

# Confiscation of Proceeds of Crime Amendment Act 2005 No 73

[2005-73]



New South Wales

## Status Information

### Currency of version

Historical version for 20 June 2006 to 3 July 2007 (accessed 11 July 2024 at 20:30)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2007](#)

### Authorisation

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# Confiscation of Proceeds of Crime Amendment Act 2005 No 73



New South Wales

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# Confiscation of Proceeds of Crime Amendment Act 2005 No 73



New South Wales

An Act to amend the *Confiscation of Proceeds of Crime Act 1989*, the *Civil Liability Act 2002*, the *Crimes Act 1900* and the *Forfeiture Act 1995* with respect to the seizure and restraint of property connected with criminal activity, the supervision of damages paid to offenders suffering from mental illness, money laundering offences and the application of the forfeiture rule to persons found not guilty of murder by reason of mental illness; and for other purposes.

## 1 Name of Act

This Act is the *Confiscation of Proceeds of Crime Amendment Act 2005*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Amendment of *Confiscation of Proceeds of Crime Act 1989 No 90*

The *Confiscation of Proceeds of Crime Act 1989* is amended as set out in Schedule 1.

## 4-6 (Repealed)

## Schedule 1 Amendment of *Confiscation of Proceeds of Crime Act 1989*

(Section 3)

### [1] Section 4 Definitions

Insert at the end of paragraph (b) (iii) of the definition of ***appropriate court*** in section 4 (1):

, or

- (iv) a drug proceeds order against a person convicted of a drug trafficking offence or an application for a drug proceeds order,

**[2] Section 4 (1), definition of “appropriate court”**

Insert after paragraph (b):

, or

(c) in relation to a freezing notice, the court or Magistrate in which or before whom proceedings (including committal proceedings) for a serious offence on which the freezing notice is based are held.

**[3] Section 4 (1), definition of “appropriate officer”**

Insert “or freezing notices” after “restraining orders” in paragraph (b).

**[4] Section 4 (1), definition of “authorised officer”**

Insert “, Division 1A of Part 3” after “orders)” in paragraph (b).

**[5] (Repealed)**

**[6] Section 4 (1), definition of “confiscation order”**

Omit “or a pecuniary penalty order”.

Insert instead “, pecuniary penalty order or drug proceeds order”.

**[7] (Repealed)**

**[8] Section 4 (1)**

Insert in alphabetical order:

***facsimile*** includes a reference to any electronic communication device which transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

***freezing notice*** means a notice issued under section 42C.

***interstate crime related property declaration*** means a declaration or other instrument that is made under a corresponding law and is of a kind declared by the regulations to be within this definition.

***telephone*** includes radio, facsimile and any other communication device.

**[9]-[15] (Repealed)**

**[16] Section 4 (9)**

Insert after section 4 (8):

- (9) For the purposes of this Act, the **value of property** (other than cash) in relation to any person holding the property:
- (a) if any other person holds an interest in the property, is the market value of the first-mentioned person's beneficial interest in the property (less the amount required to discharge any encumbrance, other than a forfeiture order, on that interest), and
  - (b) in any other case, is its market value.

**[17]-[19] (Repealed)**

**[20] Section 13 Applications for confiscation orders**

Omit section 13 (2). Insert instead:

- (2) If a person is convicted of a drug trafficking offence, an appropriate officer may apply to an appropriate court for one or both of the following orders:
- (a) a forfeiture order against property that is tainted property in respect of any drug trafficking offences,
  - (b) a drug proceeds order against the person in respect of benefits derived by the person from the commission of any drug trafficking offences.

**[21] Section 13 (3A) (a) (ii)**

Insert "or 30 (1) (b)" after "section 25 (2) (a1)".

**[22] Sections 14 (2) and 15 (2) (b) and (5)**

Insert "or drug proceeds order" after "pecuniary penalty order" wherever occurring.

**[23] Section 18 Forfeiture orders**

Omit "section 13 (1) (a) or (2)" wherever occurring in section 18 (1) and (4).

Insert instead "section 13 (1) (a) or (2) (a)".

**[24] (Repealed)**

**[25] Section 27 Court may lift corporate veil etc**

Insert "or freezing notice" after "restraining order" in section 27 (3) (b).

**[26] Sections 29 and 30**

Omit the sections. Insert instead:

## 29 Drug proceeds orders

- (1) If an application is made for a drug proceeds order against a person (in this Division called the **defendant**) convicted of a drug trafficking offence, the court must:
  - (a) determine whether the defendant has derived any benefit in connection with drug trafficking at any time, and
  - (b) if the court believes the defendant has so benefited, assess the value of any such benefit, and
  - (c) order the defendant to pay to the State a pecuniary penalty equal to the amount so assessed.
- (2) If:
  - (a) property that is the proceeds of drug trafficking has been forfeited under this Act or a law of the Commonwealth, a Territory or another State, or
  - (b) a forfeiture order is proposed to be made against property that is proceeds of drug trafficking,

the pecuniary penalty to be made is taken to be reduced by an amount equal to the value of the property as at the time of the making of the forfeiture order.
- (3) If:
  - (a) a court makes an order under this section in relation to an offence, and
  - (b) in calculating the penalty amount, the court took into account a proposed forfeiture order in respect of property, and
  - (c) an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made,

an appropriate officer may apply to the court for a variation of the order to increase the penalty amount by the value of the property and the court may, if it considers it appropriate to do so, vary the order accordingly.
- (4) An amount payable by a defendant to the State in accordance with an order made under this section is, for all purposes, taken to be a civil debt due by the defendant to the State.
- (5) An order made by a court under this section may be enforced as if it were an order made by the court in civil proceedings instituted by the State against the

defendant to recover a debt due by the person to the State.

### **30 Assessment of proceeds of drug trafficking**

- (1) A court is to assess the benefits (if any) derived in connection with drug trafficking by having regard to information before the court concerning all or any of the following matters:
  - (a) the money, or the value of property other than money, that came into the possession or control of the defendant, or another person at the request or by the direction of the defendant, at any time in connection with drug trafficking by the defendant,
  - (b) the value of any benefit that was provided for the defendant, or for another person at the request or direction of the defendant, in respect of the defendant's involvement or participation in a public promotion relating to drug trafficking (or such part of the value of the benefit as is commensurate with the proportion of the defendant's involvement or participation that is concerned with drug trafficking),
  - (c) the value of any benefit, other than a benefit of a kind referred to in paragraph (a) or (b), that was provided for the defendant, or another person at the request or by the direction of the defendant, because of drug trafficking by the defendant,
  - (d) the market value, at the time of the drug trafficking, of substances similar or substantially similar to the prohibited drug or prohibited plant involved in the drug trafficking offence or offences,
  - (e) the amount that was, or the range of amounts that were, ordinarily paid for the doing of an act or thing similar or substantially similar to the doing of the act or thing constituting the drug trafficking,
  - (f) the value of the defendant's property appearing to the court:
    - (i) to have been held by the defendant at any time since his or her conviction, or
    - (ii) to have been transferred to the defendant at any time since the beginning of the period of 6 years that ended when the proceedings were instituted against the defendant,
  - (g) the value of the defendant's income and expenditure:
    - (i) at any time since his or her conviction, or
    - (ii) at any time since the beginning of the period of 6 years that ended when the proceedings were instituted against the defendant.

- (2) In considering whether to treat a benefit of the kind referred to in subsection (1) (b) as a benefit derived in connection with drug trafficking, a court may have regard to any matter that it thinks fit, including the public interest and any research, educational or rehabilitative purpose of the public promotion concerned.
- (3) If evidence is given that the value of the defendant's property or the defendant's income or expenditure:
  - (a) after the defendant committed drug trafficking offences, or
  - (b) during and after the end of the period of 6 years that ended when proceedings for the drug trafficking offences were last instituted against the defendant,exceeded the value of the defendant's property or income or expenditure before the defendant committed the drug trafficking offences or before the commencement of that period then the court must treat the value of the benefits derived by the defendant because of drug trafficking by the defendant as being not less than the amount of the excess.
- (4) Subsection (3) does not apply to the whole or a part of the excess referred to in that subsection if the defendant satisfies the court that it was due to causes unrelated to drug trafficking or the commission of other serious offences.
- (5) For the purposes of assessing the value of the proceeds of drug trafficking in a case where a drug proceeds order has previously been made against the defendant, the court must leave out of account any of the defendant's proceeds of drug trafficking that are shown to the court:
  - (a) to have been taken into account in determining the amount to be recovered in respect of drug trafficking under a previous drug proceeds order or pecuniary penalty order, or
  - (b) to have been recovered under an order made under the *Criminal Assets Recovery Act 1990*.
- (6) In assessing the value of the proceeds of drug trafficking of a defendant convicted of a drug trafficking offence or offences, any expenses or outgoings of the defendant in connection with the commission of the offence or offences must not be deducted.
- (7) This section applies to and in relation to property that comes into the possession or under the control of a person either within or outside New South Wales, and to benefits that are provided for a person either within or outside New South Wales.



**[27] Section 31 Statements relating to drug trafficking**

Omit “payment or other reward was received” from section 31 (3) (b) and (6) wherever occurring.

Insert instead “benefit was derived”.

**[28] Section 31 (4) and (7)-(9)**

Omit the subsections.

**[29] Section 31A**

Insert after section 31:

**31A Evidence as to value of drugs and other matters**

- (1) In proceedings for an application for a drug proceeds order, a member of NSW Police, a member of the Australian Federal Police or a Customs officer may give evidence (whether in person or in a statement tendered to the court by the prosecution under this Division):
  - (a) as to the market value, at the time of a drug trafficking offence in relation to a substance, or substantially similar substances, and
  - (b) as to the amount, or the range of amounts, ordinarily paid for the doing of a similar or substantially similar act or thing to the offence.
- (2) The evidence may be given by a person who is experienced in the investigation of indictable offences under (or similar to offences under) the *Drug Misuse and Trafficking Act 1985*.
- (3) Any such person may give evidence, to the best of his or her information, knowledge and belief:
  - (a) as to the amount that was the market value of a prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* at a particular time or during a particular period, or
  - (b) as to the amount, or the range of amounts, ordinarily paid at a particular time, or during a particular period, for the doing of an act or thing in relation to any such prohibited drug or prohibited plant,despite any rule of law or practice relating to hearsay evidence and the testimony is, in the absence of evidence to the contrary, evidence of the matter testified to.

**[30] Section 32**

Omit sections 32–34. Insert instead:

**32 Court may look at property subject to effective control of defendant**

- (1) In assessing the value of benefits derived by a person because of drug trafficking, a court may treat as property of the defendant any property that, in the opinion of the court, is subject to the effective control of the defendant.
- (2) On application by an appropriate officer, a court may make an order declaring that specified property is available to satisfy a drug proceeds order, if it is of the opinion that the property is subject to the effective control of a defendant against whom the court has made a drug proceeds order.
- (3) If a court declares that property is available to satisfy a drug proceeds order:
  - (a) the order may be enforced against the property as if the property were property of the person against whom the order is made, and
  - (b) a freezing notice or restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (4) An appropriate officer must give written notice of an application under this section to the defendant and to any other person the appropriate officer has reason to believe may have an interest in the property.
- (5) The defendant and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

**[31]-[33] (Repealed)**

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

Insert after Division 1:

**Division 1A Freezing notices**

**42A Definitions**

In this Division:

**authorised justice** means an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

**defendant** has the same meaning as in section 42B.

## **42B Applications for freezing notices**

- (1) An authorised officer may apply to an authorised justice for a freezing notice in respect of specified property of a person if the person (the **defendant**) has been, or is about to be, charged with, or has been convicted of, a serious offence and the authorised officer has reasonable grounds for believing that:
  - (a) if the defendant has not been convicted of the offence, the defendant committed the offence, and
  - (b) the property is tainted property in relation to that offence or the defendant derived benefits because of having committed the offence or, if the offence is a drug trafficking offence, the property is the defendant's proceeds of drug trafficking.
- (2) An authorised officer may apply to an authorised justice for a freezing notice in respect of the property of a person if another person (the **defendant**) has been, or is about to be, charged with, or has been convicted of, a serious offence and the authorised officer has reasonable grounds for believing that:
  - (a) the property is tainted property in relation to the offence with which the defendant has been or is about to be charged, or of which the defendant has been convicted, or is the defendant's proceeds of drug trafficking, or
  - (b) the property is subject to the effective control of the defendant and the defendant has derived a benefit, directly or indirectly, from the commission of the serious offence.
- (3) An application for a freezing notice (other than a telephone freezing notice) must be in writing in the form prescribed by the regulations and must be made by the applicant in person.
- (4) The applicant must provide (either orally or in writing) any further information that the authorised justice requires concerning the grounds on which the freezing notice is sought.

## **42C Issue of freezing notices**

- (1) An authorised justice may issue a freezing notice if satisfied that:
  - (a) the defendant is likely to be charged with the offence or a related offence within 48 hours or has been charged with or convicted of a serious offence, and
  - (b) there are reasonable grounds for the belief of the officer as to the matters set out in subsection (2) (c) and (d) (i) or (e) (i) or (ii) (if applicable).
- (2) An authorised justice must not issue a freezing notice unless:

- (a) the application includes details of the authority of the applicant to make the application, and
  - (b) the application includes the grounds on which the notice is being sought, and
  - (c) the application is supported by a statement by the applicant that the applicant believes that the defendant has committed a serious offence, if the defendant has not been convicted of the offence, and
  - (d) in the case of property of the defendant, the application is supported by a statement by the applicant:
    - (i) that the applicant believes that the property to which the application relates is tainted property in relation to that offence or the defendant derived benefits because of having committed the offence or, if the offence is a drug trafficking offence, the property is the defendant's proceeds of drug trafficking, and
    - (ii) setting out the grounds on which the applicant holds those beliefs, and
  - (e) in the case of property of a person other than the defendant, the application is supported by a statement by the applicant that the applicant believes that:
    - (i) the property is tainted property in relation to the offence with which the defendant has been charged or convicted or is the defendant's proceeds of drug trafficking, or
    - (ii) the property is subject to the effective control of the defendant and the defendant has derived a benefit, directly or indirectly, from the commission of the offence,and setting out the grounds on which the applicant holds those beliefs, and
  - (f) the statements and any other information given by the applicant in or in connection with the application are verified before the authorised justice on oath or affirmation or by affidavit.
- (3) In determining whether there are reasonable grounds to believe that property is in the effective control of the defendant, the authorised justice may have regard to the matters referred to in section 10.
- (4) A freezing notice may not be issued in respect of property affected by a restraining order or forfeiture order or the subject of an application for a restraining order or forfeiture order under this Act.
- (5) A freezing notice under this Act and a restraining order under the *Criminal*

*Assets Recovery Act 1990* may not be made so as to be in force in respect of the same interest in property at the same time.

- (6) The issue of a freezing notice is a ministerial function and is not a judicial function.

#### **42D Form of freezing notice**

- (1) A freezing notice must direct that:
  - (a) specified property not be disposed of, or otherwise dealt with by the defendant or by any other person, except in the manner and circumstances (if any) specified in the notice, and
  - (b) the property be held in the custody of the Commissioner of Police or the defendant or another person, pending the determination of an application for confirmation of the freezing notice.
- (2) A freezing notice is to be in the form prescribed by the regulations.

#### **42E Telephone freezing notices**

- (1) An authorised officer may make an application by telephone for a freezing notice.
- (2) An authorised justice must not issue a freezing notice on an application made by telephone unless the authorised justice is satisfied that the notice is required urgently and that it is not practicable for the application to be made in person.
- (3) An application under this section must be made by facsimile if the facilities to do so are readily available for that purpose.
- (4) If it is not practicable for an application for a freezing notice to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.
- (5) An authorised justice who issues a freezing notice on an application made by telephone must:
  - (a) complete and sign the notice, and
  - (b) furnish the notice to the person who made the application or inform that person of the terms of the notice and of the date and time when it was signed.
- (6) If a freezing notice is issued on an application made by telephone, the applicant is to complete a form of freezing notice in the terms indicated by the authorised justice under subsection (5) (b) and write on it the name of that authorised

justice and the date and time when the notice was signed.

- (7) A form of freezing notice so completed is taken to be a freezing notice issued in accordance with this Act.
- (8) A freezing notice is to be furnished by an authorised justice by transmitting it by facsimile, if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original document.

#### **42F Notice of issue of freezing notice**

- (1) An applicant for a freezing notice must give notice of the issuing of the notice to the defendant, any owner of property affected by the notice and any other person subject to the notice.
- (2) Notice must be given in accordance with the regulations.

#### **42G False or misleading information in applications**

- (1) A person must not, in or in connection with an application for a freezing notice, give information to an authorised justice that the person knows to be false or misleading in a material particular.

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

- (2) This section applies to an application by telephone as well as in person.
- (3) This section applies whether or not the information given is also verified on oath or affirmation or by affidavit.

#### **42H Record of proceedings before authorised justice**

- (1) An authorised justice who issues a freezing notice must cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the notice.
- (2) The regulations may make provision for or with respect to:
  - (a) the keeping of records in connection with the issue and execution of freezing notices, and
  - (b) the inspection of any such records, and
  - (c) any other matter in connection with any such records.
- (3) Any matter that might disclose the identity of a person must not be recorded pursuant to this section if the authorised justice is satisfied that the safety of any person might be jeopardised by doing so.

#### **42I Application to confirm freezing notice**

- (1) An application for confirmation of the notice is to be made to the appropriate court by an authorised officer, not later than 14 days after a freezing notice is issued.
- (2) The application is to be set down for hearing on the first date for committal or trial proceedings for the serious offence on which the freezing notice was based that occurs after the application is made, or as soon as practicable after the application is made.
- (3) An applicant for confirmation of a freezing notice must give notice of the application to the defendant, any owner of property affected by the notice and any other person subject to the notice.
- (4) A person given notice under this section is entitled to appear and to adduce evidence at the hearing of the application.
- (5) Notice must be given in accordance with rules of court.

#### **42J Notice to third parties**

If an application has been made to an appropriate court to confirm a freezing notice in respect of property:

- (a) the court may, if it thinks fit, require the officer making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and
- (b) a person to whom the court requires notice to be given under this section is entitled to appear and to adduce evidence at the hearing of the application.

#### **42K Appeals against freezing notices issued by authorised justices**

- (1) A defendant, an authorised officer or another person claiming an interest in property affected by a freezing notice may, at any time before the notice is confirmed, apply to the appropriate court to have the freezing notice set aside or varied.
- (2) An application may be heard before the day set down for hearing the application to confirm the notice.
- (3) On an application, the appropriate court must proceed to deal with the matter under section 42L, whether or not an application has been made under section 42I.

## **42L Confirmation of freezing notices**

- (1) An appropriate court may, on an application under section 42I or 42K:
  - (a) confirm the freezing notice (with or without variation), or
  - (b) set aside the freezing notice.
- (2) An appropriate court may confirm a freezing notice if it is satisfied that:
  - (a) the application is supported by an affidavit by an authorised officer that complies with this section, and
  - (b) having regard to the matters contained in the affidavit or other evidence given in the proceedings, there are reasonable grounds to believe the matters set out in the affidavit, and
  - (c) proceedings have been commenced against the defendant for a serious offence or the defendant has been convicted of a serious offence, and
  - (d) the property concerned is not affected by a restraining order, or an application for a restraining order under this Act or the *Criminal Assets Recovery Act 1990*, and
  - (e) it is appropriate in the circumstances to confirm the notice.
- (3) The affidavit of the authorised officer supporting the application must set out the officer's belief, and the grounds for the belief, that the defendant committed the serious offence concerned (including details of any conviction) and as to one or more of the following in relation to property the subject of the freezing notice:
  - (a) in the case of property of the defendant, that the property is tainted property in relation to the offence or the defendant derived benefits because of having committed the offence or the property is the defendant's proceeds of drug trafficking,
  - (b) in the case of property of a person other than the defendant, that:
    - (i) the property is tainted property in relation to the offence or is the defendant's proceeds of drug trafficking, or
    - (ii) the property is subject to the effective control of the defendant and the defendant has derived a benefit, directly or indirectly, from the commission of the serious offence.
- (4) In determining whether there are reasonable grounds to believe that property is in the effective control of the defendant, the appropriate court must have regard to the matters referred to in section 10.



- (5) The appropriate court must make orders of a kind referred to in section 42M in relation to property to which a freezing notice applies if it confirms the freezing notice. Any such order is taken, for the purposes of this Act, to be included in the terms of the freezing notice.
- (6) If evidence is given at the hearing that property to which the application relates was in the possession of the defendant at or immediately after the commission of the offence:
  - (a) if there is no evidence given tending to show that the property was not used in, or in connection with, the commission of the offence—the court must presume that the property was used in, or in connection with, the commission of the offence, or
  - (b) in any other case—the court must not confirm a freezing notice in relation to the property unless it is satisfied, on the balance of probabilities, that the property was used in, or in connection with, the commission of the offence.

#### **42M Orders for the management of property**

- (1) An appropriate court that confirms a freezing notice is to make an order directing the Commissioner of Police:
  - (a) to take control of the property (if it is not under the control of the Commissioner) and, in any case, dispose of the property or the part of the property specified in the order, in the manner specified in the order, and
  - (b) to retain any proceeds until they are payable under this Act to another person or the State.
- (2) An appropriate court may, if it thinks it appropriate to do so in the circumstances of the case, make one or more of the following orders instead of the order referred to in subsection (1):
  - (a) an order directing that the property, or the part of the property specified in the order, is not to be disposed of, or otherwise dealt with, by the defendant or any other person, except in the manner and circumstances (if any) specified in the order,
  - (b) an order directing the Public Trustee or the Commissioner of Police to retain control or to take control of the property or the part of the property specified in the order,
  - (c) an order directing that the property or the part of the property specified in the order be returned to or retained by the defendant or another person,
  - (d) an order that the defendant or another person be allowed access to the property or the part of the property specified in the order.

- (3) In determining whether it is appropriate in the circumstances to make an order of a kind referred to in subsection (1) or (2), the appropriate court is to have regard to the following matters:
- (a) whether a defendant who is in custody is likely to be granted bail,
  - (b) any hardship that is reasonably likely to be caused to the defendant or a third party,
  - (c) if the defendant is an Aboriginal person or a Torres Strait Islander, when considering any hardship that is reasonably likely to be caused to the defendant or a third party, the responsibilities arising from the defendant's ties to extended family and kinship,
  - (d) the nature of the property and whether it is unique in nature,
  - (e) the case against the defendant,
  - (f) the expenses relating to storage and maintenance of the property,
  - (g) the use that is ordinarily or had been intended to be made of the property.
- (4) In addition to any other order under this section, the appropriate court may make one or more of the following orders:
- (a) an order providing for the provision, out of the property, of the defendant's reasonable living expenses, business expenses or reasonable expenses in defending a criminal charge,
  - (b) if the freezing notice directs the Public Trustee or the Commissioner of Police to take control (but not to dispose) of the property:
    - (i) an order regulating the manner in which the Public Trustee or Commissioner is to exercise his or her functions under the notice or order, or
    - (ii) an order determining any question relating to the property to which the notice relates, including any question relating to the liabilities of the owner or the exercise of the functions of the Public Trustee or Commissioner, or
    - (iii) an order directing the owner or a director of a body corporate that is the owner to give to the Public Trustee or Commissioner, within a period specified in the order, a statement, verified by the oath or affirmation of the person making the statement, setting out the particulars of the property, or dealings with the property, that the court thinks proper,
  - (c) such other ancillary or consequential orders as the court thinks appropriate

in the circumstances.

- (5) An order under this section directing the sale of property must require it to be sold for not less than its value at the time of the sale.

#### **42N Undertakings as to payment of damages or costs**

- (1) An appropriate court may refuse to confirm a freezing notice if the State refuses or fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the notice.
- (2) For the purposes of an application to confirm a freezing notice, an appropriate officer may, on behalf of the State, give to the appropriate court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.

#### **42O Contravention of freezing notices**

- (1) A person who knowingly contravenes a freezing notice is guilty of an offence and punishable, on conviction, by a fine equivalent to the value of the property subject to the notice (as determined by the appropriate court) or by imprisonment for a period not exceeding 2 years, or both.
- (2) If:
  - (a) a freezing notice is made against property, and
  - (b) the property is disposed of, or otherwise dealt with, in contravention of the notice, and
  - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,an appropriate officer may apply to the Supreme Court for an order that the disposition or dealing be set aside.
- (3) The Supreme Court may, on an application under subsection (2), make an order:
  - (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place, or
  - (b) setting aside the disposition or dealing as from the day of the order and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

#### **42P Duration of freezing notices**

A freezing notice ceases to be in force if any of the following occurs:

- (a) if the defendant has not been charged with a serious offence at the end of the period of 48 hours after the issuing of the notice,
- (b) on an appropriate court refusing to confirm the freezing notice or if an application for confirmation of the notice has not been made within 14 days after it is issued,
- (c) if the charge is withdrawn and the defendant is not charged with a related offence by the time of the withdrawal,
- (d) if the defendant is acquitted of the charge or the charge is dismissed and the defendant is not charged with a related offence by the time of the acquittal or dismissal,
- (e) if the appropriate court refuses to make a forfeiture order in relation to the property to which it relates and:
  - (i) an appeal against the refusal is finally determined, or
  - (ii) the time for making an appeal against the refusal expires and an appeal is not made before the time expires,
- (f) if a court makes an order setting aside the freezing notice in respect of the whole of the property to which it relates.

#### **42Q Effect of other orders on freezing notices**

- (1) If, while a freezing notice in respect of property is in force, a court makes a forfeiture order in respect of the property or makes a pecuniary penalty order or a drug proceeds order against the defendant subject to the notice, the court or an appropriate court may:
  - (a) if it considers it appropriate, make an order setting aside the freezing notice in respect of the whole or a specified part of the property, and
  - (b) make any other order or orders it considers appropriate in relation to the operation of the freezing notice.
- (2) If, while a freezing notice in respect of property is in force, a court refuses to make a forfeiture order in respect of the property or refuses to make a pecuniary penalty order or drug proceeds order against the defendant, the court or an appropriate court may:
  - (a) if it considers it appropriate, make an order in relation to the period for which the freezing notice is to remain in force, and

- (b) make any other order or orders it considers appropriate in relation to the operation of the freezing notice.
- (3) An order under this section may:
- (a) set aside the freezing notice wholly or in part, or
  - (b) take effect:
    - (i) on the making of the forfeiture order, pecuniary penalty order or drug proceeds order, or
    - (ii) at a specified time, or
    - (iii) if relevant, on the payment of a penalty amount to the State, or
    - (iv) on the happening of some other specified event.

#### **42R Purchase of property**

- (1) The payment to the State of an amount equal to the value of property subject to a freezing notice operates to discharge the freezing notice (except in so far as the court otherwise directs).
- (2) For the purposes of this section, the value of property is the value agreed between the Attorney General and the person seeking to discharge the freezing notice.
- (3) A payment may not be made under this section before a freezing notice is confirmed by a court.

#### **42S Return of property**

- (1) If a freezing notice ceases to be in force and the property concerned is not subject to any other order under this Act, the person who is lawfully entitled to it may apply to the Attorney General for the return of the property or for payment of an amount equal to the value of the property together with interest calculated from the date, and at the rate, prescribed by the regulations.
- (2) The Attorney General must, if satisfied that the person is lawfully entitled to the property, return the property or pay the amount, as the case requires, not later than 6 months after receipt of the application.
- (3) If the person who is lawfully entitled to property or to be paid an amount under this section cannot be ascertained or an application is not made within 6 months of the freezing notice ceasing to be in force, the property is to be dealt with as if it had been forfeited under this Act.

#### **42T Arrangements for management of property**

The Commissioner of Police may enter into arrangements with the Public Trustee or any other person with respect to the management of property that is under the control of the Commissioner under a freezing notice.

#### **42U Appeals against refusal to confirm freezing notice**

- (1) The Attorney General, the Director of Public Prosecutions or the Commissioner of Police may appeal to the appeal court against a refusal by an appropriate court to confirm a freezing notice.
- (2) On an appeal, the appeal court may make any order that an appropriate court may make on an application for confirmation of a freezing notice.
- (3) An order made by the appeal court under this section is taken to have been made by the appropriate court, but is not on that account subject to further appeal.
- (4) In this section, the **appeal court** is:
  - (a) in relation to a Magistrate, Local Court, the Children's Court or District Court—the Supreme Court, and
  - (b) in relation to the Supreme Court—the Court of Criminal Appeal.

#### **42V Court may make further orders relating to freezing notices**

- (1) An appropriate court that confirms a freezing notice or a court that is dealing with proceedings for a serious offence in relation to which a freezing notice has been issued may, at any time, make any orders ancillary to the freezing notice that the court considers appropriate.
- (2) Without limiting the generality of subsection (1), the court may make any one or more of the following orders:
  - (a) an order varying the terms of the freezing notice, including the property to which it relates and any conditions of the notice,
  - (b) an order with respect to the carrying out of any undertaking with respect to the payment of costs or damages given by the State in connection with the confirmation of the freezing notice,
  - (c) an order setting aside the freezing notice in respect of the whole or part of the property.
- (3) An order under this section may be made on the application of any of the following persons:

- (a) an appropriate officer,
  - (b) the owner,
  - (c) a person directed by the freezing notice to take control of property subject to the notice,
  - (d) any other person with the leave of the court.
- (4) A person who makes an application under this section must give notice of the application, as prescribed by the regulations or rules of court, to each other person who is entitled, by virtue of subsection (3) (a)–(c), to make an application under this section.

**[35], [36] (Repealed)**

**[37] Section 43 (9)**

Insert after section 43 (8):

- (9) A restraining order may not be made in respect of property affected by a freezing notice or the subject of a current application for a freezing notice under this Act.

**[38] Section 45 Supreme Court may make further orders relating to restraining orders**

Omit section 45 (6) and (7). Insert instead:

- (6) A person who makes an application under this section in relation to a restraining order must give notice of the application, as prescribed by the regulations or rules of court, to each other person who is entitled, by virtue of subsection (3) (a)–(c), to make an application under this section in relation to the order.

**[39] New section 45A**

Re-number section 50 as section 45A and insert after section 45.

**[40] New section 45B**

Re-number section 55 as section 45B and insert after new section 45A.

**[41] Part 3, Division 3, heading**

Insert before section 46:

Division 3 **General provisions applying to restraining orders and freezing notices**

**[42] Section 46**

Omit the section. Insert instead:

**46 Order for taxation of legal expenses to be met out of restrained or frozen property**

(1) If:

(a) the Supreme Court makes a restraining order directing the Public Trustee to take control of property or an appropriate court makes a freezing notice directing the Public Trustee or Commissioner of Police to take control of property, and

(b) the order or notice makes provision for meeting, out of the property or part of it, a person's reasonable expenses in defending a criminal charge,

the Public Trustee or Commissioner may apply to the court for an order under subsection (3).

(2) The Public Trustee or Commissioner must give to the person written notice of an application under this section.

(3) On an application, the court may order that the expenses be taxed as provided in the order or notice or may dismiss the application.

(4) An applicant for an order need not, except as ordered by the court after the application is made, take any steps for the purpose of meeting the expenses as provided by the restraining order or freezing notice unless and until:

(a) an order under subsection (3) in relation to the expenses is complied with, or

(b) the application, and any appeal arising out of it, are finally determined, or otherwise disposed of, otherwise than by the making of such an order.

**[43] Section 47 Public Trustee or Commissioner of Police to discharge confiscation order**

Insert "or Commissioner of Police" after "Public Trustee" where firstly occurring in section 47 (1) (a).

**[44] Section 47 (1) (a) and (4) (a)**

Insert "or freezing notice" after "restraining order" wherever occurring.

**[45] Section 47 (1) (b)**

Omit "or drug proceeds order".



**[46] Section 47 (1)**

Insert “or Commissioner” after “Public Trustee” where secondly and thirdly occurring.

**[47] Section 47 (2), (4), (5) and (6)**

Insert “or Commissioner” after “Public Trustee” wherever occurring.

**[48] Section 47 (4) (a)**

Insert “or Commissioner’s” after “Public Trustee’s” wherever occurring.

**[49] Section 47 (6)**

Omit “or drug proceeds order” wherever occurring.

**[50] Section 48 Charge on property subject to restraining order or freezing notice**

Omit section 48 (1) (a). Insert instead:

- (a) in reliance on the charging, or the proposed charging, of a person with, or the conviction of a person of, a serious offence, a court has made a restraining order or confirmed a freezing notice in respect of property of a person, and

**[51] Section 48 (1)**

Insert “or freezing notice” after “restraining order” where secondly occurring.

**[52] Section 48 (2) (c) (iii)**

Omit the subparagraph. Insert instead:

- (iii) if the restraining order or freezing notice directed the Public Trustee or the Commissioner of Police to take control of the property—by the owner of the property with the consent of the Public Trustee or the Commissioner, or

**[53] Section 48 (4) (a)**

Insert “or Commissioner” after “Public Trustee”.

**[54] Section 49 Registration of restraining orders and freezing notices**

Insert “or freezing notice” after “restraining order” wherever occurring in section 49 (1).

**[55] Section 49 (2)**

Omit “a restraining order”. Insert instead “an order or notice”.

**[56] Section 49 (2)**

Omit “section 50”. Insert instead “section 42O or 45A”.

**[57] Section 49 (2)**

Omit “the restraining order”. Insert instead “the order or notice”.

**[58] Section 49 (3)**

Insert “or freezing notice” after “restraining order”.

**[59] Section 49 (3)**

Insert “or notice” after “the order”.

**[60] Section 51 Hindering or obstructing Public Trustee or Commissioner of Police**

Omit section 51 (1). Insert instead:

- (1) A person must not hinder or obstruct the Public Trustee or the Commissioner of Police in the performance of their obligations under a restraining order or freezing notice.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

**[61] Section 51A**

Insert after section 51:

**51A Orders to furnish statements to Public Trustee or Commissioner of Police**

- (1) A person directed by an order under section 42M or 45 to furnish a statement to the Public Trustee or Commissioner of Police is not excused from:
  - (a) furnishing the statement, or
  - (b) setting out particulars in the statement,on the ground that the statement or particulars might tend to incriminate the person or make the person liable to a forfeiture or penalty.
- (2) A statement furnished to the Public Trustee or Commissioner under any such order, and any information, document or thing obtained as a direct or indirect consequence of the statement, is not admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

**[62] Section 52 Protection of Public Trustee and Commissioner of Police from liability in certain cases**

Insert “or Commissioner of Police” after “Public Trustee” wherever occurring in section 52 (2) and (3).

**[63] Section 52 (2) and (3)**

Insert “or freezing notice” after “restraining order” wherever occurring.

**[64] Section 53 Fees payable to Public Trustee or Commissioner of Police**

Insert “or Commissioner of Police” after “Public Trustee” wherever occurring.

**[65] Section 53**

Insert “or freezing notice” after “restraining order”.

**[66] Section 54 Court may revoke orders or notices**

Omit “the Supreme Court has made a restraining order, the Court may, on application made to it by the person, revoke the order”.

Insert instead “a court has made a restraining order or confirmed a freezing notice, the court may, on application made to it by the person, revoke the order or notice”.

**[67] Section 54 (a) and (b)**

Omit “Court” wherever occurring. Insert instead “court”.

**[68] Section 54 (2)**

Insert at the end of section 54:

- (2) A person who makes an application under this section must give notice of the application, as prescribed by the regulations or rules of court.

**[69] Section 56 Notice of applications under this Part**

Omit the section.

**[70] Section 57 Certificate by Public Trustee or Commissioner of Police**

Insert “or freezing notice” after “restraining order” wherever occurring.

**[71] Section 57 (2)**

Insert at the end of section 57:

- (2) If a freezing notice is in force directing the Commissioner of Police to take control of

property, a certificate by the Commissioner:

- (a) certifying that the freezing notice has been made and is in force, and
- (b) stating the terms of the freezing notice,

is to be accepted by all courts, officers and other persons, whether acting under any Act or not, as evidence of the matters so certified and stated and of the Commissioner's right to act under the notice, without production of any further proof.

**[72] Section 62 Effect of production orders on proceedings etc**

Insert "or to confirm a freezing notice" after "drug proceeds order" in section 62 (3).

**[73]-[76] (Repealed)**

**[77] Section 74 Proceedings for offences**

Omit "under section 50 (contravention of restraining orders)" from section 74 (2).

Insert instead "under section 420 or 45A".

**[78] Section 74 (3)**

Omit "under section 50 shall".

Insert instead "under section 420 or 45A must".

**[79]-[83] (Repealed)**

**[84] Section 79 Effect of registration of interstate restraining orders**

Omit "48, 54, 55" from section 79 (2). Insert instead "45B, 48, 54".

**[85]-[96] (Repealed)**

**[97] Section 89 Interstate operation of New South Wales orders and notices**

Omit "or restraining order" wherever occurring.

Insert instead ", restraining order or freezing notice".

**[98] Section 89 (1), (2), (3) (a), (b) and (c)**

Insert "or notice" after "the order" wherever occurring.

**[99] Section 90 Costs incurred on variation of orders or notices on application by third parties**

Omit "the Supreme Court" from section 90 (1) (a). Insert instead "a court".

**[100] Section 90 (1) (a)**

Omit “or restraining order”.

Insert instead “, restraining order or freezing notice”.

**[101] Section 90 (1)**

Omit “Supreme Court may”. Insert instead “court may”.

**[102] Section 90 (2), (3), (4) and (5)**

Omit “Supreme Court” wherever occurring. Insert instead “court”.

**[103] Section 90 (6)**

Omit the subsection. Insert instead:

(6) In this section:

***third party***, in relation to a forfeiture order, restraining order or freezing notice, means a person who is not the subject of the order or notice.

***vary*** includes limit the manner in which an order or notice applies.

**[104] (Repealed)**

**[105] Section 91 (b)**

Insert “or section 42S (return of property)” after “orders”.

**[106]-[108] (Repealed)**

**Schedules 2-4 (Repealed)**