- (a) an order for the examination on oath, before the Court or before an officer of the Court prescribed by rules of court, of—
 - (i) the affected person or another person in relation to the affairs of the affected person, including the nature and location of property in which the affected person has an interest, and
 - (ii) the spouse or de facto partner of the affected person in relation to the affairs of the spouse, de facto partner or affected person, including the nature and location of property in which the spouse, de facto partner or affected person has an interest,
 - (b) an order directing the following persons to give the Commission a statement setting out information about the property or dealings with the property in which the affected person has or had an interest—
 - (i) a person who is or was an affected person, or
 - (ii) if the affected person is or was a body corporate—a director of the body corporate specified by the Court.
- (3) The statement must be—
- (a) provided to the Commission within the period specified in the order, and
 - (b) verified by the oath of the person making the statement.
- (4) The Commission must give notice of an application for an order under this section to the affected person.
- (5) Sections 13 and 13A apply to a person being examined under an order under this section in the same way the provisions apply to a person being examined under an order under section 12(1).
- (6) In this section—
- affected person* means—
- (a) for an application for an order under Division 1A, Subdivision 4—the claimant or applicant who applied for the order, or
 - (b) for an application for an assets forfeiture order—the owner of an interest in property proposed to be subject to the order, or
 - (c) for an application for a proceeds assessment order or unexplained wealth order—the person proposed to be subject to the order, or

- (d) for a non-disclosure order—the defendant whose interest in property is proposed to be subject to the order.

claimant has the same meaning as in Division 1A.

[14] Part 3A

Insert after Part 3—

Part 3A Powers of NSW Trustee and Guardian

32B Definitions

In this Part—

date, of a relevant notice or order, means the date on which the notice or order was made, issued or given.

relevant notice or order means the following—

- (a) a restraining order, including the following relating to a restraining order—
- (i) an ancillary order under section 12,
 - (ii) an order for the sale of an interest in property under section 14,
- (b) an assets forfeiture notice,
- (c) an assets forfeiture order,
- (d) a notice given in accordance with section 21D(4).

32C Protection of NSW Trustee and Guardian

- (1) A person who hinders or obstructs the NSW Trustee and Guardian in the performance of the NSW Trustee and Guardian's functions under a relevant notice or order is guilty of an offence.
Maximum penalty—20 penalty units or imprisonment for 6 months, or both.
- (2) The *NSW Trustee and Guardian Act 2009*, section 121 applies to the functions of the NSW Trustee and Guardian under this Act in the same way as it applies to the functions of the NSW Trustee and Guardian under that section.
- (3) The NSW Trustee and Guardian is not liable for rates, land tax or other statutory charges—
- (a) due on or after the date of the relevant notice or order, and
 - (b) imposed by or under a law of the State on or in relation to an interest in property of which the NSW Trustee and Guardian has been directed by a relevant notice or order to take control.
- (4) Subsection (3) does not extend to the NSW Trustee and Guardian's liability for rates, land tax or other statutory charges for the rents and profits received by the NSW Trustee and Guardian in relation to the property on or after the date of the relevant notice or order.
- (5) If the NSW Trustee and Guardian, in accordance with a relevant notice or order, takes control of a business carried on by a person, the NSW Trustee and Guardian is not liable—
- (a) for a payment for long service leave for which the person was liable, or
 - (b) for a payment for long service leave to which a person employed by the NSW Trustee and Guardian in the person's capacity as manager of the business, or the legal representative of the person, becomes entitled after the date of the relevant notice or order, or

- (c) to meet, otherwise than out of the income or assets of the business, liabilities and expenses incurred in controlling the business.
- (6) In this section—
NSW Trustee and Guardian includes staff and agents of the NSW Trustee and Guardian.

32D Fees payable to NSW Trustee and Guardian

- (1) This section applies to an interest in property—
 - (a) over which the NSW Trustee and Guardian takes control in accordance with a restraining order or a notice given in accordance with section 21D(4), or
 - (b) vested in the NSW Trustee and Guardian on the forfeiture of the property under an assets forfeiture notice or assets forfeiture order.
- (2) The NSW Trustee and Guardian may deduct the prescribed fees from the proceeds of the sale of an interest in the property.
- (3) If the interest is not sold or otherwise disposed of, the NSW Trustee and Guardian may recover the prescribed fees from the Proceeds Account.

32E Evidentiary certificate

- (1) A certificate of evidence issued in accordance with this section is evidence of the following, if specified in the certificate—
 - (a) that a relevant notice or order has been made and is in force,
 - (b) that a relevant notice or order was or was not subject to a term or condition,
 - (c) that an obligation, power or direction was or was not conferred on the NSW Trustee and Guardian by a relevant notice or order,
 - (d) that an interest in property was or was not subject to a relevant notice or order,
 - (e) that an interest in property subject to a relevant notice or order was or was not sold or otherwise disposed of,
 - (f) that an interest in property subject to a relevant notice or order was or was not vested in the NSW Trustee and Guardian,
 - (g) that an ancillary order under section 12 has been made and is in force,
 - (h) other matters prescribed by the regulations.
- (2) An evidentiary certificate must—
 - (a) relate to a relevant notice or order that—
 - (i) has been made and is in force, and
 - (ii) confers obligations on, or gives a direction to, the NSW Trustee and Guardian, and
 - (b) be signed by the Chief Executive Officer of the NSW Trustee and Guardian or by an officer authorised by the Chief Executive Officer, and
 - (c) be sealed with the seal of the NSW Trustee.
- (3) The certificate—
 - (a) must be accepted by other persons, whether or not acting under this or another Act, as evidence of the matter certified, and

- (b) is admissible in criminal or civil proceedings under this Act as evidence of the matter certified, in the absence of evidence to the contrary.

[15] Section 38 Search warrants

Insert at the end of section 38(1)(e)—

, or

- (f) property reasonably suspected of being unexplained wealth.

[16] Section 38(1A)

Insert after section 38(1)—

- (1A) An authorised officer under this Act may apply to an authorised officer, within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*, for the issue of a search warrant under this Division if the authorised officer under this Act suspects on reasonable grounds that property that is unexplained wealth is or, within 72 hours, will be in the possession of a person.

[17] Section 39 Seizure of property and searching of person

Insert at the end of section 39(1)(e)—

, or

- (f) unexplained wealth.

[18] Section 39(3A)

Insert after section 39(3)—

- (3A) A person executing a search warrant issued under this Division in relation to unexplained wealth in the possession of a person may, by the use of necessary and reasonable force—
- (a) stop, search and detain the person, and
- (b) seize and detain all or part of a thing—
- (i) found as a result of the search, and
- (ii) that the person reasonably suspects is unexplained wealth.

[19] Section 42

Omit the section. Insert instead—

42 Obstruction of persons executing a search warrant

A person who, without reasonable excuse, obstructs or hinders a person executing a search warrant under this Division or Division 3 is guilty of an offence.

Maximum penalty—1,000 penalty units or imprisonment for 5 years, or both.

[20] Section 44 Application for search warrant for location of property-tracking document

Insert at the end of the section—

- (2) If an authorised officer reasonably suspects a property-tracking document is, or may be within 72 hours, in the possession of a person, the officer may—
- (a) apply to the Court for the issue of a search warrant under section 45 in relation to the person, and
- (b) lay before the Supreme Court an information on oath setting out the grounds for the application.

[21] Section 45 Search warrant for location etc of property

Insert after section 45(1)—

- (1A) If an application is made under section 44 for a search warrant in relation to a property-tracking document reasonably suspected of being in the possession of a person, the Supreme Court may issue a search warrant authorising an authorised officer, with necessary and reasonable assistance, and by the use of necessary and reasonable force to—
- (a) stop, search and detain the person, and
 - (b) seize and detain all or part of a thing—
 - (i) found as a result of the search, and
 - (ii) that the officer reasonably suspects is, or contains, a property-tracking document.
- (1B) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 4, Division 4 applies to a search warrant issued under subsection (1A).

[22] Section 47

Omit the section. Insert instead—

47 Seizure of property

- (1) An authorised officer executing a search warrant under this Division may do one or more of the following—
- (a) examine property or evidence seized in executing the search warrant (the *property or evidence*),
 - (b) inspect and test the property or evidence,
 - (c) for property or evidence that is a document—make copies of, and take extracts from, the document,
 - (d) for property or evidence that is, or that might reasonably be suspected of being, held in or accessible from, a computer—give a direction to a person to give the authorised officer—
 - (i) information or assistance that is reasonable and necessary to enable the officer to access data held in, or accessible from, the computer, or
 - (ii) information or assistance reasonably necessary to allow the officer to—
 - (A) copy data from the computer to another computer, or
 - (B) convert the data into documentary form or another form intelligible to a computer used by the officer.
- (2) Without limiting subsection (1)(d), the authorised officer may require the person to provide assistance in accessing data on a computer secured by biometric means, including, for example, fingerprints or retina scans.
- (3) A search warrant issued under this Division is taken to authorise the seizure of a document or thing that the authorised officer executing the search warrant reasonably believes—
- (a) will afford evidence of a criminal offence, whether under the law of this State or the Commonwealth or another State or a Territory, and
 - (b) is necessary to seize to prevent the concealment, loss or destruction of the document or thing.

- (4) Self-incrimination is not a reasonable excuse for refusing to comply with a direction given under subsection (1)(d).
- (5) To avoid doubt—
 - (a) information provided by a specified person under subsection (1) to access data held in, or accessible from, a computer may be used only for that purpose and no other purpose, and
 - (b) this section is subject to any other provision of this Act or another Act that provides for how a police officer may take particulars that are necessary to identify a person.
- (6) In this section—
computer means an electronic device for storing, processing or transferring information.

[23] Part 4, Division 4, heading

Insert “**and freezing notices**” after “**orders**”.

[24] Section 48 Monitoring orders

Insert at the end of section 48(2)(c)—

, or

- (d) has current or previous wealth exceeding the value of the person’s lawfully acquired wealth by—
 - (i) for money—\$250,000, or
 - (ii) otherwise—\$2,000,000.

[25] Section 48A

Insert after section 48—

48A Freezing notices

- (1) The Commissioner for the Commission may give a freezing notice to a financial institution in relation to a person’s account if the Commissioner—
 - (a) is satisfied the person is a relevant person, and
 - (b) reasonably suspects funds in the account will be withdrawn, transferred or otherwise disposed of before—
 - (i) the Commission makes an application for a restraining order applying to the funds, or
 - (ii) the Supreme Court determines an application for a restraining order applying to the funds.
- (2) The financial institution must prevent the withdrawal or transfer of funds from the account for the period specified in the freezing notice.
- (3) The Commissioner for the Commission may specify a period of no longer than 2 business days in the freezing notice.
- (4) The Commissioner for the Commission may give 1 further freezing notice in accordance with this section if—
 - (a) the Commissioner has applied for a restraining order in relation to the funds held in the account, and
 - (b) the Supreme Court has not yet determined the application.

- (5) A freezing notice given to a financial institution under this section must contain—
 - (a) the name of the holder of each account subject to the notice, and
 - (b) the period referred to in subsection (2), and
 - (c) other information prescribed by the regulations.
- (6) The freezing notice takes effect when the financial institution is served with the notice.
- (7) The Commissioner for the Commission must give a copy of a freezing notice given to a financial institution under this section to the Law Enforcement Conduct Commission.
- (8) In this section—

relevant person means a person who—

 - (a) has engaged in serious crime related activity, or
 - (b) has acquired serious crime derived property, or
 - (c) the Commissioner for the Commission reasonably suspects has unexplained wealth exceeding a value of—
 - (i) for money—\$250,000, or
 - (ii) otherwise—\$2,000,000.

[26] Section 49

Omit the section. Insert instead—

49 Offences relating to monitoring orders and freezing notices

- (1) A financial institution given notice of a monitoring order is guilty of an offence if the institution knowingly—
 - (a) contravenes the order, or
 - (b) provides false or misleading information in purported compliance with the order.
- (2) A financial institution that is given a freezing notice under section 48A is guilty of an offence if the institution knowingly contravenes the notice.
- (3) In this section—

financial institution includes an officer, employee or agent of the institution acting in the course of the person's employment or agency.

Maximum penalty—1,000 penalty units.

[27] Section 51 Communication of information by financial institutions to prescribed authorities

Omit section 51(2).

[28] Sections 51A–52

Omit section 52. Insert instead—

51A Giving notices to financial institutions

- (1) A relevant person may give a written notice to a financial institution requiring the institution to provide to an authorised officer information or documents relevant to one or more of the following—

- (a) determining whether an account is or was held by a specified person with the financial institution,
 - (b) determining whether a person is or was a signatory to an account,
 - (c) if a person holds an account with the institution—the current balance of the account,
 - (d) details of transactions involving an account over a specified period of up to 6 months,
 - (e) details of all accounts held by a specified person, including the name of each other person who also holds or held the accounts,
 - (f) details of all accounts for which a specified person is an authorised signatory,
 - (g) a transaction conducted by the financial institution on behalf of a specified person,
 - (h) the name of the person who holds a safety deposit box with the financial institution and the dates on which the safety deposit box has been accessed.
- (2) The person must not give the notice unless the person reasonably believes the notice is required—
- (a) to determine whether to take action under this Act, or
 - (b) in relation to proceedings under this Act.
- (3) In this section—
- relevant person** means—
- (a) the Commissioner for the Commission, or
 - (b) the Commissioner of Police.

51B Contents of notices to financial institutions

- (1) The notice must—
- (a) state that the person giving the notice believes the notice is required—
 - (i) to determine whether to take an action under this Act, or
 - (ii) for proceedings under this Act, and
 - (b) specify the name of the financial institution, and
 - (c) specify the kind of information or documents required to be provided, and
 - (d) specify the way in which the information or documents must be provided, and
 - (e) specify that the information or documents must be provided no later than—
 - (i) 14 days after the notice is given, or
 - (ii) if the officer giving the notice thinks it appropriate—another day, occurring no earlier than 3 business days after the notice is given, specified in the notice, and
 - (f) if the notice specifies that information about the notice must not be disclosed—set out the offence of disclosing the existence or nature of the notice, and
 - (g) set out the offence of failing to comply with the notice.

- (2) For subsection (1)(e)(ii), the person giving the notice must consider the following in deciding whether to specify a day earlier than 14 days after the notice is given—
 - (a) the urgency of the situation,
 - (b) hardship that may be caused to the financial institution in complying with the notice.
- (3) A financial institution that is given a notice under section 51A may request an extension of the period within which the information or documents must be provided.
- (4) The person who gave the notice may, by further written notice on the request of the financial institution or on the person's own initiative, vary the notice to specify that the information or documents must be provided by a later day.

51C Offences relating to notices

- (1) A financial institution commits an offence if—
 - (a) the financial institution makes a statement, whether orally, in a document or in another way, and
 - (b) the statement—
 - (i) is false or misleading, or
 - (ii) omits a matter or thing without which the statement is misleading, and
 - (c) the statement is made in connection with a notice under section 51A.
- (2) A financial institution commits an offence if—
 - (a) the financial institution is given a notice under section 51A, and
 - (b) the notice specifies that information about the notice must not be disclosed, and
 - (c) the financial institution discloses the existence or nature of the notice.
- (3) A financial institution commits an offence if—
 - (a) the financial institution is given a notice under section 51A, and
 - (b) the financial institution fails to comply with the notice.
- (4) A financial institution does not commit an offence under this section if the financial institution discloses the existence or nature of the notice to a law enforcement agency monitoring an account specified in the notice.
- (5) It is a defence to an offence against subsection (3) if—
 - (a) the financial institution fails to comply with the notice only because the financial institution does not provide the information or a document within the period specified in the notice, and
 - (b) the financial institution took all reasonable steps to provide the information or document within the period, and
 - (c) the financial institution provides the information or document as soon as practicable after the end of the period.
- (6) In this section—

financial institution includes an officer, employee or agent of the institution acting in the course of the person's employment or agency.

law enforcement agency has the same meaning as in the *Crime Commission Act 2012*.

Maximum penalty—1,000 penalty units.

52 Protection for financial institutions

- (1) For the *Crimes Act 1900*, Part 4AC—
 - (a) the fact that a financial institution is, or has been, subject to a monitoring order must be disregarded, and
 - (b) a financial institution that, under section 51, gives information as soon as practicable after forming the belief referred to in the section, must be taken not to have been in possession of the information.
- (2) An action, suit or proceeding does not lie against a financial institution in relation to the following—
 - (a) the giving of information by the financial institution under section 51 or 51A,
 - (b) compliance with a monitoring order or freezing notice.
- (3) In this section—

financial institution includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.

[29] Section 53 Proceedings for offences

Omit section 53(3) and (4). Insert instead—

- (3) Proceedings for the following must be dealt with before the Supreme Court in its summary jurisdiction—
 - (a) an offence under section 16—contravention of a restraining order,
 - (b) an offence under section 49—contravention of a monitoring order or freezing notice,
 - (c) an offence under section 50(1)—disclosure of the existence of a monitoring order.

[30] Section 61 Restriction on functions

Insert after section 61(2)—

- (2A) An application for a forfeiture order under the *Confiscation of Proceeds of Crime Act 1989*, section 34A(1) must not be made in relation to an interest in property that is, or has been, the subject of a restraining order under this Act.

[31] Sections 63 and 63A

Omit section 63. Insert instead—

63 Stay of proceedings

- (1) The Supreme Court may stay proceedings under this Act that are not criminal proceedings (***non-criminal proceedings***) if the court considers it is in the interests of justice.
- (2) The court must not stay non-criminal proceedings on the following grounds—
 - (a) that criminal proceedings involve—
 - (i) the person subject to the non-criminal proceedings, whether or not the circumstances relating to the non-criminal proceedings are or may be the same as, or substantially similar to, the circumstances relating to the criminal proceedings, or

- (ii) another person in relation to matters relating to the subject matter of the non-criminal proceedings, whether or not the subject matter is the same as, or substantially similar to, the matters relating to the criminal proceedings,
 - (b) that a person may, in the non-criminal proceedings, consider it necessary—
 - (i) to give relevant evidence, or
 - (ii) to call relevant evidence from another person,
 - (c) that non-criminal proceedings in relation to another person have been or will or may be stayed, whether or not the staying of the non-criminal proceedings would avoid multiple proceedings.
- (3) In considering whether a stay of non-criminal proceedings is in the interests of justice, the Supreme Court must consider the following matters—
- (a) that the non-criminal proceedings, and criminal proceedings referred to in subsection (2)(a), should proceed as expeditiously as possible,
 - (b) the cost and inconvenience to the Crown of keeping property to which the non-criminal proceedings relate and being unable to expeditiously realise proceeds from the property,
 - (c) the risk of the Commission suffering prejudice in relation to the conduct of the non-criminal proceedings if stayed,
 - (d) whether the court could address the prejudice that a person, other than the Commission, would suffer if the non-criminal proceedings were not stayed, whether by making other orders or otherwise.
- Note—** Other orders the court could make include an order for the hearing of proceedings in closed court or an order prohibiting the disclosure of information.
- (4) In this section—
- criminal proceedings*** includes a reference to criminal proceedings proposed to be, or that may be, instituted or commenced, whether or not under this Act.
- relevant evidence*** means evidence that is or may be relevant to a matter that is or may be at issue in criminal proceedings instituted or commenced against the person or another person.

63A Closed court

The Supreme Court may order that proceedings under this Act, other than criminal proceedings, be heard, in whole or in part, in closed court if the court considers the order is necessary to prevent interference with the administration of criminal justice.

[32] Sections 66 and 66A

Omit the sections.

[33] Section 68

Insert after section 67—

68 Review of certain provisions relating to unexplained wealth

- (1) The Minister must conduct a review of the reviewable provisions to determine whether—
 - (a) the policy objectives of the reviewable provisions remain valid, and
 - (b) the terms of the reviewable provisions remain appropriate for securing the objectives.

- (2) The review must be commenced as soon as practicable after 1 February 2025.
- (3) A report on the outcome of the review must be tabled in each House of Parliament by 1 February 2026.
- (4) In this section—
reviewable provisions means—
 - (a) Part 3, Divisions 1A and 2B and Part 3A, and
 - (b) sections 10A(5)(a)(v), 10D(1)(b), 28A(2) and (6), 28B(2), 28C(1)(c) and (1A), 38(1)(f) and (1A), 39(1)(f) and (3A), 42, 44(2), 45(1A), 47, 48(2)(d), 48A, 49, 51A–52, 53(3), 61(2A), 63 and 63A.

[34] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions relating to Confiscation of Proceeds of Crime Legislation Amendment Act 2022

Definition

In this Part—

2022 amending Act means the *Confiscation of Proceeds of Crime Legislation Amendment Act 2022*.

Serious crime related activities and unexplained wealth orders

- (1) An amendment made by the 2022 amending Act extends to a serious crime related activity that occurred before 1 February 2023.
- (2) An amendment made by the 2022 amending Act does not apply to proceedings pending immediately before 1 February 2023.

Non-criminal proceedings

Sections 63 and 63A, as inserted by the 2022 amending Act, apply to the following—

- (a) proceedings pending immediately before 1 February 2023,
- (b) proceedings commenced on or after 1 February 2023,
- (c) applications pending immediately before 1 February 2023 for a stay of proceedings,
- (d) applications for a stay of proceedings made on or after 1 February 2023.

Schedule 4 Amendment of other legislation

4.1 Criminal Assets Recovery Regulation 2017

[1] **Clause 7 Fees payable to NSW Trustee and Guardian**

Omit “For the purposes of section 19 of the Act” from clause 7(1).

Insert instead “For the Act, section 32D(2)”.

[2] **Clause 7(1)**

Insert “or a notice given under the Act, section 21D(4),” after “restraining order”.

[3] **Clause 12A**

Insert after clause 12—

12A Maximum allowable costs for legal services—the Act, s 16B

For the Act, section 16B(2) and (3), the maximum allowable costs are the rates for legal representation set by the Attorney General, as adjusted from time to time and published on the website of the Department of Communities and Justice.

4.2 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert at the end of Table 2, Part 13, with appropriate clause numbering—

Criminal Assets Recovery Act 1990

An offence under the *Criminal Assets Recovery Act 1990*, section 42.

Confiscation of Proceeds of Crime Act 1989

An offence under the *Confiscation of Proceeds of Crime Act 1989*, section 67C.

4.3 Unexplained Wealth (Commonwealth Powers) Act 2018 No 42

Section 8

Omit the section. Insert instead—

8 Relevant offences

For the Commonwealth Proceeds of Crime Act, a *serious criminal offence*, within the meaning of the *Criminal Assets Recovery Act 1990*, section 6(2), is specified by this Act, other than—

- (a) an offence specified in paragraph (c) or (h) of the definition, and

- (b) an offence specified in paragraph (i) of the definition, but only to the extent to which the offence relates to an offence specified in paragraph (c) or (h) of the definition.