Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010

No. 4, 2010

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

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

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Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010

No. 4, 2010

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

[*Assented to 19 February 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	19 February 2010
2. Schedule 1, items 1 to 213	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 1 of Schedule 2 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	20 February 2010
3. Schedule 1, item 214	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 5 of Schedule 2 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	19 May 2010

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
4. Schedule 1, item 215	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 1 of Schedule 2 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. However, the provision(s) do not commence at all if: (c) item 70 of Schedule 2 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* commences before the event mentioned in paragraph (a); or (d) the event mentioned in paragraph (b) does not occur.	20 February 2010
5. Schedule 1, item 216	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 5 of Schedule 2 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	19 May 2010
6. Schedule 1, items 217 to 221	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 1 of Schedule 2 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	20 February 2010

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
7. Schedules 2, 3 and 4	The day after this Act receives the Royal Assent.	20 February 2010
8. Schedule 5, Part 1	The 28th day after this Act receives the Royal Assent.	19 March 2010
9. Schedule 5, Part 2	The day after this Act receives the Royal Assent.	20 February 2010
10. Schedule 6, items 1 and 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of subsection 369(4) of the *Criminal Procedure Act 2009* of Victoria.	
11. Schedule 6, item 3	Immediately after the commencement of subsection 369(4) of the *Criminal Procedure Act 2009* of Victoria.	
12. Schedules 7, 8 and 9	The day after this Act receives the Royal Assent.	20 February 2010
13. Schedules 10 and 11	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 1 of Schedule 4 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	20 February 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

Schedule 1—Proceeds of crime

Part 1—Exclusion, recovery and compensation

Proceeds of Crime Act 2002

1 Subsection 29(1)

Omit "may", substitute "must".

Note: The heading to section 29 is altered by omitting "**Court may exclude**" and substituting "**Excluding**".

2 Subsection 29(1)

Omit "specified", substitute "a specified *interest in".

3 Paragraph 29(1)(b)

Omit "property", substitute "interest".

4 Subsection 29(2)

Omit "specified", substitute "a specified *interest in".

5 Paragraphs 29(2)(a), (b), (c) and (d)

Omit "property", substitute "interest".

6 Subsection 29(3)

Before "property" (first occurring), insert "a specified *interest in".

7 Paragraphs 29(3)(a) and (d)

Omit "property", substitute "interest".

8 Subsection 29(4)

Before "property" (first occurring), insert "a specified *interest in".

9 Paragraph 29(4)(a)

Omit "owns the property", substitute "has the interest".

10 Paragraph 29(4)(b)

Omit "property is not owned", substitute "interest is not held".

11 Section 29A

Omit "may", substitute "must".

Note: The heading to section 29A is altered by omitting "**Court may exclude**" and substituting "**Excluding**".

12 Section 29A

Omit "specified", substitute "a specified *interest in".

13 Paragraph 29A(b)

Repeal the paragraph, substitute:

(b) the court is satisfied that the interest is held by a person other than the *suspect and is not subject to the *effective control of the suspect.

14 Section 29A (note)

Omit "an examination of the applicant", substitute "examinations in relation to the restraining order".

15 Subsection 30(1)

Repeal the subsection, substitute:

(1) A person may apply for an order under section 29 or 29A if a *restraining order that could cover property in which the person claims an *interest has been applied for, but is yet to be made.

Note: The heading to section 30 is altered by omitting "**after notice of the application for the order**" and substituting "**before restraining order has been made**".

16 Subsection 31(1)

Repeal the subsection, substitute:

(1) A person may apply for an order under section 29 or 29A if a *restraining order that covers property in which the person claims an *interest has been made.

(1A) An application under subsection (1):

(a) must be made to the court that made the *restraining order; and

(b) may be made at any time after the restraining order is made.

Note: The heading to section 31 is altered by omitting "**notice of the order**" and substituting "**restraining order has been made**".

17 At the end of subsection 31(6)

Add "However, the DPP need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.".

18 Paragraph 32(b)

Omit "an *examination of the applicant", substitute "*examinations in relation to the application".

19 Application

Division 3 of Part 2-1 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

20 Subsection 73(1)

Before "property" (first occurring), insert "a specified *interest in".

21 Paragraph 73(1)(b)

Omit "the applicant's property", substitute "property in which the applicant has an interest".

22 Paragraphs 73(1)(c), (d) and (e)

Repeal the paragraphs, substitute:

(c) if the forfeiture order was (or the forfeiture order applied for would be) made under section 47 or 49—the court is satisfied that the applicant's interest in the property is neither of the following:

(i) *proceeds of *unlawful activity;

(ii) if an offence on which the order was (or would be) based is a *serious offence—an instrument of any serious offence; and

(d) if the forfeiture order was (or the forfeiture order applied for would be) made under section 48—the court is satisfied that the applicant's interest in the property is neither proceeds nor an instrument of any of the offences to which the forfeiture order or forfeiture application relates.

23 Paragraph 73(2)(a)

Omit "property", substitute "*interest".

24 Paragraphs 73(2)(b), (c) and (d)

Omit "property" (wherever occurring), substitute "interest".

25 Subsection 74(1)

Omit "the *person's property", substitute "property in which the person claims an *interest".

26 Subsections 74(2) and (3)

Repeal the subsections, substitute:

After a forfeiture order has been made

(2) A person who claims an *interest in property specified in a *forfeiture order may, at any time after the forfeiture order is made, apply to the court that made the forfeiture order for an *exclusion order.

(3) However, unless the court gives leave, the person cannot apply for an *exclusion order if he or she:

(a) was notified of the application for the *forfeiture order, but did not appear at the hearing of that application; or

(b) appeared at the hearing of that application.

(4) The court may give the person leave to apply if the court is satisfied that:

(a) if paragraph (3)(a) applies—the person had a good reason for not appearing; or

(b) if paragraph (3)(b) applies—the person now has evidence relevant to the person's application that was not available to the person at the time of the hearing; or

(c) in either case—there are other special grounds for granting the leave.

27 Subsection 75(3)

Omit "examine the applicant under Part 3-1", substitute "conduct *examinations in relation to the application".

28 Section 76

Omit "examine the applicant under Part 3-1", substitute "conduct *examinations in relation to the application".

29 Subdivision C of Division 5 of Part 2-2 (heading)

Repeal the heading, substitute:

Subdivision C—Compensating for proportion of property not derived or realised from commission of any offence

30 Subsection 77(1)

Repeal the subsection, substitute:

(1) A court that made a *forfeiture order, or that is hearing, or is to hear, an application for a forfeiture order, must make an order under subsection (2) (a ***compensation order***) if:

(a) a person (the ***applicant***) has applied for a compensation order; and

(b) the court is satisfied that the applicant has an *interest in property specified in the forfeiture order or in the application for the forfeiture order; and

(c) the court is satisfied that a proportion of the value of the applicant's interest was not derived or realised, directly or indirectly, from the commission of any offence; and

(d) the court is satisfied that the applicant's interest is not an instrument of any offence; and

(e) in the case of a court that is hearing or is to hear an application for a forfeiture order—the court makes the forfeiture order.

31 Paragraph 77(2)(b)

After "Commonwealth", insert ", once the property has vested absolutely in it,".

32 Section 78

Repeal the section, substitute:

78 Application for compensation orders

Before a forfeiture order has been made

(1) A person may apply to a court for a *compensation order if an application for a *forfeiture order that could specify property in which the person claims an *interest has been made to the court, but the forfeiture order is yet to be made.

After a forfeiture order has been made

(2) A person who claims an *interest in property specified in a *forfeiture order may, at any time after the forfeiture order is made, apply to the court that made the forfeiture order for a *compensation order.

(3) However, unless the court gives leave, the person cannot apply under subsection (2) if he or she:
  (a) was notified of the application for the *forfeiture order, but did not make an application under subsection (1) before the forfeiture order was made; or
  (b) appeared at the hearing of the application for the forfeiture order.

(4) The court may give the person leave to apply under subsection (2) if the court is satisfied that:
  (a) if paragraph (3)(a) applies—the person had a good reason for not making an application under subsection (1) before the *forfeiture order was made; or
  (b) in either case:
    (i) the person now has evidence relevant to the making of the *compensation order that was not available to the person at the time the forfeiture order was made; or
    (ii) there are other special grounds for granting the leave.

33 At the end of subsection 79(3)

Add "However, the DPP need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.".

34 At the end of Subdivision C of Division 5 of Part 2-2

Add:

79A When an application can be heard

An application for a *compensation order must not be heard until the *DPP has had a reasonable opportunity to conduct *examinations in relation to the application.

35 Application

(1) Subdivisions B and C of Division 5 of Part 2-2 of the *Proceeds of Crime Act 2002*, as amended by this Part, apply in relation to forfeiture orders under section 47 or 49 of that Act that relate to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

(2) Subdivisions B and C of Division 5 of Part 2-2 of the *Proceeds of Crime Act 2002*, as amended by this Part, apply in relation to forfeiture orders under section 48 of that Act applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

36 Section 91 (simplified outline)

Before:

There are cases in which forfeited property can be recovered from the Commonwealth.

Insert:

There are cases in which compensation is payable by the Commonwealth.

37 Paragraph 92(1)(a)

Omit "the", substitute "a".

38 Subparagraph 92(1)(b)(i)

After "order", insert "under section 17 or 18".

39 Paragraph 92(3)(a)

Omit "day of the conviction", substitute "*conviction day".

40 After section 92

Insert:

92A Notice of date of forfeiture under this Part, etc.

(1) The *DPP must, before property is forfeited under this Part, take reasonable steps to give any person who has or claims, or whom the DPP reasonably believes may have, an *interest in the property a written notice stating:

(a) the date on which the property will be forfeited under this Part unless it is excluded from forfeiture; and

(b) the effect of section 93 (which deals with *extension orders); and

(c) that the person may be able to apply for an order under one of the following sections in relation to the property:

(i) section 29 (which deals with the exclusion of property from *restraining orders);

(ii) section 94 (which deals with the exclusion of property from forfeiture);

(iii) section 94A (which deals with compensation).

(2) However, the *DPP need not give a notice to a person under subsection (1) if the person has made:

(a) an application for an *extension order in relation to the property; and

(b) an application under section 30, 31 or 94 in relation to the property.

41 Paragraph 93(1)(a)

Omit "day of", substitute "*conviction day for".

42 Paragraph 93(1)(b)

Repeal the paragraph, substitute:

(b) the applicant has also applied to the court under:

(i) section 30 or 31 to exclude property from the restraining order; or

(ii) section 94 to exclude the property that is covered by the restraining order from forfeiture under this Part; and

43 Paragraph 93(1)(c)

Omit "31", substitute "30, 31 or 94".

44 Subsection 93(1)

Omit "day of" (last occurring), substitute "conviction day for".

45 Subsection 93(2)

Omit "31", substitute "30, 31 or 94".

46 Subsection 93(2)

Omit "day of", substitute "*conviction day for".

47 Subsection 93(3)

Omit "31", substitute "30, 31 or 94".

48 At the end of section 93

Add:

(4) If the court makes the *extension order, the *DPP must take reasonable steps to give any person who has or claims, or whom the DPP reasonably believes may have, an *interest in the property to which the order relates a written notice stating:

(a) the date on which the property will be forfeited under this Part, in accordance with the extension order, unless it is excluded from forfeiture; and

(b) the effect of subsections (2) and (3).

49 Subsection 94(1)

Omit "the *restraining", substitute "a *restraining".

50 Subsection 94(1)

Omit "may", substitute "must".

51 Paragraphs 94(1)(a), (b) and (c)

Repeal the paragraphs, substitute:

(a) a person (the ***applicant***) has applied for an order under this section; and

(b) the court is satisfied that the applicant has an *interest in property covered by the restraining order; and

52 Paragraph 94(1)(d)

Omit "the person", substitute "a person".

53 Paragraph 94(1)(e)

Before "property", insert "applicant's interest in the".

54 Paragraph 94(1)(f)

Omit "defendant's", substitute "applicant's".

55 At the end of subsection 94(5)

Add "However, the DPP need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.".

56 At the end of section 94

Add:

(6) The application must not be heard until the *DPP has had a reasonable opportunity to conduct *examinations in relation to the application.

57 After section 94

Insert:

94A Compensating for proportion of property not derived or realised from commission of any offence

(1) The court that made a *restraining order referred to in paragraph 92(1)(b) must make an order that complies with subsection (2) if:

(a) a person (the ***applicant***) has applied for an order under this section; and

(b) the court is satisfied that the applicant has an *interest in property covered, or that was at any time covered, by the restraining order; and

(c) a person has been convicted of a *serious offence to which the restraining order relates; and

(d) the court is satisfied that a proportion of the value of the applicant's interest was not derived or realised, directly or indirectly, from the commission of any offence; and

(e) the court is satisfied that the applicant's interest is not an *instrument of any offence.

(2) An order under this section must:

(a) specify the proportion found by the court under paragraph (1)(d); and

(b) direct the Commonwealth, once the property has vested absolutely in it, to:

(i) if the property has not been disposed of—dispose of the property; and

(ii) pay the applicant an amount equal to that proportion of the difference between the amount received from disposing of the property and the sum of any payments of the kind referred to in paragraph 100(1)(b) in connection with the forfeiture.

(3) A person who claims an *interest in property covered by a *restraining order referred to in paragraph 92(1)(b) may apply to the court that made the restraining order for an order under this section at any time.

(4) However, if the property has already been forfeited under this Part, the person cannot, unless the court gives leave, apply under subsection (3) if he or she:

(a) either:

(i) was given a notice under subsection 92A(1) in relation to the property; or

(ii) was not given such a notice because of subsection 92A(2); and

(b) did not make the application under subsection (3) before that forfeiture.

(5) The court may give the person leave to apply if the court is satisfied that:

(a) the person had a good reason for not making the application before the forfeiture; or

(b) the person now has evidence relevant to the application that was not available before the forfeiture; or

(c) there are special grounds for granting the leave.

(6) The person must give written notice to the *DPP of both the application and the grounds on which the order is sought.

(7) The *DPP may appear and adduce evidence at the hearing of the application.

(8) The *DPP must give the applicant notice of any grounds on which it proposes to contest the application. However, the DPP need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(9) The application must not be heard until the *DPP has had a reasonable opportunity to conduct *examinations in relation to the application.

58 Subsection 102(1)

Omit "(1)".

59 Subsection 102(1)

Omit "may", substitute "must".

60 Paragraph 102(1)(b)

Repeal the paragraph, substitute:

(b) the court is satisfied that:

(i) the applicant had an interest in the property before the forfeiture of the property; and

(ii) the applicant's interest in the property is neither *proceeds of unlawful activity nor an *instrument of unlawful activity; and

(iii) the applicant's interest in the property was lawfully acquired;

61 Subparagraph 102(1)(d)(ii)

Omit "declaring that there is payable by the Commonwealth", substitute "directing the Commonwealth to pay".

62 Subsections 102(2) and (3)

Repeal the subsections.

63 Section 104

Repeal the section, substitute:

104 Applying for orders under section 102 or 103

(1) A person who claims an *interest in property that has been forfeited to the Commonwealth under section 92 may, at any time after the forfeiture, apply to the court that made the *restraining order referred to in paragraph 92(1)(b) for an order under section 102 or 103.

(2) However, unless the court gives leave, the person cannot make an application for an order under section 102 if he or she:

(a) either:

(i) was given a notice under subsection 92A(1) in relation to the property; or

(ii) was not given such a notice because of subsection 92A(2); and

(b) either:

(i) did not make an application under section 29 or 94 in relation to the property; or

(ii) made such an application and appeared at the hearing of the application.

(3) The court may give the person leave to apply if the court is satisfied that:

(a) if subparagraph (2)(b)(i) applies—the person had a good reason for not making an application under section 29 or 94; or

(b) if subparagraph (2)(b)(ii) applies—the person now has evidence relevant to the person's application under this section that was not available at the time of the hearing; or

(c) in either case—there are other special grounds for granting the leave.

(4) The applicant must give written notice to the *DPP of both the application and the grounds on which the order is sought.

(5) The *DPP may appear and adduce evidence at the hearing of the application.

(6) The *DPP must give the applicant notice of any grounds on which it proposes to contest the application. However, the DPP need not

do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(7) The application must not be heard until the *DPP has had a reasonable opportunity to conduct *examinations in relation to the application.

64 Paragraph 106(b)

Omit "subparagraph 102(1)(d)(i)", substitute "subparagraph 102(d)(i)".

65 Application

Part 2-3 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to property covered by restraining orders made on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

66 Paragraph 333(1)(a)

Omit "the person was convicted of", substitute "a court passes sentence for".

67 Application

Paragraph 333(1)(a) of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to a person in relation to whom a court passes sentence on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

Part 2—Pecuniary penalty orders

Proceeds of Crime Act 2002

68 Subparagraph 121(4)(a)(i)

After "property", insert ", or property suspected of being subject to the *effective control of the person,".

69 Paragraph 122(1)(a)

Omit all the words after "control", substitute "of the person or another person".

70 Paragraph 122(1)(b)

Omit all the words after "provided", substitute "to the person or another person".

71 Paragraph 124(1)(c)

After "illegal activity" (last occurring), insert "and the other unlawful activity".

72 Paragraph 124(5)(a)

After "property", insert ", or property that is suspected of being subject to the *effective control of the person,".

73 Section 130

Omit "offence" (first occurring), substitute "*unlawful activity".

74 Paragraph 130(a)

Omit "offence", substitute "unlawful activity".

75 Subsection 133(1)

Omit "one or both of subsections (2) and (3) apply", substitute "one or more of subsections (2), (2A) or (3) apply".

76 After subsection 133(2)

Insert:

(2A) The *penalty amount may be increased if:

(a) the penalty amount was reduced under section 130 to take account of a forfeiture of property or a proposed *forfeiture order against property; and

(b) one of the following orders has been made:

(i) an order under section 73 or 94 excluding an *interest in the property from forfeiture;

(ii) an order under section 77 or 94A (which deal with compensation) directing the Commonwealth to pay an amount to a person in relation to a proportion of an interest in the property that was not derived or realised from the commission of any offence;

(iii) an order under section 102 (which deals with the recovery of property) in relation to an interest in the property.

The amount of the increase is such amount as the court considers appropriate.

(2B) In determining the amount of the increase for the purposes of subsection (2A), the court may have regard to:

(a) if subparagraph (2A)(b)(i) or (iii) applies—the value of the interest, as at the time the order was made; and

(b) if subparagraph (2A)(b)(ii) applies—the amount that the Commonwealth was required to pay; and

(c) any other matter the court considers relevant.

77 Application

Division 2 of Part 2-4 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to pecuniary penalty orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

78 At the end of section 134

Add:

(6) Despite subsections (2) and (3), the court hearing the application may give leave for the application to be made after the time before which an application would otherwise need to be made under those

subsections if it is satisfied that it would be in the interests of justice to allow the application.

79 Subsection 136(2)

Omit ", and any affidavit supporting the application,".

80 Subsections 136(3) and (4)

Repeal the subsections, substitute:

(3) The *DPP must give a copy of any affidavit supporting the application to a person who would be subject to the *pecuniary penalty order (if it were made) within a reasonable time before the hearing of the application.

81 Application

Division 3 of Part 2-4 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to applications made on or after the commencement of this item for pecuniary penalty orders, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

82 Subsection 146(1)

Repeal the subsection, substitute:

(1) Subject to subsections (2) and (3), a *pecuniary penalty order made in relation to a person's conviction of an offence is discharged if:

(a) the person's conviction of any of the offences to which the order relates is subsequently *quashed; and

(b) the *DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed or varied.

83 Subsection 146(2)

Omit "However, unless", substitute "Unless".

84 After subsection 146(2)

Insert:

(2A) To avoid doubt, the *DPP may make an application to confirm the order and an application to vary the order, and the court may hear both applications at the same time.

85 Subsection 146(3)

Repeal the subsection, substitute:

(3) A *pecuniary penalty order made in relation to a person's conviction of an offence is discharged if:

(a) the person's conviction of the offence is subsequently *quashed; and

(b) the order does not relate to any other offence; and

(c) the offence is not a *serious offence.

86 Section 147 (including the note)

After "confirmation" (wherever occurring), insert "or variation".

Note: The heading to section 147 is altered by inserting "**or variation**" after "**confirmation**".

87 Subsection 148(1)

After "confirmation", insert "or variation".

Note: The heading to section 148 is altered by inserting "**or variation**" after "**confirmation**".

88 Subparagraph 148(2)(a)(i)

Omit "the offence", substitute "any of the offences to which the order relates".

89 Subparagraph 148(2)(a)(ii)

Omit "that offence", substitute "any of those offences".

90 Paragraph 148(2)(a)

Omit "the conviction", substitute "such a conviction".

91 After section 149

Insert:

149A Court may vary pecuniary penalty order

(1) The court may vary the *pecuniary penalty order by reducing the *penalty amount by an amount worked out under subsection (2) if the court is satisfied that:

(a) the order relates to more than one offence; and

(b) when the *DPP applied for the order, the court could have made the order in relation to at least one of the offences that has not been *quashed.

(2) The amount is an amount equal to so much of the *penalty amount as the court reasonably believes to be attributable to a person's conviction of an offence:

(a) to which the *pecuniary penalty order relates; and

(b) that was *quashed.

(3) In determining the amount by which the *penalty amount should be reduced under subsection (2), the court may have regard to:

(a) the transcripts and evidence referred to in subsection 148(2); and

(b) the transcript of, and the evidence given in, any proceedings relating to the application for the *pecuniary penalty order or any application to vary the order; and

(c) any other matter that the court considers relevant.

92 Subsection 150(1)

After "149,", insert "or varies the order under section 149A,".

Note: The heading to section 150 is altered by inserting "**or variation**" after "**confirmation**".

93 Subsection 150(2)

After "confirm", insert "or vary".

Note: The heading to section 181 is altered by omitting "**for confirmation of forfeiture**" and substituting "**relating to quashing of convictions**".

94 Application

Division 5 of Part 2-4 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to convictions quashed on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

95 Paragraph 335(6)(a)

Repeal the paragraph, substitute:

(a) the order would, if made, be one of the following orders relating to an offence of which a person has been convicted:

(i) a *restraining order under section 17;

(ii) a *forfeiture order under section 48;

(iii) a *pecuniary penalty order under subparagraph 116(1)(b)(i); and

96 Paragraph 335(6)(b)

After "magistrate", insert "(the ***convicting magistrate***)".

97 Subsection 335(6)

Omit "the magistrate", substitute "a magistrate of the same court as the convicting magistrate".

98 Application

Subsection 335(6) of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to persons convicted before a magistrate on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

Part 3—Examinations

Proceeds of Crime Act 2002

99 Paragraph 180(1)(b)

Repeal the paragraph, substitute:

(b) a person who is a *suspect in relation to the restraining order; or

100 Subsection 180(1)

Omit "affairs", substitute "*affairs".

101 Subsection 180(1)

Omit "(including the nature and location of any property)".

102 Application

Section 180 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

103 After section 180

Insert:

180A Examination orders relating to applications for exclusion from forfeiture

(1) If an application for an order under section 73 or 94 for an *interest in property to be excluded from forfeiture is made, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:

(a) a person who has or claims an interest in the property; or

(b) the spouse or *de facto partner of a person referred to in paragraph (a);

about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

180B Examination orders relating to applications for compensation

(1) If an application for an order under section 77 or 94A (which deal with compensation) is made in relation to an *interest in property that has been or may be forfeited, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:
(a) a person who has or claims an *interest in the property; or
(b) the spouse or *de facto partner of a person referred to in paragraph (a);
about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

180C Examination orders relating to applications under section 102

(1) If an application for an order under section 102 (which deals with the recovery of property) is made under section 104 in relation to forfeited property, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:
(a) a person who has or claims an *interest in the property; or
(b) the spouse or *de facto partner of a person referred to in paragraph (a);
about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

180D Examination orders relating to enforcement of confiscation orders

(1) If a *confiscation order has been made but not satisfied, the court that made the confiscation order may make an order (an ***examination order***) for the *examination of any person including:

(a) a person against whom the confiscation order was made; or

(b) the spouse or *de facto partner of a person referred to in paragraph (a);

about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when proceedings relating to the enforcement of the *confiscation order are finally determined, withdrawn or otherwise disposed of.

180E Examination orders relating to restraining orders revoked under section 44

(1) If a *restraining order is revoked under section 44 (which deals with giving security to revoke etc. a restraining order), the court that revoked the restraining order may make an order (an ***examination order***) for the *examination of any person including:

(a) a person whose property was, or a person who had an *interest in property that was, the subject of the restraining order; or

(b) the spouse or *de facto partner of a person referred to in paragraph (a);

about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when the *restraining order would have ceased to have effect, assuming it had not been revoked under section 44.

104 Application

(1) Sections 180A and 180B of the *Proceeds of Crime Act 2002*, as inserted by this Part, apply in relation to applications for orders under section 73 or 77 of that Act:

(a) if the forfeiture order to which the application relates was or would be made under section 47 or 49 of that Act—that relate to restraining orders applied for on or after the commencement of this item; and

(b) if the forfeiture order to which the application relates was or would be made under section 48 of that Act—that relate to forfeiture orders applied for on or after the commencement of this item;

whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

(2) Sections 180A and 180B of the *Proceeds of Crime Act 2002*, as inserted by this Part, apply in relation to applications for orders under section 94 or 94A of that Act that relate to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

(3) Sections 180C and 180E of the *Proceeds of Crime Act 2002*, as inserted by this Part, apply in relation to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

(4) Section 180D of the *Proceeds of Crime Act 2002*, as inserted by this Part, applies in relation to confiscation orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

105 Subsection 181(1)

Omit "affairs", substitute "*affairs".

106 Subsection 181(1)

Omit "(including the nature and location of any property)".

107 Application

Section 181 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to convictions quashed on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

108 Section 182

Before "An", insert "(1)".

109 At the end of section 182

Add:

(2) The court must consider an application for an *examination order without notice having been given to any person if the *DPP requests the court to do so.

110 Subsection 187(4)

Omit "affairs" (first occurring), substitute "*affairs".

111 After paragraph 187(4)(a)

Insert:

(aa) if the examination relates to an application for exclusion from forfeiture and the person is no longer a person whose affairs can, under section 180A, be subject to the examination; or

(ab) if the examination relates to an application for an order under section 77 or 94A and the person is no longer a person whose affairs can, under section 180B, be subject to the examination; or

(ac) if the examination relates to an application for an order under section 102 and the person is no longer a person whose affairs can, under section 180C, be subject to the examination; or

(ad) if the examination relates to a *confiscation order that has not been satisfied and the person is no longer a person whose affairs can, under section 180D, be subject to the examination; or

(ae) if the examination relates to a *restraining order that has been revoked and the person is no longer a person whose affairs can, under section 180E, be subject to the examination; or

112 Paragraph 187(5)(b)

Repeal the paragraph, substitute:

(b) is relevant to the *affairs of a person whose affairs can, under section 180, 180A, 180B, 180C, 180D, 180E or 181, be subject to the examination.

113 Application

Sections 182 and 187 of the *Proceeds of Crime Act 2002*, as amended by this Part, apply in relation to examination orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

114 Section 195 (penalty)

Omit "6 months or 30 penalty units", substitute "2 years or 120 penalty units".

115 Subsection 196(1) (penalty)

Omit "6 months or 30 penalty units", substitute "2 years or 120 penalty units".

116 After section 197

Insert:

197A Giving false or misleading answers or documents

A person commits an offence if:

(a) the person is attending an *examination; and

(b) the person gives an answer or produces a document in the examination; and

(c) the answer or document:

(i) is false or misleading; or

(ii) omits any matter or thing without which it is misleading.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

117 Subparagraph 269(a)(ii)

Omit "affairs", substitute "*affairs".

118 Section 338

Insert:

affairs of a person includes, but is not limited to:

(a) the nature and location of property of the person or property in which the person has an interest; and

(b) any activities of the person that are, or may be, relevant to whether or not the person has engaged in unlawful activity of a kind relevant to the making of an order under this Act.

119 Section 338 (definition of *examination order*)

After "180", insert ", 180A, 180B, 180C, 180D, 180E".

Part 4—Notices

Proceeds of Crime Act 2002

120 After paragraph 202(5)(c)

Insert:

(ca) a document relevant to identifying, locating or quantifying property suspected of being:

(i) proceeds of an indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; or

(ii) an instrument of a serious offence;

whether or not the identity of the person who committed the offence is known;

121 Paragraph 202(5)(d)

Omit "such property", substitute "property referred to in paragraph (c) or (ca)".

122 Paragraph 202(5)(f)

After "(c),", insert "(ca),".

123 Subsection 202(6)

After "(5)(c)(ii)", insert "or paragraph (5)(ca)".

124 Subsection 202(6)

Omit "subparagraph" (second occurring), substitute "provision".

125 After paragraph 203(1)(c)

Insert:

(ca) specify the form and manner in which those documents are to be produced; and

126 Subsection 203(2)

Repeal the subsection, substitute:

(2) The time or times specified under paragraph (1)(c) must be:

(a) at least 14 days after the day on which the *production order is made; or

(b) if the magistrate who makes the production order is satisfied that it is appropriate, having regard to the matters specified in subsection (3), to specify an earlier time—at least 3 days after the day on which the production order is made.

(3) The matters to which the magistrate must have regard for the purposes of deciding whether an earlier time is appropriate under paragraph (2)(b) are:

(a) the urgency of the situation; and

(b) any hardship that may be caused to the person required by the *production order to produce documents or make documents available.

127 At the end of section 211

Add:

(3) It is a defence to an offence against subsection (1) if:

(a) the person fails to comply with the *production order only because the person does not produce one or more documents specified in the order within the time specified in the order; and

(b) the person took all reasonable steps to produce the document or documents within that time; and

(c) the person produces the document or documents as soon as practicable after that time.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

128 Application

Part 3-2 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to production orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

129 Paragraphs 213(1)(a) and (b)

After “is”, insert “or was”.

130 Paragraph 213(1)(d)

Omit "such".

131 Paragraph 213(1)(e)

After "hold", insert "or held".

132 After paragraph 213(1)(e)

Insert:

(ea) determining whether a *stored value card was issued to a specified person by a financial institution;

(eb) details of transactions made using such a card over a specified period of up to 6 months;

133 At the end of subsection 213(3)

Add:

; or (f) the Commissioner of Taxation; or

(g) the Chief Executive Officer of Customs; or

(h) the Chairperson of the Australian Securities and Investments Commission.

134 Section 214

Before "The", insert "(1)".

135 Paragraph 214(d)

After "provided", insert ", having regard to the record-keeping capabilities of the financial institution (to the extent known to the officer)".

136 Paragraph 214(e)

Repeal the paragraph, substitute:

(e) specify that the information or documents must be provided no later than:

(i) 14 days after the giving of the notice; or

(ii) if the officer giving the notice believes that it is appropriate, having regard to the matters specified in subsection (2), to specify an earlier day that is at least 3 days after the giving of the notice—that earlier day; and

137 At the end of section 214

Add:

(2) The matters to which the officer giving the notice must have regard in deciding whether to specify an earlier day under subparagraph (1)(e)(ii) are:

(a) the urgency of the situation; and

(b) any hardship that may be caused to the *financial institution required by the notice to provide the information or documents.

138 Section 218

Before "A", insert "(1)".

139 At the end of section 218

Add:

(2) It is a defence to an offence against subsection (1) if:

(a) the person fails to comply with the notice only because the person does not provide the information or a document within the period specified in the notice; and

(b) the person took all reasonable steps to provide the information or document within that period; and

(c) the person provides the information or document as soon as practicable after the end of that period.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

140 Application

Part 3-3 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to notices given under section 213 of that Act on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

141 Subsection 219(1)

Repeal the subsection, substitute:

(1) A judge of a court of a State or Territory that has jurisdiction to deal with criminal matters on indictment may make an order (a ***monitoring order***) that a *financial institution provide information about transactions:

(a) conducted during a particular period through an *account held by a particular person with the institution; or

(b) made using a *stored value card issued to a particular person by a financial institution.

142 Paragraph 219(2)(a)

Omit "in respect of whose *account the information is sought", substitute "who holds the *account or to whom the *stored value card was issued".

143 Paragraph 219(2)(b)

After "account", insert "or card".

144 Subsection 219(3)

Omit "in question", substitute "or to whom the card was issued".

145 Paragraph 220(1)(a)

Repeal the paragraph, substitute:

(a) specify the name or names:

(i) in which the *account is believed to be held; or

(ii) of the person to whom the *stored value card was issued; and

146 Application

Part 3-4 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to monitoring orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

147 Section 338 (definition of *account*)

Repeal the definition, substitute:

account means any facility or arrangement through which a *financial institution accepts deposits or allows withdrawals and includes:

(a) a facility or arrangement for:

(i) a *fixed term deposit; or

(ii) a safety deposit box; and

(b) a credit card account; and
(c) a loan account (other than a credit card account); and
(d) an account held in the form of units in:
(i) a cash management trust; or
(ii) a trust of a kind prescribed by the regulations; and
(e) a closed account.

To avoid doubt, it is immaterial whether:

(f) an account has a nil balance; or
(g) any transactions have been allowed in relation to an account.

148 Section 338

Insert:

stored value card means a portable device that is capable of storing monetary value in a form other than physical currency, or as otherwise prescribed by the regulations.

Part 5—Ancillary orders

Proceeds of Crime Act 2002

149 After paragraph 39(1)(c)

Insert:

(ca) an order directing the *suspect in relation to the restraining order to give a sworn statement to a specified person, within a specified period, setting out all of his or her *interests in property, and his or her liabilities;

150 Paragraph 39(1)(d)

After "owner" (first occurring), insert "or a previous owner".

151 Paragraph 39(1)(d)

After "owner" (second occurring), insert "or previous owner".

152 After paragraph 39(1)(d)

Insert:

(da) if the court is satisfied that there are reasonable grounds to suspect that a person (other than the owner or a previous owner) has information relevant to identifying, locating or quantifying the property—an order directing the person to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;

153 Paragraph 39(1)(g)

After "restraining order", insert ", or who has *effective control of property covered by a restraining order,".

154 After subsection 39(3)

Insert:

(3A) Despite subsection (3), the court must consider an application for an ancillary order without notice having been given under that subsection if:

(a) the *DPP requests the court to do so; and

(b) the *restraining order to which the application relates was considered, in accordance with subsection 26(4), without notice having been given.

155 After subsection 39(4)

Insert:

(4A) The court may, at any time before finally determining the application, direct the *DPP to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

(4B) If the court makes the ancillary order after a request under subsection (3A), the *DPP must give written notice to any person whom the DPP reasonably believes may be affected by the order.

156 After section 39

Insert:

39A Privilege against self incrimination etc. does not apply

(1) A person is not excused from giving a sworn statement under paragraph 39(1)(ca), (d) or (da) on the grounds that to do so would tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of a natural person, a sworn statement is not admissible in civil or criminal proceedings against the person who made the statement except:

(a) in criminal proceedings for giving false or misleading information; or

(b) in proceedings on an application under this Act; or

(c) in proceedings ancillary to an application under this Act; or

(d) in proceedings for enforcement of a *confiscation order.

39B Application to revoke ancillary order

(1) A person may apply to the court that made an ancillary order under section 39 to revoke the order if:

(a) the person is affected by the order; and

(b) the application for the ancillary order was heard without notice having been given under subsection 39(3) following a request under subsection 39(3A).

(2) The application must be made within 14 days after the person was notified of the ancillary order.

(3) The applicant must give written notice of the application, and the grounds on which the revocation is sought, to any person who was entitled to make the application for the ancillary order (see subsection 39(2)).

(4) The effect of the ancillary order is stayed until the court determines the application.

(5) The court may revoke the ancillary order on application under subsection (1) if it considers it appropriate to do so.

(6) The court may have regard to any matter it considers appropriate in determining the application.

(7) If:

(a) the ancillary order directed a person to do a thing within a particular period; and

(b) an application is made to revoke the order under this section;

the court may, if it considers it appropriate to do so, vary the order to extend that period by a specified period.

157 Section 40 (note)

After "restraining order", insert ", or who has effective control of property covered by a restraining order,".

158 Application

Division 5 of Part 2-1 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

158A Subparagraph 266A(1)(a)(i)

Omit "39(1)(d)", substitute "39(1)(ca), (d) or (da)".

Part 6—Evidence

Proceeds of Crime Act 2002

159 Subsection 64(2)

Omit "If the application relates to a person's conviction of an *indictable offence, the court", substitute "The court".

160 Paragraph 64(2)(a)

Repeal the paragraph, substitute:

(a) the transcript of any proceeding against the person for an offence that constitutes *unlawful activity; and

161 Application

Section 64 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to forfeiture orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

162 Subsection 138(2)

Omit "If the application relates to a person's conviction of an *indictable offence, the court", substitute "The court".

163 Paragraph 138(2)(a)

Repeal the paragraph, substitute:

(a) the transcript of any proceeding against the person for an offence that constitutes *unlawful activity; and

164 Application

Section 138 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to pecuniary penalty orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

165 After section 318

Insert:

318A Admissibility in proceedings of statements made at examination by absent witness

Scope

(1) This section applies if direct evidence by a person (the ***absent witness***) of a matter would be admissible in a proceeding before a court:

(a) on an application for an order under this Act; or

(b) ancillary to such an application; or

(c) for the enforcement of an order made under this Act.

Admissibility of statements made at examination

(2) A statement that the absent witness made at an *examination of the absent witness and that tends to establish the matter is admissible in the proceeding as evidence of the matter:

(a) if it appears to the court that:

(i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or

(ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or

(iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or

(b) if it does not so appear to the court—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

Rules that apply if statement admitted

(3) The rules in subsections (4) to (6) apply if evidence of a statement is admitted under subsection (2).

(4) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:

(a) how long after the matters to which it related occurred the statement was made; and

(b) any reason the absent witness may have had for concealing or misrepresenting a material matter; and

(c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.

(5) If the absent witness is not called as a witness in the proceeding:

(a) evidence that would, if the absent witness had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and

(b) evidence is admissible to show that the statement is inconsistent with another statement that the absent witness has made at any time.

(6) However, evidence of a matter is not admissible under this section if, had the absent witness been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

318B Objection to admission of statements made at examination

Adducing party to give notice

(1) A party (the ***adducing party***) to a proceeding referred to in subsection 318A(1) may, not less than 14 days before the first day of the hearing of the proceeding, give another party to the proceeding written notice that the adducing party:

(a) will apply to have admitted in evidence in the proceeding specified statements made at an *examination; and

(b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.

(2) The notice must set out, or be accompanied by a written record of, the specified statements.

Other party may object to admission of specified statements

(3) The other party may, within 14 days after a notice is given under subsection (1), give the adducing party a written notice (an ***objection notice***):

(a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and

(b) specifying, in relation to each of those statements, the grounds of objection.

(4) The period referred to in subsection (3) may be extended by the court before which the proceeding is to be heard or by agreement between the parties concerned.

Effect of giving objection notice

(5) On receiving an objection notice, the adducing party must give to the court a copy of:

(a) the notice under subsection (1) and any record under subsection (2); and

(b) the objection notice.

(6) If subsection (5) is complied with, the court may either:

(a) determine the objections as a preliminary point before the hearing of the proceeding begins; or

(b) defer determination of the objections until the hearing.

Effect of not giving objection notice

(7) If a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless:

(a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or

(b) the court gives the other party leave to object to the statement being so admitted.

166 Application

Sections 318A and 318B of the *Proceeds of Crime Act 2002*, as inserted by this Part, apply in relation to statements made at an examination on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

Part 7—Definitions

Proceeds of Crime Act 2002

167 Subsection 19(4)

Omit "*indictable".

Note: The heading to section 19 is altered by omitting "**people suspected of committing**" and substituting "**property suspected of being proceeds of**".

168 Application

Section 19 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

169 Subsection 337(3)

Repeal the subsection.

170 After subsection 337(4)

Insert:

(4A) In determining whether or not property is subject to the ***effective control*** of a person, the effect of any order made in relation to the property under this Act is to be disregarded.

171 At the end of section 337

Add:

(7) To avoid doubt, property may be subject to the ***effective control*** of more than one person.

172 Paragraph 337A(1)(a)

Before "*restraining", insert "*production order, *search warrant,".

173 Paragraph 337A(2)(a)

After "*freezing order", insert ", *production order, *search warrant".

174 Subsection 337A(3)

Repeal the subsection.

175 Application

Section 337A of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to applications referred to in paragraph 337A(1)(a) of that Act made on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

176 Section 338 (definition of *discretionary trust*)

Repeal the definition.

177 Section 338 (paragraph (b) of the definition of *evidential material*)

After "offence", insert ", a *foreign indictable offence or an *indictable offence of Commonwealth concern".

178 Application

The amendment made by item 177 applies in relation to search warrants applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

179 Section 338 (after paragraph (a) of the definition of *serious offence*)

Insert:

(aa) unlawful conduct by a person that consists of an indictable offence (the ***3 year offence***) punishable by imprisonment for 3 or more years and one or more other indictable offences that, taken together with the 3 year offence, constitute a series of offences:

(i) that are founded on the same facts or are of a similar character; and

(ii) that cause, or are intended to cause, a benefit to the value of at least $10,000 for that person or another person, or a loss to the Commonwealth or another person of at least $10,000; or

180 Section 338 (paragraph (a) of the definition of *tainted property*)

After "offence", insert ", a *foreign indictable offence or an *indictable offence of Commonwealth concern".

181 Application

The amendment made by item 180 applies in relation to search warrants applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

182 Section 338 (paragraph (b) of the definition of *unlawful activity*)

Omit "that may be dealt with on indictment (even if it may be dealt with as a summary offence in some circumstances)".

Part 8—Technical amendments relating to orders

Proceeds of Crime Act 2002

183 At the end of subsection 45(1)

Add:

; or (h) a new trial is ordered in relation to the offence.

Note: The heading to section 49 is altered by omitting "**conduct constituting**" and substituting "**property suspected of being proceeds of**".

184 Application

Section 45 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to restraining orders applied for on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

185 Section 84

Before "The court", insert "(1)".

186 At the end of section 84

Add:

(2) For the purposes of paragraphs (1)(a) and (b), the requirement in paragraph 47(1)(b) or 49(1)(b) (as the case requires) is taken to be satisfied.

187 Application

Section 84 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to applications made as referred to in paragraph 81(1)(b) of that Act on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

188 Subsection 85(1)

Omit "84(a)", substitute "84(1)(a)".

189 Subsection 85(2)

Omit "84(b)", substitute "84(1)(b)".

190 Section 110

Before "The court", insert "(1)".

191 At the end of section 110

Add:

(2) For the purposes of paragraphs (1)(a) and (b), the requirement in paragraph 47(1)(b) or 49(1)(b) (as the case requires) is taken to be satisfied.

192 Application

Section 110 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to applications made as referred to in paragraph 107(1)(c) of that Act on or after the commencement of this item, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

193 Subsection 111(1)

Omit "110(a)", substitute "110(1)(a)".

194 Subsection 111(2)

Omit "110(b)", substitute "110(1)(b)".

195 Paragraph 316(1)(b)

Omit "has an interest in the property that is the subject of the proceeding", substitute "would be affected by the order".

196 Paragraph 316(2)(b)

Repeal the paragraph, substitute:

(b) if the order is an order under section 47 (forfeiture orders relating to conduct constituting serious offences) or 49 (forfeiture orders relating to property suspected of proceeds of indictable offences etc.)—before the end of the period of 6 months referred to in paragraph 47(1)(b) or 49(1)(b) (as the case requires).

197 Application

Section 316 of the *Proceeds of Crime Act 2002*, as amended by this Part, applies in relation to proceedings under Chapter 2 of that Act, whether commenced before, on or after the commencement of this item.

Part 9—Confiscated Assets Account

Division 1—Simplification of accounting

Proceeds of Crime Act 2002

198 Subsection 296(2)

Repeal the subsection.

199 Subsection 297(1)

Omit "(1) The following are purposes of the *Confiscated Assets Account in respect of *suspended funds:", substitute "The following are purposes of the *Confiscated Assets Account:".

200 Subsection 297(2)

Repeal the subsection.

200A Subsection 298(1)

Omit "in a particular financial year".

201 Section 299

Repeal the section.

202 Section 338 (definition of *distributable funds*)

Repeal the definition.

203 Section 338 (definition of *suspended funds*)

Repeal the definition.

Division 2—Crediting amounts paid to settle proceedings

Proceeds of Crime Act 2002

204 At the end of subsection 296(1)

Add:

; and (h) amounts paid to the Commonwealth in settlement of proceedings connected with this Act.

205 Application

Paragraph 296(1)(h) of the *Proceeds of Crime Act 2002* (as amended by this Division) applies to amounts paid to the Commonwealth on or after the commencement of this Division in settlement of proceedings connected with this Act, whether the settlements occurred before, on or after that commencement.

Division 3—Payments by the Commonwealth under court orders

Proceeds of Crime Act 2002

206 At the end of section 55

Add:

(4) For the purposes of an order described in paragraph (2)(a), an amount may be specified wholly or partly by reference to a specified proportion of the difference between:

(a) the amount received from disposing of the combined interests specified in the *forfeiture order; and

(b) the sum of any payments of the kind referred to in paragraph 70(1)(b) in connection with the forfeiture order.

207 After paragraph 297(1)(f)

Insert:

(fa) making any payments the Commonwealth is directed to make by an order under paragraph 55(2)(a), section 72, paragraph 73(2)(d), section 77 or 94A, subparagraph 102(d)(ii) or section 179L;

208 Paragraph 297(1)(g)

Repeal the paragraph, substitute:

(g) making any payments under an arrangement under paragraph 88(1)(b) or subsection 289(2);

209 Application

Paragraphs 297(1)(fa) and (g) of the *Proceeds of Crime Act 2002* (as amended by this Division) apply in relation to orders and arrangements made on or after the commencement of this Division.

Part 10—Other amendments

Administrative Decisions (Judicial Review) Act 1977

210 After paragraph (ya) of Schedule 1

Insert:

(yb) decisions of the DPP to apply for an order under the *Proceeds of Crime Act 2002*;

211 Application

The amendment made by item 210 applies in relation to decisions made on or after the commencement of this item.

Proceeds of Crime Act 2002

212 Paragraph 142(3)(a)

After "property", insert "(other than an encumbrance in which the person referred to paragraph (1)(a) has an *interest)".

213 Paragraph 169(3)(a)

After "property", insert "(other than an encumbrance in which the person referred to in paragraph (1)(a) has an *interest)".

214 Part 4-4 (heading)

Repeal the heading, substitute:

Part 4-4—Charges over restrained property to secure certain amounts payable to the Commonwealth

215 Paragraph 302(a)

After "property", insert "(other than an encumbrance in which the person who is liable to pay the amount has an *interest)".

216 Division 2 of Part 4-4 (heading)

Repeal the heading.

217 Paragraph 302C(a)

After "property", insert "(other than an encumbrance in which the person who is liable to pay the amount owing under subsection 293(3) has an *interest)".

218 Paragraph 307(3)(a)

After "property", insert "(other than an encumbrance in which the person convicted of the offence has an *interest)".

219 Application

Sections 142, 169, 302, 302C and 307 of the *Proceeds of Crime Act 2002*, as amended by this Part, apply in relation to charges created on or after the commencement of this item.

220 After section 315

Insert:

315A Court may hear multiple applications at same time

A court may hear and determine 2 or more applications under this Act at the same time.

221 Application

Section 315A of the *Proceeds of Crime Act 2002*, as inserted by this Part, applies in relation to applications made on or after the commencement of this item.

Schedule 2—Search warrants

Part 1—Seized things

Crimes Act 1914

1 Subsection 3C(1) (definition of *magistrate*)

Omit "3ZW", substitute "3ZQZ".

2 Section 3CA

Omit "3ZW" (wherever occurring), substitute "3ZQZ".

3 Subsection 3F(5)

Repeal the subsection.

4 Paragraph 3L(1B)(b)

Repeal the paragraph, substitute:

(b) the Commissioner is satisfied that the data is not required (or is no longer required) for a purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings;

5 Subsections 3UF(4) to (7)

Repeal the subsections.

Note: The heading to section 3UF is replaced by the heading "**Seizure notices**".

6 Subsection 3UF(9)

Repeal the subsection.

7 Section 3UG

Repeal the section.

8 Subsection 3UK(1)

Omit "sections 3UF and 3UG", substitute "section 3UF".

9 After Division 4B of Part IAA

Insert:

Division 4C—Using, sharing and returning things seized and documents produced

Subdivision A—Using and sharing things seized and documents produced

3ZQU Purposes for which things and documents may be used and shared

Use and sharing of thing or document by constable or Commonwealth officer

(1) A constable or Commonwealth officer may use, or make available to another constable or Commonwealth officer to use, a thing seized under this Part, or the original or a copy of a document produced under Division 4B, for the purpose of any or all of the following if it is necessary to do so for that purpose:

(a) preventing, investigating or prosecuting an offence;

(b) proceedings under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*;

(c) proceedings under a corresponding law (within the meaning of either of the Acts mentioned in paragraph (b)) that relate to a State offence that has a federal aspect;

(d) proceedings for the forfeiture of the thing under a law of the Commonwealth;

(e) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 or 105 of the *Criminal Code*;

(f) investigating or resolving a complaint or an allegation of misconduct relating to an exercise of a power or the performance of a function or duty under this Part;

(g) investigating or resolving an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*) under Part V of that Act;

(h) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;

(i) investigating or inquiring into a corruption issue under the *Law Enforcement Integrity Commissioner Act 2006*;

(j) proceedings in relation to a complaint, allegation or issue mentioned in paragraph (f), (g), (h) or (i);

(k) deciding whether to institute proceedings, to make an application or request, or to take any other action, mentioned in any of the preceding paragraphs of this subsection;

(l) the performance of the functions of the Australian Federal Police under section 8 of the *Australian Federal Police Act 1979*.

(2) A constable or Commonwealth officer may use a thing seized under this Part, or the original or a copy of a document produced under Division 4B, for any other use that is required or authorised by or under a law of a State or a Territory.

(3) A constable or Commonwealth officer may make available to another constable or Commonwealth officer to use a thing seized under this Part, or the original or a copy of a document produced under Division 4B, for any purpose for which the making available of the thing or document is required or authorised by a law of a State or Territory.

(4) To avoid doubt, this section does not limit any other law of the Commonwealth that:

(a) requires or authorises the use of a document or other thing; or

(b) requires or authorises the making available (however described) of a document or other thing.

Sharing thing or document for use by State, Territory or foreign agency

(5) A constable or Commonwealth officer may make a thing seized under this Part, or the original or a copy of a document produced under Division 4B, available to:

(a) a State or Territory law enforcement agency; or

(b) an agency that has responsibility for:

(i) law enforcement in a foreign country; or

(ii) intelligence gathering for a foreign country; or

(iii) the security of a foreign country;

to be used by that agency for a purpose mentioned in subsection (1), (2) or (3) and the purpose of any or all of the following (but not for any other purpose):

(c) preventing, investigating or prosecuting an offence against a law of a State or Territory;

(d) proceedings under a corresponding law (within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*);

(e) proceedings for the forfeiture of the thing under a law of a State or Territory;

(f) deciding whether to institute proceedings or to take any other action mentioned in any of paragraphs (1)(a) to (l) (inclusive), subsection (2) or (3) or paragraph (c), (d) or (e) of this subsection.

Ministerial arrangements for sharing

(6) This Division does not prevent the Minister from making an arrangement with a Minister of a State or Territory for:

(a) the making available to a State or Territory law enforcement agency of that State or Territory, for purposes mentioned in subsections (1), (3) and (5), of things seized under this Part and originals and copies of documents produced under Division 4B; and

(b) the disposal by the agency of such things, originals and copies when they are no longer of use to that agency for those purposes.

Note: This subsection does not empower the Minister to make such an arrangement.

Definition

(7) In this section:

State or Territory law enforcement agency means:

(a) the police force or police service of a State or Territory; or

(b) the New South Wales Crime Commission constituted by the *New South Wales Crime Commission Act 1985* of New South Wales; or

(c) the Independent Commission Against Corruption constituted by the *Independent Commission Against Corruption Act 1988* of New South Wales; or

(d) the Police Integrity Commission constituted by the *Police Integrity Commission Act 1996* of New South Wales; or

(e) the Office of Police Integrity continued by the *Police Integrity Act 2008* of Victoria; or

(f) the Crime and Misconduct Commission of Queensland; or

(g) the Corruption and Crime Commission established by the *Corruption and Crime Commission Act 2003* of Western Australia.

3ZQV Operating seized electronic equipment

(1) This section applies to electronic equipment seized under this Part or moved from warrant premises under section 3K.

(2) The electronic equipment may be operated at any location after it has been seized or moved, for the purpose of determining whether data that is evidential material is held on or accessible from the electronic equipment, and obtaining access to such data.

(3) The data referred to in subsection (2) includes, but is not limited to, the following:

(a) data held on the electronic equipment, including data held on the electronic equipment when operated under this section that was not held on the electronic equipment at the time the electronic equipment was seized;

(b) data not held on the electronic equipment but accessible by using it, including data that was not accessible at the time the electronic equipment was seized.

(4) If the electronic equipment was seized under a warrant or moved under section 3K, the electronic equipment may be operated before or after the expiry of the warrant.

(5) This section does not limit the operation of other provisions of this Part that relate to dealing with items seized under this Part or moved under section 3K.

Note: For example, this section does not affect the operation of the time limits in section 3K on examination or processing of a thing removed under that section from warrant premises.

3ZQW Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of equipment being operated as mentioned in section 3ZQV:

(i) damage is caused to the equipment; or

(ii) damage is caused to data recorded on the equipment or data access to which was obtained from the operation of the equipment; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.

(4) If the equipment was seized or moved from premises, then, in determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

Subdivision B—Returning things seized under Division 2 or 4

3ZQX When things seized under Division 2 or 4 must be returned

(1) If the Commissioner is satisfied that a thing seized under Division 2 or 4 is not required (or is no longer required) for a

purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings, the Commissioner must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it.

(2) However, the Commissioner does not have to take those steps if:

(a) the thing may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or

(b) the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

Subdivision C—Returning things seized under Division 3

3ZQY When things seized under Division 3 must be returned

(1) If:

(a) the Commissioner is satisfied that a thing seized under Division 3 is not required (or is no longer required) for a purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings; or

(b) the period of 60 days after the thing's seizure ends;

the Commissioner must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it.

(2) However, the Commissioner does not have to take those steps if:

(a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(b) the thing may be retained because of an order under section 3ZQZ; or

(c) the thing may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or

(d) the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

3ZQZ Magistrate may permit a thing seized under Division 3 to be retained

(1) The Commissioner may apply to a magistrate for an order under this section that a thing seized under Division 3 may be retained for a period if the application is made:
  (a) before the end of 60 days after the seizure; or
  (b) before the end of a period previously specified in an order in relation to the thing under this section.

(2) If the magistrate is satisfied that the thing is being used, or is required to be used, for a purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings, the magistrate may order that the thing may be retained for the period specified in the order.

(3) Before making the application, the Commissioner must:
  (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  (b) if it is practicable to do so, notify each person who the Commissioner believes to have such an interest of the proposed application.

Subdivision D—Returning things seized under Division 3A

3ZQZA Owner may request return of thing

(1) The Commissioner must take reasonable steps to return a thing seized under Division 3A if the owner requests the return of the thing.

(2) However, the Commissioner does not have to take those steps if:
  (a) the Commissioner suspects on reasonable grounds that if the thing is returned to the owner, the thing is likely to be used by the owner or another person in the commission of a terrorist act, a terrorism offence or a serious offence; or
  (b) the Commissioner is satisfied that the thing is being used, or is required to be used, for a purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings.

(3) If:

(a) the owner of a thing requests the return of the thing:
(i) within 90 days after the date of the seizure notice served under section 3UF in relation to the thing; or
(ii) if subsection 3UF(2) applied in relation to the thing so that a seizure notice was not served—within 90 days after the day on which the thing was seized; and
(b) the thing has not been returned to the owner by the end of the 90th day;

the Commissioner must, before the end of the 95th day:

(c) take reasonable steps to return the thing to the owner; or
(d) apply to a magistrate for an order under section 3ZQZB.

(4) In this section:

terrorist act has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

3ZQZB Magistrate may permit a thing seized under Division 3A to be retained, forfeited etc.

(1) If subsection 3ZQZA(3) applies, the Commissioner may apply to a magistrate for an order in relation to the thing.

(2) The magistrate must, in determining an application by the Commissioner under subsection (1), allow the owner of the thing to appear and be heard.

(3) If the magistrate is satisfied that the thing is being used, or is required to be used, for a purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings, the magistrate may order that the thing may be retained for the period specified in the order.

(4) If the magistrate is satisfied that there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to be used by the owner or another person in the commission of a terrorist act, a terrorism offence or a serious offence, the magistrate may make any of the following orders:

(a) that the thing may be retained for the period specified in the order;
(b) that the thing is forfeited to the Commonwealth;

(c) that the thing is to be sold and the proceeds given to the owner;

(d) that the thing is to be otherwise sold or disposed of.

(5) If the magistrate is not satisfied as mentioned in subsection (3) or (4), the magistrate must order that the thing be returned to the owner.

(6) In this section:

terrorist act has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

10 Sections 3ZV and 3ZW

Repeal the sections, substitute:

3ZW Delegation by Commissioner

The Commissioner may delegate to a constable any or all of the Commissioner's powers, functions or duties under this Part.

11 Application

The amendments made by this Part apply in relation to:

(a) a thing seized before, on or after the commencement of this Part; and

(b) a document produced before, on or after the commencement of this Part.

Part 2—Use of equipment under warrant

Crimes Act 1914

12 Subparagraph 3K(2)(a)(ii)

Repeal the subparagraph, substitute:

(ii) the executing officer or constable assisting suspects on reasonable grounds that the thing contains or constitutes evidential material; or

13 After subsection 3K(3)

Insert:

(3AA) The executing officer need not comply with paragraph (3)(a) or (b) if he or she believes on reasonable grounds that to do so might:

(a) endanger the safety of a person; or

(b) prejudice an investigation or prosecution.

14 Subsections 3K(3A) and (3B)

Omit "72 hours", substitute "14 days".

15 After subsection 3K(3C)

Insert:

(3D) A single extension cannot exceed 7 days.

16 Subsection 3L(1)

Repeal the subsection, substitute:

(1) The executing officer or a constable assisting may operate electronic equipment at the warrant premises to access data (including data not held at the premises) if he or she suspects on reasonable grounds that the data constitutes evidential material.

Note: A constable can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance: see section 3LA.

17 Subsection 3L(1A)

Omit "believes on reasonable grounds that any data accessed by operating the electronic equipment might constitute", substitute "suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes".

18 Paragraphs 3L(1A)(a) and (b)

Omit "the data", substitute "any or all of the data accessed by operating the electronic equipment".

19 Subsection 3L(4)

Omit "believes", substitute "suspects".

20 Section 3LA

Repeal the section, substitute:

3LAA Use of electronic equipment at other place

(1) If electronic equipment found at the warrant premises is moved to another place under subsection 3K(2), the executing officer or a constable assisting may operate the equipment to access data (including data held at another place).

(2) If the executing officer or constable assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes evidential material, he or she may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.

(3) If the Commissioner is satisfied that the data is not required (or is no longer required) for a purpose mentioned in section 3ZQU or for other judicial or administrative review proceedings, the Commissioner must arrange for:

(a) the removal of the data from any device in the control of the Australian Federal Police; and

(b) the destruction of any other reproduction of the data in the control of the Australian Federal Police.

(4) If the executing officer or a constable assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can be put in documentary form—put the material in that form and seize the documents so produced.

(5) A constable may seize equipment under paragraph (4)(a) only if:

(a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in paragraph (4)(b); or

(b) possession by the occupier of the equipment could constitute an offence.

3LA Person with knowledge of a computer or a computer system to assist access etc.

(1) A constable may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow a constable to do one or more of the following:

(a) access data held in, or accessible from, a computer or data storage device that:

(i) is on warrant premises; or

(ii) has been removed from warrant premises under subsection 3K(2) and is at another place for examination or processing; or

(iii) has been seized under this Division and is no longer on the warrant premises;

(b) copy data held in, or accessible from, a computer, or data storage device, described in paragraph (a) to another data storage device;

(c) convert into documentary form or another form intelligible to a constable:

(i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or

(ii) data held in a data storage device to which the data was copied as described in paragraph (b); or

(iii) data held in a data storage device removed from warrant premises under subsection 3L(1A).

(2) The magistrate may grant the order if the magistrate is satisfied that:

(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer or data storage device; and

(b) the specified person is:

(i) reasonably suspected of having committed the offence stated in the relevant warrant; or

(ii) the owner or lessee of the computer or device; or

(iii) an employee of the owner or lessee of the computer or device; or

(iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or

(v) a person who uses or has used the computer or device; or

(vi) a person who is or was a system administrator for the system including the computer or device; and

(c) the specified person has relevant knowledge of:

(i) the computer or device or a computer network of which the computer or device forms or formed a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or device.

(3) If:

(a) the computer or data storage device that is the subject of the order is seized under this Division; and

(b) the order was granted on the basis of an application made before the seizure;

the order does not have effect on or after the seizure.

Note: An application for another order under this section relating to the computer or data storage device may be made after the seizure. If the other order is made after the computer or device has been removed from the warrant premises, that other order can specify conditions relating to the provision of information or assistance.

(4) If the computer or data storage device is not on warrant premises, the order must:

(a) specify the period within which the person must provide the information or assistance; and

(b) specify the place at which the person must provide the information or assistance; and

(c) specify the conditions (if any) determined by the magistrate as the conditions to which the requirement on the person to provide the information or assistance is subject.

(5) A person commits an offence if the person fails to comply with the order.

Penalty for contravention of this subsection: Imprisonment for 2 years.

21 Paragraph 3LB(1)(a)

After "subsection 3L(1)", insert "or 3LAA(1)".

22 Paragraph 3LB(1)(d)

After "subsection 3L(1A) or (2)", insert "or 3LAA(2) or (4)".

23 Section 3M

Repeal the section, substitute:

3M Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of equipment being operated as mentioned in section 3K, 3L or 3LAA:

(i) damage is caused to the equipment; or

(ii) damage is caused to data recorded on the equipment or data access to which was obtained from the operation of the equipment; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

24 Paragraph 3N(2)(a)

After "paragraph 3L(2)(b)", insert "or 3LAA(4)(b)".

25 Application

(1) The amendments made by this Part apply in relation to warrants issued on or after the commencement of this Part.

(2) However, section 3LA of the *Crimes Act 1914* as amended by this Part applies in relation to orders under that section made after the commencement of the amendments. For this purpose it does not matter whether one or more of the following events occurred before, on or after that commencement:

(a) the issue of the warrant concerned;

(b) the removal or seizure of the computer or data storage device (if such removal or seizure is relevant to applying for or making the order concerned).

Schedule 3—Witness protection

Part 1—Amendments

Witness Protection Act 1994

1 Section 3 (paragraph (b) of the definition of *complementary witness protection law*)

Omit "by the Minister by notice published in the *Gazette*", substitute "under section 3AA".

2 Section 3

Insert:

current NWPP identity, in relation to a participant at a particular time, means an identity:

(a) provided to the participant under the NWPP; and

(b) being used by the participant at that time.

3 Section 3

Insert:

former NWPP identity, in relation to a participant at a particular time, means an identity that:

(a) was provided to the person under the NWPP before that time; and

(b) is not the participant's current NWPP identity at that time.

4 Section 3

Insert:

former participant means a person who has ceased to be included in the NWPP.

5 Section 3

Insert:

Immigration Secretary means the Secretary of the Department administered by the Minister who administers the *Migration Act 1958*.

6 Section 3

Insert:

information, in relation to the identity of a person includes, but is not limited to, information about one or more of the following in relation to the person:

(a) appearance;
(b) voice quality or accent;
(c) mannerisms;
(d) address or location;
(e) particular skills and qualifications;
(f) personal history.

7 Section 3

Insert:

original identity, in relation to a participant, means the identity of the participant at the time immediately before he or she was first provided with an identity under the NWPP.

8 Section 3 (definition of *participant*)

Repeal the definition, substitute:

participant means a person included in the NWPP and, unless the contrary intention appears, includes a former participant.

9 Section 3

Insert:

State offence that has a federal aspect has the meaning given by section 3AB.

10 Section 3

Insert:

State participant means a participant:

(a) in relation to a State offence that has a federal aspect; or

(b) in relation to a State offence that does not have a federal aspect; or

(c) in relation to a commission or inquiry under a law of a State.

11 Section 3

Insert:

Territory participant means a participant:

(a) in relation to an offence against a law of a Territory; or

(b) in relation to a commission or inquiry under a law of a Territory.

12 Section 3 (paragraph (e) of the definition of *witness*)

Omit "such a person", substitute "a person referred to in paragraph (a), (b), (c) or (d)".

13 After section 3

Insert:

3AA Declaration of *complementary witness protection law*

For the purposes of this Act, the Minister may, by legislative instrument, declare a law of a State or Territory to be a ***complementary witness protection law***.

3AB *State offence that has a federal aspect*

An offence against a law of a State is taken, for the purposes of this Act, to be a ***State offence that has a federal aspect***:

(a) in a case where the offence is being investigated by the Australian Federal Police—if it would be taken to be a State offence that has a federal aspect under section 4AA of the *Australian Federal Police Act 1979*; and

(b) in a case where the offence is being investigated by the Australian Crime Commission—if it would be taken to be a State offence that has a federal aspect under section 4A of the *Australian Crime Commission Act 2002*; and

(c) in any other case—if it would be taken to be a State offence that has a federal aspect if either of the sections referred to in paragraphs (a) and (b) were to apply.

14 At the end of section 8

Add:

(6) In this section:

participant does not include a former participant.

15 At the end of section 9

Add:

(8) In this section:

participant does not include a former participant.

(9) To avoid doubt, subsection (8) does not affect any obligation of a former participant under a memorandum of understanding if the obligation continues (whether expressly or impliedly) to have effect after the former participant ceased to be included in the NWPP.

16 Paragraph 11(3)(b)

After "name", insert "for each new identity".

17 Paragraph 11(3)(e)

Repeal the paragraph, substitute:

(e) in the case of a former participant—the date on which the person became a former participant.

18 Paragraph 11(5)(d)

Omit "19(2)", substitute "19(6)".

19 At the end of section 11

Add:

(6) In this section, ***participant*** and ***former participant*** do not include a person who is a former participant only because of the operation of subsection 13(6).

20 Paragraph 13(2)(b)

Repeal the paragraph, substitute:

(b) permitting persons who hold or occupy designated positions to acquire and use assumed identities in accordance with Part IAC of the *Crimes Act 1914*; and

Note: The heading to section 13 is replaced by the heading "**Action to protect witnesses, participants and former participants etc.**".

21 Paragraph 13(3)(b)

Omit "be entitled if the witness were not included in the NWPP", substitute "otherwise be entitled".

22 At the end of section 13

Add:

(5) The Commissioner may take the actions referred to in subsections (1) and (2) in respect of a former participant, or any other person whose relationship with the former participant is such that the Commissioner is satisfied that it is appropriate to take those actions, as if the former participant or other person were a witness included in the NWPP, if:

(a) the Commissioner considers the actions necessary and reasonable for the protection of the former participant or the other person; and

(b) the Commissioner has assessed the suitability of taking the actions in respect of the former participant or the other person.

(6) If the Commissioner takes action under subsection (5) in respect of a person other than a former participant, this Act applies to the person as if the person were a former participant.

(7) When the Commissioner first takes action under subsection (5) in respect of a former participant who was a participant under section 10 or 10A, the Commissioner must give the Immigration Secretary, or an officer nominated by that Secretary, written notice that he or she has taken that action.

23 Subparagraph 14(b)(ii)

Before "identity", insert "original".

24 Subsection 15(5)

Omit "former identity", substitute "original identity or a former NWPP identity".

25 Paragraph 16(1)(a)

Omit "former", substitute "original identity or a former NWPP".

26 Paragraph 16(1)(b)

Omit "his or her former", substitute "the original identity or the former NWPP".

27 Subsection 16(1)

Omit "his or her former" (third occurring), substitute "the original identity or the former NWPP".

28 Subsection 16(2)

Omit "former", substitute "original identity or any former NWPP".

29 Subsection 16(2)

Omit "new", substitute "current NWPP".

30 Subsection 16(4)

Omit "former" (wherever occurring), substitute "original identity or any former NWPP".

31 Subsection 16(6)

Repeal the subsection.

32 Section 17

Omit "former identity", substitute "original identity or any former NWPP identity".

33 Subsection 18(1)

Omit "Protection and assistance provided under the NWPP to a participant", substitute "A participant's inclusion in the NWPP".

Note 1: The heading to section 18 is replaced by the heading "**Termination of inclusion in NWPP and other protection and assistance**".

Note 2: The following heading to subsection 18(1) is inserted "*Termination of inclusion in NWPP*".

34 Subparagraph 18(1)(b)(iv)

Omit "protection and assistance for the participant", substitute "the participant's inclusion in the NWPP".

35 Subsection 18(1)

Omit "the protection and assistance should", substitute "the participant's inclusion in the NWPP should".

36 Subsection 18(2)

Omit "that protection and assistance provided under the NWPP to a participant be terminated", substitute "that a participant's inclusion in the NWPP be terminated (the ***termination decision***)".

37 After subsection 18(2)

Insert:

Termination of protection and assistance to former participants etc.

(2A) Protection and assistance provided under subsection 13(5) to a person (including a former participant):

(a) must be terminated by the Commissioner if the person requests in writing that it be terminated; or

(b) may be terminated by a Deputy Commissioner if:

(i) the Deputy Commissioner discovers that the person had knowingly given information to the Commissioner that is false or misleading in a material particular; or

(ii) the person's conduct or threatened conduct is, in the opinion of the Deputy Commissioner, likely to compromise the integrity of the NWPP; or

(iii) the circumstances that gave rise to the need for protection and assistance for the person cease to exist; or

(iv) the person deliberately breaches an undertaking given to the Commonwealth, a State or a Territory that is relevant to the provision of that protection and assistance; or

(v) there is, in the opinion of the Deputy Commissioner, no reasonable justification for protection and assistance to continue to be provided to the person;

and the Deputy Commissioner is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

(2B) If a Deputy Commissioner makes a decision under paragraph (2A)(b) that protection and assistance provided to a person be terminated (the ***termination decision***), the Deputy Commissioner must take reasonable steps to notify the person of the decision.

38 Subsection 18(3)

Omit "participant who receives such a notification", substitute "person who receives notification of a termination decision".

Note: The following heading to subsection 18(3) is inserted "*Review*".

39 Paragraphs 18(4)(b) and (c)

Omit "participant" (wherever occurring), substitute "person".

40 Subsection 18(5)

Omit "A decision of a Deputy Commissioner under paragraph (1)(b) that protection and assistance provided under the NWPP to a participant be terminated", substitute "A termination decision that relates to a person".

Note: The following heading to subsection 18(5) is inserted "*When termination decisions take effect*".

41 Subparagraph 18(5)(a)(i)

Omit "participant's", substitute "person's".

42 Subparagraph 18(5)(a)(ii)

Omit "participant", substitute "person".

43 Paragraphs 18(5)(b), (c), (d) and (e)

Omit "participant" (wherever occurring), substitute "person".

44 Subsection 18(6)

Repeal the subsection, substitute:

Notification of Immigration Secretary

(6) If:

(a) a Deputy Commissioner makes a termination decision in relation to a person; and

(b) the person was at any time a participant under section 10 or 10A;

the Commissioner must give the Immigration Secretary, or an officer nominated by that Secretary, written notice of that decision.

45 At the end of section 18

Add:

(7) In this section:

participant does not include a former participant.

46 Subsection 19(1)

Repeal the subsection, substitute:

(1) If a participant has been provided with a new identity under the NWPP, a Deputy Commissioner may, if he or she considers it appropriate to do so, take such action as is necessary to restore the original identity or any former NWPP identity of the participant.

47 Subsection 19(2)

Omit "former".

48 Subsection 19(3)

Omit "former participant's former identity, the former", substitute "original identity or any former NWPP identity of the participant, the".

49 Subsections 19(5) and (6)

Repeal the subsections, substitute:

(5) If the Commissioner or a Deputy Commissioner takes action under this section to restore the original identity or any former NWPP identity of a Commonwealth participant, a State participant or a Territory participant, the Commissioner or a Deputy Commissioner may give a notice to the participant under subsection (6).

(6) The notice:

(a) must be in writing; and

(b) must require the participant to return to the Commissioner, within 10 days of the giving of the notice, all documents provided to the participant that relate to:

(i) the participant's current NWPP identity; and

(ii) any former NWPP identity of the participant that is not being restored.

(7) A person commits an offence if:

(a) the person is given a notice under subsection (6); and

(b) the person refuses or fails to comply with the notice.

Penalty: 10 penalty units.

50 Paragraph 20(c)

Omit "new identity or new location", substitute "current NWPP identity or current location".

51 Section 21

After "conferred", insert ", or the performance or purported performance of a function conferred or a duty imposed,".

52 Section 22

Repeal the section, substitute:

22 Offences relating to Commonwealth or Territory participants

Disclosure of information about Commonwealth or Territory participant

(1) A person commits an offence if:

(a) the person discloses information about an individual; and

(b) the individual is a participant; and

(c) the individual is a Commonwealth participant or a Territory participant; and

(d) either or both of the following apply:

(i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;

(ii) there is a risk that disclosure of the information will reveal that the individual is a participant.

Penalty: Imprisonment for 2 years.

Disclosure of information about individual undergoing assessment as Commonwealth or Territory participant

(2) A person commits an offence if:

(a) the person discloses information about an individual; and

(b) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and

(c) if the individual were included in the NWPP following that assessment, the individual would be a Commonwealth participant or a Territory participant; and

(d) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment.

Penalty: Imprisonment for 2 years.

Disclosure of information that may compromise security of Commonwealth or Territory participant

(3) A person commits an offence if:

(a) the person discloses information about an individual; and

(b) the individual is a participant; and

(c) the individual is a Commonwealth participant or a Territory participant; and

(d) either or both of the following apply:

(i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;

(ii) there is a risk that disclosure of the information will reveal that the individual is a participant; and

(e) there is a risk that disclosure of the information will compromise the security of the individual.

Penalty: Imprisonment for 10 years.

Disclosure of information that may compromise security of individual undergoing assessment as Commonwealth or Territory participant

(4) A person commits an offence if:

(a) the person discloses information about an individual; and

(b) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and

(c) if the individual were included in the NWPP following that assessment, the individual would be a Commonwealth participant or a Territory participant; and

(d) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment; and

(e) there is a risk that disclosure of the information will compromise the security of the individual.

Penalty: Imprisonment for 10 years.

(5) Subsections (1), (2), (3) and (4) do not apply to a disclosure by a person if:

(a) the person has been authorised by the Commissioner to make the disclosure; or

(b) the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976*; or

(c) the disclosure is made for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue; or

(d) the disclosure is made for the purpose of:

(i) giving information that raises an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*); or

(ii) investigating or resolving an AFP conduct or practices issue under Part V of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(6) Absolute liability applies to paragraphs (1)(c), (2)(c), (3)(c) and (4)(c).

Note: For absolute liability, see section 6.2 of the *Criminal Code.*

(7) To avoid doubt, a person may be convicted of an offence against subsection (1), (2), (3) or (4) because of a risk that a disclosure will have a particular effect even if the disclosure does not actually have that effect.

22A Offences relating to State participants

Disclosure of information about State participant

(1) A person commits an offence if:

(a) the person is:

(i) a Commonwealth officer; or

(ii) a Commonwealth participant; or

(iii) a State participant; or

(iv) a Territory participant; or

(v) any other person; and

(b) the person discloses information about an individual; and

(c) the individual is a participant; and

(d) the individual is a State participant; and

(e) either or both of the following apply:

(i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;

(ii) there is a risk that disclosure of the information will reveal that the individual is a participant; and

(f) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 2 years.

Disclosure of information about individual undergoing assessment as State participant

(2) A person commits an offence if:

(a) the person is:

(i) a Commonwealth officer; or

(ii) a Commonwealth participant; or

(iii) a State participant; or
(iv) a Territory participant; or
(v) any other person; and

(b) the person discloses information about an individual; and

(c) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and

(d) if the individual were included in the NWPP following that assessment, the individual would be a State participant; and

(e) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment; and

(f) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 2 years.

Disclosure of information that may compromise security of State participant

(3) A person commits an offence if:

(a) the person is:
(i) a Commonwealth officer; or
(ii) a Commonwealth participant; or
(iii) a State participant; or
(iv) a Territory participant; or
(v) any other person; and

(b) the person discloses information about an individual; and

(c) the individual is a participant; and

(d) the individual is a State participant; and

(e) either or both of the following apply:
(i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;
(ii) there is a risk that disclosure of the information will reveal that the individual is a participant; and

(f) there is a risk that disclosure of the information will compromise the security of the individual; and

(g) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that the disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 10 years.

Disclosure of information that may compromise security of individual undergoing assessment as State participant

(4) A person commits an offence if:

(a) the person is:

(i) a Commonwealth officer; or

(ii) a Commonwealth participant; or

(iii) a State participant; or

(iv) a Territory participant; or

(v) any other person; and

(b) the person discloses information about an individual; and

(c) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and

(d) if the individual were included in the NWPP following that assessment, the individual would be a State participant; and

(e) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment; and

(f) there is a risk that disclosure of the information will compromise the security of the individual; and

(g) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 10 years.

(5) Subsections (1), (2), (3) and (4) do not apply to a disclosure by a person if:

(a) the person has been authorised by the Commissioner to make the disclosure; or

(b) the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976*; or

(c) the disclosure is made for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue; or

(d) the disclosure is made for the purpose of:

(i) giving information that raises an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*); or

(ii) investigating or resolving an AFP conduct or practices issue under Part V of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(6) Absolute liability applies to paragraphs (1)(d), (2)(d), (3)(d) and (4)(d).

Note: For absolute liability, see section 6.2 of the *Criminal Code.*

(7) To avoid doubt, a person may be convicted of an offence against subsection (1), (2), (3) or (4) because of a risk that a disclosure will have a particular effect even if the disclosure does not actually have that effect.

22B Offences relating to disclosure of information about the NWPP

Disclosures by participants and persons undergoing assessment

(1) A person commits an offence if:

(a) the person is, or is undergoing or has undergone assessment for inclusion in the NWPP as, one of the following:

(i) a Commonwealth participant;

(ii) a Territory participant;

(iii) a State participant; and

(b) the person discloses any of the following:

(i) the fact that he or she is such a participant, or is undergoing or has undergone such assessment;

(ii) information about the way in which the NWPP operates;

(iii) information about the Commissioner, a Deputy Commissioner, any AFP employee or any special member of the Australian Federal Police who is or has been involved in the NWPP;

(iv) the fact that he or she has signed a memorandum of understanding;

(v) any details of a memorandum of understanding that he or she has signed.

Penalty: Imprisonment for 5 years.

Disclosures by other persons

(2) A person (other than a person referred to in paragraph (1)(a)) commits an offence if:

(a) the person discloses information; and

(b) the information is either or both of the following:

(i) information about the way in which the NWPP operates;

(ii) information about the Commissioner, a Deputy Commissioner, any AFP employee or any special member of the Australian Federal Police who is or has been involved in the NWPP; and

(c) there is a risk that disclosure of the information will do either or both of the following:

(i) adversely affect the integrity of the NWPP;

(ii) compromise the security of the Commissioner, a Deputy Commissioner, or an AFP employee or special member of the Australian Federal Police who is or has been involved in the NWPP.

Penalty: Imprisonment for 5 years.

(3) Subsections (1) and (2) do not apply to a disclosure by a person if:

(a) the person has been authorised by the Commissioner to make the disclosure; or

(b) the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976*; or

(c) the disclosure is made for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue; or

(d) the disclosure is made for the purpose of:

(i) giving information that raises an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*); or

(ii) investigating or resolving an AFP conduct or practices issue under Part V of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) To avoid doubt, a person may be convicted of an offence against subsection (2) because of a risk that a disclosure will have a particular effect even if the disclosure does not actually have that effect.

22C Disclosures to courts, etc.

(1) To avoid doubt, sections 22, 22A and 22B apply to a disclosure of information to:

(a) a court or tribunal; or

(b) a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry.

(2) The application of subsection (1) to the disclosure of information as mentioned in that subsection does not affect the operation of subsection 26(3).

53 Subsection 25(1)

Omit "subsection (3)", substitute "subsections (3) and (4)".

54 Subsection 25(3)

Omit "and 27", substitute ", 27 and 27A".

55 At the end of section 25

Add:

(4) The Commissioner's powers and functions under subsections 13(5) and (7) may only be delegated to a Deputy Commissioner, an Assistant Commissioner, or a person occupying an equivalent or higher rank in the Australian Federal Police.

56 Paragraph 26(1)(a)

Omit "a Royal Commission or an approved authority", substitute "a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry".

57 Paragraphs 26(1)(a) and (b)

After "duties", insert ", or the exercise of powers,".

58 After paragraph 26(1)(b)

Insert:

; or (c) to divulge or communicate to or before such a body information, if:

(i) the information is about the identity of, or disclosure of the information is such as to reveal the identity of, an AFP employee or special member of the Australian Federal Police who is involved in the operation of the NWPP; and

(ii) the person has the information as a result of the performance of functions or duties, or the exercise of powers, under this Act;

59 Paragraph 26(2)(a)

Omit "a Royal Commission or an approved authority", substitute "a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry".

60 After paragraph 26(2)(b)

Insert:

; or (c) to divulge or communicate to or before such a body information, if:

(i) the information is about the identity of, or disclosure of the information is such as to reveal the identity of, an AFP employee or special member of the Australian Federal Police who is involved in the operation of the NWPP; and

(ii) the person has the information as a result of the performance of functions or duties, or the exercise of powers, in relation to this Act;

61 Subsection 26(3)

After "Commonwealth", insert ", a State or a Territory".

62 Subsection 26(5)

Omit "or a former participant".

63 Subsection 26(5)

Omit "or former participant".

64 Subsection 27(1)

Repeal the subsection, substitute:

(1) If:

(a) a participant is to be a witness, under the participant's current NWPP identity, in a criminal proceeding; and

(b) the participant has a criminal record under his or her original identity or any former NWPP identity;

the participant must notify the Commissioner that the participant is to be a witness in the proceeding.

65 Subsection 27(2)

Omit "or former participant".

66 After section 27

Insert:

27A Requirement where participant involved in civil proceedings

(1) If a participant is to be involved, under the participant's current NWPP identity, in a civil proceeding in which his or her identity is in issue, the participant must notify the Commissioner that the participant is involved in the proceeding.

(2) After being notified under subsection (1), the Commissioner may take any action he or she considers appropriate in the circumstances.

(3) In this section:

civil proceeding means any proceeding in a court, a tribunal or a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry, other than a criminal proceeding, and, to avoid doubt, each of the following is part of a civil proceeding:

(a) any proceeding on an ex parte application (including an application made before pleadings are filed in a court);

(b) the discovery, exchange, production, inspection or disclosure of intended evidence, documents and reports of persons intended to be called by a party to give evidence;

(c) an appeal proceeding;

(d) any interlocutory or other proceeding prescribed by regulations for the purposes of this paragraph.

67 Section 28

Repeal the section, substitute:

28 Identity of participant not to be disclosed in court proceedings etc.

(1) This section applies if one of more of the following matters is in issue, or may be disclosed, in any proceedings before a court, a tribunal, or a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry:

(a) the original identity or a former NWPP identity of:

(i) a Commonwealth participant; or

(ii) a State participant; or

(iii) a Territory participant;

(b) the fact that a person is such a participant;

(c) the fact that a person has undergone or is undergoing assessment for inclusion in the NWPP as such a participant.

(2) The court, tribunal or commission:

(a) must, unless it considers that it is not in the interests of justice to do so, hold in private that part of the proceedings that relates to the matter referred to in paragraph (1)(a), (b) or (c); and

(b) must make such orders relating to the suppression of publication of evidence given before it as, in its opinion, will ensure that the matter referred to in paragraph (1)(a), (b) or (c) is not made public; and

(c) must, unless it considers that it is not in the interests of justice to do so, make such other orders as it considers appropriate to ensure that neither of the following is made public:

(i) the matter referred to in paragraph (1)(a), (b) or (c);
(ii) information that may compromise the security of a person referred to in any of those paragraphs.

(3) To avoid doubt, paragraph (2)(b) does not prevent the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.

28A Offence of contravening an order under section 28

(1) A person commits an offence if:
(a) an order is in force under section 28; and
(b) the person engages in conduct; and
(c) the conduct contravenes the order.

Penalty: Imprisonment for 2 years.

(2) To avoid doubt, this section does not limit any other powers of the body that made the order under section 28.

68 Subsection 30(1)

Omit "section 27", substitute "sections 27 and 27A".

Part 2—Application and saving provisions

69 Saving provision—declarations of complementary witness protection laws

(1) A declaration made under paragraph (b) of the definition of ***complementary witness protection law*** in section 3 of the *Witness Protection Act 1994* before the commencement of this item is not, and is taken never to have been, a legislative instrument.

(2) If the declaration was in force just before the commencement of this item, the declaration has effect from that commencement, subject to subitem (1), as if it had been made under section 3AA of that Act as inserted by this Schedule.

70 Application—action in respect of former participants etc.

The Commissioner may take action under subsection 13(5) of the *Witness Protection Act 1994*, as inserted by this Schedule, on or after the commencement of this item, whether the former participant concerned became a former participant before, on or after that commencement.

71 Application—non-disclosure of former identity

(1) Section 16 of the *Witness Protection Act 1994*, as amended by this Act, applies on and after the commencement of this item in relation to a pre-commencement permission given to a participant for a particular purpose as if it were a post-commencement permission given for the participant not to disclose his or her original identity for that purpose.

(2) In this item:

post-commencement permission means a permission given under paragraph 16(1)(b) of the *Witness Protection Act 1994*, as in force at the commencement of this item.

pre-commencement permission means a permission given under paragraph 16(1)(b) of the *Witness Protection Act 1994* before the commencement of this item.

Schedule 4—Criminal organisation and association offences

Criminal Code Act 1995

1 At the end of Chapter 9 of the *Criminal Code*

Add:

Part 9.9—Criminal associations and organisations

Division 390—Criminal associations and organisations

Subdivision A—Definitions

390.1 Definitions

(1) In this Division:

ancillary offence, in relation to a State offence (the ***primary offence***), means:

(a) a State offence of conspiring to commit the primary offence; or

(b) a State offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the primary offence; or

(c) a State offence of attempting to commit the primary offence.

associate means meet or communicate (by electronic communication or otherwise).

Australian offence means an offence against a law of the Commonwealth, a State or a Territory.

child: without limiting who is a child of a person for the purposes of this Division, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

close family member of a person means:

(a) the person's spouse or de facto partner; or
(b) a parent, step-parent or grandparent of the person; or
(c) a child, stepchild or grandchild of the person; or
(d) a brother, sister, stepbrother or stepsister of the person; or
(e) a guardian or carer of the person.

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

constitutionally covered offence punishable by imprisonment for at least 12 months means:

(a) any of the following offences that is punishable on conviction by imprisonment for at least 12 months or for life:
  (i) an offence against a law of the Commonwealth;
  (ii) a State offence that has a federal aspect;
  (iii) an offence against a law of a Territory; or
(b) a foreign offence that is constituted by conduct that, if engaged in in Australia, would constitute an Australian offence punishable on conviction by imprisonment for at least 12 months or for life.

constitutionally covered offence punishable by imprisonment for at least 3 years means:

(a) any of the following offences that is punishable on conviction by imprisonment for at least 3 years or for life:
  (i) an offence against a law of the Commonwealth;
  (ii) a State offence that has a federal aspect;
  (iii) an offence against a law of a Territory; or
(b) a foreign offence that is constituted by conduct that, if engaged in in Australia, would constitute an Australian offence punishable on conviction by imprisonment for at least 3 years or for life.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

electronic communication means a communication of information:

(a) whether in the form of text; or
(b) whether in the form of data; or
(c) whether in the form of speech, music or other sounds; or

(d) whether in the form of visual images (animated or otherwise); or

(e) whether in any other form; or

(f) whether in any combination of forms;

by means of guided and/or unguided electromagnetic energy.

federal aspect has the meaning given by section 390.2.

foreign offence means an offence against a law of a foreign country or part of a foreign country.

for the benefit of: an offence against any law is, or would if committed be, ***for the benefit of*** an organisation if the offence results or is likely to result in:

(a) the organisation receiving directly or indirectly a significant benefit of any kind; or

(b) at least one member of the organisation receiving (in his or her capacity as such a member) directly or indirectly a significant benefit of any kind.

offence against any law means an Australian offence or a foreign offence.

offence against any law punishable by imprisonment for at least 3 years means:

(a) an Australian offence punishable on conviction by imprisonment for at least 3 years or for life; or

(b) a foreign offence punishable on conviction (however described) by imprisonment for at least 3 years or for life or by death.

parent: without limiting who is a parent of a person for the purposes of this Division, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this subsection.

State offence means an offence against a law of a State.

stepchild: without limiting who is a stepchild of a person for the purposes of this Division, someone is the stepchild of a person if he or she would be the person's stepchild except that the person is not legally married to the person's de facto partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Division, someone who is a de facto partner of a parent of the person is the step-parent of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

(2) For the purposes of the definition of ***close family member*** in subsection (1), if one person is the child of another person because of the definition of ***child*** in that subsection, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

(3) To avoid doubt:

(a) a reference in this Division to an organisation is a reference to an organisation however it is organised; and

(b) a reference in this Division to a person includes a reference to a person outside Australia.

390.2 State offences that have a federal aspect

Object

(1) The object of this section is to identify State offences that have a federal aspect because:

(a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or

(b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence is committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence).

State offences that have a federal aspect

(2) For the purposes of this Act, a State offence has a ***federal aspect*** if, and only if:

(a) both:

(i) the State offence is not an ancillary offence; and

(ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or

(b) both:

(i) the State offence is an ancillary offence that relates to a particular primary offence; and

(ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or

(c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth.

Specificity of acts or omissions

(3) For the purposes of paragraph (2)(c), the specificity of the acts or omissions involved in committing a State offence is to be determined having regard to the circumstances in which the offence is committed (whether or not those circumstances are expressed to be elements of the offence).

State offences covered by paragraph (2)(c)

(4) A State offence is taken to be covered by paragraph (2)(c) if the conduct constituting the State offence:

(a) affects the interests of:

(i) the Commonwealth; or

(ii) an authority of the Commonwealth; or

(iii) a constitutional corporation; or

(b) was engaged in by a constitutional corporation; or

(c) was engaged in in a Commonwealth place; or

(d) involved the use of a postal service or other like service; or

(e) involved an electronic communication; or

(f) involved trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) within a Territory, between a State and a Territory or between 2 Territories; or

(g) involved:

(i) banking (other than State banking not extending beyond the limits of the State concerned); or

(ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or

(h) relates to a matter outside Australia; or

(i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or

(j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.

(5) Subsection (4) does not limit paragraph (2)(c).

Subdivision B—Offences

390.3 Associating in support of serious organised criminal activity

(1) A person (the ***first person***) commits an offence if:

(a) the first person associates on 2 or more occasions with another person (the ***second person***); and

(b) the second person engages, or proposes to engage, in conduct (the ***second person's conduct***) that constitutes, or is part of conduct constituting, an offence against any law; and

(c) the associations facilitate the engagement or proposed engagement by the second person in the second person's conduct; and

(d) the offence against any law mentioned in paragraph (b) involves 2 or more persons; and

(e) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 3 years.

Penalty: Imprisonment for 3 years.

Repeat offence

(2) A person (the ***first person***) commits an offence if:

(a) the first person has previously been convicted of an offence against subsection (1); and

(b) the first person associates with another person (the ***second person***); and

(c) the second person engages, or proposes to engage, in conduct (the ***second person's conduct***) that constitutes, or is part of conduct constituting, an offence against any law; and

(d) the association facilitates the engagement or proposed engagement by the second person in the second person's conduct; and

(e) the offence against any law mentioned in paragraph (c) involves 2 or more persons; and

(f) the offence against any law mentioned in paragraph (c) is a constitutionally covered offence punishable by imprisonment for at least 3 years.

Penalty: Imprisonment for 3 years.

Knowledge fault element for paragraphs (1)(b) and (2)(c)

(3) The fault element for paragraphs (1)(b) and (2)(c) is knowledge (by the first person).

Intention fault element for paragraphs (1)(c) and (2)(d)

(3A) The fault element for paragraphs (1)(c) and (2)(d) is intention (by the first person).

Absolute liability

(4) Absolute liability applies to paragraphs (1)(e) and (2)(f).

Note: For absolute liability, see section 6.2.

Prosecution need not prove identity of certain persons

(5) In a prosecution for an offence against subsection (1) or (2), it is not necessary to prove the identity of any of the persons mentioned in paragraph (1)(d) or (2)(e).

Defence for certain kinds of associations

(6) This section does not apply to an association if:

(a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern; or

(b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or

(c) the association is only for the purpose of providing aid of a humanitarian nature; or

(d) the association is only for the purpose of providing legal advice or legal representation in connection with judicial or administrative proceedings under a law of the Commonwealth, a State, a Territory or a foreign country; or

(e) the association is reasonable in the circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3).

(6A) Paragraphs (6)(a), (b), (c), (d) and (e) do not limit one another.

Other limits on this section

(7) A person who is convicted of an offence against subsection (1) or (2) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence against subsection (1) or (2) for other conduct of the person that takes place:

(a) at the same time as that conduct; or

(b) within 7 days before or after any of those occasions.

(8) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

390.4 Supporting a criminal organisation

(1) A person commits an offence if:

(a) the person provides material support or resources to an organisation or a member of an organisation; and

(b) either:

(i) the provision of the support or resources aids; or

(ii) there is a risk that the provision of the support or resources will aid;

the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 5 years.

(2) Absolute liability applies to paragraphs (1)(e) and (f).

Note: For absolute liability, see section 6.2.

(3) To avoid doubt, a person may be convicted of an offence against subsection (1) because of a risk that the provision of the support or resources will aid the organisation as described in paragraph (1)(b) even if the provision of the support or resources does not actually aid the organisation in that way.

390.5 Committing an offence for the benefit of, or at the direction of, a criminal organisation

Offence committed for the benefit of an organisation

(1) A person commits an offence if:

(a) the person commits an offence against any law (the ***underlying offence***); and

(b) the underlying offence is for the benefit of an organisation; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the underlying offence is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 7 years.

Offence committed at the direction of an organisation

(2) A person commits an offence if:

(a) the person commits an offence against any law (the ***underlying offence***); and

(b) the person engaged in the conduct constituting the underlying offence at the direction of an organisation or of a member of an organisation; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the underlying offence is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 7 years.

Fault elements

(3) There is no fault element for the physical elements described in paragraphs (1)(a) and (2)(a) other than the fault elements (however described), if any, for the underlying offence.

Absolute liability

(4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

Avoiding multiplicity of proceedings and punishments

(5) To avoid doubt, the person may be convicted of an offence against subsection (1) or (2) even if the person has not:

(a) been convicted of the underlying offence; or

(b) been the subject of an order under section 19B (Discharge of offenders without proceeding to conviction) of the *Crimes Act 1914*, or a corresponding law of a State, Territory or foreign country, relating to the underlying offence.

(6) If a person has been convicted or acquitted of a foreign offence in respect of conduct, the person cannot be convicted of an offence against this section in respect of that conduct.

Note: If the underlying offence is an Australian offence, section 4C of the *Crimes Act 1914* prevents the person from being punished twice under Australian law (once under this section and once under the Commonwealth, State or Territory law creating the underlying offence) for the act or omission constituting the underlying offence.

Likely benefits

(7) To avoid doubt, the person may be convicted of an offence against subsection (1) because the underlying offence is likely to result in the organisation or at least one member receiving benefits as described in the definition of ***for the benefit of*** in subsection 390.1(1), even if the organisation or member does not actually receive such a benefit.

390.6 Directing activities of a criminal organisation

(1) A person commits an offence if:

(a) the person directs one or more activities of an organisation; and

(b) either:

(i) the activity or activities directed aid; or

(ii) there is a risk that the activity or activities directed will aid;

the organisation to engage in conduct constituting an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting

an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 10 years.

(2) A person commits an offence if:

(a) the person directs one or more activities of an organisation; and

(b) the activity or activities directed constitute an offence against any law; and

(c) the organisation consists of 2 or more persons; and

(d) the organisation's aims or activities include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation; and

(e) the offence against any law mentioned in paragraph (d) is an offence against any law punishable by imprisonment for at least 3 years; and

(f) the offence against any law mentioned in paragraph (b) is a constitutionally covered offence punishable by imprisonment for at least 12 months.

Penalty: Imprisonment for 15 years.

(3) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

(4) To avoid doubt, the person may be convicted of an offence against subsection (1) because of a risk that the activity or activities directed will aid the organisation as described in paragraph (1)(b) even if the activity or activities do not actually aid the organisation in that way.

390.7 Extended geographical jurisdiction—category C

Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against this Division.

2 Dictionary in the *Criminal Code*

Insert:

federal aspect is defined in section 390.2.

3 Application of sections 390.3, 390.4, 390.5 and 390.6 of the *Criminal Code*

Sections 390.3, 390.4, 390.5 and 390.6 of the *Criminal Code* apply if all the relevant conduct was engaged in after the commencement of those sections.

Telecommunications (Interception and Access) Act 1979

4 After subsection 5D(8)

Insert:

Offences relating to criminal associations and organisations

(8A) An offence is also a ***serious offence*** if it is an offence against Division 390 of the *Criminal Code*.

Schedule 5—Money laundering

Part 1—Criminal Code Act 1995

1 Subsection 400.1(1) of the *Criminal Code* (definition of *instrument of crime*)

After "an offence", insert "against a law of the Commonwealth, a State, a Territory or a foreign country".

2 Subsection 400.1(1) of the *Criminal Code* (definition of *proceeds of crime*)

After "that is", insert "wholly or partly".

3 Subsection 400.1(1) of the *Criminal Code* (definition of *proceeds of crime*)

After "an offence", insert "against a law of the Commonwealth, a State, a Territory or a foreign country".

4 Section 400.2 of the *Criminal Code*

Repeal the section, substitute:

400.2 Definition of *deals with money or other property*

A person ***deals with money or other property*** if the person does any of the following:

(a) receives, possesses, conceals or disposes of money or other property;

(b) imports money or other property into Australia;

(c) exports money or other property from Australia;

(d) engages in a banking transaction relating to money or other property.

400.2A Application of offences relating to possible instruments of crime

(1) This section affects the application of sections 400.3, 400.4, 400.5, 400.6, 400.7 and 400.8 so far as they relate to a person dealing with money or other property that:

(a) is intended by the person to become an instrument of crime; or

(b) is at risk of becoming an instrument of crime.

(2) Those sections apply if at least one of the circumstances described in subsections (3) and (4) exists.

(3) One circumstance is that money or other property is intended to become, or at risk of becoming, an instrument of crime in relation to an offence that is:

(a) a Commonwealth indictable offence; or

(b) a foreign indictable offence; or

(c) a State indictable offence that has a federal aspect; or

(d) an Australian Capital Territory indictable offence; or

(e) a Northern Territory indictable offence.

Note: The prosecution need not prove the existence of any fault element for the nature of the offence: see section 400.11.

(4) Another circumstance is that the dealing with the money or other property occurs:

(a) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or

(b) by means of a communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or

(c) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned); or

(d) outside Australia.

(5) Absolute liability applies to subsections (3) and (4).

Note: For absolute liability, see section 6.2.

5 Subsection 400.3(4) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

6 At the end of subsection 400.3(4) of the *Criminal Code*

Add:

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:

(a) is intended by the person to become an instrument of crime; or

(b) is at risk of becoming an instrument of crime.

7 Subsection 400.4(4) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

8 At the end of subsection 400.4(4) of the *Criminal Code*

Add:

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

9 Subsection 400.5(4) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

10 At the end of subsection 400.5(4) of the *Criminal Code*

Add:

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

11 Subsection 400.6(4) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

12 At the end of subsection 400.6(4) of the *Criminal Code*

Add:

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

13 Subsection 400.7(4) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

14 At the end of subsection 400.7(4) of the *Criminal Code*

Add:

Note 2: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

15 At the end of section 400.8 of the *Criminal Code*

Add:

Note: Section 400.2A affects the application of this section so far as it relates to a person dealing with money or other property that:
(a) is intended by the person to become an instrument of crime; or
(b) is at risk of becoming an instrument of crime.

16 Subsection 400.9(1) of the *Criminal Code*

Repeal the subsection, substitute:

(1) A person commits an offence if:
(a) the person deals with money or other property; and
(b) it is reasonable to suspect that the money or property is proceeds of crime; and
(c) at the time of the dealing, the value of the money and other property is $100,000 or more.

Penalty: Imprisonment for 3 years, or 180 penalty units, or both.

(1A) A person commits an offence if:
(a) the person deals with money or other property; and
(b) it is reasonable to suspect that the money or property is proceeds of crime; and
(c) at the time of the dealing, the value of the money and other property is less than $100,000.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

Note: The heading to section 400.9 is altered by omitting "**Possession etc. of**" and substituting "**Dealing with**".

17 Subsection 400.9(2) of the *Criminal Code*

After "(1)(b)", insert "or (1A)(b)".

18 Paragraph 400.9(2)(c) of the *Criminal Code*

After "expenditure", insert "over a reasonable period within which the conduct occurs".

19 Subsection 400.9(3) of the *Criminal Code*

Repeal the subsection.

20 Subsection 400.9(4) of the *Criminal Code*

Omit "paragraph (1)(b)", substitute "paragraphs (1)(b) and (c) and (1A)(b) and (c)".

21 Subsection 400.9(6) of the *Criminal Code*

Repeal the subsection.

22 Subsection 400.10(1) of the *Criminal Code*

Omit "or 400.7", substitute ", 400.7 or 400.9".

23 Section 400.15 of the *Criminal Code*

Repeal the section, substitute:

400.15 Geographical jurisdiction

(1) A person does not commit an offence against this Division unless:

(a) the conduct constituting the alleged offence occurs:

(i) wholly or partly in Australia; or

(ii) wholly or partly on board an Australian aircraft or an Australian ship; or

(b) the conduct constituting the alleged offence occurs wholly outside Australia (but not on board an Australian aircraft or an Australian ship) and the money or other property:

(i) is proceeds of crime; or

(ii) is intended to become an instrument of crime; or

(iii) is at risk of becoming an instrument of crime;

in relation to a Commonwealth indictable offence, a State indictable offence, an Australian Capital Territory indictable offence or a Northern Territory indictable offence; or

(c) the conduct constituting the alleged offence occurs wholly outside Australia and:

(i) at the time of the alleged offence, the person is an Australian citizen; or

(ii) at the time of the alleged offence, the person is a resident of Australia; or

(iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or

(d) all of the following conditions are satisfied:

(i) the alleged offence is an ancillary offence;

(ii) the conduct constituting the alleged offence occurs wholly outside Australia;

(iii) the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

Note: The expression ***offence*** is given an extended meaning by subsection 11.2(1), section 11.3 and subsection 11.6(1).

Defence—primary offence

(2) A person is not guilty of an offence against this Division if:

(a) the alleged offence is a primary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) paragraph (1)(b) of this section does not apply; and

(d) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) there is not in force in:

(i) the foreign country where the conduct constituting the alleged offence occurs; or

(ii) the part of the foreign country where the conduct constituting the alleged offence occurs;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the offence against this Division.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) For the purposes of the application of subsection 13.3(3) to an offence, subsection (2) of this section is taken to be an exception provided by the law creating the offence.

Defence—ancillary offence

(4) A person is not guilty of an offence against this Division if:

(a) the alleged offence is an ancillary offence; and

(b) the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(c) the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and

(d) paragraph (1)(b) of this section does not apply (and would not apply if the conduct described in paragraph (c) of this subsection occurred as intended); and

(e) the person is neither:

(i) an Australian citizen; nor

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(f) there is not in force in:

(i) the foreign country where the conduct constituting the primary offence to which the ancillary offence relates occurs, or is intended by the person to occur; or

(ii) the part of the foreign country where the conduct constituting the primary offence to which the ancillary offence relates or is intended by the person to occur;

a law of that foreign country, or a law of that part of that foreign country, that creates an offence that corresponds to the primary offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

(5) For the purposes of the application of subsection 13.3(3) to an offence, subsection (4) of this section is taken to be an exception provided by the law creating the offence.

Extended application of sections 16.1, 16.2 and 16.3

(6) Section 16.1, except paragraph 16.1(1)(a), applies in relation to an offence against this Division (in addition to the application of that section apart from this subsection).

Note: Section 16.1 requires the Attorney-General's consent for prosecution of an offence if the alleged conduct occurred wholly in a foreign country in certain circumstances.

(7) Sections 16.2 and 16.3 apply for the purposes of this Division in the same way as they apply for the purposes of Part 2.7.

Note: Section 16.2 treats the sending of things and electronic communications into and out of Australia as conduct occurring partly in Australia. Section 16.3 affects the meaning of ***Australia***.

24 Application

The amendments made by this Part apply in relation to conduct engaged in on or after the commencement of this Part.

Part 2—Anti-Money Laundering and Counter-Terrorism Financing Act 2006

25 Section 5

Insert:

non-financier means a person who is not:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union; or

(e) a person specified in the AML/CTF Rules.

26 Section 5 (definition of *stored value card*)

Repeal the definition, substitute:

stored value card does not include a debit card or credit card but includes a portable device (other than a debit card or credit card) that:

(a) is capable of:

(i) storing monetary value in a form other than physical currency; or

(ii) being used to gain access to monetary value stored in such a form; and

(b) is of a kind prescribed by the regulations.

27 Subsection 6(2) (table items 21, 22, 23 and 24)

Omit "stored on" (wherever occurring), substitute "stored in connection with".

28 Subsection 6(2) (table items 31 and 32)

Repeal the items, substitute:

31	in the capacity of a non-financier carrying on a business of giving effect to remittance arrangements, accepting an instruction from a transferor entity for the transfer of money or property under a designated remittance arrangement	the transferor entity
32	in the capacity of a non-financier carrying on a business of giving effect to remittance arrangements, making money or property available, or arranging for it to be made available, to an ultimate transferee entity as a result of a transfer under a designated remittance arrangement	the ultimate transferee entity

29 Application

The amendments of section 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part apply in relation to the provision of designated services on or after the commencement of this Part.

30 Paragraphs 10(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) at least one of the persons described in the following subparagraphs is a non-financier:

(i) a person who accepts an instruction from the transferor entity for the transfer of money or property under the remittance arrangement;

(ii) a person who makes money or property available, or arranges for it to be made available, to an ultimate transferee entity as a result of a transfer under the remittance arrangement; and

31 Transitional provisions for AML/CTF Rules

(1) This item applies if, immediately before the commencement of this Part, a provision of the AML/CTF Rules specified a person for the purposes of subparagraph 10(1)(a)(v) or (b)(v) of the *Anti-Money Laundering*

and Counter-Terrorism Financing Act 2006 (as in force immediately before that commencement).

(2) The provision has effect as if it specified the person for the purposes of paragraph (e) of the definition of ***non-financier*** in section 5 of that Act as amended by this Part.

(3) This item does not prevent the amendment or repeal of those rules so as to affect the provision.

32 Paragraph 10(3)(a)

Omit "money or property is accepted so as to enable its transfer under the arrangement", substitute "an instruction is accepted for the transfer of money or property under the arrangement".

33 Section 46 (table items 3 and 4)

Omit "person in Australia", substitute "non-financier in Australia".

34 Subsection 59(1)

Omit "as soon as possible", substitute "immediately".

35 Subsection 123(3)

Repeal the subsection, substitute:

(3) If a reporting entity is required under subsection 49(1) to give information, or produce a document, to a person, the reporting entity must not disclose to anyone else:
  (a) that the reporting entity is or has been required to do so; or
  (b) that the information has been given or the document has been produced; or
  (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that:
    (i) the reporting entity had been required to give the first-mentioned information or produce the document; or
    (ii) the first-mentioned information had been given; or
    (iii) the document had been produced.

36 Application

Subsection 123(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as amended by this Part, applies in relation to requirements made under subsection 49(1) of that Act before, on or after the commencement of this item.

Schedule 6—Unfitness to plead

Crimes Act 1914

1 At the end of Division 6 of Part IB

Add:

20BI Appeals against some Victorian jury findings of unfitness to be tried

(1) This section applies if:

(a) in proceedings for a federal offence in the Trial Division of the Supreme Court of Victoria or in the County Court of Victoria, a question arises whether the accused is fit to stand trial; and

(b) a jury finds that the accused is unfit.

Right to appeal

(2) The accused may appeal to the Court of Appeal of Victoria against the finding:

(a) on a ground involving only one or more questions of law alone; or

(b) on a ground involving one or more questions of fact alone, or one or more questions of mixed law and fact, if the judge before whom the accused came for trial certifies the ground is fit for appeal; or

(c) on any ground if the Court of Appeal gives leave.

Decision on appeal

(3) The Court of Appeal must allow the appeal if the court thinks that:

(a) the finding should be set aside because it is unreasonable or cannot be supported having regard to the evidence; or

(b) the order of the Supreme Court or County Court giving effect to the finding should be set aside because of a wrong decision on a question of law; or

(c) there was a miscarriage of justice.

(4) Otherwise, the Court of Appeal must dismiss the appeal.

(5) Despite subsection (3), the Court of Appeal may dismiss the appeal if the Court of Appeal thinks that no substantial miscarriage of justice has occurred.

Consequences if appeal allowed

(6) If the Court of Appeal allows the appeal:

(a) the accused may be tried for the federal offence; and

(b) the Court of Appeal may make orders for the custody or bail of the accused.

Rules of court

(7) Rules of court for the Court of Appeal of Victoria may make provision relating to appeals under subsection (2) and proceedings relating to orders under paragraph (6)(b).

Relationship with the rest of this Division

(8) This Division has effect subject to this section.

2 Application of section 20BI of the *Crimes Act 1914*

Section 20BI of the *Crimes Act 1914* (as amended by this Schedule) applies to findings made before, on or after the commencement of that section.

3 Transitional provision

(1) If appeal proceedings were started under section 570C of the *Crimes Act 1958* of Victoria before the repeal of that section but those proceedings (including any proceedings for orders under subsection 570C(2) of that Act following the allowing of the appeal) were not completed before that repeal:

(a) section 20BI of the *Crimes Act 1914* does not apply in relation to the finding that was the subject of the appeal proceedings, despite item 2; and

(b) the following provisions of the *Crimes Act 1958* of Victoria, as in force immediately before their repeal by the *Criminal Procedure Act 2009* of Victoria, continue to apply (as laws of the Commonwealth) in relation to the finding despite that repeal:

(i) section 570C;

(ii) section 570A as applied by section 570C;

(iii) other provisions so far as they relate to section 570C or section 570A as applied by section 570C.

Note 1: Before their repeal those provisions applied because of section 68 of the *Judiciary Act 1903*.

Note 2: Section 570C of the *Crimes Act 1958* of Victoria provided for appeals to the Court of Appeal of Victoria from a finding by a jury in proceedings in the Trial Division of the Supreme Court of Victoria or in the County Court of Victoria that the accused was not fit to stand trial.

Note 3: Section 570C of the *Crimes Act 1958* of Victoria provided for appeals by applying section 570A of that Act with modifications. Other provisions of that Act (such as section 570D and Division 3 of Part VI) related to appeals to the Court of Appeal (including appeals under section 570C of that Act).

(2) An instrument in force for the purposes of any of those provisions immediately before the repeal described in paragraph (1)(b) of the provision continues in force (despite that repeal) for the purposes of that provision as it continues to apply because of that paragraph.

Schedule 7—Amendments relating to the Australian Crime Commission

Part 1—Main amendments

Australian Crime Commission Act 2002

1 Subsection 4(1)

Insert:

> ***constable*** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State.

2 Subsection 4(1) (at the end of the definition of *eligible Commonwealth Board member*)

Add:

; (f) the Commissioner of Taxation.

3 Subsection 4(1)

Insert:

> ***in contempt of the ACC*** has the meaning given by section 34A.

4 Subsection 4(1) (definition of *intelligence operation*)

Repeal the definition, substitute:

> ***intelligence operation*** means an operation that is primarily directed towards the collection, correlation, analysis or dissemination of criminal information and intelligence relating to federally relevant criminal activity, but that may involve the investigation of matters relating to federally relevant criminal activity.

5 Subsection 4(1)

Insert:

> ***Ombudsman*** means the Commonwealth Ombudsman.

6 Subsection 4A(6) (definition of *intelligence operation*)

Repeal the definition, substitute:

> ***intelligence operation*** means an operation that is primarily directed towards the collection, correlation, analysis or dissemination of criminal information and intelligence relating to relevant criminal activity, but that may involve the investigation of matters relating to relevant criminal activity.

7 At the end of subsection 7B(2)

Add:

; (i) the Commissioner of Taxation.

8 Subsection 7C(5)

Omit "3 days", substitute "7 days".

9 Paragraph 28(1A)(b)

Omit "summons; or", substitute "summons.".

10 Paragraph 28(1A)(c)

Repeal the paragraph.

11 Subsection 28(8)

Repeal the subsection, substitute:

(8) A failure to comply with section 29A, so far as section 29A relates to a summons under subsection (1) of this section, does not affect the validity of the summons.

12 Paragraph 29(1A)(b)

Omit "notice; or", substitute "notice.".

13 Paragraph 29(1A)(c)

Repeal the paragraph.

14 Subsection 29(5)

Repeal the subsection, substitute:

(5) A failure to comply with section 29A, so far as section 29A relates to a notice under subsection (1) of this section, does not affect the validity of the notice.

15 At the end of subsection 29B(2)

Add:

; or (f) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or

(g) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.

16 Paragraph 29B(4)(b)

Omit "giving legal advice", substitute "giving or obtaining legal advice or legal representation".

17 At the end of subsection 29B(4)

Add:

; or (d) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or

(e) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.

18 After section 34

Insert:

34A Contempt of the ACC

A person is ***in contempt of the ACC*** if he or she:

(a) when appearing as a witness at an examination before an examiner:

(i) refuses or fails to take an oath or affirmation when required to do so under section 28; or

(ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or

(iii) refuses or fails to produce a document or thing that he or she was required to produce by a summons or notice

under this Act that was served to him or her as prescribed; or

(b) is a legal practitioner who is required to answer a question or produce a document at an examination before an examiner, and both of the following apply:

(i) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;

(ii) he or she refuses to comply with the requirement and does not, when required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made; or

(c) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or

(d) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or

(e) disrupts an examination before an examiner; or

(f) threatens a person present at an examination before an examiner.

34B Federal Court or Supreme Court to deal with contempt

(1) If an examiner is of the opinion that, during an examination before the examiner, a person is in contempt of the ACC, the examiner may apply to either of the following courts for the person to be dealt with in relation to the contempt:

(a) the Federal Court;

(b) the Supreme Court of the State or Territory in which the examination to which the contempt relates is being conducted.

(2) Before making the application, the examiner must inform the person that the examiner proposes to make the application.

(3) The application must be accompanied by a certificate that states:

(a) the grounds for making the application; and

(b) evidence in support of the application.

(4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.

(5) If, after:

(a) considering the matters specified in the certificate; and

(b) hearing or receiving any evidence or statements by or in support of the ACC; and

(c) hearing or receiving any evidence or statements by or in support of the person;

the Court to which the application was made finds that the person was in contempt of the ACC, the Court may deal with the person as if the acts or omissions involved constituted a contempt of that Court.

(6) For the purposes of determining whether a person is in contempt of the ACC under subsection (1), Chapter 2 of the *Criminal Code* applies as if:

(a) contempt of the ACC were an offence; and

(b) references to a person being criminally responsible for an offence were references to a person being responsible for contempt of the ACC.

34C Conduct of contempt proceedings

(1) This section applies if an application for a person to be dealt with in relation to a contempt of the ACC is made to the Federal Court or to the Supreme Court of a State or Territory under section 34B.

(2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any Rules of Court) that apply in relation to the punishment of a contempt of the Court to which the application was made.

(3) In proceedings in relation to the application, a certificate under subsection 34B(3) is prima facie evidence of the matters specified in the certificate.

34D Person in contempt may be detained

(1) If an examiner proposes to make an application under subsection 34B(1) in respect of a person, he or she may, during the hearing concerned, direct a constable to detain the person for the purpose of bringing the person before the Court to which the application was made for the hearing of the application.

(2) If the person is detained under subsection (1):
  (a) the examiner must apply to the Court as soon as practicable under subsection 34B(1) in respect of the person; and
  (b) the person must, subject to subsection (3) of this section, be brought before the Court as soon as practicable.

(3) The Court may:
  (a) direct that the person be released from detention on condition that he or she will appear before the Court in relation to the application; or
  (b) order that the person continue to be detained until the application is determined.

(4) The Court may also impose any other condition on the release, for example:
  (a) that the person surrenders his or her passport; or
  (b) that the person gives an undertaking as to his or her living arrangements; or
  (c) that the person reports as required to a law enforcement agency.

(5) The Court may at any time vary or revoke a condition imposed under subsection (4).

34E Examiner may withdraw contempt application

(1) An examiner may at any time withdraw an application in relation to a person under subsection 34B(1).

(2) If:
  (a) the examiner does so; and
  (b) the person is in detention under section 34D;

the person must be released from detention immediately.

34F Relationship with section 12

To avoid doubt, evidence relating to an application under subsection 34B(1) is not required to be given to a person or authority under subsection 12(1).

19 At the end of subsection 35(1)

Add:

; or (c) threaten any person present at an examination before an examiner.

20 Section 35A

Before "Where", insert "(1)".

21 At the end of section 35A

Add:

(2) If:

(a) an application is made to the Federal Court or a Supreme Court under subsection 34B(1) in respect of an act or omission by a person; and

(b) the person is dealt with by the Court under that section in respect of the act or omission;

the person is not liable to be prosecuted for an offence in respect of that act or omission.

(3) If a person is prosecuted for an offence in respect of an act or omission referred to in subsection 34B(1), an application must not be made under subsection 34B(1) in respect of that act or omission.

22 Section 61A

Repeal the section, substitute:

61A Review of operation of Act

(1) The Minister must cause an independent review to be undertaken of:

(a) the operation of this Act during the 5 year period beginning at the commencement of Schedule 7 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010*; and

(b) the operation of this Act during each subsequent 5 year period.

(2) A review under subsection (1) must be undertaken as soon as practicable after the end of the 5 year period to which the review is to relate.

(3) If, before the Minister undertakes a review of the operation of this Act in relation to a particular 5 year period referred to in subsection (1), a committee of one or both Houses of the Parliament starts such a review, the Minister need not undertake such a review.

Part 2—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

23 After paragraph (w) of Schedule 1

Insert:

(wa) decisions under section 34B or 34D of the *Australian Crime Commission Act 2002*;

Surveillance Devices Act 2004

24 Subsection 6(1) (at the end of the definition of *relevant proceeding*)

Add:

; (p) a proceeding in relation to an application under subsection 34B(1) of the *Australian Crime Commission Act 2002* in respect of contempt of the Australian Crime Commission.

Telecommunications (Interception and Access) Act 1979

25 After paragraph 5B(1)(hc)

Insert:

(hd) a proceeding in relation to an application under subsection 34B(1) of the *Australian Crime Commission Act 2002* in respect of contempt of the Australian Crime Commission; or

Part 3—Application provisions

26 Application of amendments relating to contempt

The amendments made by item 3 and items 18 to 21 of this Schedule apply to an act or omission engaged in by a person in relation to an examination that began on or after the commencement of this item.

27 Application of amendment made by item 4

The amendment made by item 4 of this Schedule applies to operations that began before, on or after the commencement of this item.

28 Application of amendments relating to reasons for summons or notice

The amendments made by items 9, 10, 11, 12, 13 and 14 of this Schedule apply to a summons or notice issued on or after the commencement of this item.

29 Application of amendments made by items 24 and 25

The amendments made by items 24 and 25 of this Schedule apply to information obtained before, on or after the commencement of this item.

Schedule 8—Penalties for bribery

Criminal Code Act 1995

1 Subsection 70.2(1) of the *Criminal Code* (penalty)

Repeal the penalty.

2 Subsection 70.2(1) of the *Criminal Code* (notes 1 and 2)

Repeal the notes, substitute:

Note: For defences see sections 70.3 and 70.4.

3 At the end of section 70.2 of the *Criminal Code*

Add:

Penalty for individual

(4) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 100,000 penalty units;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(6) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all

the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(8) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

4 Subsection 141.1(1) of the *Criminal Code* (penalty)

Repeal the penalty.

5 Subsection 141.1(3) of the *Criminal Code* (penalty)

Repeal the penalty.

6 At the end of section 141.1

Add:

Penalty for individual

(5) An offence against subsection (1) or (3) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(6) An offence against subsection (1) or (3) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 100,000 penalty units;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the ***turnover period***) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(7) For the purposes of this section, the ***annual turnover*** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(8) Expressions used in subsection (7) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(9) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

Schedule 9—Drug importation

Criminal Code Act 1995

1 Section 300.2 of the Criminal Code (definition of *import*)

Repeal the definition, substitute:

import, in relation to a substance, means import the substance into Australia and includes:

(a) bring the substance into Australia; and

(b) deal with the substance in connection with its importation.

Schedule 10—Amendments consequential on enactment of joint commission offence

Aboriginal and Torres Strait Islander Act 2005

1 Subparagraph 199(9)(b)(ii)

After "11.2,", insert "11.2A,".

A New Tax System (Family Assistance) (Administration) Act 1999

2 Subparagraph 75(c)(i)

After "11.2", insert "or 11.2A".

3 Paragraph 188(a)

After "11.2", insert "or 11.2A".

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

4 Subparagraph 47(9)(b)(ii)

After "11.2,", insert "11.2A,".

Corporations (Aboriginal and Torres Strait Islander) Act 2006

5 Paragraph 496-20(1)(a)

After "11.2", insert "or 11.2A".

Corporations Act 2001

6 Paragraph 1042F(2)(b)

After "11.2,", insert "11.2A,".

Crimes Act 1914

7 Paragraph 50AA(2)(b)

Omit "or 11.3", substitute ", 11.2A or 11.3".

8 Subsection 50AA(3)

After "11.2", insert "or 11.2A".

Crimes (Biological Weapons) Act 1976

9 Subsection 10(1)

After "11.2", insert "or 11.2A".

Crimes (Internationally Protected Persons) Act 1976

10 Subsection 8(5)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

Crimes (Ships and Fixed Platforms) Act 1992

11 Subsection 5A(3)

Omit "and 11.2", substitute ", 11.2 and 11.2A".

12 Subsection 18(5) (definition of *offence against this Division*)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

13 Subsection 20(6) (definition of *offence against Division 1*)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

14 Subsection 29(5) (definition of *offence against this Part*)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

15 Paragraph 30(1)(b)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

16 Paragraph 31(b)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

Customs Administration Act 1985

17 Paragraph 16AA(1)(b)

After "11.2,", insert "11.2A,".

Defence Force Discipline Act 1982

18 Subsection 54A(6)

After "11.2", insert "or 11.2A".

Excise Act 1901

19 Paragraph 87AA(b)

After "11.2", insert ", 11.2A".

Great Barrier Reef Marine Park Act 1975

20 After subsection 61B(8)

Insert:

(8A) For the purposes of this section, if a person is convicted of an offence against this Act because of section 11.2A of the *Criminal Code*:

(a) the person is taken to have been convicted of an ancillary offence; and

(b) the offence that was committed because of that section is taken to be the primary offence to which the ancillary offence relates.

Historic Shipwrecks Act 1976

21 Subsection 3(1) (paragraph (b) of the definition of *offence against this Act*)

After "11.2", insert "or 11.2A".

Patents Act 1990

22 Paragraph 225(5)(b)

After "11.2,", insert "11.2A,".

Privacy Act 1988

23 Subsection 99A(9)

After "11.2,", insert "11.2A,".

Proceeds of Crime Act 2002

24 Section 338 (paragraph (g) of the definition of *serious offence*)

After "11.2,", insert "11.2A,".

Sea Installations Act 1987

25 Subparagraph 56(2)(a)(ii)

Omit "or 11.2", substitute ", 11.2 or 11.2A".

26 Subsection 62(14)

After "11.2", insert ", 11.2A".

Social Security Act 1991

27 Paragraph 1224AB(b)

After "11.2,", insert "11.2A,".

Social Security (Administration) Act 1999

28 Paragraph 228(a)

After "11.2", insert "or 11.2A".

Superannuation (Resolution of Complaints) Act 1993

29 Subsection 66(8)

After "11.2,", insert "11.2A,".

Trade Marks Act 1995

30 Subsection 150(2)

After "11.2", insert "or 11.2A".

War Crimes Act 1945

31 Subsection 9(2)

After "11.2", insert ", 11.2A".

Schedule 11—References to repealed provisions of the Crimes Act 1914

Aircraft Noise Levy Collection Act 1995

1 Subsection 16(7) (paragraphs (a) and (b) of the definition of *offence against this Act*)

Repeal the paragraphs, substitute:

(a) section 6 of the *Crimes Act 1914*; or

(b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

Airports Act 1996

2 Subsection 225(6)

Omit "created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*", substitute "against section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*,".

Antarctic Marine Living Resources Conservation Act 1981

3 Subsection 3(3)

Omit "created by section 6, 7 or 7A of the *Crimes Act 1914*", substitute "against section 6 of the *Crimes Act 1914*, or against section 11.1 or 11.4 of the *Criminal Code*,".

Antarctic Treaty (Environment Protection) Act 1980

4 Subsection 3(3)

Omit "created by section 6, 7, 7A or 86 of the *Crimes Act 1914*", substitute "against section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*,".

Crimes Act 1914

5 Subsection 15B(1B)

Omit "arising under section 5, or under", substitute "that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*, or against".

6 Section 51 (definition of *offence against this Part*)

Repeal the definition, substitute:

offence against this Part includes:

(a) an offence against section 6 that relates to an offence against a provision of this Part; and

(b) an offence against a provision of this Part that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; and

(c) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to an offence against a provision of this Part.

Defence Act 1903

7 Paragraph 108(b)

Omit "section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*", substitute "section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*,".

Environment Protection (Sea Dumping) Act 1981

8 Subsection 4(2)

Omit "created by section 6, 7 or 7A of the *Crimes Act 1914*", substitute "against section 6 of the *Crimes Act 1914*, or against section 11.1 or 11.4 of the *Criminal Code*,".

Export Market Development Grants Act 1997

9 Subsection 16(2) (paragraph (d) of the definition of *relevant offence*)

Repeal the paragraph, substitute:

(d) an offence:

(i) against section 6 of the *Crimes Act 1914*; or

(ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*; or

(iv) against a provision of a law of a State or Territory that corresponds to any of the provisions referred to in subparagraphs (i) to (iii);

that relates to an offence referred to in paragraph (a) or (c); or

10 Paragraph 78(1)(d)

Repeal the paragraph, substitute:

(d) an offence:

(i) against section 6 of the *Crimes Act 1914*; or

(ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*; or

(iv) against a provision of a law of a State or Territory that corresponds to any of the provisions referred to in subparagraphs (i) to (iii);

that relates to an offence referred to in paragraph (a) or (c); or

Gene Technology Act 2000

11 Subsection 189(4)

Repeal the subsection, substitute:

(4) A reference in section 188 to an ancillary offence relating to this Act or the regulations is a reference to an offence:

(a) against section 6 of the *Crimes Act 1914*; or

(b) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(c) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to this Act or the regulations.

Health Insurance Act 1973

12 Subsection 23DA(1) (subparagraphs (c)(i) and (ii) of the definition of *relevant offence*)

Repeal the subparagraphs, substitute:

(i) section 6 of the *Crimes Act 1914*; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

Offshore Minerals Act 1994

13 Paragraphs 378(7)(a) and (b)

Repeal the paragraphs, substitute:

(a) an offence:

(i) against section 6 of the *Crimes Act 1914*; or

(ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to a provision of this Act is taken to be an offence against a provision of this Act; and

(b) an offence:

(i) against section 6 of the *Crimes Act 1914*; or

(ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to a provision of the regulations is taken to be an offence against a provision of the regulations; and

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

14 Paragraph 65(9)(b)

Repeal the paragraph, substitute:

(b) an offence:

(i) against section 6 of the *Crimes Act 1914*; or

(ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

being an offence that relates to the regulations.

Plant Breeder's Rights Act 1994

15 Subsection 76(9)

Repeal the subsection, substitute:

(9) A reference in this section to an offence against section 74 or 75 includes a reference to an offence:

(a) against section 6 of the *Crimes Act 1914*; or

(b) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(c) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to section 74 or 75 of this Act.

Shipping Registration Act 1981

16 Subsection 3(7)

Omit "created by section 6, 7 or 7A of the *Crimes Act 1914*", substitute "against section 6 of the *Crimes Act 1914*, or against section 11.1 or 11.4 of the *Criminal Code*,".

South Pacific Nuclear Free Zone Treaty Act 1986

17 Subsection 4(1) (definition of *offence against this Act*)

Repeal the definition, substitute:

offence against this Act includes:

(a) an offence against section 6 of the *Crimes Act 1914* in relation to an offence against this Act; and

(b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence in relation to an offence against this Act.

18 Paragraphs 32(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) an offence against section 6 of the *Crimes Act 1914* in relation to an offence against a provision of this Act; and

(b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence in relation to an offence against a provision of this Act.

19 Paragraphs 33(5)(a) and (b)

Repeal the paragraphs, substitute:

(a) an offence against section 6 of the *Crimes Act 1914* in relation to an offence against a provision of that Part; and

(b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence in relation to an offence against a provision of that Part.

Taxation Administration Act 1953

20 Subsection 8J(6)

Repeal the subsection, substitute:

(6) A reference in subsection (4) of this section or subsection 8M(2) to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A) includes a reference to an offence against section 11.1 of the *Criminal Code* that relates to an offence against subsection 8K(1) or (1B) or 8L(1) or (1A), as the case may be.

21 Subsection 8J(8)

Omit "section 7 of the *Crimes Act 1914*", substitute "section 11.1 of the *Criminal Code*".

Tobacco Advertising Prohibition Act 1992

22 Subsection 32(8)

Repeal the subsection, substitute:

(8) A reference in this section to an offence against this Act includes a reference to an offence:

(a) against section 6 of the *Crimes Act 1914*; or

(b) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

(c) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;

being an offence that relates to this Act.

Trade Practices Act 1974

23 Subsection 79(5)

Omit "Sections 5, 7 and 7A of the *Crimes Act 1914*, and section 11.1 of the *Criminal Code*,", substitute "Subsections 11.1(1), 11.2(1), 11.2A(1), and 11.4(1) of the *Criminal Code*".

Tradex Scheme Act 1999

24 Section 4 (definition of *offence against this Act*)

Omit "section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914*", substitute "section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*,".

Weapons of Mass Destruction (Prevention of Proliferation) Act 1995

25 Section 3 (paragraphs (a) and (b) of the definition of *offence against this Act*)

Repeal the paragraphs, substitute:

(a) section 6 of the *Crimes Act 1914*; or

(b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

[*Minister's second reading speech made in—*
House of Representatives on 16 September 2009
Senate on 19 November 2009]

(183/09)