

**Version No. 044**  
**Confiscation Act 1997**  
**Act No. 108/1997**

Version incorporating amendments as at 11 October 2006

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**Act No. 108/1997**

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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. Purposes**

The purposes of this Act are—

- (a) to provide for the forfeiture of the proceeds of certain offences, whatever the form into which they have been converted;
- (b) to provide for the automatic forfeiture of restrained property of persons convicted of certain offences in certain circumstances;
- (c) to provide for the forfeiture by the Supreme Court or the County Court of property restrained on suspicion that it is tainted property in relation to a Schedule 2 offence;
- (d) to provide for the forfeiture of property used in connection with the commission of certain offences;
- (e) to provide for the freezing of assets;
- (f) to provide for the destruction or disposal of certain illegal goods;
- (g) to provide for the effective enforcement of this Act and the management of seized and restrained assets;

**S. 1(c)**  
**substituted by**  
**No. 87/2004**  
**s. 4.**

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- (h) to preserve assets for the purpose of restitution or compensation to victims of crime;
- (i) to amend the **Sentencing Act 1991** to provide for the sentencing of continuing criminal enterprise offenders;
- (j) to repeal the **Crimes (Confiscation of Profits) Act 1986**;
- (k) to make consequential amendments to certain other Acts.

## 2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 January 1999, it comes into operation on that day.

## 3. Definitions

- (1) In this Act—

**"account"** means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for—

- (a) a fixed term deposit; and
- (b) a safety deposit box;

**"appeal period"**, in relation to a defendant's conviction of an offence, means the period ending—

- (a) if the period provided for the lodging of an appeal against the conviction has ended without such an appeal having

S. 3  
amended by  
No. 63/2003  
s. 5(2) (ILA  
s. 39B(1)).

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been lodged, at the end of that period;  
or

- (b) if an appeal against the conviction has been lodged, when the appeal is abandoned or finally determined;

**"appropriate officer"** means—

- (a) in the case of an application to the Magistrates' Court or the Children's Court—the Chief Commissioner of Police; or
- (b) in the case of an application that is prescribed by the regulations for the purposes of this paragraph or is of a class of applications that is so prescribed—a person so prescribed or a person belonging to a class of persons so prescribed;

**"automatic forfeiture"** means—

- (a) forfeiture under section 35; or
- (b) the making of a pecuniary penalty order on an application under section 58(1) if section 68 applies in relation to the Schedule 2 offence;

S. 3(1) def. of "automatic forfeiture" amended by No. 87/2004 s. 5(a).

\* \* \* \* \*

S. 3(1) def. of "automatic forfeiture offence" substituted by No. 63/2003 s. 4(1), amended by No. 104/2003 s. 5(2), repealed by No. 87/2004 s. 5(b).

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S. 3(1) def. of  
"automatic  
forfeiture  
quantity"  
inserted by  
No. 63/2003  
s. 5(1).

**"automatic forfeiture quantity"** has the same meaning as it has in the **Drugs, Poisons and Controlled Substances Act 1981**;

S. 3(1) def. of  
"bank"  
amended by  
No. 11/2001  
s. 3(Sch.  
item 13).

**"bank"** means—

- (a) the Reserve Bank of Australia; or
- (b) an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;
- (c) a person who carries on State banking within the meaning of section 51(xiii) of the Constitution of the Commonwealth;

**"building society"** means a society registered or incorporated as a building society, co-operative housing society or similar society under an Act or the laws of another State or a Territory;

**"cash dealer"** has the same meaning as in the Financial Transaction Reports Act 1988 of the Commonwealth;

**"civil forfeiture"** means—

- (a) forfeiture under a civil forfeiture order; or
- (b) the making of a pecuniary penalty order under Division 2 of Part 8;

S. 3(1) def. of  
"civil forfeiture  
offence"  
amended by  
No. 104/2003  
s. 5(2),  
repealed by  
No. 87/2004  
s. 5(b).

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**"civil forfeiture order"** means an order made under Part 4;

**"conversion costs"** means costs referred to in section 135;

**"corresponding law"**, in relation to this Act or a provision of this Act, means a law of the Commonwealth or another State or a Territory that is declared by the regulations to be a law that corresponds to this Act or the provision;

**"court"** means Supreme Court or County Court or, subject to section 12, the Magistrates' Court or Children's Court, as the case requires;

**"credit union"** means a credit union or credit society carrying on business under an Act or the laws of another State or a Territory;

**"defendant"**, in relation to an offence, means the person who—

(a) has been or will be charged with the offence; or

(b) has been convicted of the offence—

and in respect of whom an application is made under this Act;

**"Director"** means the Director of the Australian Transaction Reports and Analysis Centre established by the Financial Transaction Reports Act 1988 of the Commonwealth;

**"disposal order"** means an order made under section 78;

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S. 3(1) def. of  
"document  
request"  
inserted by  
No. 63/2003  
s. 5(1).

**"document request"** means a request for documents made under Division 6 of Part 13 in relation to property for which the Secretary has responsibility under a memorandum of understanding entered into under section 78A;

**"DPP"** means Director of Public Prosecutions for Victoria;

**"encumbrance"**, in relation to property, includes any interest, mortgage, charge, right, claim or demand which is or may be had, made or set up in, to, on or in respect of the property;

**"examination order"** means an order made under Part 12;

**"exclusion order"** means an order made under section 21, 22, 24, 50(1), 52(1) or 54(1);

**"facsimile copy"** means a copy obtained by facsimile transmission;

S. 3(1) def. of  
"financial  
institution"  
amended by  
Nos 63/2003  
s. 4(a)(b),  
79/2006 s. 86.

**"financial institution"** means—

- (a) a bank; or
- (b) a building society; or
- (c) a credit union; or
- (d) a body corporate that is or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth; or
- (e) a casino operator within the meaning of the **Casino Control Act 1991**; or
- (f) the holder of the wagering licence under Part 3 of Chapter 4 of the **Gambling Regulation Act 2003**;



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**"fixed term deposit"** means an interest bearing deposit lodged for a fixed period;

\* \* \* \* \*

S. 3(1) def. of "forfeiture offence" amended by No. 104/2003 s. 5(2), repealed by No. 87/2004 s. 5(b).

**"forfeiture order"** means an order made under Division 1 of Part 3;

**"freezing order"** means an order made under section 31F;

S. 3(1) def. of "freezing order" inserted by No. 63/2003 s. 5(1).

**"gift"**, in relation to property, includes a transfer for a consideration significantly less than the greater of—

- (a) the prevailing market value of the property; or
- (b) the consideration paid by the defendant;

**"information notice"** means a notice issued under section 118D or 118E;

S. 3(1) def. of "information notice" inserted by No. 63/2003 s. 5(1).

**"interest"**, in relation to property, means—

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege over, or in connection with, the property;

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**"interstate forfeiture order"** means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

**"interstate offence"** means an offence against the laws of the Commonwealth or another State or a Territory, being an offence in relation to which an interstate forfeiture order or an interstate pecuniary penalty order may be made under a corresponding law of the Commonwealth or that State or Territory;

**"interstate pecuniary penalty order"** means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

**"interstate restraining order"** means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

**"law enforcement agency"** means—

- (a) the DPP; or
- (b) the police force of Victoria; or
- (ba) any other authority or person responsible for the performance of functions or activities under this Act directed to—
  - (i) the management of property seized under this Act or property in respect of which a restraining order is made (other than a trustee); or
  - (ii) the enforcement of this Act; or
  - (iii) the enforcement of orders made under this Act; or

S. 3(1) def. of "law enforcement agency" amended by No. 63/2003 s. 4(3).

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(c) any other authority or person responsible for the investigation or prosecution of offences against the laws of—

(i) Victoria or any other State; or

(ii) the Commonwealth; or

(iii) the Australian Capital Territory or the Northern Territory of Australia—

that is prescribed for the purposes of this definition;

**"legal practitioner"** means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of "legal practitioner" inserted by No. 18/2005 s. 18(Sch. 1 item 17.1).

**"monitoring order"** means an order made under section 116;

**"occupier"**, in Part 11A, means a person who appears to be an occupier of, or to be in charge of, the premises and to be aged 18 years or more;

S. 3(1) def. of "occupier" inserted by No. 63/2003 s. 5(1).

**"pecuniary penalty order"** means an order made under Part 8;

**"premises"** includes vessel, aircraft, vehicle and any place (other than a public place), whether built upon or not;

S. 3(1) def. of "premises" amended by No. 63/2003 s. 4(4).

**"proceeds"**, in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence;

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**"production order"** means an order made under section 101;

**"property"** means real or personal property of every description, whether situated within or outside Victoria and whether tangible or intangible, and includes any interest in any such real or personal property;

**"property-tracking document"** means—

- (a) a document relevant to—
  - (i) identifying, locating or quantifying property in which a person has an interest; or
  - (ii) identifying or locating any document necessary for the transfer of property in which a person has an interest; or
- (b) a document relevant to—
  - (i) identifying, locating or quantifying tainted property; or
  - (ii) identifying or locating any document necessary for the transfer of tainted property;

**"relevant period"** means the period of 6 months, or any longer period that is fixed by the court before which the person was convicted on an application made by the DPP or an appropriate officer, as the case may be, on notice to that person during that period of 6 months, after—

- (a) if the person is to be taken to have been convicted of the offence by reason of section 4(1)(a)—the day on which the person was convicted of the offence;

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- (b) if the person is to be taken to have been convicted of the offence by reason of section 4(1)(b)—the day on which the person was found guilty of the offence;
- (c) if the person is to be taken to have been convicted of the offence by reason of section 4(1)(c)—the day on which the offence was taken into account;

**"reportable details"**, in relation to a transaction, means the details of the transaction that are referred to in Schedule 4 to the Financial Transaction Reports Act 1988 of the Commonwealth;

**"restraining order"** means an order made under section 18;

**"Schedule 1 offence"** means an offence referred to in Schedule 1 and, in Parts 11 and 13, includes an interstate offence;

S. 3(1) def. of "Schedule 1 offence" inserted by No. 87/2004 s. 5(c).

**"Schedule 2 offence"** means an offence referred to in Schedule 2 and—

S. 3(1) def. of "Schedule 2 offence" inserted by No. 87/2004 s. 5(c).

- (a) if circumstances are specified in Schedule 2 in relation to that offence, means an offence committed in those circumstances; and
- (b) in Parts 11 and 13, includes an interstate offence;

**"search warrant"** means (except in Division 2 of Part 13) a search warrant issued under Part 11 and in Division 2 of Part 13 means a search warrant issued under that Division;

**"Secretary"** means the Secretary to the Department of Justice;

S. 3(1) def. of "Secretary" inserted by No. 63/2003 s. 5(1).

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S. 3(1) def. of  
"seizure  
warrant"  
inserted by  
No. 63/2003  
s. 5(1).

**"seizure warrant"** means a warrant issued under section 79A;

S. 3(1) def. of  
"tainted  
property"  
amended by  
Nos 63/2003  
s. 4(5)(a)(b),  
104/2003  
s. 5(3).

**"tainted property"**, in relation to an offence, means property that—

- (a) was used, or was intended by the defendant to be used in, or in connection with, the commission of the offence; or
- (b) was derived or realised, or substantially derived or realised, directly or indirectly, from property referred to in paragraph (a); or
- (c) was derived or realised, or substantially derived or realised, directly or indirectly, by any person from the commission of the offence; or
- (d) in the case of an offence against section 194 of the **Crimes Act 1958**, is proceeds of crime within the meaning of section 193 of that Act; or
- (e) in the case of an offence against section 195 of the **Crimes Act 1958**, is referred to in that section; or
- (f) in the case of an offence against section 195A of the **Crimes Act 1958**, becomes an instrument of crime within the meaning of section 193 of that Act;

S. 3(1) def. of  
"trustee"  
amended by  
No. 44/2001  
s. 3(Sch.  
item 21.1).

**"trustee"** means—

- (a) a trustee company within the meaning of the **Trustee Companies Act 1984**;
- (b) an official liquidator within the meaning of the Corporations Act;

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**"unlawful activity"** means an act or omission that constitutes an offence against a law in force in the Commonwealth, Victoria or another State, a Territory or a foreign country punishable by imprisonment;

S. 3(1) def. of "unlawful activity" amended by No. 43/1998 s. 7.

**"Victoria Legal Aid"** means Victoria Legal Aid established under the **Legal Aid Act 1978**.

- (2) If under the **Public Administration Act 2004** the name of the Department of Justice is changed, the reference in sub-section (1) in the definition of "Secretary" to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 3(2) inserted by No. 63/2003 s. 5(2), amended by No. 108/2004 s. 117(1) (Sch. 3 item 38).

#### 4. Meaning of "conviction"

- (1) For the purposes of this Act, a person is deemed to have been convicted of an offence if—
- (a) the person has been convicted of the offence; or
  - (b) the person has been charged with the offence and the court hearing the charge finds the person guilty of the offence but does not record a conviction; or
  - (c) the offence was taken into account by a court under section 100 of the **Sentencing Act 1991** in sentencing the person for another offence; or
  - (d) the person has been charged with the offence but, before the charge is finally determined, the person absconds.
- (2) For the purposes of this Act, a person who, because of sub-section (1), is deemed to have been convicted of an offence, is deemed to have committed that offence.

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**5. Meaning of "absconds"**

For the purposes of this Act, a person is deemed to abscond if—

- (a) the person is charged with an offence but dies without the charge having been determined; or
- (b) the person is charged with an offence, a warrant to arrest the person is issued in relation to that charge and one of the following occurs—
  - (i) the person dies without the warrant being executed; or
  - (ii) at the end of the period of 6 months commencing on the day on which the warrant is issued—
    - (A) the person cannot be found; or
    - (B) the person is, for any other reason, not amenable to justice and, if the person is outside Victoria, extradition proceedings are not on foot; or
  - (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued—
    - (A) the person is, by reason of being outside Victoria, not amenable to justice; and
    - (B) extradition proceedings are on foot—

and subsequently those proceedings terminate without an order for the person's extradition being made—

and either—



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- (c) the person was committed for trial for the offence; or
  - (d) a court makes an order that the evidence is of sufficient weight to support a conviction for the offence.

**6. Meaning of "quashing of conviction"**

For the purposes of this Act, a conviction is deemed to have been quashed—

- (a) where the person is deemed to have been convicted by reason of section 4(1)(a)—if the conviction is quashed or set aside or a free pardon is granted by the Governor; or
- (b) where the person is deemed to have been convicted by reason of section 4(1)(b)—if the finding of guilt is quashed or set aside; or
- (c) where the person is deemed to have been convicted by reason of section 4(1)(c)—if the decision of the court to take the offence into account is quashed or set aside.

**7. Meaning of "charged with an offence"**

(1) For the purposes of this Act, a person is deemed to have been charged with an offence if—

- (a) a presentment has been made or an indictment has been laid for the offence; or
- (b) a charge has been filed against the person for the offence—

whether or not—

- (i) a summons to answer to the charge; or
  - (ii) a warrant to arrest the person—
- has been issued and served.

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- (2) A reference in this Act to the withdrawing of a charge includes a reference to the entering of a nolle prosequi.

S. 8  
amended by  
No. 43/1998  
s. 8.

**8. Related offences**

For the purposes of this Act, two offences are related to one another if they are founded on the same facts or form or are part of a series of offences of the same or a similar character.

**9. Effective control of property**

- (1) For the purposes of this Act, property may be subject to the effective control of a person whether or not the person has an interest in it.
- (2) In determining whether or not property is subject to the effective control of a person or whether or not there are reasonable grounds to believe that it is, regard may be had to—
- (a) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
  - (b) a trust that has a relationship to the property; and
  - (c) family, domestic, business or other relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and other persons.

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**10. Property in which the defendant has an interest**

For the purposes of an application under this Act in relation to an offence, property in which the defendant has an interest includes—

- (a) any property that is, on the day when the first application is made under this Act in respect of that offence, subject to the effective control of the defendant; and
- (b) any property that was the subject of a gift from the defendant to another person—
  - (i) within the period of 6 years before the first application made under this Act in respect of that offence; and
  - (ii) at any time if the application is made for the purposes of automatic forfeiture or civil forfeiture.

**11. Meaning of "dealing with property"**

For the purposes of this Act, dealing with property of a person includes—

- (a) if a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from Victoria; and
- (c) receiving or making a gift of the property; and
- (d) creating or assigning an interest in the property; and

S. 11(d)  
amended by  
No. 43/1998  
s. 9.

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S. 11(e)  
inserted by  
No. 43/1998  
s. 9.

(e) using the property to obtain or extend credit;  
and

S. 11(f)  
inserted by  
No. 43/1998  
s. 9.

(f) using credit secured against the property.

## 12. Jurisdiction

S. 12(1A)  
inserted by  
No. 63/2003  
s. 6.

(1) The jurisdiction given to the Children's Court by this Act is exercisable by the Criminal Division of that Court.

(1A) Despite the jurisdictional limit of the Magistrates' Court in civil proceedings, the Magistrates' Court may make a freezing order in respect of an account held with a financial institution, irrespective of the amount held in that account.

(2) The Magistrates' Court or the Children's Court must not make a restraining order or a forfeiture order in respect of real property.

(3) The Magistrates' Court or the Children's Court must not, in relation to a particular offence, make a restraining order in respect of property unless it is satisfied that the value of the property (together with the value of any other property in respect of which a restraining order has been granted in relation to that offence) does not exceed the jurisdictional limit of the Magistrates' Court in civil proceedings, other than proceedings in which damages are claimed that consist of or include damages in respect of personal injury.

S. 12(4)  
amended by  
No. 87/2004  
s. 6(1).

(4) The Magistrates' Court or the Children's Court must not, in relation to the conviction of a defendant for a particular Schedule 1 offence, make a forfeiture order in respect of property unless it is satisfied that the value of the property (together with the value of any other property that

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is the subject of any other undischarged forfeiture order made by that court in relation to that conviction) does not exceed the jurisdictional limit of the Magistrates' Court in civil proceedings, other than proceedings in which damages are claimed that consist of or include damages in respect of personal injury.

- (5) The Magistrates' Court or the Children's Court must not, in relation to the conviction of a defendant for a particular Schedule 1 offence, make a pecuniary penalty order against the defendant unless it is satisfied that the amount payable under the order (together with the amount payable under any other undischarged pecuniary penalty order made against the defendant by that court in relation to that conviction) does not exceed the jurisdictional limit of the Magistrates' Court in civil proceedings, other than proceedings in which damages are claimed that consist of or include damages in respect of personal injury.
- (6) If a person was convicted before the Magistrates' Court or the Children's Court and that court does not have jurisdiction to make a restraining order, forfeiture order or pecuniary penalty order because of the value of the property or the amount payable, then the Supreme Court and the County Court have jurisdiction.
- (7) For the purposes of this section, the value of property is its value as determined by the court hearing the application.
- (8) The County Court has jurisdiction under this Act to make any order (except an order under Division 2 of Part 8) irrespective of the value of the property or the amount payable.

**S. 12(5)**  
**amended by**  
**No. 87/2004**  
**s. 6(1).**

**S. 12(6)**  
**amended by**  
**No. 63/2003**  
**s. 7.**

**S. 12(8)**  
**amended by**  
**No. 87/2004**  
**s. 6(2).**

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**13. Act to bind Crown**

- (1) This Act binds the Crown not only in right of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
  - (2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.
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**PART 2—RESTRAINING ORDERS**

**14. Restraining orders**

- (1) A restraining order is an order that no property or interest in property, that is property or an interest to which the order applies, is to be disposed of, or otherwise dealt with by any person except in the manner and circumstances (if any) specified in the order.
- (2) If a provision of this Act confers a power to apply for a restraining order in respect of property in which a person has an interest, the application may be made in respect of one or more of the following—
  - (a) specified property of the person;
  - (b) all the property of the person, including property acquired after the making of the order;
  - (c) specified property of the person and all other property of the person, including property acquired after the making of the order;
  - (d) all the property of the person, including property acquired after the making of the order, other than specified property;
  - (e) specified property of another person.
- (3) If the court making a restraining order considers that the circumstances so require, the order may direct a trustee specified in the order to take control of some or all of the property specified in the order.

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- (4) A restraining order may, at the time it is made or at a later time, provide for meeting—
- (a) the reasonable living expenses (including the reasonable living expenses of any dependants); and
  - (b) reasonable business expenses—
- of any person to whose property the order applies if the court that makes or made the order is satisfied that these expenses cannot be met from unrestrained property or income of the person.
- (5) A court, in making a restraining order, must not provide for the payment of legal expenses in respect of any legal proceeding, whether criminal or civil, and whether in respect of a charge to which the restraining order relates or otherwise.
- (6) Subject to sub-sections (4) and (5), a restraining order may be made subject to any conditions that the court thinks fit.
- (7) The court may refuse to make a restraining order if the DPP or another person or body on behalf of the State refuses or fails to give to the court any undertakings that the court considers appropriate concerning the payment of damages or costs in relation to the making and operation of the order.

S. 14(7)  
amended by  
No. 43/1998  
s. 10.

**15. Purposes for which a restraining order may be made**

- (1) A restraining order may be made to preserve property in order that the property will be available for any one or more of the following purposes—
- (a) to satisfy any forfeiture order that may be made under Division 1 of Part 3;
  - (b) to satisfy automatic forfeiture of property that may occur under Division 2 of Part 3;



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- (c) to satisfy any civil forfeiture order that may be made under Part 4;
  - (d) to satisfy any pecuniary penalty order that may be made under Part 8;
  - (e) to satisfy any order for restitution or compensation that may be made under the **Sentencing Act 1991**.
- (2) An application for a restraining order must state the purpose for which it is sought.
  - (3) If a court makes a restraining order in respect of property or an interest in property—
    - (a) the court must state in the order the purpose for which the property or interest is restrained; and
    - (b) if the court excludes property or an interest in property from the order in respect of a purpose, the court must state in the order whether the property or interest remains restrained for any other purpose and, if so, state that other purpose.
  - (4) If a court makes a restraining order on application under section 16(2)(a) and a person is subsequently charged with a Schedule 2 offence in relation to which the restrained property or interest in property is tainted property, the court may vary the restraining order to add to or substitute the purpose for which the property or interest is restrained.

S. 15(4)  
inserted by  
No. 87/2004  
s. 7.

Note: Section 26 enables the court to make orders varying the property to which the restraining order relates.

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**16. Application for restraining order**

S. 16(1)  
substituted by  
No. 87/2004  
s. 8(1).

(1) If a person has been, or within the next 48 hours will be, charged with or has been convicted of a Schedule 1 offence—

- (a) the DPP may apply, without notice, to any court; or
- (b) an appropriate officer may apply, without notice, to the Magistrates' Court or the Children's Court—

for a restraining order in respect of property in which the defendant has an interest or which is tainted property in relation to that offence.

S. 16(2)  
substituted by  
No. 87/2004  
s. 8(1).

(2) The DPP or a prescribed person, or a person belonging to a prescribed class of persons, may apply, without notice, to the Supreme Court or the County Court for a restraining order in respect of property if—

- (a) a member of the police force suspects on reasonable grounds that the property is tainted property in relation to a Schedule 2 offence; or
- (b) a member of the police force or a person authorised by or under an Act to prosecute the relevant type of offence believes that—
  - (i) within the next 48 hours a person will be charged with a Schedule 2 offence; and
  - (ii) that person has an interest in the property or that the property is tainted property in relation to that offence; or
- (c) a person has been charged with a Schedule 2 offence and that person has an interest in the property or the property is tainted property in relation to that offence; or

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- (d) a person has been convicted of a Schedule 2 offence and that person has an interest in the property or the property is tainted property in relation to that offence.
- (2A) An application under sub-section (2) for the purposes of civil forfeiture may only be made in respect of property that is reasonably suspected to be tainted property. **S. 16(2A) inserted by No. 87/2004 s. 8(1).**
- (3) An application under sub-section (2) for the purposes of automatic forfeiture may only be made before the end of the relevant period in relation to the conviction. **S. 16(3) amended by No. 87/2004 s. 8(2).**
- (4) An application under sub-section (1) or (2)(b), (c) or (d) must be supported by an affidavit of— **S. 16(4) amended by No. 87/2004 s. 8(3).**
- (a) a member of the police force; or
- (b) a person authorised by or under an Act to prosecute the relevant type of offence—
- setting out any relevant matters and stating that the member or person believes the following matters and setting out the grounds on which the member or person holds those beliefs—
- (c) in the case of an application made in reliance on the proposed charging of the defendant with an offence, that the defendant will be so charged within the next 48 hours; and
- (d) that the defendant has an interest in the property or the property is tainted property, as the case may be; and
- (e) if the restraining order is being sought for a purpose referred to in paragraph (a), (d) or (e) of section 15(1), that—
- (i) a forfeiture order may be made in respect of the property; or

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- (ii) a pecuniary penalty order may be made against the defendant; or
- (iii) an order for restitution or compensation may be made under the **Sentencing Act 1991**.

S. 16(5)  
inserted by  
No. 87/2004  
s. 8(4).

- (5) An application under sub-section (2)(a) must be supported by an affidavit of a member of the police force setting out any relevant matters and stating that the member suspects that the property is tainted property in relation to a Schedule 2 offence and setting out the grounds on which the member has that suspicion.

**17. Procedure on application**

S. 17(1)  
amended by  
No. 87/2004  
s. 8(5),  
substituted by  
No. 79/2006  
s. 10.

- (1) If, having regard to the matters referred to in sub-section (1A), the court is satisfied that the circumstances of the case justify the giving of notice to a person affected, the court may direct an applicant under section 16(1) or 16(2) to give notice of the application to any person whom the court has reason to believe has an interest in the property that is the subject of the application.

S. 17(1A)  
inserted by  
No. 79/2006  
s. 10.

- (1A) In determining whether the circumstances of the case justify the giving of notice, the court must have regard to—
  - (a) the aim of preserving the property that is the subject of the application so as to ensure its availability for the purpose for which the restraining order is sought; and
  - (b) any jeopardy to an investigation by a law enforcement agency into criminal activity that could result from the giving of notice; and
  - (c) any risk to the safety or security of a person, including a potential witness in any criminal proceeding, that could result from the giving of notice; and

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- (d) the provision made by this Act to enable a person claiming an interest in property the subject of a restraining order to apply for an exclusion order to protect that interest from the operation of the restraining order; and
  - (e) the limited duration of a restraining order; and
  - (f) the submissions, if any, made by the applicant in relation to the giving of notice.
- (1B) In determining whether to direct an applicant to give notice of an application under section 16(1) or 16(2), the court may have regard to any other matter that the court considers relevant.
- (1C) If the court does not require notice of an application under section 16(1) or 16(2) to be given under sub-section (1), it may hear and determine the application in the absence of any person who has an interest in the property that is the subject of the application.
- (2) Any person notified under sub-section (1) is entitled to appear and to give evidence at the hearing of the application but the absence of that person does not prevent the court from making a restraining order.
- (3) The court may—
- (a) order that the whole or any part of the proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of the proceeding; or
  - (c) make an order prohibiting the publication of a report of the whole or any part of the proceeding or of any information derived from the proceeding.

**S. 17(1B)**  
**inserted by**  
**No. 79/2006**  
**s. 10.**

**S. 17(1C)**  
**inserted by**  
**No. 79/2006**  
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- (4) The court must cause a copy of any order made under sub-section (3) to be posted on a door of the court house or in another conspicuous place where notices are usually posted at the court house.
- (5) A person must not contravene an order posted under sub-section (4).

Penalty: Imprisonment for 12 months or  
1000 penalty units.

S. 18  
amended by  
Nos 43/1998  
s. 11, 87/2004  
s. 9(1)(a)(b)(2)  
(ILA s. 39B(1)).

### 18. Determination of application

- (1) On an application under section 16(1) or (2)(b), (c) or (d), the court must make a restraining order if it is satisfied that the defendant—
  - (a) has been, or within the next 48 hours will be, charged with; or
  - (b) has been convicted of—  
a Schedule 1 offence or a Schedule 2 offence (as the case may be) and—
    - (c) it considers that, having regard to the matters contained in the affidavit supporting the application and to any other sworn evidence before it, there are reasonable grounds for making the restraining order; and
    - (d) if the restraining order is being sought for a purpose referred to in section 15(1)(e), it is satisfied that—
      - (i) applications have been, or are likely to be, made for restitution or compensation under the **Sentencing Act 1991** in respect of the Schedule 1 offence or Schedule 2 offence; and
      - (ii) the order of the court under the **Sentencing Act 1991** is likely to exceed \$10 000.

S. 18(1)(d)(i)  
amended by  
No. 87/2004  
s. 9(1)(c).

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(2) On an application under section 16(2)(a), the court must make a restraining order if it is satisfied that—

S. 18(2)  
inserted by  
No. 87/2004  
s. 9(2).

- (a) the deponent of the affidavit supporting the application does suspect that the property is tainted property in relation to a Schedule 2 offence; and
- (b) there are reasonable grounds for that suspicion.

**19. Notice of restraining order to be given to persons affected**

(1) If—

- (a) a restraining order is made in respect of property of a person; and
- (b) notice had not been given to that person of the application for the order—

the applicant must give written notice of the making of the order to that person.

(2) If a person to whom notice must be given under sub-section (1) cannot be found after all reasonable steps have been taken to locate the person, the applicant must cause to be published in a newspaper circulating generally in Victoria a notice containing details of the restraining order or give notice to that person in any other manner that the court directs.

**19A. Notice requiring declaration of property interests**

S. 19A  
inserted by  
No. 63/2003  
s. 8.

(1) If a restraining order is made in respect of property, a member of the police force must give a notice to each person who the applicant for the restraining order believes has an interest in that property requiring the person to give to the member of the police force a written declaration of property interests.

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- (2) A notice under sub-section (1) must—
- (a) be in the prescribed form; and
  - (b) state the effect of section 19C.

S. 19B  
inserted by  
No. 63/2003  
s. 8.

**19B. What must be included in a declaration of property interests?**

- (1) A person who has been given a notice under section 19A must provide a written declaration of property interests that states whether that person—
- (a) has an interest in the property; and
  - (b) believes that any other person has an interest in the property.
- (2) If the person making the declaration of property interests believes that any other person has an interest in the property, the person making the declaration must state the name of every such person in the declaration.

S. 19C  
inserted by  
No. 63/2003  
s. 8.

**19C. Offences**

- (1) A person who is given a notice under section 19A must not, without reasonable excuse, fail to give the declaration of property interests required by that notice to a member of the police force within 14 days after the notice is given to the person.

Penalty: Level 9 fine (60 penalty units maximum).

- (2) A person who is given a notice under section 19A must not make a statement in the declaration of property interests required by that notice that is false or misleading in a material particular.

Penalty: Level 9 fine (60 penalty units maximum).



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**s. 19D**

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**19D. Court directions to provide information**

**S. 19D**  
**inserted by**  
**No. 63/2003**  
**s. 8.**

- (1) If a person who has been given a notice under section 19A—
- (a) is convicted of an offence under section 19C(1) or (2); and
  - (b) has not, prior to that conviction, provided the information that should have been provided in a declaration of property interests as required by the notice under section 19A—
- the court which convicts that person must direct the person to provide the court with the information that should have been provided in a declaration of property interests.

- (2) If a person who has been given a notice under section 19A—
- (a) is convicted of the Schedule 1 offence or Schedule 2 offence in relation to which the restraining order was made; and
  - (b) has not, prior to that conviction, provided the information that should have been provided in a declaration of property interests as required by the notice under section 19A; and
  - (c) does not have a reasonable excuse for failing to provide the information in a declaration of property interests required by the notice under section 19A—

**S. 19D(2)(a)**  
**amended by**  
**No. 87/2004**  
**s. 22(1)(a).**

the court which convicts that person must direct the person to provide the court with the information that should have been provided in the declaration of property interests.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2—Restraining Orders

s. 19E

S. 19E  
inserted by  
No. 63/2003  
s. 8.

**19E. Admissibility of statement**

A statement made by a person in a declaration of property interests given in response to a notice under section 19A is admissible against that person in—

- (a) a proceeding for making a false or misleading statement in the declaration; or
- (b) any proceeding under this Act—

S. 19E(b)  
substituted by  
No. 104/2003  
s. 5(4).

but is not otherwise admissible in evidence against that person.

**20. Application for exclusion from restraining order**

- (1) If a court makes a restraining order against property under section 18, any person claiming an interest in the property (including the defendant) may apply to that court for an order under section 21, 22 or 24.

S. 20(1A)  
inserted by  
No. 87/2004  
s. 10(1).

- (1A) An application under sub-section (1) must be made—
  - (a) if notice is required to be given under section 19(1), within 30 days after service of notice of the making of the restraining order; or
  - (b) in any other case, within 30 days after the making of the restraining order.

S. 20(1B)  
inserted by  
No. 87/2004  
s. 10(1).

- (1B) The court may extend the period within which an application may be made, whether or not that period has expired, if it is in the interests of justice to do so.

S. 20(2)  
amended by  
No. 87/2004  
s. 10(2).

- (2) An applicant must give notice of the application, and, subject to sub-section (6), of the grounds on which it is made—

*Confiscation Act 1997*  
*Act No. 108/1997*

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- (a) to the applicant for the restraining order; and
- (b) to any other person whom the applicant has reason to believe has an interest in the property.
- (3) Any person referred to in sub-section (2) is entitled to appear and to give evidence at the hearing of an application for an order under section 21, 22 or 24 but the absence of that person does not prevent the court from making an order under section 21, 22 or 24.
- (4) If the person referred to in sub-section (2)(a) proposes to contest an application for an exclusion order, that person must give the applicant notice of the grounds on which the application is to be contested.
- (5) If—
- (a) a court makes a restraining order against property under section 18 in relation to an offence; and
- (b) a person claiming an interest in the property is charged with the offence or a related offence that is a Schedule 1 offence or a Schedule 2 offence—
- any statement made or evidence given by the person in support of an application under this section is admissible against that person in a proceeding for perjury or any proceeding under this Act but is not otherwise admissible in evidence against that person.
- (6) If—
- (a) a court makes a restraining order against property under section 18 in relation to a Schedule 2 offence; and

**S. 20(5)**  
inserted by  
No. 87/2004  
s. 10(3).

**S. 20(6)**  
inserted by  
No. 87/2004  
s. 10(3).

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(b) a person claiming an interest in the property is charged with the Schedule 2 offence or a related offence that is a Schedule 2 offence; and

(c) that person applies for an order under section 21, 22 or 24—

the person need not give notice of the grounds on which the application is made until the charge against the person is finally determined or is withdrawn.

S. 20(7)  
inserted by  
No. 87/2004  
s. 10(3).

(7) Any person referred to in sub-section (2) may apply to the court for an order that the hearing of the application for an order under section 21, 22 or 24 be stayed until the charge referred to in sub-section (6)(b) is finally determined or is withdrawn.

Note: Section 26 enables the court to make orders varying the property to which the restraining order relates.

**21. Determination of exclusion application—restraining order—Schedule 1 offence**

S. 21  
amended by  
No. 87/2004  
s. 22(1)(b).

On an application made under section 20, where the restraining order has been made in relation to a Schedule 1 offence (other than for a purpose referred to in paragraph (b) or (c) of section 15(1))—

- (a) if the court is satisfied that the property in which the applicant claims an interest—
- (i) is not tainted property; and
  - (ii) will not be required to satisfy any purpose for which the restraining order was made—

the court may make an order excluding the property from the operation of the restraining order; or

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- (b) if the applicant is a person other than the defendant and—
- (i) the court is not satisfied as specified in paragraph (a)(i), the court may make an order excluding the property from the operation of the restraining order if satisfied that—
- (A) the applicant was not, in any way, involved in the commission of the Schedule 1 offence; and
- (B) where the applicant acquired the interest before the commission, or alleged commission, of the Schedule 1 offence, the applicant did not know that the defendant would use, or intended to use, the property in, or in connection with, the commission of the Schedule 1 offence; and
- (C) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the Schedule 1 offence, the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and
- (D) the applicant's interest in the property is not subject to the effective control of the defendant; and

**S. 21(b)(i)(A)**  
amended by  
**No. 87/2004**  
**s. 22(1)(b).**

**S. 21(b)(i)(B)**  
amended by  
**No. 87/2004**  
**s. 22(1)(b).**

**S. 21(b)(i)(C)**  
amended by  
**No. 87/2004**  
**s. 22(1)(b).**

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- (E) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration; or
- (ii) the court is satisfied as specified in paragraph (a)(i) but not satisfied as specified in paragraph (a)(ii), the court may make an order excluding the property from the operation of the restraining order if satisfied that—
  - (A) the applicant's interest in the property is not subject to the effective control of the defendant; and
  - (B) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration.

S. 22  
amended by  
No. 87/2004  
s. 11(a).

**22. Determination of exclusion application—restraining order—automatic forfeiture**

On an application made under section 20, where the restraining order has been made in relation to a Schedule 2 offence for the purposes of automatic forfeiture—

S. 22(a)  
amended by  
No. 43/1998  
s. 39(a).

- (a) the court may make an order excluding the property from the operation of the restraining order if the court is satisfied that—

S. 22(a)(ii)  
substituted by  
No. 87/2004  
s. 11(b).

- (i) the property in which the applicant claims an interest was lawfully acquired by the applicant; and
  - (ii) the property is not tainted property; and

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- (iii) the property will not be required to satisfy any pecuniary penalty order or an order for restitution or compensation under the **Sentencing Act 1991**; or
- (b) where the application is made by a person other than the defendant, the court may make an order excluding the property from the operation of the restraining order—
- (i) if the court is not satisfied that the property in which the person claims an interest is not tainted property but is satisfied that—
- (A) the applicant was not, in any way, involved in the commission of the Schedule 2 offence; and **S. 22(b)(i)(A) amended by No. 87/2004 s. 11(c).**
- (B) where the applicant acquired the interest before the commission, or alleged commission, of the Schedule 2 offence, the applicant did not know that the defendant would use, or intended to use, the property in, or in connection with, the commission of the Schedule 2 offence; and **S. 22(b)(i)(B) amended by No. 87/2004 s. 11(c).**
- (C) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the Schedule 2 offence, the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and **S. 22(b)(i)(C) amended by No. 87/2004 s. 11(c).**
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*Confiscation Act 1997*  
*Act No. 108/1997*

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s. 22

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- (D) the applicant's interest in the property is not subject to the effective control of the defendant; and
  - (E) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration; or
- (ii) if the court is satisfied that the property is not tainted property and that—
- (A) the applicant's interest in the property is not subject to the effective control of the defendant; and
  - (B) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration; or
- (c) where the application is made by the executor or administrator of the estate of a deceased defendant, the court may make an order excluding the property from the operation of the restraining order if the court is satisfied that—
- (i) the defendant is dead; and
  - (ii) there are reasonable grounds to believe that the interest claimed by the estate of the defendant was lawfully acquired by the defendant; and
  - (iii) the property was not used in, or in connection with, any unlawful activity and was not derived or realised, directly or indirectly, by any person from any unlawful activity; and
- 

S. 22(c)(ii)  
amended by  
No. 43/1998  
s. 12.



- (iv) the property will not be required to satisfy any pecuniary penalty order or an order for restitution or compensation under the **Sentencing Act 1991**.

**23. Declaration that restraining order shall be disregarded for purposes of automatic forfeiture**

If—

- (a) in the circumstances set out in section 22(a), the court is satisfied of the matters referred to in sub-paragraphs (i) and (ii); or
- (b) in the circumstances set out in section 22(c), the court is satisfied of the matters referred to in sub-paragraphs (i), (ii) and (iii)—

but the interest is not excluded from the operation of the restraining order, the court may, by order, declare that the restraining order, to the extent to which it relates to the property, shall be disregarded for the purposes of section 35.

**24. Determination of exclusion application—restraining order—civil forfeiture**

S. 24  
amended by  
No. 87/2004  
s. 12(a).

On an application made under section 20, where the restraining order has been made in relation to a Schedule 2 offence for the purposes of civil forfeiture—

- (a) the court may make an order excluding the property from the operation of the restraining order if the court is satisfied that—

S. 24(a)  
amended by  
No. 43/1998  
s. 39(b).

\* \* \* \* \*

S. 24(a)(i)  
repealed by  
No. 87/2004  
s. 12(c).

- (ii) the property is not tainted property; or

S. 24(a)(ii)  
substituted by  
No. 87/2004  
s. 12(b).

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*Act No. 108/1997*

Part 2—Restraining Orders

s. 24

S. 24(a)(iii)  
repealed by  
No. 87/2004  
s. 12(c).

\* \* \* \* \*

S. 24(b)  
substituted by  
No. 87/2004  
s. 12(d).

- (b) the court may make an order excluding the property from the operation of the restraining order if the court is not satisfied that the property in which the applicant claims an interest is not tainted property but is satisfied that—
- (i) the applicant was not, in any way, involved in the commission of the Schedule 2 offence; and
  - (ii) where the applicant acquired the interest before the commission, or alleged commission, of the Schedule 2 offence, the applicant did not know that the property would be, or was intended to be, used in, or in connection with, the commission of the Schedule 2 offence; and
  - (iii) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the Schedule 2 offence, the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and
  - (iv) the applicant's interest in the property is not subject to the effective control of the person who is suspected to have committed the Schedule 2 offence; and

- (v) where the applicant acquired the interest, directly or indirectly, from the person who is suspected to have committed the Schedule 2 offence, that it was acquired for sufficient consideration.

\* \* \* \* \*

S. 25  
repealed by  
No. 87/2004  
s. 13.

## 26. Further orders

- (1) The court may, when it makes a restraining order or at any later time, make such orders in relation to the property to which the restraining order relates as it considers just.
- (2) An order under sub-section (1) may be made on the application of—
- (a) the applicant for the restraining order; or
  - (b) the defendant; or
  - (c) a person to whose property the restraining order relates or who has an interest in that property; or
  - (d) a trustee—if the restraining order directed the trustee to take control of property; or
  - (da) a prescribed person, or a person belonging to a prescribed class of persons; or
  - (e) any other person who obtains the leave of the court to apply.
- (3) Any person referred to in sub-section (2) is entitled to appear and to give evidence at the hearing of an application under this section but the absence of that person does not prevent the court from making an order.

S. 26(2)(da)  
inserted by  
No. 43/1998  
s. 13.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2—Restraining Orders

s. 26

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- (4) The applicant for an order under sub-section (1) must give written notice of the application to each other person referred to in paragraphs (a) to (d) of sub-section (2) who could have applied for the order.
- (5) Examples of the kind of order that the court may make under sub-section (1) are—
- (a) an order varying the property to which the restraining order relates;
  - (b) an order varying any condition to which the restraining order is subject;
  - (c) an order providing for the reasonable living expenses and reasonable business expenses of any person referred to in section 14(4);
  - (d) an order relating to the carrying out of any undertaking given under section 14(7) in relation to the restraining order;
  - (e) an order for examination under Part 12;
  - (f) an order directing any person whose property the restraining order relates to or any other person to furnish to such person as the court directs, within the period specified in the order, a statement, verified by the oath or affirmation of that person, setting out such particulars of the property to which the restraining order relates as the court thinks proper;
  - (g) an order directing any relevant registration authority not to register any instrument affecting property to which the restraining order relates while it is in force except in accordance with the order;
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*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2—Restraining Orders

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- (ga) if the restraining order did not direct a trustee to take control of property in accordance with section 14(3), an order directing a trustee to take control of property at any later time specified in the order under sub-section (1); **S. 26(5)(ga) inserted by No. 63/2003 s. 9(1).**
- (h) if the restraining order directed a trustee to take control of property—
- (i) an order regulating the manner in which the trustee may exercise powers or perform duties under the restraining order;
  - (ii) an order determining any question relating to the property; **S. 26(5)(h)(ii) amended by No. 63/2003 s. 9(2)(a).**
- (i) an order directing a person to whose property the restraining order relates or who has an interest in that property to use or manage specified property to which the restraining order relates, subject to conditions specified in the order; **S. 26(5)(i) inserted by No. 63/2003 s. 9(2)(b).**
- (j) an order directing a person prescribed for the purposes of sub-section (2)(da), if that person so consents, to do any activity specified in the order that is reasonably necessary for the purpose of managing specified property to which the restraining order relates. **S. 26(5)(j) inserted by No. 63/2003 s. 9(2)(b).**

**Example**

The court may direct the carrying out of repairs on restrained premises.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2—Restraining Orders

s. 27

**27. Duration and setting aside of restraining order**

S. 27(1)  
amended by  
No. 87/2004  
s. 14(1)(a)(b).

(1) If, at the end of the period of 48 hours after the making of a restraining order in reliance on the proposed charging of a defendant with a Schedule 1 offence or a Schedule 2 offence, the defendant has not been charged with the offence or a related offence that is a Schedule 1 offence or a Schedule 2 offence, whether or not in the same Schedule as the original offence, the order ceases to be in force at the end of that period.

S. 27(2)  
amended by  
No. 43/1998  
s. 14(1),  
substituted by  
No. 87/2004  
s. 14(2).

(2) A restraining order made on an application under section 16(2)(a) ceases to be in force on the expiry of 90 days after it is made unless an application for a civil forfeiture order in respect of the restrained property is then pending before the Supreme Court or the County Court.

S. 27(3)  
amended by  
No. 87/2004  
s. 14(3)(a).

(3) If, when a restraining order was made in reliance on the charging, or proposed charging, of a defendant with a Schedule 1 offence or a Schedule 2 offence or in reliance on the conviction of a defendant of such an offence—

S. 27(3)(a)  
amended by  
No. 87/2004  
s. 14(3)(a).

(a) the charge is withdrawn and the defendant is not charged with a related offence that is a Schedule 1 offence or a Schedule 2 offence by the time of the withdrawal, whether or not in the same Schedule as the original offence, the restraining order ceases to be in force on the expiry of 7 days after the charge is withdrawn; or

S. 27(3)(b)  
amended by  
No. 87/2004  
s. 14(3)(a)(b).

(b) the defendant is acquitted of the charge and the defendant is not charged with a related offence that is a Schedule 1 offence or a Schedule 2 offence by the time of the acquittal, whether or not in the same Schedule as the original offence, the restraining order ceases to be in force when the acquittal occurs; or

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S. 27(3)(ba)  
inserted by  
No. 43/1998  
s. 14(2)(a),  
repealed by  
No. 87/2004  
s. 14(3)(c).

(c) the conviction of the defendant of the offence is subsequently quashed, the restraining order (other than one referred to in sub-section (2)) ceases to be in force when the appeal period expires unless a re-trial has been ordered at the time of the quashing of the conviction.

S. 27(3)(c)  
amended by  
No. 43/1998  
s. 14(2)(b).

(4) If, while a restraining order in respect of an interest in property is in force, a court makes a forfeiture order or a civil forfeiture order in respect of the interest or makes a pecuniary penalty order against the defendant or makes an order for restitution or compensation under the **Sentencing Act 1991**, that court or the Supreme Court or the County Court may—

S. 27(4)  
amended by  
No. 87/2004  
s. 14(4).

- (a) make an order setting aside the restraining order in respect of the whole or a specified part of the interest; or
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(5) If a restraining order is made for a purpose referred to in section 15(1) and, while the order is in force, a court refuses to make an order for that purpose, that court or the Supreme Court or the County Court may—

S. 27(5)  
amended by  
No. 87/2004  
s. 14(5).

- (a) make an order in relation to the purpose and period for which the restraining order is to remain in force; and

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S. 27(6)  
amended by  
No. 87/2004  
s. 14(6)(a).

S. 27(6)(a)  
amended by  
No. 87/2004  
s. 14(6)(a).

S. 27(6)(b)  
amended by  
No. 87/2004  
s. 14(6)(b).

S. 27(7)(b)(iii)  
amended by  
No. 43/1998  
s. 36(a).

(b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(6) A court may make an order setting aside a restraining order on the application of a person if the person—

(a) gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed on the person under Part 8; or

(b) gives undertakings satisfactory to the court concerning the person's property.

(7) An order under sub-section (4), (5) or (6) may be made so as—

(a) to set aside the restraining order wholly or in part; and

(b) to take effect—

(i) on the making of the first-mentioned order; or

(ii) at a specified time; or

(iii) if relevant, on the payment of money or the transfer of property to the Minister; or

(iv) on the happening of some other specified event—

and, when the first-mentioned order takes effect, the restraining order ceases to be in force to the extent to which it is set aside.



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- (8) An order under sub-section (4), (5) or (6) may be made on the application of—
- (a) the applicant for the restraining order; or
  - (b) the defendant; or
  - (c) any person to whose property the restraining order relates or who has an interest in that property; or
  - (d) a trustee—if the restraining order directed the trustee to take control of property; or
  - (e) any other person who obtains the leave of the court to apply.

**28. Registration of restraining order**

- (1) If—
- (a) a restraining order applies to property of a particular kind; and
  - (b) any law of Victoria provides for the registration of title to, or encumbrances on, or documents relating to the title to property of that kind—

the relevant registration authority under that law must, on application to it by the applicant for the restraining order, record on the register the prescribed particulars of the restraining order.

- (2) Without limiting sub-section (1), if a restraining order or an interstate restraining order registered under Part 15 of this Act relates to land under the operation of the **Transfer of Land Act 1958**, a caveat may be lodged under section 89 of that Act by any person mentioned in that section in relation to that order.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2—Restraining Orders

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- (3) For the purposes of sub-section (2) and without limiting that sub-section—
- (a) the applicant for the restraining order; or
  - (b) if the restraining order directed a trustee to take control of the property, the trustee; or
  - (c) if an interstate restraining order directed a person to take control of the property, the person or, if that person entered into an agreement with a trustee to act as the agent of the person, the trustee—

is deemed to be a person mentioned in section 89 of the **Transfer of Land Act 1958**.

**29. Contravention of restraining order**

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, an interest in property to which the order applies is guilty of an indictable offence and liable to—
- (a) level 5 imprisonment (10 years maximum);  
or
  - (b) a level 5 fine (1200 penalty units maximum) or a fine not exceeding the value of the interest (as determined by the court),  
whichever is greater—

or to both.

- (2) If the prescribed particulars referred to in section 28(1) are recorded as required by that section, a person who disposes of, or otherwise deals with, the property after the recording of those particulars is, for the purposes of sub-section (1), to be taken to know of the restraining order.

**30. Priority given to payment of restitution or compensation**

If a restraining order is made for a purpose referred to in section 15(1)(e) and one or more other purposes and an order for restitution or compensation is made under the **Sentencing Act 1991** in relation to the offence in reliance on which the restraining order is made or damages are awarded in relation to that offence, the State must ensure that the order for restitution, compensation or damages is satisfied, to the value of the restrained property, before any other purpose for which the restraining order is made.

**31. State to pay restitution and compensation out of forfeited property etc.**

(1) If—

\* \* \* \* \*

- (b) property is forfeited by or under this Act, or a pecuniary penalty order is made, in relation to the offence in reliance on which the restraining order is made; and
- (c) an order for restitution or compensation is made under the **Sentencing Act 1991** in relation to that offence or damages are awarded in relation to that offence—

the State must satisfy, subject to sub-section (2), to the value of the property forfeited or the amount of the penalty paid (less conversion costs), the order for restitution, compensation or damages.

S. 31 amended by No. 43/1998 s. 15(1)(b)(2) (ILA s. 39B(1)).

S. 31(1)(a) repealed by No. 43/1998 s. 15(1)(a).

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*Act No. 108/1997*

Part 2—Restraining Orders

s. 31

S. 31(2)  
inserted by  
No. 43/1998  
s. 15(2).

- (2) If, in relation to an offence, the value of the property forfeited and the amount of the penalty paid (less conversion costs) are less than the sum of orders for restitution, compensation or damages, the State must pay to each person awarded restitution, compensation or damages an amount calculated in accordance with the formula—

$$F \times V/A$$

where—

F is the value of the property forfeited and the amount of the penalty paid (less conversion costs);

V is a victim's award of restitution, compensation or damages to the extent that it has not been satisfied;

A is the total of awards of restitution, compensation and damages in respect of the offence.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2A—Freezing Orders

s. 31A

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**PART 2A—FREEZING ORDERS**

Pt 2A  
(Heading and  
ss 31A–31M)  
inserted by  
No. 63/2003  
s. 10.

**31A. Definition**

S. 31A  
inserted by  
No. 63/2003  
s. 10.

In this Part—

**"authorised member of the police force"**

means—

- (a) a person authorised under section 31B;  
or
- (b) a person belonging to a class authorised  
under section 31B.

**31B. Chief Commissioner of Police may authorise police  
to apply for freezing orders**

S. 31B  
inserted by  
No. 63/2003  
s. 10.

For the purposes of applying for a freezing order  
under this Part, the Chief Commissioner of Police  
may authorise in writing the following—

- (a) a member of the police force; or
- (b) a class of member of the police force.

**31C. Freezing order**

S. 31C  
inserted by  
No. 63/2003  
s. 10.

- (1) A freezing order is an order that a financial  
institution must not allow a person to make  
withdrawals from a specified account—
  - (a) that is held in the person's name or in the  
name of the person and another person; or
  - (b) in which the person has an interest—except in the manner and circumstances (if any)  
specified in the order.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 2A—Freezing Orders

**s. 31D**

- (2) For the purposes of a freezing order, it is irrelevant whether or not money is deposited into the account in relation to which the freezing order was made after the order takes effect.
- (3) A freezing order does not prevent a financial institution from making withdrawals from an account for the purpose of meeting a liability imposed on the financial institution in connection with that account by any law of the State or the Commonwealth.

**S. 31D**  
inserted by  
No. 63/2003  
s. 10.

**31D. Application for freezing order**

- (1) An authorised member of the police force may apply to the Magistrates' Court for a freezing order if the applicant believes on reasonable grounds that—
  - (a) the person in whose name the account is held in respect of which the freezing order is sought or a person who has an interest in that account—
    - (i) has committed, or is about to commit, a Schedule 1 offence or a Schedule 2 offence; or
    - (ii) was involved in the commission, or is about to be involved in the commission, of such an offence; or
    - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of such an offence; and
  - (b) an application for a restraining order is likely to be made in respect of property in which the person—
    - (i) in whose name the account is held has an interest; or

**S. 31D(1)(a)(i)**  
amended by  
No. 87/2004  
s. 22(1)(c).

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*Act No. 108/1997*

Part 2A—Freezing Orders

s. 31D

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- (ii) who has an interest in the account in respect of which a freezing order is sought, has an interest.
- (2) Subject to this section and section 31E, an application under sub-section (1) must be supported by an affidavit setting out—
- (a) the grounds on which the freezing order is sought; and
  - (b) the name or names in which the relevant account is held; and
  - (c) the financial institution with which the account is held; and
  - (d) the account number or, if this is not known to the applicant, a description of the account that is sufficient to identify the account.
- (3) If the applicant for a freezing order believes that it is impracticable for an affidavit to be prepared and sworn before the application is made, an application may be made before an affidavit is prepared or sworn.
- (4) If sub-section (3) applies, the applicant for a freezing order must—
- (a) provide as much information as the Magistrates' Court considers is reasonably practicable in the circumstances; and
  - (b) not later than the day following the making of the application, send a duly sworn affidavit to the venue of the Magistrates' Court that determined the application, whether or not a freezing order has been made.
- (5) In addition to the powers of the Magistrates' Court under section 126 of the **Magistrates' Court Act 1989**, the Court may order that the whole or any part of the proceedings for an application for a
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**s. 31E**

freezing order be heard in closed court if the Court is of the opinion that it is necessary to do so in order not to prejudice an investigation by a member of the police force.

**S. 31E**  
inserted by  
No. 63/2003  
s. 10.

**31E. Application may be made by telephone etc.**

- (1) If it is impracticable for the applicant for a freezing order to apply in person, the applicant may apply under section 31D for a freezing order by telephone, facsimile or other form of communication.
- (2) If transmission by facsimile machine is available and an affidavit has been prepared, the applicant must transmit a copy of the affidavit, whether sworn or unsworn, to the venue of the Magistrates' Court that is to determine the application for a freezing order.
- (3) If an application is made under section 31D in accordance with this section, the applicant, not later than the day following the making of the application, must send the original affidavit duly sworn to the venue of the Magistrates' Court that determined the application, whether or not a freezing order has been made.

**S. 31F**  
inserted by  
No. 63/2003  
s. 10.

**31F. Making of freezing order**

- (1) On an application under section 31D, the Magistrates' Court may make a freezing order if it is satisfied—
  - (a) that there are reasonable grounds for believing the matters referred to in paragraphs (a) and (b) of section 31D(1); and
  - (b) if the application has been made without an affidavit, that—
    - (i) there are sufficiently urgent circumstances to justify the making of an application without an affidavit; and



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s. 31F

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- (ii) it would have been impracticable for an affidavit to have been prepared and sworn before the application was made; and
  - (c) if the application has not been made in person, that it would have been impracticable for the applicant to have applied in person for the freezing order; and
  - (d) that it is appropriate to make the freezing order.
- (2) In determining whether a freezing order should be made, the Magistrates' Court must have regard to—
- (a) the amount of money in the account to be frozen; and
  - (b) whether the account is held in the name of more than one person; and
  - (c) any hardship that may reasonably be likely to be caused to any person by the order.
- (3) A freezing order must specify—
- (a) the name of the magistrate constituting the court which made the order; and
  - (b) the date and time at which the order was made; and
  - (c) the name of the financial institution with which the account is held; and
  - (d) the number of the account to be frozen or a description of the account that is sufficient to identify the account; and
  - (e) any conditions to which the order is subject.
- (4) A freezing order must be in the prescribed form.
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- (5) Subject to sub-section (6), if the Magistrates' Court makes a freezing order on an application made in accordance with section 31E, the Court must—
- (a) inform the applicant of the terms of the freezing order and the date on which and the time at which it was made; and
  - (b) if transmission by facsimile machine is available, transmit a copy of the freezing order to the applicant.
- (6) If a copy of the freezing order has not been transmitted by facsimile machine, the Magistrates' Court must make a copy of the freezing order available to the applicant as soon as practicable.

**S. 31G**  
inserted by  
**No. 63/2003**  
**s. 10.**

**31G. Notice of freezing order**

- (1) If the Magistrates' Court makes a freezing order and a copy of the order is provided to the applicant in writing or by facsimile at the time the order is made, a member of the police force must give to the relevant financial institution—
- (a) a copy of the freezing order; and
  - (b) a notice in the prescribed form which specifies—
    - (i) that the freezing order takes effect at the time that notice of the freezing order is given to the financial institution and lasts for 72 hours unless the financial institution is otherwise advised by a member of the police force that the order—
      - (A) has ceased to have effect; or
      - (B) has been extended by court order under section 31I; and
    - (ii) the effect of sections 31K and 31L.

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**s. 31G**

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- (2) If the Magistrates' Court makes a freezing order and a copy of the order is not provided to the applicant in writing or by facsimile at the time the order is made, a member of the police force must give to the relevant financial institution a notice in the prescribed form which specifies—
- (a) the name of the magistrate constituting the court which made the order; and
  - (b) the date and time at which the order was made; and
  - (c) the name of the financial institution; and
  - (d) the number of the account to be frozen or a description of the account that is sufficient to identify the account; and
  - (e) any conditions to which the order is subject; and
  - (f) that the freezing order takes effect at the time that notice of the freezing order is given to the financial institution and lasts for 72 hours unless the financial institution is otherwise advised by a member of the police force that the order—
    - (i) has ceased to have effect; or
    - (ii) has been extended by court order under section 31I; and
  - (g) the effect of sections 31K and 31L.
- (3) A notice under this section must not be given to the relevant financial institution more than 72 hours after a freezing order has been made.
- (4) A notice under this section must be given in accordance with section 137 and, without limiting the generality of that section, may be given by facsimile.
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**s. 31H**

- (5) For the purposes of this section, the regulations may prescribe a composite form which incorporates the prescribed notice required by sub-section (1) and the prescribed notice required by sub-section (2).

S. 31H  
inserted by  
No. 63/2003  
s. 10.

**31H. When does a freezing order take effect?**

- (1) A freezing order takes effect on the date and at the time that notice of the freezing order is given to the financial institution in accordance with section 31G.
- (2) Subject to section 31I, a freezing order ceases to be in force on—
- (a) the making of a restraining order in respect of the money in the account; or
  - (b) the expiration of 72 hours after the time on which the freezing order took effect—
- whichever occurs first.

S. 31I  
inserted by  
No. 63/2003  
s. 10.

**31I. Extension of freezing orders**

- (1) A person who applied for a freezing order may apply to the Magistrates' Court for an extension of the duration of that freezing order.
- (2) On an application under sub-section (1), the Magistrates' Court—
- (a) must have regard to the matters set out in section 31F(2); and
  - (b) must not extend the duration of a freezing order unless the Court is satisfied that—
    - (i) an application for a restraining order in respect of the money in the account has been made; and
    - (ii) the application for the restraining order has not been determined.

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- (3) If the Magistrates' Court extends the duration of a freezing order, the applicant for the extension must give a written notice to the relevant financial institution stating that—
- (a) the duration of the freezing order has been extended; and
  - (b) the extended freezing order ceases to be in force—
    - (i) when a restraining order is made in respect of the money in the account to which the freezing order applies; or
    - (ii) if a restraining order is not made in respect of the money in the account to which the freezing order applies, when the financial institution is given notice under sub-section (5) that the extended freezing order has ceased to be in force.
- (4) A written notice under sub-section (3) must be given within 6 hours after the Magistrates' Court extends the freezing order.
- (5) If the Magistrates' Court extends the duration of a freezing order and, on the determination of an application for a restraining order, a restraining order is not made in respect of the money in the account to which the freezing order applies, the applicant for the extension of the freezing order must give a written notice to the relevant financial institution stating that the extended freezing order has ceased to be in force.
- (6) A written notice under sub-section (5) must be given as soon as practicable, but not more than 6 hours after the application for the restraining order is determined.
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- (7) A freezing order that has been extended under sub-section (2) ceases to be in force—
- (a) when a restraining order is made in respect of the money in the account to which the freezing order applies; or
  - (b) if a restraining order is not made in respect of the money in the account to which the freezing order applies, when the financial institution is given notice under sub-section (5) that the extended freezing order has ceased to be in force.

S. 31J  
inserted by  
No. 63/2003  
s. 10.

**31J. Report to Magistrates' Court on freezing order**

- (1) If a freezing order is made, the person who applied for the freezing order must give a report in writing to the registrar of the Magistrates' Court—
- (a) stating whether or not notice of the freezing order was given to the financial institution in accordance with section 31G; and
  - (b) setting out the date on and time at which the freezing order—
    - (i) took effect; and
    - (ii) ceased to be in force; and
  - (c) stating whether or not the freezing order was extended.
- (2) A report under this section must be made—
- (a) within 7 days after the freezing order ceases to be in force; or
  - (b) if notice of the freezing order was not given to the financial institution, within 7 days after the freezing order was made.

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**31K. Failure to comply with freezing order**

- (1) A financial institution that has been given notice of a freezing order must not, without reasonable excuse, fail to comply with the order.

Penalty: Level 5 fine (1200 penalty units maximum).

- (2) An offence against this section is a summary offence.

S. 31K  
inserted by  
No. 63/2003  
s. 10.

**31L. Offence to disclose existence of freezing order**

- (1) While a freezing order is in force, a financial institution that has been given notice of a freezing order must not disclose the existence or operation of the freezing order to any person except—

- (a) a member of the police force; or
- (b) an officer or agent of the financial institution, for the purpose of ensuring that the freezing order is complied with; or
- (c) a legal practitioner acting for the financial institution, for the purpose of obtaining legal advice or representation in relation to the freezing order; or
- (d) a person in whose name the account is held or who has an interest in the account in respect of which the freezing order is made.

Penalty: Level 5 fine (1200 penalty units maximum).

- (2) While a freezing order is in force, a person to whom the existence or operation of the freezing order is disclosed in accordance with sub-section (1) must not—

- (a) while he or she is a person of a kind referred to in paragraph (a), (b) or (c) of sub-section (1) disclose the existence or operation of the freezing order to any person

S. 31L  
inserted by  
No. 63/2003  
s. 10.

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except another person of that kind for the purpose of—

- (i) if the disclosure is made by a member of the police force, the performance of the member's duties; or
  - (ii) if the disclosure is made by an officer or agent of the financial institution, ensuring that the freezing order is complied with or obtaining legal advice or representation in relation to the freezing order; or
  - (iii) if the disclosure is made by a legal practitioner, giving legal advice or providing representation in relation to the freezing order; or
- (b) when he or she is no longer a person of a kind referred to in paragraph (a), (b) or (c) of sub-section (1), make a record of, or disclose, the existence or operation of the freezing order in any circumstances.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (3) Nothing in sub-section (2) prevents the disclosure by a person of a kind referred to in paragraph (a), (b) or (c) of sub-section (1) of the existence or operation of a freezing order—
- (a) for the purposes of, or in connection with, legal proceedings; or
  - (b) in the course of proceedings before a court.
- (4) Nothing in sub-section (2) prevents the disclosure by a person of a kind referred to in paragraph (a) of sub-section (1) of the existence or operation of a freezing order for the purposes of a report under section 139A(1).



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s. 31M

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- (5) While a freezing order is in force, a member of the police force must not be required to disclose to any court the existence or operation of the freezing order.
  - (6) A reference in this section to disclosing the existence or operation of a freezing order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the freezing order.
  - (7) An offence against sub-section (1) is a summary offence.

**31M. Freezing order to be disregarded for certain purposes**

If a financial institution is given, or has been given, notice of a freezing order, the fact that the freezing order has been made must be disregarded for the purposes of the application of section 194 or 195A of the **Crimes Act 1958** in relation to the institution.

S. 31M  
(Heading)  
inserted by  
No. 104/2003  
s. 5(5)(a).

S. 31M  
inserted by  
No. 63/2003  
s. 10,  
amended by  
No. 104/2003  
s. 5(5)(b).

*Confiscation Act 1997*  
*Act No. 108/1997*

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s. 32

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**PART 3—FORFEITURE OF PROPERTY**

**Division 1—Forfeiture on Court Order**

**32. Application for forfeiture order**

S. 32(1)  
amended by  
No. 87/2004  
s. 22(1)(d).

- (1) If a defendant is convicted of a Schedule 1 offence, the DPP or an appropriate officer may apply to the Supreme Court or the court before which the defendant was convicted of the offence for a forfeiture order in respect of tainted property.
- (2) Except with the leave of the court, an application may only be made under sub-section (1) before the end of the relevant period (if any) in relation to the conviction.
- (3) A court must not grant leave under sub-section (2) unless it is satisfied that—
  - (a) the property to which the application relates was derived, realised or identified only after the end of the relevant period; or
  - (b) necessary evidence became available only after the end of the relevant period; or
  - (c) it is otherwise in the interests of justice to do so.

S. 32(4)(a)  
amended by  
No. 63/2003  
s. 11.

- (4) The applicant must give written notice of the application—
  - (a) to the defendant, unless the defendant has absconded; and
  - (b) to any other person whom the applicant has reason to believe has an interest in the property.

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- (5) The court may waive the requirement under sub-section (4) to give notice if—
- (a) the defendant is present before the court; and
  - (b) the court is satisfied either that any other person who has an interest in the property is present before the court or that it is fair to waive the requirement despite any such person not being present.
- (6) The court may, at any time before the final determination of the application, require the applicant to give notice of the application to any person, in any manner and within any time that the court thinks fit.
- (7) Any person notified under sub-section (4) or (6) and any other person who claims an interest in the property are entitled to appear and to give evidence at the hearing of the application but the absence of a person does not prevent the court from making a forfeiture order.
- (8) The court may, at any time before the final determination of the application and whether or not the period for making the application has expired, amend the application as it thinks fit, either at the request of the applicant or with the approval of the applicant.
- (9) If an application under sub-section (1) has been finally determined, no further application may be made under that sub-section in relation to the same conviction, except with the leave of the Supreme Court or the court which dealt with the earlier application.

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- (10) A court must not grant leave under sub-section (9) unless it is satisfied that—
- (a) the property to which the new application relates was derived, realised or identified only after the earlier application was determined; or
  - (b) necessary evidence became available only after the earlier application was determined; or
  - (c) it is otherwise in the interests of justice to do so.

**33. Determination of application for forfeiture order**

S. 33(1)  
amended by  
No. 43/1998  
s. 36(b).

- (1) On an application under section 32(1), if the court is satisfied that the property is tainted property in relation to the offence, the court may order that the property, or such of the property as is specified by the court in the order, be forfeited to the Minister.
- (2) A forfeiture order must specify the interests in property to which it applies.
- (3) If an application is made under section 32(1) to the court before which the person was convicted of the offence before that court has passed sentence for the offence, that court may make a forfeiture order at the time of passing sentence and for this purpose the court may, if it thinks it necessary to do so, defer the passing of sentence until it has determined the application for the order.
- (4) On an application under section 32(1) a court may, subject to any rules of court, take into account in determining the application any material that it thinks fit, including evidence given in any proceeding relating to the offence in reliance on the conviction of which the application is made and, for this purpose, the whole or any

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part of the transcript of those proceedings is admissible in evidence as if it were a record of evidence given on the hearing of the application.

- (5) In considering whether to make an order under sub-section (1) in respect of particular property, the court may have regard to—
- (a) the use that is ordinarily made, or had been intended to be made, of the property; and
  - (b) any hardship that may reasonably be likely to be caused to any person by the order; and
  - (c) the claim of any person to an interest in the property having regard to the matters specified in section 50(1).
- (6) A court must give priority to an application made under section 84 (restitution order) or Division 2 of Part 4 (compensation order) of the **Sentencing Act 1991** in relation to the same conviction and, accordingly, may defer the determination of an application under section 32(1) until the application under the **Sentencing Act 1991** has been determined.
- (7) The making of a forfeiture order does not prevent the making of a pecuniary penalty order.

S. 33(6)  
amended by  
No. 54/2000  
s. 25(2).

**34. Consent orders**

- (1) Subject to section 12, a court may make a forfeiture order by consent of the applicant and the respondent and of any person whom it has reason to believe has an interest in property in respect of which the order is made.
- (2) A law enforcement agency or an applicant for a forfeiture order must not enter into an agreement to settle any matter in respect of which a forfeiture order could be made under this Division and which involves the payment of money or the transfer of property to the Minister except—

S. 34(2)  
amended by  
No. 43/1998  
s. 36(c).

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- (a) by way of a consent order under subsection (1); or
- (b) as restitution of stolen property; or
- (c) as compensation for loss or destruction of, or damage to, property; or
- (d) with the approval of the Supreme Court or the court before which the person was convicted of the Schedule 1 offence.

S. 34(2)(d)  
amended by  
No. 87/2004  
s. 22(1)(e).

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(Heading and  
ss. 34A–34C)  
inserted by  
No. 63/2003  
s. 12.

**Division 1A—Tainted Property Substitution Declaration**

S. 34A  
inserted by  
No. 63/2003  
s. 12.

**34A. Interpretation**

(1) For the purposes of this Division, property is not available for forfeiture if the defendant does not have an interest in the property.

(2) In this Division—

**"applicant"** means a person who may apply for—

- (a) a forfeiture order; or
- (b) a restraining order for the purposes of forfeiture.

S. 34B  
inserted by  
No. 63/2003  
s. 12.

**34B. Application for tainted property substitution declaration**

S. 34B(1)  
amended by  
No. 87/2004  
s. 22(1)(f).

- (1) If a defendant is convicted of a Schedule 1 offence, an applicant may apply for a tainted property substitution declaration to—
- (a) the Supreme Court; or
  - (b) the County Court; or
  - (c) the court before which the defendant was convicted of the offence.

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- (2) The application under sub-section (1) must—
- (a) be made in conjunction with an application for a forfeiture order; and
  - (b) specify property that the defendant used or intended to use in or in connection with the commission of the Schedule 1 offence of which the defendant is convicted; and
  - (c) specify property which is to be substituted for the property referred to in paragraph (b) that—
    - (i) is property in which the defendant had an interest at the time that the Schedule 1 offence was committed; and
    - (ii) is of the same nature or description as the property referred to in paragraph (b).

S. 34B(2)(b)  
amended by  
No. 87/2004  
s. 22(1)(f).

S. 34B(2)(c)(i)  
amended by  
No. 87/2004  
s. 22(1)(f).

**Example**

A defendant is convicted of a sexual offence against a child and, in the commission of that offence, the defendant used a rented flat although the defendant owned a flat at the time. The prosecution may apply to the court for a declaration that the flat owned by the defendant is tainted property although the rented flat and the defendant's flat are not of equal value. (see section 34C(2)).

**34C. Court may make tainted property substitution declaration**

S. 34C  
inserted by  
No. 63/2003  
s. 12.

- (1) Subject to sub-section (2), a court may make a tainted property substitution declaration if the court is satisfied as to the following matters—
- (a) that the defendant used or intended to use the property which is not available for forfeiture in or in connection with the commission of the Schedule 1 offence of which the defendant is convicted; and

S. 34C(1)(a)  
amended by  
No. 87/2004  
s. 22(1)(g).

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**S. 34C(1)(c)(i)**  
**amended by**  
**No. 87/2004**  
**s. 22(1)(g).**

(b) that the property referred to in paragraph (a) is not available for forfeiture; and

(c) that the property which is to be substituted for the property referred to in paragraph (a)—

(i) is property in which the defendant had an interest at the time that the Schedule 1 offence was committed; and

(ii) is of the same nature or description as the property referred to in paragraph (a).

(2) The court may make a tainted property substitution declaration whether or not the value of the property which is not available for forfeiture is equal to the value of the property which is to be substituted for that property.

**S. 34C(3)**  
**amended by**  
**No. 87/2004**  
**s. 22(1)(g).**

(3) A court must not make a tainted property substitution declaration in respect of any property if, at the time of the commission of the Schedule 1 offence, the defendant did not have an interest in the property.

(4) If the court makes a tainted property substitution declaration in respect of property, that property—

(a) is substituted for the property which is not available for forfeiture; and

(b) is deemed to be tainted property for the purposes of this Act.



*Confiscation Act 1997*  
*Act No. 108/1997*

Part 3—Forfeiture of Property

s. 35

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**Division 2—Automatic Forfeiture after Conviction**

**35. Automatic forfeiture of restrained property on conviction of certain offences**

(1) If—

S. 35(1)  
amended by  
No. 43/1998  
s. 36(d).

(a) a person is convicted of a Schedule 2 offence; and

S. 35(1)(a)  
amended by  
No. 87/2004  
s. 22(1)(h).

(b) a restraining order is or was made under Part 2 in respect of property for the purposes of automatic forfeiture in reliance on—

(i) the defendant's conviction of that offence; or

(ii) the charging or proposed charging of the defendant with that offence or a related offence that is a Schedule 2 offence; and

S. 35(1)(b)(ii)  
amended by  
No. 87/2004  
s. 22(1)(h).

(c) the restrained property is not the subject of an exclusion order under section 22—

the restrained property<sup>1</sup> is forfeited to the Minister on the expiry of 60 days after—

(d) the making of the restraining order; or

(e) the defendant's conviction—

whichever is later.

(2) If, within the period of 60 days referred to in subsection (1), an application has been made for an exclusion order under section 22 in respect of restrained property, the property is forfeited to the Minister—

S. 35(2)  
amended by  
No. 43/1998  
s. 36(d).

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*Act No. 108/1997*

Part 3—Forfeiture of Property

s. 35A

- (a) if the application is refused or dismissed, at the end of the period during which the person may appeal against the refusal or dismissal or, if such an appeal is lodged, when the appeal is abandoned or finally determined without the order having been made; or
- (b) if the application is withdrawn or struck out, on that withdrawal or striking out.

S. 35(3)  
amended by  
No. 87/2004  
s. 22(1)(h).

- (3) If a person is, by reason of section 4(1)(d), deemed to have been convicted of a Schedule 2 offence, the DPP may apply to the Supreme Court or the County Court for an order declaring the date of conviction for the purposes of this section.

S. 35(4)  
amended by  
No. 87/2004  
s. 22(1)(h).

- (4) On an application under sub-section (3), the court must not make an order declaring the date of conviction of a person of a Schedule 2 offence unless it is satisfied that the person has absconded.

S. 35A  
(Heading)  
amended by  
No. 87/2004  
s. 22(1)(i)(i)

**35A. Schedule 2 offences—application for court declaration**

S. 35A  
inserted by  
No. 63/2003  
s. 13.

S. 35A(1)  
amended by  
No. 87/2004  
s. 22(1)(i)(ii).

- (1) Subject to sub-section (2), the DPP may apply to the court which convicted a defendant of an offence for a declaration that the offence was a Schedule 2 offence.
- (2) An application under sub-section (1) must not be made if the court which convicted the defendant of the offence has already made a finding that the offence was committed in the circumstances specified in Schedule 2 in relation to that offence.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 3—Forfeiture of Property

s. 35B

**35B. Applicant to notify defendant**

- (1) The applicant must give written notice of the application under section 35A to the defendant.
- (2) The court hearing the application under section 35A may waive the requirement to give notice if the defendant is present before the court.
- (3) The defendant is entitled to appear and to give evidence at the hearing of the application under section 35A but the absence of the defendant does not prevent the court from making a declaration.

S. 35B  
inserted by  
No. 63/2003  
s. 13.

**35C. Court may make declaration**

On an application under section 35A, the court may make a declaration if satisfied that the offence is a Schedule 2 offence.

S. 35C  
inserted by  
No. 63/2003  
s. 13,  
amended by  
No. 87/2004  
s. 22(1)(j).

**36. Declaration that property has been forfeited**

- (1) If a court makes a restraining order in reliance on—
  - (a) a defendant's conviction of a Schedule 2 offence; or
  - (b) the charging or proposed charging of a defendant with a Schedule 2 offence—

S. 36  
amended by  
Nos 43/1998  
s. 36(e),  
63/2003 s. 14  
(ILA s. 39B(1)).

S. 36(1)(a)  
amended by  
No. 87/2004  
s. 22(1)(k).

S. 36(1)(b)  
amended by  
No. 87/2004  
s. 22(1)(k).

a person may apply to the court that made that order for a declaration that property that was subject to the restraining order has been forfeited to the Minister under section 35 and the court, if satisfied that the property has been forfeited to the Minister under that section, must make a declaration accordingly.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 3—Forfeiture of Property

s. 36

**S. 36(2)**  
**inserted by**  
**No. 63/2003**  
**s. 14.**

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- (2) An applicant under this section for a declaration that property has been forfeited is not required to give notice of the application to any person who has an interest in the property.
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**PART 4—CIVIL FORFEITURE**

**37. Application for civil forfeiture order**

(1AA) In this section—

**"the Court"** means the Supreme Court or the County Court.

S. 37(1AA)  
inserted by  
No. 87/2004  
s. 15(1).

(1) If a restraining order is in force under section 18(2) in respect of property, the DPP or a prescribed person, or a person belonging to a prescribed class of persons, may apply to the Court for a civil forfeiture order in respect of the property.

S. 37(1)  
substituted by  
No. 87/2004  
s. 15(1).

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S. 37(2)  
repealed by  
No. 87/2004  
s. 15(1).

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S. 37(3)  
amended by  
No. 63/2003  
s. 15,  
repealed by  
No. 87/2004  
s. 15(1).

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S. 37(3A)(3B)  
inserted by  
No. 43/1998  
s. 16,  
repealed by  
No. 87/2004  
s. 15(1).

(4) The applicant must give written notice of the application to every person who the applicant has reason to believe has an interest in the property.

S. 37(4)  
substituted by  
No. 87/2004  
s. 15(2).

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 4—Civil Forfeiture

s. 37

S. 37(5)  
amended by  
No. 87/2004  
s. 15(3)(a).

(5) The Court may waive the requirement under sub-section (4) to give notice if—

S. 37(5)(a)  
repealed by  
No. 87/2004  
s. 15(3)(b).

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S. 37(5)(b)  
amended by  
No. 87/2004  
s. 15(3)(c).

(b) the Court is satisfied either that any person who has an interest in the property is present before the Court or that it is fair to waive the requirement despite any such person not being present.

S. 37(6)  
amended by  
No. 87/2004  
s. 15(4).

(6) The Court may, at any time before the final determination of the application, require the applicant to give notice of the application to any person, in any manner and within any time that the Court thinks fit.

S. 37(7)  
amended by  
No. 87/2004  
s. 15(4).

(7) Any person notified under sub-section (6) and any other person who claims an interest in the property are entitled to appear and to give evidence at the hearing of the application but the absence of a person does not prevent the Court from making a civil forfeiture order.

S. 37(8)  
amended by  
No. 87/2004  
s. 15(4)(5).

(8) The Court may, at any time before the final determination of the application, amend the application as it thinks fit, either at the request of the applicant or with the approval of the applicant.

S. 37(9)  
repealed by  
No. 87/2004  
s. 15(6).

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S. 37(10)  
amended by  
No. 87/2004  
s. 15(7)(a)(b).

(10) If an application under sub-section (1) has been finally determined, no further application may be made under that sub-section in relation to the same Schedule 2 offence, except with the leave of the Court.

*Confiscation Act 1997*  
*Act No. 108/1997*  
Part 4—Civil Forfeiture

s. 37

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- (11) The Court must not grant leave under sub-section (10) unless it is satisfied that—
- (a) the property to which the new application relates was derived, realised or identified only after the earlier application was determined; or
  - (b) necessary evidence became available only after the earlier application was determined; or
  - (c) it is otherwise in the interests of justice to do so.
- (12) The court may—
- (a) order that the whole or any part of the proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of the proceeding; or
  - (c) make an order prohibiting the publication of a report of the whole or any part of the proceeding or of any information derived from the proceeding.
- (13) The court must cause a copy of any order made under sub-section (12) to be posted on a door of the court house or in another conspicuous place where notices are usually posted at the court house.
- (14) A person must not contravene an order posted under sub-section (13).
- Penalty: Imprisonment for 12 months or 1000 penalty units.

S. 37(11)  
amended by  
No. 87/2004  
s. 15(4).

**38. Determination of application for civil forfeiture order**

S. 38(1AA)  
inserted by  
No. 87/2004  
s. 16(1).

(1AA) In this section—

**"the Court"** means the Supreme Court or the County Court.

S. 38(1)  
amended by  
No. 43/1998  
s. 36(f),  
substituted by  
No. 87/2004  
s. 16(1).

(1) On an application under section 37(1), the Court must order that the restrained property be forfeited to the Minister if the Court is satisfied that—

- (a) the requirements of section 37 as to notice of the application have been complied with; and
- (b) not less than 30 days have elapsed since the last notice given in accordance with section 37; and
- (c) there are no pending applications under section 20 in relation to the restrained property.

S. 38(2)  
amended by  
No. 87/2004  
s. 16(2).

(2) The Court may exclude particular property from the operation of a civil forfeiture order if satisfied that otherwise hardship may reasonably be likely to be caused to any person by the order.

(3) A civil forfeiture order must specify the interests in property to which it applies.

S. 38(4)  
substituted by  
No. 87/2004  
s. 16(3).

(4) The Court may, subject to any rules of court, take into account in determining the application any material that it thinks fit.

S. 38(5)  
repealed by  
No. 87/2004  
s. 16(4).

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(6) The making of a civil forfeiture order does not prevent the making of a pecuniary penalty order.



*Confiscation Act 1997*

*Act No. 108/1997*

Part 4—Civil Forfeiture

s. 39

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**39. Consent orders**

- (1) The Supreme Court or the County Court may make a civil forfeiture order by consent of the applicant and the respondent and of any person whom it has reason to believe has an interest in property in respect of which the order is made.
- (2) A law enforcement agency or an applicant for a civil forfeiture order must not enter into an agreement to settle any matter in respect of which a civil forfeiture order could be made under this Part and which involves the payment of money or the transfer of property to the Minister except—
- (a) by way of a consent order under subsection (1); or
  - (b) as restitution of stolen property; or
  - (c) as compensation for loss or destruction of, or damage to, property; or
  - (d) with the approval of the Supreme Court or the County Court.

S. 39(1)  
amended by  
No. 87/2004  
s. 17(1).

S. 39(2)  
amended by  
No. 43/1998  
s. 36(g).

S. 39(2)(d)  
amended by  
No. 87/2004  
s. 17(2).

**40. Forfeiture of property that may be used as evidence in trial**

A civil forfeiture order may be made in respect of any interest in property that may have evidentiary value in any criminal proceedings but the property must not be disposed of or otherwise dealt with before the end of the appeal period in relation to those proceedings.

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*Confiscation Act 1997*  
*Act No. 108/1997*

Part 5—Effect of Forfeiture

s. 41

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**PART 5—EFFECT OF FORFEITURE**

**41. Effect of forfeiture**

- (1) In this section "**registrable property**" means property title to which is passed by registration on a register kept by a relevant registration authority.
- (2) If—
- (a) a court makes a forfeiture order or a civil forfeiture order in respect of property then, immediately on the making of the order; or
  - (b) property is forfeited to the Minister by automatic forfeiture under section 35—

S. 41(2)  
amended by  
No. 43/1998  
s. 36(i).

S. 41(2)(b)  
amended by  
No. 43/1998  
s. 36(i).

the property vests in the Minister subject to every mortgage, charge or encumbrance to which it was subject immediately before the order was made or the automatic forfeiture occurred (as the case may be) and to—

- (c) in the case of land, every interest registered, notified or saved under the **Transfer of Land Act 1958** or the **Property Law Act 1958**; and
  - (d) in the case of goods to which Part 3 of the **Chattel Securities Act 1987** applies, every security interest registered under that Act.
- (3) If registrable property is forfeited to the Minister under a forfeiture order or a civil forfeiture order or by automatic forfeiture under section 35—
- (a) the property vests in equity in the Minister but does not vest in the Minister at law until the applicable registration requirements have been complied with; and

S. 41(3)  
amended by  
No. 43/1998  
s. 36(i).

S. 41(3)(a)  
amended by  
No. 43/1998  
s. 36(i).

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 5—Effect of Forfeiture

s. 42

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- (b) the Minister is entitled to be registered as owner of the property; and S. 41(3)(b)  
amended by  
No. 43/1998  
s. 36(i).
- (c) the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section has power to do, or to authorise the doing of, anything necessary or convenient to obtain the registration of the Minister as owner, including but not limited to, the execution of any instrument required to be executed by a person transferring an interest in property of that kind. S. 41(3)(c)  
amended by  
No. 43/1998  
s. 36(h)(i).
- (4) If registrable property has been forfeited to the Minister under a forfeiture order or a civil forfeiture order or by automatic forfeiture under section 35, the Minister or the DPP or a prescribed person authorised by the Minister for the purposes of this sub-section has power to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Minister in the property. S. 41(4)  
amended by  
No. 43/1998  
s. 36(h)(i).

**42. Power to discharge mortgage or charge**

- (1) If the Supreme Court or the County Court is satisfied, on application by—
- (a) in the case of property forfeited under a civil forfeiture order, a prescribed person or a person belonging to a prescribed class of persons; or
- (b) in any case, the DPP—
- that a mortgage or charge to which the property is subject was created to limit the effect of a forfeiture order or a civil forfeiture order or automatic forfeiture, it may discharge that mortgage or charge.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 5—Effect of Forfeiture

s. 43

S. 42(2)  
repealed by  
No. 85/1998  
s. 24(Sch.  
item 11).

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- (3) The Registrar of Titles must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of any order under sub-section (1).

**43. Court may give directions**

A court has power to give all directions that are necessary to give effect to a forfeiture order or a civil forfeiture order made by it or to automatic forfeiture and may, if it is satisfied on reasonable grounds that any directions have not been, or would not be, complied with, make an order directing a person specified in the order to take control of the forfeited property, or a specified part of the forfeited property.

**44. Disposal of forfeited property**

S. 44(1)  
amended by  
No. 43/1998  
s. 36(j).

- (1) If property that is not money is forfeited to the Minister under a forfeiture order or a civil forfeiture order or by automatic forfeiture under section 35 then, subject to sub-section (2) and to any direction under sub-section (4), the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section must, as soon as practicable after the property vests in the Minister, sell or otherwise dispose of the property.

S. 44(2)  
amended by  
No. 43/1998  
s. 36(j).

- (2) Except with the leave of the court which made the forfeiture order or the civil forfeiture order or, in the case of automatic forfeiture, the court in which the defendant was convicted, the Minister must not—
- (a) dispose of, or otherwise deal with, the property; or

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 5—Effect of Forfeiture

s. 44

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- (b) authorise any other person or body to dispose of, or otherwise deal with, the property—  
before the end of the appeal period, if any, or, if an application has been made under section 49, 51 or 53 for an exclusion order, before the final determination of the application, whichever is later.
- (3) For the purposes of sub-section (2), the appeal period ends—
- (a) in the case of a forfeiture order, when an appeal may no longer be lodged against either the forfeiture order or the conviction in reliance on which the order was made or, if such an appeal is lodged, when the appeal is abandoned or finally determined;
- (b) in the case of automatic forfeiture, when an appeal may no longer be lodged against either the conviction in reliance on which automatic forfeiture occurred or a refusal to make an exclusion order under section 22 or, if such an appeal is lodged, when the appeal is abandoned or finally determined. **S. 44(3)(b) amended by No. 43/1998 s. 17(1)(a)(b).**
- (c) in the case of a civil forfeiture order, when an appeal may no longer be lodged against either the civil forfeiture order or a refusal to make an exclusion order under section 24 or, if such an appeal is lodged, when the appeal is abandoned or finally determined. **S. 44(3)(c) inserted by No. 43/1998 s. 17(2).**
- (4) If property is forfeited under a forfeiture order or a civil forfeiture order or by automatic forfeiture under section 35, the Minister, or a prescribed person authorised by the Minister for the purposes of this sub-section, may, before the property is dealt with under sub-section (1), direct that the property be disposed of, or otherwise dealt with, as specified in the direction. **S. 44(4) amended by No. 43/1998 s. 17(3).**
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*Confiscation Act 1997*  
*Act No. 108/1997*

Part 5—Effect of Forfeiture

s. 45

S. 44(6)  
amended by  
No. 43/1998  
s. 36(j)(k).

- (5) Without limiting sub-section (4), the directions that may be given under that sub-section include a direction that property is to be disposed of in accordance with the provisions of a law specified in the direction.
- (6) If property is forfeited to the Minister under a forfeiture order or a civil forfeiture order or by automatic forfeiture under section 35, the Minister, or a prescribed person authorised by the Minister for the purposes of this sub-section, may give all directions that are necessary or convenient to realise the Minister's interest in the property.

**45. Relief from hardship**

- (1) If a court is satisfied that hardship may reasonably be likely to be caused to any person by a forfeiture order or a civil forfeiture order made by that court, the court—
  - (a) may order that the person is entitled to be paid a specified amount out of the forfeited property, being an amount that the court thinks is necessary to prevent hardship to the person; and
  - (b) may make ancillary orders for the purpose of ensuring the proper application of an amount so paid to a person who is under 18 years of age.
- (2) An applicant for an order under sub-section (1) must give written notice of the application to the applicant for the forfeiture order or the civil forfeiture order.

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**46. Discharge of forfeiture order**

- (1) A forfeiture order is discharged—
- (a) if the conviction in reliance on which the order was made is subsequently quashed; or
  - (b) if—
    - (i) in reliance on the deemed conviction of a person under section 4(1)(d), a forfeiture order has been made in respect of the person; and
    - (ii) after the making of the order, the person surrenders to a member of the police force or is found or becomes for any other reason amenable to justice; and
    - (iii) the person is acquitted, on appeal or otherwise; and
    - (iv) the person pays to the State any conversion costs notified to the person by the Minister; or
  - (c) if it is discharged by the court which hears an appeal against it under section 142; or
  - (d) if a payment is made to discharge it in accordance with section 56 or 57.
- (2) If a forfeiture order is discharged in the manner referred to in paragraph (a), (b) or (c) of subsection (1), the person on whose application the forfeiture order was made must, as soon as practicable after the discharge, give written notice of the discharge to all persons whom the first-mentioned person has reason to believe may have had an interest in the property immediately before it was forfeited.

**S. 46(2)**  
**amended by**  
**No. 43/1998**  
**s. 18(a)(b).**

- (3) A notice under sub-section (2) must include a statement to the effect that a person claiming to have had an interest in the property immediately before it was forfeited may make an application under section 55.

**47. Discharge of automatic forfeiture in respect of an interest**

- (1) Automatic forfeiture under section 35 is discharged in respect of an interest in property—
- (a) if the conviction in reliance on which the automatic forfeiture occurred is subsequently quashed; or
  - (b) if an exclusion order in respect of the interest is made, whether on appeal or otherwise; or
  - (c) if—
    - (i) in reliance on the deemed conviction of a person under section 4(1)(d), automatic forfeiture has occurred in respect of the person; and
    - (ii) after the occurrence of automatic forfeiture, the person surrenders to a member of the police force or is found or becomes for any other reason amenable to justice; and
    - (iii) the person is acquitted, on appeal or otherwise; and
    - (iv) the person pays to the State any conversion costs notified to the person by the Minister; or
  - (d) if a payment is made to discharge it in accordance with section 56 or 57.



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- (2) If automatic forfeiture is discharged in the manner referred to in paragraph (a), (b) or (c) of sub-section (1), the DPP must—
- (a) as soon as practicable after the discharge, give written notice of the discharge to all persons whom the DPP has reason to believe may have had an interest in the property immediately before it was forfeited; and
  - (b) if required to do so by a court, give written notice of the discharge to a specified person or class of persons in the manner and within the time that the court considers appropriate.
- (3) A notice under sub-section (2) must include a statement to the effect that a person claiming to have had an interest in the property immediately before it was forfeited may make an application under section 55.

**48. Discharge of civil forfeiture order**

- (1) A civil forfeiture order is discharged if—
- (a) it is discharged by the Court of Appeal on hearing an appeal against it under section 142; or
  - (b) a payment is made to discharge it in accordance with section 56 or 57.
- (2) If a civil forfeiture order is discharged in the manner referred to in paragraph (a) of sub-section (1), the person on whose application the order was made must, as soon as practicable after the discharge, give written notice of the discharge to any person to whom notice of the application for the civil forfeiture order was given under Part 4.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 5—Effect of Forfeiture

s. 48

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- (3) A notice under sub-section (2) must include a statement to the effect that a person claiming to have had an interest in the property immediately before it was forfeited may make an application under section 55.
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**PART 6—EXCLUSION ORDERS**

**49. Application for exclusion from forfeiture order**

- (1) If property is forfeited, or is sought to be forfeited, to the Minister under a forfeiture order, a person (other than the defendant) who claims an interest in the property or claims to have had an interest in the property immediately before it was forfeited may, subject to sub-section (2), apply to the court that made the forfeiture order or from which a forfeiture order is sought for an order under section 50.
- (2) The application must, subject to sub-section (3), be made at the same time as the application for a forfeiture order or, if a forfeiture order has been made, before the end of the period of 60 days commencing on the day on which the forfeiture order was made.
- (3) The court that made the forfeiture order may grant a person leave to apply after the end of the period referred to in sub-section (2) if it is satisfied that the delay in making the application is not due to neglect on the part of the applicant.
- (4) An applicant must give written notice of the application, and of the grounds on which it is made—
  - (a) to the applicant for the forfeiture order; and
  - (b) to any other person whom the applicant has reason to believe has an interest in the property or had an interest in the property immediately before it was forfeited.

S. 49(1)  
amended by  
No. 43/1998  
s. 36(l).

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 6—Exclusion Orders

s. 50

(5) Any person notified under sub-section (4) is entitled to appear and to give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under section 50.

(6) If—

(a) the person referred to in sub-section (4)(a) proposes to contest an application for an exclusion order; and

(b) the application is not made at the same time as the application for a forfeiture order—

that person must give the applicant for the exclusion order written notice of the grounds on which the application is to be contested.

**50. Determination of exclusion application—forfeiture order**

(1) On an application made under section 49—

(a) if the court is not satisfied that the property in which the applicant claims an interest is not tainted property, the court may make an order excluding the property from the operation of the forfeiture order if satisfied that—

(i) the applicant was not, in any way, involved in the commission of the Schedule 1 offence; and

(ii) where the applicant acquired the interest before the commission of the Schedule 1 offence, the applicant did not know that the defendant would use, or intended to use, the property in, or in connection with, the commission of the Schedule 1 offence; and

S. 50(1)(a)(i)  
amended by  
No. 87/2004  
s. 22(1)(l).

S. 50(1)(a)(ii)  
amended by  
No. 87/2004  
s. 22(1)(l).

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 6—Exclusion Orders

s. 51

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- (iii) where the applicant acquired the interest at the time of or after the commission of the Schedule 1 offence, the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and
- (iv) the applicant's interest in the property is not subject to the effective control of the defendant; and
- (v) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration; or
- (b) if the court is satisfied that the property is not tainted property, the court may make an order excluding the property from the operation of the forfeiture order.
- (2) If the court makes an order under sub-section (1), the court may also make an order declaring the nature, extent and value of the applicant's interest in the property.
- 51. Application for exclusion from automatic forfeiture**
- (1) If property is forfeited to the Minister under section 35, a person (other than the defendant) who claims to have had an interest in the property immediately before it was forfeited may, subject to sub-sections (2) and (4), apply to the court that made the relevant restraining order for an order under section 52.
- (2) The application must, subject to sub-section (3), be made before the end of the period of 60 days commencing on the day on which the property is forfeited to the Minister.

S. 50(1)(a)(iii)  
amended by  
No. 87/2004  
s. 22(1)(l).

S. 50(1)(b)  
substituted by  
No. 43/1998  
s. 19.

S. 51(1)  
amended by  
No. 43/1998  
s. 36(m).

S. 51(2)  
amended by  
No. 43/1998  
s. 36(m).

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 6—Exclusion Orders

s. 51

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- (3) The court that made the relevant restraining order may grant a person leave to apply after the end of the period referred to in sub-section (2) if it is satisfied that the delay in making the application is not due to neglect on the part of the applicant.
- (4) An application for an order under section 52 in relation to an interest in property must not be made by a person who was given notice of—
- (a) proceedings on the application for the relevant restraining order; or
  - (b) the making of the relevant restraining order—
- except with the leave of the court that made the relevant restraining order.
- (5) The court may grant a person leave under sub-section (4) to make an application if the court is satisfied that the person's failure to seek to have the property excluded from the relevant restraining order was not due to neglect on the part of the applicant.
- (6) An applicant must give written notice of the application, and of the grounds on which it is made—
- (a) to the DPP; and
  - (b) to any person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited.
- (7) Any person notified under sub-section (6) is entitled to appear and to give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under section 52.
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- (8) If the DPP proposes to contest an application for an exclusion order, the DPP must give the applicant written notice of the grounds on which the application is to be contested.

**52. Determination of exclusion application—automatic forfeiture**

- (1) On an application made under section 51, the court may make an order excluding property in which the applicant claims an interest from the operation of section 35—
- (a) if the court is not satisfied that the property in which the applicant claims an interest is not tainted property but is satisfied that—
- (i) the applicant was not, in any way, involved in the commission of the Schedule 2 offence; and
  - (ii) where the applicant acquired the interest before the commission of the Schedule 2 offence, the applicant did not know that the defendant would use, or intended to use, the property in, or in connection with, the commission of the Schedule 2 offence; and
  - (iii) where the applicant acquired the interest at the time of or after the commission of the Schedule 2 offence, the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and
  - (iv) the applicant's interest in the property is not subject to the effective control of the defendant; and

S. 52(1)(a)(i)  
amended by  
No. 87/2004  
s. 22(1)(m).

S. 52(1)(a)(ii)  
amended by  
No. 87/2004  
s. 22(1)(m).

S. 52(1)(a)(iii)  
amended by  
No. 87/2004  
s. 22(1)(m).

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*Act No. 108/1997*

Part 6—Exclusion Orders

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- (v) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration; or
- (b) if the court is satisfied that the property is not tainted property and that—
  - (i) the applicant's interest in the property is not subject to the effective control of the defendant; and
  - (ii) where the applicant acquired the interest from the defendant, directly or indirectly, that it was acquired for sufficient consideration.
- (2) If the court makes an order under sub-section (1), the court may also make an order declaring the nature, extent and value of the applicant's interest in the property.

**53. Application for exclusion from civil forfeiture order**

(1AA) In this section—

**"the Court"** means the court that made the relevant civil forfeiture order under section 38.

- (1) If property is forfeited to the Minister under section 38, a person who claims to have had an interest in the property immediately before it was forfeited may, subject to sub-sections (2) and (4), apply to the Court for an order under section 54.

S. 53(1AA)  
inserted by  
No. 87/2004  
s. 18(1).

S. 53(1)  
amended by  
Nos 43/1998  
s. 36(n),  
87/2004  
s. 18(2)(3),  
79/2006  
s. 11(1).

S. 53(1A)  
inserted by  
No. 87/2004  
s. 18(4),  
repealed by  
No. 79/2006  
s. 11(2).

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- (2) The application must, subject to sub-section (3), be made before the end of the period of 60 days commencing on the day on which the property is forfeited to the Minister. **S. 53(2) amended by No. 43/1998 s. 36(n).**
- (3) The Court may grant a person leave to apply after the end of the period referred to in sub-section (2) if it is satisfied that the delay in making the application is not due to neglect on the part of the applicant. **S. 53(3) amended by No. 87/2004 s. 18(2).**
- (4) An application for an order under section 54 in relation to an interest in property must not be made by a person who was given notice of—
- (a) proceedings on the application for the relevant restraining order; or
  - (b) the making of the relevant restraining order—
- except with the leave of the Court.
- (5) The Court may grant a person leave under sub-section (4) to make an application if it is satisfied that the person's failure to seek to have the property excluded from the relevant restraining order was not due to neglect on the part of the applicant. **S. 53(5) amended by No. 87/2004 s. 18(2).**
- (6) An applicant must give written notice of the application, and of the grounds on which it is made—
- (a) to the applicant for the civil forfeiture order; and
  - (b) to any person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited.

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- (7) Any person notified under sub-section (6) is entitled to appear and to give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under section 54.
- (8) If the applicant for the civil forfeiture order proposes to contest an application for an exclusion order, he or she must give the applicant for the exclusion order written notice of the grounds on which the application is to be contested.

**54. Determination of exclusion application—civil forfeiture order**

(1AA) In this section—

**"the Court"** means the court that made the relevant civil forfeiture order under section 38.

- (1) On an application made under section 53, the Court may make an order excluding property in which the applicant claims an interest from the operation of an order under section 38 if it is not satisfied that the property in which the applicant claims an interest is not tainted property but is satisfied that—
  - (a) the applicant was not, in any way, involved in the commission of the Schedule 2 offence; and
  - (b) where the applicant acquired the interest before the commission, or alleged commission, of the Schedule 2 offence, the applicant did not know that the property would be, or was intended to be, used in, or in connection with, the commission of the Schedule 2 offence; and

S. 54(1AA)  
inserted by  
No. 87/2004  
s. 18(5).

S. 54(1)  
amended by  
No. 43/1998  
s. 20,  
substituted by  
No. 87/2004  
s. 18(5).

*Confiscation Act 1997*  
*Act No. 108/1997*

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- (c) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the Schedule 2 offence, the applicant acquired the interest without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and
- (d) the applicant's interest in the property is not subject to the effective control of the person who is suspected to have committed the Schedule 2 offence; and
- (e) where the applicant acquired the interest, directly or indirectly, from the person who is suspected to have committed the Schedule 2 offence, that it was acquired for sufficient consideration.
- (2) If the Court makes an order under sub-section (1), it may also make an order declaring the nature, extent and value of the applicant's interest in the property.
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**S. 54(2)**  
**amended by**  
**No. 87/2004**  
**s. 18(6).**

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**PART 7—RETURN OF PROPERTY**

**55. Application to Minister for return of property or payment of value**

(1) If—

- (a) a forfeiture order is discharged in the manner referred to in section 46(1)(a), (b) or (c); or
- (b) automatic forfeiture is discharged in the manner referred to in section 47(1)(a), (b) or (c); or
- (c) a civil forfeiture order is discharged in the manner referred to in section 48(1)(a)—

any person who claims to have had an interest in the property immediately before it was forfeited may apply in writing to the Minister for the transfer of the interest to the person.

(2) If a court makes an exclusion order under section 50(1), 52(1) or 54(1) in respect of an interest in property, the applicant for the exclusion order may apply in writing to the Minister for the transfer of the interest to the person.

(3) On receipt of an application under sub-section (1) or (2), the Minister may transfer the interest to the applicant if satisfied that—

- (a) the interest was vested in the applicant immediately before the forfeiture; and
- (b) the interest is still vested in the Minister; and

(c) there is no reason why the interest should not be transferred to the applicant.

S. 55(3)(b)  
amended by  
No. 43/1998  
s. 36(o).

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*Act No. 108/1997*

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- (4) The transfer of an interest to a person under this section may, if the Minister thinks fit, be conditional on the payment, within 6 months after notice of the condition is given to the applicant, of any amount referred to in section 14(4) or 45 paid to the person in relation to that forfeiture order. **S. 55(4) amended by No. 87/2004 s. 22(2)(a).**
- (5) If a person fails to make a payment referred to in sub-section (4) within 6 months after receiving notice of the condition, the Minister must not transfer the interest to the person but sub-section (6) applies as if the interest were no longer vested in the Minister. **S. 55(5) amended by No. 43/1998 s. 36(o).**
- (6) If a person applies under sub-section (1) or (2) in respect of an interest in property, which is no longer vested in the Minister and the Minister is satisfied that the interest was vested in the applicant immediately before the forfeiture—
- (a) if an order has not been made under section 50(2), 52(2) or 54(2), the Minister may make a declaration of the value (as at the time of making the declaration) of the interest; and
- (b) there is payable to the applicant an amount equal to the value determined by the court or declared under paragraph (a) less any amount referred to in section 14(4) or 45 paid to the person in relation to that forfeiture order. **S. 55(6) amended by No. 43/1998 s. 36(o).**
- (7) An amount payable under sub-section (6) must be notified to the person in writing and paid within 6 months after the notice is given. **S. 55(6)(b) amended by No. 87/2004 s. 22(2)(a).**
- (8) If the Minister is required by this section to arrange for property to be transferred to a person, the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section has power to do, or authorise the doing of, anything necessary or convenient to effect the **S. 55(8) amended by No. 43/1998 s. 36(p).**
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transfer, including, but not limited to, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

S. 55(9)  
amended by  
No. 87/2004  
s. 22(2)(a).

- (9) If the Minister determines under this section not to transfer an interest to an applicant in whom the interest was vested immediately before the forfeiture, there is payable to the applicant—
- (a) the amount determined by the court under section 50(2), 52(2) or 54(2); or
  - (b) if no such determination has been made, an amount equal to the value of the interest as determined by the Minister—

less any amount referred to in section 14(4) or 45 paid to the applicant in relation to that forfeiture order.

- (10) A determination or purported determination of the Minister under this section is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal on any account.

**56. Person with interest in forfeited property may buy back interest**

S. 56(1)  
amended by  
No. 43/1998  
s. 36(q).

- (1) If property is forfeited to the Minister under Part 3 or Part 4, any person who claims to have had an interest in the property immediately before it was forfeited may apply in writing to the Minister to buy back the interest.
- (2) An applicant must give written notice of the application to any other person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited.

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- (3) If the Minister is satisfied that—
- (a) the interest was vested in the applicant immediately before the forfeiture; and
  - (b) the interest is still vested in the Minister; and
  - (c) there is no reason why the interest should not be transferred to the applicant—
- the Minister may make a declaration of the value (as at the time of making the declaration) of the interest and notify the applicant accordingly.
- (4) If the applicant pays to the Minister the amount so notified within 2 months, the Minister may transfer the interest to the applicant and the forfeiture is discharged to the extent to which it relates to the interest.
- (5) If the Minister is permitted by this section to transfer an interest in property to a person, the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section has power to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, but not limited to, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.
- (6) A determination or purported determination of the Minister under this section is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal on any account.

**S. 56(3)(b)**  
amended by  
**No. 43/1998**  
s. 36(q).

**S. 56(4)**  
amended by  
**No. 43/1998**  
s. 21(1).

**S. 56(5)**  
amended by  
**No. 43/1998**  
s. 36(r).

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S. 56(7)  
amended by  
No. 43/1998  
s. 21(2).

- (7) If an applicant has paid an amount under this section in respect of an interest in property forfeited under Part 3 and in relation to an offence for which the conviction is subsequently quashed, the applicant is entitled to the refund of the amount paid.

**57. Buying out other interests in forfeited property**

S. 57(1)  
amended by  
No. 43/1998  
s. 36(s).

- (1) If property is forfeited to the Minister under Part 3 or Part 4, any person who claims to have had an interest in the property immediately before it was forfeited may apply in writing to the Minister to buy out any other interest in the property.

- (2) An applicant must give written notice to each other person whom the applicant has reason to believe had an interest in the property immediately before it was forfeited that—

S. 57(2)(a)  
amended by  
No. 43/1998  
s. 36(s).

- (a) the applicant wishes to purchase that other interest from the Minister; and

- (b) the person notified may, within 28 days after receiving the notice, lodge a written objection to the purchase of that interest with the Minister.

- (3) If the Minister is satisfied that—

S. 57(3)(b)  
amended by  
No. 43/1998  
s. 36(s).

- (a) an interest in the property was vested in the applicant immediately before the forfeiture; and

- (b) the interest that the applicant wishes to purchase is still vested in the Minister; and



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- (c) there is no reason why the interest should not be sold to the applicant—

the Minister may make a declaration of the value (as at the time of making the declaration) of the interest and notify the applicant accordingly.

- (4) If—

- (a) a person notified under sub-section (2) does not lodge a written objection to the purchase of the person's interest with the Minister within the period referred to in that sub-section; and
- (b) within 6 months after being notified of the amount payable under sub-section (3) the applicant pays to the Minister the amount so notified—

the Minister must transfer that interest to the applicant and the forfeiture is discharged to the extent to which it relates to the interest.

- (5) If the Minister is permitted by this section to transfer an interest in property to a person, the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section has power to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, but not limited to, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.
- (6) A determination or purported determination of the Minister under this section is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal on any account.

**S. 57(5)**  
**amended by**  
**No. 43/1998**  
**s. 36(t).**

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Part 8—Pecuniary Penalty Orders

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**PART 8—PECUNIARY PENALTY ORDERS**

Pt 8 Div. 1  
(Heading)  
substituted by  
No. 87/2004  
s. 19(a).

**Division 1—Pecuniary Penalty Orders Following Conviction**

**58. Application for pecuniary penalty order**

S. 58(1)  
amended by  
No. 87/2004  
s. 19(b).

(1) If a defendant is convicted of a Schedule 2 offence, the DPP may apply to the Supreme Court or the court before which the defendant was convicted of the offence for a pecuniary penalty order.

S. 58(2)  
amended by  
No. 87/2004  
s. 19(c).

(2) If a defendant is convicted of a Schedule 1 offence other than a Schedule 2 offence—

- (a) the DPP may apply to a court; or
- (b) an appropriate officer may apply to the Magistrates' Court or the Children's Court—  
for a pecuniary penalty order.

(3) Except with the leave of the Supreme Court or the court before which the defendant was convicted, an application may only be made under sub-section (1) or (2) before the end of the relevant period (if any) in relation to the conviction.

(4) A court must not grant leave under sub-section (3) unless it is satisfied that—

- (a) the benefit to which the application relates was derived, realised or identified only after the end of the relevant period; or
  - (b) necessary evidence became available only after the end of the relevant period; or
  - (c) it is otherwise in the interests of justice to do so.
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- (5) The applicant must give written notice of the application to the defendant.
  - (6) The court may waive the requirement under sub-section (5) to give notice if the court is satisfied that it is fair to do so.
  - (7) The court may, at any time before the final determination of the application and whether or not the period for making the application has expired, amend the application as it thinks fit, either at the request of the applicant or with the approval of the applicant.
  - (8) If an application under sub-section (1) or (2) has been finally determined, no further application may be made under that sub-section in relation to the same conviction, except with the leave of the Supreme Court or the court which dealt with the earlier application.
  - (9) A court must not grant leave under sub-section (8) unless it is satisfied that—
    - (a) the benefit to which the new application relates was derived, realised or identified only after the earlier application was determined; or
    - (b) necessary evidence became available only after the earlier application was determined; or
    - (c) it is otherwise in the interests of justice to do so.

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**59. Determination of application for pecuniary penalty order**

S. 59(1)  
amended by  
No. 87/2004  
s. 19(d).

- (1) On an application under section 58(1) or (2), the court may—
  - (a) assess the value of the benefits derived by the defendant in relation to the offence; and
  - (b) order the defendant to pay to the State a pecuniary penalty equal to the value as so assessed less, if the court thinks it desirable to take it into account, any amount paid or payable by way of restitution or compensation in relation to the same conviction—

and must do so on an application under section 58(1) if section 68 applies in relation to the Schedule 2 offence.

- (2) The defendant is entitled to appear and to give evidence at the hearing of an application under section 58(1) or (2) but the absence of the defendant does not prevent the court from making a pecuniary penalty order.
- (3) If an application is made under section 58(2) to the court before which the defendant was convicted of the offence before that court has passed sentence for the offence, that court may make a pecuniary penalty order at the time of passing sentence and for this purpose the court may, if it thinks it necessary to do so, defer the passing of sentence until it has determined the application for the order.
- (4) On an application under section 58(1) or (2) a court may, subject to any rules of court, take into account in determining the application any material that it thinks fit including—

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- (a) subject to section 99(2), a statement or disclosure made during an examination ordered under Part 12; and
- (b) evidence given in any proceeding relating to the offence in reliance on the conviction of which the application is made—

and, for this purpose, the whole or any part of the transcript of those proceedings is admissible in evidence as if it were a record of evidence given on the hearing of the application.

- (5) A court must give priority to an application made under section 84 (restitution order) or Division 2 of Part 4 (compensation order) of the **Sentencing Act 1991** in relation to the same conviction and, accordingly, may defer the determination of an application under section 58(1) or (2) until the application under the **Sentencing Act 1991** has been determined.
- (6) A court may defer the determination of an application under section 58(1) until the final determination of any application for an exclusion order under section 22(a).

S. 59(5)  
amended by  
No. 54/2000  
s. 25(2).

**60. Consent orders**

- (1) Subject to section 12, a court may make a pecuniary penalty order under this Division by consent of the applicant and the respondent.
- (2) A law enforcement agency or an applicant for a pecuniary penalty order must not enter into an agreement to settle any matter in respect of which a pecuniary penalty order could be made under this Division and which involves the payment of money or the transfer of property to the State or the Minister except—
  - (a) by way of a consent order under subsection (1); or

S. 60(2)  
amended by  
No. 43/1998  
s. 36(u).

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*Act No. 108/1997*

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- (b) as restitution of stolen property; or
- (c) as compensation for loss or destruction of, or damage to, property; or
- (d) with the approval of the Supreme Court or the court before which the defendant was convicted of the offence in reliance on which an application for a pecuniary penalty order could be made.

**61. Pecuniary penalty order does not prevent forfeiture**

The making of a pecuniary penalty order under this Division against a defendant in relation to an offence does not prevent—

- (a) the making of a forfeiture order; or
- (b) automatic forfeiture occurring—

in respect of an interest in property of the defendant in relation to the same offence.

**62. Discharge of pecuniary penalty order**

- (1) A pecuniary penalty order under this Division is discharged—
  - (a) if the conviction in reliance on which the order was made is subsequently quashed; or
  - (b) if—
    - (i) in reliance on the deemed conviction of a person under section 4(1)(d), a pecuniary penalty order has been made under this Division against the person; and
    - (ii) after the making of the order, the person surrenders to a member of the police force or is found or becomes for any other reason amenable to justice; and

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- (iii) the person is acquitted, on appeal or otherwise; or
  - (c) if it is discharged by the court which hears an appeal against it under section 142; or
  - (d) if the pecuniary penalty is paid.
- (2) If a pecuniary penalty order is registered under the Service and Execution of Process Act 1992 of the Commonwealth, notice of the discharge of that order must be given as prescribed by the rules of the Supreme Court.

S. 62(2)  
amended by  
No. 43/1998  
s. 39(c).

**Division 2—Pecuniary Penalty Order Based on Finding of Guilt on Civil Standard**

Pt 8 Div. 2  
(Heading)  
substituted by  
No. 87/2004  
s. 19(e).

**63. Application for pecuniary penalty order**

- (1) If a defendant has been charged with a Schedule 2 offence, the DPP or a prescribed person, or a person belonging to a prescribed class of persons, may apply to the Supreme Court for a pecuniary penalty order.
- (2) For the purposes of this Division, it does not matter that the charge has been withdrawn or finally determined.
- (3) If a restraining order is in force under Part 2, the application under sub-section (1) may only be made within the period of 7 days after the making of the restraining order, except with the leave of the Supreme Court.
- (3A) If a charge has been withdrawn or finally determined, the application under sub-section (1) may only be made within the period of 6 months after the day on which the charge was withdrawn or finally determined, except with the leave of the Supreme Court.

S. 63(1)  
amended by  
No. 87/2004  
s. 19(f).

S. 63(2)  
amended by  
No. 87/2004  
s. 19(g).

S. 63(3A)  
inserted by  
No. 43/1998  
s. 22(1).

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*Act No. 108/1997*

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**S. 63(4)**  
amended by  
No. 43/1998  
s. 22(2)(a).

(4) The Supreme Court must not grant leave under sub-section (3) or (3A) unless it is satisfied that—

**S. 63(4)(a)**  
amended by  
No. 43/1998  
s. 22(2)(b).

- (a) the benefit to which the application relates was derived, realised or identified only after the end of the period referred to in sub-section (3) or (3A), as the case may be; or
- (b) necessary evidence became available only after the end of that period; or
- (c) it is otherwise in the interests of justice to do so.

(5) The applicant must give written notice of the application to the defendant.

(6) The Supreme Court may waive the requirement under sub-section (5) to give notice if the Court is satisfied that it is fair to do so.

(7) The Supreme Court may, at any time before the final determination of the application and whether or not the period for making the application has expired, amend the application as it thinks fit, either at the request of the applicant or with the approval of the applicant.

(8) An application under sub-section (1) must not be heard and determined before the expiry of 60 days after the making of the application.

**S. 63(9)**  
amended by  
No. 87/2004  
s. 19(h).

(9) If an application under sub-section (1) has been finally determined, no further application may be made under that sub-section in relation to the same Schedule 2 offence, except with the leave of the Supreme Court.



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*Act No. 108/1997*

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- (10) The Supreme Court must not grant leave under sub-section (9) unless it is satisfied that—
- (a) the benefit to which the new application relates was derived, realised or identified only after the earlier application was determined; or
  - (b) necessary evidence became available only after the earlier application was determined; or
  - (c) it is otherwise in the interests of justice to do so.
- (11) The Supreme Court may—
- (a) order that the whole or any part of the proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of the proceeding; or
  - (c) make an order prohibiting the publication of a report of the whole or any part of the proceeding or of any information derived from the proceeding.
- (12) The court must cause a copy of any order made under sub-section (11) to be posted on a door of the court house or in another conspicuous place where notices are usually posted at the court house.
- (13) A person must not contravene an order posted under sub-section (12).

Penalty: Imprisonment for 12 months or  
1000 penalty units.

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*Act No. 108/1997*

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**64. Determination of application for pecuniary penalty order**

S. 64(1)  
amended by  
No. 87/2004  
s. 19(i).

(1) On an application under section 63(1), the Supreme Court must, if it finds on the balance of probabilities that the defendant committed the Schedule 2 offence with which the defendant was charged, whether or not the defendant has been tried and, if tried, acquitted—

(a) assess the value of the benefits derived by the defendant in relation to the offence; and

S. 64(1)(b)  
amended by  
No. 87/2004  
s. 19(i).

(b) order the defendant to pay to the State a pecuniary penalty equal to the value as so assessed less, if the Supreme Court thinks it desirable to take it into account, any amount paid or payable by way of restitution or compensation in relation to the same Schedule 2 offence.

(2) The defendant is entitled to appear and to give evidence at the hearing of an application under section 63(1) but the absence of the defendant does not prevent the Supreme Court from making a pecuniary penalty order.

(3) The Supreme Court may, subject to any rules of court, take into account in determining the application any material that it thinks fit including—

(a) subject to section 99(2), a statement or disclosure made during an examination ordered under Part 12; and

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*Act No. 108/1997*

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(b) if the application is heard after the defendant has been tried for the Schedule 2 offence, evidence given in any proceeding relating to that offence—

S. 64(3)(b)  
amended by  
No. 87/2004  
s. 19(i).

and, for this purpose, the whole or any part of the transcript of those proceedings is admissible in evidence as if it were a record of evidence given on the hearing of the application.

(4) The Supreme Court must give priority to an application made under section 84 (restitution order) or Division 2 of Part 4 (compensation order) of the **Sentencing Act 1991** in relation to the same Schedule 2 offence and, accordingly, may defer the determination of an application under section 63(1) until the application under the **Sentencing Act 1991** has been determined.

S. 64(4)  
amended by  
Nos 54/2000  
s. 25(2),  
87/2004  
s. 19(i).

(5) The quashing of a conviction for a Schedule 2 offence does not affect the validity of a pecuniary penalty order under this Division that was made before or after the conviction was quashed and was based on that offence.

S. 64(5)  
amended by  
Nos 43/1998  
s. 23, 87/2004  
s. 19(i).

(6) The making of a pecuniary penalty order under this Division against a defendant in relation to an offence does not prevent the making of a civil forfeiture order in relation to the same offence.

**65. Consent orders**

(1) The Supreme Court may make a pecuniary penalty order under this Division by consent of the applicant and the respondent.

(2) A law enforcement agency or an applicant for a pecuniary penalty order must not enter into an agreement to settle any matter in respect of which a pecuniary penalty order could be made under this Division and which involves the payment of money or the transfer of property to the State or the Minister except—

S. 65(2)  
amended by  
No. 43/1998  
s. 36(v).

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- (a) by way of a consent order under subsection (1); or
- (b) as restitution of stolen property; or
- (c) as compensation for loss or destruction of, or damage to, property; or
- (d) with the approval of the Supreme Court.

**66. Discharge of pecuniary penalty order**

- (1) A pecuniary penalty order under this Division is discharged if—
  - (a) it is discharged by the Court of Appeal on hearing an appeal against it under section 142; or
  - (b) the pecuniary penalty is paid.
- (2) If a pecuniary penalty order is registered under the Service and Execution of Process Act 1992 of the Commonwealth, notice of the discharge of that order must be given as prescribed by the rules of the Supreme Court.

S. 66(2)  
amended by  
No. 43/1998  
s. 39(d).

**Division 3—General**

**67. Assessment of benefits**

- (1) For the purposes of this Part, the value of the benefits derived by a defendant in relation to an offence may include—
  - (aa) any money actually received as a result of the commission of the offence, regardless of expenditures incurred in deriving that money;
  - (a) any property that was derived or realised, directly or indirectly, by the defendant or another person, at the request or by the direction of the defendant, as the result of the commission of the offence;

S. 67(1)  
amended by  
No. 43/1998  
s. 36(w).

S. 67(1)(aa)  
inserted by  
No. 43/1998  
s. 24.

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- (b) any benefit, service or financial advantage provided for the defendant or another person, at the request or by the direction of the defendant, as the result of the commission of the offence;
  - (c) any increase in the total value of property in which the defendant has an interest in the period beginning immediately before the commission of the offence and ending at some time after the commission of the offence that the court is not satisfied was due to causes unrelated to the commission of the offence;
  - (d) subject to sub-section (3), any profits derived by the defendant, or by another person on the defendant's behalf or at the request or by the direction of the defendant, from a depiction of the offence or an expression of the defendant's thoughts, opinions or emotions regarding the offence in—
    - (i) a film, slide, video tape, video disc or any other form of recording from which a visual image can be produced; or
    - (ii) a record, tape, compact disc or any other form of recording from which words or sounds can be produced; or
    - (iii) a book, newspaper, magazine or other written or pictorial matter; or
    - (iv) a radio or television production; or
    - (v) a live entertainment of any kind;
  - (e) any other thing that the court thinks fit to treat as benefits—

but must not include any property forfeited to the Minister under this Act.

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- (2) For the purposes of sub-section (1)(c), if an offence is committed between 2 dates, the period begins immediately before the earlier of the 2 dates and ends at some time after the later of the 2 dates.
- (3) In considering whether to treat profits of a kind referred to in sub-section (1)(d) as benefits derived in relation to the offence, the court may have regard to any matters that it thinks fit including—
  - (a) whether it is not in the public interest to treat them as benefits; and
  - (b) whether the depiction or expression has any general social or educational value; and
  - (c) the nature and purposes of the publication, production or entertainment including its use for research, educational or rehabilitation purposes.

**68. Assessment of benefits in relation to Schedule 2 offences**

S. 68(1)  
amended by  
No. 87/2004  
s. 19(j)(i)(ii).

- (1) A prescribed person or a person belonging to a prescribed class of persons may apply to the Supreme Court for the application of this section in relation to a Schedule 2 offence.

S. 68(2)  
amended by  
No. 87/2004  
s. 19(k).

- (2) The DPP may apply to the Supreme Court or the County Court for the application of this section in relation to a Schedule 2 offence.

S. 68(3)  
amended by  
No. 43/1998  
s. 36(x).

- (3) In assessing the value of the benefits derived by a defendant in relation to an offence, the court must, on application under sub-section (1) or (2), subject to sub-section (4), treat as benefits—
  - (a) all property in which the defendant had an interest at the time the first application is made under this Act in respect of the offence; and

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- (b) all expenditure of the defendant within the period of 6 years immediately before the time the first application is made under this Act in respect of the offence—

regardless of whether any benefits were actually derived and whether they were derived in relation to an offence, but must not include any property which has been forfeited to the Minister under this Act.

- (4) On an application under sub-section (1) or (2), the Supreme Court or the County Court may refuse to treat as benefits specified property or expenditure if the Court is satisfied by the defendant that—
- (a) in the case of property—
- (i) the property—
- (A) was lawfully acquired by the defendant; and
- (B) was not used in, or in connection with, any unlawful activity and was not derived or realised, directly or indirectly, by any person from any unlawful activity; or
- (ii) an interstate forfeiture order already applies to the property; or
- (iii) a forfeiture order, an interstate forfeiture order, a pecuniary penalty order or an interstate pecuniary penalty order under the **Crimes (Confiscation of Profits) Act 1986** already applies to the property; or

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- (b) in the case of expenditure—
- (i) the funds which were expended were lawfully acquired and were not derived or realised, directly or indirectly, by any person from any unlawful activity; or
  - (ii) the expenditure was made to satisfy a pecuniary penalty order or an interstate pecuniary penalty order under this Act or the **Crimes (Confiscation of Profits) Act 1986**.

**69. Variation of pecuniary penalty order**

- (1) If—
- (a) a court made a pecuniary penalty order under this Part in relation to an offence; and
  - (b) in assessing the value of the benefits derived, the court took into account the making of a restitution or compensation order under the **Sentencing Act 1991** against the defendant in relation to the offence; and
  - (c) an appeal against the restitution or compensation order is allowed—
- the DPP or the defendant may apply to the court which made the pecuniary penalty order for a variation of that order, taking into account the successful appeal.
- (2) An applicant under sub-section (1) must give written notice of the application to the DPP or the defendant, as the case may be.
  - (3) On an application under sub-section (1) the court may, if it considers it appropriate to do so, vary the pecuniary penalty order.



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**70. Declaration that property available to satisfy order**

- (1) On application by the DPP, a prescribed person or a person belonging to a prescribed class of persons or an appropriate officer, a court may, if in its opinion particular property in respect of which a restraining order has been made—
- (a) was, on the date when the order was made, subject to the effective control of the defendant; or
  - (b) was the subject of a gift from the defendant to another person—
- make an order declaring that the whole, or a specified part, of that property is available to satisfy a pecuniary penalty order.
- (2) If a court declares that property is available to satisfy a pecuniary penalty order, the order may be enforced as if the property were property of the defendant.
- (3) An applicant under sub-section (1) must give written notice of the application—
- (a) to the person against whom the order is sought; and
  - (b) to the defendant; and
  - (c) to any other person to whom the court directs that notice be given; and
  - (d) to any other person whom the applicant has reason to believe has an interest in the property.
- (4) Any person notified under sub-section (3) and any other person who claims an interest in the property are entitled to appear and to give evidence at the hearing of the application but the absence of a person does not prevent the court from making an order under this section.

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**71. Court may give directions**

A court has power to give all directions that are necessary to give effect to a pecuniary penalty order made by it and may, if it is satisfied on reasonable grounds that any directions have not been, or would not be, complied with, make an order directing a person specified in the order to take control of property on which there is a charge created by section 72(1) or (2).

**72. Charge on property subject to restraining order or declaration**

S. 72(1)  
amended by  
No. 43/1998  
s. 25(c).

(1) If—

S. 72(1)(a)  
amended by  
No. 43/1998  
s. 25(a).

(a) a court makes a restraining order in respect of all or some of the property of a person;  
and

S. 72(1)(b)  
amended by  
No. 43/1998  
s. 25(b).

(b) a court, whether before or after the making of the restraining order, makes a pecuniary penalty order against that person—

then there is created, on the making of the pecuniary penalty order or the restraining order, whichever is the later, a charge on all the property of that person to which the restraining order applies to secure the payment to the State of the pecuniary penalty.

(2) If a court makes a declaration under section 70(1), then there is created, on the making of the declaration, a charge on all the property to which the declaration applies to secure the payment to the State of the pecuniary penalty.

(3) A charge created by sub-section (1) or (2) on property ceases to have effect if any of the following occur—

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- (a) the pecuniary penalty order is discharged;
  - (b) the property is disposed of under section 75;
  - (c) the property is disposed of with the consent of the court that made the pecuniary penalty order or, if a trustee has been directed to take control of the property, with the consent of the trustee;
  - (d) the property is sold to a purchaser in good faith for value who, at the time of the purchase, had no notice of the charge.
- (4) A charge created by sub-section (1) or (2) on property—
- (a) except as provided by section 42(1), is subject to every encumbrance to which the property was subject immediately before the pecuniary penalty order or declaration (as the case may be) was made but has priority over all other encumbrances; and
  - (b) subject to sub-section (3), remains on the property despite any disposal of the property.
- (5) If—
- (a) a charge is created by sub-section (1) or (2) on property of a particular kind; and
  - (b) any law of Victoria provides for the registration of charges on property of that kind—
- the applicant for the pecuniary penalty order or declaration may cause the charge so created to be registered under that law.
- (6) If the charge is registered under sub-section (5), a person who purchases the property after the registration of the charge is, for the purposes of sub-section (3)(d), to be taken to have had notice of the charge.
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(7) If—

- (a) a declaration under section 70(1) applies to property of a particular kind; and
- (b) any law of Victoria provides for the registration of title to, or encumbrances on, or documents relating to the title to property of that kind—

the relevant registration authority under that law must, on application to it by the applicant for the declaration, record on the register the prescribed particulars of the declaration.

(8) Without limiting sub-section (7), if a declaration relates to land under the operation of the **Transfer of Land Act 1958**, a caveat may be lodged under section 89 of that Act by any person mentioned in that section in relation to that order.

(9) For the purposes of sub-section (8) and without limiting that sub-section—

- (a) the applicant for the declaration; or
- (b) if under section 71 a court directed a person to take control of the property, that person—

is deemed to be a person mentioned in section 89 of the **Transfer of Land Act 1958**.

**73. Disposal of property obtained to satisfy pecuniary penalty order**

S. 73(1)  
amended by  
No. 43/1998  
s. 36(y).

- (1) If property that is not money is obtained by the Minister under a pecuniary penalty order then, subject to sub-section (2) and to any direction under sub-section (4), the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section must, as soon as practicable after the property vests in the Minister, sell or otherwise dispose of the property.

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- (2) Except with the leave of the court which made the pecuniary penalty order, the Minister must not—
- (a) dispose of, or otherwise deal with, the property; or
  - (b) authorise any other person or body to dispose of, or otherwise deal with, the property—
- before the end of the appeal period.
- (3) For the purposes of sub-section (2), the appeal period ends when an appeal may no longer be lodged against either the pecuniary penalty order or the conviction in reliance on which the order was made or, if such an appeal is lodged, when the appeal is abandoned or finally determined.
- (4) If property is obtained under a pecuniary penalty order, the Minister, or a prescribed person authorised by the Minister for the purposes of this sub-section, may, before the property is dealt with under sub-section (1), direct that the property be disposed of, or otherwise dealt with, as specified in the direction.
- (5) Without limiting sub-section (4), the directions that may be given under that sub-section include a direction that property is to be disposed of in accordance with the provisions of a law specified in the direction.
- (6) If property is obtained by the Minister under a pecuniary penalty order, the Minister, or a prescribed person authorised by the Minister for the purposes of this sub-section, may give all directions that are necessary or convenient to realise the Minister's interest in the property.
- S. 73(2)**  
**amended by**  
**No. 43/1998**  
**s. 36(y).**
- S. 73(4)**  
**amended by**  
**No. 43/1998**  
**s. 39(e).**
- S. 73(6)**  
**amended by**  
**No. 43/1998**  
**s. 36(y)(z).**

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**74. Pecuniary penalty order debt due to Crown**

- (1) An amount payable by a person to the State under a pecuniary penalty order is, for all purposes, to be taken to be a civil debt due by the person to the Crown.
  - (2) A pecuniary penalty order made by a court may be enforced as if it were an order made by it in civil proceedings instituted by the Crown against the defendant to recover a debt due by the defendant to the Crown.
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**PART 9—POWERS OF TRUSTEE**

**75. Liability under forfeiture or pecuniary penalty order to be satisfied by trustee**

- (1) Any money realised by the trustee out of the disposal of, or otherwise in connection with, property which the trustee was directed to take control of by a restraining order must be applied by the trustee towards the following in the order in which they are set out—
  - (a) any fees, commissions and disbursements payable to the trustee under section 76(1);
  - (b) any conversion costs incurred by the trustee in connection with that property—

and the trustee must pay any money left over to the Minister for payment into the Consolidated Fund.

- (2) If the trustee pays any money in satisfaction of the liability of a person under a forfeiture order, civil forfeiture order or pecuniary penalty order or under automatic forfeiture under section 35, the liability of that person under the order or the automatic forfeiture is, to the extent of the payment, discharged.

**76. Provisions concerning the trustee**

- (1) A trustee is entitled to receive such fees, commissions and disbursements as may be approved by the Minister, or a prescribed person authorised by the Minister for the purposes of this sub-section, on an application under this sub-section in respect of the exercise of powers or the performance of duties in relation to property of which the trustee has taken control under a restraining order.

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- (2) If a trustee is directed by a restraining order to take control of property, the trustee may do anything that is reasonably necessary for the purpose of preserving the property including, but not limited to—
- (a) becoming a party to any civil proceedings affecting the property;
  - (b) making sure that the property is insured;
  - (c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments;
  - (d) if the property consists, wholly or partly, of a business—
    - (i) employing, or terminating the employment of, persons in the business;
    - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis;
  - (e) if the property consists, wholly or partly, of shares in a company—exercising (to the exclusion of the registered holder) the rights attaching to the shares as if the trustee were the registered holder.
- (3) A person must not hinder or obstruct the trustee in the exercise of powers or the performance of duties by the trustee in relation to property of which the trustee has taken control under a restraining order.
- Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.



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- (4) A certificate under the hand or seal of a trustee—
- (a) certifying that a restraining order has been made directing the trustee to take control of property and that the restraining order is in force; and
  - (b) stating the terms of the restraining order—  
is for all purposes evidence and, until the contrary is proved, conclusive evidence of the facts so certified and stated.
- (5) A trustee is only personally liable for any rates, land tax or municipal or other statutory charges which—
- (a) are imposed by or under a law of Victoria on or in respect of property of which the trustee has taken control under a restraining order; and
  - (b) fall due on or after the date of the restraining order—  
to the extent of the rents and profits received by the trustee in respect of that property on or after that date.
- (6) If a trustee, having taken control under a restraining order of a business carried on by a person, carries on that business, the trustee is not personally liable for—
- (a) any payment in respect of long service leave for which that person was liable; or
  - (b) any payment in respect of long service leave to which a person employed by the trustee to manage the business, or the legal personal representative of such a person, becomes entitled after the date of the restraining order.

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- (7) With the permission of the Minister, or a prescribed person authorised by the Minister for the purposes of this sub-section, a trustee may appoint a person as agent to exercise all or any of the powers or perform all or any of the duties conferred or imposed on the trustee by this Act in relation to property of which the trustee has taken control under a restraining order.
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**PART 10—DISPOSAL ORDERS**

**77. Application for disposal order**

(1) If a person has been convicted of a Schedule 1 offence, the DPP or an appropriate officer may, without notice, subject to sub-section (2), apply to the Magistrates' Court or the court before which the person was convicted of the offence for a disposal order in respect of—

S. 77  
amended by  
No. 87/2004  
s. 22(2)(b).

- (a) a drug of dependence or a poison or controlled substance within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**; or
- (b) an instrument, device or substance that is or has been used or is capable of being used for or in the cultivation, manufacture, sale or use or in the preparation for cultivation, manufacture, sale or use of a drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**; or
- (c) an explosive substance within the meaning of Division 8 of Part I of the **Crimes Act 1958**; or
- (d) any property that is prescribed by the regulations for the purposes of this sub-section; or
- (e) any other property that—
  - (i) is of negligible value; or
  - (ii) is not fit for the use for which it is intended and cannot be readily made fit for that use—

S. 77(1)(d)  
amended by  
No. 63/2003  
s. 16(a).

S. 77(1)(e)  
inserted by  
No. 63/2003  
s. 16(b).

that was used, or was intended to be used, in, or in connection with, the commission of the offence or

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was derived or realised, directly or indirectly, by that person or another person, from the commission of the offence.

- (2) An application may only be made under sub-section (1) before the end of the relevant period (if any) in relation to the conviction.

**78. Disposal orders**

S. 78(1)  
amended by  
No. 63/2003  
s. 17(1).

- (1) Subject to sub-section (1A), if an application is made to a court under section 77(1) for an order in respect of particular property, the court may, if it considers it appropriate, order that the property be forfeited to the State and destroyed or disposed of in such manner as is provided in the order if it is satisfied that the property is property described in that section.

S. 78(1A)  
inserted by  
No. 63/2003  
s. 17(2).

- (1A) If an application under section 77(1) is made in respect of property of the kind described in paragraph (e) of that section, the court must be satisfied as to the following matters before making a disposal order under sub-section (1)—
- (a) that the property—
    - (i) is of negligible value; or
    - (ii) is not fit for the use for which it is intended and cannot be readily made fit for that use; and
  - (b) if there is any other person who has an interest in the property to which the application relates, that the person is not likely to have any objections to the disposal of the property; and
  - (c) that there is no other reason not to dispose of the property.

**Example**

It may be a reason not to dispose of the property if the property is of sentimental value to a person.

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- (2) A court has power to give all directions that are necessary to give effect to a disposal order made by it.
- (3) A disposal order made in reliance on a person's conviction of a Schedule 1 offence—
- (a) is stayed pending the expiry of the appeal period in relation to the conviction; and
  - (b) ceases to have effect if on appeal the conviction is quashed.
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**S. 78(3)**  
**inserted by**  
**No. 79/2006**  
**s. 12.**

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Part 10A—Property Management

s. 78A

Pt 10A  
(Heading and  
ss 78A, 78B)  
inserted by  
No. 63/2003  
s. 18.

**PART 10A—PROPERTY MANAGEMENT**

S. 78A  
inserted by  
No. 63/2003  
s. 18.

**78A. Memorandum of understanding**

- (1) The Secretary and a law enforcement agency may enter into a memorandum of understanding that provides for the transfer from the law enforcement agency to the Secretary of responsibilities and powers under this Act in relation to the management of property—
  - (a) seized under this Act; or
  - (b) in respect of which a restraining order has been made; or
  - (c) seized under a warrant under—
    - (i) section 465 of the **Crimes Act 1958**; or
    - (ii) section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**.
- (2) A memorandum of understanding may—
  - (a) refer to—
    - (i) specified property; or
    - (ii) a specified class of property; or
    - (iii) a specified person who has an interest in property or against whom an order or declaration is made under this Act; and
  - (b) contain such terms as are agreed to by the Secretary and the law enforcement agency.

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Part 10A—Property Management

**s. 78B**

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**78B. Certificate of responsibility and power**

**S. 78B  
inserted by  
No. 63/2003  
s. 18.**

- (1) The Secretary may issue a certificate that states that the Secretary has responsibility for, and power in relation to, specified property by virtue of a specified memorandum of understanding entered into under section 78A.
- (2) A certificate purporting to be signed by the Secretary and issued under this section—
  - (a) is admissible in evidence in any proceedings; and
  - (b) in the absence of evidence to the contrary, is conclusive evidence of the matters stated in it.
- (3) A certificate under this section must be in the prescribed form.

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**PART 11—SEARCH WARRANTS**

**79. Search warrants**

- (1) A member of the police force may apply to a magistrate or to a judge of the Supreme Court or County Court for a search warrant to be issued under this Part in respect of any premises.
- (2) A magistrate or judge to whom an application is made under sub-section (1) may, if satisfied that there are reasonable grounds for believing that there is, or may be within the next 72 hours, any tainted property or any property forfeited under this Act in or on the premises, issue a search warrant authorising any member of the police force to break and enter the premises and do either or both of the following—
  - (a) search the premises for the tainted property or the forfeited property;
  - (b) search any person found in or on the premises in accordance with section 94.
- (3) A warrant may be issued under this Part in reliance on the commission of a Schedule 1 offence even if no person has been charged with that offence if the magistrate or judge is satisfied that it is likely that a person will be so charged within 48 hours.
- (4) There must be stated in a warrant—
  - (a) the purpose for which the warrant is issued; and
  - (b) the nature of the offence in reliance on which the warrant is issued; and
  - (c) a description of the kind of property authorised to be seized.

S. 79(3)  
amended by  
No. 87/2004  
s. 22(2)(c).



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*Act No. 108/1997*

Part 11—Search Warrants

s. 79A

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- (5) Every warrant issued under sub-section (2) must be in the prescribed form.
  - (6) Nothing in this Part limits any of the provisions of any other Act relating to search warrants.

**79A. Seizure warrants—public places**

S. 79A  
inserted by  
No. 63/2003  
s. 19.

- (1) A member of the police force may apply to a magistrate or to a judge of the Supreme Court or County Court for a seizure warrant to be issued under this Part in respect of—
  - (a) tainted property which is at a public place; or
  - (b) property forfeited under this Act which is at a public place.
- (2) A magistrate or judge to whom an application is made under sub-section (1), if satisfied that there are reasonable grounds for believing that there is, or may be within the next 72 hours, any tainted property at a public place or any property forfeited under this Act at a public place, may issue a seizure warrant authorising any member of the police force to seize—
  - (a) the tainted property specified in the warrant from a public place; or
  - (b) the forfeited property specified in the warrant from a public place.
- (3) A seizure warrant may be issued under this Part in reliance on the commission of a Schedule 1 offence even if no person has been charged with that offence if the magistrate or judge is satisfied that it is likely that a person will be so charged within 48 hours.

S. 79A(3)  
amended by  
No. 87/2004  
s. 22(2)(d).

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Part 11—Search Warrants

s. 80

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- (4) There must be stated in a seizure warrant—
    - (a) the purpose for which the warrant is issued; and
    - (b) the nature of the offence in reliance on which the warrant is issued; and
    - (c) a description of the property authorised to be seized.
  - (5) Nothing in a seizure warrant authorises—
    - (a) the seizure of property other than the property specified in the warrant; or
    - (b) the arrest of a person; or
    - (c) the entry of any premises to seize property.
  - (6) Every seizure warrant issued under sub-section (2) must be in the prescribed form.

**80. Application for warrant**

S. 80(1)  
amended by  
No. 63/2003  
s. 20(1).

- (1) An application for a search warrant or a seizure warrant must be made in writing.

S. 80(2)  
amended by  
No. 63/2003  
s. 20(1).

- (2) A magistrate or judge must not issue a search warrant or a seizure warrant unless—
  - (a) the application for the warrant sets out the grounds on which the warrant is being sought; and
  - (b) the applicant has given the magistrate or judge, either orally or in writing, any further information that he or she requires concerning the grounds on which the warrant is being sought; and
  - (c) the information given by the applicant is verified before the magistrate or judge on oath or affirmation or by affidavit.

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- (3) A magistrate or judge may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant or a seizure warrant.

S. 80(3)  
amended by  
No. 63/2003  
s. 20(1).

**81. Warrant may be granted by telephone**

S. 81  
(Heading)  
inserted by  
No. 63/2003  
s. 20(2).

- (1) If, by reason of circumstances of urgency, a member of the police force considers it necessary to do so, the member may apply for a search warrant under section 79 or a seizure warrant under section 79A to a magistrate or judge, by telephone, in accordance with this section.
- (2) Before making the application, the member must prepare an affidavit setting out the grounds on which the warrant is sought, but may, if necessary, make the application before the affidavit has been sworn.
- (3) If transmission by facsimile machine is available, the member must transmit a copy of the affidavit, whether sworn or unsworn, to the magistrate or judge who is to hear the application by telephone.
- (4) If—
- (a) after having considered the terms of the affidavit; and
  - (b) after having received any further information that the magistrate or judge requires concerning the grounds on which the warrant is being sought—

S. 81(1)  
amended by  
No. 63/2003  
s. 20(3)(a).

S. 81(4)  
amended by  
No. 63/2003  
s. 20(3)(b).

the magistrate or judge is satisfied as required by section 79(2) or section 79A(2) (as the case requires), he or she may issue a search warrant.

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**S. 81(5)**  
amended by  
No. 63/2003  
s. 20(3)(c).

- (5) If a magistrate or judge issues a search warrant or a seizure warrant on an application made by telephone, he or she must—
- (a) inform the applicant of the terms of the warrant and the date on which and the time at which it was issued, and record on the warrant the reasons for issuing the warrant; and
  - (b) if transmission by facsimile machine is available, transmit a copy of the warrant to the applicant.

**S. 81(6)**  
amended by  
No. 63/2003  
s. 20(3)(d)(i).

- (6) If a copy of the search warrant or the seizure warrant has not been transmitted by facsimile machine, the applicant must—

**S. 81(6)(a)**  
amended by  
No. 63/2003  
s. 20(3)(d)(ii).

- (a) complete a form of search warrant or a seizure warrant (as the case requires) in the terms furnished to the applicant by the magistrate or judge and must write on it the name of the magistrate or judge and the date on which and the time at which the warrant was issued; and

**S. 81(6)(b)**  
amended by  
No. 63/2003  
s. 20(3)(d)(iii).

- (b) not later than the day following the date of the execution of the search warrant or the seizure warrant (as the case requires) or the expiry of the warrant, whichever is earlier, send the form of warrant completed by the applicant to the magistrate or judge who issued the warrant.

**S. 81(7)**  
amended by  
No. 63/2003  
s. 20(3)(e).

- (7) If an application is made by telephone, whether or not a search warrant or a seizure warrant is issued, the applicant must, not later than the day following the making of the application, send the original affidavit duly sworn to the magistrate or judge who heard the application.

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- (8) In any proceeding, if it is material for a court to be satisfied that an entry, search or seizure was authorised in accordance with this section, and the warrant signed by a magistrate or judge in accordance with this section authorising the entry, search or seizure is not produced in evidence, the court must assume, unless the contrary is proved, that the entry, search or seizure was not authorised by such a warrant.

**82. Record of proceedings for warrant**

- (1) A magistrate or judge who issues a search warrant or a seizure warrant must cause a record to be made of all relevant particulars of the grounds he or she has relied on to justify the issue of the warrant.
- (2) The magistrate or judge may decline to record any matter that might disclose the identity of a person if the magistrate or judge believes on reasonable grounds that to do so might jeopardise the safety of any person.

S. 82(1)  
amended by  
No. 63/2003  
s. 20(4).

**83. Notice to occupier of premises entered under search warrant**

- (1) A magistrate or judge must prepare and give an occupier's notice to the person to whom the magistrate or judge issues a search warrant.
- (2) An occupier's notice—
- (a) must specify—
    - (i) the name of the person who applied for the warrant; and
    - (ii) the name of the magistrate or judge who issued the warrant; and
    - (iii) the date and the time when the warrant was issued; and

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- (iv) the address or other description of the premises which are the subject of the warrant; and
  - (b) must contain a summary of the nature of the warrant and the powers conferred by the warrant.
- (3) A member of the police force executing a search warrant must—
- (a) on entry into or onto the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of, or to be in charge of, the premises and to be aged 18 or more; or
  - (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of, or person in charge of, the premises, either personally or in such other manner as the magistrate or judge who issued the warrant may direct, as soon as practicable after executing the warrant.
- (4) Service of an occupier's notice under sub-section (3)(b) may be postponed by the magistrate or judge who issued the search warrant if he or she is satisfied that there are reasonable grounds for the postponement.
- (5) Service of an occupier's notice under sub-section (3)(b) may be postponed on more than one occasion, but must not be postponed on any one occasion for a period exceeding 6 months.

S. 84  
(Heading)  
inserted by  
No. 63/2003  
s. 20(5).

**84. Duty to show search warrant**

A member of the police force executing a search warrant must produce the warrant for inspection by an occupier of, or a person who is in charge of, the premises if requested to do so.

**84A. Duty to show seizure warrant**

A member of the police force executing a seizure warrant must produce the warrant for inspection by any person present during the execution of the seizure warrant, if that person—

- (a) has an interest in the property being seized;  
or
- (b) is in charge of the property being seized.

S. 84A  
inserted by  
No. 63/2003  
s. 21.

**85. Use of force**

A person authorised to search premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of that search.

**86. Use of assistants to execute warrant**

A member of the police force may execute a search warrant or a seizure warrant with the aid of any assistants that the member considers necessary.

S. 86  
amended by  
No. 63/2003  
s. 22(1).

**87. Application of Magistrates' Court Act 1989**

Except to the extent that a contrary intention appears in this Part, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this Part.

**88. Expiry of warrant**

A search warrant or a seizure warrant ceases to have effect—

- (a) at the end of the period of 1 month after its issue; or
- (b) if it is recalled and cancelled by the magistrate or judge who issued it; or

S. 88  
amended by  
No. 63/2003  
s. 22(2).

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(c) when it is executed—  
whichever occurs first.

S. 88A  
inserted by  
No. 63/2003  
s. 23.

**88A. Notice of execution of seizure warrant**

- (1) The applicant for a seizure warrant must give notice of the execution of that warrant to all persons known to have an interest in the property seized under the warrant.
- (2) A notice under sub-section (1) must be—
  - (a) given as soon as practicable, but not more than 7 days after the execution of the seizure warrant; and
  - (b) in the prescribed form.

**89. Report on execution of warrant etc.**

S. 89(1)  
amended by  
No. 63/2003  
s. 24(1).

- (1) The person to whom a search warrant or a seizure warrant is issued must give a report in writing to the magistrate or judge who issued the warrant—
  - (a) stating whether or not the warrant was executed; and
  - (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized); and
  - (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
  - (d) in the case of a search warrant, stating whether or not an occupier's notice has been served in connection with the execution of the warrant; and

S. 89(1)(d)  
amended by  
No. 63/2003  
s. 24(2).

S. 89(1)(da)  
inserted by  
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s. 24(3).

- (da) in the case of a seizure warrant, stating whether or not a notice of the execution of a seizure warrant has been given in accordance with section 88A; and



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- (e) stating whether or not an embargo notice has been issued under section 93 in connection with the execution of the search warrant and describing briefly the property subject to the notice.
- (2) A report must be made within 10 days after the expiry of the warrant.
- (3) A person may apply to the magistrate or judge to whom a report has been given under subsection (1) for an order authorising the person to inspect the report if the person satisfies the magistrate or judge that he or she is—
- (a) the owner or occupier of premises upon which the warrant was executed; or
  - (b) a person who has an interest in property seized in the execution of the warrant; or
  - (c) a person who has an interest in property subject to an embargo notice issued under section 93 in connection with the execution of the warrant.

S. 89(1)(e)  
amended by  
No. 63/2003  
s. 24(4).

**90. Absence etc. of magistrate or judge who issued warrant**

S. 90  
amended by  
No. 63/2003  
s. 24(5)(a).

If the magistrate or judge who issued a search warrant or a seizure warrant has ceased to hold office or is absent—

- (a) a report required to be given to him or her under section 89; or
- (b) in the case of a search warrant, a power exercisable by him or her under section 83(3)(b) or (4)—

S. 90(b)  
amended by  
No. 63/2003  
s. 24(5)(b).

must be given to, or may be exercised by, as the case requires, any other magistrate or judge.

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S. 91  
amended by  
No. 63/2003  
s. 24(6).

**91. Defects in warrants**

A search warrant or a seizure warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

**92. Seizure of property under search warrant**

- (1) A member of the police force executing a search warrant may seize property of the kind described in the warrant.
- (2) A member of the police force executing a search warrant may also seize property which is not of the kind described in the warrant if—
  - (a) the member of the police force believes on reasonable grounds that the property—
    - (i) is of a kind which could have been included in a search warrant issued under this Part; or
    - (ii) will afford evidence about the commission of another Schedule 1 offence; and
  - (b) the member believes on reasonable grounds that it is necessary to seize that property in order to prevent its concealment, loss or destruction or its use in committing or continuing a Schedule 1 offence.
- (3) The power conferred by this section to seize property includes power—
  - (a) to remove the property from the premises where it is found; and
  - (b) to guard the property in or on those premises; and
  - (c) to make copies of the whole or any part of the property; and

S. 92(2)(a)(ii)  
amended by  
No. 87/2004  
s. 22(2)(e).

S. 92(2)(b)  
amended by  
No. 87/2004  
s. 22(2)(e).

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- (d) to issue an embargo notice under section 93 in respect of the property.

**93. Embargo notice**

- (1) In this section, "**property**" does not include real property.
- (2) A member of the police force executing a search warrant who is authorised by that warrant or section 92 to seize property may, if the property cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the prescribed form—
- (a) by causing a copy of the notice to be served on the person in possession of the property;  
or
- (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing the copy to the property in a prominent position.
- (3) A person who knows that an embargo notice relates to property and who—
- (a) sells; or
- (b) leases; or
- (c) without the written consent of the member of the police force who issued the embargo notice, moves; or
- (d) transfers; or

S. 93(3)  
amended by  
No. 43/1998  
s. 26(1).

S. 93(3)(a)  
inserted by  
No. 43/1998  
s. 26(1).

S. 93(3)(b)  
inserted by  
No. 43/1998  
s. 26(1).

S. 93(3)(c)  
inserted by  
No. 43/1998  
s. 26(1).

S. 93(3)(d)  
inserted by  
No. 43/1998  
s. 26(1).

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S. 93(3)(e)  
inserted by  
No. 43/1998  
s. 26(1).

(e) otherwise deals with—

the property, or any part of the property, while the embargo notice is in force is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

- (4) It is a defence to a prosecution for an offence against sub-section (3) to prove that the defendant moved the property or the part of the property for the purpose of protecting and preserving it.
- (5) Despite anything in any other Act, a sale, lease, transfer or other dealing with property in contravention of this section is void.
- (6) If an application for a restraining order in respect of tainted property to which an embargo notice relates is not made within 21 days after the issue of an embargo notice, the embargo notice ceases to be in force at the end of that period but, if such an application is made, it continues in operation until that application is determined.

S. 93(5)  
amended by  
No. 43/1998  
s. 26(2).

**94. Search of persons under search warrant**

- (1) A member of the police force executing a search warrant may, if the search warrant authorises him or her to do so, search any person found in or on the premises whom the member suspects on reasonable grounds of having on his or her person property of the kind described in the warrant.
- (2) A person must not be searched under this section except by a person of the same sex.

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**95. Obstruction or hindrance of person executing search warrant**

S. 95  
amended by  
No. 63/2003  
s. 24(7).

A person must not, without reasonable excuse, obstruct or hinder a person executing a search warrant or a seizure warrant.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

**95A. Application for property seized under search warrants under other Acts to be held or retained under this Act**

S. 95A  
inserted by  
No. 63/2003  
s. 25.

(1) A member of the police force may apply to the Magistrates' Court for a declaration that property seized under a warrant under—

(a) section 465 of the **Crimes Act 1958**; or

(b) section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**—

is to be held or retained as if it were tainted property seized under a warrant under section 79 of this Act.

(2) An application under sub-section (1) may only be made if—

(a) the property is no longer required for evidentiary purposes under the **Crimes Act 1958** or the **Drugs, Poisons and Controlled Substances Act 1981** (as the case requires); and

(b) no direction has previously been made under section 465(1B) or 465C of the **Crimes Act 1958** or section 81(1A) or 81C of the **Drugs, Poisons and Controlled Substances Act 1981** (as the case requires).

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- (3) An application may be made within 7 days after the property is no longer required for evidentiary purposes under the **Crimes Act 1958** or the **Drugs, Poisons and Controlled Substances Act 1981** (as the case requires).

S. 95B  
inserted by  
No. 63/2003  
s. 25.

**95B. What must be in the application?**

- (1) An application under section 95A must be supported by evidence on oath or by affidavit of the applicant.
- (2) An application under section 95A must specify—
- (a) whether the warrant was issued under the **Crimes Act 1958** or the **Drugs, Poisons and Controlled Substances Act 1981**; and
  - (b) when the warrant was issued; and
  - (c) the property seized under the warrant which is the subject of the application; and
  - (d) the grounds on which the applicant believes that the property seized under the warrant is tainted property; and
  - (e) whether any directions have been made in relation to the property and, if so, whether those directions have been complied with; and
  - (f) the offence or offences with which the defendant has been charged; and
  - (g) that the property which is the subject of the application is no longer required for evidentiary purposes under the **Crimes Act 1958** or the **Drugs, Poisons and Controlled Substances Act 1981** (as the case requires).

**95C. Court may make declaration**

(1) If the Magistrates' Court is satisfied that it is appropriate to do so, the Court may make a declaration that property seized under a warrant under—

- (a) section 465 of the **Crimes Act 1958**; or
- (b) section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**—

is to be held or retained as if it were tainted property seized under a warrant under section 79 of this Act.

(2) A declaration must—

- (a) specify the property to which the declaration applies; and
- (b) state that the specified property to which the declaration applies is to be held or retained as if it were tainted property seized under a warrant under section 79 of this Act.

S. 95C  
inserted by  
No. 63/2003  
s. 25.

**95D. Notice of declaration**

(1) If the Magistrates' Court makes a declaration under section 95C, the applicant for the declaration must give notice that the declaration has been made to all persons known to have an interest in the property to which the declaration applies that the property is being held or retained as if it were tainted property seized under a warrant under section 79 of this Act by virtue of a declaration made under section 95C.

(2) A notice under sub-section (1) must be—

- (a) given within 7 days after the Magistrates' Court has made the declaration under section 95C; and
- (b) in the prescribed form.

S. 95D  
inserted by  
No. 63/2003  
s. 25.

S. 95E  
inserted by  
No. 63/2003  
s. 25.

**95E. Effect of declaration**

If a declaration is made under section 95C, the property to which the declaration applies—

- (a) is deemed, on and from the date on which the property is no longer required for evidentiary purposes under the **Crimes Act 1958** or the **Drugs, Poisons and Controlled Substances Act 1981** (as the case requires), to have been seized as tainted property under a warrant under section 79 of this Act; and
- (b) is to be dealt with under this Act accordingly.

**96. Disposal of livestock or perishable property**

- (1) If property seized under a warrant is livestock or property of a perishable nature, a prescribed person authorised by the Minister for the purposes of this section may sell the property at any time after it has been seized without notice to the person from whose possession it was seized or any person who has an interest in the property if in the opinion of the prescribed person it is necessary to sell the property to realise its value.
- (2) The prescribed person must give written notice of the sale, in the prescribed manner, to—
  - (a) the person from whose possession the property was seized; and
  - (b) any person whom the prescribed person has reason to believe has an interest in the property—within 14 days after that sale.
- (3) The proceeds of sale must be paid into the Consolidated Fund.



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- (4) Section 97 applies to the proceeds of sale as if they were the property seized under the warrant.

**97. Return of seized property**

- (1) If property has been seized under a warrant and—

(a) by the end of the period of 7 days after the property was seized, no person has been charged with the Schedule 1 offence in reliance on the commission of which the warrant was issued, and an application for a restraining order or a forfeiture order has not been made in respect of the property; or

S. 97(1)(a)  
amended by  
No. 87/2004  
s. 22(2)(f).

(b) a person has been charged with and convicted of such an offence but by the end of the period of 6 months after the date of conviction or the end of the appeal period (if any) an application for a restraining order or a forfeiture order has not been made in respect of the property or such an application has been made but a forfeiture order has not been made or the property has been excluded from the restraining order or the forfeiture order or has been discharged or excluded on appeal under section 142; or

(c) a person has been charged with such an offence and acquitted and by the end of the period of 7 days after the acquittal the property is not restrained for a purpose referred to in section 15(1)(c) or (d) in relation to a Schedule 2 offence; or

S. 97(1)(c)  
amended by  
No. 87/2004  
s. 22(2)(g).

(d) a person has been charged with and convicted of such an offence but the conviction is quashed and a retrial has not been ordered at the time of the quashing of the conviction and by the end of the period of 7 days after the quashing of the conviction the property is not restrained for a purpose

S. 97(1)(d)  
amended by  
No. 87/2004  
s. 22(2)(g).

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referred to in section 15(1)(c) or (d) in relation to a Schedule 2 offence—

then the Chief Commissioner of Police must arrange for the property to be returned to the person from whose possession it was seized or to such other person as the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section directs.

(2) If—

S. 97(2)(a)  
amended by  
No. 63/2003  
s. 26(1).

- (a) property has been seized under a search warrant or a seizure warrant; and
- (b) an application has been made under this Act to a court for a forfeiture order or civil forfeiture order in respect of the property; and
- (c) the court refuses to make the order being sought—

the court must make an order directing that the property be returned to the person from whose possession it was seized or to such other person as the Minister or a prescribed person authorised by the Minister for the purposes of this sub-section directs forthwith or, if the refusal was a refusal to make a civil forfeiture order, at the time and in the circumstances specified in the order if the court considers that an application may yet be made for a forfeiture order.

S. 97(3)  
amended by  
No. 63/2003  
s. 26(2).

- (3) If property has been seized under a search warrant or a seizure warrant other than property seized under a warrant referred to in sub-section (1) or sold under section 96, the person from whose possession the property was seized or any other person who claims an interest in the property may apply to the Magistrates' Court for an order—

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- (a) directing that the property be returned to that person; or
- (b) directing that the person be allowed access to the property—

and the Court may, if it considers it appropriate, make such an order on such terms and conditions (if any) as it thinks fit.

- (3A) If property has been seized under a search warrant or a seizure warrant (other than property seized under a warrant referred to in sub-section (11) or sold under section 96), a prescribed person may apply to the Magistrates' Court for an order—

**S. 97(3A)**  
inserted by  
No. 63/2003  
s. 26(3).

- (a) directing that the property be returned to—
  - (i) the person from whose possession the property was seized; or
  - (ii) any other person who claims an interest in the property; or
- (b) directing that access to the property be given to—
  - (i) the person from whose possession the property was seized; or
  - (ii) any other person who claims an interest in the property—

and the Court may, if it considers it appropriate, make such an order on such terms and conditions (if any) as it thinks fit.

- (4) The applicant for an order under sub-section (3) or (3A) must give written notice of the application and of the date, time and place fixed for the hearing of it—

**S. 97(4)**  
amended by  
No. 63/2003  
s. 26(4)(a).

- (a) to the DPP, to a prescribed person or a person belonging to a prescribed class of persons or to the appropriate officer, as the case requires; and

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S. 97(5)  
amended by  
No. 63/2003  
s. 26(4)(a).

S. 97(6)  
amended by  
No. 63/2003  
s. 26(4)(a).

- (b) to any other person whom the applicant has reason to believe has an interest in the property.
- (5) Any person notified under sub-section (4) is entitled to appear and to give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under sub-section (3) or (3A).
- (6) If the Magistrates' Court makes an order under sub-section (3) or (3A), an application for a variation, or the revocation, of the order may at any time be made to the Magistrates' Court by—
- (a) the person referred to in sub-section (4)(a);  
or
  - (b) the person from whose possession the property was seized; or
  - (c) any other person who claims an interest in the property.
- (7) An applicant under sub-section (6) must give written notice of the application and of the date, time and place fixed for the hearing of it—
- (a) if the person referred to in sub-section (4)(a) is the applicant, to the person from whose possession the property was seized and any other person whom the applicant has reason to believe has an interest in the property; and
  - (b) in any other case, to the person referred to in sub-section (4)(a).
- (8) Any person notified under sub-section (7) is entitled to appear and to give evidence at the hearing of the application but the absence of that person does not prevent the court from making an order under sub-section (9).

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- (9) On an application under sub-section (6) the Magistrates' Court may, if it considers it appropriate—
- (a) if the application is for a variation of the order, vary the order on any terms and conditions that it thinks fit; or
  - (b) if the application is for the revocation of the order, revoke the order on any terms and conditions that it thinks fit.
- (10) A person must not knowingly contravene an order made under sub-section (3) or (3A).
- Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.
- (11) This section (except sub-sections (3) and (3A)) applies to a search warrant or a seizure warrant issued in reliance on the commission of an interstate offence as if the references in it to a forfeiture order included references to an interstate forfeiture order.
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**S. 97(10)**  
amended by  
**No. 63/2003**  
s. 26(4)(a).

**S. 97(11)**  
amended by  
**No. 63/2003**  
s. 26(4)(b)(i)(ii).

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s. 97A

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(Heading and  
ss 97A–97W)  
inserted by  
No. 63/2003  
s. 27.

S. 97A  
inserted by  
No. 63/2003  
s. 27.

**PART 11A—PROPERTY MANAGEMENT WARRANTS**

**Division 1—Search and Inspection Warrants**

**97A. Application for search and inspection warrant**

- (1) A prescribed person or a person who belongs to a prescribed class of persons may apply to a magistrate for a search and inspection warrant to be issued under this Division in respect of specified property—
  - (a) that is the subject of a restraining order; or
  - (b) to which an embargo notice relates; or
  - (c) that has been forfeited under this Act—  
if the applicant believes on reasonable grounds that—
    - (d) it is necessary to inspect the property for the purposes of maintaining the property; and
    - (e) in the case of property other than real property, the property is, or may be within the next 72 hours, in or on specified premises.
- (2) An application for a search and inspection warrant must be made in writing.
- (3) A magistrate must not issue a search and inspection warrant unless—
  - (a) the application for the warrant sets out the grounds on which the warrant is being sought; and
  - (b) the applicant has given the magistrate, either orally or in writing, any further information that the magistrate requires concerning the grounds on which the warrant is being sought; and

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s. 97B

- (c) the information given by the applicant is verified before the magistrate on oath or affirmation or by affidavit.
- (4) A magistrate may administer an oath or affirmation or take an affidavit for the purposes of an application for a search and inspection warrant.

**97B. Search and inspection warrant**

S. 97B  
inserted by  
No. 63/2003  
s. 27.

- (1) A magistrate to whom an application is made under section 97A, if satisfied that there are reasonable grounds for believing the matters set out in the application, may issue a search and inspection warrant to the person or persons named in the warrant to enter the specified premises and search for and inspect the specified property.
- (2) A search and inspection warrant issued under subsection (1) may authorise the person or persons named in the warrant—
  - (a) to enter the premises specified in the warrant; and
  - (b) to search for and inspect the property specified in the warrant; and
  - (c) to break open any receptacle in or on the premises specified in the warrant for the purposes of the search and inspection of the property specified in the warrant, if it is reasonably necessary to do so; and
  - (d) to photograph or record by other means the property specified in the warrant; and
  - (e) to make an inventory of the property specified in the warrant.
- (3) A search and inspection warrant issued under subsection (1) may authorise the sheriff or a person directed by the sheriff to break and enter the premises specified in the warrant.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97C

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- (4) Nothing in a search and inspection warrant authorises—
- (a) the seizure of property; or
  - (b) the arrest of a person.
- (5) There must be stated in a search and inspection warrant—
- (a) the purpose for which the warrant is issued; and
  - (b) a description of the property authorised to be inspected; and
  - (c) whether a restraining order or embargo notice relates to the property or whether the property is forfeited under this Act; and
  - (d) the address or other description of the premises in respect of which the warrant is issued.
- (6) Every search and inspection warrant issued under sub-section (1) must be in the prescribed form.

S. 97C  
inserted by  
No. 63/2003  
s. 27.

**97C. Record of proceedings for search and inspection warrant**

- (1) A magistrate who issues a search and inspection warrant must cause a record to be made of all relevant particulars of the grounds he or she has relied on to justify the issue of the warrant.
- (2) The magistrate may decline to record any matter that might disclose the identity of a person if the magistrate believes on reasonable grounds that to do so might jeopardise the safety of any person.

S. 97D  
inserted by  
No. 63/2003  
s. 27.

**97D. Announcement before entry**

On executing a search and inspection warrant, the person executing the warrant—

- (a) must announce that he or she is authorised by the warrant to enter the premises; and



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s. 97E

- (b) must give any person at the premises an opportunity to allow entry to the premises before force is used to enter the premises.

**97E. Copy of search and inspection warrant to be given to occupier**

S. 97E  
inserted by  
No. 63/2003  
s. 27.

- (1) A person executing a search and inspection warrant must—
- (a) if the occupier is present at the premises where the warrant is being executed, identify himself or herself to the occupier and give the occupier a copy of the warrant; or
  - (b) if the occupier is not present at the premises where the warrant is being executed, identify himself or herself to any other person at the premises and give that person a copy of the warrant.

Penalty: Level 10 fine (10 penalty units maximum).

- (2) If a person executing a search and inspection warrant—
- (a) believes that the occupier is not present at the premises and that no other person is present at the premises; or
  - (b) has given a copy of the warrant to a person at the premises who is not the occupier—

he or she must give the occupier a copy of the warrant as soon as practicable but not more than 7 days after the warrant is executed.

Penalty: Level 10 fine (10 penalty units maximum).

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*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97F

S. 97F  
inserted by  
No. 63/2003  
s. 27.

**97F. Use of assistants to execute search and inspection warrant**

A person executing a search and inspection warrant may do so with the aid of any assistants that the person considers reasonably necessary to achieve the purpose for which the warrant was issued.

S. 97G  
inserted by  
No. 63/2003  
s. 27.

**97G. Application of Magistrates' Court Act 1989**

Except to the extent that a contrary intention appears in this Division, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search and inspection warrants under this Division.

S. 97H  
inserted by  
No. 63/2003  
s. 27.

**97H. Expiry of search and inspection warrant**

- (1) A search and inspection warrant ceases to have effect if it is recalled and cancelled by the magistrate who issued it.
- (2) If sub-section (1) does not apply, a search and inspection warrant ceases to have effect—
  - (a) at the end of the period of 1 month after its issue; or
  - (b) when it is executed—whichever occurs first.

S. 97I  
inserted by  
No. 63/2003  
s. 27.

**97I. Report on execution of warrant etc.**

- (1) The person to whom a search and inspection warrant is issued must give a report to the registrar of the Magistrates' Court—
  - (a) stating whether or not the warrant was executed; and

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**s. 97J**

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- (b) if the warrant was executed, setting out briefly the result of the execution of the warrant (including a brief description of the property inspected); and
  - (c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed; and
  - (d) stating whether or not a copy of the warrant was given to the occupier or another person at the premises; and
  - (e) stating whether or not a copy of any inventory made of the property inspected and a notice as required by section 97J were given to any person who has an interest in the property inspected.
- (2) A report must be—
- (a) in the prescribed form; and
  - (b) made within 10 days after the expiry of the warrant.
- (3) A person may apply to the Magistrates' Court for an order authorising the person to inspect the report given under sub-section (1) if the person satisfies the Court that the person is—
- (a) the owner or occupier of premises upon which the warrant was executed; or
  - (b) a person who has an interest in property inspected in the execution of the warrant.

**97J. Copy of inventory to be given**

- (1) A person who executes a search and inspection warrant must give any person who has an interest in the property inspected—
  - (a) a copy of any inventory made of the property to which the warrant relates; and

**S. 97J**  
**inserted by**  
**No. 63/2003**  
**s. 27.**

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*Act No. 108/1997*

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s. 97K

- (b) a written notice stating that the person who has an interest in the property may request a copy of any photograph or other record made of the property to which the warrant relates as specified in that notice.
- (2) A copy of an inventory and a written notice required to be given under sub-section (1) must be given within a reasonable time after the warrant was executed.
- (3) If a person requests a copy of any photograph or other record in accordance with sub-section (1), the person who executed the search and inspection warrant must give the copy or record to the person who made the request, within 14 days after the request was made.

S. 97K  
inserted by  
No. 63/2003  
s. 27.

**97K. Defects in search and inspection warrant**

A search and inspection warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

S. 97L  
inserted by  
No. 63/2003  
s. 27.

**97L. Obstruction or hindrance of person executing search and inspection warrant**

A person must not, without reasonable excuse, obstruct or hinder a person executing a search and inspection warrant.

Penalty: Level 9 fine (60 penalty units maximum).

**Division 2—Search and Seizure Warrants**

S. 97M  
inserted by  
No. 63/2003  
s. 27.

**97M. Application for search and seizure warrant**

- (1) A prescribed person or a person who belongs to a prescribed class of persons may apply to a magistrate for a search and seizure warrant to be issued under this Division in respect of specified property that has been forfeited under this Act if

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97N

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the applicant believes on reasonable grounds that the property is, or may be within the next 72 hours, in or on specified premises.

- (2) An application for a search and seizure warrant must be made in writing.
- (3) A magistrate must not issue a search and seizure warrant unless—
  - (a) the application for the warrant sets out the grounds on which the warrant is being sought; and
  - (b) the applicant has given the magistrate, either orally or in writing, any further information that the magistrate requires concerning the grounds on which the warrant is being sought; and
  - (c) the information given by the applicant is verified before the magistrate on oath or affirmation or by affidavit.
- (4) A magistrate may administer an oath or affirmation or take an affidavit for the purposes of an application for a search and seizure warrant.

**97N. Search and seizure warrant**

- (1) A magistrate to whom an application is made under section 97M, if satisfied that there are reasonable grounds for believing the matters set out in the application, may issue a search and seizure warrant to the person or persons named in the warrant to enter the specified premises and search for and seize the specified property.
- (2) A search and seizure warrant issued under subsection (1) may authorise the person or persons named in the warrant—
  - (a) to enter the premises specified in the warrant; and

S. 97N  
inserted by  
No. 63/2003  
s. 27.

*Confiscation Act 1997*  
*Act No. 108/1997*

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s. 97O

- (b) to break open any receptacle in or on the premises specified in the warrant for the purposes of the search and seizure of the property specified in the warrant, if it is reasonably necessary to do so; and
  - (c) to search for and seize the property specified in the warrant.
- (3) A search and seizure warrant issued under sub-section (1) may authorise the sheriff or a person directed by the sheriff to break and enter the premises specified in the warrant.
- (4) Nothing in a search and seizure warrant authorises—
- (a) the seizure of any property that is not specified in the warrant; or
  - (b) the arrest of a person.
- (5) There must be stated in a search and seizure warrant—
- (a) the purpose for which the warrant is issued; and
  - (b) a description of the property authorised to be seized; and
  - (c) the address or other description of the premises in respect of which the warrant is issued.
- (6) Every search and seizure warrant issued under sub-section (1) must be in the prescribed form.

**97O. Record of proceedings for search and seizure warrant**

- (1) A magistrate who issues a search and seizure warrant must cause a record to be made of all relevant particulars of the grounds he or she has relied on to justify the issue of the warrant.

S. 97O  
inserted by  
No. 63/2003  
s. 27.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97P

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- (2) The magistrate may decline to record any matter that might disclose the identity of a person if the magistrate believes on reasonable grounds that to do so might jeopardise the safety of any person.

**97P. Announcement before entry**

S. 97P  
inserted by  
No. 63/2003  
s. 27.

On executing a search and seizure warrant, the person executing the warrant—

- (a) must announce that he or she is authorised by the warrant to enter the premises; and
- (b) must give any person at the premises an opportunity to allow entry to the premises before force is used to enter the premises.

**97Q. Copy of search and seizure warrant to be given to occupier**

S. 97Q  
inserted by  
No. 63/2003  
s. 27.

- (1) A person executing a search and seizure warrant must—
- (a) if the occupier is present at the premises where the warrant is being executed, identify himself or herself to the occupier and give the occupier a copy of the warrant; or
  - (b) if the occupier is not present at the premises where the warrant is being executed, identify himself or herself to any other person at the premises and give that person a copy of the warrant.

Penalty: Level 10 fine (10 penalty units maximum).

- (2) If a person executing a search and seizure warrant—
- (a) believes that the occupier is not present at the premises and that no other person is present at the premises; or

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97R

(b) has given a copy of the warrant to a person at the premises who is not the occupier—

he or she must give the occupier a copy of the warrant as soon as practicable but not more than 7 days after the warrant is executed.

Penalty: Level 10 fine (10 penalty units maximum).

S. 97R  
inserted by  
No. 63/2003  
s. 27.

**97R. Use of assistants to execute search and seizure warrant**

A person executing a search and seizure warrant may do so with the aid of any assistants that the person considers reasonably necessary to achieve the purpose for which the warrant was issued.

S. 97S  
inserted by  
No. 63/2003  
s. 27.

**97S. Application of Magistrates' Court Act 1989**

Except to the extent that a contrary intention appears in this Division, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search and seizure warrants under this Division.

S. 97T  
inserted by  
No. 63/2003  
s. 27.

**97T. Expiry of search and seizure warrant**

- (1) A search and seizure warrant ceases to have effect if it is recalled and cancelled by the magistrate who issued it.
- (2) If sub-section (1) does not apply, a search and seizure warrant ceases to have effect—
  - (a) at the end of the period of 1 month after its issue; or
  - (b) when it is executed—whichever occurs first.



*Confiscation Act 1997*  
*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97U

**97U. Report on execution of search and seizure warrant etc.**

S. 97U  
inserted by  
No. 63/2003  
s. 27.

- (1) The person to whom a search and seizure warrant is issued must give a report to the registrar of the Magistrates' Court—
  - (a) stating whether or not the warrant was executed; and
  - (b) if the warrant was executed, setting out briefly the result of the execution of the warrant (including a brief description of the property seized); and
  - (c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed; and
  - (d) stating whether or not a copy of the warrant was given to the occupier or another person at the premises.
- (2) A report must be—
  - (a) in the prescribed form; and
  - (b) made within 10 days after the expiry of the warrant.
- (3) A person may apply to the Magistrates' Court for an order authorising the person to inspect the report given under sub-section (1) if the person satisfies the Court that the person is—
  - (a) the owner or occupier of premises upon which the warrant was executed; or
  - (b) a person who has an interest in property seized in the execution of the warrant.

**97V. Defects in search and seizure warrant**

S. 97V  
inserted by  
No. 63/2003  
s. 27.

A search and seizure warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 11A—Property Management Warrants

s. 97W

S. 97W  
inserted by  
No. 63/2003  
s. 27.

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**97W. Obstruction or hindrance of person executing  
search and seizure warrant**

A person must not, without reasonable excuse,  
obstruct or hinder a person executing a search and  
seizure warrant.

Penalty: Level 9 fine (60 penalty units  
maximum).

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**PART 12—EXAMINATION ORDERS**

**98. Order for examination**

(1) In this section, "**relevant person**" means the DPP or a prescribed person or a person belonging to a prescribed class of persons.

S. 98(1)  
substituted by  
No. 43/1998  
s. 27.

(2) If a court is satisfied that—

S. 98(2)  
substituted by  
No. 63/2003  
s. 28.

(a) a defendant has been charged with or convicted of a Schedule 1 offence or a Schedule 2 offence or a court has made a restraining order against property under section 18 in relation to a Schedule 2 offence; and

S. 98(2)(a)  
substituted by  
No. 87/2004  
s. 20(1).

(b) it is appropriate to make an order under this section—

the court may, on application by a relevant person, make an order for the examination before the court of any person concerning—

(c) the affairs of the defendant or any other person, including the nature and location of—

S. 98(2)(c)  
amended by  
No. 87/2004  
s. 20(2)(a).

(i) any property in which the defendant or person has or may have an interest; or

S. 98(2)(c)(i)  
amended by  
No. 87/2004  
s. 20(2)(b).

(ii) any property which the applicant for the order believes on reasonable grounds to be tainted property; and

(d) issues connected with the effective management and maintenance of any property referred to in paragraph (c), including any income, expenditure or liabilities in relation to the property.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 12—Examination Orders

s. 99

S. 98(2A)  
inserted by  
No. 63/2003  
s. 28,  
amended by  
No. 87/2004  
s. 20(3).

(2A) In determining whether it is appropriate to make an order under sub-section (2) in respect of a defendant who has been charged with a Schedule 1 offence or a Schedule 2 offence, the likelihood of the defendant being convicted of the offence is not a relevant consideration.

(3) An application for an order under sub-section (2) may be made by a relevant person to—

S. 98(3)(a)  
amended by  
No. 87/2004  
s. 20(4).

(a) if a restraining order is or has been made in reliance on the charging or conviction of the defendant or in relation to a Schedule 2 offence, the court which made the restraining order; or

(b) in any other case, any court.

(4) The applicant must give written notice of an application under this section to the defendant and any person whom the applicant seeks to examine under the order.

S. 98(5)  
amended by  
No. 87/2004  
s. 20(5).

(5) For the purposes of an application under this section in respect of a Schedule 2 offence, it does not matter that the charge has been withdrawn or finally determined.

**99. Examination**

(1) In an examination referred to in section 98(2), a person may not refuse or fail to answer a question that might tend to incriminate the person.

(2) A statement or disclosure made by a person in answer to a question put in the course of an examination referred to in section 98(2) is admissible against that person in—

(a) any civil proceeding; or

(b) a proceeding for giving false testimony in the course of the examination; or

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*Act No. 108/1997*

Part 12—Examination Orders

s. 99

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- (c) any proceeding under this Act—  
but is not otherwise admissible in evidence against  
that person.
- (3) A person who is ordered to attend an examination  
referred to in section 98(2) must not—
- (a) without reasonable excuse, fail to attend as  
required by the order; or
  - (b) without reasonable excuse, fail to attend  
from day to day until the conclusion of the  
examination; or
  - (c) refuse or fail to take an oath or make an  
affirmation for the purpose of the  
examination; or
  - (d) refuse or fail to answer a question that the  
person is directed by the court to answer; or
  - (e) make a statement in the course of the  
examination that is false or misleading in a  
material particular.

Penalty: Level 7 imprisonment (2 years  
maximum) or a level 7 fine  
(240 penalty units maximum) or both.

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*Confiscation Act 1997*  
*Act No. 108/1997*

Part 13—Information Gathering Powers

s. 100

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**PART 13—INFORMATION GATHERING POWERS**

**Division 1—Production Orders**

**100. Application for production order**

S. 100(1)  
amended by  
No. 87/2004  
s. 22(2)(h).

- (1) In this section, "**relevant offence**" means a Schedule 1 offence or a Schedule 2 offence.
- (2) If a person has been convicted of a relevant offence or a member of the police force believes that a person has committed a relevant offence, the member may, without notice, apply to a court for a production order against that person or another person.
- (3) An application under sub-section (2) must be supported by an affidavit of the applicant—
  - (a) stating, if a person has not been convicted of a relevant offence, that he or she believes that a person has committed a relevant offence; and
  - (b) stating that he or she believes that the person against whom the order is sought has possession or control of a property-tracking document or property-tracking documents in relation to that relevant offence; and
  - (c) setting out the grounds on which the applicant holds those beliefs.
- (4) The court hearing an application under sub-section (2) may require the applicant to give it any additional information that it requires concerning the grounds on which the order is sought.
- (5) An application under sub-section (2) must be heard in closed court.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 13—Information Gathering Powers

s. 101

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**101. Production orders**

- (1) A court may, on an application under section 100(2), if it considers that, having regard to the matters contained in the affidavit of the applicant and to any other sworn evidence before it, there are reasonable grounds for doing so, make a production order against the person and, if it is in the public interest to do so, an order under subsection (6).
- (2) A production order may require the person against whom it is made—
  - (a) to produce to a member of the police force at a specified time and place; or
  - (b) to make available to a member of the police force for inspection at a specified time or times—

any property-tracking documents that are in the person's possession or control.
- (3) If the applicant's affidavit—
  - (a) states that he or she believes that—
    - (i) the person who was convicted of or is believed to have committed the offence derived a benefit in relation to the offence, having regard to section 67 or 68 (as the case may be); and
    - (ii) property specified in the application—
      - (A) is subject to the effective control of that person; or
      - (B) was the subject of a gift from that person; and

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*Act No. 108/1997*

Part 13—Information Gathering Powers

**s. 101**

(b) sets out the grounds on which the applicant holds those beliefs—

the court may if it considers that, having regard to the matters contained in that affidavit and to any other sworn evidence before it, there are reasonable grounds for doing so, treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence.

- (4) The court must not make a production order of the kind referred to in sub-section (2)(a) in respect of any ledgers, day-books, cash-books, account books or other accounting records used in the ordinary business of banking or in respect of any document contained in a public register required to be kept by or under any Act.
- (5) When a production order has been made the applicant must give written notice of its making to the person against whom it is made.
- (6) If a court makes a production order against a person, it may order that—
- (a) the person must not disclose the existence or contents of the order to any person except a legal practitioner acting for or engaged on behalf of the person against whom the production order is made; and
  - (b) the legal practitioner must not disclose the existence or contents of the order to any person other than the person for whom the legal practitioner is acting or on whose behalf the legal practitioner has been engaged.

**S. 101(6)(a)**  
amended by  
**No. 43/1998**  
s. 28(a).

**S. 101(6)(b)**  
amended by  
**No. 43/1998**  
s. 28(b)(i)(ii).



*Confiscation Act 1997*  
*Act No. 108/1997*

Part 13—Information Gathering Powers

s. 102

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**102. Powers under production orders**

- (1) If a document is produced to a member of the police force under a production order, the member may do any one or more of the following—
  - (a) inspect the document;
  - (b) take extracts from the document;
  - (c) make copies of the document;
  - (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.
- (2) If a document is made available to a member of the police force for inspection under a production order, the member may do any one or more of the following—
  - (a) inspect the document;
  - (b) take extracts from the document;
  - (c) make copies of the document.
- (3) If a member of the police force retains a document under a production order, he or she must, on request by the person against whom the order was made—
  - (a) give the person a copy of the document certified by the member in writing to be a true copy of the document; and
  - (b) unless the person has been given a copy of the document under paragraph (a), permit the person to do any one or more of the following—
    - (i) inspect the document;
    - (ii) take extracts from the document;
    - (iii) make copies of the document.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 13—Information Gathering Powers

s. 103

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**103. Expiry of production order**

A production order ceases to have effect—

- (a) at the end of the period of 1 month after its issue; or
- (b) when it is executed—

whichever occurs first.

**104. Report on execution of production order etc.**

(1) The person to whom a production order is issued must give a report in writing to the magistrate or judge who made the order—

- (a) stating whether or not the order was executed; and
- (b) if the order was executed—setting out briefly the result of the execution of the order (including a brief description of any document inspected, copied or retained or from which an extract was taken); and
- (c) if the order was not executed—setting out briefly the reasons why the order was not executed.

(2) A report must be made within 10 days after the expiry of the production order.

**105. Absence etc. of magistrate or judge who made production order**

If the magistrate or judge who made a production order has ceased to hold office or is absent, a report required to be given to him or her under section 104 must be given to any other magistrate or judge.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 13—Information Gathering Powers

s. 106

**106. Effect of production orders on proceedings etc.**

(1) A person is not excused from producing or making available a document when required to do so by a production order on the ground that to do so—

(a) might tend to incriminate the person or make the person liable to a penalty; or

(b) would be in breach of an obligation by a legal practitioner to a client not to disclose the existence or contents of the document; or

S. 106(1)(b)  
amended by  
No. 43/1998  
s. 29(1).

(c) would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.

S. 106(1)(c)  
inserted by  
No. 43/1998  
s. 29(1).

(2) If a person produces or makes available a document under a production order—

S. 106(2)  
amended by  
No. 43/1998  
s. 29(2).

(a) the production or making available of the document; or

(b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document—

is not admissible against the person or another person to whom the person owes the obligation referred to in paragraph (b) or (c) of sub-section (1) in any criminal proceedings other than proceedings for an offence against section 108.

(3) An action, suit or proceeding does not lie against a person who, in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of a document, produces or makes available the document when required to do so by a production order.

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**107. Variation of production orders**

- (1) If a court makes a production order requiring a person to produce a document, the person against whom the order is made may apply to the court for a variation of the order.
- (2) An applicant must give written notice of the application to the applicant for the production order.

**108. Failure to comply with production order**

- (1) A person against whom a production order is made must not—
  - (a) contravene the order without reasonable excuse; or
  - (b) in purported compliance with the order, produce or make available a document known to the person to be false or misleading in a material particular without—
    - (i) indicating to the member of the police force to whom the document is produced or made available that the document is false or misleading and the respect in which it is false or misleading; and
    - (ii) providing correct information to the member of the police force if the person is in possession of, or can reasonably acquire, the correct information.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

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- (2) A person against whom a production order is made must not—
- (a) without reasonable excuse, destroy, dispose of or deliver to another person documents subject to the order that were in the possession or control of the first mentioned person when notice of the making of the order was given to the person; or
  - (b) in any other manner obstruct or evade compliance with the order.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (3) A person must not contravene an order made under section 101(6).

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

**Division 2—Search Powers**

**109. Application for search warrant for property-tracking documents**

- (1) The DPP or a member of the police force may apply to a magistrate or to a judge of the Supreme Court or County Court for a search warrant for property-tracking documents in relation to a Schedule 1 offence or a Schedule 2 offence of which a person has been convicted or which the applicant has reasonable grounds for believing to have been committed by a person.

S. 109(1)  
amended by  
No. 87/2004  
s. 22(2)(i).

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*Act No. 108/1997*

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**S. 109(2)**  
**amended by**  
**No. 87/2004**  
**s. 22(2)(j).**

- (2) An application can only be made under sub-section (1) if the applicant has reasonable grounds for believing that there is, or may be within the next 72 hours, in or on any premises, a property-tracking document in relation to the Schedule 1 offence or the Schedule 2 offence.
- (3) An application under sub-section (1)—
  - (a) must be in writing; and
  - (b) must be supported by evidence on oath or by affidavit setting out the grounds on which it is made; and
  - (c) must be heard in closed court.
- (4) A magistrate or judge hearing an application under sub-section (1) may require the applicant to give him or her, either orally or in writing, any additional information that he or she requires concerning the grounds on which the order is sought.

**110. Search warrants**

- (1) A magistrate or judge to whom an application is made under section 109(1) may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (2) A magistrate or judge must not issue a search warrant unless he or she is satisfied that—
  - (a) the document cannot be identified or described with sufficient particularity to enable a production order to be made in respect of it; or
  - (b) a production order made in respect of the document has not been complied with; or

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*Act No. 108/1997*

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- (c) there are reasonable grounds to suspect that it would be unlikely that any production order made in respect of the document would be complied with; or
- (d) the investigation might be seriously prejudiced if the applicant did not gain immediate access to the document without notice to any person.
- (3) If the applicant's affidavit—
- (a) states that he or she believes that—
- (i) the person who was convicted of the offence, or is believed to have committed the offence, derived a benefit in relation to the offence, having regard to section 67 or 68 (as the case may be); and
- (ii) property specified in the application—
- (A) is subject to the effective control of that person; or
- (B) was the subject of a gift from that person; and
- (b) sets out the grounds on which the applicant holds those beliefs—

the magistrate or judge may if he or she considers that, having regard to the matters contained in that affidavit and to any other sworn evidence before him or her, there are reasonable grounds for doing so, treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence.

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- (4) There must be stated in a search warrant—
- (a) the purpose for which the warrant is issued; and
  - (b) the nature of the offence in reliance on which the warrant is issued; and
  - (c) a description of the kind of documents authorised to be seized.
- (5) Every warrant issued under this section must be in the prescribed form.

**111. Expiry of warrant**

A search warrant ceases to have effect—

- (a) at the end of the period of 1 month after its issue; or
- (b) if it is recalled and cancelled by the magistrate or judge who issued it; or
- (c) when it is executed—

whichever occurs first.

**112. Application of Magistrates' Court Act 1989**

Except to the extent that a contrary intention appears in this Division, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this Division.

**113. Authority conferred by search warrant**

A search warrant authorises the person to whom it is directed, with any assistants and by any force that is necessary and reasonable—

- (a) to break, enter and search any premises named or described in the warrant for any document of the kind described in the warrant; and



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- (b) to seize any document found in the course of the search that the person executing the warrant believes, on reasonable grounds, to be a document of that kind; and
- (c) to seize any document or thing found in the course of the search that the person executing the warrant believes, on reasonable grounds—
- (i) to be a property-tracking document in relation to the offence (although not of a kind described in the warrant) or in relation to another Schedule 1 offence or Schedule 2 offence; or
  - (ii) to be a thing that will afford evidence about the commission of a Schedule 1 offence—

S. 113(c)(i)  
amended by  
No. 87/2004  
s. 22(2)(k).

S. 113(c)(ii)  
amended by  
No. 87/2004  
s. 22(2)(l).

and that he or she believes, on reasonable grounds, is necessary to be seized in order to prevent its concealment, loss or destruction.

**114. Search for documents with consent**

S. 114  
amended by  
No. 87/2004  
s. 22(2)(m).

Nothing in this Division prevents a member of the police force, with the consent of the occupier of any premises, entering and searching the premises for a property-tracking document in relation to a Schedule 1 offence or a Schedule 2 offence and seizing any document found in the course of the search that he or she believes, on reasonable grounds, to be a document of that kind.

**Division 3—Monitoring Orders**

**115. Application for monitoring order**

(1AA) In this section—

**"the DPI"** means the Director, Police Integrity under section 102A(2) of the **Police Regulation Act 1958**.

S. 115(1AA)  
inserted by  
No. 87/2004  
s. 21(1).

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S. 115(1)  
amended by  
No. 87/2004  
s. 21(2).

- (1) The DPI or a member of the police force may, without notice, apply to the Supreme Court for an order directing a financial institution to give to a particular law enforcement agency information obtained by the institution about transactions conducted through an account held by a particular person with the institution, including information about—
  - (a) the making of a fixed term deposit; and
  - (b) the transfer of the whole or of any part of a fixed term deposit at the end of the term.
- (2) An application under sub-section (1) must be supported by an affidavit of the applicant—
  - (a) stating that he or she believes that the person in respect of whose account the information is sought—
    - (i) has committed, or is about to commit, a Schedule 1 offence or a Schedule 2 offence; or
    - (ii) was involved in the commission, or is about to be involved in the commission, of such an offence; or
    - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of such an offence; and
  - (b) setting out the grounds on which the applicant holds those beliefs.
- (3) The Supreme Court may require the applicant to give it any additional information that it requires concerning the grounds on which the order is sought.
- (4) An application under sub-section (1) must be heard in closed court.

S. 115(2)(a)(i)  
amended by  
No. 87/2004  
s. 21(3).

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**116. Monitoring orders**

- (1) The Supreme Court may, on an application under section 115(1), if it considers that, having regard to the matters contained in the affidavit of the applicant and to any other sworn evidence before it, there are reasonable grounds for doing so, make a monitoring order against the financial institution.
- (2) A monitoring order must specify—
  - (a) the name or names in which the account is believed to be held; and
  - (b) the kind of information that the financial institution is required to give; and
  - (c) the law enforcement agency to which the information is to be given; and
  - (d) the manner in which the information is to be given; and
  - (e) the period during which the order is to have effect.
- (3) A period specified under sub-section (2)(e) must not commence earlier than the day on which notice of the order is given to the financial institution and must not end later than 3 months after the date of the order.
- (4) If a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made must be disregarded for the purposes of the application of section 194 or 195A of the **Crimes Act 1958** in relation to the institution.
- (5) When a monitoring order has been made the applicant must give written notice of its making to the financial institution against whom it is made.

**S. 116(4)**  
amended by  
**No. 104/2003**  
**s. 5(6).**

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**117. Failure to comply with monitoring order**

- (1) A financial institution that has been given notice of a monitoring order must not knowingly—
- (a) contravene the order; or
  - (b) in purported compliance with the order give information that is false or misleading in a material particular.

Penalty: Level 5 fine (1200 penalty units maximum).

- (2) An offence against this section is a summary offence.

**118. Existence and operation of monitoring order not to be disclosed**

- (1) A financial institution that is, or has been, subject to a monitoring order must not disclose the existence or operation of the order to any person (including the person to whom the order relates) except—
- (a) if the order specifies the police force of Victoria as the law enforcement agency to which information is to be given—a member of the police force; or
  - (b) if the order specifies another authority or person as the law enforcement agency to which information is to be given—a member, or member of the staff, of the agency; or
  - (c) an officer or agent of the financial institution, for the purpose of ensuring that the order is complied with; or

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- (d) a legal practitioner acting for the financial institution, for the purpose of obtaining legal advice or representation in relation to the order.

Penalty: Level 5 fine (1200 penalty units maximum).

- (2) The law enforcement agency to which information is given under a monitoring order must give that information to a prescribed person authorised by the Minister for the purposes of this sub-section.
- (3) A person to whom the existence or operation of a monitoring order is disclosed in accordance with sub-section (1) or to whom information is given under sub-section (2) must not—
- (a) while he or she is a person of a kind referred to in paragraph (a), (b), (c) or (d) of sub-section (1) or a person referred to in sub-section (2), disclose the existence or operation of the order to any person except another person of that kind for the purpose of—
- (i) if the disclosure is made by a person of a kind referred to in paragraph (a) or (b) of sub-section (1) or a person referred to in sub-section (2)—the performance of his or her duties; or
- (ii) if the disclosure is made by an officer or agent of the financial institution—ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or
- (iii) if the disclosure is made by a legal practitioner—giving legal advice or providing representation in relation to the order; or
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(b) when he or she is no longer a person of a kind referred to in paragraph (a), (b), (c) or (d) of sub-section (1) or a person referred to in sub-section (2), make a record of, or disclose, the existence or operation of the order in any circumstances.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

(4) Nothing in sub-section (3) prevents the disclosure by a person of a kind referred to in paragraph (a) or (b) of sub-section (1) or a person referred to in sub-section (2) of the existence or operation of a monitoring order—

(a) for the purposes of, or in connection with, legal proceedings; or

(b) in the course of proceedings before a court.

(5) A person of a kind referred to in paragraph (a) or (b) of sub-section (1) or a person referred to in sub-section (2) must not be required to disclose to any court the existence or operation of a monitoring order.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

(7) An offence against sub-section (1) is a summary offence.

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**Division 3A—Information Notices**

Pt 13 Div. 3A  
(Heading and  
ss 118A–  
118M)  
inserted by  
No. 63/2003  
s. 29.

**118A. Definition**

In this Division—

**"authorised member of the police force"** means  
a member of the police force authorised  
under section 118B.

S. 118A  
inserted by  
No. 63/2003  
s. 29.

**118B. Chief Commissioner of Police may authorise police  
to issue information notices**

The Chief Commissioner of Police may authorise  
in writing a member of the police force of the rank  
of inspector or above to issue information notices.

S. 118B  
inserted by  
No. 63/2003  
s. 29.

**118C. Who can issue information notices?**

An information notice may be issued in  
accordance with this Division by—

- (a) an authorised member of the police force; or
- (b) a prescribed person.

S. 118C  
inserted by  
No. 63/2003  
s. 29.

**118D. Issuing information notices—authorised member of  
police force**

- (1) An authorised member of the police force may  
issue an information notice to a financial  
institution for the purposes of any proceedings  
under this Act.
- (2) An authorised member of the police force must  
not issue an information notice unless he or she  
reasonably believes that—

S. 118D  
inserted by  
No. 63/2003  
s. 29.

S. 118D(1)  
amended by  
No. 104/2003  
s. 5(7).

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- (a) the person in respect of whose account with the financial institution the information is sought or a person who has an interest in that account—
- (i) has committed, or is about to commit, a Schedule 1 offence or a Schedule 2 offence; or
  - (ii) was involved in the commission, or is about to be involved in the commission, of such an offence; or
  - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of such an offence; and
- (b) the issuing of the information notice is required to determine whether to take any action under this Act.

S. 118D(2)(a)(i)  
amended by  
No. 87/2004  
s. 22(2)(n).

S. 118E  
inserted by  
No. 63/2003  
s. 29.

**118E. Issuing information notices—prescribed person**

- (1) A person prescribed for the purposes of section 118C may issue an information notice to a financial institution for the purposes of satisfying a pecuniary penalty order.
- (2) A person prescribed for the purposes of section 118C must not issue an information notice unless he or she reasonably believes that—
  - (a) a pecuniary penalty order has been made against a defendant in relation to a Schedule 1 offence or a Schedule 2 offence; and
  - (b) the issuing of the information notice is required to satisfy the pecuniary penalty order.

S. 118E(2)(a)  
amended by  
No. 87/2004  
s. 22(2)(o).



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**118F. Information notice to be signed and reasons recorded**

S. 118F  
inserted by  
No. 63/2003  
s. 29.

- (1) A person who issues an information notice must sign the notice.
- (2) A person who issues an information notice must make a written record of the reasons he or she has relied on to justify the issuing of the information notice.

**118G. What can an information notice require?**

S. 118G  
inserted by  
No. 63/2003  
s. 29.

- (1) An information notice may require a financial institution to give to the law enforcement agency specified in the information notice the following information only—
  - (a) if the information notice specifies a name or names in which an account is believed to be held—
    - (i) whether an account is held in that name or those names with the financial institution; and
    - (ii) if an account is held in that name or those names with that institution, the account number and current balance of that account; or
  - (b) if the information notice specifies an account number—
    - (i) the name or names in which that account is held; and
    - (ii) the balance of that account.
- (2) An information notice may only require a financial institution to give information to the law enforcement agency of which the person who issued the information notice is a member or an officer or an employee.

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s. 118H

S. 118H  
inserted by  
No. 63/2003  
s. 29.

**118H. What must the information notice contain?**

- (1) An information notice must be in the prescribed form.
- (2) An information notice must specify—
  - (a) the name of the person who has issued the information notice; and
  - (b) the section of this Act under which that person is authorised to issue information notices; and
  - (c) the name of the financial institution; and
  - (d) the name or names in which the account is believed to be held or the account number of the account believed to be held with the financial institution (as the case requires); and
  - (e) any other details that may assist the financial institution to identify the account; and
  - (f) the kind of information that the financial institution is required to give; and
  - (g) the law enforcement agency to which the information is to be given, being the law enforcement agency of which the person who issued the information notice is a member or an officer or an employee; and
  - (h) that the information required is to be given in writing; and
  - (i) the period within which the financial institution is to comply with the information notice, being a period of not less than 3 business days after the date on which the information notice is given to the financial institution; and
  - (j) the effect of sections 118J, 118K and 118L.

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**118I. How is an information notice given?**

An information notice must be given to a financial institution in accordance with section 137 and, without limiting the generality of that section, may be given by facsimile.

S. 118I  
inserted by  
No. 63/2003  
s. 29.

**118J. Offence to fail to comply with information notice**

- (1) A financial institution that has been given an information notice must not—
- (a) without reasonable excuse, fail to comply with the information notice; or
  - (b) in purported compliance with the information notice, knowingly give information that is false or misleading in a material particular.

Penalty: Level 5 fine (1200 penalty units maximum).

- (2) An offence against this section is a summary offence.

S. 118J  
inserted by  
No. 63/2003  
s. 29.

**118K. Offence to disclose existence of information notice**

- (1) Subject to sub-section (7), a financial institution that is given, or has been given, an information notice must not disclose the existence of the information notice to any person (including the person to whom the notice relates) except—
- (a) if the information notice specifies the police force of Victoria as the law enforcement agency to which the information is to be given, a member of the police force; or
  - (b) if the information notice specifies another authority or person as the law enforcement agency to which information is to be given, a member or an officer or an employee of the agency; or

S. 118K  
inserted by  
No. 63/2003  
s. 29.

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- (c) an officer or agent of the financial institution, for the purpose of ensuring that the information notice is complied with; or
  - (d) a legal practitioner acting for the financial institution, for the purpose of obtaining legal advice or representation in relation to the information notice.

Penalty: Level 5 fine (1200 penalty units maximum).

- (2) Subject to sub-section (7), a person to whom the existence of an information notice is disclosed in accordance with sub-section (1) must not—
  - (a) while he or she is a person of a kind referred to in paragraph (a), (b), (c) or (d) of sub-section (1), disclose the existence of the information notice to any person except another person of that kind for the purpose of—
    - (i) if the disclosure is made by a person of a kind referred to in paragraph (a) or (b) of sub-section (1), the performance of his or her duties; or
    - (ii) if the disclosure is made by an officer or agent of the financial institution, ensuring that the information notice is complied with or obtaining legal advice or representation in relation to the information notice; or
    - (iii) if the disclosure is made by a legal practitioner, giving legal advice or providing representation in relation to the information notice; or

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s. 118K

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(b) when he or she is no longer a person of a kind referred to in paragraph (a), (b), (c) or (d) of sub-section (1), make a record of, or disclose, the existence of the information notice in any circumstances.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (3) Nothing in sub-section (2) prevents the disclosure by a person of a kind referred to in paragraph (a), (b), (c) or (d) of sub-section (1) of the existence of an information notice—
- (a) for the purposes of, or in connection with, legal proceedings; or
  - (b) in the course of proceedings before a court.
- (4) Nothing in sub-section (2) prevents the disclosure by a person of a kind referred to in paragraph (a) or (b) of sub-section (1) of the existence of an information notice for the purposes of a report under section 139A(1) or (2).
- (5) A reference in this section to disclosing the existence of an information notice to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence of the information notice.
- (6) An offence against sub-section (1) is a summary offence.
- (7) It is not an offence under this section to disclose the existence of an information notice if the existence of the information notice has been made known in any proceedings in open court.

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**s. 118L**

S. 118L  
inserted by  
No. 63/2003  
s. 29.

**118L. Immunity from suit**

No civil proceeding lies against—

- (a) a financial institution; or
- (b) a person who is an officer, employee or agent of that financial institution acting in the course of that person's duties as an officer, employee or agent—

in relation to any action taken or information given by the institution or person in compliance with an information notice.

S. 118M  
(Heading)  
substituted by  
No. 104/2003  
s. 5(8)(a).  
S. 118M  
inserted by  
No. 63/2003  
s. 29,  
amended by  
No. 104/2003  
s. 5(8)(b).

**118M. Giving of information notice to be disregarded for certain purposes**

If a financial institution is given, or has been given, an information notice, the fact that the information notice has been issued must be disregarded for the purposes of the application of section 194 or 195A of the **Crimes Act 1958** in relation to the institution.

**Division 4—Reports of Suspect Transactions**

**119. Reports of suspect transactions**

- (1) A cash dealer who is a party to a transaction and who has reasonable grounds for suspecting that information that the cash dealer has concerning the transaction—
  - (a) may be relevant to an investigation, or prosecution, of a person for an offence against a law of Victoria; or
  - (b) may be of assistance in the enforcement of this Act or the regulations made under this Act—

must, as soon as practicable, prepare a report of the transaction and communicate the information contained in it to the Director.

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- (2) Sub-section (1) applies only where the cash dealer is not required to report the transaction under Division 2 of Part II of the Financial Transaction Reports Act 1988 of the Commonwealth.
- (3) The report must—
- (a) be in the form approved by the Director in writing for the purposes of section 16 of the Financial Transaction Reports Act 1988 of the Commonwealth;
  - (b) contain the reportable details of the transaction;
  - (c) set out the grounds for the suspicion referred to in sub-section (1);
  - (d) be signed by the cash dealer.
- (4) The communication to the Director of the information contained in the report must be made—
- (a) by giving the Director a copy of the report; or
  - (b) in any other manner and form approved by the Director.
- (5) An approval for the purposes of sub-section (4)(b)—
- (a) must be in writing; and
  - (b) may relate to a specified cash dealer or a specified class of cash dealers.
- (6) A cash dealer who communicates information to the Director under sub-section (1) or Division 2 of Part II of the Financial Transaction Reports Act 1988 of the Commonwealth must, if requested to do so by a member of the police force, give any further information that is related, whether directly or indirectly, to the information communicated to the Director and is specified in

**S. 119(6)**  
**amended by**  
**No. 43/1998**  
**s. 30.**

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the request to the extent to which the cash dealer has that information.

- (7) An action, suit or proceeding does not lie against—
- (a) a cash dealer; or
  - (b) an officer, employee or agent of the cash dealer acting in the course of that person's appointment, employment or agency—
- in relation to any action by the cash dealer or person taken under this section or taken in the mistaken belief that it was required by this section.
- (8) A cash dealer or an officer, employee or agent of a cash dealer who communicates or gives information under this section must be taken, for the purposes of the offence of money laundering, not to have been in possession of that information at any time.
- (9) A cash dealer must not refuse or fail—
- (a) to prepare a report; or
  - (b) to communicate information to the Director—
- when and as required under sub-section (1).
- Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.
- (10) A cash dealer must not, in communicating information to the Director under sub-section (1), knowingly—
- (a) make a statement that is false or misleading in a material particular; or



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- (b) omit from a statement any matter or thing without which the statement is misleading in a material particular.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

**Division 4A—Sharing of Information**

Pt 13 Div. 4A  
(Heading and  
s. 119A)  
inserted by  
No. 63/2003  
s. 30.

**119A. Communication of information between law enforcement agencies**

S. 119A  
inserted by  
No. 63/2003  
s. 30.

A person who is a member or an officer or employee of a law enforcement agency may divulge or communicate any information to another law enforcement agency if the person divulging or communicating that information believes on reasonable grounds that to do so is necessary for—

- (a) the management of property—
- (i) seized under this Act; or
  - (ii) in respect of which a restraining order has been made; or
  - (iii) to which an embargo notice relates; or
- (b) the purposes of any proceedings under this Act; or
- (c) the enforcement of this Act or any orders made under this Act.

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**Division 5—Interstate Offences**

**120. Ministerial arrangements for transmission of documents or information**

(1) The Minister may enter into arrangements with a Minister to whom the administration of a corresponding law is committed under which—

(a) documents or things seized, copies or extracts of documents produced, and information obtained under this Part in respect of an interstate offence—

(i) are to be transmitted to the appropriate law enforcement agency in the place where the corresponding law is in force for the purposes of investigation of, or proceedings in respect of, that offence; and

(ii) when no longer required for those purposes, are to be returned, unless disposed of by order or direction of a court, to the Chief Commissioner of Police in Victoria; and

S. 120(1)(a)(ii)  
amended by  
No. 43/1998  
s. 39(f).

(b) documents or things seized, copies or extracts of documents produced, and information obtained under the corresponding law in respect of a Schedule 1 offence—

(i) are to be transmitted to the Chief Commissioner of Police in Victoria; and

(ii) when no longer required for the purposes of investigation of, or proceedings in respect of the offence, are to be returned, unless disposed of by order or direction of a court, to the

S. 120(1)(b)  
amended by  
No. 87/2004  
s. 22(2)(p).

S. 120(1)(b)(i)  
amended by  
No. 43/1998  
s. 39(g).

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appropriate law enforcement agency in the place in which they were seized.

- (2) The owner of a document or thing returned to the Chief Commissioner of Police in accordance with arrangements under sub-section (1) is entitled to its return.
- (3) The right referred to in sub-section (2) is enforceable by action in detinue in a court of competent jurisdiction.

**Division 6—Document Requests**

Pt 13 Div. 6  
(Heading and  
ss 120A–  
120E)  
inserted by  
No. 63/2003  
s. 31.

**120A. When a document request may be made**

If, under a memorandum of understanding entered into under section 78A, the Secretary has responsibility for property, the Secretary may request any person whom the Secretary believes has possession or control of documents that relate to the maintenance and management of that property to produce those documents to the Secretary.

S. 120A  
inserted by  
No. 63/2003  
s. 31.

**120B. Document request**

A document request must—

- (a) be in the prescribed form; and
- (b) specify the basis on which the Secretary has responsibility for the property; and
- (c) specify the documents requested or the type of documents requested; and

S. 120B  
inserted by  
No. 63/2003  
s. 31.

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- (d) state the purposes for which the documents are sought; and
- (e) state whether the documents will be provided to any other person and if so, in what circumstances; and
- (f) be given to the person who is requested to produce the documents.

S. 120C  
inserted by  
No. 63/2003  
s. 31.

**120C. Offences**

- (1) A person who is given a document request must not, without reasonable excuse, fail to comply with the document request within 14 days after the day on which the document request is given.

Penalty: Level 9 fine (60 penalty units maximum).

- (2) A person who is given a document request must not provide any document that is false or misleading in a material particular.

Penalty: Level 9 fine (60 penalty units maximum).

S. 120D  
inserted by  
No. 63/2003  
s. 31.

**120D. Requested documents to be provided—Court order**

If a person has been convicted of an offence against section 120C, the court which convicts that person may direct the person to provide the documents that should have been provided to the Secretary.

S. 120E  
inserted by  
No. 63/2003  
s. 31.

**120E. Return of documents**

- (1) A document that is produced under this Division to the Secretary must be returned to the person who produced the document within 7 days after so producing the document.

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**s. 120E**

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- (2) If the Secretary believes on reasonable grounds that it is necessary for the purposes of this Act to retain the document for more than 7 days, the Secretary must give the person who produced the document a copy of the document certified in writing to be a true copy of the document.

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\* \* \* \* \*

**Pt 14  
(Heading and  
ss 121–123)  
repealed by  
No. 104/2003  
s. 5(1).**

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**PART 15—INTERSTATE ORDERS AND WARRANTS**

S. 124  
amended by  
No. 87/2004  
s. 22(2)(q).

**124. Definition**

In this Part—

**"proceeds of crime"** means—

- (a) proceeds of a Schedule 1 offence or an offence against a law of the Commonwealth that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence) committed in Victoria; or
- (b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that—
  - (i) occurred outside Victoria; and
  - (ii) would, if they had occurred in Victoria, have constituted an offence referred to in paragraph (a).

**125. Registration of interstate orders**

(1) If—

- (a) an interstate forfeiture order expressly applies to specified property in Victoria; or
- (b) an interstate restraining order expressly applies to—
  - (i) specified property in Victoria; or
  - (ii) all property in Victoria of a specified person—

a copy of the order, sealed by the court which made it, may be registered in the Supreme Court by the applicant for the order or by the DPP or by a person who is prescribed for the purposes of this

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sub-section or a person of a class of persons so prescribed.

- (2) A copy of any amendments made to an interstate order (whether those amendments were made before or after its registration in the Supreme Court), sealed by the court which made the amendments, may be registered in the same way, and the amendments do not, for the purposes of this Act, have effect until they are registered.
- (3) Registration of an interstate order may be refused to the extent that the order would not, on registration, be capable of enforcement in Victoria.
- (4) Registration is to be effected in accordance with the rules of the Supreme Court.
- (5) A facsimile copy of an interstate order or of any amendments made to an interstate order is, if the facsimile copy is certified in accordance with the rules of the Supreme Court, to be regarded for the purposes of this Act as the same as the sealed copy but registration effected by means of it ceases to have effect at the end of 5 days unless the sealed copy has been registered by then.

**126. Effect of registration**

- (1) A registered interstate forfeiture order is, for the purposes of this Act (other than Parts 5, 6 and 7 and section 142) to be taken to be a forfeiture order made under section 33 at the time of registration.
- (2) A registered interstate restraining order is, for the purposes of this Act (other than sections 19, 20, 26, 27, 72 and 142) to be taken to be a restraining order made under section 18.

S. 126(2)  
amended by  
No. 43/1998  
s. 31.

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**127. Duration of registration**

An interstate forfeiture order or an interstate restraining order ceases to be registered under this Act if—

- (a) it ceases to be in force in the State or Territory in which it was made; or
- (b) its registration is cancelled under this Act.

**128. Cancellation of registration**

(1) The registration of an interstate forfeiture order or an interstate restraining order may be cancelled by the Supreme Court or an officer of the Supreme Court prescribed by the rules of the Supreme Court if—

- (a) registration was improperly obtained; or
- (b) particulars of any amendments made to the order, or of any ancillary orders or directions made by a court, are not given to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.

(2) The registration of an interstate forfeiture order or an interstate restraining order may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in Victoria.

**129. Charge on property subject to registered interstate restraining order**

(1) If—

- (a) in reliance on the charging, or the proposed charging of a person with, or the conviction of a person of, an interstate offence, an interstate restraining order has been made; and

S. 129(1)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 25).



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*Act No. 108/1997*

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(b) an interstate pecuniary penalty order is made—

then there is created, on the registration of the interstate restraining order under this Act or the registration in Victoria of the interstate pecuniary penalty order under the Service and Execution of Process Act 1992 of the Commonwealth (whichever is the later), a charge on all the property to which the restraining order applies to secure the payment of the pecuniary penalty.

- (2) A charge created by sub-section (1) on property ceases to have effect when under the corresponding law the charge created on the making of the pecuniary penalty order ceases to have effect.
- (3) Sub-sections (4) and (5) of section 72 apply to a charge created by sub-section (1) of this section in the same manner and to the same extent as they apply to a charge created by section 72(1) or (2).

**130. Trustee may act as agent**

A trustee may enter into an agreement to act as the agent of a person directed by an interstate restraining order to take control of property.

**131. Interstate orders and search warrants**

- (1) If property has been seized under a search warrant issued in reliance on the commission of an interstate offence and a court of the other State or the Territory makes an order—
  - (a) directing that the property be returned to the person from whose possession it was seized;  
or
  - (b) directing that that person be allowed access to the property—

the order must, as far as possible, be given effect to in Victoria.

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**S. 131(2)(a)**  
**amended by**  
**No. 87/2004**  
**s. 22(2)(r).**

(2) If—

- (a) property to which this sub-section applies has been seized in another State or a Territory under a search warrant issued under a corresponding law in reliance on the commission of a Schedule 1 offence; and
- (b) an application has been made to a court for a forfeiture order or a civil forfeiture order or a restraining order for the purposes of automatic forfeiture in respect of the property; and
- (c) the court refuses to make the order or excludes the property from the operation of any restraining order made by it—

the court must make an order directing that the property be returned to the person from whose possession it was seized.

**S. 131(3)**  
**amended by**  
**No. 87/2004**  
**s. 22(2)(s).**

- (3) If property to which this sub-section applies has been seized in another State or a Territory under a search warrant issued under a corresponding law in reliance on the commission of a Schedule 1 offence or a Schedule 2 offence, the person from whose possession the property was seized may apply to the Magistrates' Court for an order—
  - (a) directing that the property be returned to that person; or
  - (b) directing that the person be allowed access to the property—

and the Court may make such an order on such terms and conditions (if any) as it thinks fit.

- (4) The applicant for an order under sub-section (3) must give to the DPP or an appropriate officer written notice of the application and of the date, time and place fixed for the hearing of it.

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- (5) Sub-sections (2) and (3) apply to all property seized under a search warrant other than property that—
- (a) was used in, or in connection with, the commission of an interstate offence; or
  - (b) was derived or realised, directly or indirectly, by any person, in relation to an interstate offence.
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**PART 16—MISCELLANEOUS**

**132. Standard of proof**

Any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

**133. Nature of proceedings**

- (1) Proceedings on an application under this Act are civil in nature, except as otherwise provided by this Act.
- (2) Despite sub-section (1), the rules regulating the practice and procedure of a court in civil proceedings do not apply to a proceeding on an application under this Act.
- (3) The fact that criminal proceedings have been instituted or commenced is not a ground on which a court may stay proceedings under this Act.

S. 133A  
inserted by  
No. 43/1998  
s. 32.

**133A. Costs**

- (1) Costs may only be awarded in accordance with this section.
- (2) If—
  - (a) a person brings, or appears at, proceedings under this Act before a court in order—
    - (i) to prevent a forfeiture order or restraining order from being made against property of the person; or
    - (ii) to have property of the person excluded from a forfeiture order or restraining order; and
  - (b) the person is successful in those proceedings; and

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- (c) the court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made—

the court may order the applicant for the forfeiture order or restraining order to pay all costs incurred by the person in connection with the proceedings or any part of those costs that is determined by the court.

- (3) If a person brings, or appears at, proceedings under this Act before the Supreme Court in order—
- (a) to prevent a civil forfeiture order or a restraining order for the purpose of civil forfeiture from being made against property of the person; or
- (b) to have property of the person excluded from a civil forfeiture order or a restraining order for the purpose of civil forfeiture—

the Supreme Court may order the applicant for the civil forfeiture order or restraining order to pay all costs incurred by the person in connection with the proceedings or any part of those costs that is determined by the Court if—

- (c) the Supreme Court refuses to make a civil forfeiture order under section 38; or
- (d) the person (other than the defendant) is successful in those proceedings.
- (4) The amount of costs referred to in sub-sections (2) and (3) is in the discretion of the court.

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**134. Crime Prevention and Victims' Aid Fund**

- (1) There shall continue to be a Trust Fund called the Crime Prevention and Victims' Aid Fund within the Public Account and the following must be paid into it—
    - (a) all money appropriated by Parliament for the purposes of the Fund;
    - (b) all money received by the State from the Confiscated Assets Trust Fund established under the Proceeds of Crime Act 1987 of the Commonwealth;
    - (c) all other money received for the purposes of the Fund.
  - (2) The Minister may pay out of the Fund any sums that he or she deems fit, and subject to any conditions, limitations or restrictions that he or she determines, for or towards—
    - (a) organisations involved in providing information, support or assistance to victims of crime; or
    - (b) the development or co-ordination of programs or services for the provision of information, support or assistance to victims of crime; or
    - (c) the development, implementation, co-ordination or evaluation of crime prevention and control programs; or
    - (d) criminological research.
  - (3) All money realised under a forfeiture order, a civil forfeiture order, a pecuniary penalty order or by automatic forfeiture under section 35 that is not required to be paid to a person or body under section 75(1) must be paid into the Consolidated Fund.
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**135. Conversion costs**

Conversion costs are the reasonable costs and expenses incurred in locating, storing, maintaining or disposing of, or otherwise in connection with the conversion into money of, property to which a forfeiture order, a civil forfeiture order or a pecuniary penalty order or automatic forfeiture under section 35 applies.

S. 135  
substituted by  
No. 43/1998  
s. 33.

**136. Stamp duty not payable**

No stamp duty is payable under the **Stamps Act 1958** in respect of the transfer of any property under this Act.

**137. Service of documents**

- (1) For the purposes of this Act, a document may be served on, or given to, a person—
- (a) if the person is a natural person—
    - (i) by delivering it personally to the person; or
    - (ii) by sending it by post to the person at his or her usual or last known residential or business address; or
    - (iii) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
  - (b) if the person is a company incorporated under the Corporations Act—
    - (i) by delivering it personally to the registered office of the company; or
    - (ii) by sending it by post to the registered office of the company; or

S. 137(1)(b)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 21.2).

- (iii) in any other way that service of documents may be effected on a body corporate; or
  - (c) if the person is an incorporated association within the meaning of the **Associations Incorporation Act 1981**, in accordance with section 48 of that Act.
- (2) If it appears to a court, by evidence on oath or by affidavit, that service cannot be promptly effected, the court may make an order for substituted service.

**138. Maximum fine for body corporate**

- (1) If a body corporate is found guilty of an offence against this Act and the court has power to fine the body corporate, it may, unless the contrary intention appears, impose on the body corporate a fine not greater than 5 times the amount of the maximum fine that could be imposed by the court on a natural person found guilty of the same offence committed at the same time.
- (2) This section has effect despite anything to the contrary in the **Sentencing Act 1991** and despite the prescription of a maximum fine for the offence applicable to all offenders.

**139. Law enforcement agency to provide information to Minister**

A law enforcement agency must provide to the Minister any information that the Minister requires within the time specified by the Minister.

**139A. Reports to the Minister**

- (1) As soon as practicable after the end of each financial year, the Chief Commissioner of Police must submit a report to the Minister that includes the following information—

S. 139A  
inserted by  
No. 63/2003  
s. 32.



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- (a) the number of information notices issued by members of the police force; and
  - (b) the number of applications for freezing orders made by members of the police force—
    - (i) by telephone; and
    - (ii) by facsimile; and
    - (iii) in person; and
  - (c) the number of freezing orders made; and
  - (d) the number of freezing orders made in respect of accounts which were subsequently the subject of a restraining order; and
  - (e) the number of notices of freezing orders given under section 31G to financial institutions.
- (2) As soon as practicable after the end of each financial year, a law enforcement agency prescribed for the purposes of this section must submit a report to the Minister that includes the following information—
- (a) the number of information notices issued by the law enforcement agency; and
  - (b) the number of applications by the law enforcement agency for search and inspection warrants; and
  - (c) the number of search and inspection warrants issued to the law enforcement agency; and
  - (d) the number of search and inspection warrants executed by the law enforcement agency; and
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- (e) the number of search and inspection warrants executed by the law enforcement agency which involved the use of force to enter premises; and
  - (f) the number of document requests made by the law enforcement agency under a delegation by the Secretary in accordance with section 143A.
- (3) The Minister must cause each report under subsections (1) and (2) to be laid before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.

**140. Secrecy**

S. 140(1)  
amended by  
No. 63/2003  
s. 33(a).

- (1) Except as provided by this section and section 119A, a person who obtains information, or to whom information is communicated or given, under Part 13 must not make a record of it or directly or indirectly divulge or communicate it otherwise than—
- (a) with the consent of the person or body to whom the information relates; or
  - (b) in the course of performing a duty under or in connection with this Act; or
  - (c) in connection with the enforcement of the laws of the State.

Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

- (2) A person who obtains information, or to whom information is communicated or given, under Part 13 may, or may be compelled to, divulge or communicate the information to a court if it is necessary to do so for the purpose of any legal proceedings arising out of this Act or any proceedings for the enforcement of the laws of the

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State but is otherwise not competent or  
compellable to give evidence in relation to that  
information.

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S. 140(3)  
repealed by  
No. 63/2003  
s. 33(b).

- (4) The provisions of this section are additional to,  
and do not take away from, any other provision of  
this Act prohibiting or limiting the disclosure of  
information.

**141. Court may hear applications at same time**

- (1) If an application for a civil forfeiture order,  
forfeiture order or pecuniary penalty order or a  
disposal order is made to a court before which a  
person was convicted of a Schedule 1 offence—
- (a) the application may be dealt with by that  
court; and
- (b) any function or power may be exercised and  
any duty may be performed by that court in  
relation to the civil forfeiture order,  
forfeiture order or pecuniary penalty order or  
disposal order—

S. 141(1)  
amended by  
No. 87/2004  
s. 22(2)(t).

whether or not that court is constituted in the same  
way as it was constituted when the person was  
convicted of the offence.

- (2) A court may hear and determine at the same  
time—
- (a) 2 or more applications under this Act; or
- (b) applications under this Act and the Proceeds  
of Crime Act 1987 of the Commonwealth.

## 142. Appeals

(1) Without affecting any other right of appeal, a person who has an interest in property in respect of which—

- (a) a forfeiture order is made; or
- (b) the Supreme Court or the County Court has made, or refused to make, an exclusion order under section 22 or 52(1)—

may appeal against that order or refusal—

- (c) in the case of a person convicted of an offence in reliance on which the order was made—in the same manner as if the order were, or were part of, the sentence imposed in respect of the offence; or
- (d) in any other case—in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, the sentence imposed in respect of the offence.

(2) Without affecting any other right of appeal, a person who has an interest in property in respect of which—

- (a) a civil forfeiture order is made; or
- (b) the Supreme Court or the County Court has made, or refused to make, an exclusion order under section 24 or 54(1)—

may appeal against that order or refusal in the same manner as if the person had been convicted of the Schedule 2 offence in relation to which the order was made and the order were, or were part of, the sentence imposed in respect of the offence.

S. 142(1)(b)  
amended by  
No. 43/1998  
s. 34(1).

S. 142(2)  
amended by  
No. 87/2004  
s. 22(2)(u)(ii).

S. 142(2)(b)  
amended by  
No. 87/2004  
s. 22(2)(u)(i).

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(3) Without affecting any other right of appeal, a person against whom a pecuniary penalty order is made may appeal against that order in the same manner as if it were, or were part of, the sentence imposed in respect of the offence in relation to which the order was made.

(4) On appeal, a forfeiture order, a pecuniary penalty order, an exclusion order under section 22, 50(1), 52(1) or 54(1) or a refusal to make an exclusion order under section 22, 50(1), 52(1) or 54(1) may be confirmed, discharged or varied or the matter may be remitted for re-hearing to the court which made the order, or refused to make the order, with or without any direction in law.

**S. 142(4)**  
amended by  
**No. 43/1998**  
**s. 34(2).**

(5) The DPP or a prescribed person or a person belonging to a prescribed class of persons may appeal to the Court of Appeal against—

(a) a civil forfeiture order or against the refusal of the Supreme Court or the County Court to make a civil forfeiture order; or

**S. 142(5)(a)**  
amended by  
**No. 87/2004**  
**s. 22(2)(v)(i).**

(b) the making of an exclusion order under section 24 or 54(1); or

(c) the making of a pecuniary penalty order under Division 2 of Part 8 or against the refusal to make a pecuniary penalty order under Division 2 of Part 8—

**S. 142(5)(c)**  
amended by  
**No. 87/2004**  
**s. 22(2)(v)(ii).**

in the same manner as if the order or refusal were, or were part of, a sentence imposed in respect of the offence.

(6) On appeal, a civil forfeiture order, an exclusion order under section 24 or 54(1) or a refusal to make an exclusion order under section 24 or 54(1) may be confirmed, discharged or varied or the matter may be remitted for re-hearing to the Supreme Court or the County Court, as the case may be, with or without any direction in law.

**S. 142(6)**  
amended by  
**No. 87/2004**  
**s. 22(2)(w).**

**143. Provision of legal aid**

- (1) If a court is satisfied at any time that—
- (a) a restraining order has been made in respect of property of a person and the restraining order is in force; and
  - (b) the person is in need of legal assistance in respect of any legal proceeding, whether civil or criminal, and whether in respect of a charge to which the restraining order relates or otherwise, because the person is unable to afford the full cost of obtaining legal assistance from a private law practice or private legal practitioner (within the meaning of the **Legal Aid Act 1978**) from unrestrained property or income of the person—

the court may order Victoria Legal Aid to provide legal assistance to the person, on any conditions specified by the court, and may adjourn the legal proceeding until such assistance has been provided.

- (2) Despite anything in the **Legal Aid Act 1978**, Victoria Legal Aid must provide legal assistance in accordance with an order made under subsection (1).
- (3) If—
- (a) a court makes an order under this section; and
  - (b) a condition of the provision of legal assistance is that the cost or part of the cost, and any interest payable on the whole or the part of the cost, to Victoria Legal Aid of providing the assistance be secured by a charge over any land or any other property in which the person has an interest; and

S. 143(1)(b)  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 17.2)

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- (c) an amount required to be paid to Victoria Legal Aid under such a condition is not paid; and
  - (d) the person to whom legal assistance is provided is registered as the proprietor of an estate in fee simple, either solely or as a joint tenant or a tenant in common, in land under the **Transfer of Land Act 1958** or holds an estate in fee simple or an equity of redemption, either solely or as a joint tenant or a tenant in common, in land not under that Act—

Victoria Legal Aid may secure the payment of any amount which has not been paid (including any unpaid interest) and any interest which may become due and unpaid on the whole or any part of that amount by taking out a charge over that land.

- (4) A charge taken out by Victoria Legal Aid is to be for the benefit of the Legal Aid Fund.
- (5) Sections 47B, 47C, 47D and 47E of the **Legal Aid Act 1978** apply to a charge over land referred to in this section as if it were a charge to which section 47A(2) of that Act applies.
- (6) If an amount owed to Victoria Legal Aid under this section is not paid and Victoria Legal Aid is unable, by enforcing a charge to which subsection (3) applies or otherwise, to recover that amount, then the State must pay that amount to Victoria Legal Aid to the value of any property forfeited to the Minister or the amount of any penalty paid to the State (less conversion costs and any amount paid under section 31) in relation to the offence in reliance on which the restraining order was made and the Consolidated Fund is, to the necessary extent, appropriated accordingly.

S. 143(6)  
amended by  
No. 43/1998  
ss 36(za),  
39(h).

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 16—Miscellaneous

s. 143A

S. 143A  
inserted by  
No. 63/2003  
s. 34.

### 143A. Delegation

The Secretary, by instrument, may delegate to any prescribed person any power or function of the Secretary under Division 6 of Part 13.

### 144. Operation of other laws not affected

Nothing in this Act limits or restricts the operation of any other law providing for the forfeiture of property.

S. 144A  
inserted by  
No. 79/2006  
s. 13.

### 144A. Validation

- (1) A restraining order made on or before 26 September 2005 is not invalid only because it is directed to a named person and is deemed to have, and always to have had, effect according to its tenor.
- (2) Sub-section (1) does not affect the rights of the parties in the proceeding known as *Director of Public Prosecutions (Vic.) v. Navarolli and Mokbel* (No. 1545 of 2005) in the Supreme Court of Victoria.

S. 145  
amended by  
No. 63/2003  
s. 35 (ILA  
s. 39B(1)).

### 145. Supreme Court—limitation of jurisdiction

- (1) It is the intention of sections 55(10), 56(6), 57(6), 106(3) and 119(7) to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 118L to alter or vary section 85 of the **Constitution Act 1975**.

S. 145(2)  
inserted by  
No. 63/2003  
s. 35.

### 146. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.



- 
- (2) The regulations—
- (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstance.

**147. Rules of court**

Rules of court made by the authority having for the time being power to make rules regulating the practice and procedure of a court may include rules for or with respect to—

- (a) the joinder or severance of proceedings under this Act;
  - (b) the manner of giving any notice required to be given by or under this Act;
  - (c) the manner in which evidence of particular facts may be given in a proceeding under this Act.
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*Confiscation Act 1997*  
*Act No. 108/1997*

Part 17—Amendment of Sentencing Act 1991

s. 148

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**PART 17—AMENDMENT OF SENTENCING ACT 1991**

**148. New Part 2B inserted**

After Part 2A of the **Sentencing Act 1991**  
**insert—**

**'PART 2B—CONTINUING CRIMINAL  
ENTERPRISE OFFENDERS**

**6G. Application of Part**

This Part applies to a court in sentencing a continuing criminal enterprise offender for a continuing criminal enterprise offence.

**6H. Definitions for purposes of this Part**

(1) In this Part—

**"continuing criminal enterprise offence"**  
means an offence referred to in  
Schedule 1A;

**"continuing criminal enterprise offender"**  
means an offender who is found guilty  
of—

- (a) a continuing criminal enterprise offence and who in another trial or hearing or more than one other trial or hearing had been found guilty of 2 or more relevant offences;
- (b) 2 continuing criminal enterprise offences and who in another trial or hearing had been found guilty of a relevant offence;
- (c) 3 or more continuing criminal enterprise offences;

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s. 148

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**"relevant offence"**, in relation to a continuing criminal enterprise offence, means a continuing criminal enterprise offence of which an offender has been found guilty within the period of 10 years before the date on which the later offence was committed.

- (2) For the purposes of the definition of "relevant offence" in sub-section (1), if an offence of which an offender has been found guilty was committed between two dates, the offence was committed on the earlier date.

**6I. Increased maximum penalty for CCE offences**

- (1) A continuing criminal enterprise offender is liable, for a continuing criminal enterprise offence, to a maximum term of imprisonment of 2 times the length of the maximum term prescribed for the offence or 25 years, whichever is the lesser.
- (2) This section has effect despite anything to the contrary in this or any other Act.

**6J. CCE offender status to be noted on record**

- (1) A court that sentences a continuing criminal enterprise offender for a continuing criminal enterprise offence must, at the time of doing so, cause to be entered in the records of the court in respect of that offence the fact that the offender was sentenced for a continuing criminal enterprise offence.
- (2) Despite anything to the contrary in the **Evidence Act 1958** or the **Crimes Act 1958**, a statement of the fact that an offender was sentenced for a continuing criminal enterprise offence as a continuing criminal enterprise offender may be included in a

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 17—Amendment of Sentencing Act 1991

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certificate issued under section 87(1) of the **Evidence Act 1958** or in a certified statement of conviction issued under section 395 of the **Crimes Act 1958**.'.

**149. New Schedule 1A inserted**

After Schedule 1 to the **Sentencing Act 1991**  
**insert—**

**"SCHEDULE 1A**

**CONTINUING CRIMINAL ENTERPRISE OFFENCES**

1. An offence against any of the following provisions of the **Crimes Act 1958**:
  - (a) section 74(1) (theft) where the value of the property stolen is \$50 000 or more;
  - (b) section 75(1) (robbery) where the value of the property stolen is \$50 000 or more;
  - (c) section 75A(1) (armed robbery) where the value of the property stolen is \$50 000 or more;
  - (d) section 81(1) (obtaining property by deception) where the value of the property obtained is \$50 000 or more;
  - (e) section 82(1) (obtaining financial advantage by deception) where the value of the financial advantage obtained is \$50 000 or more;
  - (f) section 83(1) (false accounting) where the potential gain or loss is \$50 000 or more;
  - (g) section 88(2) (handling stolen goods) where the value of the goods handled is \$50 000 or more;
  - (h) section 197(1), (2) or (3) (destroying or damaging property) where the value of the property destroyed or damaged is \$50 000 or more.
2. Any automatic forfeiture offence within the meaning of the **Confiscation Act 1997** where the value of the property in respect of which the offence is committed is \$50 000 or more.

*Confiscation Act 1997*  
*Act No. 108/1997*

Part 17—Amendment of Sentencing Act 1991

**s. 149**

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3. The common law offence of conspiracy to defraud where the property, financial advantage or economic loss in respect of which the offence is committed is \$50 000 or more."
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*Act No. 108/1997*

Part 18—Consequential Amendments and Transitional Provisions

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**PART 18—CONSEQUENTIAL AMENDMENTS AND  
TRANSITIONAL PROVISIONS**

**150. Repeal**

- (1) The **Crimes (Confiscation of Profits) Act 1986** (except Parts 1 and 2A) is **repealed**.
- (2) Parts 1 and 2A of the **Crimes (Confiscation of Profits) Act 1986** are **repealed**.
- (3) The **Crimes (Confiscation of Profits) (Amendment) Act 1991** is **repealed**.

**151. Crimes Act 1958**

In section 70AA(9) of the **Crimes Act 1958**, for "**Crimes (Confiscation of Profits) Act 1986**" substitute "**Confiscation Act 1997**".

**152. Drugs, Poisons and Controlled Substances Act 1981**

- (1) In the **Drugs, Poisons and Controlled Substances Act 1981**—
  - (a) in section 122A(1), for "**Crimes (Confiscation of Profits) Act 1986**" substitute "**Confiscation Act 1997**";
  - (b) in section 125, **omit** "and all moneys received or recovered by the Crown pursuant to the **Crimes (Confiscation of Profits) Act 1986** in relation to offences under section 71, 71A, 71B, 72, 73, 79(1) or 80(1) of this Act";
  - (c) in section 126(1)(a), **omit** "and all moneys received or recovered by the Crown pursuant to the **Crimes (Confiscation of Profits) Act 1986** in relation to offences under section 71, 71A, 71B, 72, 73, 79(1) or 80(1) of this Act";

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(d) in section 126(1), after paragraph (a)  
**insert—**

"(b) all money appropriated by Parliament  
for the purposes of the Fund;"

(e) in section 126(2), **omit** ", with the approval  
of the Governor in Council,".

(2) In section 126 of the **Drugs, Poisons and  
Controlled Substances Act 1981**, for sub-  
sections (3) and (4) **substitute—**

"(3) The conversion costs that may be deducted  
under section 126(1)(a) are the reasonable  
costs and expenses incurred in locating,  
storing, maintaining or disposing of, or  
otherwise in connection with the conversion  
into money of, property forfeited under this  
Act.

(4) Conversion costs must be paid by the State  
to the person who, or body which, incurred  
the costs."

**153. Evidence Act 1958**

In section 149A of the **Evidence Act 1958**, for  
**"Crimes (Confiscation of Profits) Act 1986"**  
**substitute "Confiscation Act 1997"**.

**154. Magistrates' Court Act 1989**

In Schedule 4 to the **Magistrates' Court Act  
1989**, **omit** item 50.

**155. Road Safety Act 1986**

In section 92(3)(g) of the **Road Safety Act 1986**,  
after **"1986"** **insert** "or the **Confiscation Act  
1997"**.

S. 155  
substituted by  
No. 43/1998  
s. 35.

**156. Sentencing Act 1991**

In the **Sentencing Act 1991**—

- (a) in section 5(2A)(a)—
  - (i) for "**Crimes (Confiscation of Profits) Act 1986**" substitute "**Confiscation Act 1997**";
  - (ii) in sub-paragraph (iii), after "realised," insert "or substantially derived or realised,";
- (b) in section 5(2A)(b), after "realised," insert "or substantially derived or realised,";
- (c) in section 5(2A), after paragraph (d) insert—
  - "(e) must not have regard to any property forfeited under automatic forfeiture or a pecuniary penalty order made in relation to an automatic forfeiture offence under that Act.";
- (d) in section 5(2B) for "confiscation order made under the **Crimes (Confiscation of Profits) Act 1986**" substitute "forfeiture order or civil forfeiture order made under, or automatic forfeiture occurring by operation of, the **Confiscation Act 1997**";
- (e) in section 50(3) for "confiscation of the proceeds of the crime" substitute "forfeiture of the offender's property or the automatic forfeiture of the offender's property by operation of law";
- (f) in section 85(1), for "An" substitute "Subject to section 30 of the **Confiscation Act 1997**, an";
- (g) in section 87, for "An" substitute "Subject to section 30 of the **Confiscation Act 1997**, an".



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**157. Transitional**

- (1) Subject to sub-sections (2) and (4), this Act applies with respect to forfeiture offences (other than civil forfeiture offences for the purposes of civil forfeiture) and interstate offences for which a criminal proceeding is commenced, or is to be commenced, after the commencement of Part 2, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (2) This Act applies with respect to civil forfeiture offences for the purposes of civil forfeiture only if they are alleged to have been committed after the commencement of Part 4.
- (3) For the purposes of sub-section (2), if an offence is alleged to have been committed between two dates and Part 4 commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that Part.
- (4) Part 10 applies with respect to forfeiture offences of which a person is convicted after the commencement of that Part, irrespective of when the offence is alleged to have been committed.
- (4A) The **Crimes (Confiscation of Profits) Act 1986** continues to apply, despite its repeal, with respect to serious offences and interstate serious offences within the meaning of that Act for which a criminal proceeding was commenced before the commencement of Part 2 of this Act (irrespective of whether any conviction of that offence for the purposes of that Act occurs before or after the commencement of that Part) as if that Act had not been repealed.

S. 157(1)  
amended by  
No. 43/1998  
s. 37.

S. 157(4A)  
inserted by  
No. 80/1998  
s. 5(1).

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s. 157

S. 157(4B)  
inserted by  
No. 80/1998  
s. 5(1).

- (4B) Without limiting sub-section (4A)—
- (a) any application, appeal or order may be made, direction given, warrant issued or other thing done under the **Crimes (Confiscation of Profits) Act 1986** that could have been made, given, issued or done under that Act had it not been repealed; and
  - (b) anything made, given, issued or done under that Act after its repeal by virtue of this section has the like effect as it would have had if that Act had not been repealed.
- (5) The repeal by this Act of a provision of the **Crimes (Confiscation of Profits) Act 1986** does not affect any application made to a court under that provision before its repeal and that application may continue to be dealt with and determined, or may be withdrawn, as if this Act had not been passed.
- (6) The repeal by this Act of a provision of the **Crimes (Confiscation of Profits) Act 1986** does not affect any order made by a court (or any order that by force of that Act is to be taken to be an order made by a court) under that provision before its repeal, or after its repeal on an application to which sub-section (5) applies, and that order continues to have effect and may be varied, discharged, set aside or appealed against under that Act as if this Act had not been passed.
- (7) The repeal by this Act of a provision of the **Crimes (Confiscation of Profits) Act 1986** does not affect any warrant issued, or any interstate forfeiture order or interstate restraining order registered, under that provision before its repeal, or after its repeal on an application to which sub-section (5) applies, and that warrant may be executed, or the registration of that order

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cancelled, under that Act as if this Act had not been passed.

- (8) The repeal by this Act of section 15A of the **Crimes (Confiscation of Profits) Act 1986** does not affect the existence of the Crime Prevention and Victims' Aid Fund in the Public Account and all money standing to the credit of the Fund immediately before that repeal remains in the Fund and may be dealt with in accordance with this Act.
- (9) All money realised after the commencement of section 150(2) under a confiscation order made under the **Crimes (Confiscation of Profits) Act 1986** that, if that section had not come into operation, would have been paid into the Crime Prevention and Victims' Aid Fund or the Drug Rehabilitation and Research Fund under section 125 or 126 of the **Drugs, Poisons and Controlled Substances Act 1981** must be paid into that Fund.
- (10) All money realised after the commencement of section 152(1) under a confiscation order made under the **Crimes (Confiscation of Profits) Act 1986** that, if that section had not come into operation, would have been paid into the Drug Rehabilitation and Research Fund under section 125 or 126 of the **Drugs, Poisons and Controlled Substances Act 1981** must be paid into that Fund and may be dealt with in accordance with the **Drugs, Poisons and Controlled Substances Act 1981**.
- (10A) Item 18 of Schedule 1 to this Act (as inserted in that Schedule by section 33(2) of the **Prostitution Control (Amendment) Act 1999**) applies with respect to offences against section 123 of this Act of which a person is convicted after the commencement of section 33(2) of that Act,

S. 157(10A)  
inserted by  
No. 44/1999  
s. 33(1).

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*Act No. 108/1997*

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irrespective of when the offence is alleged to have been committed.

(11) The provisions of this section are in addition to, and not in derogation from, the provisions of the **Interpretation of Legislation Act 1984**.

S. 157(12)  
inserted by  
No. 80/1998  
s. 5(2).

(12) A reference in this section to the **Crimes (Confiscation of Profits) Act 1986** is a reference to that Act as in force immediately before its repeal.

S. 157(13)  
inserted by  
No. 80/1998  
s. 5(2).

(13) The amendments made to this section by section 5 of the **Crimes, Confiscation and Evidence Acts (Amendment) Act 1998** do not affect the rights of the parties that were the subject of the proceeding known as *Martin v Cooper and Martin* heard in the Magistrates' Court at Melbourne and determined on 7 October 1998.

S. 158  
inserted by  
No. 63/2003  
s. 42.

**158. Confiscation (Amendment) Act 2003—definition of "tainted property" transitional provision**

The definition of "tainted property" as amended by section 4(5) of the **Confiscation (Amendment) Act 2003**, in so far as it relates to an offence under section 122 or 123(1), applies only with respect to an offence under section 122 or 123(1) of which a person is convicted after the commencement of section 4(5) of that Act.

S. 159  
inserted by  
No. 63/2003  
s. 42.

**159. Confiscation (Amendment) Act 2003—declaration of property interests transitional provision**

Sections 19A to 19E apply only in relation to property in respect of which a restraining order is made after the commencement of section 8 of the **Confiscation (Amendment) Act 2003**.

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*Act No. 108/1997*

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s. 160

**160. Confiscation (Amendment) Act 2003—freezing orders transitional provision**

S. 160  
inserted by  
No. 63/2003  
s. 42.

Part 2A applies with respect to any forfeiture offence, automatic forfeiture offence or civil forfeiture offence irrespective of when the offence is alleged to have been committed.

**161. Confiscation (Amendment) Act 2003—tainted property substitution declaration transitional provisions**

S. 161  
inserted by  
No. 63/2003  
s. 42.

- (1) Division 1A of Part 3 applies with respect to forfeiture offences only if they are alleged to have been committed after the commencement of section 12 of the **Confiscation (Amendment) Act 2003**.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates and section 12 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

**162. Confiscation (Amendment) Act 2003—disposal orders transitional provision**

S. 162  
inserted by  
No. 63/2003  
s. 42.

Part 10, as amended by sections 16 and 17 of the **Confiscation (Amendment) Act 2003**, applies with respect to any forfeiture offence of which a person is convicted after the commencement of those sections, irrespective of when the offence is alleged to have been committed.

**163. Confiscation (Amendment) Act 2003—property seized under other Acts transitional provision**

S. 163  
inserted by  
No. 63/2003  
s. 42.

Sections 95A to 95E apply to any property seized under a warrant issued under section 465 of the **Crimes Act 1958** or section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**, irrespective of when the warrant was executed.

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*Act No. 108/1997*

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S. 164  
inserted by  
No. 63/2003  
s. 42.

**164. Confiscation (Amendment) Act 2003—examination orders transitional provision**

Section 98(2), as substituted by section 28 of the **Confiscation (Amendment) Act 2003**, applies only in relation to examination orders for which an application was made after the commencement of section 28 of that Act.

S. 165  
inserted by  
No. 63/2003  
s. 42.

**165. Confiscation (Amendment) Act 2003—document requests transitional provisions**

- (1) Division 6 of Part 13 applies in relation to property in respect of which a restraining order was made, irrespective of when the restraining order was made.
- (2) Division 6 of Part 13 applies in relation to property seized under a warrant issued under this Act, section 465 of the **Crimes Act 1958** or section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**, irrespective of when the warrant was executed.

S. 166  
inserted by  
No. 63/2003  
s. 42.

**166. Confiscation (Amendment) Act 2003—Schedule 1 offences transitional provisions**

- (1) Items 5A and 13A of Schedule 1 apply only with respect to an offence alleged to have been committed after the commencement of section 36 of the **Confiscation (Amendment) Act 2003**.
- (2) Despite the substitution of item 7(j) of Schedule 1 by section 36 of the **Confiscation (Amendment) Act 2003**, item 7(j), as in force immediately before the commencement of that section, continues to apply in respect of an offence referred to in item 7(j) (as in force immediately before that commencement) which is alleged to have been committed before the commencement of that section.

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*Act No. 108/1997*

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- (3) Item 7 of Schedule 1, as amended by section 36 of the **Confiscation (Amendment) Act 2003**, applies only with respect to an offence alleged to have been committed after the commencement of that section.
- (4) For the purposes of this section, if an offence is alleged to have been committed between two dates and section 36 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

**167. Confiscation (Amendment) Act 2003—Schedule 2—  
drug trafficking offences transitional provisions**

S. 167  
inserted by  
No. 63/2003  
s. 42.

- (1) Item 1 of Schedule 2, as amended by section 37 of the **Confiscation (Amendment) Act 2003**, applies only with respect to an offence alleged to have been committed after the commencement of that section.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates and section 37 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

**168. Confiscation (Amendment) Act 2003—Schedule 2  
offences transitional provisions**

S. 168  
inserted by  
No. 63/2003  
s. 42.

- (1) Despite the substitution of item 2 of Schedule 2 by section 38 of the **Confiscation (Amendment) Act 2003**, item 2, as in force immediately before the commencement of that section, continues to apply in respect of any offence referred to in item 2 (as in force immediately before that commencement) which is alleged to have been committed before the commencement of that section.

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*Act No. 108/1997*

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- (2) Item 2 of Schedule 2, as amended by section 38 of the **Confiscation (Amendment) Act 2003**, applies only with respect to an offence alleged to have been committed after the commencement of that section.
- (3) Items 2A, 2B and 2C of Schedule 2 apply only with respect to an offence alleged to have been committed after the commencement of section 38 of the **Confiscation (Amendment) Act 2003**.
- (4) For the purposes of this section, if an offence is alleged to have been committed between two dates and section 38 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

S. 169  
inserted by  
No. 63/2003  
s. 42.

**169. Confiscation (Amendment) Act 2003—Schedule 2—  
money laundering transitional provisions**

- (1) Despite the amendment of item 3 of Schedule 2 by section 39 of the **Confiscation (Amendment) Act 2003**, item 3, as in force immediately before the commencement of that section, continues to apply in respect of any offence referred to in item 3 (as in force immediately before that commencement) which is alleged to have been committed before the commencement of that section.
- (2) Item 3 of Schedule 2, as amended by section 39 of the **Confiscation (Amendment) Act 2003**, applies only with respect to an offence alleged to have been committed after the commencement of that section.
- (3) For the purposes of this section, if an offence is alleged to have been committed between two dates and section 39 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to



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*Act No. 108/1997*

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have been committed before the commencement of that section.

**170. Confiscation (Amendment) Act 2003—Schedule 2—  
attempts transitional provisions**

S. 170  
inserted by  
No. 63/2003  
s. 42.

- (1) Despite the amendment of item 5 of Schedule 2 by section 40 of the **Confiscation (Amendment) Act 2003**, item 5, as in force immediately before the commencement of that section, continues to apply in respect of any offence referred to in item 5 (as in force immediately before that commencement) which is alleged to have been committed before the commencement of that section.
- (2) Item 5 of Schedule 2, as amended by section 40 of the **Confiscation (Amendment) Act 2003**, applies only with respect to an offence alleged to have been committed after the commencement of that section.
- (3) For the purposes of this section, if an offence is alleged to have been committed between two dates and section 40 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

**171. Confiscation (Amendment) Act 2003—Schedule 2—  
common law offences transitional provisions**

S. 171  
inserted by  
No. 63/2003  
s. 42.

- (1) Despite the substitution of item 7 of Schedule 2 by section 41 of the **Confiscation (Amendment) Act 2003**, item 7, as in force immediately before the commencement of that section, continues to apply in respect of any offence referred to in item 7 (as in force immediately before that commencement) which is alleged to have been committed before the commencement of that section.

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- (2) Item 7 of Schedule 2, as amended by section 41 of the **Confiscation (Amendment) Act 2003**, applies only with respect to an offence alleged to have been committed after the commencement of that section.
- (3) Items 8 and 9 of Schedule 2 apply only with respect to an offence alleged to have been committed after the commencement of section 41 of the **Confiscation (Amendment) Act 2003**.
- (4) For the purposes of this section, if an offence is alleged to have been committed between two dates and section 41 of the **Confiscation (Amendment) Act 2003** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

S. 172  
inserted by  
No. 63/2003  
s. 42.

**172. Interpretation of Legislation Act 1984**

The provisions of sections 158 to 171 are in addition to, and not in derogation from, the provisions of the **Interpretation of Legislation Act 1984**.

S. 173  
inserted by  
No. 104/2003  
s. 6.

**173. Transitional—Crimes (Money Laundering) Act 2003**

- (1) The definition of "tainted property" in section 3 of this Act as amended by section 5(3) of the **Crimes (Money Laundering) Act 2003**, in so far as it relates to an offence under section 194, 195 or 195A of the **Crimes Act 1958**, applies only with respect to offences alleged to have been committed on or after the commencement of section 5(3) of the **Crimes (Money Laundering) Act 2003**.

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*Act No. 108/1997*

- 
- (2) The amendment of section 31M of this Act made by section 5(5) of the **Crimes (Money Laundering) Act 2003** applies only to freezing orders notice of which is given to a financial institution on or after the commencement of section 5(5) of that Act.
  - (3) The amendment of section 116(4) of this Act made by section 5(6) of the **Crimes (Money Laundering) Act 2003** applies only to monitoring orders notice of which is given to a financial institution on or after the commencement of section 5(6) of that Act.
  - (4) The amendment of section 118M of this Act made by section 5(8) of the **Crimes (Money Laundering) Act 2003** applies only to an information notice given to a financial institution on or after the commencement of section 5(8) of that Act.
  - (5) Item 18 of Schedule 1 and item 3 of Schedule 2 continue to apply in respect of any offence referred to in the item which is alleged to have been committed before the commencement of section 5(1) of the **Crimes (Money Laundering) Act 2003**.
  - (6) For the purposes of this section, if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 5(1) of the **Crimes (Money Laundering) Act 2003**, the offence is alleged to have been committed before that commencement.

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Part 18—Consequential Amendments and Transitional Provisions

s. 174

S. 174  
inserted by  
No. 87/2004  
s. 23.

**174. Transitional—Major Crime Legislation (Seizure of Assets) Act 2004**

This Act as amended by the **Major Crime Legislation (Seizure of Assets) Act 2004** applies to an application for an order under this Act made on or after the commencement of the **Major Crime Legislation (Seizure of Assets) Act 2004**, irrespective of when the offence to which the application relates is alleged or suspected to have been committed.

S. 175  
inserted by  
No. 79/2006  
s. 14.

**175. Transitional—Justice Legislation (Further Amendment) Act 2006**

- (1) Section 17 as amended by section 10 of the **Justice Legislation (Further Amendment) Act 2006** applies to an application for a restraining order made on or after the commencement of section 10 of that Act.
- (2) Section 53 as amended by section 11 of the **Justice Legislation (Further Amendment) Act 2006** applies to an application made on or after the commencement of section 11 of that Act.
- (3) Section 78 as amended by section 12 of the **Justice Legislation (Further Amendment) Act 2006** applies to a disposal order made on or after the commencement of section 12 of that Act.

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**SCHEDULES**

**SCHEDULE 1**

**OFFENCES—FORFEITURE ON COURT ORDER**

Sch. 1  
(Heading)  
substituted by  
No. 87/2004  
s. 22(2)(x).

1. An indictable offence against the law of Victoria.
2. A Schedule 2 offence.
3. An offence against section 27 of the **Archaeological and Aboriginal Relics Preservation Act 1972** (purchase and sale of portable relics).
4. An offence against any of the following provisions of the **Casino Control Act 1991**:
  - (a) section 79A(1) (special employee accepting gratuities etc.);
  - (b) section 120 (wilfully evading fees etc.);
  - (c) section 153B (forgery etc.).
5. An offence against any of the following provisions of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**:
  - (a) section 8 (exhibition of RC and X 18+ films);
  - (b) section 9 (exhibition of unclassified, RC, X 18+, R 18+ and MA 15+ films);
  - (c) section 15(1) or (2) (selling unclassified, RC and X 18+ films);

Sch. 1 item 2  
substituted by  
No. 87/2004  
s. 22(2)(y).

Sch. 1  
item 5(a)  
amended by  
No. 6/2005  
s. 13(4)(a).

Sch. 1  
item 5(b)  
amended by  
No. 6/2005  
s. 13(4)(b).

Sch. 1  
item 5(c)  
amended by  
Nos 60/1998  
s. 16(a),  
6/2005  
s. 13(4)(c).

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Sch. 1  
item 5(d)  
amended by  
No. 6/2005  
s. 13(4)(d).

- (d) section 23(1) or (2) (possession or copying of unclassified, RC and X 18+ films for purpose of sale or exhibition);

Sch. 1  
item 5(da)  
inserted by  
No. 60/1998  
s. 16(b),  
amended by  
No. 6/2005  
s. 13(4)(e).

- (da) section 23A(4) or (5) (possession or copying of commercial quantity of X 18+ films);

- (e) section 24(1) (making objectionable film);  
(f) section 25(1) (sale of unclassified or RC publication);  
(g) section 31(1) (possession or copying of unclassified or RC publication for purpose of sale);  
(h) section 32(1) (producing objectionable publication);  
(i) section 34 (sale or demonstration of computer game);  
(j) section 36(1) (sale or demonstration of unclassified or RC computer game);  
(k) section 45(1) or (2) (possession or copying of unclassified or RC computer game for purpose of sale or demonstration);  
(l) section 57(1) (publication or transmission of objectionable material).

Sch. 1 item 5A  
inserted by  
No. 63/2003  
s. 36(1).

- 5A. An offence against section 54(5) of the **Dangerous Goods Act 1985** (selling or otherwise dealing with an unauthorised explosive).
6. An offence against any of the following provisions of the **Fisheries Act 1968**:
- (a) section 13C(8) (exceeding abalone catch quota);  
(b) section 13D(4) (possessing abalone without prescribed abalone docket);  
(c) section 17(1), (1A), (1B) or (1C) (unlicensed operation; exceeding bag limit of abalone; failure to comply with abalone processor's or storer's licence; scalloping in Port Phillip Bay);  
(d) section 37 (destruction of boundary marks);  
(e) section 52 (using prohibited equipment);

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- (f) section 59 (using poison to take fish);
- (g) section 60(1) (use of explosives);
- (h) section 61(1) or (3) (taking undersize fish) where the penalty imposed is 50 penalty units or more;
- (i) section 61B (possessing abalone in excess of bag limit) where the penalty imposed is 50 penalty units or more;
- (j) section 63(1) (poisoning or polluting waters containing fish);
- (k) section 68(3) (failure to comply with notice to cease poisoning waters containing fish).
7. An offence against any of the following provisions of the **Fisheries Act 1995**:
- (a) section 36(1) (unauthorised commercial fishing activities);
- (b) section 37(1) (offences relating to commercial abalone equipment);
- (c) section 39(1), (2) or (3) (restrictions concerning access licences);
- (d) section 40(1) (receipt, consignment etc. of fish);
- (e) section 42(1) (offences relating to aquaculture and live fish etc.);
- (f) section 53(1) or (4) (failure to comply with licence or permit conditions);
- (g) section 66(1) (holder of access licence exceeding permitted amount);
- (ga) section 66A(1) (taking fish during quota period in excess of notice specification);
- (h) section 67(3) (contravention of regulation or fisheries notice prohibition);
- (i) section 68A(1), (2), (4B) or (5) (offences in relation to size and catch limits);
- (j) section 68B(1) (possession of fish taken from non-Victorian waters in contravention of permitted size or amount);
- Sch. 1  
item 7(ga)  
inserted by  
No. 63/2003  
s. 36(2).**
- Sch. 1  
item 7(i)  
amended by  
No. 63/2003  
s. 36(3).**
- Sch. 1  
item 7(j)  
substituted by  
No. 63/2003  
s. 36(4).**
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Sch. 1  
item 7(la)  
inserted by  
No. 63/2003  
s. 36(5).

- (k) section 71(1) (unauthorised taking etc. of protected aquatic biota);
- (l) section 76 (offences concerning noxious aquatic species);
- (la) section 99(1) (failure to keep document in relation to receipt of priority species);

Sch. 1  
item 7(lb)  
inserted by  
No. 63/2003  
s. 36(5).

- (lb) section 108A(5) (failure to comply with retention notice);
- (m) section 112(1) or (2) (use of explosives, poisons, substances or equipment for fishing);
- (n) section 113(1) (interference with lawful fishing activities or aquaculture activities);
- (o) section 114(3) (contravention of regulation or fisheries notice prohibition);
- (p) section 115 (interference with commercial fishing equipment or aquaculture equipment);
- (q) section 116(1) (possession or sale of fish taken in contravention of Act or corresponding law);
- (r) section 117(1) (use of foreign boat for fishing);
- (s) section 118(1) (having foreign boat equipped with commercial fishing equipment);
- (t) section 119(1) (blocking passage of fish);
- (ta) section 119A (knowingly make false or misleading statements in relation to priority species).

Sch. 1  
item 7(ta)  
inserted by  
No. 108/2003  
s. 8(1).

- (u) section 130(4) (failure to comply with order prohibiting person from being on certain boats or in certain places);

Sch. 1  
item 7(ua)  
inserted by  
No. 63/2003  
s. 36(6).

- (ua) section 130A(5) (failure to comply with court order prohibiting fishing activity or possession of fish or equipment);



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- (ub) section 130B(6) (failure to comply with court order prohibiting person from being in or on specified waters);
- (v) section 139 (taking fish etc. from research station or hatchery on Crown land);
- (w) section 147 (improper use of information).
8. An offence against any of the following provisions of the **Flora and Fauna Guarantee Act 1988**:
- (a) section 47(1) (offences relating to protected flora);
- (b) section 52(1) (taking, trading in or keeping listed fish).
9. An offence against any of the following provisions of the **Forests Act 1958**:
- (a) section 59(1) (felling etc. tree in protected forest);
- (b) section 61 (felling etc. reserved tree);
- (c) section 96 (miscellaneous offences);
- (d) sections 96A and 96B.
10. An offence against any of the following provisions of the **Gambling Regulation Act 2003**—
- (a) section 2.2.1(2) (lotteries prohibited);
- (b) section 2.5.2(1) (owning or occupying betting house);
- (c) section 2.5.5 (exhibiting placards or advertising betting houses);
- (d) section 2.5.6 (advertising as to betting);
- (e) section 2.5.8(1) (betting in street etc.);
- (f) section 2.5.12 (making bet with or inviting minor to bet an offence);
- (g) section 2.5.14 (offences in respect of totalisators);
- (h) section 2.5.15(1) (publication etc. of information concerning betting etc.);
- (i) section 2.5.17(1) (posting up betting placards and notices);
- Sch. 1  
item 7(ub)  
inserted by  
No. 63/2003  
s. 36(6).
- Sch. 1  
item 9(d)  
inserted by  
No. 48/2004  
s. 133.
- Sch. 1 item 10  
substituted by  
No. 114/2003  
s. 12.1.3(Sch.  
6 item 3).

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- (j) section 2.5.18(1) (communicating certain racing information while race meeting is being held);
- (k) section 2.6.1(1) (possession of instrument of betting);
- (l) section 3.4.68(1) or (2) (payments to venue operator by manufacturer or supplier of gaming equipment);
- (m) section 3.5.28(1), (2), (3) or (4) (inducements, cheating etc.);
- (n) section 3.5.31 (extending credit for playing gaming machine);
- (o) section 4.7.5(1) or (2) (inducements, cheating etc.);
- (p) section 4.7.6 (extending credit etc.);
- (q) section 8.2.2(b) (conducting session of bingo games otherwise than in accordance with Act and minor gaming permit);
- (r) section 10.5.17 (impersonation of inspector or commissioner);
- (s) section 10.5.18(1) or (2) (bribery of authorised person).

Sch. 1  
items 11–13  
repealed by  
No. 114/2003  
s. 12.1.3(Sch.  
6 item 3).

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Sch. 1  
item 13A  
inserted by  
No. 63/2003  
s. 36(7).

13A. An offence against any of the following provisions of the **National Parks Act 1975**:

- (a) section 45A(1) (taking fish or fishing bait for sale in marine national park or marine sanctuary);
- (b) section 45A(2) (taking fish or fishing bait for purposes other than sale without permit in marine national park or marine sanctuary);
- (c) section 45A(3) (growing etc. fish or fishing bait in marine national park or marine sanctuary);
- (d) section 45A(4) (being in a prescribed area in charge of prescribed boat or in charge of boat carrying prescribed equipment);
- (e) section 45A(5) (possessing or being in charge of boat carrying a priority species).

14. An offence against any of the following provisions of the **Racing Act 1958**:

- (a) section 29 (1A), (1B) or (1C) (receipt of direct financial benefit from profits of race-meeting);
- (b) section 55(2) (non-mechanical speed coursing).

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15. An offence against any of the following provisions of the **Wildlife Act 1975**:
- (a) section 41(1) or (2) (taking or possessing etc. endangered wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(a)  
amended by  
No. 43/1998  
s. 38(a).
  - (b) section 42(1) or (2) (taking or possessing etc. notable wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(b)  
amended by  
No. 43/1998  
s. 38(b).
  - (c) section 43(1) or (2) (taking or possessing etc. protected wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(c)  
amended by  
No. 43/1998  
s. 38(c).
  - (d) section 43A (possessing unlawfully taken wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(d)  
amended by  
No. 43/1998  
s. 38(d).
  - (e) section 45 (taking eggs of protected wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(e)  
amended by  
No. 43/1998  
s. 38(e).
  - (f) section 46 (trapping wild duck etc.) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(f)  
amended by  
No. 43/1998  
s. 38(f).
  - (g) section 47(1) (taking protected wildlife in close season) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(g)  
amended by  
No. 43/1998  
s. 38(g).
  - (h) section 48(1) (setting dog on wildlife not being game) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**; Sch. 1  
item 15(h)  
amended by  
No. 43/1998  
s. 38(h).

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Sch. 1  
item 15(ha)  
inserted by  
No. 43/1998  
s. 38(i).

(ha) section 41 (hunting, taking or destroying endangered wildlife);

Sch. 1  
item 15(hb)  
inserted by  
No. 43/1998  
s. 38(i).

(hb) section 42 (hunting, taking or destroying notable wildlife);

Sch. 1  
item 15(hc)  
inserted by  
No. 43/1998  
s. 38(i).

(hc) section 43 (hunting, taking or destroying protected wildlife);

Sch. 1  
item 15(hd)  
inserted by  
No. 43/1998  
s. 38(i).

(hd) section 45 (acquiring etc. endangered wildlife);

Sch. 1  
item 15(he)  
inserted by  
No. 43/1998  
s. 38(i).

(he) section 46 (acquiring etc. notable wildlife);

Sch. 1  
item 15(hf)  
inserted by  
No. 43/1998  
s. 38(i).

(hf) section 47 (acquiring etc. protected wildlife);

Sch. 1 item  
15(hg)  
inserted by  
No. 43/1998  
s. 38(i).

(hg) section 47D (wildlife unlawfully taken);

(i) section 49(2) (contravening Order prohibiting possession etc. of wildlife);

(j) section 50(1) (importing or exporting wildlife without permit);

(k) section 52 (release of wildlife and animals from captivity or confinement);

(l) section 53 (use of prohibited equipment);

(m) section 54(1) (killing etc. wildlife by poison);

(n) section 55 (using bird-lime etc.);

(o) section 56(1) (use or possession of punt gun);

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- (p) section 58 (molesting etc. protected wildlife during close season);
- (q) section 60A(2) (failure to comply with demand to produce firearms licence or permit);
- (r) section 73(1) (conducting unlicensed animal exhibition);
- (s) section 74(1) (unlicensed keeping of zoo);
- (t) section 74E(1) (contravention of licence conditions etc.);
- (u) section 76(3) (failure to release whale);
- (v) section 77(1) (action to be taken with respect to killing or taking of whale);
- (w) section 80 (breach of permit condition).
16. An offence against section 70 of the **Crimes Act 1958** (possession of child pornography). Sch. 1 item 16  
inserted by  
No. 43/1998  
s. 38(j).
17. An offence against section 22(1A) of the **Prostitution Control Act 1994** (prostitution service providers to be licensed). Sch. 1 item 17  
inserted by  
No. 44/1999  
s. 33(2).
18. An offence against section 123 of this Act (possession etc. of property suspected of being proceeds of crime), as in force immediately before its repeal by section 5(1) of the **Crimes (Money Laundering) Act 2003**. Sch. 1 item 18  
inserted by  
No. 44/1999  
s. 33(2),  
amended by  
No. 104/2003  
s. 5(9).
19. An offence against section 195 of the **Crimes Act 1958**. Sch. 1 item 19  
inserted by  
No. 104/2003  
s. 5(10).
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Sch. 2

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**SCHEDULE 2**

Sch. 2  
(Heading)  
substituted by  
No. 87/2004  
s. 22(2)(z).

**OFFENCES—AUTOMATIC FORFEITURE AND CIVIL  
FORFEITURE**

1. An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**:

Sch. 2 cl. 1(a)  
substituted by  
No. 61/2001  
s. 11(1)(a).

- (a) section 71 (trafficking in a quantity of a drug or drugs of dependence that is not less than the large commercial quantity applicable to that drug or those drugs);

Sch. 2 cl. 1(ab)  
inserted by  
No. 61/2001  
s. 11(1)(a).

- (ab) section 71AA (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs);

Sch. 2 cl. 1(ac)  
inserted by  
No. 63/2003  
s. 37(1).

- (ac) section 71AB (trafficking in a drug of dependence to a child) where—
- (i) the drug of dependence is a drug specified in Part 3 of Schedule Eleven to that Act; and
  - (ii) the quantity of the drug of dependence trafficked is not less than the automatic forfeiture quantity specified in column 2B of Part 3 of Schedule Eleven to that Act applicable to that drug;

Sch. 2 cl. 1(ad)  
inserted by  
No. 63/2003  
s. 37(1).

- (ad) section 71AC (trafficking in a drug of dependence) where—
- (i) the drug of dependence is a drug specified in Part 3 of Schedule Eleven to that Act; and
  - (ii) the quantity of the drug of dependence trafficked is not less than the automatic forfeiture quantity specified in column 2B of Part 3 of Schedule Eleven to that Act applicable to that drug;

Sch. 2 cl. 1(b)  
substituted by  
No. 61/2001  
s. 11(1)(b).

- (b) section 72 (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic plant);

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| <p>(ba) section 72A (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant);</p>   | <p><b>Sch. 2 cl. 1(ba)</b><br/>inserted by<br/><b>No. 61/2001</b><br/>s. 11(1)(b).</p>  |
| <p>(c) section 79(1) or 80(3)(a) (conspiracy) in circumstances where the conspiracy is to commit an offence in the circumstances referred to in paragraph (a), (ab), (ac), (ad), (b) or (ba);</p>   | <p><b>Sch. 2 cl. 1(c)</b><br/>amended by<br/><b>Nos 61/2001</b><br/>s. 11(1)(c),<br/><b>63/2003</b><br/>s. 37(2)(a)(b).</p>         |
| <p>(d) section 80(1) or 80(3)(b) (aiding and abetting etc.) in circumstances where the offence that is aided, abetted, counselled, procured, solicited or incited is an offence referred to in paragraph (a), (ab), (ac), (ad), (b) or (ba), committed in the circumstances referred to in those paragraphs or an offence committed in the circumstances referred to in paragraph (a), (ab), (ac), (ad), (b) or (ba) under a law in force in a place outside Victoria that is a corresponding law in relation to section 71, 71AA, 71AB, 71AC, 72 or 72A, as the case requires.</p> | <p><b>Sch. 2 cl. 1(d)</b><br/>amended by<br/><b>Nos 61/2001</b><br/>s. 11(1)(d)(i)(ii),<br/><b>63/2003</b><br/>s. 37(3)(a)–(c).</p> |
| <p>1A. An offence against any of the following provisions of the <b>Drugs, Poisons and Controlled Substances Act 1981</b> as in force immediately before the commencement of the <b>Drugs, Poisons and Controlled Substances (Amendment) Act 2001</b>—</p>  | <p><b>Sch. 2 cl. 1A</b><br/>inserted by<br/><b>No. 35/2002</b><br/>s. 28(Sch.<br/>item 2.1).</p>                                    |
| <p>(a) section 71(1) (trafficking in a drug of dependence) in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence;</p>   |   |
| <p>(b) section 72(1) (cultivation of narcotic plants) in circumstances where the offence is committed in relation to a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant;</p>   |   |
| <p>(c) section 79(1) or 80(3)(a) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a) or (b);</p>  |   |
| <p>(d) section 80(1) or 80(3)(b) (aiding and abetting etc.) in circumstances where the offence that is aided, abetted, counselled, procured, solicited or incited is an offence referred to in paragraph (a) or (b) or an offence committed in the circumstances referred to in paragraph (a) or (b) under a law in force in a place outside Victoria that is a corresponding law in relation to section 71(1) or 72(1), as the case requires.</p>  |   |
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Sch. 2 cl. 2  
substituted by  
No. 63/2003  
s. 38.

2. An offence against any of the following provisions of the **Crimes Act 1958**:
- (a) section 27 (extortion with threat to kill) where—
    - (i) only one offence is charged and the demand made is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined demands made are \$75 000 or more;
  - (b) section 28 (extortion with threat to destroy property) where—
    - (i) only one offence is charged and the demand made is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined demands made are \$75 000 or more;
  - (c) section 74 (theft) where—
    - (i) only one offence is charged and the value of the property in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property in respect of which the offences are committed is \$75 000 or more;
  - (d) section 75 (robbery) where—
    - (i) only one offence is charged and the value of the property in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property in respect of which the offences are committed is \$75 000 or more;
  - (e) section 75A (armed robbery) where—
    - (i) only one offence is charged and the value of the property in respect of which the offence is committed is \$50 000 or more; or



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- (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property in respect of which the offences are committed is \$75 000 or more;
  - (f) section 81(1) (obtaining property by deception) where—
    - (i) only one offence is charged and the value of the property in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property in respect of which the offences are committed is \$75 000 or more;
  - (g) section 82(1) (obtaining financial advantage by deception) where—
    - (i) only one offence is charged and the value of the financial advantage obtained is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the financial advantage obtained is \$75 000 or more;
  - (h) section 87 (blackmail) where—
    - (i) only one offence is charged and the demand made is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined demands made are \$75 000 or more;
  - (i) section 88 (handling stolen goods) where—
    - (i) only one offence is charged and the value of the goods in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the goods in respect of which the offences are committed is \$75 000 or more;
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- (j) section 176 (receipt or solicitation of secret commission by an agent) where—
    - (i) only one offence is charged and the valuable consideration in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the valuable consideration in respect of which the offences are committed is \$75 000 or more;
  - (k) section 178 (giving or receiving false or misleading receipt or account with intent to defraud or deceive principal) where—
    - (i) only one offence is charged and the amount intended to be defrauded is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined amounts intended to be defrauded are \$75 000 or more;
  - (l) section 179 (gift or receipt of secret commission in return for advice) where—
    - (i) only one offence is charged and the valuable consideration in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the valuable consideration in respect of which the offences are committed is \$75 000 or more;
  - (m) section 180 (secret commission to trustee in return for substituted appointment) where—
    - (i) only one offence is charged and the valuable consideration in respect of which the offence is committed is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the valuable consideration in respect of which the offences are committed is \$75 000 or more;
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- (n) section 191 (fraudulently inducing persons to invest money) where—
- (i) only one offence is charged and the value of the property (including any profit) in respect of which the offence is committed is \$50 000 or more; or
  - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property (including any profit) in respect of which the offences are committed is \$75 000 or more;
- (o) section 321(1) where the conspiracy is to commit an offence in the circumstances referred to in paragraphs (a) to (n).
- 2A. An offence against any of the following provisions of the **Prostitution Control Act 1994**:
- (a) section 6(1) (receiving payment for sexual services provided by a child) where—
    - (i) only one offence is charged and the value of the payment received is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the payments received is \$75 000 or more;
  - (b) section 7(1) (agreement for provision of sexual services by a child) where—
    - (i) only one offence is charged and the value of the agreed payment is \$50 000 or more; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the combined value of the agreed payments is \$75 000 or more;
  - (c) section 7(1) (agreement for provision of sexual services by a child) where—
    - (i) only one offence is charged and the provision of sexual services is in exchange for a quantity of a drug of dependence which is—
      - (A) in the case of a drug of dependence specified in Part 3 of Schedule Eleven to the **Drugs, Poisons and Controlled Substances Act 1981**, not less than the automatic forfeiture quantity specified in column 2B

**Sch. 2 cl. 2A**  
**inserted by**  
**No. 63/2003**  
**s. 38.**

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- of Part 3 of that Schedule to that Act applicable to that drug; or
- (B) in the case of any other drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**, not less than the commercial quantity applicable to that drug; or
- (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the provision of sexual services is in exchange for a combined quantity of drugs of dependence which is—
    - (A) in the case of a drug of dependence or drugs of dependence specified in Part 3 of Schedule Eleven to the **Drugs, Poisons and Controlled Substances Act 1981**, not less than the automatic forfeiture quantity specified in column 2B of Part 3 of that Schedule to that Act applicable to that drug or those drugs; or
    - (B) in the case of any other drug of dependence or drugs of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**, not less than the commercial quantity applicable to that drug or those drugs;
- (d) section 22(1) (carrying on business as a prostitution service provider without licence or in breach of licence) where—
    - (i) only one offence is charged and \$50 000 or more is received by the business; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and \$75 000 or more is received by the business;
  - (e) section 22(3) (assisting in the carrying on of a prostitution service providing business without licence or in breach of licence) where—
    - (i) only one offence is charged and \$50 000 or more is received by the business; or
    - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and \$75 000 or more is received by the business.
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2B. An offence against any of the following provisions of the **Casino Control Act 1991**:

Sch. 2 cl. 2B  
inserted by  
No. 63/2003  
s. 38.

- (a) section 153A(2) (bribery by a key official within the meaning of that Act) where—
  - (i) only one offence is charged and the value of the money, property or value of any kind in respect of which the offence is committed is \$50 000 or more; or
  - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the money, property or value of any kind in respect of which the offences are committed is \$75 000 or more;
- (b) section 153A(3) (bribery of a key official within the meaning of that Act) where—
  - (i) only one offence is charged and the value of the money, property or value of any kind in respect of which the offence is committed is \$50 000 or more; or
  - (ii) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the money, property or value of any kind in respect of which the offences are committed is \$75 000 or more.

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Sch. 2 cl. 2C  
inserted by  
No. 63/2003  
s. 38,  
repealed by  
No. 45/2004  
s. 41(a).

3. An offence against section 122(1) of the **Confiscation Act 1997** (money laundering) where the money or other property is proceeds of an offence committed in the circumstances referred to in item 1, 1A, 2, 2A, 2B, 2C, 8 or 9, as in force immediately before its repeal by section 5(1) of the **Crimes (Money Laundering) Act 2003**.

Sch. 2 cl. 3  
amended by  
Nos 63/2003  
s. 39, 104/2003  
s. 5(11).

3A. An offence against section 194(1), (2) or (3) of the **Crimes Act 1958** where the property dealt with is proceeds of an offence committed in the circumstances referred to in item 1, 1A, 2, 2A, 2B, 2C (as in force immediately before its repeal by section 41(a) of the **Racing and Gaming Acts (Amendment) Act 2004**), 8, 9 or 10 and—

Sch. 2 cl. 3A  
inserted by  
No. 104/2003  
s. 5(12),  
amended by  
Nos 45/2004  
s. 41(b),  
69/2004  
s. 59(a).

- (a) only one offence against section 194(1), (2) or (3) of the **Crimes Act 1958** is charged and the value of the property dealt with is \$50 000 or more; or

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- (b) more than one offence against section 194(1), (2) or (3) of the **Crimes Act 1958** is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property dealt with is \$75 000 or more.
4. An offence of—
- (a) conspiracy to commit; or
- (b) aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of—
- an offence referred to in item 3.
- Sch. 2 cl. 4A inserted by No. 69/2004 s. 59(b).
- 4A. An offence of conspiracy to commit an offence referred to in item 10 in the circumstances referred to in that item.
- Sch. 2 cl. 5 amended by Nos 63/2003 s. 40, 45/2004 s. 41(b), 69/2004 s. 59(a).
5. An offence of attempting to commit any offence in the circumstances referred to in item 1, 1A, 2, 2A, 2B, 2C (as in force immediately before its repeal by section 41(a) of the **Racing and Gaming Acts (Amendment) Act 2004**), 3, 8, 9 or 10.
6. A continuing criminal enterprise offence within the meaning of Part 2B of the **Sentencing Act 1991** for which the offender is liable to be sentenced under that Part as a continuing criminal enterprise offender.
- Sch. 2 cl. 7 substituted by No. 63/2003 s. 41.
7. The common law offence of conspiracy to defraud where—
- (a) only one offence is charged and the value of the property, financial advantage or economic loss in respect of which the offence is committed is \$50 000 or more; or
- (b) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property, financial advantage or economic loss in respect of which the offences are committed is \$75 000 or more.
- Sch. 2 cl. 8 inserted by No. 63/2003 s. 41.
8. The common law offence of misconduct in public office where—
- (a) only one offence is charged and the value of the property in respect of which the offence is committed is \$50 000 or more; or
- (b) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property in respect of which the offences are committed is \$75 000 or more.
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9. The common law offence of bribery of a public official where—
- (a) only one offence is charged and the value of the property in respect of which the offence is committed is \$50 000 or more; or
  - (b) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the value of the property in respect of which the offences are committed is \$75 000 or more.
10. An offence against section 111A, 111B or 111C of the **Fisheries Act 1995** where—
- (a) only one offence is charged and the export value at the time of the offence of the fish involved in the offence is \$50 000 or more; or
  - (b) more than one offence is charged and the offences are founded on the same facts or form or are part of a series of offences of the same or similar character and the export value at the time, or times, of the offences of the fish involved in the offences is \$75 000 or more.

**Sch. 2 cl. 9**  
**inserted by**  
**No. 63/2003**  
**s. 41.**

**Sch. 2 cl. 10**  
**inserted by**  
**No. 108/2003**  
**s. 8(2).**

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Sch. 3  
amended by  
Nos 61/2001  
s. 11(2)(a)-(d),  
35/2002  
s. 28(Sch.  
item 2.2),  
repealed by  
No. 87/2004  
s. 22(3).

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**ENDNOTES**

**1. General Information**

*Minister's second reading speech—*

*Legislative Assembly: 13 November 1997*

*Legislative Council: 4 December 1997*

The long title for the Bill for this Act was "A Bill to provide for the forfeiture of the proceeds of crime and other property in certain circumstances, to amend the **Sentencing Act 1991**, to repeal the **Crimes (Confiscation of Profits) Act 1986** and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 13 November 1997*

*Legislative Council: 4 December 1997*

*Absolute majorities:*

*Legislative Assembly: 3 December 1997*

*Legislative Council: 10 December 1997*

The **Confiscation Act 1997** was assented to on 23 December 1997 and came into operation as follows:

Part 1 (sections 1–13) on 23 December 1997: section 2(1); rest of Act on 1 July 1998: Government Gazette 25 June 1998 page 1561.

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## 2. Table of Amendments

This Version incorporates amendments made to the **Confiscation Act 1997** by Acts and subordinate instruments.

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### **Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* Ss 7–39 on 26.5.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

### **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1998, No. 60/1998**

*Assent Date:* 27.10.98  
*Commencement Date:* S. 16 on 27.10.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

### **Crimes, Confiscation and Evidence Acts (Amendment) Act 1998, No. 80/1998**

*Assent Date:* 13.11.98  
*Commencement Date:* Pt 3 (s. 5) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

### **Transfer of Land (Single Register) Act 1998, No. 85/1998**

*Assent Date:* 17.11.98  
*Commencement Date:* S. 24(Sch. item 11) on 1.1.99: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

### **Prostitution Control (Amendment) Act 1999, No. 44/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 33 on 8.6.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

### **Victims of Crime Assistance (Amendment) Act 2000, No. 54/2000**

*Assent Date:* 12.9.00  
*Commencement Date:* S. 25(2) on 1.1.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

### **Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 25) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

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**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 13) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 21) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001**

*Assent Date:* 23.10.01  
*Commencement Date:* S. 11 on 1.1.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002**

*Assent Date:* 18.6.02  
*Commencement Date:* S. 28(Sch. item 2) on 19.6.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Confiscation (Amendment) Act 2003, No. 63/2003**

*Assent Date:* 30.9.03  
*Commencement Date:* Ss 4–42 on 1.12.03: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Crimes (Money Laundering) Act 2003, No. 104/2003**

*Assent Date:* 9.12.03  
*Commencement Date:* Ss 5, 6 on 1.1.04: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Fisheries (Further Amendment) Act 2003, No. 108/2003**

*Assent Date:* 9.12.03  
*Commencement Date:* S. 8 on 10.12.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Gambling Regulation Act 2003, No. 114/2003**

*Assent Date:* 16.12.03  
*Commencement Date:* S. 12.1.3(Sch. 6 item 3) on 1.7.04: Government Gazette 1.7.04 p. 1843  
*Current State:* This information relates only to the provision/s amending the **Confiscation 1997**

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**Racing and Gaming Acts (Amendment) Act 2004, No. 45/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 41 on 1.7.04: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Sustainable Forests (Timber) Act 2004, No. 48/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 133 on 17.6.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004**

*Assent Date:* 19.10.04  
*Commencement Date:* S. 59 on 20.10.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Major Crime Legislation (Seizure of Assets) Act 2004, No. 87/2004**

*Assent Date:* 23.11.04  
*Commencement Date:* Ss 4–23 on 1.1.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 38) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005, No. 6/2005**

*Assent Date:* 27.4.05  
*Commencement Date:* S. 13(4) on 26.5.05: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 17) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

**Justice Legislation (Further Amendment) Act 2006, No. 79/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* Ss 10–14, 86 on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Confiscation Act 1997**

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### **3. Explanatory Details**

<sup>1</sup> S. 35(1): Section 23 enables a court to declare that a restraining order, to the extent to which it relates to certain property, shall be disregarded for the purposes of section 35.