



New South Wales

Confiscation of Proceeds of Crime Legislation Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Confiscation of Proceeds of Crime Act 1989*, the *Crime Commission Act 2012*, the *Criminal Assets Recovery Act 1990* and other legislation to prevent and disrupt organised and other serious crime, including the following—

- (a) to provide law enforcement with certain powers to seize and forfeit property connected to persons involved in serious criminal offences including serious drug offences,
- (b) to provide for additional powers of the NSW Crime Commission to conduct investigations and to provide for circumstances where a person is in contempt of the Commission,
- (c) to set out circumstances in which the Supreme Court must make an unexplained wealth order,
- (d) to expand the powers of law enforcement to seize property under a search warrant,
- (e) to provide that the NSW Crime Commissioner and the NSW Police Commissioner may give notice requiring financial institutions to provide information about transactions or assets of certain persons,
- (f) to implement the recommendations resulting from the statutory review of the *Crime Commission Act 2012* and the *Criminal Assets Recovery Act 1990*.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act.

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

Schedule 1[1] replaces the definitions of *account*, *appropriate court* and *financial institution* and inserts the definitions of *digital currency*, *drug trafficker declaration*, *registrable digital currency exchange service* and *unlawfully acquired*.

Schedule 1[3] provides that a property-tracking document is a document relevant to determining the property of a person who committed a serious offence or determining tainted property in relation to a serious offence.

Schedule 1[7] provides for circumstances where certain property (the *relevant property*) the subject of a restraining order or confirmed freezing notice is forfeited to the Crown if a person is convicted of a serious criminal offence. Each person with a beneficial interest in the relevant property must be given notice of the forfeiture by the authority who applied for the restraining order or confirmation of freezing notice and proposed section 17C sets out the particulars of the notice.

Proposed sections 17D and 17E provide for applications to the court for an exclusion order to exclude some or all of the relevant property from forfeiture and for appeals to the Supreme Court against the dismissal of an exclusion order to recover some or all of the relevant property. Proposed section 17F provides for circumstances in which the relevant court may declare the relevant property forfeited.

Proposed section 17G provides that a person may apply to the court for an order to recover the person's interest in property forfeited under proposed Division 1A. **Schedule 1[18]** provides that no duty is payable for the return of any property under proposed section 17G.

Proposed section 17H provides that the dependent of a person who has an interest in property forfeited under proposed Division 1A may apply to the Supreme Court for an order to be paid a specific amount out of the proceeds of the sale of the interest in the property if the court is satisfied the forfeiture has caused the dependent hardship.

Schedule 1[9] provides for drug trafficker declarations (a *declaration*). 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. If a declaration is made against a person, an appropriate officer may apply to an appropriate court for a forfeiture order in relation to property belonging to the person and the court must make the order in relation to the property unless the person can prove the property is lawfully acquired. A declaration expires 5 years after the day the declaration was made. **Schedule 1[2], [6] and [8]** make consequential amendments.

Schedule 1[10] provides that an authorised officer may issue a search warrant for property in the control of a person against whom a drug trafficker declaration has been made or, if the person is charged with a serious drug offence, may be made if the person was convicted of the offence. **Schedule 1[12]** makes a consequential amendment and **Schedule 1[11]** inserts the definition of *authorised officer*.

Schedule 1[14] provides that an appropriate officer or a member of the Police Force may apply to the Supreme Court for a restraining order in relation to property belonging to a person against whom a drug trafficker declaration has been made or may be made. The Court may make an order if the Court is satisfied there are reasonable grounds for suspecting the property belongs to the person against whom the declaration has been made. **Schedule 1[4]** makes a consequential amendment.

Schedule 1[15] provides that the Supreme Court may treat any document as a property tracking document if the document is relevant to determining property is connected to the offence and the authorised officer has stated on oath the officer has reasonable grounds to believe the property is in the control of the person who committed the offence.

Schedule 1[16] provides for the powers of an authorised officer to seize property-tracking documents. Proposed sections 67A and 67B provide for circumstances in which an authorised

officer may apply to the Supreme Court for a search warrant for a property-tracking document and sets out the powers of the authorised officer under the warrant, including powers relating to the seizure of property-tracking documents. Proposed section 67C makes it an offence to obstruct a person executing a relevant search warrant with a maximum penalty of 1,000 penalty units or imprisonment for 5 years, or both. **Schedule 1[13]** makes a consequential amendment.

Schedule 1[17] provides that the Commissioner of Police may give a written notice to a financial institution to provide an authorised officer particular information or documents and the required particulars of the notice. Proposed section 71C sets out offences relating to a notice issued to a financial institution with a maximum penalty of 1,000 penalty units. Proposed section 72 provides for protections for a financial institution that complies with a notice given under section 71 or proposed section 71A or a monitoring order.

Schedule 1[19] requires the Minister to commence a review of certain proposed provisions as soon as practicable after 1 February 2025.

Schedule 1[20] contains transitional provisions. **Schedule 1[5]** makes a consequential amendment.

Schedule 2 Amendment of Crime Commission Act 2012 No 66

Schedule 2[1] expands the object of the Act to include preventing and disrupting organised and other serious crime.

Schedule 2[2] expands the principal functions of the NSW Crime Commission to include applications for orders under the *Crimes (Serious Crime Prevention Orders) Act 2016*.

Schedule 2[3] provides that if a person makes a claim that the person is not required to produce a document or thing related to a production notice to an officer of the NSW Crime Commission, the officer will serve the person with a summons requiring the person to appear before the Commissioner under section 47C to show cause as to why they should not be dealt with under section 47B for alleged contempt. **Schedule 2[4]–[7]** make consequential amendments.

Schedule 2[8] provides that answers and documents provided by a witness to the NSW Crime Commission may be used in evidence against the person for a relevant order unless proceedings for the order have commenced or are imminent. **Schedule 2[9]** inserts the definitions of *imminent* and *relevant order*.

Schedule 2[10] provides that the NSW Crime Commission may direct evidence given before the Commission to be given to the following—

- (a) an agency responsible for making applications for certain orders,
- (b) a court an application hearing an application for certain orders,
- (c) a defendant in proceedings for certain orders.

Schedule 2[11] provides for contempt of the NSW Crime Commission, including when a person is guilty of contempt of the Commission, the procedure the Commission may follow to require the Supreme Court to inquire into the alleged contempt and the powers and obligations of the Court in relation to a hearing about alleged contempt of the Commission.

Schedule 2[12] provides that a relevant person, as defined in the proposed section, must not disclose certain information acquired under the Act or in connection with the Commission acting in its corporate capacity, with a maximum penalty of 50 penalty units or imprisonment for 12 months, or both. Proceedings for an offence of this kind must be commenced within 3 years after the date of the alleged offence. A relevant person must not be required to produce information acquired under the Act or in connection with the Commission acting in its corporate capacity. Proposed section 80AA permits certain disclosures of information.

Schedule 2[13] requires an annual report by the Commissioner to include certain information in relation to forfeitures and freezing notices under the *Criminal Assets Recovery Act 1990*.

Schedule 2[14] provides that the office of Commissioner or Assistant Commissioner does not become vacant if the office holder is absent from duty for 14 days in the period of 12 months without the Minister's leave or unless the absence results from illness or another unavoidable cause.

Schedule 2[15] provides that proposed sections 80 and 80AA extend to anything to which the *New South Wales Crime Commission Act 1985*, section 29 applied immediately before its repeal and information acquired before 1 February 2023.

Schedule 3 Amendment of Criminal Assets Recovery Act 1990 No 23

Schedule 3[1] expands the objects of the Act to provide for the confiscation of a person's unexplained wealth where the person's current or previous wealth significantly exceeds the value of the person's lawfully acquired wealth.

Schedule 3[2] inserts the definitions of *account*, *assets forfeiture notice*, *current or previous wealth*, *dependant*, *digital currency*, *engaging in*, *registrable digital currency exchange service* and *unexplained wealth*, replaces the definition of *financial institution* to include a registrable digital currency exchange service and replaces the definition of *money* to include money held in the form of digital currency. **Schedule 3[6] and [10]** make consequential amendments.

Schedule 3[3] replaces the definition of *drug trafficking offence*, inserts the definition of *serious criminal offence* and removes the definition of *drug premises offence* for the meaning of serious crime related activity.

Schedule 3[4] requires the Supreme Court to make a restraining order against a person if an authorised officer suspects that the person has unexplained wealth that is money totalling \$250,000 or more, or for wealth that is not money, that is at least \$2,000,000. **Schedule 3[2]** replaces the definition of *property-tracking document* to include a document related to current or previous wealth that might reasonably be suspected to be unexplained wealth and to clarify that a document may be in digital or electronic form.

Schedule 3[5] provides that the suspected value of unexplained wealth of a person is grounds for a restraining order to remain in force after the first 2 working days of the operation of the order if there is an unsatisfied proceeds assessment or unexplained wealth order in force against the person.

Schedule 3[7] provides for the administration of the forfeiture of property, other than land, that is seized in connection with an investigation including the following—

- (a) circumstances in which the NSW Crime Commission may issue an assets forfeiture notice and the required particulars of the notice, including who the notice must be given to,
- (b) the requirement that the Commission give written notice of an asset forfeiture notice to an agency in possession of property relating to the notice,
- (c) the effect of an assets forfeiture notice, including particulars of the commencement of the notice and the power of the Commission to direct the person in possession of the property to sell an interest in property related to the order,
- (d) dispute claims and appeals in relation to an assets forfeiture notice,
- (e) the powers and obligations of the Supreme Court in relation to appeals against dismissals of dispute claims and for the recovery of forfeited property.

Schedule 3[13] makes a consequential amendment.

Schedule 3[8] sets out circumstances in which the Supreme Court is required to make an unexplained wealth order against a person.

Schedule 3[9] provides that an amount payable under an unexplained order must not be taken into account in determining a person's entitlement to legal aid.

Schedule 3[11] provides that the Supreme Court must deduct from the amount payable under an unexplained wealth order the value of property forfeited under proposed Part 2, Division 1A of the *Confiscation of Proceeds of Crime Act 1989*.

Schedule 3[12] provides that the Supreme Court may consider the reasonable necessities of life in relation to a person subject to an unexplained wealth order and the person's dependants when assessing the amount payable under an unexplained wealth order.

Schedule 3[14] provides for the powers of the NSW Trustee and Guardian, including limitations on liabilities, and makes it an offence to hinder the NSW Trustee and Guardian in the performance of its functions under a relevant order or notice, with a maximum penalty of 20 penalty units or imprisonment for 6 months, or both. The proposed Part also sets out fees payable to the NSW Trustee and Guardian and the particulars of an evidentiary certificate issued under proposed section 32E.

Schedule 3[15] provides that an authorised officer may apply for a search warrant for any premises if the officer has reasonable grounds for believing unexplained wealth is on the premises or will be on the premises within 72 hours. **Schedule 3[16]** provides that an authorised officer may apply for a search warrant if the officer suspects on reasonable grounds that unexplained wealth is in the possession of a person or will be in the possession of a person within 72 hours.

Schedule 3[17] expands the grounds under which an application for a search warrant may be made to include property reasonably suspected of being unexplained wealth. On the issue of the search warrant, property reasonably suspected of being unexplained wealth may be seized by the person executing the search warrant.

Schedule 3[18] provides that a person executing a search warrant in relation to unexplained wealth may use reasonable force to stop, search and detain a person and to seize and detain all or part of a thing the person reasonably suspects is unexplained wealth.

Schedule 3[19] expands the offence of obstructing a person executing a search warrant to include a warrant issued under Division 3 and increases the maximum penalty for an offence under the proposed section to 1,000 penalty units or imprisonment for 5 years, or both.

Schedule 3[20] provides that an authorised officer may apply to the Supreme Court for a search warrant under if the officer reasonably suspects a property-tracking document is in the possession of a person or will be in the possession of a person within 72 hours.

Schedule 3[21] provides that a person executing a search warrant in relation to a property-tracking document may use reasonable force to stop, search and detain a person and to seize and detain all or part of certain things.

Schedule 3[22] provides that an authorised officer executing a search warrant under Division 3 may examine, inspect or test property or evidence seized in executing the search warrant. For property or evidence that is a document, the officer may make copies. The proposed section provides for powers of an authorised officer to access property or evidence that the officer reasonably suspects to be held in a computer and self-incrimination is not a reasonable excuse to not comply with a direction related to access of property or evidence held in the computer.

Schedule 3[24] provides the particulars of the unexplained wealth of a person that is reasonable grounds for the Supreme Court to make a monitoring order.

Schedule 3[25] provides for freezing notices that may be given by the NSW Crime Commissioner to a financial institution in relation to funds certain persons the Commissioner reasonably suspects will access before the NSW Crime Commission makes an application for a restraining order or the Supreme Court determines an application for a restraining order applying to the funds. **Schedule 3[23]** makes a consequential amendment.

Schedule 3[26] makes the following an offence for a financial institution, with a maximum penalty of 1,000 penalty units—

- (a) to contravene a monitoring order,

- (b) to provide false or misleading information to indicate compliance with a monitoring order,
- (c) to contravene a freezing notice issued under proposed section 48A.

Schedule 3[28] provides that the NSW Crime Commissioner or Commissioner of Police may give a written notice to a financial institution requiring the institution to provide certain information or documents and sets out offences relating to the notice, with a maximum penalty of 1,000 penalty units. **Schedule 3[27]** makes a consequential amendment. Proposed section 52 provides certain protections for a financial institution that complies with a freezing order.

Schedule 3[29] sets out proceedings for offences the Supreme Court must deal with summarily.

Schedule 3[30] provides that if property is or has been the subject of a restraining order under the Act, an application for a forfeiture order under proposed section 34A(1) of the *Confiscation of Proceeds of Crime Act 1989* must not be made in relation to an interest in the property.

Schedule 3[31] provides that the Supreme Court may stay non-criminal proceedings under the Act if the court determines it is in the interests of justice, sets out the matters the court must consider in determining whether a stay is in the interests of justice and provides grounds where the court must not stay non-criminal proceedings. Proposed section 63A provides for the Supreme Court to make orders for non-criminal proceedings to be heard in closed court.

Schedule 3[32] omits spent and unnecessary provisions.

Schedule 3[33] requires the Minister to commence a review of the *reviewable provisions* as soon as practicable after 1 February 2025.

Schedule 3[34] contains transitional provisions.

Schedule 4 Amendment of other legislation

Schedule 4.1[1] and [2] amends the *Criminal Assets Recovery Regulation 2017*, clause 7(1) to provide that under proposed section 32D(2) of the Act, the NSW Trustee and Guardian is entitled to deduct fees from the proceeds of disposition of an interest in certain property and may take control of certain property under proposed section 21D(4) of the Act.

Schedule 4.1[3] inserts proposed clause 12A into the *Criminal Assets Recovery Regulation 2017* to provide that the maximum allowable costs for legal services are the rates set by the Attorney General.

Schedule 4.2 inserts proposed clauses into Schedule 1, Table 2, Part 13 of the *Criminal Procedure Act 1986* to provide the following offences may be dealt with summarily—

- (a) an offence under proposed section 42 of the *Criminal Assets Recovery Act 1990*,
- (b) an offence under proposed section 67C of the *Proceeds of Crime Act 1989*.

Schedule 4.3 replaces the *Unexplained Wealth (Commonwealth Powers) Act 2018*, section 8 to provide for the offences comprising a serious criminal offence, as defined by the *Criminal Assets Recovery Act 1990*, section 6(2), that are specified by the *Unexplained Wealth (Commonwealth Powers) Act 2018* for the *Proceeds of Crime Act 2002* of the Commonwealth.



New South Wales

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Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Confiscation of Proceeds of Crime Act 1989 No 90	3
Schedule 2	Amendment of Crime Commission Act 2012 No 66	17
Schedule 3	Amendment of Criminal Assets Recovery Act 1990 No 23	26
Schedule 4	Amendment of other legislation	47



New South Wales

Confiscation of Proceeds of Crime Legislation Amendment Bill 2022

No. _____, 2022

A Bill for

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*.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

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

3

2 Commencement

4

This Act commences on 1 February 2023.

5

Schedule 1	Amendment of Confiscation of Proceeds of Crime Act 1989 No 90	1
		2
[1] Section 4 Definitions		3
	Omit section 4(1), definitions of <i>account</i> , <i>appropriate court</i> and <i>financial institution</i> .	4
	Insert in alphabetical order—	5
	<i>account</i> means a facility or arrangement through which a financial institution accepts deposits or allows withdrawals, and includes a facility or arrangement for the following—	6
		7
		8
	(a) a fixed term deposit or safety deposit box,	9
	(b) the deposit or withdrawal of, or a transaction involving, digital currency, including a registrable digital currency exchange service.	10
		11
	<i>appropriate court</i> means—	12
	(a) the Supreme Court, or	13
	(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	14
		15
		16
	(c) otherwise—the court in which a person is convicted of a drug trafficking offence, a serious offence or a serious drug offence.	17
		18
	<i>digital currency</i> has the same meaning as in the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> of the Commonwealth.	19
		20
	<i>drug trafficker declaration</i> has the same meaning as in section 34(1).	21
	<i>financial institution</i> means the following, and includes a registrable digital currency exchange service—	22
		23
	(a) an authorised deposit-taking institution,	24
	(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).	25
		26
		27
	<i>registrable digital currency exchange service</i> has the same meaning as in the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> of the Commonwealth.	28
		29
		30
	<i>unlawfully acquired</i> has the same meaning as in section 34A(7).	31
[2] Section 4(1), definition of “forfeiture order”		32
	Insert “or 34A” after “section 18”.	33
[3] Section 4(1), definition of “property-tracking document”		34
	Omit “quantifying” wherever occurring in paragraphs (a)(i) and (b)(i).	35
	Insert instead “determining”.	36
[4] Section 4(1), definition of “restraining order”		37
	Insert “or 43A” after “section 43”.	38
[5] Section 12 Application		39
	Insert after section 12(3)—	40
	(4) This section is subject to Schedule 1.	41

[6] Section 13 Applications for confiscation orders	1
Insert after section 13(6)—	2
(7) Section 34A prevails over this section to the extent of an inconsistency.	3
[7] Part 2, Division 1A	4
Insert after Division 1—	5
Division 1A Forfeiture of certain property if person convicted of serious offence	6
	7
17A Definitions	8
In this Division—	9
<i>exclusion order</i> —see section 17D(1).	10
<i>forfeiture notice</i> —see section 17C(1).	11
<i>relevant authority</i> means the authority that applied for the restraining order or the confirmation of the freezing notice in relation to the relevant property.	12
<i>relevant court</i> means the court that made the restraining order or confirmed the freezing notice in relation to the relevant property.	14
<i>relevant property</i> 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—	16
(a) property the subject of a restraining order made in relation to a serious offence for which the person has been convicted,	19
(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,	21
(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.	23
	24
	25
17B Forfeiture of relevant property	26
(1) The relevant property of a person is forfeited to the Crown—	27
(a) at the end of the relevant period, or	28
(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	29
(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.	31
	32
	33
(2) The forfeiture takes effect in the same way as if a court had made a forfeiture order in relation to the relevant property.	34
	35
(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.	36
	37
	38
17C Notification of forfeiture	39
(1) The relevant authority must give a notice of intention to forfeit relevant property (a <i>forfeiture notice</i>) in accordance with this section.	40
	41
(2) The relevant authority must, as soon as reasonably practicable, give the notice—	42
	43

(a)	to each person the relevant authority knows or reasonably suspects has a beneficial interest in the relevant property, and	1 2
(b)	no later than 28 days before the end of the relevant period.	3
(3)	The notice must include the following—	4
(a)	a description of the relevant property,	5
(b)	the date on which the relevant period will end,	6
(c)	the way in which, and time within which, a person may apply for an exclusion order.	7 8
(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.	9 10 11
17D	Exclusion orders	12
(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 <i>exclusion order</i>).	13 14 15
(2)	The person must give written notice to the relevant authority of—	16
(a)	the making of the application, and	17
(b)	the grounds on which the application is made.	18
(3)	The relevant authority may appear and adduce evidence at the hearing of the application.	19 20
(4)	On hearing the application for the exclusion order, the court may—	21
(a)	direct that the relevant property be returned to the applicant if the court is satisfied, on the balance of probabilities, that—	22 23
(i)	the applicant has an interest in the property, and	24
(ii)	the interest in the property is not—	25
(A)	tainted property, or	26
(B)	if the relevant property relates to a restraining order made under section 43A—unlawfully acquired property, or	27 28
(b)	otherwise—dismiss the application.	29
(5)	The court must not make an order under this section if the relevant property has been forfeited under this Division.	30 31
17E	Appeal against dismissal of application for exclusion order	32
(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—	33 34 35
(a)	made by the person, and	36
(b)	dismissed by a court other than the Supreme Court or the Court of Criminal Appeal.	37 38
(2)	The appeal must be made within 6 months of the applicant receiving notice of the dismissal.	39 40
(3)	The relevant authority may appear and adduce evidence at the hearing.	41
(4)	On hearing the appeal, the Supreme Court must—	42

(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	1 2 3
(b)	otherwise—dismiss the appeal.	4
(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—	5 6
(a)	the applicant has an interest in the property, and	7
(b)	the interest in the property is not—	8
(i)	tainted property, or	9
(ii)	if the relevant property relates to a restraining order made under section 43A—unlawfully acquired property.	10 11
17F	Court may declare relevant property forfeited under this Division	12
	The relevant court may declare that relevant property has been forfeited under this Division if—	13 14
(a)	the relevant authority applies to the court for the declaration, and	15
(b)	the court is satisfied the relevant property is forfeited under this Division.	16 17
17G	Recovery of forfeited property	18
(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.	19 20 21
(2)	The person must give written notice to the relevant authority of—	22
(a)	the making of the application, and	23
(b)	the grounds on which the application is made.	24
(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.	25 26 27
(4)	The court may grant leave to make the application if the court is satisfied—	28
(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	29 30 31
(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	32 33 34
(c)	there are special grounds for granting the leave.	35
(5)	The relevant authority may appear and adduce evidence at the hearing.	36
(6)	On hearing the application, the court must—	37
(a)	make an order—	38
(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	39 40 41 42
(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	43 44 45

(b)	otherwise—dismiss the application.	1
(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—	2 3
(a)	the applicant was not involved in the commission of the serious offence in relation to which the relevant property was forfeited,	4 5
(b)	if the applicant acquired the interest at the time of or after the commission of the offence—the applicant acquired the interest—	6 7
(i)	for sufficient consideration, and	8
(ii)	without knowing, and in circumstances that would not arouse a reasonable suspicion, that the property was, at the time of the acquisition—	9 10 11
(A)	for property that relates to a restraining order made under section 43A—unlawfully acquired, or	12 13
(B)	otherwise—tainted.	14
17H	Relief from hardship—dependants	15
(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.	16 17 18
(2)	If the Supreme Court is satisfied the forfeiture has caused hardship to the dependant, the Court may—	19 20
(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	21 22 23
(b)	if the dependant is under 18 years of age—make ancillary orders to ensure the proper application of the amount.	24 25
(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.	26 27 28
(4)	Subsection (3) does not apply if the dependant is under 18 years of age.	29
[8]	Section 22 Orders pending forfeiture	30
	Insert “or 34A” after “section 13” in section 22(1).	31
[9]	Part 2, Division 6	32
	Insert after Part 2, Division 5—	33
	Division 6	
	Drug trafficker declarations	34
34	Drug trafficker declaration	35
(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 <i>drug trafficker declaration</i>).	36 37 38
(2)	The application may be made—	39
(a)	during sentencing proceedings for the serious drug offence, or	40
(b)	at another time.	41

- (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 <i>lawfully acquired</i> if it is not unlawfully acquired.	1
(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.	2 3 4
[10]	Section 36 Search warrants	5
	Omit section 36(1)–(3). Insert instead—	6
(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—	7 8 9
(a)	tainted property, or	10
(b)	property the member reasonably suspects is unlawfully acquired and belonging to, or in the effective control of, a person—	11 12
(i)	against whom a drug trafficker declaration has been made, or	13
(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.	14 15 16
(2)	The authorised officer may, if satisfied there are reasonable grounds, issue a search warrant authorising a member of the Police Force to—	17 18
(a)	enter the premises, and	19
(b)	search the premises for the property.	20
(3)	The search warrant must—	21
(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	22 23 24
(b)	include a description of the kind of property authorised to be seized, and	25
(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.	26 27 28
[11]	Section 36(6)	29
	Insert after section 36(5)—	30
(6)	In this section—	31
	<i>authorised officer</i> has the same meaning as in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	32 33
[12]	Section 37	34
	Omit the section. Insert instead—	35
37	Seizure of property under warrants	36
(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.	37 38
(2)	A search warrant issued under this Part authorises the seizure of property if, in executing the warrant, a member of the Police Force—	39 40
(a)	finds property the member believes on reasonable grounds to be seizable property, and	41 42

(b)	believes on reasonable grounds it is necessary to seize the property to prevent the property's—	1
(i)	concealment, loss or destruction, or	2
(ii)	use in committing, continuing or repeating a serious offence or serious drug offence.	3
(3)	The power conferred by this section to seize property includes a power to—	4
(a)	remove the property from the premises where it is found, and	5
(b)	guard the property in or on those premises.	6
(4)	In this section—	7
	<i>seizable property</i> means—	8
(a)	tainted property, or	9
(b)	property a member of the Police Force reasonably suspects is unlawfully acquired and belonging to, or in the effective control of, a person—	10
(i)	against whom a drug trafficker declaration has been made, or	11
(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.	12
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[13]	Section 42	19
	Omit the section.	20
[14]	Section 43A	21
	Insert after section 43—	22
43A	Restraining orders—drug trafficker declarations	23
(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 <i>defendant</i>)—	24
(a)	against whom a drug trafficker declaration has been made, or	25
(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.	26
		27
(2)	The application must be supported by—	28
(a)	for an application under subsection (1)(a)—a copy of the drug trafficker declaration, and	29
(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	30
(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.	31
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		42
(3)	The Court must not make a restraining order against the property of a person under this section unless the Court—	43
		44

(a)	has considered the declaration, if any, the affidavit and evidence adduced under section 44(1)(b), and	1 2
(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.	3 4 5
(4)	The Court may, by order—	6
(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	7 8 9
(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.	10 11 12
(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.	13 14 15
[15]	Section 66 Application for search warrant for location etc of property	16
	Omit “quantifying” from section 66(2). Insert instead “determining”.	17
[16]	Sections 67A–67C	18
	Insert after section 67—	19
67A	Application for search warrant for location of property-tracking document	20
(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—	21 22
(a)	lay before the Supreme Court an information on oath setting out the grounds, and	23 24
(b)	apply to the Court for the issue of a search warrant in relation to the person.	25 26
(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—	27 28 29
(a)	stop, search and detain the person, and	30
(b)	seize and detain all or part of a thing—	31
(i)	found as a result of the search, and	32
(ii)	that the officer reasonably suspects is, or contains, a property-tracking document.	33 34
(3)	The Supreme Court must not issue a search warrant under this section unless the Court is satisfied—	35 36
(a)	the document cannot be identified or described with sufficient particularity to obtain a production order in relation to the document, or	37 38
(b)	a production order has been given in relation to the document and has not been complied with, or	39 40
(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	41 42 43

(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.	1 2 3
(4)	The Supreme Court must not issue a search warrant under this section unless—	4 5
(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	6 7 8
(b)	the Court is satisfied there are reasonable grounds for issuing the search warrant.	9 10
(5)	The following provisions apply to a search warrant issued under this section—	11
(a)	section 67(4) and (5),	12
(b)	the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> , Part 4, Division 4.	13 14
67B	Seizure of property-tracking documents	15
(1)	An authorised officer executing a search warrant under this Division in relation to a property-tracking document may—	16 17
(a)	make copies of, and take extracts from, the document, and	18
(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—	19 20 21
(i)	information or assistance that is reasonable and necessary to enable the officer to access data held in, or accessible from, the computer, or	22 23 24
(ii)	information or assistance reasonably necessary to allow the officer to—	25 26
(A)	copy data from the computer to another computer, or	27
(B)	convert the data into documentary form or another form intelligible to a computer used by the officer.	28 29
(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.	30 31 32
(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—	33 34 35
(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	36 37
(b)	is necessary to seize to prevent the concealment, loss or destruction of the document or thing.	38 39
(4)	Self-incrimination is not a reasonable excuse for refusing to comply with a direction given under subsection (1)(b).	40 41
(5)	To avoid doubt—	42
(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	43 44 45

(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.	1 2 3
(6)	In this section— <i>computer</i> means an electronic device for storing, processing or transferring information.	4 5 6
67C	Obstruction of persons executing a search warrant	7
	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.	8 9 10
	Maximum penalty—1,000 penalty units or imprisonment for 5 years, or both.	11
[17]	Sections 71A–72	12
	Omit section 72. Insert instead—	13
71A	Giving notices to financial institutions	14
(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—	15 16 17
(a)	determining whether an account is or was held by a specified person with the financial institution,	18 19
(b)	determining whether a person is or was a signatory to an account,	20
(c)	if a person holds an account with the institution—the current balance of the account,	21 22
(d)	details of transactions involving an account over a specified period of up to 6 months,	23 24
(e)	details of all accounts held by a specified person, including the name of each other person who also holds or held the accounts,	25 26
(f)	details of all accounts for which a specified person is an authorised signatory,	27 28
(g)	a transaction conducted by the financial institution on behalf of a specified person,	29 30
(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.	31 32 33
(2)	The Commissioner of Police must not give the notice unless the Commissioner reasonably believes the notice is required—	34 35
(a)	to determine whether to take action under this Act, or	36
(b)	in relation to proceedings under this Act.	37
71B	Content of notices to financial institutions	38
(1)	The notice must—	39
(a)	state that the Commissioner of Police believes the notice is required—	40
(i)	to determine whether to take an action under this Act, or	41
(ii)	for proceedings under this Act, and	42
(b)	specify the name of the financial institution, and	43

(c)	specify the kind of information or documents required to be provided, and	1 2
(d)	specify the way in which the information or documents must be provided, and	3 4
(e)	specify that the information or documents must be provided no later than—	5 6
(i)	14 days after the notice is given, or	7
(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	8 9 10
(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	11 12 13
(g)	set out the offence of failing to comply with the notice.	14
(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—	15 16 17
(a)	the urgency of the situation,	18
(b)	hardship that may be caused to the financial institution in complying with the notice.	19 20
(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.	21 22 23
(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.	24 25 26 27
71C	Offences relating to notices	28
(1)	A financial institution commits an offence if—	29
(a)	the financial institution makes a statement, whether orally, in a document or in another way, and	30 31
(b)	the statement—	32
(i)	is false or misleading, or	33
(ii)	omits a matter or thing without which the statement is misleading, and	34 35
(c)	the statement is made in connection with a notice given to the financial institution under section 71A.	36 37
(2)	A financial institution commits an offence if—	38
(a)	the financial institution is given a notice under section 71A, and	39
(b)	the notice specifies that information about the notice must not be disclosed, and	40 41
(c)	the financial institution discloses the existence or nature of the notice.	42
(3)	A financial institution commits an offence if—	43
(a)	the financial institution is given a notice under section 71A, and	44
(b)	the financial institution fails to comply with the notice.	45

(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.	1 2 3
(5)	It is a defence to an offence against subsection (3) if—	4
(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	5 6 7
(b)	the financial institution took all reasonable steps to provide the information or document within the period, and	8 9
(c)	the financial institution provides the information or document as soon as practicable after the end of the period.	10 11
(6)	In this section—	12
	<i>financial institution</i> includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.	13 14
	<i>law enforcement agency</i> has the same meaning as in the <i>Crime Commission Act 2012</i> .	15 16
	Maximum penalty—1,000 penalty units.	17
72	Protection for financial institutions	18
(1)	For the <i>Crimes Act 1900</i> , Part 4AC—	19
(a)	the fact that a financial institution is, or has been, subject to a monitoring order must be disregarded, and	20 21
(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.	22 23 24
(2)	An action, suit or proceeding does not lie against a financial institution in relation to the following—	25 26
(a)	the giving of information by the financial institution under section 71 or 71A,	27 28
(b)	compliance with a monitoring order.	29
(3)	In this section—	30
	<i>financial institution</i> includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.	31 32
[18]	Section 91 Duty not payable	33
	Insert “section 17G (recovery of forfeited property),” before “section 21” in section 91(b).	34
[19]	Section 97	35
	Omit the section. Insert instead—	36
97	Review of certain provisions relating to restrained property and drug trafficker declarations	37 38
(1)	The Minister must conduct a review of the reviewable provisions to determine whether—	39 40
(a)	the policy objectives of the reviewable provisions remain valid, and	41
(b)	the terms of the reviewable provisions remain appropriate for securing the objectives.	42 43
(2)	The review must be commenced as soon as practicable after 1 February 2025.	44

(3)	A report on the outcome of the review must be tabled in each House of Parliament by 1 February 2026.	1 2
(4)	In this section—	3
	<i>reviewable provisions</i> means—	4
(a)	Part 2, Divisions 1A and 6, and	5
(b)	sections 36, 37, 43A, 66, 67A–67C and 71A–71C.	6
[20]	Schedule 1 Savings, transitional and other provisions	7
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	8
Part	Provisions consequent on enactment of Confiscation of Proceeds of Crime Legislation Amendment Act 2022	9 10 11
	Definition	12
	In this Part—	13
	<i>amending Act</i> means the <i>Confiscation of Proceeds of Crime Legislation Amendment Act 2022</i> .	14 15
	Automatic forfeiture of relevant property	16
	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.	17 18
	Applications for drug trafficker declarations	19
	Section 34(1), as inserted by the amending Act, does not apply to, or in relation to, a conviction made before 1 February 2023.	20 21

Schedule 2 Amendment of Crime Commission Act 2012 No 66

[1] Section 3 Object	2
Insert “prevent, disrupt and” before “reduce”.	3
[2] Section 10 Principal functions of Commission	4
Insert after section 10(1)(g)—	5
(h) to apply for orders under the <i>Crimes (Serious Crime Prevention Orders) Act 2016</i> .	6
7	7
[3] Section 30 Refusal or failure of person to produce document or thing	8
Omit section 30(3)(a). Insert instead—	9
(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	10
11	11
12	12
13	13
[4] Section 30(3)(b) and (5)	14
Omit “pending the hearing” wherever occurring. Insert instead “pending the appearance”.	15
[5] Section 30(4)(a)	16
Omit the paragraph. Insert instead—	17
(a) the Commissioner must, in accordance with section 47C, summon the person to appear before the Commissioner, and	18
19	19
[6] Section 31, heading	20
Omit “ Hearing ”. Insert instead “ Appearance ”.	21
[7] Section 31(1)	22
Omit “a hearing referred to in section 30(4), the Commission”.	23
Insert instead “an appearance referred to in section 30(4), the Commissioner”.	24
[8] Section 39 Privilege concerning answers and documents	25
Omit section 39(2). Insert instead—	26
(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—	27
28	28
29	29
(a) the falsity of evidence given by the witness, or	30
(b) a relevant order unless the proceedings for the order have commenced or are imminent.	31
32	32
[9] Section 39(7)	33
Insert after section 39(6)—	34
(7) In this section—	35
imminent has the same meaning as in section 45AA(4).	36
relevant order means the following orders, within the meaning of the <i>Criminal Assets Recovery Act 1990</i> —	37
38	38
(a) a confiscation order,	39
39	39

(b)	an interstate assets forfeiture order,	1
(c)	an interstate proceeds assessment or unexplained wealth order,	2
(d)	an interstate restraining order,	3
(e)	a non-disclosure order,	4
(f)	a restraining order.	5
[10]	Section 45AA	6
	Insert after section 45—	7
45AA	Disclosure of evidence to certain agencies	8
(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—	9 10 11
(a)	an agency responsible for making an application for a relevant order,	12
(b)	a court to which the Commission or another agency makes an application for a relevant order,	13 14
(c)	a defendant in proceedings for a relevant order.	15
(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.	16 17 18
(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.	19 20 21
(4)	Proceedings are <i>imminent</i> 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.	22 23 24
(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).	25 26
(6)	In this section—	27
	<i>derivative evidence</i> has the same meaning as in section 39A(1).	28
	<i>evidence</i> includes a matter specified in section 45(1)(a), (b), (c) or (d).	29
	<i>relevant order</i> has the same meaning as in section 39.	30
[11]	Part 2, Divisions 9 and 10	31
	Omit Part 2, Division 9. Insert instead—	32
	Division 9 Contempt	33
47	Definitions	34
	In this Division—	35
	<i>contemnor</i> means a person alleged to be guilty of contempt of the Commission.	36 37
	<i>contempt of the Commission</i> —see section 47A(1).	38
	<i>contempt of the Commission certificate</i> —see section 47B(2).	39

47A Contempt of the Commission	1
(1) A person is guilty of <i>contempt of the Commission</i> if the person, without a reasonable excuse—	2
(a) if served with a summons to appear as a witness before the Commission—fails to attend—	3
(i) as required by the summons, or	4
(ii) from day to day unless excused or released from further attendance by an executive officer, or	5
(b) if appearing as a witness at a hearing before the Commission—refuses or fails to—	6
(i) comply with a requirement to take an oath or make an affirmation under section 24(7), or	7
(ii) answer a question the person is required to answer by the executive officer presiding at the hearing, or	8
(iii) produce a document or thing the person was required to produce at the hearing, or	9
(iv) produce a document or thing the person was required to produce by a summons served on the person, or	10
(c) in relation to proceedings before the Commission, wilfully threatens or insults—	11
(i) the Commissioner, an Assistant Commissioner or an officer of the Commission, or	12
(ii) a witness or person summoned to attend before the Commission, or	13
(iii) an Australian legal practitioner appointed to assist the Commission as counsel, or	14
(iv) an Australian legal practitioner or other person authorised to appear before the Commission, or	15
(d) obstructs or hinders the Commission or an officer of the Commission in the exercise of the functions of the Commission, or	16
(e) disrupts a hearing before the Commission, or	17
(f) when released by order under section 36(5) on condition the person appear before the Commission—fails to appear before the Commission, or	18
(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	19
(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.	20
(2) For subsection (1), self-incrimination is not a reasonable excuse.	21
47B Procedure for alleged contempt	22
(1) This section applies to alleged contempt of the Commission.	23
(2) The Commissioner may give the Supreme Court a certificate (a <i>contempt of the Commission certificate</i>) in which the Commissioner sets out the facts of the alleged contempt.	24
(3) A contempt of the Commission certificate is prima facie evidence of the matters certified.	25

(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.	1 2 3
(5)	The Supreme Court must hear—	4
(a)	witnesses who may be produced against or on behalf of the person charged with the contempt, and	5 6
(b)	statements offered in defence.	7
(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.	8 9 10
(7)	The <i>Supreme Court Act 1970</i> and the rules of court of the Supreme Court, with the necessary modifications, apply and extend to this section.	11 12
47C	Powers of Commissioner in relation to alleged contempt	13
(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.	14 15 16 17
(2)	The summons must set out the details of the alleged contempt.	18
(3)	The Commissioner may, on proof of the service of the summons—	19
(a)	issue a warrant to arrest the contemnor, and	20
(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.	21 22 23
(4)	Subsection (3) applies if—	24
(a)	the contemnor fails to attend before the Commissioner as required by the summons, and	25 26
(b)	no reasonable excuse to the satisfaction of the Commissioner is offered for the failure.	27 28
(5)	If contempt of the Commission is committed in the face or hearing of the Commissioner, the Commissioner may direct that the contemnor—	29 30
(a)	be taken into custody in a correctional centre or elsewhere—	31
(i)	by a member of the NSW Police Force, or	32
(ii)	by an officer of the Commission authorised by the Commissioner, and	33 34
	Note— A person in custody may be given into the keeping of a correctional officer—see the <i>Crimes (Administration of Sentences) Act 1999</i> , section 250.	35 36
(b)	be called on to show cause as to why the contemnor should not be dealt with under section 47B for the contempt.	37 38
(6)	The Commissioner may issue a warrant—	39
(a)	to arrest the contemnor while the contemnor, whether or not already in custody, is before the Commissioner, and	40 41
(b)	to bring the contemnor before the Supreme Court as soon as practicable.	42
(7)	The warrant is sufficient authority—	43
(a)	for a member of the NSW Police Force to arrest the contemnor, and	44

(b)	to deliver the contemnor into the custody of the governor of the correctional centre specified in the warrant, and	1 2
(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.	3 4 5
(8)	The warrant must be accompanied by—	6
(a)	the contempt of the Commission certificate, or	7
(b)	a written statement setting out the details of the alleged contempt.	8
(9)	The Commissioner may revoke the warrant at any time before the contemnor is brought before the Supreme Court.	9 10
(10)	When the contemnor is brought before the Supreme Court, the Court may, until the determination of the matter, direct that the contemnor—	11 12
(a)	be kept in custody as determined by the Court, or	13
(b)	be released.	14
47D	Conditional release of contemnor	15
(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.	16 17
(2)	The release must be subject to the condition that the contemnor appear before the Supreme Court.	18 19
(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—	20 21 22
(a)	the provision of sureties by the contemnor,	23
(b)	the surrender of a passport held by the contemnor,	24
(c)	a requirement relating to the residence of the contemnor and regular reporting by the contemnor to the Commissioner.	25 26
(4)	The Commissioner may, from time to time, make an order to amend, revoke or add to the conditions.	27 28
(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.	29 30 31
47E	Review by Supreme Court	32
(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—	33 34 35
(a)	the decision not to release, or the failure to release, the contemnor, or	36
(b)	the terms of the conditions.	37
(2)	The Supreme Court may affirm or set aside the following—	38
(a)	a decision by the Commissioner not to release the contemnor,	39
(b)	a condition imposed by the Commissioner on the release of the contemnor.	40 41
(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	42 43

Commissioner has not made a decision about the release of the contemnor within a reasonable time.	1 2
(4) An order made under subsection (3) is taken to be an order of the Commissioner.	3 4
47F Act or omission that is both an offence and contempt	5
(1) An act or omission may be heard as contempt of the Commission even though it may also be dealt with as an offence.	6 7
(2) An act or omission may be dealt with as an offence even though it may be heard as contempt of the Commission.	8 9
(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.	10 11 12
Division 10 Miscellaneous	13
47G Obstruction or disruption of Commission	14
A person must not—	15
(a) obstruct or hinder the Commission or an officer of the Commission in the exercise of the functions of the Commission, or	16 17
(b) disrupt a hearing before the Commission.	18
Maximum penalty—100 penalty units or imprisonment for 2 years, or both.	19
48 Protection from liability	20
(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.	21 22 23
(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.	24 25 26 27
(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.	28 29 30
(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.	31 32
(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.	33 34 35
[12] Sections 80 and 80AA	36
Omit section 80. Insert instead—	37
80 Secrecy	38
(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.	39 40 41 42
Maximum penalty—50 penalty units or imprisonment for 12 months, or both.	43

(2)	The Commission is not taken to act solely in its corporate capacity only because the Commission—	1
	(a) enters into a contract or agreement for the purpose of acquiring—	2
	(i) intelligence, or	3
	(ii) other information for an investigation, or	4
	(b) acquires or uses technology for the purpose of the Commission’s investigative functions.	5
(3)	A relevant person must not be required—	6
	(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	7
	(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.	8
(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.	9
(5)	In this section—	10
	<i>court</i> includes a tribunal, authority or person having power to require the production of documents or the answering of questions.	11
	<i>disclose</i> includes communicate.	12
	<i>produce</i> includes permit access to or inspection of.	13
	<i>relevant person</i> means the following—	14
	(a) an executive officer,	15
	(b) a member of staff of the Commission,	16
	(c) a person involved in an investigation or in the exercise of the Commission’s functions under this Act,	17
	(d) an Australian legal practitioner who assists, or performs services for or on behalf of, the Commission,	18
	(e) a member of a task force assisting the Commission in accordance with an arrangement under section 58,	19
	(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,	20
	(g) a person conducting a review under section 78B in relation to the person’s functions under the section,	21
	(h) a person who was previously a person referred to in paragraphs (a)–(g).	22
80AA	Secrecy—defences	23
(1)	A relevant person does not commit an offence under section 80 if the record or disclosure is made or done—	24
	(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	25
	(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	26
	(c) in accordance with a direction of the Commissioner or Management Committee, if the Commissioner or Chairperson of the Management	27

Committee certifies it is necessary, in the public interest, for the information to be disclosed, or	1 2
(d) in accordance with a requirement under the <i>Law Enforcement Conduct Commission Act 2016</i> .	3 4
(2) A relevant person does not commit an offence under section 80 if the disclosure is—	5 6
(a) to an authority or a person prescribed by the regulations, or	7
(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.	8 9 10
(3) In this section—	11
<i>disclose</i> includes communicate.	12
<i>relevant person</i> has the same meaning as in section 80.	13
[13] Section 82 Annual report	14
Insert after section 82(2)(g)—	15
(h) in relation to forfeitures under the <i>Criminal Assets Recovery Act 1990</i> , Part 3, Division 1A, the following information—	16 17
(i) the number of assets forfeiture notices issued,	18
(ii) the number of forfeitures,	19
(iii) the number of dispute claims made, including whether each claim was dismissed or approved,	20 21
(iv) the number of court proceedings in relation to the forfeitures,	22
(v) the amount realised by the forfeitures,	23
(i) a description of the use of freezing notices under the <i>Criminal Assets Recovery Act 1990</i> , including the number of freezing notices issued.	24 25
[14] Schedule 1 Provisions relating to Commissioner and Assistant Commissioners	26
Omit clause 6(1)(f).	27
[15] Schedule 4 Savings, transitional and other provisions	28
Insert at the end of the Schedule, with appropriate Part and clause numbering—	29
Part Provision relating to Confiscation of Proceeds of Crime Legislation Amendment Act 2022	30 31
Secrecy	32
(1) Sections 80 and 80AA, as inserted by the amending Act, extend to—	33
(a) anything to which the repealed Act, section 29 applied immediately before its repeal, and	34 35
(b) information acquired before 1 February 2023.	36
(2) A reference in section 80 or 80AA—	37
(a) to a provision of this Act includes a reference to the corresponding provision of the repealed Act, and	38 39
(b) to the exercise of functions under this Act includes a reference to the exercise of functions under the repealed Act.	40 41
(3) In this clause—	42

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

1
2

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

3
4

Schedule 3	Amendment of Criminal Assets Recovery Act	1
	1990 No 23	2
[1] Section 3 Principal objects		3
	Omit section 3(a1). Insert instead—	4
	(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—	5
		6
		7
		8
	(i) the person has engaged in a serious crime related activity,	9
	(ii) the person has acquired proceeds from the serious crime related activity of another person,	10
		11
	(iii) the person’s current or previous wealth significantly exceeds the value of the person’s lawfully acquired wealth, and	12
		13
[2] Section 4 Definitions		14
	Omit the definitions of <i>financial institution</i> , <i>money</i> and <i>property-tracking document</i> from section 4(1).	15
		16
	Insert in alphabetical order—	17
	<i>account</i> means a facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for the following—	18
		19
		20
	(a) a fixed term deposit or safety deposit box,	21
	(b) the deposit or withdrawal of, or a transaction involving, digital currency, including a registrable digital currency exchange service.	22
		23
	<i>assets forfeiture notice</i> has the same meaning as in section 21C(1).	24
	<i>current or previous wealth</i> , of a person, means the amount equal to the sum of the values of the following, whether held within or outside New South Wales—	25
		26
		27
	(a) all interests in property of the person,	28
	(b) all interests in property subject to the effective control of the person,	29
	(c) all interests in property that the person has expended, consumed or otherwise disposed of, whether by gift, sale or otherwise,	30
		31
	(d) a service, advantage or benefit provided for the person or, at the person’s request or direction, to another person.	32
		33
	<i>dependant</i> in relation to a person means—	34
	(a) a spouse or a de facto partner of the person, or	35
	(b) a child, or a member of the household, of the person, dependent for support on the person.	36
		37
	<i>digital currency</i> has the same meaning as in the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> of the Commonwealth.	38
		39
	<i>engaging in</i> includes having been engaged in.	40
	<i>financial institution</i> means the following, and includes a registrable digital currency exchange service—	41
		42
	(a) an authorised deposit-taking institution,	43
	(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).	44
		45
		46

<i>money</i> means money held by, or in the effective control of, a person, including in the form of cash or digital currency.	1 2
<i>property-tracking document</i> means a document, including a document in digital or electronic form, relevant to determining, identifying or locating one or more of the following—	3 4 5
(a) an interest in property of a person who might reasonably be suspected of engaging in a serious crime related activity,	6 7
(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,	8 9 10
(c) an interest in property that might reasonably be suspected of being an interest that is serious crime derived property,	11 12
(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,	13 14 15
(e) the current or previous wealth of a person that might reasonably be suspected of being unexplained wealth.	16 17
<i>registrable digital currency exchange service</i> has the same meaning as in the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> of the Commonwealth.	18 19 20
<i>unexplained wealth</i> , of a person, means the whole or any part of the current or previous wealth of the person that is or was—	21 22
(a) illegally acquired property, or	23
(b) the proceeds of an illegal activity.	24
[3] Section 6 Meaning of “serious crime related activity”	25
Omit section 6(2)–(4). Insert instead—	26
(2) In this section—	27
<i>drug trafficking offence</i> means an offence under the following provisions of the <i>Drug Misuse and Trafficking Act 1985</i> —	28 29
(a) section 23—offences relating to prohibited plants,	30
(b) section 23A—offences relating to enhanced indoor cultivation of prohibited plants in the presence of children,	31 32
(c) section 24—offences relating to the manufacture and production of prohibited drugs,	33 34
(d) section 24A—offences relating to the possession of precursors for the manufacture or production of prohibited drugs,	35 36
(e) section 25—offences relating to the supply of prohibited drugs,	37
(f) section 25A—offence of supplying prohibited drugs on an ongoing basis.	38 39
<i>serious criminal offence</i> means the following offences—	40
(a) the following offences referred to in the <i>Poisons and Therapeutic Goods Act 1966</i> , section 45A, immediately before its repeal—	41 42
(i) the offence of supplying a drug of addiction or prohibited drug,	43
(ii) the offence of cultivating, supplying or possessing a prohibited plant,	44 45
(iii) the offence of permitting premises, as owner, occupier or lessee of the premises, to be used for the purpose of the cultivation or	46 47

supply of a prohibited plant or of being concerned in the management of the premises,	1
	2
(b) a drug trafficking offence,	3
(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,	4
	5
	6
	7
(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,	8
	9
	10
	11
	12
	13
(e) an offence under the <i>Firearms Act 1996</i> , section 50A, 51, 51B, 51BA or 51BB,	14
	15
(f) a second or subsequent offence under the <i>Drug Misuse and Trafficking Act 1985</i> , section 36Y,	16
	17
(g) an offence under the following provisions of the <i>Crimes Act 1900</i> —	18
(i) section 80D or 80E,	19
(ii) Part 3, Division 15 or 15A, other than section 91D(1)(b),	20
(iii) section 93T or 93TA,	21
(iv) section 197, to the extent the offence involves the destruction of or damage to property having a value of more than \$500,	22
	23
(v) section 308C, to the extent the offence involves the intention of committing an offence referred to in this paragraph or paragraphs (a)–(f),	24
	25
	26
(vi) section 308D or 308E,	27
(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),	28
	29
	30
	31
(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).	32
	33
	34
[4] Section 10A Proceedings for restraining orders	35
Insert at the end of section 10A(5)(a)(iv)—	36
, or	37
(v) the person’s unexplained wealth is at least—	38
(A) for unexplained wealth that is money—\$250,000, or	39
(B) otherwise—\$2,000,000,	40
[5] Section 10D Duration of restraining orders	41
Omit section 10D(1)(b). Insert instead—	42
(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	43
	44
	45
	46

[6] Sections 18, 19, 21, 24(4) and 28B(4)	1
Omit the provisions.	2
[7] Part 3, Division 1A	3
Insert before Division 1—	4
Division 1A Administrative forfeiture of certain property	5
Subdivision 1 Preliminary	6
21A Definitions	7
In this Division—	8
<i>claimant</i> —see section 21G(3).	9
<i>dispute period</i> of an assets forfeiture notice means—	10
(a) a period of 60 days after the publication of the notice, or	11
(b) a longer period specified in the notice by the Commission.	12
<i>final notice</i> —see section 21F(2).	13
<i>investigative agency</i> has the same meaning as in the <i>Crime Commission Act 2012</i> .	14
<i>property</i> means—	16
(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	17
(b) does not include real property.	21
21B Review of Division	22
(1) The Minister must review this Division to determine whether—	23
(a) the policy objectives of the provisions remain valid, and	24
(b) the terms of the provisions remain appropriate for securing those objectives.	25
(2) The review must be undertaken as soon as possible after the period of 3 years from the commencement of this Division.	27
(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.	29
Subdivision 2 Issue of assets forfeiture notice	31
21C Commission may issue assets forfeiture notice	32
(1) The Commission may issue a notice of intention to forfeit property (an <i>assets forfeiture notice</i>) if reasonably satisfied the interest in the property is one or more of the following kinds—	33
(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,	34
(b) an interest in property suspected of being serious crime derived property because of serious crime related activity,	35
	36
	37
	38
	39
	40

- (c) an interest in property held in a false name and suspected to be fraudulently acquired property that is illegally acquired property, 1
2
- (d) an interest in property suspected of being— 3
 - (i) an available interest relating to serious crime use property, or 4
 - (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. 5
6
7
- (2) The Commission must give the notice— 8
 - (a) to each person the Commission knows or reasonably suspects has a beneficial interest in the property, and 9
10
 - (b) in accordance with the regulations. 11
- (3) The notice must include the following information— 12
 - (a) a description of the property, 13
 - (b) the grounds on which the property is held by the relevant investigative agency, including the details of the seizure, 14
15
 - (c) the grounds on which the Commission has issued the notice, 16
 - (d) information about how to dispute the forfeiture, including the dispute period. 17
18
- (4) The notice must be published, as soon as practicable after the notice is issued— 19
20
 - (a) in the Gazette, and 21
 - (b) in a daily newspaper circulating throughout New South Wales, and 22
 - (c) in the way approved by the Commission. 23
- (5) In this section— 24
 - substituted serious crime use property declaration* has the same meaning as in section 22AA(2). 25
26
- 21D Commission must notify investigative agency in possession of property** 27
- (1) The Commission must, as soon as practicable after issuing an assets forfeiture notice in relation to property, give written notice to— 28
29
 - (a) the investigative agency in possession of the property, and 30
 - (b) if the property is being held by another person on behalf of the investigative agency—the other person. 31
32
- (2) The notice must direct the investigative agency or the other person— 33
 - (a) to continue to hold the property, or 34
 - (b) to transfer the property to the NSW Trustee and Guardian. 35
- (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— 36
37
38
 - (a) the forfeiture occurs, or 39
 - (b) the property is required to be returned under this Division. 40
- (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— 41
42
43
44

(a)	the forfeiture occurs, or	1
(b)	the property is required to be returned under this Division.	2
21E	Commission may order sale during dispute period	3
(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—	4
(a)	the property is subject to waste or substantial loss of value, or	5
(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	6
(c)	the retention of the property would constitute a danger to—	7
(i)	public health and safety, or	8
(ii)	the health of other animals, plants or agricultural produce because the property is a live animal, or	9
(iii)	public health because the property is perishable or a live animal.	10
(2)	The proceeds of the sale of an interest in the property must be held by the person or investigative agency until—	11
(a)	the forfeiture occurs, or	12
(b)	the property is required to be returned under this Division.	13
21F	Effect of assets forfeiture notice	14
(1)	An assets forfeiture notice takes effect—	15
(a)	immediately after the end of the dispute period, or	16
(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.	17
(2)	The Commission must, as soon as practicable after an assets forfeiture notice takes effect, give written notice of the forfeiture (a <i>final notice</i>) to—	18
(a)	each person who was given a notice under section 21C, and	19
(b)	a person who made a dispute claim in relation to the notice.	20
(3)	On an assets forfeiture notice taking effect in relation to an interest in property—	21
(a)	the interest is forfeited to the Crown and vests in the NSW Trustee and Guardian on behalf of the Crown, and	22
(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.	23
(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.	24
(5)	The proceeds must be—	25
(a)	paid to the Treasurer, and	26
(b)	credited to the Proceeds Account.	27
(6)	The Treasurer may delegate the power to give directions under this section.	28

Subdivision 3 Dispute claims and appeals 1

21G Making of dispute claim 2

- (1) A person may make a dispute claim in relation to an assets forfeiture notice during the dispute period of the notice. 3
4
- (2) The dispute claim must be made in writing to the Commission. 5
- (3) The dispute claim must include the following information— 6
 - (a) the name, date of birth and address of the person making the claim (the *claimant*), 7
8
 - (b) the basis of the claim, including the following and evidence, if any, supporting the following— 9
10
 - (i) a description of the claimant’s interest in the property, 11
 - (ii) how the interest in the property was acquired, 12
 - (iii) why the interest in the property is not illegally acquired property, 13
 - (c) a statutory declaration supporting the information in the claim. 14

21H Commission must assess dispute claim 15

- (1) The Commission must assess a dispute claim in accordance with this section. 16
- (2) The Commission must— 17
 - (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— 18
19
20
 - (i) the claimant has an interest in the property, and 21
 - (ii) the interest in the property is not illegally acquired property, or 22
 - (b) otherwise—dismiss the claim. 23
- (3) The Commission must give written notice to the claimant of the following— 24
 - (a) the outcome of the assessment, 25
 - (b) the reasons for the outcome, 26
 - (c) if the claim is dismissed—the way in which the claimant may appeal the dismissal. 27
28

Subdivision 4 Powers of Supreme Court 29

21I Appeal against dismissal of dispute claim 30

- (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— 31
32
 - (a) made by the claimant, and 33
 - (b) dismissed by the Commission. 34
- (2) The appeal must be made within 60 days of the applicant receiving notice of the dismissal. 35
36
- (3) The Supreme Court may— 37
 - (a) make an order for the following— 38
 - (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, 39
40
41
42

- (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 1
 - (b) otherwise—dismiss the appeal. 2
 - (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— 3
 - (a) the claimant has an interest in the property, and 4
 - (b) the interest in the property is not illegally acquired property. 5
- 21J Application to Supreme Court for recovery of forfeited property** 6
- (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. 7
 - (2) The Supreme Court may grant leave to make the application up to 6 months after the issue of the final notice. 8
 - (3) The Supreme Court may— 9
 - (a) make an order for the following— 10
 - (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, 11
 - (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 12
 - (b) otherwise—dismiss the appeal. 13
 - (4) The Supreme Court must not make an order under subsection (3)(a) unless the Court is satisfied of the following— 14
 - (a) it is more probable than not that— 15
 - (i) the applicant has an interest in the property, and 16
 - (ii) the interest is not illegally acquired property, 17
 - (b) the applicant has a reasonable excuse for failing to make a dispute claim in accordance with this Division, 18
 - (c) the applicant commenced the application as soon as reasonably practicable. 19
- 21K Relief from hardship—dependants** 20
- (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. 21
 - (2) The Supreme Court may grant leave to make the application up to 6 months after the issue of the final notice. 22
 - (3) If the Supreme Court is satisfied the forfeiture of the property will cause hardship to the dependant, the Court— 23
 - (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 24

(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.	1 2
(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.	3 4 5 6
(5)	Subsection (4) does not apply if the dependant is under 18 years of age.	7
[8]	Section 28A Making of unexplained wealth order	8
	Omit section 28A(2). Insert instead—	9
(2)	The Supreme Court must make an unexplained wealth order against a person if the Court finds there is a reasonable suspicion—	10 11
(a)	the person has, before the day the application is made—	12
(i)	engaged in a serious crime related activity, or	13
(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	14 15 16
(b)	the person’s current or previous wealth exceeds the value of the person’s lawfully acquired wealth by—	17 18
(i)	for money—\$250,000, or	19
(ii)	otherwise—\$2,000,000.	20
[9]	Section 28A(6)	21
	Insert after section 28A(5)—	22
(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 <i>Legal Aid Commission Act 1979</i> .	23 24 25
[10]	Section 28B Assessment for unexplained wealth order—unexplained wealth	26
	Omit section 28B(2). Insert instead—	27
(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—	28 29 30 31
(a)	illegally acquired property, or	32
(b)	the proceeds of an illegal activity.	33
[11]	Section 28C General provisions applying to proceeds assessment and unexplained wealth orders	34 35
	Insert “or under Part 2, Division 1A of that Act” after “ <i>Confiscation of Proceeds of Crime Act 1989</i> ” in section 28C(1)(c).	36 37
[12]	Section 28C(1A)	38
	Insert after section 28C(1)—	39
(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—	40 41 42
(a)	the person subject to the order, and	43

(b)	the person’s dependants, if any.	1
[13]	Part 3, Division 2B	2
	Omit the Division. Insert instead—	3
	Division 2B Ancillary orders	4
31D	Additional orders if application made for certain other orders	5
(1)	This section applies if an application is made for the following orders—	6
(a)	a confiscation order,	7
(b)	an order under section 31A(2) or 31B(2) (a <i>non-disclosure order</i>),	8
(c)	an order under Division 1A, Subdivision 4.	9
(2)	The Supreme Court may, on the application of the Commission, make the following orders—	10
(a)	an order for the examination on oath, before the Court or before an officer of the Court prescribed by rules of court, of—	12
(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	14
(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,	17
(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—	21
(i)	a person who is or was an affected person, or	22
(ii)	if the affected person is or was a body corporate—a director of the body corporate specified by the Court.	23
(3)	The statement must be—	24
(a)	provided to the Commission within the period specified in the order, and	25
(b)	verified by the oath of the person making the statement.	26
(4)	The Commission must give notice of an application for an order under this section to the affected person.	27
(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).	28
(6)	In this section—	29
	<i>affected person</i> means—	30
(a)	for an application for an order under Division 1A, Subdivision 4—the claimant or applicant who applied for the order, or	31
(b)	for an application for an assets forfeiture order—the owner of an interest in property proposed to be subject to the order, or	32
(c)	for an application for a proceeds assessment order or unexplained wealth order—the person proposed to be subject to the order, or	33

- (d) for a non-disclosure order—the defendant whose interest in property is proposed to be subject to the order. 1
2
claimant has the same meaning as in Division 1A. 3

[14] **Part 3A** 4
Insert after Part 3— 5

Part 3A Powers of NSW Trustee and Guardian 6

32B Definitions 7

In this Part— 8

date, of a relevant notice or order, means the date on which the notice or order was made, issued or given. 9
10

relevant notice or order means the following— 11

- (a) a restraining order, including the following relating to a restraining order— 12
13
(i) an ancillary order under section 12, 14
(ii) an order for the sale of an interest in property under section 14, 15
(b) an assets forfeiture notice, 16
(c) an assets forfeiture order, 17
(d) a notice given in accordance with section 21D(4). 18

32C Protection of NSW Trustee and Guardian 19

- (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. 20
21
Maximum penalty—20 penalty units or imprisonment for 6 months, or both. 23
- (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. 24
25
26
- (3) The NSW Trustee and Guardian is not liable for rates, land tax or other statutory charges— 27
28
(a) due on or after the date of the relevant notice or order, and 29
(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. 30
31
32
- (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. 33
34
35
36
- (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— 37
38
39
(a) for a payment for long service leave for which the person was liable, or 40
(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 41
42
43
44

(c)	to meet, otherwise than out of the income or assets of the business, liabilities and expenses incurred in controlling the business.	1 2
(6)	In this section— <i>NSW Trustee and Guardian</i> includes staff and agents of the NSW Trustee and Guardian.	3 4 5
32D	Fees payable to NSW Trustee and Guardian	6
(1)	This section applies to an interest in property—	7
(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	8 9 10
(b)	vested in the NSW Trustee and Guardian on the forfeiture of the property under an assets forfeiture notice or assets forfeiture order.	11 12
(2)	The NSW Trustee and Guardian may deduct the prescribed fees from the proceeds of the sale of an interest in the property.	13 14
(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.	15 16
32E	Evidentiary certificate	17
(1)	A certificate of evidence issued in accordance with this section is evidence of the following, if specified in the certificate—	18 19
(a)	that a relevant notice or order has been made and is in force,	20
(b)	that a relevant notice or order was or was not subject to a term or condition,	21 22
(c)	that an obligation, power or direction was or was not conferred on the NSW Trustee and Guardian by a relevant notice or order,	23 24
(d)	that an interest in property was or was not subject to a relevant notice or order,	25 26
(e)	that an interest in property subject to a relevant notice or order was or was not sold or otherwise disposed of,	27 28
(f)	that an interest in property subject to a relevant notice or order was or was not vested in the NSW Trustee and Guardian,	29 30
(g)	that an ancillary order under section 12 has been made and is in force,	31
(h)	other matters prescribed by the regulations.	32
(2)	An evidentiary certificate must—	33
(a)	relate to a relevant notice or order that—	34
(i)	has been made and is in force, and	35
(ii)	confers obligations on, or gives a direction to, the NSW Trustee and Guardian, and	36 37
(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	38 39 40
(c)	be sealed with the seal of the NSW Trustee.	41
(3)	The certificate—	42
(a)	must be accepted by other persons, whether or not acting under this or another Act, as evidence of the matter certified, and	43 44

	(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.	1 2
[15]	Section 38 Search warrants	3
	Insert at the end of section 38(1)(e)—	4
	, or	5
	(f) property reasonably suspected of being unexplained wealth.	6
[16]	Section 38(1A)	7
	Insert after section 38(1)—	8
	(1A) An authorised officer under this Act may apply to an authorised officer, within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> , 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.	9 10 11 12 13
[17]	Section 39 Seizure of property and searching of person	14
	Insert at the end of section 39(1)(e)—	15
	, or	16
	(f) unexplained wealth.	17
[18]	Section 39(3A)	18
	Insert after section 39(3)—	19
	(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—	20 21 22
	(a) stop, search and detain the person, and	23
	(b) seize and detain all or part of a thing—	24
	(i) found as a result of the search, and	25
	(ii) that the person reasonably suspects is unexplained wealth.	26
[19]	Section 42	27
	Omit the section. Insert instead—	28
	42 Obstruction of persons executing a search warrant	29
	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.	30 31 32
	Maximum penalty—1,000 penalty units or imprisonment for 5 years, or both.	33
[20]	Section 44 Application for search warrant for location of property-tracking document	34
	Insert at the end of the section—	35
	(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—	36 37
	(a) apply to the Court for the issue of a search warrant under section 45 in relation to the person, and	38 39
	(b) lay before the Supreme Court an information on oath setting out the grounds for the application.	40 41

[21] Section 45 Search warrant for location etc of property	1
Insert after section 45(1)—	2
(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—	3 4 5 6 7
(a) stop, search and detain the person, and	8
(b) seize and detain all or part of a thing—	9
(i) found as a result of the search, and	10
(ii) that the officer reasonably suspects is, or contains, a property-tracking document.	11 12
(1B) The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> , Part 4, Division 4 applies to a search warrant issued under subsection (1A).	13 14
[22] Section 47	15
Omit the section. Insert instead—	16
47 Seizure of property	17
(1) An authorised officer executing a search warrant under this Division may do one or more of the following—	18 19
(a) examine property or evidence seized in executing the search warrant (<i>the property or evidence</i>),	20 21
(b) inspect and test the property or evidence,	22
(c) for property or evidence that is a document—make copies of, and take extracts from, the document,	23 24
(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—	25 26 27
(i) information or assistance that is reasonable and necessary to enable the officer to access data held in, or accessible from, the computer, or	28 29 30
(ii) information or assistance reasonably necessary to allow the officer to—	31 32
(A) copy data from the computer to another computer, or	33
(B) convert the data into documentary form or another form intelligible to a computer used by the officer.	34 35
(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.	36 37 38
(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—	39 40 41
(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	42 43
(b) is necessary to seize to prevent the concealment, loss or destruction of the document or thing.	44 45

(4)	Self-incrimination is not a reasonable excuse for refusing to comply with a direction given under subsection (1)(d).	1 2
(5)	To avoid doubt—	3
(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	4 5 6
(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.	7 8 9
(6)	In this section—	10
	<i>computer</i> means an electronic device for storing, processing or transferring information.	11 12
[23]	Part 4, Division 4, heading	13
	Insert “ and freezing notices ” after “ orders ”.	14
[24]	Section 48 Monitoring orders	15
	Insert at the end of section 48(2)(c)—	16
	, or	17
(d)	has current or previous wealth exceeding the value of the person’s lawfully acquired wealth by—	18 19
(i)	for money—\$250,000, or	20
(ii)	otherwise—\$2,000,000.	21
[25]	Section 48A	22
	Insert after section 48—	23
48A	Freezing notices	24
(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—	25 26
(a)	is satisfied the person is a relevant person, and	27
(b)	reasonably suspects funds in the account will be withdrawn, transferred or otherwise disposed of before—	28 29
(i)	the Commission makes an application for a restraining order applying to the funds, or	30 31
(ii)	the Supreme Court determines an application for a restraining order applying to the funds.	32 33
(2)	The financial institution must prevent the withdrawal or transfer of funds from the account for the period specified in the freezing notice.	34 35
(3)	The Commissioner for the Commission may specify a period of no longer than 2 business days in the freezing notice.	36 37
(4)	The Commissioner for the Commission may give 1 further freezing notice in accordance with this section if—	38 39
(a)	the Commissioner has applied for a restraining order in relation to the funds held in the account, and	40 41
(b)	the Supreme Court has not yet determined the application.	42

(5)	A freezing notice given to a financial institution under this section must contain—	1
	(a) the name of the holder of each account subject to the notice, and	2
	(b) the period referred to in subsection (2), and	3
	(c) other information prescribed by the regulations.	4
(6)	The freezing notice takes effect when the financial institution is served with the notice.	5
(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.	6
(8)	In this section—	7
	<i>relevant person</i> means a person who—	8
	(a) has engaged in serious crime related activity, or	9
	(b) has acquired serious crime derived property, or	10
	(c) the Commissioner for the Commission reasonably suspects has unexplained wealth exceeding a value of—	11
	(i) for money—\$250,000, or	12
	(ii) otherwise—\$2,000,000.	13
[26] Section 49		14
	Omit the section. Insert instead—	15
49 Offences relating to monitoring orders and freezing notices		16
(1)	A financial institution given notice of a monitoring order is guilty of an offence if the institution knowingly—	17
	(a) contravenes the order, or	18
	(b) provides false or misleading information in purported compliance with the order.	19
(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.	20
(3)	In this section—	21
	<i>financial institution</i> includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.	22
	Maximum penalty—1,000 penalty units.	23
[27] Section 51 Communication of information by financial institutions to prescribed authorities		24
	Omit section 51(2).	25
[28] Sections 51A–52		26
	Omit section 52. Insert instead—	27
51A Giving notices to financial institutions		28
(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—	29
		30
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		41

(a)	determining whether an account is or was held by a specified person with the financial institution,	1 2
(b)	determining whether a person is or was a signatory to an account,	3
(c)	if a person holds an account with the institution—the current balance of the account,	4 5
(d)	details of transactions involving an account over a specified period of up to 6 months,	6 7
(e)	details of all accounts held by a specified person, including the name of each other person who also holds or held the accounts,	8 9
(f)	details of all accounts for which a specified person is an authorised signatory,	10 11
(g)	a transaction conducted by the financial institution on behalf of a specified person,	12 13
(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.	14 15 16
(2)	The person must not give the notice unless the person reasonably believes the notice is required—	17 18
(a)	to determine whether to take action under this Act, or	19
(b)	in relation to proceedings under this Act.	20
(3)	In this section—	21
	<i>relevant person</i> means—	22
(a)	the Commissioner for the Commission, or	23
(b)	the Commissioner of Police.	24
51B	Contents of notices to financial institutions	25
(1)	The notice must—	26
(a)	state that the person giving the notice believes the notice is required—	27
(i)	to determine whether to take an action under this Act, or	28
(ii)	for proceedings under this Act, and	29
(b)	specify the name of the financial institution, and	30
(c)	specify the kind of information or documents required to be provided, and	31 32
(d)	specify the way in which the information or documents must be provided, and	33 34
(e)	specify that the information or documents must be provided no later than—	35 36
(i)	14 days after the notice is given, or	37
(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	38 39 40
(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	41 42 43
(g)	set out the offence of failing to comply with the notice.	44

- (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.	1
52 Protection for financial institutions	2
(1) For the <i>Crimes Act 1900</i> , Part 4AC—	3
(a) the fact that a financial institution is, or has been, subject to a monitoring order must be disregarded, and	4 5
(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.	6 7 8
(2) An action, suit or proceeding does not lie against a financial institution in relation to the following—	9 10
(a) the giving of information by the financial institution under section 51 or 51A,	11 12
(b) compliance with a monitoring order or freezing notice.	13
(3) In this section—	14
financial institution includes an officer, employee or agent of the institution acting in the course of the person’s employment or agency.	15 16
[29] Section 53 Proceedings for offences	17
Omit section 53(3) and (4). Insert instead—	18
(3) Proceedings for the following must be dealt with before the Supreme Court in its summary jurisdiction—	19 20
(a) an offence under section 16—contravention of a restraining order,	21
(b) an offence under section 49—contravention of a monitoring order or freezing notice,	22 23
(c) an offence under section 50(1)—disclosure of the existence of a monitoring order.	24 25
[30] Section 61 Restriction on functions	26
Insert after section 61(2)—	27
(2A) An application for a forfeiture order under the <i>Confiscation of Proceeds of Crime Act 1989</i> , 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.	28 29 30
[31] Sections 63 and 63A	31
Omit section 63. Insert instead—	32
63 Stay of proceedings	33
(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.	34 35 36
(2) The court must not stay non-criminal proceedings on the following grounds—	37
(a) that criminal proceedings involve—	38
(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	39 40 41 42

(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,	1 2 3 4
(b)	that a person may, in the non-criminal proceedings, consider it necessary—	5 6
(i)	to give relevant evidence, or	7
(ii)	to call relevant evidence from another person,	8
(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.	9 10 11
(3)	In considering whether a stay of non-criminal proceedings is in the interests of justice, the Supreme Court must consider the following matters—	12 13
(a)	that the non-criminal proceedings, and criminal proceedings referred to in subsection (2)(a), should proceed as expeditiously as possible,	14 15
(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,	16 17 18
(c)	the risk of the Commission suffering prejudice in relation to the conduct of the non-criminal proceedings if stayed,	19 20
(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.	21 22 23
	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.	24 25
(4)	In this section—	26
	<i>criminal proceedings</i> includes a reference to criminal proceedings proposed to be, or that may be, instituted or commenced, whether or not under this Act.	27 28
	<i>relevant evidence</i> 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.	29 30 31
63A	Closed court	32
	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.	33 34 35 36
[32]	Sections 66 and 66A	37
	Omit the sections.	38
[33]	Section 68	39
	Insert after section 67—	40
68	Review of certain provisions relating to unexplained wealth	41
(1)	The Minister must conduct a review of the reviewable provisions to determine whether—	42 43
(a)	the policy objectives of the reviewable provisions remain valid, and	44
(b)	the terms of the reviewable provisions remain appropriate for securing the objectives.	45 46

(2)	The review must be commenced as soon as practicable after 1 February 2025.	1
(3)	A report on the outcome of the review must be tabled in each House of Parliament by 1 February 2026.	2 3
(4)	In this section—	4
	<i>reviewable provisions</i> means—	5
(a)	Part 3, Divisions 1A and 2B and Part 3A, and	6
(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.	7 8 9
[34]	Schedule 1 Savings and transitional provisions	10
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	11
Part	Provisions relating to Confiscation of Proceeds of Crime Legislation Amendment Act 2022	12 13
	Definition	14
	In this Part—	15
	<i>2022 amending Act</i> means the <i>Confiscation of Proceeds of Crime Legislation Amendment Act 2022</i> .	16 17
	Serious crime related activities and unexplained wealth orders	18
(1)	An amendment made by the 2022 amending Act extends to a serious crime related activity that occurred before 1 February 2023.	19 20
(2)	An amendment made by the 2022 amending Act does not apply to proceedings pending immediately before 1 February 2023.	21 22
	Non-criminal proceedings	23
	Sections 63 and 63A, as inserted by the 2022 amending Act, apply to the following—	24 25
(a)	proceedings pending immediately before 1 February 2023,	26
(b)	proceedings commenced on or after 1 February 2023,	27
(c)	applications pending immediately before 1 February 2023 for a stay of proceedings,	28 29
(d)	applications for a stay of proceedings made on or after 1 February 2023.	30

Schedule 4	Amendment of other legislation	1
4.1	Criminal Assets Recovery Regulation 2017	2
[1]	Clause 7 Fees payable to NSW Trustee and Guardian	3
	Omit “For the purposes of section 19 of the Act” from clause 7(1).	4
	Insert instead “For the Act, section 32D(2)”.	5
[2]	Clause 7(1)	6
	Insert “or a notice given under the Act, section 21D(4),” after “restraining order”.	7
[3]	Clause 12A	8
	Insert after clause 12—	9
12A	Maximum allowable costs for legal services—the Act, s 16B	10
	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.	11 12 13 14
4.2	Criminal Procedure Act 1986 No 209	15
	Schedule 1 Indictable offences triable summarily	16
	Insert at the end of Table 2, Part 13, with appropriate clause numbering—	17
	Criminal Assets Recovery Act 1990	18
	An offence under the <i>Criminal Assets Recovery Act 1990</i> , section 42.	19
	Confiscation of Proceeds of Crime Act 1989	20
	An offence under the <i>Confiscation of Proceeds of Crime Act 1989</i> , section 67C.	21 22
4.3	Unexplained Wealth (Commonwealth Powers) Act 2018 No 42	23
	Section 8	24
	Omit the section. Insert instead—	25
	8 Relevant offences	26
	For the Commonwealth Proceeds of Crime Act, a <i>serious criminal offence</i> , within the meaning of the <i>Criminal Assets Recovery Act 1990</i> , section 6(2), is specified by this Act, other than—	27 28 29
	(a) an offence specified in paragraph (c) or (h) of the definition, and	30

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| (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. | 1
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3 |
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