





# **Crimes Legislation Amendment (Economic Disruption) Act 2021**

**No. 3, 2021**

**An Act to amend the *Crimes Act 1914*, the *Criminal Code Act 1995* and the *Proceeds of Crime Act 2002*,  
and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Crimes Legislation Amendment (Economic Disruption) Act 2021

No. 3, 2021

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**An Act to amend the *Crimes Act 1914*, the *Criminal Code Act 1995* and the *Proceeds of Crime Act 2002*,  
and for other purposes**

[Assented to 16 February 2021]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Crimes Legislation Amendment (Economic Disruption) Act 2021*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 February 2021
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	17 February 2021
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of Part 6 of Schedule 1 to the <i>Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	17 February 2021 (paragraph (a) applies)
4. Schedules 2 to 6	The day after this Act receives the Royal Assent.	17 February 2021
5. Schedule 7, Part 1	The day after this Act receives the Royal Assent.	17 February 2021
6. Schedule 7, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 5; and (b) the commencement of Part 1 of Schedule 2 to the <i>Crimes Legislation Amendment (Combatting Corporate</i>	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>Crime) Act 2021.</i>	
	However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation 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.

## Schedule 1—Money laundering

### Part 1—General amendments

#### Division 1—Amendments

##### *Criminal Code Act 1995*

#### 1 Subsection 400.1(1) of the *Criminal Code*

Insert:

*director*, in relation to a company, means:

- (a) any person occupying or acting in the position of director of the company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act, other than when those directors only do so:
  - (i) in the proper performance of the functions attaching to the person's professional capacity; or
  - (ii) in their business relationship with the person.

*effective control* has a meaning affected by section 400.2AA.

*foreign offence* means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

- (a) a law of the Commonwealth; or
- (b) a law of a State; or
- (c) a law of a Territory.

*proceeds of general crime offence provision* means an offence against any of the following provisions:

- (a) subsection 400.2B(2);
- (b) subsection 400.2B(3);
- (c) subsection 400.2B(5);
- (d) subsection 400.2B(6);
- (e) subsection 400.2B(8);

- (f) subsection 400.2B(9);
- (g) subsection 400.3(1A);
- (h) subsection 400.3(1B);
- (i) subsection 400.3(2A);
- (j) subsection 400.3(2B);
- (k) subsection 400.3(3A);
- (l) subsection 400.3(3B);
- (m) subsection 400.4(1A);
- (n) subsection 400.4(1B);
- (o) subsection 400.4(2A);
- (p) subsection 400.4(2B);
- (q) subsection 400.4(3A);
- (r) subsection 400.4(3B).

**2 Subsection 400.1(1) of the *Criminal Code* (definition of *proceeds of crime*)**

Repeal the definition.

**3 Subsection 400.1(1) of the *Criminal Code***

Insert:

*proceeds of general crime* means any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of:

- (a) an offence against a law of the Commonwealth, a State or a Territory; or
- (b) a foreign offence.

*proceeds of indictable crime* means:

- (a) any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of a particular offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence); or
- (b) any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence of a particular kind against a law of the Commonwealth, a State, a Territory or a foreign

country that may be dealt with as an indictable offence (even if an offence of that kind may, in some circumstances, be dealt with as a summary offence).

#### **4 Paragraph 400.1(3)(b) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

#### **5 Section 400.2 of the *Criminal Code***

Omit “A person”, substitute “(1) For the purposes of this Division, a person”.

#### **6 At the end of section 400.2 of the *Criminal Code***

Add:

- (2) For the purposes of this Division, if:
  - (a) a person (the *first person*) engages in conduct; and
  - (b) the first person’s conduct causes another person to deal with money or other property (within the meaning of subsection (1)); and
  - (c) the first person is reckless as to whether the first person’s conduct causes the other person to deal with the money or property;the first person is taken to have dealt with the money or property.
- (3) For the purposes of subsection (2), it is immaterial whether the identity of the other person can be established.
- (4) For the purposes of subsection (2), the conduct of a person *causes* another person to deal with money or other property (within the meaning of subsection (1)) if the conduct substantially contributes to the other person dealing with the money or property (within the meaning of subsection (1)).
- (5) For the purposes of subsection (4), it is immaterial whether the identity of the other person can be established.

#### **7 After section 400.2 of the *Criminal Code***

Insert:

#### **400.2AA Effective control of money or property**

- (1) For the purposes of this Division, a person may have *effective control* of money or other property whether or not the person has:
  - (a) a legal or equitable estate or interest in the money or property; or
  - (b) a right, power or privilege in connection with the money or property.
- (2) For the purposes of this Division, if money or other property is held on trust for the ultimate benefit of a person, the person is taken to have *effective control* of the money or property.
- (3) For the purposes of this Division, in determining whether or not a person has effective control of money or other property, regard may be had to:
  - (a) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the money or property; and
  - (b) a trust that has a relationship to the money or property; and
  - (c) family, domestic and business relationships between:
    - (i) persons having an interest in the money or property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b); and
    - (ii) other persons.
- (4) For the purposes of this section, family relationships are taken to include the following (without limitation):
  - (a) relationships between de facto partners;
  - (b) relationships of child and parent that arise if someone is the child of a person because of the definition of *child* in the Dictionary;
  - (c) relationships traced through relationships mentioned in paragraphs (a) and (b).
- (5) To avoid doubt, for the purposes of this Division, more than one person may have *effective control* of money or other property.

#### **8 Subsection 400.2A(1) of the Criminal Code**

After “sections”, insert “400.2B,”.

## 9 After section 400.2A of the Criminal Code

Insert:

### **400.2B Proceeds of crime etc.—money or property worth \$10,000,000 or more**

#### *Tier 1 offences*

- (1) A person commits an offence if:
  - (a) the person deals with money or other property; and
  - (b) either:
    - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
    - (ii) the person intends that the money or property will become an instrument of crime; and
  - (c) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for life.

- (2) A person commits an offence if:
  - (a) the person engages in conduct in relation to money or other property; and
  - (b) the money or property is, and the person believes it to be, proceeds of general crime; and
  - (c) the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;
    - (vii) any rights in respect of the money or property;
    - (viii) the identity of any person who has rights in respect of the money or property;
    - (ix) the identity of any person who has effective control of the money or property; and

- (d) when the conduct occurs, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for life.

- (3) A person commits an offence if:
  - (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
  - (b) for each occasion, the money or property is, and the person believes it to be, proceeds of general crime; and
  - (c) for each occasion, the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;
    - (vii) any rights in respect of the money or property;
    - (viii) the identity of any person who has rights in respect of the money or property;
    - (ix) the identity of any person who has effective control of the money or property; and
  - (d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$10,000,000 or more.

Penalty: Imprisonment for life.

*Tier 2 offences*

- (4) A person commits an offence if:
  - (a) the person deals with money or other property; and
  - (b) either:
    - (i) the money or property is proceeds of indictable crime;  
or
    - (ii) there is a risk that the money or property will become an instrument of crime; and
  - (c) the person is reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there

is a risk that it will become an instrument of crime (as the case requires); and

- (d) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

- (5) A person commits an offence if:

- (a) the person engages in conduct in relation to money or other property; and
- (b) the money or property is proceeds of general crime; and
- (c) the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) the conduct concealed or disguised any or all of the following:
- (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

- (6) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
-

- (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$10,000,000 or more.

Penalty: Imprisonment for 15 years, or 900 penalty units, or both.

*Tier 3 offences*

- (7) A person commits an offence if:
- (a) the person deals with money or other property; and
  - (b) either:
    - (i) the money or property is proceeds of indictable crime; or
    - (ii) there is a risk that the money or property will become an instrument of crime; and
  - (c) the person is negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime (as the case requires); and
  - (d) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 6 years, or 360 penalty units, or both.

- (8) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
  - (b) the money or property is proceeds of general crime; and

- (c) the person is negligent as to the fact that the money or property is proceeds of general crime; and
- (d) the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 6 years, or 360 penalty units, or both.

- (9) A person commits an offence if:
- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
  - (b) for each occasion, the money or property is proceeds of general crime; and
  - (c) for each occasion, the person is negligent as to the fact that the money or property is proceeds of general crime; and
  - (d) for each occasion, the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;
    - (vii) any rights in respect of the money or property;
    - (viii) the identity of any person who has rights in respect of the money or property;

- (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$10,000,000 or more.

Penalty: Imprisonment for 6 years, or 360 penalty units, or both.

*Absolute liability*

- (10) Absolute liability applies to paragraphs (1)(c), (2)(d), (3)(d), (4)(d), (5)(e), (6)(e), (7)(d), (8)(e) and (9)(e).

Note 1: Section 400.10 provides for a defence of mistake of fact in relation to these paragraphs.

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.

**10 Section 400.3 (heading)**

Omit “**Dealing in proceeds of crime**”, substitute “**Proceeds of crime**”.

**11 Before subsection 400.3(1) of the *Criminal Code***

Insert:

*Tier 1 offences*

**12 Subparagraph 400.3(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**13 After subsection 400.3(1) of the *Criminal Code***

Insert:

- (1A) A person commits an offence if:
  - (a) the person engages in conduct in relation to money or other property; and
  - (b) the money or property is, and the person believes it to be, proceeds of general crime; and
  - (c) the conduct concealed or disguised any or all of the following:

- (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (d) when the conduct occurs, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

(1B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is, and the person believes it to be, proceeds of general crime; and
- (c) for each occasion, the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

**14 Before subsection 400.3(2) of the *Criminal Code***

Insert:

*Tier 2 offences*

**15 Subparagraph 400.3(2)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**16 Paragraph 400.3(2)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**17 After subsection 400.3(2) of the *Criminal Code***

Insert:

- (2A) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
  - (b) the money or property is proceeds of general crime; and
  - (c) the person is reckless as to the fact that the money or property is proceeds of general crime; and
  - (d) the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;
    - (vii) any rights in respect of the money or property;
    - (viii) the identity of any person who has rights in respect of the money or property;
    - (ix) the identity of any person who has effective control of the money or property; and
  - (e) when the conduct occurs, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

(2B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$1,000,000 or more.

Penalty: Imprisonment for 12 years, or 720 penalty units, or both.

**18 Before subsection 400.3(3) of the *Criminal Code***

Insert:

*Tier 3 offences*

**19 Subparagraph 400.3(3)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**20 Paragraph 400.3(3)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**21 After subsection 400.3(3) of the *Criminal Code***

Insert:

- (3A) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
  - (b) the money or property is proceeds of general crime; and
  - (c) the person is negligent as to the fact that the money or property is proceeds of general crime; and
  - (d) the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;
    - (vii) any rights in respect of the money or property;
    - (viii) the identity of any person who has rights in respect of the money or property;
    - (ix) the identity of any person who has effective control of the money or property; and
  - (e) when the conduct occurs, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

- (3B) A person commits an offence if:
- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
  - (b) for each occasion, the money or property is proceeds of general crime; and
  - (c) for each occasion, the person is negligent as to the fact that the money or property is proceeds of general crime; and
  - (d) for each occasion, the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;

- (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$1,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

**22 Before subsection 400.3(4) of the *Criminal Code***

Insert:

*Absolute liability*

**23 Subsection 400.3(4) of the *Criminal Code***

Omit “(2)(d) and (3)(d)”, substitute “(1A)(d), (1B)(d), (2)(d), (2A)(e), (2B)(e), (3)(d), (3A)(e) and (3B)(e)”.

**24 Section 400.4 (heading)**

Omit “**Dealing in proceeds of crime**”, substitute “**Proceeds of crime**”.

**25 Before subsection 400.4(1) of the *Criminal Code***

Insert:

*Tier 1 offences*

**26 Subparagraph 400.4(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**27 After subsection 400.4(1) of the *Criminal Code***

Insert:

(1A) A person commits an offence if:

- (a) the person engages in conduct in relation to money or other property; and
- (b) the money or property is, and the person believes it to be, proceeds of general crime; and
- (c) the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (d) when the conduct occurs, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

- (1B) A person commits an offence if:
- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
  - (b) for each occasion, the money or property is, and the person believes it to be, proceeds of general crime; and
  - (c) for each occasion, the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;
    - (vii) any rights in respect of the money or property;

- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$100,000 or more.

Penalty: Imprisonment for 20 years, or 1200 penalty units, or both.

**28 Before subsection 400.4(2) of the *Criminal Code***

Insert:

*Tier 2 offences*

**29 Subparagraph 400.4(2)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**30 Paragraph 400.4(2)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**31 After subsection 400.4(2) of the *Criminal Code***

Insert:

- (2A) A person commits an offence if:
- (a) the person engages in conduct in relation to money or other property; and
  - (b) the money or property is proceeds of general crime; and
  - (c) the person is reckless as to the fact that the money or property is proceeds of general crime; and
  - (d) the conduct concealed or disguised any or all of the following:
    - (i) the nature of the money or property;
    - (ii) the value of the money or property;
    - (iii) the source of the money or property;
    - (iv) the location of the money or property;
    - (v) any disposition of the money or property;
    - (vi) any movement of the money or property;

- (vii) any rights in respect of the money or property;
- (viii) the identity of any person who has rights in respect of the money or property;
- (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

(2B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and
- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is reckless as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$100,000 or more.

Penalty: Imprisonment for 10 years, or 600 penalty units, or both.

### **32 Before subsection 400.4(3) of the *Criminal Code***

Insert:

*Tier 3 offences*

**33 Subparagraph 400.4(3)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**34 Paragraph 400.4(3)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**35 After subsection 400.4(3) of the *Criminal Code***

Insert:

(3A) A person commits an offence if:

- (a) the person engages in conduct in relation to money or other property; and
- (b) the money or property is proceeds of general crime; and
- (c) the person is negligent as to the fact that the money or property is proceeds of general crime; and
- (d) the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) when the conduct occurs, the value of the money and other property is \$100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

(3B) A person commits an offence if:

- (a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and

- (b) for each occasion, the money or property is proceeds of general crime; and
- (c) for each occasion, the person is negligent as to the fact that the money or property is proceeds of general crime; and
- (d) for each occasion, the conduct concealed or disguised any or all of the following:
  - (i) the nature of the money or property;
  - (ii) the value of the money or property;
  - (iii) the source of the money or property;
  - (iv) the location of the money or property;
  - (v) any disposition of the money or property;
  - (vi) any movement of the money or property;
  - (vii) any rights in respect of the money or property;
  - (viii) the identity of any person who has rights in respect of the money or property;
  - (ix) the identity of any person who has effective control of the money or property; and
- (e) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is \$100,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

**36 Before subsection 400.4(4) of the *Criminal Code***

Insert:

*Absolute liability*

**37 Subsection 400.4(4) of the *Criminal Code***

Omit “(2)(d) and (3)(d)”, substitute “(1A)(d), (1B)(d), (2)(d), (2A)(e), (2B)(e), (3)(d), (3A)(e) and (3B)(e)”.

**38 Section 400.5 (heading)**

Omit “**Dealing in proceeds of crime**”, substitute “**Proceeds of crime**”.

**39 Subparagraph 400.5(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**40 Subparagraph 400.5(2)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**41 Paragraph 400.5(2)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**42 Subparagraph 400.5(3)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**43 Paragraph 400.5(3)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**44 Section 400.6 (heading)**

Omit “**Dealing in proceeds of crime**”, substitute “**Proceeds of crime**”.

**45 Subparagraph 400.6(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**46 Subparagraph 400.6(2)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**47 Paragraph 400.6(2)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**48 Subparagraph 400.6(3)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**49 Paragraph 400.6(3)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**50 Section 400.7 (heading)**

Omit “**Dealing in proceeds of crime**”, substitute “**Proceeds of crime**”.

**51 Subparagraph 400.7(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**52 Subparagraph 400.7(2)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

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**53 Paragraph 400.7(2)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**54 Subparagraph 400.7(3)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**55 Paragraph 400.7(3)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**56 Section 400.8 (heading)**

Omit “Dealing in proceeds of crime”, substitute “Proceeds of crime”.

**57 Subparagraph 400.8(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**58 Subparagraph 400.8(2)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**59 Paragraph 400.8(2)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**60 Subparagraph 400.8(3)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**61 Paragraph 400.8(3)(c) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**62 Before subsection 400.9(1) of the *Criminal Code***

Insert:

(1AA) 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 indictable crime; and
- (c) at the time of the dealing, the value of the money and other property is \$10,000,000 or more.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

(1AB) 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 indictable crime; and
- (c) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 4 years, or 240 penalty units, or both.

**63 Paragraph 400.9(1)(b) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**64 Paragraph 400.9(1A)(b) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**65 Subsection 400.9(2) of the *Criminal Code***

Omit “Without limiting paragraph (1)(b) or (1A)(b), that paragraph is taken to be satisfied if:”, substitute “For the purposes of this section, it is taken to be reasonable to suspect that money or other property is proceeds of indictable crime if:”.

**66 Paragraph 400.9(2)(a) of the *Criminal Code***

Omit “referred to in paragraph (1)(a)”, substitute “constituting the offence”.

**67 Subsection 400.9(4) of the *Criminal Code***

Before “(1)(b)”, insert “(1AA)(b) and (c), (1AB)(b) and (c),”.

**68 Subsection 400.10(1) of the *Criminal Code***

Before “400.3”, insert “400.2B,”.

**69 Subsection 400.10(1) of the *Criminal Code***

After “400.9”, insert “(other than an offence against a proceeds of general crime offence provision)”.

**70 After paragraph 400.10(1)(a) of the *Criminal Code***

Insert:

- (aa) in a case where the dealing continued during a period—the person had that belief throughout that period; and

**71 Subsection 400.10(1) of the *Criminal Code* (example)**

Omit “proceeds of crime” (wherever occurring), substitute “proceeds of indictable crime”.

**72 After subsection 400.10(1) of the *Criminal Code***

Insert:

- (1A) A person is not criminally responsible for an offence against a proceeds of general crime offence provision that relates to engaging in conduct in relation to money or property if:
- (a) at or before the time of engaging in the conduct, the person considered what was the value of the money or property, and was under a mistaken but reasonable belief about that value; and
  - (b) in a case where the conduct continued during a period—the person had that belief throughout that period; and
  - (c) had the value been what the person believed it to be, the person’s conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3)).

**73 At the end of section 400.11 of the *Criminal Code***

Add:

- ; (h) whether an offence is a foreign offence.

**74 Subsection 400.12(1)**

After “this Division”(whenever occurring), insert “(other than a proceeds of general crime offence provision)”.

**75 Subsection 400.13(1) of the *Criminal Code***

Repeal the subsection, substitute:

- (1) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of general crime, to establish that:
- (a) a particular offence, or an offence of a particular kind, was committed in relation to the money or property; or

- (b) a particular person committed an offence, or an offence of a particular kind, in relation to the money or property.
- (1A) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of indictable crime covered by paragraph (a) of the definition of ***proceeds of indictable crime*** in subsection 400.1(1), to establish that a particular person committed an offence in relation to the money or property.
- (1B) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of indictable crime covered by paragraph (b) of the definition of ***proceeds of indictable crime*** in subsection 400.1(1), to establish that:
- (a) a particular offence was committed in relation to the money or property; or
  - (b) a particular person committed an offence in relation to the money or property.

## **76 After section 400.14 of the *Criminal Code***

Insert:

### **400.14A Recklessness as to nature of money or property sufficient for offence of attempt to commit an offence against certain provisions of this Part**

- (1) Despite subsection 11.1(3), for the offence of attempting to commit an offence against any of the following provisions:
- (a) subsection 400.2B(4);
  - (b) subsection 400.2B(5);
  - (c) subsection 400.2B(6);
  - (d) subsection 400.2B(7);
  - (e) subsection 400.2B(8);
  - (f) subsection 400.2B(9);
  - (g) subsection 400.3(2);
  - (h) subsection 400.3(2A);
  - (i) subsection 400.3(2B);
  - (j) subsection 400.3(3);
  - (k) subsection 400.3(3A);

- (l) subsection 400.3(3B);
- (m) subsection 400.4(2);
- (n) subsection 400.4(2A);
- (o) subsection 400.4(2B);
- (p) subsection 400.4(3);
- (q) subsection 400.4(3A);
- (r) subsection 400.4(3B);
- (s) subsection 400.5(2);
- (t) subsection 400.5(3);
- (u) subsection 400.6(2);
- (v) subsection 400.6(3);
- (w) subsection 400.7(2);
- (x) subsection 400.7(3);
- (y) subsection 400.8(2);
- (z) subsection 400.8(3);

recklessness is the fault element in relation to whichever of the following is a physical element of the offence attempted:

- (za) that money or property is proceeds of indictable crime;
- (zb) that money or property is proceeds of general crime.

Note: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness: see subsection 5.4(4)

#### **77 Paragraph 400.15(1)(b) of the *Criminal Code***

Before “the conduct”, insert “except in the case of an alleged offence against a proceeds of general crime offence provision—”.

#### **78 Subparagraph 400.15(1)(b)(i) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

#### **79 After paragraph 400.15(1)(b) of the *Criminal Code***

Insert:

- (ba) in the case of an alleged offence against a proceeds of general crime offence provision:
  - (i) the conduct constituting the alleged offence occurs wholly outside Australia (but not on board an Australian aircraft or an Australian ship); and

- (ii) the money or other property is proceeds of general crime in relation to an offence against a law of the Commonwealth, an offence against a law of a State, an offence against a law of the Australian Capital Territory or an offence against a law of the Northern Territory; or

## **Division 2—Application of amendments**

### **80 Application of amendments**

The amendments made by this Part, so far as they relate to:

- (a) a dealing with money or other property; or
- (b) other conduct engaged in by a person;

apply in relation to a dealing with money or other property, or other conduct engaged in by a person, as the case requires, that occurs after the commencement of this item.

**Part 2—Amendments contingent on the  
commencement of the Anti-Money  
Laundering and Counter-Terrorism  
Financing and Other Legislation  
Amendment Act 2020**

**Division 1—Amendments**

*Criminal Code Act 1995*

**81 Section 400.10A of the *Criminal Code* (at the end of the heading)**

Add “—proceeds of indictable crime”.

**82 Subsection 400.10A(1) of the *Criminal Code***

After “against section”, insert “400.2B,”.

**83 Subsection 400.10A(1) of the *Criminal Code***

After “400.8”, insert “(other than an offence against a proceeds of general crime offence provision)”.

**84 Subsection 400.10A(1) of the *Criminal Code***

Omit “proceeds of crime”, substitute “proceeds of indictable crime”.

**85 After section 400.10A of the *Criminal Code*)**

Insert:

**400.10B Effect of money or property being provided as part of a controlled operation—proceeds of general crime**

- (1) In a prosecution for an offence against a proceeds of general crime offence provision by a person in relation to the person engaging in conduct in relation to money or other property, it is not necessary to prove that the money or property is proceeds of general crime if it is proved that, as part of a controlled operation in relation to suspected offences against this Division, either of the following provided the money or property:

**Schedule 1** Money laundering

**Part 2** Amendments contingent on the commencement of the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020

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- (a) a law enforcement participant in the controlled operation;
- (b) a civilian participant in the controlled operation, acting in accordance with the instructions of a law enforcement officer.

(2) In this section:

*civilian participant* in a controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

*controlled operation* has the meaning given by Part IAB of the *Crimes Act 1914*.

## **Division 2—Application of amendments**

### **86 Application of amendments**

- (1) The amendments of section 400.10A of the *Criminal Code* made by this Part apply in relation to a dealing with money or other property that occurs after the commencement of this item.
- (2) Section 400.10B of the *Criminal Code* (as inserted by this Part) applies in relation to conduct engaged in by a person in relation to money or other property after the commencement of this item.

## **Schedule 2—Investigation of Commonwealth offences**

### ***Crimes Act 1914***

#### **1 Subsection 23B(1)**

Insert:

***designated official*** means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory; or
- (c) a person who holds an office the functions of which include the investigation of Commonwealth offences and who is empowered by a law of the Commonwealth because of the holding of that office to make arrests in respect of such offences.

#### **2 Subsection 23B(1) (paragraph (a) of the definition of *investigating official*)**

After “Australian Federal Police”, insert “(other than a member or special member of the Australian Federal Police who is engaged in covert investigations under the orders of a superior)”.

#### **3 Subsection 23B(1) (paragraph (b) of the definition of *investigating official*)**

After “Territory”, insert “(other than a member of the police force of a State or Territory who is engaged in covert investigations under the orders of a superior)”.

#### **4 Subsection 23B(1) (at the end of paragraph (c) of the definition of *investigating official*)**

Add “(other than a person who is engaged in covert investigations under the orders of a superior)”.

#### **5 Paragraph 23B(4)(a)**

Omit “an investigating official”, substitute “a designated official”.

**6 Subsection 23V(3)**

Repeal the subsection.

## **Schedule 3—Buy-backs**

### **Part 1—Amendments**

#### *Proceeds of Crime Act 2002*

##### **1 Section 57**

Repeal the section, substitute:

##### **57 Court may make orders relating to buying back forfeited property**

- (1) If:
- (a) a court makes a \*forfeiture order against property; and
  - (b) a person who claims to have had an \*interest in the property before the forfeiture order was made has made an application under section 57A for an order under this section; and
  - (c) the court is satisfied that the person had the interest immediately before the forfeiture order was made; and
  - (d) the court is satisfied that the person is not a \*suspect in relation to the forfeiture order; and
  - (e) in a case where the property was covered by a \*restraining order when the forfeiture order was made—the court is satisfied that the person is not a suspect in relation to the restraining order; and
  - (f) in a case where the forfeiture order was made under section 47 or 48—the court is satisfied that, when the conduct that is the subject of the forfeiture order occurred, the person had no knowledge of the conduct; and
  - (g) in a case where the property was \*proceeds of an offence or an \*instrument of an offence—the court is satisfied that, when the property became proceeds of an offence or an instrument of an offence, the person had no knowledge of the conduct constituting the offence; and
  - (h) the court is satisfied that, if the interest were to be transferred to the person under section 89:
    - (i) the amount paid to the Commonwealth under paragraph 89(1)(c) would not be property that is covered by subsection (6); and

- (ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 89(1)(c) would be borrowed by the person under a loan—the person’s financial circumstances are such that the person will be able to repay the loan, meet the person’s eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection (6); and
  - (i) the court is satisfied that:
    - (i) it would not be contrary to the public interest for the interest to be transferred to the person; and
    - (ii) there is no other reason why the interest should not be transferred to the person;
- the court may make an order:
- (j) declaring the nature, extent and value (as at the time when the order is made under this subsection) of the interest; and
  - (k) declaring that the interest may be excluded, under section 89, from the operation of the forfeiture order.

Note: Money can be property.

- (2) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (1)(h)(ii) was made under an arrangement entered into before or after the application mentioned in paragraph (1)(b) was made.
- (3) For the purposes of this section, *loan* includes anything that may reasonably be regarded as equivalent to a loan, and *borrow* has a corresponding meaning.
- (4) For the purposes of this section, each of the following are *eligible living expenses* of the person:
  - (a) the person’s reasonable living expenses;
  - (b) the reasonable living expenses of any of the \*dependants of the person;
  - (c) the reasonable business expenses of the person.
- (5) For the purposes of this section, an *eligible debt* of the person is a debt incurred in good faith by the person.
- (6) This subsection covers any of the following property:
  - (a) property that is wholly or partly derived or realised by the person, directly or indirectly, from \*unlawful activity;

- (b) property that is used in, or in connection with, the commission of unlawful activity;
- (c) property that is intended to be used in, or in connection with, the commission of unlawful activity.

### **57A Applying for an order under section 57**

*Before a forfeiture order has been made*

- (1) A person may apply to a court for an order under section 57 in relation to an \*interest in property if an application for a \*forfeiture order that could specify property in which the person claims that 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 to have had an \*interest in property specified in a \*forfeiture order immediately before the forfeiture order was made may, at any time after the forfeiture order is made, apply to the court that made the forfeiture order for an order under section 57 in relation to the interest.
- (3) However, unless the court gives leave, the person cannot apply under subsection (2) if the person:
  - (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 the person was notified of the application for the \*forfeiture order, but did not make an application under subsection (1) before the forfeiture order was made—the person had a good reason for not making an application under subsection (1) before the forfeiture order was made; or
  - (b) in any case:
    - (i) the person now has evidence relevant to the making of the section 57 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.
- (5) However, the court must not hear an application under subsection (2) if:
  - (a) the \*Official Trustee has taken any action in relation to the property under section 70; and
  - (b) it would not be practicable for the court to make an order in relation to the interest under section 57.

*Other matters*

- (6) An applicant under subsection (1) or (2) must give written notice to the \*responsible authority of both the application and the grounds on which the order is sought.
- (7) The \*responsible authority may appear and adduce evidence at the hearing of an application under subsection (1) or (2).
- (8) To avoid doubt, the \*responsible authority may represent the Commonwealth in proceedings relating to an application under subsection (1) or (2).
- (9) The \*responsible authority must give an applicant under subsection (1) or (2) notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct \*examinations in relation to the application.
- (10) An application under subsection (1) or (2) must not be heard until the \*responsible authority has had a reasonable opportunity to conduct \*examinations in relation to the application.

## **2 Section 103**

Repeal the section, substitute:

### **103 Court may make orders relating to buying back forfeited property**

- (1) If property is forfeited to the Commonwealth under section 92, the court that made the \*restraining order referred to in paragraph 92(1)(b) may, if:

- (a) a person who claims to have had an \*interest in the property before the forfeiture has made an application under section 104A for an order under this section; and
  - (b) the court is satisfied that the person had the interest immediately before the forfeiture; and
  - (c) the court is satisfied that the person is not a \*suspect in relation to the restraining order; and
  - (d) the court is satisfied that, at the time when the offence mentioned in paragraph 92(1)(a) was committed, the person did not have knowledge of the conduct constituting the offence; and
  - (e) in a case where the property was \*proceeds of an offence or an \*instrument of an offence—the court is satisfied that, when the property became proceeds of an offence or an instrument of an offence, the person had no knowledge of the conduct constituting the offence; and
  - (f) the court is satisfied that, if the interest were to be transferred to the person under section 105:
    - (i) the amount paid to the Commonwealth under paragraph 105(1)(c) would not be property that is covered by subsection (6); and
    - (ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 105(1)(c) would be borrowed by the person under a loan—the person’s financial circumstances are such that the person will be able to repay the loan, meet the person’s eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection (6); and
  - (g) the court is satisfied that:
    - (i) it would not be contrary to the public interest for the interest to be transferred to the person; and
    - (ii) there is no other reason why the interest should not be transferred to the person;
- make an order:
- (h) declaring the nature, extent and value (as at the time when the order is made under this subsection) of the interest; and
  - (i) declaring that the forfeiture ceases to operate in relation to the interest if payment is made under section 105.

Note: Money can be property.

- (2) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (1)(f)(ii) was made under an arrangement entered into before or after the application mentioned in paragraph (1)(a) was made.
- (3) For the purposes of this section, *loan* includes anything that may reasonably be regarded as equivalent to a loan, and *borrow* has a corresponding meaning.
- (4) For the purposes of this section, each of the following are *eligible living expenses* of the person:
  - (a) the person's reasonable living expenses;
  - (b) the reasonable living expenses of any of the \*dependants of the person;
  - (c) the reasonable business expenses of the person.
- (5) For the purposes of this section, an *eligible debt* of the person is a debt incurred in good faith by the person.
- (6) This subsection covers any of the following property:
  - (a) property that is wholly or partly derived or realised by the person, directly or indirectly, from \*unlawful activity;
  - (b) property that is used in, or in connection with, the commission of unlawful activity;
  - (c) property that is intended to be used in, or in connection with, the commission of unlawful activity.

### 3 Section 104 (heading)

Omit “orders under section 102 or 103”, substitute “an order under section 102”.

### 4 Subsection 104(1)

Omit “or 103”.

### 5 After section 104

Insert:

#### 104A Applying for an order under section 103

- (1) 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 section 103 at any time.

- (2) However, if the property has already been forfeited under section 92, the person cannot, unless the court gives leave, apply under subsection (1) of this section if the person:
  - (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 (1) of this section before that forfeiture.
- (3) 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 that forfeiture; or
  - (b) the person now has evidence relevant to the application that was not available before that forfeiture; or
  - (c) there are special grounds for granting the leave.
- (4) However, the court must not hear an application under subsection (1) if:
  - (a) the \*Official Trustee has taken any action in relation to the property under section 100; and
  - (b) it would not be practicable for the court to make an order in relation to the interest under section 103.
- (5) The person must give written notice to the \*responsible authority of both the application and the grounds on which the order is sought.
- (6) The \*responsible authority may appear and adduce evidence at the hearing of the application.
- (7) To avoid doubt, the \*responsible authority may represent the Commonwealth in proceedings relating to an application under subsection (1).
- (8) The \*responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However,

the authority 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 \*responsible authority has had a reasonable opportunity to conduct \*examinations in relation to the application.

## 6 After section 181

Insert:

### 181A Examination orders relating to applications under section 57A

- (1) If an application for an order under section 57 (which deals with buying back forfeited property) is made under section 57A in relation to property that is the subject of a \*forfeiture order, the court to which the application is made may make an order (an *examination order*) for the \*examination of any person including:
- (a) the person who made the application; or
  - (b) a person who is a \*suspect in relation to the forfeiture order; or
  - (c) in a case where the property was covered by a \*restraining order when the forfeiture order was made—a person who is a suspect in relation to the restraining order; or
  - (d) the spouse or \*de facto partner of a person referred to in paragraph (a), (b) or (c);
- about the \*affairs of a person referred to in paragraph (a), (b), (c) or (d).
- (2) The \*examination order ceases to have effect when:
- (a) the application is withdrawn; or
  - (b) the court makes a decision on the application.

### 181B Examination orders relating to applications under section 104A

- (1) If an application for an order under section 103 (which deals with buying back forfeited property) is made under section 104A in relation to property, the court to which the application is made may make an order (an *examination order*) for the \*examination of any person including:

- (a) the person who made the application; or
  - (b) a person who is a \*suspect in relation to the \*restraining order mentioned in section 103; or
  - (c) the spouse or \*de facto partner of a person referred to in paragraph (a) or (b);
- about the \*affairs of a person referred to in paragraph (a), (b) or (c).
- (2) The \*examination order ceases to have effect when:
    - (a) the application is withdrawn; or
    - (b) the court makes a decision on the application.

### **7 At the end of subsection 187(4)**

Add:

- ; or (c) if the examination relates to an application for an order under section 57 and the person is no longer a person whose affairs can, under section 181A, be subject to the examination; or
- (d) if the examination relates to an application for an order under section 103 and the person is no longer a person whose affairs can, under section 181B, be subject to the examination.

### **8 Paragraph 187(5)(b)**

Omit “or 181”, substitute “, 181, 181A or 181B”.

### **9 After paragraph 202(5)(eb)**

Insert:

- (ec) a document relevant to determining whether, in a case where a person has made an application under section 57A for an order under section 57 in relation to an \*interest in property:
  - (i) the amount paid to the Commonwealth under paragraph 89(1)(c) would not be property that is covered by subsection 57(6); and
  - (ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 89(1)(c) would be borrowed by the person under a loan—the person’s financial circumstances are such that the person will be able to repay the loan, meet the person’s eligible living expenses and meet any eligible debts of the person,

using property that is not covered by subsection 57(6);  
and

- (ed) a document relevant to determining whether, in a case where a person has made an application under section 104A for an order under section 103 in relation to an interest in property:
- (i) the amount paid to the Commonwealth under paragraph 105(1)(c) would not be property that is covered by subsection 103(6); and
  - (ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 105(1)(c) would be borrowed by the person under a loan—the person’s financial circumstances are such that the person will be able to repay the loan, meet the person’s eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection 103(6);  
and

#### 10 Paragraph 202(5)(f)

Omit “or (eb)”, substitute “, (eb), (ec) or (ed)”.

#### 11 At the end of section 202

Add:

- (7) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (5)(ec)(ii) was made under an arrangement entered into before or after the making of the application mentioned in paragraph (5)(ec).
- (8) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (5)(ed)(ii) was made under an arrangement entered into before or after the making of the application mentioned in paragraph (5)(ed).
- (9) For the purposes of this section, *loan* includes anything that may reasonably be regarded as equivalent to a loan, and *borrow* has a corresponding meaning.
- (10) For the purposes of this section, each of the following are *eligible living expenses* of a person:
  - (a) the person’s reasonable living expenses;

- (b) the reasonable living expenses of any of the \*dependants of the person;
  - (c) the reasonable business expenses of the person.
- (11) For the purposes of this section, an *eligible debt* of a person is a debt incurred in good faith by the person.

**12 Section 338 (definition of examination order)**

Omit “or 181”, substitute “, 181, 181A or 181B”.

**13 Section 338 (before paragraph (h) of the definition of serious offence)**

Insert:

- (gh) an offence against section 195, 196 or 197A that relates to an \*examination of a person who is the subject of an \*examination order under section 181A, if the person committing the offence:
  - (i) is covered by paragraph 181A(1)(a), (b) or (c); or
  - (ii) is or was a party to proceedings relating to the application mentioned in section 181A; or
- (gi) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 181B, if the person committing the offence:
  - (i) is covered by paragraph 181B(1)(a) or (b); or
  - (ii) is or was a party to proceedings relating to the application mentioned in section 181B; or

## Part 2—Transitional provisions

### 14 Transitional—section 57 of the *Proceeds of Crime Act 2002*

Despite the amendment made by item 1, the *Proceeds of Crime Act 2002* continues to apply, in relation to:

- (a) an application made before the commencement of this item for an order under section 57 of that Act; and
- (b) an order made under section 57 of that Act:
  - (i) after the commencement of this item, in response to such an application; or
  - (ii) before the commencement of this item;

as if that amendment had not been made.

### 15 Transitional—sections 103 and 104 of the *Proceeds of Crime Act 2002*

Despite the amendments made by items 2 to 5, the *Proceeds of Crime Act 2002* continues to apply, in relation to:

- (a) an application made before the commencement of this item for an order under section 103 of that Act; and
- (b) an order made under section 103 of that Act:
  - (i) after the commencement of this item, in response to such an application; or
  - (ii) before the commencement of this item;

as if those amendments had not been made.

## Schedule 4—Benefit

### Part 1—Amendments

#### *Proceeds of Crime Act 2002*

##### **1 Section 338**

Insert:

*advantage* includes financial advantage.

Note: See also the definition of *financial advantage*.

##### **2 Section 338 (at the end of the definition of *benefit*)**

Add:

Note: See also the definition of *advantage*.

##### **3 Section 338**

Insert:

*financial advantage* includes the avoidance, deferral or reduction of a debt, loss or liability.

## Part 2—Application provisions

### 4 Application

- (1) Subject to subitem (2), the amendments made by this Schedule, to the extent that they are relevant to a benefit derived by a person, apply in relation to a benefit derived by the person before, at or after the commencement of this item.
- (2) The amendments made by this Schedule, to the extent that they are relevant to proceedings in a court, apply in relation to:
  - (a) proceedings instituted after the commencement of this item;  
and
  - (b) proceedings that:
    - (i) were instituted before the commencement of this item;  
and
    - (ii) are pending as at the commencement of this item.

## **Schedule 5—Jurisdiction of courts**

### **Part 1—Amendments**

#### *Proceeds of Crime Act 2002*

##### **1 Section 53**

Repeal the section.

##### **2 After section 68**

Insert:

##### **68A Third exception—property located outside Australia**

- (1) Despite section 66, if property specified in a \*forfeiture order is property located outside \*Australia:
- (a) that property vests in equity in the Commonwealth; and
  - (b) that property only vests in the Commonwealth at law to the extent permitted under the law in force in the place where that property is located; and
  - (c) the \*responsible authority has power, on behalf of the Commonwealth, to do anything necessary or convenient to:
    - (i) give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; or
    - (ii) arrange for the enforcement of, or give effect to, the forfeiture order.
- Note: The following is an example of action by the responsible authority under subparagraph (1)(c)(ii): arranging for a request under section 32 of the \*Mutual Assistance Act in relation to the enforcement of the forfeiture order.
- (2) Any action by the \*responsible authority under subparagraph (1)(c)(i) is not a dealing for the purposes of subsection 69(1).
- (3) Despite section 66 and subsection (1) of this section, if:
- (a) property specified in a \*forfeiture order is property located outside \*Australia; and

(b) under the law in force in the place where that property is located, that property vests in a person;  
that property vests in that person under that law.

(4) Subsection (3) does not affect any equitable interest vested in the Commonwealth by paragraph (1)(a).

### 3 After section 98

Insert:

#### 98A Third exception—property located outside Australia

- (1) Despite section 96, if property forfeited under section 92 is property located outside \*Australia:
- (a) that property vests in equity in the Commonwealth; and
  - (b) that property only vests in the Commonwealth at law to the extent permitted under the law in force in the place where that property is located; and
  - (c) the \*responsible authority has power, on behalf of the Commonwealth, to do anything necessary or convenient to:
    - (i) give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; or
    - (ii) arrange for the enforcement of, or give effect to, the declaration under section 95 that relates to the forfeiture of that property.

Note: The following is an example of action by the responsible authority under subparagraph (1)(c)(ii): arranging for a request under section 32 of the \*Mutual Assistance Act in relation to the enforcement of the declaration under section 95 of this Act that relates to the forfeiture of that property.

- (2) Any action by the \*responsible authority under subparagraph (1)(c)(i) is not a dealing for the purposes of subsection 99(1).
- (3) Despite section 96 and subsection (1) of this section, if:
- (a) property forfeited under section 92 is property located outside \*Australia; and
  - (b) under the law in force in the place where that property is located, that property vests in a person;  
that property vests in that person under that law.

- (4) Subsection (3) does not affect any equitable interest vested in the Commonwealth by paragraph (1)(a).

**4 Subsection 314(2)**

Omit “Subject to section 53, the”, substitute “The”.

**5 At the end of section 314**

Add:

- (4) The jurisdiction of a court with respect to matters arising under this Act is not excluded or limited merely because the proceedings relate to, or may otherwise concern, property located outside  
\*Australia.

## Part 2—Application provisions

### 6 Application

- (1) Subject to subitem (2), the amendments made by this Schedule, to the extent that they are relevant to property acquired by a person, apply in relation to property acquired by the person before, at or after the commencement of this item.
- (2) The amendments made by this Schedule, to the extent that they are relevant to proceedings in a court, apply in relation to:
  - (a) proceedings instituted after the commencement of this item;  
and
  - (b) proceedings that:
    - (i) were instituted before the commencement of this item;  
and
    - (ii) are pending as at the commencement of this item.

## Schedule 6—Information

### Part 1—Amendments

#### *Proceeds of Crime Act 2002*

**1 Section 195 (penalty)**

Omit “2 years or 120”, substitute “5 years or 300”.

**2 Subsection 196(1) (penalty)**

Omit “2 years or 120”, substitute “5 years or 300”.

**3 Section 197A (penalty)**

Omit “2 years or 120”, substitute “5 years or 300”.

**4 At the end of section 198**

Add:

; or (f) in proceedings for an offence against this Part.

**5 Subsection 211(1) (penalty)**

Omit “100”, substitute “120”.

**6 Subsection 218(1) (penalty)**

Omit “100”, substitute “120”.

**7 Subparagraph 266A(1)(a)(ii)**

After “by the person” (second occurring), insert “or someone else”.

**8 At the end of paragraph 266A(1)(a)**

Add:

(iii) the exercise of a power (by the person or someone else),  
or performance (by the person or someone else) of a  
function, under Division 2 of Part 4-1; or

**9 Subsection 266A(2) (after table item 2C)**

Insert:

**Schedule 6** Information  
**Part 1** Amendments

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2D	Authority of the Commonwealth, or of a State or Territory, that has a function of investigating or prosecuting offences against a law of the Commonwealth, State or Territory	Assisting in the prevention, investigation or prosecution of: (a) an offence against this Act that involves non-compliance with an obligation or requirement; or (b) an offence against section 15G, 197A, 209, 216, 222 or 266 of this Act; or (c) an offence against clause 8 or 15 of Schedule 1 to this Act; or (d) an offence against section 137.1 or 137.2 of the <i>Criminal Code</i> that relates to this Act; or (e) an offence that involves non-compliance with an order of a court made under this Act
2E	*Mutual Assistance Department	Either or both of the following purposes: (a) facilitating the Mutual Assistance Department's performance of its functions in relation to the <i>Extradition Act 1988</i> , the <i>International Criminal Court Act 2002</i> , the <i>International War Crimes Tribunals Act 1995</i> or the *Mutual Assistance Act; (b) a purpose that is ancillary or incidental to the performance by the Mutual Assistance Department of any of the functions covered by paragraph (a)

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2F	Authority of a foreign country with functions corresponding to the functions of the Mutual Assistance Department that are covered by item 2E	<p>Either or both of the following purposes:</p> <p>(a) assisting in the prevention, investigation or prosecution of an offence against a law of the country constituted by conduct that, if it occurred in Australia, would constitute an offence against a law of the Commonwealth, or of a State or Territory, punishable on conviction by imprisonment for at least 3 years or for life;</p> <p>(b) assisting in the identification, location, tracing, investigation or confiscation of *proceeds or *instruments of crime, if the identification, location, tracing, investigation or confiscation could take place under this Act, or under a *corresponding law of a State or a *self-governing Territory, if the proceeds or instruments related to an offence against a law of the Commonwealth, a State or a Territory</p>
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**10 Subsection 266A(2) (at the end of the table)**

Add:

4	The *International Criminal Court	Enabling or assisting the International Criminal Court to perform any of its functions
5	An *International War Crimes Tribunal	Enabling or assisting the International War Crimes Tribunal to perform any of its functions
6	Professional disciplinary body	Enabling or assisting the body to perform any of the body's functions

**11 At the end of subsection 266A(2)**

Add:

Note: This section is not intended to alter the procedures applicable to the disclosure of information to foreign countries (for example, procedures under the *Mutual Assistance in Criminal Matters Act 1987*). If this section applies to information, this section gives authorisation for the disclosure of the information in accordance with those procedures.

## 12 After subsection 266A(2)

Insert:

- (2A) To avoid doubt, this section does not prevent the person from disclosing or using the information:
- (a) for the purpose for which the information was obtained; or
  - (b) for purposes directly or indirectly connected with, or incidental to, the purpose for which the information was obtained; or
  - (c) if the person obtained the information as a result of a disclosure, or a series of disclosures, under this section or clause 18 of Schedule 1:
    - (i) for the purpose for which the information was obtained as a result of that disclosure or any of the disclosures in that series; or
    - (ii) for purposes directly or indirectly connected with, or incidental to, the purpose for which the information was obtained as a result of that disclosure or any of the disclosures in that series.

## 13 After paragraph 266A(4)(e)

Insert:

; or (f) proceedings for an offence against Part 3-1.

## 14 After subsection 266A(6)

Insert:

- (6A) Subsection (5) does not apply in proceedings for an offence against Part 3-2.

## 15 Paragraph 271(2)(b)

Omit “or”.

**16 Paragraph 271(2)(c)**

Repeal the paragraph.

**17 Subsection 271(2)**

Omit all the words after “against the natural person,”, substitute:  
except:

- (c) proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code 1995* (false and misleading information and documents) in relation to giving the information or document; or
- (d) proceedings for an offence against this Division.

**18 Section 338**

Insert:

*International Criminal Court* has the same meaning as in the *Criminal Code*.

*International War Crimes Tribunal* means a Tribunal (within the meaning of the *International War Crimes Tribunals Act 1995*).

*Mutual Assistance Department* means the Department administered by the Minister who administers the Mutual Assistance Act.

**19 Section 338 (after paragraph (g) of the definition of serious offence)**

Insert:

- (ga) an offence against section 195, 196 or 197A that relates to an \*examination of a person who is the subject of an \*examination order under section 180, if the person committing the offence:
  - (i) is covered by paragraph 180(1)(a) or (b); or
  - (ii) is or was a party to proceedings relating to the \*restraining order mentioned in section 180; or
- (gb) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180A, if the person committing the offence:
  - (i) is covered by paragraph 180A(1)(a); or

- (ii) is or was a party to proceedings relating to the relevant application mentioned in section 180A; or
- (gc) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180B, if the person committing the offence:
  - (i) is covered by paragraph 180B(1)(a); or
  - (ii) is or was a party to proceedings relating to the relevant application mentioned in section 180B; or
- (gd) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180C, if the person committing the offence:
  - (i) is covered by paragraph 180C(1)(a); or
  - (ii) is or was a party to proceedings relating to the application mentioned in section 180C; or
- (ge) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180D, if the person committing the offence:
  - (i) is covered by paragraph 180D(1)(a); or
  - (ii) is or was a party to proceedings relating to the \*confiscation order mentioned in section 180D; or
- (gf) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180E, if the person committing the offence:
  - (i) is covered by paragraph 180E(1)(a); or
  - (ii) is or was a party to proceedings relating to the revocation mentioned in section 180E; or
- (gg) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 181, if the person committing the offence:
  - (i) is covered by paragraph 181(1)(a) or (b); or
  - (ii) is or was a party to proceedings relating to the relevant application mentioned in section 181; or

## **Part 2—Application provisions**

### **20 Application—section 266A of the *Proceeds of Crime Act 2002***

The amendments of section 266A of the *Proceeds of Crime Act 2002* made by this Schedule apply in relation to information obtained before, at or after the commencement of this item.

## Schedule 7—Official Trustee

### Part 1—General amendments

#### Division 1—Amendments

#### *COAG Reform Fund Act 2008*

##### 1 Subsection 5(2) (after note 5)

Insert:

Note 5A: An amount originating in the Confiscated Assets Account may be transferred to the COAG Reform Fund—see the *Proceeds of Crime Act 2002*.

##### 2 At the end of subsection 7(1)

Add:

; and (e) the grant is not covered by section 298F of the *Proceeds of Crime Act 2002*.

##### 3 At the end of subsection 7(3)

Add:

Note 4: The provision referred to in paragraph (1)(e) deals with the channelling, through the COAG Reform Fund, of State/Territory grants payments from the Confiscated Assets Account established by the *Proceeds of Crime Act 2002*. For terms and conditions of those grants, see the *Proceeds of Crime Act 2002*.

#### *Proceeds of Crime Act 2002*

##### 4 Paragraph 9(a)

Omit “, which largely relate to property that is subject to restraining orders”.

##### 5 At the end of section 69

Add:

*Controlled property*

- (4) If property covered by a \*forfeiture order is controlled property for the purposes of Division 3 of Part 4-1, this section does not prevent or limit the exercise of powers or performance of duties by the \*Official Trustee under that Division.

**6 After paragraph 70(1)(b)**

Insert:

- (ba) apply:
- (i) any amounts received from that disposal; and
  - (ii) any property specified in the order that is money;
- to payment of an \*associated GST entity's liability (if any) to pay \*GST in connection with the disposal; and

**7 After Division 4 of Part 2-2**

Insert:

**Division 4A—Controlled property**

**71A Official Trustee may take custody and control of forfeited property**

- (1) The \*Official Trustee may take custody and control of any or all of the property covered by a \*forfeiture order.

Note: Part 4-1 sets out the Official Trustee's powers over the property.

- (2) If the \*Official Trustee decides to take custody and control of property under subsection (1), the court that made the \*forfeiture order that covers the property may make either or both of the following orders:
- (a) an order determining any question relating to the exercise of powers conferred on the Official Trustee under Division 3 of Part 4-1, or the performance of duties imposed on the Official Trustee under that Division, to the extent that those powers or duties relate to the property;
  - (b) an order directing any person to do anything necessary or convenient to enable the Official Trustee to take custody and control of the property.

- (3) The court may only make an order under subsection (2) on the application of:
- (a) the \*responsible authority; or
  - (b) the person who, immediately before the making of the \*forfeiture order, was the owner of the property covered by that order; or
  - (c) the \*Official Trustee; or
  - (d) any other person who has the leave of the court.

**8 Subsection 88(1)**

Omit “Minister” (first occurring), substitute “\*Official Trustee”.

**9 Paragraph 88(1)(d)**

Omit “Minister”, substitute “Official Trustee”.

**10 Subsection 88(2)**

Omit “Minister” (first occurring), substitute “\*Official Trustee”.

**11 Subsection 88(2)**

Omit “Minister” (second occurring), substitute “Official Trustee”.

**12 Paragraph 89(1)(d)**

Omit “Minister”, substitute “\*Official Trustee”.

**13 Section 90**

Repeal the section, substitute:

**90 Buying out other interests in forfeited property**

- (1) If:
- (a) property is forfeited to the Commonwealth under this Part; and
  - (b) an interest in the property is required to be transferred to a person (the *relevant person*) under subsection 88(1) or 89(1), or under a direction under paragraph 73(2)(c); and
  - (c) the relevant person’s interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and

- (d) the relevant person gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that:
    - (i) the relevant person intends to purchase that other interest from the Commonwealth; and
    - (ii) the person served with the notice may, within 21 days after receiving the notice, lodge a written objection to the purchase of that other interest with the Minister and the \*Official Trustee; and
  - (e) no person served with notice under paragraph (d) in relation to that other interest lodges a written objection to the purchase of that other interest with the Minister and the Official Trustee within the period referred to in that paragraph; and
  - (f) the relevant person pays to the Commonwealth, while that other interest is still vested in the Commonwealth, an amount equal to the value of that other interest;
- the Official Trustee must arrange for that other interest to be transferred to the relevant person.
- (2) If a person served with notice under paragraph (1)(d) in relation to the other interest mentioned in that paragraph lodges a written objection to the purchase of that other interest with the Minister and the \*Official Trustee within the period referred to in that paragraph:
- (a) the Minister; or
  - (b) a \*senior Departmental officer authorised by the Minister for the purposes of this subsection;
- may direct the Official Trustee to transfer that other interest to the person.

#### **14 At the end of section 99**

Add:

##### *Controlled property*

- (4) If property forfeited under section 92 is controlled property for the purposes of Division 3 of Part 4-1, this section does not prevent or limit the exercise of powers or performance of duties by the \*Official Trustee under that Division.

### **15 Subsection 100(1)**

Omit “If subsection 99(1) no longer prevents”, substitute “If subsection 99(1) authorises”.

### **16 After paragraph 100(1)(b)**

Insert:

(ba) apply:

- (i) any amounts received from that disposal; and
- (ii) any of the forfeited property that is money; to payment of an \*associated GST entity’s liability (if any) to pay \*GST in connection with the disposal; and

### **17 After Division 2 of Part 2-3**

Insert:

## **Division 2A—Controlled property**

### **101A Official Trustee may take custody and control of forfeited property**

- (1) The \*Official Trustee may take custody and control of property forfeited to the Commonwealth under section 92.

Note: Part 4-1 sets out the Official Trustee’s powers over the property.

- (2) If the \*Official Trustee decides to take custody and control of property under subsection (1), the court that made the \*restraining order referred to in paragraph 92(1)(b) in relation to the property may make either or both of the following orders:

- (a) an order determining any question relating to the exercise of powers conferred on the Official Trustee under Division 3 of Part 4-1, or the performance of duties imposed on the Official Trustee under that Division, to the extent that those powers or duties relate to the property;
- (b) an order directing any person to do anything necessary or convenient to enable the Official Trustee to take custody and control of the property.

- (3) The court may only make an order under subsection (2) on the application of:

- (a) the \*responsible authority; or
- (b) the person who, immediately before the property was forfeited under section 92, was the owner of the property covered by that order; or
- (c) the \*Official Trustee; or
- (d) any other person who has the leave of the court.

### **18 Subsection 105(1)**

Omit “Minister”, substitute “\*Official Trustee”.

### **19 Section 106**

Repeal the section, substitute:

### **106 Buying out other interests in forfeited property**

- (1) If:
  - (a) property is forfeited to the Commonwealth under section 92; and
  - (b) an interest in the property is required to be transferred to a person (the *relevant person*) under section 105, or under a direction under subparagraph 102(d)(i); and
  - (c) the relevant person’s interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and
  - (d) the relevant person gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that:
    - (i) the relevant person intends to purchase that other interest from the Commonwealth; and
    - (ii) the person served with the notice may, within 21 days after receiving the notice, lodge a written objection to the purchase of that other interest with the Minister and the \*Official Trustee; and
  - (e) no person served with the notice under paragraph (d) in relation to that other interest lodges a written objection to the purchase of that other interest with the Minister and the Official Trustee within the period referred to in that paragraph; and

- (f) the relevant person pays to the Commonwealth, while that other interest is still vested in the Commonwealth, an amount equal to the value of that other interest;  
the Official Trustee must arrange for that other interest to be transferred to the relevant person.
- (2) If a person served with notice under paragraph (1)(d) in relation to the other interest mentioned in that paragraph lodges a written objection to the purchase of that other interest with the Minister and the \*Official Trustee within the period referred to in that paragraph:
- (a) the Minister; or
  - (b) a \*senior Departmental officer authorised by the Minister for the purposes of this subsection;
- may direct the Official Trustee to transfer that other interest to the person.

**20 Subsection 114(1)**

Omit “Minister” (first occurring), substitute “\*Official Trustee”.

**21 Paragraph 114(1)(d)**

Omit “Minister”, substitute “Official Trustee”.

**22 Subsection 114(2)**

Omit “Minister” (first occurring), substitute “\*Official Trustee”.

**23 Subsection 114(2)**

Omit “Minister” (second occurring), substitute “Official Trustee”.

**24 After section 267**

Insert:

**267AA Additional property to which the Official Trustee’s powers under Division 2 apply**

- (1) The powers conferred on the \*Official Trustee under Division 2 may be exercised in relation to:
- (a) property that is the subject of a \*forfeiture order; or
  - (b) property forfeited under section 92; or

- (c) property that is subject to a direction under section 282 or 282A.
- (2) Without limiting the definition of *controlled property* in section 267, for the purposes of Division 2, that property is *controlled property*.

**267AB Additional property to which the Official Trustee’s powers under Division 3 apply**

- (1) The powers conferred on the \*Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to:
  - (a) property that is the subject of a \*forfeiture order; or
  - (b) property forfeited under section 92; or
  - (c) property that is subject to a direction under section 282 or 282A.
- (2) If property is the subject of a \*forfeiture order, the powers conferred on the \*Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to the property:
  - (a) during the period:
    - (i) beginning when the forfeiture order was made; and
    - (ii) ending at the later of the times set out in subsection 69(1); or
  - (b) during the period mentioned in section 86.
- (3) If property is forfeited under section 92, the powers conferred on the \*Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to the property during the period:
  - (a) beginning when the property was forfeited; and
  - (b) ending at the end of the period mentioned in subsection 99(1).
- (4) If property is subject to a direction under section 282 or 282A, the powers conferred on the \*Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to the property during the appeal period under section 285.

- (5) Without limiting the definition of *controlled property* in section 267, for the purposes of Division 3 and sections 289 and 290, property covered by subsection (1), (2), (3), or (4) of this section is *controlled property*.

## 25 Subsection 270(1)

After “require the person”, insert “to do any or all of the following things”.

## 26 Paragraphs 270(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) to:

- (i) give the Official Trustee such information as the Official Trustee requires for the purposes of the exercise of the Official Trustee’s powers or the performance of the Official Trustee’s duties under this Part; and
- (ii) do so within the period, and in the manner, specified in the notice;

(b) to:

- (i) attend before the Official Trustee, or a person authorised in writing by the Official Trustee for the purposes of this paragraph, at the time and place specified in the notice; and
- (ii) give evidence relating to any matters connected with the exercise of the Official Trustee’s powers or the performance of the Official Trustee’s duties under this Part;

(c) to:

- (i) give evidence by video link to the Official Trustee, or a person authorised in writing by the Official Trustee for the purposes of this paragraph, if the evidence relates to any matters connected with the exercise of the Official Trustee’s powers or the performance of the Official Trustee’s duties under this Part; and
- (ii) commence doing so at the time specified in the notice;

(d) to:

- (i) give evidence by telephone to the Official Trustee, or a person authorised in writing by the Official Trustee for the purposes of this paragraph, if the evidence relates to

- any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and
- (ii) commence doing so at the time specified in the notice;
- (e) to:
- (i) produce all \*books in the possession of the person notified relating to any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and
  - (ii) do so within the period, and in the manner, specified in the notice.

## **27 Subsection 270(2)**

Repeal the subsection, substitute:

- (2) In the case of a requirement under paragraph (1)(b), (c) or (d), the \*Official Trustee or a person authorised under the paragraph concerned:
  - (a) may require the evidence to be given on oath or affirmation, and either orally or in writing; and
  - (b) for that purpose, may administer an oath or affirmation.
- (3) An oath or affirmation to be sworn or made by a person who is to give evidence by video link may be administered:
  - (a) by means of video link, in as nearly as practicable the same way as if the person were to give evidence in the presence of the \*Official Trustee or the person authorised under paragraph (1)(c), as the case may be; or
  - (b) as follows:
    - (i) on behalf of the Official Trustee or the person authorised under paragraph (1)(c), as the case may be;
    - (ii) by a person authorised by the Official Trustee or the person authorised under paragraph (1)(c), as the case may be;
    - (iii) at the place where the person is present for the purposes of giving evidence.
- (4) An oath or affirmation to be sworn or made by a person who is to give evidence by telephone may be administered:

- (a) by telephone, in as nearly as practicable the same way as if the person were to give evidence in the presence of the \*Official Trustee or the person authorised under paragraph (1)(d), as the case may be; or
- (b) as follows:
  - (i) on behalf of the Official Trustee or the person authorised under paragraph (1)(d), as the case may be;
  - (ii) by a person authorised by the Official Trustee or the person authorised under paragraph (1)(d), as the case may be;
  - (iii) at the place where the person is present for the purposes of giving evidence.

**28 Section 275**

Before “A person”, insert “(1)”.

**29 Subparagraph 275(b)(ii)**

Omit “be; or”, substitute “be.”.

**30 Subparagraph 275(b)(iii)**

Repeal the subparagraph.

**31 At the end of section 275**

Add:

- (2) A person commits an offence if:
  - (a) the person is required by a notice under paragraph 270(1)(c) to give evidence by video link; and
  - (b) the person refuses or fails:
    - (i) to be sworn or to make an affirmation; or
    - (ii) to answer a question that the person is required to answer by the \*Official Trustee or a person authorised under that paragraph, as the case may be.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (3) A person commits an offence if:
  - (a) the person is required by a notice under paragraph 270(1)(d) to give evidence by telephone; and
  - (b) the person refuses or fails:

- (i) to be sworn or to make an affirmation; or
- (ii) to answer a question that the person is required to answer by the \*Official Trustee or a person authorised under that paragraph, as the case may be.

Penalty for contravention of this subsection: Imprisonment for 6 months or 30 penalty units, or both.

### **32 At the end of Division 2 of Part 4-1**

Add:

#### **275A Failure to produce a book**

A person commits an offence if:

- (a) the person is required by a notice under paragraph 270(1)(e) to produce a \*book; and
- (b) the person refuses or fails to comply with the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

### **33 Paragraph 278(2)(a)**

Before “agreement”, insert “written”.

### **34 Section 279 (at the end of the heading)**

Add “etc.”.

### **35 Paragraphs 279(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) if the \*controlled property is covered by a \*forfeiture order:
  - (i) the person who was the owner of the property immediately before the forfeiture order was made; and
  - (ii) any other person whom the \*Official Trustee has reason to believe may have had an \*interest in the property immediately before the forfeiture order was made; or
- (b) if the controlled property is forfeited under section 92:
  - (i) the person who was the owner of the property immediately before the forfeiture; and
  - (ii) any other person whom the Official Trustee has reason to believe may have had an interest in the property immediately before the forfeiture; or

- (c) in any other case:
  - (i) the owner of the controlled property; and
  - (ii) any other person whom the Official Trustee has reason to believe may have an interest in the controlled property.

### **36 At the end of section 279**

Add:

*Pre-disposal agreement*

- (5) Subsection (1) does not require written notice of the proposed disposal of the \*controlled property to be given to a person who has agreed in writing to the disposal of the controlled property.
- (6) If:
  - (a) a person has agreed to the disposal of the \*controlled property; and
  - (b) the \*Official Trustee disposes of the property;the Official Trustee must:
  - (c) give the person written notice of the disposal of the property; and
  - (d) do so as soon as practicable after the disposal of the property.

### **37 Section 281**

Before “Amounts”, insert “(1)”.

### **38 Paragraphs 281(a) and (b)**

Repeal the paragraphs, substitute:

- (a) if the property was covered by a \*restraining order—are taken to be covered by the restraining order; or
- (b) if the property was covered by a \*forfeiture order—are taken to be covered by the forfeiture order; or
- (c) if the property was forfeited under section 92—are taken to be forfeited under that section; or
- (d) if the property was subject to a charge under section 142—are taken to be subject to the charge; or
- (e) if the property was subject to a charge under section 169—are taken to be subject to the charge; or

- (f) if the property was subject to a charge under section 179SA—are taken to be subject to the charge.

**39 At the end of section 281**

Add:

- (2) If the \*controlled property:
- (a) was covered by a \*restraining order or \*forfeiture order; and
  - (b) was so covered on the basis that the property was \*proceeds of an offence, or an \*instrument of an offence, to which the restraining order or forfeiture order relates;
- amounts realised from any sale of the property under section 278 continue to be proceeds of that offence or an instrument of that offence.

**40 At the end of Division 3 of Part 4-1**

Add:

**281A Official Trustee does not acquire any additional proprietary interests in controlled property**

To avoid doubt, the \*Official Trustee does not acquire any additional proprietary interests in \*controlled property when:

- (a) exercising powers conferred by this Division; or
- (b) performing duties imposed by this Division.

**41 At the end of section 285**

Add:

*Controlled property*

- (5) If the property to which a direction under section 282 or 282A relates is controlled property for the purposes of Division 3 of Part 4-1, this section does not prevent or limit the exercise of powers or performance of duties by the \*Official Trustee under that Division.

**42 Paragraph 288(1)(a)**

Omit “or under”, substitute “, under”.

**43 Paragraph 288(1)(a)**

After “\*Mutual Assistance Act”, insert “or under section 208DA or Division 3 of Part XIII of the *Customs Act 1901*”.

**44 At the end of subsection 289(1)**

Add:

Note: See also section 267AB, which extends the meaning of *controlled property* for the purposes of this section.

**45 Subsection 289(2)**

Omit “the \*restraining order relating to the \*controlled property ceases to be in force and the property is returned to its owner,”, substitute “the \*controlled property is returned to its owner as a result of a restraining order ceasing to be in force or as a result of the controlled property ceasing to be subject to forfeiture under this Act.”.

**46 At the end of subsection 290(1)**

Add:

Note: See also section 267AB, which extends the meaning of *controlled property* for the purposes of this section.

**47 After paragraph 296(1)(a)**

Insert:

(aa) input tax credits:

- (i) to which the \*Official Trustee is entitled; and
- (ii) that are in connection with disposals under section 70 or 100; and

**48 Paragraph 296(3)(b)**

Omit “90(f)”, substitute “90(1)(f)”.

**49 Paragraph 296(3)(d)**

Omit “106(f)”, substitute “106(1)(f)”.

**50 After paragraph 297(b)**

Insert:

- (ba) transferring amounts to the \*COAG Reform Fund in accordance with section 298E for the purposes of making grants to the States and Territories under section 298A;

**51 Paragraph 297(e)**

Omit “but that the Official Trustee has been unable to recover”, substitute “or (b)”.

**52 After paragraph 297(e)**

Insert:

- (ea) paying the Official Trustee amounts that were payable to the Official Trustee under regulations made for the purposes of subsection 9B(1) of the *Crimes Act 1914*;

**53 After paragraph 297(f)**

Insert:

- (faa) making any payments in discharge of an \*associated GST entity’s liability to pay \*GST in connection with a disposal under section 70 or 100;

**54 Before paragraph 296(1)(h)**

Insert:

- (gb) money (other than a penalty) that is paid by a person to the Commonwealth (directly or indirectly) under, or in connection with, a \*foreign deferred prosecution agreement, and that represents any or all of the following:
  - (i) the whole or a part of \*benefits the person derived from alleged \*unlawful activity;
  - (ii) the whole or a part of property that is wholly or partly derived or realised by the person, directly or indirectly, from alleged unlawful activity;
  - (iii) the whole or a part of property that is used in, or in connection with, the commission of alleged unlawful activity;
  - (iv) the whole or a part of property that is intended to be used in, or in connection with, the commission of alleged unlawful activity; and

## **55 At the end of Part 4-3**

Add:

### **Division 4—Grants to the States and Territories for crime prevention etc.**

#### **298A Grants to the States and Territories for crime prevention etc.**

- (1) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a State or Territory for one or more of the following purposes:
  - (a) crime prevention measures;
  - (b) law enforcement measures;
  - (c) measures relating to treatment of drug addiction;
  - (d) diversionary measures relating to illegal use of drugs.
- (2) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.
- (3) Subsection (2) does not limit subsection (1).

#### **298B Terms and conditions of grants**

##### *Scope*

- (1) This section applies to a grant of financial assistance made under section 298A.

##### *Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted must be set out in a written agreement between the Commonwealth and the grant recipient.
- (3) The grant recipient must comply with the terms and conditions.
- (4) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the grant recipient must repay amounts to the Commonwealth.

Note: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

- (5) An agreement under subsection (2) is to be entered into by the Minister on behalf of the Commonwealth.

### **298C Minister has powers etc. of the Commonwealth**

- (1) The Minister, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as the grantor of a grant made under section 298A.
- (2) Without limiting subsection (1):
- (a) a section 298A grant is to be paid by the Minister on behalf of the Commonwealth; and
  - (b) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 298A grant is to be paid to the Minister on behalf of the Commonwealth; and
  - (c) the Minister may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a section 298A grant.

### **298D Conferral of powers on the Minister**

The Minister may exercise a power conferred on the Minister by an agreement under section 298B.

### **298E Channelling State/Territory grants through the COAG Reform Fund**

- (1) If the Minister decides that a grant of financial assistance should be made to a State or Territory under section 298A, the Minister must, by writing, direct that, as soon as practicable, a specified amount (which must equal the amount of the grant) is to be:
- (a) debited from the \*Confiscated Assets Account; and
  - (b) credited to the \*COAG Reform Fund.
- (2) The direction must be expressed to be given in order to enable the amount to be debited from the \*COAG Reform Fund for the purpose of making the grant.
- (3) Two or more directions under subsection (1) may be set out in the same document.

- (4) A direction under subsection (1) is not a legislative instrument.
- (5) The Minister must give a copy of a direction under subsection (1) to the Treasurer.

#### **298F Debits from the COAG Reform Fund**

If an amount has been credited under paragraph 298E(1)(b) to the \*COAG Reform Fund for a purpose in relation to a grant of financial assistance to a State or Territory, the Treasurer must:

- (a) ensure that the COAG Reform Fund is debited for the purposes of making the grant; and
- (b) do so as soon as practicable after the amount has been credited.

#### **56 Section 338**

Insert:

*associated GST entity* means an entity (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*) that has entered into an arrangement with the \*Official Trustee under section 153-50 of that Act.

*COAG Reform Fund* means the COAG Reform Fund established by section 5 of the *COAG Reform Fund Act 2008*.

#### **57 Section 338 (note to the definition of *controlled property*)**

Omit “Note”, substitute “Note 1”.

#### **58 Section 338 (at the end of the definition of *controlled property*)**

Add:

Note 2: Section 267AA alters the meaning of this term for the purposes of Division 2 of Part 4-1.

Note 3: Section 267AB alters the meaning of this term for the purposes of Division 3 of Part 4-1 and sections 289 and 290.

#### **59 Section 338**

Insert:

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**entitled**, in relation to an \*input tax credit, includes notionally entitled to the input tax credit.

**foreign deferred prosecution agreement** means an agreement that:

- (a) is between a person and a competent authority of a foreign country; and
- (b) provides for the indefinite deferral of the prosecution of the person for an offence against a law of the foreign country, so long as the conditions set out in the agreement are met.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**input tax credit** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**liability to pay GST** includes notional liability to pay GST.

## **Division 2—Application of amendments**

### **60 Application—sections 270 and 275 of the *Proceeds of Crime Act 2002***

The amendments of sections 270 and 275 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to a notice given under section 270 of that Act after the commencement of this item.

### **61 Application—section 278 of the *Proceeds of Crime Act 2002***

The amendment of section 278 of the *Proceeds of Crime Act 2002* made by this Part applies in relation to an agreement made or given by a person after the commencement of this item.

### **62 Application—section 279 of the *Proceeds of Crime Act 2002***

- (1) The amendment of subsection 279(1) of the *Proceeds of Crime Act 2002* made by this Part applies in relation to a notice given after the commencement of this item.
- (2) Subsections 279(5) and (6) of the *Proceeds of Crime Act 2002* (as amended by this Part) apply in relation to an agreement made or given by a person after the commencement of this item.

**63 Application—section 281 of the *Proceeds of Crime Act 2002***

The amendments of section 281 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to a sale that occurs after the commencement of this item.

**64 Application—paragraph 296(1)(aa) of the *Proceeds of Crime Act 2002***

Paragraph 296(1)(aa) of the *Proceeds of Crime Act 2002* (as amended by this Part) applies in relation to input tax credits to which the Official Trustee becomes entitled after the commencement of this item.

**65 Application—paragraph 297(e) of the *Proceeds of Crime Act 2002***

- (1) The amendment of paragraph 297(e) of the *Proceeds of Crime Act 2002* made by this Part, so far as it concerns amounts payable to the Official Trustee under regulations made for the purposes of paragraph 288(1)(a) of that Act, applies in relation to costs, charges and expenses incurred after the commencement of this item.
- (2) The amendment of paragraph 297(e) of the *Proceeds of Crime Act 2002* made by this Part, so far as it concerns amounts payable to the Official Trustee under regulations made for the purposes of paragraph 288(1)(b) of that Act, applies in relation to remuneration that becomes payable after the commencement of this item.

**66 Application—paragraph 297(ea) of the *Proceeds of Crime Act 2002***

- (1) Paragraph 297(ea) of the *Proceeds of Crime Act 2002* (as amended by this Part), so far as it concerns amounts payable to the Official Trustee under regulations made for the purposes of paragraph 9B(1)(a) of the *Crimes Act 1914*, applies in relation to costs, charges and expenses incurred after the commencement of this item.
- (2) Paragraph 297(ea) of the *Proceeds of Crime Act 2002* (as amended by this Part), so far as it concerns amounts payable to the Official Trustee under regulations made for the purposes of paragraph 9B(1)(b) of the *Crimes Act 1914*, applies in relation to remuneration that becomes payable after the commencement of this item.

**Part 2—Amendments contingent on the  
commencement of the Crimes Legislation  
Amendment (Combatting Corporate Crime)  
Act 2021**

*Proceeds of Crime Act 2002*

**67 After paragraph 296(1)(f)**

Insert:

- (fa) money (other than a penalty) that is paid by a person to the Commonwealth (directly or indirectly) under a \*Commonwealth deferred prosecution agreement, and that represents any or all of the following:
- (i) the whole or a part of \*benefits the person derived from alleged \*unlawful activity;
  - (ii) the whole or a part of property that is wholly or partly derived or realised by the person, directly or indirectly, from alleged unlawful activity;
  - (iii) the whole or a part of property that is used in, or in connection with, the commission of alleged unlawful activity;
  - (iv) the whole or a part of property that is intended to be used in, or in connection with, the commission of alleged unlawful activity; and

**68 Section 338**

Insert:

*Commonwealth deferred prosecution agreement* means a deferred prosecution agreement (within the meaning of the *Director of Public Prosecutions Act 1983*).

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*[Minister's second reading speech made in—  
House of Representatives on 2 September 2020  
Senate on 10 December 2020]*

(110/20)

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