

CLAUSE NOTES

Crime (Confiscation of Profits) Amendment (Unexplained Wealth) Bill 2013

Clause 1: Short title

Clause 2: Commencement

Clause 3: The Principal Act is the *Crime (Confiscation of Profits) Act 1993*.

Clause 4: Amends section 4(1) of the Principal Act by inserting new definitions and substitute definitions for the following terms: *authorised officer*, *commercial benefit*, *commercial exploitation*, *DPP*, *land*, *literary proceeds*, *unexplained wealth*, *unexplained wealth declaration* and *wealth*.

Clause 5: Inserts new sections 4A, 4B and 4C in Part 1 defining the meaning of the terms: *property-tracking document* (4A), *commercial benefit* (4B) and *literary proceeds* (4C), respectively.

Clause 6: Inserts a new section 5A which will enable an application to be made under Part 2 of the Principal Act in respect of a person who has derived *literary proceeds*.

Clause 7: Amends section 8(1) of the Principal Act by omitting “Act” and substituting “Act, other than Part 9”.

Clause 8: Amends section 27(7) by replacing “Director of Public Prosecutions” with “DPP”.

Clause 9: Inserts section 55A which defines ***monitoring order*** for the purposes of section 56(1) of the Principal Act.

Clause 10: Amends the heading of Part 8 from “Miscellaneous” to “General Legal Matters” to accommodate the insertion of new Parts 9 and 10 into the structure of the Principal Act.

Clause 11:Amends section 79 of the Principal Act to include the Commonwealth and except Part 9 from the operation of subsection (6).

Clause 12: Repeals sections 80 and 83 of the Principal Act and substitutes them with a new “Part 9 - Unexplained Wealth” –

Section 80 Inserts an Interpretation section for terms appearing in Part 9.

Section 81 Defines the meaning of *effective control* for the purposes of Part 9.

Section 82 Defines when property is “at risk of forfeiture” under Part 9 and when property is “taken to be property of a person” under Part 9”.

Section 83 Provides that a notice, declaration, order or instrument made under Part 9 in respect of land is taken to be a “dealing” within the meaning of the *Land Titles Act 1980*. This will enable those notices, declarations, orders or instruments to be registered under the *Land Titles Act* against the titles of land identified in unexplained wealth proceedings.

It is intended that all unexplained wealth dealings will have priority over all other dealings lodged or registered under the *Land Titles Act* in respect of the land regardless of when the other dealings were lodged or registered. This will freeze all action in respect of the

land giving priority to the unexplained wealth proceedings.

Section 84 Provides that, for the purposes of Part 9, property or a benefit is “lawfully acquired” only in the circumstances specified in the section.

Section 85 Creates the presumption for the purposes of Part 9, that any property or benefit that is a constituent of a person’s wealth has not been lawfully acquired by the person, unless the person proves otherwise.

Section 86 Provides that a financial organisation may voluntarily provide information about a suspicious transaction to the DPP if the organisation suspects, on reasonable grounds, that the information may: assist the DPP or assist the Supreme Court in deciding whether or not to make an unexplained wealth declaration, or to otherwise assist any unexplained wealth proceedings.

Section 87 Provides the DPP with the power to issue a written notice to a financial organisation requiring it to provide information in respect of unexplained wealth proceedings or for the purpose of assisting the DPP in deciding whether to apply for any order, declaration or warrant under the Act. The section also sets out how the financial

organisation is to comply with a notice and how information provided may be used.

Failure to comply with the requirements of a notice is a criminal offence with a substantial maximum fine not exceeding 5000 penalty units.

Section 88

Provides that the DPP has power to issue a written notice to a GBE, and other defined or prescribed organisation requiring it to provide information in respect of unexplained wealth proceedings or for the purpose of assisting the DPP in deciding whether to apply for any order, declaration or warrant under the Act. The section also sets out timelines for compliance and how information provided may be used.

This section also has an offence provision identical to section 87.

Section 89

This section provides protection against civil and criminal liability to those who in good faith provide information or comply with a notice or requirement to the extent that they are required to do so by sections 86, 87 or 88.

Section 90

This section provides that it is an offence to knowingly provide false or misleading information, records, materials or things in purported

compliance with sections 86, 87 or 88.

Nevertheless, to encourage full disclosure under those sections it is not an offence if the organisation or officer who provided the information, record, material or thing informs the DPP of that fact as soon as practicable after becoming aware that they were false or misleading, indicates what was false or misleading about it, provides the correct information, record, material or thing and provides information on who had access to the false or misleading information, record, material or thing.

This section has an offence provision identical to section 87.

Section 91

Provides that the DPP may apply to the Supreme Court for an order for the examination of a person. The application may be made ex parte, that is, in the absence of the proposed examinee or the proposed respondent.

Section 92

Provides that the Supreme Court may make an order compelling a person to submit to an examination about specified matters relevant to assessing whether or not another person's wealth is lawfully acquired.

An examination order may specify that the person to be examined must provide the Supreme Court with documents or information described in the order.

Section 93

Provides for how an examination order is to be served.

Section 94

Provides that failure of a person to comply with an examination order or any requirements made as part of an examination held under an examination order, is an offence.

If a person who fails to comply with an examination order is the owner of restrained property he or she will lose the entitlement to object to the restraint of the property.

It is also an offence to give false information or a false document in purported compliance with an examination order.

To encourage full disclosure in an examination it is not an offence if the person who provided false or misleading information or documents informs the DPP of that fact as soon as practicable after becoming aware that they were false or misleading, indicates what was false or misleading about it, provides the correct information or document and provides information on who had access to

the false or misleading information or document.

A person is not excused from complying with an examination order, or any requirements made as part of an examination held under an examination order, on the grounds that complying with the order or any requirements made as part of the examination would tend to incriminate the person or expose him or her to a penalty; or could result in forfeiture of property; or would be in breach of an obligation not to disclose information of any sort, however the obligation arose.

A statement or disclosure made in the course of complying with an examination order is only admissible as evidence against the person in a proceeding against the person for an offence against this section; any civil proceeding; and any proceeding under the Principal Act that could lead to the forfeiture of property owned, effectively controlled or given away by the person, but only for the purpose of identifying the property.

The transcript of an examination is admissible as evidence of a statement or disclosure made by the person in the course of complying with an examination

order, for example, as evidence of an prior inconsistent statement.

Section 95

Provides that an examination under an examination order is to be held as a proceeding before a judge in chambers or the Associate Judge as specified in the order.

A person served with an examination order to attend and submit to examination must comply with the order and personally answer questions asked during the examination.

The person may have an Australian legal practitioner present for the purpose of providing advice during the examination.

Section 96

Provides that the DPP may apply to the Supreme Court for a document production order to be made in relation to a person the DPP suspects has possession or control of a property-tracking document and specifies what the application must contain and that the application may be made ex parte.

Section 97

Provides that the Supreme Court may make a document production order if satisfied that the document is relevant to assessing whether another person's wealth has been lawfully acquired and there are reasonable grounds for suspecting

that the document is in the person's possession or control.

A document production order may contain particulars specified in this section and is to specify the time and place for the document to be produced.

Section 98 Sets out what the DPP may do with a property-tracking document depending upon the content of the relevant document production order.

Section 99 Provides that it is an offence to fail to comply with a document production order or knowingly producing a document which is false or misleading in a material particular.

As with sections 90 and 94: a person does not commit an offence if subsequent timely disclosure is made of the false or misleading nature of the document. The section also abolishes common law and other rights against self-incrimination and specifies when the information contained in property-tracking document is admissible in other proceedings.

Section 100 Provides that a person may apply to the Supreme Court to vary a document production order to allow a property-tracking document to be made available rather than given to the DPP,

where the document is essential to the lawful business activities of the person.

Section 101 Provides that compliance with a document production order is not admissible as evidence against the person in any criminal proceedings except proceedings for an offence under section 99.

Section 102 Provides that the DPP may apply to the Supreme Court for a monitoring order.

The application must specify the account to be monitored, the person whose transactions are to be monitored and the financial organisation to be subject to the order.

The financial organisation may be required to give the DPP information about transactions carried out through an account specified in the order or held with the organisation by a person specified in the order.

The application may be made ex parte.

Section 103: Provides that the Supreme Court may make a monitoring order.

Section 104 Provides that the DPP may apply to the Supreme Court for a suspension order.

The application is to specify the account or transaction to be suspended under the order, the

person whose transactions are to be suspended and the financial organisation to be subject to the order.

The application may be made ex parte.

Section 105: Provides that the Supreme Court may make a suspension order requiring a financial organisation to notify the DPP immediately: of any transaction that has been initiated in connection with a specified account; or if there are reasonable grounds for suspecting that a transaction is about to be initiated through a specified account. The order may require a financial organisation to refrain from completing or effecting such transactions for 48 hours.

The intended purpose of this section is to prevent money which is suspected of being a constituent of a person's unexplained wealth from being disposed of or removed from the court's jurisdiction.

Section 106 Sets out general matters applying to both monitoring and suspension orders, including the requirement that the Court be satisfied that there exist reasonable grounds for suspecting a connection with unexplained wealth.

The maximum duration of an order for monitoring or suspension is

prescribed (3 months) but the court has discretion to extend the period on as many occasions as it sees fit.

Section 107 Provides for an offence of failing to comply with, or providing false or misleading information in relation to, a monitoring or suspension order and contains the same provisions allowing for the correction of false and misleading information as sections 90 and 94.

Section 108 Prohibits the disclosure of specified information and sets out what conduct is included in the phrase “disclose information”. The purpose of this is two-fold: it enables the DPP to investigate and obtain evidence of the suspected acquisition of unexplained wealth without the suspect being made aware of the investigation; and it provides protection to the reputation of those being investigated during this and other preparation stages of the investigation process.

Section 109: Provides details of the circumstances when a disclosure may be made without contravening section 108; for example, a person may make disclosures to a lawyer for the purpose of obtaining legal advice in relation to the proceedings.

Section 110: This section provides the power to stop and/or detain a person, without a warrant, if there are reasonable grounds for suspecting that they have in their possession property or documents relating to unexplained wealth proceedings

The section addresses the possibility that a person who is suspected of having unlawfully acquired wealth may attempt to move property and documentation relating to unexplained wealth proceedings amongst acquaintances in an attempt to avoid detection or seizure.

This provision is intended to assist investigators in establishing where property and documentation is located.

Section 111: Provides that a police officer may apply for a search warrant of premises or property suspected of relating to unexplained wealth, how the application may be made, what a warrant may authorise and when the warrant may be carried out.

Subsection (3) is intended to account for the situation where intelligence indicates that property or documentation is to be moved but it is not certain when that will be.

The section provides that a search warrant authorises the seizure of

property found in a search in certain circumstances.

Section 112: Provides additional specified powers to police officers exercising powers under section 110 or 111.

Section 113: Provides for a search warrant to have effect after expiration in specified circumstances to overcome the situation where documents are moved between premises or other circumstances occur which would otherwise defeat the intended effect of a search warrant.

Section 114: Provides that seized property may be moved and retained at another location.

Section 115: Provides that property may be seized, retained or guarded for up to 72 hours without a specified restraining order having been made where a police officer suspects it is not lawfully acquired.

Section 116: Provides for the making of interim wealth-restraining orders in specified circumstances but such order will only have effect for 3 days. An interim wealth-restraining order is intended to prevent property from being moved out of the jurisdiction, for example by stopping a vehicle being boarded on a TT-Line vessel, or other property being transported by air.

- Section 117:** Provides for an application for a wealth-restraining order to be made in relation to property connected with unexplained wealth proceedings.
- Section 118:** Provides that a wealth-restraining order may only be made if the court is satisfied that an unexplained wealth declaration has been made or an application for an unexplained wealth declaration or document production order has been made or the court is assured that the DPP intends to make an application for an unexplained wealth declaration. Sets out what the wealth-restraining order may specify.
- Section 119:** Provides that a wealth-restraining order is to specify each ground on which the order has been made.
- Section 120:** Provides that the Supreme Court is not to include any information in a wealth restraining order if that information could prejudice an ongoing investigation by the DPP.
- Section 121:** Sets out what the Supreme Court may do in relation to property which is the subject of a wealth-restraining order.
- Section 122:** Provides for the procedure for the service of a wealth-restraining order.
- Section 123:** Requires a person served with a wealth-restraining order to provide

a statutory declaration including prescribed information and filing it in court, and provides for a penalty for non-compliance.

Section 124: Sets out the effect of a wealth-restraining order.

Section 125: Provides for how co-owned property subject to a wealth-restraint order is to be treated.

Section 126: Provides that the duration of a wealth-restraining order is determined by the court, may be extended on application by the DPP and that the DPP is to serve notice of any extension on each person on whom a copy of the wealth-restraining order was served under section 122.

Section 127: Sets out the circumstances in which a wealth-restraining order ceases to have effect and the related actions required of the DPP and police.

Section 128: This section sets out the requirements for lodging a wealth-restraining order over land with the Recorder of Titles. Land only becomes restrained property once the wealth-restraining order is registered under the *Land Titles Act 1980*.

Section 129: Provides that property may be restrained under more than one order

- Section 130:** Sets out what “dealing” with property means for the purposes of this Part of the Act.
- Section 131:** Provides for the protection of the rights of mortgagees and lessors where the property mortgaged or leased is subject to a specified restraining order.
- Section 132:** Provides that a person must not deal with restrained property or property that is subject to an interim wealth-restraining order but specifies exceptions to this prohibition and a defence to a prosecution for an offence under the section.
- Section 133:** Provides that a dealing with property that contravenes section 132 has no effect on the rights of the State under this Part.
- Section 134:** Provides that a person may object to restraining of property owned or effectively controlled by that person.
- Section 135:** Specifies the time limitation for making objections under section 134. The section also provides the court with discretion to allow an application out of time in limited circumstances.
- Section 136:** Provides that the State is a party to objection proceedings.
- Section 137:** Provides that a wealth-restraining order may be set aside or varied by the Court after hearing an

objection and that the Court may make any necessary or convenient ancillary orders.

Section 138: Sets out what property and benefits constitute a person's wealth for the purposes of the Part.

Section 139: Sets out what unexplained wealth is for the purposes of the Part.

Section 140: Sets out how the value of unexplained wealth is assessed.

Section 141: Provides that the DPP may apply to the Supreme Court for an unexplained wealth declaration against a person.

Section 142: Provides that if the Court determines that it is more likely than not that aspects of a person's wealth have been unlawfully acquired, it is required to make an unexplained wealth declaration. The section also sets out specific matters that the Court is to include in an unexplained wealth declaration.

Section 143: Provides that a respondent's unexplained wealth liability consists of the amount declared under section 142(4)(b) and any costs awarded against him or her.

Section 144: Provides that unexplained wealth liability is payable to State and may be satisfied by the forfeiture of restrained property.

Section 145: Provides that if a respondent does not pay the unexplained wealth

liability within the time specified, or if not specified, within 31 days after the unexplained wealth declaration was made, the DPP may pursue the matter in the Court as a civil debt or refer the liability for collection under the *Monetary Penalties Enforcement Act 2005*.

Section 146: Provides that the respondent may satisfy the liability by transferring property wholly owned or effectively controlled solely by the respondent to the State whether or not the property is restrained property.

Section 147: Provides that proceeds from the sale of restrained property are available and may be used or are at risk of forfeiture to satisfy the unexplained wealth liability of the person.

Section 148: Provides that restrained property is at risk of forfeiture despite the grounds of an unexplained wealth declaration and being different from a wealth-restraining order

Section 149: Provides that effectively controlled or given away property may only be called upon to satisfy the respondent's unexplained wealth liability if property owned by the respondent is not available or is insufficient to satisfy the liability.

Section 150: Provides that the DPP may apply to the Court for a forfeitable property

declaration in relation to property not owned by respondent but suspected to be effectively controlled, or given away, by a respondent to an unexplained wealth declaration.

Section 151: Provides that a Court may make forfeitable property declarations in respect of property effectively owned or given away by the respondent and that the onus of proving that property is not effectively controlled or was not given away by the respondent is that of the respondent or another person claiming ownership. The section also provides that a forfeitable property declaration allows the Court to make a wealth forfeiture order in respect of the property subject to the declaration and any necessary or convenient ancillary orders.

Section 152: Provides that the DPP may apply to the Court for a wealth forfeiture orders and that the Court can make such an order to satisfy a liability to the State under a unexplained wealth declaration.

Section 153: Sets out how co-owned forfeited property is to be dealt with to ensure that co-ownership is not an obstacle to the State obtaining the sum owed by the respondent.

Section 154: Provides that where the Court makes a wealth forfeiture order in

respect of land the land vests in the State and sets out the procedure required to register the order in the Register within the meaning of the *Land Titles Act 1980*.

Section 155: Provides for the procedure to be followed in relation to the forfeiture of registrable property other than land.

Section 156: Provides that a person must deliver up property subject to a wealth forfeiture order to the State on demand and creates an offence for failure to comply.

Section 157: Provides that the DPP may apply for a variation of a forfeitable property declaration or a wealth forfeiture order or a further wealth forfeiture order and that the Court may vary the declaration or order or make a further wealth forfeiture order. The section requires any variation to be made, registered or otherwise dealt with as the order or declaration it varies.

Section 158: Provides that forfeited property has no value in respect of satisfying an unexplained wealth liability until it is sold by or on behalf of the State. The intention of the section is to ensure that the State actually receives the sum for which the respondent has been assessed as being liable.

Provides that until property has actually been sold it only has an expected value. This could also work to the respondent's advantage if, for example, property values rise and the State receives more from the sale than the property was valued when the respondent's liability was being assessed by the court.

Subsection (2)(a) takes into account the possibility that another person may have an interest in forfeited property as a co-owner and that that person's interest must be deducted from the value of property available to satisfy the respondent's liability.

This section also takes into account that the State and the Commissioner of Police may have incurred other costs and expenses in exercising powers and performing functions under this Part. Those sums are to be deducted from the proceeds of the sale of forfeited property before the respondent's remaining liability to the State is calculated.

Section 159: Provides that the Commissioner of Police is responsible for the control and management of property retained or seized under a search warrant.

Section 160: Provides that the Public Trustee has responsibility for the control and

management of restrained or forfeited property and may appoint a person to manage the property.

Section 161: Provides that a financial organisation must transfer restrained funds to the Public Trustee, on demand and that the Public Trustee must hold these funds on trust.

Section 162: Provides that an owner of restrained property may apply to the Supreme Court for an order in relation to the control or management or the sale or destruction of the restrained property.

Section 163: Sets out the duties of a person responsible for control or management of restrained or forfeited property.

Section 164: Provides that a person with responsibility for the control or management of restrained or forfeited property may apply to the Supreme Court for an order to destroy the property if it would not be in the public interest to preserve the property.

Section 165: Provides that a person who has control or management of restrained property may apply to the Supreme Court for an order to sell that property, and the Court may make such an order if satisfied

of certain matters relating to the diminishing value of the property.

Provides that the Public Trustee may sell such property for and on behalf of the State in similar circumstances without obtaining an order, if the property is subject to a wealth-restraining order and is not land and the Minister approves the sale in the circumstances.

Provides that if the property sold is land, the section provides the procedure to be applied to amend the Register.

Section 166: Provides that a person who has the control or management of restrained property may arrange for a valuation and inventory of the property. If an inventory is taken, a copy of it must be served on each person also served with the wealth-restraining order.

Section 167: Provides that a person who owned or effectively controlled restrained or forfeited property which was destroyed or sold under this Subdivision and was entitled under this Part for the property to be returned, had it not been destroyed or sold, may apply to the Supreme Court for compensation. The section sets out what matters the Court is to consider in relation to the application and what the Court may order.

Section 168: Provides that if the Public Trustee has the responsibility under this Part for the control or management of property, it may appoint a person to perform all or any of its functions in relation to the property.

Section 169: Provides that various other provisions of the Principal Act are to be read so as to apply to property held by Public Trustee under this Part.

Section 170: Provides that a person may apply to the Supreme Court for his or her share of forfeited property to be returned to them.

This section is intended to provide an opportunity for redress to a person who co-owns property that has been forfeited.

Section 171: Provides that the State is a party to an application under section 170.

Section 172: Provides that the Supreme Court may order the return to an applicant of forfeited property if the applicant establishes certain matters to the satisfaction of the Court.

The section also sets out how the court is to deal with returning co-owned property.

Section 173: Provides for the interstate registration and enforcement of various orders made under this Part.

- Section 174:** Provides for the registration in this State of interstate orders in respect of unexplained wealth, which relate to land in Tasmania.
- Section 175:** Provides for the enforcement in this State of interstate restraining orders relating to unexplained wealth.
- Section 176:** Provides for the enforcement in this State of interstate forfeiture orders relating to unexplained wealth.
- Section 177:** Sets out the duration of registration of interstate orders relating to unexplained wealth.
- Section 178:** Sets out when the Court may cancel registration of an interstate order relating to unexplained wealth and the procedure to be followed where the cancelled order relates wholly or in part to land.
- Section 179:** Provides for registration under the *Land Titles Act 1980* of certain documents and orders under this Part, including: documents lodged by the respondent transferring land to the State to satisfy his or her unexplained wealth liability without a forfeiture order having been made; and a sealed copy of a wealth forfeiture order vesting land in the State; or a sealed copy of the documentation showing that an interstate forfeiture order has been registered under the Act. The

Recorder is required to register the lodged documents against the relevant folio of the Register and register the State as the proprietor of the property.

Provides that in relation to the operation of this Part if there is any inconsistency between it and the *Land Titles Act 1980* the provisions in this Part prevail.

Provides that although the registration against the title of land of an order or document under this Part prevails over all other dealings with that land, a person may still lodge caveats, dealings and instruments relating to the land and the Recorder can accept them and issue any usual notifications but, the Recorder cannot register them while the land is restrained property.

Section 180: Provides for how this Part is to operate in conjunction with other legislation providing for the registration of interests in property.

Section 181: Provides that where a wealth-restraining order has been registered against the title of land or entered in an appropriate register in respect of other registrable property, a person who deals with the property is taken to have notice that the property is restrained property.

Section 182: Provides that the Supreme Court and the Magistrate's Court have jurisdiction under this Part irrespective of the value of the property concerned.

Section 183: Provides that unexplained wealth proceedings are taken to be civil proceedings.

Provides that a court hearing these proceedings may order that: the proceedings be held in closed court; only specified persons or classes of person may be present during the proceedings; and that publication of a report on the proceeding or of any information derived from the proceedings is prohibited.

Provides that except in relation to an offence under this Part: a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Part; rules of evidence applicable in civil proceedings apply in proceedings under this Part; the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Part; and that a question of fact to be decided by a court in proceedings on an application under this Part is to be decided on the balance of probabilities.

Provides that a decision under this Part, except Division 4, about the

existence of grounds for doing or suspecting anything may be based on hearsay evidence or hearsay information.

Section 184: Provides that the Attorney-General may appear in any proceedings in which the State has an interest, whether or not the DPP or the State is also a party.

Section 185: Provides that unexplained wealth proceedings are not to be stayed or adjourned for the purpose of awaiting the outcome of any criminal proceedings that have commenced, or are to commence, involving a person whose property is or may be affected by proceedings under this Part.

Section 186: Provides that in any proceedings under this Part, a court may at any time make an order that is agreed to by the parties.

Section 187: Provides that if a person fails to take action to comply with an order under this Part, the court may direct the Assistant Judge or the Registrar of the Court to take that action instead, and the costs incurred in doing so are to be costs recoverable from the person as a debt due and payable.

Section 188: Defines the meaning of an equitable sharing arrangement for the purpose of this section.

Provides that all money forfeited to the State under this Part, all proceeds of forfeited property sold under this Part and all money received by the State in relation to this Part under an equitable sharing arrangement is to be paid into the Consolidated Fund.

Section 189: Provides that funds that are restrained under this Part and are transferred to the Public Trustee by a financial organisations, income from a business or property managed by the Public Trustee under this Part, and the proceeds of sale of restrained property where the sale is authorised by the court are to be paid into the common fund of the Public Trustee created under the *Public Trustee Act 1930*.

Provides that money that has been paid into the common fund under this Part may be paid out of that fund by the Public Trustee to cover the costs of storing and managing restrained property incurred by the Public Trustee or a person appointed to manage the property; fees payable to the Public Trustee for the management of property or performance of function under this Part; under an order of the court as restrained property that is to be returned; to a *bona fide* mortgagee or encumbrancee of property sold under this Part; if the money is

proceeds from the sale of property under a registered interstate forfeiture order, to the State that made the interstate order; as a co-owner's share of property sold under this Part; in any circumstances provided for by the *Public Trustee Act 1930*; to the State, including money that becomes forfeited property or as otherwise prescribed.

Provides that money required to be paid out under this Part are to be paid as soon as practicable after the Public Trustee becomes aware that payment is due.

Section 190: Provides that dealings by which property is transferred to or vested in the State (or is agreed to be transferred to or vested in the State) under this Part are exempt from stamp duty and fees that would otherwise be payable under the *Land Titles Act 1980* and the *Duties Act 2001*.

Section 191: Provides that family photographs, family portraits, necessary food and necessary clothing are not to be made subject to a wealth-restraining order or a wealth forfeiture order.

Provides that ordinary tools of trade, professional instruments and reference books are also not to be made subject to a wealth-restraining order or a forfeiture order. A

maximum value of property to be protected may be prescribed per person, per order or as otherwise prescribed; and that property that is protected under this section is only protected to the extent that the aggregate value of that property does not exceed the prescribed amount.

Provides that property that by the operation of this section is not to be made subject to a wealth-restraining or forfeiture order, is not to be retained or guarded under this Part or made subject to a search warrant issued under this Part; and is not to be restrained; and is not available for the purpose of satisfying a person's unexplained wealth liability; and cannot be forfeited under Subdivision 3 of Division 6.

Section 192: Provides that for the purposes of this Part property transferred under a will or administration of an intestate estate is not taken to be transferred for value; and property transferred in the course of proceedings in the Family Court or Western Australia or the Family Court of Australia is taken to be transferred for value.

Section 193: Provides that restrained property is not to be released to meet a person's legal expenses in relation to proceedings under this Part, that

relate to the forfeiture of the property or to any other civil or criminal proceedings and is not to be taken into account for the purposes of an application by the person for legal aid.

Provides that if the Tasmanian Legal Aid Commission or another legal aid organisation provides a person with legal aid in respect of proceedings under this Part or any other civil or criminal proceedings and property of the person that was restrained property is no longer restrained in whole or in part as surplus to an amount forfeited to the State (and any order for costs), the person is liable to the Commission or other organisation for his or her legal costs and the property release is charged as security for those costs.

Provides that a charge under this section is subject to any other encumbrances on the property that take priority and if the property is land, takes effect when the charge is registered in accordance with the *Land Titles Act 1980*.

Provides that if legal aid is granted to a person whose property is restrained under this Part and the restrained property is forfeited, the Commission or other organisation may apply to the Minister for

reimbursement of the legal costs incurred in providing legal aid to the person.

Provides that on application by the Commission or other organisation, the Minister may reimburse the Commission or organisation out of funds realised from the forfeited property, having regard to the value of the property forfeited, the legal costs incurred by the Commission or organisation in the matter and the state of the legal aid fund.

Section 194: Provides that a person carrying out a function under this Part is not personally liable in civil proceedings for anything done or any default made by the person in good faith, and that the State is also not liable for that person's actions or default.

Section 195: Provides that, subject to this Part, the fact that an application, order or finding has been made under this Part in relation to any property or person does not prevent another such application, order or finding, or a different application, order or finding, from being made under this Act in relation to the property or the person.

Section 196: Defines a sham transaction in terms of specified actions taken with the purpose of directly or indirectly defeating, avoiding, preventing or

impeding the operation of this Part in any respect.

Provides that the DPP may apply to the Supreme Court for an order declaring that a transaction is a “sham” transaction.

Provides that on hearing an application and in order to promote justice, the Supreme Court may make an order declaring that the transaction is void in whole or in part, preventing the transaction from being carried out, or varying the operation of the transaction in whole or in part.

Provides that if an order is made under this section the court may make any ancillary orders that are necessary or convenient in the circumstances for or in respect of any consequential or related matter, including orders relating to dealing with property, disposing of any proceeds from the sale of property, making payment of money and creating a charge on property in favour of any person and the enforcement of the charge.

Section 197: Provides that if a corporation commits an offence against this Part and it is proved that the offence occurred with the knowledge and consent of an officer of a corporation, both are taken to have committed an offence.

Section 198: Provides that if the court is satisfied that a person is avoiding personal service it can make an order for a different mode of service to that otherwise specified.

Section 199: Provides that the DPP may delegate, in writing, any of his or her functions and powers under this Part other than the power of delegation.

Section 200: Provides that the death of a person does not prohibit unexplained wealth proceedings being taken against that person.

Provides that if a person who owns restrained property dies, this Part of the Act continues to apply to the property in all respects as if the person had not died.

Also provides that if a person who is a joint tenant of restrained property dies the property does not vest in surviving joint tenants or tenants and a wealth-restraining order continues to apply to the property as if the person had not died.

Section 201: This provision creates two offences for obstruction a police officer.

Provides, in subsection (1), that it is an offence to wilfully delay or obstruct a police offer in the performance of the police officer's functions under this Part, or wilfully delay or obstruct a person assisting

a police officer in the performance of those functions.

Provides, in subsection (2), that it is an offence to knowingly or wilfully fail to produce any property to, or conceal or attempt to conceal any property from, a police officer in the performance of the officer's functions under this Part or a person assisting a police officer in the performance of those functions.

Section 202: Provides that legal professional privilege in all its forms apply in relation to proceedings under this Part.

Section 203: Provides that regulations may be made relating to specified aspects of unexplained wealth proceedings.

Section 204: This is a remaking of the general regulation-making power for the Act. This was previously revoked to accommodate the restructuring of the Act to include the new Part 9.

Clause 13: Provides that the Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of the Act commence.