Confiscation Act

Context

The *Confiscation Act 1997* (the Act) is the principal forfeiture legislation for exhibits or property derived from the commission of an offence. The Act has scope over all indictable offences and specified summary offences and affords opportunities for police officers to restrain and make application for forfeiture through the Victorian court system.

Except where a court orders a specific method of disposal (e.g. for drugs and explosives), the court can only order that property be forfeited to the Attorney-General in accordance with Part 3, the Act. Any property forfeited to the Attorney-General becomes the responsibility of Department of Justice and Community Safety (DJCS).

The Assistant Director, Asset Confiscation Operations (ACO), DJCS is authorised by the Attorney-General, as a prescribed person, to direct how all property forfeited under the Act should be disposed of or sold. The ACO works in conjunction with Victoria Police and the Office of Public Prosecutions (OPP), to coordinate the Asset Confiscation Scheme.

Policy at a glance

This policy includes:

- provisions for forfeiture of seized property under the Act
- management of seized property based on evidentiary value
- the criteria and process regarding applications for a:
    - forfeiture order
    - disposal order
    - restraining order
    - pecuniary penalty order
    - search warrant
- the process for obtaining an unexplained wealth order
- the process for issuing an embargo notice.

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Definitions

Lawfully acquired wealth – means any of the following:

- lawfully acquired property
- lawfully derived benefits
- lawfully obtained services and advantages.

Lawfully derived benefit – defined in s.40GA, the Act and includes:

- a prize or the proceeds of any form of gambling
- salary or wages or payment under a contract for services that did not exceed the reasonable market rate at the time.

Lawfully obtained services and advantages – defined in s.40GB, the Act and includes:

- a prize or the proceeds of any form of gambling
- salary or wages or payment under a contract for services that did not exceed the reasonable market rate at the time.

Property – defined in s.3, the Act. Real or personal property of every description, whether situated within or outside Victoria and whether tangible or intangible and includes any interest in any such real or personal property.

Schedule 1 offence – refers to offences listed in Schedule 1 of the Act.

- Schedule 1 offences include, but are not limited to:
  - an indictable offence against the law of Victoria
  - a Schedule 2 offence
  - specified summary offences
  - an interstate offence.

Schedule 2 offence – refers to offences listed in Schedule 2 of the Act.

- Schedule 2 offences constitute serious criminal activity and include, but are not limited to offences against certain provisions of the following Acts:
  - *Drugs, Poisons and Controlled Substances Act 1981*
  - *Crimes Act 1958*
  - *Casino Control Act 1991*
  - *Fisheries Act 1995*
  - *Firearms Act 1996.*

Tainted property – defined in s.3, the Act. Broadly, tainted property is property which has been used in or derived from the commission of an offence, or is the subject of a proceeds of crime offence. In civil forfeiture related matters, property is tainted if police suspect on reasonable grounds it was used in or derived from the commission of a Schedule 2 offence, or the proceeds of a Schedule 2 offence.

Unexplained wealth – is the difference between a person's total wealth and their lawfully acquired wealth.

Wealth (of a person) – defined in s.40BA, the Act means the total value of all of the following:
- property in which a person has an interest or which is under their effective control
- benefits the person derives including benefits another derives at the request of the person
- services and advantages a person obtains including services and advantages another person obtains at the direction or request of the person.

Scope and application

This policy applies to employees involved with the management, retention and disposal of property under the Act.

Responsibilities and procedures

1. Overview

1.1 *Forfeiture of seized property*

- As stated in **VPM Seized property and special property types**, property and exhibits can be seized with or without warrant under specific legislative provisions or common law.
- The Act allows for seized property to be dealt with by way of any of the following court orders, including but not limited to:
  - forfeiture order
  - disposal order
  - restraining order (Schedule 1 and 2 offences)
  - civil forfeiture restraining order
  - unexplained wealth restraining order
  - unexplained wealth order
  - embargo notice.

  Note: property may be subject to a restraining order and either or both a civil forfeiture restraining order and an unexplained wealth restraining order (s.15A). Property may also be subject to more than one unexplained wealth restraining order (s.40EA).
- The informant must notify the Criminal Proceeds Squad as soon as possible after charging an offender with a Schedule 2 offence.
- The Work Unit Manager, Criminal Proceeds Squad must:
  - allocate the investigation to a Criminal Proceeds Squad member for an asset sweep of all persons who have committed or are about to commit a Schedule 1 or Schedule 2 offence

- ensure preparation of any relevant application under the Act
- liaise with the OPP.

1.2 *Communication of information between law enforcement agencies*

- Section 119A, the Act provides for communication of information between law enforcement agencies and includes information necessary for enforcement of the Act or any orders made under the Act.
- When enforcing orders under the Act, DJCS may seek information from Victoria Police regarding an accused.
- Employees can release any information which they have personal knowledge of gained through an investigation in accordance with s.119A, the Act. Some information, such as information gained from telephone intercepts, may be protected by law and cannot be disclosed. Where there is any doubt, seek advice from a work unit manager or the Criminal Proceeds Squad.
- Members must also comply with **VPMP Information sharing.**

2. Management of property seized under section 79, *Confiscation Act 1997*

At the earliest opportunity, a decision must be made as to how to deal with seized property by any one of the following methods:

If the property has	Members must
Been seized under warrant or specific legislation (e.g., *Firearms Act 1996*)	• comply with the requirements of: - the relevant Act - a Magistrate's direction - application for forfeiture procedures (see section 3 of this policy)
Evidentiary value and an application will be made for either its forfeiture or disposal under the Act	• retain the property as an exhibit • make a notation on PALM that retention is required in accordance with the applicable provisions of the Act • make an application for: - forfeiture (see section 3 of this policy) or - disposal (see section 4 of this policy)
Evidentiary value where secondary evidence can be used i.e., a photograph of an exhibit, and an no application will be made for forfeiture or disposal under the Act	• compile a statement of secondary evidence • legally dispose of the property (e.g., return to owner) • comply with application for forfeiture procedures (see section 3 of this policy)
No evidentiary value where an application will be made for forfeiture as tainted property, or it will be required to satisfy a pecuniary penalty order, an order for restitution or compensation	• do one of the following: – if the property has not been seized under a s.79, the Act warrant, have the property seized under that warrant (see section 11.3 of this policy) unless the property was seized under a s.465 *Crimes Act* warrant – obtain a declaration on the original warrant pursuant to s.95A, the Act unless the property was seized under a s.465 *Crimes Act* warrant – if the property seized can be used to satisfy an order for pecuniary penalty, restitution or compensation, make application for a restraining order (see section 7 of this policy) – comply with application for forfeiture procedures (see section 3 of this policy)

No evidentiary value and no application will be made for forfeiture under the Act	• return to the owner if they are lawfully able to possess the property (if not, treat it as unclaimed) • if no owner can be located, or the owner fails to claim the property, treat as unclaimed, or • if there are two or more claimants to the property, treat the property as being in dispute (s.58, *Victoria Police Act 2013*)
An existing restraining order under the Act	• do not dispose of the property without prior consultation with the Criminal Proceeds Squad Note: these restraining orders have priority over other disposal methods

3. Application for a forfeiture order under the *Confiscation Act 1997*

3.1 *Application criteria*

- If an accused is convicted of a Schedule 1 offence, an application for forfeiture to be determined:
  - in the Magistrates' or Children's Court can be made by a prosecutor, Sub-officer or a solicitor attached to the Criminal Proceeds Squad on behalf of those members
  - at all other courts can be made by the OPP.

  Note: the Magistrates' Court has a jurisdictional limit of $100,000.00 in confiscation matters and is unable to order the forfeiture of property where its total value exceeds this amount.
- Applications must be made within six months of the date of conviction. The court will only allow an extension of this period in specific circumstances.

3.2 *Application for a forfeiture order in the Magistrates' or Children's Court*

Application for forfeiture order in the Magistrates' or Children's Court	***Part 3, Confiscation Act 1997***
Before court	
Informant	• Complete a Forfeiture/Disposal Order [Form 745] and attach to the brief • Clearly mark the following on the Brief Head [Form 208A]: – station code – PALM number(s) – that a Form 745 is attached • A prosecutor may require additional information if the grounds for forfeiture are not clear
Member authorising prosecution	• Ensure that the best and correct method of forfeiture/disposal has been recommended. Note: if the property is of such a class that the court can order disposal (such as firearms) then a disposal order or other specific order should be sought, not a forfeiture order
Work unit manager	• Ensure that Station Books and PALM are endorsed with relevant court dates, including adjournments and appeals
At court	
Prosecutor	• Seek application for the method of forfeiture/disposal • After conviction, if a forfeiture application is to be made under the Act, request the court to waive the requirement to give the accused written notice of the application under s.32(5), the Act. If the Court does not grant a waiver, the case may have to be adjourned to enable the accused to be served the written notice in accordance with s.32(4), the Act
After court	
Prosecutor	• Endorse the Form 208A • Complete the prosecutor section of the Form 745 • If the court granted the order or extract, attach this and the completed Form 745 to the brief

	• If the court did not grant a waiver, provide advice to the informant that a written notice is required to be served on the accused in accordance with s.32(4), the Act
Informant	• Ensure that an order or extract has been obtained • Forward the order and PALM references to the work unit manager requesting the property be sold or otherwise disposed of as directed by the court • If the court has also made an order for compensation or restitution, forward this to the work unit manager • If the court did not grant a waiver: – prepare an Application for Forfeiture/Pecuniary Penalty Order [Form 743] – arrange a date for hearing the application – serve a copy of the Form 743 on the accused and any other party with an interest in the property
Work unit manager	• Ensure that Station Books and PALM include the prosecutor's endorsement of the case finalisation, including the date of completion and that entries are not closed before the property has been disposed of • If money is paid into the Central Banking System, notification must be made to the Financial Services Department (FSD) on the Request for Refund/Transfer of Monies [Form 59]. FSD must advise DJCS • If the court has also made an order for compensation or restitution, forward this to the Warehouse Operations Support Unit • After an appeal period, ensure property is legally dealt with at the earliest opportunity (see section 3.3 of this policy)

3.3 *Disposal of property after a forfeiture order has been granted*

- After an appeal period has expired, the work unit manager must ensure all of the following is forwarded to the Warehouse Operations Support Unit:
  - a brief report of the circumstances of the matter including where the property is located and relevant PALM references
  - a copy of the forfeiture order along with the completed Form 745 and any order for restitution or compensation.
- Warehouse Operations Support Unit must forward relevant information to DJCS where required.
- DJCS will advise of the manner for disposal of the property.
- Where DJCS takes possession of the property, the informant must obtain a receipt and attach to the relevant PALM entry. The entry can then be completed.
- Refer to **VPM Property and exhibit management** for more information.

4. Application for a disposal order under Part 10, the *Confiscation Act 1997*

4.1 *Overview*

- If an accused has been convicted of a Schedule 1 offence, application for a disposal order may be made in respect of items detailed in s.77, the Act. This includes but is not limited to:
  - drugs and drug paraphernalia
  - an explosives substance
  - child abuse material.
- Where other specific legislation applies, e.g., *Firearms Act*, members must comply with that legislation.

- The court may order that the property be forfeited to the State and destroyed or disposed of in such a manner as provided for in the order.

4.2 Application criteria

- If an accused is convicted of a Schedule 1 offence, the application for disposal to be determined:
  - in the Magistrates' or Children's Court can be made by a prosecutor or Sub-officer
  - at all other courts can be made by the OPP.
- Applications must be made within six months of the date of conviction. The court will only allow an extension of this period in specific circumstances.

4.3 Application for a disposal order in the Magistrates' or Children's Court

Application for a disposal order in the Magistrates' or Children's Court	***Part 10, the Act***
Before court	
Informant	• Complete and attach Form 745 to the brief • Clearly mark the following on the Form 208A: • station code – PALM number(s) – that a Form 745 is attached
Member authorising prosecution	• Ensure that the best and correct method of forfeiture/disposal has been recommended Note: if the property is such that it should be sold by public auction or otherwise dealt with rather than destroyed, then a forfeiture order or other specific order should be sought, not a disposal order • Ensure that the brief contains sufficient information to support the application for a disposal order
Work unit manager	Ensure that the Register of Briefs and PALM are endorsed with relevant court dates, including adjournments and appeals
At court	
Prosecutor	• Provide advice on the method of forfeiture/disposal • After conviction, request the court to make the required forfeiture/disposal order
After court	
Prosecutor	• Endorse the 208A brief • Complete the prosecutor section of the Form 745 • If the court granted the order or extract, attach this and the completed Form 745 to the brief
Informant	• Ensure that an order or extract has been obtained • Forward the order and PALM references to the work unit manager requesting the property be disposed of as directed by the court
Work unit manager	• Ensure that PALM and the Register of Briefs include the prosecutor's endorsement of the case finalisation, including date of completion and that entries are not closed before the property has been disposed of • After an appeal period, ensure property is disposed of according to the disposal order at the earliest opportunity

5. Application for a restraining order under Part 2, the *Confiscation Act 1997*

5.1 Overview

- A restraining order under Part 2, the Act is an order that no property or interest in property (to which the order applies) is to be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order.
- A restraining order may be made to satisfy any of the following:

- a forfeiture order
- automatic forfeiture of property
- a pecuniary penalty order
- an order for restitution or compensation under the *Sentencing Act 1991*.

5.2 Application criteria

- An application for a restraining order may be made if an accused has been, or within the next 48 hours will be, charged with or has been convicted of:
  - a Schedule 1 offence – without notice; the OPP may apply to any court, or a prosecutor or Sub-officer may apply to the Magistrates' Court or the Children's Court
  - a Schedule 2 offence – without notice; the OPP or a prescribed person, or a person belonging to a prescribed class of persons (ACO, DJCS), may apply to the Supreme Court or the County Court.
- Before making application for a restraining order, contact the Criminal Proceeds Squad for advice on pre-seizure and pre-restraint planning to minimise the risks of liability regarding seizures and restraints.

5.3 Application for a restraining order in the Magistrates' or Children's Court

Application for a restraining order in the Magistrates' or Children's Court	***Part 2, Confiscation Act 1997***
Before court	
Informant	• Assess the value of any property sought to be restrained to ensure it does not exceed $100,000.00 • Complete 'Part A' of Application for Approval to Restrain Property [Form 748] • Complete Affidavit in Support of an Application for a Restraining Order [Form 744] (retain original) • Seek approval from an Inspector or above to make the application. Approval may be granted over the telephone, however, the documents must be forwarded to the approving member within 24 hours • If the application is approved: – complete Application for Restraining Order Pursuant to the Confiscation Act 1997 [Form 747] – arrange a date for hearing the application and file a copy of the Form 747 with the court – notify the Criminal Proceeds Squad that an application for a restraining order will be made
Inspector or above	• Assess the value of any property sought to be restrained to ensure it does not exceed $100,000.00 • Before granting authority, consider the legislative requirements as detailed on the Form 748 • Complete 'Part B' of Form 748 and return to the informant. Reasons must be provided if authority is not given which may also require the informant to conduct further investigation and seek later authority

At/after court	
Prosecutor	• Seek application for a restraining order. Give, or cause to be given, an undertaking regarding costs (s.14(7))
Informant	• Attend court for the making of the restraining order • If the restraining order is made and the person who has an interest in the property is not present at the time of making the order, or has not been given a copy of the application for a restraining order, give a copy of the restraining order to that person in accordance with s.19(1), the Act and a Notice Requiring Declaration of Property Interests [Form 740A] in accordance with s.19A, the Act • Whether or not the court grants the application, notify the: – work unit manager, Criminal Proceeds Squad and – Inspector or above who gave authority

Work unit manager, Criminal Proceeds Squad	• Must maintain a record of all applications for restraining orders • Must advise DJCS of applications for restraining orders and forward them a copy of the relevant order and any supporting documentation

5.4 *Application for a restraining order under the Confiscation Act 1997 on behalf of a victim*

- After a conviction, a court may restrain property if it is satisfied that an order under the *Sentencing Act* for restitution or compensation is likely to exceed $20,000 (s.18, the Act). Members may make an application on behalf of a victim.
- If the authorising Inspector or above does not approve the application, they must provide reasons, in writing, to the victim. A copy must also be attached to the brief.

6. Application for a civil forfeiture restraining order under Part 4, the *Confiscation Act 1997*

6.1 *Overview*

- A civil forfeiture restraining order under Part 4, the Act is an order that no property or interest in property to which the order applies is to be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order.
- An application for a civil forfeiture restraining order is not dependent upon the accused being charged with a criminal offence.
- A civil forfeiture restraining order is made for the purpose of satisfying a civil forfeiture order.

6.2 *Application criteria*

- An application for a civil forfeiture restraining order may be made by the OPP or the Assistant Director, Asset Confiscation Operations, as a prescribed person, in respect of property if a police officer suspects on reasonable grounds to be tainted in relation to a Schedule 2 offence (s.36K(1), the Act).
- Applications for a civil forfeiture restraining order are prepared by the Criminal Proceeds Squad and filed by the OPP with the County Court or Supreme Court.

7. Application for a pecuniary penalty order under Part 8, the *Confiscation Act 1997*

7.1 *Overview*

A pecuniary penalty order under Part 8, the Act is an order made by the court requiring an accused to pay the Crown an amount assessed as being equal to the value of the benefits derived in relation to the offence. A pecuniary penalty order is a civil debt due to the Crown and is not a fine. DJCS is responsible for enforcement of pecuniary penalty orders.

7.2 *Application criteria*

- If an accused is convicted of a Schedule 1 offence (other than a Schedule 2 offence), an application for a pecuniary penalty order to be determined:

- in the Magistrates' or Children's Court can be made by a prosecutor or Sub-officer
- at all other courts can be made by the OPP.

- If an accused is convicted of a Schedule 2 offence, an application for a pecuniary penalty order to be determined:
  - in the Magistrates' or Children's Court can be made by a prosecutor or Sub-officer
  - at all other courts can be made by the OPP.
- Applications must be made within six months of the date of conviction.
- Before making application for a pecuniary penalty order, contact the Criminal Proceeds Squad for advice.

Application for pecuniary penalty order in the Magistrates' or Children's Court	***Part 8, Confiscation Act 1997***
Before court	
Informant	• Consult the Criminal Proceeds Squad or Criminal Investigations and Confiscations Legal Unit to discuss the application • Calculate and provide details of any benefit derived by the accused • Complete Form 743 and serve it upon the accused (it can be served with the charges, brief of evidence or separately)
At court	
Prosecutor	• Seek application for a pecuniary penalty order
After court	
Informant	• Complete a Report to Accompany Pecuniary Penalty Orders [Form 750] and attach the court issued extract of the order • Provide a copy of the Form 750 to the Criminal Proceeds Squad, for forwarding to ACO

8. Application for an unexplained wealth restraining order under Part 4A, the *Confiscation Act 1997*

8.1 *Overview*

- An unexplained wealth restraining order under Part 4A, the Act is an order that no property or interest in property (to which the order applies) is to be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order.

8.2 *Purpose of unexplained wealth restraining order*

- Unexplained wealth restraining orders are made in respect of property for the purpose of ensuring it is available to satisfy both:
  - an unexplained wealth forfeiture
  - an unexplained wealth order.
- Unexplained wealth forfeiture occurs when property that is the subject of an unexplained wealth restraining order is automatically forfeited on the expiry of six months after the making of the unexplained wealth restraining order.
- An unexplained wealth order is a court-imposed debt that requires a person to pay, to the State, the value of any unexplained wealth that has been accumulated in the 10 years prior to the making of the order. Property that is the subject of an unexplained wealth restraining order can be used to discharge an unexplained wealth order.

8.3 Applications for an unexplained wealth restraining order

- Part 4A, the Act provides for applications for unexplained wealth restraining orders in respect of property where a police officer suspects on reasonable grounds that:
  - a person has engaged in serious criminal activity and has an interest in the property (valued at more than $50,000.00) (s.40F(1), the Act) or
  - it was not lawfully acquired (s.40F(2), the Act) or
  - a person has wealth that exceeds their lawfully acquired wealth in an amount of more than $200,000.00 and has an interest in the property (s.40F(2A), the Act).
- Unexplained wealth restraining orders under ss.40F(1)-40F(2) are made so that restrained property can be forfeited.
- Unexplained wealth restraining orders under s.40F(2A) are made so that restrained property can be applied towards satisfying an unexplained wealth order.

8.4 Application criteria

- An application for an unexplained wealth restraining order under ss.40F(1)-40F(2) can be made in the Magistrates' or Children's Court by a prosecutor or Sub-officer, or by the OPP at all other courts.
- An application for an unexplained wealth restraining order under s.40F(2A) may only be made by the OPP in the County Court or Supreme Court.

Note: whether an accused has engaged in serious criminal activity is not a consideration when assessing wealth.

- An unexplained wealth restraining order made under s.40F(2A) will expire after 90 days unless an application for an unexplained wealth order has been made against the person named in the unexplained wealth restraining order.

8.5 Application for an unexplained wealth restraining order in the Magistrates' or Children's Court

Application for an unexplained wealth restraining order in the Magistrates' or Children's Court		***Part 4A, Confiscation Act 1997***
Before court		
Informant	• Assess the value of any property sought to be restrained to ensure it does not exceed $100,000.00 • Complete 'Part A' of Application for Approval to Restrain Property [Form 748] • Complete Affidavit in Support of an Application for an Unexplained Wealth Restraining Order [Form 744] (retain original) • Seek approval from an Inspector or above to make the application. Approval may be granted over the telephone, however the documents must be forwarded to the approving member within 24 hours • If the application is approved: – complete Application for Restraining Order Pursuant to the Confiscation Act 1997 [Form 747] – arrange a date for hearing the application and file a copy of the Form 747 with the court – notify the Criminal Proceeds Squad that an application for an Unexplained Wealth Restraining Order will be made	
Inspector or above	• Assess the value of any property sought to be restrained to ensure it does not exceed $100,000.00 • Before granting authority, consider the legislative requirements as detailed on the Form 748 • Complete 'Part B' of Form 748 and return to the informant. Reasons must be provided if authority is not given which may also require the informant to conduct further investigation and seek later authority	

At/after court	
Prosecutor	• Seek application for an Unexplained Wealth Restraining Order • Give, or cause to be given, an undertaking regarding costs (section 40C(7))
Informant	• Attend court for the making of the Unexplained Wealth Restraining Order • If the Unexplained Wealth Restraining Order is made and the person who has an interest in the property is not present at the time of making the order or has not been given a copy of the application for an Unexplained Wealth Restraining Order, give a copy of the Unexplained Wealth Restraining Order to that person in accordance with section 40J(1), the Act and a Notice Requiring Declaration of Property Interests in accordance with either section 40K or 40M, the Act • Whether or not the court grants the application, notify the: – work unit manager, Criminal Proceeds Squad – Inspector or above who gave authority
Work unit manager Criminal Proceeds Squad	• Must maintain a record of all applications for Unexplained Wealth Restraining Orders • Must advise DJCS of applications for an Unexplained Wealth Restraining Orders and forward them a copy of the relevant order and any supporting documentation

9. Application for an unexplained wealth order under Part 4A, the *Confiscation Act 1997*

9.1 *Overview*

- An Unexplained Wealth Order requires a person to pay the State the value of any wealth where the person is unable to satisfy the court that their wealth was lawfully acquired.
- An application for an Unexplained Wealth Order must be made within 90 days of the making of an Unexplained Wealth Restraining Order under s.40F(2A), the Act.

9.2 *Application criteria*

- The OPP may apply for an Unexplained Wealth Order in the County Court or Supreme Court if a police officer suspects on reasonable grounds that a person has wealth that exceeds their lawfully acquired wealth in an amount of more than $200,000.00.

10. Assessment of wealth

- In accordance with s.40ZAAC, the Act, a person's wealth is assessed with regard to property, benefits, services or advantages acquired by a person more than 10 years prior to the application and includes:
  - the value of property sought to be restrained
  - the value of property consumed or disposed of by the person
  - expenses paid for by the person
  - the value of any benefits received by the person
  - the value of any services and advantages obtained by the person
  - the value of property, benefits, services and advantages received by another at the direction of the subject person.

Note: wealth is to be assessed by reference to the greater of either the value of property at the time of acquisition or its current value.

11. Warrant to search for tainted or forfeited property under the *Confiscation Act 1997*

11.1 *Overview*

- Any member may apply to a magistrate or judge of the Supreme Court or County Court for a warrant to search for tainted or forfeited property (s.79, the Act).

11.2 *Procedure for applying for a search warrant under the Confiscation Act 1997*

- In urgent circumstances, warrants may be issued over the telephone. For non-urgent applications, members must do all of the following:
  - complete Schedule 1E Search Warrant (Section 79) [Form 739]
  - comply with **VPM Searches of property**
  - complete Report on Execution of Warrant [Form 741] to notify the relevant court regarding the outcome of the search.

11.3 *Tainted property in Victoria Police possession*

- Where members have seized property that no longer has evidentiary value and an application will be made for its forfeiture, it must be seized under a s.79 warrant using Form 739 unless seized under s.465, *Crimes Act* or s.81, *Drugs, Poisons and Controlled Substances Act*. On most occasions, this property will already be in Victoria Police possession.
- When completing Form 739, members must:
  - seek approval of an Inspector or above, however it is not necessary to compile an operation order or risk assessment
  - nominate the address to be searched as the actual location of the property, regardless of whether it is Victoria Police premises
  - serve the occupier's copy of the warrant on the work unit manager of the location of the property.
- The work unit manager must file the occupier's copy with the PALM entry. The work unit manager is not required to notify any other party.
- If property is seized under a s.465, *Crimes Act* warrant and the property is to be held or retained:
  - the member named in the warrant or another member may apply to the Magistrates' Court at a venue of the Magistrates' Court that is nearest to the warrant premises for a direction under s.465B(1), *Crimes Act*, that the thing so seized be held or retained as if it were tainted property seized under a warrant under s.79, the Act.
- If property is seized under a s.81, *Drugs, Poisons and Controlled Substances Act* warrant, and the property is to be held or retained, a member may apply under s.95A, the Act for a declaration that such property be held or retained as if it were tainted property seized under a s.79, the Act warrant.

11.4 *Embargo notices*

- Where members execute a s.79 warrant to seize tainted or forfeited property and the property cannot, or cannot readily be physically seized and removed, an embargo notice may be issued in relation to the property. This prohibits a person from selling, leasing, moving without written consent, transferring or otherwise dealing with the property while the notice is in force, unless with consent of the member who issued the notice.

- The issue of an embargo notice must be:
  - authorised by an Inspector or above (preferably by the same member who authorised the search warrant)
  - in the prescribed form (Embargo Notice [Form 751])
  - served on the person in possession of the property, or if they cannot be located after all reasonable steps have been taken to do so, a copy may be affixed to the property in a prominent position.
- After the member issues an embargo notice, they must make application for a restraining order within 21 days.
- The informant must notify the work unit manager, Criminal Proceeds Squad of any embargo notices issued.

Related documents

- **VPM Property and exhibit management**
- **VPM Searches of property**
- *Confiscation Act 1997*

Further advice and information

For further advice and assistance regarding this policy, contact a supervisor or the Criminal Proceeds Squad.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
01/08/23	Updated to reflect changes to the *Confiscation Act 1997* due to commencement of the *Major Crime and Community Safety Legislation Amendment Act 2022* and transfer to the VPM format.	FF-224216 1
25/03/25	Updated to reflect changes to the *Confiscation Act 1997* due to commencement of the *Confiscation Amendment (Unexplained Wealth) Act 2024.*	FF-260706
16/06/2025	Minor amendments to reflect updated division/work units in line with the OID organisational restructure.	N/A