

No. 23 of 2005.

***Proceeds of Crime Act 2005.***

Certified on: 23/1/2006.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Proceeds of Crime Act 2005,*

Being an Act to –

- (a) to provide for measures against money laundering; and
- (b) to provide for the forfeiture of property used in connection with the commission of offences; and
- (c) to deprive persons of the proceeds of, and benefits derived from, the commission of offences; and
- (d) for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

For Section 38 of the *Constitution*, this Act is a law that is made to give effect to the public interest in public order and public welfare to the extent that it regulates or restricts any of the following rights or freedoms –

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*;
  - (b) the right to privacy conferred by Section 49 of the *Constitution*;
  - (c) the protection from unjust deprivation of property conferred by Section 53 of the *Constitution*;
  - (d) the right to compensation conferred by Section 58 of the *Constitution*;
- and

- (e) the protection from unjust deprivation of property conferred by Section 53 of the *Constitution*,

is a law that is made for the purposes of complying with Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and Basic Social Obligations, in particular to restrict rights and freedoms of persons in certain circumstances accordingly to Law from exercising their rights and freedoms for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper respect or regard for the right and dignity of mankind.

## 2. ACT TO BIND STATE.

- (1) This Act binds the State.  
 (2) This Act does not make the State liable to be prosecuted for an offence.

## 3. DEFINITIONS.

- (1) In this Act, unless contrary intentions appears: –

**“account”** means a facility or arrangement by which a financial institution or cash dealer does any 1 or more of the following –

- (a) accepts deposits of currency;
- (b) allows withdrawals or transfers of currency;
- (c) pays cheques or payment orders drawn on a financial institution or cash dealer by a person;
- (d) collects, for a person, cheques or payment orders drawn on a financial institution or cash dealer;
- (e) supplies a facility or arrangement for a safety deposit box;

**“appeal”** includes –

- (a) proceedings by way of discharging or setting aside a judgement; and
- (b) an application for a new trial; and
- (c) an application for a stay of execution;

**“authorised officer”** means a person authorised under Section 4;

**“benefit”** has the meaning given by Section 5;

**“cash dealer”** means –

- (a) a financial institution; or
- (b) a person who carries on a business of an insurer or an insurance intermediary; or
- (c) a person who carries on a business of a securities dealer or a futures broker; or

- (d) a person who carries on a business of dealing in precious metals and stones; or
- (e) a person who carries on a business of collecting, holding and delivering cash as part of a business of providing payroll services; or,
- (f) an operator of a gambling house, casino or lottery; or
- (g) a trustee or manager of a unit trust; or
- (h) a trustee, administrator or investment manager of a superannuation scheme, other than a closed –end scheme; or
- (i) a notary; or
- (j) a person who carries on a business of dealing in real estate or high value items including antiques; or
- (k) a person who carries on a business of underwriting share issues and participation in such issues; or
- (l) a person who carries on a business of providing –
  - (i) advice to undertakings on capital structure, industrial strategy and related questions; and
  - (ii) advice and services relating to mergers and the purchase of undertakings; or
- (m) a money –broker; or
- (n) a person who carries on a business of providing portfolio management and advice; or
- (o) a person who carries on a business of safekeeping and administration of securities; or
- (p) a person who carries on a business of providing credit reference services; or
- (q) a person who carries on a business of providing safe custody services; or
- (r) a legal practitioner when acting for a client in a financial or real estate transaction, to the extent that he or she receives funds in the course of his or her business, for deposit or investment or to settle a real estate transaction; or
- (s) an accountant, to the extent that he or she receives funds in the course of his or her business for deposit or investment; or
- (t) any other prescribed business;

**“charge”** includes –

- (a) any procedure by which criminal proceedings are begun against a person; and

- (b) in relation to an offence prosecuted summarily –the issue of the summons for the offence;

“**confiscation order**” means a forfeiture order or a pecuniary penalty order;

“**conviction**” has the meaning given by Section 6;

“**Court**” means a court of competent jurisdiction;

“**currency**” means coin and paper money that is legal tender in its country of issue;

“**dealing with property**” includes –

- (a) in relation to property that is a debt –making a payment to the creditor in reduction or discharge of the debt; and
- (b) giving or receiving property as a gift; and
- (c) removing property from Papua New Guinea; and
- (d) in relation to property that is subject to a restraining order – taking part in a transaction that reduces the value of a person’s interest in the property.

“**document**” means a record of information in any form, including –

- (a) a written or printed thing, including a map, plan, graph or drawing;
- (b) a record that is kept in electronic form, including any record that can be accessed in Papua New Guinea;
- (c) a photograph;
- (d) a disk, tape, film sound –track or other thing in which sound or other data is embodied;
- (e) a film, negative, tape or other thing in which a visual image is embodied;

“**FIU**” means the Financial Intelligence Unit established by Section 13;

“**financial institution**” means a person that carries on a business of any of the following:

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) providing money transmission services;
- (e) issuing, selling or redeeming traveller’s cheques, money orders or similar instruments, or
- (f) entering into guarantees and commitments;

- (g) trading for the institution's own account, or for the account of customers, in –
  - (i) money market instruments (for example, cheques, bills and certificates of deposit); or
  - (ii) foreign exchange; or
  - (iii) financial futures and options; or
  - (iv) exchange and interest rate instruments; or
  - (v) transferable securities;

**“foreign pecuniary penalty order”** has the same meaning as in the *Mutual Assistance Act*;

**“foreign forfeiture order”** has the same meaning as in the *Mutual Assistance Act*;

**“foreign indictable offence”** means an offence against the law of another country that, if the relevant act or omission had occurred in Papua New Guinea, would be an indictable offence;

**“foreign restraining order”** has the same meaning as in the *Mutual Assistance Act*;

**“foreign serious offence”** means a serious offence against the law of a foreign country;

**“forfeiture order”** means an order made by the Court under Sections 58 and 59;

**“gift”** has the meaning given by Section 12;

**“indictable offence”** means an offence against the law of Papua New Guinea –

- (a) that may be prosecuted on indictment; and
- (b) for which the maximum penalty is death or a term of imprisonment for at least 1 year;

**“interest in property”** means –

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in relation to the property; whether present or future and whether vested or contingent;

**“Minister”** means the Minister for Justice;

**“monitoring order”** means an order under Section 161;

**“Mutual Assistance Act”** means the *Mutual Assistance in Criminal Matters Act 2005*;

**“narcotic drug”** has the meaning given in Section 2 of the *Customs Act 1951*;

**“pecuniary penalty order”** means an order under Section 84;

**“police force”** means the Royal Papua New Guinea Constabulary;

**“police officer”** means a member of the Royal Papua New Guinea Constabulary;

**“premises”** includes –

- (a) a structure, building, aircraft or vessel; and
- (b) a place (whether or not it is enclosed or built upon); and
- (c) a part of premises;

**“proceedings”** includes any procedure (including an inquiry, investigation, or preliminary or final determination of facts) conducted by or under the supervision of a Judge or judicial officer in relation to –

- (a) an alleged or proven offence; or
- (b) property derived from such an offence;

**“proceeds”** has the meaning given by Section 10;

**“production order”** means an order under Section 154;

**“property”** includes money and all other property, real or personal, including an enforceable right of action and other intangible or incorporeal property;

**“property –tracking document”** in relation to an offence, means a document relevant to –

- (a) identifying, locating or quantifying property of a person who committed the offence; or
- (b) identifying or locating any document necessary for the transfer of property of a person who committed the offence; or
- (c) identifying, locating or quantifying tainted property in relation to the offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

**“quashing”** in relation to an offence, has the meaning given by Section 8;

**“registered foreign restraining order”** means a foreign restraining order registered in the Court under the *Mutual Assistance Act*;

**“registrable property”** means property the title to which is passed by registration on a register kept under a law in force in Papua New Guinea;

**“related offence”** an offence is related to another offence if the physical elements of the 2 offences are substantially the same acts or omissions;

**“relevant offence”** in relation to tainted property, means an offence because of which the property becomes tainted property;



**“restraining order”** other than a foreign restraining order, means an order under Sections 38 or 39;

**“serious offence”** means –

- (a) an indictable offence for which the maximum penalty is death or imprisonment for 3 years involving –
  - (i) unlawful conduct constituted by or relating to Section 34; or
  - (ii) unlawful conduct by a person that causes or is intended to cause a benefit to the value of at least K10, 000.00 for that person or another person; or
  - (iii) unlawful conduct by a person that causes, or is intended to cause, a loss to the State or to another person of at least K10, 000.00; or
- (b) an indictable offence specified in the Regulations;

**“sufficient consideration”** means an acquisition or disposal of property for sufficient consideration if it is for a consideration that is sufficient and that reflects the value of the property, having regard solely to commercial considerations;

**“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 –

- (a) proceeds of an offence;
- (b) property used in, or in connection with, the commission of an offence;
- (c) property intended to be used in, or in connection with, the commission of an offence;

**“unlawful activity”** means an act or omission that constitutes an offence against a law of Papua New Guinea or the foreign country where the activity occurs;

(2) A reference in this Act to the law of a country includes a law in force in a part of the country (for example, the law of a State of a country that has a federal system of government).

**4. AUTHORISED OFFICERS.**

The Commissioner of Police may authorise in writing a police officer who is a member of the FIU to perform functions under Division 1 of Part 2 or a police officer to perform functions under Division 3 of Part 2 of this Act.

**5. MEANING OF BENEFIT.**

- (1) For this Act, a “benefit” includes a service or advantage.
- (2) A person benefits from an offence if –
  - (a) the person receives a benefit in connection with, or arising from, the commission of the offence; or
  - (b) another person receives a benefit in connection with, or arising from, the commission of the offence at the first –mentioned person’s request or direction.

**6. MEANING OF CONVICTION.**

For this Act, a person is taken to have been convicted of an offence if –

- (a) the person was convicted of the offence, whether summarily or on indictment; or
- (b) the person was charged with, and found guilty of, the offence but was discharged without conviction; or
- (c) the person was not found guilty of the offence, but the court, with the consent of the person, took the offence into account in passing sentence on the person for another offence; or
- (d) the person absconds in connection with the offence.

**7. MEANING OF CONVICTION DAY.**

For this Act, the conviction day, in relation to a person’s conviction of an indictable offence, is –

- (a) if the person is taken to have been convicted of the offence because of Paragraph (a) of Section 6 –the day on which the person was convicted of the offence; or
- (b) if the person is taken to have been convicted of the offence because of Paragraph (b) of Section 6 –the day on which the person was discharged without conviction; or
- (c) if the person is taken to have been convicted of the offence because of Paragraph (c) of Section 6 –the day on which the court took the offence into account in passing sentence for the other offence mentioned in the paragraph; or

- (d) if the person is taken to have been convicted of the offence because of Paragraph (d) of Section 6 –the day on which the person is taken to have absconded in connection with the offence.

**8. MEANING OF QUASHING A CONVICTION OF AN OFFENCE.**

(1) For this Act, a person’s conviction of an offence is taken to be quashed if –

- (a) if the person is taken to have been convicted of the offence because of Paragraph (a) of Section 6 –the conviction is quashed or set aside; or
- (b) if the person is taken to have been convicted of the offence because of Paragraph (b) of Section 6 –the finding of guilt is quashed or set aside; or
- (c) if the person is taken to have been convicted of the offence because of Paragraph (c) of Section 6 –either of the following events occur:
  - (i) the person’s conviction of the other offence referred to in that paragraph is quashed or set aside;
  - (ii) the decision of the Court to take the offence into account in passing sentence for that other offence is quashed or set aside;
- (d) if the person is taken to have been convicted of the offence because of Paragraph (d) of Section 6 –after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.

(2) This section does not apply to a foreign indictable offence.

**9. 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) However, if a person is 1 of 2 or more beneficiaries under a discretionary trust, the following undivided proportion of the trust property is taken to be under the effective control of the person –

**1/number of beneficiaries**

(4) If property is initially owned by a person and, within 5 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.

(5) 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 and business relationships between persons having an interest in the property, or in companies of the kind referred to in Paragraph (a), and other persons.

#### **10. MEANING OF PROCEEDS.**

(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 Papua New Guinea.

(2) Proceeds of an offence includes –

- (a) property into which any property derived or realised directly from the offence is later converted or transformed; and
- (b) income, capital or other economic gains derived or realised from that property since the offence.

#### **11. HOW THE VALUE OF PROPERTY IS WORKED OUT.**

(1) For this Act, the value of property (other than currency) to a person holding the property (the property holder) is –

- (a) if another person holds an interest in the property –the market value of the property holder’s beneficial interest in the property, less the amount required to discharge any encumbrance on the property holder’s interest; and
- (b) in any other case –its market value.

(2) For this Act, the value at a time (the assessment time) of property that was received by a person is the greater of –

- (a) the value of the property to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; and
- (b) the value to the recipient at the assessment time of property that, in whole or in part, directly or indirectly represents in the recipient’s hands the property that he or she received.

**12. MEANING OF GIFT.**

In this Act “gift” includes a transfer (directly or indirectly) of property by one person to another for a consideration that is significantly less than the value of the property.

**PART 2. – MEASURES TO COMBAT MONEY-LAUNDERING.*****Division 1.******-Administration.*****13. FINANCIAL INTELLIGENCE UNIT –ESTABLISHMENT.**

There is established, within the Royal Papua New Guinea Constabulary, the Financial Intelligence Unit.

**14. FUNCTIONS OF THE FIU.**

The functions of the FIU are –

- (a) to receive reports issued by cash dealers under Sections 23 and 24; and
- (b) to refer such reports to an authorised officer; and
- (c) to compile statistics and records, make recommendations arising out of any information received, issue guidelines to cash dealers and advise the Minister; and
- (d) to identify training requirements and provide training for cash dealers about transaction record –keeping and reporting obligations; and
- (e) to consult with any relevant person, institution or organisation in exercising its powers or duties; and
- (f) to conduct investigations for the purposes of the Act.

**15. POWERS OF INSPECTION OF PREMISES OF A CASH DEALER.**

(1) This section applies to an authorised officer who is given access to the business premises of a cash dealer in compliance with a notice under Section 16.

(2) For the purpose of monitoring the cash dealer's compliance with Sections 23 and 24, the authorised officer may inspect:

- (a) any records kept at, or accessible from, the premises that relate to the cash dealer's obligations under those sections; and
- (b) any system used for keeping those records; and
- (c) any reports, under those sections, retained at or accessible from the premises; and
- (d) any system used by the cash dealer for:
  - (i) preparing reports under those sections; or
  - (ii) sending such reports to the FIU; or
  - (iii) retaining such reports.

(3) An authorised officer who is empowered under this section to inspect records or reports of a cash dealer, may also receive or make copies of, or take extracts from, the records or reports.

**16. NOTICE TO GIVE ACCESS TO BUSINESS PREMISES.**

(1) The Commissioner of Police may, by written notice, require a cash dealer to give, to an authorised officer, access to its business premises.

(2) A notice under Subsection (1) must specify –

- (a) the name of the authorised officer;
- (b) the day on which access is required; and
- (c) the time at which access is required which must be during business hours in the place where the business premises are situated.

(3) A cash dealer to whom a notice is given, must comply with the notice.

**17. APPLICATION FOR PRODUCTION AND MONITORING ORDERS.**

To determine whether any property belongs to, or is in the possession or under the control of, a person, an authorised officer may apply to a magistrate for a production order under Division 5 of Part 4 or a monitoring order under Division 6 of Part 4.

**18. ORDERS TO ENFORCE COMPLIANCE WITH OBLIGATIONS UNDER THIS ACT.**

(1) If a cash dealer appears to have failed to comply with an obligation under Part 4, an authorised officer may apply to the Court for an order against the cash dealer or any officers or employees, or specified officers or employees of the cash dealer, in such terms as the Court thinks necessary to enforce compliance with the obligation.

(2) The Court may also order that, if the cash dealer or officer or employee fails, without reasonable excuse, to comply with the order, the cash dealer, officer or employee must pay a financial penalty of the amount and in the manner directed by the Court.

***Division 2.***

***.Reporting and record –keeping obligations of cash dealers.***

**19. DEFINITIONS FOR DIVISION 2.**

In this Division –

“**customer**”, of a cash dealer, means a person by or for whom the cash dealer carries out a financial transaction of any of the following kinds:

- (a) opening or closing an account with the cash dealer;

- (b) operating an account with the cash dealer;
- (c) opening or using a deposit box held by the cash dealer;
- (d) transferring funds telegraphically or electronically to another person;
- (e) transmitting funds between Papua New Guinea and a foreign country or between foreign countries;
- (f) making a loan to the person.

**“minimum retention period”**, for a document, means –

- (a) if the document relates to the opening of an account with a cash dealer –7 years after the day when the account is closed; or
- (b) if the document relates to the opening by a person of a deposit box held by the cash dealer –7 years after the day when person ceases to use the deposit box; or
- (c) in any other case –7 years after the day when the relevant transaction takes place;

**“transaction”** includes a proposed transaction.

## **20. CASH DEALERS TO VERIFY EACH CUSTOMER’S IDENTITY.**

(1) In accordance with Subsection (2), a cash dealer must satisfy itself of the identity of an applicant seeking –

- (a) to enter into a business relationship with it; or
- (b) to carry out a transaction or series of transactions with it.

(2) The cash dealer must require the applicant to produce a record reasonably capable of establishing the applicant’s identity, such as –

- (a) The cash dealer must require the applicant to produce a record reasonably capable of establishing the applicant’s identity, such as –
- (b) for a body corporate –a copy of its certificate of incorporation.

(3) If an applicant requests a cash dealer to enter into –

- (a) a continuing business relationship; or
- (b) in the absence of such a relationship –any transaction, the cash dealer must take reasonable measures to establish whether the person is acting for another person.

(4) If it appears to a cash dealer that an applicant requesting it to enter into a transaction, whether or not in the course of a continuing business relationship, is acting for another person, the cash dealer must take reasonable measures to establish the identity of the person for whom, or for whose ultimate benefit, the applicant is apparently acting in the proposed transaction.



(5) If satisfactory evidence of identity is not produced for Subsections (2) and (4), the cash dealer –

- (a) must not proceed any further with the transaction unless directed to do so by the FIU; and
- (b) must report the attempted transaction to the FIU under Section 24,

(6) A cash dealer that fails, without reasonable excuse, to comply with Subsections (1), (3), (4) and (5) commits an offence.

Penalty: If the offender is a natural person – a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate – a fine of K250, 000.00

(7) In deciding what measures are reasonable for Subsections (2) and (4), regard must be had to all the circumstances of the case, and in particular to –

- (a) whether the applicant is based or incorporated in a country whose laws include measures intended to prevent the country's financial system being used for money – laundering; and
- (b) custom and practice from time to time in the relevant field of business.

(8) Nothing in this section requires the production of any evidence of identity if –

- (a) the applicant is itself a cash dealer to which this Act applies; or
- (b) the transaction or series of transactions is part of a business relationship with an applicant that has already produced satisfactory evidence of identity.

## **21. CASH DEALERS TO ESTABLISH AND MAINTAIN CUSTOMER RECORDS.**

(1) A cash dealer who fails, without a reasonable excuse –

- (a) in accordance with Subsection (2), to establish and maintain records of all transactions carried out by it –
  - (i) of at least K200.00; or
  - (ii) of its equivalent in foreign currency; or
  - (iii) of such other amount as prescribed; or
- (b) if evidence of a person's identity is obtained in accordance with Section 20 to establish and maintain a record that –
  - (i) indicates the kind of evidence obtained; and
  - (ii) comprises either a copy of the evidence or information that enables a copy of it to be obtained; or
- (c) to establish and maintain all records that relate to an account holder in the name of the account holder,

is guilty of an offence.

Penalty: If the offender is a natural person – a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate – a fine of K250, 000.00.

(2) A record of a transaction under Subsection (1)(a) must show –

- (a) the name, address and occupation (or, where appropriate, the business or principal activity) of each person –
  - (i) conducting the transaction; or
  - (ii) if known – on whose behalf the transaction is being conducted; and
- (b) how the cash dealer verified the identity of each such person; and
- (c) the nature and date of the transaction; and
- (d) the type and amount of currency involved; and
- (e) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction; and
- (f) if the transaction involves a negotiable instrument other than currency –
  - (i) the name of the drawer of the instrument; and
  - (ii) the name of the institution on which it was drawn; and
  - (iii) the name of the payee (if any); and
  - (iv) the amount and date of the instrument; and
  - (v) the number (if any) of the instrument; and
  - (vi) details of any endorsements appearing on the instrument; and
- (g) the name and address of the cash dealer, and of the officer, employee or agent of the cash dealer who prepared the report.

(3) This section does not limit any other obligation of a cash dealer to keep documents.

## **22. ELECTRONIC TRANSFER ORIGINATOR INFORMATION.**

(1) This section applies to a cash dealer that initiates an electronic transfer of –

- (a) K10, 000.00 or more; or
- (b) an amount prescribed in regulations for this paragraph.

(2) The cash dealer must include with the transfer the following information –

- (a) the name of the originator;
- (b) the originator's account number or a unique reference number;

(c) the originator's address or customer identification number.

(3) A cash dealer that contravenes Subsection (2) is guilty of an offence.

Penalty: For a natural person –a fine of K50, 000.00 or imprisonment for 5 years;

For a body corporate –a fine of K250, 000.00.

(4) Subsection (2) does not apply to –

(a) a transfer that flows from a transaction carried out using a credit or debit card if the card number accompanies the transfer; or

(b) a transfer between financial institutions, each acting on its own behalf.

### **23. GENERAL REPORTING OBLIGATION.**

(1) A cash dealer must report to the FIU –

(a) any transaction of K10, 000.00 in cash or more, or other amount as prescribed, in the course of a single transaction, unless the other party to the transaction is also a cash dealer; and

(b) the sending out of Papua New Guinea at the request of a customer of any electronic funds transfer of K10, 000.00 or more, or other amount as prescribed, in the course of a single transaction; and

(c) the receipt from outside Papua New Guinea of an electronic funds transfer, sent at the request of a customer, of K10, 000.00 or more, or other amount as prescribed, in the course of a single transaction.

(2) Subsection (1)(b) does not apply when the cash dealer sends an electronic funds transfer to a person or entity in Papua New Guinea, even if the final recipient is outside Papua New Guinea.

(3) Subsection (1)(c) does not apply when the financial entity or cash dealer receives an electronic funds transfer from a person or entity in Papua New Guinea, even if the initial sender is outside Papua New Guinea.

(4) A cash dealer that contravenes Subsection (1) is guilty of an offence.

Penalty: For a natural person –a fine of K50, 000.00 or imprisonment for 5 years;

For a body corporate –a fine of K250, 000.00.

(5) A person commits an offence against this subsection if a person conducts 2 or more transactions or electronic funds transfers that are of an amount below the threshold amount and, having regard to –

(a) the manner and form in which the transactions or transfers were conducted, including, without limiting the generality of this, any of the following:

(i) the value of the currency involved in each transaction or transfer;

- (ii) the aggregated value of the currency involved in the transactions or transfers;
  - (iii) the period of time over which the transactions or transfers occurred;
  - (iv) the interval of time between any of the transactions or transfers;
  - (v) the locations at which the transactions or transfers were initiated or conducted; and
- (b) any explanation made by the person as to the manner or form in which the transfers were conducted,

it would be reasonable to conclude that the person conducted the transactions or transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that;

- (c) no report in relation to the transactions or transfers would be made under Subsection (1); or
- (d) would not give rise to a significant cash transaction.

(6) A person who contravenes Subsection (5) is guilty of an offence.

Penalty: For a natural person – a fine of K50, 000.00 or imprisonment for 5 years;

For a body corporate – a fine of K250, 000.00.

## **24. CASH DEALERS TO REPORT TO SUSPECT TRANSACTIONS.**

(1) This section applies to a cash dealer that is a party to a transaction.

(2) If the cash dealer has reasonable grounds to suspect that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for a serious offence, it must –

- (a) take measures to find out –
  - (i) the purpose of the transaction; and
  - (ii) the origin of the funds; and
  - (iii) where the funds will be sent; and
  - (iv) the name and address of the person who will receive the funds; and
- (b) give a report of the transaction, in accordance with Subsection (3), to the FIU within 3 working days of the time that the cash dealer first becomes aware of the transaction.

(3) A report required by Subsection (2)(b) must –

- (a) be given in writing or in a manner approved by the Minister; and

- (b) include the particulars about the transaction mentioned in Subsection (2)(a) and Subsection (3); and
- (c) include any prescribed particulars; and
- (d) include a statement of the grounds on which the cash dealer holds the suspicion; and
- (e) be signed or otherwise authenticated by the cash dealer.

(4) A cash dealer that has reported a transaction in accordance with this Division must, if requested to do so by the FIU, give the FIU any further information that it has about the transaction.

(5) A cash dealer that fails without reasonable excuse to comply with Subsections (2) and (4) is guilty of an offence.

## **25. CASH DEALER MUST NOT DISCLOSE INFORMATION.**

(1) If a cash dealer gives information to the FIU about its suspicion about a transaction to which it is a party, the cash dealer, or an officer, employee or agent of the cash dealer, must not, unless required to do so under this or another Act, disclose to anyone else –

- (a) that the cash dealer has formed the suspicion; or
- (b) that information has been given; or
- (c) any other information from which a person could reasonably be expected to infer that the suspicion had been formed or that the information had been given to the FIU.

(2) A cash dealer, or an officer, employee or agent of a cash dealer, who contravenes Subsection (1) is guilty of an offence.

Penalty: If the offender is a natural person – a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate – a fine of K250, 000.00.

## **26. CASH DEALERS TO ESTABLISH AND MAINTAIN INTERNAL REPORTING PROCEDURES.**

(1) A cash dealer must establish and maintain internal procedures –

- (a) to identify persons to whom an employee is to report any information that comes to the employee's attention in the course of employment, and that gives rise to knowledge or suspicion by the employee that another person is engaged in money –laundering; and
- (b) to enable any person identified under Paragraph (a) to have reasonable access to information that may be relevant to deciding whether sufficient basis exists to report the matter to the FIU; and

(c) to require the identified person to report the matter to the FIU, if he or she decides that sufficient basis exists to do so.

(2) A cash dealer that fails, without reasonable excuse, to comply with Subsection (1) commits an offence.

Penalty: If the offender is a natural person –a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate –a fine of K250, 000.00

## **27. FURTHER PREVENTIVE MEASURES BY AND CASH DEALERS.**

(1) A cash dealer must establish and maintain internal procedures –

(a) to make its employees aware of domestic laws about money –laundrying, and the procedures and policies established and maintained by it under this Act; and

(b) to train its employees to recognise and handle money –laundrying transactions.

(2) A cash dealer that fails, without reasonable excuse, to comply with Subsection (1) commits an offence.

Penalty: If the offender is a natural person –a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate –a fine of K250, 000.00.

## **28. CASH DEALERS TO RETAIN RECORDS.**

(1) A cash dealer must keep, for the minimum retention period for the document, a document that relates to a financial transaction carried out by the cash dealer in its capacity as a cash dealer, including (without limiting the generality of this obligation) a document that relates to a transaction of a kind mentioned in the definition of customer in Section 19.

(2) However, Subsection (1) does not apply to –

(a) a document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of less than K200.00 (or a higher amount prescribed for this paragraph); or

(b) a document that –

(i) is not a document given to the cash dealer by or for a customer; and

(ii) need not be retained to preserve a record of the financial transaction concerned.

(3) A cash dealer required to keep documents under this section must keep them on microfilm or in another way that makes retrieving them, or the information in them, reasonably practicable.

(4) A cash dealer that fails, without reasonable excuse, to comply with Subsections (1) and (3) commits an offence.

Penalty: If the offender is a natural person – a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate – a fine of K250, 000.00.

(5) This section does not limit any other obligation of a cash dealer to retain documents.

## **29. REGISTER OF ORIGINAL DOCUMENTS.**

(1) If, despite Section 28(1), a cash dealer is required by law to release an original document before the end of the minimum retention period for the document, the cash dealer must keep a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) The cash dealer must maintain a register of documents released under Subsection (1).

(3) A cash dealer that fails, without reasonable excuse, to comply with Subsections (1) and (2) commits an offence.

Penalty: If the offender is a natural person – a fine of K50, 000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate – a fine of K250, 000.00.

## **30. PROTECTION FROM LIABILITY.**

(1) An action, suit or proceeding does not lie against –

(a) a cash dealer; or

(b) an officer, employee or agent of a cash dealer, acting in the course of that person's employment or agency, in relation to any action taken under Sections 23 and 24.

(2) If a cash dealer or an officer, employee or agent of a cash dealer, acting in the course of that person's employment or agency, gives information to the FIU under Section 24(2), the cash dealer is taken, for Sections 34 and 35, not to have been in possession of that information at any time.

### ***Division 3.***

#### ***Suspicious currency movements.***

## **31. SEIZURE AND DETENTION OF SUSPICIOUS IMPORTS OR EXPORTS OF CURRENCY.**

An authorised officer may seize and detain any currency that is being imported into or exported from Papua New Guinea if –

- (a) the amount is not less than the equivalent of K5, 000.00 (or a higher amount prescribed by regulation for this paragraph); and
- (b) there are reasonable grounds for suspecting that it is tainted property.

### **32. DETENTION OF SEIZED CURRENCY.**

(1) Currency detained under Section 31 may not be detained for more than 24 hours after it is seized.

(2) However, a magistrate may order its continued detention for a period not exceeding 3 months from the day it is seized, on being satisfied that –

- (a) there are reasonable grounds for the suspicion mentioned in Paragraph (b) of Section 31; and
- (b) its continued detention is justified while:
  - (i) its origin or derivation is further investigated; or
  - (ii) consideration is given to the institution (in Papua New Guinea or elsewhere) of criminal proceedings against a person for an offence with which the currency is connected.

(3) The Court may subsequently order the continued detention of the currency if satisfied of the matters mentioned in Subsection (2)(a) and (b), but the total period of detention may not exceed 2 years from the date of the first order made under Subsection (2).

### **33. RELEASE OF DETAINED CURRENCY.**

(1) Currency detained under Section 32 may be released in whole or in part to the person for whom it was imported or exported –

- (a) by order of the Court that its continued detention is no longer justified, upon application by or for that person and after considering any views of the Minister to the contrary; or
- (b) by an authorised officer, if satisfied that its continued detention is no longer justified.

(2) However, currency detained under Section 32 must not be released if –

- (a) an application is made for –
  - (i) a confiscation order against the whole or any part of the currency; or
  - (ii) a restraining order against it pending determination of its liability to confiscation; or
  - (iii) the registration of a foreign forfeiture order or foreign restraining order against it; or
- (b) proceedings are under way in Papua New Guinea or elsewhere against a person for an offence with which the currency is connected,



until the proceedings relating to the relevant application, or the proceedings relating to the offence, have been concluded.

***Division 4.***

***Offences.***

**34. MONEY –LAUNDERING.**

(1) In this section –

“**transaction**” includes the receiving or making of a gift.

(2) A person engages in money –laundering if the person –

- (a) engages, directly or indirectly, in a transaction that involves money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime; or
- (b) receives, possesses, disposes of or brings into Papua New Guinea money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime; or
- (c) conceals or disguises the source, existence, nature, location or control of money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime.

(3) A person who engages in money –laundering is guilty of an offence.

Penalty: If the offender is a natural person –a fine of K100, 000.00 or imprisonment for 20 years, or both; or

If the offender is a body corporate –a fine of K500, 000.00.

**35. POSSESSION OF PROPERTY SUSPECTED OF BEING PROCEEDS OF CRIME.**

(1) A person who receives, possesses, conceals, disposes of or brings into Papua New Guinea money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence.

Penalty: If the offender is a natural person –a fine of K10, 000.00 or imprisonment for 2 years, or both;

If the offender is a body corporate –a fine of K50, 000.00

(2) It is a defence to a prosecution under Subsection (1) that the person charged had no reasonable grounds for suspecting that the property mentioned in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.

(3) A person is not liable to be convicted of an offence against both section and this section because of the same act or omission.

**36. OPENING ACCOUNT IN FALSE NAME.**

A person who opens or operates an account with a cash dealer in a false name is guilty of an offence.

Penalty: For a natural person – a fine of K10, 000.00 or imprisonment for 2 years, or both; or

For a body corporate – a fine of K50, 000.00

**37. PREJUDICING INVESTIGATION BY DISCLOSING INFORMATION.**

A person who –

- (a) knows or suspects that a report is being prepared or has been sent to the FIU; and
- (b) discloses information or another matter; and
- (c) knows or has reasonable grounds to suspect that disclosing the information or matter is likely to prejudice an investigation of an offence, or possible offence, of money –laundering,

is guilty of an offence.

Penalty: A fine of K10,000.00 or imprisonment for 2 years, or both.

**PART 3. – THE CONFISCATION SCHEME.**

***Division 1.***

***Restraining orders .***

***Subdivision 1. – Making restraining orders.***

**38. RESTRAINING ORDERS –PEOPLE CONVICTED OF, OR CHARGED WITH, INDICTABLE OFFENCES.**

(1) The Court must order that –

- (a) property must not be disposed of or otherwise dealt with by any person;
- (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances set out in the order,
- (c) the Public Prosecutor applies for the order; and
- (d) a person has been convicted of, or has been charged with, an indictable offence, or it is proposed that he or she be charged with an indictable offence; and
- (e) the requirements of Subsection (3) have been met; and
- (f) the Court is satisfied that the police officer who made the affidavit mentioned in Subsection (3) holds the suspicion or suspicions mentioned in the affidavit, on reasonable grounds.

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property mentioned in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that the property is any 1 or more of the following –

- (a) all or specified property of the suspect;
- (b) all property of the suspect other than specified property;
- (c) 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;
- (d) specified property of another person (whether or not that other person's identity is known) that is tainted property.

(3) The application for the order must be supported by an affidavit of a police officer stating –

- (a) if the suspect has not been convicted of an indictable offence –that the police officer suspects that the suspect committed the offence; and
- (b) if the application is to restrain property of a person other than the suspect –that the police officer suspects that:
  - (i) the property is subject to the effective control of the suspect; or
  - (ii) the property is tainted property; and

(c) the grounds on which the police officer holds the suspicions.

(4) Despite Subsection (1), the Court may refuse to make a restraining order in relation to an indictable offence that is not a serious offence if the Court is satisfied that it is not in the public interest to make the order.

(5) The Court must make a restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

**39. RESTRAINING ORDERS –PEOPLE SUSPECTED OF COMMITTING SERIOUS OFFENCES.**

(1) The Court must order that –

(a) property must not be disposed of or otherwise dealt with by any person;  
or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstance specified in the order;

if –

(c) the Public Prosecutor applies for the order; and

(d) there are reasonable grounds to suspect that:

(i) a person has committed a serious offence; and

(ii) the offence was committed within the 7 years preceding the application, or since the application was made; and

(e) the requirements in Subsection (3) have been met; and

(f) the Court is satisfied that the police officer who made the affidavit mentioned in Subsection (3) holds the suspicion or suspicions mentioned in the affidavit, on reasonable grounds.

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property mentioned in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that the property is any 1 or more of the following:

(a) all or specified property of the suspect;

(b) all property of the suspect other than specified property;

(c) 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;

(d) specified property of another person (whether or not that other person's identity is known) that is proceeds of the offence.

(3) The application for the order must be supported by an affidavit of a police officer stating –

- (a) that the police officer suspects that the suspect committed the offence within the 7 years preceding the application, or since the application was made; and
- (b) if the application is to restrain property of a person other than the suspect –that the police officer suspects that:
  - (i) the property is subject to the effective control of the suspect; or
  - (ii) the property is proceeds of the offence; and
- (c) the grounds on which the authorised officer holds the suspicions.

(4) The reasonable grounds referred to in Subsection (1)(d) need not be based on a finding as to the commission of a particular serious offence.

(5) The Court must make a restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

(6) The Court may specify that a restraining order covers property that is acquired by the suspect after the Court makes the order, but if the Court does not make that specification in the order, property acquired by the suspect after the Court makes the order is not covered by the order.

***Subdivision 2. – How restraining orders are obtained.***

**40. PUBLIC PROSECUTOR MAY APPLY FOR A RESTRAINING ORDER.**

- (1) The Public Prosecutor may apply to the Court for a restraining order.
- (2) An application for a restraining order may be made *ex parte*.

**41. NOTICE OF APPLICATION FOR RESTRAINING ORDER.**

(1) Subject to Subsection (4), before making an application to a court for a restraining order in relation to property, the Public Prosecutor must –

- (a) give written notice of the application to the owner of the property (if the owner is known); and
- (b) include with the notice a copy of the application and any affidavit that supports the application.

(2) Subject to Subsection (4), the Public Prosecutor must also –

- (a) give written notice of the application to any other person that the Public Prosecutor reasonably believes may have an interest in the property; and
- (b) include with the notice:
  - (i) a copy of the application; and
  - (ii) a further notice that the person may request that the Public Prosecutor give the person a copy of any affidavit supporting the application.

(3) The Public Prosecutor must comply with a request under Subsection (2)(b)(ii) as soon as practicable.

(4) The court must consider the application without notice having been given if the Public Prosecutor requests the court to do so.

(5) The court may, at any time before finally determining the application do either or both of the following:

- (a) direct the Public Prosecutor to give or publish notice of the application to a specified person or class of persons;
- (b) specify the time and manner in which the notice is to be given or published.

(6) A person who claims an interest in property may appear and adduce evidence at the hearing of the application.

***Subdivision 3. – Excluding Property from Restraining Orders.***

**42. COURT MAY EXCLUDE PROPERTY FROM A RESTRAINING ORDER.**

(1) The Court may, at the time when a restraining order is made or at a later time, exclude specified property from the order if –

- (a) an application is made under Sections 43 or 44; and
- (b) the Court is satisfied that there is a reason under Subsection (2) for excluding the property from the order.

(2) The reasons for excluding specified property from a restraining order are –

- (a) for a restraining order under Section 38 if the offence, or any of the offences, to which the order relates is a serious offence –the property is not:
  - (i) proceeds of unlawful activity; or
  - (ii) property used in, or in connection with, unlawful activity; or
  - (iii) property intended to be used in, or in connection with, unlawful activity; or
- (b) for a restraining order under Section 38 if Paragraph (a) does not apply –the property is not:
  - (i) proceeds of an offence; or
  - (ii) property used in, or in connection with, the commission of an offence; or
  - (iii) property intended to be used in, or in connection with, the commission of an offence; or
- (c) for a restraining order under Section 39 –the property is not proceeds of unlawful activity.

(3) The Court must not exclude property from a restraining order under Sections 38 or 39 unless it is satisfied that a pecuniary penalty order could not be made against –

- (a) the person who owns the property; or
- (b) if the property is not owned by the suspect but is under his or her effective control –the suspect.

**43. APPLICATION TO EXCLUDE PROPERTY FROM A RESTRAINING ORDER AFTER NOTICE OF THE APPLICATION FOR THE ORDER.**

(1) A person whose property would be covered by a restraining order may apply to the Court to exclude specified property from the restraining order within 14 days after being notified of the application for the order.

(2) The person must give written notice to the Public Prosecutor of both the application and the grounds on which the exclusion is sought.

(3) The Public Prosecutor may appear and adduce evidence at the hearing of the application.

(4) The Public Prosecutor must give the person notice of any grounds on which it proposes to contest the application.

**44. APPLICATION TO EXCLUDE PROPERTY FROM A RESTRAINING ORDER AFTER NOTICE OF THE ORDER.**

(1) A person may apply to the Court to exclude specified property from a restraining order at any time after being notified of the order.

(2) However, unless the Court gives leave, the person cannot apply if he or she –

- (a) was notified of the application for the restraining order, but did not appear at the hearing of that application; or
- (b) appeared at the hearing of that application.

(3) The Court may give the person leave to apply if the Court is satisfied that –

- (a) if Paragraph (a) of Subsection (2) applies –the person had a good reason for not appearing; or
- (b) if Paragraph (b) of Subsection (2) applies –the person now has evidence relevant to the person’s application that was not available at the time of the hearing; or
- (c) in either case –there are other special grounds for granting the leave.

(4) The Public Prosecutor must give the person notice of any grounds on which it proposes to contest the application.

(5) The person must give written notice to the Public Prosecutor of both the application and the grounds on which the exclusion is sought.

***Subdivision 4. – Giving effect to restraining orders.*****45. NOTICE OF A RESTRAINING ORDER.**

(1) If the Court makes a restraining order covering property that a person owns, the Public Prosecutor must give written notice of the order to the person.

(2) The Public Prosecutor must include a copy of the application and any affidavit supporting the application with the notice (if these documents have not already been given to the person).

(3) However the Court may order that –

- (a) all or part of the application or affidavit is not to be given to the person;  
or
- (b) the Public Prosecutor delay giving the notice (and the documents included with the notice) for a specified period,

if the Public Prosecutor requests the Court to do so and the Court considers that this is appropriate in order to protect the integrity of any investigation or prosecution.

(4) If the Court orders the Public Prosecutor to delay giving the notice (and the documents included with the notice) for a specified period, the Public Prosecutor must give the notice as soon as practicable after the end of that period.

**46. REGISTRATION OF RESTRAINING ORDER.**

(1) An authority that administers a law of Papua New Guinea that provides for the registration of title to, or charges over, property of a particular kind, may, on application by the Public Prosecutor, record on a register kept under that law the particulars of a restraining order that applies to property of that kind.

(2) If those particulars are so recorded, a person who subsequently deals with the property is taken, for Section 49, to have notice of the restraining order at the time of the dealing.

**47. NOTICE TO REGISTRATION AUTHORITIES OF EXCLUSIONS FROM OR VARIATIONS TO RESTRAINING ORDERS.**

(1) If the Public Prosecutor has previously applied to a registration authority under Section 46 for the recording in a register of particulars of a restraining order covering particular property, the Public Prosecutor must notify the registration authority if –

- (a) the property is no longer covered by the order because it is excluded from the order under Section 42 or because the property covered by the order is varied under Section 53; or
- (b) a condition to which the restraining order is subject is varied under Section 53.

(2) The notice must be given within a reasonable time after the order under Section 53 is made.



**48. COURT MAY SET ASIDE A DISPOSITION CONTRAVENING A RESTRAINING ORDER.**

(1) If a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order the Public Prosecutor may apply to the Court for an order setting aside the disposition or dealing.

(2) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may –

- (a) set aside the disposition or dealing with effect from the day when it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and make an order declaring the interest held by any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

**49. CONTRAVENTION OF RESTRAINING ORDERS.**

A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence.

Penalty: For a natural person – a fine of K70,000.00 or imprisonment for 7 years, or both; or

For a body corporate – a fine of K350,000.00

***Subdivision 5. – Other Orders.***

**50. COURT MAY ORDER COMMISSIONER FOR POLICE TO TAKE CUSTODY AND CONTROL OF PROPERTY.**

The Court may order the Commissioner of Police to take custody and control of property, or specified property, covered by a restraining order if –

- (a) the Commissioner of Police consents; and
- (b) the Court is satisfied that this is required.

**51. PRESERVATION OF PROPERTY.**

If the Court gives the Commissioner of Police a direction under Section 50 in relation to property, the Commissioner of Police may do anything that is reasonably necessary to preserve the property and, for that purpose –

- (a) may do anything in relation to the property that its owner could do; and
- (b) may do so to the exclusion of the owner.

**52. UNDERTAKINGS BY STATE.**

Before making a restraining order, the Court may require the State to give an undertaking about the payment of damages or costs, or both, in relation to the making and execution of the order.

**53. ANCILLARY ORDERS AND FURTHER ORDERS.**

(1) If there is a restraining order against property, the Court may make any ancillary orders that the Court considers appropriate, including any 1 or more of the following –

- (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 52;
- (d) an order directing the owner of the property (including, if the property 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;
- (e) if the Commissioner of Police is ordered under section to take custody and control of property –
  - (i) an order regulating the manner in which the Commissioner of Police may exercise his or her powers or perform his or her 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 for the exercise of powers or the performance of the duties of the Commissioner of Police; or
  - (iii) an order directing any person to do anything necessary or convenient to enable the Commissioner of Police to take custody and control of the property;
- (f) an order giving directions about the operation of the restraining order and any 1 or more of the following –
  - (i) a forfeiture 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;
- (g) an order requiring a person whose property is covered by a restraining order to do anything necessary or convenient to bring the property within the jurisdiction.

(2) The Court can make an ancillary order only on the application of –

- (a) the Public Prosecutor; or

- (b) the Commissioner of Police; or
- (c) the owner of the property covered by the order; or
- (d) with the leave of the Court –any other person.

(3) The Court must not hear an application under Subsection (1) unless the applicant has given reasonable written notice of the application to each other person who is entitled to make an application under that subsection for the restraining order.

(4) The Court may –

- (a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property;
- (b) hear any person who, in the opinion of the Court, appears to have an interest in the property.

(5) If a person is required, in accordance with an order under Subsection (1)(d), to make a sworn statement –

- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or a penalty; and
- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

***Subdivision 6. – Duration of Restraining Orders.***

**54. WHEN A RESTRAINING ORDER IS IN FORCE.**

A restraining order is in force from the time when it is made.

**55. WHEN RESTRAINING ORDER CEASES TO BE IN FORCE.**

(1) A restraining order that relates to 1 or more offences ceases to be in force 28 days after 1 of the following occurs –

- (a) the charge or all of the charges that relate to the restraining order are withdrawn;
- (b) the suspect is acquitted of the offence, or all of the offences with which he or she was charged;
- (c) the suspect's conviction for the offence, or all of the offences, of which he or she was convicted are quashed,

unless –

- (d) there is a confiscation order that relates to the offence; or
- (e) there is an application for such a confiscation order before the court; or

- (f) there is an application under Subdivision 5 of Division 1 of this Part; or
- (g) the suspect is charged with a related offence.

(2) A restraining order ceases to be in force if, within 28 days after the order was made –

- (a) the suspect has not been convicted of, or charged with, the offence or at least 1 offence, to which the restraining order relates; and
- (b) there is no confiscation order or application for a confiscation order that relates to the offence.

(3) A restraining order ceases to be in force in respect of property covered by the restraining order if –

- (a) either –
  - (i) the court refuses an application for a forfeiture order that would have covered the property; or
  - (ii) the court excludes the property from a forfeiture order; or
  - (iii) a forfeiture order that covers the property is discharged or ceases to have effect; or
  - (iv) under Section 56, the Court excludes the property from forfeiture; and
- (b) in the case of a refusal of an application for a forfeiture order:
  - (i) the time for an appeal against the refusal has expired without an appeal being lodged; or
  - (ii) an appeal against the refusal has lapsed; or
  - (iii) an appeal against the refusal has been dismissed and finally disposed of; and
- (c) no application for another confiscation order relating to:
  - (i) an offence to which the restraining order relates; or
  - (ii) a related offence, is yet to be determined; and
- (d) no other confiscation order relating to such an offence is in force.

(4) A restraining order ceases to be in force to the extent that property that it covers vests absolutely in the State upon forfeiture.

(5) A restraining order that relates to one or more offences ceases to be in force in respect of property covered by the restraining order if –

- (a) a pecuniary penalty order relates to that offence or those offences; and
- (b) one or more of the following occurs:
  - (i) the pecuniary penalty order is satisfied;

- (ii) the property is sold or disposed of to satisfy the pecuniary penalty order;
  - (iii) the pecuniary penalty order is discharged or ceases to have effect.
- (6) Despite Subsection (1), if –
- (a) a restraining order covers property of a person who is not a suspect; and
  - (b) the property is –
    - (i) property used in or in connection with the commission of an offence to which the order relates; or
    - (ii) property intended to be used in or in connection with the commission of an offence to which the order relates; and
  - (c) the property is not proceeds of such an offence; and
  - (d) the property is not subject to the effective control of another person who is a suspect in relation to the order,

the restraining order ceases to be in force in respect of that property if the suspect has not been charged with the offence or a related offence within 28 days after the restraining order is made.

**56. RELEASE OF PROPERTY SUBJECT TO AUTOMATIC FORFEITURE.**

- (1) This section applies if –
- (a) a person has been convicted of, or has been charged with or is about to be charged with, an offence mentioned in Paragraph (1)(a) of Section 71; and
  - (b) the Court makes a restraining order against property because of the circumstances mentioned in Paragraph (a); and
  - (c) the person has an interest in the property.
- (2) The person may apply to the Court for a declaration under Subsection (3).
- (3) The Court may declare that the restraining order, to the extent to which it relates to the property, is to be disregarded for Section 71 if the Court is satisfied that –
- (a) the property was not used for any unlawful activity and was not derived by a person from any unlawful activity; and
  - (b) the person's interest in the property was lawfully acquired.

**57. COURT MAY REVOKE RESTRAINING ORDERS.**

- (1) If the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order if –

- (a) for an applicant who is a suspect – the applicant gives security satisfactory to the Court for the satisfaction of any pecuniary penalty order that may be made against the person under this Act; or
- (b) the applicant gives undertakings satisfactory to the Court about the property.

(2) An applicant under Subsection (1) must give reasonable written notice of the application to the Public Prosecutor and, if the restraining order directed the Commissioner of Police to take control of property, the Commissioner of Police.

***Division 2.***

***Forfeiture orders.***

***Subdivision 1. – Making forfeiture orders.***

**58. FORFEITURE ORDERS – ON CONVICTION OF INDICTABLE OFFENCE.**

(1) The Court must make an order that property specified in the order is forfeited to the State if –

- (a) the Public Prosecutor applies for the order; and
- (b) a person has been convicted of 1 or more indictable offences; and
- (c) the Court is satisfied that the property to be specified in the order is tainted property.

(2) The Court may make an order that property specified in the order is forfeited to the State if –

- (a) the Public Prosecutor applies for the order; and
- (b) a person has been convicted of 1 or more indictable offences; and
- (c) Subsection (1)(c) does not apply; and
- (d) the Court is satisfied that the property to be specified in the order is tainted property.

(3) In considering whether it is appropriate to make an order under Subsection (2) in respect of particular property, the court may have regard to –

- (a) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (b) the use that is ordinarily made, or was intended to be made of the property to be specified in the order; and
- (c) the gravity of the offence or offences.

**59. FORFEITURE ORDERS – CONDUCT CONSTITUTING A SERIOUS OFFENCE.**

(1) The Court must make an order that property specified in the order is forfeited to the State if –

- (a) the Public Prosecutor applies for the order; and
- (b) the property to be specified in the order is covered by a restraining order under Section 39; and
- (c) the Court is satisfied that –
  - (i) a person whose conduct or suspected conduct formed the basis of the restraining order engaged in conduct constituting 1 or more serious offences; and
  - (ii) the conduct was engaged in either;
    - (A) no longer than 7 years prior to the date of the application for the restraining order under Section 39; or
    - (B) after the application was made

(2) For Subsection (1)(c), a finding of the Court –

- (a) need not be based on a finding as to the commission of a particular offence; and
- (b) can be based on a finding that a serious offence was committed.

(3) The raising of a doubt as to whether a person engaged in conduct constituting a serious offence is not of itself sufficient to avoid a finding by the Court under Subsection (1)(c).

**60. EXISTENCE OF OTHER CONFISCATION ORDERS.**

The Court's power to make a forfeiture order in relation to an offence is not affected by the existence of another confiscation order in relation to the offence.

**61. ACQUITTALS DO NOT AFFECT FORFEITURE ORDERS UNDER SECTION 59.**

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the Court's power to make a forfeiture order under Section 59 in relation to the offence.

**62. MAKING OF FORFEITURE ORDER IF PERSON HAS ABSCONDED.**

If a person is taken to have been convicted of an indictable offence because of Paragraph (d) of Section 6, the Court must not make a forfeiture order relating to the person's conviction unless –

- (a) the Court is satisfied on the balance of probabilities that the person has absconded; and

- (b) either –
  - (i) the person has been committed for trial for the offence; or
  - (ii) the Court is satisfied, having regard to all the evidence before the Court that a reasonable jury, properly instructed could lawfully find the person guilty of the offence.

***Subdivision 2. – Other relevant matters when the Court is considering whether to make a forfeiture order..***

**63. PRESUMPTION IN CERTAIN CASES THAT PROPERTY WAS USED, IN OR IN CONNECTION WITH, THE COMMISSION OF AN OFFENCE.**

(1) This section applies if the Public Prosecutor applies for a forfeiture order under Section 58 against particular property in relation to a person's conviction of an indictable offence.

(2) In deciding whether property was used in, or in connection with, the commission of the offence –

- (a) if the evidence establishes that the property was in the person's possession at the time of, or immediately after, the offence was committed the Court may infer that the property was used in, or in connection with, the commission of the offence; and
- (b) if the evidence establishes that the property (in particular, money) was found, during investigations before or after the person was arrested for and charged with the offence
  - (i) in the person's possession; or
  - (ii) under the person's control in a building, vehicle, receptacle or place,

the court may infer that the property was derived, obtained or realised as a result of the person's committing the offence; and

- (c) if –
  - (i) the evidence establishes that the value, after the person committed the offence, of all the person's ascertainable property is more than the value of all the person's ascertainable property before the person committed the offence; and
  - (ii) the Court is satisfied that the person's income from sources unrelated to criminal activity cannot reasonably account for the increase in value,

the Court may infer that the value of all or part of the increase represents property that the person derived, obtained or realised directly or indirectly from committing the offence.



**64. FORFEITURE ORDERS MUST SPECIFY THE VALUE OF FORFEITED PROPERTY.**

If the Court orders that property (other than money) be forfeited to the State, the Court must specify in the order the amount that it considers to be the value of the property when the order is made.

**65. THE COURT MAY ALSO MAKE SUPPORTING DIRECTIONS.**

(1) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

(2) This includes, for a forfeiture order specifying registrable property a direction to an officer of the Court to do anything necessary or convenient to obtain possession of any document necessary for the transfer of the property.

*Subdivision 3. – How Forfeiture Orders are obtained.*

**66. PUBLIC PROSECUTOR MAY APPLY FOR A FORFEITURE ORDER.**

(1) The Public Prosecutor may apply for a forfeiture order.

(2) If the application relates to a person's conviction of an indictable offence, the application must be made before the end of the period of 6 months after the conviction day.

**67. ADDITIONAL APPLICATION FOR A FORFEITURE ORDER.**

(1) After an application for a forfeiture order is finally determined no further application for a forfeiture order may be made, in relation to the offence for which the person was convicted, without leave of the Court.

(2) The Court may give leave for a new application only if –

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

**68. NOTICE OF APPLICATION.**

(1) The Public Prosecutor must give written notice of an application for a forfeiture order to –

- (a) if the order is sought relating to a person's conviction of an offence — the person; and
- (b) any person who claims an interest in property covered by the application; and

(c) any person that the Public Prosecutor reasonably believes may have an interest in the property.

(2) The court hearing the application may, at any time before finally determining the application –

(a) direct the Public Prosecutor to give or publish notice of the application to a specified person or class of persons; and

(b) specify the time and manner in which the notice is to be given or published.

#### **69. PROCEDURE ON APPLICATION.**

(1) Any person who claims an interest in the property covered by an application for a forfeiture order may appear and present evidence at the hearing of the application.

(2) If the application relates to a person's conviction of an indictable offence, the Court may, in determining the application, have regard to –

(a) the transcript of any proceeding against the person for:

(i) that offence; or

(ii) if the person is taken to be convicted of that offence because of Paragraph (c) of Section 6 — the other offence referred to in that paragraph; and

(b) the evidence given in any such proceeding.

(3) The Court may make a forfeiture order even if a person entitled to be given notice of the relevant application fails to appear at the hearing of the application.

#### **70. AMENDING AN APPLICATION.**

(1) The Court, hearing an application for a forfeiture order, may amend the application –

(a) on application by the Public Prosecutor; or

(b) with the consent of the Public Prosecutor.

(2) However, the Court must not amend the application to include additional property in the application unless –

(a) the Court is satisfied that –

(i) the property was not reasonably capable of identification when the application was originally made; or

(ii) necessary evidence became available only after the application was originally made; or

(b) the forfeiture order applied for is a forfeiture order under Section 60 and the Court is satisfied that:

- (i) including the additional property in the application for the order might have prejudiced the investigation of, or the prosecution of a person for, an offence; or
- (ii) it is for any other reason appropriate to grant the application to amend.

(3) If the Public Prosecutor applies to amend an application for a forfeiture to include additional property in the application, the Public Prosecutor must give reasonable written notice of the application to amend to any person whom the Public Prosecutor reasonably believes may have an interest in the additional property.

(4) If the application is for a forfeiture order under Section 58, a person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application to amend.

***Subdivision 4. – Automatic forfeiture on conviction of certain offences.***

**71. AUTOMATIC FORFEITURE OF RESTRAINED PROPERTY.**

- (1) This section applies if –
  - (a) a person is convicted of any of the following offences –
    - (i) a serious offence;
    - (ii) an offence prescribed in the Regulations;
    - (iii) attempting or conspiring to commit, or assisting another person to escape punishment for, an offence mentioned in Subparagraphs (i) and (ii); and
  - (b) a restraining order in relation to property has been made following –
    - (i) the conviction; or
    - (ii) the charging, or proposed charging, of the person with the offence; and
  - (c) the restraining order, to the extent to which it relates to the property, is not the subject of a declaration under this Act; and
  - (d) the restraining order is in force at the end of –
    - (i) the period (the forfeiture period) of 6 months starting on the day of conviction; or
    - (ii) if the forfeiture period is extended under Subsection (3), the forfeiture period as extended.

(2) The property is forfeited to the State at the end of the forfeiture period or the forfeiture period as extended.

(3) On application within the forfeiture period, the Court may make an order extending the forfeiture period by up to 6 months if it is satisfied that it is in the interests of justice to do so.

(4) If property is forfeited under this section, a forfeiture order is taken to have been made by the Court.

***Subdivision 5. – Effect of forfeiture.***

**72. EFFECT OF AUTOMATIC FORFEITURE UNDER SECTION 71.**

(1) Property specified in a forfeiture order vests absolutely in the State at the time the order is made.

(2) Property forfeited under Section 71 vests absolutely in the State at the time of the forfeiture.

**73. FIRST EXCEPTION – REGISTRABLE PROPERTY.**

(1) Despite Section 72 if property which is the subject of a forfeiture order or property forfeited under Section 71, is registrable property -

- (a) that property vests in equity in the State but does not vest in the State until all the applicable registration requirements have been complied with; and
- (b) the Public Prosecutor has power, on behalf of the State, to do anything necessary or convenient to give notice of, or otherwise protect the State's equitable interest in that property; and
- (c) the State is entitled to be registered as the owner of that property; and
- (d) the Commissioner of Police has power, on behalf of the State, to do anything necessary or convenient to obtain the registration of the State as owner.

(2) Any action by the Public Prosecutor under Subsection (1)(b) is not a dealing for the purposes of Section 75(1).

(3) The Commissioner's powers under Subsection (1)(d) include executing any instrument required to be executed by a person transferring an interest in property of that kind.

**74. SECOND EXCEPTION – IF A JOINT OWNER DIES.**

(1) Despite Section 72, if a person –

- (a) was, immediately before his or her death, the joint owner of property specified in a forfeiture order; but
- (b) died before the order was made, but –
  - (i) after the Public Prosecutor applied for the order; or
  - (ii) while a restraining order covering the property was in force,

the property is taken to have vested in the State immediately before his or her death.

(2) A restraining order mentioned in Subsection (1) is taken to have continued to apply to the property as if the person had not died.

(3) Despite Section 72, if –

- (a) a person who is convicted of a serious offence was, immediately before his or her death, the joint owner of property; and
- (b) the period that would apply under Section 71(3) if the property were subject to forfeiture under Section 71 in relation to the conviction had not ended before his or her death; and
- (c) if that period had ended immediately before his or her death — the property would have been forfeited under Section 71,

the property is taken to have vested in the State immediately before his or her death.

#### **75. WHEN CAN THE STATE BEGIN DEALING WITH FORFEITED PROPERTY.**

(1) The State and persons acting on its behalf, can dispose of, or otherwise deal with, property specified in a forfeiture order only if the order is still in force and only after the later of the following times –

- (a) in relation to the order –
  - (i) if the period for lodging an appeal against the order has ended without such an appeal having been lodged — at the end of that period; or
  - (ii) if an appeal against the order has been lodged — when the appeal lapses or is finally determined;
- (b) if the order was made in relation to a person’s conviction of an offence –
  - (i) if the period for lodging an appeal against the conviction has ended without such an appeal having been lodged — at the end of that period; or
  - (ii) if an appeal against the conviction has been lodged — when the appeal lapses or is finally determined.

(2) For the purposes of Subsection (1)(b)–

- (a) if the person is taken to have been convicted of the offence because of Paragraph (b) of Section 6 — an appeal against the finding of the person guilty of the offence is taken to be an appeal against the conviction; and
- (b) if the person is taken to have been convicted of the offence because of Paragraph (c) of Section 6 — an appeal against the person’s conviction of the other offence referred to in that paragraph is taken to be an appeal against the conviction.

(3) The State, and persons acting on its behalf, can dispose of, or otherwise deal with, property forfeited under Section 71 in relation to a person's conviction of a serious offence if and only if –

- (a) the period applying under Subsection (5) has come to an end; and
- (b) the conviction has not been quashed by that time.

(4) Disposals and dealings in relation to property mentioned in Subsections (1) and (3) may occur earlier than the relevant time set out in this section, with the leave of the Court and in accordance with any directions by the Court.

(5) The period at the end of which the State, and persons acting on its behalf, can dispose of or otherwise deal with the property mentioned in Subsection (3) is –

- (a) if the conviction is one in relation to which neither Paragraph (b) or (c) of Section 6 applies, the period ending:
  - (i) if the period for lodging an appeal against the conviction has ended without such an appeal having been lodged — at the end of that period; or
  - (ii) if an appeal against the conviction has been lodged — when the appeal lapses or is finally determined; or
- (b) if the person is taken to have been convicted because of Paragraph (b) of Section 6, the period ending –
  - (i) if the period for lodging an appeal against the finding of the person guilty of the offence has ended without such an appeal having been lodged — at the end of that period; or
  - (ii) if an appeal against the finding of the person guilty of the offence has been lodged — when the appeal lapses or is finally determined; or
- (c) if the person is taken to have been convicted because of Paragraph of Section 6, the period ending –
  - (i) if the period for lodging an appeal against the person's conviction of the other offence referred to in that paragraph has ended without such an appeal having been lodged — at the end of that period; or
  - (ii) if an appeal against the person's conviction of the other offence referred to in that paragraph has been lodged — when the appeal lapses or is finally determined.

## **76. HOW MUST FORFEITED PROPERTY BE DEALT WITH.**

(1) This section applies to –

- (a) property forfeited under Section 71, if Section 75(3) no longer prevents disposal or dealing with the property; and

(b) property specified in a forfeiture order that is still in force at the later time mentioned in Section 75(1).

(2) The Commissioner of Police must, on behalf of the State as soon as practicable –

(a) dispose of any of the forfeited property that is not money; and

(b) credit amounts received from that disposal and any of the forfeited property that is money to the Consolidated Revenue Fund.

***Subdivision 6. – Recovery of forfeited property.***

**77. FORFEITURE ORDERS – PROTECTION OF THIRD PARTIES.**

(1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under Subsection (2).

(2) If a person applies to the Court for an order about the person’s interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person’s interest if the Court is satisfied –

(a) that the applicant was not involved in committing an offence in relation to which forfeiture of the property is sought, or a forfeiture order against the property was made; and

(b) if the applicant acquired the interest when, or after, the offence was committed — that the applicant acquired the interest:

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, proceeds of an offence or property used, or intended to be used, in or in connection with the commission of an offence.

(3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months starting on the day when the order is made, apply to the Court for an order under Subsection (2).

(4) The Court may give leave for a later application if it is satisfied that the delay in applying was not because of the person’s neglect.

(5) A person may not make an application under Subsection (3), except with the leave of the Court, if the person –

(a) knew about the application for the forfeiture order before the order was made; or

(b) appeared at the hearing of that application.

(6) A person who applies to the Court under Subsections (1) and (3) must give reasonable written notice of the application to the Public Prosecutor.

(7) The Public Prosecutor –

(a) is a party to the proceedings in an application under Subsections (1) and (3); and

(b) may make an application under Subsection (1) for a person.

(8) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (2), if the period for appeals has expired and any appeal from that order has been determined or has lapsed:

(a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or

(b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

#### **78. AUTOMATIC FORFEITURE – PROTECTION OF THIRD PARTIES.**

(1) If property is forfeited under Section 71, a person who claims an interest in the property may apply to the Court for an order under Subsections (6) and (9).

(2) The application must be made within 6 months after the property is forfeited.

(3) The Court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant's neglect.

(4) A person cannot apply to the Court for an order under Subsections (6) and (10) if the person –

(a) was given notice of the application for the restraining order in relation to the property; or

(b) appeared at the hearing of the application for the restraining order.

(5) However, the Court may give leave for the person to apply if it considers that the failure to apply, or to apply successfully, to have the property excluded from the restraining order was not because of the applicant's neglect.

(6) The Court may make an order –

(a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the property; and

(b) directing the State –

(i) if the property is still vested in the State, to transfer the property to the person; or

(ii) if the property is no longer vested in the State, to pay to the person the value of the person's interest in the property.

(7) The Court may make the order only if it is satisfied that the applicant, apart from the forfeiture, would have an interest in the property and the circumstances mentioned in Subsection (8) apply.

(8) For Subsection (7), the circumstances are that -



- (a) the applicant was not involved in the commission of the offence in relation to which the forfeiture order was made; and
- (b) the applicant acquired the interest –
  - (i) in good faith and for sufficient consideration; and
  - (ii) if the applicant acquired the interest at the time of or after the commission of the offence without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was proceeds of an offence or property used, or intended to be used, in or in connection with the commission of an offence; and
- (c) the applicant’s interest in the property was not under the suspect’s effective control before it was forfeited
- (d) the property was not used in, or in connection with, any unlawful activity and was not derived by anyone from any unlawful activity; and
- (e) the applicant’s interest in the property was lawfully acquired.

(9) The Court may make an order declaring the nature, extent and value (when the declaration is made) of the interest, and that Section 71 no longer applies to the interest, if –

- (a) the person pays to the State the amount of the value of the interest while it is vested in the State; and
- (b) the Court is satisfied that
  - (i) the person, apart from the forfeiture, would have an interest in the property; and
  - (ii) it would not be contrary to the public interest for the interest in the property to be transferred to the person; and
  - (iii) there is no other reason why the interest should not be transferred to the person.

(10) For an application under this section –

- (a) the applicant must give notice to the Public Prosecutor of the making of the application; and
- (b) the Public Prosecutor is a party.

***Subdivision 7. – The Effect on Forfeiture Orders of Acquittals and Quashing of Convictions.***

**79. FORFEITURE ORDER MADE UNDER SECTION 59 UNAFFECTED BY ACQUITTAL OR QUASHING OF CONVICTION.**

A forfeiture order made under Section 59 against a person in relation to an offence is not affected if –

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

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

### **80. DISCHARGE OF FORFEITURE ORDER MADE UNDER SECTION 58.**

(1) If the Court makes a forfeiture order under Section 58 in reliance on a person's conviction of an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) If a forfeiture order against property is discharged –

- (a) under Subsection (1); or
- (b) by the Court hearing an appeal against the making of the order; a person who claims to have had an interest in the property immediately before the forfeiture order was made may apply to the Commissioner of Police, in writing, for the transfer of the interest to the person.

(3) On receipt of an application under Subsection (2) from a person who had such an interest in the property, the Commissioner of Police must –

- (a) if the interest is vested in the State — transfer the property or interest in the property, or the part of it to which the interest relates, to the person; or
- (b) if the State has disposed of the interest — pay the person an amount equal to the value of the interest at the time the order is made.

(4) The Public Prosecutor may ask the Court to determine whether the person had the interest claimed under Subsection (2)

(5) The Commissioner of Police has power to do, or authorise the doing of, anything necessary or convenient to transfer or return property under Section 77, or this section, including executing any instrument and applying to register an interest in the property on a register.

### ***Subdivision 8. – Miscellaneous.***

### **81. PAYMENT INSTEAD OF FORFEITURE ORDER.**

If the Court is satisfied that a forfeiture order should be made against property of a person, but that the property, or any part of it or interest in it, cannot be made subject to such an order, and, in particular –

- (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 interest was transferred to avoid the forfeiture of the property; or
- (c) is located outside Papua New Guinea; or
- (d) has been mingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property, part or interest to be forfeited, order the person to pay to the State an amount equal to the value of the property, part or interest.

**82. ENFORCEMENT OF ORDER FOR PAYMENT INSTEAD OF FORFEITURE.**

(1) An amount payable by a person to the State under an order under Section 81 is a civil debt due by the person to the State.

(2) An order against a person under Section 81 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 judgment debt.

(3) If an order is made against a person under Section 81 and the person is, or becomes, a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee in bankruptcy.

**83. REGISTERED FOREIGN FORFEITURE ORDERS.**

If a foreign forfeiture order is registered in the Court under the Mutual Assistance Act, this Division applies to the order as if –

- (a) the order were an order made by the Court under this Division; and
- (b) the period mentioned in Section 77(3) and Section 78(3) were 6 weeks rather than 6 months.

***Division 3.***

***Pecuniary penalty orders.***

***Subdivision 1. – Making pecuniary penalty orders.***

**84. MAKING PECUNIARY PENALTY ORDERS.**

(1) The Court must make an order requiring a person to pay an amount to the State if –

- (a) the Public Prosecutor applies for the order; and
- (b) the court is satisfied of either or both of the following:
  - (i) the person has been convicted of an indictable offence and has derived benefits from the commission of the offence;
  - (ii) subject to Subsection (2), the person has committed a serious offence.

(2) Subsection (1)(b)(ii) does not apply unless the court is satisfied that the offence was committed –

- (a) within the period of 7 years:

- (i) before the application; or
  - (ii) if some or all of the person's property is already covered by a restraining order — before the application for the restraining order; or
- (b) since the application was made.

(3) The period of 7 years mentioned in Subsection (2) may be a period that began before the commencement of this Act.

(4) 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.

(5) The court's power to make a pecuniary penalty order in relation to an offence is not affected by the existence of another confiscation order in relation to the offence.

#### **85. MAKING OF PECUNIARY PENALTY ORDER IF PERSON HAS ABSCONDED.**

If, because of Paragraph (d) of Section 6, a person is taken to have been convicted of an indictable offence, the Court must not make a pecuniary penalty order in relation to the person's conviction unless —

- (a) the Court is satisfied on the balance of probabilities that the person has absconded; and
- (b) either —
  - (i) the person has been committed for trial for the offence; or
  - (ii) the Court is satisfied, having regard to all the evidence before the Court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

#### **86. ANCILLARY ORDERS.**

The Court may make orders ancillary to a pecuniary penalty order at the same time as the pecuniary penalty order is made or at a later time.

#### **87. ACQUITTALS DO NOT AFFECT PECUNIARY PENALTY ORDERS.**

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the Court's power to make a pecuniary penalty order in relation to the offence.

***Subdivision 2. – Penalty amounts.***

**88. DETERMINING PENALTY AMOUNTS.**

(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 Subdivision.

(2) If the offence to which the order relates is not a serious offence, the penalty amount is determined by:

- (a) assessing under this Subdivision the value of the benefits the person derived from the commission of the offence; and
- (b) subtracting from that value the sum of all the reductions (if any) in the penalty amount under this Subdivision.

(3) If the offence to which the order relates is a serious offence, the penalty amount is determined by –

- (a) assessing under this Subdivision the value of the benefits that the person derived from –
  - (i) the commission of that offence; and
  - (ii) subject to Subsection (4), the commission of any other offence that constitutes unlawful activity; and
- (b) subtracting from that value the sum of all the reductions (if any) in the penalty amount under this Subdivision.

(4) Subsection (3)(a)(ii) does not apply in relation to an offence unless the offence was committed:

- (a) within –
  - (i) if some or all of the person's property is covered by a restraining order — the period of 7 years preceding the restraining order; or
  - (ii) otherwise — the period of 7 years preceding the application for the pecuniary penalty order; or
- (b) during the period since the application for the restraining order or the pecuniary penalty order was made.

**89. THE VALUE OF BENEFITS – EVIDENCE THE COURT IS TO CONSIDER.**

(1) In assessing the value of benefits that a person has derived from the commission of an offence or offences (the illegal activity) 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, came into the possession or under the control of –
  - (i) the person; or

- (ii) another person at the person's request or direction;
- (b) the value of any other benefit that, because of the illegal activity, was provided to:
  - (i) the person; or
  - (ii) another person at the person's request or direction;
- (c) if any of the illegal activity consisted of doing an act or thing in relation to a narcotic drug –
  - (i) the market value, at the time of the offence, of similar or substantially similar narcotic drugs; 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;
- (d) the value of the person's property before, during and after the illegal activity;
- (e) the person's income and expenditure before, during and after the illegal activity.

(2) At the hearing of an application for a pecuniary penalty order, a police officer or a Customs Officer, who is 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 drug 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 drug.

(3) The officer's testimony under Subsection (2) –

- (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.

**90. VALUE OF BENEFITS DERIVED – OFFENCES THAT ARE NOT SERIOUS OFFENCES.**

(1) If –

- (a) an application is made for a pecuniary penalty order against a person in relation to an offence or offences (the illegal activity); and
- (b) the offence is not a serious offence, or none of the offences are serious offences; and
- (c) at the hearing of the application, evidence is given that the value of the person's property during or after the illegal activity exceeded the value of the person's property before the illegal activity,

the Court is to treat the value of the benefits derived by the person from the commission of the illegal activity as being not less than the amount of the greatest excess.

(2) The amount treated as the value of the benefits under this section is reduced to the extent (if any) that the Court is satisfied that the excess was due to causes unrelated to the illegal activity.

**91. VALUE OF BENEFITS DERIVED – SERIOUS OFFENCES.**

(1) If –

- (a) an application is made for a pecuniary penalty order against a person in relation to an offence or offences (the illegal activity); and
- (b) the offence is a serious offence, or 1 or more of the offences are serious offences; and
- (c) at the hearing of the application, evidence is given that the value of the person’s property during or after:
  - (i) the illegal activity; or
  - (ii) any other unlawful activity that the person has engaged in within the period referred to in Subsection (5),

exceeded the value of the person’s property before the illegal activity, the Court is to treat the value of the benefits derived by the person from the commission of the illegal activity as being not less than the amount of the greatest excess.

(2) The amount treated as the value of the benefits under Subsection (1) is reduced to the extent (if any) that the excess was due to causes unrelated to –

- (a) the illegal activity; or
- (b) any other unlawful activity that the person has engaged in within the period referred to in Subsection (5).

(3) If evidence is given at the hearing of the application, of the person’s expenditure during the period referred to in Subsection (5), the amount of the expenditure is presumed, unless the contrary is proved, to be the value of the benefit that the person obtained because of the illegal activity.

(4) Subsection (3) does not apply to expenditure to the extent that it resulted in the acquisition of property that is taken into account under Subsection (1).

(5) For Subsection (1)(c)(ii), Subsection (2)(b) and Subsection (3), the period is –

- (a) if some or all of the person’s property is covered by a restraining order — the period of 7 years preceding the application for the restraining order;
- (b) otherwise — the period of 7 years preceding the application for the pecuniary penalty order,

and includes the period since the application for the restraining order or the pecuniary penalty order was made.

**92. VALUE OF BENEFITS MAY BE AS AT TIME OF ASSESSMENT.**

(1) In quantifying the value of a benefit for this Subdivision, the Court may treat as the value of the benefit the value that the benefit would have had if derived at the time the Court makes its assessment of the value of the benefit.

(2) Without limiting Subsection (1), the Court may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time the Court makes its assessment.

**93. MATTERS THAT DO NOT REDUCE THE VALUE OF BENEFITS.**

In assessing the value of benefits that a person has derived from the commission of an offence or offences (the illegal activity), none of the following are to be subtracted –

- (a) expenses or outgoings the person incurred in relation to the illegal activity;
- (b) the value of any benefits that the person derives as agent for, or otherwise on behalf of, another person (whether or not the other person receives any of the benefits).

**94. BENEFITS ALREADY THE SUBJECT OF A PECUNIARY PENALTY.**

A benefit is not to be taken into account for the purposes of this Subdivision if a pecuniary penalty has been imposed in respect of the benefit under –

- (a) this Act; or
- (b) another law of Papua New Guinea.

**95. PROPERTY UNDER A PERSON'S EFFECTIVE CONTROL.**

In assessing the value of benefits that a person has derived, 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.

**96. REDUCING PENALTY AMOUNTS.**

(1) This section applies to the reduction of a penalty amount under pecuniary penalty order against a person.

(2) The penalty amount is reduced by an amount equal to the value, as at the time of making the order, of any property that is proceeds of the offence to which the order relates if –

- (a) the property has been forfeited in relation to the offence to which the order relates; or



(b) an application has been made for a forfeiture order that would cover the property.

(3) The Court may reduce the penalty amount by an amount that, in the Court's opinion –

(a) represents the tax that the person has paid; and

(b) is attributable to the benefits to which the order relates.

(4) The tax may be tax payable under a law of Papua New Guinea or a foreign country.

(5) The Court may, if it considers it appropriate to do so, reduce the penalty amount by an amount equal to the amount payable by the person by way of fine, restitution, compensation or damages in relation to an offence to which the order relates.

#### **97. VARYING PECUNIARY PENALTY ORDERS TO INCREASE PENALTY AMOUNTS.**

(1) The Court may, on the application of the Public Prosecutor, vary a pecuniary penalty order against a person by increasing the penalty amount if 1 or both of Subsections (2) and (3) apply.

(2) The penalty amount may be increased if –

(a) the penalty amount was reduced under Section 96(2) to take into account a forfeiture of property or a proposed forfeiture order against property; and

(b) an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the order being made.

(3) The penalty amount may be increased if –

(a) the penalty amount was reduced under Section 96(3) to take into account an amount of tax the person paid; and

(b) an amount is repaid or refunded to the person in respect of that tax.

(4) The amount of the increase is equal to –

(a) for Subsection (2) — the value of the property; and

(b) for Subsection (3) — the amount repaid or refunded.

#### ***Subdivision 3. – How Pecuniary Penalty Orders are obtained.***

#### **98. PUBLIC PROSECUTOR MAY APPLY FOR A PECUNIARY PENALTY ORDER.**

(1) The Public Prosecutor may apply for a pecuniary penalty order.

(2) If the application relates to a person's conviction of an indictable offence that is not a serious offence, the application must be made before the end of the period of 6 months after the conviction day.

(3) If the application relates to a person's conviction of a serious offence, the application must be made before –

- (a) the end of the period of 9 months after the conviction day; or
- (b) if an extension order is in force at the end of that period — the end of the period of 3 months after the end of the extended period relating to that extension order.

(4) An application may be made for a pecuniary penalty order in relation to an offence even if –

- (a) a forfeiture order in relation to the offence, or an application for such a forfeiture order, has been made; or
- (b) Section 71 applies in relation to the offence.

#### **99. ADDITIONAL APPLICATION FOR A PECUNIARY PENALTY ORDER.**

(1) Without the leave of the Court, the Public Prosecutor cannot apply for a pecuniary penalty order against a person in respect of benefits that the person derived from the commission of an offence if –

- (a) an application has previously been made –
  - (i) under this Subdivision; or
  - (ii) under another law of Papua New Guinea,

for a pecuniary penalty in respect of the benefits the person derived from the commission of the offence; and

- (b) the application has been finally determined.

(2) The Court must not give leave unless it is satisfied that –

- (a) the benefit to which the new application relates was identified only after the first application was determined; or
- (b) necessary evidence became available only after the first application was determined; or
- (c) it is in the interests of justice to give the leave.

#### **100. NOTICE OF APPLICATION.**

(1) The Public Prosecutor must give written notice of the application to a person who would be subject to the pecuniary penalty order if it were made.

(2) The Public Prosecutor must include a copy of the application, and any affidavit supporting the application, with the notice, unless the Court makes an order allowing the giving of a copy of the affidavit to be delayed.

(3) The Court must not make an order allowing the giving of a copy of the affidavit to be delayed unless it is satisfied that –

- (a) including a copy of the affidavit with the notice would prejudice the investigation of, or the prosecution of a person for, an offence; or
- (b) it is for any other reason appropriate to make the order.

#### **101. AMENDMENT OF APPLICATION.**

(1) The Court hearing the application may amend the application –

- (a) on application by the Public Prosecutor; or
- (b) with the consent of the Public Prosecutor.

(2) However, the Court must not amend the application so as to include an additional benefit in the application unless the Court is satisfied that –

- (a) the benefit was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(3) On applying for an amendment to include an additional benefit in the application, the Public Prosecutor must give to the person against whom the pecuniary penalty order would be made a written notice of the application to amend.

#### **102. PROCEDURE ON APPLICATION.**

(1) The person who would be subject to the pecuniary penalty order if it were made may appear and adduce evidence at the hearing of the application.

(2) If the application relates to a person's conviction of an indictable offence, the Court may, in determining the application, have regard to –

- (a) the transcript of any proceeding against the person for:
  - (i) that offence; or
  - (ii) if the person is taken to be convicted of that offence because of Paragraph (c) of Section 6— the other offence referred to in that paragraph; and
- (b) the evidence given in any such proceeding.

#### ***Subdivision 4. – Enforcement of Pecuniary Penalty Orders.***

#### **103. ENFORCEMENT OF PECUNIARY PENALTY ORDERS.**

(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, and the debt arising from the order is taken to be a judgment debt.

(3) If a pecuniary penalty order is made against a person and the person is, or becomes, a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee in bankruptcy.

(4) If a pecuniary penalty order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

#### **104. PROPERTY SUBJECT TO A PERSON'S EFFECTIVE CONTROL.**

(1) If –

- (a) a person is subject to a pecuniary penalty order; and
- (b) the Public Prosecutor applies to the court for an order under this section; and
- (c) the court is satisfied that particular property is subject to the effective control of the person,

the court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

(2) The order under Subsection (1) may be enforced against the property as if the property were the person's property.

(3) A restraining order may be made in respect of the property as if –

- (a) the property were the person's property; and
- (b) the person had committed a serious offence.

(4) If the Public Prosecutor applies for an order under Subsection (1) relating to particular property, the Public Prosecutor must give written notice of the application to –

- (a) the person who is subject to the pecuniary penalty order; and
- (b) any person whom the Public Prosecutor has reason to believe may have an interest in the property.

(5) The person who is subject to the pecuniary penalty order, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.

#### **105. CHARGE ON PROPERTY SUBJECT TO A RESTRAINING ORDER.**

(1) If –

- (a) a pecuniary penalty order is made against a person in relation to an indictable offence; and
- (b) a restraining order is, or has been, made against;

- (i) the person's property; or
- (ii) the person's property in relation to which an order under Subsection 105 (1) is, or has been, made; and

(c) the restraining order relates to that offence or a related offence,

then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the State of the penalty amount.

(2) The charge ceases to have effect in respect of the property –

- (a) if the pecuniary penalty order was made in relation to the person's conviction of the indictable offence and that conviction is quashed – upon the order being discharged under Subdivision 5; or
- (b) upon the discharge of the pecuniary penalty order or the restraining order or the restraining order by a court hearing an appeal against the making of the order; or
- (c) upon payment to the State of the penalty amount in satisfaction of the pecuniary penalty order; or
- (d) upon the sale or other disposition of the property:
  - (i) under an order under Section 109; or
  - (ii) by the owner of the property with consent of the court that made the pecuniary penalty order; or
  - (iii) if the restraining order directed the Commissioner of Police to take custody and control of the property – by the owner of the property with consent of the Commissioner of Police; or
- (e) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge,

whichever first occurs.

(3) The charge –

- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge; and
- (b) has priority over all other encumbrances; and
- (c) subject to Subsection (2), is not affected by any change of ownership of the property.

#### **106. CHARGES MAY BE REGISTERED.**

(1) If –

- (a) a charge is created by Section 105 on property of a particular kind; and

- (b) the provisions of any law of Papua New Guinea provides for the registration of title to, or charges over, property of that kind,

the Public Prosecutor may cause the charge so created to be registered under the provisions of that law.

(2) A person who purchases or otherwise acquires an interest in the property after the registration of the charge is, for the purposes of Section 105(2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

***Subdivision 5. – The Effect on Pecuniary Penalty Orders of Convictions being Quashed.***

**107. PECUNIARY PENALTY ORDER NOT AFFECTED IF NOT MADE IN RELATION TO A CONVICTION.**

A pecuniary penalty order made in relation to an offence but not made in relation to a person's conviction of an offence is not affected if the person is convicted of the offence and the conviction is subsequently quashed.

**108. EFFECT ON A PECUNIARY PENALTY ORDER IF MADE IN RELATION TO A CONVICTION OF AN OFFENCE.**

(1) A pecuniary penalty order made in relation to a person's conviction of a serious offence is discharged if –

- (a) the person's conviction of the offence is subsequently quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed) ; and
- (b) the Public Prosecutor does not, within 14 days after the conviction is quashed, apply to the Court that made the order for the order to be confirmed.

(2) The quashing of the conviction does not affect the pecuniary order –

- (a) for 14 days after the application is quashed; and
- (b) if the Public Prosecutor makes an application under Subsection (1)(b) — unless and until the Court makes a decision to refuse the application.

(3) A pecuniary penalty order made in relation to a person's conviction of an indictable offence that is not a serious offence is discharged if the person's conviction of the offence is subsequently quashed.

**109. NOTICE OF APPLICATION FOR CONFIRMATION OF PECUNIARY PENALTY ORDER.**

The Public Prosecutor must give to the person written notice of an application for confirmation of a pecuniary penalty order.

**110. PROCEDURE ON APPLICATION FOR CONFIRMATION OF PECUNIARY PENALTY ORDER.**

(1) The person may appear and adduce evidence at the hearing of the application for confirmation of the order.

(2) The Court may, in determining the application have regard to –

- (a) the transcript of any proceeding against the person for –
  - (i) the offence of which the person was convicted; or
  - (ii) if the person was taken to have been convicted of the offence because of Paragraph (c) of Section 6 – the other offence referred to in that paragraph,

including any appeals in relation to the conviction; and

- (b) the evidence given in any such proceeding.

**111. COURT MAY CONFIRM PECUNIARY PENALTY ORDER.**

The Court may confirm the pecuniary penalty order if the Court is satisfied that, when the Public Prosecutor applied for the order, the Court could have made the order –

- (a) on the ground that the person had committed the offence within the period of 7 years mentioned in Section 84(2) in relation to the order, or since the end of that period; and
- (b) without relying on the person's conviction of the offence.

**112. EFFECT OF THE COURT'S DECISION ON CONFIRMATION OF THE ORDER.**

(1) If the Court confirms the pecuniary penalty order under Section 97, the order is taken not to be affected by the quashing of the person's conviction of the offence.

(2) If the Court decides not to confirm the pecuniary penalty order, the order is discharged.

**PART 4. – FACILITATING INVESTIGATIONS AND PRESERVING  
PROPERTY.**

***Division 1.***

***Powers of search and seizure.***

**113. WARRANT TO SEARCH LAND ETC., FOR TAINTED PROPERTY.**

(1) A police officer may apply to a magistrate for the issue of a warrant to search land or premises for tainted property.

(2) The magistrate may administer an oath or affirmation for the purposes of the application.

(3) The application, and any oath required for the application, may be made in whole or part by telephone or e-mail.

(4) The magistrate may issue the warrant authorising the police officer, with such assistance, and by such force, as is necessary and reasonable –

- (a) to enter the land or premises; and
- (b) to search the land or premises for the tainted property and to seize it.

(5) The magistrate may issue the warrant only if –

- (a) he or she is satisfied that –
  - (i) the property authorised to be seized is tainted property; and
  - (ii) an information has been laid or will be laid within 48 hours for the relevant offence; and
  - (iii) there are reasonable grounds for issuing the warrant; and
- (b) the application sets out the grounds on which the warrant is being sought; and
- (c) the officer or another person has given the magistrate, either orally or in writing, any further information the magistrate requires about the grounds on which the warrant is being sought; and
- (d) the information given is verified before the magistrate on oath or affirmation or by affidavit.

(6) A warrant issued under this section must include –

- (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and
- (b) a description of the kind of property authorised to be seized; and
- (c) a time at which the warrant ceases to have effect; and
- (d) a statement whether entry is authorised at any time or at specified times.



(7) The search warrant is taken to have been issued, and comes into force, when it is signed by the magistrate.

**114. APPLICATION FOR A WARRANT BY TELEPHONE OR E-MAIL.**

(1) A police officer may apply to a magistrate for a warrant mentioned in Section 113 by telephone, facsimile or e-mail –

- (a) in an urgent case; or
- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The applicant must tell the magistrate his or her –

- (a) name; and
- (b) rank in the police force; and
- (c) number in the police force (if any).

(3) An application under this section must include all the information that is required to be provided in an application under Section 113

(4) The magistrate may issue the warrant only if –

- (a) the matters in Section 113(5)(a), (b) and (c) are satisfied; and
- (b) the applicant gives an undertaking that the information given will be verified in writing by affidavit.

(5) The magistrate must tell the applicant –

- (a) the facts on which the magistrate relied as grounds for the issue of the warrant; and
- (b) the terms of the warrant; and
- (c) the day on which and the time at which the warrant was signed.

(6) The applicant must, as soon as practicable after the issue of the warrant, give to the magistrate the affidavit mentioned in Subsection (4)(b).

**115. RECORD OF PROCEEDINGS BEFORE MAGISTRATE.**

(1) A magistrate who issues a search warrant must record in the approved form all relevant particulars of the grounds the magistrate has relied on to justify the issue of the warrant.

(2) The magistrate may decline to record any matter that might disclose the identity of a person if the magistrate believes on reasonable grounds that to do so might jeopardise the safety of any person.

**116. DUTY TO SHOW WARRANT.**

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

(2) If the officer, for a reasonable cause, cannot produce the warrant at the time of the request, the officer may, instead, produce a form of the warrant –

- (a) completed substantially in the terms of the warrant issued by the magistrate; and
- (b) stating –
  - (i) the name of the officer who applied for the warrant; and
  - (ii) the name of the magistrate who issued the warrant; and
  - (iii) the date and time when the warrant was issued and expires; and
  - (iv) the address or other description of the premises that are the subject of the warrant; and
  - (v) a summary of the nature of the warrant and the powers conferred by the warrant.

**117. USE OF FORCE TO ENTER PREMISES.**

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

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

**118. USE OF ASSISTANTS TO EXECUTE WARRANT.**

A police officer may execute a search warrant with the aid of such assistance as the officer considers necessary.

**119. EXPIRY OF WARRANT.**

A search warrant ceases to have effect at the earliest of the following times –

- (a) at the end of 1 month after its issue, or earlier if determined by the magistrate;
- (b) on being withdrawn by the magistrate who issued it;
- (c) when it is executed.

**120. DEFECTS IN WARRANTS.**

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

**121. SEARCH OF PERSONS UNDER SEARCH WARRANT.**

A police officer executing a search warrant under this Division on premises may, if the search warrant authorises the officer to do so, search any person found in or on the premises if the officer suspects on reasonable grounds that the person has property of the kind described in the warrant.

**122. POLICE OFFICER MAY SEIZE TAINTED PROPERTY.**

In the course of a search, under a warrant issued under Section 113 for a thing of a kind specified in the warrant, if a police officer finds another thing the warrant is taken to authorise the officer to seize the other thing if there are reasonable grounds –

- (a) for believing the other thing to be tainted property in relation to a serious offence, or to afford evidence about the commission of a criminal offence in Papua New Guinea; or
- (b) for believing that it is necessary to seize the property or thing to prevent it being concealed, lost or destroyed, or used to commit, continue or repeat the offence or another offence.

**123. RETURN OF SEIZED PROPERTY – GENERAL RULE.**

(1) If property has been seized under this Division, a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) The Court must order the Commissioner of Police to return the property to the person if the Court is satisfied that –

- (a) the person is entitled to possession of the property; and
- (b) the property is not tainted property; and
- (c) the person in relation to whose conviction, charging or proposed charging the property was seized has no interest in the property.

**124. RETURN OF SEIZED PROPERTY IF NO INFORMATION LAID.**

(1) Subsection (2) applies if property has been seized under this Division and –

- (a) either –
  - (i) when the property was seized, an information had not been laid for a relevant offence; or
  - (ii) an information is not laid for a relevant offence within 48 hours after the property was seized; or
- (b) proceedings for forfeiture of the property had not been commenced within 48 hours after the property was seized.

(2) The Commissioner of Police must, subject to Section 126 arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that 48 hours.

**125. RETURN OF SEIZED PROPERTY IF NO FORFEITURE ORDER MADE.**

(1) Subsection (2) applies if –

- (a) property has been seized under this Division; and
- (b) any proceedings for an offence because of which the property is tainted have been completed; and
- (c) the Minister –
  - (i) has not applied for a forfeiture order; and
  - (ii) does not apply for a forfeiture order within 14 days after the proceedings are completed; and
- (d) the property is in the Commissioner of Police's possession.

(2) The Commissioner of Police must, subject to Section 126, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable.

**126. RETENTION OF SEIZED PROPERTY IF RESTRAINING ORDER MADE.**

(1) Subsections (2) and (3) apply if –

- (a) property has been seized under this Division; and
- (b) a restraining order is made against the property before the Commissioner of Police is required by this Act to return it.

(2) If when the restraining order is made the property is in the Commissioner of Police's possession, the Commissioner of Police may apply to the Court for an order that the Commissioner of Police keep possession of the property.

(3) If the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence, the Court may order that the Commissioner of Police may retain the property for as long as the property is so required as evidence.

(4) If the Court makes an order under Subsection (3) about the property, the Commissioner of Police must arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

(5) In proceedings for an order under Subsection (3), the Court may order that a witness need not –

- (a) answer a specified question; or
- (b) produce a specified document,

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or the prosecution of a person for, an offence.

**127. HOW COMMISSIONER OF POLICE MUST DEAL WITH PROPERTY SUBJECT TO FORFEITURE ORDER.**

(1) Subsection (2) applies if –

- (a) property has been seized under this Division; and
- (b) while the property is in the Commissioner of Police’s possession, a forfeiture order is made against the property.

(2) The Commissioner of Police must deal with the property as required by the order.

***Division 2.***

***Search for and seizure of tainted property –foreign offences.***

**128. APPLICATION OF THIS DIVISION.**

(1) If, under the *Mutual Assistance Act*, a police officer is authorised to apply to a magistrate for a search warrant under this Act in relation to tainted property in relation to a foreign indictable offence, this Division applies to –

- (a) the application; and
- (b) any warrant issued as a result of the application.

(2) In this Division –

- (a) a reference to tainted property is taken to be a reference to tainted property in relation to a foreign indictable offence; and
- (b) a reference to a relevant offence is taken to be a reference to a relevant foreign indictable offence.

**129. POLICE MAY SEIZE TAINTED PROPERTY.**

(1) Subsection (2) applies if, in the course of searching under a warrant mentioned in Section 128 for tainted property, a police officer finds –

- (a) property that there are reasonable grounds to believe is tainted property for which another search warrant under that section is in force; or
- (b) anything that there are reasonable grounds to believe:
  - (i) is relevant to a criminal proceeding in the foreign country for the foreign indictable offence; or
  - (ii) will afford evidence as to the commission of a criminal offence.

(2) If there are reasonable grounds for believing that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction, or its

use in committing, continuing or repeating the offence, the warrant is taken to authorise the police officer to seize the property or thing.

**130. RETURN OF SEIZED PROPERTY – GENERAL RULE.**

(1) If property has been seized under this Division, a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) The Court must order the Commissioner of Police to return the property to the person if the Court is satisfied that –

- (a) the person is entitled to possession of the property; and
- (b) the property is not tainted property; and
- (c) the person who is believed or alleged to have committed the relevant foreign indictable offence has no interest in the property.

**131. RETURN OF SEIZED PROPERTY IF NO FORFEITURE ORDER MADE.**

(1) Subsection (2) applies if property has been seized under this Division and –

- (a) proceedings for forfeiture of the property had not been commenced within 48 hours after it was seized; or
- (b) no forfeiture order is made against the property within 30 days after it was seized,

and the property is in the Commissioner of Police's possession at the end of the period of 30 days.

(2) The Commissioner of Police must arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

**132. RETENTION OF SEIZED PROPERTY IF RESTRAINING ORDER MADE.**

(1) This section applies if –

- (a) property has been seized under this Division; and
- (b) the Commissioner of Police would be required to arrange for the property to be returned to a person as soon as practicable after the end of a period; and
- (c) before the end of that period:
  - (i) a foreign restraining order against the property is registered in the Court; or
  - (ii) the Court makes a restraining order against the property.

(2) If the property is in the Commissioner of Police's possession when the restraining order is made or registered, the Commissioner of Police may apply to the Court for an order that the Commissioner of Police retain possession of the property until it is dealt with in accordance with another provision of this Act.

(3) The Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence, order that the Commissioner of Police may retain the property for as long as the property is so required as evidence.

(4) In proceedings for an order under Subsection (2), the Court may order that a witness need not –

- (a) answer a specified question; or
- (b) produce a specified document,

if the Court is satisfied that answering the question, or producing the document, may prejudice the investigation of an offence or the prosecution of a person.

(5) If the Court has made an order under Subsection (4), the Commissioner of Police must arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

### **133. PROPERTY SUBJECT TO FORFEITURE ORDER.**

(1) Subsection (2) applies if –

- (a) property has been seized under this Division; and
- (b) while the property is in the Commissioner of Police's possession, a foreign forfeiture order against the property is registered in the Court.

(2) The Commissioner of Police must deal with the property as required by the order.

### ***Division 3.***

#### ***Restraining Orders for Foreign Offences.***

### **134. APPLICATION OF THIS DIVISION.**

This Division applies to an application by the Public Prosecutor for a restraining order under this Act against any property of a person in relation to a foreign indictable offence, and to any restraining order made as a result of the application.

### **135. DEFINITION - DEFENDANTS.**

A person is a defendant for this Division if –

- (a) he or she has been convicted of a foreign indictable offence; or

- (b) there are reasonable grounds for believing that a criminal proceeding has commenced, or is about to be commenced, against him or her in a foreign country.

### 136. APPLICATION FOR INTERIM RESTRAINING ORDER.

(1) If, under the Mutual Assistance Act, the Minister has authorised the Public Prosecutor to apply for a restraining order under this Act against any property of a defendant, the Public Prosecutor may apply to the Court for an restraining order against –

- (a) property held by the defendant; or
- (b) specified property held by another person.

(2) The application may be made *ex parte*.

(3) The application must be in writing, and must be accompanied by an affidavit stating –

- (a) if the defendant has been convicted of a foreign indictable offence –the offence of which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction; and
- (b) if the defendant has not been convicted of a foreign indictable offence – the offence for which criminal proceedings are believed to have been commenced, and the grounds for believing that the defendant committed the offence; and
- (c) if it is believed that criminal proceedings are about to be commenced against the defendant –the grounds for believing that the proceedings will be commenced within 7 days; and
- (d) a description of the property against which the restraining order is sought; and
- (e) the name and address of the person who is believed to be in possession of the property; and
- (f) if the application seeks a restraining order against property of a defendant –the grounds for believing that the property is tainted property in relation to a foreign indictable offence, or that the defendant derived a benefit directly or indirectly from committing such an offence; and
- (g) if the application seeks a restraining order against property of a person other than a defendant –the grounds for the belief that the property is tainted property in relation to a foreign indictable offence, or is subject to the effective control of the defendant.

### 137. NOTICE OF APPLICATION FOR RESTRAINING ORDER.

(1) Before making a restraining order under Section 138, the Court –



- (a) must require written notice to be given, within a reasonable time, to any person who may have an interest in the property; and
- (b) may take evidence from such a person.

(2) However, if the Public Prosecutor so requests, the Court must consider the application without requiring notice to be given in accordance with Subsection (1), but a restraining order made in reliance on this subsection ceases to have effect after 14 days or a lesser period that the Court specifies in the order.

(3) The Court may, on application by the Public Prosecutor, extend the period of operation of a restraining order made in reliance on Subsection (2), but must not consider the application without requiring reasonable written notice to be given to any person who may have an interest in the property.

### **138. MAKING RESTRAINING ORDERS.**

(1) Subsection (2) applies if the Public Prosecutor applies to the Court for a restraining order against property of a defendant and the Court is satisfied that –

- (a) the defendant has been convicted of a foreign indictable offence, or a criminal proceeding for a foreign indictable offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country; and
- (b) if the defendant has not been convicted of a foreign indictable offence – there are reasonable grounds for believing that the defendant committed the offence; and
- (c) if the application seeks a restraining order against property of a defendant – there are reasonable grounds for believing that:
  - (i) the property is tainted property in relation to a foreign indictable offence; or
  - (ii) the defendant derived a benefit directly or indirectly from the commission of the offence; and
- (d) if the application seeks a restraining order against property of a person other than a defendant – there are reasonable grounds for believing that the property is:
  - (i) tainted property in relation to a foreign indictable offence; or
  - (ii) subject to the effective control of the defendant.

(2) The Court may make an order prohibiting the defendant or any other person from –

- (a) disposing of, or otherwise dealing with the property specified in the order; or
- (b) disposing of, or otherwise dealing with the part of, or the interest in, the property, that is specified in the order,

either absolutely or except in a way specified in the order.

(3) An order under Subsection (2) may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following –

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act or in being represented in a criminal proceeding in a foreign country;
- (c) another specified debt incurred by the person in good faith.

(4) However, the order must not make provision of that kind unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.

(5) In proceedings for an order under Subsection (2), the Court may –

- (a) take into account evidence that would otherwise be inadmissible; and
- (b) if the Court is satisfied that answering a specified question or producing a specified document may prejudice the investigation of an offence or the prosecution of a person order that a witness need not:
  - (i) answer the question; or
  - (ii) produce the document.

### **139. UNDERTAKINGS BY STATE.**

Before making a restraining order, the Court may require the State to give an undertaking about the payment of damages or costs, or both, for the making and execution of the order.

### **140. SERVICE OF INTERIM RESTRAINING ORDER.**

(1) A copy of a restraining order must be served on a person affected by it in the way the Court directs.

(2) If the Court is satisfied that it is in the public interest to do so, it may order that service under Subsection (1) be delayed for a specified period.

### **141. ANCILLARY ORDERS AND FURTHER ORDERS.**

(1) If the Court makes a restraining order, any of the following may apply to the Court for an ancillary order –

- (a) the Public Prosecutor;
- (b) a person whose property is the subject of the restraining order (the owner);
- (c) with the leave of the Court –any other person.

(2) An ancillary order may do any 1 or more of the following –

- (a) vary the property to which the restraining order relates;
- (b) vary any condition to which the restraining order is subject;
- (c) order a person to be examined on oath before the Court about the affairs of the owner or the defendant;
- (d) provide for carrying out any undertaking about the payment of damages or costs given by the State in relation to the making of the restraining order;
- (e) order the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;
- (f) anything else that the Court considers necessary in the circumstances.

(3) If a person who has an interest in property against which a restraining order is made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court must grant the application if the Court is satisfied that –

- (a) the applicant was not involved in the commission of the offence in relation to which the order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, that the applicant acquired the interest
  - (i) for sufficient consideration; and
  - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
- (b) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) The Court must not hear an application under Subsection (1) unless the applicant has given reasonable written notice of the application to each other person who is entitled to make an application under that subsection for the restraining order.

(5) Before making the order, the Court –

- (a) must require written notice to be given, within, a reasonable time, to any person who may have an interest in the property ; and
- (b) may take evidence from such a person.

(6) If a person is required, in accordance with an order under Subsection (2)(c) or (e), to make a statement on oath –

- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or a penalty; and

- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

#### **142. REGISTRATION OF RESTRAINING ORDER.**

(1) An authority that administers a law of Papua New Guinea that provides for the registration of title to, or charges over, property of a particular kind, may, on application by the Public Prosecutor, record on a register kept under that law the particulars of the interim restraining order that applies to property of that kind.

(2) If those particulars are so recorded, a person who subsequently deals with the property is taken, for Section 143, to have notice of the order at the time of the dealing.

#### **143. CONTRAVENTION OF RESTRAINING ORDERS.**

(1) A person who knowingly contravenes a restraining order under this Division by disposing of, or otherwise dealing with, property that is subject to the order commits an offence.

Penalty: For a natural person – a fine of K50,000.00 or imprisonment for 5 years, or both; or

For a body corporate – a fine of K250,000.00

(2) If a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Minister may apply to the Court for an order setting aside the disposition or dealing.

(3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may -

- (a) set aside the relevant disposition or dealing with effect from the day when it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

#### **144. WHEN A RESTRAINING ORDER CEASES TO BE IN FORCE.**

(1) A restraining order ceases to have effect at the end of 30 days starting on the day when the order is made.

(2) Where –

- (a) if the Court makes a restraining order, it may, on application by the Minister made before the end of the period mentioned in Subsection (2), extend the period of operation of the order; and

- (b) if –
  - (i) a restraining order is made against property; and
  - (ii) before the end of the period mentioned in Subsection (1) (including any extension of that period under Subsection (2), a foreign restraining order against the property is registered in the Court under the *Mutual Assistance Act*,

the restraining order ceases to have effect when the foreign restraining order is registered.

***Division 4.***

***Foreign Restraining Orders.***

**145. REGISTERED FOREIGN RESTRAINING ORDERS – COURT MAY DIRECT COMMISSIONER OF POLICE TO TAKE CUSTODY AND CONTROL OF PROPERTY.**

(1) If a foreign restraining order has been registered by the Court under the *Mutual Assistance Act*, on application by the Public Prosecutor, the Court may, if satisfied that the circumstances so require order the Commissioner of Police –

- (a) to take custody and control of the property subject to a registered foreign restraining order; and
- (b) to manage or otherwise deal with the property in accordance with the directions of the Court.

(2) The Court must not make an order under Subsection (1) without the consent of the Commissioner for Police.

(3) Before making an order under Subsection (1), the Court must require reasonable notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(4) If the Court makes an order under Subsection (1) in relation to property, the Commissioner of Police:

- (a) may do anything that is reasonably necessary for preserving the property; and
- (b) for that purpose may exercise any power that the owner of the property could exercise; and
- (c) may do so to the exclusion of the owner.

(5) If the Court makes an order under Subsection (1) against property of a person, the Court may, when it makes the order or afterwards, make any of the following orders:

- (a) an order directing the person to give the Commissioner of Police a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;

- (b) an order regulating the performance or exercise of the Commissioner's functions, duties or powers under the registered foreign restraining order;
- (c) an order deciding any question about the property;
- (d) if the registered foreign restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property –an order directing that those expenses be taxed, as provided in the order, before being met;
- (e) an order providing for the payment to the Commissioner of Police out of the property of the costs, charges and expenses incurred in relation to the performance or exercise by the Commissioner of Police of functions, duties or powers under the registered foreign restraining order.

#### **146. REGISTERED FOREIGN RESTRAINING ORDERS - UNDERTAKINGS.**

(1) Subsection (2) applies to property if the property is subject to a registered foreign restraining order.

(2) The Court may, on application by a person claiming an interest in the property, make an order about the giving, or carrying out, of an undertaking by the State, about the payment of damages or costs for the registration, making or operation of the order.

#### **147. SERVICE OF REGISTERED FOREIGN RESTRAINING ORDER.**

(1) A copy of a registered foreign restraining order or an order under Section 145 must be served on a person affected by it in the way the Court directs.

(2) If the Court is satisfied that it is in the public interest to do so, it may order that service under Subsection (1) be delayed for a specified period.

#### **148. COMMISSIONER OF POLICE TO SATISFY REGISTERED FOREIGN PECUNIARY PENALTY ORDER.**

(1) In this section, a reference to a registered foreign restraining order includes an order under Section 145.

(2) This section applies if –

- (a) a foreign pecuniary penalty order is registered in the Court against a defendant; and
- (b) a registered foreign restraining order is in force against property of –
  - (i) the defendant; or
  - (ii) another person.

(3) The Court may direct the Commissioner of Police to satisfy the pecuniary penalty order by a payment to the State out of the property –

- (a) on the registration of the later of the orders; or
- (b) on application by the Public Prosecutor, at any time while the restraining order remains in force.

(4) To enable the Commissioner of Police to comply with a direction under Subsection (3), the Court may –

- (a) direct the Commissioner of Police to sell or otherwise dispose of a specified part of the property; and
- (b) order that the Commissioner of Police may:
  - (i) execute any deed or instrument in the name of a person who owns, or has an interest in, the property, and
  - (ii) do anything necessary to give validity and effect to such a deed or instrument.

(5) If the Court makes an order of the kind mentioned in Subsection (4)(b), the execution of a deed or instrument by the Commissioner of Police in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Commissioner of Police executed it.

**149. AMOUNTS PAID FOR REGISTERED FOREIGN PECUNIARY PENALTY ORDERS.**

If a foreign pecuniary penalty order is registered in the Court under the *Mutual Assistance Act*, any amount paid, whether in Papua New Guinea or elsewhere, in satisfaction of the foreign pecuniary penalty order is taken to have been paid in satisfaction of the debt that arises because of the registration of that order.

**150. REGISTRATION OF REGISTERED FOREIGN RESTRAINING ORDER.**

(1) In this section, a reference to a registered foreign restraining order includes a reference to an order under Section 145.

(2) An authority that administers a law of Papua New Guinea that provides for the registration of title to, or charges over, property of a particular kind, may, on application by the Public Prosecutor, record on a register kept under that law the particulars of a registered foreign restraining order that applies to property of that kind.

(3) If those particulars are so recorded, a person who subsequently deals with the property is taken, for Section 151 to have notice of the registered foreign restraining order at the time of the dealing.

**151. CONTRAVENTION OF REGISTERED FOREIGN RESTRAINING ORDER.**

(1) In this section, a reference to a registered foreign restraining order includes a reference to an order under Section 145.

(2) A person who knowingly contravenes a registered foreign restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence.

Penalty: For a natural person – a fine of K50,000.00 or imprisonment for 5 years, or both; or

For a body corporate – a fine of K250,000.00.

(3) If a registered foreign restraining order is in force against property and the property is disposed of, or otherwise dealt with, in contravention of the order, the Public Prosecutor may apply to the Court for an order setting aside the disposition or dealing.

(4) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may –

- (a) set aside the relevant disposition or dealing with effect from the day when it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

## **152. REGISTERED FOREIGN RESTRAINING ORDERS – WHEN ORDER CEASES TO BE IN FORCE.**

A registered foreign restraining order ceases to be in force when the registration is cancelled in accordance with the *Mutual Assistance Act*.

### ***Division 5.***

#### ***Production orders and other information gathering powers.***

## **153. APPLICATION FOR PRODUCTION ORDERS.**

(1) Subsection (2) applies if –

- (a) a person has been convicted of an indictable offence and there are reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence; or
- (b) there are reasonable grounds for suspecting that a person has committed an indictable offence and that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence.

(2) A police officer may apply to a magistrate for a production order against the person.

(3) The application –



- (a) may be made *ex parte*; and
- (b) must be in writing and must be accompanied by an affidavit.

(4) Subsection (5) applies if a police officer applies for a production order in relation to an offence, and includes in the affidavit a statement to the effect that there are reasonable grounds for believing that –

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) property specified in the affidavit is under the effective control of the person mentioned in Paragraph (a).

(5) For this section, the magistrate hearing the application may treat any document relevant to identifying, locating or quantifying that property as a property –tracking document in relation to the offence.

#### **154. PRODUCTION ORDERS.**

(1) The magistrate may, if satisfied that there are reasonable grounds for doing so, make a production order requiring a person to –

- (a) produce to a police officer, at a specified time and place, any documents of the kind mentioned in Section 153(1) that are in the person’s possession or control; or
- (b) make available to a police officer for inspection, at a specified time or times and place or places, any documents of that kind that are in the person’s possession or control.

(2) The order has effect despite any law that prohibits disclosure of information including the law relating to solicitor-client confidentiality.

(3) However, a production order under Subsection (1)(a) may not require the production of accounting records used in the ordinary business of banking, including ledgers, day –books, cash books and account books.

(4) If a production order requires a person to produce or make available a document that is a computer file, the order is taken to require the person –

- (a) to allow the police officer named in the order, or a person acting under the direction of that officer, to use a computer on which the document is held; and
- (b) to give the officer any password necessary to allow the officer to have access to the document; and
- (c) to allow the officer to use any computer software necessary to allow the officer to have access to the document.

**155. SCOPE OF POLICE POWERS UNDER PRODUCTION ORDER.**

(1) If a document is produced to a police officer, or made available to a police officer for inspection, under a production order, the police officer may do any one or more of the following:

- (a) inspect the document;
- (b) take extracts from it;
- (c) print it;
- (d) make copies of it;
- (e) in relation to an order under Paragraph (a) — keep the document if, and for as long as, reasonably necessary for the purposes of this Act.

(2) If a police officer keeps a document, the police officer must –

- (a) make a copy of the document, certify the copy in writing to be a true copy and give the copy to the person to whom the order was addressed; or
- (b) allow the person –
  - (i) to inspect the document; or
  - (ii) to take extracts from it; or
  - (iii) to make copies of it.

**156. WHAT USE CAN BE MADE OF INFORMATION.**

(1) If a person produces, or makes available, a document under a production order –

- (a) the production or making available of the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document,

is not admissible against the person in any criminal proceedings except a proceeding for an offence against Section 158.

(2) A person required by a production order to produce or make available a document is not excused from doing so on the ground that producing the document or making it available –

- (a) might tend to incriminate the person or make the person liable to a penalty; or
- (b) would be in breach of an obligation (whether imposed by an Act or otherwise) not to disclose the existence or contents of the document.

**157. VARIATION OF PRODUCTION ORDER.**

(1) If a production order requires a person to produce a document to a police officer, the person may apply to a magistrate to vary the order.

(2) If the magistrate is satisfied that the document is essential to the person's business activities, the magistrate may vary the production order so that it requires the person to make the document available to a police officer for inspection.

**158. FAILURE TO COMPLY WITH PRODUCTION ORDER.**

If a production order requires a person to produce a document to a police officer, or make a document available to a police officer for inspection, the person commits an offence if the person –

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order, produces or makes available a document that the person knows to be false or misleading in a material particular without:
  - (i) telling the police officer that the document is false or misleading, and the way in which it is false or misleading; and
  - (ii) giving correct information to the police officer if the person has, or can reasonably obtain, the correct information.

Penalty: If the offender is a natural person – a fine of K50,000.00 or imprisonment for 5 years, or both; or

If the offender is a body corporate – a fine of K250,000.00.

**159. SEARCH WARRANT TO FACILITATE INVESTIGATION.**

(1) A police officer may apply to a magistrate for a warrant under Subsection (4) to search premises for a document if –

- (a) a person is convicted of an indictable offence, and there are reasonable grounds for suspecting that there is on premises a property-tracking document for the offence; or
- (b) there are reasonable grounds for suspecting that a person has committed an indictable offence and there is on the premises a property – tracking document for the offence.

(2) If a police officer applies for a warrant under Subsection (4) in relation to an offence and includes in an accompanying affidavit a statement to the effect that there are reasonable grounds for believing that –

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from committing the offence; and
- (b) property specified in the affidavit is subject to the effective control of the person;

the magistrate may treat any document relevant to identifying, locating or quantifying the property as a property – tracking document in relation to the offence.

(3) Despite any enactment that prohibits disclosure of information, if an application is made under Subsection (1) for a warrant to search premises for a property-tracking document –

- (a) the magistrate may, if satisfied that there are reasonable grounds for doing so, issue a warrant of that kind in the same way, and subject to the same conditions, as the magistrate could issue a search warrant under Division 1 of Part 4; and
- (b) subject to this Division, the warrant may be executed in the same way as if it had been issued under that Division.

(4) However, a magistrate may not issue a search warrant under Subsection (3) unless the magistrate is satisfied that –

- (a) it would not be appropriate to make a production order for the document; or
- (b) the investigation in relation to which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without warning to any person.

(5) If a police officer enters premises in execution of a warrant issued under this section, the police officer may seize –

- (a) any document that is likely to be of substantial value (whether by itself or together with other documents) to the investigation in relation to which the warrant was issued; and
- (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

#### **160. PRODUCTION ORDERS AND SEARCH WARRANTS FOR FOREIGN OFFENCES.**

(1) If a police officer applies to a magistrate under the *Mutual Assistance Act* for –

- (a) a production order under this Act in relation to a foreign indictable offence; or
- (b) a search warrant under this Act for a property-tracking document in relation to a foreign indictable offence,

this Division applies to the application and to any order or warrant issued as a result of the application as if a reference in this Division to a serious offence were a reference to the foreign indictable offence.

(2) If a police officer takes possession of a document under a production order made, or a warrant issued, in relation to a foreign indictable offence, the police officer may keep the document until the Minister gives a written direction about how the document is to be dealt with, but not for longer than 1 month.

(3) A direction by the Minister under Subsection (2) about a document may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the relevant order or warrant.

***Division 6.***

***Monitoring orders.***

**161. MONITORING ORDERS.**

(1) A police officer of, or above, the rank of sergeant may apply to a magistrate in accordance with Subsection (2) for an order directing a cash dealer to give information to a police officer, or an officer of the Ombudsman Commission appointed under Section 25 of the *Organic Law on the Ombudsman Commission*, about transactions conducted through an account held by a specified person with the institution during the period specified in the order.

(2) The application –

(a) maybe made *ex parte*; and

(b) must be in writing and accompanied by an affidavit.

(3) A magistrate may not make a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person about whose account that information is sought –

(a) has committed, is about to commit, an indictable offence; or

(b) was involved in committing, or is about to involve in committing, an indictable offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from committing an indictable offence.

(4) The period specified in the order –

(a) must not begin before the day when notice of the order is given to the cash dealer; and

(b) must end not later than 3 months after the day the order is made.

(5) A monitoring order must specify –

(a) the name or names in which the account is believed to be held; and

(b) the kind of information that the cash dealer is required to give; and

(c) the name of the officer to whom, and the way in which, the information is given.

(6) If the cash dealer is, or has been, subject to a monitoring order, the fact that the monitoring order has been made must be disregarded for the application of Sections 34 and 35 of the *Constitution*.

(7) A reference in this section to a transaction conducted through an account includes –

- (a) the making of a fixed term deposit; and
- (b) in relation to a fixed term deposit –the transfer of the amount deposited, or any part of it, at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the cash dealer.

**162. MONITORING ORDERS –OFFENCES FOR FINANCIAL INSTITUTIONS AND CASH DEALERS.**

(1) A cash dealer that has been given notice of a monitoring order and who knowingly –

- (a) contravenes the order; or
- (b) provides false or misleading information in purported compliance with the order,

commits an offence.

Penalty: A fine of K350,000.00.

(2) A cash dealer that is, or has been, subject to a monitoring order commits an offence if the cash dealer discloses the existence or the operation of the order, except –

- (a) to the Commissioner of Police, or to a police officer authorised in writing by the Commissioner of Police to receive the information; or
- (b) to a senior officer of the Ombudsman Commission appointed under Section 25 of the *Organic Law on the Ombudsman Commission*; or
- (c) to an officer or agent of the institution, to ensure that the order is complied with; or
- (d) to a legal practitioner, to obtain legal advice or representation in relation to the order.

Penalty: If the person is a natural person –a fine of K70,000.00 or imprisonment for 7 years or both; or

If the person is a body corporate –a fine of K350,000.00.

**163. MONITORING ORDERS –OTHER OFFENCES.**

(1) This section applies to the following persons –

- (a) the Commissioner of Police;
- (b) a police officer authorised in writing by the Commissioner of Police to receive information about a monitoring order;
- (c) an officer of the Ombudsman Commission appointed under Section 25 of the *Organic Law on the Ombudsman Commission*;
- (d) an officer or agent of a cash dealer;
- (e) a legal practitioner.

(2) A person of a kind mentioned in Subsection (1) to whom the existence or operation of a monitoring order has been disclosed commits an offence if he or she:

- (a) discloses the existence or operation of the order except to another person of a kind mentioned in Subsection (1) in the following circumstances -
  - (i) if the disclosure is made by the Commissioner of Police, a police officer or an officer of the Ombudsman Commission –in connection with the person’s duties;
  - (ii) if the disclosure is made by an officer or agent of a cash dealer –to ensure that the order is complied with, or to obtain legal advice or representation for the order; or
  - (iii) if the disclosure is made by a legal practitioner –to give legal advice or make representations in relation to the order; or
- (b) after the person has ceased to be a person of a kind mentioned in Subsection (1) –makes a record of, or discloses, the existence or the operation of the order in any circumstances.

Penalty: If the person is a natural person –a fine of K70, 000.00 or imprisonment for 7 years, or both; or

If the person is a body corporate –a fine of K350, 000.00.

(3) Despite Subsection (2), the Commissioner of Police, a police officer or an officer of the Ombudsman Commission who discloses the existence or operation of a monitoring order –

- (a) in connection with legal proceedings; or
- (b) in the course of proceedings before a court,

is not guilty of an offence.

(4) Despite any other law, the Commissioner of Police, a police officer or an officer of the Ombudsman Commission may not be required to disclose to a court the existence or operation of a monitoring order.

(5) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

**PART 5. – DISCLOSURE OF INFORMATION HELD BY GOVERNMENT  
DEPARTMENT.**

**164. DIRECTION TO DISCLOSE INFORMATION.**

Despite any other law, the Minister may direct the person in charge of a Government department or statutory body to give or disclose, to the Minister or a police officer nominated by the Minister, a document or information that is in the possession or under the control of that person or to which that person has access, if the Minister is satisfied that the document or information is relevant to –

- (a) establishing whether an indictable offence has been, or is being, committed; or
- (b) the making, or proposed or possible making, of an order under Part 3 or 4 of this Act.

**165. FURTHER DISCLOSURE OF INFORMATION AND DOCUMENTS.**

(1) A person to whom a document or information has been disclosed under Section 164 must not further disclose the document or information except for –

- (a) the investigation of, or the prosecution, or proposed or possible prosecution, of a person for an indictable offence; or
- (b) an investigation relating to proceedings, or proposed or possible proceedings, for the making of an order under this Act or an investigation relating to the making, or proposed or possible making, of such an order.

(2) A person to whom a document or information has been disclosed in accordance with Subsections (1) or this subsection must not disclose the document or information to another person except for a purpose mentioned in Subsection (1)(a) or (b).

(3) If a document or information is disclosed to a person under section or Subsections (1) and (2), the person –

- (a) must not voluntarily give the document or information in evidence in a proceeding before the Court other than a proceeding of a kind mentioned in Subsection (1)(a) or (b); and
- (b) may not be required to give the document or information to the Court.

(4) A person who discloses a document or information in contravention of this section is guilty of an offence.

Penalty: A fine of K10,000.00 or imprisonment for 2 years, or both.

**166. EVIDENTIAL VALUE OF COPIES.**

(1) If a document is examined by or given to the Minister or a police officer under a direction under Section 164 the person who examines it, or to whom it is



given, or an officer or person authorised for the purpose by the person in charge of the Government department or statutory body to which the direction was given, may make or cause to be made 1 or more copies of the document.

(2) A copy purporting to be certified by the person in charge of the Government department or statutory body to be a copy made under Subsection (1) –

- (a) is evidence of the nature and content of the original document; and
- (b) has the same probative force as the original document would have had if it had been proved in the ordinary way.

**PART 6. – PROPERTY UNDER THE CONTROL OF THE COMMISSIONER OF POLICE.**

**167. COMMISSIONER OF POLICE TO SATISFY PECUNIARY PENALTY ORDER.**

(1) This section applies if –

- (a) a pecuniary penalty order is made against a person in reliance on the defendant's conviction of an offence; and
- (b) a restraining order is in force against property, in reliance on the person's conviction, or alleged commission, of the offence.

(2) The Court may direct the Commissioner of Police to satisfy the pecuniary penalty order by a payment to the State out of the property –

- (a) on the making of the later of the orders; or
- (b) on application by the Minister, at any time while the restraining order remains in force.

(3) To enable the Commissioner of Police to comply with a direction under Subsection (2), the Court may –

- (a) direct the Commissioner of Police to sell or otherwise dispose of a part of the property that the Court specifies; and
- (b) order that the Commissioner of Police may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns or has an interest in the property.

(4) If the Court makes an order of the kind mentioned in Subsection (3)(b), the execution of a deed or instrument by the Commissioner of Police in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Commissioner of Police executed it.

(5) The Commissioner of Police must not take action to sell property under a direction under Subsection (2) –

- (a) until –
  - (i) the periods for the lodging of an appeal against the relevant conviction, and the making of the relevant pecuniary penalty order and restraining order, have expired without any such appeal having been lodged; or
  - (ii) if an appeal is lodged against a relevant conviction, or the making of the relevant pecuniary penalty order or restraining order – all the appeals lapse or are finally determined; or
- (b) if proceedings in bankruptcy against the owner of the property are in progress or the owner is a bankrupt.

**168. LIABILITY UNDER A FORFEITURE ORDER OR AUTOMATIC FORFEITURE TO BE SATISFIED BY COMMISSIONER OF POLICE.**

(1) This section applies if –

- (a) the Commissioner of Police has taken control of property under this Act; and
- (b) a forfeiture order is made, or the property is forfeited under Section 71 because of the conviction of the person of the offence in relation to which the restraining order was made.

(2) The Commissioner of Police may apply to the Court, before which the person was convicted, for an order directing the Commissioner of Police to pay to the State out of the property –the amount that the Minister determines to be the value (at the time of the determination) of the property.

(3) The Court may make an order in accordance with Subsection (2) and any other order that is necessary to enable the Commissioner of Police to comply with the order, including –

- (a) an order directing the Commissioner of Police to dispose of a specified part of the property;
- (b) an order empowering a person to execute a document or to do anything else necessary to enable the Commissioner of Police to dispose of the property;
- (c) an order specifying the person to whom any money remaining after making the payments authorised by Subsection (4) should be paid.

(4) Proceeds realised by the Commissioner of Police from the property, because of an order under this Act, must be applied as follows –

- (a) first –in payment of expenses incurred by the Commissioner of Police in connection with the property;
- (b) second –in accordance with an order made under Subsection (3);
- (c) last –to the person mentioned in an order of a kind mentioned in Subsection (3) or otherwise to the person the Commissioner of Police reasonably believes is entitled to the proceeds.

(5) If the Commissioner of Police pays any money in satisfaction of –

- (a) the liability of a person under a forfeiture order; or
- (b) a forfeiture of property under Section 71,

the liability of the person under the order or for the forfeiture of the property is, to the extent of the payment, discharged.

**169. PROPERTY UNDER THE CONTROL OF THE COMMISSIONER OF POLICE UNDER A RESTRAINING ORDER.**

(1) The Commissioner of Police may deduct from income from property under his or her control under a restraining order, any expenses incurred in connection with the property.

(2) A person who hinders or obstructs the Commissioner of Police or a person acting on behalf of the Commissioner of Police in the exercise of powers or the performance of duties in relation to property of which the Commissioner of Police has taken control under a restraining order is guilty of an offence.

Penalty: a fine of K5,000.00 or 6 months imprisonment.

(3) The Commissioner of Police is liable for any rates, land tax or municipal or other statutory charges that –

(a) are imposed under a law of Papua New Guinea on or in relation to property of which the Commissioner of Police has taken control under a restraining order; and

(b) become due on or after the date of the restraining order; only to the extent of the rents and profits received by the Commissioner of Police for the property on or after that date.

(4) If the Commissioner of Police, having taken control under a restraining order of a business carried on by a person, carries on that business, the Commissioner of Police is not personally liable for –

(a) any payment for long service leave for which the person was liable; or

(b) any payment for long service leave to which a person employed by the Commissioner of Police to manage the business, or the legal personal representative of such a person, becomes entitled after the date of the restraining order.

(5) The Commissioner of Police may appoint a person as agent to exercise all or any of the powers or perform all or any of the duties conferred or imposed on the Commissioner of Police by this Act in relation to property of which the Commissioner of Police has taken control under a restraining order.

**PART 7. – MISCELLANEOUS.**

**170. ORDER TO A DECLARE A TRANSACTION VOID.**

(1) An authorised officer may apply to the Court for a declaration that the whole or part of a transaction to deal with property is void because a purpose of the transaction is –

- (a) to defeat the objects of this Act; or
- (b) to change the application of this Act to property; or
- (c) to change the application of this Act to a person.

(2) The officer must give written notice of the application to any person the officer has reason for believing may have an interest in the property disposed of or otherwise dealt with under the transaction.

(3) The Court may, at any time before the final determination of the application, direct the officer –

- (a) to give written notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or
- (b) to publish notice of the application, containing the particulars that the Court directs, in the National Gazette and, as often as the Court directs, in a newspaper published and circulating in Papua New Guinea.

(4) The Court may not make a declaration under Subsection (1) if it is satisfied that –

- (a) the person acquired the interest in the property:
  - (i) in good faith and for sufficient consideration; and
  - (ii) not for any of the purposes mentioned in Subsection (1); and
- (b) the person was not a party to the commission of a serious offence that is relied on in an application made under this Act.

(5) If a declaration is made under Subsection (1), the Court may also declare the rights of a person who acquired an interest in the property after the transaction was entered into or carried out and before the declaration was made.

**171. CONDUCT BY DIRECTORS, SERVANTS OR AGENTS.**

(1) For this Act, the state of mind of a person may be established in accordance with this section.

(2) For conduct engaged in, or taken under Subsection (3) to have been engaged in, by a body corporate, it is sufficient to show that a director, servant or agent of the body corporate who engaged in the conduct within the scope of his or her actual or apparent authority, had that state of mind.

(3) Conduct engaged in for a body corporate is taken, for this Act, to have been engaged in by the body corporate if it was engaged in –

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by another person, if –
  - (i) it was done at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate; and
  - (ii) giving the direction, consent or agreement was within the scope of the actual or apparent authority of the director, servant or agent.

(4) For conduct taken, under Subsection (5), to have been engaged in by a person (other than a body corporate), it is sufficient to show that a servant or agent of the person who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

(5) Conduct engaged in for a person (other than a body corporate) is taken, for this Act, to have been engaged in by the person if it was engaged in by –

- (a) a servant or agent of the person within the scope of the servant or agent's actual or apparent authority; or
- (b) by another person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent.

(6) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

## **172. STANDARD OF PROOF.**

Except in relation to the prosecution of an offence under this Act, a question of fact to be decided by the Court in proceedings under this Act is to be decided on the balance of probabilities.

## **173. COSTS.**

The Court may order the State to pay all costs reasonably incurred by a person in connection with proceedings, or a part, specified in the order, of those costs if –

- (a) the person brings, or appears at, the proceedings under this Act before a court –
  - (i) to prevent a forfeiture, confiscation or restraining order from being made against property of the person; or
  - (ii) to have property of the person excluded from a forfeiture, confiscation or restraining order; and
- (b) the person is successful in those proceedings; and

- (c) the Court is satisfied that the person was not involved in any way in the commission of the offence in relation to which the forfeiture, confiscation or restraining order was sought or made.

**174. FEES.**

No fee is payable by the State for filing or lodging –

- (a) an instrument under this Act; or
- (b) an instrument to transfer property to the State under this Act.

**175. FORMS.**

(1) The Minister may approve a form for anything for which this Act requires or permits an approved form to be used.

(2) Unless the Minister directs otherwise, an application to the Court under this Act must be made in the form prescribed by the rules of the Court.

**176. NON –ABILITY OF COMMISSIONER OF POLICE.**

The Commissioner of Police is not personally liable for any act done, or omitted to be done, by him or her in performing the Commissioner of Police's functions under this Act.

**177. OPERATION OF CERTAIN OTHER LAWS NOT AFFECTED.**

Nothing in this Act prejudices, limits or restricts –

- (a) the operation of any other law that provides for the forfeiture of property or the imposition of penalties or fines; or
- (b) the remedies available to the State, apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or detain property that is exercisable by a police officer apart from this Act.

**178. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters which are –

- (a) by this Act required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

Office of Legislative Counsel, PNG