

Lexbridge

The Criminal Asset Confiscation (Model) Legal Framework Act

*Model Legislation as part of the Model Legal Framework on Anti-Money
Laundering & Criminal Asset Confiscation*

Produced by Lexbridge Lawyers, in coordination with the Asia-Pacific Group on Money
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Criminal Asset Confiscation

Model Legal Framework

Long title

An Act for a [model] legal framework for criminal asset confiscation, and for related purposes.

Be it enacted by:

[Each jurisdiction will have its own enacting formula]

Part 1 Preliminary Matters

1. Short title

This Act is the Criminal Asset Confiscation [Model] Legal Framework Act [2026].

2. Commencement

This Act commences on [date to be inserted].

3. Objects

(1) The objects of the Model Legal Framework are:

- (a) to establish a Model Legal Framework for criminal asset confiscation, tailored to smaller jurisdictions in the Pacific region, but also adaptable for other geographic regions; and
- (b) to provide adopting countries with a comprehensive suite of model provisions to investigate and confiscate effectively the instruments and proceeds of domestic and transnational crime; and
- (c) to target persons who profit from, but distance themselves from criminal activity by depriving them of unexplained wealth and the profits of crime without relying on a criminal conviction; and
- (d) to punish and deter offenders, prevent the reinvestment of criminal proceeds in further illegal activities, and undermine the profitability of criminal enterprises; and

- (e) to provide law enforcement agencies, anti-corruption authorities, prosecutors, other asset recovery practitioners and competent authorities with comprehensive measures to target and confiscate criminal assets; and
 - (f) to apply a portion of any confiscated assets to preventing and combatting crime through diversion, deterrence, detection, investigation and prosecution, and, if in the public interest, compensating victims of confiscation crimes and paying foreign jurisdictions; and
 - (g) to facilitate stronger regional cooperation through improved interoperability using compatible regional laws.
- (2) To achieve these objects, the Model Legal Framework functions primarily through comprehensive provisions providing for:
- (a) the criminalisation and penalisation of all forms of dealing with property that is the proceeds of, or an instrument of, crime; and
 - (b) a suite of investigative tools to facilitate the identification and location of property which may be the subject of confiscation proceedings; and
 - (c) the conviction and non-conviction-based proceeds of crime restraint and forfeiture, and the making of pecuniary penalty orders; and
 - (d) an asset management framework.

Note: in line with revisions to Financial Action Task Force Standards, asset recovery is a priority for competent authorities involved in combating proceeds generating crime. The Model Legal Framework will be supported by a suite of accompanying implementation resources, to help countries with implementing the framework domestically. A goal of the Model Legal Framework is to ensure technical compliance with international obligations and standards, and effective implementation in practice.

4. Definitions

Comment for adopting jurisdiction: each jurisdiction can revise the definitions to suit its requirements and drafting practices, for example, the definitions of 'authorised officer', 'Minister' and 'proceeds of crime authority' may need to be modified.

In this Act, unless the context otherwise requires:

advantage includes financial advantage;

asset management account means the account established under section 173;

asset manager means an asset manager appointed under section 75 or an asset manager referred to in section 148;

authorised officer means:

- (a) a police officer who is authorised under section 189 to be an authorised officer; or
- (b) a member, officer or employee of any other government agency who is authorised under section 189 to be an authorised officer;

Note: paragraph (b) allows a wide range of government agencies such as revenue, anti-corruption agencies and Financial Intelligence Units to authorise one or more of their members, officers or employees to be authorised officers for the purposes of this Act and to exercise powers of authorised officers under this Act.

benefit includes service or advantage;

confiscated assets account means the confiscated assets account established under section 178;

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

crypto asset, see section 6;

deals with property, see section 5;

document means a record of information in any form, including:

- (a) a written or printed thing, including a map, plan, graph or drawing; and
- (b) a record that is kept in electronic form, including any record that can be accessed in [adopting jurisdiction]; and
- (c) a photograph; and
- (d) a disk, tape, film sound-track or other thing in which sound or other data is embodied;

effective control, see section 7;

examination order means an examination order made under section 39;

executing officer, in relation to a warrant, means the officer named in the warrant by the magistrate as being responsible for executing the warrant;

financial advantage includes the avoidance, deferral or reduction of a debt, loss or liability;

foreign indictable offence means an offence against the law of another country that, if the relevant act or omission had occurred in [adopting jurisdiction], would be an indictable offence;

forfeiture order means:

- (a) a conviction-based forfeiture order made under section 91; or
- (b) a non-conviction-based forfeiture order made under section 92; or
- (c) an asset-directed forfeiture order made under section 93;

freezing direction means a freezing direction made under section 22;

government agency means:

- (a) a ministry, department, authority, agency or instrumentality of the State; or
- (b) a statutory body established by an Act or a corporation in which the State has a controlling interest;

indictable offence means an offence against a law of [adopting jurisdiction] that may be prosecuted on indictment, even if it may be dealt with as a summary offence in some circumstances;

instrument of an offence, see section 8;

interest, in relation to property or a thing, means:

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

judicial officer means:

- (a) a magistrate; or
- (b) a judge of a court of [adopting jurisdiction]; or
- (c) any other person performing a function or exercising a power of a judicial nature;

Minister means the Minister for [*justice*];

monitoring order means a monitoring order made under section 36;

officer means an officer, employee or member of a government agency;

pecuniary penalty order means:

(a) a conviction-based pecuniary penalty order made under section 120; or

(b) a non-conviction-based pecuniary penalty order made under section 121;

premises includes:

(a) any land; and

(b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not);
and

(c) any part of such a structure, building, aircraft, vehicle, vessel or place;

proceeds of an offence, see section 8;

proceeds of crime means any property, wholly or in part, derived or realised directly or indirectly from an offence and includes:

(a) property into which any property derived or realised directly from the serious offence was converted, transformed or intermingled; and

(b) capital or other benefits derived or realised from such property;

at any time after the offence;

proceeds of crime authority means the Commissioner of Police or the Public Prosecutor;

production order means a production order made under section 30;

property means real or personal property, whether situated in [adopting jurisdiction] or elsewhere and whether tangible or intangible, and includes:

(a) an interest in such real or personal property; and

(b) crypto assets;

restrained assets account means the restricted assets account established under section 169;

restraining order means:

- (c) a charge-based restraining order made under section 59; or
- (d) a conviction-based restraining order made under section 60; or
- (e) a non-conviction-based restraining order made under section 61; or
- (f) an asset-directed restraining order made under section 62;

registered foreign pecuniary penalty order means a foreign pecuniary penalty order registered under a [*mutual assistance law*] in [adopting jurisdiction];

serious offence means an indictable offence or a foreign indictable offence for which the maximum penalty is death or imprisonment for at least 12 months;

specified non-financial institution means a non-financial institution prescribed by the regulations;

specified offence means an offence prescribed by the regulations;

suspect, in relation to a restraining order or a confiscation order, means the person who:

- (a) has been convicted of; or
- (b) has been charged with or is proposed to be charged with; or
- (c) if the order is a restraining order, is suspected of having committed; or
- (d) if the order is a confiscation order, committed;

the offence or offences, to which the order relates;

tainted property means property that is:

- (a) proceeds of an offence; or
- (b) an instrument of an offence;

and includes property located outside of [adopting jurisdiction];

Note: the property could be located in a jurisdiction that is involved in foreign or transnational crimes.

tainted property search and seizure warrant means a warrant issued under section 46;

unlawful activity means an act or omission that constitutes an offence against a law of [adopting jurisdiction] or a foreign indictable offence.

5. Meaning of deals with property

(1) **Deals with property** includes one or more of the following acts:

- (a) receives or acquires property;
- (b) possesses or uses property;
- (c) transfers property;
- (d) removes property from or brings property into *[name of country]*;
- (e) converts property from one form to another;
- (f) conceals or disguises the nature, source, location, disposition, movement or ownership of property or any rights with respect to it;
- (g) disposes of property, including by way of sale, gift, or otherwise.

(2) For the purposes of subsection (1), an act includes an omission that has an effect referred to in paragraph (1)(a), (b), (c), (d), (e), (f) or (g).

(3) For the purposes of subsection (1), if a person (**first mentioned person**) instructs, directs or requests another person to undertake an act referred to in paragraph (1)(a), (b), (c), (d), (e), (f) or (g) on behalf of the first mentioned person, then the first mentioned person is deemed to have undertaken that act.

6. Crypto asset

(1) A **crypto asset** is a digital representation of value that uses:

- (a) cryptography for security; and
- (b) distributed ledger technology (such as blockchain) to record transactions, allowing crypto assets to be stored, transferred or traded electronically.

- (2) Crypto assets include cryptocurrencies (such as Bitcoin), stablecoins, and Non Fugible Tokens.

Note: Crypto assets generally function independently of central banks and governments e.g. Bitcoin are decentralized, private digital assets operating without central authority. However, Central Bank Digital Currencies (CBDCs) are government-issued, centralized digital forms of fiat money. CBDCs are legal tender and stable, while other cryptocurrency prices are volatile.

7. Meaning of effective control

- (1) Property may be subject to the **effective control** of a person whether or not the person has:
- (a) a legal or equitable estate or interest in the property; or
 - (b) a right, power or privilege in relation to the property.
- (2) Property that is held on trust for the ultimate benefit of a person is taken to be under the effective control of the person.
- (3) If property is initially owned by a person and, within five years either before or after an application for a restraining order or a confiscation order is made, disposed of to another person without sufficient consideration, then the property is taken to be under the effective control of the first-mentioned person.
- (4) In determining whether or not property is subject to the effective control of a person, regard may be had to:
- (a) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
 - (b) a trust that has a relationship to the property; and
 - (c) family, domestic, business and other relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (a), and other persons.
- (5) To avoid doubt, property may be subject to the effective control of more than one person.

8. Proceeds and instruments

- (1) Property is **proceeds of an offence** if:

- (a) it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
- (b) it is partly derived or realised, whether directly or indirectly, from the commission of the offence, whether the property is situated within or outside [adopting jurisdiction].

(2) Proceeds of an offence includes:

- (a) property into which the proceeds of the offence is, wholly or partly, successively converted, transformed or intermingled; and
- (b) income, capital or other economic gains derived or realised from that property since the offence.

(3) Property is an **instrument of an offence** if it is:

- (a) used in, or in connection with, wholly or in part, the commission of the offence; or
- (b) intended to be used in, or in connection with, wholly or in part, the commission of the offence, whether the property is situated within or outside [adopting jurisdiction].

(4) An instrument of an offence includes:

- (a) a property into which an instrument is, wholly or partly, successively converted, transformed or intermingled; and
- (b) income, capital or other economic gains derived or realised from that property since the offence.

(5) The fact that proceeds or an instrument of an offence are intermingled with other property does not prevent the property from being treated as proceeds or an instrument of an offence.

(6) Property remains proceeds of an offence or an instrument of an offence even if:

- (a) it is credited to an account; or
- (b) it is disposed or otherwise dealt with.

(7) Property can be proceeds or an instrument of an offence even if no person has been convicted of the offence.

Part 2 Money Laundering Offences

9. Intentional money laundering

(1) A person commits an offence if:

- (a) the person deals with property; and
- (b) the person knows, or ought reasonably to know, the property is the proceeds of crime.

(2) A person who commits an offence against subsection (1) is punishable on conviction to:

- (a) for a natural person—a fine not exceeding [\$250,000] or imprisonment for a term not exceeding [25] years, or both; or
- (b) for any other legal person—a fine not exceeding [\$10,000,000].

10. Reckless money laundering

(1) A person commits an offence if:

- (a) the person deals with property; and
- (b) the person is reckless to the possibility that the property is the proceeds of crime.

(2) A person who commits an offence against subsection (1) is punishable on conviction to:

- (a) for a natural person—a fine not exceeding [\$15,000] or imprisonment for a term not exceeding [15] years, or both; or
- (b) for any other legal person—a fine not exceeding [\$1,000,000].

11. Money laundering—property reasonably suspected of being proceeds of crime

(1) A person commits an offence if:

- (a) the person deals with property; and
- (b) it is reasonable to suspect that the property is the proceeds of crime.

(2) A person who commits an offence against subsection (1) is punishable on conviction to:

- (a) for a natural person—a fine not exceeding [\$5,000] or imprisonment for a term not exceeding [5] years, or both; or
- (b) for any other legal person—a fine not exceeding [\$200,000].

12. Proof of knowledge or intent

- (1) For the purpose of an offence against section 9 or 10, knowledge or intent may be inferred from objective factual circumstances.
- (2) Subsection (1) is not intended to exclude or limit any other way of proving knowledge or intent for the purposes of a prosecution.

13. Circumstances inferring property is proceeds of crime

For the purpose of an offence against section 11, it is reasonable to suspect that property is the proceeds of crime if:

- (a) dealing with the property involves a number of transactions that are structured or conducted to avoid the reporting requirements under an [AML/CFT law]; or

Comment for adopting jurisdiction: each jurisdiction can define AML/CFT law or list its AML/CFT laws.

- (b) dealing with the property involves using one or more accounts maintained in false names; or
- (c) dealing with the property involves permitting another person to use the person's bank account or another account in exchange for property; or
- (d) dealing with the property involves using an account in the name of a nominee or an account established or maintained for use by another person to avoid the identity of the beneficial owner being exposed; or
- (e) the value of the property involved is grossly disproportionate to the person's lawful income and expenditure over a reasonable period of time within which the conduct occurs; or
- (f) dealing with the property involves a transaction to which reporting obligations attach under an [AML/CFT law] or which exceeds the threshold reporting obligation under an [AML/CFT law], and the person has:

- (i) contravened those reporting obligations; or
 - (ii) given false or misleading information in purported compliance with those reporting obligations; or
- (g) dealing with the property involves an importation or exportation which is required by law to be reported and the person has:
- (i) contravened his or her obligations under the law relating to making the report; or
 - (ii) given false or misleading information in purported compliance with those obligations; or
- (h) the person has:
- (i) stated that dealing with the property was engaged in on behalf, or at the request, of another person; and
 - (ii) not provided information enabling the other person to be identified.

14. Proof of other charge or offence is not required

For the purpose of an offence against section 9, 10 or 11, it is not necessary to establish that a person was charged with or convicted of an offence in order to prove that property is the proceeds of crime.

15. Proof of proceeds of crime

To avoid doubt, in order to prove that property is the proceeds of crime for the purpose of section 9, 10 or 11:

- (a) it is not necessary to establish:
 - (i) who committed the criminal conduct in relation to the property; or
 - (ii) that there is a charge or a conviction relating to the criminal conduct; and
- (b) the prosecution:

- (i) is not required to prove that the property had derived from particular criminal conduct, but must prove either the general type or types of criminal conduct from which the property had derived; and
- (ii) may rely on evidence that the circumstances in which the property had been handled are such as to give rise to the inference that it can only be derived from criminal conduct.

16. Engaging in an offence

For the purposes of this Part, a person engages in an offence if the person:

- (a) attempts or conspires to commit the offence; or
- (b) participates in the commission of the offence; or
- (c) acts in concert, or in a joint enterprise, with another person to commit the offence;
or
- (d) causes another person to engage in the offence, including by aiding, abetting, facilitating, counselling, encouraging, or procuring the commission of the offence.

17. Alternative verdicts

(1) This section applies if, on a trial for an offence against section 9, 10 or 11, a court:

- (a) is not satisfied that the defendant is guilty of the offence charged; but
- (b) is otherwise satisfied that the defendant is guilty of another offence against section 9, 10 or 11 for which the maximum penalty is less than the maximum penalty for the offence charged.

(2) The court may find the defendant not guilty of the offence charged but guilty of the other offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

18. Liability of directors, officers, employees, contractors and agents

For the avoidance of doubt, a person may be liable for an offence against section 9, 10 or 11 if:

- (a) the person is a director, officer, employee, contractor or agent of a legal person; and
- (b) the person consents to, permits or authorises the legal person to engage in conduct or is otherwise responsible for the legal person engaging in the conduct; and

- (c) the conduct constitutes an offence against section 9, 10 or 11 and the legal person commits the offence; and

- (d) the person knows, or is reckless or negligent as to, the elements of the offence committed by the legal person.

Part 3 Notices, orders, directions and warrants

Division 1 Notices to financial institutions and specified non-financial institutions

19. Notices to financial institutions and specified non-financial institutions

(1) Subject to subsection (2), the Commissioner of Police or an authorised officer may issue a notice to a financial institution or a specified non-financial institution requiring the institution to provide to the person who issued the notice any information or documents relevant to one or more of the following:

- (a) the relationship between the institution and any person specified in the notice, including the details and current balances of any account that is or was held by the person or to which the person is or was a signatory;
- (b) the name and identification details of any person who is or was the holder of, or signatory to, an account specified in the notice;

Note: this provision applies to open and closed accounts. If the relationship is no longer current, closed accounts can be searched for the legislated archival period (generally 5–7 years depending on the jurisdiction).

- (c) the details of any transactions over a specified period of up to 6 months set out in the notice:
 - (i) conducted by or on behalf of any person specified in the notice; or
 - (ii) to or from any account specified in the notice.

(2) The Commissioner of Police or an authorised officer must not issue a notice unless he or she suspects on reasonable grounds on the basis of information available to him or her at the time of issuing the notice that:

- (a) the person named in the notice has been involved in the commission of a serious offence or a specified offence; or
- (b) property, including accounts, specified in the notice is or contains tainted property.

20. Time for compliance with notices

(1) An institution must provide the information or documents within 10 business days after the date of service of a notice under section 19.

(2) However, if the Commissioner of Police or authorised officer issuing the notice believes that it is necessary to specify a shorter period to avoid prejudice to an investigation due to exceptional circumstances, the institution must provide the information or documents within the shorter period specified in the notice, being a period of not less than three business days after the date of service of the notice.

21. Contents of notices

A notice under section 19 must contain the following information:

(a) the Commissioner of Police or authorised officer issuing the notice suspects on reasonable grounds that:

(i) the person named in the notice has been involved in the commission of a serious offence or specified offence; or

Note: a foreign serious offence would be captured as bringing the proceeds into the jurisdiction would constitute a domestic money laundering offence.

(ii) property, including accounts, specified in the notice is or contains tainted property;

(b) the name and branch or address of the institution to which the notice is issued;

(c) the matters relevant to which information or documents must be provided, being one or more of the following matters:

(i) the relationship between the institution and any person specified in the notice, including the details and current balances of any account held by the person or to which the person is a signatory;

(ii) the name and identification details of any person who is the holder of, or signatory to, an account specified in the notice;

(iii) the details of any transactions over a specified period of up to 6 months conducted by or on behalf of any person specified in the notice, or to or from any account specified in the notice;

(d) the form and manner in which the information or documents are to be provided;

(e) the notice must be complied with within:

(i) 10 business days after the date of service of the notice; or

(ii) if the Commissioner of Police or authorised officer issuing the notice believes that it is necessary to specify a shorter period to avoid prejudice to an investigation due to exceptional circumstances—that shorter period, being a period of not less than three business days after the date of service of the notice;

Note: the purpose of the notice is to advance a criminal asset investigation to locate tainted property and establish ownership or control of such property as a matter of urgency in order to secure it for confiscation proceedings through freezing directions or restraining orders, or both.

(f) it is an offence to do any of the following:

(i) disclose the existence, nature or details of the notice;

(ii) make a false or misleading statement with respect to the notice;

(iii) fail to comply with the notice without a reasonable excuse;

and the maximum penalty for each offence for a natural person is imprisonment for a term of 2 years or a fine of [\$2,000], or both, and for any other legal person is a fine of [\$50,000];

(g) no legal suit or action may be brought against a person for an act taken in good faith in compliance with the notice.

Division 2 Freezing Directions

22. Freezing directions to financial institutions and specified non-financial institutions

(1) Subject to subsection (2), the Commissioner of Police or an authorised officer may issue a direction (a **freezing direction**) to a financial institution or a specified non-financial institution requiring the institution to prevent any dealings or transactions on any account or property specified in the direction for a period of [20 business days] after the date of service of the direction on the institution.

Comment for adopting jurisdiction: each jurisdiction should specify a period that allows sufficient time to analyse the transactions and for competent authorities to initiate, if appropriate, an action to freeze or seize property in the jurisdiction. The specified period may need to be more or less than 20 days.

(2) The Commissioner of Police or authorised officer must not issue a freezing direction unless he or she suspects on reasonable grounds on the basis of available information that:

(a) the account or property specified in the direction is within the jurisdiction; and

(b) the property is likely to be made subject to a restraining order.

23. Extension of duration of freezing directions

- (1) The Commissioner of Police or an authorised officer issuing the direction may, by notice in writing to an institution, extend the duration of a freezing direction by up to an additional ten business days if he or she is satisfied that it is reasonable in the circumstances to do so.
- (2) The duration of a freezing direction may be extended only once.

24. Contents of freezing directions

A freezing direction must contain the following information:

- (a) the name of the financial institution or specified non-financial institution to which the direction is issued;
- (b) sufficient details about the account or property specified in the direction to enable its identification;
- (c) the Commissioner of Police or authorised officer issuing the direction is satisfied there are reasonable grounds to suspect that the account or property specified in the direction is within the jurisdiction and the property:
 - (i) is tainted property or the account contains tainted property; or
 - (ii) may be used in whole or in part to satisfy a pecuniary penalty order or a registered foreign pecuniary penalty order;
- (d) the institution must:
 - (i) immediately and prior to informing the account holder or any other person outside of the institution of the direction, take steps necessary to prevent any dealings or transactions on the specified account or property; and
 - (ii) continue to do so for a period of 20 business days, or any extended period, after the date of service of the direction on the institution;
- (e) it is an offence to:
 - (i) make a false or misleading statement with respect to the direction; or
 - (ii) fail to comply with the direction without a reasonable excuse;

and the maximum penalty for each offence for a natural person is imprisonment for a term of 2 years or a fine of [\$2,000], or both, and for any other legal person is a fine of [\$50,000];

- (f) no legal suit or action may be brought against a person for an act taken in good faith in compliance with the direction.

Division 3 Directions to government agencies

25. Directions to government agencies to give documents or disclose information

- (1) Subject to subsection (2), the Commissioner of Police or an authorised officer may direct the person in charge of a government agency to give or disclose to the person specified in the direction any document or information:
 - (a) that is in the possession or under the control of the person in charge of the government agency; or
 - (b) to which the person in charge of the government agency has access in his or her official capacity.
- (2) The Commissioner of Police or authorised officer must not issue a direction unless he or she is satisfied that the document or information is relevant to:
 - (a) establishing whether a serious offence or a specified offence has been, or is being, committed; or
 - (b) the making, or proposed or possible making, of an order under Part 4, 5 or 6.
- (3) If the Commissioner of Police or authorised officer is satisfied on reasonable grounds that it is not practical to give a direction to the person in charge of a government agency, the direction may be given to the next senior person in the government agency.
- (4) A direction to a person must be given to the person by delivering it personally to the person.
- (5) The Commissioner of Police or authorised officer may, at the time a direction is given or at any later time, require a document:
 - (a) to be provided in or under the cover of an affidavit by the person to whom the direction was given; or
 - (b) to be certified by that person.
- (6) The Commissioner of Police or authorised officer may, at the time a direction is given or at any later time, require information to be provided in or under the cover of an affidavit by:

- (a) the person to whom the direction was given; or
- (b) another officer of the same government agency who is directed to make the affidavit by the person to whom the direction was given.

26. Time for compliance with directions

- (1) A government agency must provide the information or documents within 10 business days after the date of service of a direction under section 25.
- (2) However, if the Commissioner of Police or authorised officer issuing the direction believes that it is necessary to specify a shorter period to avoid prejudice to an investigation due to exceptional circumstances, the government agency must provide the information or documents within that shorter period specified in the direction, being a period of not less than three business days after the date of service of the direction.

27. Contents of directions

A direction under section 25 must contain the following information:

- (a) the Commissioner of Police or authorised officer issuing the direction is satisfied that the information or documents are relevant to a matter referred to in paragraph 25(2)(a) or (b);
- (b) a description of the type and nature of information or documents required to be provided;
- (c) the form and manner in which the information or documents are to be provided;
- (d) the period within which the information or documents must be provided;
- (e) no legal suit or action may be brought against a person for an act taken in good faith in compliance with a direction.

28. Court order for compliance with direction

- (1) This section applies if information or documents are not provided within the required time under a direction issued under section 25.
- (2) The Commissioner of Police or an authorised officer may apply to a court for an order that the person in charge of a government agency must provide the information or documents in accordance with the direction.

Comment for adopting jurisdiction: each jurisdiction can decide whether the application should be made to a magistrate, judge or court (magistrate is used in legislation in Papua New Guinea).

(3) The court must make the order if:

(a) the document or information is relevant to:

(i) establishing whether a serious offence or a specified offence has been, or is being, committed; or

(ii) the making, or proposed making, of an order under Part 4, 5 or 6; and

(b) the person to whom the direction was given has not provided a reasonable excuse supported by evidence for not complying with the direction.

(4) The information or documents are to be provided within:

(a) 10 business days after the date of service of the court order; or

(b) if the court is satisfied that it is necessary to specify a shorter period to avoid prejudice to an investigation due to exceptional circumstances—that shorter period specified in the court order, being a period of not less than 3 business days after the date of service of the court order.

(5) An order must contain the following information:

(a) a description of the type and nature of information or documents required to be provided;

(b) the form and manner in which the information or documents are to be provided;

(c) the period within which the information or documents must be provided.

(6) The Commissioner of Police or authorised officer need not give notice of the application to any person and the application is to be heard without any other party being present.

29. Offence of non-compliance with court order

A person who fails, without reasonable excuse, to comply with an order made under section 28 commits an offence and is punishable on conviction to a fine not exceeding [\$XXX].

Comment for adopting jurisdiction: each jurisdiction can determine whether it wants to make non-compliance an offence, and, if so, what is the appropriate maximum penalty.

Division 4 Production orders

30. Production orders

- (1) Subject to subsection (2), a magistrate may make an order (a **production order**) requiring a person to produce or make available to the Commissioner of Police or an authorised officer property-tracking documents, or property-tracking documents of the kind, specified in the order.
- (2) The magistrate must not make the production order unless the magistrate is satisfied there are reasonable grounds to suspect that:
 - (a) the person has possession or control of the property-tracking documents; and
 - (b) the property-tracking documents are, or contain information, relevant to identifying, locating or quantifying property; and
 - (c) either:
 - (i) the property is owned by a person, or in the possession or control of a person, who has been convicted of, or charged with, or who is reasonably suspected of having committed, a serious or specified offence; or
 - (ii) the property is tainted property.
- (3) A production order can be made only on an application by the Commissioner of Police or an authorised officer, and he or she need not give notice of the application to any person.
- (4) A production order must specify the powers of the Commissioner of Police or authorised officer with respect to the property-tracking documents, including whether he or she can retain, take extracts from, or make copies of, or only inspect the documents.
- (5) A production order may not require the production of accounting documents used in the ordinary business of banking, including ledgers, day-books, cash books and account books.

31. Time for compliance with production orders

The property-tracking documents are to be produced or made available on or before a date specified by the magistrate making the production order, being a date that is not later than 10 business days after the date on which the production order is made.

32. Service of production orders

As soon as practicable after a production order is made, a [*proceeds of crime authority*] must serve the order on the person the subject of the order.

33. Contents of production orders

A production order must contain the following information:

- (a) the property-tracking documents to be produced or made available, or a description of the nature of the documents to be produced or made available sufficient to allow their identification;
- (b) the manner and form in which the documents are to be produced or made available;
- (c) the place at which, and the specified date on or before which, the documents are to be produced or made available;
- (d) the Commissioner of Police or authorised officer to whom the documents are to be produced or made available;
- (e) the powers of the Commissioner of Police or the authorised officer with respect to the documents, including whether he or she can retain, take extracts from, or make copies of, or only inspect the documents;
- (f) it is an offence to do any of the following:
 - (i) disclose the existence, nature or details of the production order;
 - (ii) make a false or misleading statement with respect to the production order;
 - (iii) fail to comply with the production order without a reasonable excuse;
 - (iv) destroy, deface or otherwise interfere with the property-tracking documents;

and the maximum penalty for each offence for a natural person is imprisonment for a term of 2 years or a fine of [\$2,000], or both, and for any other legal person is a fine of [\$50,000];

- (g) no legal suit or action may be brought against a person for an act taken in good faith in compliance with the production order.

34. Striking out or variation of production orders

(1) A person served with a production order may apply to strike out or vary the order.

(2) The application must be made to:

- (a) the magistrate who made the order; or
 - (b) if that magistrate is unavailable, any other magistrate.
- (3) Subject to subsections (4) and (5), the magistrate may, if satisfied that the Commissioner of Police or authorised officer to whom the property-tracking documents are to be made available or produced has been notified of the application, make an order to:
- (a) strike out the production order, in whole or in part; or
 - (b) vary any of the terms of the production order; or
 - (c) dismiss the application.
- (4) The magistrate must not make an order to strike out a production order, in whole or in part, unless satisfied that:
- (a) the person named in the production order does not have possession or control of the specified property-tracking documents; or
 - (b) the specified property-tracking documents do not exist or cannot be identified or located; or
 - (c) the specified property-tracking documents are accounting documents used in the ordinary business of banking, including ledgers, day-books, cash books and account books.
- (5) If a person is required to produce a document under a production order, the magistrate must not vary the production order so that it instead requires the person to make the document available for inspection, unless that magistrate is satisfied that the document is essential to the person's business activities.
- (6) If the magistrate makes an order:
- (a) varying any of the terms of the production order; or
 - (b) dismissing the application; or
 - (c) striking out the production order in part only;
- the magistrate must determine a new date by which documents must be provided, being a date not more than 20 business days after the date of the magistrate's order.
- (7) The hearing of an application is to:

- (a) commence within *[three business days]* after the Commissioner of Police or authorised officer receives notice of the application; and

Comment for adopting jurisdiction: the timeframe may need to be adjusted for each jurisdiction.

- (b) proceed in closed court only if the magistrate considers it is necessary to prevent interference with the administration of criminal justice.
- (8) To avoid doubt, the making of an order by a magistrate to strike out a production order does not preclude the issuing of a new production order.

35. Destroying etc. a document subject to a production order

(1) A person commits an offence if:

- (a) the person destroys, defaces or otherwise interferes with a property-tracking document; and
- (b) a production order is in force requiring the document to be produced or made available; and
- (c) the person knows or has reasonable grounds to suspect that the production order is in force.

(2) A person who commits an offence against subsection (1) is punishable on conviction to:

- (a) for a natural person, a fine not exceeding [\$2,000] or a term of imprisonment not exceeding 2 years, or both; or
- (b) for any other legal person, a fine not exceeding [\$50,000].

Division 5: Monitoring orders

36. Monitoring orders

(1) Subject to subsection (2), a magistrate may make an order (a **monitoring order**) requiring a financial institution or specified non-financial institution to:

- (a) produce information to the Commissioner of Police or an authorised officer with respect to all transactions conducted by or on behalf of a specified person or through a specified account while the monitoring order is in force; or

- (b) provide the Commissioner of Police or authorised officer with access to such information.
- (2) The magistrate must not make a monitoring order unless the magistrate is satisfied there are reasonable grounds to suspect that:
- (a) the person in relation to whom the information is sought has committed, is committing, or is about to commit, a serious offence or a specified offence; or
 - (b) the specified account is being used for the retention or transfer of proceeds of crime.
- (3) A monitoring order can be made only on application by the Commissioner of Police or an authorised officer and notice of the application need not be given to any person.
- (4) The application is to be heard by the magistrate without any other party being present.

37. Period of monitoring orders

- (1) The period of a monitoring order starts and ends on a date determined by a magistrate, but the order must not end on a date later than 3 months after the date the order comes into force.
- (2) However, if a magistrate is satisfied that it is reasonable in the circumstances to do so, the magistrate may, on an application by the Commissioner of Police or an authorised officer, make an order extending the period of a monitoring order.
- (3) The extension period starts and ends on a date determined by the magistrate, but must not end on a date later than 3 months after the magistrate's extension order comes into force.

38. Contents of monitoring orders

A monitoring order must contain the following information:

- (a) sufficient information by which to identify the persons or accounts specified in the order;
- (b) the duration of the order, being a period of not more than 3 months;
- (c) the nature and form of information that the institution is required to provide;
- (d) the method and frequency of communication of the information;
- (e) the Commissioner of Police or authorised officer to whom the information is to be provided or made available;
- (f) the powers of the Commissioner of Police or authorised officer with respect to the information, including whether he or she can retain, take extracts from, or make copies of, or only have access to the information;

(g) it is an offence to do any of the following:

- (i) disclose the existence, nature or details of a monitoring order;
- (ii) make a false or misleading statement with respect to the monitoring order;
- (iii) fail to comply with the monitoring order without a reasonable excuse;

and the maximum penalty for each offence for a natural person is imprisonment for a term of 2 years or a fine of [\$2,000], or both, and for any other legal person is a fine of [\$50,000];

(h) no legal suit or action may be brought against a person for an act taken in good faith in compliance with the monitoring order.

Division 6 Examination Orders

39. Power to make an examination order

- (1) This section applies if a court has jurisdiction to make an order under Part 4 or 5.
- (2) Subject to subsection (3), a judicial officer may make an order (an **examination order**) requiring a person to do either or both of the following:
 - (a) attend an examination hearing and answer questions;
 - (b) produce specified information or documents, or both.

Comment for adopting jurisdiction: each jurisdiction can decide whether the power should be given to a judicial officer, magistrate, judge or court.

- (3) The judicial officer must not make an examination order unless satisfied there are reasonable grounds for suspecting that the person can provide evidence, information or documents relevant to an investigation, application or proceeding under this Act.
- (4) An examination order can only be made on application by the Commissioner of Police or an authorised officer.
- (5) Notice of the application need not be given to any person.

40. Contents of an examination order

An examination order must specify:

- (a) the identity of the person who is subject to the order; and
- (b) a description of the investigation, application or proceeding under this Act to which the evidence, information or documents is suspected to be relevant; and
- (c) if applicable, the time and place of the examination hearing; and
- (d) if applicable, a description of the documents or information, or both, to be produced; and
- (e) if applicable, the time and place at which the documents or information, or both, are to be produced; and
- (f) if applicable, the actions that the Commissioner of Police or authorised officer is authorised to take with respect to the documents or information, or both, to be produced, including whether originals, copies or extracts may be retained; and
- (g) it is an offence to do any of the following:
 - (i) disclose the existence, nature or details of the examination order;
 - (ii) make a false or misleading statement with respect to the examination order;
 - (iii) fail to comply with the examination order without a reasonable excuse;and the maximum penalty for each offence for a natural person is imprisonment for a term of 2 years or a fine of [\$2,000], or both, and for any other legal person is a fine of [\$50,000]; and
- (h) no legal suit or action may be brought against a person for an act taken in good faith in compliance with the examination order.

41. Examination hearings

- (1) Subject to subsections (2) and (3), an examination hearing is to be heard in closed court.
- (2) The presiding judicial officer may make an order permitting a specified person to be present at the examination hearing if satisfied that the person's presence at the hearing is in the interests of justice.
- (3) The legal representative of the person who is subject to the examination order is permitted to be present at the examination hearing.
- (4) The legal representative may:

- (a) address the persons present at the examination hearing; and
- (b) examine his or her client upon leave to do so being granted by the presiding judicial officer.

42. Examination by video link or telephone

The presiding judicial officer may make an order permitting the person who is subject to the examination order to give evidence at the examination hearing by telephone or audio-visual technology if satisfied that:

- (a) requiring the person's physical presence would cause undue inconvenience, delay or expense; and
- (b) permitting the person to give evidence at the examination hearing by telephone or audio-visual technology would not cause unacceptable prejudice to the hearing.

43. Answers at an examination hearing

- (1) A person under examination must answer all questions truthfully.
- (2) Subject to subsection (3), a person under examination must not refuse to answer a question or produce documents or information if, but for this subsection:
 - (a) a privilege or immunity, including a privilege against self-incrimination or professional privilege, would apply; or
 - (b) disclosure of the document or information would be unlawful or inconsistent with a contractual obligation.
- (3) Subsection (2) does not affect any privilege or immunity conferred upon a foreign official or employee of a sovereign State pursuant to, or under laws giving effect to, an international treaty to which [adopting jurisdiction] has acceded, including the Vienna Convention on Diplomatic Relations 1961 or Vienna Convention on Consular Relations 1963.

44. Restriction on publication of certain material

- (1) The presiding judicial officer may give directions preventing or restricting disclosure or publication of matters contained in questions asked, answers given, or documents or information produced in the course of an examination hearing.
- (2) The judicial officer must not give a direction unless satisfied doing so is:
 - (a) in the interests of the administration of justice; or
 - (b) necessary to avoid a risk of unfair prejudice to a person's reputation; or
 - (c) otherwise in the public interest.

- (3) A direction may be given generally or to a specified person or persons.
- (4) The judicial officer may give a direction on his or her own initiative or at the request of the person being examined.

45. Use of information and documents obtained under an examination order

- (1) An examination hearing is to be recorded, and a recording and an official transcript of the recording may be relied on as evidence of the matters contained in the recording.
- (2) Evidence obtained under an examination order is not admissible in any legal proceedings other than:
 - (a) the application or proceeding under this Act in connection to which the examination order was made; or
 - (b) the prosecution of an offence:
 - (i) of perjury in relation to the giving of that evidence; or
 - (ii) referred to in subparagraph 40(g)(i), (ii) or (iii).

Division 7 Tainted property search and seizure warrants

46. Tainted property search and seizure warrants

- (1) Subject to subsection (2), a magistrate may issue a warrant (a **tainted property search and seizure warrant**) permitting an officer to enter and search premises and to seize property at, on or in the premises within a period, starting on the date the warrant is issued and ending on a date that is 20 business days after it is issued.

Note: premises is defined and includes an aircraft, a vehicle and a vessel, see section 4.

- (2) The magistrate must not issue a warrant unless satisfied there are reasonable grounds to suspect that there is at, on or in the premises, or will be within the next 20 business days:
 - (a) tainted property; or
 - (b) evidence establishing the nature and extent of any person's interest in or control over tainted property; or
 - (c) property that is or will be the subject of a restraining order or forfeiture order.
- (3) A warrant can only be issued on an application by the Commissioner of Police or an authorised officer and he or she need not give notice of the application to any person.
- (4) The application is to be heard by the magistrate without any other party being present.

47. Contents of tainted property search and seizure warrants

(1) A tainted property search and seizure warrant must contain the following information:

- (a) the address of the specified premises or the registration or identification number of the aircraft, vehicle or vessel;
- (b) the times during which the warrant may be executed;
- (c) the time and date of expiry of the warrant;
- (d) the government agency and minimum rank of the officer who may execute the warrant;
- (e) that reasonable force may be used to enter the premises;
- (f) that the executing officer, or an officer acting under his or her direction, may conduct a physical search of any person at the premises or in possession or control of the aircraft, vehicle or vessel who he or she has reasonable grounds to believe is in possession of:
 - (i) tainted property; or
 - (ii) evidence establishing the nature and extent of any person's interest in or control over tainted property; or
 - (iii) property that is or will be the subject of a restraining order or forfeiture order;
- (g) that the executing officer, or an officer acting under his or her direction, may seize any property he or she has reasonable grounds to believe is:
 - (i) tainted property; or
 - (ii) evidence establishing the nature and extent of any person's interest in or control over tainted property; or
 - (iii) evidence establishing the commission of a serious offence; or
 - (iv) property that is or will be the subject of a restraining order or forfeiture order;
- (h) if applicable, that the executing officer, or an officer acting under his or her direction, may take necessary and reasonable actions to:
 - (i) record and retain audio-visual and forensic information; and
 - (ii) access, and search, any computer or other electronic device or data storage device and to record, download, upload or transfer any digital information from it;

- (i) that it is an offence to hinder or obstruct an executing officer in the lawful execution of a warrant and that the maximum penalty for this offence is imprisonment for 5 years or a fine of [\$5,000], or both;
- (j) that a person has a right to apply to a magistrate for an order that any property seized under the warrant be returned to the person or that the person receive compensation for any loss or damage incurred in connection with a warrant.

Comment for adopting jurisdiction: each jurisdiction will need to reference its own relevant legislation, and there will also be a need to consider consequential amendments to secure criminal proceeds and tainted property tracking documents.

- (2) A warrant is not invalidated by any defect other than a defect which affects the substance of the warrant in a material particular.

48. Urgent applications for tainted property search and seizure warrants

- (1) The Commissioner of Police or an authorised officer may apply to a magistrate for a tainted property search and seizure warrant by telephone, email or other electronic means.
- (2) A magistrate must not issue a warrant under this section unless satisfied that:
 - (a) a search warrant in terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (3) A warrant issued under this section must satisfy the requirements of a tainted property search and seizure warrant as if the application for it had been made in person.

Comment for adopting jurisdiction: each jurisdiction will need to tailor these provisions to ensure consistency with its domestic procedures for urgent applications.

49. Execution of warrant

- (1) An officer executing a tainted property search and seizure warrant:
 - (a) must comply with the terms of the warrant; and
 - (b) must inform any person at the premises or in possession or control of the aircraft, vehicle or vessel, of the terms of the warrant and the intention to execute the warrant and give that person the opportunity to allow access to the premises or aircraft, vehicle or vessel, unless the officer believes on reasonable grounds to do so would:

- (i) endanger the safety of any person; or
 - (ii) prejudice or frustrate the effective execution of the warrant; and
- (c) must produce the warrant, or a copy of the warrant, for inspection by any person at the premises or in possession or control of the aircraft, vehicle or vessel, upon request; and
- (d) must allow any person at the premises or in possession or control of the aircraft, vehicle or vessel to be present and to observe while the warrant is being executed, unless:
- (i) the person impedes the search; or
 - (ii) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search; and
- (e) must make an itemised record of any property seized from the premises or aircraft, vehicle or vessel and provide a signed copy of this record to any person at the premises or in possession or control of the aircraft, vehicle or vessel; and
- (f) may use force to execute the warrant only to the extent that is necessary and reasonable in the circumstances.
- (2) This section does not prevent multiple areas of the premises being searched at the same time.

Comment for adopting jurisdiction: if the Model Legal Framework is adopted in your jurisdiction, then a consistent approach to warrants within your jurisdiction would be beneficial for consistency and to avoid confusion.

50. Hindering or obstructing the lawful execution of a warrant

A person commits an offence if the person hinders or obstructs an officer in the lawful execution of a tainted property search and seizure warrant and is punishable on conviction by a fine not exceeding [\$5,000] or a term of imprisonment not exceeding 5 years, or both.

51. Retention, return and disposal of seized property

- (1) The Commissioner of Police or an authorised officer must take all reasonable steps to secure and preserve property seized pursuant to a tainted property search and seizure warrant, until it is returned to a person with a lawful interest in the property or dealt with or disposed of in accordance with the terms of a court order or this Act.
- (2) The Commissioner of Police or an authorised officer must take all reasonable steps to return the property to a person with a lawful interest in the property as soon as practical after becoming aware that:

- (a) no person has been, or in the next three months will be, charged with an offence in connection with which the property is tainted property or evidence of any person's interest in or control over tainted property; or
- (b) any person charged with an offence in connection with which the property is tainted property or evidence of any person's interest in or control over tainted property has been acquitted or the charges have been withdrawn or dismissed; or
- (c) the property has not been, and will not in the next three months be, the subject of an application for a restraining order, forfeiture order or pecuniary penalty order; or
- (d) any application for a restraining order, forfeiture order or pecuniary penalty order over the property has been refused, withdrawn or dismissed.

(3) If a court makes:

- (a) a restraining order or a forfeiture order over property seized pursuant to a tainted property search and seizure warrant; or
- (b) a pecuniary penalty order;

the Commissioner of Police or an authorised officer must take all reasonable steps to transfer possession or dispose of the property in accordance with the terms of the order.

52. Return of seized property

- (1) A person who claims an interest in property seized under this Division may apply to a magistrate for an order under subsection (2).
- (2) A magistrate must not make an order that the seized property be returned to the person unless the magistrate is satisfied that:
 - (a) three months has elapsed since the property was seized; and
 - (b) the person has a lawful interest in the property that entitles the person to possession of the property; and
 - (c) the property is not tainted property; and
 - (d) any person with an interest in the property has not been charged with or convicted of a serious or specified offence; and
 - (e) an application for restraint or forfeiture of the property has not been, or is likely not to be, made.
- (3) If an order is made under subsection (2), the Commissioner of Police or an authorised officer must arrange for the property to be returned to the person as soon as practicable.

- (4) If the property or its value has been lost due to the Commissioner of Police or an authorised officer not having taken all reasonable steps to secure and preserve the property, a magistrate may make an order for compensation for the value of the property to be paid to the person by the Commissioner of Police or an authorised officer.

Division 8 General Provisions for Part 3

53. Application of sections

- (1) Subject to subsection (2), sections 54, 55 and 56 apply to each of the following:

- (a) a notice issued under section 19;
- (b) a freezing direction;
- (c) a production order;
- (d) a monitoring order;
- (e) an examination order;
- (f) a tainted property search and seizure warrant.

- (2) Section 54 does not apply to a freezing direction nor a tainted property search and seizure warrant.

54. Disclosing existence, nature or details of notices or orders

- (1) A person commits an offence if the person:

- (a) is served with a notice or order to which this section applies; and
- (b) discloses the existence, nature or details of the notice or order.

- (2) A person who commits an offence against subsection (1) is punishable on conviction to:

- (a) for a natural person, a fine not exceeding [\$2,000] or a term of imprisonment not exceeding 2 years, or both; or
- (b) for any other legal person, a fine not exceeding [\$50,000].

- (3) It is a defence to an offence against subsection (1) if the disclosure is made for the purpose of complying with the notice or order.

55. Making a false or misleading statement with respect to notices, directions or orders

- (1) A person commits an offence if:
- (a) the person makes a statement in response to, or in connection with, a notice, direction, order or warrant to which this section applies; and
 - (b) the statement is false or intentionally misleading, whether by express written or verbal representation, or omission of a relevant matter.
- (2) A person who commits an offence against subsection (1) is punishable on conviction to:
- (a) for a natural person, a fine not exceeding [\$2,000] or a term of imprisonment not exceeding 2 years, or both; or
 - (b) for any other legal person, a fine not exceeding [\$50,000].
- (3) It is a defence to an offence against subsection (1) if a false or misleading statement with respect to the notice, direction, order or warrant is made to:
- (a) avoid disclosing the existence, nature or details of the notice, direction, order or warrant; or
 - (b) ensure compliance with the notice, direction, order or warrant.

56. Failing to comply with notices, directions or orders

- (1) A person commits an offence if the person:
- (a) is served with a notice, direction, order or warrant to which this section applies; and
 - (b) fails to comply with one or more terms of the notice, direction, order or warrant without a reasonable excuse.
- (2) For the purposes of subsection (1), a person has a reasonable excuse if the person takes all reasonable steps to comply with the terms of the notice, direction, order or warrant, but is unable to do so due to circumstances outside of the person's control.
- (3) For the purposes of subsection (1), a person does not have a reasonable excuse merely because the person claims there are insufficient institutional resources or capacity to comply with the notice, direction, order or warrant.

(4) A person who commits an offence against subsection (1) is punishable on conviction to:

(a) for a natural person, a fine not exceeding [\$2,000] or a term of imprisonment not exceeding 2 years, or both; or

(b) for any other legal person, a fine not exceeding [\$50,000].

57. Legal protection of persons

(1) This section applies to each of the following:

(a) a notice issued under section 19;

(b) a freezing direction;

(c) a direction issued under section 25;

(d) a court order made under section 28;

(e) a production order;

(f) a monitoring order;

(g) an examination order;

(h) a tainted property search and seizure warrant.

(2) No action, suit or proceeding may be brought against a person for any action taken in good faith in compliance with a notice, direction, order or warrant to which this section applies.

Part 4 Restraining orders

Division 1 Restraining orders

58. Four types of restraining orders

The following are the four types of restraining orders:

- (a) a charge-based restraining order;
- (b) a conviction-based restraining order;
- (c) a non-conviction-based restraining order;
- (d) an asset-directed restraining order.

59. Charge-based restraining orders

A court must make a charge-based restraining order if:

- (a) a person:
 - (i) has been charged with a serious offence or a specified offence; or
 - (ii) is likely to be charged with a serious offence or a specified offence within 20 business days after the application for the restraining order is made; and
- (b) a [*proceeds of crime authority*] has applied for the restraining order in accordance with Division 2 of this Part; and
- (c) any affidavit requirements under section 68 for the application have been satisfied; and
- (d) the police officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds; and
- (e) the court has jurisdiction to make the restraining order under section 184.

60. Conviction-based restraining orders

A court must make a conviction-based restraining order if:

- (a) either:
 - (i) a person has been convicted of a serious offence or a specified offence; and

- (ii) all relevant appeal periods have elapsed and all appeals have been determined not more than 12 months prior to the making of the application for the order; and
- (b) a [*proceeds of crime authority*] has applied for the restraining order in accordance with Division 2 of this Part; and
- (c) any affidavit requirements under section 68 for the application have been satisfied; and
- (d) the police officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds; and
- (e) the court has jurisdiction to make the restraining order under section 184.

Note: a serious offence includes certain foreign offences, see definition of serious offence, section 4.

61. Non-conviction-based restraining orders

- (1) A court must make a non-conviction-based restraining order if:
 - (a) there are reasonable grounds to suspect that a person has committed a serious offence or a specified offence; and
 - (b) a [*proceeds of crime authority*] has applied for the restraining order in accordance with Division 2 of this Part; and
 - (c) any affidavit requirements under section 68 for the application have been satisfied; and
 - (d) the police officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds; and
 - (e) the court has jurisdiction to make the restraining order under section 184.

Note: a serious offence includes certain foreign offences, see definition of serious offence, section 4.

- (2) To avoid doubt, the court does not need to make a finding as to the commission of a particular serious offence or specified offence to make the order.

62. Asset-directed restraining orders

- (1) A court must make an asset-directed restraining order that covers property if:

- (a) there are reasonable grounds to suspect that the property is tainted property in relation to a serious offence or a specified offence; and
 - (b) a [*proceeds of crime authority*] has applied for the restraining order in accordance with Division 2 of this Part; and
 - (c) any affidavit requirements under section 68 for the application have been satisfied; and
 - (d) the police officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds; and
 - (e) the court has jurisdiction to make the restraining order under section 184.
- (2) Subsection (1) applies whether or not the identity of:
- (a) the person suspected of having committed the offence is known; or
 - (b) the owner of the property or any other person with any right in relation to the property is known.
- (3) To avoid doubt, the court does not need to make a finding as to the commission of a particular serious offence or specified offence to make the order.

63. Restraining order must be made even if certain evidence not available

A court must make a restraining order even if there is no evidence of any risk of the property the subject of the application for the order being disposed of or otherwise dealt with.

64. Property covered by a restraining order

- (1) A charge-based restraining order, a conviction-based restraining order and a non-conviction-based restraining order may cover one or more of the following:
- (a) all property of the suspect;
 - (b) property of the suspect specified in the order;
 - (c) all property of the suspect other than property specified in the order;
 - (d) specified property of another person (whether or not that other person's identity is known) that is subject to the effective control of the suspect;
 - (e) in the case of a charged-based restraining order—specified property of another person (whether or not that other person's identity is known) that is tainted property in relation to the offence (or at least one of the offences) with which the suspect has been or is proposed to be charged;

- (f) In the case of a conviction-based restraining order—specified property of another person (whether or not that other person’s identity is known) that is tainted property in relation to the offence (or at least one of the offences) for which the suspect was convicted;
- (g) in the case of a non-conviction based restraining order—specified property of another person (whether or not that other person’s identity is known) that is tainted property in relation to the offence (or at least one of the offences) for which the suspect is suspected of having committed.

(2) An asset-directed restraining order covers the property specified in the order.

65. Restraint of all property

(1) This section applies to a restraining order if the order covers:

- (a) all property of a person; or
- (b) all property of the person, other than property specified in the order.

(2) Unless the court otherwise specifies in the restraining order, the order is taken to include:

- (a) property of the person that has not been identified in the order; and
- (b) property that the person acquires whilst the order is in effect.

66. Effect of a restraining order

The property covered by a restraining order must not be disposed of or otherwise dealt with by any person, except in the manner and circumstances set out in the order.

Note: A court has the power to make ancillary orders, see section 76.

Division 2 Applying for a restraining order

67. Proceeds of crime authority may apply for a restraining order

(1) A [*proceeds of crime authority*] may apply to a court for a restraining order if the court has jurisdiction to make a restraining order under section 184.

Comment for adopting jurisdiction: each jurisdiction may wish to give this power to a number of public authorities, or simply to substitute the Public Prosecutor or similar officeholder.

(2) The application must:

(a) state the type or types of restraining order that the [*proceeds of crime authority*] is seeking; and

(b) specify the property that is sought to be restrained.

Note: depending on the type of restraining order sought, this could be all property of a person, all property except specified property or specified property only.

(3) To avoid doubt, the [*proceeds of crime authority*] may seek multiple kinds of restraining orders over the same property in the one application.

(4) If the [*proceeds of crime authority*] is requesting that certain property be specified in the restraining order, the application must include a sufficient description of the property to allow it to be identified.

(5) The application must be supported by an affidavit of a police officer in accordance with the requirements under section 68.

(6) Despite section 69, a [*proceeds of crime authority*] may make an *ex parte* application to the court for a restraining order if a request to do so is made to the court by the authority.

68. Affidavit in support of an application for a restraining order

(1) An application for a restraining order must be supported by an affidavit of a police officer that states:

(a) in the case of a charge-based restraining order:

(i) the suspect has been charged with a serious offence or a specified offence or that the police intend to charge the suspect with a serious offence or a specified offence within 20 business days after the application for the order is made; and

(ii) the police officer suspects that the suspect committed the offence; and

(b) in the case of a conviction-based restraining order—the suspect has been convicted of a serious offence or a specified offence and that all relevant appeal periods have elapsed and all appeals have been determined not more than 12 months prior to the making of the application; and

(c) in the case of a non-conviction-based restraining order—the police officer suspects that the suspect committed a serious offence or a specified offence; and

(d) in the case of an asset-directed restraining order—the police officer suspects that the property is tainted property in relation to a serious offence or specified offence; and

- (e) if the application requests that certain property of the suspect be specified in the restraining order—the police officer suspects that the property is owned by the suspect; and
- (f) if the application relates to property that is not owned by the suspect—the police officer suspects that the property is:
 - (i) subject to the effective control of the suspect; or
 - (ii) tainted property in relation to the offence; and
- (g) the grounds upon which the police officer holds those suspicions.

(2) Paragraphs (1)(e) and (f) do not apply to an asset-directed restraining order.

69. Notice of application

- (1) The [*proceeds of crime authority*] that applies for a restraining order covering property must give written notice of the application to any person [*the proceeds of crime authority*] knows or suspects holds an interest in the property.
- (2) The notice must be given not less than 5 business days and not more than 20 business days before the hearing of the application, unless the court makes an order waiving the notice requirement.
- (3) At any time before the court finally determines the application, the court may direct the applicant to notify a specified person or class of persons of the application within the timeframe and in such manner as the court determines.
- (4) The court may in the direction alter any of the requirements of section 70 as it determines.

Note: if the court directs that notice be given to a class of persons, the class may not need to have all of the information required under section 70 or the notice may be published rather than served.

70. Contents of notice of application

- (1) A notice of an application for a restraining order must contain the following information:
 - (a) the date, time and place for the hearing of the application;

- (b) that any person with an interest in property that is the subject of the application has a right to contest the application or seek exclusion of the property from the order under section 78.
- (2) The notice must be served on a person in accordance with section 187.
- (3) The following must also be included with the notice:
- (a) a copy of the application;
 - (b) for a notice to the owner of the property (if the owner is known)—a copy of any affidavit supporting the application;
 - (c) for a notice to any other person—a further notice that the person may request that the [*proceeds of crime authority*] give the person a copy of any affidavit supporting the application.
- (4) Subject to subsection (5), if a request for a copy of an affidavit supporting the application is made, the [*proceeds of crime authority*] must comply with the request as soon as practicable.
- (5) The [*proceeds of crime authority*] may in order to prevent prejudice to the administration of justice suppress or withhold providing information.
- (6) Any suppression or withholding of information is subject to an order of the court and the order may be applied for on an *ex parte* basis.

Division 3 Making restraining orders

71. Undertaking as to damages or costs

Despite sections 59, 60, 61 and 62, a court may refuse to make a restraining order if the Attorney-General or the equivalent officeholder refuses or fails to give the court an appropriate undertaking with respect to the payment of damages or costs, or both, for the making and operation of the restraining order, and any extension of the duration of the restraining order.

72. Contents of a restraining order

A restraining order must specify the following:

- (a) the actual purpose of the restraining order, namely, that the court directs that property subject to the order must not be disposed of or otherwise dealt with, except in the manner set out in the order;
- (b) the type of restraining order made, see section 58;

- (c) the property covered by the restraining order;
- (d) if property is specified in the order—a description of that property sufficiently detailed to allow for its identification, if possible;
- (e) the details of any property that has been excluded from the operation of the order;
- (f) any directions as to dealings with the restrained property;
- (g) any undertakings made as to damages or costs in relation to the order;
- (h) any ancillary orders made by the court under section 76.

73. Notice of a restraining order

- (1) If a court makes a restraining order, the [*proceeds of crime authority*] that applied for the order must give written notice of the restraining order to the persons that the [*proceeds of crime authority*] knows or suspects hold an interest in the restrained property.
- (2) The notice must:
 - (a) include a copy of the restraining order and any other order relating to the restrained property, including ancillary orders; and
 - (b) set out that it is an offence to deal with or dispose of the restrained property in contravention of the restraining order; and
 - (c) set out that a person who has an interest in the restrained property has a right to apply for the restraining order to be revoked or amended, including to exclude property from the restraining order or to make allowance for reasonable living expenses.
- (3) The notice must be served on a person in accordance with section 187.

74. Registration of a restraining order

- (1) If a court makes a restraining order, the [*proceeds of crime authority*] that applied for the order may direct any governmental authority that administers any law providing for the registration of title to, or charges over, property of a particular kind to record the particulars of the restraining order if it applies to property of that kind.
- (2) The governmental authority must record the particulars of the restraining order as soon as practicable after receiving the direction.
- (3) Any person who subsequently deals with the property is taken to have notice of the restraining order at the time of the dealing.
- (4) If:
 - (a) the restraining order ceases to have effect over the property; or

- (b) the particulars of the restraining order as it relates to the property change in a material way;

the [*proceeds of crime authority*] must give written notice of this to the governmental authority so that the register can be updated accordingly.

Division 4 Other orders relating to restraining orders

75. Court may appoint asset manager

- (1) The court that made a restraining order, or any other court that could have made a restraining order, may appoint an asset manager to take custody and control of the property, or specified property, covered by a restraining order if the court is satisfied that this is required.
- (2) The court must specify the powers of the asset manager over the property.

76. Ancillary orders

- (1) The court that made a restraining order, or any other court that could have made a restraining order, may make any ancillary orders that the court considers appropriate.
- (2) Without limiting subsection (1), the court may make one or more of the following orders:
 - (a) an order varying the property covered by the restraining order;
 - (b) an order varying a condition to which the restraining order is subject;
 - (c) an order relating to an undertaking required under section 71;
 - (d) an order directing the suspect in relation to the restraining order to give a sworn statement to a specified person, within a specified period, setting out all of his or her interests in property, and his or her liabilities;
 - (e) an order directing the owner or a previous owner of the property (including, if the owner or previous owner is a body corporate, a specified director of the body corporate) to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;
 - (f) if the court is satisfied that there are reasonable grounds to suspect that a person (other than the owner or a previous owner) has information relevant to identifying, locating or quantifying the property—an order directing the person to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;
 - (g) if an asset manager is appointed under section 75 to take custody and control of the property:

- (i) an order regulating the manner in which the asset manager may exercise its powers or perform its duties under the restraining order; or
 - (ii) an order determining any question relating to the property, including a question relating to the liabilities of the owner or the exercise of powers or the performance of duties of the asset manager; or
 - (iii) an order directing any person to do anything necessary or convenient to enable the asset manager to take custody and control of the property;
- (h) an order giving directions about the operation of the restraining order and either or both of the following:
- (i) a foreign order that covers the same property as the restraining order;
 - (ii) a pecuniary penalty order that relates to the same offence as the restraining order;
- (i) an order requiring a person whose property is covered by the restraining order, or who has effective control of property covered by the restraining order, to do anything necessary or convenient to bring the property within the jurisdiction.
- (3) The court can only make an ancillary order on the application of:
- (a) a [*proceeds of crime authority*]; or
 - (b) the owner of the property covered by the restraining order; or
 - (c) if an asset manager has been appointed by the court—the asset manager of the property concerned; or
 - (d) any other person who has leave of the court.
- (4) A person who applies for an ancillary order must give written notice of the application to all other persons entitled to make such an application.
- (5) Despite subsection (4), the court must consider an application for an ancillary order without notice having been given under that subsection if the [*proceeds of crime authority*] requests the court to do so.
- (6) An ancillary order may be made:
- (a) if it is made by the court that made the restraining order—when making the restraining order; or
 - (b) in any case—at any time after the restraining order is made.

- (7) The court may, at any time before finally determining the application, direct the [*proceeds of crime authority*] to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.
- (8) If the court makes the ancillary order after a request under subsection (5), the [*proceeds of crime authority*] must give written notice in accordance with section 187 to any person the authority reasonably believes may be affected by the order.

77. Revocation of restraining orders

(1) If a person:

- (a) has an interest in property covered by a restraining order; and
- (b) was not notified of the application for the restraining order;

the person may apply to the court that made the restraining order for the revocation of the restraining order.

Note: Subsection (1) would apply to persons who were not notified because their interest was not known, there was a failure of service, or the court issued a waiver for service.

(2) The application must:

- (a) set out the grounds for the application; and
- (b) be made within 20 business days after the person is notified of the restraining order or becomes aware of the restraining order, whichever occurs first.

(3) The applicant must give written notice of the application to the [*proceeds of crime authority*] that applied for the restraining order.

(4) The [*proceeds of crime authority*] may appear at the hearing of the application and adduce additional evidence.

(5) The court may revoke the restraining order if the court is satisfied there are no grounds on which to make the restraining order at the time of considering the application to revoke the order.

(6) If the restraining order is revoked, the [*proceeds of crime authority*] must give notice of the revocation to any person the authority knows has an interest in the property that was covered by the restraining order.

- (7) The restraining order remains in force until the revocation application is finally determined.

78. Exclusion of property from a restraining order

- (1) If a person has an interest in property that is covered by a restraining order, the person may apply for the property or the person's interest in the property to be excluded from the operation of the restraining order.
- (2) An order under subsection (1) (the **exclusion order**) has the effect that the property or the person's interest in the property is not covered by the restraining order.
- (3) The application must set out the grounds for the exclusion and must be made to the court that made the restraining order, and may be made at any time after the restraining order is made.
- (4) The applicant must give notice of the application to the [*proceeds of crime authority*] and the authority may adduce additional evidence.
- (5) The exclusion application must not be heard until the proceeds of crime authority has conducted an examination hearing.
- (6) The court may make an exclusion order if the court is satisfied that:
- (a) the applicant has an interest in the property covered by the restraining order; and
 - (b) the property is not tainted property; and
 - (c) a pecuniary penalty order could not be made against any person who owns the property or has effective control of the property.
- (7) The court may make such additional orders as the court considers appropriate, including in relation to how the property or the interest in the property may or is to be dealt with.
- (8) If a person makes an application under subsection (1), the person must apply for leave of the court to make a further application.
- (9) The court may grant leave only if the court is satisfied that the further application relies on evidence that was not available to the applicant at the time of a previous application.

79. Reasonable living expenses

- (1) If a person has an interest in property that is covered by a restraining order, the person may apply for his or her reasonable living expenses, or reasonable living expenses of his or her dependants, to be met out of the property.
- (2) The application must be made to the court that made the restraining order and may be made at any time after the restraining order is made.

- (3) The applicant must give written notice of the application to the [*proceeds of crime authority*] that applied for the restraining order and the asset manager of the property.
- (4) The [*proceeds of crime authority*] and the asset manager may appear at the hearing of the application and adduce additional evidence.
- (5) The application must be supported by an affidavit of the applicant that discloses:
 - (a) the applicant's interest in the property covered by the restraining order; and
 - (b) the basis on which the applicant claims that a failure to make an order under this section would cause unreasonable hardship to the applicant or to his or her dependants, including information on the applicant's current income, and current assets and liabilities, if relevant.
- (6) If the court is satisfied that a failure to make the order would cause unreasonable hardship to the applicant or his or her dependants, the court may order that the asset manager allow the reasonable living expenses of the applicant or his or her dependants to be met out of the restrained property.
- (7) The court may make such additional orders as it considers appropriate to give effect to the order, including orders to the asset manager concerning how the reasonable living expenses are to be met out of the restrained property.

80. Adding property to a restraining order

- (1) The [*proceeds of crime authority*] that applied for a restraining order may apply for additional property to be covered by a restraining order.
- (2) The application must be made to the court that made the restraining order and must comply with the requirements of Division 2 of this Part.
- (3) An order made by the court must comply with the requirements of Division 3 of this Part.
- (4) However, the [*proceeds of crime authority*] does not need to adduce evidence of the commission of a serious offence or specified offence if the court has been satisfied of these matters in the initial application for the restraining order.

Example: For a non-conviction-based restraining order, the [*proceeds of crime authority*] does not need to adduce evidence and convince the court anew that there are reasonable grounds to suspect that the suspect has committed a serious offence or specified offence. The authority just needs to plead and prove those parts that relate to the new property.

81. Compensation for certain non-compliance by proceeds of crime authority

- (1) A person may apply to a court for an order that the Attorney-General or equivalent officer holder pay to the person an amount for loss or damage in connection with a restraining order.

- (2) The court must make the order if the court is satisfied that the applicant:
- (a) holds a lawful interest in property that is covered by the restraining order; and
 - (b) has suffered loss or damage unjustly or due to the non-compliance of the [*proceeds of crime authority*] with its obligations under this Part.

82. Setting aside a disposition or dealing contravening a restraining order

- (1) A [*proceeds of crime authority*] may apply to the court that made a restraining order to set aside a disposition of or dealing with property in contravention of the restraining order.
- (2) An order setting aside a disposition of or dealing with property in contravention of the restraining order has the effect of declaring the disposition or dealing to be null and void.
- (3) The court may make such additional orders as the court considers appropriate to give effect to the setting aside of the disposition or dealing in a just and fair manner, including by ordering that the purchase price be returned to a buyer who paid sufficient consideration for the property and acted in good faith.

Division 5 Duration of restraining orders

83. Cessation of charge-based restraining orders

A charge-based restraining order ceases to be in force:

- (a) 20 business days after the date that the order is made if a charge relating to the restraining order has not been brought against the suspect within that period; or
- (b) 20 business days after the date that the charge, or all of the charges, that relate to the restraining order are withdrawn or dismissed; or
- (c) 20 business days after the date that the suspect is acquitted of the offence, or all of the offences, with which he or she was charged; or
- (d) 20 business days after the date that the suspect's conviction for the charge, or all of the charges, that relate to the restraining order are overturned or quashed; or
- (e) 12 months after the date that the suspect's conviction for the charge, or all of the charges, on which the restraining order is based, unless an application has been made for:
 - (i) forfeiture of the property that is covered by the restraining order; or
 - (ii) a pecuniary penalty order against the suspect in connection with the suspect's conviction for the charge, or all of the charges, on which the restraining order is based;

and that application has not been determined; or

- (f) on the withdrawal of any application for forfeiture of the property that is covered by the restraining order; or
- (g) on the withdrawal of any application for a pecuniary penalty order against the suspect; or
- (h) 20 business days after the expiry of all relevant appeal periods and the conclusion of all relevant appeals following the dismissal of any application for:
 - (i) forfeiture of the property covered by the restraining order; or
 - (ii) a pecuniary penalty order against the suspect;

whichever occurs first.

84. Cessation of conviction-based restraining orders

A conviction-based restraining order ceases to be in force:

- (a) 20 business days after the date that the conviction on which the order is based is quashed, set aside or expunged by a court exercising appellate jurisdiction; or
- (b) 12 months after the date of the conviction on which the order is based, unless an application has been made for:
 - (i) forfeiture of the property that is covered by the restraining order; or
 - (ii) a pecuniary penalty order against the suspect in connection with the conviction upon which the restraining order is based;

and that application has not been determined; or

- (c) on the withdrawal of any application for forfeiture of the property that is covered by the restraining order; or
- (d) on the withdrawal of any application for a pecuniary penalty order against the suspect; or
- (e) 20 business days after the expiry of all relevant appeal periods and the conclusion of all relevant appeals following the dismissal of any application for:

- (i) forfeiture of the property covered by the restraining order; or
- (ii) a pecuniary penalty order against the suspect;

whichever occurs first.

85. Cessation of non-conviction-based restraining orders

A non-conviction-based restraining order ceases to be in force:

- (a) 90 business days after the date of the order, unless an application has been made for:

- (i) forfeiture of the property that is covered by the restraining order; or
- (ii) a pecuniary penalty order against the suspect;

and that application has not been determined; or

- (b) on the withdrawal of any application for forfeiture of the property that is covered by the restraining order; or

- (c) on the withdrawal of any application for a pecuniary penalty order against the suspect; or

- (d) 20 business days after the expiry of all relevant appeal periods and the conclusion of all relevant appeals following the dismissal of any application for:

- (i) forfeiture of the property covered by the restraining order; or
- (ii) a pecuniary penalty order against the suspect;

whichever occurs first.

86. Cessation of asset directed restraining orders

An asset-directed restraining order ceases to be in force:

- (a) 60 business days after the date of the order, unless an application for forfeiture of the property that is covered by the order has been made and the application has not been determined; or

- (b) on the withdrawal of any application for forfeiture of the property that is covered by the order; or
- (c) 20 business days after the expiry of all relevant appeal periods and the conclusion of all relevant appeals following the dismissal of any application for:
 - (i) forfeiture of the property that is covered by the restraining order; or
 - (ii) the exclusion of the property that is covered by the restraining order from the scope of a forfeiture order; or
- (d) on the making of any order by a court to strike out the restraining order; or
- (e) on the forfeiture of the property covered by the restraining order to the State; or
- (f) 20 business days after the refusal of an application for a forfeiture order that would have covered the property had it been made;

whichever occurs first.

87. Exception to cessation of restraining orders

Despite sections 83, 84, 85 and 86, a restraining order does not cease to be in force in relation to property at a particular time if:

- (a) an application for a confiscation order has been made to a court in relation to that property; and
- (b) at that particular time, the application has not been finally determined by the court.

Example: if there is a charge-based restraining order in place and the criminal proceedings fail, it is open to authorities to file an application for a confiscation order within 20 business days and keep the restraining order alive.

Division 6 Failure to comply with a restraining order

88. Offence of knowingly failing to comply with a restraining order

(1) A person commits an offence if the person:

- (a) disposes of, or otherwise deals with, property; and
- (b) knows the disposition or dealing contravenes a restraining order that covers the property.

(2) A person who commits an offence against subsection (1) is punishable on conviction to:

(a) for a natural person—a fine not exceeding [\$5,000] or a term of imprisonment not exceeding [5 years], or both; or

(b) for any other legal person—a fine not exceeding [\$200,000].

89. Offence of recklessly failing to comply with a restraining order

(1) A person commits an offence if the person:

(a) disposes of, or otherwise deals with, property; and

(b) is reckless as to the fact the disposition or dealing contravenes a restraining order that covers the property.

(2) A person who commits an offence against subsection (1) is punishable on conviction to:

(a) for a natural person—a fine not exceeding [\$3,000] or a term of imprisonment not exceeding [3 years], or both; or

(b) for any other legal person—a fine not exceeding [\$100,000].

Part 5 Forfeiture orders

Division 1 Forfeiture orders

90. Three types of forfeiture orders

The following are the three types of forfeiture orders:

- (a) a conviction-based forfeiture order;
- (b) a non-conviction-based forfeiture order;
- (c) an asset-directed forfeiture order.

91. Conviction-based forfeiture orders

A court must make a conviction-based forfeiture order if:

- (a) a person has been convicted of one or more serious or specified offences; and
- (b) the property specified in the order is tainted property in relation to the offence or offences for which the person is convicted; and
- (c) a [*proceeds of crime authority*] has applied for a conviction-based forfeiture order in accordance with Division 2 of this Part.

92. Non-conviction-based forfeiture orders

(1) A court must make a non-conviction based forfeiture order if:

- (a) a person engaged in conduct constituting a serious offence or specified offence; and
- (b) the property specified in the order is covered by a restraining order; and
- (c) the restraining order has been in force for at least six months; and
- (d) a [*proceeds of crime authority*] has applied for a non-conviction based forfeiture order in accordance with Division 2 of this Part.

Note: The order can be made before the end of the period of 6 months referred to in paragraph (1)(c) if it is made as a consent order, see section 186.

Comment for adopting jurisdiction: each jurisdiction may wish to consider whether there are any statute of limitations issues relevant to this section. In practice, the application of statutes of limitations can give rise to legal challenges.

- (2) A finding of the court for the purposes of paragraph (1)(a) need not be based on a finding as to the commission of a particular offence, and can be based on a finding that some serious offence or specified offence was committed.

93. Asset-directed forfeiture orders

- (1) A court must make an asset-directed forfeiture order if:
- (a) the property specified in the order is covered by a restraining order; and
 - (b) the restraining order has been in force for at least six months; and
 - (c) the property is tainted property; and
 - (d) a [*proceeds of crime authority*] has applied for a forfeiture order in accordance with Division 2 of this Part; and
 - (e) the [*proceeds of crime authority*] has taken reasonable steps to identify and notify persons with an interest in the property.

Note: The order can be made before the end of the period of six months referred to in paragraph (1)(b) if it is made as a consent order, see section 186.

- (2) The court may make an asset-directed forfeiture order whether or not the identity of the person who committed the offence or the owner of the property is known.
- (3) The court does not need to make a finding that property is tainted property in order for the property to be forfeited if the property is covered by an asset-directed restraining order and:
- (a) a person has not contested the application for a forfeiture order and adduced evidence that gives rise to a belief as to whether the property is tainted property or not; or
 - (b) an application to exclude the property from the restraining order has not been made; or
 - (c) an application to exclude the property from the forfeiture order has not been made; or
 - (d) if an application referred to in paragraph (b) or (c) has been made, the application has been withdrawn.

Division 2 Applying for a forfeiture order

94. Proceeds of Crime Authority may apply for a forfeiture order

(1) A [*proceeds of crime authority*] may apply to a court for a forfeiture order.

Comment for adopting jurisdiction: each jurisdiction may wish to give this power to a number of public authorities, or simply to substitute the Public Prosecutor or similar officeholder.

(2) The application must:

(a) state the type or types of forfeiture order that the [*proceeds of crime authority*] is seeking; and

(b) specify the property that is sought to be forfeited, including a sufficient description of the property to allow it to be identified.

(3) To avoid doubt, the applicant may seek multiple kinds of forfeiture orders over the same property in the one application.

(4) An application for a conviction-based forfeiture order must be made within 12 months after the determination of all appeals and the expiry of all appeal periods that relate to the conviction.

(5) An application for a non-conviction-based or asset-directed forfeiture order in relation to property must be made within 60 days after the granting of a restraining order that relates to that property.

(6) An application for a non-conviction-based or asset-directed forfeiture order must not be heard until the restraining order has been in effect for 6 months.

95. Notice of application

(1) The [*proceeds of crime authority*] that applies for a forfeiture order must give written notice of the application to:

(a) the suspect in the case of an application for a conviction-based or non-conviction-based forfeiture order; and

(b) any person who claims an interest in the property covered by the application; and

(c) any other person the [*proceeds of crime authority*] knows or suspects holds an interest in the property.

(2) The notice must be given not less than 20 business days before the hearing of the application.

- (3) At any time before the court finally determines the application, the court may direct the applicant to notify a specified person or class of persons of the application within the timeframe and in such manner as the court determines.
- (4) The court may in the direction alter any of the requirements of section 96 as it determines.

Example: if the court directs that notice be given to a class of persons, the class may not need to have all of the information required under section 96 or the notice may be published rather than served.

96. Contents of notice of application

- (1) A notice of an application for a forfeiture order must contain the following information:
 - (a) the date, time and place for the hearing of the application;
 - (b) that any person with an interest in property that is the subject of the application has a right to contest the application and may have the right to seek exclusion of the property from the order under Division 6 of this Part.
- (2) A copy of the application must be included with the notice.
- (3) The notice must be served in accordance with section 187.

97. Subsequent applications for a forfeiture order

- (1) If an application for a conviction-based or non-conviction-based forfeiture order has been finally determined, a further application for a forfeiture order relating to the same offence or conduct cannot be made without leave of the court.
- (2) The court may give leave for a further application to be made only if:
 - (a) the property to which the new application relates was identified after the previous application was made; or
 - (b) necessary evidence became available only after the previous application was determined; or
 - (c) the court considers that it is in the interests of justice that the new application be made.

Division 3 Making forfeiture orders

98. Contents of a forfeiture order

A forfeiture order must specify the following:

- (a) the type of forfeiture order made, see section 90;
- (b) the property to which the forfeiture order relates, including a description of that property sufficiently detailed to allow for its identification, if possible;
- (c) an estimate of the amount that the court considers to be the value of the forfeited property at the time that the forfeiture order is made;
- (d) any directions to facilitate the realisation of the forfeited property.

99. Special rules for non-conviction-based or asset-directed forfeiture orders

- (1) A court's power to make a non-conviction-based or an asset-directed forfeiture order is not affected by the fact that the person concerned has been acquitted of an offence for which he or she was charged.
- (2) The court does not need to make a finding as to the commission of a particular serious or specified offence in order to make a non-conviction-based or asset-directed forfeiture order.
- (3) The raising of a reasonable doubt as to whether the person concerned committed a serious offence or a specified offence is not sufficient to avoid a finding that he or she engaged in conduct constituting a serious offence or specified offence for the purposes of making a non-conviction-based or asset-directed forfeiture order.

100. Alternative application for a non-conviction-based forfeiture order

- (1) This section applies if a [*proceeds of crime authority*] has applied for a conviction-based forfeiture order and:
 - (a) the person against whom the order is sought is acquitted of the relevant charge or the charge is dismissed; or
 - (b) a court exercising appellate jurisdiction in relation to the person's conviction, overturns or quashes the conviction.
- (2) A court may make a non-conviction-based forfeiture order if the court is satisfied that:
 - (a) all persons with an interest in the property concerned were given notice by the [*proceeds of crime authority*] of the intended application for a non-conviction based forfeiture order at least 20 days before the hearing of the application in accordance with the requirements of section 95; and

Note: in this scenario the prosecution will presumably have given notice of their intention to apply for a conviction-based forfeiture order, but the intended effect of this subsection is to require them also to have given notice of their intention to seek, in the alternative, a non-conviction-based forfeiture order.

- (b) the property specified in the order is covered by a restraining order and the restraining order has been in force for at least 6 months; and
 - (c) the person concerned engaged in conduct constituting a serious offence or specified offence, whether or not it was the serious offence or specified offence the person was charged with; and
 - (d) the property is tainted property.
- (3) The court may adjourn the hearing of the application if necessary to ensure that:
- (a) all persons with an interest in the property were given notice by the [*proceeds of crime authority*] of the intended application for a non-conviction based forfeiture order at least 20 days before the hearing of the application in accordance with the requirements of section 95; and
 - (b) the property specified in the order is covered by a restraining order and it has been in force for at least six months, unless the court has made a consent order to the forfeiture.
- (4) To avoid doubt, the court may make a forfeiture order even if a person with standing to appear and adduce evidence at the hearing of the application does not appear.

101. Discretion to refuse to order the forfeiture of instruments of crime

- (1) A court may refuse to order the forfeiture of property if the court is satisfied that the property is the instrument of an offence, but the court is not satisfied that the property is the proceeds of an offence.
- (2) In deciding whether or not to exercise its discretion, the court must consider:
- (a) the gravity of the conduct concerned; and
 - (b) the extent to which the property was used in the carrying out of the conduct; and
 - (c) the use that is ordinarily made of the property or the use that is ordinarily made of property of that kind; and
 - (d) any hardship that may reasonably be expected to be caused to any person by the operation of the proposed order; and
 - (e) whether it is in the interests of justice to make the order.

102. Making of forfeiture order if respondent is unavailable

- (1) This section applies if a person is unavailable.

- (2) A court may proceed to hear an application for a conviction-based forfeiture order in the person's absence if:
- (a) the person has been committed to stand trial for the relevant offence; or
 - (b) the court is satisfied that the person could have been committed for trial if the person had been available.

Comment for adopting jurisdiction: if committals are not conducted in the jurisdiction, then consideration should be given to providing that the court is satisfied there is sufficient evidence that the person committed the offence.

- (3) A court may proceed to hear an application for a non-conviction-based forfeiture order in the person's absence.
- (4) In this section, a person is unavailable if he or she:
- (a) has died; or
 - (b) despite reasonable efforts, cannot be located or served in the six months following:
 - (i) a warrant having been issued for the person's arrest in relation to any offence; or
 - (ii) proceedings having been commenced in relation to the person under this Act.

103. Payment instead of forfeiture order

- (1) This section applies if a court is satisfied that a conviction-based or non-conviction-based forfeiture order should be made against the property of a person, but the property, or any part of it or any interest in it, cannot be practically made subject to the order.
- (2) Without limiting subsection (1), the property, or any part of it or any interest in it, cannot be practically made subject to the order if the property:
- (a) cannot, with the exercise of due diligence, be found; or
 - (b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or the interest was transferred to avoid the forfeiture of the property; or
 - (c) is located outside the jurisdiction; or
 - (d) has been mingled with other property that cannot practically be divided.

- (3) The court may, instead of ordering that the property, or part of the property or an interest in the property be forfeited to the State, order the person to pay to the State an amount equal to the value of the property, or the part or the interest.
- (4) An amount payable by the person to the State under an order under subsection (3) is a civil debt due by the person to the State.
- (5) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State, and the debt arising from the order is taken to be a judgement debt.
- (6) For the purposes of this Act, an order under this section is taken to be a forfeiture order.

Division 4 Automatic forfeiture

104. Automatic forfeiture of certain restrained property

- (1) This section applies if:
 - (a) a person is convicted of a serious offence or specified offence; and
 - (b) a charge-based or conviction-based restraining order is in force and it relates to the offence for which the person was convicted, or a related offence.
- (2) The property covered by the restraining order and which has not been excluded from the operation of the restraining order is forfeited by force of this section to the State on the latest of the following days (the **forfeiture day**):
 - (a) the day that is 6 months after the day of the conviction of the person (the **conviction day**) charged with the serious offence or specified offence upon which the forfeiture relies;
 - (b) the day that is six months after the date on which the restraining order was made;
 - (c) the day specified by the court under subsection (4).
- (3) Prior to the forfeiture day, the [*proceeds of crime authority*] that applied for the restraining order or the convicted person or any other person who claims an interest in the property to be forfeited may apply to the court to defer the forfeiture day.
- (4) The court that made the restraining order may make an order deferring the forfeiture day for a period not exceeding 12 months after the conviction day if the court is satisfied that it is in the interests of justice to do so.

105. Declaration of automatically forfeited property

- (1) A [*proceeds of crime authority*] may apply to a court for a declaration that property has been forfeited to the State under section 104.

- (2) The application may be made *ex parte*.
- (3) The court must make the declaration if the court is satisfied that the property has been forfeited under section 104.
- (4) The Court may make such ancillary orders as are necessary to give effect to a transfer of the property to the State.

Division 5 Effect of forfeiture

106. When forfeited property vests in the State

- (1) Property covered by a forfeiture order vests absolutely in the State at the time the forfeiture order is made.
- (2) However, property forfeited under section 104 vests absolutely in the State at the end of the forfeiture day.
- (3) This section is subject to section 107.

107. When forfeited registrable property vests in the State

- (1) This section applies to property if the property is registrable property and the property:
 - (a) is covered by a forfeiture order; or
 - (b) has been forfeited under section 104.
- (2) The property vests in the State in equity:
 - (a) when the forfeiture order is made; or
 - (b) for property forfeited under section 104—at the end of the forfeiture day.
- (3) However, the property vests in the State in law when all applicable registration requirements have been complied with.
- (4) The State is entitled to be registered as the owner of the property:
 - (a) when the forfeiture order is made; or
 - (b) for property forfeited under section 104—at the end of the forfeiture day.
- (5) The [*proceeds of crime authority*] that applied for the forfeiture order or the restraining order, as the case requires, and the asset manager have power to do anything necessary or convenient:

- (a) to protect the State's equitable interest in forfeited registrable property until such time as the property vests absolutely in the State; and
 - (b) to obtain registration as the legal owner of the property.
- (6) The power referred to in paragraph (5)(b) includes directing any governmental authority that administers any law providing for the registration of title to, or charges over, property of a particular kind to:
- (a) record the particulars of the forfeiture, including the State as the new owner; and
 - (b) execute any instrument required to be executed by a person transferring an interest in property of that kind.
- (7) A governmental authority must record the particulars of the forfeiture as soon as practicable after receiving a direction under subsection (6).
- (8) The [*proceeds of crime authority*] or the asset manager may apply to a court for an order instructing any person to do anything that the court considers necessary to have the State registered as the owner of the property.
- (9) Any action taken in good faith by the [*proceeds of crime authority*], the asset manager or any other governmental authority of a kind referred to in subsection (6) is not a contravention of section 109.

108. Offence of non-compliance with certain directions or court orders

A person who fails, without reasonable excuse, to comply with a direction under subsection 107(6) or a court order under subsection 107(8) commits an offence and is punishable on conviction to a fine not exceeding [\$XX].

Comment for adopting jurisdiction: each jurisdiction can determine whether non-compliance with a direction or an order should be an offence, and, if so, what is an appropriate maximum penalty.

109. Dealing with forfeited property

- (1) A person commits an offence if the person:
- (a) disposes of or otherwise deals with property other than in accordance with the terms of a forfeiture order; and
 - (b) knows or has reason to suspect that the property has been forfeited to the State under this Act.
- (2) A reference to property in subsection (1) includes a reference to property that has vested in the State in equity pending registration.

- (3) A person who commits an offence against subsection (1) is punishable on conviction to:
- (a) for a natural person— a fine not exceeding [\$XX] or a term of imprisonment not exceeding XX years, or both; or
 - (b) for any other legal person—a fine not exceeding [\$XX].

Comment for adopting jurisdiction: the appropriate penalty will need to be determined.

Division 6 Exclusion of property from forfeiture

110. Application to exclude property from forfeiture—before forfeiture order made

- (1) This section applies if an application for a forfeiture order has been made, but not finally determined.
- (2) Any person who claims an interest in the property the subject of the application may apply for an order under section 112, 113 or 114.
- (3) However, an application cannot be made without the leave of the court.
- (4) If the person applied to exclude the property from a restraining order and the application was unsuccessful in whole or in part, the court may grant leave only if the court is satisfied that the application to exclude the property from forfeiture relies on grounds or evidence that were not advanced in the application for exclusion from the restraining order.

111. Application to exclude property from forfeiture—after forfeiture

- (1) If property has been forfeited to the State, any person who claims an interest in the property may apply for an order under section 112, 113 or 114.
- (2) However, an application cannot be made without the leave of the court.
- (3) If the person:
- (a) knew about the application for forfeiture before it had been heard; or
 - (b) knew that the property was subject to a restraining order before it had been forfeited;

the court may grant leave only if the court is satisfied that the person had a good reason for not applying for exclusion before the property was forfeited to the State and that the

failure to make an application at the earlier stage was not a result of the person's neglect.

(4) If the person:

- (a) did not know about the application for forfeiture before it had been heard; or
- (b) did not know that the property was covered by a restraining order before it had been forfeited;

the court may grant leave only if the court is satisfied that the person made the application for leave of the court within six months after becoming aware that the property had been forfeited to the State.

112. Court may exclude property from forfeiture—innocent third party

(1) A court may by order exclude property from forfeiture (whether or not the forfeiture has occurred) if the court is satisfied that:

- (a) if not for the forfeiture, a person would have an interest in the property; and
- (b) the person was not involved in the commission of an offence in relation to which the forfeiture of the property is or was sought; and
- (c) the property is not subject to the effective control of any person who was involved in the commission of an offence in relation to which the forfeiture of the property is or was sought; and
- (d) if the person acquired the interest in the property at the time that the offence was committed or subsequently, the person acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowledge and in circumstances that would not cause a reasonable person to suspect that the property was, and at the time that it was acquired, tainted property; and

(e) it is in the public interest to make the order, having regard to all the circumstances.

(2) If the court makes an order, the order must specify:

- (a) the nature, extent and estimated value of the person's interest in the property; and
- (b) the property is not subject to forfeiture; and

(c) either:

(i) the property is to be returned to the person; or

(ii) the State must make a payment to the person equal to the estimated value of the person's interest in the property.

113. Court may exclude property from forfeiture—proportional exclusion

(1) A court may by order exclude from forfeiture a part of property if the court is satisfied that:

(a) if not for the forfeiture, a person would have an interest in the property; and

(b) a proportion of the value of the person's interest in the property was not derived or realised, directly or indirectly, from the commission of any offence; and

(c) it would not be contrary to the public interest for the proportion referred to in paragraph (b) to be transferred to the person.

Example: if a person purchases a house with money that is partially the proceeds of crime and partially derived from legitimate activities, a proportion of the value of the person's interest in the house could be excluded from forfeiture under this section.

(2) If the court makes an order, the order must specify:

(a) the nature, extent and estimated value of the person's interest in the property; and

(b) the proportion is not subject to forfeiture; and

(c) either:

(i) the property is to be returned to the person; or

(ii) the State must make a payment to the person equal to the estimated value of the person's interest in the property.

114. Court may exclude property from forfeiture—payment to the State

(1) A court may exclude from forfeiture a person's interest in property if the court is satisfied that:

(a) the person has made a payment to the State equivalent to the value of the person's interest in the property; and

- (b) if not for the forfeiture, the person would have an interest in the property; and
- (c) it would not be contrary to the public interest for that interest to be transferred to the person; and
- (d) it is practically possible to return the person's interest to the person whilst maintaining the integrity of other actions that have or may be taken under this Act.

Note: this is essentially a 'buyback' provision that enables, for example, someone to purchase back from the State their family home if it has been forfeited. The aim is to ensure that it is practically possible to return the interest to the person, but if other interests in the same property are still subject to forfeiture this may not be practically possible.

(2) If the court makes an order, the order must specify:

- (a) the nature, extent and estimated value of the person's interest in the property; and
- (b) if the person makes a payment to the State equal to the estimated value of the person's interest in the property, the property will not be subject to forfeiture and must be returned to the person.

115. Procedural matters

In any proceedings under section 112, 113 or 114, the [*proceeds of crime authority*] concerned and the asset manager of the property are taken to be parties to the proceedings.

116. Return of property excluded from forfeiture

- (1) If an order is made under section 112, 113 or 114, the asset manager of the property must comply with the order after ensuring that all relevant appeal periods have expired and that any appeals have been finally determined or have lapsed.
- (2) If an order is made under section 114, the person concerned must make the payment to the State before the asset manager of the property complies with the order.

Division 7 Other matters relating to forfeiture orders

117. Certain forfeiture orders unaffected by the outcome of related criminal proceedings

- (1) A non-conviction-based forfeiture order that is made against a person in relation to an offence is not affected if:
 - (a) having been charged with the offence, the person is subsequently acquitted; or
 - (b) the person is convicted of the offence and the conviction is subsequently quashed.

- (2) An asset-directed forfeiture order that is made against property is not affected if:
- (a) a person is charged with an offence relating to the property, and the person is subsequently acquitted of the offence; or
 - (b) the person is convicted of an offence relating to the property, and the conviction is subsequently quashed.

118. Effect of acquittal or quashing on conviction-based forfeiture orders and automatic forfeiture

(1) If:

- (a) in reliance on a person's conviction for an offence:
 - (i) a conviction-based forfeiture order is made; or
 - (ii) property is forfeited under section 104; and
- (b) the conviction is subsequently quashed;

the quashing of the conviction discharges the forfeiture and the forfeiture order lapses 20 days after the conviction is quashed.

(2) To avoid doubt, an application for a non-conviction-based forfeiture order may be made before the forfeiture order lapses.

(3) If a forfeiture is discharged under subsection (1), any person who claims an interest in the property may make a request in writing to the asset manager that the person's interest be returned to the person.

(4) If the asset manager is satisfied that the person making the request does have the interest that the person claims, the asset manager must deal with the property that was forfeited as follows:

- (a) if the property is vested in the State—return the property or the interest in the property to the person; or
- (b) if the State has disposed of the interest—pay to the person an amount equal to the value of the person's interest in the property at the time of forfeiture.

(5) If:

(a) the asset manager is unable to determine whether the person has the interest that the person claims; or

(b) there are competing claims to the same interest in the property;

the asset manager must apply to the court to determine the matter.

(6) The [*proceeds of crime authority*] that applied for the forfeiture order and all persons claiming an interest in the property are taken to be parties to the proceedings referred to in subsection (5).

Part 6 Pecuniary Penalty Orders

Division 1 Pecuniary penalty orders

119. Two types of pecuniary penalty orders

There are two types of pecuniary penalty orders:

- (a) a conviction-based pecuniary penalty order; and
- (b) a non-conviction-based pecuniary penalty order.

120. Conviction-based pecuniary penalty orders

(1) A court must make a conviction-based pecuniary penalty order if:

- (a) a person has been convicted of one or more serious offences or specified offences;
and
- (b) the person has derived benefits from the offence or offences; and
- (c) a [*proceeds of crime authority*] has applied for a conviction based pecuniary penalty order in accordance with Division 2 of this Part.

(2) The court may order that the person pay to the State an amount that the court considers represents the benefit that the person derived from the commission of the offence or offences, and the commission of any other offence that constitutes unlawful activity.

121. Non-conviction-based pecuniary penalty orders

(1) A court must make a non-conviction-based pecuniary penalty order if:

- (a) there are reasonable grounds to suspect that a person has committed one or more serious offences or specified offences; and
- (b) the person has derived benefits from the offence or offences; and
- (c) a [*proceeds of crime authority*] has applied for a non-conviction based pecuniary penalty order in accordance with Division 2 of this Part.

(2) The court may order that the person pay to the State an amount that the court considers represents the benefit that the person derived from the commission of the offence or offences, and the commission of any other offence that constitutes unlawful activity.

(3) In determining whether a person has derived a benefit, the court may treat as property of the person any property that, in the court's opinion, is subject to the person's effective control.

122. Effect of a pecuniary penalty order

- (1) An amount payable by a person to the State under a pecuniary penalty order is a civil debt due by the person to the State.
- (2) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State.
- (3) The debt arising from a pecuniary penalty order is taken to be a judgment debt.
- (4) If any property of a person is covered by a restraining order when a pecuniary penalty order is made, the debt arising from the pecuniary penalty order may be enforced against the restrained property.
- (5) A pecuniary penalty order remains in force until the debt arising from the order has been discharged in full.

Comment for adopting jurisdiction: each jurisdiction should check whether including subsection (5) will be contrary to their existing civil debt recovery provisions.

Division 2 Applying for a pecuniary penalty order

123. Application for a pecuniary penalty order

- (1) A [*proceeds of crime authority*] may apply to a court for a pecuniary penalty order.

Comment for adopting jurisdiction: each jurisdiction may wish to give this power to a number of public authorities, or simply to substitute 'the Public Prosecutor' or similar officeholder.

- (2) The application must state whether a conviction-based pecuniary penalty order or a non-conviction-based pecuniary penalty order, or both, are being sought.
- (3) An application for a conviction-based pecuniary penalty order must be made within 12 months after the expiry of all relevant appeal periods and the final determination of all relevant appeals that relate to the conviction.
- (4) If the [*proceeds of crime authority*] is seeking a declaration under section 130 that specified property is under the effective control of the person against whom the pecuniary penalty order is being sought, this must be pleaded in the application for the pecuniary penalty order.
- (5) However, nothing in this section prevents the [*proceeds of crime authority*] from amending the application for the pecuniary penalty order in accordance with the applicable rules of court to seek a declaration under section 130.

124. Notice of application

- (1) The [*proceeds of crime authority*] that applies for a pecuniary penalty order must give written notice of the application to the person against whom the order is sought.
- (2) If the [*proceeds of crime authority*] is seeking a declaration under section 130 in relation to specified property, the [*proceeds of crime authority*] must give written notice of the application for the pecuniary penalty order to any person the [*proceeds of crime authority*] knows or suspects holds an interest in that property.
- (3) Notice of the application must be given not less than 20 business days before the hearing of the application.
- (4) At any time before the court finally determines the application, the court may direct the applicant to notify a specified person or class of persons of the application within the timeframe and in such manner as the court determines.
- (5) The court may in the direction alter any of the requirements of section 125 as it determines.

Example: if the court directs that notice be given to a class of persons, the class may not need to have all of the information required under section 125 or the notice may be published rather than served.

125. Contents of notice of application

- (1) A notice of an application for a pecuniary penalty order must contain the following information:
 - (a) the date, time and place for the hearing of the application;
 - (b) if the application is seeking a declaration under section 130 in relation to specified property, that any person with an interest in the property has a right to contest the application.
- (2) A copy of the application must be included with the notice.
- (3) The notice must be served on a person in accordance with section 187.

126. Subsequent applications for a pecuniary penalty order

- (1) If an application for a conviction-based or non-conviction-based pecuniary penalty order, or both, has been finally determined, a further application for a pecuniary penalty order relating to the same offence or conduct may not be made without leave of the court.
- (2) The court may give leave for a further application to be made only if:

- (a) the benefits to which the new application relates were identified after the previous application was made; or
- (b) necessary evidence became available only after the previous application was determined; or
- (c) the court considers that it is in the interests of justice that the new application be made.

Division 3 Making pecuniary penalty orders

127. Court may make a pecuniary penalty order even if certain evidence not given

A court may make a pecuniary penalty order even if a person with standing to appear and adduce evidence at the hearing of the application for the order does not appear.

128. Special rules for non-conviction-based pecuniary penalty orders

- (1) A court's power to make a non-conviction-based pecuniary penalty order is not affected by the fact that the person concerned has been acquitted of an offence for which he or she was charged.
- (2) The court does not need to make a finding as to the commission of a particular serious or specified offence in order to make a non-conviction-based pecuniary penalty order.
- (3) The raising of a reasonable doubt as to whether the person concerned committed a serious offence or specified offence is not sufficient to avoid a finding that he or she engaged in conduct constituting a serious offence or specified offence for the purposes of making a non-conviction-based pecuniary penalty order.

129. Making of pecuniary penalty order if person is unavailable

- (1) This section applies if a person is unavailable.
- (2) A court may proceed to hear an application for a conviction-based pecuniary penalty order in the person's absence if:
 - (a) the person has been committed to stand trial for the relevant offence; or
 - (b) the court is satisfied that the person could have been committed for trial if the person had been available.
- (3) A court may proceed to hear an application for a non-conviction-based pecuniary penalty order in the person's absence.
- (4) In this section, a person is unavailable if he or she:

- (a) has died; or
- (b) despite reasonable efforts, cannot be located or served in the 6 months following:
 - (i) a warrant having been issued for the person's arrest in relation to any offence;
or
 - (ii) proceedings having been commenced in relation to the person under this Act.

130. Declaring property to be under the effective control of a person

- (1) A court may make a declaration that property specified in the declaration is under the effective control of a person against whom a pecuniary penalty order is made.
- (2) The court may make the declaration when making the pecuniary penalty order or subsequently upon application by the [*proceeds of crime authority*] that applied for the order.
- (3) The State is authorised to use the property specified in the declaration to enforce the pecuniary penalty order as if the property were owned by the person.

131. Contents of a pecuniary penalty order

A pecuniary penalty order must specify the following:

- (a) the type of pecuniary penalty order made, see section 119;
- (b) the amount of the penalty that the person against whom the order is made is ordered to pay, being the value of the benefit calculated in accordance with Division 4 of this Part;
- (c) if a declaration is made under section 130 in relation to specified property—any directions as to dealings with that property.

132. Consent pecuniary penalty order

A court may make a pecuniary penalty order by consent under section 186 if the parties to the application for a pecuniary penalty order agree to the value of the benefit.

Division 4 Amount payable under a pecuniary penalty order

133. Determining penalty amount

- (1) The amount that a person is ordered to pay to the State under a pecuniary penalty order (the **penalty amount**) is the amount the Court determines under this Division.
- (2) The penalty amount is determined by:

- (a) assessing under section 134, as at the date of the hearing of the application for the pecuniary penalty order, the value of the benefits that the person derived from the commission of the offence or offences to which the order relates, and the commission of any other offences that constitutes unlawful activity; and
- (b) subtracting from the value of the benefits any allowable reductions under section 135.

134. Assessing the value of the benefit derived

(1) In assessing the value of the benefits that the person derived from the commission of an offence or offences (the **illegal activity**) to which the pecuniary penalty order relates, the court is to have regard to the evidence before it concerning any or all of the following:

- (a) the money, or the value of the property other than money, that, because of the illegal activity, was obtained by, or came into the possession or under the effective control of, the person or another person;
- (b) the value of any other benefit or advantage that, because of the illegal activity, the person or another person received, including, in the case of illegal business practices, the resulting revenue;
- (c) the value of the person's property before, during and after the illegal activity, including property under the person's effective control;
- (d) the person's income and expenditure before, during and after the illegal activity;
- (e) if the offence or offences consisted of doing an act or thing in relation to a narcotic substance:
 - (i) the market value, at the time of the offence, of similar or substantially similar narcotic substances; and
 - (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing.

(2) However, the court is not to take the following into account:

- (a) expenses or outgoings that the person incurred in relation to the illegal activity;
- (b) any benefits in relation to which a pecuniary penalty order has already been imposed under this Act or equivalent legislation in another jurisdiction.

- (3) In quantifying the value of a benefit, the court may treat as the value of the benefit the value that the benefit would have had if it had been derived at the time the court makes its assessment of the value of the benefit.
- (4) At the hearing of an application for a pecuniary penalty order, a police officer or a customs officer, experienced in the investigation of narcotics offences, may testify, to the best of the officer's information, knowledge and belief:
- (a) with respect to the amount that was the market value of a narcotic substance at a particular time or during a particular period; or
 - (b) with respect to the amount, or the range of amounts ordinarily paid at a particular time, or during a particular period, for the doing of an act or thing in relation to a narcotic substance.
- (5) The officer's testimony under subsection (4):
- (a) is admissible at the hearing despite any rule of law or practice relating to hearsay evidence; and
 - (b) is prima-facie evidence of the matters testified.

135. Allowable reductions

- (1) The amounts in subsections (2), (3) and (4) are allowable reductions.
- (2) An amount equal to the value, as at the time of the making of the pecuniary penalty order, of:
- (a) any property of the person against whom the pecuniary penalty order is made, being property that will be or has been forfeited under any other Act; and
 - (b) any other property under the person's effective control that:
 - (i) has been forfeited under this Act or under equivalent legislation in another jurisdiction; or
 - (ii) is subject to an application for a forfeiture order; or
 - (iii) will be forfeited under section 104 or under equivalent legislation in another jurisdiction;
- in relation to the conduct to which the pecuniary penalty order relates.

- (3) An amount that, in the court's opinion, represents the extent to which tax, including tax paid under the law of another jurisdiction, that the person has paid is attributable to the benefits to which the pecuniary penalty order relates.
- (4) An amount that, if the court considers it appropriate, is equal to the amount paid by the person by way of fine, restitution, compensation or damages in relation to an offence to which the pecuniary penalty order relates.

136. Increasing the penalty amount

(1) This section applies if:

(a) the penalty amount payable under a pecuniary penalty order is reduced in relation to a forfeiture or proposed forfeiture; and

(b) either:

(i) an appeal against the forfeiture is allowed; or

(ii) the forfeiture proceedings conclude without the forfeiture order being made.

(2) The [*proceeds of crime authority*] that applied for the pecuniary penalty order may apply to the court that made the order for an order to increase the penalty amount under the pecuniary penalty order by an amount that the court considers appropriate.

137. Court may appoint experts

A court may allow expert evidence to be admitted to assist the court in determining an appropriate penalty amount payable under a pecuniary penalty order.

Comment for adopting jurisdiction: each jurisdiction will have its own evidence provisions that deal with the admissibility of expert evidence that may also need to be considered.

Division 5 Discharge of a pecuniary penalty order

138. Non-conviction-based pecuniary penalty orders unaffected by the outcome of related criminal proceedings

A non-conviction-based pecuniary penalty order that is made against a person in relation to an offence is not affected if:

(a) having been charged with the offence, the person is subsequently acquitted; or

(b) the person is convicted of the offence and the conviction is subsequently quashed.

139. Discharge of a pecuniary penalty order after conviction quashed

(1) If:

- (a) a conviction-based pecuniary penalty order is made in reliance on a person's conviction for an offence; and
- (b) the conviction is subsequently quashed;

the quashing of the conviction discharges the pecuniary penalty order.

(2) The pecuniary penalty order lapses 20 days after the conviction is quashed if no application is made to confirm the pecuniary penalty order within that period.

140. Confirmation of pecuniary penalty order after conviction quashed

(1) If a conviction is quashed under section 139, the [*proceeds of crime authority*] that applied for the pecuniary penalty order may apply to the court that made the order to confirm the order.

(2) The court must confirm the pecuniary penalty order if the court is satisfied of either or both of the following:

- (a) a conviction-based pecuniary penalty order could have been made against the person at the time the original pecuniary penalty order was made against the person in reliance on other convictions of the person that were not quashed; or
- (b) the evidence against the person is sufficient to sustain a non-conviction-based pecuniary penalty order in relation to the same conduct alleged in the indictment for which the conviction was quashed.

(3) If the court confirms a pecuniary penalty order under subsection (2), the court may vary the penalty amount under the order to the extent that the court considers appropriate, taking into account the conduct in relation to which the order may now be made and the method of calculation provided for the penalty amount under Division 4 of this Part.

Part 7 General Provisions for Parts 4, 5 and 6

141. Application of sections

Sections 142 to 147 apply to:

- (a) a restraining order; and
- (b) a forfeiture order; and
- (c) a pecuniary penalty order.

142. Waiver of notice requirement

- (1) On an application being made by a [*proceeds of crime authority*] that has applied for an order to which this section applies, the court may, subject to subsection (2):
 - (a) waive the requirement for giving notice of the application to one or more persons who are known or suspected to hold an interest in the property covered by the application; or
 - (b) order that the notice may be served without specified information required under section 70, 96 or 125, as the case requires.
- (2) The court must be satisfied that there is a real risk that the giving of notice or disclosure of information to a person would:
 - (a) prejudice the application for the restraining order, or any other application made under this Act; or
 - (b) prejudice a criminal investigation or prosecution; or
 - (c) compromise the safety of any person identified or unidentified; or
 - (d) result in property relating to the application being lost, destroyed, disposed of, altered or concealed.
- (3) The application may be made *ex parte* at any time after the application for the order is made and before it is determined.
- (4) The application or any other application under this Act is not prejudiced solely on the basis that it gives a person the opportunity to contest an application for the order.

143. Dispensing with service of notice of application

On an application being made by a [*proceeds of crime authority*] that has applied for an order to which this section applies or on its own volition, the court may make an order

to dispense with notice of the application being served on a person if the court is satisfied that the person is outside the jurisdiction and not amenable to justice.

144. Who may be heard at a hearing for an order

The following persons are entitled to appear and adduce evidence at the hearing of an application for an order to which this section applies or any proceedings arising from the same conduct:

- (a) any person who is given notice of the application;
- (b) any other person who claims an interest in the property that is the subject of the application.

145. No stay if related criminal proceedings on foot

- (1) A court must not make an order to stay an application for an order to which this section applies pending criminal proceedings arising from the same conduct, unless the court is satisfied that doing so is necessary to avoid prejudice to or unfairness in those pending criminal proceedings.
- (2) For the avoidance of doubt, the mere existence of related criminal proceedings is not, on its own, a sufficient reason to stay proceedings for the order.

146. Suppression of evidence

- (1) If a [*proceeds of crime authority*] applies to a court for an order to which this section applies and the court is satisfied of the matters in subsection (2), the court may make an order prohibiting or restricting the publication of either or both of the following:
 - (a) any or all of the application proceedings for the order;
 - (b) evidence relating to the application for or the making of the order.
- (2) The court must be satisfied it is necessary to make the order to prevent:
 - (a) prejudice to the application proceedings; or
 - (b) prejudice to a related criminal investigation or prosecution; or
 - (c) a risk to the safety of any person, whether identified or unidentified; or
 - (d) any property relating to the application being lost, destroyed, disposed of, altered or concealed.

(3) The court may make an order on its own volition or on application by the [*proceeds of crime authority*] that applied for the order or any other party to the proceedings.

147. Case conferences

A court to which a [*proceeds of crime authority*] has applied for an order to which this section applies may order the authority and any person who intends to appear at the hearing of the application for the order to attend a case conference if the court is satisfied that doing so may facilitate early resolution or settlement of the proceedings by consent.

Part 8 Asset Management

Division 1 Asset manager

148. The asset manager

The Attorney-General is the asset manager.

Comment for adopting jurisdiction: each jurisdiction can decide which officeholder holds the title of asset manager. The Attorney-General, Solicitor-General or Commissioner of Police would seem to be appropriate candidates.

149. Delegation by the asset manager

- (1) The asset manager may delegate any or all of the functions, duties and powers of the asset manager imposed or conferred by or under this Act to any person who, in the opinion of the asset manager, possesses the relevant skills and experience to undertake the role.
- (2) The delegation:
 - (a) must be in writing; and
 - (b) may be made generally or as otherwise provided by the instrument of delegation; and
 - (c) must specify the functions, duties and powers that are delegated; and
 - (d) must not include the power to delegate under subsection (1); and
 - (e) may be made to a legal person, or a natural person working for the government or outside of government.
- (3) A function, duty or power so delegated, when performed or exercised by the delegate, is, for the purposes of this Act, deemed to have been performed or exercised by the asset manager.
- (4) A delegation by the asset manager does not prevent the performance or exercise of a function, duty or power by the asset manager.
- (5) The functions, duties and powers of the asset manager that are delegated must be performed or exercised subject to any conditions:
 - (a) specified in the instrument of delegation; or
 - (b) otherwise specified in writing to the delegate by the asset manager.

(6) The functions, duties and powers of the asset manager may be delegated:

- (a) in whole to a single natural or legal person; or
- (b) to different natural or legal persons for different kinds or pieces of property as specified in the instrument of delegation.

Example: a real estate agent could be appointed to manage a house, and a marine agent could be appointed to manage a vessel.

(7) If a delegation is made to a person outside government, the asset manager must ensure that the proposed remuneration for the delegate is reasonable in the circumstances and represents value for money.

(8) A delegate of the asset manager may engage employees or contractors to support the delegate, but those employees or contractors must not perform any of the functions or duties, or exercise any of the powers of the asset manager, unless the asset manager has delegated such functions, duties or powers to those employees or contractors.

150. Duties of the asset manager

(1) The primary duty of the asset manager is to preserve the value in property under the control of the asset manager until such time as it is:

- (a) forfeited to the State and dealt with in accordance with this Act; or
- (b) returned to its rightful owner.

(2) Without limiting subsection (1), the asset manager may do any or all of the following:

- (a) seize or otherwise take control of property (**controlled property**) if the asset manager is authorised to do so by this or any other Act, or a court order;
- (b) identify and mitigate risks associated with the asset management process, including issues related to liability and insurance, and document risk identification and mitigation decisions and activities;
- (c) maintain legal possession of controlled property;
- (d) maintain a full inventory of controlled property, and document asset management activities and decisions relating to asset management;
- (e) safeguard physical property to prevent their loss, theft or damage, including through repairs or upkeep where necessary;

- (f) oversee liquid assets, such as bank accounts and investments, to ensure that they are frozen and monitored;
- (g) sell or otherwise dispose of controlled property if authorised by this or any other Act, or a court order;
- (h) apply the proceeds of sale as directed by this or any other Act, or a court order;
- (i) arrange for the return of controlled property to its owner if authorised by this or any other Act, or a court order;

Example: in the case of a residential property where the owner is allowed to continue living there unless and until the property is forfeited.

- (j) report in accordance with Division 5 of this Part on the current status of controlled property and asset management activities undertaken in the reporting period;
- (k) ensure compliance with all Acts and court orders relevant to asset management.

151. Powers of the asset manager

The asset manager has the following powers:

- (a) to take possession of property that has been restrained or forfeited, and associated documents to the extent necessary, including title deeds to the property;
- (b) to access premises for the purpose of taking possession of the property;
- (c) if the property has been forfeited by order of the court, to evict persons from the property;
- (d) to request police assistance for the purpose of undertaking any duties under section 150, and to utilise any assistance that is provided;
- (e) to transport, store and take other measures, including the procurement or continuation of insurance, reasonably necessary to preserve the value in the property;
- (f) to commence, or become a party to, any civil proceedings affecting the property;
- (g) if the managed property consists, in whole or in part, of a business, to do anything reasonably necessary or convenient for the carrying on of the business;
- (h) to dispose of the property in appropriate circumstances;

- (i) to give effect to any other orders that the court makes that direct the asset manager to undertake some action in relation to the property.

Division 2: Management of restrained and forfeited property

152. Management of restrained property

- (1) As soon as practicable after a restraining order is made, the [*proceeds of crime authority*] that applied for the order must provide to the asset manager:
 - (a) a copy of the restraining order; and
 - (b) such further information as is reasonably required by the asset manager to take possession of the property subject to the restraining order.
- (2) After receiving a copy of the restraining order and further information, the asset manager may exercise such powers referred to in section 151 as are necessary and convenient for performing such duties referred to in section 150 as are required to be exercised in relation to the property.
- (3) In exercising the powers and performing the duties in relation to the property, the asset manager must comply with any directions of the court.
- (4) If the restrained property is money, the asset manager must transfer the money to the restrained assets account.

153. Management of forfeited property

- (1) As soon as practicable after property is forfeited to the State, the [*proceeds of crime authority*] that applied for the forfeiture order must provide to the asset manager:
 - (a) a copy of the forfeiture order or evidence of automatic forfeiture; and
 - (b) such further information as is reasonably required by the asset manager to give effect to the forfeiture.
- (2) After receiving a copy of the forfeiture order and further information, the asset manager may exercise such powers referred to in section 151 as are necessary and convenient:
 - (a) to give effect to the forfeiture; and
 - (b) if the property is not in the possession of the asset manager—to secure possession of the property; and
 - (c) for performing such other duties referred to in section 150 as are required to be performed in relation to the property.

- (3) In exercising the powers and performing the duties in relation to the property, the asset manager must comply with any directions of the court.
- (4) If the restrained property is money, the asset manager must transfer the money to the confiscated assets account.

154. Request for court direction on management of property

The asset manager may apply to the court that made the restraining order or forfeiture order for any or all of the following orders:

- (a) an order regulating the manner in which the asset manager may exercise powers or perform duties in relation to restrained or forfeited property;
- (b) an order determining any question relating to restrained or forfeited property, including a question relating to the liabilities of any person;
- (c) an order directing any person to do anything necessary or convenient to enable the asset manager to take custody and control or to otherwise manage restrained or forfeited property, and to bring the property within the jurisdiction;
- (d) any other order that the court considers appropriate to allow the asset manager to exercise powers or perform duties under this Act in relation to restrained or forfeited property;
- (e) any other order that the court considers appropriate to protect a person's legitimate interest in restrained or forfeited property;
- (f) any other order that the court considers appropriate for the just and effective operation of this Act.

Division 3: Disposal and destruction of restrained and forfeited property

155. Disposal of forfeited property

- (1) The asset manager may dispose of any forfeited property that is not money as soon as practicable after the forfeiture, but not less than six months after any applicable appeal periods have expired.
- (2) As soon as practicable after the disposal, the asset manager must transfer the proceeds of sale to the confiscated assets account.

156. Disposal of restrained property in advance of forfeiture

- (1) The asset manager may dispose of restrained property prior to forfeiture if the asset manager believes that this is the best way to preserve the value in the property.

(2) The early disposal of the property may be made by consent under section 157 or by court order under section 158.

(3) If restrained property is disposed of:

(a) the legal rights over the property prior to the disposal apply, with such modifications as are necessary, to the proceeds of the disposal; and

Example: if there are shared or joint rights of ownership over the property before disposal, there are generally the same rights of ownership over the proceeds after disposal. It follows that the proceeds of the sale of a house owned jointly by a married couple are jointly owned by the couple.

(b) the restraining order that covered the property prior to the disposal applies, with such modifications as are necessary, to the proceeds of the disposal.

(4) As soon as practicable after the disposal, the asset manager must transfer the proceeds of sale to the restrained assets account.

157. Early disposal of restrained property by consent

(1) The asset manager may dispose of restrained property in its possession without a court order if the persons referred to in subsection (2) give their prior written consent to the disposal.

(2) The persons are:

(a) the asset manager; and

(b) the prosecuting authority; and

(c) all persons who hold a legal interest in the restrained property.

Comment for adopting jurisdiction: the Public Prosecutor is likely to be the prosecuting authority for the underlying restraint and confiscation proceedings. See also subsection 158(1).

(3) The asset manager may dispose of the restrained property as soon as practicable after the persons referred to in subsection (2) have consented to the disposal.

(4) The disposal must be made in accordance with section 159.

158. Early disposal of restrained property by court order

(1) This section applies to the disposal of restrained property if:

- (a) the asset manager and the prosecuting authority consent to the disposal of the property; but
 - (b) a person with a legal interest in the property does not consent to the disposal of the property or cannot be identified, found or contacted.
- (2) The prosecuting authority may make an application to the court for early disposal of the property.
- (3) The asset manager and any person who holds a legal interest in the property are deemed to be parties to the proceeding.
- (4) The court may order that the property be disposed of in accordance with section 159 and any specific further directions that the court makes if the court is satisfied, upon the hearing of the application, that:
- (a) early disposal is the best way to preserve the value in the restrained property; and
 - (b) it is in the interests of justice to make the order.
- (5) In deciding whether to make an early disposal order, the court must have regard to the following:
- (a) the likely depreciation in the value of the property during the likely period of restraint;
 - (b) the likely cost of storing and managing the property during the likely period of restraint;
 - (c) any undertaking by the owner of the property or any other person claiming an interest in the property to surrender other property in substitution for the property;
 - (d) any undertaking by the owner of the property or any other person claiming an interest in the property to pay for the storage or management of the property, or both;
 - (e) whether monetary compensation would be an adequate remedy for the owner of the property or any other person claiming an interest in the property.

159. General provisions for disposal of restrained or forfeited property

- (1) Subject to section 160, if the asset manager disposes of restrained or forfeited property, the asset manager is under a legal duty to dispose of the property:
- (a) to a person or persons at arm's length from the asset manager and prosecuting authority; and

- (b) for a fair price in accordance with the prevailing market in the jurisdiction for similar property; and
- (c) in accordance with subsection (2).

(2) The asset manager must:

- (a) publish in the government gazette the details of the disposal, including the property sold, the identity of the purchaser and the sale price; and
- (b) inform the court that made the restraining or forfeiture order of these details.

Comment for adopting jurisdiction: each jurisdiction may specify another method of publication.

- (3) If part of the disposed property has been excluded from the restraining order or forfeiture, then, upon finalisation of the disposal, the asset manager must transfer to the rightful owner of the excluded part the amount that it represents.

160. Court approval for disposal of restrained or forfeited property

- (1) If the asset manager is satisfied that it is not possible or prudent to undertake the disposal in accordance with the criteria in subsection 159(1), the asset manager must obtain the approval of the court that made the restraining order or forfeiture order to the disposal in such other manner as the court determines.

Example: There may not be a ready market for the kind of asset in question or the sensitive nature of the asset may make publication of the disposal details inappropriate, and the asset manager could ask for the identity of the buyer to remain anonymous.

- (2) The asset manager may make an *ex parte* application to the court requesting an order that the sale be approved.
- (3) If the court is satisfied that the disposal of the property is in the interests of the administration of this Act as a whole, the court may order that the sale be approved, despite one or more of the criteria in subsection 159(1) not being met.
- (4) The court's order must set out the terms of the sale and the asset manager must sell the property in accordance with those terms.

161. Destruction of restrained or forfeited property

- (1) The asset manager may propose to destroy restrained or forfeited property that is under the control of the asset manager if the asset manager is satisfied that the destruction of the property is in the public interest or is required for the health or safety of the public.

- (2) If the asset manager proposes to destroy restrained or forfeited property, and the relevant [*proceeds of crime authority*] consents to the destruction, the asset manager must give written notice of the proposed destruction.
- (3) The notice must:
 - (a) set out details of the proposed destruction and the process for objecting to it; and
 - (b) be given to the owner of the property and any other person the asset manager has reason to believe has an interest in the property.
- (4) A person may object in writing to the proposed destruction within three business days after the service of the notice on the person.
- (5) If the persons required to be served with the notice agree to the proposed destruction of the property, or fail to object within three business days, the asset manager may arrange for the property to be destroyed.
- (6) If a person objects to the destruction of the property, the asset manager may apply to the court that made the restraining order or forfeiture order for an order that the asset manager arrange for the property to be destroyed.
- (7) On the hearing of the application, the court may order the destruction of the property if, in the court's opinion, it is in the public interest to destroy the property or the destruction of the property is required for the health or safety of the public.

Division 4: Return of property

162. Part of the property excluded from restraining or forfeiture order

- (1) This section applies if part of the property has been excluded from the operation of a restraining order or forfeiture order.

Example: the court has ordered that a certain part of restrained property is owned by an innocent third party.

- (2) Subject to subsection (3), the asset manager must return that part of the property that has been excluded from the operation of the restraining or forfeiture order to the owner of the excluded property if it is feasible to do so.

Example: In the case of some assets, such as money, it will not be difficult to sever from the whole that part of the property that has been excluded.

- (3) If it is not feasible to do so, the asset manager must retain control of the property, unless the property is disposed of in accordance with section 159.

- (4) If the property produces income and it is possible for the income to be apportioned between its legal owners in accordance with their share, the asset manager must provide to each owner who is an innocent party their share of the income due to them by virtue of their interest.

163. Court makes an allowance for living and other expenses

If the court makes an allowance out of restrained property for a person's reasonable living and other expenses, the asset manager must release such property to the person in accordance with the court's decision.

164. Return of property if restraining order lapses or automatic forfeiture

- (1) If a restraining order lapses and:

- (a) no forfeiture order is made; or
- (b) no automatic forfeiture occurs, see Division 4 of Part 5;

the asset manager must return the property to its rightful owners as determined by the court.

- (2) The property must not be returned until after the expiry of any applicable appeal periods.

Division 5 Administrative matters

165. Asset manager to report on activities and costs

- (1) The asset manager must prepare a report for each half year on the tasks undertaken by the asset manager and all delegates in relation to restrained and forfeited property, including details of financial outlays related to the management of the property, during the half year.
- (2) The asset manager must give the report to the Minister within 30 days after the end of the half year, and the Minister must as soon as practicable table the report in Parliament.
- (3) The report must include an up-to-date statement on the status and current valuation of the property under the management of the asset manager and an estimate of the costs that are likely to be incurred in managing the property over the next half year.

166. Costs incurred by delegate outside government

If the asset manager has delegated any functions, duties or powers in relation to restrained or forfeited property to a person outside government, the delegate is entitled to recover the following in connection with the performance of those functions or duties, and the exercise of those powers:

- (a) costs, charges and expenses incurred by or payable by the delegate;
- (b) reasonable remuneration for work undertaken by the delegate;
- (c) any other costs specified in the regulations.

Note: delegates within government should be remunerated and have their costs covered within the usual governmental processes.

167. Audit of the asset manager

(1) A [senior government officer] must appoint an auditor of the asset manager.

Comment for adopting jurisdiction: each jurisdiction should determine the officeholder who is to appoint the auditor.

(2) The auditor must undertake an independent audit of the asset manager for each year.

(3) The audit must cover the actions, including financial transactions, undertaken by the asset manager in relation to restrained or forfeited property in its capacity as asset manager, and the actions of all delegates of the asset manager in their capacity as delegates, during the year.

(4) The auditor must give the report to the senior government officer as soon as practicable after the end of the year.

168. Liability of the asset manager

(1) The asset manager and any delegate of the asset manager are not personally liable for any loss or damage incurred by a person who claims an interest in restrained or forfeited property managed by the asset manager or delegate, unless the court is satisfied that the loss or damage arose from the negligence of the asset manager or delegate.

(2) The asset manager and any delegate of the asset manager are not personally liable for taxes, rates or other statutory charges payable in relation to the property whilst under the control of the asset manager or delegate.

(3) Such taxes, rates or other statutory charges must be paid out of any rents or profits from the property or out of the property.

Part 9 Accounts for restrained and confiscated assets

Division 1 Restrained assets account

169. Establishment of restrained assets account

- (1) The restrained assets account is established with the Reserve Bank by this section.
- (2) The account is an interest-bearing account.
- (3) The asset manager and a [senior government officer] are joint signatories to the account.

Comment for adopting jurisdiction: each jurisdiction should determine the officeholder who is to take on this role.

- (4) The purpose of the restrained assets account is to preserve restrained funds until the conclusion of proceedings under this Act.

170. Depositing and maintaining funds in the restrained assets account

There must be credited to the restrained assets account:

- (a) money that has been restrained under Part 4; and
- (b) amounts from the sale of assets that have been disposed of whilst subject to a restraining order.

171. Removal of funds from the restrained assets account

- (1) Funds in the restrained assets account must not be removed from the account except in accordance with subsection (2) or (3), or by order of a court made under this Act.
- (2) If funds have been forfeited to the State in accordance with this Act, the funds must be transferred to the confiscated assets account.
- (3) If funds cease to be covered by a restraining order and have not been forfeited to the State, the funds must be returned to their lawful owner.
- (4) If the court orders that the owner of property that is held in the restrained assets account should be given access to some part of the property in that account for the purpose of meeting legal, business or living expenses, funds must be made available to the owner in accordance with the order.

- (5) If the court makes another order directing that all or some of the funds in the restrained assets account be dealt with in a particular manner, the funds must be dealt with in accordance with the order.
- (6) The asset manager may apply to the court for directions for the removal or management of funds from the restrained assets account.

Example: an application for directions could relate to whether funds should be removed from the account and to where such funds should be sent.

172. Interest accrued on funds in the restrained assets account

- (1) Any interest accrued by funds in the restrained assets account is subject to the restraining order that covers the original funds in the account as if the interest were those original funds.
- (2) If funds in the account are forfeited to the State, the interest accrued by the funds during the period in which the funds were in the account are forfeited to the State.
- (3) If subsection 171(2) or (3) applies, any interest accrued by virtue of the funds being in the restrained assets account must be transferred with the original funds.

Example: if the funds are returned to the owner, the owner also gets the interest. If the funds are forfeited to the State, the interest is also dealt with in the same manner.

- (4) If subsection 171(5) applies, the court may direct the manner in which the accrued interest is to be dealt with.
- (5) If the court does not make a direction as to the accrued interest, it must remain in the restrained assets account and is subject to the relevant restraining order.

Division 2 Asset management account

173. Establishment of asset management account

- (1) The asset management account is established with the Reserve Bank by this section.
- (2) The account is an interest-bearing account.
- (3) The asset manager and a [senior government officer] are joint signatories to the account.

Comment for adopting jurisdiction: each jurisdiction should determine the officeholder who is to take on this role.

- (4) The purpose of the asset management account is for the payment of costs and expenses of asset management functions.

174. Maximum and minimum balances of the asset management account

- (1) The maximum balance of the asset management account is [XXX].

Comment for adopting jurisdiction: each jurisdiction will need to insert the amount. See also subsection (2).

- (2) The minimum balance of the asset management account is [XXX].

Note: the maximum balance should be a monetary amount at which the account can comfortably meet all expected asset management costs for the coming 12 months. The minimum balance should be a monetary amount below which the account would have too little money to function effectively.

- (3) The amount of the maximum balance and minimum balance may be varied by regulation.

175. Depositing and maintaining funds in the asset management account

- (1) As soon as practicable after the establishment of the asset management account, an amount equivalent to the maximum balance must be provided by way of an interest-free loan to the asset management account from [consolidated revenue].

Comment for adopting jurisdiction: each jurisdiction should decide how to refer to 'consolidated revenue'.

- (2) As soon as practicable after the start of each financial year, an additional amount must be provided by way of an interest-free loan to the asset management account from [consolidated revenue] so as to ensure that the account is at its maximum balance.

- (3) However, if the account is at or above its maximum balance at the start of a financial year, a loan is not required.

- (4) If the balance of the asset management account falls below the minimum balance, an additional amount must as soon as practicable be provided by way of an interest-free loan to the account from [consolidated revenue] so that the account is again at its maximum balance.

176. Payment of costs and expenses of asset management from the asset management account

- (1) The asset manager and any delegate of the asset manager are entitled to recover their costs and reasonable remuneration from the asset management account.
- (2) Details of the costs and remuneration must be set out in the six-monthly report referred to in section 165.
- (3) Such costs and remuneration are payable as soon as practicable after the making and acceptance of the report.

Note: see Division 5 of Part 8 for the six-monthly report, and costs and remuneration.

- (4) The asset manager and a delegate of the asset manager may request that payments relating to asset management be made directly from the account.

Example: This could be used to enable the renting of a warehouse to store restrained assets. The delegate might not have the funds to pay for this and then seek reimbursement, so the rental costs can be paid directly from the asset management account.

- (5) The request must be made in writing to the signatories of the account.
- (6) If the signatories approve the request, they must as soon as practicable make the necessary arrangements for the funds to be transferred.

177. Interest accrued on funds in the asset management account

Any interest that accrues on funds in the asset management account must be used for the same purposes and in the same manner as the other funds in the account.

Division 3 Confiscated assets account

178. Establishment of confiscated assets account

- (1) The confiscated assets account is established with the Reserve Bank by this section.
- (2) The account is an interest-bearing account.
- (3) The asset manager and a [*senior government officer*] are joint signatories to the account.

Comment for adopting jurisdiction: each jurisdiction should determine the officeholder who is to take on this role.

- (4) The purpose of the account is to receive the proceeds of all confiscated assets, including amounts recovered by way of pecuniary penalty orders.

179. **Depositing funds in the confiscated assets account**

The following must be credited to the confiscated assets account:

- (a) all money that has been forfeited to the State under this Act;
- (b) all money that has been:
 - (i) sent to the State by a foreign jurisdiction following forfeiture; or
 - (ii) paid to the State under this Act or an equivalent law in another jurisdiction;
- (c) the proceeds of the disposal of all property that is not money that has been forfeited to the State and disposed of under this Act;
- (d) any other amount of money paid to the State under this Act, including pursuant to pecuniary penalty orders.

180. **Use of funds in the confiscated assets account**

- (1) After money is credited to the confiscated assets account, the following process must take place in the order specified:

- (a) first—money must be paid in accordance with any court order concerning the manner in which the State is to deal with forfeited property;

Example: this includes court orders to pay money to persons who have been deemed to have an interest in the property that has been forfeited.

- (b) second—money must be paid into the asset management account until it reaches the maximum balance;
- (c) third—money must be paid into [*consolidated revenue*] as repayment for any outstanding loans made to the asset management account, whether or not the money loaned was related to the management of the property in question;
- (d) fourth—any remaining money must be distributed in accordance with section 181.

- (2) To avoid doubt, the process must stop if the confiscated assets account ceases to have any funds.

181. Disbursement of remaining funds

(1) If paragraph 180(1)(d) applies, the following process must be followed:

- (a) the signatories to the confiscated assets account must give written notice to the [Attorney-General] that there are funds in the account for disbursement in accordance with this section, and the amount of the funds available for this purpose;

Comment for adopting jurisdiction: each jurisdiction should decide whether it is the Attorney-General or another officeholder.

- (b) if the [Attorney-General] is of the opinion that it is in the public interest to divert some or all of these funds from [consolidated revenue] and be applied to a different purpose, the [Attorney-General] must in writing direct the manner in which the funds are to be used;
- (c) if a direction is not made within two months after notice is given, the funds to which the direction relates must be transferred to [consolidated revenue];
- (d) if a direction is made that does not relate to all of the funds referred to in the notice, the remaining funds must be transferred to [consolidated revenue].

(2) Without limiting paragraph (1)(b), the public interest includes:

- (a) the payment of compensation to the victims of the crime or crimes to which the confiscation relates; and
- (b) payments to foreign jurisdictions, including if a foreign order has been registered in [adopting jurisdiction].

(3) If a direction is made in accordance with paragraph (1)(b), the details of funds diverted in accordance with the direction, including the amount, the purpose to which the funds were directed, and the reasons for doing so must be published in the government gazette.

182. Interest accrued on funds in the confiscated assets account

Any interest that accrues on funds in the confiscated assets account must be dealt with in the same manner as the other funds in the account.

Division 4 Audit of accounts

183. Audit of accounts

(1) A [senior government officer] must appoint an auditor for the purposes of this section.

Comment for adopting jurisdiction: each jurisdiction should decide the officeholder who is to appoint the auditor.

- (2) The auditor must undertake an independent audit of the restrained assets account, the asset management account and the confiscated assets account for each year.
- (3) The audit must cover all transactions included in each of the accounts for the year.
- (4) The auditor must give the report to the senior government officer as soon as practicable after the end of the year.

Part 10 Miscellaneous

184. Jurisdiction of court to make restraining, forfeiture and pecuniary penalty orders

- (1) A court has jurisdiction to make a restraining order, a forfeiture order or a pecuniary penalty order if:
 - (a) the court has jurisdiction to hear the prosecution of the offence or suspected offence on which the order is or would be based; or
 - (b) the property that is or would be the subject of the order is situated or accessible within [adopting jurisdiction]; or
 - (c) the owner of the property that is or would be the subject of the order is a resident of or present in [adopting jurisdiction].
- (2) An application for a restraining order, a forfeiture order or a pecuniary penalty order may be:
 - (a) brought in a court that has criminal jurisdiction or civil jurisdiction; and
 - (b) transferred between those jurisdictions at any time during the proceedings to facilitate the administration of justice.
- (3) If a court has jurisdiction to make a restraining order, a forfeiture order or a pecuniary penalty order, then the court has jurisdiction to make an order related to a restraining order, a forfeiture order or a pecuniary penalty order.

Example: an application to vary a restraining order has the same jurisdictional rules as the restraining order itself.

185. Proof

- (1) Except in relation to the prosecution of an offence under this Act, a question of fact to be decided by a court in proceedings under this Act is to be decided on the balance of probabilities.
- (2) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.
- (3) The applicant in any proceedings under this Act must file with the court evidence on oath, affirmation or declaration in support of the application.
- (4) If an application under this Act is contested and is not being heard ex parte, the court must decide the application following a hearing in which the applicant and the respondent are both given a reasonable opportunity to respond to the evidence before the court.

- (5) If more than one application is made under this Act that concerns the same property or the same conduct or alleged conduct, evidence adduced in an earlier application may be relied upon in a later application if the evidence is otherwise admissible in the later application.

186. Consent orders

- (1) A court may make an order in a proceeding under this Act with the consent of:
- (a) the applicant in the proceeding; and
 - (b) everyone whom the court has reason to believe would be affected by the order.
- (2) The order may be made:
- (a) without consideration of the matters that the court would otherwise consider in the proceeding; and
 - (b) if the order is an order under section 92 or 93 before the end of the period of six months referred to in paragraph 92(1)(c) or 93(1)(b), as the case requires.

187. Service of notices, directions and orders

- (1) Subject to subsection (3), a notice, direction or order under this Act that is required to be given or served must be given to or served on a legal person by:
- (a) leaving it at the person's last known place of business; or
 - (b) sending it by email to the person's last known official, published or public email address; or
 - (c) sending it by pre-paid post or registered post to the person's last known postal address or place of business.
- (2) Subject to subsection (3), a notice, direction or order under this Act that is required to be given or served must be given to or served on a natural person by:

- (a) leaving it at the person's last known place of residence or business; or
 - (b) sending it by email to the person's last known email address; or
 - (c) sending it by pre-paid post or registered post to the person's last known postal address.
- (3) If all reasonable attempts have been made to give or serve the notice, direction or order accordance with subsection (1) or (2) without success, the notice, direction or order is deemed to have been given or served on publication:
- (a) in the government gazette or on an official government website; or
 - (b) in the print or digital edition of a daily newspaper that is available in the jurisdiction; or
 - (c) on a publicly accessible website established for this purpose.

188. **Special rules of evidence**

- (1) A court may admit [*official records*] of any criminal proceeding relating to an application for an order under this Act or the making of the order as proof of the matters contained in the official records.

Comment for adopting jurisdiction: The aim of this section is to ensure that a proceeds of crime authority can rely on a conviction without the need to call evidence again to satisfy a court on a non-conviction-based application that the offences were established.

- (2) Without limiting subsection (1), a certificate of conviction of an offence or similar official record of a conviction:
- (a) is admissible in any civil proceedings under this Act; and
 - (b) is evidence of the commission of the offence by the person to whom it relates.
- (3) The court may admit evidence admitted in any criminal proceeding relating to the application for the order or the making of the order.

189. **Authorised officers**

- (1) The Commissioner of Police may, in writing, authorise a police officer to be an authorised officer for the purposes of this Act.

- (2) The head of any other government agency may, in writing, authorise a member, officer or employee of that government agency to be an authorised officer for the purposes of this Act.

190. Delegation by proceeds of crime authority

- (1) A [*proceeds of crime authority*] may delegate any or all of the functions, duties and powers of the authority imposed or conferred by or under this Act to any person who possesses the relevant skills and experience to undertake the role.
- (2) The delegation:
- (a) must be in writing; and
 - (b) may be made generally or as otherwise provided by the instrument of delegation; and
 - (c) must specify the functions, duties and powers that are delegated; and
 - (d) must not include the power to delegate under subsection (1); and
 - (e) may be made to a legal person, or a natural person working for the government or outside of government.
- (3) A function, duty or power so delegated, when performed or exercised by the delegate, is, for the purposes of this Act, deemed to have been performed or exercised by the [*proceeds of crime authority*].
- (4) A delegation by the [*proceeds of crime authority*] does not prevent the performance or exercise of a function, duty or power by the authority.
- (5) The functions, duties and powers of the [*proceeds of crime authority*] that are delegated must be performed or exercised subject to any conditions:
- (a) specified in the instrument of delegation; or
 - (b) otherwise specified in writing to the delegate by the authority.

191. Regulations

The Minister may make regulations for the effective carrying out of the provisions of this Act.