



STATUTES AMENDMENT (CRIMES CONFISCATION AND RESTITUTION) ACT 1991

No. 75 of 1991

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ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 75 of 1991

An Act to amend the Crimes (Confiscation of Profits) Act 1986 and the Criminal Law Consolidation Act 1935.

[Assented to 12 December 1991]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Crimes Confiscation and Restitution) Act 1991*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2

AMENDMENT OF CRIMES (CONFISCATION OF PROFITS) ACT 1986

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended—

(a) by inserting after the definition of “drug” in subsection (1) the following definition:

“equitable sharing program” means an arrangement under which—

(a) the State shares with the Commonwealth or a reciprocating State the proceeds of local forfeiture orders where officers of a law enforcement agency of the Commonwealth or the reciprocating State have made a significant contribution to the recovery of those proceeds;

or

(b) the Commonwealth or a reciprocating State shares with the State the proceeds of interstate forfeiture orders where officers of a law enforcement agency of the State have made a significant contribution to the recovery of those proceeds;

(b) by striking out from subsection (1) the definition of “forfeitable property” and substituting the following definition:

“forfeitable property”—*see section 6 (1a)*;

(c) by inserting after the definition of “gift” in subsection (1) the following definitions:

“interstate forfeiture offence” means an offence that could, on conviction of the offender, give rise to a forfeiture or pecuniary penalty order under the law of the Commonwealth or a reciprocating State:

“interstate forfeiture order” means a forfeiture order or a pecuniary penalty order under the law of the Commonwealth or a reciprocating State:

“local forfeiture order” means an order for forfeiture of property under this Act or under some other law of the State providing for criminal forfeiture;

and

(d) by inserting after the definition of “property” the following definitions:

“reciprocating State” means a State or Territory of the Commonwealth in which a corresponding law is in force:

“relevant offence” means a prescribed offence or an interstate forfeiture offence.

Amendment of s. 6—Restraining orders

5. Section 6 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) Property is forfeitable property if—

(a) a relevant offence has been committed or there are reasonable grounds to suspect the commission of a relevant offence;

(b) either—

(i) the offender has been convicted and in consequence of the conviction a local or interstate forfeiture order may be made against a particular person;

or

(ii) if the offender were convicted of the offence, a local or interstate forfeiture order might be made against a particular person;

and

(c) the property is—

(i) property of that person;

(ii) held on behalf of that person;

or

(iii) in the effective control of that person.

Amendment of s. 10—Payments into and out of the Criminal Injuries Compensation Fund

6. Section 10 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) Subject to any direction of the court by which the forfeiture is imposed—

(a) any money forfeited under this Act or obtained by realisation of other property forfeited under this Act;

or

(b) money deriving from the enforcement in the State of an order under a corresponding law registered in the State,

must be dealt with as follows:

(c) the costs of the administration of this Act must be paid out of that money;

and

(d) the balance must be paid into the Criminal Injuries Compensation Fund.

(1a) Any money—

(a) paid to the State under the equitable sharing program;

or

(b) paid to the State by the Commonwealth, being money paid to the Commonwealth by a foreign country within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth, under a treaty or arrangement providing for mutual assistance in criminal matters,

must be paid into the Criminal Injuries Compensation Fund.;

and

(b) by striking out subsection (3) and substituting the following subsection:

(3) The purposes for which money may be applied from the Criminal Injuries Compensation Fund include—

(a) the financial support, to an extent determined by the Attorney-General, of programs directed at the treatment and rehabilitation of persons who are dependent on drugs (but the extent of that support cannot exceed the income of the Fund derived from forfeitures imposed in respect of serious drug offences);

and

(b) payments to the Commonwealth or to another State or a Territory of the Commonwealth, under the equitable sharing program.

Amendment of s. 10a—Registration of interstate orders

7. Section 10a of the principal Act is amended by inserting in subsection (2) “but as if it were made in favour of the Crown in right of this State” after “made”.

Insertion of s. 10b

8. The following section is inserted after section 10a of the principal Act:

Money laundering

10b. (1) In this section “transaction” includes receiving or making of a gift.

(2) A person must not engage in money laundering.

Penalty: In the case of a natural person \$200 000 or 20 years, or both.

In the case of a body corporate \$600 000.

(3) A person engages in money laundering if, and only if—

(a) the person engages, directly or indirectly, in a transaction involving tainted property, or tainted property within the meaning of a corresponding law;

or

(b) the person receives, possesses, conceals, disposes of or brings into South Australia any tainted property, or tainted property within the meaning of a corresponding law,

and the person knows that the property is derived or realised, directly or indirectly, from unlawful activity.

PART 3**AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935****Amendment of s. 348—Interpretation**

9. Section 348 of the principal Act is amended by inserting before the definition of “appellant” the following definition:

“ancillary order” means—

(a) an order for forfeiture under section 5 of the *Crimes (Confiscation of Profits) Act 1986*;

(b) a restraining order under section 7 of the *Crimes (Confiscation of Profits) Act 1986*;

(c) an order for the restitution of property under section 52 of the *Criminal Law (Sentencing) Act 1988*;

or

(d) an order for compensation under section 53 of the *Criminal Law (Sentencing) Act 1988*,

made by a District Criminal Court, or by the Supreme Court in the exercise of its criminal jurisdiction at first instance.

Insertion of s. 354a

10. The following section is inserted after section 354 of the principal Act:

Right of appeal against ancillary orders

354a. (1) A person against whom an ancillary order has been made may, in accordance with rules of court, appeal to the Full Court against that order.

(2) The Attorney-General may, in accordance with rules of court, appeal to the Full Court against an ancillary order or a decision not to make an ancillary order.

(3) An appeal under this section may, in appropriate cases, be heard together with an appeal against sentence (and may be brought as part of such an appeal) and if an appeal against sentence and an appeal against an ancillary order are in fact brought separately the Supreme Court may direct that they be heard together.

Transitional provision

11. The amendments made by this Part apply in respect of proceedings commenced either before or after the commencement of this Part.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor