

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

CRIMES LEGISLATION AMENDMENT BILL 1989

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENT OF THE ACTS INTERPRETATION ACT 1901

3. Principal Act
4. References to writing, documents and records

PART 3—AMENDMENTS OF THE CRIMES ACT 1914

5. Principal Act
6. Pecuniary penalties—natural persons and bodies corporate
7. What amounts to forgery
8. Forgery of Commonwealth documents etc.
9. Insertion of new Part:

PART VIA—OFFENCES RELATING TO COMPUTERS

- 76A. Interpretation
- 76B. Unlawful access to data in Commonwealth and other computers
- 76C. Damaging data in Commonwealth and other computers
- 76D. Unlawful access to data in Commonwealth and other computers by means of Commonwealth facility
- 76E. Damaging data in Commonwealth and other computers by means of Commonwealth facility
- 76F. Saving of State and Territory laws
10. Insertion of new Part:

TABLE OF PROVISIONS—*continued*

Section

PART VIIC—PARDONS, QUASHED CONVICTIONS AND SPENT CONVICTIONS

Division 1—Interpretation and application of Part

- 85ZL. Interpretation of Part
- 85ZM. Meaning of “conviction” and “spent conviction”
- 85ZN. Meaning of “quash”
- 85ZP. Application of Part
- 85ZQ. Part binds the Crown

Division 2—Pardons for persons wrongly convicted, and quashed convictions

- 85ZR. Pardons for persons wrongly convicted
- 85ZS. Effect of pardons for persons wrongly convicted
- 85ZT. Quashed convictions
- 85ZU. Effect of quashed convictions

Division 3—Spent convictions

- 85ZV. Spent convictions
- 85ZW. Effect of right of non-disclosure

Division 4—Convictions of further offences

- 85ZX. Convictions of further Commonwealth or Territory offences
- 85ZY. Convictions of further State or foreign offences

Division 5—Complaints to Privacy Commissioner

- 85ZZ. Privacy Commissioner’s functions
- 85ZZA. Complaints to the Privacy Commissioner
- 85ZZB. Identity of respondent to complaint
- 85ZZC. Investigation of complaints
- 85ZZD. Determinations of Privacy Commissioner
- 85ZZE. Payment of compensation or expenses
- 85ZZF. Enforcement of determination or recommendation
- 85ZZG. Application of Privacy Act

Division 6—Exclusions

- 85ZZH. Exclusions
- 85ZZJ. Further exemptions—law enforcement agencies
- 85ZZK. Fair reporting: pardons and quashed convictions
- 11. Amendments of *Crimes Act 1914* relating to penalties
- 12. Transition

PART 4—AMENDMENTS OF THE CRIMES (AIRCRAFT) ACT 1963

- 13. Principal Act
- 14. Interpretation
- 15. Taking or sending dangerous goods on aircraft
- 16. Interpretation

PART 5—AMENDMENTS OF THE CUSTOMS ACT 1901

- 17. Principal Act
- 18. Interpretation
- 19. Insertion of new section:
 - 243AB. Effective control of property
- 20. Pecuniary penalties

TABLE OF PROVISIONS—*continued*

Section

- 21. Assessment of pecuniary penalty
- 22. Insertion of new section:
243CA. Court may lift corporate veil etc.
- 23. Court may make restraining order against property
- 24. Court may make further orders
- 25. Repeal and substitution of section:
243G. Official Trustee to discharge pecuniary penalty
- 26. Repeal and substitution of section:
243K. Contravention of restraining orders
- 27. Repeal and substitution of section:
243P. Costs etc. payable to Official Trustee
- 28. Repeal and substitution of section:
243Q. Notices
- 29. Minor and consequential amendments

PART 6—AMENDMENTS OF THE DIRECTOR OF PUBLIC PROSECUTIONS
ACT 1983

- 30. Principal Act
- 31. Functions of Director
- 32. Powers of Director
- 33. Delegation by Director

PART 7—AMENDMENT OF THE JUDICIARY ACT 1903

- 34. Principal Act
- 35. Trial of indictable offence without preliminary examination

PART 8—AMENDMENTS OF THE NATIONAL CRIME AUTHORITY ACT
1984

- 36. Principal Act
- 37. Authority may request information from Commonwealth agencies
- 38. Hearings
- 39. Meetings of the Authority
- 40. Insertion of new section:
46A. Chairman to be responsible for management of Authority
- 41. Public sittings and bulletins
- 42. Schedule 2
- 43. Amendments of the *National Crime Authority Act 1984* relating to members and Chairman

SCHEDULE 1

AMENDMENTS OF THE CRIMES ACT 1914 RELATING TO PENALTIES

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE CUSTOMS ACT 1901

SCHEDULE 3

AMENDMENTS OF THE NATIONAL CRIME AUTHORITY ACT 1984 RELATING TO
MEMBERS AND CHAIRMAN

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 11 May 1989

(Attorney-General)

A BILL

FOR

**An Act to amend various Acts relating to criminal matters,
and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Crimes Legislation Amendment Act 1989*.

Commencement

2. (1) Parts 1 and 2, Part 3 (other than section 10) and Part 4 commence on the day on which this Act receives the Royal Assent.

10 (2) Section 10 commences on a day to be fixed by Proclamation, but if that section does not commence within the period of 12 months beginning

on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(3) Parts 5, 6 and 7 commence on the 28th day after the day on which this Act receives the Royal Assent.

(4) Part 8 commences on 1 July 1989.

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PART 2—AMENDMENT OF THE ACTS INTERPRETATION ACT 1901

Principal Act

3. In this Part, “Principal Act” means the *Acts Interpretation Act 1901*¹.

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References to writing, documents and records

4. Section 25 of the Principal Act is amended by inserting the following definition:

“‘record’ includes information stored or recorded by means of a computer;”.

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PART 3—AMENDMENTS OF THE CRIMES ACT 1914

Principal Act

5. In this Part, “Principal Act” means the *Crimes Act 1914*².

Pecuniary penalties—natural persons and bodies corporate

6. Section 4B of the Principal Act is amended:

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(a) by omitting from subsection (2) “thinks a pecuniary penalty” and substituting “thinks it”;

(b) by inserting in subsection (2) “, or in addition to,” after “instead of”;

(c) by omitting from subsection (2) all the words from and including “not exceeding” and substituting “not exceeding an amount calculated using the formula:

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$$\frac{\text{Term of Imprisonment}}{6} \times \$3,000$$

6

where:

Term of Imprisonment is the maximum term of imprisonment, expressed in months, by which the offence is punishable.”;

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(d) by inserting after subsection (2) the following subsection:

“(2A) Where a natural person is convicted of an offence against a law of the Commonwealth in respect of which a court may impose a penalty of imprisonment for life, the court may, if the contrary intention does not appear and the court thinks it appropriate in all the circumstances of the case, impose, instead of, or in addition to,

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a penalty of imprisonment, a pecuniary penalty not exceeding \$200,000.”.

What amounts to forgery

5 7. Section 63 of the Principal Act is amended by adding at the end the following subsection:

“(3) Where a person does an act referred to in a paragraph of subsection (1) with intent that a computer, a machine or other device should respond to the counterfeit seal or impression of a seal or signature, or to the false or altered document, register or record, as if it were genuine:

- 10 (a) to the prejudice of the Commonwealth or of any State or person;
or
(b) with the result that the Commonwealth or any State or person would be induced to do or refrain from doing any act, whether in Australia or elsewhere;

15 the person shall be taken to have forged the seal, signature, document, register or record, as the case may be.”.

Forgery of Commonwealth documents etc.

8. Section 67 of the Principal Act is amended by omitting from paragraph (e) “record or other document” and substituting “document or other record”.

20 9. After Part VI of the Principal Act the following Part is inserted:

“PART VIA—OFFENCES RELATING TO COMPUTERS

Interpretation

“76A. (1) In this Part, unless the contrary intention appears:

- 25 ‘Commonwealth’ includes a public authority under the Commonwealth;
‘Commonwealth computer’ means a computer, a computer system or a part of a computer system, owned, leased or operated by the Commonwealth;
‘data’ includes information, a computer program or part of a computer program.

30 “(2) In this Part:

- (a) a reference to data stored in a computer includes a reference to data entered or copied into the computer; and
(b) a reference to data stored on behalf of the Commonwealth in a computer includes a reference to:
35 (i) data stored in the computer at the direction or request of the Commonwealth; and
(ii) data supplied by the Commonwealth that is stored in the computer under, or in the course of performing, a contract with the Commonwealth.

Unlawful access to data in Commonwealth and other computers

“76B. (1) A person who intentionally and without authority obtains access to:

- (a) data stored in a Commonwealth computer; or
- (b) data stored on behalf of the Commonwealth in a computer that is not a Commonwealth computer; 5

is guilty of an offence.

Penalty: Imprisonment for 6 months.

“(2) A person who:

- (a) with intent to defraud any person and without authority obtains access to data stored in a Commonwealth computer, or to data stored on behalf of the Commonwealth in a computer that is not a Commonwealth computer; or 10
- (b) intentionally and without authority obtains access to data stored in a Commonwealth computer, or to data stored on behalf of the Commonwealth in a computer that is not a Commonwealth computer, being data that the person knows or ought reasonably to know relates to: 15
 - (i) the security, defence or international relations of Australia;
 - (ii) the existence or identity of a confidential source of information relating to the enforcement of a criminal law of the Commonwealth or of a State or Territory; 20
 - (iii) the enforcement of a law of the Commonwealth or of a State or Territory;
 - (iv) the protection of public safety; 25
 - (v) the personal affairs of any person;
 - (vi) trade secrets;
 - (vii) records of a financial institution; or
 - (viii) commercial information the disclosure of which could cause advantage or disadvantage to any person; 30

is guilty of an offence.

Penalty: Imprisonment for 2 years.

“(3) A person who:

- (a) has intentionally and without authority obtained access to data stored in a Commonwealth computer, or to data stored on behalf of the Commonwealth in a computer that is not a Commonwealth computer; 35
- (b) after examining part of that data, knows or ought reasonably to know that the part of the data which the person examined relates wholly or partly to any of the matters referred to in paragraph (2) (b); and 40
- (c) continues to examine that data;

is guilty of an offence.

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

Damaging data in Commonwealth and other computers

“76C. A person who intentionally and without authority or lawful excuse:

- (a) destroys, erases or alters data stored in, or inserts data into, a Commonwealth computer;
- (b) interferes with, or interrupts or obstructs the lawful use of, a Commonwealth computer;
- (c) destroys, erases, alters or adds to data stored on behalf of the Commonwealth in a computer that is not a Commonwealth computer; or
- (d) impedes or prevents access to, or impairs the usefulness or effectiveness of, data stored in a Commonwealth computer or data stored on behalf of the Commonwealth in a computer that is not a Commonwealth computer;

is guilty of an offence.

Penalty: Imprisonment for 10 years.

Unlawful access to data in Commonwealth and other computers by means of Commonwealth facility

“76D. (1) A person who, by means of a facility operated or provided by the Commonwealth, intentionally and without authority obtains access to data stored in a computer, is guilty of an offence.

Penalty: Imprisonment for 6 months.

“(2) A person who:

- (a) by means of a facility operated or provided by the Commonwealth, with intent to defraud any person and without authority obtains access to data stored in a computer; or
- (b) by means of such a facility, intentionally and without authority obtains access to data stored in a computer, being data that the person knows or ought reasonably to know relates to:
 - (i) the security, defence or international relations of Australia;
 - (ii) the existence or identity of a confidential source of information relating to the enforcement of a criminal law of the Commonwealth or of a State or Territory;
 - (iii) the enforcement of a law of the Commonwealth or of a State or Territory;
 - (iv) the protection of public safety;
 - (v) the personal affairs of any person;
 - (vi) trade secrets;
 - (vii) records of a financial institution; or
 - (viii) commercial information the disclosure of which could cause advantage or disadvantage to any person;

is guilty of an offence.

Penalty: Imprisonment for 2 years.

“(3) A person who:

- (a) by means of a facility operated or provided by the Commonwealth, has intentionally and without authority obtained access to data stored in a computer;
- (b) after examining part of that data, knows or ought reasonably to know that the part of the data which the person examined relates wholly or partly to any of the matters referred to in paragraph (2) (b); and
- (c) continues to examine that data;

is guilty of an offence.

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

Damaging data in Commonwealth and other computers by means of Commonwealth facility

“76E. A person who, by means of a facility operated or provided by the Commonwealth, intentionally and without authority or lawful excuse:

- (a) destroys, erases or alters data stored in, or inserts data into, a computer;
- (b) interferes with, or interrupts or obstructs the lawful use of, a computer; or
- (c) impedes or prevents access to, or impairs the usefulness or effectiveness of, data stored in a computer;

is guilty of an offence.

Penalty: Imprisonment for 10 years.

Saving of State and Territory laws

“76F. Sections 76D and 76E are not intended to exclude or limit the concurrent operation of any law of a State or Territory.”

10. Before Part VIII of the Principal Act the following Part is inserted:

“PART VIIIC—PARDONS, QUASHED CONVICTIONS AND SPENT CONVICTIONS

“Division 1—Interpretation and application of Part

Interpretation of Part

“85ZL. In this Part, unless the contrary intention appears:

‘Commonwealth authority’ means:

- (a) a Commonwealth Minister;
- (b) a Commonwealth Department;
- (c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth law, not being:

- (i) an incorporated company, society or association; or
- (ii) an organisation within the meaning of the *Industrial Relations Act 1988* or a branch of such an organisation;

- 5 (d) a body established or appointed by the Governor-General, or by a Commonwealth Minister, otherwise than by or under a Commonwealth law;
- (e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Commonwealth law other than the office of Secretary of a Commonwealth Department;
- 10 (f) a person holding or performing the duties of an appointment made by the Governor-General, or by a Commonwealth Minister, otherwise than under a Commonwealth law;
- 15 (g) a federal court;
- (h) the Supreme Court of the Australian Capital Territory; or
- (j) the Australian Federal Police;

'Commonwealth Department' means a Department within the meaning of the *Public Service Act 1922*;

20 'Commonwealth law' means:

- (a) an Act other than:
 - (i) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (ii) the *Northern Territory (Self-Government) Act 1978*;
- 25 (b) an instrument (including rules, regulations or by-laws) made under an Act (other than an Act referred to in subparagraph (a) (i) or (ii)); or
- (c) any other legislation that applies as a law of the Commonwealth (other than legislation in so far as it is applied by an Act referred to in subparagraph (a) (i) or (ii)), to the extent that it operates as such a law;

30 'Commonwealth Minister' means a Minister of State of the Commonwealth;

35 'Commonwealth offence' means an offence against a Commonwealth law;

'complaint' means a complaint under subsection 85ZZA (1);

'designated offence' means:

- (a) a sexual offence; or
- 40 (b) any other offence against the person if the victim of the offence was under 18 at the time the offence was committed;

'designated position' means a position in a Commonwealth authority which the head of the authority has determined to be a designated security assessment position whose duties are likely to involve access to national security information classified as secret or top secret;

'foreign law' means a law of a foreign country;

'foreign offence' means an offence against a foreign law;

'intelligence or security agency' means:

- (a) the Australian Security Intelligence Organization;
- (b) the Australian Secret Intelligence Service; 5
- (c) the Office of National Assessments;
- (d) that part of the Department of Defence known as the Defence Signals Directorate; or
- (e) that part of the Department of Defence known as the Joint Intelligence Organisation; 10

'law enforcement agency' means:

- (a) the Australian Federal Police;
- (b) the police force of a State or Territory;
- (c) the National Crime Authority;
- (d) the Australian Bureau of Criminal Intelligence; 15
- (e) the National Exchange of Police Information;
- (f) the Independent Commission Against Corruption established under the Independent Commission Against Corruption Act, 1988 of the State of New South Wales, or a similar body established under a law of another State; 20
- (g) the State Drug Crime Commission established under the State Drug Crime Commission Act, 1985 of the State of New South Wales, or a similar body established under a law of another State;
- (h) the Office of the Director of Public Prosecutions, or a similar body established under a State law; 25
- (j) a Director of Public Prosecutions, or a person performing a similar function, appointed under a law of a State;
- (k) staff appointed to assist a Director or person referred to in paragraph (j); or 30
- (m) officers or members of the Attorney-General's Department of a State or a similar State Department, or of a body administered by such a Department, being officers or members whose primary function is the institution or conduct of proceedings for State offences; 35

'national security information' means information affecting the defence, security or international relations of Australia;

'Privacy Act' means the *Privacy Act 1988*;

'security' has the same meaning as in the *Australian Security Intelligence Organization Act 1979*; 40

'spent', in relation to a conviction, has the meaning given it in section 85ZP;

'State' includes the Australian Capital Territory and the Northern Territory;

'State authority' means:

- (a) a State Minister;
- (b) a State Department;
- (c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a State law, not being:
 - (i) an incorporated company, society or association;
 - (ii) an association of employers or employees that is registered or recognised under a State law dealing with the conciliation and arbitration of industrial disputes; or
 - (iii) the body corporate constituted under subsection 6(1) of the *Legal Practitioners Ordinance 1970* of the Australian Capital Territory or a similar body constituted under a law of another State;
- (d) a body established or appointed by a Governor of a State, or by a State Minister, or by the Australian Capital Territory Executive or the Administrator of the Northern Territory otherwise than by or under a State law;
- (e) a person holding or performing the duties of an office established by or under, or an appointment made under, a State law, other than the office of head of a State Department (however described);
- (f) a person holding or performing the duties of an appointment, being an appointment made by a Governor of a State or by a State Minister, or by the Australian Capital Territory Executive or the Administrator of the Northern Territory otherwise than under a State law;
- (g) a State court; or
- (h) a State police force;

'State law' means a law in force in a State (other than a Commonwealth law);

'State offence' means an offence against a State law;

'Territory' does not include the Australian Capital Territory or the Northern Territory;

'Territory law' means a law in force in a Territory (other than a Commonwealth law);

'Territory offence' means an offence against a Territory law;

'waiting period', in relation to an offence, means:

- (a) if the person convicted of the offence was dealt with as a minor in relation to the conviction—the period of 5 years beginning on the day on which the person was convicted of the offence; or

- (b) in any other case—the period of 10 years beginning on the day on which the person was convicted of the offence.

Meaning of ‘conviction’ and ‘spent’ conviction

“85ZM. (1) For the purposes of this Part, a person shall be taken to have been convicted of an offence if:

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- (a) the person has been convicted, whether summarily or on indictment, of the offence;
- (b) the person has been charged with, and found guilty of, the offence but discharged without conviction; or
- (c) the person has not been found guilty of the offence, but a court has taken it into account in passing sentence on the person for another offence.

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“(2) For the purposes of this Part, a person’s conviction of an offence is spent if:

- (a) the person has been granted a pardon for a reason other than that the person was wrongly convicted of the offence; or
- (b) the person was not sentenced to imprisonment for the offence, or was not sentenced to imprisonment for the offence for more than 30 months, and the waiting period for the offence has ended.

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Meaning of ‘quash’

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“85ZN. For the purposes of this Part, a person’s conviction of an offence shall be taken to have been quashed:

- (a) where the person was convicted of the offence—if the conviction has been quashed or set aside;
- (b) where the person was found guilty of the offence, but discharged without conviction—if the finding of guilt has been quashed or set aside; or
- (c) where the person was not found guilty of the offence, but a court has taken it into account in passing sentence on the person for another offence:
 - (i) if the person’s conviction of the other offence has been quashed or set aside; or
 - (ii) if the court’s decision to take the offence into account has been set aside.

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Application of Part

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“85ZP. (1) This Part applies in relation to a person convicted of an offence whether the person was convicted before or after the commencement of this Part.

“(2) A reference in this Part to a person convicted of an offence does not include a reference to a body corporate.

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“(3) Nothing in this Part authorises a person or body to disclose or take into account a conviction of an offence if to do so would contravene any Commonwealth law, State law, Territory law or foreign law.

5 “(4) Nothing in this Part affects anything lawfully done before a pardon is granted or a conviction is quashed or spent.

Part binds the Crown

“85ZQ. This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

10 **“Division 2—Pardons for persons wrongly convicted, and quashed convictions**

Pardons for persons wrongly convicted

15 “85ZR. (1) Despite any other Commonwealth law or any State law or Territory law, where a person has been granted a free and absolute pardon for a Commonwealth offence or a Territory offence because the person was wrongly convicted of the offence:

- (a) the person shall be taken, in any State or Territory, for all purposes, never to have been convicted of the offence; and
- 20 (b) the person shall be taken, in a foreign country, by any Commonwealth authority or State authority in that country, for all purposes, never to have been convicted of the offence.

25 “(2) Despite any other Commonwealth law or any Territory law, where, under a State law or a foreign law a person is, in particular circumstances or for a particular purpose, to be taken never to have been convicted of an offence under a law of that State or foreign country:

- (a) the person shall be taken, in any Territory, in corresponding circumstances or for a corresponding purpose, never to have been convicted of that offence; and
- 30 (b) the person shall be taken, in any State or foreign country, in corresponding circumstances or for a corresponding purpose, by any Commonwealth authority in that State or country, never to have been convicted of that offence.

Effect of pardons for persons wrongly convicted

35 “85ZS. Without affecting the generality of section 85ZR, but despite any other Commonwealth law or any State law or Territory law, where, under section 85ZR, a person is, in particular circumstances or for a particular purpose, to be taken never to have been convicted of an offence:

- 40 (a) the person is not required, in those circumstances or for that purpose, to disclose the fact that the person was charged with, or convicted of, the offence;

- (b) it is lawful for the person to claim, in those circumstances, or for that purpose, on oath or otherwise, that he or she was not charged with, or convicted of, the offence;
- (c) in the case of a Commonwealth offence or a Territory offence—the person is not otherwise subject to any legal duty or disability to which he or she would not have been subject if he or she had not been convicted; and 5
- (d) anyone else who knows, or could reasonably be expected to know, that section 85ZR applies to the person in relation to the offence shall not: 10
 - (i) without the person's consent, disclose the fact that the person was charged with, or convicted of, the offence to any other person, or to a Commonwealth authority or State authority, where it is lawful for the first-mentioned person not to disclose it to that other person or that authority; or 15
 - (ii) in those circumstances, or for that purpose, take account of the fact that the person was charged with, or convicted of, the offence.

Quashed convictions

“85ZT. (1) Despite any other Commonwealth law or any State law or Territory law, where a person's conviction of a Commonwealth offence or a Territory offence has been quashed, the person is not required: 20

- (a) in any State or Territory—to disclose to any person, for any purpose, the fact that the person has been charged with, or convicted of, the offence; or 25
- (b) in a foreign country—to disclose to any Commonwealth authority or State authority in that country, for any purpose, the fact that the person has been charged with, or convicted of, the offence.

“(2) Despite any other Commonwealth law or any Territory law, where a person's conviction of a State offence or a foreign offence has been quashed, the person is not required: 30

- (a) in any Territory—to disclose to any person, for any purpose, the fact that the person has been charged with, or convicted of, the offence; or
- (b) in any State or foreign country—to disclose to any Commonwealth authority in that State or country, for any purpose, the fact that the person has been charged with, or convicted of, the offence. 35

Effect of quashed convictions

“85ZU. Despite any other Commonwealth law or any State law or Territory law, where, under section 85ZT, it is lawful for a person not to disclose, in particular circumstances, or for a particular purpose, the fact that he or she was charged with, or convicted of, an offence: 40

- (a) it is lawful for the person to claim, in those circumstances, or for that purpose, on oath or otherwise, that he or she was not charged with, or convicted of, the offence; and
- 5 (b) anyone else who knows, or could reasonably be expected to know, that section 85ZT applies to the person in relation to the offence shall not:
- (i) without the person's consent, disclose the fact that the person was charged with, or convicted of, the offence to any other person, or to a Commonwealth authority or State authority, where it is lawful for the first-mentioned person not to disclose it to that other person or that authority; or
- 10 (ii) in those circumstances, or for that purpose, take account of the fact that the person was charged with, or convicted of, the offence.

15 ***“Division 3—Spent convictions***

Spent convictions

“85ZV. (1) Subject to Division 6, but despite any other Commonwealth law or any State law or Territory law, if a person's conviction of a Commonwealth offence or a Territory offence is spent, the person is not

20 required:

- (a) in any State or Territory—to disclose to any person, for any purpose, the fact that the person has been charged with, or convicted of, the offence; or
- (b) in a foreign country—to disclose to any Commonwealth authority or State authority in that country, for any purpose, the fact that
- 25 the person has been charged with, or convicted of, the offence.

“(2) Subject to Division 6, but despite any other Commonwealth law or any Territory law, if a person's conviction of a State offence or a foreign offence is spent, the person is not required:

- (a) in any Territory—to disclose to any person, for any purpose, the fact that the person has been charged with, or convicted of, the offence; or
- (b) in any State or foreign country—to disclose to any Commonwealth authority in that State or country, for any purpose, the fact that
- 35 the person has been charged with, or convicted of, the offence.

“(3) Subject to Division 6, but despite any other Commonwealth law or any Territory law, where:

- (a) a person was convicted of a State offence;
- (b) subsection (2) does not apply to the person in relation to the offence; and
- 40 (c) under a law in force in that State, being a law dealing with the disclosure or taking into account of spent convictions (however described in that law) it is lawful for the person, in particular

circumstances or for a particular purpose, not to disclose the fact that the person was charged with, or convicted of, the offence; the person is not required, in corresponding circumstances or for a corresponding purpose:

- (d) in a Territory—to disclose the fact that the person was charged with, or convicted of, the offence; or 5
- (e) in a State or foreign country—to disclose that fact to any Commonwealth authority in that State or country.

Effect of right of non-disclosure

“85ZW. Subject to Division 6, but despite any other Commonwealth law, or any State law or Territory law, where, under section 85ZV, it is lawful for a person not to disclose, in particular circumstances, or for a particular purpose, the fact that he or she was charged with, or convicted of, an offence: 10

- (a) it is lawful for the person to claim, in those circumstances, or for that purpose, on oath or otherwise, that he or she was not charged with, or convicted of, the offence; and 15
- (b) anyone else who knows, or could reasonably be expected to know, that section 85ZV applies to the person in relation to the offence shall not: 20
 - (i) without the person’s consent, disclose the fact that the person was charged with, or convicted of, the offence to any other person, or to a Commonwealth authority or State authority, where it is lawful for the first-mentioned person not to disclose it to that other person or that authority; or 25
 - (ii) in those circumstances, or for that purpose, take account of the fact that the person was charged with, or convicted of, the offence.

“Division 4—Convictions of further offences

Convictions of further Commonwealth or Territory offences 30

“85ZX. (1) Where:

- (a) Division 3 applies to a person in relation to an offence of which the person was convicted, or would (unless an order is made under this section) so apply to the person if the waiting period for the offence had ended; and 35
- (b) before or after the end of the waiting period for the offence, the person is convicted summarily, by a court exercising federal jurisdiction or a court of a Territory, of another offence, being an offence committed during that waiting period;

the court may order that Division 3 ceases to apply or does not apply to the person, as the case requires, in relation to the earlier offence until the waiting period for the later offence has ended. 40

“(2) Where:

- (a) Division 3 applies to a person in relation to an offence of which the person was convicted, or would (but for this subsection) so apply to the person if the waiting period for the offence had ended; and
- (b) before or after the end of the waiting period for the offence, the person is convicted on indictment, by a court exercising federal jurisdiction or a court of a Territory, of another offence, being an offence committed during that waiting period;

Division 3 ceases to apply or does not apply to the person, as the case requires, in relation to the earlier offence until the waiting period for the later offence has ended.

Convictions of further State or foreign offences

“85ZY. Subject to subsection 85ZV (3), where:

- (a) Division 3 applies to a person in relation to an offence of which the person was convicted, or would so apply to the person if the waiting period for the offence had ended; and
- (b) before or after the end of the waiting period for the offence, the person is convicted (whether summarily or on indictment) by a court of a State (not being a court exercising federal jurisdiction) or a court of a foreign country, of another offence, being an offence committed during that waiting period;

Division 3 ceases to apply or does not apply to the person, as the case requires, in relation to the earlier offence until the waiting period for the later offence has ended.

“Division 5—Complaints to Privacy Commissioner

Privacy Commissioner’s functions

“85ZZ. (1) The Privacy Commissioner has the following functions:

- (a) to investigate an act or practice of a person or of a Commonwealth authority or State authority that may breach Division 2 or 3 and, where the Commissioner considers it appropriate, to try, by conciliation, to effect a settlement of the matters that gave rise to the investigation;
- (b) to receive and examine any written requests for complete or partial exclusion of persons from the application of Division 3 and advise the Minister whether an exclusion should be granted and whether there should be any restrictions on the circumstances in which an exclusion would apply.

“(2) In the performance of those functions, the Privacy Commissioner shall:

- (a) have due regard for the protection of important human rights and social interests that compete with the rights given by this Part, including the recognition of the right of government and business to achieve their objectives in an efficient way;

- (b) take account of:
 - (i) international obligations accepted by Australia, including those concerning the international technology of communications; and
 - (ii) developing general international guidelines relevant to the better protection of individual privacy; 5
- (c) take into account the nature of the offence concerned;
- (d) ensure that his or her advice is, within the limitations of the powers of the Commonwealth, capable of acceptance, adaptation and extension in any State or Territory; and 10
- (e) ensure that his or her directions and advice are consistent with the Information Privacy Principles set out in section 14 of the Privacy Act.

Complaints to the Privacy Commissioner

“85ZZA. (1) A person may complain to the Privacy Commissioner about an act or practice of another person or of a Commonwealth authority or State authority that may be a breach of Division 2 or 3. 15

“(2) A complaint shall be in writing.

“(3) It is the duty of members of the staff of the Human Rights and Equal Opportunity Commission to give appropriate help to a person who wishes to make a complaint and wants help to formulate the complaint. 20

“(4) The complaint shall specify the respondent to the complaint.

Identity of respondent to complaint

“85ZZB. (1) If a complaint is about an act or practice of a Commonwealth Department or a State Department, or an officer of such a Department, the Secretary or head of the Department is the respondent to the complaint. 25

“(2) If a complaint is about an act or practice of another Commonwealth authority or State authority, or a member or officer of such an authority, being an authority that is within the responsibility of a Commonwealth or State Minister but not within the responsibility of a Commonwealth Department or a State Department, the Minister is the respondent to the complaint. 30

“(3) If a complaint is about an act or practice of any other Commonwealth authority or State authority, or a member or officer of such an authority, the chief executive officer of the authority is the respondent to the complaint. 35

“(4) If a complaint is about an act or practice of a person other than a Commonwealth authority or a State authority, that person is the respondent to the complaint. 40

Investigation of complaints

“85ZZC. (1) The Privacy Commissioner shall consider a complaint, and shall investigate the act or practice complained of, if the act or practice may be a breach of Division 2 or 3.

5 “(2) The Privacy Commissioner may decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made if satisfied that:

- (a) the act or practice is not a breach of Division 2 or 3;
- 10 (b) the complainant has not complained to the respondent about the act or practice;
- (c) the complainant has complained to the respondent, and that the respondent:
 - 15 (i) has dealt, or is dealing, adequately with the complaint; or
 - (ii) has not yet had an adequate opportunity to deal with the complaint;
- (d) the complaint was made more than 12 months after the complainant became aware of the act or practice;
- (e) the complaint is frivolous, vexatious, misconceived or lacking in substance;
- 20 (f) the act or practice is the subject of an application under another Commonwealth law, or under a State law or a Territory law, and that the subject-matter of the complaint has been, or is being, dealt with adequately under that law; or
- 25 (g) the act or practice could be made the subject of an application under another Commonwealth law, or under a State law or a Territory law, for a more appropriate remedy.

Determinations of Privacy Commissioner

“85ZZD. (1) After investigating a complaint, the Commissioner may:

- 30 (a) make a determination dismissing the complaint; or
- (b) find the complaint substantiated and make a determination that includes one or more of the following:
 - 35 (i) a declaration that the authority or person about whom the complaint was made has engaged in conduct unlawful under this Act and should not repeat or continue that conduct;
 - (ii) a declaration that the respondent should do any reasonable act or carry out any reasonable course of conduct to redress any loss or damage suffered by the complainant;
 - (iii) a declaration that the respondent should employ or re-employ the complainant;
 - 40 (iv) a declaration that the respondent should promote the complainant;
 - (v) a declaration that the complainant is entitled to a specified amount by way of compensation for any loss or damage

suffered because of the act or practice about which the complaint was made;

- (vi) a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the complainant;
- (vii) a declaration that it would be inappropriate for any further action to be taken in the matter.

“(2) The Privacy Commissioner may require one or both parties to a complaint to attend such counselling as is specified by the Commissioner with a view to settling the matter to which the complaint relates.

“(3) When making a determination, the Privacy Commissioner shall state any findings of fact upon which the determination is based.

“(4) When making a determination, the Privacy Commissioner may declare that the complainant is entitled to a specified amount to reimburse the complainant for expenses reasonably incurred in connection with the making of the complaint and the investigation of the complaint.

“(5) In paragraph (1) (b):

‘damage’ includes humiliation suffered by the complainant or injury to his or her feelings.

Payment of compensation or expenses

“85ZZE. Where a determination under paragraph 85ZZD (1) (b) includes a declaration of a kind referred to in subparagraph 85ZZD (1) (b) (v) or subsection 85ZZD (4), the declaration has effect as a declaration that the complainant is entitled to receive the specified amount:

- (a) if the complaint was about an act or practice of a Commonwealth authority—from the Commonwealth;
- (b) if the complaint was about an act or practice of a State authority—from that State; or
- (c) in any other case—from the respondent.

Enforcement of determination or recommendation

“85ZZF. (1) The Privacy Commissioner or the complainant may apply to the Federal Court for an order to enforce a determination under paragraph 85ZZD (1) (b) or subsection 85ZZD (4).

“(2) If the Federal Court is satisfied that the authority or person about whom the complaint was made has done anything that is a breach of Division 2 or 3 the court may make any orders it thinks fit (including a declaration of right).

“(3) An order may give effect to a determination.

Application of Privacy Act

5 “85ZZG. (1) Sections 42 to 48 (inclusive) of the Privacy Act, and sections 50, 64 to 68 (inclusive), 96 and 98 of that Act apply, with any necessary changes, in relation to a complaint as if the complaint had been made under subsection 36 (1) of that Act.

“(2) Where a provision of the Privacy Act is applied under subsection (1) or (2), a reference in that provision to an agency shall be read as a reference to a Commonwealth authority or a State authority, as the case requires.

10

“Division 6—Exclusions**Exclusions**

15 “85ZZH. Division 3 does not apply in relation to the disclosure of information to or by, or the taking into account of information by a person or body referred to in one of the following paragraphs for the purpose specified in relation to the person or body:

- (a) a law enforcement agency, for the purpose of making decisions in relation to prosecution or sentencing or of assessing prospective employees or prospective members of the agency;
- 20 (b) an intelligence or security agency, for the purpose of assessing prospective employees or prospective members of the agency;
- (c) a court or tribunal established under a Commonwealth law, a State law or a Territory law, for the purpose of making a decision, including a decision in relation to sentencing;
- 25 (d) a person who makes a decision under the *Migration Act 1958*, the *Australian Citizenship Act 1948*, or the *Immigration Act 1980* of the Territory of Norfolk Island, for the purpose of making that decision;
- (e) a person or body who employs or otherwise engages other persons in relation to the care, instruction or supervision of minors, for the purpose of finding out whether a person who is being assessed by the person or body for that employment or engagement has been convicted of a designated offence;
- 30 (f) a person or body who otherwise makes available care, instruction or supervision services for minors, for the purpose of finding out whether a person who is being assessed by the person or body in connection with those services has been convicted of a designated offence;
- 35 (g) a Commonwealth authority, for the purpose of assessing appointees or prospective appointees to a designated position;
- 40 (h) the Cash Transaction Reports Agency, for the purpose of assessing prospective officers or members of the agency;
- (j) the Australian Government Solicitor, for the purpose of instituting or conducting proceedings for Commonwealth offences;

- (k) a prescribed person or body, for a prescribed purpose, in relation to a conviction for a prescribed offence.

Further exemptions—law enforcement agencies

“85ZZJ. Division 3 does not apply in relation to:

- (a) the disclosure of information by a law enforcement agency, or an employee or member of a law enforcement agency, to another law enforcement agency, or an employee or member of another law enforcement agency, where the disclosure is made in the discharge of the duties of the first-mentioned agency, employee or member; 5
- (b) filing or recording information that comes into the possession of a law enforcement agency, or an employee or member of a law enforcement agency, where the filing or recording is done in the discharge of the duties of the agency, employee or member; or 10
- (c) the use by a law enforcement agency of information relating to the investigation or prevention of crime, where the investigation or prevention of crime is a function of the agency. 15

Fair reporting: pardons and quashed convictions

“85ZZK. The publication of a fair and accurate report of the circumstances in which a person was granted a pardon (on any ground), or a person’s conviction was quashed, and of any related court proceedings, is not a breach of Division 2 or 3.” 20

Amendments of *Crimes Act 1914* relating to penalties

11. The Principal Act is amended as set out in Schedule 1.

Transition

12. The Privacy Commissioner may, at any time before the commencement of section 10 of this Act, perform the function referred to in paragraph 85ZZ (1) (b) of the Principal Act as if section 10 of this Act had commenced. 25

PART 4—AMENDMENTS OF THE CRIMES (AIRCRAFT) ACT 1963

Principal Act

13. In this Part, “Principal Act” means the *Crimes (Aircraft) Act 1963*. 30

Interpretation

14. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘Air Navigation Regulations’ means regulations made under the *Air Navigation Act 1920*, and includes any of those regulations as in force under the law of a State;” 35

Taking or sending dangerous goods on aircraft

15. Section 18 of the Principal Act is amended by inserting in paragraph (2) (b) “the Air Navigation Regulations,” after “under”.

Interpretation

5 16. Section 20A of the Principal Act is amended by omitting the definition of “Commonwealth aerodrome” and substituting the following definition:

“‘Commonwealth aerodrome’ means:

(a) an area of land or water in Australia that is owned by the Commonwealth and used, or intended for use, either wholly or in part, for, or in connection with, the arrival, departure or other movement of aircraft; or

(b) a Federal airport within the meaning of the *Federal Airports Corporation Act 1986*;

and includes any building or other structure, or installation or equipment, in that area or on the land that forms the Federal airport, that is provided for use in connection with the operation of that area or that land as an aerodrome or as a Federal airport, as the case may be;”.

PART 5—AMENDMENTS OF THE CUSTOMS ACT 1901**Principal Act**

17. In this Part, “Principal Act” means the *Customs Act 1901*⁴.

Interpretation

18. Section 243A of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “property” and substituting the following definition:

“‘property’ means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property;”;

(b) by inserting in subsection (1) the following definitions:

“‘benefit’ includes service or advantage;

‘dealing’, in relation to property of a person, includes:

(a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt;

(b) removing the property from Australia; and

(c) receiving or making a gift of the property;

‘effective control’, in relation to property, or an interest in property, has the meaning given by section 243AB;

‘interest’, in relation to property, means:

(a) a legal or equitable estate or interest in the property; or

- (b) a right, power or privilege in connection with the property;
 whether present or future and whether vested or contingent;
 'penalty amount', in relation to an order under section 243B against a person, means the amount that the person is liable to pay the Commonwealth under the order; 5
- 'police officer' 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; 10
- 'restraining order' means an order made under paragraph 243E (2) (c);
- 'trustee in bankruptcy' means:
- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; 15
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement;
- (c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X of the *Bankruptcy Act 1966*—the trustee of the deed or the composition; or 20
- (d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate;"; 25
- (c) by omitting subsection (4) and substituting the following subsections:
- "(4) A reference in this Division to a benefit derived by a person includes a reference to: 30
- (a) a benefit derived, directly or indirectly, by the person; and
- (b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.
- "(4A) A reference in this Division to the property of a person includes a reference to property in respect of which the person has a beneficial interest."; 35
- (d) by omitting from subsection (5) "member of the Australian Federal Police" and substituting "police officer";
- (e) by omitting from subsection (5) "an order under that section directing the Official Trustee to take control of " and substituting "a restraining order against"; 40
- (f) by omitting subsection (7).

19. After section 243A of the Principal Act the following section is inserted:

Effective control of property

5 “243AB. (1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Division whether or not the person has:

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in connection with the property.

10 “(2) Without limiting the generality of any other provision of this Division, in determining:

- (a) whether or not property, or an interest in property, is subject to the effective control of a person; or
- (b) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of a person;

15 regard may be had to:

- (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (d) a trust that has a relationship to the property; and
- 20 (e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.”.

Pecuniary penalties

25 20. Section 243B of the Principal Act is amended by omitting from subsection (1) “or the Comptroller” and substituting “, the Comptroller or the Director of Public Prosecutions”.

Assessment of pecuniary penalty

30 21. (1) Section 243C of the Principal Act is amended:

- (a) by omitting from paragraph (2) (d) “and”;
- (b) by inserting in paragraph (2) (e) “, during” after “before” (first occurring);
- (c) by omitting from paragraph (2) (e) “and after the end of” and substituting “, during and after”;
- 35 (d) by adding at the end of subsection (2) the following word and paragraph:

“; and (f) the defendant’s income and expenditure before, during and after he or she engaged in that dealing, or before, during and after that period, as the case may be.”;

- 40 (e) by omitting from subsection (3) “after he engaged in a particular prescribed narcotics dealing, or after” and substituting “during or

after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of,”;

- (f) by inserting in subsection (3) “greatest” before “excess”;
- (g) by omitting from subsection (4) “after he engaged in a particular prescribed narcotics dealing, or after” and substituting “during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of,”; 5
- (h) by omitting from subsection (5) “member of the Australian Federal Police” and substituting “police officer”;
- (j) by adding at the end the following subsections: 10

“(7) The Court, in quantifying the value of a benefit for the purposes of this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made. 15

“(8) For the purposes of this section, where property of a person vests in a trustee in bankruptcy, the property shall be taken to continue to be the property of the person.”. 20

(2) The amendments made by subsection (1) apply in relation to a proceeding instituted before the commencement of this section if the hearing of it commenced or commences after the commencement of this section.

22. (1) After section 243C of the Principal Act the following section is inserted: 25

Court may lift corporate veil etc.

“243CA. (1) Where the Court is assessing the value of benefits derived by a person (in this section called ‘the defendant’) because of engaging in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, the Court may treat as property of the defendant any property that, in the opinion of the Court, is subject to the effective control of the defendant. 30

“(2) Where the Court makes, or has made, an order (in this section called ‘a pecuniary penalty order’) that the defendant pay a pecuniary penalty under section 243B, the Court may: 35

- (a) on application by the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions; and
- (b) if the Court is of the opinion that particular property is subject to the effective control of the defendant;

make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order. 40

“(3) Where the Court declares that property is available to satisfy a pecuniary penalty order:

- (a) the order may be enforced against the property as if it were the defendant’s; and
- 5 (b) a restraining order may be made in respect of the property as if it were the defendant’s property.

“(4) Where the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions makes an application for an order under subsection (2) that property is available to satisfy a pecuniary penalty order against the defendant:

- (a) the person (in this paragraph called ‘the applicant’) who makes the application shall give written notice of the application to the defendant and to any person who the applicant has reason to believe may have an interest in the property; and
- 15 (b) the defendant and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.”.

(2) The amendments made by subsection (1) apply in relation to a proceeding instituted before the commencement of this section if the hearing of it commenced or commences after the commencement of this section.

20 **Court may make restraining order against property**

23. (1) Section 243E of the Principal Act is amended:

(a) by omitting from subsection (1) “or the Comptroller” (wherever occurring) and substituting “, the Comptroller or the Director of Public Prosecutions”;

25 (b) by omitting from subsection (1) all words from and including “directing” and substituting the following words and paragraphs:

“under paragraph (2) (c) against:

- (a) specified property of the defendant;
- 30 (b) all the property of the defendant (including property acquired after the making of the order);
- (c) specified property of the defendant and all other property of the defendant (including property acquired after the making of the order);
- (d) all the property of the defendant (including property acquired after the making of the order) other than specified property;
- 35 or
- (e) specified property of a person other than the defendant.”;

(c) by inserting after subsection (1) the following subsection:

“(1A) The application under subsection (1) may be made:

- 40 (a) where the Court makes the order under section 243B—at any time before the liability of the defendant in respect of the pecuniary penalty has been discharged; or

- (b) in any other case—at any time before the proceeding under section 243B is finally disposed of.”;
- (d) by omitting from subparagraph (2) (a) (i) “member of the Australian Federal Police” and substituting “police officer”;
- (e) by omitting subparagraph (2) (a) (ii) and substituting the following subparagraph: 5
- “(ii) if the application seeks an order against specified property of the defendant—an affidavit of a police officer or an officer of Customs stating that he or she believes that the property is the property of the defendant and setting out the grounds on which he or she holds that belief; and”;
- (f) by omitting paragraph (2) (c) and substituting the following paragraph: 10
- “(c) shall, subject to subsection (2A), make an order:
- (i) directing that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and 15
- (ii) if the Court is satisfied that the circumstances so require—direct the Official Trustee to take custody and control of the property, or such part of the property as is specified in the order; and”;
- (g) by inserting after subsection (2) the following subsection: 20
- “(2A) Where an application under subsection (1) seeks an order under paragraph (2) (c) against specified property of a person other than the defendant, the Court shall not make the order unless: 25
- (a) the application is supported by an affidavit of a police officer or an officer of Customs stating that the officer believes that the property is subject to the effective control of the defendant; and 30
- (b) the Court considers that, having regard to the matters contained in that affidavit, there are reasonable grounds for holding that belief.”;
- (h) by omitting from subsection (3) “an order directing the Official Trustee to take control of property” and substituting “the order”; 35
- (j) by omitting from subsection (4) “an order directing the Official Trustee to take control of property” and substituting “the order against property”;
- (k) by inserting after subsection (4) the following subsection: 40
- “(4A) The Court shall not make provision of the kind referred to in paragraph (4) (c) unless it is satisfied that the defendant cannot meet the expenses concerned out of property that is not subject to the order.”;

- (m) by omitting from subsection (5) “an order under subsection (2) directing the Official Trustee to take control of property” and substituting “the order”;
- (n) by omitting from subsection (6) “or the Comptroller” and substituting “, the Comptroller or the Director of Public Prosecutions”;
- (p) by adding at the end the following subsections:

“(8) Where the Official Trustee is given a direction under subparagraph (2) (c) (ii) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

- (a) becoming a party to any civil proceedings affecting the property;
- (b) ensuring that the property is insured;
- (c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and
- (d) if the property consists, wholly or partly, of a business:
 - (i) employing, or terminating the employment of, persons in the business; and
 - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.

“(9) Where the Official Trustee is given a direction under subparagraph (2) (c) (ii) in relation to shares in a company, the Official Trustee is entitled:

- (a) to exercise the rights attaching to the shares as if it were the registered holder of the shares; and
- (b) to do so to the exclusion of the registered holder.

“(10) Neither paragraph (8) (c) nor subsection (9) limits the generality of the other.

“(11) In proceedings dealing with an application for an order under paragraph (2) (c), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.”.

(2) Subsections 243E (4A), (8), (9) and (10) of the Principal Act as amended by subsection (1) apply in relation to an order under paragraph 243 (2) (c) of the Principal Act even though the order was made before the commencement of this section.

Court may make further orders

24. Section 243F of the Principal Act is amended:

- (a) by omitting from subsection (1) “an order (in this section referred to as the ‘original order’) under subsection 243E (1) directing the Official Trustee to take control of specified property, or all of the property,” and substituting “a restraining order (in this section called the ‘original order’) against property”; 5
- (b) by omitting from subsection (1) “in this section referred to as the ‘defendant’ ” and substituting “in this section called the ‘owner’ ”;
- (c) by omitting from paragraph (1) (c) “defendant” and substituting “owner”; 10
- (d) by omitting paragraph (1) (d) and substituting the following paragraph:
 - “(d) directing:
 - (i) the owner; or 15
 - (ii) if the owner is a body corporate—a director of the body corporate specified by the Court;
 - to give to the Minister, the Commissioner of Police, the Comptroller, the Director of Public Prosecutions or the Official Trustee, within a period specified in the order, a statement verified by the oath of the person making the statement, setting out such particulars of the property, or dealings with the property, of the owner as the Court thinks proper;”;
- (e) by omitting paragraph (1) (e) and substituting the following paragraph: 25
 - “(e) for the examination on oath of the owner or another person before the Court or Registrar of the Court concerning the affairs of the owner, including the nature and location of the owner’s property;”;
- (f) by inserting after paragraph (1) (e) the following paragraph: 30
 - “(ea) directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the original order; or”;
- (g) by omitting from paragraph (2) (b) “or the Comptroller” and substituting “, the Comptroller or the Director of Public Prosecutions”; 35
- (h) by omitting from paragraph (2) (c) “defendant” and substituting “owner”; 40
- (j) by inserting after subsection (2) the following subsection:
 - “(2A) Where:
 - (a) the Court made the original order against the property in reliance on the engaging by a person (in this subsection called

the 'defendant') in a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

- (b) another person having an interest in the property applies to the Court for a variation of the order to exclude the interest from the order;

the Court shall grant the application if satisfied that the interest is not subject to the effective control of the defendant.”;

- (k) by omitting from subsections (3) and (3A) “Official Trustee” and substituting “Minister, the Commissioner of Police, the Comptroller, the Director of Public Prosecutions or the Official Trustee”.

25. (1) Section 243G of the Principal Act is repealed and the following section is substituted:

Official Trustee to discharge pecuniary penalty

“243G. (1) Where:

- (a) the Court makes an order under section 243B that a person pay a pecuniary penalty in relation to a particular prescribed narcotics dealing or in relation to prescribed narcotics dealings during a particular period; and
- (b) at the time when the order is made, the Official Trustee has custody and control of property under a restraining order made, in reliance on the prescribed narcotics dealing or prescribed narcotics dealings, against:
 - (i) property of the person; or
 - (ii) property of another person in relation to which an order under subsection 243CA (2) is made;

the Court may include in the order under section 243B a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

“(2) Where:

- (a) the Court makes an order under section 243B for a person to pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and
- (b) a restraining order is subsequently made against:
 - (i) property of the person; or
 - (ii) property of another person in relation to which an order under subsection 243CA (2) is made;

in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the Court may include in the restraining order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

“(3) For the purposes of enabling the Official Trustee to comply with a direction given by the Court under subsection (1) or (2), the Court may, in the order in which the direction is given or by a subsequent order:

- (a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the Court specifies; and 5
- (b) appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument. 10

“(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

“(5) Where the Official Trustee is given a direction under subsection (1) or (2) in relation to property, the Official Trustee shall not: 15

- (a) if the property is money—apply the money in accordance with subsection (6) until the end of the appeal period; and
- (b) if the property is not money—shall not sell or otherwise dispose of the property until the end of the appeal period. 20

“(6) Where the Official Trustee is given a direction under subsection (1) or (2) in relation to property, the Official Trustee shall, as soon as practicable after the end of the appeal period:

- (a) if the property is money:
 - (i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 243P (1), incurred or payable in connection with the restraining order and payable to the Official Trustee under the regulations; and 25
 - (ii) subject to subsection (7), pay the remainder of the money to the Commonwealth; and 30
- (b) if the property is not money:
 - (i) sell or otherwise dispose of the property;
 - (ii) apply the proceeds of the sale or disposition in payment of the costs, charges, expenses and remuneration of the kind referred to in subsection 243P (1), incurred or payable in connection with the restraining order or the sale or disposition and payable to the Official Trustee under the regulations; and 35
 - (iii) subject to subsection (7), pay the remainder of those proceeds to the Commonwealth. 40

“(7) Where the money or proceeds to which subparagraph (6) (a) (ii) or (b) (iii) applies exceeds the penalty amount, the Official Trustee shall:

- (a) pay to the Commonwealth an amount equal to the penalty amount; and
- (b) pay the balance to the person whose property was subject to the restraining order.

5 “(8) Where the Official Trustee pays, in accordance with a direction under this section, money to the Commonwealth in satisfaction of a person’s liability under an order under section 243B, the person’s liability under the order shall, to the extent of the payment be deemed to be discharged.

“(9) Where:

- 10 (a) a restraining order is made against property in reliance on a particular prescribed narcotics dealing engaged in by the person or prescribed narcotics dealings engaged in by the person during a particular period; and
- 15 (b) before or after the restraining order is made, an order under section 243B has been or is made against the person in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the appeal period in respect of the property is the period ending:

- 20 (c) if the period provided for the lodging of an appeal against the making of the order under section 243B has ended without such an appeal having been lodged—at the end of that period; or
- (d) if an appeal against the making of the order under section 243B has been lodged—when the appeal lapses or is finally determined.”

25 (2) Subject to the regulations, where, immediately before the commencement of this section, fees within the meaning of subsection 243P (1) (including expenses incurred in connection with the sale or disposition of property to which a restraining order relates) were payable to the Official Trustee in accordance with that subsection in respect of a restraining order, the fees shall be taken to be, after that commencement, costs incurred in connection with the restraining order and payable to the Official Trustee under the regulations.

30 26. Section 243K of the Principal Act is repealed and the following section is substituted:

Contravention of restraining orders

35 “243K. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order is guilty of an offence.

Penalty: Imprisonment for 5 years.

“(2) Where:

- 40 (a) a restraining order is made against property;
- (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and

- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside. 5

“(3) Where an application is made under subsection (2) in relation to a disposition or dealing, the Court may make an order:

- (a) setting the disposition or dealing aside as from the day on which it took place; or

- (b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.”. 10

27. Section 243P of the Principal Act is repealed and the following section is substituted: 15

Costs etc. payable to Official Trustee

“243P. (1) The regulations may make provision for or in relation to:

- (a) the costs, charges and expenses incurred in connection with; and

- (b) the Official Trustee’s remuneration in respect of; 20

the performance or exercise by the Official Trustee of functions, duties or powers under this Division.

“(2) An amount equal to each amount of remuneration that the Official Trustee receives under the regulations shall be paid into the Consolidated Revenue Fund. 25

“(3) Where there are no regulations in relation to a matter referred to in subsection (1):

- (a) the regulations referred to in section 55 of the *Proceeds of Crime Act 1987* shall apply, so far as they are applicable, and with appropriate changes, in relation to the matter; and 30

- (b) a reference in this Division (other than in this subsection) to regulations in relation to the matter shall be taken to be a reference to the regulations referred to in section 55 of the *Proceeds of Crime Act 1987*.”.

28. Section 243Q of the Principal Act is repealed and the following section is substituted: 35

Notices

“243Q. (1) Subject to subsection (2), where the Court makes a restraining order, or an order under section 243CA or 243F, against a person’s property, the person who applied for the order in this section called the ‘applicant’ shall give the person written notice of the order. 40

“(2) Where:

- (a) the Court makes a restraining order against a person’s property;
and
- (b) the Court is satisfied that it would be in the public interest to delay
5 giving notice of the order to the person;

the Court may order that giving the person notice of the order be delayed for such period as is specified in the order under this subsection and the applicant shall give the person notice of the restraining order as soon as practicable after the end of the period specified.”.

10 **Minor and consequential amendments**

29. The Principal Act is amended as set out in Schedule 2.

PART 6—AMENDMENTS OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

Principal Act

15 30. In this Part, “Principal Act” means the *Director of Public Prosecutions Act 1983*⁵.

Functions of Director

31. Section 6 of the Principal Act is amended:

(a) by omitting subsection (2A) and substituting the following subsection:

20 “(2A) The Director may, with the consent of the person concerned, institute a prosecution of a person on indictment for an indictable offence against the laws of the Commonwealth in respect of which the person has not been examined or committed for trial.”;

(b) by omitting paragraph (2B) (b) and substituting the following:

25 “(b) any other offence founded on facts or evidence disclosed in the course of committal proceedings;

without:

(c) where paragraph (a) applies—the person having been committed for trial in respect of the offence; or

30 (d) where paragraph (b) applies—the person having been examined or committed for trial in respect of the offence.”;

(c) by adding at the end of subsection (2C) “without the person having been examined or committed for trial”;

(d) by inserting after subsection (2C) the following subsection:

35 “(2D) In any other case where the Director considers it appropriate to do so, the Director may institute a prosecution of a person on indictment for an indictable offence against the laws of the Commonwealth in respect of which the person has not been examined or committed for trial.”.

Powers of Director

32. Section 9 of the Principal Act is amended:

(a) by omitting from paragraph (6) (a) "or" (last occurring);

(b) by inserting after paragraph (6) (b) the following word and paragraph: 5

"; or (ba) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced, in specified proceedings;"; 10

(c) by omitting from subsection (6) all the words from and including "being proceedings" to and including "under the laws of the Commonwealth,";

(d) by omitting from paragraph (6) (c) "or" (last occurring);

(e) by inserting after paragraph (6) (d) the following word and paragraph: 15

"; or (e) any information, document or other thing that is obtained as mentioned in paragraph (ba);";

(f) by inserting after subsection (6) the following subsections:

“(6A) In subsection (6): 20

‘specified proceedings’ means:

(a) proceedings for an offence against, or for the recovery of a pecuniary penalty under, a law of the Commonwealth;

(b) proceedings in Australia under the *Extradition Act 1988* or the *Mutual Assistance in Criminal Matters Act 1987*; 25

(c) proceedings by way of a coronial inquest or inquiry conducted under the laws of the Commonwealth; or

(d) proceedings in respect of a forfeiture order under the *Proceeds of Crime Act 1987* or proceedings in respect of goods forfeited under the *Customs Act 1901*. 30

“(6B) The Director may, if the Director considers it appropriate to do so, give to a person an undertaking that: 35

(a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in State or Territory proceedings;

(b) the fact that the person discloses or produces a document or other thing in State or Territory proceedings; or

(c) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced in State or Territory proceedings; 40

will not be used in evidence against the person in any civil or criminal proceedings under a law of the Commonwealth, and where the Director gives such an undertaking:

- (d) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the State or Territory proceedings;
- (e) the fact that the person discloses or produces a document or other thing in the State or Territory proceedings; or
- (f) any information, document or other thing that is obtained as mentioned in paragraph (c);

as the case may be, is not admissible in evidence against the person in any civil or criminal proceedings under a law of the Commonwealth in a federal court or in a court of a State or Territory, other than proceedings in respect of the falsity of evidence given by the person.

“(6C) In subsection (6B):

‘State or Territory proceedings’ means proceedings in a State or Territory:

- (a) for an offence against, or for the recovery of a pecuniary penalty under, a law of that State or Territory; or
- (b) in respect of a forfeiture order under a law of that State or Territory.

“(6D) The Director may, if the Director considers it appropriate to do so, give to a person an undertaking that the person will not be prosecuted (whether on indictment or summarily):

- (a) for a specified offence against a law of the Commonwealth; or
- (b) in respect of specified acts or omissions that constitute, or may constitute, an offence against a law of the Commonwealth.

“(6E) Where the Director gives to a person an undertaking under subsection (6D), no criminal proceedings shall be instituted in a federal court or in a court of a State or Territory against the person in respect of such an offence or in respect of such acts or omissions.

“(6F) An undertaking under subsection (6D) may be subject to such conditions (if any) as the Director considers appropriate.”

Delegation by Director

33. Section 31 of the Principal Act is amended by omitting from subsection (1) “under subsection 9 (2)” and substituting “under subsections 6 (2D), 9 (2) and 9 (6D)”.

PART 7—AMENDMENT OF THE JUDICIARY ACT 1903

Principal Act

34. In this Part, “Principal Act” means the *Judiciary Act 1903*⁶.

Trial of indictable offence without preliminary examination

35. Section 71A of the Principal Act is amended by adding at the end the following subsection: 5

“(3) Nothing in subsection (1) affects the power under subsection 6 (2D) of the *Director of Public Prosecutions Act 1983* of the Director of Public Prosecutions.”.

PART 8—AMENDMENTS OF THE NATIONAL CRIME AUTHORITY ACT 1984 10

Principal Act

36. In this Part, “Principal Act” means the *National Crime Authority Act 1984*⁷.

Authority may request information from Commonwealth agencies 15

37. Section 19A of the Principal Act is amended:

(a) by inserting after subsection (7) the following subsection:

“(7A) An action, suit or proceeding does not lie against:

(a) a prescribed officer of an agency; or

(b) a person who is, or has been, a member, officer or employee of an agency; 20

in relation to any action taken by such an officer or person in compliance, in accordance with this section, with a request under this section.”;

(b) by inserting “(other than such a body that is specified in Schedule 2 to this Act)” after “*Freedom of Information Act 1982*” in the definition of “exempt agency” in subsection (8). 25

Hearings

38. Section 25 of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsections: 30

“(3) The Chairman shall preside at all hearings at which the Chairman is present.

“(3A) If the Chairman is not present at a hearing at which there are 2 or more members, the members present shall elect one of their number to preside at that hearing. 35

“(3B) Questions arising at a hearing shall be determined by a majority of the votes of the members present.

“(3C) The person presiding at a hearing has a deliberative vote, and, if necessary, also has a casting vote.

“(3D) The Authority may regulate the conduct of proceedings at a hearing as it thinks fit.”;

5 (b) by inserting after subsection (9) the following subsections:

“(9A) Subject to subsection (9B), the Chairman may, in writing, vary or revoke a direction under subsection (9).

10 “(9B) The Chairman shall not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.”.

Meetings of the Authority

39. Section 46 of the Principal Act is amended:

15 (a) by omitting from subsection (3) “2 members” and substituting “the Chairman and one other member”;

(b) by omitting from subsection (4) “at which he is present”;

(c) by omitting subsection (5);

(d) by adding at the end of subsection (6) “, being a majority that includes the vote of the Chairman”;

20 (e) by omitting subsection (7) and substituting the following subsection:

“(7) At a meeting of the Authority, the Chairman has a deliberative vote, and, if necessary, also has a casting vote.”.

40. After section 46 of the Principal Act the following section is inserted:

Chairman to be responsible for management of Authority

25 “46A. The Chairman shall manage the affairs of the Authority in accordance with the policy of, and any directions given by, the Authority.”.

Public sittings and bulletins

41. Section 60 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

30 “(3) The Chairman shall preside at all sittings at which the Chairman is present.

“(3A) If the Chairman is not present at a sitting at which there are 2 or more members, the members present shall elect one of their number to preside at that sitting.

35 “(3B) Questions arising at a sitting shall be determined by a majority of the votes of the members present.

“(3C) The person presiding at a sitting has a deliberative vote, and, if necessary, also has a casting vote.

“(3D) The Authority may regulate the conduct of proceedings at a sitting as it thinks fit.”.

Schedule 2

42. The Principal Act is amended by adding at the end the following Schedule:

5

“SCHEDULE 2

Subsection 19A (8)
(definition of
'agency')

CERTAIN BODIES NOT SUBJECT TO SECTION 19A

Australian Industry Development Corporation
 Australian National Railways Commission
 Australian Shipping Commission
 Commonwealth Banking Corporation; Commonwealth Bank of Australia;
 Commonwealth Savings Bank of Australia; Commonwealth
 Development Bank of Australia
 Commonwealth Serum Laboratories Commission
 Housing Loans Insurance Corporation
 Pipeline Authority
 Snowy Mountains Engineering Corporation
 Superannuation Fund Investment Trust”.

Amendments of the *National Crime Authority Act 1984* relating to members and Chairman

43. The Principal Act is amended as set out in Schedule 3.

SCHEDULE 1

Section 11

AMENDMENTS OF THE CRIMES ACT 1914 RELATING TO PENALTIES

Paragraph 4J (3) (a):

Omit "\$2,000", substitute "\$6,000".

Paragraph 4J (3) (b):

Omit "\$5,000", substitute "\$12,000".

Subsection 4J (5):

Omit "\$2,000", substitute "\$6,000".

Section 7A:

Omit "\$2,000 or imprisonment for 12 months, or both", substitute "Imprisonment for 12 months."

Paragraph 20 (5) (b):

(a) Omit "\$10,000", substitute "\$30,000".

(b) Omit "\$2,000", substitute "\$6,000".

Subsection 24E (3):

Omit the subsection, substitute the following subsection:

"(3) The penalty for an offence against section 24C or 24D shall, where the offence is prosecuted summarily, be imprisonment for a period not exceeding 12 months."

Sections 46, 47, 47B, 47C and 48:

Omit "\$10,000 or imprisonment for 5 years, or both", substitute "Imprisonment for 5 years".

SCHEDULE 2

Section 29

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE CUSTOMS ACT 1901

Subsection 243H (1):

Omit "an order under section 243E", substitute "a restraining order".

Subsection 243H (2):

(a) Omit "an order under section 243E", substitute "a restraining order".

(b) Omit "order under section 243E", substitute "restraining order".

SCHEDULE 2—continued**Subsection 243H (3):**

Omit “an order under section 243E”, substitute “a restraining order”.

Subsection 243H (4):

- (a) Omit “, an order under section 243E,”, substitute “a restraining order.”.
- (b) Omit “order under section 243E”, substitute “restraining order”.

Subsection 243J (1):

Omit “an order under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of the person”, substitute “a restraining order against property”.

Subsection 243J (2):

Omit “an order under section 243E”, substitute “a restraining order”.

Subparagraph 243J (2) (e) (i):

Omit “an order made by”, substitute “a direction of”.

Subsection 243J (3):

Omit all words from and including “by reason of” to and including “property” (second occurring).

Subsection 243J (4):

- (a) After “Official Trustee” (first occurring) insert “or the person who applied for the restraining order against that property”.
- (b) After “Official Trustee” (second occurring) insert “or the person who applied for the restraining order, as the case may be,”.

Paragraph 243L (1) (a):

Omit “an order”, substitute “a direction”.

Subsection 243L (1):

- (a) Omit “the order” (wherever occurring), substitute “the direction”.
- (b) Omit “or Comptroller”, substitute “, the Comptroller or the Director of Public Prosecutions”.

Section 243M:

Omit “by an order under subsection (1) of section 243G” (wherever occurring), substitute “under subsection 243G (1) or (2)”.

Paragraph 243N (1) (a):

Omit the paragraph, substitute the following paragraph:

- “(a) the Court has made a restraining order directing the Official Trustee to take custody and control of property of a person;”.

SCHEDULE 2—continued

Subsection 243N (1):

- (a) After “taken” (first and second occurring) insert “custody and”.
- (b) After “taking of” insert “custody and”.

Subsection 243N (2):

- (a) Omit “an order under section 243E”, substitute “a restraining order”.
- (b) After “taken” (first and second occurring) insert “custody and”.
- (c) After “taking of” insert “custody and”.

Subsections 243N (3) and (4):

Omit “an order under section 243E to take”, substitute “a restraining order to take custody and”.

Subsection 243N (5):

Omit the subsection.

SCHEDULE 3

Section 43

**AMENDMENTS OF THE NATIONAL CRIME AUTHORITY ACT
1984 RELATING TO MEMBERS AND CHAIRMAN**

Subsection 4 (1) (definition of “acting member”):

Omit the definition.

Subsections 19A (1) and (2):

Omit “or acting member”.

Subsections 20 (1) and (2):

Omit “or acting member” (wherever occurring).

Subsection 20 (5) (paragraph (b) of the definition of “Prescribed Provision”):

Omit “the Schedule”, substitute “Schedule 1”.

Subsection 20 (6):

Omit “the Schedule” (wherever occurring), substitute “Schedule 1”.

Subsection 22 (1):

Omit “of the Authority”.

Paragraph 22 (1) (a):

Omit “Authority has”, substitute “member has”.

Paragraph 22 (1) (b):

Omit “the Authority”, substitute “the member”.

SCHEDULE 3—continued**Paragraph 22 (8) (b):**

Omit “the Authority shall”, substitute “a member shall”.

Subparagraph 22 (8) (b) (ii):

Omit “the Authority”, substitute “the member”.

Subsection 22 (9):

(a) Omit “The Authority”, substitute “A member”.

(b) Omit “the Authority”, substitute “the member”.

Subsection 23 (1):

(a) Omit “the Authority considers”, substitute “a member considers”.

(b) Omit “a member of the Authority”, substitute “the member”.

Subsection 24 (1):

Omit “of the Authority”.

Subsection 24 (4):

Omit “by the Authority”, substitute “by a member”.

Subsection 24 (5):

Omit “the Authority shall”, substitute “a member shall”.

Subsection 25 (2):

Omit “or acting members”.

Subsection 25 (7):

Omit “or an acting member,”.

Subsection 26 (1):

Omit “Authority determines”, substitute “Chairman determines”.

Subsection 26 (2):

Omit “Authority” (wherever occurring), substitute “Chairman”.

Subsection 28 (1):

Omit “or an acting member”.

Subsection 28 (3):

Omit “unless the Authority”, substitute “unless the member issuing the summons”.

Subsections 28 (4) and (5):

Omit “or acting member” (wherever occurring).

Subsection 28 (6):

Omit “or by a person acting as Chairman”.

SCHEDULE 3—continued

Subsection 29 (1):

Omit “or acting member” (wherever occurring).

Paragraph 30 (1) (b):

Omit “or an acting member”.

Subsections 30 (2) and (3):

Omit “or acting member”.

Subsection 32 (8A):

Omit “as the Authority”, substitute “as a member”.

Section 34:

Omit “or acting member” (wherever occurring).

Paragraph 35 (1) (a):

Omit “or an acting member”.

Subsection 36 (1):

- (a) Omit “or an acting member”.
- (b) Omit “or acting member”.

Sections 39 and 42:

Omit “or acting member” (wherever occurring).

Subsection 46 (9):

Omit the subsection.

Subsection 48 (3):

Omit the subsection.

Subsection 51 (1):

Omit “or acting member”.

Subsection 59 (7):

- (a) Omit “Authority” (wherever occurring), substitute “Chairman”.
- (b) Omit “its”, substitute “the Authority’s”.

Subsection 59 (8):

Omit “Authority may, whenever it appears to the Authority”, substitute “Chairman may, whenever it appears to the Chairman”.

Subsection 59 (11):

Omit “Authority may, wherever it appears to the Authority”, substitute “Chairman may, whenever it appears to the Chairman”.

SCHEDULE 3—continued**Section 59A:**

- (a) Omit “The Authority”, substitute “The Chairman”.
- (b) Omit “or acting member”.
- (c) Omit “its”, substitute “the Chairman’s”.

Subsection 60 (2):

Omit “or acting members”.

Paragraph 61 (2) (d):

Omit “Authority”, substitute “Chairman”.

Schedule

Omit “SCHEDULE”, substitute “SCHEDULE 1”.

NOTES

1. No. 2, 1901, as amended. For previous amendments, see No. 4, 1916; No. 8, 1918; No. 23, 1930; No. 24, 1932; No. 10, 1937; No. 7, 1941; No. 78, 1947; No. 79, 1948; No. 80, 1950; No. 69, 1957; No. 19, 1963; No. 52, 1964; No. 93, 1966; Nos. 79 and 216, 1973; Nos. 37 and 144, 1976; No. 35, 1978; No. 1, 1980; No. 61, 1981; No. 26, 1982 (as amended by No. 80, 1982); No. 80, 1982; No. 39, 1983; No. 27, 1984 (as amended by No. 165, 1984); No. 63, 1984 (as amended by No. 165, 1984); No. 72, 1984; No. 193, 1985; Nos. 92, 120 and 141, 1987; and Nos. 99 and 120, 1988.
2. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; No. 73, 1987; No. 120, 1987; and No. 00, 1989.
3. No. 64, 1963, as amended. For previous amendments, see No. 216, 1973; No. 7, 1977; No. 129, 1979; No. 80, 1982; Nos. 39 and 114, 1983; and No. 63, 1988.
4. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; Nos. 162 and 216, 1973; Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; No. 19, 1979; No. 92, 1979 (as amended by Nos. 40 and 175, 1985); Nos. 116, 155, 177 and 180, 1979; Nos. 13, 15, 110 and 171, 1980; Nos. 45 and 61, 1981; No. 64, 1981 (as amended by No. 51, 1982); Nos. 67, 152 and 157, 1981; Nos. 48, 51 and 80, 1982; No. 81, 1982 (as amended by No. 39, 1983; No. 72, 1984; and No. 40, 1985); Nos. 108, 115 and 137, 1982; Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; and Nos. 63, 66, 76 and 121, 1988.

NOTES—continued

5. No. 113, 1983, as amended. For previous amendments, see Nos. 10 and 165, 1984; Nos. 64 and 166, 1985; No. 88, 1986; Nos. 86 and 141, 1987; and No. 120, 1988.
6. No. 6, 1903, as amended. For previous amendments, see No. 5, 1906; No. 8, 1907; No. 34, 1910; No. 31, 1912; No. 11, 1914; No. 4, 1915; No. 38, 1920; No. 39, 1926; No. 9, 1927; No. 60, 1932; Nos. 34 and 65, 1933; No. 45, 1934; No. 5, 1937; No. 43, 1939; No. 50, 1940; No. 10, 1946; No. 52, 1947; No. 65, 1948; Nos. 51 and 80, 1950; Nos. 17 and 35, 1955; No. 50, 1959; Nos. 32 and 109, 1960; No. 91, 1965; Nos. 55 and 93, 1966; No. 134, 1968; No. 39, 1969; No. 216, 1973; No. 164, 1976; No. 36, 1978; Nos. 19, 86 and 138, 1979; No. 61, 1981; No. 26, 1982; Nos. 39, 91 and 114, 1983; Nos. 7, 12, 72 and 165, 1984; No. 65, 1985; No. 1, 1986; and Nos. 38 and 120, 1988.
7. No. 41, 1984, as amended. For previous amendments, see Nos. 123 and 165, 1984; Nos. 104 and 193, 1985; Nos. 89 and 141, 1987; and Nos. 65 and 66, 1988.

