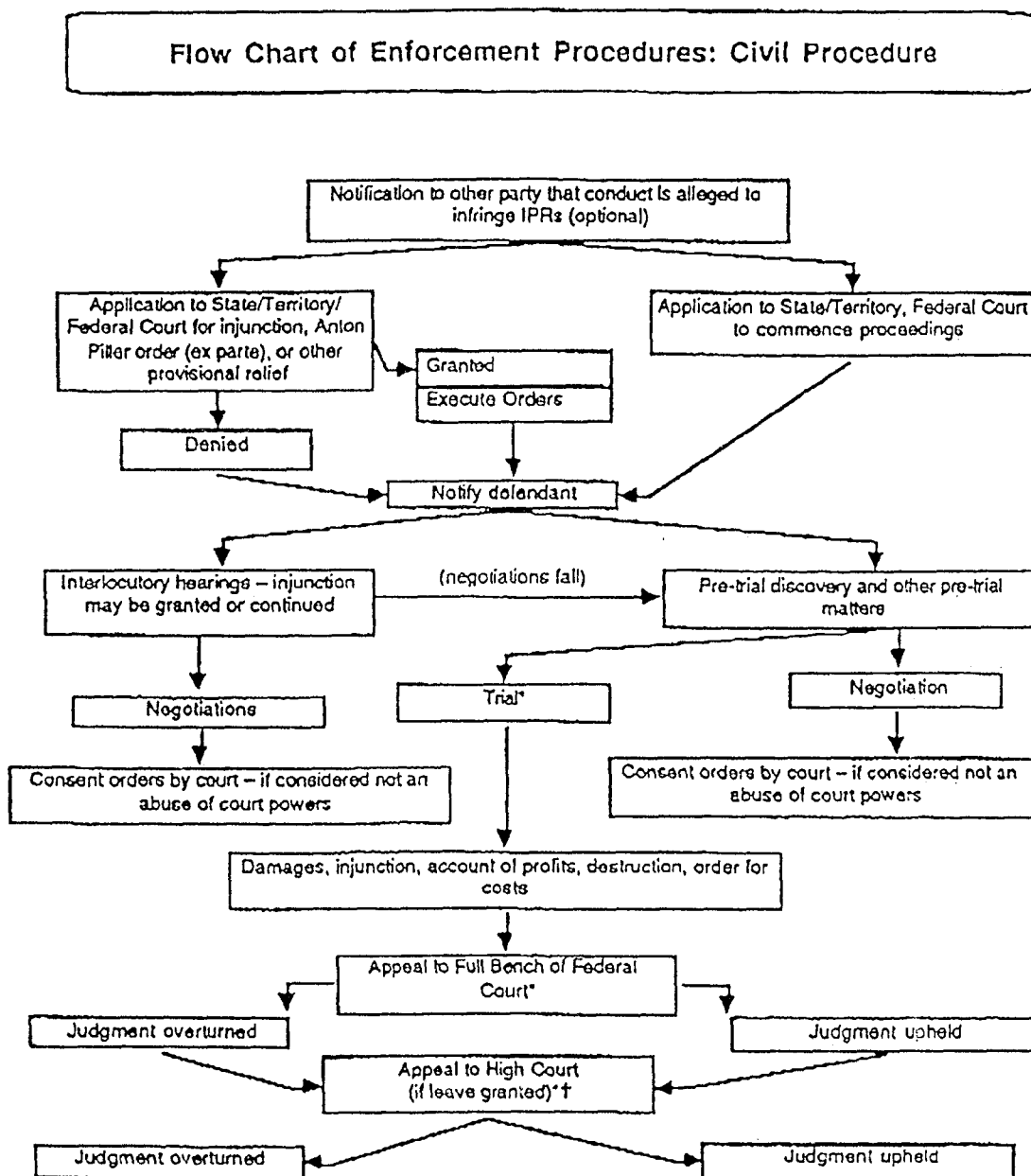


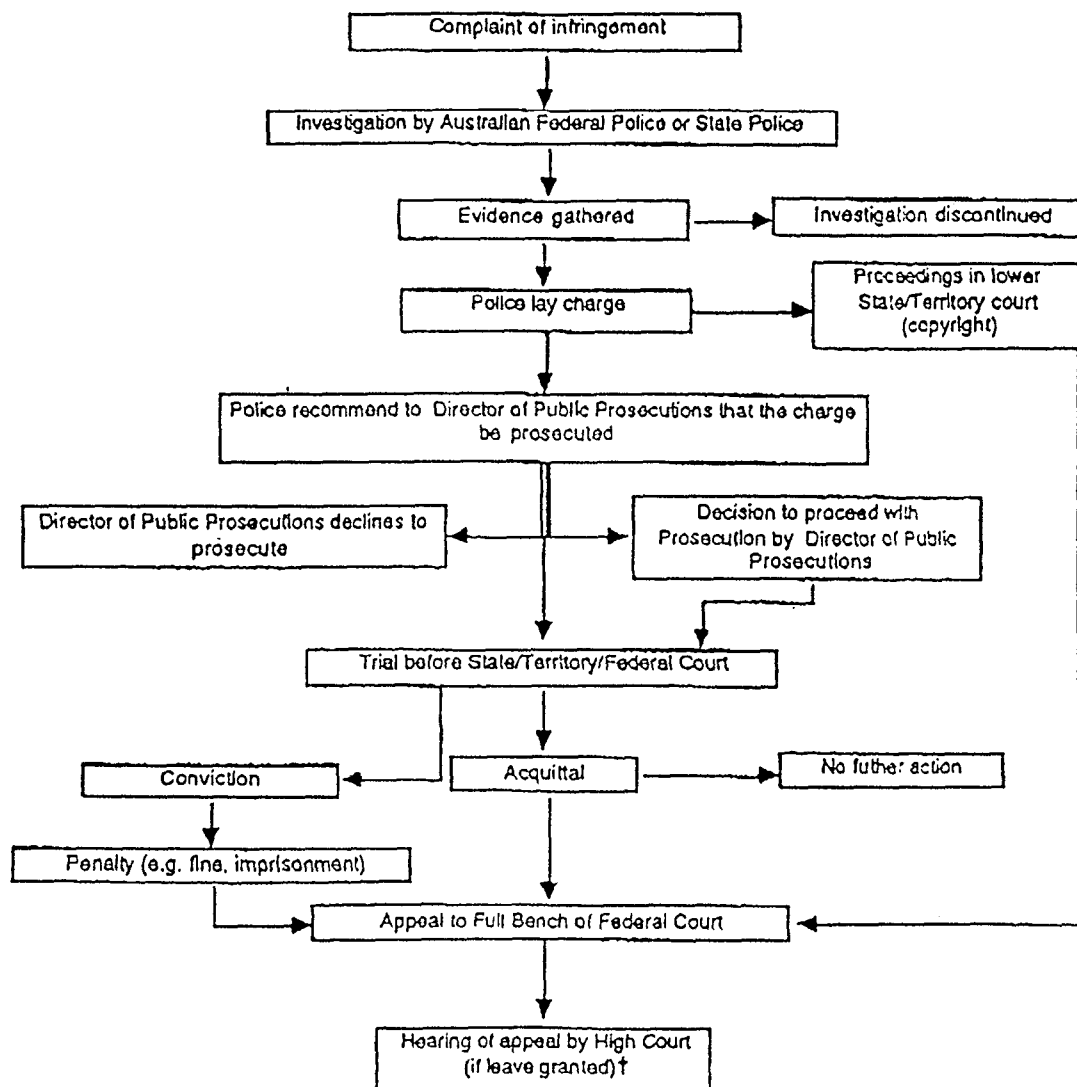
ANNEX 4



(† For all appeal matters the High Court exercises a discretion to decide whether an appeal is warranted or raises a sufficiently serious matter of public concern (special leave applications are heard before 3 High Court Judges).

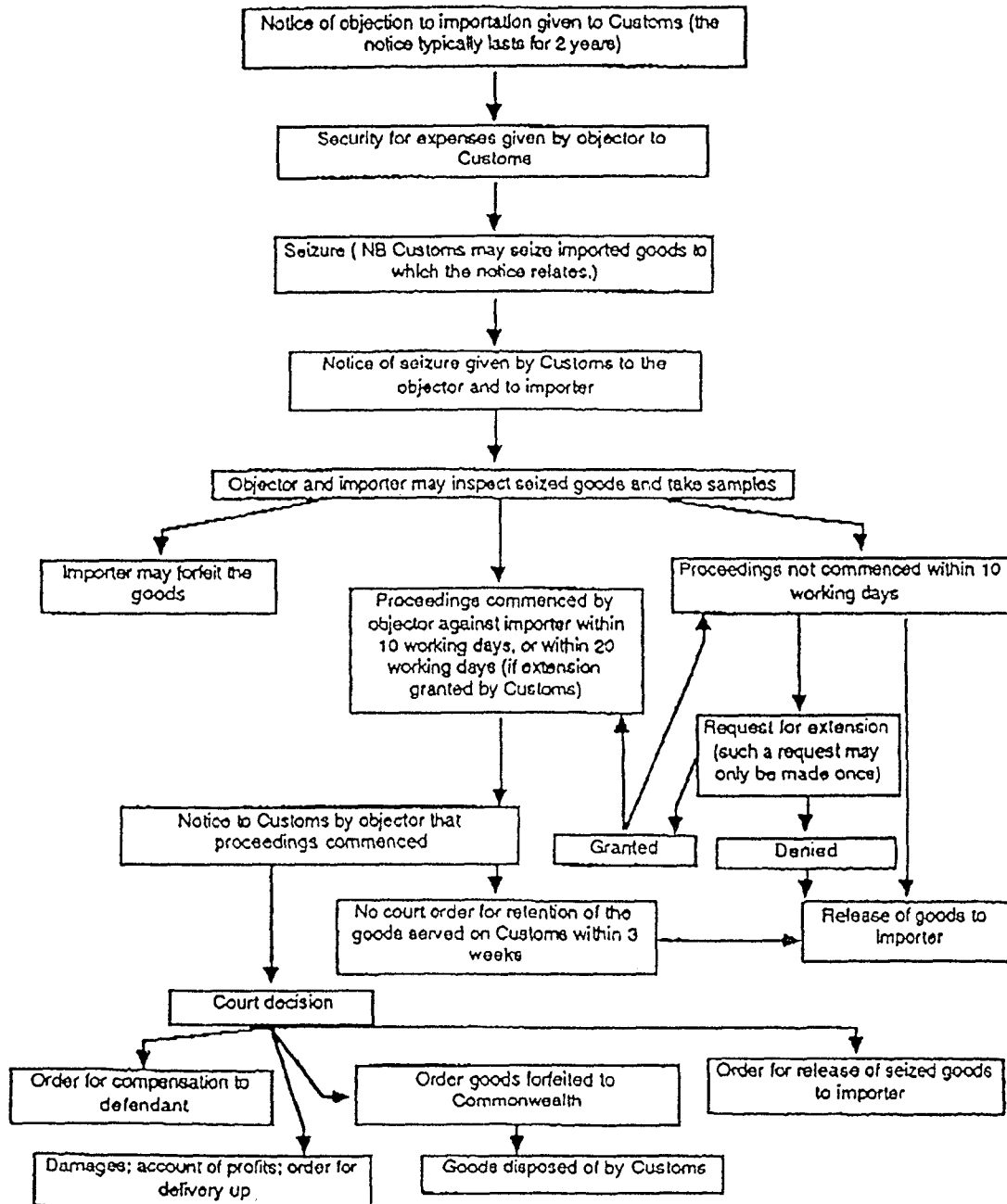
*N.B. In the usual case, costs follow the cause. A successful appellant can usually obtain an order that the other party pay all his/her/its solicitor/client costs in all proceedings no matter if the other party had been successful in the lower court(s).)

Flow Chart of Enforcement Procedures: Criminal Procedure



(† For all appeal matters the High Court exercises a discretion to decide whether an appeal is warranted or raises a sufficiently serious matter of public concern (special leave applications are heard before 3 High Court Judges).)

Flow Chart of Enforcement Procedures: Border Procedures



ANNEX 5

Copyright Act

134B Interpretation

134B. In this Division:

"Comptroller-General" means the Comptroller-General of Customs;

"copyright material" means:

(a) a work; or

(b) a sound recording; or

(c) a cinematograph film; or

(d) a published edition of a work; or

(e) a television or sound broadcast as recorded in a cinematograph film or a sound recording;

"objector", in relation to particular seized copies, means the person who gave the notice under subsection 135 (2) as a result of the giving of which the copies were seized; "owner", in relation to the copyright in copyright material, includes an exclusive licensee of the copyright in the material; "seized copies" means copies seized under subsection 135 (7).

135 Restriction of importation of copies of works etc.

135. (1) In this section:

(a) a reference to Australia does not include a reference to the external Territories; and

(b) a reference to importation into Australia does not include a reference to importation from such a Territory.

(2) A person may give the Comptroller-General a written notice stating:

(a) that the person is the owner of the copyright in copyright material; and

(b) that the person objects to the importation into Australia of copies of the copyright material to which this section applies.

(3) When a notice is given under subsection (2), any prescribed document must be given with the notice.

(4) This section applies to a copy of copyright material if the making of the copy would, if it had been carried out in Australia by the person importing the copy, have constituted an infringement of the copyright in the copyright material.

(5) Unless it is revoked under subsection (6), a notice under subsection (2) remains in force until:

(a) the end of the period of 2 years commencing on the day on which the notice was given; or

(b) the end of the period for which the copyright in the copyright material to which the notice relates is to subsist;

whichever is the earlier.

(6) A notice under subsection (2) may be revoked by written notice given to the Comptroller-General by the person who gave the first-mentioned notice or by a subsequent owner of the copyright in the copyright material to which the notice relates.

(7) If:

(a) a notice has been given under subsection (2) in respect of copyright material; and

(b) the notice has not been withdrawn; and

(c) a person imports copies of the copyright material to which this section applies into Australia for the purpose of:

(i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the copies; or

(ii) distributing the copies for the purpose of trade; or

(iii) distributing the copies for any other purpose to an extent

that will affect prejudicially the owner of the copyright in the copyright material; or

(iv) by way of trade exhibiting the copies in public; and

(d) the copies are subject to the control of the Customs within the meaning of the Customs Act 1901;

the Comptroller-General may seize the copies.

(8) The regulations may make provision for or in relation to:

- (a) the forms of notices under this section; and
- (b) the times at which, and the manner in which, notices are to be given; and
- (c) the giving of information and evidence to the Comptroller-General.

(9) The regulations may contain provisions similar to the provisions of this section in relation to the importation into external Territories (other than importation from Australia or from another such Territory) of copies of copyright material.

(10) This section does not apply to the importation into Australia of copies of books whose importation, by virtue of section 44A or 112A, does not constitute an infringement of copyright.

135AA Security for expenses of seizure

135AA. The Comptroller-General may refuse to seize copies under subsection 135 (7) unless:

- (a) the objector has deposited with the Comptroller-General a sum of money that, in the opinion of the Comptroller-General, is sufficient to reimburse the Commonwealth for the reasonable expenses it is likely to incur as a result of the seizure of the copies; or
- (b) the objector has given security, to the satisfaction of the Comptroller-General, for the reimbursement of the Commonwealth for those expenses.

135AB Secure storage of seized copies

135AB. Seized copies must be taken to such secure place as the Comptroller-General directs.

135AC Notice of seizure

135AC. (1) As soon as is practicable after copies are seized under subsection 135 (7), the Comptroller-General must give to the importer and the objector, either personally or by post, a written notice identifying the copies and stating that the identified copies have been seized.

(2) A notice under subsection (1) must state that the copies will be released to the importer unless:

- (a) an action for infringement of copyright in respect of the copies is instituted by the objector within a specified period from the day specified in the notice; and
- (b) the objector gives written notice to the Comptroller-General within that period stating that the action for infringement of copyright has been instituted.

(3) The period to be specified for the purposes of paragraph (2) (a) is the period prescribed for the purposes of that paragraph.

(4) The day specified for the purposes of paragraph (2) (a) must not be earlier than the day on which the notice is given.

(5) The objector may, by written notice given to the Comptroller-General before the end of the period specified in a notice for the purposes of paragraph (2) (a) ("the retention period"), request that the period be extended.

(6) Subject to subsection (7), if:

- (a) a request is made in accordance with subsection (5); and
 - (b) the Comptroller-General is satisfied that it is reasonable that the request be granted;
- the Comptroller-General may extend the retention period by such period as is prescribed.

(7) A decision on a request made in accordance with subsection (5) must be made within 24 hours after the request is made. However, such a decision cannot be made after the end of the retention period to which the request relates.

135AD Inspection, release etc. of seized copies

135AD. (1) The Comptroller-General may permit the objector or the importer to inspect the seized copies.

(2) If the objector gives the Comptroller-General the requisite undertakings, the Comptroller-General may permit the objector to remove one sample of the seized copies from the custody of the Comptroller-General for inspection by the objector.

(3) If the importer gives the Comptroller-General the requisite undertakings, the Comptroller-General may permit the importer to remove one sample of the seized copies from the custody of the Comptroller-General for inspection by the importer.

(4) The requisite undertakings are undertakings in writing that the person giving the undertaking will:

(a) return the sample copy to the Comptroller-General at a specified time that is satisfactory to the Comptroller-General; and

(b) take reasonable care to prevent damage to the sample copy.

(5) If the Comptroller-General permits inspection of the seized copies, or the removal of a sample copy, by the objector in accordance with this section, the Commonwealth is not liable to the importer for any loss or damage suffered by the importer arising out of:

(a) damage to any of the seized copies incurred during that inspection; or

(b) anything done by the objector or any other person to, or in relation to, a sample copy removed from the custody of the Comptroller-General or any use made by the objector of such a sample copy.

135AE Forfeiture of seized copies by consent

135AE. (1) Subject to subsection (2), the importer may, by written notice to the Comptroller-General, consent to the seized copies being forfeited to the Commonwealth.

(2) The notice must be given before any action for infringement of copyright in relation to the copies is instituted.

(3) If the importer gives such a notice, the copies are forfeited to the Commonwealth and must be disposed of:

(a) in the manner prescribed by the regulations; or

(b) if no manner of disposal is so prescribed-as the Comptroller-General directs.

135AF Compulsory release of seized copies to the importer

135AF. (1) The Comptroller-General must release seized copies (not being copies forfeited to the Commonwealth under section 135AE) to the importer on the expiration of the retention period for the copies if the objector has not, before the expiration of that period:

(a) instituted an action for infringement of the relevant copyright in respect of the copies; and

(b) given written notice to the Comptroller-General stating that the action has been instituted.

(2) For the purpose of subsection (1), the retention period for seized copies is:

(a) the period specified in a notice given under subsection 135AC (1) in respect of the copies; or

(b) if that period has been extended under subsection 135AC (6), that period as so extended.

(3) If:

(a) an action for infringement of copyright has been instituted in respect of seized copies; and

(b) at the end of a period of 3 weeks commencing on the day on which the action was instituted, there is not in force an order of the court in which the action was instituted preventing the release of the copies;

the Comptroller-General must release the copies to the importer.

(4) If the objector gives written notice to the Comptroller-General stating that he or she consents to the release of the seized copies, the Comptroller-General must release the copies to the importer.

(5) This section has effect subject to section 135AH.

135AG Provision relating to actions for infringement of copyright

135AG. (1) In this section, "infringement action" means an action for an infringement of copyright constituted by the importation of seized copies.

(2) The court in which an infringement action is pending may, on the application of a person having a sufficient interest in the subject-matter of the action, allow the person to be joined as a defendant to the action.

(3) The Comptroller-General is entitled to be heard on the hearing of an infringement action.

(4) In addition to any relief that may be granted apart from this section, the court may:

(a) at any time, order that the seized copies be released to the importer subject to such conditions (if any) as the court thinks fit; or

(b) order that the seized copies not be released to the importer before the end of a specified period; or

(c) order that the goods be forfeited to the Commonwealth.

(5) A court may not make an order under paragraph (4) (a) if it is satisfied that the Comptroller-General is required or permitted, under any other law of the Commonwealth, to retain control of the seized copies.

(6) The Comptroller-General must comply with an order made under subsection (4).

(7) If:

(a) the court decides that the relevant copyright was not infringed by the importation of the seized copies; and

(b) a defendant to the infringement action satisfies the court that he or she has suffered loss or damage as a result of the seizure of the copies;

the court may order the objector to pay to that defendant such amount as the court determines as compensation for any part of that loss or damage that is attributable to a period beginning on or after the day on which the action was commenced.

135AH Retention of control of seized copies

135AH. In spite of section 135AF, in a case in which no order has been made under subsection 135AG (4) in relation to seized copies, the Comptroller-General is not obliged to release or dispose of the copies if the Comptroller-General is required or permitted, under any other law of the Commonwealth, to retain control of the copies.

135AI Disposal of seized copies ordered to be forfeited

135AI. If a court orders that seized copies are to be forfeited to the Commonwealth, the copies must be disposed of:

(a) in the manner prescribed by the regulations; or

(b) if no manner of disposal is so prescribed-as the Comptroller-General directs.

135AJ Insufficient security

135AJ. (1) If the reasonable expenses incurred by the Commonwealth in relation to action taken by the Comptroller-General under this Division or taken in accordance with an order of a court under this Division exceed the amount deposited, or the amount of the security given, under section 135AA, the amount of the excess is a debt due to the Commonwealth.

(2) The debt created by subsection (1) is due:

(a) by the objector; or

(b) if there are 2 or more objectors, by the objectors jointly and severally.

135AK Immunity of the Commonwealth

135AK. The Commonwealth is not liable for any loss or damage suffered by a person:

(a) because of the seizure of copies, or the failure of the Comptroller-General to seize copies, under this Division; or

(b) because of the release of any seized copies.