

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

CRIMES LEGISLATION AMENDMENT BILL (No. 2) 1991

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1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 15 May 1991

(Attorney-General)

A BILL

FOR

**An Act to amend certain Acts in relation to criminal and
law enforcement matters, and for related purposes**

The Parliament of Australia enacts:

PART 1—INTRODUCTORY

Short title

5 **1.** This Act may be cited as the *Crimes Legislation Amendment Act*
(No. 2) 1991.

Commencement

2. **(1)** Subject to this section, this Act commences on the day on
which it receives the Royal Assent.

10 **(2)** Sections 5 to 10 (inclusive), Parts 3, 4, 5, 6, 7 and 9 and
sections 40 to 50 (inclusive) commence 28 days after the day on which
this Act receives the Royal Assent.

(3) Subject to subsections (4) and (5), section 51 and Part 8 commence on a day or days to be fixed by Proclamation.

(4) If the commencement of Part 8 is not fixed by a Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, the Part is repealed on the first day after the end of that period. 5

(5) If section 51 does not commence under subsection (3) within the period of 6 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. 10

PART 2—AMENDMENTS OF THE AUSTRALIAN FEDERAL POLICE ACT 1979

Principal Act

3. In this Part, “Principal Act” means the *Australian Federal Police Act 1979*¹. 15

Functions

4. Section 8 of the Principal Act is amended:

(a) by omitting from subsection (1) “The functions” and substituting “Subject to subsection (2C), the functions”;

(b) by omitting from subsection (2A) “for the protection of witnesses, and,” and substituting “for the protection, in the circumstances and subject to the conditions specified in the arrangements, of such of the following as are so specified: 20

(e) witnesses;

(f) people who, because of their relationship to, or association with, a witness need, or may need, such protection; 25

(g) any other people who, for any other reason, need, or may need, such protection;

and,”;

(c) by inserting after subsection (2B) the following subsection: 30

“(2C) The functions of the Australian Federal Police do not include the provision of services under arrangements entered into under subsection (2A) in relation to offences against a law of a State, unless the provision of such services in relation to those offences is authorised to the extent necessary, whether by enactment or otherwise: 35

(a) by that State; or

(b) if that State is different from the State in which the services are provided—by both of those States.”.

End of appointments

5. Section 26E of the Principal Act is amended:

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

5 “(1A) Where a determination is not made under subsection
(1) in relation to a member or staff member, the Commissioner
may determine, in writing, that, subject to any conditions
specified in the determination, if the member or staff member
is retired under paragraph (2) (b) before the end of the term of
10 appointment, the member or staff member is entitled to the
compensation specified in, or worked out under, the
determination.”;

(b) by omitting from paragraph (2) (b) “the person who made the
appointment” and substituting “the Commissioner”;

15 (c) by omitting from subsection (3) “A person” and substituting
“The Commissioner”.

Application for superannuation order: evidence

6. (1) Section 45A of the Principal Act is amended by adding at
the end of subsection (1) “and to the evidence given in any such
proceedings”.

20 (2) The amendment made by subsection (1) applies in relation to
an application made under subsection 45 (1) of the Principal Act after
the commencement of this section in respect of a person’s conviction
of an offence, whether the person was convicted before or after the
commencement.

25 **Notice of application for restraining order**

7. Section 49E of the Principal Act is amended:

(a) by omitting from subsection (2) “subsection (3)” and substituting
“section 49EA”;

(b) by omitting subsections (3) and (4).

30 8. After section 49E of the Principal Act the following section is
inserted:

Extension of certain restraining orders

35 “49EA. (1) Subject to subsection (2), the court may, on application
made by the DPP before the end of the period mentioned in subsection
49E (2), extend the period of operation of a restraining order made in
reliance on that subsection.

40 “(2) Subsections 49D (1), (2), (3) and (5) apply, with the necessary
changes made, to the extension of the period of operation of a restraining
order made in reliance on subsection 49E (2) in the same way as they
apply to the making of a restraining order.

“(3) The DPP must give written notice of an application under subsection (1) for the extension of a restraining order to:

- (a) the owner of the property against which the restraining order was made; and
- (b) any other person who the DPP has reason to believe may have an interest in the property.”.

5

Transitional

9. The amendments made by sections 7 and 8 do not apply to an application made under subsection 49E (3) of the Principal Act before the commencement of this section.

10

Ancillary orders

10. (1) Section 49J of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) an order for the examination on oath before the court or the Registrar of the court of any person, including:

15

(i) the owner of property subject to the restraining order (in this paragraph called the ‘owner’); or

(ii) the defendant;

about the affairs (including the nature and location of any property) of:

20

(iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or the defendant, or both—that person; and”.

(2) An ancillary order may be made under paragraph 49J (1) (c), as amended by this Act, in relation to restraining orders whether made before or after the commencement of this section.

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PART 3—AMENDMENTS OF THE CASH TRANSACTION REPORTS ACT 1988

Principal Act

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11. In this Part, “Principal Act” means the *Cash Transaction Reports Act 1988*².

Reports of suspect transactions

12. Section 16 of the Principal Act is amended:

(a) by omitting from subsection (5) everything after “in relation to” and substituting:

35

“any action by the cash dealer or person taken:

(c) under this section; or

(d) in the mistaken belief that such action was required under this section.”;

40

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

5 “(5A) Where a cash dealer communicates to the Director, under subsection (1), information about the cash dealer’s suspicion in relation to a transaction to which the cash dealer is a party, the cash dealer must not, unless required to do so under this Act or any other Act, disclose to anyone else:

(a) that the cash dealer has formed the suspicion; or
(b) that information has been communicated to the Director;
or

10 (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed or that the first-mentioned information had been communicated.

15 “(5B) A cash dealer who contravenes subsection (5A) is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years, or both.

20 “(5C) Subsection (5A) does not prevent a cash dealer from communicating or disclosing to any court any information, or matter, referred to in that subsection.”.

13. After section 17 of the Principal Act, the following section is inserted in Part II:

Inspection of identifying systems etc.

25 “17A. (1) The Director may, by written notice to a cash dealer, require the dealer to give the authorised officer specified in the notice access to the dealer’s premises so specified on the day and during the hours so specified.

30 “(2) The hours specified in a notice must occur during the cash dealer’s normal business hours.

“(3) A cash dealer must comply with a notice.

35 “(4) Where an authorised officer is given access to premises under a notice, the officer may, for the purposes of monitoring the cash dealer’s compliance with section 16, inspect any system that may be used by the dealer at those premises for identifying and recording transactions that are, or might be, covered by subsection 16 (1) and any records that may be kept on, or may be accessible from, the premises relating to such transactions.”.

Cash dealer to keep documents

40 14. Section 23 of the Principal Act is amended:

(a) by inserting in subsection (1A) “or a copy of it” after “retain the record”;

- (b) by inserting in paragraphs (2) (a) and (b) “or a copy of it” after “retain the record”;
- (c) by omitting from paragraph (2) (ba) “, together with any record” and substituting “or a copy of it, together with any record, or copy of any record.”; 5
- (d) by inserting in paragraph (2) (c) “or a copy of it” after “retain the record”.

Access to CTR information

15. Section 27 of the Principal Act is amended:

- (a) by adding at the end of paragraph (1) (a) “and”; 10
- (b) by adding at the end of subsection (1) the following word and paragraph:
 - “and (d) the Attorney-General is entitled to access to CTR information for the purpose of dealing with a request made by a foreign country to which the *Mutual Assistance in Criminal Matters Act 1987* applies because of regulations made under subsection 7 (2A) of that Act.”; 15
- (c) by inserting after subsection (3) the following subsection:
 - “(3A) Where the Attorney-General: 20
 - (a) is given access to CTR information under section 37A of the *Mutual Assistance in Criminal Matters Act 1987*; and
 - (b) is satisfied that the foreign country requesting the information has given appropriate undertakings for protecting the confidentiality of the information, and for controlling the use that will be made of it; 25the Attorney-General may communicate that information to the foreign country.”;
- (d) by omitting from subsection (16) everything after “included” and substituting: 30
 - “a reference to:
 - (a) the Police Force of a State; and
 - (b) the New South Wales Crime Commission; and
 - (c) the Independent Commission Against Corruption of New South Wales; and 35
 - (d) the Criminal Justice Commission of Queensland.”;
- (e) by omitting from paragraph (17) (e) “and”;
- (f) by adding at the end of subsection (17) the following paragraphs: 40
 - “(g) the Commissioner for the Independent Commission Against Corruption of New South Wales;
 - (h) the Assistant Commissioner for that Commission;
 - (i) a member of staff of that Commission;
 - (j) Counsel appointed to assist that Commission;

- (k) the Chairman of the Criminal Justice Commission of Queensland;
- (l) a member of that Commission; and
- (m) an officer of that Commission.”.

5 **Failure to provide information**

16. Section 28 of the Principal Act is amended by adding at the end of paragraph (1) (b) “or 17A (1)”.

Questioning and search powers

10 17. Section 33 of the Principal Act is amended by omitting from subsection (3A) “section 196” and substituting “section 219ZA”.

Functions of Director

18. Section 38 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (c) “and”;
- (b) by adding at the end of subsection (1) the following word and paragraph:
15 “and (e) to issue guidelines to cash dealers about their obligations under this Act and the regulations.”.

19. After section 40A of the Principal Act the following section is inserted in Part VI:

20 **Annual Report**

“40B. The Director must, as soon as practicable after 30 June in each year, prepare, and give the Minister, a report of the Agency’s operations during the year that ended on that day.”.

PART 4—AMENDMENTS OF THE CRIMES ACT 1914

25 **Principal Act**

20. In this Part, “Principal Act” means the *Crimes Act 1914*³.

21. After section 21F of the Principal Act the following sections are inserted in Division 10 of Part 1B:

Conditions etc. that a court may impose on certain offenders

- 30 “22. (1) Where a court makes a relevant order or passes a relevant sentence in respect of a person charged with, or convicted of:
- (a) an offence against a law of the Commonwealth or of a Territory, being an offence that is a serious narcotics offence; or
 - (b) a prescribed offence against a law of the Commonwealth or of
35 a Territory;

it may, at the same time or at a later time, order the person to do all or any of the following things:

- (c) to remain in Australia;
- (d) to refrain from applying for, or obtaining, an Australian passport;
- (e) to surrender possession of any Australian passport held by the person.

5

“(2) Subject to subsection (3), an order made under subsection (1) has effect during such reasonable period as is specified by the court in the order.

“(3) The court may, by order, revoke an order made under subsection (1) or vary such an order as the court sees fit.

10

“(4) If the court makes an order under subsection (1) or (3), the Registrar or other appropriate officer of the court, as the case requires, must, as soon as practicable, give to the Secretary to the Department administering the *Passports Act 1938* a copy of the order.

“(5) If the court makes an order under paragraph (1) (e):

15

- (a) the passport must be given to the Registrar or other appropriate officer of the court; and
- (b) the Registrar or officer must cause the passport to be kept in such custody as he or she thinks fit until:
 - (i) the passport is required to be released under subsection (6); or
 - (ii) the passport is cancelled or expires;whichever happens first.

20

“(6) If a passport surrendered under an order under paragraph (1) (e) is in force when that order ceases to have effect, the person having the custody of the passport at that time must, on the application of the person to whom it was issued, cause it to be returned to that person.

25

“(7) In this section:

‘**relevant order**’ means an order:

30

- (a) remanding a person, whether on bail or in custody; or
- (b) suspending the sentence passed on a person upon his or her entering into a recognizance; or
- (c) releasing the person on conditions under subsection 20 (1);

‘**relevant sentence**’ means:

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- (a) a sentence of imprisonment other than a suspended sentence; or
- (b) a sentence under section 20AB;

‘**serious narcotics offence**’ has the same meaning as in section 7 of the *Proceeds of Crime Act 1987*.

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State orders relating to passports

“22A. (1) If, under a law of a State, a court makes an order requiring a person charged with, or convicted of:

(a) a serious narcotics offence against a law of that State; or

5 (b) such other serious offence against a law of that State as is specified in the first-mentioned law;

to surrender possession of any Australian passport held by the person, the person must surrender the passport to the Registrar, or other appropriate officer, of the court to be dealt with in accordance with that law.

“(2) In this section:

‘serious narcotics offence’ has the same meaning as in section 7 of the *Proceeds of Crime Act 1987*.”.

Further amendments

15 22. The Principal Act is further amended as set out in the Schedule.

**PART 5—AMENDMENTS OF THE CRIMES
(SUPERANNUATION BENEFITS) ACT 1989**

Principal Act

20 23. In this Part, “Principal Act” means the *Crimes (Superannuation Benefits) Act 1989*⁴.

Application for superannuation order: evidence

24. (1) Section 18 of the Principal Act is amended by adding at the end of subsection (1) “and to the evidence given in any such proceedings”.

25 (2) The amendment made by subsection (1) applies in relation to an application made under subsection 17 (1) of the Principal Act after the commencement of this section in respect of a person’s conviction of an offence, whether the person was convicted before or after the commencement.

30 **Notice of application for restraining order**

25. Section 28 of the Principal Act is amended:

(a) by omitting from subsection (2) “subsection (3)” and substituting “section 28A”;

(b) by omitting subsections (3) and (4).

35 26. After section 28 of the Principal Act the following section is inserted:

Extension of certain restraining orders

“28A. (1) Subject to subsection (2), the court may, on application made by the DPP before the end of the period mentioned in subsection 28 (2), extend the period of effect of a restraining order made in reliance on that subsection. 5

“(2) Subsections 27 (1), (2) and (3) apply, with the necessary changes made, to the extension of the period of operation of a restraining order made in reliance on subsection 28 (2) in the same way as they apply to the making of a restraining order.

“(3) The DPP must give written notice of an application under subsection (1) for the extension of the period of effect of a restraining order to: 10

- (a) the owner of the property against which the restraining order was made; and
- (b) any other person who the DPP has reason to believe may have an interest in the property.”. 15

Transitional

27. The amendments made by sections 25 and 26 do not apply to an application made under subsection 28 (3) of the Principal Act before the commencement of this section. 20

Ancillary orders

28. (1) Section 32 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

- “(c) an order for the examination on oath before the court or the Registrar of the court of any person, including: 25
- (i) the owner of property subject to the restraining order (in this paragraph called the ‘owner’); or
 - (ii) the defendant;
- about the affairs (including the nature and location of any property) of: 30
- (iii) anyone else who is either the owner or the defendant, or both; and
 - (iv) if the person to be examined is either the owner or the defendant, or both—that person; and”.

(2) The amendment made by subsection (1) applies in relation to restraining orders made before or after the commencement of this section. 35

PART 6—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

29. In this Part, “Principal Act” means the *Customs Act 1901*⁵. 40

Court may make restraining order against property

30. Section 243E of the Principal Act is amended:

- (a) by inserting in subsection (1) “one or more of the following” after “against”;
- 5 (b) by omitting paragraph (1) (c);
- (c) by omitting from paragraph (1) (d) “or”.

Court may make further orders

31. (1) Section 243F of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsection:
10 “(1AA) In this section:
‘defendant’ has the same meaning as in section 243E.”;
- (b) by omitting subparagraph (1) (d) (ii) and substituting the following subparagraphs:
15 (ii) if the owner is not the defendant—the defendant; or
(iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the Court;”;
- (c) by inserting in paragraph (1) (d) “or defendant” after “owner” (last occurring);
- (d) by omitting paragraph (1) (e) and substituting the following paragraph:
20 “(e) for the examination on oath before the Court or Registrar of the Court of any person, including:
(i) the owner; or
(ii) the defendant;
25 about the affairs (including the nature and location of any property) of:
(iii) anyone else who is either the owner or the defendant, or both; and
(iv) if the person to be examined is either the owner
30 or defendant, or both—that person;”;
- (e) by adding at the end the following subsection:
“ (5) In proceedings dealing with an application for an order under subsection (1), a witness is not required to answer a question or to produce a document if the Court is satisfied that
35 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) The amendments made by paragraphs (1) (a), (b), (c) and (d) apply in relation to restraining orders made before or after the commencement of this section.
40

(3) The amendment made by paragraph (1) (e) applies in relation to a witness appearing after the commencement of this section in

proceedings dealing with an application for an order under subsection 243F (1), whenever made, in relation to a restraining order existing at, or made after, that commencement.

PART 7—AMENDMENTS OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987 5

Principal Act

32. In this Part, “Principal Act” means the *Mutual Assistance in Criminal Matters Act 1987*⁶.

Application of Act

33. Section 7 of the Principal Act is amended: 10

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

“(2A) The regulations may make provision to the effect that this Act applies to a specified foreign country in respect of obtaining access, for the purpose of international assistance in criminal matters, to CTR information, subject to such limitations, conditions, exceptions, qualifications or other modifications as are specified in the regulations.”; 15

(b) by inserting in subsection (3) “or (2A), or in both of those subsections,” after “subsection (2)”;

(c) by adding at the end the following subsection: 20

“(4) In this section:

‘CTR information’ has the same meaning as in the *Cash Transaction Reports Act 1988*.”.

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

“PART VIA—CTR INFORMATION 25

Requests for CTR information

“37A. (1) Where a foreign country, being a country to which this Act applies because of regulations made under subsection 7 (2A), asks the Attorney-General to give information to it, the Attorney-General may direct the Director of the Cash Transaction Reports Agency to give the Attorney-General access to such of the information requested as is CTR information, for the purpose of enabling the Attorney-General to deal with the request. 30

“(2) In this section:

‘CTR information’ has the same meaning as in the *Cash Transaction Reports Act 1988*.”. 35

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

Principal Act

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

Interpretation

36. Section 4 of the Principal Act is amended:

- 10 (a) by inserting “the Australian Capital Territory and” after “includes” in the definition of “State” in subsection (1);
- (b) by inserting “the Australian Capital Territory or” after “include” in the definition of “Territory” in subsection (1);
- (c) by omitting subsection (3) and substituting the following subsection:

“**(3)** In this Act:

- 15 (a) a reference to the Parliament of a State is to be read as:
- (i) in relation to the Australian Capital Territory—a reference to the Legislative Assembly of that Territory; and
- 20 (ii) in relation to the Northern Territory—a reference to the Legislative Assembly of that Territory; and
- (b) a reference to the Governor of a State is to be read as:
- (i) in relation to the Australian Capital Territory—a reference to the Governor-General; and
- 25 (ii) in relation to the Northern Territory—a reference to the Administrator of that Territory; and
- (c) a reference to the Premier of a State is to be read as:
- (i) in relation to the Australian Capital Territory—a reference to the Chief Minister of that Territory; and
- 30 (ii) in relation to the Northern Territory—a reference to the Chief Minister of that Territory; and
- (d) a reference to a Minister of the Crown of a State is to be read as:
- 35 (i) in relation to the Australian Capital Territory—a reference to a person appointed as a Minister under section 41 of the *Australian Capital Territory (Self-Government) Act 1988*; and
- 40 (ii) in relation to the Northern Territory—a reference to a person holding Ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978*.”.

Establishment and constitution of Authority

37. Section 7 of the Principal Act is amended by omitting subparagraph (8) (b) (ii) and substituting the following subparagraph:

“(ii) the Minister of the Crown of each participating State who is responsible for: 5

(A) if the State has no Police Force—police affairs in that State; and

(B) in every other case—matters relating to the Police Force of that State;”.

PART 9—AMENDMENT OF THE PASSPORTS ACT 1938 10

Principal Act

38. In this Part, “Principal Act” means the *Passports Act 1938*⁸.

Passports not to be issued to certain persons

39. Section 7B of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph: 15

“(b) the authorized officer has reason to believe that the person is required to remain in Australia or to refrain from applying for, or obtaining, an Australian passport:

(i) by order of a court made under a law of the Commonwealth or of a State or Territory; or 20

(ii) under a condition of parole or of a recognizance, surety or bail bond; or

(iii) under a condition specified in a licence granted under section 19AP of the *Crimes Act 1914* or in any similar instrument of early release granted or issued under a law of a State or Territory.”. 25

PART 10—AMENDMENTS OF THE PROCEEDS OF CRIME ACT 1987

Principal Act

40. In this Part, “Principal Act” means the *Proceeds of Crime Act 1987*⁹. 30

Procedure on application

41. (1) Section 18 of the Principal Act is amended by adding at the end of subsection (1) “and to the evidence given in any such proceeding”. 35

(2) The amendment made by subsection (1) applies in relation to an application made under subsection 14 (1) of the Principal Act after the commencement of this section for a confiscation order in respect

of a person's conviction, whether the person was convicted before or after that commencement.

Assessment of pecuniary penalty

42. (1) Section 27 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“ ‘insolvency trustee’ means:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or
- (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; or
- (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
- (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;”;

(b) by inserting in subparagraphs (2) (d) (i) and (2) (e) (i) “, during” after “before”;

(c) by inserting in paragraph (4) (a) “during or” before “after”;

(d) by inserting in paragraph (4) (a) “greatest” before “excess”;

(e) by omitting from subsection (9) “the Official Trustee by reason of the person's bankruptcy” and substituting “an insolvency trustee”.

(2) The amendments made by paragraphs (1) (a) and (e) apply in relation to all assessments made under subsection 27 (2) of the Principal Act after the commencement of this section, whether the application for a pecuniary penalty order was made before or after that commencement.

(3) The amendments made by paragraphs (1) (b), (c) and (d) apply only in relation to an application made under section 14 of the Principal Act for a pecuniary penalty order, after the commencement of this section.

Forfeiture of all restrained property if person convicted of serious offence

43. (1) Section 30 of the Principal Act is amended by omitting from subsection (8A) “in reliance on a person's conviction of a serious offence, a person” and substituting “in reliance on:

(a) a person's conviction of a serious offence; or

(b) the charging or proposed charging of a person with such an offence;

a person”.

(2) The amendment made by subsection (1) applies whether the forfeiture occurred, or the restraining order to which the forfeiture relates was made, before or after the commencement of this section.

Restraining orders

5

44. Section 43 of the Principal Act is amended:

- (a) by inserting in subsection (1) “one or more of the following” after “against”;
- (b) by omitting paragraph (1) (da);
- (c) by omitting from paragraph (1) (e) “or”.

10

Notice of application for restraining order

45. Section 45 of the Principal Act is amended:

- (a) by omitting from subsection (2) “subsection (3)” and substituting “section 45A”;
- (b) by omitting subsections (3) and (4);
- (c) by omitting from subsection (5) everything from and including “an application for” to the end of paragraph (b) and substituting “an application for a restraining order,”.

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46. After section 45 of the Principal Act the following section is inserted:

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Extension of certain restraining orders

“45A. (1) Subject to subsection (2), the court may, on application made by the DPP before the end of the period mentioned in subsection 45 (2), extend the period of operation of a restraining order made in reliance on that subsection.

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“(2) Section 44 (other than subsection 44 (4)) applies, with the necessary changes made, to the extension of the period of operation of a restraining order made in reliance on subsection 45 (2) in the same way as it applies to the making of a restraining order.

“(3) The DPP must give written notice of an application under subsection (1) for the extension of the period of operation of a restraining order to:

30

- (a) the owner of the property against which the restraining order was made; and
- (b) any other person who the DPP has reason to believe may have an interest in the property.

35

“(4) The court may, at any time before the final determination of an application for an extension of the period of operation of a restraining order, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.”.

40

Transitional

47. The amendments made by sections 45 and 46 do not apply to an application made under subsection 45 (3) of the Principal Act before the commencement of this section.

5 **Court may make further orders**

48. (1) Section 48 of the Principal Act is amended:

(a) by omitting paragraph (1)(c) and substituting the following paragraph:

10 “(c) an order for the examination on oath before the court or the registrar of the court of any person, including:

(i) a person whose property is the subject of the restraining order (in this section called the ‘owner’);
or

15 (ii) a person who is the defendant within the meaning of section 43 in relation to the offence to which the restraining order relates (in this subsection called the ‘defendant’);

about the affairs (including the nature and location of any property) of:

20 (iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or the defendant or both—that person.”;

(b) by inserting after paragraph (1)(d) the following paragraph:

25 “(da) an order directing:

(i) the owner; or

(ii) if the owner is not the defendant—the defendant;
or

30 (iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the court;

to give to:

35 (iv) where the restraining order is, or includes, an order made under paragraph 43 (2) (b)—the Official Trustee; and

(v) in any other case—the applicant for the ancillary order or such other person as the court directs;

40 within a period specified in the ancillary order, a statement sworn on oath setting out such particulars of the property, or dealings with the property, of the owner or the defendant, as the case may be, as the court thinks proper.”;

(c) by omitting subparagraph (1)(e)(iii) and substituting the following subparagraph:

“(iii) an order 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 restraining order;”;

(d) by inserting after subsection (2) the following subsection: 5

“(2A) An ancillary order made before or after the commencement of this subsection in relation to a restraining order that is in force on or after that commencement does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under paragraph 57 (2) (e) or (g).”;

(e) by omitting from subsection (6A) “subsection (1) directs to furnish a statement to the Official Trustee” and substituting “paragraph (1) (da) directs to give a statement”;

(f) by omitting from subsection (6A) “furnishing” and substituting “giving”; 15

(g) by omitting from subsection (6B) “furnishes a statement to the Official Trustee” and substituting “gives a statement”;

(h) by omitting from subsection (6B) “subsection (1)” and substituting “paragraph (1) (f)”. 20

(2) The amendments made by subsection (1) apply in relation to restraining orders made before or after the commencement of this section.

When restraining order ceases to be in force

49. (1) Section 57 of the Principal Act is amended: 25

(a) by inserting in subparagraph (2) (e) (i) “that is a pecuniary penalty order” after “confiscation order”;

(b) by omitting from subparagraph (2) (e) (ii) “confiscation order” and substituting “pecuniary penalty order”;

(c) by omitting from paragraph (2) (e) “when the confiscation order is satisfied or otherwise ceases to be in force” and substituting “, upon the pecuniary penalty order being satisfied or otherwise ceasing to be in force, to the extent that the property to which the restraining order relates is the same as the property that is sold or otherwise disposed of to satisfy the pecuniary penalty order and pay the costs, charges, expenses and remuneration referred to in subsection 49 (6)”;

(d) by inserting in paragraph (2) (g) “19 or” after “section”. 35

(2) The amendments made by subsection (1) apply in relation to restraining orders made before or after the commencement of this section. 40

Production orders

50. Section 66 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (d) “and”;
- (b) by omitting paragraph (e).

5 **State and Territory courts to have jurisdiction**

51. Section 98 of the Principal Act is amended:

- (a) by omitting from subsection (2) “subsections (3) and (5)” and substituting “this section”;
- (b) by omitting subsection (3) and substituting the following subsections:

10 “(3) A court cannot make a forfeiture order in respect of property if the court does not have jurisdiction with respect to the recovery of property of that kind.

15 “(3A) A court may make a forfeiture order in respect of property even though, apart from this section, the court does not have jurisdiction with respect to property whose value equals the value of that property.”;

- (c) by omitting subsection (5) and substituting the following subsections:

20 “(5) Where:

- (a) a court makes a pecuniary penalty order of a particular amount; and
- (b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount, the registrar of the court must issue a certificate containing the prescribed particulars.

25 “(5A) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the pecuniary penalty order.

30 “(5B) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.”.

SCHEDULE

Section 22

FURTHER AMENDMENTS OF THE CRIMES ACT 1914

Subsection 16 (1):

Insert:

“**‘aggregate’**, in relation to 2 or more sentences or terms of imprisonment, or in relation to the unserved portions of such sentences or terms, means the total effective sentence or term of imprisonment imposed, or remaining unserved, as the case may be, having regard to whether the sentences or terms are to be served cumulatively, partly cumulatively or concurrently.

EXAMPLES DEMONSTRATING MEANING OF “AGGREGATE”

Example 1:

The aggregate of 3 sentences, each of 2 years, to be served concurrently, is 2 years.

Example 2:

The aggregate of 3 sentences, each of 2 years, where 2 sentences are to be served concurrently and one is to be served cumulatively, is 4 years.

Example 3:

The aggregate of a one year unserved portion of a sentence, a 2 year unserved portion of another sentence, to be served concurrently with the first sentence, and a 2 year sentence to be served cumulatively, is 4 years.”.

Paragraph 16B (b):

After “because” insert “of”.

Subsection 19 (1):

- (a) Omit “must, by order, direct when each federal sentence imposed by it for the first-mentioned offence commences, but so that:”, substitute “must, when imposing a federal sentence for that federal offence, or for each of those federal offences, by order direct when the federal sentence commences, but so that:”.
- (b) Omit “each federal sentence does not commence”, substitute “no federal sentence commences”.

Paragraph 19 (3) (c):

Omit “each federal sentence does not commence”, substitute “no federal sentence commences”.

Sections 19AB, 19AC, 19AD and 19AE:

Repeal sections 19AB, 19AC, 19AD and 19AE, substitute:

When court must fix non-parole period or make a recognizance release order

“19AB. (1) Subject to subsection (3), where:

- (a) a person is convicted of a federal offence, or of 2 or more federal offences at the same sitting; and

SCHEDULE—continued

- (b) a court imposes on the person a federal life sentence, or a federal sentence that exceeds, or federal sentences that, in the aggregate, exceed 3 years; and
- (c) at the time the sentence or sentences are imposed, the person is not already serving or subject to a federal sentence;

the court must either:

- (d) fix a single non-parole period in respect of that sentence or those sentences; or
- (e) make a recognizance release order.

“(2) Subject to subsection (3), where:

- (a) while a person is in prison and is serving or subject to a federal sentence, a further federal sentence is imposed on the person; and
- (b) the result is that the person is to serve or to complete a federal life sentence or federal sentences the unserved portions of which, in the aggregate, exceed 3 years; and
- (c) at the time the further federal sentence is imposed, the person is not already subject to a non-parole period or recognizance release order in respect of a federal sentence;

the court imposing the further sentence must either:

- (d) fix a single non-parole period in respect of all federal sentences the person is to serve or complete; or
- (e) make a recognizance release order.

“(3) Where, but for this subsection, a court would be required by this section to fix a non-parole period, or make a recognizance release order, in respect of a person, the court may decline to do either if, having regard to the nature and circumstances of the offence or offences concerned and to the antecedents of the person, the court is satisfied that neither is appropriate.

“(4) Where the court decides that neither a non-parole period nor a recognizance release order is appropriate, the court must:

- (a) state its reasons for so deciding; and
- (b) cause the reasons to be entered in the records of the court.

When court must fix a recognizance release order

“19AC. (1) Subject to subsections (3) and (4), where:

- (a) a person is convicted of a federal offence, or of 2 or more federal offences at the same sitting; and
- (b) the court imposes on the person a federal sentence that does not exceed, or federal sentences that, in the aggregate, do not exceed, 3 years; and
- (c) at the time the sentence or sentences are imposed the person is not already serving or subject to a federal sentence;

SCHEDULE—continued

the court must make a recognizance release order in respect of that sentence or those sentences and must not fix a non-parole period.

“(2) Subject to subsections (3) and (4), where:

- (a) while a person is in prison and is serving or subject to a federal sentence, a further federal sentence is imposed on the person; and
- (b) the result is that the person is to serve or to complete federal sentences the unserved portions of which do not exceed, in the aggregate, 3 years; and
- (c) at the time the further federal sentence is imposed, the person is not already subject to a recognizance release order in respect of a federal sentence;

the court imposing the further sentence must make a recognizance release order in respect of all federal sentences to be served or completed by the person and must not fix a non-parole period.

“(3) Where:

- (a) the federal sentence or federal sentences referred to in paragraph (1) (b); or
- (b) the unserved portions of the federal sentences referred to in paragraph (2) (b);

in the aggregate, do not exceed 6 months, the court is not required to make a recognizance release order.

“(4) Where, but for this subsection, a court would be required by this section to make a recognizance release order in respect of a person, the court may decline to do so if, having regard to the nature and circumstances of the offence or offences concerned and to the antecedents of the person, the court is satisfied that such an order is not appropriate.

“(5) Where the court decides that a recognizance release order is not appropriate, the court must:

- (a) state its reasons for so deciding; and
- (b) cause the reasons to be entered in the records of the court.

Persons already subject to a non-parole period

“19AD. (1) Where:

- (a) a non-parole period (in this section called the ‘**existing non-parole period**’) has been fixed in respect of a federal sentence or federal sentences; and
- (b) while the offender is serving the existing non-parole period, a court imposes a further federal sentence on the person;

this section applies.

SCHEDULE—continued

“(2) Where this section applies, the court must, after considering the relevant circumstances, including:

- (a) the existing non-parole period; and
- (b) the nature and circumstances of the offence or offences concerned; and
- (c) the antecedents of the person;

do one of the following things:

- (d) make an order confirming the existing non-parole period;
- (e) fix a new single non-parole period in respect of all federal sentences the person is to serve or complete;
- (f) where the court decides that, in the circumstances, a non-parole period is not appropriate—cancel the existing non-parole period and decline to fix a new non-parole period.

“(3) Where, under paragraph (2) (e), the court fixes a new single non-parole period, it:

- (a) is to be treated as having superceded the existing non-parole period; and
- (b) must not be such as to allow the person to be released on parole earlier than would have been the case if the further sentence had not been imposed.

“(4) Where this section applies, the court must not make a recognizance release order.

“(5) Where, under paragraph (2) (f), the court declines to fix a new non-parole period, the court must:

- (a) state its reasons for deciding that a non-parole period is not appropriate; and
- (b) cause the reasons to be entered in the records of the court.

Persons already subject to recognizance release order

“19AE. (1) Where:

- (a) a person is subject to a recognizance release order (in this section called the ‘**existing recognizance release order**’) made in respect of a federal sentence or federal sentences; and
- (b) before the person is released under that order, the court imposes a further federal sentence on the person;

this section applies.

“(2) Where this section applies, the court must, after considering the relevant circumstances, including:

- (a) the existing recognizance release order; and
- (b) the nature and circumstances of the offence or offences concerned; and

SCHEDULE—continued

- (c) the antecedents of the person;
do one of the following things:
- (d) make an order confirming the existing recognizance release order;
 - (e) make a new recognizance release order in respect of all federal sentences the person is to serve or complete;
 - (f) where, as a result of the further federal sentence being imposed, the person is to serve or to complete a federal life sentence or federal sentences the unserved portions of which, in the aggregate, exceed 3 years and the court decides that it is appropriate to fix a non-parole period—fix a single non-parole period in respect of all federal sentences the person is to serve or complete;
 - (g) where the court decides that, in the circumstances, neither a recognizance release order nor a non-parole period is appropriate—cancel the existing recognizance release order and decline to make a new recognizance release order.

“(3) Where, under paragraph (2) (e), the court makes a new recognizance release order, that order:

- (a) is to be treated as having superceded the existing recognizance release order; and
- (b) must not be such as to allow the person to be released earlier than would have been the case if the further sentence had not been imposed.

“(4) Where, under paragraph (2) (f), the court fixes a single non-parole period, it:

- (a) is to be treated as having superceded the existing recognizance release order; and
- (b) must not be such as to allow the person to be released on parole earlier than he or she would have been released if the further sentence had not been imposed.

“(5) Where, under paragraph (2) (g), the court declines to make a new recognizance release order, the court must:

- (a) state its reasons for deciding that neither a recognizance release order nor a non-parole period is appropriate; and
- (b) cause the reasons to be entered in the records of the court.”.

Paragraph 19AH (1) (a):

After “sentence”, insert “imposed on a person”.

NOTES

1. No. 58, 1979, as amended. For previous amendments, see No. 155, 1979; No. 69, 1980; No. 22, 1981; No. 80, 1982; No. 39, 1983 (as amended by No. 117, 1984); No. 91, 1983 (as amended by No. 117, 1984 and No. 121, 1985); No. 117, 1984; No. 121, 1985; No. 35, 1986; Nos. 38, 87, 109 and 120, 1988; Nos. 71, 147 and 153, 1989; No. 11, 1990; and No. 28, 1991.
2. No. 64, 1988, as amended. For previous amendments, see Nos. 4 and 110, 1990.
3. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915 (as amended by No. 54, 1920); 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; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981 (as amended by No. 193, 1985); No. 67, 1982 (as amended by No. 193, 1985; Nos. 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; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; and No. 28, 1991.
4. No. 145, 1989, as amended. For previous amendments, see No. 153, 1989.
5. 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; No. 7, 1934; No. 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 and 133, 1965; No. 82, 1965 (as amended by No. 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; No. 56, 1975 (as amended by No. 107, 1975); Nos. 77 and 107, 1975; Nos. 37, 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, 61, 67, 152 and 157, 1981; No. 64, 1981 (as amended by No. 51, 1982 and No. 5, 1990); Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983; No. 72, 1984; No. 40, 1985; and No. 5, 1990); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39 and 175, 1985; No. 40, 1985 (as amended by No. 5, 1990); Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 76, 99, 120 and 121, 1988; No. 66, 1988 (as amended by No. 120, 1988); Nos. 23, 24, 78, 108 and 174, 1989; Nos. 5, 6, 11, 37, 70 and 111, 1990; and No. 28, 1991.
6. No. 85, 1987, as amended. For previous amendments, see No. 66, 1988 (as amended by No. 120, 1988); and No. 120, 1988.
7. No. 41, 1984, as amended. For previous amendments, see Nos. 123 and 165, 1984; Nos. 104 and 193, 1985; No. 89, 1987 (as amended by No. 120, 1987); and No. 141, 1987; Nos. 65, 66, 75, 87 and 110, 1988; No. 108, 1989; No. 4, 1990; and No. 28, 1991.
8. No. 15, 1938, as amended. For previous amendments, see No. 85, 1948; No. 93, 1966; No. 216, 1973; Nos. 37 and 91, 1976; Nos. 103 and 155, 1979; No. 70, 1980; No. 168, 1984; No. 65, 1985; and No. 28, 1991.
9. No. 87, 1987, as amended. For previous amendments, see No. 120, 1987; No. 120, 1988; and No. 28, 1991.