

Version No. 011
Crimes (Confiscation of Profits) Act 1986

Act No. 101/1986

Version incorporating amendments as at 1 September 1997

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are as follows—

- (a) to provide for the forfeiture of property used in connection with the commission of a crime;
- (b) to provide for the confiscation of the profits of crime, whatever the form into which they have been converted;
- (c) to provide for the freezing of assets;
- (d) to provide for the destruction or disposal of certain illegal goods;
- (e) to make miscellaneous amendments to the **Drugs, Poisons and Controlled Substances Act 1981** and the **Summary Offences Act 1966**.

2. *Commencement*

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

(1) In this Act—

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

S. 3(1) def. of "account" inserted by No. 90/1991 s. 4(1)(a).

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

"appropriate officer" means—

S. 3(1) def. of "appropriate officer" amended by Nos 57/1989 s. 3(Sch. item 43.1(a)), 90/1991 s. 4(1)(b)(i)(ii) (A)(B).

- (a) in the case of an application to the Magistrates' 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 of a class of persons so prescribed;

"bank" means—

S. 3(1) def. of "bank" inserted by No. 90/1991 s. 4(1)(c).

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

S. 3(1) def. of "building society" inserted by No. 90/1991 s. 4(1)(c).

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S. 3(1) def. of
"cash dealer"
inserted by
No. 90/1991
s. 4(1)(c),
amended by
No. 90/1991
s. 37(a)(i).

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

"confiscation order" means a forfeiture order or
a pecuniary penalty order;

"corresponding law" means a law of another
State or a Territory that is declared by the
regulations to be a law that corresponds to
this Act;

S. 3(1) def. of
"credit union"
inserted by
No. 90/1991
s. 4(1)(d).

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

S. 3(1) def. of
"Director"
inserted by
No. 90/1991
s. 4(1)(d),
amended by
No. 90/1991
s. 37(a)(ii).

"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 26(1);

"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;

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

S. 3(1) def. of
"financial
institution"
inserted by
No. 90/1991
s. 4(1)(e).

"financial institution" means—

- (a) a bank; or
- (b) a building society; or
- (c) a credit union; or

(d) a body corporate that is or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth;

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

S. 3(1) def. of "fixed term deposit" inserted by No. 90/1991 s. 4(1)(e).

"forfeiture order" means an order made under section 7(1);

"interest", in relation to property, means—

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

"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 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;

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

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S. 3(1) def. of
"law
enforcement
agency"
inserted by
No. 90/1991
s. 4(1)(f).

"law enforcement agency" means—

- (a) the police force of Victoria; or
- (b) 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;

S. 3(1) def. of
"monitoring
order"
inserted by
No. 90/1991
s. 4(1)(f).

"monitoring order" means an order made under section 41M;

"pecuniary penalty order" means an order made under section 12(1);

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

S. 3(1) def. of
"production
order"
inserted by
No. 90/1991
s. 4(1)(g).

"production order" means an order made under section 41B;

S. 3(1) def. of
"property"
amended by
No. 90/1991
s. 4(1)(h).

"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", in relation to an offence, means—

S. 3(1) def. of "property-tracking document" inserted by No. 90/1991 s. 4(1)(i).

- (a) a document relevant to—
 - (i) identifying, locating or quantifying property of a person who committed, or is reasonably suspected of having committed, the offence; or
 - (ii) identifying or locating any document necessary for the transfer of property of a person who committed, or is reasonably suspected of having committed, the offence; 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 Director of Public Prosecutions on notice to that person during that period of 6 months, after—

S. 3(1) def. of "relevant period" amended by No. 90/1991 s. 4(1)(j)(i)(ii).

- (a) if the person is to be taken to have been convicted of the offence by reason of sub-section (2)(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 sub-section (2)(b)—the day on which

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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 sub-section (2)(c)—the day on which the offence was taken into account;

S. 3(1) def. of "reportable details" inserted by No. 90/1991 s. 4(1)(k), amended by No. 90/1991 s. 37(a)(iii).

"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;

S. 3(1) def. of "restraining order" amended by No. 57/1989 s. 3(Sch. item 43.1(b)).

"restraining order" means an order made under section 16;

S. 3(1) def. of "search warrant" amended by No. 90/1991 s. 4(1)(i)(ii).

"search warrant" means (except in Division 2 of Part 6A) a search warrant issued under Part 6 and in Division 2 of Part 6A means a search warrant issued under that Division;

S. 3(1) def. of "serious offence" amended by No. 90/1991 s. 4(1)(m).

"serious offence" means—

- (a) an indictable offence against the laws of Victoria; or
- (b) any other offence that is prescribed by the regulations as a serious offence for the purposes of this definition or is of a class of offences that is so prescribed—

and in Parts 6 and 6B includes an interstate serious offence;

"State authority" means—

- (a) a Minister of the Crown; or
- (b) a statutory body representing the Crown; or

- (c) a person or body that is prescribed by the regulations for the purposes of this paragraph or a person or body of a class of persons or bodies that is so prescribed;

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

S. 3(1) def. of "tainted property" inserted by No. 90/1991 s. 4(1)(n).

- (a) was used, or was intended by the defendant (that is the person convicted of, charged with or about to be charged with the offence) to be used in, or in connection with, the commission of the offence; or
- (b) was derived or realised, directly or indirectly, from property referred to in paragraph (a); or
- (c) was derived or realised, directly or indirectly, by any person as a result of the commission of the offence;

"trustee" means—

S. 3(1) def. of "trustee" inserted by No. 90/1991 s. 4(1)(n), amended by No. 45/1994 s. 42(Sch. item 3.1).

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

(2) For the purposes of this Act, a person is to be taken to have been convicted of a serious 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

S. 3(2)(b) amended by No. 90/1991 s. 4(2).

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S. 3(2)(c)
amended by
No. 49/1991
s. 119(7)(Sch.
4 item 5).

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) ¹the person has been charged with the offence but, before the charge is finally determined, the person cannot be found or is for any other reason not amenable to justice.

(3) For the purposes of this Act, a conviction is to be taken to have been quashed—

(a) where the person is to be taken to have been convicted by reason of sub-section (2)(a)—if the conviction is quashed or set aside or a free pardon is granted by the Governor; or

(b) where the person is to be taken to have been convicted by reason of sub-section (2)(b)—if the finding of guilt is quashed or set aside; or

(c) where the person is to be taken to have been convicted by reason of sub-section (2)(c)—if the decision of the court to take the offence into account is quashed or set aside; or

S. 3(3)(d)
amended by
No. 90/1991
s. 4(3).

(d) where the person is to be taken to have been convicted by reason of sub-section (2)(d)—if, after the person is subsequently brought before a court to be dealt with for the offence, the person is acquitted or, if convicted, the conviction is quashed or set aside or a free pardon is granted by the Governor.

S. 3(4)
amended by
No. 57/1989
s. 3(Sch. item
43.2(a)).

(4) For the purposes of this Act, a person is to be taken to have been charged with an offence if a charge has been filed against the person for the offence whether or not—

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- (a) a summons to answer to the charge; or
- (b) a warrant to arrest the person—
- has been issued and served.
- (5) For the purposes of this Act, a person who, because of sub-section (2), is to be taken to have been convicted of a serious offence, is to be taken to have committed that offence.
- (6) 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.
- (7) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act whether or not the person has—
- (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.
- (8) In determining whether or not property, or an interest in 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
- S. 3(4)(a)**
amended by
No. 57/1989
s. 3(Sch. item
43.2(b)).
S. 3(4)(b)
amended by
No. 57/1989
s. 3(Sch. item
43.2 (c)).
- S. 3(5)**
inserted by
No. 90/1991
s. 4(4).
- S. 3(6)**
inserted by
No. 90/1991
s. 4(4).
- S. 3(7)**
inserted by
No. 90/1991
s. 4(4).
- S. 3(8)**
inserted by
No. 90/1991
s. 4(4).

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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.

S. 3(9)
inserted by
No. 90/1991
s. 4(4).

(9) For the purposes of this Act, two offences are related to one another if the elements of the two offences are substantially the same acts or omissions.

S. 3(10)
inserted by
No. 90/1991
s. 4(4).

(10) If a person is, by reason of sub-section (2)(d), to be taken to have been convicted of a serious offence, a court must not make a forfeiture order or a disposal order in reliance on that conviction unless it is satisfied—

(a) that the person was committed for trial for the offence; or

(b) that the evidence is of sufficient weight to support a conviction for the offence.

S. 3(11)
inserted by
No. 90/1991
s. 4(4).

(11) A reference in this Act to a Commonwealth Act or to any provision of a Commonwealth Act includes a reference to—

(a) that Act or provision as amended and in force for the time being; and

(b) an Act passed in substitution for that Act or provision.

4. 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

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Parliament permits, the Crown in all its other capacities.

- (2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.
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PART 2—CONFISCATION ORDERS

Division 1—Applications

5. *Application for confiscation order*

- (1) If a person has been convicted of a serious offence, the Director of Public Prosecutions or an appropriate officer may, subject to sub-sections (2) and (4), apply to the Supreme Court or the court before which the person was convicted of the offence for one or both of the following orders—
- (a) a forfeiture order in respect of tainted property;
- (b) a pecuniary penalty order.
- (2) Except with the leave of the court before which the person was convicted, an application must be made under sub-section (1) before the end of the relevant period (if any) in relation to the conviction.
- (2A) A court must not grant leave under sub-section (2) unless it is satisfied that—
- (a) the property or 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.
- (3) If an application is made under sub-section (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

S. 5(1)(a)
amended by
No. 90/1991
s. 5(a).

S. 5(2)
amended by
No. 90/1991
s. 5(b).

S. 5(2A)
inserted by
No. 90/1991
s. 5(c).

S. 5(3)
amended by
No. 90/1991
s. 5(d)(i)–(iii).

confiscation 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 confiscation order.

(3A) On an application under sub-section (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. 5(3A)
inserted by
No. 90/1991
s. 5(e).

(3B) 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 sub-section (1).

S. 5(3B)
inserted by
No. 90/1991
s. 5(e).

(4) If an application under paragraph (a) or (b) of sub-section (1) has been finally determined, no further application may be made under that paragraph in relation to the same conviction, except with the leave of the Supreme Court or the court which dealt with the earlier application.

S. 5(4)
amended by
No. 90/1991
s. 5(f).

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

S. 5(4A)
inserted by
No. 90/1991
s. 5(g).

(a) the property or 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

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- (c) it is otherwise in the interests of justice to do so.
- (5) A court may hear and determine at the same time—
- (a) an application under sub-section (1); and
 - (b) an application under a law of the Commonwealth which the Governor in Council by Order published in the Government Gazette declares to be a law that makes provision substantially similar to the provisions of this Part.

6. *Limitation on power of Magistrates' Court*

S. 6(1)
amended by
Nos 57/1989
s. 3(Sch. item
43.3), 90/1991
s. 6(a).

- (1) The Magistrates' Court may not, in relation to the conviction of a person for a particular 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 its jurisdictional limit in civil proceedings other than those in which damages are claimed that consist of or include damages in respect of personal injury.

S. 6(2)
amended by
Nos 57/1989
s. 3(Sch. item
43.3), 90/1991
s. 6(a).

- (2) The Magistrates' Court may not, in relation to the conviction of a person for a particular offence, make a pecuniary penalty order against that person 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 that person by that court in relation to that conviction) does not exceed its jurisdictional limit in civil proceedings other than those in which damages are claimed that consist of or include damages in respect of personal injury.

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- (3) The Magistrates' Court may not make a forfeiture order in respect of real property, except in such circumstances as are prescribed.
 - (4) For the purposes of this section the value of property is its value as determined by the Magistrates' Court.
 - (5) If a person was convicted before the Magistrates' Court and that Court does not have jurisdiction under this Part to make a confiscation order because of the value of the property or the amount payable, then the County Court or the Supreme Court has jurisdiction.

S. 6(3)
amended by
No. 57/1989
s. 3(Sch. item
43.3).

S. 6(5)
inserted by
No. 90/1991
s. 6(b).

6A. *No limitation on power of County Court*

The County Court has jurisdiction under this Part to make a confiscation order irrespective of the value of the property or the amount payable.

S. 6A
inserted by
No. 90/1991
s. 7.

6B. *Consent orders*

- (1) A court may, within its jurisdictional limit, make a confiscation 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 must not enter into an agreement to settle any matter in respect of which a confiscation order could be made under this Act and which involves the payment of money or the transfer of property to the Crown, a State authority or the law enforcement agency other than—
 - (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

S. 6B
inserted by
No. 90/1991
s. 7.

- (d) with the approval of the Supreme Court or the court before which the person was convicted of the offence in reliance on which an application for a confiscation order could be made.

S. 6C
inserted by
No. 90/1991
s. 7.

6C. *Jurisdiction of Children's Court*

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

Division 2—Forfeiture Orders

7. *Forfeiture orders*

S. 7(1)
amended by
No. 90/1991
s. 8(a).

- (1) If an application is made to a court under section 5(1)(a), the court may, if it considers it appropriate, order that the property be forfeited to the State if it is satisfied that the property is tainted property.
- (2) 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.

S. 7(3)
amended by
No. 90/1991
s. 8(b).

- (3) The applicant for an order under sub-section (1) must give written notice of the application in the manner prescribed by rules of court—
- (a) to the person in reliance on whose conviction the application is made; and
 - (b) to any other person whom the applicant has reason to believe has an interest in the property.

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- (3A) The court may waive the requirement under sub-section (3) to give notice if—
- (a) the person in reliance on whose conviction the application is made 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.
- (4) The court may, at any time before the final determination of the application, direct the applicant to give or publish notice of the application to such persons, in such manner and within such time as the court thinks fit.
- (5) 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 notice of application as it thinks fit, either at the request of the applicant or with the approval of the applicant.
- (6) The person in reliance on whose conviction the application is made, 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.

S. 7(3A)
inserted by
No. 90/1991
s. 8(c).

8. *Effect of forfeiture order*

- (1) Subject to sub-section (2), if a court makes a forfeiture order in respect of property then immediately on the making of the order the property vests in the State authority specified in the order or, if none is so specified, then in the Minister.
- (2) If the order relates to land under the operation of the **Transfer of Land Act 1958**, the property does

S. 8(1)
amended by
No. 90/1991
s. 9(1).

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not vest as set out in sub-section (1) until effect has been given to the order in accordance with that Act.

S. 8(2A)
inserted by
No. 90/1991
s. 9(2).

(2A) Subject to sub-section (2B), property vests as set out in sub-section (1) subject to every mortgage, charge or encumbrance to which it was subject immediately before the forfeiture order was made and to—

(a) 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

(b) in the case of goods to which Part 3 of the **Chattel Securities Act 1987** applies, every security interest registered under that Act.

S. 8(2B)
inserted by
No. 90/1991
s. 9(2).

(2B) If the court which makes a forfeiture order is satisfied that a mortgage or charge to which the property is subject was created to limit the effect of a forfeiture order, it may discharge that mortgage or charge.

S. 8(2C)
inserted by
No. 90/1991
s. 9(2).

(2C) 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 (2B).

S. 8(2D)
inserted by
No. 90/1991
s. 9(2).

(2D) 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 (2B).

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

S. 8(4)
amended by
No. 90/1991
s. 9(3).

(4) Except with the leave of the court which made the forfeiture order, the State authority in which the property vests 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.

(5) If at the end of the appeal period the forfeiture order has not been discharged, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorised by the Minister for the purposes of this sub-section.

(6) For the purposes of sub-sections (4) and (5) the appeal period ends 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 lapses or is finally determined.

9. *Effect of forfeiture order on third parties*

(1) Any person who claims an interest in property in respect of which a forfeiture order has been made by a court may, subject to sub-section (2), apply to that court for an order under sub-section (4).

(2) An application under sub-section (1) must be made within the period of 6 months after the making of the forfeiture order.

(3) Despite sub-section (2), the court which made the forfeiture order may permit a person to apply under sub-section (1) outside that period if satisfied that the failure to apply within that period was not due to any neglect or delay on the part of that person.

(3A) An applicant under sub-section (1) must give written notice of the application in the manner prescribed by rules of court to the person who

**S. 9(3A)
inserted by
No. 90/1991
s. 10(a).**

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applied for the forfeiture order.

S. 9(4)
amended by
No. 90/1991
s. 10(b)(ii)(iii).

(4) If on an application under sub-section (1) the court is satisfied—

(a) that the applicant was not in any way involved in the commission of the offence in reliance on which the forfeiture order was made; and

S. 9(4)b
substituted by
No. 90/1991
s. 10(b)(i).

(b) if the applicant acquired the interest in the property at the time of or after the commission of the offence, that the applicant acquired the interest—

(i) in good faith and for value; and

(ii) without knowing, or in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property—

S. 9(4)(c)
repealed by
No. 90/1991
s. 10(b)(i).

* * * * *

the court must make an order declaring the nature, extent and value (as at the time of making the order) of the applicant's interest in the property and directing the State authority in which the property vested under the forfeiture order to transfer the property to the applicant or to pay to the applicant the declared value of the applicant's interest in the property, whichever the order directs.

(5) If the applicant had been given notice under section 7 of the application for the forfeiture order or had attended the hearing of the application for the forfeiture order, the court must not make an order under sub-section (4) unless it is satisfied that the making of the order is justified on special grounds, such as—

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- (a) the existence of a good reason why the applicant did not attend the hearing of the application for the forfeiture order;
 - (b) that evidence now given by the applicant was not available to the applicant at the time of the hearing of the application for the forfeiture order.
- (6) No stamp duty is payable under the **Stamps Act 1958** in respect of the transfer of any property under this section.

10. Discharge of forfeiture order

- (1) A forfeiture order is discharged if—
- (a) the conviction in reliance on which the order was made is subsequently quashed; or
 - (b) it is discharged by the court which hears an appeal against it under section 51; or
 - (c) a payment is made to discharge it in accordance with this section.

(1A) If a forfeiture order is discharged in the manner referred to in paragraph (a) or (b) 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 in the manner prescribed by rules of court to any person to whom notice was given under section 7(3).

S. 10(1A)
inserted by
No. 90/1991
s. 11(1).

(1B) A notice under sub-section (1A) must include a statement to the effect that a person claiming an interest in the property may make an application under section 11(1).

S. 10(1B)
inserted by
No. 90/1991
s. 11(1).

(2) If a court makes a forfeiture order in respect of property, the person who claims to be the person in whom the property was vested immediately before the making of the order may apply in

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writing to the Minister to have the Minister determine the value of the property.

- (3) If an application is made under sub-section (2) the Minister may, if satisfied—
- (a) that the property was vested in the applicant immediately before the making of the forfeiture order; and
 - (b) that the property is still vested in the State authority in which it was vested under the forfeiture order; and
 - (c) that there is no reason why the property should not be returned to the applicant—

S. 10(3)(b) amended by No. 90/1991 s. 11(2).

determine the value (as at the time of the determination) of the property and notify the applicant of the value so determined.

- (4) If the applicant, after being notified under sub-section (3) and within the period prescribed, pays to the State authority in which the property is vested the amount so notified, the forfeiture order is discharged.
- (5) On discharge of the order the Minister must arrange for the property to be transferred to the applicant and, for this purpose, the Minister has power to do, or authorise the doing of, anything necessary to carry out the transfer.
- (6) A determination or purported determination of the Minister under sub-section (3) is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court on any account.

S. 10(4) amended by No. 90/1991 s. 11(3).

S. 10(5) amended by No. 90/1991 s. 11(4)(a)(b).

11. *Effect of discharge of forfeiture order*

- (1) If a forfeiture order is discharged in the manner referred to in paragraph (a) or (b) of section 10(1), the person who claims to be the person in whom

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the property was vested immediately before the making of the forfeiture order may—

- | | |
|---|---|
| (a) if the property is still vested in the State authority in which it was vested under the forfeiture order, by application in writing to the Minister, request the return of the property; or | S. 11(1)(a)
amended by
No. 90/1991
s. 12(a). |
| (b) if the property is no longer so vested, apply to the court which made the forfeiture order for an order declaring the value (as at the time of making the order under this paragraph) of the property. | |
| (2) On receipt of an application under sub-section (1)(a), the Minister must, subject to sub-section (3), arrange for the property to be transferred to the applicant or such other person or body as the Minister determines and, for this purpose, the Minister has power to do, or authorise the doing of, anything necessary to carry out the transfer. | S. 11(2)
amended by
No. 90/1991
s. 12(b)(i)(ii). |
| (3) If a payment has been made to any person under an order made under section 9(4), the Minister must not arrange for the property to be transferred as provided by sub-section (2) until the proposed transferee pays to the State authority concerned the total amount paid by it in respect of the property under an order or orders made under section 9(4). | S. 11(3)
amended by
No. 90/1991
s. 12(c)(i)(ii). |
| (4) On an application under sub-section (1)(b) the court must make an order declaring the value (as at the time of making the order) of the property. | |
| (5) After an order is made under sub-section (4) the applicant for the order may, by application in writing to the Minister, request the payment of the amount declared by the order. | |

S. 11(6)
amended by
No. 90/1991
s. 12(d).

- (6) On receipt of an application under sub-section (5), the Minister must direct the State authority concerned to pay to the applicant or to such other person or body as the Minister determines the amount declared by the order made under sub-section (4) less the total amount paid by the State authority in respect of the property under any order made under section 9(4).
- (7) No stamp duty is payable under the **Stamps Act 1958** in respect of the transfer of any property under this section.

Division 3—Pecuniary Penalty Orders

12. *Pecuniary penalty orders*

S. 12(1)
amended by
No. 90/1991
s. 13(1)(a).
S. 12(1)(a)
amended by
No. 90/1991
s. 13(1)(b).

- (1) If an application is made to a court under section 5(1)(b), the court may—
 - (a) assess the value of the benefits derived by the person as the result of committing the offence; and
 - (b) order the person to pay to the Crown a pecuniary penalty equal to the value as so assessed less—
 - (i) the value (as at the time of making the order under this sub-section) of any property in respect of which a forfeiture order is made in reliance on the same conviction; and
 - (ii) if the court thinks it desirable to take it into account, any amount payable by way of restitution or compensation in relation to the same conviction.

S. 12(1A)
inserted by
No. 90/1991
s. 13(2).

- (1A) The applicant for a pecuniary penalty order must give written notice of the application in the

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s. 12

manner prescribed by rules of court to the person against whom the order is sought.

- (1B) The person against whom a pecuniary penalty order is sought is entitled to appear and to give evidence at the hearing of the application. **S. 12(1B) inserted by No. 90/1991 s. 13(2).**
- (1C) The court may waive the requirement under sub-section (1A) to give notice if— **S. 12(1C) inserted by No. 90/1991 s. 13(2).**
- (a) the person in reliance on whose conviction the application is made is present before the court; and
 - (b) the court is satisfied that it is fair to do so.
- (1D) If— **S. 12(1D) inserted by No. 90/1991 s. 13(2).**
- (a) a court made a pecuniary penalty order in relation to an offence; and
 - (b) in assessing the value of the benefits derived the court took into account the making of a forfeiture order or a restitution or compensation order against the person in relation to the offence; and
 - (c) an appeal against an order referred to in paragraph (b) is allowed—
- the Director of Public Prosecutions or an appropriate officer or the person against whom the pecuniary penalty order was made may apply to the court which made it for a variation taking into account the successful appeal.
- (1E) On an application under sub-section (1D) the court may, if it considers it appropriate to do so, vary the pecuniary penalty order. **S. 12(1E) inserted by No. 90/1991 s. 13(2).**
- (2) An amount payable by a person to the Crown under a pecuniary penalty order is, for all purposes, to be taken to be a civil debt due by the person to the Crown.

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- (3) A pecuniary penalty order made by a court may be enforced as if it were an order made by the court in civil proceedings instituted by the Crown against the person concerned to recover a debt due by that person to the Crown.

S. 13
amended by
No. 90/1991
s. 14(a).

13. *Assessment of benefits*

- (1) In assessing, on an application for a pecuniary penalty order, the value of the benefits derived by a person as the result of committing an offence, the court may treat as benefits such things as it thinks fit including—
- (a) any property (whether situated within or outside Victoria) that was derived or realised, directly or indirectly, by that person or another person, at the request or by the direction of the first-mentioned person, as the result of the commission of the offence;
 - (b) any benefit, service or financial advantage provided (whether within or outside Victoria) for that person or another person, at the request or by the direction of the first-mentioned person, as the result of the commission of the offence;
 - (c) any increase in the total value of that person's property (whether situated within or outside Victoria) 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 (2), any profits derived by that person, or by another person on that person's behalf, from a depiction of the offence or an expression of that person's

S. 13(1)(d)
inserted by
No. 90/1991
s. 14(b).

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.

(2) In considering whether to treat profits of a kind referred to in sub-section (1)(d) as benefits derived as the result of committing the offence, a court may have regard to any matters that it thinks fit including—

S. 13(2)
inserted by
No. 90/1991
s. 14(b).

- (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 circumstances of the person concerned at the time of publication, production or entertainment; and
- (d) the nature and purposes of the publication, production or entertainment including its use for research, educational or rehabilitation purposes.

(3) In assessing the value of the benefits derived by a person as the result of committing an offence, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person.

S. 13(3)
inserted by
No. 90/1991
s. 14(b).

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s. 13

S. 13(4)
inserted by
No. 90/1991
s. 14(b).

(4) On application by the Director of Public Prosecutions or an appropriate officer the court may, if in its opinion particular property is subject to the effective control of a person against whom the court has made a pecuniary penalty order, make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

S. 13(5)
inserted by
No. 90/1991
s. 14(b).

(5) If a court declares that property is available to satisfy a pecuniary penalty order—

- (a) the order may be enforced as if the property were property of the person against whom the order is made; and
- (b) a restraining order may be made in respect of the property as if it were property of the person against whom the order is made.

S. 13(6)
inserted by
No. 90/1991
s. 14(b).

(6) An applicant under sub-section (4) must give written notice of the application in the manner prescribed by rules of court—

- (a) to the person against whom the order is sought; and
- (b) to any other person to whom the court directs that notice be given; and
- (c) to any other person whom the applicant has reason to believe has an interest in the property.

S. 13(7)
inserted by
No. 90/1991
s. 14(b).

(7) A 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.

14. *Discharge of pecuniary penalty order*

(1) A pecuniary penalty order is discharged if—

- (a) the conviction in reliance on which the order was made is subsequently quashed; or

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- (b) it is discharged by the court which hears an appeal against it under section 51.
- (2) If a pecuniary penalty order is registered under the Service and Execution of Process Act 1901 of the Commonwealth, notice of the discharge of that order must be given as prescribed by the rules of the Supreme Court.

Division 4—Re-hearing

15. Re-hearing

- (1) If—
 - (a) a forfeiture order or a pecuniary penalty order has been made in respect of a person who was charged with a serious offence but before the charge was finally determined, the person could not be found or was for any other reason not amenable to justice; and
 - (b) 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—

S. 15(1)
amended by
No. 90/1991
s. 15(1)(b).

S. 15(1)(b)
amended by
No. 90/1991
s. 15(1)(a).

that person or the applicant for the forfeiture order or pecuniary penalty order may apply to the court which made the order to have the order set aside.

- (2) An applicant under sub-section (1) must give written notice of the application in the manner prescribed by rules of court—
 - (a) to the Director of Public Prosecutions, if the Director is not the applicant; and
 - (b) to the person who was charged with the serious offence, if that person is not the applicant; and
 - (c) if the order is a forfeiture order, to any other person to whom notice was given under section 7(3); and

S. 15(2)
substituted by
No. 90/1991
s. 15(2).

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s. 15

(d) to any other person to whom the court directs that notice be given.

S. 15(2A)
inserted by
No. 90/1991
s. 15(2).

(2A) The court may, at any time before the final determination of the application, direct the applicant to give or publish notice of the application to any persons, in any manner and within any time that the court thinks fit.

S. 15(2B)
inserted by
No. 90/1991
s. 15(2).

(2B) Any person to whom notice of the application is given or who claims an interest in the property in respect of which the forfeiture order was made is entitled to appear and to give evidence at the hearing of the application.

(3) On an application under sub-section (1) the court may set aside the order subject to such terms and conditions with respect to costs or otherwise as it thinks fit.

(4) If the court sets aside an order it must re-hear the application for the order and may confirm, revoke or vary the order.

S. 15(5)
amended by
No. 90/1991
s. 15(3).

(5) If an order has been revoked under sub-section (4), the revocation of the order does not prevent the making of another order in respect of the person under this Part.

PART 2A—CRIME PREVENTION AND VICTIMS' AID FUND

Pt 2A
(Heading and
ss 15A, 15B)
inserted by
No. 90/1991
s. 16.

15A. *Crime Prevention and Victims' Aid Fund*

S. 15A
inserted by
No. 90/1991
s. 16.

(1) ²A Trust Fund called the Crime Prevention and Victims' Aid Fund shall be established within the Public Account and the following must be paid into it—

(a) the prescribed proportion of all money realised under a confiscation order that is not required to be paid into the Drug Rehabilitation and Research Fund under section 125 or 126 of the **Drugs, Poisons and Controlled Substances Act 1981** less conversion costs as defined in section 15B;

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S. 15A(1)(b)
repealed by
No. 31/1994
s. 3(Sch. 1
item 16).

(c) all money received by the State from the Confiscated Assets Trust Fund established under the Proceeds of Crime Act 1987 of the Commonwealth;

(d) all other money received for the purposes of the Fund.

(2) The Minister, with the approval of the Governor in Council, 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; or
 - (e) the cost of administering this Act.
- (3) All money realised under a confiscation order that is not required to be paid—
- (a) into the Crime Prevention and Victims' Aid Fund; or
 - (b) to a person or body in accordance with section 15B; or
 - (c) into the Drug Rehabilitation and Research Fund—
- must be paid into the Consolidated Fund.

S. 15B
inserted by
No. 90/1991
s. 16.

15B. Conversion costs

- (1) The conversion costs that may be deducted in accordance with section 15A(1)(a) are the reasonable costs and expenses incurred after the making of the confiscation order in locating, storing, maintaining or disposing of, or otherwise in connection with the conversion into money of, property to which the order applies.
 - (2) Conversion costs deducted in accordance with section 15A(1)(a) must be paid by the State authority in which the money is vested to the person who, or body that, incurred the costs.
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PART 3—RESTRAINING ORDERS

16. *Restraining orders*

- (1) If a person (in this section referred to as the "defendant") has been, or is about to be, charged with, or has been convicted of, a serious offence, the Director of Public Prosecutions may, without notice, apply to the Supreme Court for an order in respect of one or more of the following:
 - (a) Specified property of the defendant;
 - (b) All the property of the defendant, including property acquired after the making of the order;
 - (c) Specified property of the defendant and all other property of the defendant, including property acquired after the making of the order;
 - (d) All the property of the defendant (including property acquired after the making of the order) other than specified property;
 - (e) Specified property of a person other than the defendant.
- (2) An application under sub-section (1) must be supported by an affidavit of a member of the police force setting out any relevant matters and stating that the member believes—
 - (a) in the case of an application in respect of specified property of the defendant—
 - (i) that a forfeiture order may be made in respect of the property or may be made if the defendant is convicted of the offence; or
 - (ii) that the property is the property of the defendant and that a pecuniary penalty

S. 16
amended by
No. 55/1987
s. 57(3),
substituted by
No. 90/1991
s. 17.

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order may be made or may be made if the defendant is convicted of the offence; and

- (b) in the case of an application in respect of all the property of the defendant, that a pecuniary penalty order may be made or may be made if the defendant is convicted of the offence; and
- (c) in the case of an application in respect of specified property of a person other than the defendant—
 - (i) that a forfeiture order may be made in respect of the property; or
 - (ii) that the property is subject to the effective control of the defendant and the defendant derived a benefit, directly or indirectly, as a result of the commission of the offence—

and setting out the grounds on which the member holds those beliefs.

- (3) The Supreme Court may, on an application under sub-section (1), if it considers that, having regard to the matters contained in the affidavit and to any other sworn evidence before it, there are reasonable grounds for doing so, make an order—
 - (a) directing that the property specified in the order is not to be disposed of, or otherwise dealt with, by any person except in the manner and circumstances (if any) specified in the order; and
 - (b) if the Court considers that the circumstances so require, directing a trustee specified in the order to take control of the property specified in the order.
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- (4) If an application is made under sub-section (1) in reliance on the proposed charging of a person with a serious offence, the Supreme Court must not make a restraining order unless it is satisfied that the person is likely to be charged within 48 hours.
 - (5) If an application is made under sub-section (1) in reliance on the charging of a person with, or the conviction of a person of, a serious offence, the Supreme Court must not make a restraining order unless it is satisfied that the person has been charged with or convicted of the offence (as the case requires).
 - (6) A restraining order may provide for meeting the reasonable living and business expenses of the person whose property the order applies to and for the payment of a reasonable amount (not exceeding that specified in the order) in respect of legal expenses incurred in defending any charge for an offence to which the order relates.
 - (7) In determining a maximum amount to be specified in a restraining order under sub-section (6) in respect of legal expenses, the Supreme Court must have regard to all relevant matters including—
 - (a) the assets and financial circumstances of the person whose property the order applies to; and
 - (b) the likely nature and extent of the prosecution's legal representation; and
 - (c) the complexity and estimated length of the proceedings.
 - (8) A restraining order may be made subject to any conditions that the Supreme Court thinks fit.
 - (9) The Supreme Court may refuse to make a restraining order if the Director of Public Prosecutions refuses or fails to give to the Court
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any undertakings that the Court thinks appropriate concerning the payment of damages or costs in relation to the making and operation of the order.

S. 16A
inserted by
No. 90/1991
s. 17.

16A. Procedure on application

- (1) The Supreme Court may require the Director of Public Prosecutions to give notice of an application under section 16(1) 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.
- (3) 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.
- (4) The Supreme 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 applying to this sub-section: 1000 penalty units or imprisonment for 3 months.

17. Notice of restraining order to be given to persons affected

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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, in the manner prescribed by rules of court, notice of the making of the order to that person.

18. Further orders

- (1) The Supreme Court may, when it makes a restraining order or at any later time—
 - (a) on application made to it, make such orders in relation to the property to which the restraining order relates as it considers just;
 - (b) on application made to it or without any application, make an order authorising another court—
 - (i) to make an order varying or setting aside the restraining order; or
 - (ii) to make other orders in relation to the operation of the restraining order—

S. 18(1)(b)(i)
amended by
No. 90/1991
s. 18(1).

to the extent and in the circumstances specified in the order of the Supreme Court.

- (2) An order under sub-section (1) may be made on the application of—
 - (a) the applicant for the restraining order; or
 - (b) the person in reliance on whom being charged or proposed to be charged with an offence the restraining order was made; or
 - (c) a person whose property the restraining order relates to; or

S. 18(2)(a)
amended by
No. 90/1991
s. 18(2).

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s. 18

S. 18(2)(d)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 18(3)(a)(b).

(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 Supreme Court to apply.

(3) The applicant for an order under sub-section (1) must give notice of the application in the manner prescribed by rules of court to each other person who could have applied for the order.

(4) Examples of the kind of order that the Supreme 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;

S. 18(4)(ba)
inserted by
No. 90/1991
s. 18(4)(a).

(ba) an order varying the maximum amount specified under section 16(6) in respect of legal expenses;

(c) an order for the examination before the Supreme Court, or such officer of the Supreme Court as is prescribed by rules of court, of any person whose property the restraining order relates to or any other person concerning the nature and location of—

(i) any property of any person whose property the restraining order relates to;
or

S. 18(4)(c)(ii)
substituted by
No. 90/1991
s. 18(4)(b).

(ii) any property which the applicant for the order believes, on reasonable grounds, to be tainted property;

S. 18(4)(d)
amended by
No. 90/1991
s. 18(4)(c).

(d) an order relating to the carrying out of any undertaking given under section 16(8) in relation to the restraining order;

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s. 18

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|---|--|
| (da) an order directing any person whose property the restraining order relates to or any other person to furnish to such person as the court directs, within the period specified in the order, a statement, verified by the oath or affirmation of that person, setting out such particulars of the property to which the restraining order relates as the Court thinks proper; | S. 18(4)(da) inserted by No. 90/1991 s. 18(4)(d). |
| (db) 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; | S. 18(4)(db) inserted by No. 90/1991 s. 18(4)(d). |
| (e) if the restraining order directed a trustee to take control of property— | S. 18(4)(e) amended by Nos 55/1987 s. 57(3), 90/1991 s. 18(4)(e)(i). |
| (i) an order regulating the manner in which the trustee may exercise its powers or perform its duties under the restraining order; | S. 18(4)(e)(i) amended by Nos 55/1987 s. 57(3), 90/1991 s. 18(4)(e)(ii). |
| (ii) an order determining any question relating to the property; | |
| (iii) an order directing the person whose property the trustee has taken control of to furnish to the trustee, 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 of that person as the Court thinks proper. | S. 18(4)(e)(iii) amended by Nos 55/1987 s. 57(3), 90/1991 s. 18(4)(e)(ii). |
- (5) A person is not required in an examination referred to in sub-section (4)(c) to answer any
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question that might tend to incriminate that person.

- (6) A statement or disclosure made by a person in answer to a question put in the course of an examination referred to in sub-section (4)(c) 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) a proceeding for the making of a forfeiture order, for the purpose only of facilitating the identification of the property to be subject to the forfeiture order; or
 - (d) a proceeding for the making of a pecuniary penalty order, for the purpose only of assessing the value of the benefits derived by the person as the result of committing the offence—

but is not otherwise admissible in evidence against that person.

- (7) A person who is ordered under sub-section (1) to attend an examination referred to in sub-section (4)(c) 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) subject to sub-section (5), refuse or fail to answer a question that the person is directed

by the Supreme Court or the prescribed officer to answer; or

- (e) make a statement in the course of the examination that is false or misleading in a material particular.

Penalty: 50 penalty units or imprisonment for 2 years, or both.

19. Duration of restraining order

S. 19
substituted by
No. 90/1991
s. 19.

- (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 person with a serious offence, the person has not been charged with the offence or a related offence, the order ceases to be in force at the end of that period.
- (2) If, when a restraining order was made in reliance on the charging, or proposed charging, of a person with a serious offence—
- (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal, the restraining order ceases to be in force when the charge is withdrawn; or
- (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal, the restraining order ceases to be in force when the acquittal occurs.
- (3) If, while a restraining order in respect of property is in force, a court makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the Supreme Court may—
- (a) if it considers it appropriate, make an order setting aside the restraining order in respect

- of the whole or a specified part of the property; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.
- (4) If, while a restraining order in respect of property is in force, a court (other than the Supreme Court) makes a forfeiture order in respect of the property or makes a pecuniary penalty order against the person, the court may—
- (a) if it considers it appropriate, make an order setting aside the restraining order in respect of the whole or a specified part of the property; and
- (b) make such other order or orders as it considers appropriate in relation to the operation of the restraining order—
- but the court may make an order under this sub-section only if, and to the extent and in the circumstances, it is authorised to do so by an order of the Supreme Court under section 18(1)(b).
- (5) If, while a restraining order in respect of property is in force, a court refuses to make a forfeiture order in respect of the property or refuses to make a pecuniary penalty order against the person, the Supreme Court may—
- (a) if it considers it appropriate, make an order in relation to the 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) An order under sub-section (3), (4) or (5) may be made so as—
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- (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 a penalty amount to the State; 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.

- (7) The Supreme Court, or any other court authorised to do so by an order of the Supreme Court under section 18(1)(b), may at any time, on application made to it, make an order varying or setting aside a restraining order.
- (8) An order under sub-section (3), (4), (5) or (7) may be made on the application of—
 - (a) the Director of Public Prosecutions; or
 - (b) the person in reliance on whom being charged or proposed to be charged with an offence the restraining order was made; or
 - (c) any person whose property the restraining order relates to or who has an interest in that property.
- (9) The applicant for an order under sub-section (7) must give notice of the application in the manner prescribed by rules of court to each other person whom the applicant has reason to believe could have applied for the order.

- (10) Any person given or entitled to be given notice under sub-section (9) is entitled to appear and to give evidence at the hearing of the application.
- (11) Without limiting the generality of sub-section (7), a court referred to in that sub-section may make an order setting aside a restraining order on the application of a person referred to in sub-section (8)(b) if that person—
 - (a) gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed on that person under section 12(1) in relation to that person's conviction for that offence; or
 - (b) gives undertakings satisfactory to the court concerning that person's property.

S. 20
 substituted by
 No. 90/1991
 s. 20.

20. *Contravention of restraining order*

A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an indictable offence punishable on conviction by a fine equivalent to the value of the property (as determined by the court) or by imprisonment for a period not exceeding 5 years, or both.

21. *Charge on property subject to restraining order*

- (1) If—
 - (a) in reliance on the charging, or the proposed charging, of a person with a serious offence, the Supreme Court has made a restraining order in respect of all or some of the property of that person; and
 - (b) in reliance on the conviction of that person for that offence a court subsequently makes a pecuniary penalty order against that person—
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then there is created, on the making of the pecuniary penalty order, a charge on all the property to which the restraining order applies to secure the payment to the Crown of the pecuniary penalty.

- (2) A charge created by sub-section (1) on property ceases to have effect if any of the following occur:
- (a) The pecuniary penalty order is discharged;
 - (b) The pecuniary penalty is paid;
 - (c) The property is disposed of under an order made under section 23;
 - (d) The property is disposed of with the consent of the Supreme Court or, if a trustee has been directed to take control of the property, with the consent of the trustee;
 - (e) 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.
- (3) A charge created by sub-section (1) on property—
- (a) is subject to every encumbrance to which the property was subject immediately before the pecuniary penalty order was made but has priority over all other encumbrances; and
 - (b) subject to sub-section (2), remains on the property despite any disposal of the property.
- (4) If—
- (a) a charge is created by sub-section (1) on property of a particular kind; and
 - (b) any law of Victoria provides for the registration of charges on property of that kind—

S. 21(2)(d)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(1)(a)(b).

the applicant for the pecuniary penalty order may cause the charge so created to be registered under that law.

- (5) If the charge is registered under sub-section (4), a person who purchases the property after the registration of the charge is, for the purposes of sub-section (2)(e), to be taken to have had notice of the charge.

22. 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) If the prescribed particulars are so recorded, a person who disposes of, or otherwise deals with, the property after the recording of those particulars is, for the purposes of section 20, to be taken to know of the restraining order.
- (3) Without limiting the generality of sub-section (1), if a restraining order 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.
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PART 4—POWERS OF TRUSTEE

23. *Liability under confiscation order to be satisfied by trustee*

(1) If—

- (a) a trustee has taken control of property under a direction to do so contained in a restraining order made in reliance on a person being charged or proposed to be charged with a serious offence; and
- (b) a confiscation order is made in reliance on the conviction of that person—

the Supreme Court or the court before which the person was convicted of the offence may include in the confiscation order a direction under sub-section (2).

- (2) The Court may include in the confiscation order a direction that the trustee pay out of the property of which it has taken control—
 - (a) in the case of a forfeiture order, to the State authority in which the property is vested, such amount as the Minister determines to be the value (as at the time of the determination) of that property; or
 - (b) in the case of a pecuniary penalty order, to the Crown the amount of the pecuniary penalty.
- (3) A determination or purported determination of the Minister under sub-section (2)(a) is not liable to be challenged, appealed against, reviewed,

Pt 4 (Heading)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(2).
S. 23(1)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(a)(i)(ii).
S. 23(1)(a)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(a)(i).

S. 23(2)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(b)(i).
S. 23(2)(a)
amended by
No. 90/1991
s. 21(3)(b)(ii).

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quashed or called in question in any court on any account.

S. 23(4)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(c)(i)–
(iv)

(4) The court which gives a direction under sub-section (2) may, at that time or at any later time on the application of the trustee, make any order that is necessary to enable the trustee to comply with the direction given under sub-section (2).

(5) Examples of the kind of order that a court may make under sub-section (4) are—

S. 23(5)(a)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d).

(a) An order directing the trustee to dispose of such of the property that is under the control of the trustee as the court specifies;

S. 23(5)(b)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d).

(b) An order empowering a person to execute any document or to do anything else necessary to enable the trustee to dispose of property under the control of the trustee;

(c) An order specifying the person to whom any money left over after making the payments required by paragraphs (a), (b) and (c) of sub-section (6) should be paid.

S. 23(6)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d).

(6) 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—

S. 23(6)(a)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d)(e).

(a) any fees, commissions and disbursements payable to the trustee under section 24(1);

S. 23(6)(b)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d).

(b) any expenses incurred by the trustee in disposing of, or otherwise in connection with, that property;

(c) any amount directed to be paid by the trustee under sub-section (2)—

S. 23(6)(c)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d).

and the trustee must pay any money left over to the person specified by the court in an order made under sub-section (4).

(7) If the trustee pays any money in satisfaction of the liability of a person under a confiscation order, the liability of that person under the order is, to the extent of the payment, discharged.

S. 23(7)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(3)(d).

24. Provisions concerning the trustee

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

S. 24(1)
amended by
Nos 55/1987
s. 57(3),
90/1991
s. 21(4)(a)(b).

(1A) 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—

S. 24(1A)
inserted by
No. 90/1991
s. 21(5).

(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;

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(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 it were the registered holder.

S. 24(2) amended by Nos 55/1987 s. 57(3), 90/1991 s. 21(6)(a)(b).

(2) 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: 20 penalty units or imprisonment for 6 months, or both.

S. 24(3) repealed by No. 55/1987 s. 57(3).

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S. 24(4) substituted by No. 55/1987 s. 57(3), amended by No. 90/1991 s. 21(7)(a).

(4) A certificate under the hand or seal of a trustee—

S. 24(4)(a) amended by No. 90/1991 s. 21(7)(b).

(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.

S. 24(5) amended by Nos 55/1987 s. 57(3), 90/1991 s. 21(8)(a)(b).

(5) A trustee is only personally liable for any rates, land tax or municipal or other statutory charges which—

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(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

S. 24(5)(a) amended by Nos 55/1987 s. 57(3), 90/1991 s. 21(8)(b). S. 24(5)(b) amended by No. 55/1987 s. 57(3).

(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—

S. 24(6) amended by Nos 55/1987 s. 57(3), 90/1991 s. 21(9)(a)(b).

(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.

S. 24(6)(b) amended by Nos 55/1987 s. 57(3), 90/1991 s. 21(9)(b).

* * * * *

S. 24(6A) inserted by No. 90/1991 s. 21(10), repealed by No. 45/1994 s. 42(Sch. item 3.2).

(7) With the leave of the Supreme Court or the court before which the person was convicted of the offence, 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.

S. 24(7) amended by Nos 55/1987 s. 57(3), 90/1991 s. 21(11)(a)(b).

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PART 5—DISPOSAL ORDERS

25. Application for disposal order

(1) If a person has been convicted of a serious offence, the Director of Public Prosecutions or an appropriate officer may, subject to sub-section (2), apply to the Magistrates' Court or the Court before which the person was convicted of the offence for a disposal order in respect of—

S. 25(1)
amended by
No. 57/1989
s. 3(Sch. item
43.4).

(a) a drug of dependence or a poison or controlled substance within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**; or

(ab) 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

S. 25(1)(ab)
inserted by
No. 90/1991
s. 22.

(b) an explosive substance within the meaning of Division 8 of Part I of the **Crimes Act 1958**; or

(c) any property that is prescribed by the regulations for the purposes of this sub-section—

that was 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, as a result of the commission of the offence.

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

26. Disposal orders

- (1) If an application is made to a court under section 25(1) for an order in respect of a 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 such as is 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 6—SEARCH WARRANTS

27. Search warrants

- (1) A member of the police force may apply to a Magistrate for a search warrant to be issued under this Part in respect of any premises.
- (2) A Magistrate to whom an application is made under sub-section (1) may, if satisfied that there are reasonable grounds for believing that there is any tainted property in or on the premises, issue a search warrant authorising any member of the police force to enter the premises and—
 - (a) search for tainted property; or
 - (b) search any person found in or on the premises in accordance with section 39.
- (3) A warrant may be issued under this Part in reliance on the commission of a serious offence even if no person has been charged with that offence if the Magistrate is satisfied that it is likely that a person will be charged within 48 hours with that offence.
- (4) There must be stated in a warrant—
 - (a) the purpose for which the warrant is issued; and
 - (b) the nature of the serious offence in reliance on which the warrant is issued; and
 - (c) a description of the kind of property authorised to be seized.
- (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.

S. 27(2)
substituted by
No. 90/1991
s. 23.

28. *Application for warrant*

- (1) An application for a search warrant must be made in writing.
- (2) A Magistrate 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, either orally or in writing, such further information (if any) as the Magistrate requires concerning the grounds on which the warrant is being sought; and
 - (c) the information given by the applicant is verified before the Magistrate on oath or affirmation or by affidavit.
- (3) A Magistrate may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

29. *Record of proceedings before Magistrate*

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

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

- (1) A Magistrate must prepare and give an occupier's notice to the person to whom the Magistrate issues a search warrant.

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- (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 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 person 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 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 who issued the search warrant if that Magistrate 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
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occasion, but must not be postponed on any one occasion for a period exceeding 6 months.

31. *Duty to show warrant*

A person 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.

32. *Use of force to enter premises etc.*

- (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.
- (2) 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.

33. *Use of assistants to execute warrant*

A person may execute a search warrant with the aid of such assistants as the person considers necessary.

34. *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 withdrawn by the Magistrate who issued it; or
- (c) when it is executed—

whichever occurs first.

35. *Report to Magistrate on execution of warrant etc.*

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- (1) The person to whom a search warrant is issued must give a report in writing to the Magistrate 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.
- (2) A report must be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever occurs first.
- (3) A person may apply to the Magistrate 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 that he or she is—
 - (a) the owner or occupier of premises upon which the warrant was executed; or
 - (b) the owner of property seized and carried away in the execution of the warrant.

36. *Death, absence etc. of Magistrate who issued warrant*

If the Magistrate who issued a search warrant has died, has ceased to be a Magistrate or is absent—

- (a) a report required to be given to that Magistrate under section 35; or

(b) a power exercisable by that Magistrate under section 30(3)(b) or (4)—

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

37. *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.

38. *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 is of a kind which could have been included in a search warrant issued under this Part; 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, continuing or repeating a serious 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.

39. *Search of persons under search warrant*

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- (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 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.

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

S. 40
amended by
No. 90/1991
s. 24.

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

Penalty: 240 penalty units or imprisonment for 2 years, or both.

41. *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 serious offence in reliance on the commission of which the warrant was issued, and an application for 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 forfeiture order has not been made in respect of the property; or
 - (c) a person has been charged with such an offence and acquitted—

S. 41(1)(c)
amended by
No. 90/1991
s. 25(a).

then the Chief Commissioner of Police must arrange for the property to be returned to the

Crimes (Confiscation of Profits) Act 1986
Act No. 101/1986

s. 41

person from whose possession it was seized or to such other person as the Minister directs.

S. 41(2)
amended by
No. 90/1991
s. 25(b).

(2) For the purposes of sub-section (1) the appeal period ends when an appeal may no longer be lodged against the conviction or acquittal, as the case requires, or, if such an appeal is lodged, when the appeal lapses or is finally determined.

(3) 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 in respect of the property; and
- (c) the court refuses to make the forfeiture order—

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 directs.

S. 41(4)
amended by
Nos 57/1989
s. 3(Sch. item
43.5), 90/1991
s. 25(c).

(4) If property to which this sub-section applies has been seized under a search warrant, 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.

(5) The applicant for an order under sub-section (4) must give notice, in the manner prescribed by

rules of court, of the application and of the date, time and place fixed for the hearing of it, to the Director of Public Prosecutions and the Chief Commissioner of Police.

(5A) If the Magistrates' Court makes an order under sub-section (4), an application for a variation, or the revocation, of the order may at any time be made to the Magistrates' Court by—

S. 41(5A)
inserted by
No. 90/1991
s. 25(d).

- (a) the Director of Public Prosecutions; or
- (b) the person from whose possession the property was seized; or
- (c) any other person who claims an interest in the property.

(5B) On an application under sub-section (5A) the Magistrates' Court may, if it considers it appropriate—

S. 41(5B)
inserted by
No. 90/1991
s. 25(d).

- (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.

(5C) An applicant under sub-section (5A) must give notice, in the manner prescribed by rules of court, of the application and of the date, time and place fixed for the hearing of it—

S. 41(5C)
inserted by
No. 90/1991
s. 25(d).

- (a) if the Director of Public Prosecutions 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 Director of Public Prosecutions and the Chief Commissioner of Police.

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s. 41

S. 41(5D)
inserted by
No. 90/1991
s. 25(d).

(5D) A person must not knowingly contravene an order made under sub-section (4).

Penalty applying to this sub-section: 240 penalty units or imprisonment for 2 years, or both.

(6) This section applies to a search warrant issued in reliance on the commission of an interstate serious offence as if the references in it to a forfeiture order included references to an interstate forfeiture order.

S. 41(7)
substituted by
No. 90/1991
s. 25(e).

(7) Sub-section (4) applies to all property seized under a search warrant other than tainted property.

PART 6A—INFORMATION GATHERING POWERS

Division 1—Production Orders

41A. *Application for production order*

- (1) If a person has been convicted of a serious offence or a member of the police force believes that a person has committed a serious offence, the member may, without notice, apply to the Supreme Court for a production order against that person or another person.
- (2) An application under sub-section (1) must be supported by an affidavit of the applicant—
 - (a) stating, if a person has not been convicted of a serious offence, that he or she believes that a person has committed a serious 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 serious offence; and
 - (c) 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.

41B. *Production orders*

- (1) The Supreme Court may, on an application under section 41A(1), if it considers that, having regard to the matters contained in the affidavit of the

Pt 6A
(Heading and
ss 41A–41P)
inserted by
No. 90/1991
s. 26.
S. 41A
inserted by
No. 90/1991
s. 26.

S. 41B
inserted by
No. 90/1991
s. 26.

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applicant and to any other sworn evidence before it, there are reasonable grounds for doing so, make a production order against the person.

- (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 committed or is believed to have committed the offence derived a benefit, directly or indirectly, from its commission; and
 - (ii) property specified in the application is subject to the effective control of that person; and
 - (b) sets out the grounds on which the applicant holds those beliefs—

the Supreme 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 Supreme Court must not make a production order of the kind referred to in sub-section (2)(a)
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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, in the manner prescribed by rules of court, give notice of its making to the person against whom it is made.

41C. Powers under production orders

S. 41C
inserted by
No. 90/1991
s. 26.

- (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.

S. 41D
inserted by
No. 90/1991
s. 26.

41D. *Effect of production orders on proceedings etc.*

- (1) A person is not excused from producing or making available a document when required to do so by a production order on the ground that to do so—
 - (a) might tend to incriminate the person or make the person liable to a penalty; or
 - (b) would be in breach of an obligation (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 any person in any criminal proceedings other than proceedings for an offence against section 41F.

S. 41E
inserted by
No. 90/1991
s. 26.

41E. *Variation of production orders*

- (1) If the Supreme Court makes a production order requiring a person to produce a document, the

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person against whom the order is made may apply to the Court for a variation of the order.

- (2) If the Supreme Court is satisfied that the document is essential to the business activities of the person, it may vary the production order so that it requires the person to make the document available for inspection.

41F. Failure to comply with production order

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: If the offender is a natural person—240 penalty units or imprisonment for 2 years, or both.

If the offender is a body corporate—1200 penalty units.

S. 41F
inserted by
No. 90/1991
s. 26.

Division 2—Search Powers

S. 41G
inserted by
No. 90/1991
s. 26.

41G. *Application for search warrant for property-tracking documents*

- (1) A member of the police force may apply to the Supreme Court for a search warrant for property-tracking documents in relation to a serious 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 sub-section (1) if the applicant has reasonable grounds for suspecting that there is, or may be within the next 72 hours, in or on any premises, a property-tracking document in relation to the serious 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) 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.

S. 41H
inserted by
No. 90/1991
s. 26.

41H. *Search warrants*

- (1) The Supreme Court may, on an application under section 41G(1), issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (2) The Supreme Court must not issue a search warrant unless it 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

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- (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 includes a statement that he or she believes that—
- (a) the person who was convicted of the offence, or who he or she believes to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
 - (b) property specified in the application is subject to the effective control of that person—

the Supreme 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) There must be stated in a search warrant—
- (a) the purpose for which it is issued, including a reference to the nature of the serious offence in relation to which it is issued; and
 - (b) whether entry is authorised to be made at any time of the day or night or only during specified hours of the day or night; and

- (c) a description of the kind of documents authorised to be seized; and
- (d) a date, within one month after the day of issue, on which the warrant ceases to have effect.

S. 41I
inserted by
No. 90/1991
s. 26.

41I. *Persons to whom search warrant may be directed*

- (1) A search warrant may be directed to—
 - (a) a named member of the police force; or
 - (b) generally all members of the police force.
- (2) A search warrant directed to a named member of the police force may be executed by any member of the police force.

S. 41J
inserted by
No. 90/1991
s. 26.

41J. *Authority conferred by search warrant*

A search warrant authorises the person to whom it is directed, with any assistance 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 serious offence; or

- (ii) to be a thing that will afford evidence about the commission of a criminal offence—

and that he or she believes, on reasonable grounds, is necessary to be seized in order to prevent its concealment, loss or destruction.

41K. *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 serious 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.

S. 41K
inserted by
No. 90/1991
s. 26.

Division 3—Monitoring Orders

41L. *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
 - (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—

S. 41L
inserted by
No. 90/1991
s. 26.

- (i) has committed, or is about to commit, an offence against section 71(1) of the **Drugs, Poisons and Controlled Substances Act 1981** or an offence against section 41Q of this Act or an offence involving serious fraud; or
 - (ii) was involved in the commission, or is about to be involved in the commission, of an offence referred to in sub-paragraph (i); or
 - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an offence referred to in sub-paragraph (i); and
- (b) setting out the grounds on which the applicant holds those beliefs.
- (3) The Supreme Court may require the applicant to give it any additional information that it requires concerning the grounds on which the order is sought.
- (4) An application under sub-section (1) must be heard in closed court.

S. 41M
inserted by
No. 90/1991
s. 26.

41M. Monitoring orders

- (1) The Supreme Court may, on an application under section 41L(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—

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- (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 41Q (money laundering) in relation to the institution.
- (5) When a monitoring order has been made the applicant must, in the manner prescribed by rules of court, give notice of its making to the financial institution against whom it is made.

41N. *Failure to comply with monitoring order*

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: 1200 penalty units.

S. 41N
inserted by
No. 90/1991
s. 26.

Crimes (Confiscation of Profits) Act 1986
Act No. 101/1986

s. 41O

S. 41O
inserted by
No. 90/1991
s. 26.

41O. *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: 1200 penalty units.

- (2) A person to whom the existence or operation of a monitoring order is disclosed in accordance with sub-section (1) must not—
 - (a) while he or she is a person of a kind referred to in paragraph (a), (b), (c) or (d) of that sub-section, 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

S. 41O(1)(d)
amended by
No. 35/1996
s. 453(Sch. 1
item 17).

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- (b) of that sub-section—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

**S. 410(2)(a)(iii)
amended by
No. 35/1996
s. 453(Sch. 1
item 17).**

- (b) when he or she is no longer a person of a kind referred to in paragraph (a), (b), (c) or (d) of sub-section (1), make a record of, or disclose, the existence or operation of the order in any circumstances.

Penalty: 240 penalty units or imprisonment for 2 years, or both.

- (3) Nothing in sub-section (2) prevents the disclosure by a person of a kind referred to in paragraph (a) or (b) of sub-section (1) of the existence 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.
- (4) A person of a kind referred to in paragraph (a) or (b) of sub-section (1) must not be required to disclose to any court the existence or operation of a monitoring order.
- (5) 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.

Division 4—Reports of Suspect Transactions

S. 41P
inserted by
No. 90/1991
s. 26.

41P. *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.

S. 41P(2)
amended by
No. 90/1991
s. 37(b).

- (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—

S. 41P(3)(a)
amended by
No. 90/1991
s. 37(c).

- (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.

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- (4) The communication to the Director of the information contained in the report must be made—
- (a) by giving the Director a copy of the report; or
 - (b) in any other manner and form approved by the Director.
- (5) An approval for the purposes of sub-section (4)(b)—
- (a) must be in writing; and
 - (b) may relate to a specified cash dealer or a specified class of cash dealers.
- (6) A cash dealer who communicates information to the Director under sub-section (1) or Division 2 of Part II of the Financial Transaction Reports Act 1988 of the Commonwealth must, if requested to do so by a member of the police force, give any further information that is specified in the request to the extent to which the cash dealer has that information.
- (7) An action, suit or proceeding does not lie against—
- (a) a cash dealer; or
 - (b) an officer, employee or agent of the cash dealer acting in the course of that person's appointment, employment or agency—
- in relation to any action by the cash dealer or person taken under this section or taken in the mistaken belief that it was required by this section.
- (8) A cash dealer or an officer, employee or agent of a cash dealer who communicates or gives information under this section must be taken, for the purposes of the offence of money laundering,

S. 41P(6)
amended by
No. 90/1991
s. 37(d).

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not to have been in possession of that information at any time.

- (9) 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 applying to this sub-section: If the offender is a natural person—240 penalty units or imprisonment for 2 years, or both.

If the offender is a body corporate—1200 penalty units.

PART 6B—MONEY LAUNDERING

41Q. Money laundering³

- (1) A person who engages in money laundering is guilty of an indictable offence and liable, if a natural person, to a fine not exceeding 1200 penalty units or to level 3 imprisonment (20 years maximum), or to both and, if a body corporate, to a fine not exceeding 6000 penalty units.
- (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 derived or realised, directly or indirectly, by any person as a result of the commission of a serious offence; or
 - (b) the person receives, possesses, conceals, disposes of or brings into Victoria any money or other property derived or realised, directly or indirectly, by any person as a result of the commission of a serious offence—

knowing or believing that the money or property was so derived or realised.
- (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.
- (4) In this section "**transaction**" includes the receiving or making of a gift.

Pt 6B
(Heading and
s. 41Q)
inserted by
No. 90/1991
s. 26.
S. 41Q
inserted by
No. 90/1991
s. 26.
S. 41Q(1)
amended by
No. 48/1997
s. 69.

Crimes (Confiscation of Profits) Act 1986
Act No. 101/1986

PART 7—INTERSTATE ORDERS AND WARRANTS

42. *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 Director of Public Prosecutions or by a person who is prescribed by the regulations 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.

43. *Effect of registration*

- (1) A registered interstate forfeiture order is, for the purposes of this Act (other than sections 8(3), 9, 10, 11 and 51) to be taken to be a forfeiture order made under section 7(1) at the time of registration.
- (2) A registered interstate restraining order is, for the purposes of this Act (other than sections 17, 18, 19, 21 and 23) to be taken to be a restraining order made under section 16.

44. *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.

45. *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.

46. 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 an interstate serious offence, an interstate restraining order has been made; and
 - (b) in reliance on the conviction of that person for that offence, 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 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 any effect when under the corresponding law the charge created on the making of the pecuniary penalty order ceases to have any effect.
- (3) Sub-sections (4) and (5) of section 21 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 21(1).

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s. 47

S. 47
amended by
Nos 55/1987
s. 57(3),
90/1991 s. 27.

47. *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.

48. *Interstate orders and search warrants*

(1) If property has been seized under a search warrant issued in reliance on the commission of an interstate serious 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 serious offence; and
- (b) an application has been made to a court for a forfeiture order in respect of the property; and
- (c) the court refuses to make the forfeiture order—

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

S. 48(3)
amended by
No. 57/1989
s. 3(Sch. item
43.6).

in reliance on the commission of a serious 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, as prescribed by rules of court, 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 serious offence; or
 - (b) was derived or realised, directly or indirectly, by any person, as a result of the commission of an interstate serious offence.

PART 8—MISCELLANEOUS

S. 49
amended by
No. 90/1991
s. 28(a)(b).

49. *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.

S. 49A
inserted by
No. 90/1991
s. 29.

49A. *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 the court in civil proceedings do not apply to a proceeding on an application under this Act.

S. 49B
inserted by
No. 90/1991
s. 29.

49B. *Secrecy*

- (1) Except as provided by this section, a person who obtains information, or to whom information is communicated or given, under Part 6A must not make a record of it or directly or indirectly divulge or communicate it otherwise than—
 - (a) with the consent of a 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: 240 penalty units or imprisonment for 2 years or both.

- (2) A person who obtains information, or to whom information is communicated or given, under Part 6A 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 6A from communicating or giving the information to another law enforcement agency 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.
- (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.

50. *Constitution of court*

If an application for a confiscation order or a disposal order is made to a court before which a person was convicted of a serious 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 confiscation 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.

51. *Appeals*

- (1) Without affecting any other right of appeal, a person who has an interest in property in respect

of which a forfeiture order is made may appeal against that order—

- (a) 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
 - (b) 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 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.
- (3) On appeal, a forfeiture order or a pecuniary penalty order may be confirmed, discharged or varied or the matter may be remitted for re-hearing to the court which made the order with or without any direction in law.
- (4) The Director of Public Prosecutions may appeal against a confiscation order or against the refusal of a court to make a confiscation order in the same manner as if the order were, or were part of, the sentence imposed in respect of the offence.

S. 51(3)
amended by
No. 90/1991
s. 30.

52. Operation of other laws not affected

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

52A. Supreme Court—Limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action, suit or proceeding of a kind referred to in section 41P(7).

S. 52A
inserted by
No. 90/1991
s. 31.

53. 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 by regulations or necessary to be so 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.

53A. 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.

S. 53A
inserted by
No. 90/1991
s. 32.

54. Transitional provisions

- (1) Subject to sub-sections (2) and (3), the preceding provisions of this Act apply only with respect to serious offences committed, or alleged to have

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been committed, after the commencement of this section.

- (2) Part 5 applies with respect to serious offences committed, or alleged to have been committed, before or after the commencement of this section.
 - (3) The preceding provisions of this Act apply with respect to—
 - (a) offences under section 71, 72, 73, 79(1) or 80(1) of the **Drugs, Poisons and Controlled Substances Act 1981**; or
 - (b) interstate serious offences—
committed, or alleged to have been committed, before or after the commencement of this section.
 - (4) Despite sub-section (3) and section 55(2), if before the commencement of this section an application has been made to a court under section 83, 84, 85, 86, 88 or Part VIII of the **Drugs, Poisons and Controlled Substances Act 1981**, that application may be continued as if this Act had not been passed.
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PART 9—CONSEQUENTIAL AMENDMENTS

55. *Drugs, Poisons and Controlled Substances Act 1981*

No. 9719.

(1) The **Drugs, Poisons and Controlled Substances Act 1981** is amended as follows:

- (a) Section 1(3) is **repealed**;
- (b) Section 11(3) is **repealed**;
- (c) In section 70(1) for ", Part VI, and section 110" **substitute** "and Part VI";
- (d) Sections 85, 86, 87, 88, 89 and Part VIII are **repealed**;
- (e) In section 90(1) and (2), for "83, 84, 85, 86, 88 or 110" **substitute** "83";
- (f) After section 122 **insert**—

"122A. *Evidence of market value of drugs of dependence*

(1) In any proceedings under this Act or the regulations or under the **Crimes (Confiscation of Profits) Act 1986**—

- (a) a member of the police force; or
- (b) any other person—

whom the court is satisfied is experienced—

- (c) in the investigation of offences under section 71, 72, 73, 79(1) or 80(1) of this Act; or
- (d) in the assessment of the market value of drugs of dependence—

may give evidence in accordance with sub-section (2).

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- (2) A person mentioned in sub-section (1) may give evidence to the best of that person's information, knowledge and belief, of the market value of a drug of dependence at a particular time or during a particular period, despite any rule of law or practice relating to hearsay evidence.
- (3) Any evidence given under this section is, in the absence of evidence to the contrary, conclusive evidence of the matters testified to.";
- (g) In section 125 for "section 86" **substitute "the Crimes (Confiscation of Profits) Act 1986** in relation to offences under section 71, 72, 73, 79(1) or 80(1) of this Act";
- (h) In section 126(1)(a) for "section 86" **substitute "the Crimes (Confiscation of Profits) Act 1986** in relation to offences under section 71, 72, 73, 79(1) or 80(1) of this Act".
- (2) The amendments made by sub-section (1) to the **Drugs, Poisons and Controlled Substances Act 1981** apply with respect to offences under section 71, 72, 73, 79(1) or 80(1) of that Act committed or alleged to have been committed before or after the commencement of this section.

No. 6231.

56. Crimes Act 1958

In sub-sections (3) and (4) of section 317 of the **Crimes Act 1958 omit** ", and the explosive substance shall be forfeited to Her Majesty the Queen".

No. 6246.

57. Evidence Act 1958

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In section 149A of the **Evidence Act 1958** after "any criminal proceedings" **insert** "or any proceedings under the **Crimes (Confiscation of Profits) Act 1986**".

**PART 10—AMENDMENT OF THE DRUGS, POISONS AND
CONTROLLED SUBSTANCES ACT 1981**

58. Amendments

(1) The **Drugs, Poisons and Controlled Substances Act 1981** is amended as follows:

- (a) In section 4(1) in paragraph (b) of the definition of "drug of dependence" **omit** "of the genus of a plant";
- (b) In section 70(1)—
 - (i) in paragraph (b) of the definition of "cannabis" for "3.0" **substitute** "1.5";
 - (ii) in the definition of "narcotic plant" **omit** "of the genus of a plant";
 - (iii) in paragraph (b) of the definition of "small quantity" for "3.0" **substitute** "1.5";
- (c) In section 81(1) after "sergeant" **insert** "or for the time being in charge of a police station";
- (d) In section 83—
 - (i) for sub-section (1)(b) **substitute**—

"(b) an instrument, device or substance is 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";
 - (ii) in sub-section (1)(c) and (d) after "produced to" (wherever occurring) **insert** ", or inspected by,";

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- (iii) in sub-section (1) after paragraph (d) **insert** "—and may also order that the quantity remaining of the substance, drug of dependence or poison or controlled substance be forfeited to Her Majesty and either destroyed or disposed of in such manner as is provided in the order when no longer required for the purpose of any subsequent proceedings.";
- (iv) after sub-section (1) **insert**—
"(1A) A court has power—
(a) to give any directions; or
(b) to authorise the Minister to give any appropriate directions—
necessary to give effect to any order made by it under sub-section (1).";
- (v) in sub-section (2) **omit** "under this Act";
- (vi) after sub-section (2) **insert**—
"(3) In sub-section (1) "**cultivation**", in relation to a drug of dependence that is a narcotic plant, includes—
(a) the sowing of a seed of a narcotic plant; and
(b) the planting, growing, tending, nurturing or harvesting of a narcotic plant.
(4) Without limiting the manner in which evidence may be given on an application under sub-section

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- (1), the magistrate may inspect any place, process or thing.";
- (e) Section 84 is **repealed**;
- (f) In section 120(1) for "identity and quantity" (where twice occurring) **substitute** "identity or quantity or both the identity and quantity";
- (g) In Schedule Ten after "Sergeant" **insert** "or for the time being in charge of a police station";
- (h) In Schedule Eleven—
- (i) in column 1 of Part 1 for "Methylenedioxyamphetamines" (where twice occurring) **substitute** "Methylenedioxyamphetamine";
- (ii) in column 1 of Part 3 for "3.0" (where twice occurring) **substitute** "1.5";
- (iii) in column 4 of Part 3 for "0.001" **substitute** "50.0".
- (2) The amendments made by sub-section (1) to the **Drugs, Poisons and Controlled Substances Act 1981** apply with respect to offences committed or alleged to have been committed on or after the commencement of this section.
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**PART 11—AMENDMENT OF THE SUMMARY OFFENCES
ACT 1966**

**59. *Manner of dealing with property suspected to be
stolen etc.***

(1) For sub-sections (3) and (4) of section 33 of the
Summary Offences Act 1966 substitute—

No. 7405.

"(3) If a person has been convicted of an offence under any of the provisions of sections 26 to 32 in relation to any property, the informant, the Director of Public Prosecutions or any person who claims an interest in the property may, at the time the conviction is made or at any later time, apply to the Magistrates' Court before which the person was convicted for an order in relation to the property.

(4) A Magistrates' Court may, on an application under sub-section (3), make such orders in relation to the property to which the application relates as it considers just.

(5) Examples of the kind of order that a Magistrates' Court may make under sub-section (4) are:

- (a) If the property is not money, an order that the property be sold;
- (b) An order that the property, if money or converted into money, be paid into the Consolidated Fund;
- (c) An order declaring the nature, extent and value (as at the time of making the order) of the interest of a person specified in the order in the property and directing that the whole or any part of the property (including money into

which the property has been converted)
be transferred to that person;

- (d) An order directing that a person specified in the order retain the whole or any part of the property (including money into which the property has been converted) for a period specified in the order.
- (6) The applicant for an order under sub-section (4) must give notice of the application in the manner prescribed by rules of court to each other person whom the applicant has reason to believe could have applied for the order.
- (7) A Magistrates' Court may, at any time before the final determination of an application under sub-section (3), direct the applicant to give or publish notice of the application to such persons, in such manner and within such time as the Court thinks fit.
- (8) A Magistrates' Court has power to give all directions that are necessary to give effect to an order made by it under sub-section (4)."
- (2) The amendments made by sub-section (1) to the **Summary Offences Act 1966** apply with respect to offences committed or alleged to have been committed before or after the commencement of this section.

60. *New section 60A inserted*

- (1) After section 60 of the **Summary Offences Act 1966** insert—

"60A. *Forfeiture of weapons or instruments*

A court that convicts a person of an offence under section 4(k) or 24(2) may order that the weapon or instrument be forfeited to Her

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s. 60

Majesty and be sold or destroyed as specified in the order."

- (2) The amendment made by sub-section (1) applies with respect to offences committed or alleged to have been committed on or after the commencement of this section.

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NOTES

1. General Information

Minister's second reading speech—

Legislative Council: 12 November 1986

Legislative Assembly: 4 December 1986

The long title for the Bill for this Act was "A Bill to provide for the confiscation of the profits of crime and the forfeiture and destruction or disposal of property in certain circumstances, to amend the **Drugs, Poisons and Controlled Substances Act 1981**, the **Summary Offences Act 1966**, the **Crimes Act 1958**, the **Evidence Act 1958** and for other purposes."

The **Crimes (Confiscation of Profits) Act 1986** was assented to on 16 December 1986 and came into operation on 1 August 1987: Government Gazette 22 July 1987 p. 1924.

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Notes

2. Table of Amendments

This Version incorporates amendments made to the **Crimes (Confiscation of Profits) Act 1986** by Acts and subordinate instruments.

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Sentencing Act 1991, No. 49/1991

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation

Crimes (Confiscation of Profits) (Amendment) Act 1991, No. 90/1991⁴

Assent Date: 10.12.91
Commencement Date: All of Act (*except* ss 26, 37) on 1.9.92; ss 26, 37 on 6.12.92: Government Gazette 12.8.92 p. 2179
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 16) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**
Current State: This information relates only to the provision/s amending the **Crimes (Confiscation of Profits) Act 1986**

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: S. 42(Sch. items 3.1, 3.2) on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: This information relates only to the provision/s amending the **Crimes (Confiscation of Profits) Act 1986**

Legal Practice Act 1996, No. 35/1996

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Act No. 101/1986

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 17) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes (Confiscation of Profits) Act 1986**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997

Assent Date: 11.6.97
Commencement Date: S. 69 on 1.9.97: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes (Confiscation of Profits) Act 1986**

3. Explanatory Details

¹ S. 3(2)(d): Section 33(2) of the **Crimes (Confiscation of Profits) (Amendment) Act 1991**, No. 90/1991 reads as follows:

33. Transitional provisions

- (2) For the purposes of this section a conviction arising because of section 3(2)(d) of the Principal Act must be taken to have been imposed on the day the application is made under this Act.

² S. 15A(1): Section 33(4) of the **Crimes (Confiscation of Profits) (Amendment) Act 1991**, No. 90/1991 reads as follows:

33. Transitional provisions

- (4) Section 16, to the extent that it inserts a new section 15A(1) in the Principal Act, applies only with respect to money realised, appropriated or received after the commencement of section 16.

³ S. 41Q: Section 33(5) of the **Crimes (Confiscation of Profits) (Amendment) Act 1991**, No. 90/1991 reads as follows:

33. Transitional provisions

- (5) Section 26, to the extent that it inserts a new section 41Q in the Principal Act, applies only to offences alleged to have been committed after the commencement of section 26.

⁴ Table of Amendments, No. 90/1991: Section 33(1) of the **Crimes (Classification of Profits) (Amendment) Act 1991**, No. 90/1991 reads as follows:

33. Transitional provisions

- (1) The amendments made to the Principal Act by any provision of this Act apply only with respect to convictions imposed after the commencement of the provision, irrespective of when the offences were committed.