

BETWEEN:

ATTORNEY-GENERAL FOR THE
NORTHERN TERRITORY
First Appellant

and



THE NORTHERN TERRITORY
OF AUSTRALIA
Second Appellant

and

REGINALD WILLIAM EMMERSON
First Respondent

And

THE DIRECTOR OF PUBLIC
PROSECUTIONS
Second Respondent

FIRST RESPONDENT'S SUBMISSIONS

Part I: Certification that this submission is in a form suitable for publication on the Internet.

1. These submissions are in a form suitable for publication on the internet.

Part II: A concise statement of the issue or issues the first respondent contends that the appeal presents.

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2. The first respondent (Emmerson) accepts the appellants' statement in paragraph 3 of their submissions as an accurate statement of the issue raised by the appellants' appeal. By Emmerson's amended notice of contention, the following additional issues arise:

2.1. Is s.36A of the *Misuse of Drugs Act* (NT) ("the MDA") an invalid exercise of the legislative power of the Northern Territory because, by requiring the Court in certain circumstances to declare a person to be a "drug trafficker", it purports to direct, dictate to or constrain the Supreme Court of the Northern Territory in a way which compromises the independence and impartiality of that Court and its capacity to exercise the judicial power of the Commonwealth under Chapter III of the Constitution?

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2.2. Is s.36A of the MDA an invalid exercise of the legislative power of the Northern Territory because, by requiring the Court to declare a person to be a “drug trafficker” irrespective of whether that term is appropriate having regard to the matters in issue before, and the findings of, the Court, it purports to direct, dictate to or constrain the Supreme Court of the Northern Territory in a way which compromises the independence and impartiality of that Court and its capacity to exercise the judicial power of the Commonwealth under Chapter III of the Constitution?

10 2.3. Is the statutory scheme comprising s.36A of the MDA and s.94(1) of the *Criminal Property Forfeiture Act* (NT) (“the CPFA”) (together “the Scheme”) an invalid exercise of the legislative power of the Northern Territory because:

20 2.3.1. it is a law which purports to give to the Executive an open-ended, unconstrained and unreviewable discretion to levy a significant financial imposition on persons with a particular attribute (namely, persons who satisfy the criteria set out in s.36A(3) of the MDA) and, further, to impose an additional and distinct punishment or penalty on offenders who have already been sentenced by the Court for the subject offending without any account being taken by the sentencing Court of the fact or prospect of this additional punishment or penalty; and further or alternatively;

2.3.2. it is a law with respect to the acquisition of property otherwise than on just terms within the meaning of s.50(1) of the *Northern Territory (Self Government) Act 1978* (Cth) (“the SGA”)?

30 2.4. On the true construction of s.52(3) of the CPFA, did the restraining order made by the Northern Territory Supreme Court on 11 April 2011 cease to have effect when the charges against Emmerson were finally determined on 22 September 2011 with the result that, when he was declared a drug trafficker on 15 August 2012, none of Emmerson’s property was forfeited under s.94(1)(a) of the CPFA?

Part III: Certification that the first respondent has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.

3. Emmerson has considered whether any notice should be given in compliance with s.78B of the Judiciary Act 1903 and by a notice dated 25 November 2013 gave notice to the Attorneys General in compliance with s.78B.

Part IV: A statement of any material facts set out in the appellants’ narrative of facts or chronology that are contested.

40 4. None of the facts in the appellants’ statement of material facts in Part V of their submissions are contested. Emmerson submits that it should be supplemented by reference to the following additional facts and matters:

4.1. as to the 5 offences of which he was convicted on 17 August 2007 as referred to in paragraph 6 of the appellants’ submissions, for the first 3 Emmerson was sentenced to an aggregate sentence of 2 months

imprisonment which was wholly suspended. For the last 2, he was fined \$500 and a victim's levy of \$40 was imposed on him;¹

4.2. as to the 2 offences of which he was convicted on 12 March 2010 as referred to in paragraph 7 of the appellants' submissions, Emmerson was sentenced to an aggregate period of 18 months imprisonment which again was wholly suspended;²

4.3. as to the 2 offences of which he was convicted on 22 September 2011 as referred to in paragraph 11 of the appellants' submissions, Emmerson was sentenced to a total of 6 years imprisonment with a non-parole period of 3 years. The sentencing judge also ordered that the sentences of imprisonment which were held in suspense for the two offences referred to in paragraph 4.2 above were to be served in full and concurrently with the new 6 year sentence. Emmerson's prior offending was taken into account when he was sentenced for the offences in referred to in paragraph 4.3 above.³ Although at the time he was convicted and sentenced for these offences his property was subject to a restraining order under s.44(1)(a) of the CPFA on the ground that a conviction for these offences could lead to him being declared a drug trafficker (with the result that all of his property would be forfeited to the Territory), no account was taken or could be taken of this likelihood by the sentencing judge;⁴

4.4. the total value of the restrained property listed in paragraph 10 of the appellants' submissions is somewhere between \$854,000 and \$1.027m.⁵ All of the restrained property (apart from the cash totaling \$70,050) "... has no connection with any criminal offences whatsoever. It is property that has been acquired by Mr Emmerson through legitimate means."⁶

4.5. Emmerson was born on 28 July 1957. "He has been in meaningful and remunerative employment for most of his adult life."⁷ At various times, he has been a fire sprinkler fitter, musician, band manager, motor bike mechanic and restorer, and delivery driver.⁸ "In 2010, Emmerson seriously injured his back at work and he received workers compensation. His lower back pain continues to this day. He also suffers from depression which is related to his work injury. He is prescribed medication for back pain and depression."⁹ Emmerson has been in custody since his arrest on 17 February 2011 for the offences referred to in paragraph 4.3 above. He is eligible for parole on 17 February 2014. After his release, his back injury will prevent him from working.¹⁰

¹ (2012) 32 NTLR 180 at [13]; certificate of the Clerk of the Court of Summary Jurisdiction dated 21/2/2010 (exhibit WS1 to the affidavit of Wendy Schultz of 25 February 2011).

² (2012) 32 NTLR 180 at [13]; certificate of the Clerk of the Court of Summary Jurisdiction dated 21/2/2010 (exhibit WS2 to the affidavit of Wendy Schultz of 25 February 2011).

³ Sentencing remarks of Mildren J of 22/9/2011 at pp.4, 7, 9.

⁴ Sentencing remarks of Mildren J of 22/9/2011 at p.6; *Sentencing Act* (NT), s.5(4)(c).

⁵ (2012) 32 NTLR 180 at [3].

⁶ (2012) 32 NTLR 180 at [25]; the Court should note that Emmerson also holds shares to the value of \$AUD124,237.60 held with HSBC Trustee (Cook Islands) Ltd, registered in the Cook Islands: (2012) 32 NTLR 180 at [36]. The second appellant and second respondent did not contend below that this asset is subject to the restraining order or that it represents the proceeds of crime.

⁷ (2012) 32 NTLR 180 at [7].

⁸ Emmerson's affidavit of 28/10/2011 at [10]-[25].

⁹ (2012) 32 NTLR 180 at [8].

¹⁰ Emmerson's affidavit of 28/10/2011 at [46].

5. None of the facts in the appellants' chronology is contested.

Part V: A statement that the appellants' statement of applicable constitutional provisions, statutes and regulations is accepted or, if not, a statement identifying the respect or respects in which it is alleged to be wrong or incomplete.

6. The statement of applicable constitutional provisions, statutes and regulations in the appendix to the appellants' submissions is incomplete but otherwise accepted. The additional constitutional provisions, statutes and regulations which are applicable to this appeal are set out in the first appendix to these submissions.

Part VI: A statement of argument in answer to the argument of the appellant (argument in response to the argument of the Interveners provided separately)

The Scheme

7. Emmerson generally accepts the summary account of the Scheme at [18] to [27] of the appellants' submissions subject to supplementing it as follows:

7.1. the offences referred to in s.36A(6) of the MDA attract the forfeiture powers in s.34 of the MDA;

7.2. s.5(4)(c) of the Sentencing Act (NT) does not permit the Court sentencing a person in relation to any of the offences referred to in s.36A(6) of the MDA to take account of the fact or likelihood of forfeiture under s.94 of the CPFA;

7.3. as Kelly J has shown by a careful analysis of ss.5, 7, 8 and 9 and the definitions in s.3 of the MDA, "(t)he offences set out in s.36A(6) cover a very wide range of behaviours many of which would not be apt to render the description "drug trafficker" an accurate description of the offender"¹¹; and

7.4. by reference to the specific submissions below as to the respective roles of the DPP and the Court.

The decision of the NTCA

8. Emmerson submits that the reasoning of the judges who comprise the majority is in substance the same¹²:

8.1. the real or apparent rationale of Parliament for the imposition by the Scheme of such a "draconian"¹³ additional "penalty" or "punishment"¹⁴ on a qualifying offender is that the offender is a "drug trafficker"¹⁵ and declared by the Court to be such. The status of the respondent as a "drug trafficker" is "integral to the forfeiture process established under the scheme"¹⁶, the essential object of the Scheme being "to provide that the property of 'drug

¹¹ (2013) 33 NTLR 1 at [83].

¹² This seems also to be the appellants' position: appellants' submissions at [34], cf., at [15].

¹³ per Kelly J at [91].

¹⁴ per Kelly J at [94]; per Barr J at [102].

¹⁵ per Kelly J at [84], [90]; per Barr J at [131].

¹⁶ per Barr J at [131].

traffickers' is to be forfeited".¹⁷ "As a matter of public perception, the Court's declaration provides justification for the forfeiture, and the fact that the declaration has been made by the Court serves to alleviate public concern as to the rightfulness of such a drastic interference with recognised property rights"¹⁸;

8.2. the DPP has a discretion to select which qualifying offenders may become subject to the Scheme and be declared to be a "drug trafficker", which discretion is "virtually immune from judicial review"¹⁹ and lacks any "statutory criteria"²⁰;

10 8.3. the Court's discretion to refuse an application by the DPP under s.44(1)(a) of the CPFA for a restraining order in anticipation of an application for a declaration that the respondent is a drug trafficker does not allow the Court "to defeat the purposes of"²¹, or to "moderate the extent of ultimate forfeiture" under²², the Scheme;

8.4. on the hearing of the DPP's application, the Scheme requires the Court to declare a respondent to be a "drug trafficker" with the result that his or her property is forfeited when "that person may or may not be a drug trafficker"²³ or when that may be "contrary to the known and proven facts" or "contrary to the evidence".²⁴ This may, as a result, "obscure or conceal the true facts which satisfied the legal requirements for forfeiture";²⁵

20 8.5. in these circumstances, "the decision of the DPP once made, is clothed with the appearance of a decision of the Supreme Court".²⁶ "(T)he Court acts ministerially, in the sense that it acts as an instrument of the executive government, to make an order which is dictated by the very terms of the DPP's application".²⁷ "(T)he reputation of the judicial branch (is) borrowed by the legislative and executive branches 'to cloak their work in the neutral colors of judicial action'.²⁸ The Scheme "involves the enlistment of the Supreme Court, to an impermissible extent, to give effect to legislative policy and executive decision-making. It impinges upon the independence of the Supreme Court and thereby undermines its institutional integrity."²⁹

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9. Kelly J further supported her Honour's conclusion of invalidity by concluding that the Scheme was functionally equivalent to the legislation under consideration in *Totani* – not because it shares a list of features, but because

¹⁷ per Kelly J at [84].

¹⁸ per Barr J at [131]; see also Southwood J, (2012) 32 NTLR 180 at [73]. Although Southwood J noted at [103] and [104] that a declaration under s.36A "may be counterfactual", for reasons which are not clear his Honour did not address that argument in ruling against the *Kable* submission at [106].

¹⁹ per Kelly J at [90], footnote 68.

²⁰ per Barr J at [127].

²¹ "... for example, by refusing to make a restraining order over some or all of the property the subject of an application because in the court's opinion forfeiture of the whole of the property would be unjust or unfair or disproportionate to the degree of moral culpability involved in the defendant's offending"; per Kelly J at [68].

²² per Barr J at [97], [127].

²³ per Kelly J at [91].

²⁴ per Barr J at [108], [131].

²⁵ per Barr J at [127].

²⁶ per Kelly J at [90].

²⁷ per Kelly J at [94].

²⁸ per Barr J at [132] citing *Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575 at 615 [91] per Gummow J, citing *Mistretta v United States of America* 488 US 361 at 407 (1989). Barr J expresses this statement in the negative.

²⁹ per Barr J at [133].

its substantive effect can be accurately described in the same terms used by the High Court in *Totani*.³⁰

The Appellants' case

10. The appellants challenge this reasoning by submitting principally that:

10.1. adopting the view of Riley CJ (dissenting)³¹, "the declaration the Court makes is that the person is a drug trafficker under s.36A of the MDA, not that they are a drug trafficker according to ordinary parlance or common understandings of the term (of which there may be many variations)... the term is a label chosen by the legislature, not a finding of fact contrary to the truth";³²

10.2. the DPP's function is not materially different from the function the DPP exercises generally in relation to the commencement of prosecutions;³³

10.3. "(t)he judicial process is a reality".³⁴ It is "an orthodox and conventional judicial exercise: the adjudication of rights and liabilities established by statute."³⁵ "...(T)he vital circumstance and essential foundation of the Court's obligation to make the declaration is not one made by the Executive, but one which rests entirely upon findings of guilt for criminal behaviour made by Courts according to the normal judicial processes"³⁶;

10.4. the DPP's function is not materially different from the function the DPP exercises generally in relation to the commencement of prosecutions;³⁷

10.5. the forfeiture is effected by legislation not the Court's order³⁸;

10.6. accordingly, there is no cloaking of the work of the Executive or conscription of the Court to the Executive's work such as to attract the principle in *Kable*.³⁹

11. They also submit that Kelly J was wrong to conclude the Scheme was functionally equivalent to the legislation under consideration in *Totani*.⁴⁰

A "drug trafficker" declaration

12. The jurisdiction to grant a declaration "is discretionary... confined (only) by the considerations which mark out the boundaries of judicial power."⁴¹ It must be

³⁰ *State of South Australia v Totani* (2010) 242 CLR 1; (2013) 33 NTLR 1 per Kelly J at [92].

³¹ (2013) 33 NTLR 1 at [31], [35].

³² Appellants' submissions at [55], [56].

³³ Appellants' submissions at [44].

³⁴ Appellants' submissions at [44].

³⁵ Appellants' submissions at [53].

³⁶ Appellants' submissions at [47]; see also [59].

³⁷ Appellants' submissions at [44].

³⁸ Appellants' submissions at [59].

³⁹ Appellants' submissions at [59].

⁴⁰ Appellants' submissions at [16].

⁴¹ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 per Mason CJ, Dawson, Toohey and Gaudron JJ at 581-2; see also *Truth about Motorways Pty Ltd v Macquarie Infrastructure Investment Management Limited* (2000) 200 CLR 591 per Gaudron J at [52]; *Momcilovic v The Queen* (2011) 245 CLR 1 per French CJ at [88].

exercised with particular care as a declaration may have “effects on the community... that extend far beyond the interests of the original plaintiffs and defendant.”⁴² The damaging effect to reputation of the findings *per se* of Courts, tribunals and inquiries (which necessarily includes declarations) has long been recognised and those affected given the protection of the rules of natural justice.⁴³ Hence, the Court will not make a declaration merely on admissions or by consent⁴⁴ and will normally insist on the participation of a proper contradictor.⁴⁵

10 13. A declaration that the respondent is a drug trafficker “is not a declaration of a kind that could be made in the exercise by the Supreme Court of its general powers to award declaratory relief”⁴⁶ as it falls outside “the boundaries of judicial power”⁴⁷:

13.1. as the appellants appear to acknowledge⁴⁸, the meaning of the term is insufficiently certain to be the proper subject of a declaration of fact by the Court in the exercise of this jurisdiction, not least because the apparent but unexpressed intention is that the term is concerned with trade in unidentified substances known as “drugs” which is illicit but on a basis and in places which are not identified;

20 13.2. further, as a declaration of a person’s occupation, qualifications, status or nature (assuming one of those is its true meaning) unconfined temporally, it will necessarily be incomplete and inaccurate. In this case, whilst Emmerson may have been engaging in the trafficking of cannabis in the weeks leading up to his arrest on 17 February 2011⁴⁹, there is no evidence that he has engaged in the trafficking of drugs at any other time in his life. Instead, he has been at various times fire sprinkler fitter, musician, band manager, motor bike mechanic and restorer, and delivery driver as well as a user of illicit drugs and a drug addict.⁵⁰ Further, when on 15 August 2012 Emmerson was declared by Southwood J “to be a drug trafficker”⁵¹, an accurate statement of his status at that time would have been “a prisoner held in the lawful custody of the Director of Correctional Services under the *Prisons (Correctional Services) Act (NT)*”. In any event, on 15 August 2012, Emmerson was not trafficking in drugs, he has not done so since and he may not do so ever again;

30 13.3. if account is then taken of the differences between all of the possible meanings which the term “drug trafficker” may have or be reasonably attributed on the one hand, and the actions of a person with the qualifying findings of guilt as demonstrated by Kelly J⁵² on the other, the risk of a

⁴² *Myer Queenstown Garden Plaza Pty Ltd v Corporation of the City of Port Adelaide* (1975) 11 SASR 504 at 509-510.

⁴³ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 per Mason CJ, Dawson, Toohey and Guadron JJ at 578.

⁴⁴ *BMI Ltd v Federated Clerks Union of Australia* (1983) 51 ALR 401.

⁴⁵ *Forster v Jododex Australia Pty Limited* (1972) 127 CLR 421 per Gibbs J at 437-8.

⁴⁶ to use a term from *Momcilovic v The Queen* (2011) 245 CLR 1 per French CJ at [88].

⁴⁷ *Supra* at footnote 41.

⁴⁸ Appellants’ submissions at [55].

⁴⁹ (2012) 32 NTLR 180 at [14]-[20].

⁵⁰ Emmerson’s affidavit of 28/10/2011 at [10]-[25], [39]-[53].

⁵¹ Order of 15/8/2012.

⁵² (2013) 33 NTLR 1 at [83]; see also Barr J at [108].

significant disconnection between reality and what the declaration represents is high. In these circumstances, for the Scheme to provide for the consequences which flow from the declaration that a person is “a drug trafficker” involves “a travesty of the judicial process”⁵³;

13.4. the term adds nothing constructive or useful to the Scheme which the law or a lawyer would recognise. What is the legislature seeking to achieve by using the term “drug trafficker”? Emmerson submits that it is the political objects to be obtained from “pejorative branding” as identified by Barr J⁵⁴, particularly legitimising the extremity of the forfeiture in eyes of the public; but also, correlatively, obscuring or concealing “the true facts which satisfied the legal requirements for forfeiture”⁵⁵ which, if known, might generate public concern.

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14. Novelty is no objection *per se* to a new legislative scheme which compels the Court to make a declaration.⁵⁶ Legislatures may invest State and Territory Courts with new judicial and non-judicial functions which may include the making of declarations.⁵⁷ Further analysis is required to ascertain whether the new scheme is compatible with the institutional integrity of the Court.⁵⁸

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15. Whatever its true characterisation might be by reference to the precise terms of the Scheme, a drug trafficker declaration made under s.36A(3) has the appearance of being the result of the exercise by the Court of its “unique and essential function of... the quelling of such controversies by ascertainment of the facts”⁵⁹ within “the boundaries of judicial power”.⁶⁰ It is submitted that this is a case where “it may be difficult to view the way a court is perceived as unconnected to its integrity as an institution”⁶¹. There can be little doubt that a right-minded person reading a copy of the order⁶² or hearing a report that the Court had declared a named person to be a “drug trafficker” would conclude that that was a declaration of fact in relation to that person reached by the Court following these usual processes and, as the majority held,⁶³ that this provided the rationale for the resultant forfeiture of all of that person’s property to the Crown.

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16. Only those few with a detailed knowledge of the MDA would appreciate that this was not the case and that “the judicial function of fact finding” had been reduced “to the merest formality”.⁶⁴ Emmerson submits that, whether the

⁵³ *Polyukhovich v The Commonwealth* (1991) 172 CLR 501 per Gaudron J at 704; see also *Actors and Announcers Equity Association v Fontana Films Pty Ltd* (1982) 150 CLR 169 per Murphy J at 214; per Brennan J at 223.

⁵⁴ (2013) 33 NTLR 1 at [111]-[112].

⁵⁵ (2013) 33 NTLR 1 at [127].

⁵⁶ *Momcilovic v The Queen* (2011) 245 CLR 1 per French CJ at [84].

⁵⁷ As to which *Momcilovic* is an example.

⁵⁸ *Momcilovic v The Queen* (2011) 245 CLR 1 per French CJ at [92].

⁵⁹ *Fencott v Muller* (1983) 152 CLR 570 per Mason, Murphy, Brennan and Deane JJ at 608; see also *Nicholas v The Queen* (1998) 193 CLR 173 per Brennan J at [19], [20]; per Gaudron J at [74].

⁶⁰ *Supra* at footnote 41.

⁶¹ *Momcilovic v The Queen* (2011) 245 CLR 1 per Crennan and Kiefel JJ at [599].

⁶² Order of Southwood J of 15/8/2012.

⁶³ per Kelly J at [84]; per Barr J at [131].

⁶⁴ *Nicholas v The Queen* (1998) 193 CLR 173 per Brennan J at 190. The Scheme should be contrasted with the deeming provision considered in *Silbert v Director of Public Prosecutions (WA)* (2004) 217 CLR 181. That

making of a drug trafficker declaration is correctly characterised as a judicial or non-judicial function or whether it is a declaration of fact or a convenient legislative label for a person who has the qualifying findings of guilt, s.36A(3) is not compatible with the preservation of the institutional integrity of the Court because it compromises one of the “defining characteristics of Courts...: the reality and appearance of decisional independence and impartiality”⁶⁵.

- 10 17. If it was necessary to do so, Emmerson would submit that the majority was correct in concluding that, on a true construction of s.36A(3), a declaration “that a person is a drug trafficker” is a declaration of that fact. The language used by Parliament is “the surest guide”⁶⁶ to that conclusion. It is the rationale for the forfeiture. The risk of a disconnect between a person with three qualifying findings of guilt and a “drug trafficker” is obvious and flows necessarily from the words selected by Parliament. It is part of the Scheme, not a justification for construing the words “a drug trafficker” as if they read “a person who satisfies both paragraph (a) and paragraph (b) of s.36A(3)”.

The role of the Court

- 20 18. The Court plays a role at two stages in the Scheme: the making of the restraining order under s.44(1)(a) of the CPFA and the making of the drug trafficker declaration under s.36A(3) of the MDA. If no restraining order is in force when the declaration is made, it appears that the forfeiture under s.94 of the CPFA will not capture property owned or controlled by the respondent but will extend only to property given away. The appellants do not appear to rely on the discretion under s.44(1)(a) of the CPFA to refuse or condition a restraining order as an element of the Scheme which preserves the institutional integrity of the Court. Nor do they appear to challenge the statements of the majority which explain why the existence of this discretion does not save the Scheme.⁶⁷

- 30 19. In relation to s.36A(3) of the MDA, it is difficult to see how an inquiry confined to characterising the outcome of earlier, completed exercises of judicial power (whether by a judge or a jury or both) could itself be characterised as the performance of a judicial function.⁶⁸ Only the earlier exercises themselves would truly be “an inquiry concerning the law as it is and the facts as they are, followed by an application of the law as determined to the facts as determined”.⁶⁹ Emmerson submits that the function actually given to the Court

provision merely described the circumstances in which the operative provisions of that Act may be enlivened. It did not purport to direct the Court as to the exercise of purely judicial functions like “the determination of guilt” (or the making of declarations): *Silbert v Director of Public Prosecutions (WA)* (2004) 217 CLR 181 per Gleeson CJ, McHugh, Gummow, Hayne, Callinan and Heydon JJ at [13]; cf. appellants’ submissions at [56].

⁶⁵ *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 87 ALJR 458 per French CJ at [67]; see also per Hayne, Crennan, Kiefel and Bell JJ at [123]-[125].

⁶⁶ *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 per Hayne, Heydon, Crennan and Kiefel JJ at [47].

⁶⁷ (2013) 33 NTLR 1 per Kelly J at [64], [69]-[70], [72], per Barr J at [97]; note the concession on behalf of the first appellant recorded at [72] footnote [53] and that the reasons of the majority in this respect receive support also from Riley CJ at [12]-[16]; note also that Emmerson applied to Southwood J to set aside the restraining order but was unsuccessful for the reasons given at (2012) 32 NTLR 180 at [81]-[85].

⁶⁸ This is not in any way an appeal or review.

⁶⁹ *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361 per Kitto J at 374; see also *Totani* per Hayne J at [227] per Kiefel J at [444], [469].

is properly characterised as ministerial not judicial. It is not “a genuinely evaluative and adjudicative exercise.”⁷⁰ The present case provides an example, the Court’s function being confined to examining 3 documents – the 2 certificates recording the convictions in the Court of Summary Jurisdiction⁷¹ and the certificate of conviction from the Supreme Court⁷² - and confirming that s.36A(3) is satisfied. In substance, the Court’s role is confined to correcting mistakes in the DPP’s assessment of these court records. Given the straightforward nature of this task, such mistakes are likely to be rare.⁷³

10 *The role of the DPP*

20. The fact that the proceedings for both the restraining order and for the drug trafficker declaration are commenced in the exercise of DPP’s discretion *per se* is not and cannot be a basis for complaint.⁷⁴ However, there are two special features which take this discretion out of the usual prosecutorial discretion:

20.1. the DPP is not selecting a person whom he or she believes may have breached a law by their past conduct for the purposes of enforcing that law. Rather, he or she is selecting which members of a defined class are to be subject to the application of a law;

20 20.2. the significance of this discretion is substantially enhanced by the limited functions given to the Court. In the ordinary course, when the DPP take steps to enforce a law it is followed necessarily by the usual judicial functions of trial and sentencing. It is submitted that this feature was critical for the validity of the prosecutorial powers considered in *ex parte Correy*⁷⁵; *Fraser Henleins Pty Ltd v Cody*⁷⁶, *Palling v Corfield*⁷⁷ and *Magaming v The Queen*⁷⁸. Although in each of those cases the subject provision limited “in some degree the discretion of the Court in imposing penalties, that limitation only operates in the future upon a contingency of a conviction by the Court.”⁷⁹ “The whole prosecution, when it is launched, takes place in a court, the accused is found innocent or guilty by a court, and Parliament is entitled to make the punishment of an offence upon conviction what it likes, and to make it differ according to the alternative sections of an Act or Acts under which the charge is laid.”⁸⁰ The DPP’s decision to select a person for prosecution for the commission of an offence does nothing more than expose that person to the risk that the Court might find the offence was

⁷⁰ *Totani* per Heydon J (dissenting) at [320]; see also *Fardon v Attorney General (Qld)* (2004) 223 CLR 575 per Callinan and Heydon JJ at [219].

⁷¹ Certificate of the Clerk of the Court of Summary Jurisdiction dated 21/2/2010 (annexure WS1 to the affidavit of Wendy Schultz of 25 February 2011); certificate of the Clerk of the Court of Summary Jurisdiction dated 21/2/2010 (annexure WS2 to the affidavit of Wendy Schultz of 25 February 2011).

⁷² Annexure KTG13 to the affidavit of Kathryn Therese Gleeson of 13/02/2012.

⁷³ *Director of Public Prosecutions (NT) v Hennig* (2005) 154 A Crim R 550 related to the obviously untenable claim by the DPP that he could establish 2 prior offences for the purposes of s.36A(3)(b) even if the offences were committed on the one occasion.

⁷⁴ *Fraser Henleins Pty Ltd v Cody* (1945) 70 CLR 100 per Latham CJ at 119.

⁷⁵ (1944) 45 SR (NSW) 287.

⁷⁶ (1945) 70 CLR 100 per Latham CJ at 119; per Starke J at 121-2; per Dixon J at 125; per McTiernan J at 132, per Williams J at 139.

⁷⁷ (1970) 123 CLR 52 per Barwick CJ at 58-61; per McTiernan J at 62-63; per Menzies J at 64-65; per Owen J at 66-67; per Walsh J at 69-70.

⁷⁸ (2013) 87 ALJR 1060 per French CJ, Hayne, Crennan, Kiefel and Bell JJ at [26], [33]-[41].

⁷⁹ *ex parte Coorey* (1944) 45 SR (NSW) 287 per Davidson J at 314.

⁸⁰ *Fraser Henleins Pty Ltd v Cody* (1945) 70 CLR 100 per Williams J at 139.

committed. Normally, the exclusive consideration for the DPP is his or her prospects of success in the court proceedings which might follow. Here, as the appellants' appear to acknowledge⁸¹, the DPP's reasons for the selection of a particular person to be subject to the procedures under the Scheme from those qualified and the facts and matters relevant thereto form no part of the Court's considerations. The DPP's prospect of proving in the subsequent Court proceedings a person's qualifications under s.36A(3) will be only one – and the most straightforward – of the considerations for the DPP. The Court's function is confined to assessing whether that person had the relevant qualification, not whether he or she should be selected from the qualifying class.

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21. Further, as noted by the majority, the DPP's decision in this respect lacks any "statutory criteria"⁸² (save perhaps by reference to the broad objects of the Scheme in ss.3, 10(2) and 10(4) of the CPFA) and is "virtually immune from judicial review"⁸³. The reasons for this decision are unknown and unknowable. Yet, this is the critical, operative decision for determining which qualifying persons forfeit all of their property to the Territory.

20 *The forfeiture is effected by legislation not the Court's order*

22. Contrary to the appellants' submission, this element of the Scheme exacerbates the dominance of Parliament and the Executive over the Court. Had the Court been given the additional responsibility under the Scheme of ordering the subsequent forfeiture, it would have gained an additional, albeit limited, capacity to use its inherent powers to avoid injustice, Parliament taking the Court as it finds it.⁸⁴

Is the principle in Kable attracted?

30 23. In these circumstances, it is respectfully submitted that the conclusion and reasons of the majority the substance of which is set out in paragraph 8 above are correct. By requiring the Court to make a solemn and public declaration that the respondent is a "drug trafficker", Parliament has presented the Court as the author of and the advocate or apologist for the forfeiture outcomes which the Scheme produces. Yet, the truth is that:

23.1. the Court has not made any judicial determination that the respondent is a "drug trafficker" or that forfeiture is appropriate;

23.2. the respondent has been selected to suffer forfeiture by the Executive not the Court; and

40 23.3. the Executive's decision is based on facts and matters of which neither the Court nor the public are or can be aware.

⁸¹ Appellants' submissions at [51].

⁸² per Barr J at [127].

⁸³ per Kelly J at [90], footnote 68.

⁸⁴ *Electric Light and Power Supply Corporation Ltd v Electricity Commission (NSW)* (1956) 94 CLR 554 at 559-560.

24. This is repugnant to and incompatible with the institutional integrity of the Northern Territory Supreme Court.⁸⁵

Functionally equivalent to Totani

25. Whilst there are some obvious differences in detail in the two schemes, the conclusion as to their functional equivalence is correct:

25.1. in both cases, the order the court was required to make effected a serious invasion of the respondent's rights;

10 25.2. in both cases, the substantial recruitment arose from the dominance of a prior executive act over the outcome of subsequent court proceedings;

25.3. in *Totani*, the dominant prior executive act was the making of a declaration by the Attorney-General in relation to an organisation upon the Attorney being satisfied that its members associated for criminal purposes and that it represented a risk to public safety and order. Here, the dominant prior executive act is the decision by the DPP that, of all the persons who have 3 qualifying offences over a 10 year period, the respondent is selected to be declared a drug-trafficker and have all of his or her property forfeited as a result. In *Totani*, the express limits on the Attorney's declaratory power and the correlative right to prerogative review of the Attorney's decision did not save the legislation.⁸⁶ Here, it does not appear that there are any such limits or any such right. The prior executive act is more dominant in this instance than it was in *Totani*. Contrary to the submissions of the appellants⁸⁷, the selection by the DPP of the particular qualifying person "sets up" and "pre-determines" the outcome of the Court's processes;

25.4. in *Totani*, the overborne subsequent judicial proceeding concerned the determination of whether or not the respondent was a member of the declared organisation and, if so, the exercise of a limited discretion as to the terms of the control order. The breadth of the definition of "member" was very wide and meant that, as a practical matter, the onus would fall on the respondent to disprove membership.⁸⁸ Here, the overborne subsequent judicial proceeding concerns proving the existence of the 3 qualifying offences over a 10 year period. The object of the inquiry is the records of courts, rather than the actions of the respondent, whether in relation to drug-trafficking or otherwise. In most cases, the answer will be obvious and uncontentious. There is no discretion as to the content of the declaration or the extent of the resultant forfeiture. The subsequent judicial proceeding here is less substantial than the proceeding in *Totani*.

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Appellants' additional points

26. In response to some of the other matters relied on by the appellants:

⁸⁵ *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 87 ALJR 458 per Hayne, Crennan, Kiefel and Bell JJ at [123].

⁸⁶ *Totani* per French CJ at [27]; per Gummow J at [126]-[128]; per Hayne J at [191]-[195]; and per Heydon J at [268]-[272].

⁸⁷ Appellants' submissions at [47].

⁸⁸ *Totani* per French CJ at [81].

26.1. as Kelly J recognised⁸⁹, the vice of listing isolated statements or features from previous cases to build an argument for invalidly⁹⁰ applies equally to those seeking to defend the validity of a law;

26.2. in relation to the submission that the Court could refuse to make a drug trafficker declaration if it “would not have legal consequences” because to do so would be inconsistent with the principles on which the judicial power to make declarations is based⁹¹, this reflects the same submission which Emmerson makes at paragraph 13 above. It is difficult to see how the appellants can cherry-pick the foundation principles of the judicial power to make declarations which the Scheme can override and those which it cannot;

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26.3. the submission relying on the decision in *Baker v The Queen*⁹² that it is permissible for legislation to target a “limited class” of individuals⁹³ overlooks the requirement for the law to be of “general application”.⁹⁴ A law whose application to individuals in a defined class is determined at the discretion of the Executive is not such a law.

Part VII: Statement of the first respondent’s argument on the first respondent’s amended notice of contention

Notice of Contention - Ground in Paragraph 1A - Invalidity of s.36A(3)

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27. For the reasons set out in paragraphs 12 to 17 above, Emmerson submits that s.36A(3) by itself offends the principle in *Kable*. Parliament cannot compel the Courts to make a declaration that a person is a “drug trafficker”:

27.1. in any circumstances as it is a pejorative label without any certain meaning; or alternatively

27.2. where that statement does not reasonably correspond to the matters in issue before, and the findings of, the Court.

Notice of Contention - Ground in Paragraph 1B - Executive Discretion

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28. In the event that the Court holds that the Scheme does not offend the principle in *Kable*, Emmerson submits that it is an invalid exercise of the legislative power of the Northern Territory because it is a law which purports to give to the Executive an open-ended, unconstrained and unreviewable discretion:

28.1. to levy a significant financial imposition on persons with a particular attribute (namely, persons who satisfy the criteria set out in section 36A(3) of the MDA); and further

28.2. to impose an additional and distinct punishment or penalty on offenders who have already been sentenced by the court for the subject

⁸⁹ (2013) 33 NTLR 1 at [79].

⁹⁰ *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 87 ALJR 458 per Hayne, Crennan, Kiefel and Bell JJ at [137].

⁹¹ Appellants’ submissions at [28]-[31], particularly [31] and footnote 22.

⁹² (2004) 223 CLR 513 at [50], [165].

⁹³ Appellants’ submissions at [41]-[44].

⁹⁴ *Leath v Commonwealth* (1992) 174 CLR 455 per Mason CJ, Dawson and McHugh JJ at 469-470; *Nicholas v The Queen* (1998) 193 CLR 173 at [27]-[29], [57], [83]-[84], [163]-[167], [246]-[255].

offending without any account being taken by the sentencing court of the fact or prospect of this additional punishment or penalty.

10 29. For the reasons set out in paragraphs 20 and 21 above, the Scheme gives the DPP a "totally open-ended discretion"⁹⁵ to impose the most extreme financial sanction which the law could apply to an individual. This engages the "constitutional principle" referred to by Lord Wilberforce in *Vestey v Inland Revenue Commissioners*⁹⁶. The DPP's discretion is impermissibly arbitrary in the constitutional sense.⁹⁷ The Scheme lacks the "hallmark of the exercise of legislative power", namely, the determination of "the content of a law as a rule of conduct or a declaration as to power, right or duty".⁹⁸

20 30. Further, the Scheme targets individuals who have been found guilty of certain offences and who have been or will be sentenced by the Court. Through the guise of a "civil assets forfeiture"⁹⁹ scheme, the Scheme gives the power to the Executive to select an offender and forfeit all of his or her assets. The practical operation of the Scheme means that, like here, the forfeited assets will be legitimately derived wealth unconnected with any offending. In addition to the concerns set out in paragraph 29 above, this discretionary power in the DPP to double punish offenders by levying what in substance is the same as an additional fine has the potential to overwhelm and thereby seriously diminish the status and significance of the discharge by the Court of its sentencing functions. Emmerson submits that no matter what additional powers State or Territory legislatures may have to vest judicial functions in bodies other than Courts¹⁰⁰, they do not extend to giving a discretion of this kind to the DPP.

Notice of Contention - Ground in Paragraph 2 - Section 50(1) of the SGA

31. Like s.51(xxix) of the Constitution, s.50(1) should be viewed as a "very great" constitutional safeguard or guarantee.¹⁰¹ As such it should be given "a liberal construction"¹⁰² and "as full and flexible an operation as will cover the objects it

⁹⁵ *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 per Gaudron, McHugh, Gummow, Kirby and Hayne JJ at [100].

⁹⁶ [1980] AC 1148 at 1172F, 1174G and 1176C, which may be traced back to the protest recorded in the Bill of Rights against the assumed "Power of Dispensing with and Suspending of Lawes and the Execution of Lawes without Consent of Parlyament"; see *Plaintiff M79/2012 v Minister for Immigration and Citizenship* (2013) 87 ALJR 682, per Hayne J at [87].

⁹⁷ *Giris Pty Ltd v FCT* (1969) 119 CLR 365 at 382-383; *MacCormick v Federal Commissioner of Taxation* (1984) 158 CLR 62 per Gibbs CJ, Wilson, Deane and Dawson JJ at [29]-[33]; *Deputy Federal Commissioner of Taxation v Truhold Benefit Pty Ltd* (1985) 158 CLR 6.

⁹⁸ *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at [102], referring to *The Commonwealth v Grunseit* (1943) 67 CLR 58 per Latham CJ at 82.

⁹⁹ *International Finance Corporation Limited v New South Wales Crime Commission* (2009) 240 CLR 319 per French CJ at [25]-[32].

¹⁰⁰ In *Fardon v Attorney General (Qld)* (2004) 223 CLR 575 at [40] McHugh J suggested that State and Territory Parliaments might "legislate for the determination of issues of criminal guilt or sentencing by non-judicial tribunals" (emphasis added), which Emmerson submits assumes the existence of an irreducible core requirement to act fairly and independently as between the citizen and the Crown.

¹⁰¹ *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 per French CJ, Gummow and Crennan JJ at [43]; per Heydon J (dissenting in the result) at [185] and the authorities there referred to.

¹⁰² *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 per French CJ, Gummow and Crennan JJ at [43].

was designed to effect¹⁰³. Section 50(1) may be contravened indirectly or implicitly as well as directly and explicitly. Its application cannot be circumvented by circuitous devices¹⁰⁴. It is an express prohibition on the exercise of a plenary power. Section 51(xxxi), on the other hand, is a grant of power on terms amongst over 38 other grants of power in relation to particular matters without any similar express qualification which fetters these other sources of Commonwealth legislative power by implicitly “abstracting” all laws with respect to acquisition of property otherwise than on just terms¹⁰⁵. As such, its operation is “subject to a contrary intention either expressed or made manifest in those other grants”¹⁰⁶.

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32. Whilst the differences in the drafting of s.50(1) may rarely - perhaps never - produce different outcomes, it is important to approach the application of s.50(1) keeping its terms clearly in mind. In most matters concerning s.51(xxxi), it will be necessary to engage in two processes of characterisation (at least¹⁰⁷) – is the subject law of a character which is authorised under any and if so which grants of power to the Commonwealth and, if so, is the law of a character which is abstracted from that grant of power as a law with respect to the acquisition of property otherwise than on just terms? If the first question is answered in the negative, the second question does not arise. In cases concerning s.50(1), the first will rarely arise¹⁰⁸ and hence the second will almost always require an answer.

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33. Characterisation for the purposes of s.51(xxxi) requires an examination of “the practical and legal operation of the legislative provisions that are in issue”¹⁰⁹ and in this respect the inquiry is concerned with substance rather than form¹¹⁰. “(T)he taking of property under a federal law is not removed from “acquisition” simply because it is described as “forfeiture”¹¹¹. It is not the name, but the character of the taking, that controls the outcome of constitutional

¹⁰³ *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 per Hayne, Kiefel and Bell JJ at [134], [136].

¹⁰⁴ *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 per French CJ, Gummow and Crennan JJ at [44] per Hayne, Kiefel and Bell JJ at [136], [139] and the authorities there referred to.

¹⁰⁵ *Bank of NSW v Commonwealth (Banking Case)* (1948) 76 CLR 1 per Dixon J at 349-350; *Attorney-General v Schmidt* (1961) 105 CLR 361 per Dixon CJ at 370-371; *Wurridjal v Commonwealth* (2009) 237 CLR 309 per French CJ at [75] – [81]; per Gummow and Hayne JJ at [177], [186] – [187]; per Kirby J at [284]; per Kiefel J at [458]; *ICM Agriculture Pty Ltd v The Commonwealth* (2009) 240 CLR 140 per French CJ, Gummow and Crennan JJ at [46], per Hayne, Kiefel and Bell JJ at [135]; *JT International SA v Commonwealth* (2012) 86 ALJR 1297 per Hayne and Bell JJ at [165], [166]. Section 50(1) itself reflects the fact that the protection which s.51(xxxi) provides abstracts from other grants of power to the Commonwealth under the Constitution including s.122: *Wurridjal v Commonwealth* (2009) 237 CLR 309.

¹⁰⁶ *Nintendo Co Ltd v Centronics Systems Pty Ltd* (1994) 181 CLR 134 per Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ at 160; see also *Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513 per Gummow J at 596.

¹⁰⁷ A Commonwealth law may have more than one characterisation: *Mutual Pools & Staff Pty Ltd v The Commonwealth* (1993) 179 CLR 155 per Deane and Gaudron JJ at 188.

¹⁰⁸ The present is an example of a case where it may be said that antecedent validity issues arise which need to be determined first.

¹⁰⁹ *Telstra Corporation Ltd v Commonwealth* (2008) 234 CLR 210 at [49].

¹¹⁰ *JT International SA v Commonwealth* (2012) 86 ALJR 1297 per Hayne and Bell JJ at [169].

¹¹¹ *Theophanous v The Commonwealth* (2006) 225 CLR 101 per Gleeson CJ at [9]-[10] and per Gummow, Kirby, Hayne, Heydon and Crennan JJ at [60].

characterisation"¹¹². Whether or not a provision falls foul of s.51(xxxi) cannot depend on the opinion of the law-maker¹¹³. These principles must apply to s.50(1) of the SGA.

- 10 34. Laws which impose fines, penalties or forfeitures as a consequence of a breach of the law generally speaking are not characterised as laws with respect to acquisition of property on just terms as that term "applies only to acquisitions of a kind that permit of just terms. It is not concerned with laws in connection with which 'just terms' is an inconsistent or incongruous notion. Thus, it is not concerned with a law imposing a fine or penalty, including by way of forfeiture... Laws of that kind do not involve acquisitions that permit of just terms and, thus, they are not laws with respect to 'acquisition of property'..."¹¹⁴
- 20 35. In order to undertake properly the process of characterisation, the features of forfeiture laws which make it incongruous to speak of requiring just terms, and hence which make "forfeiture" a characterisation of exclusion for the purposes of s.50(1), need to be identified. It is submitted that these features include:
- 35.1. that the true character of the law is regulatory, i.e., its practical and legal operation is "to deter and punish forbidden conduct"¹¹⁵. A law "which does provide for the compulsory acquisition of title to property and which also happens to be regulatory" will not necessarily fall outside the protection provided by s.50(1)¹¹⁶;
- 35.2. the financial or other benefits enjoyed by the Crown are incidental to, and not part of the character of, the law; or, put another way, "the purpose of forfeiture is complete at the moment of acquisition"¹¹⁷.
- 30 36. There will necessarily be a point where the attenuated connection between the law's claimed regulatory function and the substance of its practical and legal operation on the one hand, and the reality and scale of the interests or benefits of a proprietary nature¹¹⁸ obtained by the Crown from the law's practical and legal operation on the other, are such that the subject law is properly characterised as a law with respect to the acquisition of property otherwise than on just terms - a point where the law is no longer inconsistent or incongruous with the guarantee¹¹⁹. Were it otherwise, Parliament could render the protection afforded by s.50(1) nugatory through "circuitous devices", that is, validly enact forfeiture laws with an ostensibly regulatory character but whose true function is to generate revenue for the Crown.

¹¹² *Airservices Australia v Canadian Airlines International Limited* (1999) 202 CLR 133 per Gleeson CJ and Kirby J at [101].

¹¹³ *MacCormick v FCT* (1984) 158 CLR 622 per Gibbs CJ, Wilson, Deane and Dawson JJ at 639-640.

¹¹⁴ *Director of Public Prosecutions; Ex parte Lawler* (1994) 179 CLR 270 per Deane and Gaudron JJ at 285; see also *Theophanous v The Commonwealth* (2006) 225 CLR 101 per Gummow, Kirby, Hayne, Heydon and Crennan J at [56], [60].

¹¹⁵ *Trade Practices Commission v Tooth* (1979) 142 CLR 397 per Gibbs CJ at 409; see also *R v Smithers' Ex parte McMillan* (1982) 152 CLR 477 at 485; *Emmerson v DPP* (2013) 33 NTLR 1 per Riley CJ at [24].

¹¹⁶ *Trade Practices Commission v Tooth* (1979) 142 CLR 397 per Mason J at 428.

¹¹⁷ *Director of Public Prosecutions; Ex parte Lawler* (1994) 179 CLR 276 per Toohey J at 292. *Mutual Pools & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155 per Dawson and Toohey JJ at 200.

¹¹⁸ *JT International SA v Commonwealth* (2012) 86 ALJR 1297 per French CJ at [42], per Gummow at [144], [147], per Hayne and Bell JJ at [169], per Crennan J at [278], per Kiefel J at [357].

¹¹⁹ *Theophanous v The Commonwealth* (2006) 225 CLR 101 per Gummow, Kirby, Hayne, Heydon and Crennan J at [60].

10 37. This Court has recognised the validity of legislation providing for the forfeiture of property where there has been a sufficient connection between the property and the relevant offence, including where the offence was committed in connection with the property¹²⁰, where the property was used in the commission of the offence¹²¹, where the original conferral of the property on the offender was so as to lessen the risk and temptation of the offender committing the offence¹²² and where the value of the property was commensurate with the value of the rewards generated from the offence¹²³. The present case falls outside all of these categories. Nevertheless, all members of the NTCA characterised the Scheme as falling within the “fines, penalties or forfeitures” exception.¹²⁴

38. Emmerson submits that their Honours were wrong to do so for the following reasons:

20 38.1. the express object of the Scheme is stated to be “to compensate the Territory community for the costs of deterring, detecting and dealing with the criminal activities (of declared drug traffickers)”¹²⁵, which necessarily means the generation of revenue by taking the assets of declared drug traffickers to compensate for the “costs” they have caused. It is no part of the stated purpose of the Scheme to deter the activities of drug traffickers¹²⁶. Although Riley CJ referred to the purpose set out in s.10(2)¹²⁷ his Honour did not explain how this expressly acquisitive object supported this characterisation of the law. The conclusion which ought to have been drawn is that this express object is at least a strong indication that the true character of the Scheme is not regulatory, but to acquire a benefit for the Territory;

30 38.2. the practical operation of the Scheme is to target legitimately generated wealth which is unconnected (itself) with any offending. All other wealth can be secured for the Crown’s benefit under the provisions in the CPFA which deal with crime-derived property, crime-used property, unexplained wealth declarations and criminal benefits declarations. Further, the existence of a specific forfeiture power in a sentencing court in s.34(3) *et seq* of the MDA¹²⁸ should also be noted. This means that the Scheme does not have the practical effect of reversing unjust enrichment or

¹²⁰ *Burton v Honan* (1952) 86 CLR 169 per Dixon CJ at 175, 180-1 (McTiernan at 181 and Webb and Kitto JJ at 182 concurring).

¹²¹ *Director of Public Prosecutions; Ex parte Lawler* (1994) 179 CLR 270 per Mason CJ at 275-6, per Brennan J at 279, per Deane and Gaudron JJ at 285, per Dawson J at 289 and per Toohey J at 291.

¹²² *Theophanous v The Commonwealth* (2006) 225 CLR 101 per Gummow, Kirby, Hayne, Heydon and Crennan JJ at [63].

¹²³ *R v Smithers; Ex parte McMillan* (1982) 152 CLR 477 at 485, 488.

¹²⁴ (2013) 33 NTLR 1 per Riley CJ at [25]–[27] (with whom Kelly J agreed at [57]), per Barr J at [103] who, whilst agreeing that requiring the provision of just terms would be incongruous, disagreed with Riley CJ’s conclusion at [25] that the forfeiture was not part of the penalty for any criminal offence.

¹²⁵ CPFA, ss.10(2), 10(4)(a).

¹²⁶ No attempt was made by the appellants or the second respondent below to justify the Scheme as a legitimate scheme for cost recovery which, for that reason, falls outside s.50(1).

¹²⁷ (2013) 33 NTLR 1 at 27.

¹²⁸ Where a person is found guilty, the court may on application of the Crown order that any vehicle, vessel, aircraft, other conveyance, money, money’s worth, valuable security, acknowledgement, note or other thing that relates to the offence be forfeited to the Crown, and such forfeited property shall be dealt with in such manner as the Minister directs.

disabling criminal activity. In these circumstances, Emmerson submits that the practical operation of the Scheme also strongly indicates that the true character of the Scheme is not regulatory, but to acquire a benefit for the Territory;

10 38.3. the procedure under the Act is in sharp contrast to the usual sentencing process: the offender can be denied use¹²⁹ of his or her property before the charge is determined¹³⁰ and even before it is laid¹³¹; the Court cannot make allowance for the offender paying legal expenses relating to forfeiture or criminal proceedings¹³²; the forfeiture occurs by virtue of the making of the declaration under s.36A of the MDA¹³³ rather than pursuant to a discretion exercised by the Court; the DPP and the police can access confidential information relating to information held by banks in relation to its accounts¹³⁴ and the DPP may apply to the Supreme Court for the examination of a person in respect of property¹³⁵, for the production of a property tracking document¹³⁶ or on an ex parte basis monitoring and suspension orders in respect of bank accounts¹³⁷. The complete separation of the Scheme from the sentencing process is made clear by the fact that forfeiture under the Scheme cannot be taken into account by the Court when sentencing the offender for any of the qualifying offences.¹³⁸ This further distances the Scheme from a regulatory characterisation.

20 38.4. Barr J¹³⁹ disagreed with Riley CJ's conclusion¹⁴⁰ that the forfeiture was not part of the penalty for any criminal offence. The true position is that the forfeiture is not part of, nor taken into account in, the sentencing of the "drug trafficker" in any respect, but when invoked by the DPP it nevertheless gives rise to significant additional punishment for the qualifying offences. This additional punishment is the necessary consequence of any law for the acquisition of property otherwise than on just terms which is targeted at offenders. The presence of double punishment supports its characterisation as such.

30 39. The Scheme does not claim, nor does it play, a legitimate role in the enforcement of the criminal law in relation to trafficking in illicit drugs.¹⁴¹ Whether or not a qualifying person is a drug trafficker is a happenstance. The practical advantage of allowing the DPP to deploy the Scheme in his or her discretion is to better advance the express object of the Scheme as set out in s.10(2) of the CPFA by ensuring that only those qualifying persons whose legitimately acquired wealth is likely to generate a return for the Territory are

¹²⁹ Sections 49, 55, 56 and 152 of the CPFA.

¹³⁰ Sections 39(1)(a) and 44(1)(a) of the CPFA.

¹³¹ Section 44(1)(a) of the CPFA.

¹³² Sections 46(2) and 154 of the CPFA.

¹³³ Section 94(1) of the CPFA.

¹³⁴ Sections 13 and 14 of the CPFA.

¹³⁵ Sections 17 and 18 of the CPFA.

¹³⁶ Sections 22-27 of the CPFA.

¹³⁷ Sections 29 and 30 of the CPFA.

¹³⁸ *Sentencing Act* (NT), s.5(4)(c).

¹³⁹ (2013) 33 NTLR 1 at [103].

¹⁴⁰ (2013) 33 NTLR 1 at [25], with whom Kelly J agreed at [57].

¹⁴¹ It is not defended on the basis that it is a legitimate cost recovery scheme of the kind considered in *Airservices Australia v Canadian Airlines* (1999) 202 CLR 133.

made subject to the Scheme. Its true characterisation is as a law for the acquisition of property otherwise than on just terms.

Notice of Contention - Ground in Paragraph 3 -Section 52(3) CPFA

40. The Court of Appeal and the trial judge held that s.52(3)(a) of the CPFA does not contain a temporal limitation but rather provides for the cessation of the effect of the restraining order without the need for a further order where the charge is finally determined and a declaration that the person is a drug trafficker is not made by the Court (because of a finding of not guilty, because the DPP fails to prove other relevant s.36A criteria or where the application is discontinued, withdrawn or dismissed)¹⁴².

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41. Their Honours' reasons were that:

41.1. there is nothing in the wording of the subsection to require the declaration must be sought and made contemporaneously with the final determination of the relevant charge¹⁴³;

41.2. the imposition of a temporal limitation would be inconsistent with s.51 of the CPFA¹⁴⁴ and s.36A(2) of the MDA¹⁴⁵;

41.3. by the Court of Appeal, that a temporal limitation would be inconsistent with the objection process¹⁴⁶ and with the fact that a declaration cannot be made until after a conviction is recorded¹⁴⁷; and

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41.4. by Southwood J, would cause great inconvenience in sentencing proceedings if the Court was required to interpose and deal with a civil application after the finding of guilt but before the pronouncement of sentence¹⁴⁸.

42. Section 52(3) of the CPFA relevantly provides that if a restraining order has been issued under s.44(1)(a) of the CPFA in relation to property of a person who has been charged, the order ceases to have effect:

42.1. if the charge is finally determined but the person is not declared under s.36A of the MDA to be a drug trafficker; or

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42.2. if the charge is disposed of¹⁴⁹ without being determined.

43. The Court of Appeal and the trial judge erred in holding s.52(3)(a) does not contain a temporal limitation because:

¹⁴² (2012) 32 NTLR 180 at [113]; (2013) 33 NTLR 1 per Riley CJ at [53] (Kelly J concurring at [57]) and per Barr J at [99].

¹⁴³ (2012) 32 NTLR 180 at [113]; (2013) 33 NTLR 1 per Barr J at [99].

¹⁴⁴ (2012) 32 NTLR 180 at [113]; (2013) 33 NTLR 1 per Riley CJ at [53] (Kelly J concurring at [57]) and per Barr J at [99].

¹⁴⁵ (2012) 32 NTLR 180 at [113]; (2013) 33 NTLR 1 per Riley CJ at [53] (Kelly J concurring at [57]) and per Barr J at [99].

¹⁴⁶ (2012) 32 NTLR 180 at [113]; (2013) 33 NTLR 1 per Riley CJ at [53] (Kelly J concurring at [57]) and per Barr J at [99].

¹⁴⁷ (2012) 32 NTLR 180 at [113]; (2013) 33 NTLR 1 per Riley CJ at [52] (Kelly J concurring at [57]) and per Barr J at [99].

¹⁴⁸ (2012) 32 NTLR 180 at [114].

¹⁴⁹ Section 5 of the CPFA defines "dispose of" as withdraw, file a no true bill, dismiss or file a nolle prosequi in relation to the offence. The temporal connection between the fate of the charge and the cessation of the restraining order is obvious in the case of s.52(3)(b) of the CPFA.

43.1. in construing the provision, insufficient regard was had to the principle of legality. This requires that an "intention by a legislature to abrogate or curtail fundamental rights must be clearly manifested by unmistakable and unambiguous language"¹⁵⁰, except where its implication is necessary because the provisions would be "inoperative or meaningless" without it¹⁵¹. These rights include property rights like those at stake here.¹⁵² Section 52(3)(a) is a safeguard provision. Its presence in the Scheme reflects "a legislature's concern to give a measure of protection to the interests which the common law has always valued highly and which it went to great lengths to protect"¹⁵³. Given the presence of a constructional choice, it should be construed so as to provide a real safeguard for the important rights which are otherwise left subject to forfeiture in any open-ended and uncertain way¹⁵⁴;

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43.2. the purpose of s.52(3)(a) is not to ensure that a restraining order will lapse if a declaration is not subsequently made. When would that time arrive? It could only arrive when the restraining order expires by lapse of time¹⁵⁵ or by the operation of some other provision of the Act¹⁵⁶ without the declaration having been made. It does not arrive simply because on a subsequent application no declaration is made¹⁵⁷. On this construction, the provision would have no work to do;

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43.3. the notion that the words "or at any other time" in s.36A(2)¹⁵⁸ of the Act stand in the way of the interpretation propounded by Emmerson is misconceived. The words serve 2 purposes. First, they are facilitative. They permit the DPP to apply for the declaration at any time prior to the hearing of the offence and thus meet any argument that the application is premature. The subsection does not concern when the application may be heard or determined. Secondly, the words are in recognition that s.94(1)(b) of the CPFA effect forfeiture of certain property by the declaration regardless of whether a restraining order is in effect¹⁵⁹;

¹⁵⁰ *Lee v New South Wales Crime Commission* (2013) 87 ALJR 1082 per French CJ at [56]; per Crennan J at [126]; per Kiefel J at [171]-[173]; per Gageler and Keane JJ at [307]-[317]; *Momcilovic v R* (2011) 245 CLR 1 per French CJ at [43] and per Crennan and Kiefel JJ at [512]; *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573 per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ at [43] and [44]; *Coco v The Queen* (1994) 190 CLR 427 per Mason CJ and Brennan, Gaudron and McHugh JJ at 436-7.

¹⁵¹ *Coco v The Queen* (1994) 190 CLR 427 per Mason CJ and Brennan, Gaudron and McHugh JJ at 436-7. But note that mere inconvenience in carrying out an object is not a ground for eroding fundamental common law rights.

¹⁵² *Murphy v Farmer* (1988) 165 CLR 19 per Deane, Dawson and Gaudron JJ at 28-29.

¹⁵³ *George v Rockett* (1990) 170 CLR 104 at 110-11.

¹⁵⁴ See also *Director of Public Prosecutions (ACT) v Hiep* (1998) 86 FCR 33 at 42 for the proposition that the public interest would be significantly undermined if automatic forfeiture was to be available for a more or less open ended period.

¹⁵⁵ Section 51(1) of the CPFA.

¹⁵⁶ For example, s.52(2) of the CPFA.

¹⁵⁷ Section 52(3)(a) does not refer to the dismissal of the application, but rather that the declaration is not made. Further, the fact that an application is dismissed (or that the declaration is not made on that application) does not necessarily prevent the DPP from bringing another application provided the restraining did not lapse for some other reason in the meantime.

¹⁵⁸ The provision states: "An application under subsection (1) may be made at the time of a hearing for an offence or at any other time".

¹⁵⁹ Note also the special case in s.9 of the CPFA whereby applications can be made for a declaration in respect of a person who dies before the charge is disposed of or finally determined.

43.4. contrary to what was held by Court of Appeal¹⁶⁰, the existence of a temporal limitation in s.52(3) does not cut across the objection process in the CPFA. Any inability to dispose of objections prior to the final determination of the charge can be accommodated either by the Court refusing to make the restraining order¹⁶¹ or by the court postponing the final determination of the charge until after disposal of the objections;

10 43.5. the Court of Appeal did not appreciate the existence of the time gap between the person having "been found guilty by the court" in respect of the charge in s.36A(3)(a) of the MDA and the charge being "finally determined" in s.52(3)(a) of the CPFA by the recording of the conviction (which usually occurs upon sentencing)¹⁶².

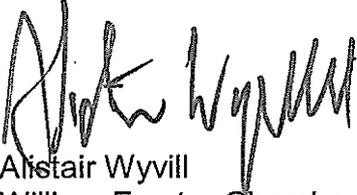
44. It is common ground the charge was laid on 21 February 2011¹⁶³, the restraining order was made on 11 April 2011¹⁶⁴, Emmerson was convicted and sentenced in respect of the charge on 22 September 2011¹⁶⁵ and the Supreme Court did not make the declaration under s.36A of MDA until 15 August 2012¹⁶⁶ following the application by the DPP filed on 13 February 2012¹⁶⁷.

20 45. The restraining order therefore ceased to have effect on 22 September 2011. It follows that when Emmerson was declared a drug trafficker, s.94(1)(a) of the CPFA did not effect a forfeiture of the property the subject of the restraining order.

Part VIII: An estimate of the number of hours required for the presentation of the respondent's oral argument.

46. It is estimated that the presentation of Emmerson's oral argument will require 2 hours.

Dated: 6 December 2013

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Alistair Wyvill
William Forster Chambers
Tel: 08 89824700
Fax: 08 89411541
Email:
awyvill@williamforster.com

Dr Peter Johnston
Stone Chambers

johnston.peter@yahoo.com.au


Nikolai Christrup
William Forster Chambers

¹⁶⁰ (2013) 33 NTLR 1 at [49] & [50] per Riley CJ, at [57] per Kelly J and at [99] per Barr J.

¹⁶¹ Where, for example, the lateness of the application means the objections cannot be dealt with prior to the final determination of the charge.

¹⁶² (2013) 33 NTLR 1 per Riley CJ at [52] (Kelly J concurring at [57]) and per Barr J at [99].

¹⁶³ (2012) 32 NTLR 180 at [27].

¹⁶⁴ (2012) 32 NTLR 180 at [32].

¹⁶⁵ (2012) 32 NTLR 180 at [12], [13] and [27].

¹⁶⁶ (2012) 32 NTLR 180 at [115].

¹⁶⁷ (2012) 32 NTLR 180 at [39].



Commonwealth of Australia Constitution Act (The Constitution)

This compilation was prepared on 25 July 2003
taking into account alterations up to Act No. 84 of 1977

**[Note: This compilation contains all amendments to the Constitution
made by the Constitution Alterations specified in Note 1
Additions to the text are shown in bold type
Omitted text is shown as ruled through]**

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

Section 51

Part V—Powers of the Parliament

51 Legislative powers of the Parliament [see Notes 10 and 11]

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

.....

- (xxxix) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;

.....

Chapter III—The Judicature

71 Judicial power and Courts

The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

75 Original jurisdiction of High Court

In all matters:

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
- (iv) between States, or between residents of different States, or between a State and a resident of another State;

Section 76

(v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth; the High Court shall have original jurisdiction.

76 Additional original jurisdiction

The Parliament may make laws conferring original jurisdiction on the High Court in any matter:

- (i) arising under this Constitution, or involving its interpretation;
- (ii) arising under any laws made by the Parliament;
- (iii) of Admiralty and maritime jurisdiction;
- (iv) relating to the same subject-matter claimed under the laws of different States.

77 Power to define jurisdiction

With respect to any of the matters mentioned in the last two sections the Parliament may make laws:

- (i) defining the jurisdiction of any federal court other than the High Court;
- (ii) defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States;
- (iii) investing any court of a State with federal jurisdiction.

Chapter VI—New States

122 Government of territories

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.



Northern Territory (Self-Government) Act 1978

Act No. 58 of 1978 as amended

This compilation was prepared on 7 July 2009
taking into account amendments up to Act No. 54 of 2009

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Part V—Finance

44 Public moneys

- (1) The public moneys of the Territory shall be available to defray the expenditure of the Territory.
- (2) The receipt, expenditure and control of public moneys of the Territory shall be regulated as provided by enactment.

Part VI—Miscellaneous

50 Acquisition of property to be on just terms

- (1) The power of the Legislative Assembly conferred by section 6 in relation to the making of laws does not extend to the making of laws with respect to the acquisition of property otherwise than on just terms.
- (2) Subject to section 70, the acquisition of any property in the Territory which, if the property were in a State, would be an acquisition to which paragraph 51(xxxi) of the Constitution would apply, shall not be made otherwise than on just terms.

NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 July 2010. Any amendments that commence after that date are not included.

CRIMINAL PROPERTY FORFEITURE ACT

An Act to provide for the forfeiture in certain circumstances of property acquired as a result of criminal activity and property used for criminal activity, to provide for the reciprocal enforcement of certain Australian legislation relating to the forfeiture of proceeds of crime and forfeiture of other property, and for related purposes

Part 1 Preliminary matters**3 Objective**

The objective of this Act is to target the proceeds of crime in general and drug-related crime in particular in order to prevent the unjust enrichment of persons involved in criminal activities.

5 Definitions

In this Act:

.....

dispose of, in relation to a charge, means:

- (a) withdraw; or
- (b) file a no true bill; or
- (c) dismiss; or
- (d) file a nolle prosequi in relation to the offence.

.....

49 Effect of restraining order

- (1) While a restraining order is in effect in relation to property:
 - (a) subject to Division 3, the property cannot be dealt with; and
 - (b) the applicant in relation to the restraining order may apply under this Act to the court that made the restraining order for an order that all or some of the property is forfeit to the Territory.
- (2) Income or other property that is derived from property subject to a restraining order is taken to be part of the property and is also subject to the restraining order.
- (3) A person may apply to the court that made a restraining order for the release of property that is subject to the order to meet reasonable living and business expenses of the owner of the property.
- (4) In subsection (3), reasonable living and business expenses does not include legal expenses mentioned in section 154.

50 Setting aside of restraining order

- (1) The applicant in relation to a restraining order under section 43(1) or (2)(a) must request the court that made the order to set the order aside if the grounds for suspecting that the property is crime-used or crime-derived no longer exist.
- (2) The applicant in relation to a restraining order under section 44(1)(a) must request the court that made the order to set the order aside if the person could not be declared to be a drug trafficker.

- (3) The applicant in relation to a restraining order may request the court that made the order to set the order aside for any other reason.
- (4) If a restraining order relating to property is set aside, the applicant in relation to the restraining order must ensure that:
 - (a) notice of the setting aside is served personally, as soon as practicable, on each person on whom a copy of the restraining order was served under section 47; and
 - (b) any property subject to the restraining order that is being retained under section 39(2) is returned to the person from whom it was seized unless it is to be otherwise dealt with under this Act or another Act; and
 - (c) any property subject to the restraining order that is being guarded under section 39(2) is released from guard; and
 - (d) if the applicant is aware that the person to whom property is to be returned under paragraph (b) is not the owner of the property – the owner is notified, where practicable, of the setting aside of the restraining order and the return of the property.

51 Duration of restraining order

- (1) A restraining order under section 43 or 44 has effect for the period set by the court when the order is made.
- (2) On application, the court that made a restraining order may extend the duration of the order for a further period.
- (3) The court that made a restraining order may extend the duration of the order on as many occasions as the court sees fit.
- (4) If the period of a restraining order is extended under this section, the applicant in relation to the order must serve a notice of the extension on each person on whom a notice was served under section 47.

52 Restraining order ceases to have effect

- (1) If a restraining order has been made under section 43(1) or (2)(a) in relation to suspected crime-used or crime-derived property, the order ceases to have effect if within the period set (or extended) by the court under section 51 an application has not been made:
 - (a) if the property is crime-derived – either under section 73 for a criminal benefits declaration or under Part 7 for forfeiture of the property; or
 - (b) if the property is crime-used – under Part 7 for forfeiture of the property.
- (2) If a restraining order has been made under section 44(1)(a) in relation to property of a person who was to be charged with an offence, the order ceases to have effect if within 21 days after the date of the order the person has not been charged with the offence indicated in the application for the order or an alternative offence.
- (3) If a restraining order has been issued under section 44(1)(a) in relation to property of a person who has been charged, or who was to be charged and a charge has been laid within 21 days after the date of the order, the order ceases to have effect:
 - (a) if the charge is finally determined but the person is not declared under section 36A of the *Misuse of Drugs Act* to be a drug trafficker; or
 - (b) if the charge is disposed of without being determined.
- (4) If a restraining order has been made under section 43 on the basis that an application had been made or was to be made for another order, the restraining order ceases to have effect if:
 - (a) within 21 days after the making of the restraining order an application has not been made for the other order; or
 - (b) the application for the other order is withdrawn; or
 - (c) the application for the other order is finally determined but the court that heard the application does not make the other order.
- (5) If a restraining order has been made under section 44(1)(b) on the basis that an application was to be made for a production order or a declaration, the restraining order ceases to have effect if:
 - (a) within 21 days after the making of the restraining order an application has not been made for the production order or the declaration; or

- (b) the application for the production order or declaration is withdrawn; or
 - (c) the application for the production order or declaration is finally determined but the court that heard the application does not make the production order or declaration; or
 - (d) if a declaration is made – the respondent's liability to pay to the Territory the amount ordered by the court that made the declaration (including any costs awarded against the respondent) is satisfied, whether or not all or any of the property subject to the restraining order was transferred to the Territory to satisfy the liability.
- (6) A restraining order made under section 43 or 44 ceases to have effect if the order is set aside under section 50 or Part 5.
- (7) Despite anything in this section, a restraining order that was issued under both sections 43 and 44 or on more than one ground under either section:
- (a) only ceases to have effect if set aside on all grounds; and
 - (b) if set aside on only some of the grounds – continues in effect on each remaining ground.
- (8) A restraining order ceases to have effect in relation to property if the property is forfeited to the Territory under Part 7, Division 3.

Division 3 Dealing with seized or restrained property

55 Prohibited dealings

- (1) A person must not deal with seized or restrained property in any way.

Maximum penalty: 1 000 penalty units or the value of the property (whichever is greater), or imprisonment for 5 years.

- (2) Subsection (1) does not apply to:

- (a) a person acting in accordance with an order under section 46(1)(c), 109(2) or 111(2);
- (b) for seized property – a police officer acting under section 39 or a person acting under the direction of a police officer who is acting in accordance with this Act; or
- (c) for restrained property – a person acting in accordance with the restraining order.

- (3) It is a defence to a prosecution for an offence under subsection (1) in relation to seized property if the defendant establishes that he or she did not know, and cannot reasonably be expected to have known, that the property was seized under section 39 at the material time.
- (4) It is a defence to a prosecution for an offence under subsection (1) in relation to property subject to a restraining order if the respondent establishes that he or she did not know, and cannot reasonably be expected to have known, that the restraining order was in force at the material time.
- (5) Subsection (1) does not prevent a person from being dealt with for a contempt of the court that made a restraining order for a contravention of the order, but the person is not punishable for both a contempt and an offence under subsection (1) arising from the same contravention.

Part 5 Objections to restraint of property**59 Objections to restraining of property**

- (1) A person may file in the court that made the relevant restraining order an objection to the restraint of the property.
- (2) An objection is to identify:
 - (a) the property to which the objection relates; and
 - (b) the grounds for objection against the property being restrained.

60 Time for filing objection

- (1) If a copy of the restraining order was served on the objector under section 47, the objection is to be filed:
 - (a) within 28 days after the day on which the copy of the order was served on the objector; or
 - (b) within any further time allowed by the court in which the objection is filed.
- (2) If a copy of the restraining order was not served on the objector under section 47, the objection is to be filed:
 - (a) within 28 days after the day on which the objector becomes aware, or could reasonably be expected to have become aware, that the property has been restrained; or

(b) within any further time allowed by the court in which the objection is filed.

(3) The court may allow further time under subsection (2) or (3) despite that the time for filing the objection has expired.

61 Parties to objection proceedings

The Territory is a party to proceedings on an objection.

62 Setting aside restraining order

(1) The court that is hearing an objection to the restraint of property may set aside the relevant restraining order to the extent provided by section 63, 64 or 65.

(2) Despite subsection (1), if the property was restrained on 2 or more grounds but the court does not set aside the restraining order in relation to all the grounds, the restraining order continues in force on each remaining ground.

(3) If a court sets aside a restraining order under this Part, the court may make any necessary or convenient ancillary orders.

65 Setting aside restraining order – other property

- (1) The court that made a restraining order under section 44(1)(a) may set the order aside if the court finds that it is more likely than not that the person who is or will be charged with the offence does not own or effectively control the property, and has not at any time given it away.
- (2) The court that made a restraining order under section 44(1)(b) or (c) may set the order aside if the court finds that it is more likely than not that the person who is or will be the respondent to the unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration does not own or effectively control the property, and has not at any time given it away.

NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 13 October 2010. Any amendments that commence after that date are not included.

MISUSE OF DRUGS ACT

An Act to consolidate and amend the law relating to the misuse of drugs, to make further provision for the prevention of the misuse of drugs, and for other purposes

Part I Preliminary

3 Interpretation

(1) In this Act:

commercial quantity, in relation to a dangerous drug, means a quantity or amount equal to or exceeding the quantity or amount of that dangerous drug specified in column 3 of Schedule 1 or 2 opposite to the name of that dangerous drug specified in column 1 of that Schedule.

dangerous drug means a substance or thing specified in Schedule 1 or 2 or, where the substance or thing so specified is a prohibited plant, any part of the plant, being a part not specified in Schedule 1 or 2, from which a substance or thing referred to in Schedule 1 or 2 can be extracted or obtained.

supply means:

- (a) give, distribute, sell, administer, transport or supply, whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;
- (b) offering to do an act referred to in paragraph (a); or
- (c) doing or offering to do an act preparatory to, in furtherance of, or for the purpose of, an act referred to in paragraph (a),

and includes barter and exchange.

traffickable quantity, in relation to a dangerous drug, means a quantity or amount equal to or exceeding the quantity or amount of that dangerous drug specified in column 2 of Schedule 1 or 2 opposite to the name of the dangerous drug specified in column 1 of that Schedule.

- (2) In this Act, a reference to a dangerous drug includes a reference to:
 - (a) a substance which is, in relation to a dangerous drug:
 - (i) an active principal of that dangerous drug;
 - (ii) a preparation or mixture of that dangerous drug (which may include a substance that is not a dangerous drug) that contains any proportion of that dangerous drug; or

- (iii) a salt of that dangerous drug or active principal,
except where the substance is separately specified in Schedule 1 or 2; and
- (b) a substance (*drug analogue*) which is, in relation to another substance (being a dangerous drug specified in Schedule 1 or 2, or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a drug or substance):
 - (i) a stereoisomer;
 - (ii) a structural isomer having the same constituent groups;
 - (iii) an alkaloid;
 - (iv) a structural modification notionally obtained in one or more of the following ways:
 - (A) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
 - (B) by the addition of hydrogen atoms to one or more unsaturated bonds;
 - (C) by the addition of one or more of the following groups:
 - (1) alkoxy, cyclic diether, acyl, acyloxy, mono-amino and dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
 - (2) alkyl, alkenyl and alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon; and
 - (3) halogen, hydroxy, nitro and amino groups;
 - (D) by the replacement of one or more of the groups specified in subparagraph (C) with another such group or groups; or
 - (E) by the conversion of a carboxyl or an ester group into an amide group; or

(v) otherwise an homologue, analogue, chemical derivative or substance substantially similar in chemical structure,

however manufactured or actually obtained, except where the drug analogue:

(vi) is a dangerous drug; or

(vii) is specified in a Schedule to the *Poisons and Dangerous Drugs Act*.

34 Forfeiture of drugs, precursors etc.

- (1) On the finding of guilt of a person for an offence against this Act, any dangerous drug or precursor in respect of which the finding of guilt is made is forfeited to the Crown.
- (2) Where a person charged with an offence against this Act is tried but not found guilty of any offence on the charge, the court before which the person was charged may order that a dangerous drug or precursor, or thing alleged to be a dangerous drug or precursor, in respect of which the offence was alleged to have been committed be forfeited to the Crown and on the order being so made it is forfeited accordingly.
- (3) Where a person is found guilty of an offence against this Act, the court by which the person is found guilty may, on application to it made on behalf of the Crown, order that any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing that relates to that offence be forfeited to the Crown.

-
- (4) Where an application referred to in subsection (3) is made, a person who has an interest in the vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing to which the application relates is entitled to:
- (a) such notice of the application as the court thinks fit; and
 - (b) to appear and be heard on the application.
- (5) Where any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing that is liable to forfeiture under subsection (2) or (3) is received or acquired by a person who was not a party to the commission of the offence by virtue of which it is liable to forfeiture, an order for its forfeiture may be made unless that person proves that he or she:
- (a) gave valuable consideration for it; and
 - (b) at the time of receiving or acquiring it had no reason to suspect the circumstances by virtue of which it is liable to forfeiture.
- (6) A court empowered under this section to order the forfeiture of any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing may order that it be released or returned to a person referred to in subsection (5) or any other person.
- (7) Where an order is made under subsection (3), a person referred to in subsection (5) may appeal against the order of the court as if the person were a defendant.
- (8) Where any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing that is forfeited under subsection (2) is in the possession or control of, or held at the direction of, a person other than the person found guilty, that other person shall, on production to the person of a copy of the order made under that subsection, immediately pay the money or deliver the money's worth, valuable security, acknowledgement, note or other thing to the Crown.
- Maximum penalty: 85 penalty units or imprisonment for 2 years.
- (9) On payment or delivery being made in accordance with subsection (8), the liability to the person found guilty, or to any other person, of the person making the payment or delivery is, to the extent of that payment or delivery, discharged.

-
- (10) A thing forfeited to the Crown under this section shall be dealt with in such manner as the Minister directs.
- (11) Where a court makes an order under subsection (3), the Judge or magistrate constituting the court shall make and sign a minute or memorandum of the order.
- (12) A minute or memorandum of an order made under subsection (11) has the force and effect of a judgment of the court and the like proceedings (including proceedings in bankruptcy) may be taken on the minute or memorandum as if the order had been a judgment of the court:
- (a) in favour of the Crown (as plaintiff and the owner of the forfeited vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing); and
 - (b) against the person found guilty as defendant.
- (13) For the purposes of this section, any vehicle, vessel, aircraft, other conveyance, money, money's worth, valuable security, acknowledgement, note or other thing shall be taken to relate to an offence if it:
- (a) is an article referred to in section 120BA of the *Police Administration Act*;
 - (b) was used in the commission of an offence against this Act;
 - (c) was received or acquired directly or indirectly as or from the proceeds or part of the proceeds of the sale of a dangerous drug, precursor; or
 - (d) entitles a person, or is evidence that a person is entitled, to receive money or money's worth as the proceeds or part of the proceeds of the sale of a dangerous drug or precursor,
- whether or not the money, money's worth, valuable security, acknowledgement, note or other thing is or was at any time owned by or in the possession of the person found guilty.

Schedule 1

section 3

Column 1 Dangerous drug	Column 2 Traffickable quantity	Column 3 Commercial quantity
Heroin	2.00 G	40.00 G
Cocaine	2.00 g	40.00 g
Phencyclidine	2.00 g	40.00 g
Lysergic acid	0.002 g	0.10 g
Lysergide	0.002 g	0.10 g

Schedule 2

section 3

COLUMN 1 Dangerous drug or prohibited plant	COLUMN 2 Traffickable quantity	COLUMN 3 Commercial quantity
Acetorphine	2.00 g	100.00 g
Acetyl-a-methylfentanyl	0.005 g	0.25 g
Acetyldihydrocodeine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of acetyldihydrocodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of acetyldihydrocodeine		
Acetylmethadol	2.00 g	100.00 g
Acetylmorphines	2.00 g	100.00 g
Alfentanil	0.005 g	0.25 g
Alkoxyamphetamines and bromo- substituted alkoxyamphetamines, except where separately specified in this Schedule	0.50 g	25.00 g
Alkoxyphenethylamines and alkyl- substituted alkoxyphenethylamines, except where separately specified in this Schedule	0.50 g	25.00 g
Alkythioamphetamines	0.50 g	25.00 g
Allylprodine	2.00 g	100.00 g
Alphacetylmethadol	10.00 g	500.00 g
Alphameprodine	0.20 g	10.00 g
Alphamethadol	0.20 g	10.00 g
Alphaprodine	25.00 g	1.25 kg
2-Amino-1-(2,5-dimethoxy-4-methyl) phenylpropane (STP, DOM)	0.50 g	10.00 g

Amphetamine	2.00 g	100.00 g
Amylobarbitone	20.00 g	1.00 kg
Anileridine	25.00 g	1.25 kg
Benzethidine	10.00 g	500.00 g
Benzylmorphine	5.00 g	250.00 g
Benzylmorphine (3-benzylmorphine)	5.00 g	250.00 g
1-Benzylpiperazine	2.00 g	100.00 g
Betacetylmethadol	5.00 g	250.00 g
Betameprodine	5.00 g	250.00 g
Betamethadol	5.00 g	250.00 g
Betaprodine	5.00 g	250.00 g
Bezitramide	5.00 g	250.00 g
4-Bromo-2,5-dimethoxyamphetamine	0.05 g	2.50 g
4-Bromo-3,5-dimethoxyamphetamine	0.50 g	25.00 g
4-Bromo-2,5-dimethoxyphenethylamine (BDMPEA)	0.50 g	25.00 g
3-Bromo-4-methoxyamphetamine	0.50 g	25.00 g
4-Bromo-3-methoxyamphetamine	0.50 g	25.00 g
Bufotenine	2.00 g	100.00 g
Bufotenine and its derivatives having hallucinogenic properties	2.00 g	100.00 g
Butobarbitone	20.00 g	1.00 kg
Butorphanol	2.00 g	100.00 g
Cannabis oil	1.00 g	25.00 g
Cannabis plant	not less than 5 nor more than 19 plants	not less than 20 plants
Cannabis plant material (being any part of the Cannabis plant, including the flowering or fruiting tops, leaves, stalks and seeds)	50.00 g	500.00 g
Cannabis resin	10.00 g	100.00 g
Cannabis seed	10.00 g	100.00 g
Cathinone	2.00 g	100.00 g

Clonitazene	5.00 g	250.00 g
Coca Leaf	250.00 g	5.00 kg
Codeine except when compounded with one or more other medicaments:	10.00 g	500.00 g
(a) in divided preparations containing 30 mg or less of codeine per dosage unit; or		
(b) in undivided preparations containing 1% or less of codeine		
Codeine-N-oxide	10.00 g	500.00 g
Codoxime	10.00 g	500.00 g
Concentrate of Poppy Straw (the material arising when poppy straw has entered into a process for concentration of its alkaloids)	250.00 g	5.00 kg
4-Cyano-2-dimethylamino-4,4-diphenylbutane (Methadone intermediate)	2.00 g	100.00 g
4-Cyano-1-methyl-4-phenylpiperidine (Pethidine intermediate A)	10.00 g	500.00 g
Cyclobarbitone	20.00 g	1.00 kg
Desomorphine	2.00 g	100.00 g
Dexamphetamine	2.00 g	100.00 g
Dextromoramide	2.00 g	100.00 g
Dextropropoxyphene, except when:	27.00 g	1.35 KG
(a) in divided preparations containing 135 mg or less of dextropropoxyphene per dosage unit; or		
(b) in liquid preparations containing 2.5% or less of dextropropoxyphene		
Diampromide	5.00 g	250.00 g
Diethylthiambutene	5.00 g	250.00 g
N,N-Diethyltryptamine (DET)	2.00 g	100.00 g

Difenoxin, except in preparations containing, per dosage unit. 0.5 mg or less of difenoxin and a quantity of atropine sulphate equivalent to at least 5% of the dose of difenoxin	2.00 g	100.00 g
Dihydrocodeine, except when compounded with one or more other medicaments:	10.00 g	500.00 g
(a) in divided preparations containing not more than 100 mg of dihydrocodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of dihydrocodeine		
Dihydromorphine	10.00 g	500.00 g
Dimenoxadol	10.00 g	500.00 g
Dimepheptanol	10.00 g	500.00 g
2,4-Dimethoxyamphetamine	0.50 g	25.00 g
3,4-Dimethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-bromoamphetamine (DOB)	0.50 g	25.00 g
3,4-Dimethoxy-5-ethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-ethoxyamphetamine	0.50 g	25.00 g
4,5-Dimethoxy-2-ethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-ethyl- α -methylphenylethylamine (DOET)	0.50 g	25.00 g
2,5-Dimethoxy-4-methylamphetamine and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	2.00 g	100.00 g
2,3-Dimethoxy-4,5-methylenedioxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-3,4-methylenedioxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy- α -methylphenylethylamine (DMA)	0.50 g	25.00 g
3,4-Dimethoxyphenylethylamine	0.50 g	25.00 g
3-(2-Dimethylaminoethyl)-4-hydroxyindole (Psilocine, Psilocin)	0.10 g	5.00 g

3-(1,2-Dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d)pyran (DMHP)	2.00 g	100.00 g
Dimethylthiambutene	20.00 g	1.00 kg
N,N,-Dimethyltryptamine (DMT)	2.00 g	100.00 g
N:N-Dimethyltryptamine and its derivatives having hallucinogenic properties	2.00 g	100.00 g
Dioxaphetyl Butyrate	2.00 g	100.00 g
Diphenoxylate, except in preparations containing, per dosage unit, 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate	2.00 g	100.00 g
Dipipanone	10.00 g	500.00 g
Drotebanol	2.00 g	100.00 g
Ecgonine	10.00 g	1.00 kg
Ethylamphetamine	2.00 g	100.00 g
4,5-Ethylenedioxy-3-methoxyamphetamine	0.50 g	25.00 g
Ethylmethylthiambutene	10.00 g	500.00 g
Ethylmorphine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of ethylmorphine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of ethylmorphine		
Eticyclidine (PCE)	2.00 g	100.00 g
Etonitazene	5.00 g	250.00 g
Etorphine	5.00 g	250.00 g
Etoxadine	5.00 g	250.00 g
Fenetylline	2.00 g	100.00 g
Fentanyl	0.005 g	0.25 g
Furethidine	1.00 g	50.00 g

Harmaline	2.00 g	100.00 g
Harmine	2.00 g	100.00 g
3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran (Parahexyl)	2.00 g	100.00 g
Hydrocodone	2.00 g	100.00 g
Hydromorphanol	2.00 g	100.00 g
Hydromorphone	2.00 g	100.00 g
B-Hydroxyfentanyl	0.005 g	0.25 g
B-Hydroxy-3-methylfentanyl	0.005 g	0.25 g
Hydroxypethidine	5.00 g	250.00 g
4-Hydroxybutanoic acid	2.00g	100.00g
Isomethadone	2.00 g	100.00 g
Ketobemidone	2.00 g	100.00 g
Ketamine	0.002g	0.10 g
Khat leaf	250.00 g	5.00 kg
Levamphetamine	2.00 g	100.00 g
Levomethamphetamine	2.00 g	100.00 g
Levomethorphan	2.00 g	100.00 g
Levomoramide	2.00 g	100.00 g
Levophenacymorphan	2.00 g	100.00 g
Levorphanol	1.00 g	50.00 g
Mecloqualone	60.00 g	3.00 kg
Mescaline – see 3,4,5-Trimethoxyphenethylamine		
Mescaline and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	7.50 g	375.00 g
Metazocine	7.00 g	350.00 g
Methadone	2.00 g	100.00 g
Methamphetamine	2.00 g	100.00 g

Methaqualone	50.00 g	2.50 kg
Methcathinone	2.00 g	100.00 g
2-Methoxy-3,4-methylenedioxyamphetamine	50.00 g	2.50 kg
2-Methoxy-4,5-methylenedioxyamphetamine	0.50 g	25.00 g
4-Methoxy-2,3-methylenedioxyamphetamine	0.50 g	25.00 g
5-Methoxy-3,4-methylenedioxy- α -methylphenylethylamine (MMDA)	0.50 g	25.00 g
2-Methoxy-3,4-methylenedioxyphenylethylamine	0.50 g	25.00 g
3-Methoxy-4,5-methylenedioxyphenylethylamine	0.50 g	25.00 g
4-Methoxy- α -methylphenylethylamine (PMA)	0.50 g	25.00 g
4-Methoxyphenylethylamine	0.50 g	25.00 g
3,4-Methylenedioxyamphetamine (MDA)	0.50 g	25.00 g
3,4-Methylenedioxy-N, α -dimethylphenylethylamine (MDMA)	0.50 g	25.00 g
3,4-Methylenedioxy-N-ethylamphetamine (MDE)	0.50 g	25.00 g
2-Methyl-3-morpholino-1,1-diphenylpropane Carboxylic Acid (Moramide intermediate)	8.00 g	400.00 g
1-Methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)	10.00 g	500.00 g
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)	2.00 g	100.00 g
Methylamphetamine	2.00 g	100.00 g
Methyldesorphine	2.00 g	100.00 g
Methyldihydromorphine	2.00 g	100.00 g
3,4-Methylenedioxyamphetamine	0.50 g	25.00 g
3-Methylfentanyl	0.005 g	0.25 g
α -Methylfentanyl	0.005 g	0.25 g
Methylphenidate	2.00 g	100.00 g
3-Methylthiofentanyl	0.005 g	0.25 g
Metopon	2.00 g	100.00 g

Morpheridine	2.00 g	100.00 g
Morphine	2.00 g	100.00 g
Morphine Methobromide	2.00 g	100.00 g
Morphine-N-oxide	2.00 g	100.00 g
Muscimol	2.00 g	100.00 g
Myrophine	20.00 g	1.00 kg
Nabilone	0.40 g	20.00 g
Nicocodine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
in divided preparations containing not more than 100 mg of nicocodine per dosage unit; or		
in undivided preparations with a concentration of not more than 2.5% of nicocodine		
Nicodicodine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of nicodicodine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of nicodicodine		
Nicomorphine	2.00 g	100.00 g
Noracylmethadol	2.00 g	100.00 g
Noracymethadol	2.00 g	100.00 g
Norcodeine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of norcodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of norcodeine		
Norlevorphanol	2.00 g	100.00 g
Normethadone	5.00 g	250.00 g
Normorphine	20.00 g	1.00 kg

Norpipanone	10.00 g	500.00 g
Opium in any form, except the alkaloids noscapine and papaverine	20.00 g	100.00 g
Oxycodone	5.00 g	250.00 g
Oxymorphone	2.00 g	100.00 g
Para-fluorofentanyl	0.005 g	0.25 g
Parahexyl	—	—
Pentazocine	20.00 g	1.00 kg
Pentobarbitone	20.00 g	1.00 kg
Pethidine	10.00 g	500.00 g
Phenadoxone	10.00 g	500.00 g
Phenampromide	10.00 g	500.00 g
Phenazocine	1.00 g	50.00 g
Phendimetrazine	5.00 g	250.00 g
Phenmetrazine	5.00 g	250.00 g
Phenomorphane	5.00 g	250.00 g
Phenoperidine	1.00 g	50.00 g
1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)	2.00 g	100.00 g
4-Phenylpiperidine-4-carboxylic Acid Ethyl Ester (Pethidine intermediate B)	10.00 g	500.00 g
Pholcodine, except when compounded with one or more other medicaments:	5.00 g	250.00 g
(a) in divided preparations containing not more than 100 mg of pholcodine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of pholcodine		
Piminodine	10.00 g	500.00 g
Piritramide	1.00 g	50.00 g
Proheptazine	1.00 g	50.00 g
Prohibited plant, other than elsewhere described in this Schedule	not less than 5 nor more than 19 plants	not less than 20 plants

Properidine	25.00 g	1.25 kg
Propiram	10.00 g	500.00 g
Psilocybin and its derivatives having hallucinogenic properties	0.10 g	5.00 g
Quinalbarbitone	20.00 g	1.00 kg
Racemethorphan	2.00 g	100.00 g
Racemoramide	2.00 g	100.00 g
Racemorphan	2.00 g	100.00 g
Rolicyclidine (PHP, PCPY)	2.00 g	100.00 g
Salvia Divinorum, including extracts and other substances structurally derived from Salvia Divinorum and having hallucinogenic properties	7.50 g	375.00 g
Secbutobarbitone	20.00 g	1.00 kg
Sufentanil	0.005 g	0.25 g
Tenocyclidine (TCP)	2.00 g	100.00 g
Tetrahydrocannabinols and their alkyl homologues except:		
(a) when separately specified in this Schedule;		
(b) in hemp seed oil, containing 50 mg/kg or less of tetrahydrocannabinols, when labelled "Not for internal use" or "Not to be taken"; or		
(c) in products for purposes other than internal human use containing 50 mg/kg or less of tetrahydrocannabinols.		
2,3,4,5-Tetramethoxyamphetamine	0.50 g	25.00 g
Thebacon	2.00 g	100.00 g
Thebaine	2.00 g	100.00 g
Thiofentanyl	0.005 g	0.25 g
Tilidine	20.00 g	1.00 kg

1-(3-Trifluoromethylphenyl) piperazine and other piperazine derivatives	2.00 g	100.00 g
Trimeperidine	10.00 g	500.00 g
2,3,4-Trimethoxyamphetamine	0.50 g	25.00 g
2,3,5-Trimethoxyamphetamine	0.50 g	25.00 g
2,3,6-Trimethoxyamphetamine	0.50 g	25.00 g
2,4,5-Trimethoxyamphetamine	0.50 g	25.00 g
2,4,6-Trimethoxyamphetamine	0.50 g	25.00 g
3,4,5-Trimethoxy- α -methylphenylethylamine (TMA)	0.50 g	25.00 g
3,4,5-Trimethoxyphenethylamine (mescaline) and other substances structurally derived from methoxyphenylethylamine, except:	7.50 g	375.00 g
(a) methoxyphenamine; or		
(b) where separately specified in this Schedule		
1-(3,4,5,-Trimethoxyphenyl)-2-aminobutane	0.50 g	25.00 g
2,4,5-Trimethoxyphenylethylamine	0.50 g	25.00 g
Anabolic Steroids:		
Danazol	10.00 g	500.00 g
Dromostanolone propionate	12.00 g	600.00 g
Ethylestrenol	10.00 g	500.00 g
Fluoxymesterone	12.00 g	600.00 g
Methandriol	32.00 g	1.60 kg
Methyltestosterone	48.00 g	2.40 kg
Nandrolone decanoate	6.00 g	300.00 g
Nandrolone phenpropionate	8.00 g	400.00 g
Oxandrolone	12.00 g	600.00 g
Oxymetholone	300.00 g	15.00 kg
Stanozolol	7.20 g	360.00 g
Testolactone	1.20 kg	6.00 kg
Testosterone	2.40 g	120.00 g
Testosterone cypionate	32.00 g	1.60 kg
Testosterone enanthate	32.00 g	1.60 kg
Testosterone propionate except anabolic steroids in products packaged for ovulation control or in quantities which can lawfully be prescribed in accordance with Schedule 4 of the <i>Poisons and Dangerous Drugs Act</i>	12.00 g	600.00 g

NORTHERN TERRITORY OF AUSTRALIA

As in force at 11 November 2013

MISUSE OF DRUGS ACT

An Act to consolidate and amend the law relating to the misuse of drugs, to make further provision for the prevention of the misuse of drugs, and for other purposes

**Schedules 1 and 2 as valid 6 December 2013
- the date of the respondent's submission**

Schedule 1

section 3

Column 1 Dangerous drug	Column 2 Traffickable quantity	Column 3 Commercial quantity
Heroin	2.00 G	40.00 G
Cocaine	2.00 g	40.00 g
Phencyclidine	2.00 g	40.00 g
Lysergic acid	0.002 g	0.10 g
Lysergide	0.002 g	0.10 g
Methamphetamine	2.00 g	40.00 g

Schedule 2

section 3

COLUMN 1 Dangerous drug or prohibited plant	COLUMN 2 Traffickable quantity	COLUMN 3 Commercial quantity
Acetorphine	2.00 g	100.00 g
Acetyl-a-methylfentanyl	0.005 g	0.25 g
Acetyldihydrocodeine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of acetyldihydrocodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of acetyldihydrocodeine		
Acetylmethadol	2.00 g	100.00 g
Acetylmorphines	2.00 g	100.00 g
Adamantoylindoles	50.0 g	500.00 g
Adamantylamidoindazoles	50.0 g	500.00 g
Adamantylamidoindoles	50.0 g	500.00 g
Alfentanil	0.005 g	0.25 g
Alkoxyamphetamines and bromo- substituted alkoxyamphetamines, except where separately specified in this Schedule	0.50 g	25.00 g
Alkoxyphenethylamines and alkyl- substituted alkoxyphenethylamines, except where separately specified in this Schedule	0.50 g	25.00 g
Alkythioamphetamines	0.50 g	25.00 g
Allylprodine	2.00 g	100.00 g
Alphacetylmethadol	10.00 g	500.00 g
Alphameprodine	0.20 g	10.00 g
Alphamethadol	0.20 g	10.00 g

Alphaprodine	25.00 g	1.25 kg
2-Amino-1-(2,5-dimethoxy-4-methyl) phenylpropane (STP, DOM)	0.50 g	10.00 g
Amphetamine	2.00 g	100.00 g
Amylobarbitone	20.00 g	1.00 kg
Anileridine	25.00 g	1.25 kg
Benzethidine	10.00 g	500.00 g
Benzylmorphine	5.00 g	250.00 g
Benzylmorphine (3-benzylmorphine)	5.00 g	250.00 g
Benzoylindoles	50.0 g	500.00 g
1-Benzylpiperazine	2.00 g	100.00 g
Betacetylmethadol	5.00 g	250.00 g
Betameprodine	5.00 g	250.00 g
Betamethadol	5.00 g	250.00 g
Betaprodine	5.00 g	250.00 g
Bezitramide	5.00 g	250.00 g
2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (25B-NBOMe)	0.50 g	25.00 g
4-Bromo-2,5-dimethoxyamphetamine	0.05 g	2.50 g
4-Bromo-3,5-dimethoxyamphetamine	0.50 g	25.00 g
4-Bromo-2,5-dimethoxyphenethylamine (BDMPEA)	0.50 g	25.00 g
3-Bromo-4-methoxyamphetamine	0.50 g	25.00 g
4-Bromo-3-methoxyamphetamine	0.50 g	25.00 g
Bufotenine	2.00 g	100.00 g
Bufotenine and its derivatives having hallucinogenic properties	2.00 g	100.00 g
Butobarbitone	20.00 g	1.00 kg
Butorphanol	2.00 g	100.00 g
Cannabis oil	1.00 g	25.00 g

Cannabis plant	not less than 5 nor more than 19 plants	not less than 20 plants
Cannabis plant material (being any part of the Cannabis plant, including the flowering or fruiting tops, leaves, stalks and seeds)	50.00 g	500.00 g
Cannabis resin	10.00 g	100.00 G
Cannabis seed	10.00 g	100.00 g
Cathinone	2.00 g	100.00 g
2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (25C-NBOMe)	0.50 g	25.00 g
Clonitazene	5.00 g	250.00 g
Coca Leaf	250.00 g	5.00 kg
Codeine except when compounded with one or more other medicaments:	10.00 g	500.00 g
(a) in divided preparations containing 30 mg or less of codeine per dosage unit; or		
(b) in undivided preparations containing 1% or less of codeine		
Codeine-N-oxide	10.00 g	500.00 g
Codoxime	10.00 g	500.00 g
Concentrate of Poppy Straw (the material arising when poppy straw has entered into a process for concentration of its alkaloids)	250.00 g	5.00 kg
4-Cyano-2-dimethylamino-4,4-diphenylbutane (Methadone intermediate)	2.00 g	100.00 g
4-Cyano-1-methyl-4-phenylpiperidine (Pethidine intermediate A)	10.00 g	500.00 g
Cyclobarbitone	20.00 g	1.00 kg
1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole *(RCS-8)	50.00 g	500.00 g
Cyclohexylphenols	50.0 g	500.00 g
Cyclopropanoylindoles	50.0 g	500.00 g

Desomorphine	2.00 g	100.00 g
Dexamphetamine	2.00 g	100.00 g
Dextromoramide	2.00 g	100.00 g
Dextropropoxyphene, except when:	27.00 g	1.35 KG
(a) in divided preparations containing 135 mg or less of dextropropoxyphene per dosage unit; or		
(b) in liquid preparations containing 2.5% or less of dextropropoxyphene		
Diampromide	5.00 g	250.00 g
Diethylthiambutene	5.00 g	250.00 g
N,N-Diethyltryptamine (DET)	2.00 g	100.00 g
Difenoxin, except in preparations containing, per dosage unit. 0.5 mg or less of difenoxin and a quantity of atropine sulphate equivalent to at least 5% of the dose of difenoxin	2.00 g	100.00 g
Dihydrocodeine, except when compounded with one or more other medicaments:	10.00 g	500.00 g
(a) in divided preparations containing not more than 100 mg of dihydrocodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of dihydrocodeine		
Dihydromorphine	10.00 g	500.00 g
Dimenoxadol	10.00 g	500.00 g
Dimephtanol	10.00 g	500.00 g
2,4-Dimethoxyamphetamine	0.50 g	25.00 g
3,4-Dimethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-bromoamphetamine (DOB)	0.50 g	25.00 g
3,4-Dimethoxy-5-ethoxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-4-ethoxyamphetamine	0.50 g	25.00 g
4,5-Dimethoxy-2-ethoxyamphetamine	0.50 g	25.00 g

2,5-Dimethoxy-4-ethyl-a-methylphenylethylamine (DOET)	0.50 g	25.00 g
2,5-Dimethoxy-4-methylamphetamine and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	2.00 g	100.00 g
2,3-Dimethoxy-4,5-methylenedioxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-3,4-methylenedioxyamphetamine	0.50 g	25.00 g
2,5-Dimethoxy-a-methylphenylethylamine (DMA)	0.50 g	25.00 g
3,4-Dimethoxyphenylethylamine	0.50 g	25.00 g
3-(2-Dimethylaminoethyl)-4-hydroxyindole (Psilocine, Psilocin)	0.10 g	5.00 g
3-(1,2-Dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d)pyran (DMHP)	2.00 g	100.00 g
Dimethylthiambutene	20.00 g	1.00 kg
N,N,-Dimethyltryptamine (DMT)	2.00 g	100.00 g
N:N-Dimethyltryptamine and its derivatives having hallucinogenic properties	2.00 g	100.00 g
Dioxaphetyl Butyrate	2.00 g	100.00 g
Diphenoxylate, except in preparations containing, per dosage unit, 2.5 mg or less of diphenoxylate and a quantity of atropine sulphate equivalent to at least 1% of the dose of diphenoxylate	2.00 g	100.00 g
Dipipanone	10.00 g	500.00 g
Drotebanol	2.00 g	100.00 g
Ecgonine	10.00 g	1.00 kg
Ethylamphetamine	2.00 g	100.00 g
4,5-Ethylenedioxy-3-methoxyamphetamine	0.50 g	25.00 g
Ethylmethylthiambutene	10.00 g	500.00 g

Ethylmorphine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of ethylmorphine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of ethylmorphine		
Eticyclidine (PCE)	2.00 g	100.00 g
Etonitazene	5.00 g	250.00 g
Etorphine	5.00 g	250.00 g
Etoxeridine	5.00 g	250.00 g
Fenetylline	2.00 g	100.00 g
Fentanyl	0.005 g	0.25 g
(1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone *(XLR11)	50.0 g	500.00 g
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole *(AM-694)	50.00 g	500.00 g
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole *(AM-2201)	50.00 g	500.00 g
Furethidine	1.00 g	50.00 g
Harmaline	2.00 g	100.00 g
Harmine	2.00 g	100.00 g
3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran (Parahexyl)	2.00 g	100.00 g
1-Hexyl-3-(1-naphthoyl)indole *(JWH-019)	50.00 g	500.00 g
Hydrocodone	2.00 g	100.00 g
Hydromorphenol	2.00 g	100.00 g
Hydromorphone	2.00 g	100.00 g

2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol *(Cannabicyclohexanol or CP 47,497 C8 homologue)	50.00 g	500.00 g
2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol *(CP 47,497)	50.00 g	500.00 g
B-Hydroxyfentanyl	0.005 g	0.25 g
9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6A,7,10,10A-tetrahydrobenzo[c]chromen-1-ol *(HU-210)	50.00 g	500.00 g
B-Hydroxy-3-methylfentanyl	0.005 g	0.25 g
Hydroxypethidine	5.00 g	250.00 g
4-Hydroxybutanoic acid	2.00g	100.00g
2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (25I-NBOMe)	0.50 g	25.00 g
Isomethadone	2.00 g	100.00 g
Ketobemidone	2.00 g	100.00 g
Ketamine	0.002g	0.10 g
Khat leaf	250.00 g	5.00 kg
Levamphetamine	2.00 g	100.00 g
Levomethorphan	2.00 g	100.00 g
Levomoramide	2.00 g	100.00 g
Levophenacymorphan	2.00 g	100.00 g
Levorphanol	1.00 g	50.00 g
Mecloquaione	60.00 g	3.00 kg
Mescaline – see 3,4,5-Trimethoxyphenethylamine		
Mescaline and other substances structurally derived from methoxyphenylethylamine having hallucinogenic properties	7.50 g	375.00 g
Metazocine	7.00 g	350.00 g
Methadone	2.00 g	100.00 g

Methaqualone	50.00 g	2.50 kg
Methcathinone	2.00 g	100.00 g
2-Methoxy-3,4-methylenedioxyamphetamine	50.00 g	2.50 kg
2-Methoxy-4,5-methylenedioxyamphetamine	0.50 g	25.00 g
4-Methoxy-2,3-methylenedioxyamphetamine	0.50 g	25.00 g
5-Methoxy-3,4-methylenedioxy- α -methylphenylethylamine (MMDA)	0.50 g	25.00 g
2-Methoxy-3,4-methylenedioxyphenylethylamine	0.50 g	25.00 g
3-Methoxy-4,5-methylenedioxyphenylethylamine	0.50 g	25.00 g
4-Methoxy- α -methylphenylethylamine (PMA)	0.50 g	25.00 g
4-Methoxyphenyl(1butyl-1h-indol-3-yl)-methanone *(RCS-4 (C4))	50.00 g	500.00 g
2-(4-Methoxyphenyl)-1-(1-pentyl-1h-indol-3-yl)-ethanone *(JWH-201)	50.0 g	500.00 g
2-(2-Methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone *(JWH-250)	50.00 g	500.00 g
2-(3-Methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone *(JWH-302)	50.0 g	500.00 g
4-Methoxyphenylethylamine	0.50 g	25.00 g
3,4-Methylenedioxyamphetamine (MDA)	0.50 g	25.00 g
3,4-Methylenedioxy-N, α -dimethylphenylethylamine (MDMA)	0.50 g	25.00 g
3,4-Methylenedioxy-N-ethylamphetamine (MDE)	0.50 g	25.00 g
2-Methyl-3-morpholino-1,1-diphenylpropane Carboxylic Acid (Moramide intermediate)	8.00 g	400.00 g
1-Methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)	10.00 g	500.00 g
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)	2.00 g	100.00 g
Methyldesorphine	2.00 g	100.00 g
Methyldihydromorphine	2.00 g	100.00 g

3,4-Methylenedioxyamphetamine	0.50 g	25.00 g
3-Methylfentanyl	0.005 g	0.25 g
a-Methylfentanyl	0.005 g	0.25 g
Methylphenidate	2.00 g	100.00 g
3-Methylthiofentanyl	0.005 g	0.25 g
Metopon	2.00 g	100.00 g
Morpheridine	2.00 g	100.00 g
Morphine	2.00 g	100.00 g
Morphine Methobromide	2.00 g	100.00 g
Morphine-N-oxide	2.00 g	100.00 g
(1-(2-Morpholin-4-ylethyl)indol-3-yl)- naphthalen-1-ylmethanone *(JWH-200)	50.00 g	500.00 g
Muscimol	2.00 g	100.00 g
Myrophine	20.00 g	1.00 kg
Nabilone	0.40 g	20.00 g
N-adamantyl-1-fluoropentylindole-3- Carboxamide *(STS-135)	50.0 g	500.00 g
N-(1-adamantyl)-1-pentyl-1H-indazole-3- carboxamide *(AKB48)	50.0 g	500.00 g
1-[(N-methylpiperidin-2-yl)methyl]-3- (adamant-1-oyl) indole *(AM-1248)	50.0 g	500.00 g
Naphthalen-1-yl-(1-butylindol-3- yl)methanone *(JWH-073)	50.00 g	500.00 g
Naphthoylindoles	50.0 g	500.00 g
Naphthoylpyrroles	50.0 g	500.00 g
Naphthylmethylindenes	50.0 g	500.00 g
Naphthylmethylindoles	50.0 g	500.00 g
Nicocodine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
in divided preparations containing not more than 100 mg of nicocodine per dosage unit; or		
in undivided preparations with a concentration of not more than 2.5% of nicocodine		

Nicodicodine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of nicodicodine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of nicodicodine		
Nicomorphine	2.00 g	100.00 g
Noracylmethadol	2.00 g	100.00 g
Noracymethadol	2.00 g	100.00 g
Norcodeine, except when compounded with one or more other medicaments:	2.00 g	100.00 g
(a) in divided preparations containing not more than 100 mg of norcodeine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of norcodeine		
Norlevorphanol	2.00 g	100.00 g
Normethadone	5.00 g	250.00 g
Normorphine	20.00 g	1.00 kg
Norpipanone	10.00 g	500.00 g
Opium in any form, except the alkaloids noscapine and papaverine	20.00 g	100.00 g
Oxycodone	5.00 g	250.00 g
Oxymorphone	2.00 g	100.00 g
Para-fluorofentanyl	0.005 g	0.25 g
Parahexyl	—	—
Pentazocine	20.00 g	1.00 kg
Pentobarbitone	20.00 g	1.00 kg
1-Pentyl-3-(4-chloro-1-naphthoyl)indole *(JWH-398)	50.00 g	500.00 g
1-Pentyl-3-(2-chlorophenylacetyl)indole *(JWH-203)	50.0 g	500.00 g

1-Pentyl-3-(4-ethyl-1-naphthoyl)indole *(JWH-210)	50.0 g	500.00 g
1-Pentyl-1h-indol-3-yl-(1-naphthoyl)menthane *(JWH-175)	50.00 g	500.00 g
1-Pentyl-3-[(4-methoxy)-benzoyl]indole *(RCS-4)	50.00 g	500.00 g
1-Pentyl-3-(4-methoxynaphthoyl)indole *(JWH-081)	50.00 g	500.00 g
1-Pentyl-3-(4-methyl-1-naphthoyl)indole *(JWH-122)	50.00 g	500.00 g
1-Pentyl-3-(1-naphthoyl)indole *(JWH-018)	50.00 g	500.00 g
(1-pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone *(UR144)	50.0 g	500.00 g
Pethidine	10.00 g	500.00 g
Phenadoxone	10.00 g	500.00 g
Phenampramide	10.00 g	500.00 g
Phenazocine	1.00 g	50.00 g
Phendimetrazine	5.00 g	250.00 g
Phenmetrazine	5.00 g	250.00 g
Phenomorphane	5.00 g	250.00 g
Phenoperidine	1.00 g	50.00 g
Phenylacetylindoles	50.0 g	500.00 g
1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)	2.00 g	100.00 g
4-Phenylpiperidine-4-carboxylic Acid Ethyl Ester (Pethidine intermediate B)	10.00 g	500.00 g
Pholcodine, except when compounded with one or more other medicaments:	5.00 g	250.00 g
(a) in divided preparations containing not more than 100 mg of pholcodine per dosage unit; or		
(b) in undivided preparations with a concentration of not more than 2.5% of pholcodine		
Piminodine	10.00 g	500.00 g

Piritramide	1.00 g	50.00 g
Pravadoline *(WIN 48098)	50.00 g	500.00 g
Proheptazine	1.00 g	50.00 g
Prohibited plant, other than elsewhere described in this Schedule	not less than 5 nor more than 19 plants	not less than 20 plants
Properidine	25.00 g	1.25 kg
Propiram	10.00 g	500.00 g
1-Propyl-2-methyl-3-(1-naphthoyl)indole *(JWH-015)	50.0 g	500.00 g
Psilocybin and its derivatives having hallucinogenic properties	0.10 g	5.00 g
Quinalbarbitone	20.00 g	1.00 kg
Racemethorphan	2.00 g	100.00 g
Racemoramide	2.00 g	100.00 g
Racemorphan	2.00 g	100.00 g
Rolicyclidine (PHP, PCPY)	2.00 g	100.00 g
Salvia Divinorum, including extracts and other substances structurally derived from Salvia Divinorum and having hallucinogenic properties	7.50 g	375.00 g
Secbutobarbitone	20.00 g	1.00 kg
Sufentanil	0.005 g	0.25 g
Tenocyclidine (TCP)	2.00 g	100.00 g
Tetrahydrocannabinols and their alkyl homologues except:		
(a) when separately specified in this Schedule;		
(b) in hemp seed oil, containing 50 mg/kg or less of tetrahydrocannabinols, when labelled "Not for internal use" or "Not to be taken"; or		
(c) in products for purposes other than internal human use containing 50 mg/kg or less of		

tetrahydrocannabinols.		
2,3,4,5-Tetramethoxyamphetamine	0.50 g	25.00 g
Thebacon	2.00 g	100.00 g
Thebaine	2.00 g	100.00 g
Thiofentanyl	0.005 g	0.25 g
Tilidine	20.00 g	1.00 kg
1-(3-Trifluoromethylphenyl) piperazine and other piperazine derivatives	2.00 g	100.00 g
Trimeperidine	10.00 g	500.00 g
2,3,4-Trimethoxyamphetamine	0.50 g	25.00 g
2,3,5-Trimethoxyamphetamine	0.50 g	25.00 g
2,3,6-Trimethoxyamphetamine	0.50 g	25.00 g
2,4,5-Trimethoxyamphetamine	0.50 g	25.00 g
2,4,6-Trimethoxyamphetamine	0.50 g	25.00 g
3,4,5-Trimethoxy-a- methylphenylethylamine (TMA)	0.50 g	25.00 g
3,4,5-Trimethoxyphenethylamine (mescaline) and other substances structurally derived from methoxy- phenylethylamine, except:	7.50 g	375.00 g
(a) methoxyphenamine; or		
(b) where separately specified in this Schedule		
1-(3,4,5,-Trimethoxyphenyl)-2- aminobutane	0.50 g	25.00 g
2,4,5-Trimethoxyphenylethylamine	0.50 g	25.00 g
Anabolic Steroids:		
Danazol	10.00 g	500.00 g
Dromostanolone propionate	12.00 g	600.00 g
Ethylestrenol	10.00 g	500.00 g
Fluoxymesterone	12.00 g	600.00 g
Methandriol	32.00 g	1.60 kg
Methyltestosterone	48.00 g	2.40 kg
Nandrolone decanoate	6.00 g	300.00 g
Nandrolone phenpropionate	8.00 g	400.00 g
Oxandrolone	12.00 g	600.00 g
Oxymetholone	300.00 g	15.00 kg
Stanozolol	7.20 g	360.00 g
Testolactone	1.20 kg	6.00 kg
Testosterone	2.40 g	120.00 g

Testosterone cypionate	32.00 g	1.60 kg
Testosterone enanthate	32.00 g	1.60 kg
Testosterone propionate except anabolic steroids in products packaged for ovulation control or in quantities which can lawfully be prescribed in accordance with Schedule 4 of the <i>Poisons and Dangerous Drugs Act</i>	12.00 g	600.00 g

NORTHERN TERRITORY OF AUSTRALIA

As in force at 13 October 2010

SENTENCING ACT

**An Act to consolidate the law relating to the sentencing of offenders and
for related purposes**

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Part 2 General principles**5 Sentencing guidelines**

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- (4) In sentencing an offender, a court:
- (a) may have regard to any co-operation by the offender in resolving any action taken against the offender under the *Criminal Property Forfeiture Act* in relation to the offence or offences for which the offender is being sentenced; and
 - (b) may have regard to a forfeiture order under the *Criminal Property Forfeiture Act* to the extent that the order relates to property that is crime-used property (within the meaning of that Act) in relation to the offence or offences for which the offender is being sentenced; and
 - (c) must not make any allowance for any other property that has been or may be forfeited to the Territory by operation of the *Criminal Property Forfeiture Act* or in any proceedings under that Act in which the offender is, was or may be a respondent.