

# **CRIMINAL PROCEEDS CONFISCATION (UNEXPLAINED WEALTH AND SERIOUS DRUG OFFENDER CONFISCATION ORDER) AMENDMENT BILL 2012**

## **Explanatory Notes**

### **Short title**

The short title of the Bill is the Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2012.

### **Policy objectives and the reasons for them**

The primary objectives of the Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Bill 2012 (the Bill) are to:

- amend the *Criminal Proceeds Confiscation Act 2002* to introduce a scheme for recovering ‘unexplained wealth’;
- amend the *Criminal Proceeds Confiscation Act 2002* to provide innocent dependants of persons against whom proceeds assessment orders are made with the ability to apply to the Supreme Court for relief from hardship;
- amend the *Criminal Proceeds Confiscation Act 2002* and the *Penalties and Sentences Act 1992* to introduce serious drug offender confiscation orders;
- amend the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* to facilitate the investigation of evidence related to matters concerning the *Criminal Proceeds Confiscation Act 2002*; and
- amend the *Criminal Proceeds Confiscation Act 2002* to increase the general effectiveness of the criminal confiscation regime in Queensland.

The Bill implements the Liberal National Party’s pre-election commitments to introduce unexplained wealth orders and drug trafficking declarations. The commitment with regard to drug trafficking declarations is expressed in the Bill with the introduction of serious drug offender confiscation orders.

The commitment regarding unexplained wealth was reiterated in the Government’s *Six Month Action Plan July-December 2012*.

Most other Australian jurisdictions already have provision in their confiscation legislation for unexplained wealth orders. The introduction of unexplained wealth

orders into the *Criminal Proceeds Confiscation Act 2002* (CPCA) ensures that Queensland will not become a safe haven for those wishing to hide their ill-gotten wealth.

In March 2012 the Commonwealth Parliamentary Joint Committee on Law Enforcement (the Committee) delivered its report (the PJCLE report) on its inquiry into Commonwealth unexplained wealth legislation and arrangements. Chapter 4 of the report provides extracts from evidence given to the Committee by law enforcement professionals suggesting that criminals will move their operations to jurisdictions where they believe there is legislative weakness.

Serious criminal activity is often motivated by a desire to make a lot of money quickly, without a great deal of effort and without the burden of taxation. The Bill targets those serious criminals and potential serious criminals who are motivated primarily by their own greed by seeking to increase the risk of involvement in serious criminal activity to such an extent that involvement in the serious criminal activity is no longer worthwhile.

Serious drug offender confiscation orders are targeted specifically to increase the risk associated with involvement in the illicit drug market. These orders also enable the community and the justice system to seek compensation for the burden the illicit drug trade places on the community and the health and justice system.

The 2012 'Health of Queenslanders' report from the Chief Health Officer of Queensland estimated that illicit drug use cost Queensland society \$1.6 billion in 2004/05 with an estimated \$39 million spent on health care.

There is also a link between illicit drug use and involvement in other criminal activity.

Currently, dependants of persons against whom proceeds assessment orders are made do not have the ability to apply to the Supreme Court for an order seeking relief from hardship. The Bill provides that these dependants will have the same ability to make an application for a hardship order as the dependants of persons against whom unexplained wealth orders and serious drug offender confiscation orders are made.

The Bill updates the provisions of the CPCA with respect to the issuing of notices to financial institutions. This will allow investigators to obtain the information necessary to allow them to identify and protect property from dissipation in a timely manner. The level of information provided to investigators and the increased penalty for non compliance more closely aligns the position in the CPCA with other Australian jurisdictions.

The Bill provides an explicit mechanism in the CPCA that will enable Queensland to participate in equitable sharing programs with other jurisdictions. The PJCLE report encouraged the facilitation of equitable sharing programs in order to make cross jurisdictional work on proceeds of crime matters easier.

The Bill provides for other minor amendments in order to assist the CPCA to continue to achieve its objectives.

## **Achievement of the Objectives**

### *Unexplained Wealth*

The Bill inserts a new Part 5A into chapter 2 of the CPCA to achieve the objective of introducing unexplained wealth orders.

Chapter 2 is the non-conviction based chapter of the CPCA. It is administered by the Crime and Misconduct Commission and therefore it follows that the commission will have responsibility for administering the new unexplained wealth orders. The Director of Public Prosecutions is the solicitor on the record for all proceeding under the CPCA.

The Bill provides that the State may apply to the Supreme Court for an order requiring a person to pay to the State an amount assessed by the court to be the value of the person's unexplained wealth.

The Bill provides that the Supreme Court must make an unexplained wealth order against a person if the State has satisfied the court that there is a reasonable suspicion that the person:

- has engaged in one or more serious crime related activities; or
- has acquired, without giving sufficient consideration, serious crime derived property from any serious crime related activity of someone else (whether or not the person knew or suspected the property was derived from illegal activity); and
- some or all of the person's current or previous wealth was acquired unlawfully.

Once the Supreme Court has made the unexplained wealth order the onus will be upon the person who is the subject of the unexplained wealth order to prove that their wealth and expenditure were lawfully acquired.

Importantly, the Bill provides the Supreme Court with the discretion to refuse to make the order if it is satisfied it is not in the public interest to do so. The Bill also provides that the court may reduce the amount that would otherwise be payable under an unexplained wealth order if it is satisfied it is in the public interest to do so.

The provision of a public interest discretion to the Supreme Court is used throughout the CPCA. It enables the Supreme Court to make an important value judgment with respect to the specific facts in the proceedings before them, guided by the subject matter, scope and purpose of the CPCA.

The Bill provides for the ability of dependants against whom an unexplained wealth order is made to make an application to the Supreme Court for a hardship order with respect to 'special property'.

The Bill provides that an unexplained wealth order is a debt payable by the person to the State.

In respect of the procedure on the application for an unexplained wealth order and enforcement of the order, the Bill attempts, wherever possible, to adopt consistent provisions with those already provided for in chapter 2 of the CPCA.

### ***Serious Drug Offender Confiscation Order Scheme***

The Bill inserts a new chapter 2A into the CPCA that creates the ‘Serious drug offender confiscation scheme’.

The Bill provides that chapter 2A will be administered by the Crime and Misconduct Commission. As with all proceedings under the CPCA, the Director of Public Prosecutions will act as solicitor on the record.

Chapter 2A provides for the Supreme Court, as a preliminary step, to make restraining orders over property so that the property is preserved for possible future forfeiture under a serious drug offender confiscation order. The Bill attempts wherever possible to adopt provisions consistent with those that are already in use for restraining orders under chapters 2 and 3

The Bill provides for amendments to the *Penalties and Sentences Act 1992* (PSA) that provide for the issuing of a serious drug offence certificate. A court that is sentencing an offender for a serious drug offence must issue such a certificate for each conviction of a serious drug offence. However if the court considers that several offences arise from the same course of offending conduct it must only issue one certificate for those related offences.

The amendments to the PSA also provide a new schedule 1B which prescribes the serious drug offences. The serious drug offences are classified as category A, category B and category C offences. A category A offence is a drug trafficking offence. Category B and C offences are other specified serious drug offences.

The new chapter 2A in the CPCA provides that a serious drug offence for which a serious drug offence certificate is issued is a ‘qualifying offence’ if:-

- it is a category A offence; or
- a category B or category C offence if:-
  - the offence is committed within seven years after committing the following offences:
    - two category B offences;
    - two category C offences;
    - one category B offence and one category C offence.

The Bill provides that the Supreme Court must make a serious drug offender confiscation order against a person if it is satisfied that the person:-

- has been convicted of a qualifying offence for which a serious drug offence certificate has been issued and has not been cancelled; and
- the application for the order was made within six months after issue of the certificate.

The Bill provides that the effect of a serious drug offender confiscation order is that it forfeits all property of the person and all property that was gifted by the person in the six years before the person was charged with the qualifying offence, to the State.

The Bill provides that the person may retain 'protected property' which is property identified in certain sections of the *Bankruptcy Act 1966* (Cth) which would not be divisible amongst a person's creditors in the event of bankruptcy.

Importantly, the Bill provides the Supreme Court with the discretion to refuse to make the order if it is satisfied it is not in the public interest to do so. The Bill also provides that the court may exclude property that would otherwise be forfeited under a serious drug offender confiscation order if it is satisfied it is in the public interest to do so. (see discussion about the use of the public interest discretion throughout the CPCA above).

The Bill provides for the ability of dependants against whom a serious drug offender confiscation order is made to make an application to the Supreme Court for a hardship order with respect to 'special property'.

The Bill achieves its other objectives by way of the proposed amendments to existing legislation described below.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving criminal proceeds confiscation law reform.

## **Estimated cost for government implementation**

Any costs in relation to the amendments will be met from existing agency resources. The future allocation of resources will be determined through the normal budgetary processes.

## **Consistency with fundamental legislative principles**

### *Unexplained wealth orders*

The Bill does provide for a retrospective adverse affect on rights and liberties. The unexplained wealth order inserted into the Bill in chapter 2 of the CPCA will apply to serious crime related activity engaged in by a person whether before or after commencement or serious crime derived property acquired by a person from someone else whether before or after the commencement. However, this is consistent with the position taken on the commencement of the CPCA and furthers the main objective of the CPCA to remove the financial gain and increase the financial loss associated with illegal activity.

The proposed amendments to the CPCA will strengthen provisions which allow for the restraint and forfeiture of proceeds of illegal activity. The amendments will thereby provide for compulsory acquisition of property without compensation. These

amendments are justified by the policy against unjust enrichment. The amendments retain a requirement for the State to prove that there is a reasonable suspicion that the respondent has either engaged in serious crime activity or acquired serious crime derived property from any serious crime related activity of another person (whether or not the respondent knew or suspected that the property was derived from illegal activity). The Bill provides the Supreme Court with an absolute discretion to refuse to make such an order or reduce an order if it considers that it is in the public interest to do so. Finally, the Bill also allows innocent dependants to make applications for relief from hardship with respect to certain assets.

The Bill contains a reversal of the onus of proof in unexplained wealth applications. The Bill provides that once the State has established that there is a reasonable suspicion that the respondent has either engaged in serious crime activity or acquired serious crime derived property from any serious crime related activity of another person (whether or not the respondent knew or suspected that the property was derived from illegal activity), the respondent will be required to prove the lawful derivation of increased wealth and expenditure. Reverse onus mechanisms are central to the capacity of civil based forfeiture schemes to achieve their purpose. The CPCA currently provides for a reversal of the onus of proof with respect to Proceeds Assessment Orders in chapter 2.

### ***Serious drug offender confiscation orders***

The Bill does provide for a retrospective adverse affect on rights and liberties. The serious drug offender confiscation order scheme will apply to criminal activity committed before the commencement of the amendments, for example, a person may be charged after the commencement of the scheme with drug trafficking offences that related to a period before commencement. However, this is consistent with the position taken on the commencement of the CPCA and can be justified by providing for an immediate deterrent effect for those who are currently engaged in serious drug offending behaviour.

The Supreme Court must make an order confiscating all assets under the effective control of certain serious drug offenders and all property gifted by certain serious drug offenders in a six year period if it is satisfied they meet the criteria set out in the Bill. Therefore, the Bill again provides for amendments that compulsorily acquire property without compensation. These amendments are justified because they are consistent with the stated aim of the CPCA to ‘remove the financial gain and increase the final loss associated with illegal activity’. The amendments are further supported by the Government’s policy of deterring people from becoming involved in the commercial supply of illegal drugs and recouping the cost of such offending to the community. The amendments provide the Supreme Court with a discretion to refuse to make such an order or reduce the property to be confiscated under such an order if it considers that it is in the public interest to do so. The amendments also provide for innocent dependants to make applications for relief where the making of an order would cause them hardship.

The Bill provides the Supreme Court with an ability to make examination orders which may compel a person to give evidence about restrained property. Privilege against self incrimination can not be claimed in these proceedings and further there is provision for this evidence to be disseminated to other agencies. This approach is

consistent with facilitating the aim of the CPCA to ‘remove the financial gain and increase the financial loss associated with illegal activity’ as examination orders assist in identifying and locating assets under the effective control of persons eligible to have a serious drug offender confiscation order made against them. Further, the Bill also provides that although a person can not claim privilege in refusing to answer a question or produce a document in the examination order proceedings, such disclosures are not generally admissible in other civil or criminal proceedings (certain specific exceptions are provided in the Bill). It is also consistent with the provision for examination orders that already exist currently in chapters 2 and 3 of the CPCA.

The Bill provides that the Supreme Court must consider an application for a restraining order made to the Court without notice being given to a person whose property is the subject of the application. The amendments are justifiable because the Bill also provides that at any time before finally determining the application the Court may direct the State to give notice to a particular person or a class of persons. These amendments are necessary to provide for the preservation of restrained assets for confiscation because a person who is given notice of a restraining order application may take steps to dissipate those assets before an order is made. These provisions are also consistent with what is provided in the existing chapters 2 and 3 of the CPCA.

#### ***Notices to financial institutions***

The proposed widening of information that can be obtained without warrant represents a further breach of an individual’s right to privacy with respect to their financial records. However, the breadth of information that can be obtained under these provisions is still very narrow in comparison with other Australian jurisdictions and the widening of the provisions is balanced with the requirement that an officer producing a notice must formally record their reasons for using the notice provisions. A new defence to the offence of failing to comply with a financial notice has also been inserted by the Bill. The new widened information provisions reflect the modern reality that large sums of money can be transferred quickly by electronic means and therefore failure to identify and restrain bank accounts quickly puts funds at risk of dissipation by those seeking to avoid the consequences of criminal confiscation. Finally, the amendment furthers the object of the CPCA which is to remove the financial gain and increase the financial loss associated with illegal activity and reflects the amendment to the objects of the CPCA.

The Bill increases the maximum penalty for the offence of failing to comply with a notice to a financial institution from 100 penalty units to 2500 penalty units. This is a significant increase in the maximum penalty. However, it brings the penalty into closer alignment with penalty provisions for similar offences in other Australian jurisdictions.

The equivalent Western Australian offence in section 54 of the *Criminal Property Confiscation Act 2000* (WA) carries a maximum penalty of \$500,000. The equivalent Northern Territory offence in section 14 of the *Criminal Property Forfeiture Act* (NT) carries a maximum penalty of 5000 penalty unit (\$665,000). Other jurisdictions with lower penalties provide for terms of imprisonment as an alternative or in addition to the financial penalty for the offence. The maximum penalty for the offence in section 249E does not include any form of imprisonment.

The increased penalty in section 249A better reflects the cost to the State when there is a failure by a financial institution to comply with a notice so that funds in bank accounts can be identified in a timely manner.

### ***External serious criminal activity***

The Bill provides for an extension of the ability of the State to obtain a person's property without compensation if that person has engaged in external serious activity. However, this is an extension of State power already included in the CPCA and is already available for serious criminal activity that occurs within Queensland. The amendments reflect the reality that serious criminal activity often crosses state borders. The amendments do not alter the current provisions in the CPCA which provide for special requirements with respect to applications relating to external serious criminal activity; for example, applications for restraining orders that relate to external serious crime related activity can only be made if the person whose property it is lives in Queensland or the property is situated in Queensland.

## **Consultation**

Consultation with the following Government departments and agencies occurred: the Department of the Premier and Cabinet; Queensland Treasury and Trade and the Queensland Police Service.

There was consultation by way of letter from the Attorney-General and Minister for Justice to the following key stakeholders advising of the framework for the amendments contained in the Bill: the President of the Court of Appeal; the Chief Justice; the Chief Judge of the District Court; the Chief Magistrate; the Queensland Law Society; the Bar Association of Queensland; the Office of the Director of Public Prosecutions; the Crime and Misconduct Commission; the Queensland Council for Civil Liberties; the Office of the Public Trustee; the Australian Bankers Association; and Legal Aid Queensland. The letter did not contain a copy of a draft Bill.

The Crime and Misconduct Commission and the Office of the Director of Public Prosecutions were consulted separately on the development of the Bill.

## **Consistency with legislation of other jurisdictions**

Most other Australian jurisdictions have provision in their confiscation legislation for unexplained wealth orders. Different versions of 'unexplained wealth' are contained in legislation in Western Australia, Northern Territory, New South Wales, South Australia and the Commonwealth.

Drug trafficking declaration schemes exist in Western Australia (introduced in 1990) and the Northern Territory (introduced in 2003).

## **Notes on provisions**

### **PART 1 – Preliminary**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides for the commencement of the Act.

## **PART 2 – Amendment of *Crime and Misconduct Act 2001***

*Clause 3* provides that Part 2 amends the *Crime and Misconduct Act 2001*. .

*Clause 4* provides for a consequential amendment to section 4 to reflect the amended definitions of ‘confiscation related activity’ and ‘confiscation related investigation’ in Schedule 2 as provided for in clause 12.

*Clause 5* provides for a consequential amendment to section 5 to reflect the amended definitions of ‘confiscation related activity’ and ‘confiscation related investigation’ in Schedule 2 as provided for in clause 12.

*Clause 6* amends section 26 to clarify that when performing its major crime function the Crime and Misconduct Commission may gather evidence for the recovery of property liable for forfeiture under a serious drug offender confiscation order or recovery of property under an unexplained wealth order.

*Clause 7* amends section 86 to provide for a consequential amendment to reflect the amended definitions of ‘confiscation related evidence’ and ‘confiscation related activity’ in Schedule 2. Subsection (2) amends section 86(4)(c) to include information with respect to qualifying offences or suspected qualifying offences to which the search warrant application relates. The term ‘qualifying offence’ refers to the term as used and defined in the new serious drug offender confiscation order scheme inserted into the *Criminal Proceeds Confiscation Act 2002* by clause 42 of the Bill.

*Clause 8* amends section 91(1)(b) to provide that the search warrant must include brief particulars of a qualifying offence or a suspected qualifying offence. This is consequential to the new serious drug offender confiscation order scheme inserted into the *Criminal Proceeds Confiscation Act 2002* by clause 42 of the Bill.

*Clause 9* amends section 92 consequential to the Crime and Misconduct Commission’s role in conducting an investigation for the new serious drug offender confiscation order scheme inserted into the *Criminal Proceeds Confiscation Act 2002* by clause 42 of the Bill. The power to detain under section 92(1)(f) is extended to where the officer reasonably suspects the person has been involved in the qualifying offence. Subsection (2) provides that for the purposes of section 92, a qualifying offence for a search warrant means the qualifying offence or suspected qualifying offence to which the warrant relates. See also the definition of ‘qualifying offence’ that relates to ‘confiscation related evidence’ that has been added to Schedule 2 in clause 12.

*Clause 10* provides for a consequential amendment of section 110A to reflect the amended definitions of ‘confiscation related evidence’, ‘confiscation related activity’ and ‘confiscation related investigation’ as provided in clause 12.

*Clause 11* provides for a consequential amendment to section 166(4)(a) to reflect the amended definitions of ‘confiscation related activity’ and ‘confiscation related investigation’ as provided in clause 12.

*Clause 12* provides for amended definitions of ‘confiscation order’, ‘confiscation related evidence’, ‘confiscation related activity’ and ‘confiscation related investigations’. These amended definitions take into account the introduction of unexplained wealth orders and serious drug offender confiscation orders into the *Criminal Proceeds Confiscation Act 2002* (see clauses 40 and 42 respectively). The Crime and Misconduct Commission will administer the new schemes (see clause 15). The amended definitions not only recognise the introduction of unexplained wealth and serious drug offender confiscation orders but also recognise that chapter 2 (clause 40) and chapter 2A (clause 42) provide for recovery on two distinct basis. Chapter 2 does not depend on a charge or conviction whereas chapter 2A relates to the charge or conviction of particular serious drug offences.

### **PART 3 – Amendment of *Criminal Proceeds Confiscation Act 2002***

*Clause 13* provides that Part 3 amends the *Criminal Proceeds Confiscation Act 2002* (CP Act).

*Clause 14* amends the long title.

*Clause 15* amends section 4.

Subsection (1) amends the objects contained in section (4)(2) to reflect the new concepts introduced by the Bill and also clarify the objects of the CP Act in its entirety.

Subsections (2), through to (5) amend section 4 to provide for the introduction of a third scheme into the CP Act, being the scheme provided in the new chapter 2A. The amendments set out the distinct basis for the three schemes in chapters 2, 2A and 3 and clarify which entity is responsible for the administration of each of those chapters. The amendments further clarify that despite any similarities between the three schemes, each scheme is separate and none of the schemes should be interpreted as limiting the other unless expressly provided otherwise.

Subsection (6) provides for the renumbering of the subsections in section 4 to accommodate the amendments.

*Clause 16* amends section 11 to provide that property in a serious drug offender confiscation order that is expressed to apply to property in another State will apply

to property in the other State in the circumstances set out in section 11(2) (a) or (b).

*Clause 17* amends section 12 as a consequence of the insertion of the new serious drug offender confiscation order scheme as inserted by new chapter 2A (refer clause 42).

*Clause 18* amends section 13 to reflect the introduction of unexplained wealth orders (see clause 40).

*Clause 19* amends section 26 to reflect the new unexplained wealth orders as inserted by clause 40. .

*Clause 20* amends section 28(4) to clarify that the State may apply to have property restrained because a person is suspected of having engaged in one or more external serious crime related activities.

*Clause 21* amends section 29(2) to clarify that the State may apply to have property restrained because a person is suspected of having engaged in one or more external serious crime related activities.

*Clause 22* amends section 30A(2) to provide that the Court must consider an application for a restraining order without notice having been given to the person whose property is the subject of the application if an ‘appropriate officer’ (defined in section 12 of the CP Act) asks the court to do so.

*Clause 23* amends section 33 of the CP Act to extend the ability of the Supreme Court to impose a condition about dealing with restrained property by agreement to other orders made under the CP Act.

*Clause 24* amends section 34(3)(a) to provide that before the Supreme Court can impose a condition providing for payments out of restrained funds in section 34(1) it must be satisfied that the person has no source of income to meet the expenses or debt.

*Clause 25* amends section 36 to reflect the introduction of unexplained wealth orders into chapter 2 of the CP Act (See clause 40).

*Clause 26* amends section 48 to reflect the introduction of unexplained wealth orders into chapter 2 of the CP Act (See clause 40).

*Clause 27* amends section 52 by omitting subsection (5). The terms contained therein are transferred to the Dictionary in schedule 6 so that they apply across the whole of the CP Act (see clause 60).

*Clause 28* amends section 54 to reflect the introduction of unexplained wealth orders into chapter 2 of the CP Act (See clause 40).

*Clause 29* amends section 58A to clarify that the State may apply to have property forfeited if a person has engaged in one or more external serious crime related activities.

*Clause 30* amends section 62 by omitting subsection (3). The definition of 'dependant' is transferred by clause 60 into the Dictionary in schedule 6 so the term applies across the whole of the CP Act.

*Clause 31* amends section 69(2) to reflect the introduction of unexplained wealth orders into chapter 2 of the CP Act (See clause 40).

*Clause 32* amends section 77 to provide that the State must give notice of an application for a proceeds assessment order to the person against whom the order is sought and anyone else the State reasonably suspects may be affected by order.

*Clause 33* amends section 79 to reflect the introduction of serious drug offender confiscation orders into chapter 2A of the CP Act (See clause 42).

*Clause 34* amends section 80 to reflect the introduction of serious drug offender confiscation orders into chapter 2A of the CP Act (See clause 42).

*Clause 35* creates a new section 80A which provides that within 28 days after a proceeds assessment order is made, notice of the order and a dependant's right to apply for a hardship order under section 89A must be provided to all known dependants of the person against whom the proceeds assessment order is made and anyone else who the commission or commission officer reasonably suspects may be affected by the order. Subsection (3) provides that the court may require notice to also be provided to any person that the court considers appropriate.

*Clause 36* amends sections 83(2) and (3) by removing the word 'an' before 'illegal activity'. This amendment is intended to make clear the original intention of the amendment to section 83 in the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009* i.e. that the State is not required in such cases to prove that the proceeds were derived from an illegal activity.

*Clause 37* amends section 87.

Subsection (1) amends section 87(2) to provide that the State must provide written notice to certain people that an application has been made to declare particular property to be under the effective control of a person against whom a proceeds assessment order is made.

Subsection (2) creates a new section 87(8) which makes it clear that proceeds assessment orders can not be enforced against property that becomes the subject of a hardship order made under new section 89C.

*Clause 38* amends section 88.

Subsections (1) and (2) amend section 88(3)(d) to provide for the introduction of chapter 2A into the CP Act.

Subsection (3) amends section 88(3) to provide that a charge under section 88 stops having effect if a hardship order is made excluding property from the operation of the charge.

Subsection (4) provides that charges must be released as soon as practicable if the charge otherwise stops having effect under section 88(3).

Subsection (5) removes the definitions of the terms ‘appropriate form’ and ‘registrar’ from section 88(11). These definitions are transferred to the Dictionary in Schedule 6 (see clause 60).

*Clause 39* inserts a new ‘Division 4’ into chapter 2, Part 5. Division 4 deals with applications for and the making of hardship orders under chapter 2, Part 5 of the CP Act.

New section 89A sets out how and when a dependant of a person against whom a proceeds assessment order is made may apply to the Supreme Court for a hardship order. Subsection (2) provides the time limits within which an application can be made. Subsections (3) and (4) set out matters about which the applicant must provide the State and other persons with written notice. Subsections (5) and (6) provide that the notice must be given at least 28 days before the hearing date of the application and must be accompanied by any affidavit that the applicant intends to rely on at the hearing of the application. Subsection (7) provides that the State must be a party to the application. Subsection (8) provides that anyone who is given notice of the application may appear at the hearing of the application. Subsections (9) and (10) provide that the State must give notice if it intends to oppose the application and must give notice of the grounds for opposing the application.

New section 89B provides that the Supreme Court may give leave for a dependant to apply for a hardship order after the end of a period mentioned in section 89A if it is satisfied that the delay in applying was not because of the dependant applicant’s neglect.

New section 89C subsections (1) and (2) sets out the matters the Supreme Court must be satisfied of before exercising its discretion to make a hardship order. Subsection (3) defines the ‘special property’ that may be the subject of a hardship order.

New Section 89D provides that the State must not, without leave of the court, dispose of specified property during the hardship order period. Subsection (2) defines the term ‘hardship order period’ for the purpose of the new section 89D.

*Clause 40* inserts a new Part 5A into chapter 2. Part 5A provides for unexplained wealth orders.

Division 1 of the new Part 5A provides for the application for, and making and variation of, unexplained wealth orders.

New section 89E sets out the meaning of ‘current or previous wealth’.

New section 89F subsections (1) and (2) provide for when and how the State may apply to the Supreme Court for an order requiring a person to pay to the State an amount assessed by the court to be the value of the person’s unexplained wealth. Subsection (3) provides that a person given notice under section 89F may appear at the hearing of the application. Subsection (4) clarifies that the absence of a person given notice under section 89F does not prevent the Supreme Court from making an unexplained wealth order.

New section 89G subsection (1) provides for when the Supreme Court must make an unexplained wealth order against a person. Subsection (3) clarifies the matters that the court needs to satisfy itself of with respect to subsection (1)(a). Subsection (2) provides that a court may refuse to make an unexplained wealth order if it is satisfied that it is not in the public interest to do so. Subsections (4) and (5) provide for the matters which the Court must be satisfied of and evidence that must be produced if the application for unexplained wealth relates only to external serious crime related activity. Subsection (6) provides the court with ability to make the ancillary orders the court considers appropriate.

New section 89H provides that an unexplained wealth order must state the amount required to be paid to the State as the value of the person’s unexplained wealth and that the amount must be assessed under the new Part 5A, Division 2. Subsection (3) provides that the court may reduce the amount that would otherwise would be payable as assessed under Division 2 if it is satisfied it is in the public interest to do so.

New section 89I provides for an unexplained wealth order to increase in circumstances where other orders under the CP Act end. Subsection (1) sets out the relevant circumstances in which 89I applies. Subsection (2) provides that the State may apply to the Supreme Court to increase the amount payable under the order. Subsection (3) provides that if the Supreme Court considers an increase appropriate it may vary the amount payable under the unexplained wealth order.

New section 89J provides for notice of an unexplained wealth order to be provided to certain persons. Subsection (1) sets out who the notice must be provided to and provides that the notice must be provided within 28 days of the making of an unexplained wealth order. Subsection (2) sets out the documents that must be included in the notice. Subsection (3) provides that the court can order notice to be given to any person the court considers appropriate in a time and manner which the court considers appropriate.

Division 2 of the new Part 5A provides for the assessment of the value of unexplained wealth.

New section 89K provides that Division 2 applies to property in Queensland or elsewhere.

New section 89L sets out the way in which the amount of unexplained wealth of a person must be assessed under the new Part 5A.

Division 3 of the new Part 5A provides for the operation of unexplained wealth orders.

New section 89M provides that an amount payable under an unexplained wealth order is a debt payable to the State that may be enforced as if it were a money order made by the Supreme Court in a civil proceeding taken by the State against the person.

New section 89N provides for the enforcement of an unexplained wealth order against property declared to be under the 'effective control' of the person against whom the court has made an unexplained wealth order (the controlling person). The term 'effective control' is defined in section 20 of the CP Act. Subsection (1) provides for the manner in which the State may apply to the Supreme Court for an order declaring that particular property is under the 'effective control' of a controlling person. Subsection (2) sets out who must be given written notice of the application. Subsection (3) provides that the controlling person or anyone else who claims an interest in the property may appear at the hearing of the application. Subsection (4) provides for the orders the court may make declaring that the property is available to satisfy the unexplained wealth order. Subsection (5) provides that the unexplained wealth order may be enforced against the property to the extent stated in the declaration. Subsection (6) provides that the court can make a restraining order in relation to the property. Subsection (7) provides that the absence of a person required to be given notice of the application does not prevent the court from making an order. Subsection (8) provides that an order can not be enforced under subsection (5) if the property becomes the subject of a hardship order made under section 89S.

New section 89O provides for charges to be placed on the property of a person against whom an unexplained wealth order is made in order for the State to secure payment of the unexplained wealth order. Subsection (1) provides that all the interests of the person in the property are charged in favour of the State to the extent necessary to secure payment of any amount of the unexplained wealth order that remains unpaid. Subsection (2) provides for certain things with respect to charges under subsection (1). Subsection (3) provides for circumstances when a charge under subsection (1) stops having effect. Subsection (4) provides that property charged under subsection (1) may be properly registered under the law by the public trustee or an appropriate officer. The term 'appropriate officer' is defined in section 12(5) of the CP Act. Subsections (5) through to (10) make specific provision for the registration of a charge under the *Land Act 1994* or the *Land Title Act 1994*. Subsection (11) provides for the definition of the term 'relevant person' in the new section 89O.

New section 89P provides in subsection (1) that a quashing of a conviction for a serious criminal offence in relation to the serious crime related activity that formed the basis of an unexplained wealth order does not affect the validity of the unexplained wealth order. Subsection (2) provides that if an unexplained wealth order is made against a deceased person the order has effect before final distribution of the estate as if the person had died the day after the making of the order.

Division 4 of the new Part 5A provides for hardship orders that can be made by a dependant of a person against whom an unexplained wealth order has been made.

New section 89Q sets out how and when a dependant of a person against whom an unexplained wealth order is made may apply to the Supreme Court for a hardship order. Subsection (2) provides the time limits within which an application can be made. Subsections (3) and (4) set out matters about which the applicant must provide the State and other persons with written notice. Subsections (5) and (6) provide that the notice must be given at least 28 days before the hearing date of the application and must be accompanied by any affidavit that the applicant intends to rely on at the hearing of the application. Subsection (7) provides that the State must be a party to the application. Subsection (8) provides that anyone who is given notice of the application may appear at the hearing of the application. Subsections (9) and (10) provide that the State must give notice if it intends to oppose the application and must give notice of the grounds for opposing the application.

New section 89R provides that the Supreme Court may give leave for a dependant to apply for a hardship order after the end of a period mentioned in section 89Q if it is satisfied that the delay in applying was not because of the dependant applicant's neglect.

New section 89S subsections (1) and (2) sets out the matters the Supreme Court must be satisfied of before exercising its discretion to make a hardship order. Subsection (3) defines the 'special property' that may be the subject of a hardship order.

New Section 89T provides that the State must not, without leave of the court, dispose of specified property during the hardship order period. Subsection (2) defines the term 'hardship order period' for the purpose of the new section 89D.

*Clause 41* amends section 90.

Subsection (1) provides that unexplained wealth orders are to be treated in the same way as proceeds assessment orders for the purposes of sections 90(2) and 90(3) respectively.

Subsection (2) inserts a new section 90(4) that provides that a proceeds assessment order and an unexplained wealth order can not both be made on the basis of the same serious crime related activity. It also inserts a new section 90(5). New section 90(5)(a) provides that once the State has unsuccessfully applied for a proceeds

assessment order on the basis of a person's serious crime related activity the State can not then apply for an unexplained wealth order on the basis of the same serious crime related activity. New section 90(5)(b) provides that once the State has unsuccessfully applied for an unexplained wealth order on the basis of a person's serious crime related activity the State can not then apply for a proceeds assessment order on the basis of the same serious crime related activity. The term 'serious crime related activity' is defined in section 16 of the CP Act.

*Clause 42* Inserts a new chapter 2A entitled 'Serious drug offender confiscation order scheme' into the CP Act.

Part 1 of the new chapter 2A provides preliminary sections.

New section 93A provides an explanation of the new chapter 2A.

New section 93B provides that the new chapter 2A applies in relation to qualifying offences or pre-qualifying offences for which a person is charged after the commencement of the section, whether or not the offence was committed before or after the commencement of the section. The definition of the terms 'qualifying offence' and 'pre-qualifying offence' can be found in the new section 93F.

Part 2 of the new chapter 2A provides for interpretation sections.

New section 93C provides definitions for the new chapter 2A.

New section 93D provides for the meaning of the term 'effective control' in the new chapter 2A.

New section 93E provides for the meaning of the term 'protected property' in the new chapter 2A.

New section 93F provides for the meaning of the terms 'qualifying offence' and 'pre-qualifying offence' in the new chapter 2A.

Part 3 of the new chapter 2A provides for restraining orders.

Division 1, Part 3 of the new chapter 2A provides for interpretation.

New section 93G defines the term 'prescribed respondent' for the purpose of Part 3 in the new chapter 2A.

Division 2, Part 3 of the new chapter 2A provides for the making and hearing of applications for restraining orders.

New section 93H provides for the manner in which the State is to apply for a restraining order under Part 3. Subsection (1) provides that the State may apply to the Supreme Court for an order restraining a person from dealing with property stated in the order other than in a stated way or in stated circumstances. Subsection (2) provides for circumstances in which an application may be without

notice to a prescribed respondent or another person to whom it relates. Subsection (3) provides that the application must be supported by an affidavit. Subsection (4) sets out the property to which an application may relate. Subsection (5) provides that the Court may refuse to consider an application until further information required by the Court is provided.

New section 93I sets out the general requirements for the affidavit that must support the application for a restraining order.

New section 93J sets out the particular requirements for the affidavit that must support the application for restraining order when the property that the State is seeking to restrain is not the property of the prescribed respondent.

New section 93K sets out who the State must give notice to when it makes an application for a restraining order and the form that notice must take.

New section 93L subsection (1) provides that the Supreme Court can only hear an application for a restraining order if it is satisfied that the person whose property is the subject of the application has received reasonable notice of the application. Subsection (2) provides that despite subsection (1) the court must consider an application without notice if the 'appropriate officer' asks the Court to do so. Subsection (3) provides that despite subsection (2) the Court may at any time before finally deciding the application, direct that notice be given to a person or class of persons in a manner and within a time frame that the Court considers appropriate. Subsection (4) provides that any person who is the subject of the application or claims to have an interest in the property that is subject of the application may appear at the hearing.

Division 3, Part 3 of the new chapter 2A provides for the making of restraining orders.

New section 93M provides for the making of a restraining order. Subsection (1) sets out the circumstances in which the Supreme Court must make a restraining order. Subsection (2) sets out the circumstances in which the Court may refuse to make a restraining order. Subsection (3) provides that the Crime and Misconduct Commission or the Commissioner of Police may give the court the undertakings the court requires. Subsection (4) sets out the circumstances about which the court must be satisfied before making a restraining order in relation to a prescribed respondent who is about to be charged with a qualifying offence. Subsection (5) provides that the making of a restraining order does not prevent the person whose property is restrained under the order from giving Legal Aid Queensland a charge over the property as a condition of an approval to give legal assistance in relation to certain proceedings set out in the subsection.

New section 93N provides that the Supreme Court does not need to be satisfied that there is a risk that property may be dealt with in a way that would defeat the operation of the CP Act in order to make a restraining order.

New section 93O provides that it is a condition of every restraining order that the person whose property is restrained under the order must preserve the property. Subsection (2) provides for other conditions the Court may make.

New section 93P provides for conditions that the Supreme Court may impose for dealing with restrained property.

New section 93Q provides for conditions the Supreme Court may impose about particular payments to be made out of restrained property.

New section 93R provides that the Supreme Court may order the Public Trustee to take control of restrained property.

New section 93S provides for the duration of restraining orders made under Part 3 of the new chapter 2A.

Division 4, Part 3 of the new chapter 2A provides for the making of other orders.

New section 93T provides that Supreme Court may make other orders it considers appropriate including but not limited to orders in the new sections 93V and 93W. Subsection (2) provides that despite subsection (1) the only orders the Court can make with respect to certain legal proceedings set out in the subsection is under the new section 93V(1)(f). Subsection (3) sets out when a Court may make an order under section 93T. Subsections (4) and (5) set out who may apply for an order other than an investigation order. Subsection (6) provides for the notice that must be given for applications under subsection (4). Subsection (7) provides for the notice that must be given for applications made under subsection (5). Subsection (8) provides that the State may apply for an investigation order. Subsection (9) provides for notice that must be given with respect to an application for an investigation order. Subsection (10) provides that subsections (6), (7) and (9) do not apply to applications made for a restraining order without notice. Subsection (11) provides that the State does not need to provide notice for an application for an investigation order if notice does not have to be given because of section 93U(2).

New section 93U provides for the hearing of applications for other orders. Subsection (1) provides that the Supreme Court must be satisfied that reasonable notice of the application has been provided to persons whose property is the subject of the application. Subsection (2) provides for when the Court must consider an application for an investigation order without notice. Subsection (3) provides that despite subsection (2) the Supreme Court may, before deciding the application, direct the State to give notice to any person or persons the Court considers appropriate. Subsection (4) provides for who can appear at the hearing of the application.

New section 93V provides for administration orders that the Supreme Court may make with respect to restraining orders under Part 3 of the new chapter 2A. Subsection (2) creates an offence for contravening an order made under section

93V which provides for a maximum penalty of 100 penalty units or two years imprisonment.

New section 93W provides for investigation orders that the Supreme Court may make under part 3 of the new chapter 2A.

Division 5, part 3 of the new chapter 2A sets out provisions for particular orders under part 3.

Subdivision 1 of Division 5 sets out provisions for examination orders made under Part 3 of the new chapter 2A.

New section 93X sets out the court officer's power to conduct examinations.

New section 93Y provides that an examination of a person must be conducted at the time and place stated in the examination order.

New section 93Z provides for examinations to take place in private but allows the court officer to give directions about who may be present at an examination and sets out a list of specific people who are entitled to be present at an examination.

New section 93ZA provides for the role that the examinee's lawyer may play at the examination.

New section 93ZB provides for the recording of evidence at an examination.

New section 93ZC provides that a person being examined under an examination order is not excused from answering a question or from producing a document or other thing on the grounds set out in subsection (1). Subsection (2) provides that a statement or disclosure made by a person in answer to a question asked in an examination order, or document or other thing produced in an examination is not admissible in any civil or criminal proceedings other than those specifically set out at sub-subsections (a), (b), (c) and (d).

New section 93ZD creates an offence of contravening an examination order with a maximum penalty of 100 penalty units or two years imprisonment.

New section 93ZE provides for how examination information may be disseminated and how it may be used in a proceeding.

Subdivision 2 of Division 5 sets out provisions for property particulars orders made under Part 3 of the new chapter 2A.

New section 93ZF provides that a person is not excused from complying with a property particulars order on the ground that the statement of particulars may tend to incriminate the person or make the person liable to forfeiture.

New section 93ZG creates an offence of contravening a property particulars order and provides for a maximum penalty of 100 penalty units or two years imprisonment.

Subdivision 3 of Division 5 sets out provisions for property seizure orders made under Part 3 of the new chapter 2A.

New section 93ZH provides for property seizure orders made by the Supreme Court that are directed to a commission officer.

New section 93ZI provides for property seizure orders made by the Supreme Court that are directed to a police officer.

Division 6, Part 3 of the new chapter 2A sets out provisions for notice of restraining orders and other orders made under Part 3.

New section 93ZJ provides for the manner and form of the notice which must be given with respect to restraining orders and other orders made under Part 3 of the new chapter 2A. Subsection (6) clarifies that orders do not stop having effect because a person has not been given a copy of the order as required under subsection (2).

Division 7, Part 3 of the new chapter 2A sets out provisions for orders that the Supreme Court may make excluding property from the operation of a restraining order made under Part 3.

Subdivision 1 of Division 7 makes provisions for when an application is made by the prescribed respondent.

New section 93ZK provides that a prescribed respondent may make an application to the Supreme Court to exclude particular property from the restraining order. Subsections (2) through to (9) set out the procedure that must be followed in the event of such an application.

New section 93ZL provides for the circumstances in which the Supreme Court may make an order excluding particular property of the prescribed respondent from the restraining order.

Subdivision 2 of Division 7 makes provisions for when an application is made by a person other than the prescribed respondent.

New section 93ZM provides that a person other than the prescribed respondent whose property is restrained under a restraining order may make an application to the Supreme Court to exclude particular property from the restraining order. Subsections (2) through to (8) set out the procedure that must be followed in the event of such an application. Subsection (9) defines 'relevant person' for new section 93ZM.

New section 93ZN provides for the circumstances in which the Supreme Court may make an order excluding particular property of a person other than the prescribed respondent from the restraining order. Subsection (3) provides that the court may require the applicant to give the undertakings about the applicant's property the Court considers appropriate.

Division 8, Part 3 of the new chapter 2A sets out provisions for an application for the extension in the duration of a restraining order made under Part 3. The new section 93ZO provides that the State may make such an application. It also provides for who must be given notice of those applications and that all persons entitled to be given notice may appear at the hearing of the application.

Division 9, Part 3 of the new chapter 2A sets out provisions for applications that can be made by the State to the Supreme Court for an order providing for the sale of restrained property before an application for a serious drug offender confiscation order has been decided.

The new section 93ZP provides for when such applications can be made, who must be given notice of the application and matters of which the Supreme Court must be satisfied before making an order under the section. Subsection (5) provides that the proceeds of a sale under an order made under this section are taken to be restrained under the restraining order applying to the property that is the subject of the application.

Division 10, Part 3 of the new chapter 2A sets out provisions for applications that can be made to the Supreme Court for an order revoking the restraining order.

New section 93ZQ provides that a person whose property is subject to the restraining order and who was not given notice of the application for the restraining order may apply to the Supreme Court to revoke the order. Subsections (2) through to (5) provide for the procedure that must be followed in the event of such an application. Subsection (6) provides that the Court may revoke the restraining order if it is satisfied that there would be no basis for making a restraining order in relation to the property.

New section 93ZR provides for who must be given notice of the revocation of a restraining order.

Division 11, Part 3 of the new chapter 2A sets out other provisions about restraining orders.

New section 93ZS provides for the registration of restraining orders.

New section 93ZT creates an offence of contravening a restraining order and provides a maximum penalty of 350 penalty units or seven years imprisonment. Subsection (2) provides a defence to the offence created in subsection (1). Subsection (3) provides that a dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith. Subsection (4) provides that the defence in subsection (2)

does not apply to restrained motor vehicles or outboard motors that are registered under the *Personal Property Securities Act 2009* (Cth).

New section 93ZU provides that a restraining order under Part 3 does not prevent the enforcement of any other order made under the CP Act against restrained property.

New section 93ZV provides that the Supreme Court may make further orders it considers appropriate with respect to a restraining order if either of the events specified in subsection (1) occur. Subsection (3) provides that such orders may be made to take effect immediately, at a stated time or when a stated event happens.

New section 93ZW provides that a restraining order is sufficient authority for a person whom the order is directed to take all steps necessary or desirable to give effect to the order.

Part 4 of the new chapter 2A provides for serious drug offender confiscation orders.

Division 1, Part 4 of the new chapter 2A provides for interpretation for Part 4.

New section 93ZX provides for the definition of 'prescribed respondent'.

New section 93ZY provides for the meaning of 'serious drug offender confiscation order'.

Division 2, Part 4 of the new chapter 2A provides for an application for a serious drug offender confiscation order.

New section 93ZZ subsections (1) through to (3) provide for when the State may apply to the Supreme Court for a serious drug offender confiscation order against a prescribed respondent. Subsection (4) provides that an application can not be set down for hearing less than 28 days after the filing of the application. Subsection (5) provides that reasonable notice of the application must be provided to the persons specified in the subsection. Subsection (6) provides a person given notice under subsection (5) may appear at the hearing of the application. Subsection (7) provides that the absence of a person required to be given notice under subsection (5) at a hearing of the application does not prevent the Court from making a serious drug offender confiscation order. Subsections (8) and (9) set out particulars that must be included in the application.

New section 93ZZA provides that a prescribed respondent may file a response to an application made under section 93ZZ. Subsection (2) sets out the information that must be included in the response. Subsections (3) and (4) provide that the response must be accompanied by any affidavit that will be relied on and must be filed with the Court and provided to the State at least 14 days before the hearing date of the application.

Division 3, Part 4 of the new chapter 2A provides for the making and effect of a serious drug offender confiscation order.

New section 93ZZB provides for the making of a serious drug offender confiscation order. Subsection (1) provides that the Supreme Court must make a serious drug offender confiscation order against the prescribed respondent if satisfied of the matters set out in subsections (1) (a) and (b). Subsection (2) provides that the Court may refuse to make a serious drug offender confiscation order if satisfied it is not in the public interest to make the order. Subsection (3) clarifies that if a proceeds assessment order, unexplained wealth order or pecuniary penalty order has been made on the basis of illegal activity constituting the qualifying offence, a serious drug offender confiscation order can not be made on the basis of the qualifying offence. Subsection (4) provides that the Court may also make the ancillary orders it considers appropriate when making the serious drug offender confiscation order. Subsection (5) provides that the serious drug offender confiscation order must list all the property set out in subsection (1)(a) and (b). Subsection (6) clarifies that subsection (5) does not limit the property that is forfeited under section 93ZZF or is protected property.

New section 93ZZC provides that particular property is only forfeited if it is listed in the serious drug offender confiscation order. Subsection (1) sets out the relevant property. Subsection (2) provides that as part of an application under 93ZZ the State may ask the Court to decide that particular property is property of the type set out in subsection (1). Subsection (3) provides that if the Court is satisfied that the property is property mention in subsection (1), the Court must include the property in the serious drug offender confiscation order. Subsection (4) provides that the serious drug offender confiscation order may be enforced against the property to the extent stated in the order.

New section 93ZZD sets out the circumstances in which the Supreme Court may make provision in a serious drug offender confiscation order about the discharge of encumbrances over any property that is to be forfeited. Subsection (3) makes clear that the Crime and Misconduct Commission or the Commissioner of Police may give the undertakings required from the State in subsection (2).

New section 93ZZE provides for the way and the time within which notice of a serious drug offender confiscation order must be given to the persons set out in subsections (1)(a) and (b). Subsection (2) sets out what documents must be provided when notice is given. Subsection (3) provides that notice must also be provided to any persons the Court consider appropriate in the way and within the time the Court considers appropriate.

New section 93ZZF provides for the effect of a serious drug offender confiscation order on the property that is subject to the order. Subsection (1) provides that such property is forfeited to the State and vests absolutely in the State upon the making of the order. Subsection (2) provides that the Supreme Court may exclude property that would otherwise be forfeited if the Court is satisfied that it is not in the public interest to include the property in the order. Subsection (3) provides that subsection (1)(b) is subject to other provisions in the CP Act about property vested or to be

vested in the State (e.g. section 213 of the CP Act provides that forfeited property is not to be disposed of during an appeal period. Also see new section 93ZZG). Subsection (4) provides that this section applies subject to section 93ZY(2). Subsection (5) provides that the Supreme Court may give any necessary or convenient directions for giving effect to the forfeiture of the property.

New section 93ZZG provides that without limiting section 213 of the CP Act, property forfeited under a serious drug offender confiscation order must not without the leave of the court be disposed of during the hardship order period defined in subsection (3).

New section 93ZZH creates an offence of dealing with forfeited property and provides a maximum penalty of 350 penalty units or seven years imprisonment. Subsection (2) provides a defence to the offence in subsection (1). Subsection (3) provides that dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

New section 93ZZI provides for the way in which chapter 2A applies to a serious drug offender confiscation order that is made against a deceased person.

New section 93ZZJ provides for the way in which chapter 2A applies to jointly owned restrained property in the event of the death of one of the joint owners.

New section 93ZZK provides for the effect of an appeal against a conviction of a person for a qualifying or a pre-qualifying offence on an application for a serious drug offender confiscation order.

New section 93ZZL provides for the effect of an amendment to a serious drug offence certificate after a serious drug offender confiscation has been made. Subsection (2) provides that in these circumstances a serious offender confiscation order is not affected.

New section 93ZZM provides that the making of a restraining order under chapter 2A does not prevent the later making of a restraining order under chapters 2 or 3. However, subsection (2) provides that this section does not limit section 257 of the CP Act which provides that a restraining order under the respective chapters can not be made to be in force at the same time (see clause 55).

New section 93ZZN provides for restrictions on the making of other orders under the CP Act if a serious drug offender confiscation order is applied for or made.

Division 4, Part 4 of the new chapter 2A provides for the making of orders excluding particular property from a serious drug offender confiscation order due to hardship.

New section 93ZZO provides that an application may be made to the Supreme Court for a hardship order by a person who is a dependant of a person against whom a serious drug offender confiscation order is made. Subsection (2) provides

that unless the Court gives leave under section 93ZZP the application must be made within three months after the serious drug confiscation order was made. Subsections (3) and (4) provide who the applicant must provide written notice of the application to and what information the application must include. Subsection (5) provides that notice must be provided at least 28 days before the hearing date of the application. Subsection (6) provides that written notice must be accompanied by any affidavit that the applicant intends to rely on at the hearing of the application. Subsection (7) provides that the State must be a party to the application. Subsection (8) provides that anyone else who is given notice of the application may appear at the hearing of the application. Subsections (9) and (10) provide that the State must give notice of any intention to oppose the application and provide the grounds for its opposition in the notice.

New section 93ZZP provides that the Supreme Court may give a dependant leave to apply for a hardship order after the period mentioned in new section 93ZZO(2) if it is satisfied that the delay in applying was not because of the applicant dependant's neglect.

New section 93ZZQ provides for the making of a hardship order by the Supreme Court. Subsection (1) sets out the circumstances in which the Court can make a hardship order in relation to 'special property'. Subsection (2) provides that a Court must not make a hardship order in favour of an adult dependant unless satisfied that the dependant had no knowledge of the relevant qualifying offence or any relevant pre-qualifying offence. Subsection (3) provides for definitions of the terms 'relevant' and 'special property'.

New section 93ZZR provides for the hardship orders the Supreme Court can make. Subsection (2) provides that the Court must only make a hardship order it considers necessary to prevent hardship to the dependant. Subsection (3) provides for ancillary orders the Court can make if the dependant applicant is under 18 years of age.

Division 5, Part 4 of the new chapter 2A provides for the discharge of serious drug offender confiscation orders.

New section 93ZZS provides for circumstances in which a serious drug offender confiscation order is discharged.

New section 93ZZT provides for the notice that must be provided by the State if a serious drug offender confiscation order is discharged for reasons set out in new section 93ZZR.

New section 93ZZU provides a mechanism for a person to apply to the Attorney-General for the return of property in the event that a serious drug offender confiscation order is discharged for reasons set out in new section 93ZZS. Subsections (3) and (4) provide that as soon as practicable after receiving the notice, the Attorney-General must arrange for the property to be transferred and may do or authorise the doing of anything necessary or convenient to affect the transfer.

New section 93ZZV provides a mechanism for a person to apply to the Supreme Court for an order declaring the value of property in the event that a serious drug offender confiscation order is discharged for the reasons set out in new section 93ZZS. Subsections (5) and (6) provide that after the Court makes the order, a person may apply to the Attorney-General for payment of the amount in the order and the Attorney-General must pay the amount declared in the order.

*Clause 43* provides a consequential amendment to section 118 that reflects the change from ‘serious drug offence’ to ‘major drug offence’ in the schedule 6 dictionary of the CP Act (see clause 58).

*Clause 44* provides a consequential amendment to section 119 which reflects the change from ‘serious drug offence’ to ‘major drug offence’ in the schedule 6 dictionary of the CP Act (see clause 58).

*Clause 45* amends section 125 so that section 125 will apply to all debts payable under the CP Act.

*Clause 46* amends section 143 subsection (5) to reflect the removal of the definitions of the terms contained within that subsection to the schedule 6 dictionary of the CP Act (see clause 60).

*Clause 47* provides a consequential amendment to section 184 which reflects the change from ‘serious drug offence’ to ‘major drug offence’ in the schedule 6 dictionary of the CP Act (see clause 60). Subsection (2) provides for a consequential amendment to reflect the introduction of serious drug offender confiscation orders in chapter 2A.

*Clause 48* amends section 186 to reflect the introduction of serious drug offender confiscation orders in chapter 2A.

*Clause 49* amends section 213 to reflect the introduction of serious drug offender confiscation orders in chapter 2A.

*Clause 50* amends section 214. Subsection (1) provides an Editor’s Note, referring to the new section 264A which provides for payments out of forfeited property under an equitable sharing program. Subsection (2) amends section 214(5) to reflect the introduction of serious drug offender confiscation orders in chapter 2A.

*Clause 51* provides a consequential amendment to section 219 to provide for the application of section 219 to serious drug offender confiscation orders and unexplained wealth orders.

*Clause 52* amends section 249B.

Subsection (1) amends the information that can be sought from a financial institution about accounts held with the financial institution in section 249B(1).

Subsection (2) amends what must be stated in a financial notice to a financial institution and inserts a new section 249B(2A) that provides that the notice may state any other details that may assist the financial institution to identify the account.

Subsection (3) inserts a new section 249B(4) that provides that the police officer or commission officer must make a written record of the reasons that the officer reasonably believes that the giving of the notice is required in subsection (2). It also inserts a new section 249B(5) which clarifies that a notice may relate to an account held in more than one name.

Subsection (4) provides for renumbering of section 249B.

*Clause 53* amends section 249E by changing the maximum penalty from 100 penalty units to 2500 penalty units. It also inserts a new section 249E(2) which creates a defence to the offence contained in section 249E.

*Clause 54* provides consequential amendments to section 256A to provide for the application of section 256A to the new chapter 2A.

*Clause 55* provides consequential amendments to section 257 to provide for the application of section 257 to the new chapter 2A.

*Clause 56* provides for consequential amendments to section 260 to provide for the application of section 260 to serious drug confiscation orders and unexplained wealth orders.

*Clause 57* creates a new section 264A which provides that the Attorney General may give a direction for payments to a participating jurisdiction under an equitable sharing program. Subsection (1) provides that the new section does not limit section 214 and specifies the amounts out of which sums can be directed to be paid under an equitable sharing program. Subsection (2) defines the terms 'equitable sharing program' and 'participating jurisdiction' for their use in this section.

*Clause 58* amends section 265 to provide for the introduction of the new serious drug offender confiscation order scheme in chapter 2A.

*Clause 59* inserts a new Part 4 into chapter 12 that provides for the transitional provisions for this Bill.

*Clause 60* amends the schedule 6 Dictionary by introducing new definitions and providing the amendment of current definitions consequential to the introduction of unexplained wealth orders and serious drug offender confiscation orders in this Act.

## **PART 4 – Amendment of *Penalties and Sentences Act 1992***

*Clause 61* provides that Part 4 amends the *Penalties and Sentences Act 1992*.

*Clause 62* amends section 4 to introduce new definitions of various terms relevant to the creation of the new Part 9C.

*Clause 63* inserts a new Part 9C.

Division 1 of the new Part 9C provides for interpretation.

New section 161F sets out the meaning of ‘category A offence’, ‘category B offence’ and ‘category C offence’.

Division 2 of the new Part 9C provides for the issue of serious drug offence certificates.

New section 161G provides for the issuing of serious drug offence certificates. Subsection (1) provides that the sentencing court must issue a serious drug offence certificate when imposing a sentence on an offender for a serious drug offence. Subsections (2) and (3) provide that if a sentencing court is sentencing an offender for two or more serious drug offences and the court is satisfied that those offences arise out of the one course of conduct then the court must only issue one serious drug offence certificate for the most serious related offence of which the person is convicted. Subsection (4) sets out how the court must determine the most serious related offence of which the person is convicted. Subsection (5) provides that the court must hear any submission made by the offender or an authorised officer about the issue of the certificate. Subsection (6) makes special provisions for findings of fact for category C offences that must be recorded on the serious drug offence certificate and signed by the sentencing judge or magistrate. Subsection (7) provides that section 161G is subject to section 161I.

New section 161H provides that a serious drug offender confiscation order must be in an approved form and include the information set out in the section.

New section 161I provides for the amendment of a serious drug offence certificate by a court to include a related offence for which an offender is later sentenced. Subsections (1) and (2) provide for circumstances when section 161I applies. Subsection (3) sets out the way in which the court must amend the serious drug offender certificate. Subsection (4) provides that the court must hear any submissions made by the offender or an authorised officer about whether the later offence is a related offence and how the serious drug offence certificate should be amended.

New section 161J provides for the amendment of a serious drug offence certificate by the proper officer of the court to correct a minor error. Subsection (2) provides that the proper officer may refer the matter to the court for a decision on whether the certificate should be amended and how.

New section 161K provides for when a serious drug offence certificate must be amended or cancelled because of the quashing of conviction or appeal for a serious drug offence.

New section 161L provides for the effect of an amendment of a serious drug offence certificate on the date of the certificate.

New section 161M provides the process to be followed upon the issuing and amending of serious drug offence certificates.

*Clause 64* inserts a new division 5 into Part 14.

The new Division 5 of Part 14 sets out the transitional provisions for the operation of the new Part 9C.

New section 226 provides that new Part 9C will operate retrospectively in particular circumstances. The new Part 9C will apply to serious drug offences for which an offender is charged and sentenced on or after the commencement of this section. This is regardless of whether the offence was committed before or after the commencement of this section.

*Clause 65* inserts a new schedule 1B setting out the serious drug offences.

## **PART 5 – Amendment of *Police Powers and Responsibilities Act 2000***

*Clause 66* provides that Part 5 amends the *Police Powers and Responsibilities Act 2000* (PPR Act).

*Clause 67* provides for a consequential amendment to section 150 to reflect the amendments to the definitions of ‘confiscation related activity’, ‘confiscation related evidence’ and the new definition of ‘qualifying offence’ in Schedule 6 (see clause 70).

*Clause 68* provides for a consequential amendment to section 180 to reflect the amendments to the definitions of ‘confiscation related activity’, ‘confiscation related evidence’ and the new definition of ‘qualifying offence’ in Schedule 6 (see clause 70).

*Clause 69* amends section 190(4) to reflect the introduction of unexplained wealth orders into the CP Act (see clause 40).

*Clause 70* amends the definition of ‘relevant proceeding’ in section 351 to reflect the introduction of unexplained wealth orders and serious drug offender confiscation orders into the CP Act and the expanded definition of ‘confiscation related evidence’ in Schedule 6 of the PPR Act which now encompasses special forfeiture orders which can be obtained under chapter 4 of the CP Act. The amended definition of ‘confiscation related evidence’ in schedule 6 of the PPR Act is found in clause 70.

*Clause 71* inserts a new Part 13 into chapter 24 that sets out the transitional provisions for the operation of the amendments in this Bill.

*Clause 72* amends schedule 3 (Relevant offences for chapter 13 disclosure of information provisions) to insert the offence in the chapter 2A created by this Bill found in the new section 93ZD (offence to contravene examination order). This is consistent with the inclusion in this schedule of the similar offence that is located in chapter 2 of the CP Act at section 41.

*Clause 73* provides for the amendment of existing definitions found in the Dictionary at schedule 6 and the insertion of new definitions. These amended and new definitions take into account the introduction of unexplained wealth orders into the CP Act (see clause 40) and the introduction of the new chapter 2A into the CP Act that provides for serious drug offender confiscation orders (see clause 42). The amended definitions not only recognise the introduction of unexplained wealth and serious drug offender confiscation orders but also recognise that chapter 2 and the new chapter 2A provide for recovery on two distinct bases. Chapter 2 does not depend on a charge or conviction whereas chapter 2A relates to the charge or conviction of particular serious drug offences. The definition of 'confiscation related evidence' has also been amended to extend to chapter 4 of the CP Act (special forfeiture).