

Version No. 011
Confiscation Act 1997

Act No. 108/1997

Version incorporating amendments as at 27 October 1998

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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, without requiring a conviction, of property of a person if the Supreme Court finds it more probable than not that the person has engaged in certain drug offences;
- (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;

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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

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 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 automatic forfeiture offence;

"automatic forfeiture offence" means an offence referred to in Schedule 2 and, in Parts 11, 13 and 14, includes an interstate offence;

"bank" means—

- (a) the Reserve Bank of Australia; or
 - (b) a bank within the meaning of the Banking Act 1959 of the Commonwealth; or
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- (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;

"civil forfeiture offence" means an offence referred to in Schedule 3 and, in Parts 11, 13 and 14, includes an interstate offence;

"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;

"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;

"financial institution" means—

(a) a bank; or

(b) a building society; or

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- (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;
- "fixed term deposit"** means an interest bearing deposit lodged for a fixed period;
- "forfeiture offence"** means an offence referred to in Schedule 1 and, in Parts 11, 13 and 14, includes an interstate offence;
- "forfeiture order"** means an order made under Division 1 of Part 3;
- "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;
- "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;
- "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
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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
- (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;

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

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

"premises" includes vessel, aircraft, vehicle and any place, whether built upon or not;

"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;

"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;
- (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;

"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;

"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
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indirectly, by any person from the commission of the offence;

"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 Law of Victoria;

"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 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**.

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.

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—

- (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.

- (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.

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

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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
- (e) using the property to obtain or extend credit; and
- (f) using credit secured against the property.

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

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

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

12. Jurisdiction

- (1) The jurisdiction given to the Children's Court by this Act is exercisable by the Criminal Division of that Court.
 - (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.
 - (4) The Magistrates' Court or the Children's Court must not, in relation to the conviction of a defendant for a particular forfeiture 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 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 forfeiture offence, make a pecuniary penalty order against the defendant
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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 has 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 a civil forfeiture order) irrespective of the value of the property or the amount payable.

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.

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.
- (4) A restraining order may, at the time it is made or at a later time, provide for meeting—

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- (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;
 - (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.

16. *Application for restraining order*

- (1) If a person has been, or within the next 48 hours will be, charged with or has been convicted of—
- (a) a civil forfeiture offence, the DPP or a prescribed person, or a person belonging to a prescribed class of persons, may apply, without notice, to the Supreme Court;
 - (b) an automatic forfeiture offence, the DPP may apply, without notice, to the Supreme Court or the County Court;
 - (c) any other forfeiture offence—
 - (i) the DPP may apply, without notice, to any court; or
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- (ii) 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.

- (2) For the purposes of civil forfeiture, it does not matter that the charge has been withdrawn or finally determined.
- (3) An application under sub-section (1) for the purposes of automatic forfeiture may only be made before the end of the relevant period in relation to the conviction.
- (4) An application under sub-section (1) must be supported by an affidavit of—
- (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**.

17. Procedure on application

- (1) The court may require an applicant under section 16(1) 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.
- (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.
- (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.

18. Determination of application

S. 18
amended by
No. 43/1998
s. 11.

On an application under section 16(1), 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 forfeiture offence, an automatic forfeiture offence or a civil forfeiture 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 forfeiture offence, automatic forfeiture offence or civil forfeiture offence; and
 - (ii) the order of the court under the **Sentencing Act 1991** is likely to exceed \$10 000.

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.

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.
- (2) An applicant must give notice of the application, and of the grounds on which it is made—
 - (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.

21. Determination of exclusion application—restraining order—forfeiture offence

On an application made under section 20, where the restraining order has been made in relation to a forfeiture 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

- (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 forfeiture offence; and
 - (B) where the applicant acquired the interest before the commission, or alleged commission, of the forfeiture 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 forfeiture offence; and

(C) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the forfeiture 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

(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.

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

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

- (a) the court may make an order excluding the property from the operation of the restraining order if the court is satisfied that—
 - (i) the property in which the applicant claims an interest was lawfully acquired by the applicant; and
 - (ii) 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
 - (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 automatic forfeiture offence; and

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

- (B) where the applicant acquired the interest before the commission, or alleged commission, of the automatic forfeiture 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 automatic forfeiture offence; and
 - (C) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the automatic forfeiture 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
 - (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
 - (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**.

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

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*

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

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

- (a) the court may make an order excluding the property from the operation of the restraining order if the court is satisfied that—
- (i) the property in which the applicant claims an interest was lawfully acquired by the applicant; and
 - (ii) 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
 - (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 if the court is satisfied that—
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- (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.

25. Declaration that restraining order shall be disregarded for purposes of civil forfeiture order

If, in the circumstances set out in section 24(a), the court is satisfied of the matters referred to in sub-paragraphs (i) and (ii) 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 38.

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

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

- (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.
- (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

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- 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;
 - (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.

27. Duration and setting aside of restraining order

- (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 forfeiture offence, an automatic forfeiture offence or a civil forfeiture offence, the defendant has not been charged with the offence or a related offence that is a forfeiture offence, automatic forfeiture offence or civil forfeiture 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.
- (2) A restraining order made for a purpose referred to in section 15(1)(c) and in reliance on a civil forfeiture offence ceases to be in force on the expiry of 7 days after it is made unless an application for a civil forfeiture order or a pecuniary penalty order in respect of that civil forfeiture offence is then pending before the Supreme Court.

S. 27(2)
amended by
No. 43/1998
s. 14(1).

- (3) If, when a restraining order was made in reliance on the charging, or proposed charging, of a defendant with a forfeiture offence, an automatic forfeiture offence or a civil forfeiture offence or in reliance on the conviction of a defendant of such an offence—
- (a) the charge is withdrawn and the defendant is not charged with a related offence that is a forfeiture offence, an automatic forfeiture offence or a civil forfeiture 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
 - (b) the defendant is acquitted of the charge (other than a charge of a civil forfeiture offence) and the defendant is not charged with a related offence that is a forfeiture offence, an automatic forfeiture offence or a civil forfeiture 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
 - (ba) the defendant is acquitted of a charge of a civil forfeiture offence and the defendant is not charged with a related offence that is a forfeiture offence, an automatic forfeiture offence or a civil forfeiture offence by the time of the acquittal, whether or not in the same Schedule as the original offence, the restraining order (other than one referred to in sub-section (2)) ceases to be in force on the expiry of 7 days after the acquittal occurs; or

S. 27(3)(ba)
inserted by
No. 43/1998
s. 14(2)(a).

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

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

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- (a) gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed on the defendant under Part 8; or
 - (b) gives undertakings satisfactory to the court concerning the defendant'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.

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

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.

(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

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- (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*

s. 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—
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Confiscation Act 1997

Act No. 108/1997

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

(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.

(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—

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

$$F \times V/A$$

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;

s. 31

Confiscation Act 1997

Act No. 108/1997

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

PART 3—FORFEITURE OF PROPERTY

Division 1—Forfeiture on Court Order

32. *Application for forfeiture order*

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

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- (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

- (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 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.

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

- (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 86 (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.

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—
- (a) by way of a consent order under sub-section (1); or

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

- (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 forfeiture offence.

Division 2—Automatic Forfeiture after Conviction

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

(1) If—

- (a) a person is convicted of an automatic forfeiture offence; and
- (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 an automatic forfeiture offence; and
- (c) the restrained property is not the subject of an exclusion order under section 22—

the restrained property¹ 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

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

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

restrained property, the property is forfeited to the Minister—

- (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.
- (3) If a person is, by reason of section 4(1)(d), deemed to have been convicted of an automatic forfeiture 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.
- (4) On an application under sub-section (3), the court must not make an order declaring the date of conviction of a person of an automatic forfeiture offence unless it is satisfied that the person has absconded.

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

36. Declaration that property has been forfeited

If a court makes a restraining order in reliance on—

- (a) a defendant's conviction of an automatic forfeiture offence; or
- (b) the charging or proposed charging of a defendant with an automatic forfeiture offence—

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

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Minister under that section, must make a
declaration accordingly.

PART 4—CIVIL FORFEITURE

37. Application for civil forfeiture order

- (1) If a defendant has been charged with a civil forfeiture 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 civil forfeiture order in respect of restrained property in which the defendant has an interest.
- (2) For the purposes of civil forfeiture, 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.

S. 37(3A)
inserted by
No. 43/1998
s. 16.

- (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. 37(3B)
inserted by
No. 43/1998
s. 16.

- (3B) The Supreme Court must not grant leave under sub-section (3A) unless it is satisfied that—
 - (a) the property to which the application relates was derived, realised or identified only after the end of the period referred to in sub-section (3A); or
 - (b) necessary evidence became available only after the end of the period referred to in sub-section (3A); or
 - (c) it is otherwise in the interests of justice to do so.

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- (4) The applicant must give written notice of the application—
 - (a) to the defendant; and
 - (b) to any other person whom the applicant has reason to believe has an interest in the property.
 - (5) The Supreme 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 Supreme 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 (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 Supreme Court from making a civil forfeiture order.
 - (8) 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.
 - (9) An application under sub-section (1) must not be heard and determined before the expiry of 60 days after the making of the application.
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- (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 civil forfeiture offence, except with the leave of the Supreme Court.
- (11) The Supreme 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).
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Penalty: Imprisonment for 12 months or
1000 penalty units.

38. *Determination of application for civil forfeiture order*

- (1) On an application under section 37(1), the Supreme Court must order that the restrained property² be forfeited to the Minister if it finds on the balance of probabilities that the defendant committed the civil forfeiture offence with which the defendant was charged, whether or not the defendant has been tried and, if tried, acquitted.
- (2) The Supreme 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.
- (4) The Supreme Court may, subject to any rules of court, take into account in determining the application any material that it thinks fit including, if the application is heard after the defendant has been tried for the civil forfeiture offence, evidence given in any proceeding relating to that offence 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) The quashing of a conviction for a civil forfeiture offence does not affect the validity of a civil forfeiture order that was made before or after the conviction was quashed and was based on that offence.
- (6) The making of a civil forfeiture order does not prevent the making of a pecuniary penalty order.

S. 38(1)
amended by
No. 43/1998
s. 36(f).

39. *Consent orders*

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

- (1) The Supreme 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 sub-section (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.

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.

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).

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

(b) the Minister is entitled to be registered as owner of the property; and

S. 41(3)(c)
amended by
No. 43/1998
s. 36(h)(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(4)
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.

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.

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- (2) The Registrar-General must make all entries on the records of enrolment of any Crown Grant and on any memorial relating to land that are necessary because of the operation of any order under sub-section (1).
 - (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

- (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.
- (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—

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

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

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- (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, 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.
 - (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.
- (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

S. 44(3)(b)
amended by
No. 43/1998
s. 17(1)(a)(b).

S. 44(3)(c)
inserted by
No. 43/1998
s. 17(2).

S. 44(4)
amended by
No. 43/1998
s. 17(3).

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 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.

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

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.

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 sub-section (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.
- (3) A notice under sub-section (2) must include a statement to the effect that a person claiming to

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

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.
- (2) If automatic forfeiture is discharged in the manner referred to in paragraph (a), (b) or (c) of subsection (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.
- (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

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before it was forfeited may make an application
under section 55.

PART 6—EXCLUSION ORDERS**49. *Application for exclusion from forfeiture order***

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

- (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.
- (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 forfeiture offence; and

(ii) where the applicant acquired the interest before the commission of the forfeiture 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 forfeiture offence; and

(iii) where the applicant acquired the interest at the time of or after the commission of the forfeiture 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

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

- (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*

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

- (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.

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

- (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.
- (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.
- (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 automatic forfeiture offence; and
 - (ii) where the applicant acquired the interest before the commission of the automatic forfeiture 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 automatic forfeiture offence; and
 - (iii) where the applicant acquired the interest at the time of or after the commission of the automatic forfeiture 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

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- (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

- (1) If property is forfeited to the Minister under section 38, 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 Supreme Court for an order under section 54.
- (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.
- (3) The Supreme 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.
- (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

S. 53(1)
amended by
No. 43/1998
s. 36(n).

S. 53(2)
amended by
No. 43/1998
s. 36(n).

(b) the making of the relevant restraining order—

except with the leave of the Supreme Court.

- (5) The Supreme 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.
- (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.
- (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*

- (1) On an application made under section 53, the Supreme 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 satisfied that—
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- (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.
- (2) If the Supreme Court makes an order under subsection (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(1)(b)
substituted by
No. 43/1998
s. 20.

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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- (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 offence.
- (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.
- (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 offence.
- (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.
- (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(5)
amended by
No. 43/1998
s. 36(o).

S. 55(6)
amended by
No. 43/1998
s. 36(o).

S. 55(8)
amended by
No. 43/1998
s. 36(p).

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.

- (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 offence.

- (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*

- (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.

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

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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.
- (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

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).

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

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
- (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—

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- (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(f).**

PART 8—PECUNIARY PENALTY ORDERS**Division 1—Automatic forfeiture offence or forfeiture offence****58. Application for pecuniary penalty order**

- (1) If a defendant is convicted of an automatic forfeiture 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.
 - (2) If a defendant is convicted of a forfeiture offence other than an automatic forfeiture 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.
 - (5) The applicant must give written notice of the application to the defendant.
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- (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.

59. Determination of application for pecuniary penalty order

- (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 automatic forfeiture 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—
 - (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—
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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 86 (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).

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 sub-section (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 defendant was convicted of the offence in reliance on which

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

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
 - (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.
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- (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—Civil forfeiture offence

63. Application for pecuniary penalty order

- (1) If a defendant has been charged with a civil forfeiture 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 civil forfeiture, 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(3A)
inserted by
No. 43/1998
s. 22(1).

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

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

- (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

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

- (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.
 - (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 civil forfeiture offence, except with the leave of the Supreme Court.
 - (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.
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- (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.

64. *Determination of application for pecuniary penalty order*

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

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 86 (compensation order) of the **Sentencing Act 1991** in relation to the same civil forfeiture 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.
- (5) The quashing of a conviction for a civil forfeiture 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
No. 43/1998
s. 23.

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- (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—
- (a) by way of a consent order under sub-section (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.

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

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

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

Commonwealth, notice of the discharge of that order must be given as prescribed by the rules of the Supreme Court.

Division 3—General

67. *Assessment of benefits*

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

(1) For the purposes of this Part, the value of the benefits derived by a defendant in relation to an offence may include—

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

- (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;
 - (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
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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.

- (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 civil forfeiture offences and automatic forfeiture offences*

- (1) The DPP or 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 civil forfeiture offence.
- (2) The DPP may apply to the Supreme Court or the County Court for the application of this section in relation to an automatic forfeiture offence.
- (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
 - (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—

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

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- (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
 - (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.

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.

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

- (1) If—

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

Confiscation Act 1997

Act No. 108/1997

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

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

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

(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—

(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.

(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.

S. 73(2)
amended by
No. 43/1998
s. 36(y).

- (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.

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- (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(4)
amended by
No. 43/1998
s. 39(e).

S. 73(6)
amended by
No. 43/1998
s. 36(y)(z).

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.

- (4) A certificate under the hand or seal of a trustee—
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- (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.
- (7) With the permission of the Minister, or a prescribed person authorised by the Minister for
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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.

PART 10—DISPOSAL ORDERS**77. Application for disposal order**

- (1) If a person has been convicted of a forfeiture 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—
- (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—
- that was used, or was intended to be used, in, or in connection with, the commission of the offence or 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.
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78. Disposal orders

- (1) 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.
 - (2) A court has power to give all directions that are necessary to give effect to a disposal order made by it.
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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 forfeiture 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.

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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.

80. *Application for warrant*

- (1) An application for a search warrant must be made in writing.
- (2) A magistrate or judge must not issue a search 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.
- (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.

81. *Search warrant may be granted by telephone*

- (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 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—
- the magistrate or judge is satisfied as required by section 79(2), he or she may issue a search warrant.
- (5) If a magistrate or judge issues a search 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.
- (6) If a copy of the search warrant has not been transmitted by facsimile machine, the applicant must—
- (a) complete a form of search warrant 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

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- (b) not later than the day following the date of the execution of the search warrant 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.
- (7) If an application is made by telephone, whether or not a search 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.
- (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 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.

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

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- (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
 - (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.

84. *Duty to show 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.

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 with the aid of any assistants that the member considers necessary.

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 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.

89. Report on execution of warrant etc.

- (1) The person to whom a search 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) stating whether or not an occupier's notice has been served in connection with the execution of the warrant; and
 - (e) stating whether or not an embargo notice has been issued under section 93 in connection with the execution of the 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 sub-section (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
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- (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.

90. *Absence etc. of magistrate or judge who issued warrant*

If the magistrate or judge who issued a search 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) a power exercisable by him or her under section 83(3)(b) or (4)—

must be given to, or may be exercised by, as the case requires, any other magistrate or judge.

91. *Defects in warrants*

A search 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 forfeiture 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 forfeiture 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
 - (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.
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| (3) A person who knows that an embargo notice relates to property and who— | S. 93(3) amended by No. 43/1998 s. 26(1). |
| (a) sells; or | S. 93(3)(a) inserted by No. 43/1998 s. 26(1). |
| (b) leases; or | S. 93(3)(b) inserted by No. 43/1998 s. 26(1). |
| (c) without the written consent of the member of the police force who issued the embargo notice, moves; or | S. 93(3)(c) inserted by No. 43/1998 s. 26(1). |
| (d) transfers; or | S. 93(3)(d) 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. | S. 93(3)(e) inserted by No. 43/1998 s. 26(1). |
| (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. | S. 93(5) amended by No. 43/1998 s. 26(2). |
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- (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.

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.

95. *Obstruction or hindrance of person executing search warrant*

A person must not, without reasonable excuse, obstruct or hinder a person executing a search warrant.

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

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.
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- (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.
 - (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 forfeiture 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
 - (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 civil forfeiture offence; or
- (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 referred to in section 15(1)(c) or (d) in relation to a civil forfeiture 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—

- (a) property has been seized under a search 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.

- (3) If property has been seized under a search warrant other than property seized under a warrant referred to in sub-section (11) 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—
- (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.

- (4) The applicant for an order under sub-section (3) must give written notice of the application and of the date, time and place fixed for the hearing of it—
- (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
 - (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).

- (6) If the Magistrates' Court makes an order under sub-section (3), 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).
- (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.
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- (10) A person must not knowingly contravene an order made under sub-section (3).

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

- (11) This section (except sub-section (3)) applies to a search 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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PART 12—EXAMINATION ORDERS

98. *Order for examination*

S. 98(1)
substituted by
No. 43/1998
s. 27.

- (1) In this section, "**relevant person**" means the DPP or a prescribed person or a person belonging to a prescribed class of persons.
 - (2) If a court is satisfied that—
 - (a) a defendant has been charged with or convicted of a forfeiture offence, an automatic forfeiture offence or a civil forfeiture offence (as the case may be); and
 - (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 the affairs of the defendant, including the nature and location of—

 - (c) any property in which the defendant has or may have an interest; or
 - (d) any property which the applicant for the order believes, on reasonable grounds, to be tainted property.
 - (3) An application for an order under sub-section (2) may be made by a relevant person to—
 - (a) if a restraining order is or has been made in reliance on the charging or conviction of the defendant, 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.
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- (5) For the purposes of an application under this section in respect of a civil forfeiture 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
 - (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.

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

PART 13—INFORMATION GATHERING POWERS

Division 1—Production Orders

100. *Application for production order*

- (1) In this section, "**relevant offence**" means a forfeiture offence, an automatic forfeiture offence or a civil forfeiture 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.

101. *Production orders*

Confiscation Act 1997

Act No. 108/1997

- (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
 - (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).**

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.

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.

106. *Effect of production orders on proceedings etc.*

Confiscation Act 1997

Act No. 108/1997

S. 106(1)(b)
amended by
No. 43/1998
s. 29(1).

S. 106(1)(c)
inserted by
No. 43/1998
s. 29(1).

S. 106(2)
amended by
No. 43/1998
s. 29(2).

- (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
 - (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.

- (2) If a person produces or makes available a document under a production order—
- (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.

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.

- (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 forfeiture offence, automatic forfeiture offence or civil forfeiture offence of which a person has been convicted or which the applicant has reasonable grounds for believing to have been committed by a person.
- (2) An application can only be made under subsection (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 forfeiture

offence, automatic forfeiture offence or civil forfeiture 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
 - (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.
- (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
- (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 forfeiture offence, automatic forfeiture offence or civil forfeiture offence; or
- (ii) to be a thing that will afford evidence about the commission of a forfeiture offence—

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*

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 forfeiture offence, automatic forfeiture offence or civil forfeiture 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*

- (1) 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
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- (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 forfeiture offence, an automatic forfeiture offence or a civil forfeiture 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.

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 122 (money laundering) 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.

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).

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- (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
 - (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
 - (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.

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- (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.

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.

- (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.
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(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 the request to the extent to which the cash dealer has that information.

S. 119(6)
amended by
No. 43/1998
s. 30.

(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.

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- (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
 - (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 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 forfeiture offence—

(i) are to be transmitted to the Chief Commissioner of Police in Victoria; and

S. 120(1)(b)(i)
amended by
No. 43/1998
s. 39(g).

(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 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.

PART 14—MONEY LAUNDERING

121. Definitions

In this Part—

"proceeds of crime" means—

- (a) proceeds of a forfeiture 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);

"transaction" includes the receiving or making of a gift.

122. Money laundering

- (1) A person who engages in money laundering is guilty of an indictable offence and liable to level 3 imprisonment (20 years maximum) or a level 3 fine (2400 penalty units maximum) or to both.
- (2) A person engages in money laundering if, and only if—
 - (a) the person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime; or

(b) the person receives, possesses, conceals, disposes of or brings into Victoria any money, or other property, that is proceeds of crime—

and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

(3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant engaged in money laundering to assist the enforcement of a law of the Commonwealth, a State or a Territory.

123. *Possession etc. of property suspected of being proceeds of crime*

(1) A person must not receive, possess, conceal, dispose of or bring into Victoria any money, or other property that may reasonably be suspected of being proceeds of crime.

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

(2) It is a defence to a charge for an offence against sub-section (1) if the defendant satisfies the court that the defendant had reasonable grounds for not suspecting that the property referred to in the charge was proceeds of crime.

PART 15—INTERSTATE ORDERS AND WARRANTS

124. *Definition*

In this Part—

"proceeds of crime" means—

- (a) proceeds of a forfeiture 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 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.

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

(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 1901 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.

- (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 forfeiture 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.

- (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 forfeiture offence, an automatic forfeiture offence or a civil forfeiture 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.

(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.

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.

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

S. 133A
inserted by
No. 43/1998
s. 32.

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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.

134. *Crime Prevention and Victims' Aid Fund*

Confiscation Act 1997

Act No. 108/1997

- (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.

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 Law—
 - (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
 - (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.

140. *Secrecy*

Confiscation Act 1997

Act No. 108/1997

- (1) Except as provided by this section, 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 State but is otherwise not competent or compellable to give evidence in relation to that information.
- (3) Nothing in this section prevents a law enforcement agency which obtains information, or to which information is communicated or given, under Part 13 from communicating or giving the information to another law enforcement agency or to a prescribed person, or a member of a prescribed class of persons, authorised by the Minister for the purposes of this sub-section for the purpose of any legal proceedings arising out of this Act or a corresponding law or in connection with the enforcement of the laws of a State, a Territory or the Commonwealth.

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- (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 forfeiture 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—

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—

S. 142(1)(b)
amended by
No. 43/1998
s. 34(1).

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- (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 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 civil forfeiture 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.
- (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

**S. 142(4)
amended by
No. 43/1998
s. 34(2).**

made the order, or refused to make the order, with or without any direction in law.

- (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 to make a civil forfeiture order; or
 - (b) the making of an exclusion order under section 24 or 54(1); or
 - (c) the making of a pecuniary penalty order in relation to a civil forfeiture offence or against the refusal to make a pecuniary penalty order in relation to a civil forfeiture offence—

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, with or without any direction in law.

143. *Provision of legal aid*

- (1) If a court is satisfied at any time that—

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- (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 practitioner 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
 - (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).

144. *Operation of other laws not affected*

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Nothing in this Act limits or restricts the operation of any other law providing for the forfeiture of property.

145. *Supreme Court—limitation of jurisdiction*

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**.

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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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;

"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 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
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Confiscation Act 1997

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s. 149

property in respect of which the offence is committed is \$50 000 or more.

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."

**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";

(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".

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.
- (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.

S. 157(1)
amended by
No. 43/1998
s. 37.

- (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 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.
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- (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**.
- (11) The provisions of this section are in addition to, and not in derogation from, the provisions of the **Interpretation of Legislation Act 1984**.
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SCHEDULES

SCHEDULE 1

FORFEITURE OFFENCES

1. An indictable offence against the law of Victoria.
2. An automatic forfeiture 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 films);
 - (b) section 9 (exhibition of unclassified, RC, X, R and MA films);
 - (c) section 15(1) or (2) (selling unclassified, RC and X films);
 - (d) section 23(1) or (2) (possession or copying of unclassified, RC and X films for purpose of sale or exhibition);
 - (da) section 23A(4) or (5) (possession or copying of commercial quantity of X 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);

Sch. 1 item
5(c)
amended by
No. 60/1998
s. 16(a).

Sch. 1 item
5(da)
inserted by
No. 60/1998
s. 16(b).

Confiscation Act 1997

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Sch. 1

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- (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).
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);
 - (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.);
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- (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);
 - (h) section 67(3) (contravention of regulation or fisheries notice prohibition);
 - (i) section 68A(1), (2) or (5) (offences in relation to size and catch limits);
 - (j) section 68A(3) (offence in relation to size or catch limit) where the penalty imposed is 50 penalty units or more;
 - (k) section 71(1) (unauthorised taking etc. of protected aquatic biota);
 - (l) section 76 (offences concerning noxious aquatic species);
 - (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);
 - (u) section 130(4) (failure to comply with order prohibiting person from being on certain boats or in certain places);
 - (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).
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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).
 10. An offence against any of the following provisions of the **Gaming and Betting Act 1994**:
 - (a) section 117(1) or (2) (inducements, cheating etc.);
 - (b) section 118 (forgery etc.);
 - (c) section 119 (extending credit etc.).
 11. An offence against any of the following provisions of the **Gaming Machine Control Act 1991**:
 - (a) section 67(1) or (2) (payments to venue operator by manufacturer or supplier of gaming equipment);
 - (b) section 81 (extending credit for playing gaming machine);
 - (c) section 146(1), (2), (3) or (4) (inducements, cheating etc.);
 - (d) section 147(1) or (2) (bribery of authorised person).
 12. An offence against any of the following provisions of the **Gaming No. 2 Act 1997**:
 - (a) section 7(2) (lotteries prohibited);
 - (b) section 21(b) (conducting session of bingo games otherwise than in accordance with Act and minor gaming permit).
 13. An offence against any of the following provisions of the **Lotteries Gaming and Betting Act 1966**:
 - (a) section 18(1) (owning or occupying betting house);
 - (b) section 21 (exhibiting placards or advertising betting houses);
 - (c) section 22 (advertising as to betting);
 - (d) section 23(1) (betting in street etc.);
 - (e) section 26 (making bet with or inviting minor to bet an offence);
 - (f) section 39 (offences in respect of totalizators);
 - (g) section 40(1) (publication etc. of information concerning betting etc.);
 - (h) section 41(1) (posting up betting placards and notices);
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- (i) section 42(1) (communicating certain racing information while race-meeting is being held);
- (j) section 66B(1) (possession of instrument of betting).
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).
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**;
- (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**;
- (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**;
- (d) section 43A (possessing unlawfully taken wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**;
- (e) section 45 (taking eggs of protected wildlife) as in force immediately before the commencement of section 14 of the **Wildlife (Amendment) Act 1997**;
- (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(a) amended by No. 43/1998 s. 38(a).
- Sch. 1 item 15(b) amended by No. 43/1998 s. 38(b).
- Sch. 1 item 15(c) amended by No. 43/1998 s. 38(c).
- Sch. 1 item 15(d) amended by No. 43/1998 s. 38(d).
- Sch. 1 item 15(e) amended by No. 43/1998 s. 38(e).
- Sch. 1 item 15(f) amended by No. 43/1998 s. 38(f).

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| (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). |
| (ha) section 41 (hunting, taking or destroying endangered wildlife); | Sch. 1 item 15(ha) inserted by No. 43/1998 s. 38(i). |
| (hb) section 42 (hunting, taking or destroying notable wildlife); | Sch. 1 item 15(hb) inserted by No. 43/1998 s. 38(i). |
| (hc) section 43 (hunting, taking or destroying protected wildlife); | Sch. 1 item 15(hc) inserted by No. 43/1998 s. 38(i). |
| (hd) section 45 (acquiring etc. endangered wildlife); | Sch. 1 item 15(hd) inserted by No. 43/1998 s. 38(i). |
| (he) section 46 (acquiring etc. notable wildlife); | Sch. 1 item 15(he) inserted by No. 43/1998 s. 38(i). |
| (hf) section 47 (acquiring etc. protected wildlife); | Sch. 1 item 15(hf) inserted by No. 43/1998 s. 38(i). |
| (hg) section 47D (wildlife unlawfully taken); | Sch. 1 item 15(hg) inserted by No. 43/1998 s. 38(i). |
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- (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);
- (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).

Sch. 1 item 16
inserted by
No. 43/1998
s. 38(j).

16. An offence against section 70 of the **Crimes Act 1958** (possession of child pornography).
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SCHEDULE 2

AUTOMATIC FORFEITURE OFFENCES

1. An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**:
 - (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;
 - (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;
 - (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);
 - (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.
 2. An offence against any of the following provisions of the **Crimes Act 1958**:
 - (a) section 81(1) (obtaining property by deception) where the value of the property in respect of which the offence is committed is \$100 000 or more;
 - (b) section 82(1) (obtaining financial advantage by deception) where the value of the financial advantage obtained is \$100 000 or more;
 - (c) section 321(1) where the conspiracy is to commit an offence referred to in paragraph (a) or (b).
 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 referred to in item 1 or 2.
 4. An offence of—
 - (a) conspiracy to commit; or
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- (b) aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of—
an offence referred to in item 3.
5. An offence of attempting to commit any offence referred to in items 1 to 3.
 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.
 7. 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 \$100 000 or more.
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SCHEDULE 3

CIVIL FORFEITURE OFFENCES

1. An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**:
 - (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;
 - (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;
 - (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);
 - (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.
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NOTES

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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Notes

2. Table of Amendments

This Version incorporates amendments made to the **Confiscation Act 1997** by Acts and subordinate instruments.

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**

3. Explanatory Details

¹ S. 35: 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.

² S. 38: Section 25 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 38.