

No. 23 of 2015.

*Proceeds of Crime (Amendment) Act 2015.*

Certified on : 20 JAN 2015



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**ARRANGEMENT OF SECTIONS.**

1. Amendment of long title.
2. Repeal and replacement of Section 1.

**“1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.”**

3. Definitions (Amendment of Section 3).
4. Repeal and replacement of Section 4.

**“4. POLICE ENTITY.”**

5. Insertion of new Sections 4A and 4B.

**“4A. MEANING OF ACCOUNT.”**

**“4B. MEANING OF TRANSACTION.”**

6. Meaning of conviction (Amendment of Section 6).
7. Meaning of conviction day (Amendment of Section 7).
8. Meaning of quashing a conviction of an offence (Amendment of Section 8).
9. Meaning of effective control (Amendment of Section 9).
10. Repeal and replacement of Section 10.

**“10. MEANING OF PROCEEDS AND INSTRUMENTS.”**

11. Repeal and replacement of Section 12.

**“12. MEANING OF GIFT.”**

12. New Section 12A.

**“12A. APPLICATION OF CRIMINAL CODE ACT.”**

13. Repeal and replacement of Part II.

**“PART II. - CROSS BORDER TRANSPORTATIONS.**

*Division 1. - Reporting obligations.*

**13. INTERPRETATION FOR THIS PART.**

**14. THE OBLIGATION TO MAKE A REPORT.**

**15. TIMING OF REPORT.**

*Division 2. - Offences.*

- 16. FAILURE TO MAKE A REPORT.
- 17. MAKING A FALSE OR MISLEADING REPORT.

*Division 3. - Powers in relation to suspicious currency, monetary instruments, precious metals and precious stones.*

- 18. POWERS TO QUESTION AND SEARCH.
- 19. DETENTION OF SUSPICIOUS CURRENCY, A MONETARY INSTRUMENT, A PRECIOUS METAL OR A PRECIOUS STONE.
- 20. RETENTION OF SUSPICIOUS CURRENCY, MONETARY INSTRUMENT, PRECIOUS METAL OR PRECIOUS STONE.
- 21. PROPERTY MANAGEMENT.
- 22. RELEASE OF SUSPICIOUS CURRENCY, MONETARY INSTRUMENT, PRECIOUS METAL OR PRECIOUS STONE.

*Division 4. - Other matters.*

- 23. INTERACTION WITH OTHER ORDERS.
- 24. CONFIDENTIALITY.
- 25. FASU TO PROVIDE INFORMATION TO CERTAIN ORGANISATIONS."

- 14. New Division 1A in PART III.

*"Division 1A. - Freezing Direction.*

- 26. SCOPE AND DURATION OF FREEZING DIRECTION.
- 27. APPLICATION FOR A DIRECTION.
- 28. EXEMPTION FROM LIABILITY.
- 29. REQUEST FOR LIVING EXPENSES.
- 30. NON-COMPLIANCE WITH A FREEZING DIRECTION.
- 31. ISSUING FALSE DIRECTIONS.
- 32. INTERACTION OF A DIRECTION WITH A RESTRAINING ORDER.
- 33. VARIATION AND REVOCATION OF A DIRECTION.
- 34. SERVICE OF DIRECTION ETC."

- 15. Restraining Orders - People convicted of, or charged with, indictable offences (Amendment of Section 38).
- 16. Restraining Orders - People suspected of committing serious offences (Amendment of Section 39).
- 17. New Sections 39A and 39B.

- "39A. RESTRAINING ORDERS – PROPERTY SUSPECTED OF BEING PROCEEDS OF INDICTABLE OFFENCES ETC.
- 39B. PART II PROPERTY SUBJECT TO RESTRAINING ORDER OR CONFISCATION ORDER."

- 18. Public Prosecutor may apply for a restraining order (Amendment of Section 40).
- 19. Notice of application for restraining order (Amendment of Section 41).
- 20. Amendment of heading to Subdivision 3 of Division 1 of Part III.

*“Subdivision 3. - Revoking and excluding property from restraining order.”*

21. Insertion of new Sections 41A and 41B.

**“41A. APPLICATION TO REVOKE A RESTRAINING ORDER.  
41B. NOTICE OF REVOCATION OF A RESTRAINING ORDER.”**

22. Court may exclude property from a restraining order (Amendment of Section 42).  
23. Application to exclude property from a restraining order after notice of the application for the order (Amendment of Section 43).  
24. Application to exclude property from a restraining order after notice of the order (Amendment of Section 44).  
25. Notice of restraining order (Amendment of Section 45).  
26. Registration of restraining order (Amendment of Section 46).  
27. Notice to registration authorities of exclusions from or variations to restraining orders (Amendment of Section 47).  
28. Repeal and replacement of Section 49.

**“49. CONTRAVENTION OF RESTRAINING ORDERS.”**

29. Repeal and replacement of Section 50.

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

30. Repeal of Section 51.  
31. Repeal and replacement of Section 52.

**“52. UNDERTAKING BY STATE.”**

32. Ancillary orders and further orders (Amendment of Section 53).  
33. New Section 53A.

**“53A. ALLOWANCE FOR LIVING EXPENSES.”**

34. When restraining order ceases to be in force (Amendment of Section 55).  
35. Release of property subject to automatic forfeiture (Amendment of Section 56).  
36. Court may revoke restraining orders (Amendment of Section 57).  
37. Forfeiture orders - on conviction of indictable offence (Amendment of Section 58).  
38. Forfeiture orders - conduct constituting a serious offence (Amendment of Section 59).  
39. New Section 59A.

**“59A. FORFEITURE ORDERS – PROPERTY SUSPECTED OF BEING  
PROCEEDS OF INDICTABLE OFFENCE ETC.”**

40. Repeal of Section 60.  
41. Acquittals do not affect forfeiture orders under Section 59 (Amendment of Section 61).  
42. Repeal and replacement of Section 62.

**“62. MAKING OF FORFEITURE ORDER IF RESPONDENT IS  
UNAVAILABLE.”**

43. Presumption in certain cases that property was used, in or in connection with, the commission of an offence (Amendment of Section 63).

44. Forfeiture orders must specify the value of forfeited property (Amendment of Section 64).
45. Additional application for a forfeiture order (Amendment of Section 67).
46. Notice of application (Amendment of Section 68).
47. Procedure on application (Amendment of Section 69).
48. Amending an application (Amendment of Section 70).
49. Automatic forfeiture of restrained property (Amendment of Section 71).
50. Insertion of new Section 71A.

**“71A. DECLARATION BY COURT IN RELATION TO SECTION 71.”**

51. Repeal and replacement of heading to Section 72.
52. First exception - registrable property (Amendment of Section 73).
53. Second exception - if a joint owner dies (Amendment of Section 74).
54. Repeal of Section 75.
55. Repeal and replacement of Section 76.

**“76. DEALINGS WITH FORFEITED PROPERTY.”**

56. Repeal and replacement of Section 77.

**“77. FORFEITURE ORDERS - DECLARATION OF INTERESTS IN PROPERTY.”**

57. Repeal and replacement of Section 78.

**“78. AUTOMATIC FORFEITURE - DECLARATIONS OF INTERESTS IN PROPERTY.”**

58. Repeal and replacement of Section 79.

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

59. Discharge of forfeiture order made under Section 58 (Amendment of Section 80).
60. Enforcement of order for payment instead of forfeiture (Amendment of Section 82).
61. Registered foreign forfeiture orders (Amendment of Section 83).
62. Making pecuniary penalty orders (Amendment of Section 84).
63. Repeal and replacement of Section 85.

**“85. MAKING OF PECUNIARY PENALTY ORDER IF RESPONDENT IS UNAVAILABLE.”**

64. Determining penalty amounts (Amendment of Section 88).
65. The value of benefits - evidence the court is to consider (Amendment of Section 89).
66. Value of benefits derived - offences that are not serious offences (Amendment of Section 90).
67. Value of benefits derived - serious offences (Amendment of Section 91).
68. Matters that do not reduce the value of benefits (Amendment of Section 93).
69. Public Prosecutor may apply for a pecuniary penalty order (Amendment of Section 98).
70. Additional application for a pecuniary penalty order (Amendment of Section 99).
71. Amendment of application (Amendment of Section 101).
72. Procedure on application (Amendment of Section 102).
73. Enforcement of pecuniary penalty orders (Amendment of Section 103).
74. Property subject to a person's effective control (Amendment of Section 104).
75. Charge on property subject to a restraining order (Amendment of Section 105).

76. Effect on a pecuniary penalty order if made in relation to a conviction of an offence (Amendment of Section 108).
77. Procedure on application for confirmation of pecuniary penalty order (Amendment of Section 110).
78. Court may confirm pecuniary penalty order (Amendment of Section 111).
79. Effect of the Court's decision on confirmation of the order (Amendment of Section 112).
80. Warrant to search land etc., for tainted property (Amendment of Section 113).
81. Application for a warrant by telephone or e-mail (Amendment of Section 114).
82. Duty to show warrant (Amendment of Section 116).
83. Expiry of warrant (Amendment of Section 119).
84. Police officer may seize tainted property (Amendment of Section 122).
85. Return of seized property - general rule (Amendment of Section 123).
86. Return of seized property if no information laid (Amendment of Section 124).
87. Return of seized property if no forfeiture order made (Amendment of Section 125).
88. Retention of seized property if restraining order made (Amendment of Section 126).
89. How Commissioner of Police must deal with property subject to forfeiture order (Amendment of Section 127).
90. Application of this Division (Amendment of Section 128).
91. Police may seize tainted property (Amendment of Section 129).
92. Return of seized property - general rule (Amendment of Section 130).
93. Return of seized property if no forfeiture order made (Amendment of Section 131).
94. Retention of seized property if restraining order made (Amendment of Section 132).
95. Property subject to forfeiture order (Amendment of Section 133).
96. Amendment of heading of Division 3 of Part IV.
97. Repeal and replacement of Section 134.

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

98. Application for interim restraining order (Amendment of Section 136).
99. Notice of application for restraining order (Amendment of Section 137).
100. Making restraining orders (Amendment of Section 138).
101. Repeal and replacement of Section 139.

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

102. Service of interim restraining order (Amendment of Section 140).
103. Ancillary orders and further order (Amendment of Section 141).
104. Registration of restraining order (Amendment of Section 142).
105. Contravention of restraining order (Amendment of Section 143).
106. When a restraining order ceases to be in force (Amendment of Section 144).
107. Registered foreign restraining order - Court may direct Commissioner of Police to take custody and control of property (Amendment of Section 145).
108. Registered foreign restraining order - undertakings (Amendment of Section 146).
109. Repeal of Section 148.
110. Repeal and replacement of Section 149.

#### **"149. AMOUNTS PAID FOR REGISTERED FOREIGN PECUNIARY PENALTY ORDER."**

111. Registration of registered foreign restraining order (Amendment of Section 150).
112. Contravention of registered foreign restraining order (Amendment of Section 151).
113. Application for production order (Amendment of Section 153).
114. Production order (Amendment of Section 154).
115. Scope of Police powers under production order (Amendment of Section 155).

116. Repeal and replacement of Section 156.

**“156. WHAT USE CAN BE MADE OF INFORMATION.”**

- 117. Variation of production order (Amendment of Section 157).
- 118. Failure to comply with production order (Amendment of Section 158).
- 119. Search warrant to facilitate investigation (Amendment of Section 159).
- 120. Production order and Search Warrants for foreign offences (Amendment of Section 160).
- 121. New Division 5A.

***“Division 5A. - Notices to Financial Institutions.***

- 160A. GIVING NOTICES TO FINANCIAL INSTITUTIONS.**
- 160B. CONTENTS OF NOTICES TO FINANCIAL INSTITUTIONS.**
- 160C. PROTECTION FROM SUITS ETC., FOR THOSE COMPLYING WITH NOTICES.**
- 160D. MAKING FALSE STATEMENTS IN NOTICES.**
- 160E. DISCLOSING EXISTENCE OR NATURE OF NOTICE.**
- 160F. FAILING TO COMPLY WITH A NOTICE.”**

- 122. Monitoring orders (Amendment of Section 161).
- 123. Repeal and replacement of Section 162.

**“162. MONITORING ORDERS - OFFENCES FOR FINANCIAL INSTITUTIONS.”**

- 124. Monitoring orders - other offences (Amendment of Section 163).
- 125. Insertion of new Divisions 7 and 8 in Part IV.

***“Division 7. - Examinations.***

- 163A. CONDUCT OF EXAMINATIONS.**
- 163B. PRIVILEGE AGAINST SELF INCRIMINATION DOES NOT APPLY.**
- 163C. OFFENCE OF DISCLOSURE RELATING TO EXAMINATIONS.**
- 163D. MAGISTRATE MAY RESTRICT DISCLOSURE OF CERTAIN MATERIAL.**
- 163E. PROCEEDINGS INVOLVING EXAMINATIONS.**
- 163F. USE OF EXAMINATION ANSWERS AND QUESTIONS BY MAGISTRATES.**
- 163G. FAILING TO ATTEND AN EXAMINATION.**
- 163H. OFFENCES RELATING TO APPEARANCE AT AN EXAMINATION.**
- 163I. GIVING FALSE OR MISLEADING ANSWERS OR DOCUMENTS.**
- 163J. ADMISSIBILITY OF EXAMINATION MATERIAL.**
- 163K. EXAMINATION ORDER CEASES TO HAVE EFFECT.**
- 163L. AUTHORISED PROSECUTOR NOT TO PROSECUTE RELATED CRIMINAL MATTERS.**
- 163M. MAGISTRATE MAY DIRECT DOCUMENTS BE PRODUCED.**
- 163N. RECORD AND TRANSCRIPT OF EXAMINATION.**

***Division 8. - Other matters.***

- 163O. RELATIONSHIP WITH SEARCH ACT.”**

- 126. Repeal and replacement of heading to Part V.

**“PART V. - DISCLOSURE OF INFORMATION HELD BY STATE BODIES.”**

127. Repeal and replacement of Section 164.

- “164. DIRECTION TO GIVE DOCUMENTS OR DISCLOSE INFORMATION.**
- 164A. COURT ORDER FOR COMPLIANCE WITH DIRECTION.**
- 164B. OFFENCE OF NON-COMPLIANCE WITH COURT ORDER.”**

128. Further disclosure of information and documents (Amendment of Section 165).

129. Repeal and replacement of Section 166.

- “166. EVIDENTIAL VALUE OF COPIES.**
- 166A. APPLICATION OF PART.”**

130. Repeal and replacement of Part VI.

**“PART VI - MANAGEMENT OF RESTRAINED AND CONFISCATED PROPERTY.**

*Division 1. - General Provisions.*

- 167. APPLICATION OF PART”.**
- 168. PRESERVATION OF THE VALUE OF PROPERTY.**
- 169. ENTRY, SEARCH AND SEIZURE POWERS WITHOUT WARRANT.**
- 169A. ANCILLARY ORDERS RELATING TO CUSTODY AND CONTROL ORDERS.**
- 169B. PROPERTY UNDER THE CUSTODY AND CONTROL OF THE COMMISSIONER OF POLICE.**

*Division 2. - Disposal and destruction of property.*

- 169C. DISPOSING OF PROPERTY SUBJECT TO A CUSTODY AND CONTROL ORDER.**
- 169D. DISPOSAL OF PROPERTY FOLLOWING OBJECTION.**
- 169E. DESTRUCTION OF PROPERTY SUBJECT TO A CUSTODY AND CONTROL ORDER.**
- 169F. DESTRUCTION OF PROPERTY FOLLOWING OBJECTION.**
- 169G. SECTION 150 OF *POLICE ACT* DOES NOT APPLY.**
- 169H. PROPERTY SUBJECT TO MUTUAL ASSISTANCE REQUEST.**
- 169I. PROCEEDS FROM SALE OF PROPERTY.**
- 169J. PAYMENT OF SALE PROCEEDS TO OWNER.**

*Division 3. - Forfeited property.*

- 169K. WHEN THE STATE CAN BEGIN DEALING WITH FORFEITED PROPERTY.**
- 169L. HOW FORFEITED PROPERTY MUST BE DEALT WITH.**

*Division 4. - Pecuniary penalty orders.*

- 169M. COMMISSIONER OF POLICE TO SATISFY PECUNIARY PENALTY ORDER.**

- 169N. COMMISSIONER OF POLICE TO SATISFY REGISTERED FOREIGN PECUNIARY PENALTY ORDER.
- 169O. PROPERTY SEIZED UNDER PART IV.
- 169P. STATE MAY RETAIN CERTAIN PROPERTY IN ITS CURRENT FORM.
- 169Q. SATISFYING PECUNIARY PENALTY ORDERS - DECLARATION OF INTEREST IN PROPERTY.
- 169R. ENFORCEMENT OF PECUNIARY PENALTY ORDERS.

*Division 5. - Management of property.*

- 169S. APPOINTMENT OF AGENTS TO MANAGE RESTRAINED OR CONFISCATED PROPERTY.
- 169T. COSTS, CHARGES AND EXPENSES OF MANAGING PROPERTY.
- 169U. TRUST ACCOUNT FOR PROPERTY HELD ON INTERIM BASIS.

*Division 6. - Confiscated Assets Fund.*

- 169V. ESTABLISHMENT OF THE CONFISCATED ASSETS FUND.
- 169W. PURPOSES OF THE CONFISCATED ASSETS FUND.
- 169X. FUNDS OF THE CONFISCATED ASSETS FUND.
- 169Y. USE OF CONFISCATED ASSETS FUND FOR PURPOSES IN SECTIONS 169W(1)(a), (b) AND (c).
- 169Z. APPLICATIONS FOR USE OF CONFISCATED ASSETS FUND FOR PURPOSES IN SECTION 169W(1)(a).
- 169ZA. APPLICATIONS TO MAINTAIN PROPERTY IN ITS CURRENT FORM.
- 169ZB. ANNUAL REPORT.

*Division 7. - Miscellaneous.*

- 169ZC. OBSTRUCTION OF COMMISSIONER OF POLICE AND OTHERS.
- 169ZD. PUBLIC AUCTION.
- 169ZE. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995.*

131. Order to declare a transaction void (Amendment of Section 170).

132. New Sections 170A to 170E.

- “170A. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE BEFORE A PERSON’S INSOLVENCY.
- “170B. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE ON OR AFTER A PERSON’S INSOLVENCY.
- “170C. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE BEFORE APPOINTMENT OF RECEIVER OR LIQUIDATOR OF COMPANY.
- “170D. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE ON OR AFTER APPOINTMENT OF RECEIVER OR LIQUIDATOR FOR COMPANY.
- “170E. AUTHORISED PROSECUTORS.”

133. Repeal and replacement of Section 171.

**“171. CONDUCT BY DIRECTORS, SERVANTS OR AGENTS.”**

134. Repeal and replacement of Section 172 and insertion of Section 172A.

**“172. PROOF.**

**172A. PROCEDURE FOR APPLICATION.”**

135. Repeal and replacement of Section 173.

**“173. COSTS.”**

136. Repeal and replacement of Section 175.

**“175. FORMS.”**

137. Repeal and replacement of Sections 176 and 177.

**“176. NON-LIABILITY OF COMMISSIONER OF POLICE AND  
OTHERS.**

**177. OPERATION OF OTHER LAWS.”**

138. Insertion of new Sections 177A to 177L.

**“177A. EFFECT OF A PERSON’S DEATH.**

**177B. CONSENT ORDERS.**

**177C. ADMISSIBILITY OF TRANSCRIPTS.**

**177D. OBSTRUCTION OF INVESTIGATION OR PROCEEDING.**

**177E. EXCHANGE OF INFORMATION.**

**177F. APPEALS.**

**177G. STAY OF PROCEEDINGS.**

**177H. CO-OPERATION AND SENTENCING.**

**177I. UNCLAIMED PROPERTY.**

**177J. HEARSAY IN APPLICATIONS FOR RESTRAINING ORDER OR  
INTERIM RESTRAINING ORDERS.**

**177K. DELEGATION BY COMMISSIONER OF POLICE.**

**177L. OTHER ORDERS.”**

139. Transitional and Savings Provisions.

140. General prospective application of Amendments.

141. Effect of repeal of certain provisions.

142. Existing Criminal offences.

143. Application of Part II to new importations and exportations.

144. Application to existing importations and exportations of currency.

145. Existing restraining order and confiscation order applications.

146. Existing applications in relation to certain existing orders.

147. Existing proceedings.

148. Automatic forfeiture.

149. Application of Section 53 Amendments.

150. Powers exercised under Part IV or V but proceedings not commenced.

151. Application of certain provisions relating to action to investigate, freeze, restrain or confiscate property.

152. Action under *Mutual Assistance in Criminal Matters Act 2005*.

153. Part IV Warrants and Orders.

154. Part V Directions.

155. Existing custody and control orders.

156. Confiscated property.
157. Existing confiscation orders.
158. Application of Section 177B.
159. Application of insolvency provisions.
160. Repeal and replacement of Arabic numerals with Roman numerals in relation to reference to Parts of the Act.



No. of 2015.

AN ACT

entitled

***Proceeds of Crime (Amendment) Act 2015,***

Being an Act to amend the ***Proceeds of Crime Act 2005***, and 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.

**1. AMENDMENT OF LONG TITLE.**

The long title of the Principal Act is amended by repealing Paragraphs (a), (b) and (c) and replacing the following:

- “(a) to provide a regime for the declaration of, and investigations into, cross border transportations of currency, monetary instruments, precious metals and precious stones; and
- (b) to provide for confiscation orders, restraining orders and freezing directions in relation to offences; and
- (c) to deprive persons of the proceeds of offences, the instruments of offences, and the benefits derived from unlawful activity; and”.

**2. REPEAL AND REPLACEMENT OF SECTION 1.**

Section 1 of the Principal Act is repealed and replaced with the following:

**“1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the ***Constitution***, namely -

- (a) Section 42 (liberty of the person); and
- (b) Section 44 (freedom from arbitrary search and entry); and
- (c) Section 49 (right to privacy); and
- (d) Section 51 (freedom of information); and
- (e) Section 53 (unjust deprivation of property); and
- (f) Section 58 (right to compensation),

is a law that is made for the purpose of complying with Section 38 of the ***Constitution***, that is necessary for the purpose of giving effect to the public interest in public safety, public order and public welfare and is reasonably justifiable in a democratic society having proper respect and regard for the rights and dignity of mankind, taking into account the National Goals and Directive Principles and Basic Social Obligations, and to give effect to certain international obligations of Papua New Guinea and to meet relevant Financial Action Task Force Recommendations because of the risk that criminal activity poses to public safety, public order and public welfare as well as to the successful economic and human development of Papua New Guinea and its citizens and to the stability of the State of Papua New Guinea.”.

**3. DEFINITIONS (AMENDMENT OF SECTION 3).**

Section 3 of the Principal Act is amended by -

(a) repealing Subsection (1) and replacing it with the following:

· “(1) In this Act, unless the contrary intention appears -

“account” has the meaning given by Section 4A;

“affairs” of a person means -

- (a) the nature and location of property of the person or property in which the person has an interest; or
- (b) the nature and location of property, being property subject to the effective control of the person; or
- (c) the financial circumstances of the person;

“appeal” includes -

- (a) proceedings by way of discharging or setting aside a judgment; and
- (b) an appeal against any order made under this Act; and
- (c) an appeal against conviction on a question of law or fact; and
- (d) an appeal on a question of law directly arising out of a proceeding under this Act which may impact on an order made under this Act;

“application” in relation to Court proceedings, means any process by which such proceedings are commenced or matters are brought before the Court under any Act, rules of Court or any other law, and includes an originating summons and a notice of motion;

“authorised prosecutor” means a person authorised under Section 170E to perform the functions and duties of an authorised prosecutor;

“bearer negotiable instrument” means -

- (a) a bill of exchange; or
- (b) a cheque; or
- (c) a promissory note; or
- (d) a bearer bond; or
- (e) a traveller’s cheque; or
- (f) a money order, postal order or similar order; or
- (g) a negotiable instrument not covered by any of the above paragraphs;

“benefit” has the meaning given under Section 5;

“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;

“Confiscated Assets Fund” means the Confiscated Assets Fund established by Section 169V;

“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 the coin and banknotes of Papua New Guinea or a foreign country that is designated by that country as legal tender or is customarily used and accepted as a medium of exchange;

“custody and control order” means an order made under Section 50, 138(6) or 145;

*Proceeds of Crime (Amendment)*

“customs officer” has the same meaning as officer has in the *Customs Act 1951*;

“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 of 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;

“dispose of property” means to dispose of property by sale or other means;

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

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

“examination” means an examination conducted pursuant to an examination order;

“examination order” means an order made under Section 53(1)(db) or 141(2)(c);

“exclusion order” means an order made under Section 42;

“FASU” means the Financial Analysis and Supervision Unit established under the *Anti-Money Laundering and Counter Terrorist Financing Act 2015*;

“financial institution” means any person or unincorporated entity that conducts in Papua New Guinea one or more of the activities listed below for or on behalf of a customer -

- (a) acceptance of deposits and other repayable funds from the public, including private banking; or
- (b) lending, including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting; or
- (c) financial leasing other than with respect to arrangements relating to consumer products; or
- (d) the transfer of money or value; or
- (e) issuing and managing means of payment, including, but not limited to, credit and debit cards, cheques, traveller’s cheques, money orders and bankers’ drafts and electronic money; or
- (f) issuing financial guarantees and commitments; or
- (g) trading in -
  - (i) bearer negotiable instruments; or
  - (ii) foreign exchange; or
  - (iii) exchange, interest rate and index instruments; or
  - (iv) transferable securities; or
  - (v) commodity futures trading; or
- (h) participation in securities issues and the provision of financial services related to such issues; or

*Proceeds of Crime (Amendment)*

- (i) individual and collective portfolio management; or
  - (j) safekeeping and administration of currency, bearer negotiable instruments or liquid securities on behalf of other persons; or
  - (k) investing, administering or managing funds or money on behalf of other persons; or
  - (l) underwriting and placement of insurance, including insurance intermediation by agents and brokers; or
  - (m) money and currency changing;
- “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 or an offence prescribed by regulations;
- “foreign restraining order” has the same meaning as in the *Mutual Assistance Act*;
- “forfeiture order”, other than a foreign forfeiture order, means an order made by the Court under Section 58, 59 or 59A, or an order that is taken to have been made by the operation of Section 71(4);
- “gift” has the same meaning given by Section 12;
- “indictable offence” means an offence against the law of Papua New Guinea -
- (a) that may be prosecuted on indictment (whether or not the offence can be dealt with summarily); and
  - (b) for which the maximum penalty is death or a term of imprisonment for at least one year or an offence prescribed in the regulations;
- “instrument” has the meaning given by Section 10;
- “interest in property” includes -
- (a) a legal or equitable estate or interest in the property; and
  - (b) a right, power or privilege in relation to the property, present or future and whether vested or contingent; and
  - (c) a security interest within the meaning of the *Personal Property Security Act 2011*; and
  - (d) any security in or over the property of a secured creditor;
- “interim restraining order” means an order made under Section 138(2);
- “living expenses” means basic expenses, including but not limited to the following:
- (a) foodstuffs; and
  - (b) rent or mortgage; and
  - (c) medicines or medical treatment; and
  - (d) public utility charges;
- “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*;

*Proceeds of Crime (Amendment)*

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

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

“penalty amount” means the amount that the Court orders a person to pay the State pursuant to a pecuniary penalty order made under Section 84;

“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 procedures (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 same meaning given by Section 10;

“production order” means an order under Section 154;

“property” means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, including an enforceable right of action, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, traveller’s cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Papua New Guinea or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such assets;

“property - tracking document” means -

- (a) any document that can help identify, locate or quantify property of any person, including property under his or her effective control; or
- (b) in relation to an offence, any document that can help identify, locate or quantify property, that has become tainted because of the offence, whether or not the identity of a person who is suspected of having committed an offence is known or unknown; or
- (c) any document that is necessary for the transfer of any property referred to in Paragraph (a) or (b); or
- (d) any document that can help to interpret any document referred to in Paragraph (a), (b) or (c);

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

“receiving entity” means an entity who receives a report under Section 14 and includes the FASU;

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

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

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

*Proceeds of Crime (Amendment)*

“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 two 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 or interim restraining order, means an order made under Section 38, 39 or 39A;

“serious offence” means an indictable offence or a foreign indictable offence for which the maximum penalty is death or imprisonment for at least three years or an offence prescribed in the regulations;

“state body” means -

- (a) the National Government; or
- (b) a Provincial Government; or
- (c) a Local-level Government; or
- (d) an arm, Department, agency or instrumentality of the State or of a Provincial Government or of a Local-level Government; or
- (e) a state owned entity;

“state owned entity” means -

- (a) a statutory body established by an Act; or
- (b) an entity in relation to which the State, a Department or an office of a Department, the trustee of a trust a beneficiary of which is the State, or another State owned enterprise -
  - (i) controls the composition of the board of directors of the entity; or
  - (ii) controls more than 50 percent of the voting power in the entity; or
  - (iii) holds more than 50 percent of the issued share capital of the entity (excluding any part of its that carries no right to participate beyond a specific amount in a distribution of either profits or capital);

“sufficient consideration” means a payment or benefit that reflects the full market value of an acquisition, disposal or transfer of property at the time of such acquisition, disposal or transfer, having regard solely to commercial considerations, and that would not otherwise constitute a gift in whole or in part;

“suspect”, in relation to a restraining order, an interim 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 or an interim restraining order is suspected of having committed; or
- (d) if the order is a confiscation order, committed, the offence or offences, or the foreign indictable offence or foreign indictable offences, to which the order relates;

“tainted property” means -

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

*Proceeds of Crime (Amendment)*

“transaction” has the meaning given by Section 4B;

“unincorporated entity” includes any unincorporated group, undertaking, organisation or legal arrangement such as a trust or an unincorporated partnership;

“unlawful activity” means an act or omission that constitutes an offence against a law of Papua New Guinea or a foreign indictable offence.”; and

(b) adding after Subsection (2), the following new subsections:

“(3) A reference in this Act to a confiscation order being made against or in relation to property includes an order that the property be used to satisfy a pecuniary penalty order or a registered foreign pecuniary penalty order.

(4) Notwithstanding the *Interpretation Act 1975*, references in this Act to offences other than -

- (a) indictable offences; and
- (b) serious offences; and
- (c) foreign indictable offences,

shall include offences against the law of a foreign country, unless the contrary intention appears.

(5) The terms “court” and “police force” wherever appearing in the Principal Act, is repealed and replaced with the terms “Court” and “Police Force”.”.

**4. REPEAL AND REPLACEMENT OF SECTION 4.**

Section 4 the Principal Act is repealed and replaced with the following:

**“4. POLICE ENTITY.**

There is established an entity within the Police Force the functions of which include -

- (a) conducting investigations under this Act; and
- (b) assisting the Commissioner of Police to perform his or her functions under this Act, as directed by the Commissioner of Police or his or her delegate.”.

**5. INSERTION OF NEW SECTIONS 4A AND 4B.**

The Principal Act is amended by inserting before Section 5, the following new sections:

**“4A. MEANING OF ACCOUNT.**

(1) An account is a facility or arrangement by which a financial institution does any of the following:

- (a) accepts deposits of funds or other assets; and
- (b) allows withdrawals or transfers of funds or other assets; and
- (c) pays, collects or draws on a bearer negotiable instrument on behalf of any other person; and
- (d) supplies a safety deposit box or any other form of safe deposit.

(2) For the avoidance of doubt, account includes any account which may be closed or inactive or any account that has a nil balance.

**4B. MEANING OF TRANSACTION.**

(1) A transaction is a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement of such and includes but is not limited to -

- (a) the opening of an account; and
- (b) any deposit, withdrawal, exchange or transfer of funds in any currency whether -
  - (i) in cash; or
  - (ii) by cheque or other bearer negotiable instrument; or
  - (iii) by non-physical means; and
- (c) the use of a safety deposit box or other form of safe deposit; and
- (d) entering into any fiduciary relationship; and
- (e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation; and
- (f) any payment made in respect of a lottery, bet or other game of chance; and
- (g) establishing or creating a body corporate or unincorporated entity.

(2) For the avoidance of doubt a reference to a transaction includes a reference to an attempted transaction.”.

**6. MEANING OF CONVICTION (AMENDMENT OF SECTION 6).**

Section 6 of the Principal Act is amended by repealing Paragraphs (c) and (d), and replacing them with the following:

“(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.”.

**7. MEANING OF CONVICTION DAY (AMENDMENT OF SECTION 7).**

Section 7 of the Principal Act is amended by repealing Paragraphs (c) and (d), and replacing them with the following:

“(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.”.

**8. MEANING OF QUASHING A CONVICTION OF AN OFFENCE (AMENDMENT OF SECTION 8).**

Section 8 of the Principal Act is amended in Subsection (1), by repealing Paragraphs (c) and (d), and replacing them with the following:

“(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; or
- (ii) the decision of the Court to take the offence into account in passing sentence for that other offence is quashed or set aside.”.

**9. MEANING OF EFFECTIVE CONTROL (AMENDMENT OF SECTION 9).**

Section 9 of the Principal Act is amended -

- (a) in Subsection (4) by deleting the phrase “application for a restraining order or a confiscation order” and replacing them with the following phrase:  
“application for a restraining order, an interim restraining order or a confiscation order”; and
- (b) in Subsection (5) by deleting the words “and business” in Paragraph (c) and replacing them with “, business and other”; and
- (c) adding the following new subsection after Subsection (5):

“(6) To avoid doubt, property may be subject to the effective control of more than one person.”.

**10. REPEAL AND REPLACEMENT OF SECTION 10.**

Section 10 of the Principal Act is repealed and replaced with the following:

**“10. MEANING OF PROCEEDS AND INSTRUMENTS.**

- (1) Property is “proceeds” of an offence if -

- (a) it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
- (b) it is partly derived or realised, whether directly or indirectly, from the commission of the offence,

whether the property is situated within or outside Papua New Guinea.

- (2) Proceeds of an offence includes -

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

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

- (4) Property is an “instrument” of an offence if it is -

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

whether the property is situated within or outside Papua New Guinea.

- (5) An instrument of an offence includes -

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

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

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

## *Proceeds of Crime (Amendment)*

(7) Proceeds or an instrument of an unlawful activity means proceeds or an instrument of the offence constituted by the act or omission that constitutes the unlawful activity.

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

### **11. REPEAL AND REPLACEMENT OF SECTION 12.**

Section 12 of the Principal Act is repealed and replaced with the following:

#### **“12. MEANING OF GIFT.**

A gift includes a transfer (directly or indirectly) of property by one person to another person for a consideration that is significantly less than the market value of the property at the time of the transfer.”.

### **12. NEW SECTION 12A.**

The Principal Act is amended by inserting after Section 12 the following new section:

#### **“12A. APPLICATION OF CRIMINAL CODE ACT.**

(1) The *Criminal Code Act 1974* applies to all offences against this Act.

(2) If a person is charged before a District Court constituted by a Principal Magistrate with an offence under this Act, the Court may deal with the charge summarily according to the procedure set out in Section 421 of the *Criminal Code Act 1974*.

(3) Subject to Section 421(4) of the *Criminal Code Act 1974*, if -

- (a) a charge for an offence is dealt with under Subsection (2); and
- (b) the maximum penalty provided in this Act for that offence is imprisonment for a term exceeding 10 years,

the maximum penalty which may be imposed by a Principal Magistrate is imprisonment for a term not exceeding 10 years.

(4) Subsection (3) applies despite anything to the contrary in this Act or the *Criminal Code Act 1974*.”.

### **13. REPEAL AND REPLACEMENT OF PART II.**

Part II of the Principal Act is repealed and replaced with the following:

#### **“PART II. - CROSS BORDER TRANSPORTATIONS.**

##### ***Division 1. - Reporting obligations.***

#### **13. INTERPRETATION FOR THIS PART.**

(1) In this Part, unless the contrary intention appears -

“export” means any out-bound physical transportation from Papua New Guinea to any other place and includes the following modes of transportation:

- (a) with a person, or in that person’s accompanying luggage by any form of transport whatsoever; or
  - (b) mail service, cargo or courier,
- and includes an attempt to export; and

## *Proceeds of Crime (Amendment)*

“import” means any in-bound physical transportation to Papua New Guinea from any other place and includes the following modes of transportation:

- (a) with a person, or in that person’s accompanying luggage by any form of transport whatsoever; or
  - (b) mail service, cargo or courier,
- and includes an attempt to import; and

“monetary instrument” means an instrument in bearer form -

- (a) that is endorsed without restriction; or
- (b) that is made out to a fictitious payee; or
- (c) that is otherwise in such other form such that title to it passes on delivery,

and includes -

- (d) a security, including a stock, bond, debenture and treasury bill; and
- (e) a negotiable instrument, including a bank draft, cheque, promissory note, traveller’s cheque and money order, other than warehouse receipts or bills of lading; and

“precious metal” means -

- (a) gold, silver, platinum, palladium, iridium, osmium, rhodium or ruthenium; or
- (b) any alloy or other substance containing any of the metals referred to in Paragraph (a); and

“precious stone” means a substance with gem quality market-recognised beauty, rarity and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli and opal; and

“relevant authority” means the Papua New Guinea Customs Service, the Papua New Guinea Immigration and Citizenship Services Authority, the Police Force and such other authority as may be prescribed by the regulations; and

“working day” means every day of the week excluding Saturday, Sunday and public holidays.

(2) In this Part, a reference to “currency”, “monetary instrument”, “precious metal” or “precious stone” includes a reference to multiple such items, or a combination of such items being imported or exported together, or both.

### **14. THE OBLIGATION TO MAKE A REPORT.**

(1) A person must make a report of the kind referred to in Subsection (2), if the person -

- (a) imports or exports currency, a monetary instrument, precious metal or precious stone with a value equivalent to K20,000.00 or more; or
- (b) arranges for the import or export of such an item.

(2) A report must -

- (a) be made in writing or in electronic format; and
- (b) be submitted to the appropriate receiving entity at the time worked out under Section 15; and

## *Proceeds of Crime (Amendment)*

- (c) include such information concerning the importation or exportation and the circumstances surrounding the importation or exportation as is required by the form prescribed under Paragraph (e); and
  - (d) include such information concerning the currency, monetary instrument, precious metal or precious stone as is required by the form prescribed under Paragraph (e); and
  - (e) be in such form as is prescribed by a relevant authority.
- (3) The appropriate receiving entity is -
  - (a) in the case of importation or exportation by a person through an airport, port or land border, the Papua New Guinea Customs Service or the Papua New Guinea Immigration and Citizenship Services Authority; and
  - (b) in the case of importation by mail service, cargo or courier, the Papua New Guinea Customs Service; and
  - (c) in the case of exportation by mail service, Post PNG; and
  - (d) in the case of exportation by cargo or courier, the airline, freight forwarder, shipping company or courier with whom the goods have been consigned.
- (4) Despite Subsection (3), a person may at all times meet the person's obligation under Subsection (1), by submitting a report directly to the FASU and the FASU must give the person a receipt confirming that the person has submitted the report.
- (5) The obligation to make a report under Subsection (1) arises if -
  - (a) the person knows the value of the currency, monetary instrument, precious metal or precious stone is equivalent to K20,000.00 or more; or
  - (b) a reasonable person would suspect that the currency, monetary instrument, precious metal or precious stone has a value equivalent to K20,000.00 or more.
- (6) In the case of multiple items of currency, monetary instruments, precious metals or precious stones (or a combination thereof) being imported or exported together, the obligation to make a report under Subsection (1), arises if their combined value is equivalent to K20,000.00 or more.
- (7) If a report is made under Subsection (1), the receiving entity to whom the report was made must, as soon as is reasonably practicable but within no more than two working days, provide the report and any other relevant information to the FASU.
- (8) Nothing in Subsection (1), affects the obligation of a person under any other Act or law to make a declaration or report.

### **15. TIMING OF REPORT.**

- (1) A report under Section 14 must be given -
  - (a) if the transportation is to be effected by a person bringing the currency, monetary instrument, precious metal or precious stone into Papua New Guinea with the person or in the person's accompanying luggage at or before the time worked out under Subsection (2); or

*Proceeds of Crime (Amendment)*

- (b) if the transportation is to be effected by a person taking the currency, monetary instrument, precious metal or precious stone out of Papua New Guinea with the person or in the person's accompanying luggage at or before the time worked out under Subsection (3); or
  - (c) if the currency, monetary instrument, precious metal or precious stone is to be exported from Papua New Guinea by a person by consigning the currency, monetary instrument, precious metal or precious stone -
    - (i) as a mail article through the post to a place outside Papua New Guinea; or
    - (ii) as cargo for carriage to a place outside Papua New Guinea by an airline, freight forwarder, shipping company or courier,at any time before the time when the possession of the currency, monetary instrument, precious metal or precious stone is transferred to Post PNG or to the airline, freight forwarder, shipping company or courier as the case may be; or
  - (d) if the currency, monetary instrument, precious metal or precious stone is imported into Papua New Guinea as air cargo, sea cargo or as a postal article or by courier, and clearance documentation is to be lodged with the Papua New Guinea Customs Service, then, at or before the time such documentation is lodged; or
  - (e) if the currency, monetary instrument, precious metal or precious stone is imported into Papua New Guinea as air cargo, sea cargo or as a postal article or by courier, and clearance documentation is not to be lodged with the Papua New Guinea Customs Service, then within three days after the recipient takes possession of the goods.
- (2) For the purposes of Subsection (1)(a), the applicable time is -
- (a) if the person -
    - (i) moves the currency, monetary instrument, precious metal or precious stone into Papua New Guinea on an aircraft or ship; and
    - (ii) after disembarking, goes to a place at which customs officers examine baggage,at or before the time that the person reaches that place; or
  - (b) in any other case, the first opportunity after arrival in Papua New Guinea that the person has to give the report under Section 14.
- (3) For the purposes of Subsection(1)(b), the applicable time is -
- (a) if -
    - (i) the movement of the currency, monetary instrument, precious metal or precious stone is to be effected on an aircraft or ship; and
    - (ii) the person, before embarking, goes to the place at which customs or immigration officers examine passports,at or before the time that the person reaches that place; or
  - (b) in any other case, as soon as the person reaches the customs officer who is to examine the person's passport in relation to the person leaving Papua New Guinea or, if there is no such examination, the last opportunity before leaving Papua New Guinea that the person has to make the report under Section 14.

*Division 2. - Offences.*

**16. FAILURE TO MAKE A REPORT.**

(1) A person who, for the purposes of or in connection with any report required by Section 14, either -

- (a) intentionally fails to make a report in any material particular; or
  - (b) is reckless as to the making of a report in any material particular
- is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years or both; or  
If the offender is a body corporate, a fine not exceeding K250,000.00.

(2) If an officer of a relevant authority reasonably suspects that a person has contravened Subsection (1) in respect of currency, a monetary instrument, a precious metal or a precious stone, this is sufficient to give rise to a reasonable suspicion that such property is tainted property.

(3) If an officer of a receiving entity or a relevant authority reasonably suspects that a person has contravened Subsection (1), the receiving entity or relevant authority must as soon as is reasonably practicable but within no more than two working days provide all the relevant information in connection with the suspected contravention to the FASU.

(4) A person who fails to make a report required by Section 14, is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K10,000.00;  
or  
If the offender is a body corporate, a fine not exceeding K50,000.00.

(5) An offence under Subsection (4), is an offence of strict liability.

**17. MAKING A FALSE OR MISLEADING REPORT.**

(1) A person who, for the purposes of or in connection with any report required by Section 14 either -

- (a) makes a report which the person knows to be false or misleading in a material particular; or
  - (b) recklessly makes a report which is false or misleading in a material particular,
- is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years or both; or  
If the offender is a body corporate, a fine not exceeding K250,000.00.

(2) If an officer of a relevant authority reasonably suspects that a person has contravened Subsection (1), in respect of currency, a monetary instrument, a precious metal or a precious stone, this is sufficient to give rise to a reasonable suspicion that such property is tainted property.

*Proceeds of Crime (Amendment)*

(3) If an officer of a receiving entity or a relevant authority reasonably suspects that a person has contravened Subsection (1), the receiving entity or relevant authority must as soon as is reasonably practicable but within no more than two working days provide all the relevant information in connection with the suspected contravention to the FASU.

*Division 3. - Powers in relation to suspicious currency, monetary instruments, precious metals and precious stones.*

**18. POWERS TO QUESTION AND SEARCH.**

(1) In this section -

“a person to whom this section applies” means -

- (a) a person who has arrived in Papua New Guinea within the past 24 hours; or
- (b) a person who, in the reasonable opinion of an officer of a relevant authority, is planning to leave Papua New Guinea in the next 24 hours; or
- (c) a person who is about to board or leave, or has boarded or left, any ship or aircraft; or
- (d) a person who, in the reasonable suspicion of an officer of a relevant authority, has imported or exported any currency, monetary instruments, precious metal or precious stone within the past 24 hours; or
- (e) a person who, in the reasonable opinion of an officer of a relevant authority, is planning to import or export any currency, monetary instruments, precious metal or precious stone within the next 24 hours;

“a thing to which this section applies” means -

- (a) a thing that a person to whom this section applies has with him or her; or
- (b) a thing which has been imported into Papua New Guinea within the past 24 hours; or
- (c) a thing which, in the reasonable opinion of an officer of a relevant authority, will be exported from Papua New Guinea in the next 24 hours; or
- (d) a thing that is about to be loaded onto or offloaded from, or has been loaded onto or offloaded from, any ship or aircraft.

(2) A person to whom this section applies must, if required to do so by an officer of a relevant authority -

- (a) declare whether or not the person has any currency, monetary instrument, precious metal or precious stone with him or her; and
- (b) declare whether or not the person has imported or exported any currency, monetary instrument, precious metal or precious stone within the past 24 hours; and
- (c) declare whether or not the person is planning to import or export any currency, monetary instrument, precious metal or precious stone within the next 24 hours; and
- (d) declare the total value of the currency, monetary instrument, precious metal or precious stone referred to in Paragraphs (a) to (c) above; and

*Proceeds of Crime (Amendment)*

- (e) declare whether or not, to the best of the person's knowledge and belief, a report under Section 14 has been made in respect of the currency, monetary instrument, precious metal or precious stone referred to in Paragraphs (a) to (c) above; and
- (f) provide any information or documentation in the person's possession concerning the importation or exportation and the circumstances surrounding the importation or exportation of the currency, monetary instrument, precious metal or precious stone referred to in Paragraphs (a) to (c) above; and
- (g) provide any information or documentation in the person's possession concerning the currency, monetary instruments, precious metal or precious stone referred to in Paragraphs (a) to (c) above, including information concerning its origin and intended use; and
- (h) make a report under Section 14; and
- (i) produce to the officer any currency, monetary instrument, precious metal or precious stone that the person has with him or her.

(3) An officer of a relevant authority may, with such assistance as is reasonable and necessary, examine or search a thing to which this section applies for the purpose of finding out whether the thing is or contains any item or items in respect of which a report under Section 14 is required.

(4) An officer of a relevant authority may, with such assistance as is reasonable and necessary, search a person to whom this section applies for the purpose of finding out whether the person has with him or her any item or items in respect of which a report under Section 14 is required, provided that the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, any item or items in respect of which a report under Section 14 is required.

(5) A person must not be searched under Subsection (4), except by a person of the same sex.

(6) An officer of a relevant authority and any person assisting an officer of a relevant authority, may board a ship or aircraft for the purpose of exercising the powers conferred by Subsection (2), (3) or (4).

(7) An officer of a relevant authority may, with such assistance as is reasonable and necessary -

- (a) board a ship or aircraft; and
- (b) examine or search the ship or aircraft and any goods found on the ship or aircraft,

for the purpose of ascertaining whether there is on board the ship or aircraft any currency, monetary instrument, precious metal or precious stone in respect of which a report under Section 14 is required.

(8) A person who fails to comply with a requirement under Subsection (2), is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years or both; or  
If the offender is a body corporate, a fine not exceeding K250,000.00.

**19. DETENTION OF SUSPICIOUS CURRENCY, A MONETARY INSTRUMENT, A PRECIOUS METAL OR A PRECIOUS STONE.**

(1) An officer of a relevant authority may detain currency, a monetary instrument, a precious metal or a precious stone that -  
(a) is being imported into or exported from Papua New Guinea; or  
(b) has been imported into Papua New Guinea,  
if the officer suspects on reasonable grounds that it is tainted property.

(2) If an officer of a relevant authority reasonably suspects that a person has exported or is attempting to export currency but does not have the authorisation from the Bank of Papua New Guinea or from an authorised dealer required under law, this is sufficient to give rise to a reasonable suspicion that such currency is tainted property.

(3) If an officer of a relevant authority reasonably suspects that a person has imported or exported or is attempting to import or export gold but does not have the consent from the Bank of Papua New Guinea required under law, this is sufficient to give rise to a reasonable suspicion that such gold is tainted property.

(4) If there is a detention under Subsection (1), the relevant authority must as soon as is reasonably practicable -

- (a) provide all the relevant information in connection with such detention to the Police Force and the FASU; and
- (b) transfer the currency, monetary instrument, precious metal or precious stone into the custody and possession of the Police Force.

(5) A transfer of currency, monetary instrument, precious metal or precious stone into the custody and possession of the Police Force under this Part does not operate as transfer of ownership or title or give rise to any lien.

(6) However the Police Force is responsible for the safekeeping of such property.

**20. RETENTION OF SUSPICIOUS CURRENCY, MONETARY INSTRUMENT, PRECIOUS METAL OR PRECIOUS STONE.**

(1) A relevant authority may not retain currency, a monetary instrument, a precious metal or a precious stone detained under Section 19 for more than three working days after it has been detained.

(2) The head of the relevant authority, or, if unavailable, the next senior person in charge of the relevant authority, with custody of the detained currency, monetary instrument, precious metal or precious stone may, in writing, extend the time period under Subsection (1), by a further five working days if he or she is satisfied that -

- (a) there are reasonable grounds for the suspicion mentioned in Section 19(1); and
- (b) its continued retention is justified while -
  - (i) its origin or derivation is further investigated; or
  - (ii) consideration is given to the commencement (in Papua New Guinea or elsewhere) of criminal proceedings or proceedings under this Act or an equivalent foreign law in connection with the currency, monetary instrument, precious metal or precious stone.

## *Proceeds of Crime (Amendment)*

(3) A Magistrate may, regardless of whether an extension has been sought under Subsection (2), by order extend the time period for which the currency, monetary instrument, precious metal or precious stone may be retained up to a maximum period not exceeding three months where he or she is satisfied that -

- (a) there are reasonable grounds for the suspicion mentioned in Section 19(1); and
- (b) its continued retention is justified while -
  - (i) its origin or derivation is further investigated; or
  - (ii) consideration is given to the commencement (in Papua New Guinea or elsewhere) of criminal proceedings or proceedings under this Act or an equivalent foreign law in connection with the currency, monetary instrument, precious metal or precious stone.

(4) A Magistrate may subsequently order the continued retention of the currency, monetary instrument, precious metal or precious stone for further periods not exceeding three months each if satisfied of the matters mentioned in Subsections (3)(a) and (b), but the total period of detention may not exceed two years from the date of the first order made under Subsection (3).

(5) If an order is made under Subsection (3) or (4) in respect of currency, monetary instrument, precious metal or precious stone that has been retained and has not already been transferred to the custody and possession of the Police Force by the relevant authority, the currency, monetary instrument, precious metal or precious stone must on the first available working day after the expiration of seven days after the date of the order of the Magistrate be transferred into the custody and possession of the Police Force.

### **21. PROPERTY MANAGEMENT.**

(1) If an officer of a relevant authority detains currency, a monetary instrument, a precious metal or a precious stone under Section 19, that officer must issue a receipt to the person who had possession of such property specifying the nature and amount of the detained property.

(2) If a relevant authority other than the Police Force has possession of currency, a monetary instrument, a precious metal or a precious stone under this Division prior to it being transferred to the Police Force, the relevant authority must keep such property in safe custody and storage on official premises.

(3) If the Police Force has possession of currency that is the subject of an order under Section 20(3) or (4) and the currency is not the subject of a restraining order or a confiscation order, the Police Force must place the currency into the trust account established by Section 169U as soon as possible after any relevant forensic examination of the currency is complete.

(4) If the Police Force has possession of currency under this Division pursuant to Section 20(1) or (2) and the currency is not the subject of a restraining order or a confiscation order, the Police Force must keep such property in safe custody and storage on official premises.

(5) If the Police Force has possession of a monetary instrument, a precious metal or a precious stone under this Division and such item is not the subject of a restraining order or a confiscation order, the Police Force must arrange for it to be kept in a secure custody facility with the Bank of Papua New Guinea.

**22. RELEASE OF SUSPICIOUS CURRENCY, MONETARY INSTRUMENT, PRECIOUS METAL OR PRECIOUS STONE.**

(1) Any currency, monetary instrument, precious metal or precious stone detained or retained under this Division must be released in accordance with this section to the person by whom it was imported or exported.

(2) If there has been no extension under Section 20(2) and no order under Section 20(3), an officer of the relevant authority with custody and possession of the currency, monetary instrument, precious metal or precious stone must release it -

- (a) within the retention period under Section 20(1), if the officer is satisfied that the retention is no longer justified; or
- (b) upon the expiration of the retention period in Section 20(1).

(3) If there has been an extension under Section 20(2), but no order under Section 20(3), the head of the relevant authority with custody and possession of the currency, monetary instrument, precious metal or precious stone must release it -

- (a) within the retention period under Section 20(2), if the head of the relevant authority is satisfied that the retention is no longer justified; or
- (b) upon the expiration of the retention period as extended by Section 20(2).

(4) If there has been an order made under Section 20(3), the relevant authority with custody and possession of the currency, monetary instrument, precious metal or precious stone must release it -

- (a) within the retention period under Section 20(3) or (4) if a Magistrate is satisfied that the retention is no longer justified and orders its release; or
- (b) if the order made under Section 20(3) and any orders made under Section 20(4) have expired.

(5) However, the currency, monetary instrument, precious metal or precious stone referred to in Subsection (1) must not be released if -

- (a) an application is made in respect of the currency, monetary instrument, precious metal or precious stone for -
  - (i) a confiscation order against the whole or any part of it; 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

## *Proceeds of Crime (Amendment)*

(b) if, in Papua New Guinea or elsewhere, criminal proceedings or proceedings under this Act or any equivalent foreign law have been commenced in connection with the currency, monetary instrument, precious metal or precious stone, until the proceedings and any appeals relating to the relevant application or in connection with the currency, monetary instrument, precious metal or precious stone have concluded.

### *Division 4. - Other matters.*

#### **23. INTERACTION WITH OTHER ORDERS.**

If a restraining order or a confiscation order is made against currency, a monetary instrument, a precious metal or a precious stone detained or retained under this Part -

- (a) the detention or retention and property management under this Part cease to be in effect; and
- (b) the remaining Parts of this Act or the *Mutual Assistance Act* apply, as appropriate, to the currency, monetary instrument, precious metal or precious stone.

#### **24. CONFIDENTIALITY.**

(1) This section applies to information obtained by a relevant authority or a receiving entity in the performance of functions or the exercise of powers under, or for the purposes of, this Part, other than -

- (a) information which is already in the public domain; or
- (b) information which is presented so that it does not refer to, or otherwise enable the identification of, any particular person.

(2) Any officer or employee of a relevant authority or a receiving entity who, directly or indirectly, makes a record of the information or discloses the information is guilty of a crime if the record or disclosure was not made in the performance of his or her functions or the exercise of his or her powers under, or for the purposes of, this Act or any other law.

Penalty: A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both.

(3) Any person to whom the information is lawfully disclosed by a relevant authority or a receiving entity or any officer or employee of a relevant authority or a receiving entity who, directly or indirectly, makes a record of the information or discloses the information is guilty of a crime if the record or disclosure was not made in the performance of the person's official duties.

Penalty: If the offender is a natural person, a fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both; or  
If the offender is a body corporate, a fine not exceeding K100,000.00.

#### **25. FASU TO PROVIDE INFORMATION TO CERTAIN ORGANISATIONS.**

If FASU is provided with information as required by this Part, FASU must provide that information to the Police Force and the Papua New Guinea Customs Service as soon as reasonably practicable.”

**14. NEW DIVISION 1A IN PART III.**

The Principal Act is amended in Part III by inserting after Division 1, the following new division:

***“Division 1A. - Freezing Direction.***

**26. SCOPE AND DURATION OF FREEZING DIRECTION.**

(1) The Commissioner of Police may issue a direction to a financial institution that property in an account must not be disposed of or dealt with by any person if the Commissioner is satisfied that -

- (a) there are reasonable grounds to suspect that some or all of the property -
  - (i) is the proceeds or an instrument of an indictable offence or foreign indictable offence; or
  - (ii) may be used to satisfy a pecuniary penalty order or a registered foreign pecuniary penalty order, whether or not an application for a pecuniary penalty order has been made; and
- (b) consideration is being given by the Public Prosecutor for an application for a restraining order or an interim restraining order to be made concerning the property.

(2) A direction may apply to all or part of property in an account.

(3) A direction is effective for 10 days from the date of its service on the financial institution.

**27. APPLICATION FOR A DIRECTION.**

(1) A police officer may make an application to the Commissioner of Police for a direction under Section 26.

(2) An application must be made using the prescribed form.

(3) A police officer who makes an application for a direction must not be the same officer who issues such a direction.

(4) The Commissioner of Police must keep and maintain an up-to-date register of all applications for directions in either electronic or written format.

**28. EXEMPTION FROM LIABILITY.**

(1) The Commissioner of Police or his or her officers, employees or agents are not liable for any action, suit or civil proceedings for anything done or omitted to be done in good faith and with due diligence in the exercise of their functions under this Division.

(2) No action, suit or civil proceedings lie against any financial institution, whether by its directors, employees or agents, or otherwise acting in the performance of their duties, in relation to any action taken by that financial institution -

- (a) in good faith in compliance with a direction under Section 26; or
- (b) in the mistaken but genuine belief that such action was required in compliance with such a direction.

## *Proceeds of Crime (Amendment)*

(3) Nothing in Subsection (1) or (2) precludes the prosecution of any person for an offence of money laundering or terrorist financing under the ***Criminal Code Act 1974***.

### **29. REQUEST FOR LIVING EXPENSES.**

(1) The owner of property that is subject to a direction under Section 26 may in writing request the Commissioner of Police to revoke or vary the direction to enable the owner of the property to access the property or part thereof for the purpose of the owner's reasonable living expenses (including the reasonable living expenses of the owner's dependents, if any).

(2) A request made under Subsection (1), must be accompanied by the following information provided under a statutory declaration by the owner of the property:

- (a) the owner's interests in property; and
- (b) the owner's liabilities; and
- (c) the source and amount of the owner's current and anticipated income.

### **30. NON-COMPLIANCE WITH A FREEZING DIRECTION.**

(1) A person who disposes of or deals with property that is the subject of a direction under Section 26 is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K70,000.00 or the amount equivalent to the value of the property which is the subject of the direction, if greater than K70,000.00, or imprisonment for a term not exceeding seven years or both; or  
If the offender is a body corporate, a fine not exceeding K350,000.00 or the amount equivalent to the value of the property which is the subject of the direction, if greater than K350,000.00.

(2) Nothing in Subsection (1), precludes the prosecution of any person for an offence of money laundering or terrorist financing under the ***Criminal Code Act 1974***.

### **31. ISSUING FALSE DIRECTIONS.**

Any person, other than the Commissioner of Police or his or her delegate, who knowingly -

- (a) issues or purports to issue a direction under Section 26; or
- (b) issues or purports to issue a variation or revocation of a direction under Section 26; or
- (c) serves a direction which has not been made by the Commissioner of Police or his or her delegate under Section 26, or a variation or revocation of such a direction, is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K70,000.00 or the amount equivalent to the value of the property which is the subject of the direction, if greater than K70,000.00, or imprisonment for a term not exceeding seven years or both; or  
If the offender is a body corporate, a fine not exceeding K350,000.00 or the amount equivalent to the value of the property which is the subject of the purported direction, variation or revocation, if greater than K350,000.00.

**32. INTERACTION OF A DIRECTION WITH A RESTRAINING ORDER.**

A direction under Section 26, including any variation, ceases to be in force to the extent that the property to which it relates is covered by a restraining order from when the restraining order comes into effect.

**33. VARIATION AND REVOCATION OF A DIRECTION.**

(1) If the Commissioner of Police determines that a direction made under Section 26 is no longer necessary, either in whole or in part, he or she must vary or revoke the direction to the extent that it is no longer necessary.

(2) A variation or revocation under Subsection (1), must be made in writing and is effective on and from the date of its service on the financial institution to which it relates.

(3) If the Commissioner of Police grants a request under Section 29, to vary a determination under Section 26, either in whole or part, he or she must revoke or vary the direction to the extent necessary to allow the owner of the property to have access to reasonable living expenses.

(4) A variation or revocation under Subsection (3), must be made in writing and is effective on and from the date of its service on the financial institution to which it relates.

**34. SERVICE OF DIRECTION ETC.**

(1) A direction under Section 26, and a revocation or variation of such a direction, must be served -

- (a) as soon as is reasonably practicable and in any event within two days after the date that it is issued; and
- (b) otherwise by ordinary service in accordance with the Rules of the National Court.

(2) A direction under Section 26, and any variation or revocation of a direction, must be served on -

- (a) the financial institution to which the direction relates; and
- (b) the owner of the property concerned.”.

**15. RESTRAINING ORDERS - PEOPLE CONVICTED OF, OR CHARGED WITH, INDICTABLE OFFENCES (AMENDMENT OF SECTION 38).**

Section 38 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) inserting “or” in Paragraph (a) immediately after “;”; and
  - (ii) inserting “if” between Paragraphs (b) and (c); and
- (b) inserting after Subsection (5) the following new subsection:

“(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.”.

**16. RESTRAINING ORDERS - PEOPLE SUSPECTED OF COMMITTING SERIOUS OFFENCES (AMENDMENT OF SECTION 39).**

Section 39 of the Principal Act is amended -

- (a) in Subsection (1) by repealing Subparagraph (ii) of Paragraph (d) and substituting the following:

“(ii) the offence was committed before, on or after the day the application was made; and”; and

- (b) in Subsection (2) by deleting in Paragraph (d), “is proceeds of the offence”; and substituting “became tainted property because of the offence”; and

- (c) in Subsection (3) by deleting in Paragraph (c), “authorised officer” and substituting “police officer”.

**17. NEW SECTIONS 39A AND 39B.**

The Principal Act is amended by inserting after Section 39, the following new sections:

**“39A. RESTRAINING ORDERS - PROPERTY SUSPECTED OF BEING PROCEEDS OF INDICTABLE OFFENCES ETC.**

- (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 the property is -  
(i) the proceeds of an indictable offence or a foreign indictable offence; or  
(ii) an instrument of an indictable offence or a foreign indictable offence,

whether or not the identity of the person who is suspected of having committed the offence is known or the identity of the owner of the property is known; 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 -

- (a) the proceeds of an indictable offence or a foreign indictable offence; or  
(b) an instrument of an indictable offence or a foreign indictable 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 property is -  
(i) the proceeds of an indictable offence or a foreign indictable offence; or

*Proceeds of Crime (Amendment)*

- (ii) an instrument of an indictable offence or a foreign indictable offence; and
- (b) the grounds on which the police 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 indictable 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.

**39B. PART II PROPERTY SUBJECT TO RESTRAINING ORDER OR CONFISCATION ORDER.**

To avoid doubt, this Part can apply to property detained or retained under Part II.”.

**18. PUBLIC PROSECUTOR MAY APPLY FOR A RESTRAINING ORDER (AMENDMENT OF SECTION 40).**

Section 40 of the Principal Act is amended in Subsection (2) by deleting “may be heard *ex parte*” and substituting “must be heard *ex parte* if the Public Prosecutor requests the Court to do so”.

**19. NOTICE OF APPLICATION FOR RESTRAINING ORDER (AMENDMENT OF SECTION 41).**

Section 41 of the Principal Act is amended -

- (a) by inserting after Subsection (3) the following new subsection:

“(3A) A Court must hear and determine the application as soon as reasonably practicable, but within 48 hours after the application is made if the Public Prosecutor requests the Court to do so.”; and

- (b) deleting from Subsection (5) “The” and substituting “Unless Subsection (4) applies, the”; and
- (c) deleting from Subsection (6) “A” and substituting “Unless Subsection (4) applies, a”; and
- (d) inserting after Subsection (6) the following new subsection:

“(7) If -

- (a) a person discloses information or provides documents about an application that is to be heard *ex parte*, other than to a person whose official duties require such information to be disclosed, or such documents to be provided, to him or her; and
- (b) the person makes the disclosure before the Court determines the application,

the person is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years or both; or  
If the offender is a body corporate, a fine not exceeding K250,000.00.”.

**20. AMENDMENT OF HEADING TO SUBDIVISION 3 OF DIVISION 1 OF PART III.**

The Principal Act is amended in Part III by repealing the heading to Subdivision 3 of Division 1 and substituting the following:

***“Subdivision 3. - Revoking and excluding property from restraining Order.”.***

**21. INSERTION OF NEW SECTIONS 41A AND 41B.**

The Principal Act is amended by inserting before Section 42 the following new sections:

**“41A. APPLICATION TO REVOKE A RESTRAINING ORDER.**

(1) A person with an interest in property who was not notified of an application for a restraining order that covers that property may apply to the Court to revoke the order.

(2) The application must be made -

- (a) within 28 days after the person is notified of the order or becomes aware of the order; or
- (b) if the person applies to the Court, within that period of 28 days, for an extension of the time for applying for revocation within such longer period, not exceeding three months, as the Court allows.

(3) The applicant must give written notice to the Public Prosecutor and the Commissioner of Police of both the application and the grounds on which the revocation is sought.

(4) However, the restraining order remains in force until the Court revokes the order.

(5) The Public Prosecutor may adduce additional evidence to the Court relating to the application to revoke the restraining order.

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

**41B. NOTICE OF REVOCATION OF A RESTRAINING ORDER.**

(1) If a restraining order is revoked under Section 41A, the Public Prosecutor must give written notice of the revocation to -

- (a) the owner of any property covered by the restraining order (if the owner is known); and
- (b) any other person the Public Prosecutor reasonably believes may have an interest in the property.

(2) However, the Public Prosecutor need not give notice to the applicant for the revocation.”.

**22. COURT MAY EXCLUDE PROPERTY FROM A RESTRAINING ORDER (AMENDMENT OF SECTION 42).**

Section 42 of the Principal Act is amended -

(a) in Subsection (1) by -

- (i) deleting “.” appearing immediately after the word “order” and substituting “; and”; and
- (ii) inserting after Paragraph (b) the following new paragraph:

“(c) the Court is satisfied that the person making the application for the exclusion of the property has an interest in the property.”; and

*Proceeds of Crime (Amendment)*

(b) by repealing Subsection (2) and replacing it with the following:

“(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 none of the following:
  - (i) proceeds of unlawful activity; or
  - (ii) an instrument of unlawful activity; or
- (b) for a restraining order under Section 38, if Paragraph (a) does not apply - the property is none of the following:
  - (i) proceeds of an offence; or
  - (ii) an instrument of an offence; or
- (c) for a restraining order under Section 39 - the property is none of the following:
  - (i) proceeds of an offence; and
  - (ii) an instrument of an offence; and
- (d) for a restraining order under Section 39A - the property is none of the following:
  - (i) proceeds of an indictable offence or a foreign indictable offence; or
  - (ii) an instrument of an indictable offence or a foreign indictable offence.”; and

(c) repealing Subsection (3) and replacing it with the following:

“(3) The Court must not exclude specified property from a restraining order under Section 38 or 39 unless the Court 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,

regardless of whether or not an application for a pecuniary penalty order has been made.

(4) A reference in this section to property includes a specified interest in property.”.

**23. APPLICATION TO EXCLUDE PROPERTY FROM A RESTRAINING ORDER AFTER NOTICE OF THE APPLICATION FOR THE ORDER (AMENDMENT OF SECTION 43).**

Section 43 of the Principal Act is amended in Subsection (1) by deleting the phrase “whose property would be covered by a restraining order”.

**24. APPLICATION TO EXCLUDE PROPERTY FROM A RESTRAINING ORDER AFTER NOTICE OF THE ORDER (AMENDMENT OF SECTION 44).**

Section 44 of the Principal Act is amended by -

(a) repealing Subsection (2) and replacing it with the following:

“(2) However, unless the Court gives leave, the person cannot apply if he or she was notified of the application for the restraining order in accordance with Subsection 41(1) or (2), and either -

- (a) did not appear at the hearing of that application; or
- (b) did appear at that hearing.”; and

*Proceeds of Crime (Amendment)*

(b) repealing Subsections (4) and (5), and substituting the following:

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

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

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

**25. NOTICE OF RESTRAINING ORDER (AMENDMENT OF SECTION 45).**

Section 45 of the Principal Act is amended by -

(a) repealing Subsection (1) and replacing it with the following:

“(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 -

(a) the owner of the property; and

(b) any other person whom the Public Prosecutor reasonably believes may have an interest in the property.”; and

(b) inserting after Subsection (4), the following subsections:

“(5) If -

(a) a restraining order is made under Section 39A in relation to property; and

(b) the identity of the owner of the property is not known or the owner of the property cannot be located, the Public Prosecutor is not required to give notice under Subsection (1), but the Public Prosecutor must take reasonable steps to identify persons with an interest in the property and notify them of the matters set out in Subsection (6).

(6) The Public Prosecutor must give written notice of the restraining order to any person identified in accordance with Subsection (5) and the notice must also provide that a person may, within the period specified in the notice, inform the Public Prosecutor in writing that the person has claimed, or is proposing to claim, an interest in the property.

(7) If a person informs the Public Prosecutor in accordance with a notice referred to in Subsection (6), that the person has claimed, or is proposing to claim, an interest in the property, then the Public Prosecutor must give the person a copy of the application for the restraining order and any affidavit supporting the application.

(8) However the Court may order that -

(a) all or part of the application or affidavit is not to be given to a person; or

(b) the Public Prosecutor delay giving all or part of the application or affidavit for a specified period to a person,

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.

*Proceeds of Crime (Amendment)*

(9) If the Court orders the Public Prosecutor to delay giving all or part of the application or affidavit for a specified period to a person, the Public Prosecutor must give all or part of the application or affidavit, as the case requires, to the person as soon as practicable after the end of that period.”.

**26. REGISTRATION OF RESTRAINING ORDER (AMENDMENT OF SECTION 46).**

Section 46 of the Principal Act is amended -

- (a) in Subsection (1), by deleting “may” and substituting “must”; and
- (b) by inserting after Subsection (2), the following new subsection:

“(3) If a restraining order is revoked under Section 41A, the Public Prosecutor must give written notice of the revocation to any authority that the Public Prosecutor made an application to under Subsection (1).”.

**27. NOTICE TO REGISTRATION AUTHORITIES OF EXCLUSIONS FROM OR VARIATIONS TO RESTRAINING ORDERS (AMENDMENT OF SECTION 47).**

Section 47 of the Principal Act is amended in Subsection (2), by deleting “order under Section 53” and substituting “the exclusion or variation order”.

**28. REPEAL AND REPLACEMENT OF SECTION 49.**

Section 49 of the Principal Act is repealed and replaced with the following:

**“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 is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K70,000.00 or imprisonment for seven years or both; or  
If the offender is a body corporate, a fine not exceeding K350,000.00.”.

**29. REPEAL AND REPLACEMENT OF SECTION 50.**

Section 50 of the Principal Act is repealed and replaced with the following:

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

(1) The Court may order the Commissioner of Police to take custody and control of property, or specified property, covered by a restraining order if the Court is satisfied that this is required because of -

- (a) the risk that, if the order is not made, the property will be sold, transferred or removed from the jurisdiction or otherwise made unavailable for use as evidence as to the commission of an offence or for the satisfaction of a confiscation order; or
- (b) the risk that, if the order is not made, the value of the property will depreciate beyond what the Court considers reasonable; or
- (c) any other factor that the Court considers it appropriate to consider.

(2) If property that is covered by a restraining order is outside of Papua New Guinea, the Court may do any or all of the following:

- (a) order the Commissioner of Police to take custody and control of the property when that property is brought within the jurisdiction; or

*Proceeds of Crime (Amendment)*

- (b) issue a declaration to the effect that, if the property were in Papua New Guinea, it would be subject to a custody and control order; or
- (c) make any other order or declaration that it considers would assist authorities to secure an order for the custody and control of the property in another country.

(3) An order or declaration under this section can be made *ex parte* if the restraining order covering the property was made *ex parte*.

(4) If the Commissioner of Police takes custody and control of property pursuant to an order under Subsection (1) or (2), the Commissioner must deal with the property in accordance with Part VI.”.

**30. REPEAL OF SECTION 51.**

Section 51 of the Principal Act is repealed.

**31. REPEAL AND REPLACEMENT OF SECTION 52.**

Section 52 of the Principal Act is repealed and replaced with the following:

**“ 52. UNDERTAKING BY STATE.**

(1) 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.

(2) The Attorney-General may give the undertaking on behalf of the State.

(3) The Attorney-General may delegate the power under Subsection (2) to the Public Prosecutor.

(4) A delegation must be in writing and may not include the power to make a delegation under Subsection (3).

(5) The power of the Attorney-General to delegate under Subsection (1) does not limit any power of delegation conferred on the Attorney-General by any other Act.

(6) To avoid doubt, monies paid pursuant to an undertaking given by the Public Prosecutor on behalf of the State must not be paid out of the funds of the Office of the Public Prosecutor and a liability owed by the State and any claim against the State must be dealt with in accordance with the *Claims By and Against the State Act 1996*.”.

**32. ANCILLARY ORDERS AND FURTHER ORDERS (AMENDMENT OF SECTION 53).**

Section 53 of the Principal Act is amended -

(a) in Subsection (1) by -

(i) repealing Paragraph (d) and replacing it with the following:

“(d) an order directing that a sworn statement be given to a specified person, within a specified period, by any or all of the following:

- (i) any person with an interest in the property (including, if the property is a body corporate, a specified director of the body corporate) setting out particulars of, or dealings with, the property; and

*Proceeds of Crime (Amendment)*

- (ii) the suspect regarding all of his or her interests and liabilities; and
    - (iii) a previous owner of the property setting out particulars of, or dealings with, the property; and
    - (iv) a statement from any other person setting out particulars of, or dealings with, the property; and
  - (da) an order directing a specified person ("the first mentioned person") to produce to a person specified in the order specified documents or documents within a specified class that are in the first mentioned person's possession or control and that relate to the restrained property; and
  - (db) an order that an authorised prosecutor conduct an examination in accordance with Division 7 of Part IV before a Magistrate of any person, including but not limited to -
    - (i) a person whose property is, or a person who has or claims an interest in property that is, the subject of the restraining order; or
    - (ii) a person who has effective control over property that is subject to the restraining order; or
    - (iii) a person who is a suspect in relation to the offence in respect of which the restraining order was made; or
    - (iv) a person who is the spouse, the de facto partner, a relative or business associate of a person referred to in Subparagraph (i), (ii) or (iii),about the affairs of a person referred to in Subparagraph (i), (ii), (iii) or (iv); and
- (ii) repealing Paragraph (e) and replacing it with the following:
- “(e) an order under Part VI if the Commissioner of Police is ordered to take custody and control of property under Section 50;” and
- (iii) by repealing Paragraph (g) and replacing it with the following:
- “(g) an order requiring-
- (i) a person whose property is covered by a restraining order; or
  - (ii) a person who has effective control of property covered by a restraining order,
- to do anything necessary or convenient to bring the property within the jurisdiction.”; and
- (b) by inserting after Subsection (1), the following new subsections:
- “(1A) If the Court makes an order under Subsection (1)(db) that a person be examined, the Court may also order that the person produce at the examination -
- (a) specified documents; or
  - (b) documents within a specified class,
- in his or her possession or under his or her control about the affairs of a person referred to in Subsection (1)(db)(i), (ii), (iii) or (iv).
- “(1B) An order made by the Court under Subsection (1)(db) must specify the person to be examined; and the date and place of the examination.”; and

*Proceeds of Crime (Amendment)*

(c) by inserting after Subsection (2), the following new subsection:

“(2A) Despite Subsection (2), the Court must not make an order under Subsection (1)(db) unless an authorised prosecutor makes the application for the order.”; and

(d) by inserting after Subsection (4), the following new subsections:

“(4A) Despite Subsections (3) and (4), the Court must consider an application for an ancillary order without notice having been given if -  
(a) the Public Prosecutor requests the Court to do so; and  
(b) the restraining order to which the application relates was considered, in accordance with Section 40(2), without notice having been given.

(4B) If proceeding *ex parte* under Section (4A), the Court may -  
(a) at any time before finally determining the application, 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.”; and

(e) in Subsection (5), by repealing Paragraph (b) and replacing it with the following:

“(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 civil or criminal proceedings, except -  
(i) proceedings for perjury in making the statement; or  
(ii) civil proceedings under this Act; or  
(iii) criminal proceedings for an offence under Subsection (9); or  
(iv) civil or criminal proceedings in which the person consents to the evidence being admitted”; and

(f) by inserting after Subsection (5), the following new subsections:

“(6) The Court is not prevented from making an order under this section merely because criminal proceedings relating to the restraining order have been instituted or have commenced, whether or not under this Act.

(7) If information or documents have been obtained under an order made under Subsection (1)(da), the information or documents are inadmissible as evidence in any criminal proceedings against the person who provided the information or documents, unless the person consents to the information or documents being admitted.

(8) Despite Subsection (7), if information or documents have been obtained under an order made under Subsection (1)(da), the information or documents are admissible -

- (a) in proceedings for perjury in relation to the information or documents; or
- (b) in criminal proceedings for an offence under Subsection (9).

*Proceeds of Crime (Amendment)*

- (9) If a person -
- (a) without a reasonable excuse, fails to make a statement or produce a document within the time specified in an order made under Subsection (1)(d) or (da); or
  - (b) makes a statement or produces a document pursuant to an order made under Subsection (1)(d) or (da) that is false or misleading in a material particular; or
  - (c) without a reasonable excuse, fails to comply with an order made under Subsection (1)(g) within the time specified in the order,
- the person is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K50,000.00 or imprisonment for five years or both; or  
If the offender is a body corporate, a fine not exceeding K250,000.00.”.

**33. NEW SECTION 53A.**

The Principal Act is amended by inserting after Section 53, the following new section:

**“53A. ALLOWANCE FOR LIVING EXPENSES.**

(1) The Court may allow the following to be met out of property, or a specified part of property, covered by a restraining order:

- (a) the reasonable living expenses of the person whose property is restrained; or
- (b) the reasonable living expenses of any of the dependents of that person; or
- (c) both (a) and (b).

(2) The Court may only make an order under Subsection (1), if -

- (a) the person whose property is restrained has applied for the order; and
- (b) the person has notified the Public Prosecutor in writing of the application and the grounds for the application; and
- (c) the person has disclosed in a statement on oath that has been filed in the Court -
  - (i) his or her interests in property; and
  - (ii) his or her liabilities; and
  - (iii) the source and amount of his or her current and anticipated income.”.

**34. WHEN RESTRAINING ORDER CEASES TO BE IN FORCE (AMENDMENT OF SECTION 55).**

Section 55 of the Principal Act is amended -

- (a) by repealing Subsections (1) and (2) and replacing it with the following:

“(1) 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 one offence, to which the restraining order relates; and

*Proceeds of Crime (Amendment)*

- (b) there is no confiscation order or application for a confiscation order that relates to the offence.

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

- (a) the charge or all of the charges that relate to the restraining order are withdrawn; or
- (b) the suspect is acquitted of the offence, or all of the offences, with which he or she was charged that relate to the restraining order; or
- (c) the suspect's conviction for the offence, or all of the offences, of which he or she was convicted that relate to the restraining order 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) the suspect is charged with a related offence; or
- (g) there is an application under Section 108 for confirmation of a pecuniary penalty order that relates to the offence; or
- (h) a new trial is ordered in relation to the offence.”; and

(b) in Subsection (3) by -

- (i) repealing Paragraph (b) and replacing it with the following:

“(b) in the case of any matter referred to in Paragraph (a)(i), (ii), (iii) or (iv) -

- (i) the time for an appeal against any such matter expired without an appeal being lodged; or
- (ii) an appeal against any such matter has lapsed; or
- (iii) an appeal against any such matter has been dismissed and finally disposed of”; and

- (ii) repealing Paragraph (c) and replacing it with the following:

“(c) no application is yet to be determined for another confiscation order relating to -

- (i) an offence to which the restraining order relates; or
- (ii) a related offence”; and

(c) in Subsection (6) by repealing Paragraph (b) and replacing it with the following:

“(b) the property is an instrument of an offence to which the order relates; and”; and

(d) by inserting after Subsection (6), the following new subsections:

“(7) Any person with an interest in property covered by a restraining order may apply to the Court for a declaration that the restraining order has ceased to be in effect because of this section.

*Proceeds of Crime (Amendment)*

(8) The Public Prosecutor and any other person who has an interest in the property may appear at the hearing of an application referred to in Subsection (7) and adduce evidence.

(9) The Court must not hear and determine an application referred to in Subsection (7) unless the Court is satisfied that the applicant has taken reasonable steps to notify the Public Prosecutor and any other person whom the applicant believes on reasonable grounds has an interest in the property concerned of the application.

(10) To avoid doubt, if an originating summons specifying that the final relief sought is a confiscation order has been filed and served, then there is deemed to be an application for a confiscation order before the Court.”.

**35. RELEASE OF PROPERTY SUBJECT TO AUTOMATIC FORFEITURE  
(AMENDMENT OF SECTION 56).**

Section 56 of the Principal Act is amended in Subsection (3) by repealing Paragraph (a) and replacing it with the following:

“(a) the property is not tainted property; and”.

**36. COURT MAY REVOKE RESTRAINING ORDERS (AMENDMENT OF SECTION 57).**

Section 57 of the Principal Act is amended -

(a) by repealing the heading and replacing it with:

**“COURT MAY REVOKE RESTRAINING ORDER UPON GIVING OF  
SECURITY ETC.”; and**

(b) in Subsection (1) by repealing Paragraph (a) and replacing it with the following:

“(a) for an applicant who is a suspect, the applicant gives security to the Commissioner of Police that is, subject to Subsection (3), satisfactory to the Court for the satisfaction of any pecuniary penalty order that may be made against the person under this Act; or”; and

(c) by inserting after Subsection (2), the following new subsections:

“(3) Security is satisfactory only if the Court is satisfied that the security -

(a) is equivalent to the market value of the property covered by the restraining order; or

(b) is of a value sufficient to meet any liability of the applicant that may be imposed under this Act.

(4) The Commissioner of Police must manage the security given under Subsection (1)(a) in accordance with Part VI as if it were restrained property in respect of which a custody and control order has been made.

(5) If the Court makes a confiscation order in respect of property that was previously covered by a restraining order that was revoked under Subsection (1), the confiscation order may be enforced by forfeiting the security provided under Subsection (1)(a):

*Proceeds of Crime (Amendment)*

- (6) If a person -
  - (a) fails to provide the security required under Subsection (1)(a); or
  - (b) fails to comply with an undertaking given under Subsection (1)(b), the person is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K20,000.00 or imprisonment for two years or both; or  
If the offender is a body corporate, a fine not exceeding K100,000.00.”.

**37. FORFEITURE ORDERS - ON CONVICTION OF INDICTABLE OFFENCE  
(AMENDMENT OF SECTION 58).**

Section 58 of the Principal Act is amended -

- (a) in Subsection (1) by repealing Paragraph (c) and replacing it with the following:

“(c) the Court is satisfied that the property specified in the order is proceeds of an offence, being the offence for which the person was convicted.”; and

- (b) in Subsection (2) by repealing Paragraph (d) and replacing it with the following:

“(d) the Court is satisfied that the property specified in the order is an instrument of an offence, being the offence for which the person was convicted.”.

**38. FORFEITURE ORDERS - CONDUCT CONSTITUTING A SERIOUS OFFENCE  
(AMENDMENT OF SECTION 59).**

Section 59 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) inserting in Paragraph (b) “38 or” before “39”; and
  - (ii) repealing Subparagraph (ii) of Paragraph (c) and replacing it with the following:

“(ii) the conduct was engaged in before, on or after the application for the restraining order was made.”; and

- (b) by inserting after Subsection (3), the following new subsections:

“(4) The hearing of an application for an order under Subsection (1), must not take place less than six months after the restraining order referred to in Subsection (1)(b) has been made.

(5) Despite Subsection (1), the Court may decide not to make an order under that subsection if the Court is satisfied that -

- (a) the property is an instrument of a serious offence, but is not the proceeds of a serious offence; and
- (b) it is not in the interests of justice to make the order.”.

**39. NEW SECTION 59A.**

The Principal Act is amended by inserting after Section 59, the following new section:

**“59A. FORFEITURE ORDERS - PROPERTY SUSPECTED OF BEING PROCEEDS OF INDICTABLE OFFENCE ETC.**

(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 specified in the order is covered by a restraining order under Section 39A; and
- (c) the restraining order has been in force for at least six months; and
- (d) the Court is satisfied that the property is -
  - (i) the proceeds of an indictable offence or a foreign indictable offence; or
  - (ii) an instrument of an indictable offence or a foreign indictable offence,

whether or not the identity of the person who committed the offence is known or the identity of the owner of the property is known; and

- (e) the Court is satisfied that the Public Prosecutor has taken reasonable steps to identify and notify the persons with an interest in the property.

(2) Subsection (1)(d) does not apply if the Court is satisfied that -

- (a) an application has not been made for an exclusion order to exclude the property from the restraining order; or
- (b) if an application for an exclusion order has been made, it has been withdrawn.

(3) Despite Subsection (1), the Court may decide not to make an order under that subsection if the Court is satisfied that -

- (a) the property is an instrument of an indictable offence or a foreign indictable offence, but is not the proceeds of an indictable offence or a foreign indictable offence; and
- (b) it is not in the interests of justice to make the order.

(4) An order under Subsection (1), need not be based on a finding as to the commission of a particular indictable offence or foreign indictable offence.

(5) The raising of a doubt as to whether a person engaged in conduct constituting an indictable offence or a foreign indictable offence is not of itself sufficient to avoid a finding by the Court under Subsection (1)(d).

(6) The Public Prosecutor bears the onus of proving the matters necessary to establish the grounds for making an order under Subsection (1), despite an applicant having failed to establish the grounds for the making of an exclusion order.”.

**40. REPEAL OF SECTION 60.**

Section 60 of the Principal Act is repealed.

**41. ACQUITTALS DO NOT AFFECT FORFEITURE ORDERS UNDER SECTION 59 (AMENDMENT OF SECTION 61).**

Section 61 of the Principal Act is amended by -

- (a) adding “**OR 59A**” at the end of the heading to the section immediately before “.”; and

- (b) inserting "or 59A" after "59".

**42. REPEAL AND REPLACEMENT OF SECTION 62.**

Section 62 of the Principal Act is repealed and replaced with the following:

**"62. MAKING OF FORFEITURE ORDER IF RESPONDENT IS UNAVAILABLE.**

(1) If a respondent to an application for a forfeiture order under Section 58 or 59 is unavailable, the Court may proceed in the respondent's absence to hear the application and to make the order sought (including any related or ancillary orders).

(2) If an application for a forfeiture order under Section 58 proceeds in accordance with Subsection (1), the Court may make the order even if the person referred to in Section 58 has not been convicted of an indictable offence but only if -

- (a) the person has been committed for trial for the offence; or
- (b) the Court is satisfied, having regard to all the evidence before the Court, that the person could have been committed for trial for the offence had the person been available.

(3) If an application for a forfeiture order under Section 59, proceeds in accordance with Subsection (1), the Court must not make the order unless all requirements in Section 59 have been fulfilled.

(4) In this section, a person is "unavailable" if he or she -

- (a) has died; or
- (b) has left Papua New Guinea and cannot be located or served; or
- (c) is, with reasonable enquiries, unable to be found after six months from -
  - (i) the date of commencement of the proceedings under this Act; or
  - (ii) if a warrant for the person's arrest has been issued in relation to any offence, the date the warrant was issued."

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

Section 63 of the Principal Act is amended -

- (a) by deleting from the heading "**THAT PROPERTY WAS USED, IN OR IN CONNECTION WITH, THE COMMISSION OF AN OFFENCE**"; and
- (b) in Subsection (1) by deleting "under Section 58 against particular property in relation to a person's conviction of an indictable offence" and substituting "against property in relation to an offence"; and
- (c) by repealing Subsection (2) and replacing it with the following:

"(2) 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 an instrument of the offence.

(3) 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 -

- (a) in the person's possession; or
- (b) under the person's control in a building, vehicle, receptacle or place,

*Proceeds of Crime (Amendment)*

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

(4) If -

- (a) 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
- (b) 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.”.

**44. FORFEITURE ORDERS MUST SPECIFY THE VALUE OF FORFEITED PROPERTY (AMENDMENT OF SECTION 64).**

Section 64 of the Principal Act is amended by inserting “an estimate of” before “the amount”.

**45. ADDITIONAL APPLICATION FOR A FORFEITURE ORDER (AMENDMENT OF SECTION 67).**

Section 67 of the Principal Act is amended -

- (a) in Subsection (1) by deleting “in relation to the offence for which the person was convicted” and substituting “in relation to the same offence”; and
- (b) inserting after Subsection (2), the following new subsection:

“(3) Subject to Subsections (1) and (2), 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.”.

**46. NOTICE OF APPLICATION (AMENDMENT OF SECTION 68).**

Section 68 of the Principal Act is amended by -

- (a) inserting after Subsection (1), the following new subsection:

“(1A) If -

- (a) an application for a forfeiture order against property is made; and
- (b) the identity of the owner of the property is not known or the owner of the property cannot be located,

the Public Prosecutor must take reasonable steps to identify and notify persons with an interest in the property.”; and

- (b) inserting after Subsection (2), the following new subsection:

“(3) The Court may, on the application of the Public Prosecutor, dispense with or alter the requirements of this section in relation to an application under Section 62, for a forfeiture order.”.

**47. PROCEDURE ON APPLICATION (AMENDMENT OF SECTION 69).**

Section 69 of the Principal Act is amended -

- (a) in Subsection (1) by deleting “present” and substituting “adduce”; and
- (b) by repealing Subsection (2).

**48. AMENDING AN APPLICATION (AMENDMENT OF SECTION 70).**

Section 70 of the Principal Act is amended -

- (a) in Subsection (2) by deleting in Paragraph (b) "Section 60" and substituting "Section 59"; and
- (b) by inserting in Subsection (3) "order" after "forfeiture"; and
- (c) by inserting in Subsection (4) "or 59" after "Section 58"; and
- (d) by inserting after Subsection (4), the following new subsection:

“(5) Despite Subsections (1) and (2), the Court must not amend an application for a forfeiture order under Section 59A to include additional property.”.

**49. AUTOMATIC FORFEITURE OF RESTRAINED PROPERTY (AMENDMENT OF SECTION 71).**

Section 71 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) repealing Subparagraph (ii) of Paragraph (a); and
  - (ii) deleting in Subparagraph (iii) of Paragraph (a) "Subparagraphs (i) and (ii)" and substituting "Subparagraph (i)"; and
  - (iii) repealing Paragraph (b) and replacing it with the following:

“(b) a restraining order under Section 38 or 39 has been made in relation to the offence for which the person was convicted, or a related offence”; and

- (iv) deleting in Paragraph (c) "a declaration under this Act" and substituting "a declaration under Section 56, 77 or 78"; and
- (v) repealing Subparagraph (i) of Paragraph (d) and replacing it with the following:

“(i) the period (the forfeiture period) of six months starting on the day of the conviction or the day on which the restraining order was made, whichever is the later; or”; and

- (b) by inserting after Subsection (3), the following new subsection:

“(3A) However, a forfeiture period extended under Subsection (3), must not be extended beyond the day that is 12 months after the conviction day.”.

**50. INSERTION OF NEW SECTION 71A.**

The Principal Act is amended by inserting after Section 71, the following new section:

**“71A. DECLARATION BY COURT IN RELATION TO SECTION 71.**

(1) The Public Prosecutor or the Commissioner of Police may apply to the Court for a declaration that property has been forfeited by operation of Section 71.

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

(3) The Court must make the declaration if the Court is satisfied that the property has been forfeited by operation of Section 71.

*Proceeds of Crime (Amendment)*

(4) If the Court makes a declaration, the Court must specify in the declaration the amount that it considers to be an estimate of the value of the property when the declaration is made.

(5) The Court may make such ancillary orders as are necessary to give effect to a transfer of the property to the State.

(6) If a person without a reasonable excuse fails to comply with an order made under Subsection (5), the person is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K20,000.00 or imprisonment for two years or both; or  
If the offender is a body corporate, a fine not exceeding K100,000.00”.

**51. REPEAL AND REPLACEMENT OF HEADING TO SECTION 72.**

The heading to Section 72 of the Principal Act is repealed and replaced with the following:

**“WHEN FORFEITED PROPERTY VESTS IN THE STATE.”**

**52. FIRST EXCEPTION - REGISTRABLE PROPERTY (AMENDMENT OF SECTION 73).**

Section 73 of the Principal Act is amended -

(a) in Subsection (1) by repealing Paragraph (b) and replacing it with the following:

“(b) the Public Prosecutor and the Commissioner of Police have 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”;

(b) in Subsection (2) by deleting “75(1)” and substituting “169K(1)”.

**53. SECOND EXCEPTION - IF A JOINT OWNER DIES (AMENDMENT OF SECTION 74).**

Section 74 of the Principal Act is amended in Subsection (3) by deleting “71(3)” in Paragraph (b) and substituting “71(2)”.

**54. REPEAL OF SECTION 75.**

Section 75 of the Principal Act is repealed.

**55. REPEAL AND REPLACEMENT OF SECTION 76.**

Section 76 of the Principal Act is repealed and replaced with the following:

**“76. DEALINGS WITH FORFEITED PROPERTY.**

A person is guilty of a crime if -

- (a) the person knows that a forfeiture order has been made in respect of property; and
- (b) the person disposes of, or otherwise deals with, the property; and
- (c) the forfeiture order has not been discharged.

Penalty: If the offender is a natural person, a fine not exceeding K70,000.00 or imprisonment for seven years or both; or  
If the offender is a body corporate, a fine not exceeding K350,000.00.”.

**56. REPEAL AND REPLACEMENT OF SECTION 77.**

Section 77 of the Principal Act is repealed and replaced with the following:

**“77. FORFEITURE ORDERS - DECLARATION OF INTERESTS IN PROPERTY.**

(1) If -

- (a) 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 (4), (5) or (7); or
- (b) a forfeiture order under Section 58, 59 or 59A has already been made against property, a person who claims an interest in the property may apply to the Court, within six months starting on the day when the order is made, for an order under Subsection (4), (5) or (7).

(2) If a person -

- (a) knew about the application for the forfeiture before the application was heard but did not appear at the hearing of the application; or
- (b) did not know about the application for the forfeiture before the application was heard and did not apply within six months starting on the day when the forfeiture order was made,

the Court may not grant an order under Subsection (4), (5) or (7) unless the Court is satisfied that the person's failure to appear or apply was for a good reason and not because of the person's neglect.

(3) If a person appeared at the hearing of the application for the forfeiture order, the Court may not grant an order under Subsection (4), (5) or (7) unless the Court is satisfied that the person now has evidence relevant to the person's application that was not available with the exercise of reasonable diligence at the time of the hearing.

(4) If a person applies to the Court for an order about the person's interest in property, the Court may make an order declaring the nature, extent and the value, if necessary (as at the time the order is made), of the person's interest and declaring that the forfeiture order does not apply to the interest if the Court is satisfied that -

- (a) the person, apart from the forfeiture, would have an interest in the property; and
- (b) the person was not involved in the commission of an offence in relation to which forfeiture of the property is sought, or a forfeiture order against the property was made; and
- (c) if the person acquired the interest when, or after, the offence was committed - the person 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, tainted property; and
- (d) the person's interest in the property is not subject to the effective control of the person whose conduct caused the forfeiture; and
- (e) it is in the public interest to make the order, having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(5) If a person applies to the Court for an order about the person's interest in property and the Court is satisfied that -

*Proceeds of Crime (Amendment)*

- (a) the person, apart from the forfeiture, would have an interest in the property; and
- (b) a proportion of the value of the person's interest was not derived or realised, directly or indirectly, from the commission of any offence; and
- (c) the person's interest is not an instrument of any offence; and
- (d) it would not be contrary to the public interest for the proportion referred to in Paragraph (b) to be transferred to the person; and
- (e) there is no other reason why the proportion referred to in Paragraph (b) should not be transferred to the person,

the Court may make an order declaring the nature, extent and value, if necessary (as at the time the order is made), of the proportion found by the Court under Paragraph (b) and declaring that the forfeiture order does not apply to that proportion.

(6) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (4) or (5), if the period for appeals has expired and any appeal from that order has been determined or has lapsed -

- (a) return the part of the property to which the interest or proportion referred to in the order relates to the person; or
- (b) pay an amount equal to the value of the interest or proportion, as specified in the order, to the person.

(7) If a person applies to the Court for an order about the person's interest in property, the Court may make an order declaring the nature, extent and value, if necessary (as at the time the order is made), of the person's interest and declaring that the forfeiture order does not apply 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.

(8) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (7), return the part of the property to which the interest referred to in the order relates to the person if -

- (a) the period for appeals has expired and any appeal from that order has been determined or has lapsed; and
- (b) the payment referred to in Subsection (7)(a) has been made.

(9) A person who applies to the Court for an order under this Section must give reasonable written notice to the Public Prosecutor.

(10) The Public Prosecutor -

- (a) is a party to the proceedings in an application under this Section; and
- (b) may make an application under this Section for a person."

**57. REPEAL AND REPLACEMENT OF SECTION 78.**

Section 78 of the Principal Act is repealed and replaced with the following:

**“78. AUTOMATIC FORFEITURE - DECLARATIONS OF INTERESTS IN PROPERTY.**

(1) If -

- (a) property is liable to be forfeited under Section 71, a person who claims an interest in the property may apply to the Court, before the forfeiture occurs, for an order under Subsection (3), (4) or (6); or
- (b) property has been forfeited under Section 71, a person who claims an interest in the property may apply to the Court, within six months starting on the day when the property is forfeited, for an order under Subsection (3), (4) or (6).

(2) If a person applies for an order under Subsection (3), (4) or (6) more than six months after the day when the property was forfeited, the Court may not grant the order unless the Court is satisfied that the person's failure to apply within six months starting on the day when the property was forfeited was for a good reason and not because of the person's neglect.

(3) If a person applies to the Court for an order about the person's interest in property, the Court may make an order declaring the nature, extent and value, if necessary (as at the time the order is made), of the person's interest and declaring that the forfeiture under Section 71, does not apply to the person's interest if the Court is satisfied that -

- (a) the person, apart from the forfeiture, would have an interest in the property; and
- (b) the person was not involved in the commission of an offence in relation to which a restraining order against the property was made; and
- (c) if the person acquired the interest when, or after, the offence was committed - the person 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, tainted property; and
- (d) the person's interest in the property is not subject to the effective control of the person whose conviction caused the forfeiture; and
- (e) it is in the public interest to make the order, having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) If a person applies to the Court for an order about the person's interest in property and the Court is satisfied that -

- (a) the person, apart from the forfeiture, would have an interest in the property; and
- (b) a proportion of the value of the person's interest was not derived or realised, directly or indirectly, from the commission of any offence; and
- (c) the person's interest is not an instrument of any offence; and
- (d) it would not be contrary to the public interest for the proportion referred to in Paragraph (b) to be transferred to the person; and
- (e) there is no other reason why the proportion referred to in Paragraph (b) should not be transferred to the person,

the Court may make an order declaring the nature, extent and the value, if necessary (as at the time the order is made), of the proportion found by the Court under Paragraph (b) and declaring that the forfeiture under Section 71, does not apply to that proportion.

*Proceeds of Crime (Amendment)*

(5) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (3) or (4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed -

- (a) return the part of the property to which the interest or proportion referred to in the order relates to the person; or
- (b) pay an amount equal to the value of the interest or proportion, as specified in the order, to the person.

(6) If a person applies to the Court for an order about the person's interest in property, the Court may also make an order declaring the nature, extent and the value, if necessary (as at the time the order is made), of the person's interest and declaring that the forfeiture under Section 71, does not apply 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.

(7) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (6), return the part of the property to which the interest referred to in the order relates to the person if -

- (a) the period for appeals has expired and any appeal from that order has been determined or has lapsed; and
- (b) the payment referred to in Subsection (6)(a) has been made.

(8) A person who applies to the Court under this section must give reasonable written notice to the Public Prosecutor.

(9) The Public Prosecutor -

- (a) is a party to the proceedings in an application under this section; and
- (b) may make an application under this section for a person.”.

**58. REPEAL AND REPLACEMENT OF SECTION 79.**

Section 79 of the Principal Act is repealed and replaced with the following:

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

(1) 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.

(2) A forfeiture order against property made under Section 59A is not affected if -

- (a) a person is charged with an offence relating to the property and is subsequently acquitted of the offence; or
- (b) the person is convicted of the offence and the conviction is subsequently quashed.”.

**59. DISCHARGE OF FORFEITURE ORDER MADE UNDER SECTION 58 (AMENDMENT OF SECTION 80).**

Section 80 of the Principal Act is amended -

- (a) in the heading by deleting the figure “58” and substituting “58 or 71”; and
- (b) by repealing Subsection (1) and replacing it with the following:

“(1) If the Court makes a forfeiture order under Section 58 or property is automatically forfeited under Section 71 in reliance on a person’s conviction of an offence and the conviction is subsequently quashed, then -

- (a) the quashing of the conviction discharges the order or automatic forfeiture; and
- (b) the discharge takes effect 21 days after the quashing of the conviction, unless the Public Prosecutor consents to it being discharged at an earlier date.”; and

- (c) by repealing Subsection (2) and replacing it with the following:

“(2) If a forfeiture order under Section 58 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.

(2A) If an automatic forfeiture under Section 71 against property is discharged under Subsection (1), a person who claims to have had an interest in the property immediately before the automatic forfeiture may apply to the Commissioner of Police, in writing, for the transfer of the interest to the person.”; and

- (d) in Subsection (3) by inserting after “Subsection (2)” “or (2A)”; and
- (e) in Subsection (4) by inserting after “Subsection (2)” “or (2A)”; and
- (f) in Subsection (5) by inserting after “Section 77” “or 78”.

**60. ENFORCEMENT OF ORDER FOR PAYMENT INSTEAD OF FORFEITURE (AMENDMENT OF SECTION 82).**

Section 82 of the Principal Act is amended by repealing Subsection (3).

**61. REGISTERED FOREIGN FORFEITURE ORDERS (AMENDMENT OF SECTION 83).**

Section 83 of the Principal Act is amended in Paragraph (b) by deleting “Section 77(3) and Section 78(2)” and substituting “Sections 77(1)(b), 77(2)(b), 78(1)(b) and 78(2)”.

**62. MAKING PECUNIARY PENALTY ORDERS (AMENDMENT OF SECTION 84).**

Section 84 of the Principal Act is amended -

- (a) in Subsection (1) by repealing Subparagraph (ii) of Paragraph (b) and replacing it with the following:

“(ii) the person has committed a serious offence.”; and

- (b) by repealing Subsections (2) and (3) and replacing it with the following:

“(2) For Subsection (1)(b)(ii), a finding of the Court need not be based on a finding as to the commission of a particular offence.”.

**63. REPEAL AND REPLACEMENT OF SECTION 85.**

Section 85 of the Principal Act is repealed and replaced with the following:

**“85. MAKING OF PECUNIARY PENALTY ORDER IF RESPONDENT IS UNAVAILABLE.**

(1) If a respondent to an application for a pecuniary penalty order under Section 84 is unavailable, the Court may proceed in their absence to hear the application and to make the order sought (including any related or ancillary orders).

(2) If an application for a pecuniary penalty order relying on Section 84(1)(b)(i) proceeds in accordance with Subsection (1), the Court may make the order even if the person has not been convicted of an indictable offence but only if -

- (a) the person has been committed for trial for the offence; or
- (b) the Court is satisfied, having regard to all the evidence before the Court, that the person could have been committed for trial for the offence if he or she had been available.

(3) If an application for a pecuniary penalty order not relying on Section 84(1)(b)(i) proceeds in accordance with Subsection (1), the Court must not make the order unless all other applicable requirements of Section 84 have been fulfilled.

(4) In this section, a person is “unavailable” if he or she -

- (a) has died; or
- (b) has left Papua New Guinea and cannot be located or served; or
- (c) is, with reasonable enquiries, unable to be found after six months from -
  - (i) the date of the commencement of the proceedings under this Act; or
  - (ii) if a warrant for his or her arrest has been issued in relation to any offence, the date the warrant was issued.”.

**64. DETERMINING PENALTY AMOUNTS (AMENDMENT OF SECTION 88).**

Section 88 of the Principal Act is amended -

- (a) in Subsection (3) by repealing Subparagraph (ii) of Paragraph (a) and replacing it with the following:

“(ii) any other unlawful activity; and”; and

- (b) by repealing Subsection (4).

**65. THE VALUE OF BENEFITS - EVIDENCE THE COURT IS TO CONSIDER (AMENDMENT OF SECTION 89).**

Section 89 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) deleting “(the illegal activity)”; and
  - (ii) deleting the words “illegal activity” appearing in Paragraphs (a), (b), (d) and (e) and substituting “offence or offences”; and
  - (iii) deleting the words “any of the illegal activity” in Paragraph (c) and substituting “the offence or offences”.

**66. VALUE OF BENEFITS DERIVED - OFFENCES THAT ARE NOT SERIOUS OFFENCES (AMENDMENT OF SECTION 90).**

Section 90 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) deleting “an offence or offences (the illegal activity)” in Paragraph (a) and substituting “a conviction of a person for an indictable offence that is not a serious offence”; and
  - (ii) repealing Paragraph (b); and
  - (iii) deleting “the illegal activity” (twice occurring) in Paragraph (c) and substituting “the indictable offence”; and
  - (iv) deleting the phrase “the commission of the illegal activity” appearing after Paragraph (c) and substituting “the commission of the indictable offence”; and
- (b) deleting in Subsection (2) “the illegal activity” and substituting “the indictable offence”.

**67. VALUE OF BENEFITS DERIVED - SERIOUS OFFENCES (AMENDMENT OF SECTION 91).**

Section 91 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) deleting “an offence or offences (the illegal activity)” in Paragraph (a) and substituting “a serious offence”; and
  - (ii) repealing Paragraph (b); and
  - (iii) deleting “the illegal activity” in Subparagraph (i) of Paragraph (c) and substituting “the serious offence”; and
  - (iv) deleting the phrase “within the period referred to in Subsection (5)” in Subparagraph (ii) of Paragraph (c); and
  - (v) deleting “the illegal activity” (twice occurring) in the paragraph immediately after Paragraph (c) and substituting “the serious offence”; and
- (b) in Subsection (2) by -
  - (i) deleting the words “the illegal activity” in Paragraph (a) and substituting “the serious offence”; and
  - (ii) deleting the words “within the period referred to in Subsection (5)” in Paragraph (b); and

- (c) repealing Subsection (3) and replacing it with the following:

“(3) If evidence is given at the hearing of the application of the person’s expenditure, 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 serious offence.”; and

- (d) by repealing Subsection (5).

**68. MATTERS THAT DO NOT REDUCE THE VALUE OF BENEFITS (AMENDMENT OF SECTION 93).**

Section 93 of the Principal Act is amended by -

- (a) deleting “(the illegal activity)”; and
- (b) deleting “the illegal activity” in Paragraph (a) and substituting “the offence or offences”.

**69. PUBLIC PROSECUTOR MAY APPLY FOR A PECUNIARY PENALTY ORDER (AMENDMENT OF SECTION 98).**

Section 98 of the Principal Act is amended in Subsection (3) by inserting “under Section 71(3)” in Paragraph (b) after “extension order” (first occurring).

**70. ADDITIONAL APPLICATION FOR A PECUNIARY PENALTY ORDER (AMENDMENT OF SECTION 99).**

Section 99 of the Principal Act is amended in Subsection (2) by inserting “(regardless of whether the evidence did or did not exist)” in Paragraph (b) after “determined”.

**71. AMENDMENT OF APPLICATION (AMENDMENT OF SECTION 101).**

Section 101 of the Principal Act is amended in Subsection (2) by inserting “(regardless of whether the evidence did or did not exist)” in Paragraph (b) after “made”.

**72. PROCEDURE ON APPLICATION (AMENDMENT OF SECTION 102).**

Section 102 of the Principal Act is amended by repealing Subsection (2).

**73. ENFORCEMENT OF PECUNIARY PENALTY ORDERS (AMENDMENT OF SECTION 103).**

Section 103 of the Principal Act is amended by repealing Subsection (3).

**74. PROPERTY SUBJECT TO A PERSON’S EFFECTIVE CONTROL (AMENDMENT OF SECTION 104).**

Section 104 of the Principal Act is amended in Subsection (1) by deleting the word “other” appearing in the paragraph immediately after Paragraph (c) and substituting “order”.

**75. CHARGE ON PROPERTY SUBJECT TO A RESTRAINING ORDER (AMENDMENT OF SECTION 105).**

Section 105 of the Principal Act is amended -

- (a) in Subsection (1) by repealing Subparagraph (ii) of Paragraph (b) and replacing it with the following:

“(ii) another person’s property in relation to which an order under Subsection 104(1) is, or has been made; and”; and

- (b) in Subsection (2) by -

- (i) repealing Paragraph (a) and replacing it with the following:

“(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”; and

- (ii) deleting “Section 109” in Subparagraph (i) of Paragraph (d) and substituting “Section 169M”; and

- (c) inserting after Subsection (3), the following new subsections:

“(4) The Public Prosecutor may apply to the Court for a declaration confirming the existence of the charge under this section.

- (5) An application under Subsection (4) may be made *ex parte*.

*Proceeds of Crime (Amendment)*

(6) The Court must make the declaration sought under Subsection (4), if the Court is satisfied that the property is subject to a charge created by this section.

(7) The Court may make such ancillary orders as are necessary to protect the State's interest in the property.

(8) If a person without a reasonable excuse fails to comply with an order made under Subsection (7), the person is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K20,000.00 or imprisonment for two years or both; or  
If the offender is a body corporate, a fine not exceeding K100,000.00.”.

**76. EFFECT ON A PECUNIARY PENALTY ORDER IF MADE IN RELATION TO A CONVICTION OF AN OFFENCE (AMENDMENT OF SECTION 108).**

Section 108 of the Principal Act is amended -

- (a) in Subsection (1) by inserting “pecuniary penalty” in Paragraph (b) immediately before the word “order” (first occurring); and
- (b) in Subsection (2) by inserting the word “penalty” immediately after the word “pecuniary”.

**77. PROCEDURE ON APPLICATION FOR CONFIRMATION OF PECUNIARY PENALTY ORDER (AMENDMENT OF SECTION 110).**

Section 110 of the Principal Act is amended in Subsection (1) by deleting “he” and substituting “the”.

**78. COURT MAY CONFIRM PECUNIARY PENALTY ORDER (AMENDMENT OF SECTION 111).**

Section 111 of the Principal Act is amended by repealing Paragraph (a) and replacing it with the following:

“(a) on the ground that the person has committed the offence; and”.

**79. EFFECT OF THE COURT'S DECISION ON CONFIRMATION OF THE ORDER (AMENDMENT OF SECTION 112).**

Section 112 of the Principal Act is amended in Subsection (1) by deleting “97” and substituting “111”.

**80. WARRANT TO SEARCH LAND ETC., FOR TAINTED PROPERTY (AMENDMENT OF SECTION 113).**

Section 113 of the Principal Act is amended in Subsection (5) by repealing Subparagraph (ii) of Paragraph (a).

**81. APPLICATION FOR A WARRANT BY TELEPHONE OR E-MAIL (AMENDMENT OF SECTION 114).**

Section 114 of the Principal Act is amended -

- (a) in Subsection (5) by deleting “The” and substituting “If the magistrate issues the warrant”; and
- (b) by repealing Subsection (6) and replacing it with the following:

*Proceeds of Crime (Amendment)*

“(6) After the magistrate tells the applicant the relevant details of the warrant, the applicant must then -

- (a) complete a form of search warrant in terms substantially corresponding to those given by the magistrate; and
- (b) state on the form -
  - (i) the name of the magistrate; and
  - (ii) the day on which the warrant was signed; and
  - (iii) the time at which the warrant was signed.

(7) The applicant must give the magistrate -

- (a) the form of search warrant completed by the applicant; and
  - (b) the affidavit mentioned in Subsection (4)(b),
- by the end of the day after the warrant expires or is executed, whichever first occurs.”.

**82. DUTY TO SHOW WARRANT (AMENDMENT OF SECTION 116).**

Section 116 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following:

“(1) A police officer executing a search warrant must give the occupier of, or a person who is in charge of, the premises a copy of the search warrant.”; and

- (b) in Subsection (2) by deleting “If” and substituting “If the warrant has been granted under Section 114 and”.

**83. EXPIRY OF WARRANT (AMENDMENT OF SECTION 119).**

Section 119 of the Principal Act is amended by -

- (a) inserting (1) in front of “A”; and
- (b) inserting after Paragraph (c), the following new subsection:

“(2) Despite Subsection (1), a warrant issued under Section 114 expires 48 hours after it is issued.”.

**84. POLICE OFFICER MAY SEIZE TAINTED PROPERTY (AMENDMENT OF SECTION 122).**

Section 122 of the Principal Act is amended by repealing Paragraph (a) and replacing it with the following:

“(a) for believing the other thing to be tainted property in relation to an indictable offence or foreign indictable offence, or to afford evidence of unlawful activity; or”.

**85. RETURN OF SEIZED PROPERTY - GENERAL RULE (AMENDMENT OF SECTION 123).**

Section 123 of the Principal Act is amended -

- (a) in Subsection (2) by repealing Paragraph (c) and replacing it with the following:

“(c) any person who is believed or alleged to have committed an offence in relation to which the property was seized has no interest in the property and did not have effective control of the property immediately before it was seized.”; and

*Proceeds of Crime (Amendment)*

(b) by inserting after Subsection (2), the following new subsections:

“(3) The person making the application must give notice to the Commissioner of Police of the application setting out the grounds on which the application is made.

(4) The Court must give the Commissioner of Police a reasonable period in which to respond to the grounds in the application.”.

**86. RETURN OF SEIZED PROPERTY IF NO INFORMATION LAID (AMENDMENT OF SECTION 124).**

Section 124 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:

“(1) Subsection (2) applies if property has been seized under this Division and -  
(a) no information was laid for a relevant offence before the seizure or within 14 days after the seizure; and  
(b) no proceedings for the restraint or forfeiture of the property were commenced before the seizure or within 14 days after the seizure.”; and

(b) in Subsection (2) by deleting “48 hours” and substituting “14 days”.

**87. RETURN OF SEIZED PROPERTY IF NO FORFEITURE ORDER MADE (AMENDMENT OF SECTION 125).**

Section 125 of the Principal Act is amended -

(a) in Subsection (1) by -

(i) repealing Paragraph (b) and replacing it with the following:

“(b) All proceedings for any offence because of which the property is alleged to be tainted property have been completed because -  
(i) the proceedings were discontinued; or  
(ii) the proceedings resulted in acquittal; or  
(iii) any conviction was subsequently quashed; and

(ii) deleting “Minister” in Paragraph (c) and substituting “Public Prosecutor”; and

(b) by inserting after Subsection (1), the following new subsection:

“(1A) Subsection (2) applies if -

- (a) property has been seized under this Division; and
- (b) a person has been convicted of one or more indictable offences because of which the property is alleged to be tainted property and the conviction or convictions have not been overturned on appeal; and
- (c) the Public Prosecutor has not applied for a forfeiture order and does not apply for a forfeiture order within six months after -
  - (i) any appeal against the conviction or convictions referred to in Paragraph (b) have lapsed or been dismissed; or
  - (ii) the period in which to make such an appeal or appeals have expired; and
- (d) the property is in the Commissioner of Police’s possession.”.

**88. RETENTION OF SEIZED PROPERTY IF RESTRAINING ORDER MADE (AMENDMENT OF SECTION 126).**

Section 126 of the Principal Act is amended -

(a) in Subsection (1) by deleting "Subsections (2) and (3) apply" and substituting "Subsection (2) applies"; and

(b) by repealing Subsection (2) and replacing it with the following:

"(2) If the property is in the Commissioner of Police's possession when the restraining order is made, the Public Prosecutor may apply to the Court for a custody and control order over the property under Section 50."; and

(c) by repealing Subsections (3), (4) and (5).

**89. HOW COMMISSIONER OF POLICE MUST DEAL WITH PROPERTY SUBJECT TO FORFEITURE ORDER (AMENDMENT OF SECTION 127).**

Section 127 of the Principal Act is amended in Subsection (2) by deleting "as required by the order" and substituting "in accordance with Part VI."

**90. APPLICATION OF THIS DIVISION (AMENDMENT OF SECTION 128).**

Section 128 of the Principal Act is amended by repealing Subsection (2).

**91. POLICE MAY SEIZE TAINTED PROPERTY (AMENDMENT OF SECTION 129).**

Section 129 of the Principal Act is amended in Subsection (1) by -

(a) repealing Paragraph (a) and replacing it with the following:

"(a) property that there are reasonable grounds to believe is tainted property in relation to an indictable offence or foreign indictable offence; or"; and

(b) deleting Subparagraph (ii) of Paragraph (b) and substituting:

"(ii) will afford evidence of unlawful activity.".

**92. RETURN OF SEIZED PROPERTY - GENERAL RULE (AMENDMENT OF SECTION 130).**

Section 130 of the Principal Act is amended in Subsection (2) by repealing Paragraph (c) and replacing it with the following:

"(c) any person who is believed or alleged to have committed an offence in relation to which the property was seized has no interest in the property and did not have effective control of the property immediately before it was seized.".

**93. RETURN OF SEIZED PROPERTY IF NO FORFEITURE ORDER MADE (AMENDMENT OF SECTION 131).**

Section 131 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:

"(1) Subsection (2) applies if property is seized under Division 2 and, within 90 days, no foreign forfeiture order relating to the property had been registered in the Court and proceedings for the forfeiture of the property have not been commenced."; and

- (b) in Subsection (2) by deleting “the” and substituting “Subject to Section 132, the”.

**94. RETENTION OF SEIZED PROPERTY IF RESTRAINING ORDER MADE (AMENDMENT OF SECTION 132).**

Section 132 of the Principal Act is amended -

- (a) in Subsection (1) by inserting “or an interim restraining order” in Subparagraph (ii) of Paragraph (c) after the word “order”; and
- (b) by repealing Subsections (2), (3), (4) and (5) and replacing them with the following:

“(2) If the property is in the Commissioner of Police’s possession when the restraining order or an interim restraining order is made or registered, the Public Prosecutor may apply to the Court for a custody and control order under Section 138(6) or 145.”.

**95. PROPERTY SUBJECT OF FORFEITURE ORDER (AMENDMENT OF SECTION 133).**

Section 133 of the Principal Act is amended in Subsection (2) by deleting “as required by the order.” and substituting “in accordance with Part VI.”.

**96. AMENDMENT OF HEADING OF DIVISION 3 OF PART IV.**

The heading to Division 3 of Part IV of the Principal Act is amended by inserting “INTERIM” before “RESTRAINING”.

**97. REPEAL AND REPLACEMENT OF SECTION 134.**

Section 134 of the Principal Act is repealed and replaced by the following section:

**“134. APPLICATION OF THIS DIVISION.**

This Division applies to an application by the Public Prosecutor pursuant to the Minister’s authorisation under Section 48 of the *Mutual Assistance Act* for an interim restraining order under this Act against any property in relation to a foreign indictable offence, and to any interim restraining order made as a result of the application.”.

**98. APPLICATION FOR INTERIM RESTRAINING ORDER (AMENDMENT OF SECTION 136).**

Section 136 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following:

“(1) If, under the *Mutual Assistance Act*, the Minister has authorised the Public Prosecutor to apply for an interim restraining order under this Act against any property in relation to an offence, the Public Prosecutor may apply to the Court for the interim restraining order against -

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

- (b) in Subsection (3) by -

- (i) inserting after Paragraph (a) the following paragraph:

“(ab) if the defendant has been convicted of a foreign indictable offence and an appeal has not been lodged against the conviction, whether the time for filing an appeal against the conviction has expired; and”;

- (ii) deleting the phrases “against the defendant” and “within 7 days” in Paragraph (c); and
- (iii) deleting “the restraining” in Paragraph (d) and substituting “the interim restraining”; and
- (iv) deleting “a restraining” in Paragraph (f) and substituting “an interim restraining”; and
- (v) deleting “of a defendant” in Paragraph (f); and
- (vi) deleting “a restraining” in Paragraph (g) and substituting “an interim restraining”.

**99. NOTICE OF APPLICATION FOR RESTRAINING ORDER (AMENDMENT OF SECTION 137).**

Section 137 of the Principal Act is amended -

- (a) in the heading by deleting “**RESTRAINING**” and substituting “**AN INTERIM RESTRAINING**”; and
- (b) in Subsections (1), (2) and (3) by deleting “a restraining” and substituting “an interim restraining”.

**100. MAKING RESTRAINING ORDER (AMENDMENT OF SECTION 138).**

Section 138 of the Principal Act is amended -

- (a) in the heading by deleting “**RESTRAINING**” and substituting “**INTERIM RESTRAINING**”; and
- (b) in Subsection (1) by -
  - (i) deleting “a restraining” (first occurring) and substituting “an interim restraining”; and
  - (ii) deleting “of a defendant”; and
  - (iii) deleting in Paragraphs (c) and (d) “a restraining” and substituting “an interim restraining”; and
- (c) in Subsection (4) by deleting “a restraining” and substituting “an interim restraining”; and
- (d) by inserting after Subsection (5), the following new subsections:

“(6) If an interim restraining order is made over property by the Court, the Court may, if satisfied that the circumstances so require, order the Commissioner of Police -

- (a) to take custody and control of the property; and
- (b) to manage or otherwise deal with the property in accordance with the directions of the Court or otherwise in accordance with Part VI.

(7) In considering whether the circumstances require an order to be made under Subsection (6), the Court must have regard to -

- (a) the risk that, if the order is not made, the property will be sold, transferred or removed from the jurisdiction or otherwise made unavailable for use as evidence as to the commission of an offence or for the satisfaction of a confiscation order, a foreign forfeiture order or a foreign pecuniary penalty order; and
- (b) the risk that, if the order is not made, the value of the property will depreciate beyond what the Court considers reasonable; and
- (c) any other factor that the Court considers it appropriate to consider, including any requests from the foreign country concerned.

(8) An interim restraining order made under Subsection (2) has effect, and may be enforced, as if it were a restraining order made by the Court under this Act at the time that the interim restraining order was made.”.

**101. REPEAL AND REPLACEMENT OF SECTION 139.**

Section 139 of the Principal Act is repealed and replaced with the following new section:

**“ 139. UNDERTAKINGS BY STATE.**

(1) Before making an interim 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.

(2) The Attorney-General may give the undertaking on behalf of the State.”.

**102. SERVICE OF INTERIM RESTRAINING ORDER (AMENDMENT OF SECTION 140).**

Section 140 of the Principal Act is amended in Subsection (1) by deleting “a restraining” and substituting “an interim restraining”.

**103. ANCILLARY ORDER AND FURTHER ORDER (AMENDMENT OF SECTION 141).**

Section 141 of the Principal Act is amended -

(a) in Subsection (1) by -

- (i) deleting “a restraining” and substituting “an interim restraining”; and
- (ii) inserting “interim” in Paragraph (b) immediately before “restraining”; and

(b) in Subsection (2) by -

- (i) inserting “interim” in Paragraphs (a), (b) and (d) immediately before “restraining”; and
- (ii) repealing Paragraph (c) and replacing it with the following:

“(c) order that an authorised prosecutor conduct an examination in accordance with Division 7 of Part IV before a Magistrate of any person, including but not limited to -

- (i) a person whose property is, or a person who has or claims an interest in property that is, the subject of the interim restraining order; or
- (ii) a person who has effective control over property that is subject to the interim restraining order; or
- (iii) a person who is a suspect in relation to the offence in respect of which the interim restraining order was made; or
- (iv) a person who is the spouse, the de facto partner, a relative or business associate of a person referred to in Subparagraph (i), (ii) or (iii),  
about the affairs of a person referred to in Subparagraph (i), (ii), (iii) or (iv);”;

(iii) repealing Paragraph (e) and replacing it with the following:

“(e) direct that a sworn statement be given to a specified person, within a specified period, by any or all of the following:

*Proceeds of Crime (Amendment)*

- (i) any person with an interest in the property (including, if the property is a body corporate, a specified director of the body corporate) setting out particulars of, or dealings with, the property; or
    - (ii) the suspect regarding all of his or her interests and liabilities; or
    - (iii) a previous owner of the property setting out particulars of, or dealings with, the property; or
    - (iv) a statement from any other person setting out particulars of, or dealings with, the property; and
  - (ea) direct a specified person (“the first mentioned person”) to produce to a person specified in the order specified documents or documents within a specified class that are in the first mentioned person’s possession or control and that relate to the restrained property;” and
- (c) inserting after Subsection (2), the following new subsections:
- “**(2A)** If the Court makes an order under Subsection (2)(c) that a person be examined, the Court may also order that the person produce at the examination -
- (a) specified documents; or
  - (b) documents within a specified class,
- in his or her possession or under his or her control about the affairs of a person referred to in Subsection (2)(c)(i), (ii), (iii) or (iv).
- (2B)** An order made by the Court under Subsection (2)(c) must specify the person to be examined and the date and place of the examination.
- (2C)** Despite Subsection (1), the Court must not make an order under Subsection (2)(c) unless an authorised prosecutor makes the application for the order.”; and
- (d) in Subsection (3) by deleting “a restraining” and substituting “an interim restraining”; and
  - (e) in Subsection (4) by inserting “interim” before “restraining”; and
  - (f) in Subsection (6) -
    - (i) by deleting “(2)(c) or (e)” and substituting “(2)(e)”; and
    - (ii) by deleting Paragraph (b) and substituting the following:

“(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 civil or criminal proceedings, except -

      - (i) proceedings for perjury in making the statement; or
      - (ii) criminal proceedings for an offence under Subsection (7); or
      - (iii) civil or criminal proceedings in which the person consents to the evidence being admitted.”; and
  - (g) inserting after Subsection (6), the following new subsections:

*Proceeds of Crime (Amendment)*

“(6A) If information or documents have been obtained under an order under Subsection (2)(ea), the information or documents are inadmissible as evidence in any criminal proceedings against the person who provided the information or documents, unless the person consents to the information or documents being admitted.

(6B) Despite Subsection (6A), if information or documents have been obtained under an order made under Subsection (2)(ea), the information or documents are admissible -

- (a) in proceedings for perjury in relation to the information or documents; or
- (b) in criminal proceedings for an offence under Subsection (7).

“(7) If a person -

- (a) without a reasonable excuse, fails to make a statement or produce a document within the time specified in an order made under Subsection (2)(e) or (ea); or
- (b) makes a statement or produces a document pursuant to an order made under Subsection (2)(e) or (ea) that is false or misleading in a material particular; or
- (c) without a reasonable excuse, fails to comply with an order made under Subsection (2)(f) within the time specified in the order, the person is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K50,000.00 or imprisonment for five years or both; or  
If the offender is a body corporate, a fine not exceeding K250,000.00.”

**104. REGISTRATION OF RESTRAINING ORDER (AMENDMENT OF SECTION 142).**

Section 142 of the Principal Act is amended -

- (a) in the heading by deleting “**RESTRAINING**” and substituting “**INTERIM RESTRAINING**”; and
- (b) in Subsection (1) by deleting “may” and substituting “must”.

**105. CONTRAVENTION OF RESTRAINING ORDER (AMENDMENT OF SECTION 143).**

Section 143 of the Principal Act is amended -

- (a) in the heading by deleting “**RESTRAINING**” and substituting “**INTERIM RESTRAINING**”; and
- (b) by repealing Subsection (1) and replacing it with the following:

“(1) A person who knowingly contravenes an interim restraining order under this Division by disposing of, or otherwise dealing with, property that is subject to the order is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K70,000.00 or imprisonment for a term not exceeding seven years or both; or  
If the offender is a body corporate, a fine not exceeding K350,000.00.”; and

- (c) in Subsection (2) by -
  - (i) deleting “a restraining” and substituting “an interim restraining”; and
  - (ii) deleting “the restraining” and substituting “the interim restraining”; and
  - (iii) deleting “Minister” and substituting “Public Prosecutor”.

**106. WHEN A RESTRAINING ORDER CEASES TO BE IN FORCE (AMENDMENT OF SECTION 144).**

Section 144 of the Principal Act is amended -

- (a) in the heading by deleting “A RESTRAINING” and substituting “AN INTERIM RESTRAINING”; and
- (b) in Subsection (1) by deleting “A restraining” and substituting “An interim restraining”; and
- (c) by repealing Subsection (2) and replacing it with the following new subsections:

“(2) If the Court makes an interim restraining order, it may, on application by the Public Prosecutor made before the end of the period mentioned in Subsection (1), extend the period of operation of the order.

(3) If an application is made under Subsection (2), the interim restraining order remains in force until the application is determined.

(4) If -

- (a) an interim restraining order is made against property; and
- (b) 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 interim restraining order ceases to have effect when the foreign restraining order is registered.”.

**107. REGISTERED FOREIGN RESTRAINING ORDER - COURT MAY DIRECT COMMISSIONER OF POLICE TO TAKE CUSTODY AND CONTROL OF PROPERTY (AMENDMENT OF SECTION 145).**

Section 145 of the Principal Act is amended -

- (a) in Subsection (1) by inserting the phrase “or otherwise in accordance with Part VI” in Paragraph (b) immediately before “.”; and
- (b) by repealing Subsections (2), (3), (4) and (5) and replacing them with the following:

“(2) In considering whether the circumstances require an order to be made under Subsection (1), the Court must have regard to -

- (a) the risk that, if the order is not made, the property will be sold, transferred or removed from the jurisdiction or otherwise made unavailable for use as evidence as to the commission of an offence or for the satisfaction of a confiscation order, a foreign forfeiture order or a foreign pecuniary penalty order; and
- (b) the risk that, if the order is not made, the value of the property will depreciate beyond what the Court considers reasonable; and
- (c) any other factor that the Court considers it appropriate to consider, including any requests from the foreign country concerned.”.

**108. REGISTERED FOREIGN RESTRAINING ORDER - UNDERTAKINGS  
(AMENDMENT OF SECTION 146).**

Section 146 of the Principal Act is amended by inserting after Subsection (2), the following new subsection:

“(3) The Attorney-General may give any undertaking on behalf of the State required by an order of the Court under Subsection (2).”.

**109. REPEAL OF SECTION 148.**

Section 148 of the Principal Act is repealed.

**110. REPEAL AND REPLACEMENT OF SECTION 149.**

Section 149 of the Principal Act is repealed and replaced with the following:

**“149. AMOUNTS PAID FOR REGISTERED FOREIGN PECUNIARY  
PENALTY ORDER.**

Any amount paid, whether in Papua New Guinea or elsewhere, in satisfaction or reduction of a registered foreign pecuniary penalty order is taken to have been paid in satisfaction or reduction of the debt that arises because of the registration of that order.”.

**111. REGISTRATION OF REGISTERED FOREIGN RESTRAINING ORDER  
(AMENDMENT OF SECTION 150).**

Section 150 of the Principal Act is amended in Subsection (2) by deleting “may” and substituting “must”.

**112. CONTRAVENTION OF REGISTERED FOREIGN RESTRAINING ORDER  
(AMENDMENT OF SECTION 151).**

Section 151 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:

“(2) A person who knowingly contravenes a registered foreign restraining order by disposing of, or otherwise dealing with, property that is subject to the order, is guilty of a crime.

Penalty: If the offender is a natural person, a fine not exceeding K70,000.00 or imprisonment for a term not exceeding seven years or both; or  
If the offender is a body corporate, a fine not exceeding K350,000.00.”.

**113. APPLICATION FOR PRODUCTION ORDER (AMENDMENT OF SECTION 153).**

Section 153 of the Principal Act is amended -

(a) in Subsection (1) by -

(i) repealing Paragraph (a) and replacing it with the following:

“(a) 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 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”; and

*Proceeds of Crime (Amendment)*

- (ii) deleting “an indictable” in Paragraph (b) and substituting “a serious”; and
- (b) inserting after Subsection (1), the following new subsection:

“(1A) Subsection (2) applies if there are reasonable grounds for suspecting that -

- (a) property is -
  - (i) the proceeds of an indictable offence or a foreign indictable offence; or
  - (ii) an instrument of an indictable offence or a foreign indictable offence,  
whether or not the identity of the person who committed the offence is known or the identity of the owner of the property is known; and
- (b) a person has possession or control of a property-tracking document or property-tracking documents in relation to the property.”; and

- (c) in Subsection (3) by repealing Paragraph (b) and replacing it with the following:

“(b) must be in writing and must be accompanied by an affidavit that states the grounds on which the police officer believes that the person has a property-tracking document or property-tracking documents.”; and

- (d) by repealing Subsections (4) and (5).

**114. PRODUCTION ORDER (AMENDMENT OF SECTION 154).**

Section 154 of the Principal Act is amended -

- (a) in Subsection (1) by inserting after “Section 153(1)” in Paragraph (a) “or (1A)”; and
- (b) by inserting after Subsection (1) the following new subsection:

“(1A) The magistrate must not make a production order unless the magistrate is satisfied that there are reasonable grounds for suspecting that the person has possession or control of a property-tracking document or property-tracking documents.”.

**115. SCOPE OF POLICE POWERS UNDER PRODUCTION ORDER (AMENDMENT OF SECTION 155).**

Section 155 of the Principal Act is amended in Subsection (1) by deleting “Paragraph (a)” in Paragraph (e) and substituting “Subsection 154(1)(a)”.

**116. REPEAL AND REPLACEMENT OF SECTION 156.**

Section 156 of the Principal Act is repealed and replaced with the following section:

**“156. WHAT USE CAN BE MADE OF INFORMATION.**

(1) 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 might tend to incriminate the person or make the person liable to forfeiture or a penalty.

*Proceeds of Crime (Amendment)*

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

- (a) the document produced; and
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document,

is not admissible against the person or any other person in any civil or criminal proceedings, other than civil or criminal proceedings referred to in Subsection (3).

(3) The proceedings are -

- (a) civil proceedings under this Act; or
- (b) criminal proceedings for perjury; or
- (c) criminal proceedings for an offence against Section 158.”.

**117. VARIATION OF PRODUCTION ORDER (AMENDMENT OF SECTION 157).**

Section 157 of the Principal Act is amended by inserting after Subsection (2), the following new subsection:

“(3) An applicant must give reasonable notice of the application to the Commissioner of Police.”.

**118. FAILURE TO COMPLY WITH PRODUCTION ORDER (AMENDMENT OF SECTION 158).**

Section 158 of the Principal Act is amended by -

- (a) deleting “commits an offence” and substituting “is guilty of a crime”; and
- (b) repealing the Penalty and replacing it with the following:

“Penalty: If the offender is a natural person, a fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both; or  
If the offender is a body corporate, a fine not exceeding K100,000.00.”.

**119. SEARCH WARRANT TO FACILITATE INVESTIGATION (AMENDMENT OF SECTION 159).**

Section 159 of the Principal Act is amended by -

- (a) repealing Subsection (1) and replacing it with the following:

“(1) A police officer may apply to a Magistrate for a warrant under Subsection (3) to search premises for a document if -

- (a) either -
  - (i) a person is convicted of, or has been charged with, an indictable offence or it is proposed that he or she be charged with an indictable offence; or
  - (ii) there are reasonable grounds for suspecting that any person (whether or not his or her identity is known) has committed a serious offence; and
- (b) there are reasonable grounds for suspecting that there is on the premises a property-tracking document relating to property that is tainted property as a result of the offence or that may be used to satisfy a pecuniary penalty order that results from the offence.”; and

*Proceeds of Crime (Amendment)*

(b) repealing Subsection (2) and replacing it with the following:

“(2) A police officer may apply to a Magistrate for a warrant under Subsection (3) to search premises for a document if there are reasonable grounds for suspecting that -

(a) property is -

(i) the proceeds of an indictable offence or a foreign indictable offence; or

(ii) an instrument of an indictable offence or a foreign indictable offence,

whether or not the identity of the person who committed the offence is known or the identity of the owner of the property is known; and

(b) there is on the premises a property-tracking document in relation to the property.”; and

(c) in Subsection (3) -

(i) by deleting “Subsection (1)” and substituting “Subsection (1) or (2)”; and

(ii) by deleting “under” in Paragraph (a) and substituting “under”; and

(d) in Subsection (5)(b) by deleting “a criminal offence” and substituting “an indictable Offence.”.

**120. PRODUCTION ORDER AND SEARCH WARRANTS FOR FOREIGN OFFENCES (AMENDMENT OF SECTION 160).**

The heading to Section 160 of the Principal Act is amended by deleting “**PRODUCTION**” and substituting “**PRODUCTION**”.

**121. NEW DIVISION 5A.**

The Principal Act is amended in Part IV, by inserting after Division 5, the following new Division:

*“Division 5A. - Notices to Financial Institutions.*

**160A. GIVING NOTICES TO FINANCIAL INSTITUTIONS.**

(1) An officer specified in Subsection (3), may give a written notice to a financial institution requiring the institution to provide to a police officer any information or documents relevant to any one or more of the following:

(a) determining whether an account is or was held by a specified person with the financial institution; or

(b) determining whether a particular person is or was a signatory to an account; or

(c) if a person holds an account with the institution, the current balance of the account; or

(d) details of transactions on an account over a specified period of up to six months; or

(e) details of any related accounts (including names of those who hold or held those accounts); or

(f) a transaction conducted by the financial institution on behalf of a specified person.

(2) The officer must not issue the notice unless the officer reasonably believes that giving the notice is required -

*Proceeds of Crime (Amendment)*

- (a) to determine whether to take any action under this Act; or
- (b) in relation to proceedings under this Act.

(3) A police officer at the level of Chief Superintendent or above may give a notice to a financial institution.

**160B. CONTENTS OF NOTICES TO FINANCIAL INSTITUTIONS.**

(1) The notice must -

- (a) state that the officer giving the notice believes that the notice is required -
  - (i) to determine whether to take any action under this Act; or
  - (ii) in relation to proceedings under this Act,(as the case requires); and
- (b) specify the name of the financial institution; and
- (c) specify the kind of information or documents required to be provided; and
- (d) specify the form and manner in which that information or those documents are to be provided, having regard to the record-keeping capabilities of the financial institution (to the extent known to the officer); and
- (e) specify that the information or documents must be provided no later than -
  - (i) 14 days after the giving of the notice; or
  - (ii) if the officer giving the notice believes that it is appropriate, having regard to the matters specified in Subsection (2), to specify an earlier day that is at least three days after the giving of the notice that earlier day; and
- (f) if the notice specifies that information about the notice must not be disclosed, set out the effect of Section 160E (disclosing existence or nature of a notice); and
- (g) set out the effect of Section 160F (failing to comply with a notice).

(2) The matters to which the officer giving the notice must have regard in deciding whether to specify an earlier day under Subsection (1)(e)(ii) are -

- (a) the urgency of the situation; and
- (b) any hardship that may be caused to the financial institution required by the notice to provide the information or documents.

**160C. PROTECTION FROM SUITS ETC., FOR THOSE COMPLYING WITH NOTICES.**

(1) No action, suit or proceeding lies against -

- (a) a financial institution; or
- (b) an officer, employee or agent of the institution acting in the course of that person's employment or agency,

in relation to any action taken by the institution or person under a notice under Section 160A or in the mistaken belief that action was required under the notice.

(2) Nothing in Subsection (1) precludes the prosecution of any person for an offence of money laundering or terrorist financing under the *Criminal Code Act 1974*.

**160D. MAKING FALSE STATEMENTS IN NOTICES.**

A person who makes a statement (whether orally, in a document or in any other way) and -

- (a) the person knows or ought to know that the statement -
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading; and
  - (b) the statement is made in, or in connection with, a notice under Section 160A,
- is guilty of a crime.

Penalty: A fine not exceeding K20,000.00 or imprisonment for two years or both.

**160E. DISCLOSING EXISTENCE OR NATURE OF NOTICE.**

(1) A person who discloses the existence or nature of a notice that is given to the person under Section 160A and that specifies that information about the notice must not be disclosed is guilty of a crime.

Penalty: If the person is a natural person, a fine not exceeding K50,000.00 or imprisonment for five years or both; or  
If the person is a body corporate, a fine not exceeding K250,000.00.

- (2) It is a defence to an offence against Subsection (1), if the disclosure is made to -
- (a) the Commissioner of Police, or to a police officer authorised in writing by the Commissioner of Police; or
  - (b) 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 notice is complied with; or
  - (d) to a legal practitioner, to obtain legal advice or representation in relation to the notice; or
  - (e) the Public Prosecutor.

**160F. FAILING TO COMPLY WITH A NOTICE.**

(1) A person who fails to comply with a notice given to the person under Section 160A, is guilty of a crime.

Penalty: If the person is a natural person, a fine not exceeding K20,000.00 or imprisonment for two years or both; or  
If the person is a body corporate, a fine not exceeding K100,000.00.

- (2) It is a defence to an offence against Subsection (1) if -
- (a) the person fails to comply with the notice only because the person does not provide the information or a document within the period specified in the notice; and
  - (b) the person took all reasonable steps to provide the information or document within that period; and
  - (c) the person provides the information or document as soon as practicable after the end of that period.”.

**122. MONITORING ORDERS (AMENDMENT OF SECTION 161).**

Section 161 of the Principal Act is amended -

- (a) by deleting “cash dealer” (wherever occurring) and substituting “financial institution”; and
- (b) in Subsection (2) by deleting “maybe” in Paragraph (a) and substituting “may be”; and
- (c) in Subsection (3) by -
  - (i) inserting “or a foreign indictable offence” in Paragraphs (a), (b) and (c) after “an indictable offence”; and
  - (ii) deleting in Paragraph (c) “committing” and substituting “the commission of”; and
- (d) by repealing Subsection (6).

**123. REPEAL AND REPLACEMENT OF SECTION 162.**

Section 162 of the Principal Act is repealed and replaced with the following:

**“162. MONITORING ORDERS - OFFENCES FOR FINANCIAL INSTITUTIONS.**

(1) If a financial institution has been given notice of a monitoring order and the financial institution knowingly -

- (a) contravenes the order; or
- (b) provides false or misleading information in purported compliance with the order,

the financial institution is guilty of a crime.

Penalty: If the person is a natural person, a fine not exceeding K70,000.00 or imprisonment for seven years or both; or  
If the person is a body corporate, a fine not exceeding K350,000.00.

(2) A financial institution that is, or has been, subject to a monitoring order is guilty of a crime if the financial institution 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; or
- (e) to the Public Prosecutor.

Penalty: If the person is a natural person, a fine not exceeding K70,000.00 or imprisonment for seven years or both; or  
If the person is a body corporate, a fine not exceeding K350,000.00.”

**124. MONITORING ORDERS - OTHER OFFENCES (AMENDMENT OF SECTION 163).**

Section 163 of the Principal Act is amended -

- (a) in Subsection (1) by -

(i) inserting after Paragraph (a) the following paragraph:

*Proceeds of Crime (Amendment)*

- “(aa) the Public Prosecutor;”; and
- (ii) repealing Paragraph (b) and replacing it with the following:
- “(b) a police officer; or  
(ba) an officer of the Office of the Public Prosecutor;”; and
- (iii) deleting in Paragraph (d) “cash dealer” and substituting “financial institution”; and
- (b) in Subsection (2) by -
- (i) deleting “commits an offence” and substituting “is guilty of a crime”; and
- (ii) inserting “or” in Subparagraph (i) of Paragraph (a) immediately after “;”; and
- (iii) inserting the following subparagraph in Paragraph (a) immediately after Subparagraph (i):
- “(ia) if the disclosure is made by the Public Prosecutor or an officer of the Office of the Public Prosecutor - in connection with the person’s duties; or”; and
- (iv) deleting “cash dealer” in Subparagraph (ii) of Paragraph (a) and substituting “financial institution”; and
- (v) deleting the Penalty and substituting the following:
- “Penalty: If the person is a natural person, a fine not exceeding K70,000.00 or imprisonment for seven years or both; or  
If the person is a body corporate, a fine not exceeding K350,000.00.”; and
- (c) in Subsections (3) and (4) by inserting “, the Public Prosecutor, an officer of the Office of the Public Prosecutor” after “a police officer”.

**125. INSERTION OF NEW DIVISIONS 7 AND 8 IN PART IV.**

The Principal Act is amended in Part IV, by inserting the following new divisions after Division 6:

**“Division 7. - Examinations.**

**163A. CONDUCT OF EXAMINATIONS.**

- (1) A person to be examined must either take an oath, or make an affirmation, before being examined.
- (2) An authorised prosecutor must conduct an examination and the examination must take place in private.
- (3) An authorised prosecutor may seek directions from the Magistrate presiding over an examination about who may be present during the examination, or during a part of it.
- (4) A person must not be present during an examination or a part of it unless he or she is -

*Proceeds of Crime (Amendment)*

- (a) the Magistrate presiding over the examination; or
- (b) the authorised prosecutor conducting the examination; or
- (c) the person being examined or his or her legal representative; or
- (d) any person who is entitled to be present because of a direction under Subsection (3).

(5) If an examination is being conducted pursuant to an examination order made under Section 141, then an official of the foreign country -

- (a) where the relevant offence was allegedly committed; or
  - (b) from where the request under the *Mutual Assistance Act* came,
- may be present during the examination or a part of it in addition to the persons referred to in Subsection (4).

(6) The legal representative of the person being examined may at such times during the examination as the Magistrate presiding over the examination determines -

- (a) address the Magistrate about any matter relevant to the conduct of the examination; and
- (b) examine the person about any matter about which the authorised prosecutor or the Magistrate has examined the person.

(7) If the person being examined does not have a legal representative, the person may at such times during the examination as the Magistrate presiding over the examination determines address the Magistrate about any matter relevant to the conduct of the examination.

(8) The Magistrate may require -

- (a) the legal representative of the person being examined to stop addressing the Magistrate, or stop his or her examination, as the case requires; or
- (b) the person being examined to stop addressing the Magistrate, if the Magistrate is of the view that the legal representative is trying to obstruct the examination by exercising rights under Subsection (6) or the person is trying to do so by exercising rights under Subsection (7).

(9) The spouse of a person being examined under an examination order is compellable to being examined in accordance with this Division.

(10) Section 18(1) of the *Evidence Act 1975* does not apply to an examination.

**163B. PRIVILEGE AGAINST SELF INCRIMINATION DOES NOT APPLY.**

(1) A person being examined pursuant to an examination order is not excused from answering a question or producing a document on the ground that answering the question or producing the document might tend to incriminate the person or make the person liable to forfeiture or a penalty.

(2) If a person being examined pursuant to an examination order answers a question or produces a document -

- (a) the answer given and the document produced; and

*Proceeds of Crime (Amendment)*

(b) any information, document or thing obtained as a direct or indirect consequence of the answer or production of the document, is not admissible against the person or any other person in any civil or criminal proceedings, other than the civil or criminal proceedings referred to in Subsection (3).

(3) The proceedings are -

- (a) criminal proceedings for perjury in relation to the examination; or
- (b) civil proceedings under this Act; or
- (c) criminal proceedings for an offence under Section 163H or 163I; or
- (d) civil or criminal proceedings in which the person consents to the evidence being admitted.

**163C. OFFENCE OF DISCLOSURE RELATING TO EXAMINATIONS.**

(1) A person who discloses, other than at an examination being conducted pursuant to an examination order -

- (a) the existence of, or any information about, the examination order; or
  - (b) in contravention of an order made under Section 163D -
    - (i) any question asked or answer given in the course of the examination; or
    - (ii) the existence or contents of any document produced in the course of the examination,
- is guilty of a crime.

Penalty: A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both.

(2) In proceedings for an offence against Subsection (1), it is a defence if the authorised prosecutor conducting the examination makes the disclosure for the purposes of -

- (a) criminal proceedings for perjury in relation to the examination; or
- (b) civil proceedings under this Act; or
- (c) criminal proceedings for an offence under Section 163H or 163I.

(3) In proceedings for an offence against Subsection (1), it is a defence if the person subject to the examination order makes the disclosure to -

- (a) a legal practitioner for the purpose of obtaining legal advice or representation -
  - (i) in relation to the examination order; or
  - (ii) for the purposes of civil or criminal proceedings under this Act; or
  - (iii) for perjury proceedings related to the examination; or
- (b) any other person for the purpose of ensuring compliance with the examination order.

(4) In proceedings for an offence against Subsection(1), it is a defence if the legal representative of the person subject to the examination order makes the disclosure to -

- (a) the person subject to the examination order or to another of that person's legal representatives for the purposes of obtaining advice or representation -

- (i) in relation to the examination order; or
- (ii) for the purposes of civil or criminal proceedings under this Act; or
- (iii) for perjury proceedings related to the examination; or
- (b) any other person to the extent necessary to ensure compliance with the order.

(5) In proceedings for an offence against Subsection (1) it is a defence if the examination order was made under Section 141 and the official of the foreign country referred to in Subsection 163A(5) makes the disclosure for the purposes of -

- (a) civil proceedings under this Act; or
- (b) criminal proceedings for an offence under Section 163H or 163I; or
- (c) Part VII of the *Mutual Assistance Act*; or
- (d) legislation of the kind referred to in Paragraph (a), (b) or (c) in the foreign country that the official represents; or
- (e) criminal proceedings for perjury related to the examination.

**163D. MAGISTRATE MAY RESTRICT DISCLOSURE OF CERTAIN MATERIAL.**

- (1) The Magistrate presiding over an examination may -
  - (a) on his or her own initiative; or
  - (b) at the request of the person being examined or his or her legal representative; or
  - (c) at the request of the authorised prosecutor conducting the examination,

give directions preventing or restricting disclosure to any person of matters contained in questions asked or answers given, or documents produced, in the course of the examination.

- (2) In deciding whether or not to give a direction, the Magistrate must have regard to -

- (a) whether -
  - (i) an answer that has been or may be given; or
  - (ii) a document that has been or may be produced; or
  - (iii) a matter that has arisen or may arise,during the examination is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against a law of Papua New Guinea; and
- (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Magistrate gives the direction; and
- (c) whether giving the direction is in the public interest; and
- (d) any other relevant matter.

**163E. PROCEEDINGS INVOLVING EXAMINATIONS.**

- (1) This section applies to -
  - (a) any question asked or answer given to a question in the course of an examination; or
  - (b) the existence or contents of any document produced in the course of an examination,

if the question, answer or document is subject to an order made under Section 163D.

## *Proceeds of Crime (Amendment)*

(2) A Court hearing a civil or criminal proceeding must hold in private any part of the proceeding that involves the disclosure of the question or answer, or the existence or contents of the document.

(3) The Court must not disclose the question or answer, or the existence or contents of the document, in any judgment.

### **163F. USE OF EXAMINATION ANSWERS AND QUESTIONS BY MAGISTRATES.**

(1) This section applies if -

- (a) a Magistrate presided over an examination; and
- (b) the Magistrate is presiding over a criminal proceeding, other than a criminal proceeding for an offence under this Division.

(2) The Magistrate must not take into account in the criminal proceeding any question asked or answer given, or document produced, in the course of the examination.

(3) If the Magistrate is of the view that there is an actual or perceived risk that the criminal proceeding could be prejudiced because the Magistrate presided over the examination, the Magistrate must withdraw from the criminal proceeding and another Magistrate must be appointed to preside over the criminal proceeding.

### **163G. FAILING TO ATTEND AN EXAMINATION.**

A person required to attend an examination pursuant to an examination order who refuses or fails to attend the examination at the time and place specified in the examination order is guilty of a crime.

Penalty: A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both.

### **163H. OFFENCES RELATING TO APPEARANCE AT AN EXAMINATION.**

(1) A person attending an examination pursuant to an examination order to answer questions or produce documents who -

- (a) refuses or fails to take an oath, or to make an affirmation; or
- (b) refuses or fails to answer a question that the authorised prosecutor conducting the examination requires the person to answer; or
- (c) refuses or fails to produce at the examination a document required by the examination order; or
- (d) leaves the examination before being excused by the Magistrate; or
- (e) refuses or fails to comply with a direction under Section 163M,

is guilty of a crime.

Penalty: A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both.

(2) Subsection (1)(c) does not apply if the person complied in relation to production of the document to the extent that it was practicable to do so.

(3) Subsection (1)(e) does not apply if the person complied with the direction under Section 163M to the extent that it was practicable to do so.

**163I. GIVING FALSE OR MISLEADING ANSWERS OR DOCUMENTS.**

A person attending an examination pursuant to an examination order who answers a question or produces a document is guilty of a crime if -

- (a) the answer or document is false or misleading; or
- (b) the person omits any matter or thing without which the answer or document is misleading.

Penalty: A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years or both.

**163J. ADMISSIBILITY OF EXAMINATION MATERIAL.**

(1) Subject to Section 163B(2) and Subsection (2), the transcript of, and the evidence given in, an examination may be received into evidence by a Court.

(2) The transcript must be certified by the clerk of the Court or the person who made it.

(3) An affidavit is not required about how the transcript was made.

(4) The transcript of an examination is evidence of an answer given by a person in the course of the examination.

**163K. EXAMINATION ORDER CEASES TO HAVE EFFECT.**

An examination order ceases to have effect if the restraining order to which it relates ceases to have effect.

**163L. AUTHORISED PROSECUTOR NOT TO PROSECUTE RELATED CRIMINAL MATTERS.**

An authorised prosecutor must not prosecute a person ("the first mentioned person") for a criminal offence under this or any other Act if the authorised prosecutor conducted an examination pursuant to an examination order -

- (a) of the first mentioned person or of another person about the affairs of the first mentioned person; or
- (b) that included questions or answers concerning facts or circumstances relevant to the prosecution of the first mentioned person.

**163M. MAGISTRATE MAY DIRECT DOCUMENTS BE PRODUCED.**

The Magistrate presiding over an examination may in the course of the examination direct that the person being examined produce specified documents or documents within a specified class to the Magistrate or the Public Prosecutor at a specified place and date.

**163N. RECORD AND TRANSCRIPT OF EXAMINATION.**

(1) The District Court must ensure that -

- (a) an examination is recorded; and
- (b) a transcript of the examination is prepared and disseminated to the parties to the proceedings in the course of which the examination was conducted and to the person who was examined.

(2) The Commissioner of Police must pay the expenses associated with the recording, transcription and disseminations and may seek reimbursement from the Confiscated Assets Fund in accordance with Section 169Y.

*Division 8. - Other matters.*

**163O. RELATIONSHIP WITH SEARCH ACT.**

(1) Any information obtained or thing seized pursuant to a search warrant under the *Search Act 1977* may be used in proceedings under this Act as if the information had been obtained or the thing had been seized under Section 113 or 159.

(2) Any information obtained or thing seized pursuant to a warrant under Section 113 or 159 may be used in any criminal proceeding under any Act as if it had been obtained or seized pursuant to the *Search Act 1977*.”.

**126. REPEAL AND REPLACEMENT OF HEADING TO PART V.**

The heading to Part V of the Principal Act is repealed and replaced with the following:

**“PART V. - DISCLOSURE OF INFORMATION HELD BY STATE BODIES.”**

**127. REPEAL AND REPLACEMENT OF SECTION 164.**

Section 164 of the Principal Act is repealed and replaced with the following:

**“164. DIRECTION TO GIVE DOCUMENTS OR DISCLOSE INFORMATION.**

(1) The Commissioner of Police may direct the person in charge of a state body to give or disclose to the Commissioner of Police a document or information referred to in Subsection (2), being a document or information -

- (a) in the possession or under the control of the person in charge of the state body; or
- (b) to which the person in charge of the state body has access in his or her official capacity.

(2) The Commissioner of Police must be satisfied that the document or information is relevant to -

- (a) establishing whether an indictable offence or a foreign indictable offence has been, or is being, committed; or
- (b) the making, or proposed or possible making, of an order under Part III or IV of this Act.

(3) If the Commissioner of Police is satisfied on reasonable grounds that it is not practical to give a direction to the person in charge of a state body, the direction may be given to the next senior person in the state body.

(4) A direction to a person must be served personally.

(5) A person to whom a direction is given must comply with the direction within 21 days after the direction is served on the person.

(6) The Commissioner of Police may, at the time a direction is given or at any later time, require a document -

- (a) to be provided in or under the cover of an affidavit by the person to whom the direction was given; or
- (b) to be certified by that person.

*Proceeds of Crime (Amendment)*

(7) The Commissioner of Police may, at the time a direction is given or at any later time, require information to be provided in or under the cover of an affidavit by -

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

**164A. COURT ORDER FOR COMPLIANCE WITH DIRECTION.**

(1) This section applies if a document or information is not given or disclosed within the required time under a direction given under Section 164.

(2) The Commissioner of Police may apply to a Magistrate for an order that -

- (a) the person in charge of the statutory body; or
- (b) another senior officer of the statutory body as the Magistrate determines,

give or disclose the document or information to the Commissioner of Police within 7 days after the order is made.

(3) The Magistrate must make the order if he or she is satisfied that -

- (a) the document or information is relevant to -
  - (i) establishing whether an indictable offence or a foreign indictable offence has been, or is being, committed; or
  - (ii) the making, or proposed making, of an order under Part III or IV; and
- (b) the person to whom the direction under Section 164 was given has not provided a reasonable excuse supported by evidence for not complying with the direction.

(4) The Magistrate may order the document -

- (a) be provided in or under the cover of an affidavit by the person to whom the order applies; or
- (b) be certified by that person.

(5) The Magistrate may order that information be provided in or under the cover of an affidavit by -

- (a) the person to whom the order applies; or
- (b) another officer of the same statutory body who is directed to make the affidavit by the person to whom the order applies.

(6) An order must be served personally on the person to whom it applies.

**164B. OFFENCE OF NON-COMPLIANCE WITH COURT ORDER.**

A person who fails, without reasonable excuse supported by evidence, to comply with an order made under Section 164A is guilty of a crime.

Penalty: A fine not exceeding K20,000.00 or imprisonment for two years or both."

**128. FURTHER DISCLOSURE OF INFORMATION AND DOCUMENTS (AMENDMENT OF SECTION 165).**

Section 165 of the Principal Act is amended -

- (a) in Subsection (1) by -
  - (i) inserting “or 164A” after “164”; and
  - (ii) inserting “or a foreign indictable offence” in Paragraph (a) after “offence”; and
- (b) in Subsection (4) by -
  - (i) deleting “an offence” and substituting “a crime”; and
  - (ii) repealing the Penalty and replacing it with the following:

Penalty: A fine not exceeding K20,000.00 or imprisonment for two years or both.”.

**129. REPEAL AND REPLACEMENT OF SECTION 166.**

Section 166 of the Principal Act is repealed and replaced with the following:

**“166. EVIDENTIAL VALUE OF COPIES.**

(1) This section applies to a document given in compliance with a direction under Section 164 or an order made under Section 164A, whether or not the document -

- (a) is provided in or under the cover of an affidavit by the person to whom the direction was given or the order applies; or
- (b) is certified by that person.

(2) The following persons may make or cause to be made one or more copies of the document:

- (a) the Commissioner of Police or a person authorised to make copies by the Commissioner; or
- (b) a person authorised to make copies by the person to whom the direction was given or the order applies.

(3) A copy in or under the cover of an affidavit by the person to whom the direction was given or the order applies, or purporting to be certified by that person to be a copy -

- (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.

**166A. APPLICATION OF PART.**

- (1) This Part applies despite any other Act or law.
- (2) To avoid doubt, this Part applies to the giving of documents and the disclosure of information in addition to Section 177E.”.

**130. REPEAL AND REPLACEMENT OF PART VI.**

Part VI of the Principal Act is repealed and replaced with the following:

**“PART VI. - MANAGEMENT OF RESTRAINED AND CONFISCATED PROPERTY.**

*Division 1. - General Provisions.*

**167. APPLICATION OF PART.**

This Part applies to property if the property -

- (a) is under the custody and control of the Commissioner of Police under a custody and control order; or
- (b) is forfeited pursuant to a registered foreign forfeiture order; or
- (c) is forfeited under Section 71, if Section 169K(4) no longer prevents disposal or dealing with the property; or
- (d) is specified in a forfeiture order that is in force at the later time mentioned in Section 169K(1); or
- (e) is used to satisfy a pecuniary penalty order or a foreign pecuniary penalty order; or
- (f) is property to which Sections 57(4), 127(2), 133(2), 169O(2) or 177I(3) apply.

**168. PRESERVATION OF THE VALUE OF PROPERTY.**

(1) If the Court makes a custody and control order in relation to property, the Commissioner of Police may do anything that is reasonably necessary to preserve the value of 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.

(2) Without limiting Subsection (1), the Commissioner of Police may do any or all of the following:

- (a) become a party to any civil proceedings affecting the property; or
- (b) ensure that the property is insured; or
- (c) realise or otherwise deal with any of the property that is securities or investments; or
- (d) if any of the property is a business -
  - (i) employ, or terminate the employment of, persons in the business; or
  - (ii) do anything necessary or convenient to carry on the business on a sound commercial basis.

(3) The Commissioner of Police may exercise the rights attaching to any of the property that is shares as if the Commissioner of Police were the registered holder of the shares, to the exclusion of the registered holder.

(4) This section applies subject to Sections 169C, 169D, 169E and 169F.

**169. ENTRY, SEARCH AND SEIZURE POWERS WITHOUT WARRANT.**

For the purpose of preserving the value of property subject to a custody and control order, a police officer may do any or all of the following:

- (a) at any reasonable time during the day or night, enter premises if the property is located, or the officer suspects on reasonable grounds that the property is located, at the premises; or

- (b) search the premises for the property; or
- (c) seize the property and remove it from the premises to be dealt with in accordance with this Part.

**169A. ANCILLARY ORDERS RELATING TO CUSTODY AND CONTROL ORDER.**

(1) This section applies if the Commissioner of Police is ordered by the Court to take custody and control of property under a custody and control order.

(2) The Commissioner of Police, the Public Prosecutor or any other person with an interest in the property may apply to the Court for any or all of the following orders:

- (a) an order regulating the manner in which the Commissioner of Police may exercise his or her powers or perform his or her duties or functions under the custody and control order; or
- (b) 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 or functions of the Commissioner of Police; or
- (c) 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; or
- (d) any other order that the Court considers appropriate -
  - (i) to allow the Commissioner of Police to perform duties or functions or exercise powers conferred or imposed on the Commissioner by or under this Part; or
  - (ii) to protect the legitimate interest of a person in the property.

(3) If a custody and control order has been made *ex parte*, any ancillary order made under Subsection (2), may be made *ex parte* if that ancillary order is made at the same time as the custody and control order.

**169B. PROPERTY UNDER THE CUSTODY AND CONTROL OF THE COMMISSIONER OF POLICE.**

(1) Subject to Subsections (2) and (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 custody and control under a custody and control order; and
- (b) become due on or after the date of the custody and control order,

only to the extent of the rents and profits received by the Commissioner of Police for the property on or after that date.

(2) If no rents or profits are received by the Commissioner of Police for the property, the owner of the property remains liable for any rates, land tax or municipal or other statutory charges referred to in Subsection (1) and must pay them accordingly.

*Proceeds of Crime (Amendment)*

(3) If, as required under Subsection (2), the owner of the property does not pay the rates, land tax or municipal or other statutory charges referred to in Subsection (1), the Commissioner of Police may pay the unpaid amounts and recover them under Division 5 of this Part or in such other way as the Court directs, including to direct the owner of the property to pay the unpaid amounts.

*Division 2. - Disposal and destruction of property.*

**169C. DISPOSING OF PROPERTY SUBJECT TO A CUSTODY AND CONTROL ORDER.**

(1) Subject to this section, the Commissioner of Police may propose to dispose of property while the property is subject to a custody and control order if the Commissioner is of the opinion that during the likely period of restraint -

- (a) the value of the property is likely to depreciate beyond what the Commissioner considers reasonable; or
- (b) the cost of storing and managing the property is likely to be higher than what the Commissioner considers reasonable; or
- (c) the combination of the depreciation of the value of the property and the cost of storing and managing the property is likely to be beyond what the Commissioner considers reasonable.

(2) The Commissioner of Police must not dispose of property unless the Public Prosecutor has consented to the proposed disposal before notice is given under Subsection (3).

(3) The Commissioner of Police must give written notice of the proposed disposal of property and the process for objecting to the proposed disposal to -

- (a) the owner of the property; and
- (b) any other person whom the Commissioner of Police has reason to believe may have an interest in the property.

(4) Subject to Subsection (5), the Commissioner of Police must cause the notice to be served personally on the persons referred to in Subsections (3)(a) and (b).

(5) The Court may, upon application by the Commissioner of Police, make an order in relation to substituted service of the notice on a person if the Court is satisfied that it is not possible or practical to serve the notice personally on the person.

(6) A person who has been served with the notice may object in writing to the proposed disposal within 21 days after service of the notice on the person.

(7) If all of the persons who are required to be served with the notice agree to the proposed disposal of the property, the Commissioner of Police may dispose of the property.

(8) For the purposes of Subsection (7), if a person does not respond to the notice within 21 days after being served with the notice, the person is deemed to have agreed to the disposal of property.

**169D. DISPOSAL OF PROPERTY FOLLOWING OBJECTION.**

(1) If a person objects under Section 169C to the disposal of property, the Public Prosecutor may apply to the Court on behalf of the Commissioner of Police for an order that the Commissioner of Police may dispose of the property.

(2) The Court may order the disposal of the property if the Court is satisfied that it is in the interests of justice to make the order.

(3) In deciding whether or not to make the order, the Court must have regard to the following:

- (a) the likely depreciation in the value of the property; and
- (b) the likely cost of storing and managing the property; and
- (c) any undertaking by the owner of the property to surrender other property in substitution for the property; and
- (d) any undertaking by the owner of the property to pay for the storage or management of the property, or both; and
- (e) whether monetary compensation would be an adequate remedy for the owner of the property or any other person with an interest in the property.

(4) Subject to Subsection (5), the Court may order a person who has objected to the disposal of property to pay costs associated with the storage or management of the property, or both, if -

- (a) the Court upholds the objection and does not make the order sought by the Public Prosecutor; and
- (b) the property -
  - (i) is made the subject of a forfeiture order or a registered foreign forfeiture order; or
  - (ii) is used to satisfy a pecuniary penalty order or a registered foreign pecuniary penalty order.

(5) The Court may make an order under Subsection (4) that a person pay the costs of storing or managing the property, or both, from the date of the order up to and including -

- (a) the date of forfeiture of the property; or
- (b) the date that the Court directs that the property may be used to satisfy the pecuniary penalty order or registered foreign pecuniary penalty order.

**169E. DESTRUCTION OF PROPERTY SUBJECT TO A CUSTODY AND CONTROL ORDER.**

(1) Subject to this section, the Commissioner of Police may propose to destroy property while the property is subject to a custody and control order if the Commissioner is satisfied that -

- (a) it is in the public interest to do so; or
- (b) it is required for the health or safety of the public.

(2) The Commissioner of Police must not destroy the property unless the Public Prosecutor has consented to the proposed destruction before notice is given under Subsection (3).

*Proceeds of Crime (Amendment)*

(3) The Commissioner of Police must give written notice of the proposed destruction of property and the process for objecting to the proposed destruction to -  
(a) the owner of the property; and  
(b) any other person whom the Commissioner of Police has reason to believe may have an interest in the property.

(4) Subject to Subsection (5), the Commissioner of Police must cause the notice to be served personally on the persons referred to in Subsections (3)(a) and (b).

(5) The Court may, upon application by the Commissioner of Police, make an order in relation to substituted service of the notice on a person if the Court is satisfied that it is not possible or practical to serve the notice personally on the person.

(6) A person who has been served with the notice may object in writing to the proposed destruction within three days after service of the notice on the person.

(7) If all of the persons who are required to be served with the notice agree to the proposed destruction of the property, the Commissioner of Police may destroy the property.

(8) For the purposes of Subsection (7), if a person does not respond to the notice within three days after being served with the notice, the person is deemed to have agreed to the destruction of the property.

**169F. DESTRUCTION OF PROPERTY FOLLOWING OBJECTION.**

(1) If a person objects under Section 169E to the destruction of the property, the Public Prosecutor may apply to the Court on behalf of the Commissioner of Police for an order that the Commissioner of Police may destroy the property.

(2) The Court may order the destruction of the property if in the Court's opinion -

- (a) it is in the public interest to do so; or
- (b) it is required for the health or safety of the public.

(3) Subject to Subsection (4), the Court may order a person who has objected to the destruction of property to pay costs associated with the storage or management of the property, or both, if -

- (a) the Court upholds the objection and does not make the order sought by the Public Prosecutor; and
- (b) the property -
  - (i) is made the subject of a forfeiture order or a registered foreign forfeiture order; or
  - (ii) is used to satisfy a pecuniary penalty order or a registered foreign pecuniary penalty order.

(4) The Court may make an order under Subsection (3), that a person pay the costs of storing or managing the property, or both, from the date of the order up to and including -

- (a) the date of forfeiture of the property; or

*Proceeds of Crime (Amendment)*

- (b) the date that the Court directs that the property may be used to satisfy the pecuniary penalty order or registered foreign pecuniary penalty order.

**169G. SECTION 150 OF *POLICE ACT* DOES NOT APPLY.**

Section 150 of the *Police Act 1998* does not apply to property disposed of under Section 169C or 169D, or property destroyed under Section 169E or 169F.

**169H. PROPERTY SUBJECT TO MUTUAL ASSISTANCE REQUEST.**

If -

- (a) property has been subject to a request under the *Mutual Assistance Act*; or
- (b) property is subject to a request under that Act; or
- (c) it is reasonably foreseeable that property could be subject to a request under that Act,

the Commissioner of Police must consult with the foreign country concerned before the property is disposed of under Section 169C or 169D, or the property is destroyed under Section 169E or 169F.

**169I. PROCEEDS FROM SALE OF PROPERTY.**

Amounts realised from any sale of property under Section 169C or 169D -

- (a) must be paid into the trust account established by Section 169U; and
- (b) are taken to be covered by the restraining order that covered the property; and
- (c) if the property was proceeds of an offence or an instrument of an offence, continue to be proceeds of that offence or an instrument of that offence.

**169J. PAYMENT OF SALE PROCEEDS TO OWNER.**

- (1) This section applies to property covered by a restraining order if -
  - (a) the property has been disposed of under Section 169C or 169D; and
  - (b) the restraining order covering the property ceases to have effect; and
  - (c) a confiscation order in relation to the property is not made; and
  - (d) a foreign forfeiture order for the property is not registered; and
  - (e) an order under Section 169M or 169N is not made.

- (2) The owner of the property must be paid the proceeds of the sale of the property together with any accrued interest on the sale proceeds.

*Division 3. - Forfeited property.*

**169K. WHEN THE STATE CAN 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 under Section 58, 59 or 59A only if the order is still in force and only after the later of the following times:
  - (a) in relation to the order -

*Proceeds of Crime (Amendment)*

- (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; and
  - (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 Subsection 6(b), 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 Subsection 6(c), 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) Disposals and dealings in relation to property mentioned in Subsection (1), 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.
- (4) 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 (6), has come to an end; and
  - (b) the conviction has not been quashed by that time.
- (5) Disposals and dealings in relation to property mentioned in Subsection (4), 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.
- (6) 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 (4) is -
- (a) if the conviction is one in relation to which neither Subsection 6(b) or (c) 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 Section 6(b), the period ending -

*Proceeds of Crime (Amendment)*

- (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 Section 6(c), 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.

(7) If a registered foreign forfeiture order is in force against property, the State and any persons acting on its behalf can dispose of, or otherwise deal with, the property from the date of registration of the foreign forfeiture order.

(8) A custody and control order relating to property referred to in Subsection (1) or (4) continues in force until the end of the period referred to in that subsection.

**169L. HOW FORFEITED PROPERTY MUST BE DEALT WITH.**

- (1) This section applies to -
  - (a) property forfeited pursuant to a registered foreign forfeiture order; and
  - (b) property forfeited under Section 71, if Section 169K(4) no longer prevents disposal or dealing with the property; and
  - (c) property specified in a forfeiture order made under Section 58, 59 or 59A that is still in force at the later time mentioned in Section 169K(1).
- (2) The Commissioner of Police must on behalf of the State, as soon as practicable -
  - (a) take custody and control of the property if the property is not already under the custody and control of the Commissioner of Police; and
  - (b) dispose of any of the forfeited property that is not money; and
  - (c) credit amounts received from that disposal and any of the forfeited property that is money to the Confiscated Assets Fund.
- (3) Despite Subsection (2), if the Commissioner of Police is of the opinion that it would be more appropriate not to dispose of the property and for the State to retain the property in its current form, the Commissioner of Police may apply in writing to the Minister for approval that the property be retained by the State in its current form.

*Proceeds of Crime (Amendment)*

- (4) If the Minister under Section 169ZA approves the application, the property must -
  - (a) not be disposed of; and
  - (b) be used in the manner and for the purposes as directed by the Minister.
- (5) If -
  - (a) only a part of property is forfeited; and
  - (b) the time has begun for the State in accordance with Section 169K to dispose of or otherwise deal with the property, the Commissioner of Police must, comply with Subsection (6).
- (6) The Commissioner of Police must as soon as practicable -
  - (a) return the part of the property that has not been forfeited to the owner of the property; or
  - (b) pay to the owner of the property an amount equal to the value of the owner's interest in the property that has not been forfeited.

*Division 4. - Pecuniary penalty orders.*

**169M. 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 person's conviction or commission of an offence; and
  - (b) a restraining order is in force against property owned by the person or under the effective control of the person, in reliance on the person's conviction, or alleged commission, of the offence.
- (2) The Court may, upon application by the Public Prosecutor or the Commissioner of Police, direct the Commissioner of Police to satisfy the pecuniary penalty order -
  - (a) on the making of the later of the orders referred to in Subsection (1); or
  - (b) at any time while the restraining order remains in force.
- (3) A direction under Subsection (2) must specify -
  - (a) that the Commissioner of Police is to satisfy the pecuniary penalty order by making a payment to the State out of the property; or
  - (b) if the application was an application of the kind mentioned in Section 169P(4)(b), that the pecuniary penalty order is to be satisfied in the manner set out in that section.
- (4) The Public Prosecutor or the Commissioner of Police must give written notice of an application made under Subsection (2) to -
  - (a) any person who claims an interest in the property covered by the application; and

*Proceeds of Crime (Amendment)*

- (b) any person that the Public Prosecutor or the Commissioner of Police, as the case may be, reasonably believes may have an interest in the property.

(5) To enable the Commissioner of Police to comply with a direction under Subsection (2), the Court may direct the Commissioner of Police to sell or otherwise dispose of a specified part of the property.

(6) The Court may order that the Commissioner of Police may, to the extent necessary to enable the Commissioner to comply with a direction under Subsection (2) -

- (a) execute any deed or instrument in the name of a person who owns, or has an interest in, the property; and
- (b) do anything necessary to give validity and effect to such a deed or instrument.

(7) If the Court makes an order of the kind mentioned in Subsection (5), 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.

(8) The Commissioner of Police must not take action to sell property pursuant to a direction under Subsection (2), until -

- (a) the periods for the lodging of an appeal against a relevant conviction, and the making of the relevant pecuniary penalty order and restraining order, have expired without any such appeal having been lodged; or
- (b) 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.

(9) If the Commissioner of Police sells property pursuant to a direction under Subsection (2), the liability of the person under the pecuniary penalty order is discharged to the extent of the amount for which the property was sold.

(10) The Commissioner of Police must on behalf of the State, as soon as practicable, credit amounts received from the sale of any property made pursuant to a direction under Subsection (2), to the Confiscated Assets Fund.

(11) If only a part of property is used to satisfy a pecuniary penalty order, the Commissioner of Police must as soon as practicable, on application by the owner of the property -

- (a) return the part of the property that has not been used to satisfy the pecuniary penalty order to the owner of the property; or
- (b) pay to the owner of the property an amount equal to the value of the owner's interest in the property that has not been so used.

**169N. 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 138(2), and a reference to the registration of a foreign restraining order includes the making of an order under Section 138(2).

(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 the defendant or property under the effective control of the defendant.

(3) The Court may, upon application by the Public Prosecutor or the Commissioner of Police, direct the Commissioner of Police to satisfy the foreign pecuniary penalty order -

- (a) on the registration of the later of the orders referred to in Subsection (2); or
- (b) at any time while the registered foreign restraining order remains in force.

(4) A direction under Subsection (3) must specify -

- (a) that the Commissioner of Police is to satisfy the foreign pecuniary penalty order by making a payment to the State out of the property; or
- (b) if the application was an application of the kind mentioned in Section 169P(4)(b), that the pecuniary penalty order is to be satisfied in the manner set out in that section.

(5) The Public Prosecutor or the Commissioner of Police, as the case may be, must give written notice of an application made under Subsection (3) to -

- (a) any person who claims an interest in the property covered by the application; and
- (b) any person that the Public Prosecutor or the Commissioner of Police reasonably believes may have an interest in the property.

(6) To enable the Commissioner of Police to comply with a direction under Subsection (3), the Court may direct the Commissioner of Police to sell or otherwise dispose of a specified part of the property.

(7) The Court may order that the Commissioner of Police may, to the extent necessary to enable the Commissioner to comply with a direction under Subsection (3) -

- (a) execute any deed or instrument in the name of a person who owns, or has an interest in, the property; and
- (b) do anything necessary to give validity and effect to such a deed or instrument.

(8) If the Court makes an order of the kind mentioned in Subsection (6), 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.

## *Proceeds of Crime (Amendment)*

(9) If the Commissioner of Police sells property pursuant to a direction under Subsection (3), the liability of the person under the registered foreign pecuniary penalty order is discharged to the extent of the amount for which the property was sold.

(10) The Commissioner of Police must on behalf of the State, as soon as practicable, credit amounts received from the sale of any property made pursuant to a direction under Subsection (3), to the Confiscated Assets Fund.

(11) If only a part of property is used to satisfy a foreign pecuniary penalty order, the Commissioner of Police must as soon as practicable, on application by the owner of the property -

- (a) return the part of the property that has not been used to satisfy the foreign pecuniary penalty order to the owner of the property; or
- (b) pay to the owner of the property an amount equal to the value of the owner's interest in the property that has not been so used.

### **169O. PROPERTY SEIZED UNDER PART IV.**

(1) Subsection (2), applies if -

- (a) property has been seized under Part IV; and
- (b) while the property is in the Commissioner of Police's possession -
  - (i) a pecuniary penalty order is made against a person who owns, or has effective control over, the property; or
  - (ii) a foreign pecuniary penalty order against that person is registered in the Court.

(2) The Commissioner must deal with the property in accordance with Part VI as if it were restrained property in respect of which a custody and control order has been made and -

- (a) if Subsection (1)(b)(i) applies, a restraining order is deemed to be in force against the property for the purposes of Section 169M; and
- (b) if Subsection (1)(b)(ii) applies, a registered foreign restraining order is deemed to be in force against the property for the purposes of Section 169N.

### **169P. STATE MAY RETAIN CERTAIN PROPERTY IN ITS CURRENT FORM.**

(1) This section applies to property referred to in Section 169(M) or 169(N).

(2) If the Commissioner of Police is of the opinion that it would be more appropriate not to dispose of the property and for the State to retain the property in its current form, the Commissioner of Police may apply in writing to the Minister for approval that the property be retained by the State in its current form.

*Proceeds of Crime (Amendment)*

- (3) If the Minister under Section 169ZA approves the application, the property must -
- (a) not be disposed of; and
  - (b) be used in the manner and for the purposes as directed by the Minister.
- (4) The Commissioner of Police must -
- (a) obtain an independent valuation of property retained by the State in its current form; and
  - (b) apply for a direction under Section 169M or 169N that the pecuniary penalty order or registered foreign pecuniary penalty order be satisfied by -
    - (i) the property being retained by the State in its current form; and
    - (ii) the amount outstanding to the State under the relevant pecuniary penalty order or foreign pecuniary penalty order being reduced by the amount of the independent valuation of the property so obtained.
- (5) The Commissioner of Police must notify the owner of the property in writing of the valuation and reduction referred to in Subsection (4).

**169Q. SATISFYING PECUNIARY PENALTY ORDERS -  
DECLARATION OF INTEREST IN PROPERTY.**

- (1) If -
- (a) an application is made for a direction under Section 169M(2) or 169N(3) in relation to property, a person who claims an interest in the property may apply to the Court, before the direction is made, for an order under Subsection (4) or (6); or
  - (b) a direction under Section 169M(2) or 169N(3) has already been made in relation to property, a person who claims an interest in the property may apply to the Court, within six months starting on the day when the direction is made, for an order under Subsection (4) or (6).
- (2) If a person -
- (a) knew about the application for the direction before the application was heard but did not appear at the hearing of the application; or
  - (b) did not apply within six months starting on the day when the direction was made,
- the Court must not grant an order under Subsection (4) or (6), unless the Court is satisfied that the person's failure to appear or apply was for a good reason and not because of the person's neglect.
- (3) If a person appeared at the hearing of the application for the direction, the Court must not grant an order under Subsection (4) or (6), unless the Court is satisfied that the person now has evidence relevant to the person's application that was not available with the exercise of reasonable diligence at the time of the hearing.

## *Proceeds of Crime (Amendment)*

(4) If a person applies to the Court for an order about the person's interest in property, the Court may make an order declaring the nature, extent and value, if necessary (as at the time the order is made), of the person's interest and declaring that the direction does not apply to the interest if the Court is satisfied that -

- (a) the person, apart from the direction, would have an interest in the property; and
- (b) the person was not involved in the commission of an offence in relation to which the pecuniary penalty order referred to in Section 169M(1)(a) or the foreign pecuniary penalty order referred to in Section 169N(2)(a) was made; and
- (c) if the person acquired the interest when, or after, the offence was committed the person 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 could be used to satisfy a pecuniary penalty order; and
- (d) the person's interest in the property is not subject to the effective control of the person against whom the pecuniary penalty order or the foreign pecuniary penalty order was made; and
- (e) it is in the public interest to make the order, having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(5) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed -

- (a) return the part of the property to which the interest of the applicant relates to the applicant; or
- (b) pay an amount equal to the value of the interest, as specified in the order, to the applicant.

(6) If a person applies to the Court for an order about the person's interest in property, the Court may make an order declaring the nature, extent and value, if necessary (as at the time the order is made), of the person's interest and declaring that the direction under Section 169M(2) or 169N(3) does not apply to the interest, if -

- (a) the person pays to the State the amount of the value of the interest; and
- (b) the Court is satisfied that -
  - (i) the person, apart from the direction, 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.

(7) The Commissioner of Police must, on application by a person who has obtained an order under Subsection (6), return the part of the property to which the interest referred to in the order relates to the applicant if -

*Proceeds of Crime (Amendment)*

- (a) the period for appeals has expired and any appeal from that order has been determined or has lapsed; and
- (b) the payment referred to in Subsection (6)(a) has been made.

(8) A person who applies to the Court for an order under this Section must give reasonable written notice to the Public Prosecutor.

- (9) The Public Prosecutor -
  - (a) is a party to the proceedings in an application under this section; and
  - (b) may make an application under this section for a person.

**169R. ENFORCEMENT OF PECUNIARY PENALTY ORDERS.**

(1) The Commissioner of Police is responsible for the enforcement of pecuniary penalty orders and registered foreign pecuniary penalty orders and may appoint an agent to enforce pecuniary penalty orders and registered foreign pecuniary penalty orders.

(2) The Commissioner of Police must cause to be prepared an annual report on the enforcement of pecuniary penalty orders and registered foreign pecuniary penalty orders to be included in the annual report referred to in Section 169(ZB).

- (3) Without limiting the contents of a report, the report must contain -
- (a) details of the pecuniary penalty orders and registered foreign pecuniary penalty orders that were enforced during the period to which the report relates, including details of how the orders were enforced; and
  - (b) details of the pecuniary penalty orders and registered foreign pecuniary penalty orders that were not enforced during that period; and
  - (c) details of expenditure relating to the enforcement action taken during that period.

***Division 5. - Management of property.***

**169S. APPOINTMENT OF AGENTS TO MANAGE RESTRAINED OR CONFISCATED PROPERTY.**

(1) Subject to Subsection (2), the Commissioner of Police may in writing appoint an agent -

- (a) to exercise all or any of the powers or perform all or any of the duties or functions conferred or imposed on the Commissioner relating to property that is under the control of the Commissioner under a custody and control order; or
- (b) to assist in the management, destruction or disposal of property -
  - (i) subject to a forfeiture order or a registered foreign forfeiture order; or

*Proceeds of Crime (Amendment)*

- (ii) that is to be used to satisfy a pecuniary penalty order under Section 169(M) or a foreign pecuniary penalty order under Section 169(N); or
- (c) to do any or all of the things referred to in Paragraph (a) or (b).

(2) An appointment under Subsection (1), must be made in accordance with the *Public Finances (Management) Act 1995*.

(3) Before acting in relation to the disposal or destruction of property under this Part, an agent appointed under Subsection (1), must obtain the written approval of the Commissioner of Police.

(4) Before commencing the management of property, an agent must sign a service agreement with the Commissioner of Police and the agreement must include provisions about -

- (a) reporting requirements; and
- (b) information sharing; and
- (c) management oversight of the property in respect of which the agent was appointed; and
- (d) funding and recovery of costs, charges and expenses.

(5) An agent is liable for any loss or damage to property arising from any act or omission by the agent in relation to the property.

(6) If the Commissioner of Police has control of a business under a custody and control order, he or she must appoint an agent to manage the business as soon as reasonably practicable.

**169T. COSTS, CHARGES AND EXPENSES OF MANAGING PROPERTY.**

(1) The Commissioner of Police may make a request in writing to the Departmental Head of the department responsible for national justice administration to recover from the Confiscated Assets Fund any reasonable costs, charges and expenses of managing, disposing of or destroying property.

(2) If the Commissioner of Police has appointed an agent under Section 169S, the Commissioner of Police must pay the agent's reasonable costs, charges and expenses in accordance with the service agreement referred to in Section 169S(4), and may recover those costs, charges and expenses from the Confiscated Assets Fund in accordance with Subsection (1).

(3) The Commissioner of Police may recover the costs, charges and expenses referred to in Subsections (1) and (2) from the Confiscated Assets Fund at any time in accordance with Part VI of this Act.

(4) In recovering costs, charges and expenses from the Confiscated Assets Fund, the Commissioner of Police must provide evidence to the Departmental Head of the department responsible for national justice Administration that the costs, charges and expenses have been properly incurred.

*Proceeds of Crime (Amendment)*

(5) This section applies to the costs, charges and expenses of managing, disposing of or destroying property subject to a request under the *Mutual Assistance Act*, unless an agreement with the foreign country concerned provides otherwise.

**169U. TRUST ACCOUNT FOR PROPERTY HELD ON INTERIM BASIS.**

(1) A trust account is established by this section for the purposes of holding property that -

- (a) is under the custody and control of the Commissioner of Police under this Act or is being retained by the Police Force pursuant to an order under Section 20(3) or (4); and
- (b) is not yet transferable to the Confiscated Assets Fund.

(2) The Departmental Head of the department responsible for national justice administration is to operate the trust account referred to in Subsection (1).

(3) The Commissioner of Police must as soon as practicable cause to be paid into the trust account referred to in Subsection (1) -

- (a) currency that is in the possession of the Police Force that is the subject of an order under Section 20(3) or (4); and
- (b) money that is in the custody and control of the Commissioner of Police because of a control and custody order; and
- (c) monetary security given to the Commissioner of Police under Section 57; and
- (d) the amounts realised from the sale of any property under Section 169C or 169D; and
- (e) any income generated from property in the custody and control of the Commissioner of Police because of a control and custody order.

(4) If any of the property is a business, Subsection (1) does not apply to money, or income, reasonably necessary to operate the business on a sound commercial basis.

(5) The Commissioner of Police must as soon as practicable request the Departmental Head of the department responsible for national justice administration to make any payments out of the trust account as are necessary to comply with a Court order, direction, declaration or discharge in accordance with this Act.

(6) The Departmental Head of the department responsible for national justice administration must make the payment requested under Subsection (4) if he or she is satisfied that it is necessary to comply with a Court order, direction, declaration or discharge.

(7) A transfer of property into the trust account referred to in Subsection (1) does not operate as transfer of ownership or title or give rise to any lien.

***Division 6. - Confiscated Assets Fund.***

**169V. ESTABLISHMENT OF THE CONFISCATED ASSETS FUND.**

(1) A trust account known as the Confiscated Assets Fund is established by this section.

*Proceeds of Crime (Amendment)*

(2) The Departmental Head of the department responsible for national justice administration is responsible for the operation of the Confiscated Assets Fund.

**169W. PURPOSES OF THE CONFISCATED ASSETS FUND.**

(1) Subject to this Division, the funds of the Confiscated Assets Fund may be applied for any or all of the following purposes:

- (a) the recovery of costs, charges and expenses of managing, disposing of or destroying property; and
- (b) the recovery of costs associated with examinations; and
- (c) payments ordered by the Court to persons who have an interest in property that has been subject to a forfeiture order or a registered foreign forfeiture order or has been used to satisfy a pecuniary penalty order or a registered foreign pecuniary penalty order; and
- (d) the sharing of property with foreign countries.

(2) Any money in the Confiscated Assets Fund that is not required for a purpose referred to in Subsection (1)(a), (b), (c) or (d) must be transferred to Consolidated Revenue at the end of each financial year.

**169X. FUNDS OF THE CONFISCATED ASSETS FUND.**

(1) The Confiscated Assets Fund consists of -

- (a) all monies appropriated by an Appropriation Act for the purposes of the Confiscated Assets Fund; and
- (b) all monies referred to in Subsection (2) received by the Fund.

(2) The following must be paid into the Confiscated Assets Fund -

- (a) monies paid to the State under Sections 77, 78, 81, 84, 103, 169L, 169M and 169N; and
- (b) any income derived from property subject to a forfeiture order or a registered foreign forfeiture order; and
- (c) property and money referred to in Section 39(2) of the *Mutual Assistance Act*.

(3) Section 18 of the *Interpretation Act 1975* does not apply to monies referred to in Subsection (2).

**169Y. USE OF CONFISCATED ASSETS FUND FOR PURPOSES IN SECTIONS 169W(1)(a), (b) AND (c).**

(1) The Commissioner of Police may in writing request the Departmental Head of the department responsible for national justice administration to reimburse the Commissioner of Police for costs, charges or expenses referred to in Section 169W(1)(a) and (b) from the Confiscated Assets Fund.

(2) The Departmental Head of the department responsible for national justice administration must authorise payment under Subsection (1) unless he or she is not satisfied on the evidence submitted to support the claim that the costs, charges or expenses have been properly incurred.

(3) For the avoidance of doubt, the reimbursement under Subsection

(1) -

*Proceeds of Crime (Amendment)*

- (a) can be made regardless of whether monies have been paid into the Confiscated Assets Fund as a result of any proceedings that relate to the property or examination; and
- (b) can be made at any time before, on or after the finalisation of any proceedings that relate to the property or examination.

(4) The Commissioner of Police may in writing request the Departmental Head of the department responsible for national justice administration to make payments referred to in Section 169W(1)(c) from the Confiscated Assets Fund.

(5) The Departmental Head of the department responsible for national justice administration must make the payment requested under Subsection (4) if he or she is satisfied that the Court order requires this.

**169Z. APPLICATIONS FOR USE OF CONFISCATED ASSETS FUND FOR PURPOSES IN SECTION 169W(1)(d).**

(1) The Commissioner of Police, the Public Prosecutor, the Departmental Head of the department responsible for national justice administration or a representative of a foreign country may in writing apply to the Minister for property that -

- (a) is in the Confiscated Assets Fund; or
  - (b) has been retained in its current form,
- to be shared with the foreign country.

(2) In deciding upon an application made under Subsection (1), the Minister must take into account -

- (a) the views of the Commissioner of Police, the Public Prosecutor and the Departmental Head of the department responsible for national justice administration; and
- (b) any relevant treaty or other international agreement to which Papua New Guinea is a party.

(3) Without limiting Subsection (2), the Minister may decide to share all or part of the property if the Minister believes it is appropriate in all the circumstances to do so, including after taking into account whether the foreign country has made a significant contribution to the recovery of the property or to the investigation or prosecution of an offence.

(4) If the Minister decides to share the property, that property must as soon as practicable be transferred to the foreign country -

- (a) if the property is in the Confiscated Assets Fund, from the Confiscated Assets Fund; and
- (b) if the property has been retained in its current form - in its current form.

**169ZA. APPLICATIONS TO MAINTAIN PROPERTY IN ITS CURRENT FORM.**

(1) The Commissioner of Police may in writing apply to the Minister for property to be kept in its current form under Section 169L or 169P.

## *Proceeds of Crime (Amendment)*

(2) For the purposes of this section and Sections 169L and 169P, if the property relates to a foreign matter a representative of the foreign country may also make such an application.

- (3) The application must -
- (a) include the recommendations of the Commissioner of Police and the Public Prosecutor; and
  - (b) if the property relates to a foreign matter include the recommendation of the Departmental Head of the department responsible for national justice administration; and
  - (c) set out details of the manner in which and the purposes for which the property is proposed to be used.

(4) The Minister may approve the application if he or she believes it is appropriate in all the circumstances to do so.

(5) Where the application relates to a foreign matter the Minister must take into account the wishes of the foreign country and any relevant treaty or other international agreement to which Papua New Guinea is a party.

(6) If the Minister approves an application for property to be kept in its current form, the Minister -

- (a) must also direct the manner in which and the purposes for which the property is to be used; and
- (b) may make such other directions in relation to the use of the property as he or she thinks appropriate.

### **169ZB. ANNUAL REPORT.**

(1) The Commissioner of Police must cause to be prepared an annual report on the exercise of powers or the performance of functions or duties in relation to property under this Part and all dealings with restrained and confiscated property.

(2) Without limiting the contents of the annual report, it must contain details of the following:

- (a) all custody and control orders made by the Court; and
- (b) all orders made by the Court in relation to property referred to in Section 169X(2); and
- (c) key actions taken to give effect to orders under Paragraphs (a) and (b), including all dealings with such property and the appointment of agents; and
- (d) all property held by the Commissioner of Police pursuant to the exercise of powers or the performance of functions or duties in relation to property under this Part; and
- (e) actions taken in relation to enforcement of pecuniary penalty orders and registered foreign pecuniary penalty orders in accordance with Section 169R; and
- (f) expenses incurred in the exercise of powers or the performance of functions or duties in relation to property under this Part; and
- (g) all incoming and outgoing transactions on the Confiscated Assets Fund; and

*Proceeds of Crime (Amendment)*

- (h) all incoming and outgoing transactions on the trust account established by Section 169U; and
- (i) transfers of property to foreign countries as approved by the Minister under Section 169Z; and
- (j) details of transfers of property that the Minister decided under Section 169ZA should be kept in its current form.

(3) The Public Prosecutor and the Departmental Head of the department responsible for national justice administration must review the annual report before it is submitted to the Minister.

(4) The Public Prosecutor and the Departmental Head of the department responsible for national justice administration may make written comments on the annual report to the Minister, including recommendations.

(5) The Commissioner of Police must provide the annual report to the Minister on or before 31 March following the year to which the report relates.

*Division 7. - Miscellaneous.*

**169ZC. OBSTRUCTION OF COMMISSIONER OF POLICE AND OTHERS.**

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 functions or duties in relation to property under this Part is guilty of a crime.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

**169ZD. PUBLIC AUCTION.**

(1) Subject to Subsection (2), if property is sold under this Part, the property must be sold by public auction.

(2) The Court may, upon application by the Commissioner of Police, make an order that property be sold by such other means as is specified in the order if the Court is satisfied that it would be more appropriate to use that other means to sell the property.

**169ZE. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.**

The trust account established by Section 169U and the Confiscated Assets Fund must be operated in accordance with the *Public Finances (Management) Act 1995*.”.

**131. ORDER TO DECLARE A TRANSACTION VOID (AMENDMENT OF SECTION 170).**

Section 170 of the Principal Act is amended -

- (a) in Subsection (1) by deleting “An authorised officer” and substituting “A police officer or the Public Prosecutor”; and
- (b) by inserting after Subsection (1), the following new subsection:

*Proceeds of Crime (Amendment)*

- “(1A) The Court must not make a declaration unless it is satisfied -
- (a) of at least one of Subsection (1)(a), (b) or (c); and
  - (b) that it is in the interest of justice to make the order.”; and
- (c) in Subsection (2) by deleting “officer” (twice occurring) and substituting “police officer or Public Prosecutor”; and
  - (d) in Subsection (3) by deleting “officer” and substituting “police officer or Public Prosecutor”; and
  - (e) in Subsection (4) by deleting “a serious offence” in Paragraph (b) and substituting “an indictable offence or a foreign indictable offence”.

**132. NEW SECTIONS 170A TO 170E.**

The Principal Act is amended after Section 170, by inserting the following new sections:

**“170A. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE BEFORE A PERSON’S INSOLVENCY.**

- (1) This section applies to a person if -
  - (a) property of the person is covered by -
    - (i) an application for a restraining order, interim restraining order or confiscation order; or
    - (ii) a restraining order, interim restraining order or confiscation order; and
  - (b) the person is adjudged an insolvent under the *Insolvency Act 1951*; and
  - (c) an application referred to in Paragraph (a)(i) or an order referred to in Paragraph (a)(ii) was made before the date of the order of adjudication of the person’s insolvency.
- (2) Despite any other Act or law to the contrary, property of the person that is covered by -
  - (a) an application referred to in Subsection (1)(a)(i); or
  - (b) an order referred to in Subsection (1)(a)(ii),does not vest in a trustee within the meaning of the *Insolvency Act 1951*.
- (3) Subject to Subsection (4), if property of the person ceases to be subject to an application referred to in Subsection (1)(a)(i), the property of the person that, but for the operation of Subsection (2), would have vested in a trustee within the meaning of the *Insolvency Act 1951* is deemed to have so vested in the trustee.
- (4) If property of the person ceases to be subject to an application referred to in Subsection (1)(a)(i) because the application succeeds and an order referred to in Subsection (1)(a)(ii) is made, Subsection (2) continues to apply.
- (5) If property of the person ceases to be subject to an order referred to in Subsection (1)(a)(ii), the property of the person that, but for the operation of Subsections (2) and (4), would have vested in a trustee within the meaning of the *Insolvency Act 1951* is deemed to have so vested in the trustee.

**170B. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE ON OR AFTER A PERSON’S INSOLVENCY.**

- (1) This section applies to a person if -
  - (a) the person is adjudged an insolvent under the *Insolvency Act 1951*; and

*Proceeds of Crime (Amendment)*

- (b) the property of the person is covered by -
    - (i) an application for a restraining order, interim restraining order or confiscation order; or
    - (ii) a restraining order, interim restraining order or confiscation order; and
  - (c) an application referred to in Paragraph (b)(i) or an order referred to in Paragraph (b)(ii) was made on or after the date of the order of adjudication of the person's insolvency.
- (2) Despite any other Act or law to the contrary, a trustee within the meaning of the *Insolvency Act 1951* must not do an act or omit to do an act in relation to property of the person that is inconsistent with -
- (a) an order being sought in an application referred to in Subsection (1)(b)(i); or
  - (b) an order referred to in Subsection (1)(b)(ii).
- (3) Subject to Subsection (4), Subsection (2) ceases to apply if property of the person ceases to be subject to an application referred to in Subsection (1)(b)(i).
- (4) Subsection (2) continues to apply if property of the person ceases to be subject to an application referred to in Subsection (1)(b)(i) because the application succeeds and an order referred to in Subsection (1)(b)(ii) is made.
- (5) Subsection (2) ceases to apply if property of the person ceases to be subject to an order referred to in Subsection (1)(b)(ii).

**170C. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE BEFORE APPOINTMENT OF RECEIVER OR LIQUIDATOR OF COMPANY.**

- (1) This section applies if -
  - (a) a receiver or liquidator has been appointed for a company under the *Companies Act 1997*; and
  - (b) the company or property of the company is covered by -
    - (i) an application for a restraining order, interim restraining order or confiscation order; or
    - (ii) a restraining order, interim restraining order or confiscation order; and
  - (c) the application referred to in Paragraph (b)(i) or the order referred to in Paragraph (b)(ii) was made before the date of appointment of the receiver or liquidator.
- (2) Despite any other Act or law to the contrary, the receiver or liquidator has no power in relation to the company or the property of the company if the company or property of the company, as the case requires, is covered by an application referred to in Subsection (1)(b)(i) or an order referred to in Subsection (1)(b)(ii).
- (3) Subject to Subsection (4), Subsection (2) ceases to apply if the company or property of the company, as the case requires, ceases to be the subject of an application referred to in Subsection (1)(b)(i).

(4) Subsection (2) continues to apply if the company or property of the company, as the case requires, ceases to be subject to an application referred to in Subsection (1)(b)(i) because the application succeeds and an order referred to in Subsection (1)(b)(ii) is made.

(5) Subsection (2) ceases to apply if the company or property of the company, as the case requires, ceases to be subject to an order referred to in Subsection (1)(b)(ii).

**170D. EFFECT OF CERTAIN APPLICATIONS OR ORDERS UNDER THIS ACT MADE ON OR AFTER APPOINTMENT OF RECEIVER OR LIQUIDATOR OF COMPANY.**

(1) This section applies if -

(a) a receiver or liquidator has been appointed for a company under the *Companies Act 1997*; and

(b) the company or property of the company is covered by -

(i) an application for a restraining order, interim restraining order or confiscation order; or

(ii) a restraining order, interim restraining order or confiscation order; and

(c) the application referred to in Paragraph (b)(i) or the order referred to in Paragraph (b)(ii) was made on or after the date of appointment of the receiver or liquidator.

(2) Despite any other Act or law to the contrary, the receiver or liquidator must not do an act or omit to do an act in relation to the company or the property of the company that is inconsistent with -

(a) an order being sought in an application referred to in Subsection (1)(b)(i); or

(b) an order referred to in Subsection (1)(b)(ii).

(3) Subject to Subsection (4), Subsection (2) ceases to apply if the company or property of the company, as the case requires, ceases to be the subject of an application referred to in Subsection (1)(b)(i).

(4) Subsection (2) continues to apply if the company or property of the company, as the case requires, ceases to be subject to an application referred to in Subsection (1)(b)(i) because the application succeeds and an order referred to in Subsection (1)(b)(ii) is made.

(5) Subsection (2) ceases to apply if the company or property of the company, as the case requires, ceases to be subject to an order referred to in Subsection (1)(b)(ii).

**170E. AUTHORISED PROSECUTORS.**

The Public Prosecutor may in writing appoint prosecutors to be authorised prosecutors for the purposes of this Act.”

**133. REPEAL AND REPLACEMENT OF SECTION 171.**

Section 171 of the Principal Act is repealed and replaced with the following:

**“171. CONDUCT BY DIRECTORS, SERVANTS OR AGENTS.**

(1) For the purposes of this Act, the state of mind of a person may be established in accordance with this section.

(2) 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.

(3) To establish the relevant state of mind for conduct engaged in, or taken under Subsection (2) 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.

(4) 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.

(5) To establish the relevant state of mind for conduct taken, under Subsection (4), 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.

(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.”.

**134. REPEAL AND REPLACEMENT OF SECTION 172 AND INSERTION OF SECTION 172A.**

Section 172 of the Principal Act is repealed and replaced with the following sections:

**“172. PROOF.**

(1) 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.

(2) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.

*Proceeds of Crime (Amendment)*

(3) The applicant in any proceedings under this Act must file with the Court evidence on oath, affirmation or declaration in support of the application.

(4) If an application under this Act is contested and is not being heard *ex parte*, the Court must decide the application following a hearing in which the applicant and the respondent are both given a reasonable opportunity to respond to the evidence before the Court.

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

**172A. PROCEDURE FOR APPLICATION.**

(1) Unless otherwise provided for by this Act, an application under this Act must not be heard until the parties to the application have had a reasonable period after the filing of the application to investigate the matter and prepare to contest the application.

(2) If the Court has made an order for a person to provide a sworn statement or to be examined, the Court must, in deciding what is a reasonable period, take into account the extent to which that order has been complied with.

(3) This Section does not apply to an application for a restraining order or an interim restraining order.”.

**135. REPEAL AND REPLACEMENT OF SECTION 173.**

Section 173 of the Principal Act is repealed and replaced with the following:

**“173. COSTS.**

(1) Subject to Subsection (2), 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 the person brings or appears at the proceedings and the proceedings are -

- (a) proceedings under this Act -
  - (i) to prevent a confiscation order, a restraining order or an interim restraining order from being made against property; or
  - (ii) to have property excluded, including by way of declaration, from a confiscation order, a restraining order or an interim restraining order; or
  - (iii) to revoke a restraining order under Section 41A; or
- (b) proceedings by way of an appeal against an order made in connection with a proceeding referred to in Subparagraph (a)(i), (ii) or (iii).

(2) The Court must not make an order unless -

- (a) the person is successful in the proceedings referred to in Subsection (1)(a) or (1)(b); and
- (b) the Court is satisfied that the person was not involved in any way in the commission of the offence in relation to which the confiscation order, restraining order or interim restraining order was sought or made.”.

**136. REPEAL AND REPLACEMENT OF SECTION 175.**

Section 175 of the Principal Act is repealed and replaced with the following:

**“175. FORMS.**

(1) Unless this Act provides otherwise, the regulations may prescribe a form for anything for which the Act requires or permits an approved form to be used.

(2) An application to a Court must be made in the form prescribed by the rules of the Court, unless there is a form specified in the Act or prescribed by the regulations.”.

**137. REPEAL AND REPLACEMENT OF SECTIONS 176 AND 177.**

Sections 176 and 177 of the Principal Act are repealed and replaced with the following:

**“176. NON-LIABILITY OF COMMISSIONER OF POLICE AND OTHERS.**

(1) The Commissioner of Police, any police officer and any person when acting as the delegate of the Commissioner of Police is not personally liable for any act done, or omitted to be done, in good faith and without gross negligence by him or her in performing the Commissioner of Police’s functions or exercising the Commissioner of Police’s powers under this Act.

(2) The Public Prosecutor and any officer of the Office of the Public Prosecutor is not personally liable for any act done, or omitted to be done, in good faith and without gross negligence by him or her in performing the Public Prosecutor’s functions or exercising the Public Prosecutor’s powers under this Act.

(3) Any officer of a relevant authority or receiving entity is not personally liable for any act done, or omitted to be done, under Part II in good faith and without gross negligence by him or her in performing functions or exercising powers under this Act.

**177. OPERATION OF OTHER LAWS.**

(1) Nothing in this Act prejudices, limits or restricts -

- (a) the operation of any other law that provides for the freezing, restraint or forfeiture of property (however named) 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 an agent of the State apart from this Act.

(2) To avoid doubt, the other laws referred to in Subsection (1)(a) that provide for the freezing, restraint or forfeiture of property (however named) do not prejudice, limit or restrict in any way the operation of this Act.

(3) To avoid doubt, the other powers of search and seizure referred to in Subsection (1)(c) do not prejudice, limit or restrict the operation of this Act.”.

**138. INSERTION OF NEW SECTIONS 177A TO 177L.**

The Principal Act is amended by inserting before Section 178, the following:

**“177A. EFFECT OF A PERSON’S DEATH.**

(1) Any notice authorised or required to be given to a person under this Act is, if the person has died, sufficiently given if given to the person representing the deceased’s estate.

(2) A reference in this Act to a person’s interest in property or a thing is, if the person has died, a reference to an interest in the property or thing that the person had immediately before his or her death.

(3) An order can be applied for and made under this Act -

(a) in respect of a person’s interest in property or a thing even if the person has died; and

(b) on the basis of the activities of a person who has died.

**177B. CONSENT ORDERS.**

(1) A court may make an order in a proceeding under this Act with the consent of -

(a) the parties to the proceeding; and

(b) any person with an interest in the property whom the court is satisfied would be affected by the order.

(2) The order may be made -

(a) without consideration of the matters that the court would otherwise consider in the proceeding; and

(b) before the end of any time period required by or under this Act.

**177C. ADMISSIBILITY OF TRANSCRIPTS.**

(1) If an application under this Act, including an appeal, relates to an offence (or alleged offence) in respect of which there are or have been criminal proceedings against a person, the Court may, in determining the application, have regard to -

(a) the transcript of any proceeding against the person for that offence or a related offence; and

(b) the evidence given in any such proceeding.

(2) In any proceedings under this Act, the Court may have regard to the transcript of any examination.

(3) A reference in Subsection (1) to proceedings includes proceedings of another country and a reference in Subsection (2) to an examination includes an examination in another country.

**177D. OBSTRUCTION OF INVESTIGATION OR PROCEEDING.**

A person who prevents, hinders or obstructs -

(a) the carrying out of an investigation for the purposes of this Act; or

(b) the conduct of proceedings for the purposes of this Act,  
is guilty of a crime.

*Proceeds of Crime (Amendment)*

Penalty: If the person is a natural person, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years or both; or  
If the person is a body corporate, a fine not exceeding K250,000.00.

**177E. EXCHANGE OF INFORMATION.**

(1) Subject to this Act, the Police Force and the Office of the Public Prosecutor may provide information to a state body, or any other agency or body, including an international agency, if the information relates to the functions of the state body, or the other agency or body.

(2) If the Police Force or the Office of the Public Prosecutor provides the information to a state body, or any other agency or body, any restrictions on the use of the information that apply to the Police Force or the Office of the Public Prosecutor apply to the state body, or the other agency or body.

(3) The Police Force and the Office of the Public Prosecutor may receive information from a state body, or any other agency or body, including an international agency.

**177F. APPEALS.**

(1) An appeal against an order made under this Act can be made in accordance with Section 14 of the *Supreme Court Act 1975*.

(2) A respondent to an application for a restraining order or an interim restraining order may appeal against the order only on the grounds that there has been an error of law.

- (3) The execution of an order made under this Act is stayed until -
- (a) the time to seek leave to appeal against the order has expired without an application for leave being lodged; or
  - (b) the time for an appeal against the order has expired without an appeal being lodged; or
  - (c) an appeal against the order has lapsed; or
  - (d) an appeal against the order has been finally disposed of.

**177G. STAY OF PROCEEDINGS.**

The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) is not a ground on which a Court may stay proceedings under this Act that are not criminal proceedings.

**177H. CO-OPERATION AND SENTENCING.**

(1) A Court passing sentence on a person in respect of the person's conviction of a criminal offence must not have regard to any order made under this Act or any cooperation by the person in resolving any action taken against the person under this Act.

(2) When making a confiscation order, a Court must not have regard to any sentence imposed on a person in respect of the person's conviction of a criminal offence, unless the Court is satisfied that exceptional circumstances exist that render it in the interests of justice to do so.

**177I. UNCLAIMED PROPERTY.**

(1) If property is seized under Part IV and proceedings in relation to the property under this Act have not commenced within six months after the date of seizure, Section 150 of the *Police Act 1998* applies to that property and, for the purposes of Section 150(1)(a) of the *Police Act 1998*, the period of six months referred to in that section commences six months after the date of seizure of the property.

(2) If -

- (a) property is seized under Part IV and proceedings under this Act have commenced within six months after the date of seizure; and
- (b) the property is in the possession of the Commissioner of Police because it has been so seized or a custody and control order has been made; and
- (c) the proceedings are discontinued or otherwise finalised without a confiscation order having been made,

Section 150 of the *Police Act 1998* applies upon the proceedings being so discontinued or finalised, and, for the purposes of Section 150(1)(a) of the *Police Act 1998*, the period of six months referred to in that section commences on the date of the discontinuation or finalisation.

(3) If -

- (a) property is seized under Part IV and proceedings under this Act have commenced within six months after the date of seizure; and
- (b) the proceedings result in a confiscation order, whether or not that order is made within the six months referred to in Paragraph (a),

the property is to be dealt with in accordance with Part VI as if it were restrained property in respect of which a custody and control order has been made.

**177J. HEARSAY IN APPLICATIONS FOR RESTRAINING ORDERS OR INTERIM RESTRAINING ORDERS.**

To avoid doubt, an application for a restraining order or an interim restraining order can be made by the Public Prosecutor on the basis of hearsay evidence and the Court can be satisfied that the suspicion of the police officer is held on reasonable grounds even if it is based on hearsay evidence.

**177K. DELEGATION BY COMMISSIONER OF POLICE.**

(1) The Commissioner of Police may delegate any or all of the functions and powers conferred or imposed on the Commissioner of Police by or under this Act to a police officer who holds a rank of Chief Superintendent or above.

(2) A delegation under Subsection (1) -

- (a) must be in writing; and
- (b) must specify the functions and powers that are delegated; and
- (c) may not include the power to make a delegation under Subsection (1).

(3) The power of the Commissioner of Police to delegate under Subsection (1) does not limit any power of delegation conferred on the Commissioner of Police by any other Act.

## *Proceeds of Crime (Amendment)*

(4) The power of the Commissioner of Police to delegate under Subsection (1) does not limit the power to appoint an agent under Division 5 of Part VI.

### **177L. OTHER ORDERS.**

A court may, at the request of any party to any proceedings under this Act, make whatever directions or orders it considers appropriate for the management of the proceedings.”.

### **139. TRANSITIONAL AND SAVINGS PROVISIONS.**

(1) Despite the repeal of the definitions of “cash dealer” and “FIU” in Section 3(1) of the Principal Act and the repeal of Sections 13 to 30, 34, 35, 36 and 37 of the Principal Act, these sections continue to apply after the commencement of this Act in relation to -

- (a) an offence committed before the commencement of this Act; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this Act; or
  - (c) any matter connected with, or arising out of such proceedings,
- as if the repeal had not been made.

(2) Despite the repeal of Sections 28 and the repeal of the definitions in Subsection 3(1) and Section 19 of the Principal Act, a cash dealer who was required to retain records under Section 28 must continue to retain those records in accordance with the minimum retention period under the repealed provisions of the Principal Act.

(3) Upon commencement of this Act, any reports provided to the Financial Intelligence Unit under Sections 13, 14, 23 and 24 of the Principal Act will come under the possession and control of FASU.

### **140. GENERAL PROSPECTIVE APPLICATION OF AMENDMENTS.**

The *Proceeds of Crime Act 2005* as amended by this Act applies to and in relation to conduct that occurs on or after the commencement of this Act, unless otherwise provided by this Act.

### **141. EFFECT OF REPEAL OF CERTAIN PROVISIONS.**

The repeal of Sections 31, 32 and 33 of the *Proceeds of Crime Act 2005* by this Act does not -

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
  - (b) affect the previous operation of the repealed provision, or anything duly done or suffered under the repealed provision; or
  - (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed provision; or
  - (d) affect any penalty, forfeiture, or punishment incurred in respect of an offence committed against the repealed provision; or
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
- and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed as if the repeal had not been made.

### **142. EXISTING CRIMINAL OFFENCES.**

- (1) This section applies to a criminal prosecution if the criminal prosecution -
  - (a) is for a criminal offence against the *Proceeds of Crime Act 2005* as in force before the commencement of this Act; and
  - (b) had commenced but had not been finally determined before that commencement.

*Proceeds of Crime (Amendment)*

(2) The criminal prosecution is to continue on and after the commencement of this Act as if the amendments to the *Proceeds of Crime Act 2005* made by this Act had not been made.

(3) For the purposes of this section, a criminal prosecution commences when a person is charged.

**143. APPLICATION OF PART II TO NEW IMPORTATIONS AND EXPORTATIONS.**

Part II of the *Proceeds of Crime Act 2005* as amended by this Act applies to any importation or exportation that occurs on or after the commencement of this Act.

**144. APPLICATION TO EXISTING IMPORTATIONS AND EXPORTATIONS OF CURRENCY.**

(1) This section applies to any importation or exportation of currency if the importation or exportation had not been completed immediately before the commencement of this Act.

(2) On and after the commencement of this Act, the importation or exportation must be dealt with in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

**145. EXISTING RESTRAINING ORDER AND CONFISCATION ORDER APPLICATIONS.**

(1) This section applies to an application for a restraining order or a confiscation order under the *Proceeds of Crime Act 2005* if the application had not been determined immediately before the commencement of this Act.

(2) On and after the commencement of this Act, the application must be determined in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

**146. EXISTING APPLICATIONS IN RELATION TO CERTAIN EXISTING ORDERS.**

(1) This section applies to an application if -

- (a) the application is in relation to a restraining order or confiscation order that was in force immediately before the commencement of this Act; and
- (b) the application had not been determined immediately before that commencement.

(2) On and after the commencement of this Act, the application must be determined in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

**147. EXISTING PROCEEDINGS.**

(1) This section applies to any proceeding under Part III of the *Proceeds of Crime Act 2005* that is in place immediately before the commencement of this Act.

(2) On and after the commencement of this Act, the proceeding must be determined in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

**148. AUTOMATIC FORFEITURE.**

(1) This section applies to an automatic forfeiture under Section 71 of the *Proceeds of Crime Act 2005* if the automatic forfeiture relies on a restraining order that was in force immediately before the commencement of this Act.

## *Proceeds of Crime (Amendment)*

(2) On and after the commencement of this Act, the automatic forfeiture must be given effect to in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

(3) Despite Subsection (2), an application for a declaration under Section 71A of the *Proceeds of Crime Act 2005* can be made on and after the commencement of this Act in relation to property forfeited under Section 71, regardless of whether the application was made before, on or after that commencement.

### **149. APPLICATION OF SECTION 53 AMENDMENTS.**

(1) Subject to Subsection (2), Section 53 of the *Proceeds of Crime Act 2005* as amended by this Act, applies to proceedings, regardless of whether the restraining order concerned was made before, on or after the commencement of this Act.

(2) Subsection (1) does not apply to the criminal offence referred to in Section 53(9) of the *Proceeds of Crime Act 2005*.

### **150. POWERS EXERCISED UNDER PART IV OR V BUT PROCEEDINGS NOT COMMENCED.**

(1) This section applies in relation to a matter if powers under Part IV (other than Division 3 or 4 of Part IV) or Part V of the *Proceeds of Crime Act 2005* had been exercised in relation to the matter before the commencement of this Act, but proceedings in relation to the matter under Part III of the *Proceeds of Crime Act 2005* had not commenced before the commencement of this Act.

(2) On and after the commencement of this Act, any proceedings in relation to the matter must be commenced and conducted in accordance with the *Proceeds of Crime Act 2005* as amended by this Act.

### **151. APPLICATION OF CERTAIN PROVISIONS RELATING TO ACTION TO INVESTIGATE, FREEZE, RESTRAIN OR CONFISCATE PROPERTY.**

The provisions in the *Proceeds of Crime Act 2005* as amended by this Act that relate to action taken to investigate, freeze, restrain or confiscate property apply -

- (a) to tainted property, regardless of whether the offence that gave rise to the property being tainted property was committed before, on or after the commencement of this Act; and
- (b) if an offence is relied upon to investigate, freeze, restrain or confiscate property, regardless of whether the offence was committed before, on or after the commencement of this Act; and
- (c) if a conviction is relied upon to investigate, freeze, restrain or confiscate property, regardless of whether the person was convicted before, on or after the commencement of this Act.

### **152. ACTION UNDER MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2005.**

(1) The *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act applies to any action authorised by the Minister under the *Mutual Assistance in Criminal Matters Act 2005* before that commencement.

(2) The *Proceeds of Crime Act 2005* as amended by this Act applies to any action authorised by the Minister under the *Mutual Assistance Act* on or after the commencement of this Act.

**153. PART IV WARRANTS AND ORDERS.**

(1) This section applies to any search warrant, production order or monitoring order if the search warrant, production order or monitoring order -

- (a) was granted under Part IV of the *Proceeds of Crime Act 2005* before the commencement of this Act; and
- (b) was in force immediately before that commencement.

(2) The search warrant, production order or monitoring order continues to have effect on and after the commencement of this Act in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

(3) Any documents or information obtained under the search warrant, production order or monitoring order can be used in proceedings, regardless of whether the proceedings commenced before, on or after the commencement of this Act.

(4) However, nothing in this section prevents the grant on or after the commencement of this Act of a search warrant, production order or monitoring order under Part IV of the *Proceeds of Crime Act 2005* as amended by this Act in a matter in respect of which a search warrant, production order or monitoring order was granted under Part IV of *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

**154. PART V DIRECTIONS.**

(1) This section applies to any Ministerial direction if the direction -

- (a) was given under Part V of the *Proceeds of Crime Act 2005* before the commencement of this Act; and
- (b) was in force immediately before the commencement of this Act.

(2) The Ministerial direction continues to have effect on and after the commencement of this Act in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

(3) Any documents or information obtained under the Ministerial direction can be used in proceedings, regardless of whether the proceedings commenced before, on or after the commencement of this Act.

(4) However, nothing in this section prevents the use on and after the commencement of this Act of Part V of the *Proceeds of Crime Act 2005* as amended by this Act -

- (a) to obtain other information or documents from the body to which the Ministerial direction applied; or
- (b) to obtain other information or documents from another body in the same matter to which the Ministerial direction applied.

**155. EXISTING CUSTODY AND CONTROL ORDERS.**

(1) This section applies to a custody and control order under Section 50 or 145 of the *Proceeds of Crime Act 2005* if the order was in force immediately before the commencement of this Act.

(2) Subject to Subsection (3), the custody and control order must be given effect to on and after the commencement of this Act by the Commissioner of Police in accordance with the *Proceeds of Crime Act 2005* as in force immediately before the commencement of this Act.

## *Proceeds of Crime (Amendment)*

(3) The custody and control order may be dealt with in accordance with the *Proceeds of Crime Act 2005* as amended by this Act if the Court and all persons with an interest in the property subject to the custody and control order consent.

(4) Nothing in this section prevents the making of an ancillary order under Section 53 of the *Proceeds of Crime Act 2005* as amended by this Act in relation to property subject to the custody and control order.

### **156. CONFISCATED PROPERTY.**

(1) This section applies to property that is confiscated under the *Proceeds of Crime Act 2005* on or after the commencement of this Act.

(2) The property must be dealt with in accordance with Part VI of the *Proceeds of Crime Act 2005* as in force when the property is confiscated.

### **157. EXISTING CONFISCATION ORDERS.**

(1) This section applies to a confiscation order if the confiscation order -

- (a) was made under the *Proceeds of Crime Act 2005* before the commencement of this Act; and
- (b) was subject to an appeal that had not been finally determined immediately before that commencement.

(2) If, on or after the commencement of this Act, the confiscation order is upheld on appeal, the property subject to the confiscation order must be dealt with in accordance with Part VI of the *Proceeds of Crime Act 2005* as amended by this Act.

### **158. APPLICATION OF SECTION 177B.**

Section 177B of the *Proceeds of Crime Act 2005* as amended by this Act applies to proceedings, regardless of whether the proceedings were commenced before, on or after the commencement of this Act.

### **159. APPLICATION OF INSOLVENCY PROVISIONS.**

(1) Sections 170A and 170B of the *Proceeds of Crime Act 2005* as amended by this Act apply in relation to the adjudication of a person's insolvency if it occurs on or after the commencement of this Act, regardless of whether it relates to circumstances that occurred before that commencement.


(2) Sections 170C and 170D of the *Proceeds of Crime Act 2005* as amended by this Act apply in relation to the appointment of a receiver or liquidator if it occurs on or after the commencement of this Act, regardless of whether it relates to circumstances that occurred before that commencement.

*Proceeds of Crime (Amendment)*

**160. REPEAL AND REPLACEMENT OF ARABIC NUMERALS WITH ROMAN NUMERALS IN RELATION TO REFERENCE TO PARTS OF THE ACT.**


Arabic numerals relating to "Parts" of the Act, wherever appearing in the Principal Act, as "Part 1, Part 2, Part 3, Part 4, Part 5, Part 6 and Part 7" are repealed and replaced with "Part I, Part II, Part III, Part IV, Part V, Part VI and Part VII".

I hereby certify that the above is a fair print of the *Proceeds of Crime (Amendment) Act 2015* which has been made by the National Parliament.

  
Acting Clerk of the National Parliament.

**20 JAN 2016**

I hereby certify that the *Proceeds of Crime (Amendment) Act 2015* was made by the National Parliament on 30 July 2015, by an absolute majority as required by the *Constitution*.

  
Speaker of the National Parliament.

**20 JAN 2016**