



Asset Confiscation Scheme



VICTORIA

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Auditor-General

Asset Confiscation Scheme

Ordered to be printed

VICTORIAN
GOVERNMENT PRINTER
September 2013

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ISBN 978 1 922044 57 0

The Hon. Bruce Atkinson MLC
President
Legislative Council
Parliament House
Melbourne

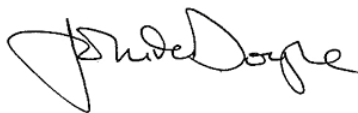
The Hon. Ken Smith MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on the audit *Asset Confiscation Scheme*.

The audit found that the Asset Confiscation Scheme is not operating as effectively or efficiently as it should. Its ability to deprive people of the proceeds of crime, and to deter and disrupt further criminal activity, is hampered largely by weaknesses in Victoria Police's approach to identifying assets, and weaknesses in how the Asset Confiscation Scheme operates as a whole.

Yours faithfully



John Doyle
Auditor-General

4 September 2013

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Audit summary

Asset confiscation is a tool that Victoria's law enforcement and public prosecution agencies use in response to criminal activity. The *Confiscation Act 1997* (the Act) and associated regulations enable the state to confiscate property in order to deprive people of the proceeds of certain offences, to disrupt further criminal activity by preventing the use of that property, and to deter others from engaging in criminal activity. The Act also enables the state to preserve assets for victims' compensation and restitution.

Asset confiscation only applies to certain offences. These include indictable offences, as well as more serious, profit-motivated offences that contravene various Acts including the *Drugs, Poisons and Controlled Substances Act 1981*, *Crimes Act 1958*, and the *Sex Work Act 1994*.

Assets that the state seeks to confiscate through a forfeiture order not only need to relate to specific offences and thresholds, but also need to be tainted or reasonably suspected to be tainted. Tainted assets are those that have been derived wholly or substantially from the proceeds of crime, or have been used, or are intended to be used, in connection with a crime.

The Asset Confiscation Scheme

The Asset Confiscation Scheme (the Scheme) was established in 1998, following the commencement of the Act. There are three key agencies that work together to achieve the objectives of the Scheme:

- **Victoria Police**—primarily through the Criminal Proceeds Squad (CPS)
- **the Office of Public Prosecutions (OPP)**—through the Proceeds of Crime directorate (POC)
- **the Department of Justice (DOJ)**—through the Asset Confiscation Operations unit (ACO).

In addition, the Scheme includes two committees: the Asset Confiscation Scheme Executive Management Group (ACSEMG), which oversees the Scheme, and the Confiscation Operations Committee, which is concerned with the operational, practical and administrative aspects of the Scheme.

Conclusions

The Scheme is not operating as effectively or efficiently as it should. Its ability to deprive people of the proceeds of crime, and to deter and disrupt further criminal activity, is hampered by weaknesses in the way that assets are identified for confiscation, and by how the Scheme is governed.

Victoria Police plays a critical role in the Scheme as it is responsible for identifying assets for confiscation through its investigative processes. However, it is not maximising opportunities to identify such assets related to profit-motivated, serious and organised crime.

Its asset confiscation functions are undermined by a failure to make the most of its investigative tools, by a lack of effective planning, and by capacity and capability weaknesses. Its current focus on victims of crime work does not directly or demonstrably contribute to the Scheme's objectives and diverts it from focusing on profit-motivated crime.

The other Scheme agencies—OPP, and ACO within DOJ—rely on, and react to, the work that Victoria Police generates. While opportunities exist to enhance their operations—such as planning and performance management for OPP, and procedures and performance management for ACO—both agencies are generally performing their core asset confiscation functions effectively and efficiently.

Significant governance weaknesses within the Scheme limit the ability of the agencies to work together effectively to implement the government's policy objectives. For example, there are unclear objectives, a lack of planning or effective oversight, a lack of clear accountability and leadership, a failure to address known longstanding weaknesses and the inability to assess performance against objectives.

Findings

Scheme performance

How well the Scheme is performing is unknown as it lacks an effective performance framework. Exacerbating this is the absence of effective performance frameworks within the individual agencies.

The need for a performance framework to assess the effectiveness and efficiency of the Scheme was first identified in VAGO's 2003 *Report on Public Sector Agencies*. The recommendation to develop overarching performance measures was accepted by DOJ. Despite its commitment ten years ago to develop such measures for the Scheme, this has not yet occurred.

Asset Confiscation Scheme reviews and evaluations

The Scheme has been subjected to three commissioned reviews between 2008 and 2012. In each review, consistent findings and recommendations were made, particularly in relation to weaknesses with the Scheme's governance and performance. While improvements to the Act have been made as a result of these reviews, little apparent action has occurred to address other significant problems, resulting in issues that have persisted unnecessarily.

Scheme governance

While the Scheme has been operating for over 15 years, it has experienced, and continues to experience, governance problems that undermine its effectiveness and efficiency. These governance issues have been known since at least 2003, and were further identified in the 2008 and 2009 reviews, and the 2012 evaluation. While efforts have been made to address them, these have not been effective.

Objective of the Scheme

The objective of the Scheme is unclear, with multiple documents referencing different objectives. The current terms of reference for the Scheme's oversight committees detail objectives that differ from what the Scheme participants actually work towards. There is no documentation that provides evidence of a decision for the Scheme's objectives to be changed to reflect the Act's objectives.

A draft set of objectives for the Scheme was developed and approved by the oversight committee in 2006, but not adopted. It is unclear why, despite being approved, these objectives were not adopted and did not drive the activities of the Scheme.

Adding to the confusion, the 2009 review recommended to ACSEMG that different objectives be approved. While there was agreement to adopt them, again this did not occur, and there is no record to explain this.

Coordination, accountability and leadership

ACSEMG has failed to fulfil its oversight and leadership roles. In particular, it has not set a strategic focus for the Scheme, nor ensured that objectives are being achieved. This is because it has failed to implement a performance framework to assess the achievement of outcomes, and has not developed clear objectives or prepared a strategic plan. These are all issues that have been known since at least 2008.

Between October 2010 and October 2012 ACSEMG did not meet. The lack of meetings was not planned and there is no documented or reasonable explanation for the interval. The Confiscation Operations Committee did not meet over the same two-year period. One obvious impact of not meeting for this duration is that the committees have missed opportunities to address the Scheme's weaknesses for two years.

While DOJ is ultimately accountable for the Scheme, and performs a leadership role, the unclear governance arrangements mean that accountability and leadership are only notional. In practice, the Scheme includes two statutorily independent bodies, Victoria Police and OPP, over which DOJ has no control. This is not an ideal arrangement, and undermines the Scheme's governance.

Planning and resources

Effective planning for asset confiscation does not occur at the Scheme level, and varies across the three agencies. Despite reviews since 2008 identifying the need to improve the Scheme's strategic planning, no effective planning has been undertaken. There is no plan that brings together information about the Scheme's opportunities and risks, that clarifies the objectives and outcomes, or how performance will be assessed. There is also no plan that establishes the Scheme's direction or its priorities.

The absence of effective planning is most notable at Victoria Police, which is essentially the driver of Scheme activity, and which therefore has a greater need for effective planning. Regular turnover of CPS staff—particularly its management—makes strategic and business planning more critical. The overall success of the Scheme is heavily dependent on how effectively Victoria Police and CPS plan and perform.

The CPS does not have any strategic or business plans, and other than at a high level, what it is tasked with doing is not clearly documented. It is not evident that CPS has undertaken or documented any assessments of the proceeds of crime-operating environments, including where there are opportunities, priorities, gaps or challenges.

POC's role in relation to asset confiscation is necessarily a reactive one, based on the assets that Victoria Police identifies for confiscation, and the number of supporting affidavits it sends to POC. Given this, its planning is partly reliant on there being effective planning at CPS. This would enable POC to understand the priorities and the active and planned investigations across Victoria Police, and to plan both strategically and operationally around these.

Regardless of the lack of planning at CPS, POC itself does not have effective planning systems and processes in place. It has no strategic or business plans that detail the broader and longer-term issues impacting on its role, the external workload pressures, what it aims to achieve each year, its priorities or its resource needs.

Like POC, ACO's role is a reactive one as it responds to the orders that POC obtains in court. This presents the same challenges in terms of effective planning if the other stakeholders in the process are not planning. However, unlike either CPS or POC, DOJ and ACO have comprehensive planning around asset management and disposal activities—with some non-material weaknesses.

Risk management

Effective risk management is fundamental to public sector operations, as well as effective governance and planning. It enables entities and agencies to identify and manage risks and opportunities that may arise while performing their functions.

Risk management across the Scheme and Victoria Police is inadequate to properly manage known risks. Risk management practices within the both POC and ACO are more advanced—both POC and ACO have developed risk management frameworks that identify risks pertinent to the functions they perform.

No adequate assessment of risks for the Scheme has been undertaken, and there is no risk management plan within CPS, even though a range of problems with the squad are well known to CPS and Victoria Police management.

Scheme operation

Victoria Police, and more specifically CPS, is responsible for identifying assets for confiscation. That Victoria Police has had a dedicated squad for many years is a positive development towards achieving the Scheme's objectives, and it is evident that the CPS is performing asset confiscation work.

However, issues relating to the type of investigations it undertakes, and how it undertakes them, along with administrative weaknesses around the prioritisation and allocation of cases, mean it is not operating as effectively or efficiently as it should.

Investigations

The Scheme's focus is on profit-motivated, serious and organised crime. Similarly, CPS considers that its focus is on the 'upper echelons of organised crime'. However, in practice, up to 60 per cent of the CPS work relates to victims of crime.

While victims' compensation is a purpose of the Act, it is unclear why CPS is performing this function, at least to the current extent. This work is time intensive and anecdotally results in few victims pursuing the offender in court. The focus on this type of work detracts from what CPS should be focusing on—profit-motivated, serious and organised crime.

Consideration needs to be given to whether it remains the responsible agency for working with victims of crime—particularly if the Scheme's objectives are to be given every chance of being achieved.

CPS has adequate investigative tools and sources of information available to undertake investigations to identify assets for confiscation. However, CPS is not making full use of its investigative tools, and may therefore be missing important assets.

In addition, the way that CPS prioritises and allocates its cases creates a risk that prioritisation will not be undertaken appropriately and investigative action will not start in a timely way. The consequence is that assets may dissipate before action can be taken, reducing the likelihood of the Scheme's objectives being met.

Restraining, managing and disposing of assets

Restraining property, through the use of restraining orders, is an important stage in the asset confiscation process. Its purpose is to prevent the disposal of property so that it will be available for a potential forfeiture order, an automatic forfeiture, a pecuniary penalty order, or for restitution or compensation.

Broadly, this process involves POC applying for restraining orders in the County and Supreme Courts, and ACO identifying and securing the assets identified in the restraining order. Delays in obtaining restraining orders and securing assets increase the risk that the assets will be dissipated.

While these agencies' functions are necessarily reactive—POC reacting to the outcome of CPS investigations, and ACO reacting to the outcome of the restraining order application process—both are performing this part of their roles effectively and efficiently. Similarly, the ACO's practices and controls around the management, maintenance and disposal of forfeited assets are generally effective and economical, therefore minimising costs and maximising financial returns to the state.

Recommendations

Number	Recommendation	Page
	The Asset Confiscation Scheme Executive Management Group should:	
1.	develop a performance framework linked to the objectives of the Asset Confiscation Scheme that includes relevant and appropriate indicators that enable reported performance to be a fair representation of actual performance	28
2.	identify and document actions required to improve the effectiveness and efficiency of the Asset Confiscation Scheme, including previously identified issues	28
3.	develop an implementation plan that details the actions, accountability, time frames, resources, implementation risks and monitoring arrangements for these actions	28
9.	clarify and confirm the objectives of the Asset Confiscation Scheme	41
10.	update the terms of reference for the Asset Confiscation Scheme Executive Management Group and Confiscation Operations Committee, and schedule routine reviews so that they remain current	41
11.	clarify and confirm the Asset Confiscation Scheme governance arrangements, including leadership, accountability, roles and responsibilities, and issue resolution mechanisms	41
12.	undertake a risk assessment for the Asset Confiscation Scheme, including the risks associated with working in a joined-up arrangement	41
13.	develop strategic and operational plans for the Asset Confiscation Scheme, linked to Asset Confiscation Scheme agency planning.	41

Recommendations – continued

Number	Recommendation	Page
	Victoria Police should:	
4.	develop a performance framework, independent of the Asset Confiscation Scheme, to enable Victoria Police management to assess the performance of the Criminal Proceeds Squad	28
5.	implement quality assurance processes around data and databases	28
14.	develop strategic and operational plans, linked to those of Crime Command, the Asset Confiscation Scheme and other Asset Confiscation Scheme agencies	41
15.	undertake a risk assessment of the Criminal Proceeds Squad and its operating environment	41
16.	review the resourcing model for the Criminal Proceeds Squad, including the cost-effectiveness of using Victorian Public Service staff	41
18.	refocus the Criminal Proceeds Squad's investigations to be predominantly focused on profit-motivated, serious and organised crime	51
19.	reallocate responsibility across the organisation for assisting victims of crime in identifying and restraining assets	51
20.	redevelop practices to ensure that investigative tools are used to their full potential	51
21.	develop and implement a Criminal Proceeds Squad training strategy that includes consistent, compulsory inductions for new staff members	51
22.	establish processes for the routine and regular review of criminal proceeds guidance	51
23.	develop, document and enforce the consistent use of case prioritisation and allocation procedures	51
24.	improve the way that the Criminal Proceeds Squad records prioritisation and allocation information to enable better management reporting.	51
	The Office of Public Prosecutions should:	
6.	develop a performance framework, independent of the Scheme, to enable the Office of Public Prosecutions' management to assess the performance of the Proceeds of Crime directorate	28
7.	implement quality assurance processes around data and databases	28
17.	develop strategic and operational plans, linked to those of the Asset Confiscation Scheme and other Asset Confiscation Scheme agencies.	41
	The Department of Justice should:	
8.	improve the current performance framework of the Asset Confiscation Operations unit to better enable the Department of Justice's management to assess its performance	28
25.	review and update the procedures for the Asset Confiscation Operations unit.	51

Submissions and comments received

In addition to progressive engagement during the course of the audit, in accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, was provided to the Department of Justice, the Office of Public Prosecutions and Victoria Police with a request for submissions or comments.

Agency views have been considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report. Their full section 16(3) submissions and comments are included in Appendix A.

1 Background

1.1 Asset confiscation

Asset confiscation is a tool that Victoria's law enforcement and public prosecution agencies use in response to criminal activity. The *Confiscation Act 1997* (the Act) and associated regulations enable the state to confiscate property in order to deprive people of the proceeds of certain offences, to disrupt further criminal activity by preventing the use of that property, and to deter others from engaging in criminal activity. The Act also enables the state to preserve assets for victims' compensation and restitution.

1.1.1 Offences

Asset confiscation only applies to certain offences. The Act lists these offences, which are known as Schedule 1 and Schedule 2 offences.

Schedule 1 offences are typically indictable offences and include offences related to various Acts, such as the *Aboriginal Heritage Act 2006*, *Casino Control Act 1991*, *Dangerous Goods Act 1985*, *Fisheries Act 1995*, *Racing Act 1958*, and the *Wildlife Act 1975*. Schedule 1 offences also include all Schedule 2 offences.

Schedule 2 offences are more serious, profit-motivated offences that contravene various Acts including the *Drugs, Poisons and Controlled Substances Act 1981*, *Crimes Act 1958*, and the *Sex Work Act 1994*.

Offences under Schedule 2 typically relate to drug trafficking and cultivation, and apply to certain quantities, depending on the type of drug. The *Drugs, Poisons and Controlled Substances Act 1981* determines these quantities. Other common Schedule 2 offences include those related to fraud, dishonesty and property where the value of one offence exceeds \$50 000, and the value of multiple offences exceeds \$75 000.

1.1.2 Tainted assets

Assets that the state seeks to confiscate through a forfeiture order not only need to relate to specific offences and thresholds, but also need to be tainted or reasonably suspected to be tainted. Tainted assets are those that have been derived wholly or substantially from the proceeds of crime, or have been used, or are intended to be used, in connection with a crime.

The types of property that can be restrained and forfeited under the Act are wide-ranging and include houses, land, share portfolios, jewellery, motor cars and cash.

1.1.3 Forfeiture and restraining orders

The most common tools available under the Act to achieve its objectives are restraining and forfeiture orders.

Restraining orders

Restraining orders are court orders that aim to preserve property, or an interest in property, so that it will be available for potential forfeiture, automatic forfeiture, a pecuniary penalty order, or to satisfy a compensation or restitution order related to a crime.

A restraining order can be sought through both criminal and civil processes. For criminal matters, they can be sought within 48 hours of when the police intend to charge the accused, or can be sought when the police have charged the accused with either a Schedule 1 or Schedule 2 offence.

Civil forfeiture restraining orders may occur where there is no charge, or where someone charged has not been convicted. The purpose of civil forfeiture restraining orders is to satisfy a civil forfeiture order that may be made in relation to property that is reasonably suspected to be tainted by a Schedule 2 offence. A civil forfeiture restraining order can be sought at any time.

Forfeiture orders

Forfeiture orders are court orders that enable the state to confiscate and dispose of tainted property. There are two kinds of forfeiture orders—'discretionary' forfeiture and civil forfeiture. In addition, the Act also allows for automatic forfeiture.

'Discretionary' forfeiture

'Discretionary' forfeiture orders can be made by the court once the accused has been convicted of a Schedule 1 offence. A decision to obtain a forfeiture order must be made within six months of the conviction.

The onus is on the state to show that the assets are tainted, and in this respect the court has discretion to award the order based on the evidence presented. A restraining order is not required for this forfeiture order, although it is commonly sought.

Civil forfeiture

A civil forfeiture restraining order can only be made in relation to a Schedule 2 offence. Obtaining such an order involves following civil court processes and does not require the defendant to be charged with a criminal offence, or to have been convicted.

The onus is on the state to show that the assets are tainted or reasonably suspected of being tainted. It needs to demonstrate this on the balance of probabilities. Civil forfeiture orders must be sought within 90 days of a restraining order being made.

Automatic forfeiture

Automatic forfeiture occurs once the accused is convicted of a Schedule 2 offence, subject to there being a restraining order and no pending applications for exclusions or exclusion orders. The court has no discretion in ordering forfeiture. If the accused disputes that the assets are tainted, the onus shifts to them to prove otherwise.

Exclusions

Restraining and forfeiture orders provide the state with significant power to affect a person's legal or equitable interest in property. To address this, the Act allows the accused and third parties with an interest in the asset to apply to the court to have any or all of the assets excluded. This can occur for restraining orders if done within 30 days of the order being made, and for the forfeiture order and automatic forfeiture if done by a third party within 60 days of forfeiture.

The court may exclude assets in several circumstances, including being satisfied that an asset is not tainted or derived from the crime. Even if the court considers the asset to be tainted, it can exclude a third party's interest in the asset. Typically, this would occur when the third party was not involved in the offence, had an interest in the asset before the offence, and did not know the asset would be used in an offence. The third party also needs to show that their interest in the property was not subject to the effective control of the accused.

1.1.4 Other orders

In addition to restraining and forfeiture orders, the asset confiscation regime also provides law enforcement and prosecution agencies with other orders to enable the Act's objectives to be met. These include pecuniary penalty orders (PPO) and property substitution declarations.

Pecuniary penalty order

After conviction of either a Schedule 1 or Schedule 2 offence, the court may make a PPO. A PPO is a debt that the convicted person must pay the state, with the debt equal in value to benefits the accused derived from the offence.

A PPO is a discretionary order, and the assessment of what constitutes a benefit derived from an offence is broad. It includes:

- any money actually received from the offence
- any property that was derived or realised
- any benefit, service or financial advantage
- any increase in the total value of property.

For Schedule 2 offences, benefits also include all property in which the accused had an interest at the time of the application for the order, and all expenditure that the accused made in the preceding six years.

Property substitution declaration

If the accused does not have an interest in an asset, it is not available for forfeiture. This is an issue where the accused used, for example, a rented property to commit an offence. In these situations, the Act allows for the state to apply for a property substitution declaration when it applies for a forfeiture order in relation to a Schedule 1 offence. The state can also seek a property substitution declaration for a Schedule 2 offence which, if made, will subject the accused's property to automatic forfeiture. A property substitution declaration essentially swaps assets the accused owns, for the assets used in the offence. This has the effect of making the accused's assets tainted. A key restriction is that the assets must be of the same nature or description, although they do not have to be of equal value.

1.1.5 Victims' compensation

Under the *Sentencing Act 1991*, if a court finds an accused person guilty, or convicts them of an offence, a victim may seek a restitution order or a compensation order for pain and suffering, and property loss and damage.

The *Sentencing Act 1991* also allows restitution and compensation orders to be made on behalf of the victim. Specifically, it allows for the Director of Public Prosecutions to act on the victim's behalf in the County or Supreme Courts, or the police prosecutor or police informant in the Magistrates Court.

The Act complements the *Sentencing Act 1991*, with one of its purposes being 'to preserve assets for the purpose of restitution or compensation to victims of crime'. Where the Director of Public Prosecutions acts to restrain property on behalf of the victim, the value of the order needs to exceed \$10 000. In addition, where the court orders the forfeiture of assets, any restitution or compensation orders must be dealt with as a priority.

Where the court makes a restitution or compensation order, this is enforceable as a civil debt. The state generally does not enforce these as it does not have this power.

1.2 Asset Confiscation Scheme

The Asset Confiscation Scheme (the Scheme) was established in 1998, following the commencement of the Act. There are three key agencies that work together to achieve the objectives of the Scheme: Victoria Police, the Office of Public Prosecutions (OPP) and the Asset Confiscation Operations unit (ACO), which is part of the Department of Justice (DOJ). In addition, the Scheme is supported by two committees: the Asset Confiscation Scheme Executive Management Group (ACSEMG), and the Confiscation Operations Committee.

1.2.1 Victoria Police

Victoria Police is the primary agency within the Scheme. It is responsible for investigating crime and identifying assets for confiscation. Asset confiscation should happen across all areas of Victoria Police, although it has a dedicated squad to deal exclusively with criminal proceeds and asset confiscation.

Criminal Proceeds Squad

The Criminal Proceeds Squad (CPS) is intended to assist other criminal investigation areas within Victoria Police to prepare the necessary legal documents for OPP, as well as undertaking its own proactive investigations. It operates within the Scheme, but does not exclusively service the Scheme. It is intended to:

- provide timely and appropriate investigative support, response assistance and advice to all areas of the force in relation to the operation and application of the Act
- conduct thorough asset investigations relative to all Schedule 2 offences
- liaise with, and provide assistance to, outside agencies including interstate police, OPP and ACO
- assist with searches where asset seizure and confiscation may occur
- assist with the restraint of property for victim compensation or restitution.

1.2.2 Office of Public Prosecutions

OPP prosecutes serious criminal offences in Victoria's County and Supreme Courts. Among its functions, it specialises in matters relating to asset confiscation.

Proceeds of Crime directorate

OPP has a dedicated unit—the Proceeds of Crime directorate (POC)—which deals exclusively with asset confiscation and matters arising under the Act. It typically reacts to matters referred to it by Victoria Police, but also works with other agencies, such as Fisheries Victoria.

POC's core function is to prepare, make and respond to all applications to court under the Act for restraining and exclusion orders, further orders and civil forfeiture orders. It also prepares and conducts appeals and judicial reviews arising out of confiscation proceedings.

1.2.3 Department of Justice

DOJ performs two roles in relation to the Scheme. It is the coordinating and accountable agency for Scheme, and is also responsible for dealing with restraining and forfeiture orders that the courts make. In this respect, it is the third and final part of the Scheme process. Through its criminal law policy unit, DOJ actively monitors the administration and operation of the Act and considers policy and legislative reforms for the Scheme.

Asset Confiscation Operations

ACO is a business unit within DOJ. It has the primary responsibility for the management and governance of the Scheme, including reporting on outcomes, convening the Scheme's executive and operational group meetings, and managing the Scheme's trust fund, which holds on trust all restrained and forfeited property.

ACO is also responsible for locating restrained assets, and their subsequent management, maintenance and disposal. It typically manages the higher value assets and financial assets such as bank accounts, share portfolios, luxury vehicles, boats, houses and land.

Asset Confiscation Scheme Executive Management Group

ACSEMG comprises senior staff from the three agencies. Fisheries Victoria also participates, given its interest in asset confiscation as part of its enforcement activities.

ACSEMG has a broad remit, including responsibility for:

- the overall performance of the Scheme in meeting its objectives
- acting collegiately and collaboratively, on a fully informed basis with due diligence and care, and in the interests of the Scheme and the key agencies
- setting the strategic focus of the Scheme to ensure the objectives are being achieved with satisfactory outcomes
- receiving and endorsing performance reports prepared by the Confiscation Operations Committee and to provide any overall Scheme performance reports required by government
- overseeing and advocating for the Scheme to be adequately resourced.

Confiscation Operations Committee

The Confiscation Operations Committee comprises operational staff from the three business units—CPS, POC and ACO—along with staff from Fisheries Victoria. The committee's purpose is to advise ACSEMG on strategic options that focus on the 'effective utilisation and continual improvement' of the Scheme. Specific functions include:

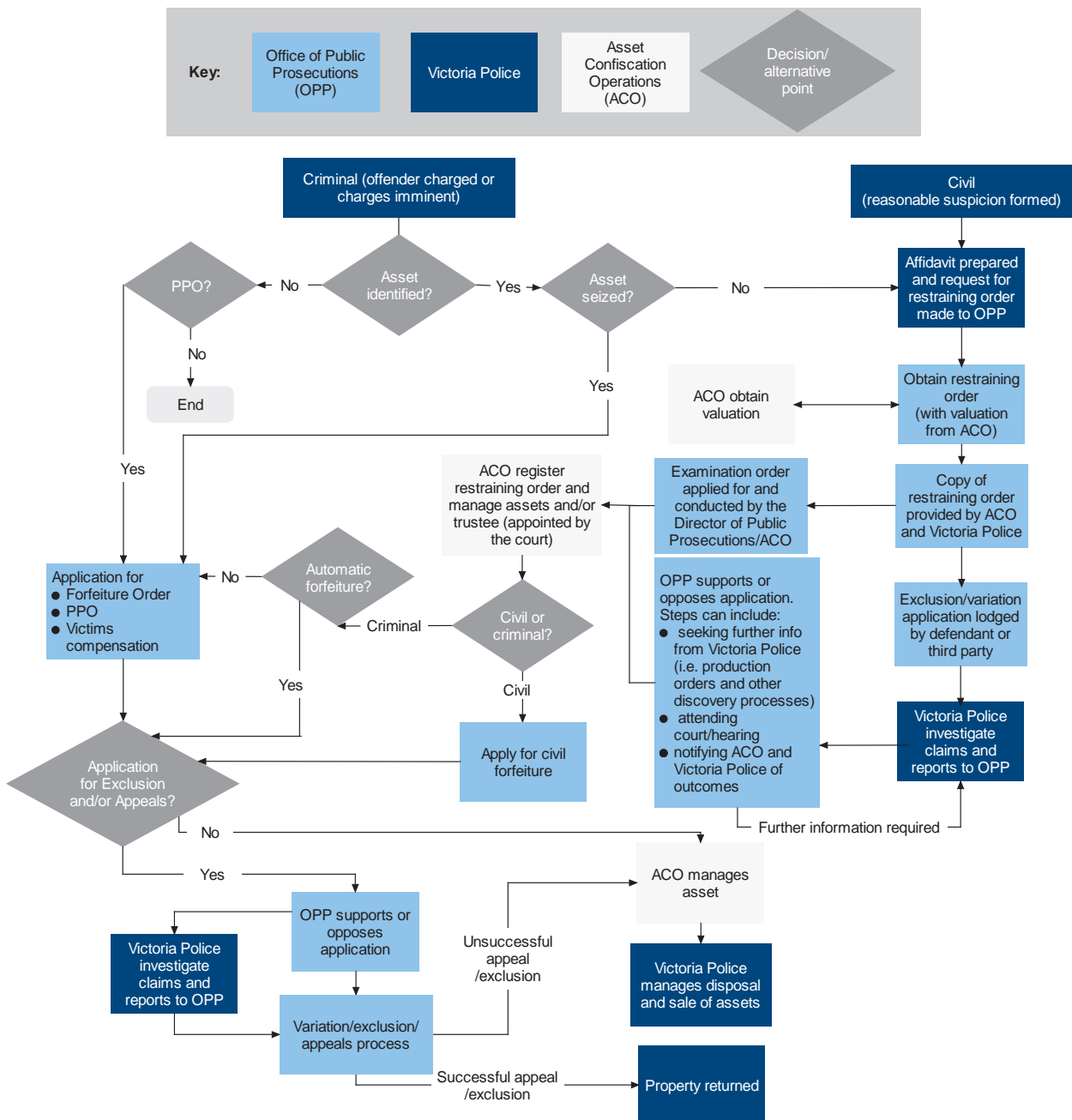
- addressing concerns relating to the operational, practical and administrative nature of the Scheme
- promoting collaboration and coordination between participating agencies
- enhancing the Scheme with increased efficiency and effectiveness.

1.2.4 Asset Confiscation Scheme workflow

The asset confiscation process is linear, with each agency required to fulfil its responsibilities before a case can be referred to the next agency. As Figure 1A shows, the process starts with Victoria Police and the investigative stage, followed by OPP and ending with ACO.

However, the nature of the process means that, typically, each agency continues to be involved throughout the life cycle of a matter. For example, while OPP's initial involvement may be to obtain a court order, it may then become involved again after an asset is restrained if a party seeks to exclude a portion of the asset.

Figure 1A
Asset Confiscation Scheme workflow



Source: Victorian Auditor-General's Office from Department of Justice data.

1.3 Asset Confiscation Scheme funding and resources

1.3.1 Funding

The Scheme has historically been funded through appropriations, comprising ongoing base funding, and supplementary funding. Between 2009–10 and 2012–13, Scheme participants received around \$40 million over four years.

As Figure 1B shows, this comprised \$26 million of ongoing funding, used to fund core activities. A further \$14 million was provided to supplement this. The majority of this funding was provided to OPP to employ solicitors in POC. Supplementary funding was also provided to key stakeholders not part of the Scheme, such as the Magistrates and County Courts, and Victorian Legal Aid.

Figure 1B
Asset Confiscation Scheme funding 2009–10 to 2012–13

Scheme agencies	2009–10	2010–11	2011–12	2012–13	Total
	\$000s	\$000s	\$000s	\$000s	\$000s
Criminal Proceeds Squad	917	942	966	990	3 815
Proceeds of Crime directorate	1 451	1 492	1 528	1 566	6 037
Asset Confiscation Operations unit	524	539	553	566	2 182
Victorian Legal Aid	232	238	244	250	964
Magistrates Court	232	238	244	250	964
County Court	83	85	87	90	345
Total supplementary	3 439	3 534	3 622	3 712	14 307
Total base funding	6 500	6 500	6 500	6 500	26 000
Total Scheme funding	9 939	10 034	10 122	10 212	40 307

Source: Victorian Auditor-General's Office from Department of Justice data.

In May 2013, the government changed the way that the Scheme was funded by making all funding ongoing, rather than the mix of ongoing and time-limited supplementary funding. The Scheme will now receive \$53.5 million over four years, from 2013–14 to 2016–17—an increase of around \$13 million.

1.3.2 Resources

Following the provision of the additional funding in May 2013, the Scheme agencies are expected to increase their staff by 12, bringing the total to 68. This includes two forensic accountants and one legal administrative assistant for the CPS, and eight solicitors and one legal administrative assistant for POC.

As of 1 June 2013, the Scheme operates with 56 staff across the three agencies. This includes:

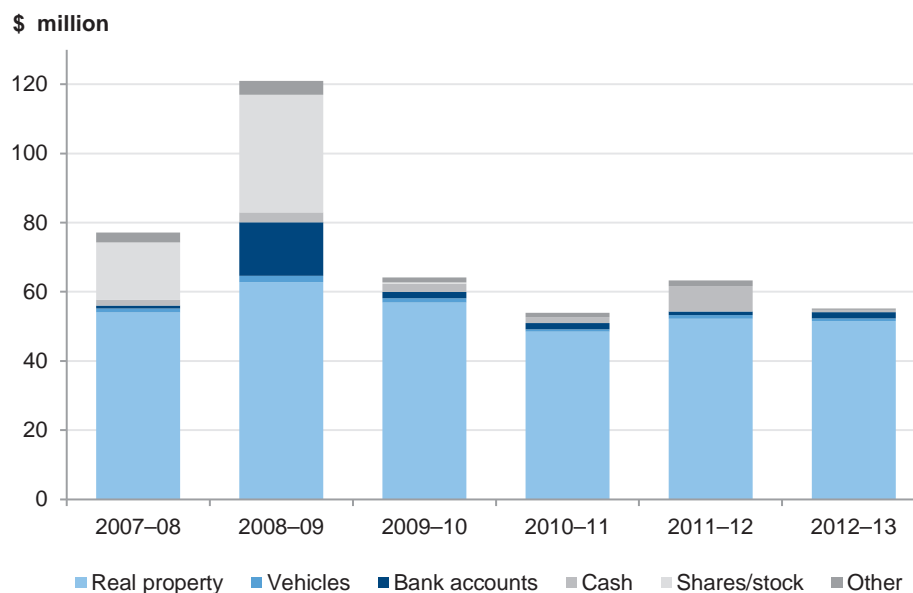
- **CPS**—31 staff, comprising 30 sworn police officers and one administrator
- **POC**—14 staff, comprising 10 solicitors, two legal administrative assistants and two seconded forensic accountants
- **ACO**—11 administrative staff.

1.4 Asset Confiscation Scheme activity

On behalf of the Scheme, ACO collates activity data related to the operations of POC and ACO. The following data is based on the June 2013 Asset Confiscation Scheme statistical report, which may not be comparable to previous reports. This is because of the ACO practice of retrospectively updating data relating to asset values once a formal valuation is obtained. Given this, the data should be treated as indicative only.

From 2007–08 until June 2013, the Scheme has restrained around \$434 million in assets. On average, 79 per cent of these assets are real property, such as houses and land. As Figure 1C shows, since peaking in 2008–09 at \$121 million, the gross value of restrained assets has declined, with restrained assets totalling \$55.2 million in 2012–13.

Figure 1C
Gross value of restrained assets, 2007–08 to 2012–13



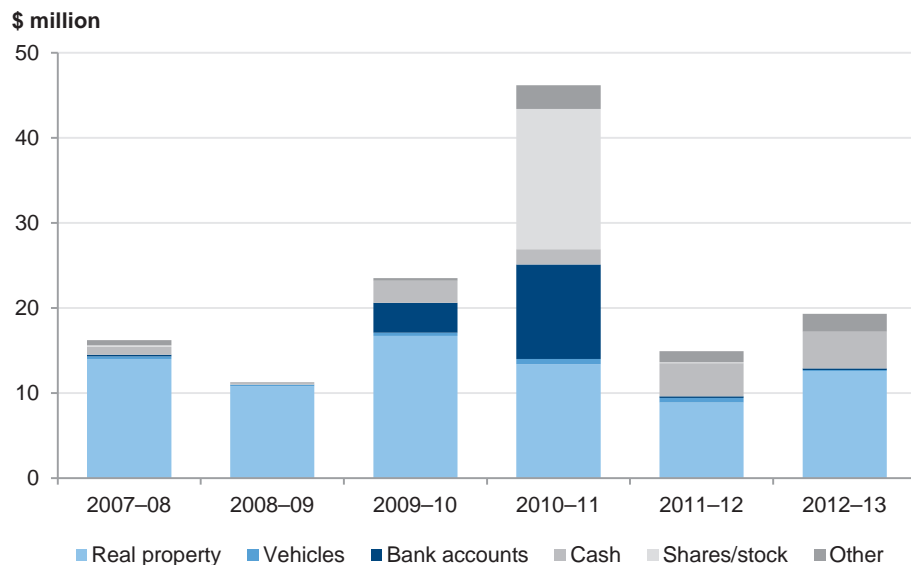
Source: Victorian Auditor-General's Office from Department of Justice data.

Figure 1D shows the gross value of forfeited assets. This reflects the value of assets that have been forfeited to the state after third parties have had their interests excluded.

Because court cases and exclusions can take, on average, around two years to complete, there is a disconnect between the assets restrained in one year and the assets forfeited in that same year. For example, in Figures 1C and 1D, there is little correlation between what was restrained in 2011–12 and what was forfeited in 2011–12. Therefore, these graphs only show the activity in a particular year.

Apart from 2010–11, which ACO considers was disproportionately high due to two cases, the gross value of forfeited assets is regularly significantly less than the value of restrained assets. This generally reflects the exclusion process provided for in the Act.

Figure 1D
Gross value of forfeited assets, 2007–08 to 2012–13



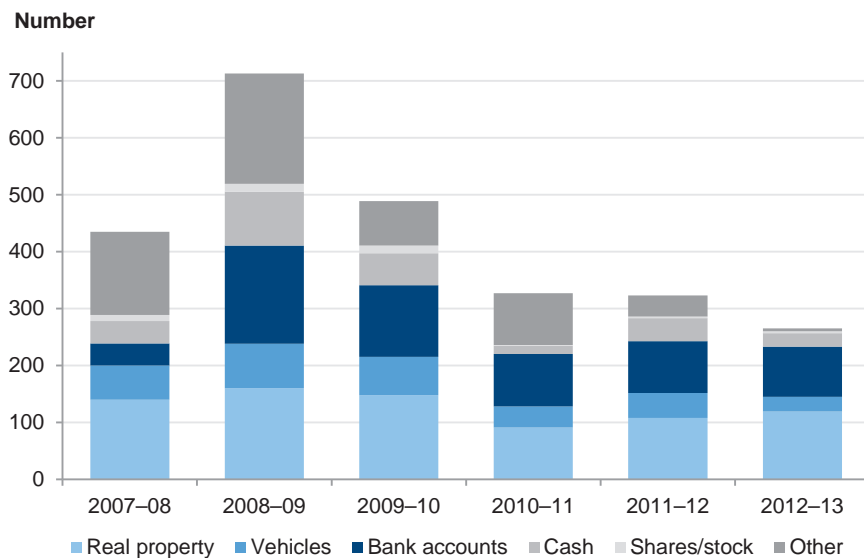
Source: Victorian Auditor-General's Office from Department of Justice data.

Figures 1E and 1F show the number and type of assets that have been restrained and forfeited. The same limitations around comparing years apply, as they do for the value of assets.

Reflecting the decrease in the value of assets restrained, the number of assets restrained has also declined since 2008–09. The most common type of asset restrained is real property, followed by bank accounts and what ACO categorise as 'other'. This is typically personal property that the police seize and hold for evidentiary purposes such as jewellery, whitegoods and other household items. The next most common assets restrained are vehicles and cash.

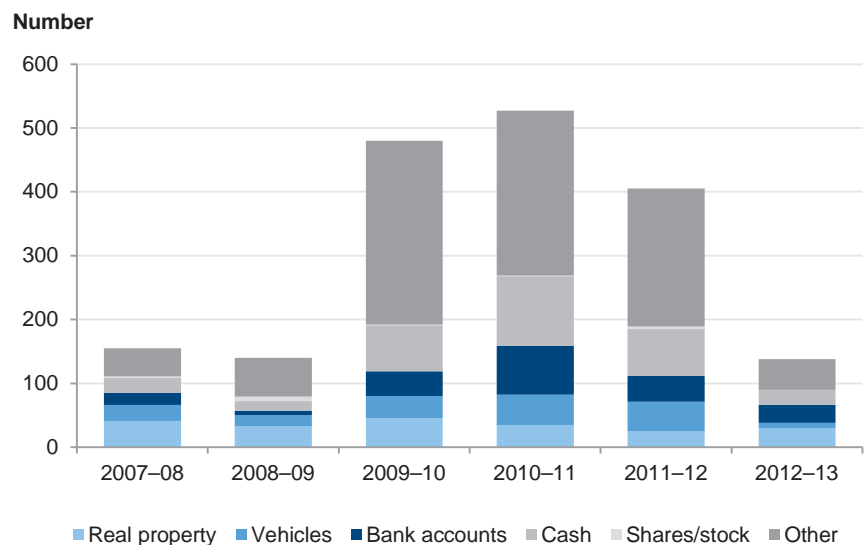
While there has been a decline in the number of restrained assets, the number of assets forfeited has increased since 2007–08, nearly doubling by the end of 2011–12. However, most of this increase is related to 'other' property. Forfeited real property has steadily decreased over this time period. Data for 2012–13 shows a significant decline in assets forfeited. The type of assets forfeited generally reflects that pattern for restrained assets.

Figure 1E
Number and type of restrained assets, 2007–08 to 2012–13



Source: Victorian Auditor-General's Office from Department of Justice data.

Figure 1F
Number and type of forfeited assets, 2007–08 to 2012–13

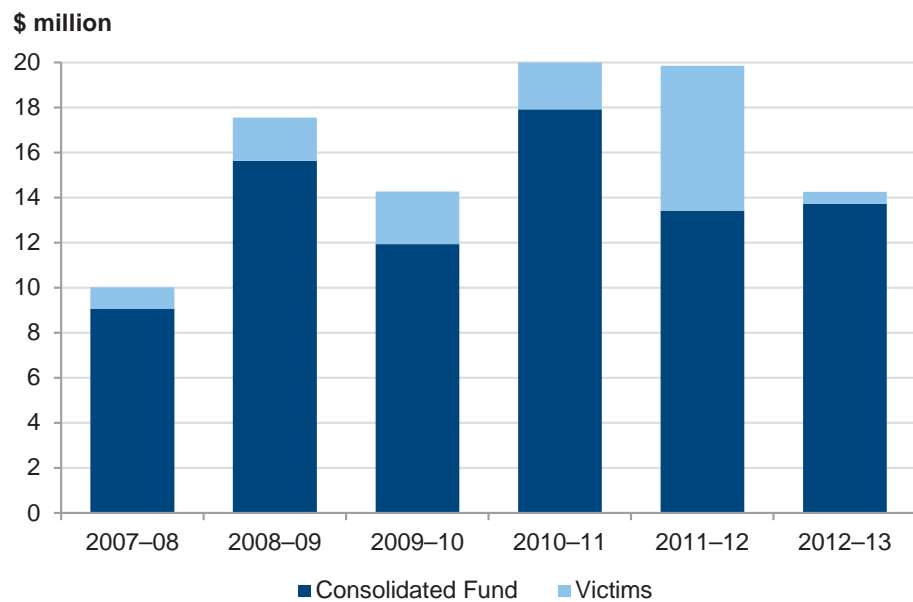


Source: Victorian Auditor-General's Office from Department of Justice data.

The major beneficiaries of forfeited assets are the state, through transfers to the consolidated fund, and victims granted restitution or compensation orders under the *Sentencing Act 1991*.

Figure 1G shows the value of payments made to both the consolidated fund and victims. Since 2007–08, the Scheme has returned around \$82 million to the consolidated fund, and around \$108 million since 1998–99. The Scheme has also returned around \$14 million to victims since 2007–08, and around \$17 million since 2000–01.

Figure 1G
Payments made to the consolidated fund and victims, 2007–08 to 2012–13



Source: Victorian Auditor-General's Office from Department of Justice data.

1.5 Audit objective and scope

The audit objective was to assess how effective, efficient and economical the Asset Confiscation Scheme is in achieving the objectives of the *Confiscation Act 1997*.

To address this objective, the audit assessed the:

- arrangements in place to identify and restrain property
- arrangements in place to manage and dispose of forfeited property
- Asset Confiscation Scheme's governance arrangements.

1.6 Audit method and cost

The audit was conducted under section 15 of the *Audit Act 1994* and in accordance with the Australian Auditing and Assurance Standards.

Pursuant to section 20(3) of the *Audit Act 1994*, unless otherwise indicated, any persons named in this report are not the subject of adverse comment or opinion.

The total cost was \$332 000.

1.7 Structure of the report

Part 2 examines how well the Scheme and agencies have performed, the performance frameworks for the Scheme and also discusses three Scheme reviews.

Part 3 examines the governance arrangements for the Scheme, including leadership, accountability, planning and risk management.

Part 4 examines the roles of the three Scheme agencies, including the identification, restraint and disposal of assets.

2 Scheme performance

At a glance

Background

Monitoring and reporting performance is a key element of effective governance and public sector accountability. Public sector entities have a responsibility to monitor and report on whether they use public funds effectively, efficiently and economically.

Conclusion

While asset confiscation activity is clearly occurring, it is not possible to assess whether this is occurring as effectively, efficiently or economically as it should. It is also not possible to assess whether the Asset Confiscation Scheme (the Scheme) is meeting its objectives and outcomes.

This is because there is no performance framework in place. Persistent weaknesses with the operation of the Scheme, known since 2008, strongly indicate that the Scheme is not well placed to achieve its objectives and perform at the required standard.

Findings

- How well the Scheme is performing is unknown as it lacks an effective performance framework, despite the Department of Justice's commitment ten years ago to develop one.
- Consistent findings and recommendations have been made in three commissioned reviews between 2008 and 2012, particularly in relation to weaknesses with the Scheme's governance and performance.

Recommendations

- The Asset Confiscation Scheme Executive Management Group should develop a performance framework linked to the objectives of the Scheme.
- Victoria Police and the Office of Public Prosecutions should develop performance frameworks to enable their management to assess performance.
- The Department of Justice should improve its performance framework to better enable its management to assess the performance of the Asset Confiscation Operations unit.

2.1 Introduction

Monitoring and reporting performance is a key element of effective governance and public sector accountability. Public sector entities have a responsibility to monitor and report on whether they use public funds efficiently and economically to achieve intended outcomes and objectives. Effective performance monitoring and reporting should also enable an agency's management to track performance and act to address underperformance when detected.

To effectively monitor performance, public sector entities need to have clearly articulated objectives, outcomes and outputs. They also need to have performance indicators that provide information on whether the entity is achieving what it said it would.

These performance indicators need to be relevant and appropriate. A relevant indicator is one that has a logical and consistent relationship to the entity's objectives, and that the entity is responsible for achieving. An appropriate indicator is one that is underpinned by sufficient information to assess its achievement against objectives, outcomes and outputs. This includes assessing trends over time and against predetermined benchmarks.

2.2 Conclusion

While asset confiscation activity is clearly occurring, it is not possible to assess whether this is occurring as effectively, efficiently or economically as it should. It is also not possible to assess whether the Asset Confiscation Scheme (the Scheme) is meeting its objectives and outcomes.

This is because there is no performance framework in place for the Scheme, or within the three key agencies. A performance framework for the whole Scheme has been under consideration for a decade, and is no closer to being established.

Three commissioned reviews since 2008 have identified persistent weaknesses with the operation of the Scheme, consistent with the findings of this audit, that strongly indicate the Scheme is not well placed to achieve its objectives and perform at the required standard. It is a significant failing that many of these weaknesses have not been addressed over an extended time frame.

2.3 Asset Confiscation Scheme performance

How well the Scheme is performing is unknown as it lacks an effective performance framework. Exacerbating this is the absence of effective performance frameworks within the individual agencies which means they are unable to determine how effectively or efficiently they are performing.

2.3.1 Scheme performance framework

2003 VAGO special review

The need for a performance framework to assess the effectiveness and efficiency of the Scheme was first identified in VAGO's 2003 *Report on Public Sector Agencies*. The recommendation to develop overarching performance measures was accepted by the Department of Justice (DOJ).

Despite DOJ's commitment ten years ago to develop overarching performance measures for the Scheme, this has not yet occurred. This is despite effort over this time to develop performance measures.

A project team was established in 2006 to create key performance indicators for the Scheme. There were a range of consultations, primarily with the Scheme participants, Fisheries Victoria (part of the Department of Environment and Primary Industries) and the courts. The project team identified 17 key indicators, three potential indicators and 17 secondary indicators for the Scheme.

However, the performance framework was never established. There is no clear rationale for this inaction over the extended time period, and without a performance framework it is not possible to determine whether the Scheme is achieving its objectives.

Currently, apart from annual reporting, there is limited monitoring of activity data. While the Scheme agencies previously provided regular activity data to DOJ's Asset Confiscation Operations unit (ACO) to compile and report to the various oversight committees, this does not happen routinely. Victoria Police does not provide any data to ACO for collating, while the Office of Public Prosecutions' (OPP) Proceeds of Crime directorate (POC) provides data when requested. This demonstrates a breakdown in processes and highlights the lack of importance placed on monitoring across the Scheme.

Budget Paper No. 3 measures

The Scheme's performance is reflected in one output measure in the budget papers. This measure is 'assets converted in 90 days'. This measure is not relevant, as it has no logical and consistent relationship to the Scheme's objectives. It is also not relevant because the Scheme is not responsible for achieving it. Rather, one agency—ACO—is responsible for it. The measure is also not appropriate as it cannot be used to assess achievement against the Scheme's objectives. The measure does not, therefore, fairly represent the actual performance of the Scheme.

DOJ and the Scheme's agencies have recognised the limitations of this measure and have proposed two new measures that they believe better reflect the Scheme's stated objectives:

- 'the gross value of restrained assets'
- 'net proceeds from confiscated outcomes'.

These measures better reflect the activities of the Scheme's agencies and more logically relate to the Scheme's objectives. This is particularly true for the objectives of deprivation and disruption, as restrained and forfeited assets have a logical link to depriving an offender of the use of assets, and disrupting the offender from using the assets in further criminal activity. However, demonstrating deterrence is not possible with the proposed measures, as a measure involving monetary value cannot assess the extent to which a potential offender did or did not commit an offence.

The new measures were intended to be included in Budget Paper No. 3 (BP3) for 2013–14. However, due to uncertainty around funding for the Scheme, they were held over until the 2014–15 reporting year. Both measures will have targets of the average gross values over a five year period. For 2012–13, this was to be \$72.9 million for gross value and \$16.4 million for net proceeds.

Section 139A reports to the minister

Section 139A of the *Confiscation Act 1997* (the Act) requires ACO and Victoria Police to report to the Attorney-General on some aspects of the operation of the Act. These are the number of times freezing orders and information notices, which are requests to financial institutions for information, have been used. This report is also required to be tabled in Parliament.

ACO goes beyond this legislative requirement and provides an annual report to the minister that includes information on revenue from forfeited assets, activity data around the number of restraining orders and the value of specific classes of assets.

Providing additional information is a positive initiative and increases the transparency of the Scheme. However, the report does not assess the Scheme's performance. This is because the information relates only to the activities of two of the agencies and there are no targets or measures against which to compare or assess performance against outcomes.

Victoria Police provides a one page report to the Attorney-General in line with the legislative requirements, although there are potential issues around the reliability of data contained in the report. It contains data for activities that the Criminal Proceeds Squad (CPS) knows about, but it does not include information notices issued outside of CPS and not reported to it. Given weaknesses with data management and quality assurance within CPS, it is not possible to identify whether the reported data is complete and accurate. In 2011–12, Victoria Police identified a discrepancy of around 7 000 information notices added to the Attorney-General's report. While Victoria Police identified this as a one-off error, the lack of any quality assurance around the data means Victoria Police cannot be confident that this is, or will remain, a one-off.

The value of the section 139A reports is also questionable. While it is a requirement under the Act to produce these and subsequently table them in Parliament, they do not contain any meaningful data analysis. It is unclear how, or if, they are used to assess the effectiveness, efficiency or economy of the Scheme.

Annual statistical report

ACO produces an annual statistical report for the two Scheme oversight committees: the Asset Confiscation Scheme Executive Management Group (ACSEMG) and the Confiscation Operations Committee. The report is similar to ACO's section 139A report, in that it contains a broad range of trended activity data. However, this report also lacks targets against which to assess performance, and is therefore unable to be used to assess overall Scheme performance. Moreover, it only includes data related to the activities of POC and ACO, which means the report does not reflect the full activities of the Scheme.

2.3.2 Agency performance frameworks

In addition to a Scheme performance framework, each agency should also have a performance framework to inform its management about how effectively and efficiently asset confiscation activities are being undertaken.

While elements of performance frameworks were evident for ACO and POC, none of the three Scheme agencies had effective frameworks that enabled an assessment of performance.

Criminal Proceeds Squad

Victoria Police has no performance framework or measures that enable it to assess its performance in relation to criminal proceeds and asset confiscation. While the budget papers and annual reports typically include performance information, albeit output rather than outcome focused, neither of these documents have measures for Victoria Police's role in asset confiscation.

There are no measures or indicators within Crime Command (formerly the Crime Department), of which CPS is a part. Similarly, CPS has no measures or indicators for any of its activities with which to assess its performance.

Informal activity monitoring occurs, although the nature of the monitoring is limited. Monthly activity reports are generated by CPS administrative staff and provided to the Officer in Charge. This data provides a snapshot of the current status. This includes information on the number of active cases, the number of restraining orders to date and the value of the restrained property to date.

However, there are no targets against which to compare the activity against, and as such the data reported does not provide any meaningful assessment of how CPS is performing.

The only form of management reporting on performance is the informal activity monitoring described above. No action is taken in relation to it, and it is typically read for noting purposes only.

There are gaps in management reporting, with CPS identifying the inability of its systems to produce data on squad activity and performance, including:

- the number of CPS-actioned files, i.e. proactive investigations, is not recorded
- the type of referral, i.e. investigation or victim referral, is not available through any reporting system but can be obtained by manual count, which is regarded as time consuming
- the average time for allocation, i.e. the number of days between the referral date and file allocation date, is not recorded
- the average time for case completion by type, i.e. the number of days between the allocation date and the completion date, is unavailable or not recorded
- the time taken to serve restraining orders on defendants and entities, i.e. banks, involved in restraining assets, is not available or not recorded.

If this data was available it would provide CPS management with valuable information about the effectiveness and efficiency of the squad. Victoria Police has subsequently advised that it is taking steps to improve its reporting capability, although implementation is dependent on design complexity, the availability of existing applications, and the cost of implementation.

Victoria Police advised that the performance of CPS is monitored through plans for the Crime Command Serious Crime Portfolio, which map to the Victoria Police Blueprint 2012–2015. It also advised that it was satisfied that the performance of CPS against the Victoria Police Blueprint is being assessed through the existing Crime Command planning and risk framework.

There is no performance management framework in place that would enable Crime Command or the Officer in Charge of CPS to understand whether CPS is performing its work effectively, efficiently and economically. Such performance frameworks are fundamental to effective governance and public administration.

The data that CPS produces and reports is unreliable. CPS operates two databases for its investigations—ASIS and Interpose—but there is no consistent approach to using these databases among CPS staff, nor is there any quality control. This has resulted in the two databases reporting different numbers of case files, when there should be no difference.

Extracting the data for management reporting is a manual exercise—an approach that increases the risk of error and the production of unreliable data. CPS is in the process of migrating data from the ASIS system to the Interpose system, which should improve data reliability issues by minimising the opportunities for error.

Proceeds of Crime directorate

POC also does not have a performance framework that encompasses performance measures, targets and outcomes to enable it to assess how effectively and efficiently it is operating.

OPP includes comprehensive output performance measures for its activities in its annual report, internal business planning reports and BP3 reports. These measures indirectly capture the work of POC, but it is not possible to disaggregate this for asset confiscation.

The only performance-related data that POC collects is activity data. This includes data that POC reports to the Scheme when requested, such as the number of restraining order applications, the number of court hearings and the number of exclusion applications. This data measures activities only and not performance, and without appropriate benchmarks or targets against which to judge performance, provides little meaningful information.

POC also collects timeliness data for restraining orders within its databases. This includes data on the date case files were created, when draft affidavits were received from CPS and when they were allocated to a solicitor. However, there is no routine analysis of this data or reporting to management.

There are also weaknesses with this data. First, it is manually collated, which increases the risk of error. Errors were evident with duplicate entries and data that indicate that affidavits were allocated before they had been received. In addition, there is data missing. This highlights the lack of any quality control mechanisms, and ultimately diminishes the usefulness of the data as a management reporting tool with which to assess aspects of POC's performance. Again, without timeliness targets or benchmarks, it is not possible to assess actual performance.

POC has recognised limitations in its management reporting and, as part of developing a new information management system, has requested additional activity-based management reports. In addition, during this audit OPP started work to develop a performance framework that would enable performance to be assessed against POC outputs and outcomes.

POC collates and reports some management information, which it considers enables it to assess its performance. This information includes consultations and meetings with staff, staff performance reviews, and caseload and workload reports. Staff performance reviews do not typically form part of an agency's performance framework, as they do not enable an assessment of how an agency is performing in relation to the achievement of its objectives. Performance reviews focus on the individual and whether they are meeting their performance standards. They also focus on learning and development needs.

Caseload and workload reports—while important management tools—do not provide adequate information on whether POC is achieving its objectives and outcomes. Rather, they report on another dimension of activity.

Asset Confiscation Operations

While ACO has elements of a performance framework, it is not adequate to enable it to assess its performance for all its functions. ACO collects and reports internally on the gross value of assets restrained and also the value of funds transferred to consolidated revenue. There are no targets that form part of a Scheme performance framework, and therefore this information only provides an indication of activity. While DOJ advised that its finance unit has a target for gross funds forfeited, this is primarily for estimating revenue for accounting purposes and not Scheme performance.

ACO also collects data relating to the management of real property, which represents around 80–90 per cent of the property it manages in most years. This data includes the timeliness of lodging restraining orders with Land Victoria, and the timeliness of property sale.

For the lodgement of restraining orders, the ACO has identified two benchmarks—lodgement within three days and lodgement in five days. Only by analysing the results is it apparent that performance relates to the five days, and it is unclear what purpose the three day benchmark serves, given that the ACO is required to lodge restraining orders within five days. However, there is no target number for lodgement for either of the benchmarks.

Analysis of actual performance data indicates that for 2011–12, 74 per cent of restraining orders were lodged within five days, with the average time taken being 6.5 days. However, the data contains five outliers (46, 46, 64, 62, and 62 days respectively). If these are removed from the 111 cases, then the average time taken is reduced to 4.2 days, which is within the benchmark.

ACO also collects data on the timeliness of sale of real property where the Attorney-General is on the title. This data appropriately excludes a range of other properties such as mortgagee sales or where buy-backs are in progress. The target for these sales is included in the performance measure reported in both BP3 and DOJ's Annual Report. This measure is 'assets converted within 90 days of the asset conversion cycle', with a target of 85 per cent.

Using this measure for the sale of real property is problematic. First, the measure relates to all forfeited property, including large volumes of low value personal property. Typically, ACO does not manage or dispose of this property type. Victoria Police is responsible for this, and personal property is easier to dispose of. Second, forfeited property may only be disposed of after 60 days once the forfeiture order has been made. This is the period available for interested parties to seek exclusion of the property, from forfeiture. This leaves only 30 days for 85 per cent of real property to be sold to meet the target. The data shows that since 2005, only one property has achieved the target of 90 days, and that was in 2007. Since then only one other property has come close—94 days in 2010. The average number of days is 273.

The ACO has identified the weaknesses with this measure as it relates to the disposals it is responsible for. As outlined earlier, it has recommended that the measure be changed to the gross value of restrained assets. However, this measure has been recommended for the Scheme and in the event it is used from 2014–15, will leave the ACO without any measure to assess its performance.

2.4 Asset Confiscation Scheme reviews and evaluations

Self-assessments of an agency or program's effectiveness and efficiency are an important element of effective governance. They provide decision-makers with information about what is working, what is not working and what action needs to be taken to address any areas of concern.

The Scheme has been subjected to three commissioned reviews in the five years between 2008 and 2012. Consistent findings and recommendations have been made in each, particularly in relation to weaknesses with the Scheme's governance and performance. While improvements to the Act have been made as a result of these reviews, little apparent action has occurred to address other significant issues over time, resulting in issues that have persisted unnecessarily.

2.4.1 2008 and 2009 reviews

2008 review

In 2008, DOJ initiated a review to assess the legislative and policy framework, and governance arrangements for managing and operating the Scheme. The review was also intended to position the Scheme to achieve its objectives into the future. The review identified weaknesses with the Scheme, including:

- **legislative framework**—the Act's principles were not well understood and each agency differed in how it interpreted the legislation
- **Scheme objectives**—they were not well defined or articulated, or aligned with agency objectives
- **accountability**—ultimate responsibility for the Scheme was unclear and lacked a strategic focus, however, agencies worked well together operationally
- **governance**—communication was variable between agencies, roles were unclear, duplication existed and there was a lack of accountability for outcomes.

While the review identified performance issues, it was primarily a proposal for a new governance structure for the Scheme, based on an integrated model involving police investigators, financial analysts/investigators, legal specialists, property/asset management and administration. This proposal was approved in principle by the Attorney-General and considered by the government. The government did not approve the proposal due to the costs of establishing a new entity. Despite the lack of government support, the government commissioned a further review of the Scheme and its governance.

2009 review

The purpose of the 2009 review was to fulfil a request by the Premier for the Attorney-General and the Treasurer to develop options for reforming the Scheme. The need for reform was identified in the 2008 review. This review was to consider creating an independent ACO, as well as transferring the role of recovery and disposal of confiscated assets to the State Revenue Office (SRO). It was also to consider the potential for each model to improve outcomes in terms of disrupting and dismantling organised crime, and the implications for government revenue.

While the Premier requested a review that considered creating a separate entity, the Department of Treasury and Finance (DTF) advised DOJ that funding for more substantive reforms was unlikely to be provided in the 2009–10 budget cycle. As a result, DOJ focused on improving the existing governance arrangements, with a longer-term objective to revisit the preferred single entity governance model.

As part of the work to improve existing governance arrangements, the review identified weaknesses with the Scheme. These included:

- **governance**—the oversight committee did not meet regularly or on a scheduled basis, resulting in no clear decision-making mechanism for the Scheme
- **accountability**—there was unclear responsibility for Scheme oversight and unclear accountability for achieving objectives
- **Scheme objectives**—there was a lack of clearly articulated strategic objectives, leading to misalignment of agency goals and hindering the coordination of resources
- **performance**—there was no overall performance monitoring for the Scheme, even though a project team was established in 2006 to develop key performance indicators
- **structure**—while scope exists for further marginal improvements to the efficiency of the Scheme's operations through administrative amendments, significant changes to the efficiency and effectiveness of the Scheme require more substantive structural and legislative reforms.

A three staged approach was developed to implement changes that would improve the efficiency and effectiveness of the Scheme. This approach included:

- identifying changes to the Scheme that would improve performance and coordination without additional investment from the government
- developing an implementation plan for the recommended short-to-medium term course of action
- identifying more substantive reforms to be revisited upon the review of the implementation of reforms in the short-to-medium term.

These stages and the associated actions are detailed in Figure 2A.

Figure 2A
Implementation actions to improve Scheme performance, 2009

Stage	Governance and accountability	Workflow efficiencies
<p>Stage 1— short term (0–6 months)</p> <p>Changes that can be actioned now, without legislative change or wider government assistance/approval.</p>	<p>Enhance strategic oversight and coordination by reconvening the Confiscation Operations Committee and Asset Confiscation Scheme Executive Management Group (ACSEMG):</p> <ul style="list-style-type: none"> • agree on objectives • formalise meeting schedule • clarify strategic role(s) • augment existing data collection and reporting to improve data on Scheme performance and assist any future reforms: <ul style="list-style-type: none"> • requires business analyst (one). 	<p>Target inefficiencies in the process of responding to applications for exclusion by providing a role for ACO in investigative accounting:</p> <ul style="list-style-type: none"> • requires investigative accountant resources (two) • memorandum of understanding (MoU) involving Victoria Police, ACO and SRO for assistance and information sharing in cases involving complex property and trust arrangements (where SRO has significant expertise and access to data).
<p>Stage 2— medium term (6–12 months)</p> <p>Changes that may be desirable following review of changes implemented in Stage 1. These changes may also require some legislative amendments.</p>	<p>Following increased data collection on performance, review performance data in order to:</p> <ul style="list-style-type: none"> • establish key performance indicators and targets <ul style="list-style-type: none"> • these should be limited in number and recognised as being within the control of the relevant agencies • review adequacy of resource allocations, and if necessary build a case for additional positions • no legislative change required. 	<p>Review investigative role provided for ACO in Stage 1, with consideration of:</p> <ul style="list-style-type: none"> • increasing investigative role of ACO • using the Office of Chief Examiner for examinations at the commencement of confiscation proceedings, to assist in rebutting applications for exclusion • may require legislative changes • review MoU arrangements with SRO with a view to extending, revising and discontinuing.
<p>Stage 3— long term (>1 year)</p> <p>Substantial changes to the legislative framework and/or structure of the Scheme. To be considered following the initial reforms and the outcomes of the current legislative review. These changes will need to be supported by robust evidence from performance data.</p>	<p>Revisit case for structural reforms combining (or separating) some or all of the current Scheme functions. This may include:</p> <ul style="list-style-type: none"> • establishing a fully integrated business unit combining the functions of the agencies, or partial integration or collocation of POC and ACO • separating civil and criminal confiscation processes • assessing the adequacy of Scheme resources • exploring options for increasing the availability and use of civil powers, for example: <ul style="list-style-type: none"> • structural amendments (including establishing an integrated business unit) • legislative amendments. <p>A key consideration for any future changes will be the need to ensure that they are consistent with the Charter of Human Rights and Responsibilities.</p>	

Source: Department of Justice.

Despite the development of an implementation plan being a key task, this was never done. While the three-stage process identifies actions to address some of the key issues, it does not address them all. Without an implementation plan, it has not been possible to clearly identify which of these actions was implemented and the timeliness and effectiveness of any implementation.

It is evident that investigative accountants were employed (Stage 1) and legislative change was made (Stage 3). In addition, there is evidence of decisions not to continue with changes involving the SRO (Stage 1) and structural reform; the latter after the election of the government in 2010. However, there is insufficient evidence to determine the outcome of the other actions.

2012 evaluation

The purpose of this evaluation, commissioned by DOJ, was to address a DTF requirement that requests to extend lapsing funding be accompanied by an evaluation that assessed the effectiveness of the funding. Prior to the 2013–14 State Budget, the Scheme was part funded through four-yearly lapsing funding. In this respect, the evaluation differs from the other reviews, which were focused on the effectiveness of the operation of the Scheme and whether reform was required.

Consistent with the 2008 and 2009 reviews, the evaluation identified a range of weaknesses with the current Scheme arrangements. That weaknesses consistent with those identified four years earlier have persisted highlights a significant failing. Scheme weaknesses identified in 2012 included:

- the key performance indicators for the Scheme have not been quantified
- there is no overarching risk framework for the Scheme
- governance arrangements are not as effective and efficient as they could be
- there is no single point of responsibility for the Scheme
- membership of the oversight committees is too big
- data systems across the agencies are incompatible
- agencies are not collocated, even though they need to work closely together
- organisational priorities do not necessarily match the Scheme's priorities.

The evaluation concluded that the Scheme had been effective in targeting profit-motivated crime, although the evaluators state it was not possible to assess the magnitude of the effectiveness. The evaluation also concluded that the Scheme was efficient, as it was self-funding and returned more to government than the funding it had received.

Despite the evaluation's conclusions, the identified weaknesses indicate that the Scheme is not operating effectively and efficiently as it should. In addition, there are weaknesses with the evaluation itself that further diminish the reliance that can be placed on the conclusions around effectiveness and efficiency.

Evaluation weaknesses

The evaluation relies on measures that are not relevant to assessing the effectiveness of the Scheme. They are primarily activity based, such as the number of cases, gross and net value of assets, the number of assets, victims' compensation and the net return to government. It also uses financial data—gross value of restrained assets—which does not provide an appropriate measure of the Scheme's effectiveness—something the same authors identified in the 2009 review. The evaluation also does not evaluate performance with reference to any benchmarks or targets.

The evaluation notes that there had been a decrease in the number of cases, and a corresponding increase in the gross value of assets restrained. The data provided for this audit supports this view. The review suggests that this may be for a number of reasons, including:

- cases being investigated are more complex and involve higher-value assets
- the increasingly complex organisational structures being created to avoid asset confiscation associated with crimes
- a refocus on the Scheme's activities from low-value, high-volume cases to high-value, low-volume cases
- that it is becoming increasingly difficult for authorities such as Victoria Police to identify and investigate, as criminals and their operations are becoming more sophisticated.

These claims are not substantiated, or based on sufficient or appropriate evidence, and are generally not supported by the evidence obtained for this audit.

The evaluation states that impacts of the Scheme on the three objectives of the Act are as follows:

- the Scheme helps to disrupt crime, evidenced by increased revenue to the state and payments to victims
- the Scheme helps to deter crime though the existence of civil forfeiture powers—although not necessarily the use of civil forfeiture powers
- more could be done to deter, disrupt and deprive—this includes a more targeted approach, including more serious, higher-level crime.

These stated impacts are based only on discussions with agencies and are unsupported by corroborating evidence. While case studies included in the government's Budget and Expenditure Review Committee business case illustrate activity around asset confiscation, they do not by themselves demonstrate the outcomes that the evaluation identified. The evaluation includes an assessment of costs involved in managing property, but otherwise provides no clear assessment of the overall efficiency of the Scheme other than its assessment about overall costs and revenue.

The evaluation also discusses governance issues, although it is questionable what analysis of evidence has actually been undertaken. This is most obvious in relation to ACSEMG—the Scheme’s coordinating and oversight group. The evaluation notes that ACSEMG meets five times every year. However, analysis of meeting minutes demonstrates that the committee did not meet for two years between October 2010 and October 2012. The Confiscation Operations Committee—another coordinating and oversight group focused on operational rather than strategic matters—also did not meet over the same period.

Recommendations

The Asset Confiscation Scheme Executive Management Group should:

1. develop a performance framework linked to the objectives of the Asset Confiscation Scheme that includes relevant and appropriate indicators that enable reported performance to be a fair representation of actual performance
2. identify and document actions required to improve the effectiveness and efficiency of the Asset Confiscation Scheme, including previously identified issues
3. develop an implementation plan that details the actions, accountability, time frames, resources, implementation risks and monitoring arrangements for these actions.

Victoria Police should:

4. develop a performance framework, independent of the Asset Confiscation Scheme, to enable Victoria Police management to assess the performance of the Criminal Proceeds Squad
5. implement quality assurance processes around data and databases.

The Office of Public Prosecutions should:

6. develop a performance framework, independent of the Asset Confiscation Scheme, to enable Office of Public Prosecutions’ management to assess the performance of the Proceeds of Crime directorate
7. implement quality assurance processes around data and databases.

The Department of Justice should:

8. improve the current performance framework of the Asset Confiscation Operations unit to better enable the Department of Justice’s management to assess its performance.
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3 Scheme governance

At a glance

Background

Good governance provides the foundation for effective performance. Governance arrangements should be clear and understood, particularly where multiple agencies are involved. It should also include effective planning.

Conclusion

Governance issues undermine the Asset Confiscation Scheme (the Scheme). Key oversight committees have failed to strategically guide the Scheme as required, and a lack of clear leadership, oversight and accountability exacerbates these weaknesses.

Findings

- Three reviews over five years have highlighted governance weaknesses across the Scheme, most of which have not been addressed.
- Ongoing weaknesses relate to unclear Scheme objectives, poorly functioning oversight committees, a lack of strategic planning, unclear leadership and accountability and a lack of effective coordination.
- Governance weaknesses have diminished the capability of Victoria Police's Criminal Proceeds Squad, which is significant given its key role in generating the Scheme's activities.

Recommendations

- The Asset Confiscation Scheme Executive Management Group (ACSEMG) should clarify and confirm the objectives of the Scheme, and the Scheme's governance arrangements including leadership, accountability, roles and responsibilities and issue resolution mechanisms.
- ACSEMG should develop strategic and operational plans for the Scheme, linked to Scheme agency planning.
- Victoria Police and the Office of Public Prosecutions should develop strategic and operational plans, linked to those of the Scheme and other Scheme agencies.
- Victoria Police should undertake a risk assessment of the Criminal Proceeds Squad and its operating environment.

3.1 Introduction

Effective governance provides the foundation for effective performance. Governance arrangements should be clear and understood, particularly where multiple agencies are involved. This minimises the risk of overlap and duplication of effort, and also helps to allocate accountability for the success or failure of initiatives.

Sound planning is also a key part of effective governance and management. It enables agencies and their business units to define objectives and how these will be achieved. It also assists agencies to understand and manage their resourcing requirements to enable them to perform their core functions.

3.2 Conclusion

Governance issues significantly undermine the Asset Confiscation Scheme (the Scheme). Key oversight committees have not met for extended periods of time and have failed to provide strategic guidance for the Scheme as required. The Scheme's governance is further weakened by a lack of clear leadership, accountability and coordination, a failure to plan at the Scheme level, and a failure to plan within two of the Scheme's agencies.

3.3 Asset Confiscation Scheme governance

While the Scheme has been operating for over ten years, it continues to experience governance problems that undermine its effectiveness and efficiency. These governance issues have been known since at least 2003 and were identified in the 2008 and 2009 reviews, and in the 2012 evaluation. While efforts have been made to address them, these have not been effective.

3.3.1 Objective of the Asset Confiscation Scheme

The objective of the Scheme is unclear, with multiple documents referencing different objectives, and a lack of documented evidence to explain why objectives were or were not adopted.

The current terms of reference for the Scheme's two oversight committees is 'to combat serious and organised crime through the removal of assets used in conjunction with the commission of an offence, derived from the commission of an offence, or proceeds reasonably suspected of being derived from criminal activity'.

However, the 2012 evaluation of the Scheme identifies the Scheme's objectives as those of the *Confiscation Act 1997* (the Act) which are:

- depriving persons of the proceeds of certain offences and of tainted property
- deterring persons from engaging in criminal activity
- disrupting criminal activity by preventing the use of tainted property in further criminal activity.

There is no documentation, including meeting minutes for the oversight committees, that provides evidence of a decision for the Scheme's objectives to be changed to reflect the Act's objectives.

A draft set of objectives for the Scheme was developed and approved by the Asset Confiscation Scheme Executive Management Group (ACSEMG) in 2006. These draft objectives were to:

- contribute to disabling and disrupting financially-motivated, organised or serious crime
- remove incentives and provide deterrence for crime
- maximise opportunities for restitution and compensation to victims of crime from offender's assets
- optimise the management of the Scheme.

It is unclear why, despite being approved, these objectives were not adopted and did not drive the activities of the Scheme.

Adding to the confusion, the 2009 review recommended to ACSEMG that the following, similar Scheme objectives be approved:

- remove incentives and provide deterrence from crime
- maximise opportunity for restitution and compensation from offenders' assets
- optimise management of the Scheme.

It was expected that final approval and documentation of these objectives would occur at the next meeting of the ACSEMG, which was scheduled for late 2009. However, these objectives were not included on meeting agendas until March 2010, with minutes showing no discussion on the objectives and no decision to adopt them. There is no record of why this did not occur despite the clear intent.

3.3.2 Coordination, accountability and leadership

Cooperative or joined-up governance structures

The Scheme's current governance structure is essentially a joined up activity. This typically involves cross-agency coordination with input from more than one agency to address complex, high-priority issues.

The success of joined up initiatives depends on how well they have been designed, and whether the associated funding, administrative and governance arrangements match the scale, nature and complexity of the issue to be addressed. Figure 3A shows elements of joined up initiatives.

Asset confiscation is a complex program area. Given the type and number of agencies, the identified weaknesses with its operation, the nature of the activity, and the linear and reliant processes involved, it should be a heavily joined up Scheme. Reflecting this, previous reviews have recommended a single entity, or at the least, collocation of the entities.

However, the Scheme is not adequately joined up as there has been a lack of coordination due to weaknesses with the oversight committees. While routine informal contact occurs, there has, until very recently, been only infrequent formal contact between the Scheme agencies. In addition, there are weak governance arrangements, including the lack of Scheme planning, the absence of joint datasets, and the absence of any robust assessment of risks affecting the Scheme.

Figure 3A
Elements of joined-up initiatives

Element	Lightly joined up	Heavily joined up
Coordination	Departments share information about their own initiatives. Coordination is focused on program implementation.	Agencies collaborate at all stages of the program from inception through to development, implementation, evaluation, and particularly at the point of program and intervention design.
Level and frequency of contact	Coordination-related contact between the departments is mainly at senior levels and is infrequent.	Collaboration occurs at all levels of all the departments and is frequent.
Strength of associated governance arrangements	Light governance framework ('authorising environment'). Supported by a secretariat with no directive powers.	Governance structure specifies roles and responsibilities. Strategic and implementation plans outline priorities and strategies. Administrative structures have decision-making and directive role to coordinate and implement plans.
Timeline	Time frame is short term, with a focus on quick results.	Time frame is long term, with a focus on both quick wins and wins over time.
Data	Agencies maintain their own datasets.	Agencies have joint datasets and jointly identify data collection needs.
Funding	Agencies and individual programs have their own funding streams.	Agencies have access to joint funding streams.
Risks	Risks in joining up are not considered.	Risks in joining up are considered and managed.

Source: Victorian Auditor-General's Office report on Coordinating Services and Initiatives for Aboriginal People, 2008.

Weaknesses around coordination, accountability and leadership identified in the three reviews undertaken since 2008 include:

- the Scheme has no single person with sufficient authority and oversight to make decisions necessary for the Scheme's success
- the Scheme lacks clearly defined roles and accountabilities, which would establish the basis for approval, decision-making and provide a single source of direction for staff
- the Scheme's key decision making forum, ACSEMG, has a membership that appears too large
- the Scheme's Confiscation Operations Committee appears to be well integrated and focused but does not have integrated and focused governance structures

- the Scheme appears to lack agreed processes and documentation to manage and resolve issues that arise, to record and communicate risks identified, and to communicate between stakeholders
- attendance at ACSEMG meetings is often delegated to less senior staff who do not have authority to make decisions.

Apart from a review of the terms of reference, no effective action has been taken or committed to address these issues, and consequently many have persisted unnecessarily.

Oversight committees

The lack of effective coordination and leadership of the Scheme was a key finding of VAGO's May 2003 *Report on Public Sector Agencies*. The report noted that the Scheme's 'governance framework would be strengthened if there was a clearer allocation of responsibility for strategic oversight of the scheme and provision of high-level advice to the government. As one option, a small executive body comprising the heads of each participating agency could fill this governance gap'.

In response, a new oversight body—ACSEMG—was established to complement the existing Confiscation Operations Committee. ACSEMG has a broad remit, including responsibility:

- for the overall performance of the Scheme in meeting its objectives
- to act collegiately and collaboratively, on a fully informed basis with due diligence and care, and in the interests of the Scheme and the key agencies
- for setting the strategic focus of the Scheme to ensure the objectives are being achieved with satisfactory outcomes
- for receiving and endorsing performance reports prepared by the Confiscation Operations Committee and provide any overall Scheme performance reports required by government
- for overseeing and advocating for the Scheme to be adequately resourced.

ACSEMG has failed to fulfil its roles and in particular, has not set the strategic focus for the Scheme, nor ensured that objectives are being achieved with satisfactory outcomes. This is because it has failed to implement a performance framework to assess the achievement of outcomes, develop clear objectives, or prepare a strategic plan. These are all issues that have been known since at least 2008.

Significantly, ACSEMG has failed in its responsibilities for the overall performance of the Scheme, demonstrated by the fact that persistent Scheme weaknesses have been known to it, and remained unaddressed for at least five years.

The terms of reference require ACSEMG to meet a minimum of five times each year. It has consistently failed to do so. Before 2009 its meeting schedule was inconsistent, although it was more regular between 2009 and October 2010. During this time it did not, however, meet its requirement of five meetings each year.

Inexplicably, between October 2010 and October 2012 ACSEMG did not meet at all. This was not planned and there is no documented or reasonable explanation for the interval. The Confiscation Operations Committee, which is concerned with the operational, practical and administrative aspects of the Scheme, did not meet for the same two-year period. The obvious impact of not meeting over this time frame is two years of missed opportunities to address the Scheme's weaknesses.

ACSEMG and the Confiscation Operations Committee reconvened in November 2012 and have met regularly since then. In addition, the Department of Justice (DOJ) is reviewing the terms of reference for both oversight committees to provide greater clarity around their roles.

Leadership and accountability

While DOJ is ultimately accountable for the Scheme, and performs a leadership role, the nature of the governance arrangements means that accountability and leadership are only notional.

In practice, the Scheme includes two statutorily independent bodies (Victoria Police and the Office of Public Prosecutions), over which DOJ has no control. This is not an ideal arrangement, and undermines the Scheme's governance. This means the Scheme heavily relies on each stakeholder to be as efficient and effective as possible. Additionally, if one stakeholder is not performing, DOJ has no practical way to influence improvement. This has the potential to affect the whole Scheme.

These weaknesses mean that the Scheme relies on effective cooperation to succeed. While there are elements of cooperation, the formal cooperative arrangements have not been effective. This is evidenced by the consistent findings in the Scheme reviews around governance, and the routine breakdown in the functioning of the oversight committees.

Governance structures

Victoria's governance arrangements are broadly consistent with other Australian approaches to asset confiscation. Recognising the limitations of the current arrangements, alternative organisational structures to address governance weaknesses have been recommended to the government, and pursued by the government, at different times over the past five years.

In August 2010, the government requested DOJ to further develop the option of an integrated agency to focus on criminal and civil forfeiture and report back in February 2011. This timing coincided with the state election and subsequent change of government in November 2010.

In January 2011, the Attorney-General, in response to advice on continuing with the reform work for a single entity, noted that a change of direction was likely, but that it was not possible to make a decision on the options as proposed.

Consequently, work to further develop the single entity has not progressed and the status quo governance arrangements remain, and their weaknesses persist. As there is no clear plan to address these issues, it is likely that the Scheme will remain limited in its effectiveness and efficiency.

3.4 Planning and resources

Sound planning is a key part of effective governance and management. It enables agencies and its business units to define objectives and how these will be achieved. Typically, planning involves routine environmental scanning of the operating environment to understand risks and opportunities, to identify strategic issues and gaps, and to identify service demands. Sound planning also involves identifying the tools, actions and resources needed to achieve the stated objectives, maximise opportunities, address issues and gaps, manage demand and mitigate risks.

There is a great necessity for sound planning for the Scheme, given the number of agencies involved, their differing roles and the need for integrated planning with partner agencies.

Effective planning for asset confiscation does not occur at the Scheme level, and varies across the three agencies. The absence of effective planning is most notable at Victoria Police, which is essentially the driver of Scheme activity. This undermines the Scheme's ability to achieve its objectives.

3.4.1 Scheme planning

Despite reviews since 2008 identifying the need to improve the Scheme's strategic planning, no effective planning has been undertaken. There is no plan that brings together information about the Scheme's opportunities and risks that clarifies the objectives and outcomes, how performance will be assessed, or its direction or priorities.

ACSEMG is responsible for establishing such a plan, and the absence of a plan represents another failing of this important oversight and coordinating body. In the absence of a Scheme-based plan, Scheme planning relies on the planning activities of the individual agencies. This either occurs in a limited way, or not all, and not in a way that considers the role of each Scheme agency and maximises integration.

3.4.2 Agency planning

Criminal Proceeds Squad

Victoria Police, and more specifically the Criminal Proceeds Squad (CPS), perform a significant role within the Scheme. Victoria Police is responsible for identifying assets for confiscation, primarily through investigations, and subsequently generating work for both the Office of Public Prosecutions' Proceeds of Crime directorate (POC) and DOJ's Asset Confiscation Operations (ACO)—both of which perform reactive roles.

The overall success of the Scheme is heavily dependent on how effectively Victoria Police and CPS plans and performs. Given Victoria Police's role in the Scheme, and in asset confiscation more generally, there is a greater need for it to plan effectively. Regular turnover of CPS staff—particularly its management—makes strategic and business planning more critical.

CPS does not effectively plan as part of its activities. It does not have any strategic or business plans, and other than at a high level, what it is tasked with doing is unclearly documented. It is not clear that CPS has undertaken or documented any assessments of the proceeds of the crime-operating environment, including where there are opportunities, priorities, gaps or challenges.

Victoria Police advised that operational and strategic plans for CPS are best developed under the Scheme's own governance and performance management arrangements.

While planning at the Scheme level is required, this does not remove the need for planning by CPS. It is inappropriate for the Scheme to perform this planning on behalf of CPS—not least because CPS does not exclusively service the Scheme. It needs to undertake its own planning, that links to the planning of the Scheme.

The main consequence of the lack of planning is that it is unclear precisely what role CPS has in relation to criminal proceeds. New staff have no coherent guidance about CPS and its activities and functions. The lack of CPS planning also limits the ability of other Scheme agencies to plan given they have little understanding about CPS priorities. In addition, it means that neither CPS nor anyone else is able to assess the effectiveness, efficiency and economy of CPS because they have nothing against which to assess its performance.

The only planning-related document available is a draft 2013 action plan that CPS has developed to guide it. There are no action plans for previous years, and while still draft, there is no apparent mechanism to monitor progress. The action plan details 20 actions, although it is unclear how these actions were identified, how they fit into the 'bigger picture' for proceeds of crime within Victoria Police, or how they complement anything done as part of the Scheme.

The actions have been categorised against time frames that are either short term, medium term or long term. It is unclear what these terms mean, which in addition to there being no monitoring, makes it difficult to assess progress. Critically, there is no information about the resources required (financial and human) to implement these actions, or how the actions will be implemented. Each action needs a detailed plan underpinning it, which does not exist.

Further undermining CPS's ability to plan is its inability to obtain data to support planning around the proceeds of crime-operating environment. While assertions have been made that cases are more complex and are taking longer, there is no supporting evidence.

Proceeds of Crime directorate

POC's role in relation to asset confiscation is necessarily a reactive one, based on the assets that Victoria Police identifies for confiscation, and the number of supporting affidavits it sends to POC. Given this, its planning is partly reliant on there being effective planning at CPS. This would enable it to understand the priorities, and the active and planned investigations across Victoria Police, and plan strategically and operationally around these.

Regardless of the lack of planning at CPS, POC does not have effective planning systems and processes in place. It has no strategic or business plans that detail the broader and longer-term issues impacting on its role, the external workload pressures, what it aims to achieve each year, its priorities and its resource needs.

POC has articulated five goals in its practice manual. While these are intended to provide direction, in the absence of a plan it is unclear how POC intends to achieve these goals, or how it will assess achievement of the goals.

Asset Confiscation Operations

Like POC, ACO's role is a reactive one as it responds to the orders that POC obtains in court. This presents the same challenges in terms of effective planning if the other stakeholders in the process are not planning. However, unlike either CPS or POC, DOJ and ACO have comprehensive planning around the Scheme and asset management and disposal activities—with some weaknesses.

Planning occurs within Infringement Management and Business Services, which is the business unit overseeing ACO. This planning includes both a strategic plan and a business plan. In the strategic plan, the focus is on the Scheme itself—reviewing the Scheme—rather than ACO. However, as DOJ is accountable for the Scheme, this focus on reviewing the Scheme is appropriate.

The business plan identifies priorities and actions related to ACO. However, there is not always a clear alignment between the priorities and actions. While one priority is to 'make it as easy as possible to address infringements and confiscation orders', there is no action to address this.

In addition, for two priorities where actions have been identified, there is either no evidence that the actions have been completed, or they have not been completed. One action was for ACO to engage with the main Scheme agencies by December 2011. While ACO state this occurred, when it occurred and the nature of the engagement cannot be substantiated through other forms of evidence. That ACSEMG did not meet during this time indicates that the engagement did not occur through this forum.

The Infringement Management and Business Services business plan also included actions for ACO, to analyse the impacts of legislative changes, and to analyse procedural and system changes. There is no evidence that these have occurred. This lack of action highlights a potential weakness in the monitoring and reporting of progress against actions, particularly given that implementation plans have been developed for each action.

3.4.3 Scheme and agency resources

Having sufficient and appropriate resources is essential if the Scheme is to achieve its objectives. The Scheme itself does not have specific resources so individual agencies are responsible for determining whether they have the resources they need. Requests as part of the annual state budget process are, however, coordinated through DOJ.

Criminal Proceeds Squad

Victoria Police assesses its resourcing needs through annual workgroup reviews. These reviews provide an opportunity for managers to raise resourcing issues with senior management. At the workgroup review conducted in March 2013, a range of issues were identified relating to CPS resourcing, particularly around the staff numbers, capability and capacity, oversight and the nature of the work. In part to address these issues, CPS requested a further nine operational staff. Through the annual budget process, CPS also requested funding for two forensic accountants.

While CPS was successful in obtaining funding for the forensic accountants, these requests have occurred without any demonstrated need, without effective operational and strategic planning, and without any demonstrated assessment of improved outcomes. CPS's inability to collate, analyse and report on management information has diminished its ability to demonstrate these things.

Additional resources are unlikely to make much difference to CPS without first addressing the major structural, operational and administrative issues affecting CPS. Significant effort should be directed to maximising the efficiencies and effectiveness of CPS and its systems, processes and current resources, including developing sound plans to underpin the assessment of resource requirements.

The ability of CPS to effectively and efficiently perform its role has also been hindered by the way it has structured its resources. Operational staff are allocated across seven teams. While these staff are all considered part of CPS, in reality four teams are either embedded in, or seconded to, Victoria Police taskforces. The activity of these teams is counted in CPS statistics, although in practice they have little, if any direct connection with CPS, and the Officer in Charge of CPS has limited oversight of these staff.

This arrangement has reduced CPS's ability to undertake more targeted investigations. Recognising this, CPS has started to recall staff embedded from the taskforces to improve its capability and capacity.

Given the routine nature of much of CPS's work, Victoria Police should consider whether the current model of resourcing CPS is the most economical. Many CPS functions could be performed by unsworn staff at a significantly lower cost, while also freeing up sworn staff for other Victoria Police priorities. However, it is recognised that such a model may be inconsistent with its commitment to reduce the number of unsworn staff.

Proceeds of Crime directorate and Asset Confiscation Operations

Both POC and ACO have sufficient and appropriate resources to perform its functions.

Following the May 2013 budget, POC received funding for an additional eight solicitors and one legal administrative assistant. This will bring POC's resources to 22 staff, which it considers sufficient to address demand from Victoria Police. POC also has access to two forensic accountants on secondment from ACO.

Previously, nine of POC's legal staff were funded through supplementary funding, which lapsed every four years. The new funding is ongoing, and should eliminate the uncertainty around these positions.

Similarly, while ACO did not receive any additional resources in the May 2013 budget, it considers its resources to be adequate to perform its functions.

3.5 Risk management

Effective risk management is fundamental to public sector operations, as well as effective governance and planning. It enables entities and agencies to identify and manage risks and opportunities that may arise while performing their functions.

Risk management across the Scheme and Victoria Police is inadequate to properly manage known risks. Risk management practices within both POC and ACO are more advanced.

3.5.1 Asset Confiscation Scheme

When departments work across their traditional boundaries in a joined-up way, it is important that the particular risks and opportunities inherent in this arrangement are identified and managed, because the actions of individual departments are likely to affect the activities of others. From a joined-up perspective, common risks include:

- parties working towards different goals, with outcomes not being achieved if goals for the initiative are not shared or clearly defined
- objectives not being met if sufficient and appropriate resources are not available, including skilled people
- initiatives failing and not meeting their objectives when leadership is unclear
- difficulties in attributing accountability for success or failure if roles and responsibilities are unclear.

No adequate assessment of risks for the Scheme has been undertaken. The 2012 evaluation identified five risks for the Scheme. However, no ratings were applied to the risks and no mitigation strategies were identified. Of note, there were no risks identified in relation to the governance of the Scheme, which has been shown to be one of the more significant limiting factors. Not recognising these risks or developing actions to address them has likely contributed to the lack of action to improve the Scheme.

3.5.2 Victoria Police and the Criminal Proceeds Squad

Risk management around asset confiscation occurs at the Crime Command (formerly the Crime Department) level. It has identified one risk relating to Victoria Police's ability to adequately identify and restrain assets. This is rated as extreme, given Victoria Police's view that the likelihood of this not occurring adequately is almost certain and the consequence is major. It has also rated the existing controls as poor. While mitigation strategies have been developed, these are limited and unlikely to address the breadth and significance of the issues affecting CPS.

There is no risk management plan within CPS, even though a range of problems with the squad are well known to CPS management. This reflects a further weakness in the planning process and CPS would benefit from developing a squad-specific risk assessment to better identify and manage its operational and strategic risks.

Victoria Police advised that, like its operational and strategic planning, risk management for CPS would best be developed under the Scheme's own governance and performance management arrangements. Again, it is inappropriate for the Scheme to perform this on behalf of Victoria Police.

3.5.3 Proceeds of Crime directorate and Asset Confiscation Operations

Both POC and ACO have developed risk management frameworks that identify risks pertinent to the functions they perform. For POC, risks are operational. There is no assessment of strategic risks, with the notable absence being the historical reliance on supplementary funding and the subsequent risks this presented to performing its functions.

However, given the well documented weaknesses with the Scheme, and well-known weaknesses among the Scheme stakeholders with respect to certain elements of the asset confiscation process, it is notable that the risk frameworks for both agencies do not address these issues more broadly. Both agencies should review their risk frameworks in light of this.

Both agencies have also developed adequate mitigation strategies, with ACO reviewing its risks quarterly thereby enabling it to remain assured that its mitigation strategies are still relevant and appropriate.

Recommendations

The Asset Confiscation Scheme Executive Management Group should:

9. clarify and confirm the objectives of the Asset Confiscation Scheme
10. update the terms of reference for the Asset Confiscation Scheme Executive Management Group and Confiscation Operations Committee, and schedule routine reviews so that they remain current
11. clarify and confirm the Asset Confiscation Scheme governance arrangements, including leadership, accountability, roles and responsibilities and issue resolution mechanisms
12. undertake a risk assessment for the Asset Confiscation Scheme, including the risks associated with working in a joined-up arrangement
13. develop strategic and operational plans for the Asset Confiscation Scheme, linked to Asset Confiscation Scheme agency planning.

Victoria Police should:

14. develop strategic and operational plans, linked to those of Crime Command, the Asset Confiscation Scheme and other Asset Confiscation Scheme agencies
15. undertake a risk assessment of the Criminal Proceeds Squad and its operating environment
16. review the resourcing model for the Criminal Proceeds Squad, including the cost-effectiveness of using Victorian Public Service staff.

The Office of Public Prosecutions should:

17. develop strategic and operational plans, linked to those of the Asset Confiscation Scheme and other Asset Confiscation Scheme agencies.
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4 Scheme operation

At a glance

Background

There are three key agencies working together to achieve the objectives of the Asset Confiscation Scheme—Victoria Police, responsible for identifying assets, the Office of Public Prosecutions (OPP), responsible for restraining assets, and the Department of Justice (DOJ), which manages and disposes of assets.

Conclusion

While Victoria Police is the driver of asset confiscation, its ability to perform this role is undermined by capacity and capability weaknesses. Ultimately, Victoria Police is not maximising opportunities to identify assets for confiscation. The other agencies necessarily react to the work generated by Victoria Police. While opportunities exist to enhance their operations, both OPP and DOJ are generally performing their core asset confiscation functions effectively and efficiently.

Findings

- The majority of the Criminal Proceeds Squad's (CPS) asset confiscation work relates to victims of crimes, rather than profit-motivated, serious and organised crime.
- CPS does not effectively prioritise its asset confiscation work, or use investigative tools in a way that maximises the identification of assets.
- CPS's staff training is informal, inconsistent and ad hoc, reducing its capability.
- OPP effectively and efficiently restrains assets through the courts.
- The Asset Confiscation Operations unit effectively, efficiently and economically manages and disposes of restrained and forfeited assets.

Recommendations

Victoria Police should:

- refocus CPS' investigations to be predominantly focused on profit-motivated serious and organised crime
- redevelop practices so that investigative tools are used to their full potential
- develop and implement a CPS training strategy that includes consistent compulsory induction for new staff members.

4.1 Introduction

There are three key agencies working together to achieve the objectives of the Asset Confiscation Scheme (the Scheme)—Victoria Police, responsible for identifying assets, the Office of Public Prosecutions (OPP), responsible for restraining assets and the Department of Justice (DOJ), which manages and disposes of assets.

For the Scheme to achieve its objectives, each of these agencies needs to perform its functions effectively and efficiently. This is particularly important for Victoria Police, which drives the Scheme through its key role of identifying assets for confiscation.

4.2 Conclusion

Victoria Police is the driver of asset confiscation, but it is unable to effectively and efficiently perform this role. The Criminal Proceeds Squad's (CPS) performance is undermined by operational deficiencies and a focus on victims of crime work that does not directly or demonstrably contribute to the Scheme's objectives to deter, disrupt and deprive criminal activity. Ultimately, Victoria Police is not maximising opportunities to identify assets for confiscation related to serious, profit-motivated crime.

The other agencies—OPP's Proceeds of Crime directorate (POC) and DOJ's Asset Confiscation Operations unit (ACO)—necessarily react to the work that Victoria Police generates. While opportunities exist to enhance their operations, both agencies are generally performing their core asset confiscation functions effectively and efficiently.

4.3 Identifying assets for restraint

Victoria Police, and more specifically CPS, is responsible for identifying assets for restraint. The existence of a dedicated squad is a positive development towards achieving the Scheme's objectives, and it is evident that CPS is performing asset confiscation work.

Issues relating to the type of investigations CPS undertakes, how it undertakes them, and administrative weaknesses around the prioritisation and allocation of cases, mean it is not operating as effectively or efficiently as it should.

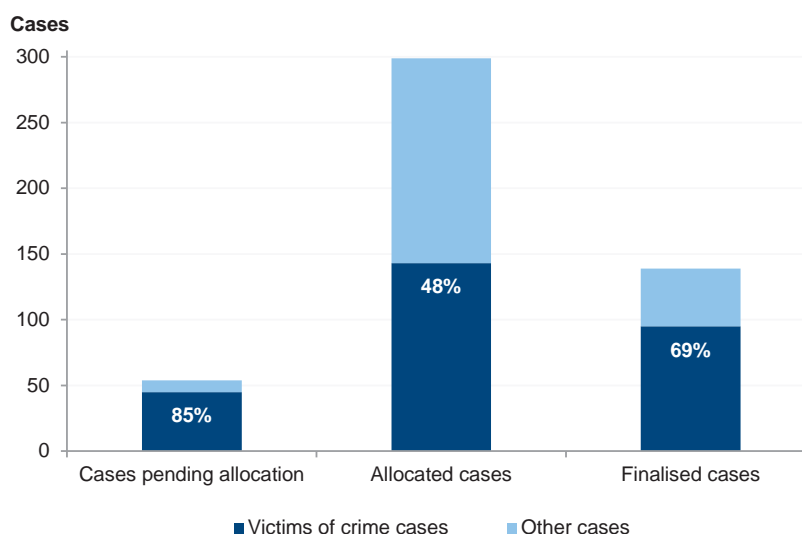
4.3.1 Investigations

The Scheme's focus is on serious and organised crime. Similarly, CPS considers that its focus is on the 'upper echelons of organised crime'. However, in practice, up to 60 per cent of CPS's work relates to victims of crime.

Victims of crime investigations involve CPS identifying the restrainable assets of an offender that the courts have charged, are about to charge, or have been found guilty or convicted of an offence. These investigations are undertaken on behalf of the victim, and typically POC also acts to restrain these assets in court, also on behalf of the victim. In most cases, it is up to the victim to seek restitution or compensation and enforce the courts' orders.

Analysis of CPS data, excluding taskforces, between 2009 and March 2013 identifies that of a total of 515 cases, 62 per cent were victims' compensation cases and 38 per cent were forfeiture cases. Figure 4A shows the proportion of victims of crime work by pending, allocated and finalised cases.

Figure 4A
Percentage of CPS victims of crime work, 2009 to March 2013



Source: Victorian Auditor-General's Office from Victoria Police data.

While victims' compensation is a purpose of the *Confiscation Act 1997*, it is unclear why CPS is performing this function, at least to the current extent. CPS performs the key role of identifying assets on behalf of victims. This work is time intensive and anecdotally results in few victims pursuing the offender in court. The focus on this type of work detracts from what should be its focus on profit-motivated, serious and organised crime, which is the Scheme's focus.

Consideration needs to be given to whether CPS remains the responsible agency for performing this work—particularly if the Scheme's objectives, with a focus on profit-motivated, serious and organised crime, are to be given every chance of being achieved. Victoria Police advised that while it intends to decentralise victims' compensation work within Victoria Police in the short term, it sees an opportunity for government to improve services to victims in the longer term by developing a facility external to Victoria Police to manage and perform this important service.

Investigative tools

CPS has adequate investigative tools and sources of information available to it to identify assets for confiscation. Common examples of information sources include financial institutions and taxation information. The Victoria Police section 139A reports, and a review of CPS activities identifies that these information sources are routinely accessed.

However, CPS is not making full use of its investigative tools, and may therefore be missing important assets. Through this audit, Victoria Police has been made aware of this weakness. Specific details have been excluded from this report due to operational sensitivities.

Investigation training and guidance

While CPS staff are typically experienced investigators, proceeds of crime investigations requires specialist knowledge around the investigation process and the law relating to asset confiscation. With regular turnover of staff within CPS, effective training is particularly important for new squad members.

There is inconsistent training on asset confiscation within CPS. There is no formal training program, and while an induction package exists, this was developed by one staff member and used primarily for new staff allocated to that team. There is no process to enable the sharing of this information, and no requirement that it is used consistently across CPS.

This ad hoc approach to training and induction means that new staff can experience training that ranges from reactive guidance and on-job training, through to a comprehensive overview and detailed guidance. This approach has obvious capability risks for CPS.

Criminal proceeds investigation guidelines are used by most CPS staff as a reference and to complement any training they receive. While the guidelines are a positive initiative, there are a range of weaknesses with them that undermine the effort to investigate criminal proceeds matters.

The guidelines are not routinely reviewed and updated, despite requiring annual review and update. While they have recently been reviewed and approved, this is the first review since their creation. Given regular changes to case law around asset confiscation, irregular updates create risks that investigators are not fully aware of the current law.

There is inadequate information about the roles and responsibilities of CPS team members, including responsibility for quality control such as checking affidavits before sending them to OPP, and monitoring the progress of cases.

Significantly, there is no clear and consistent guidance on the overall value of assets worth restraining. CPS staff use the guidelines, seek advice from POC and also have their own views on what is a reasonable value. Through this audit, Victoria Police has been made aware of this weakness. Specific details have been excluded from this report due to operational sensitivities.

4.3.2 Prioritising investigations

In receiving referrals, CPS is required to follow Victoria Police's accountability and resource model. This model dictates who is responsible for investigating certain categories of crime. In essence, more significant crime is investigated by specialist squads, such as CPS, while less significant crimes are investigated by regional staff.

Rather than use the established prioritisation model, CPS has developed its own response criteria that are designed to guide CPS on how it prioritises the cases that come in from across Victoria Police and from victims of crime. The criteria are high-level statements on the kinds of activities CPS performs. However, the statements do not provide any criteria for prioritising cases. Consequently, while a Category One matter should have priority, a Category Two matter may take priority if it has more to offer in terms of proceeds for restraint and forfeiture. Consequently, there is nothing to guide consistent or predictable decision-making.

Furthermore, even the response criteria are not consistently used, with CPS staff advising that prioritising and allocating cases within CPS adopts a 'common sense' approach that incorporates six undocumented 'principles'.

Figure 4B
Prioritisation and allocation principles

Principle	Details
The age of the offences	There is less likelihood in receiving a compensation pay-out on an older crime
The age of the victim	Action would be taken sooner if a child was the victim
Whether the offender is in a position to make restitution	If an offender has no assets, there is no point in taking action
What impact the crime has had on a victim	Fraud of a small business can cripple it, where as a bank will continue to function
Whether the victim will file for a compensation order once the assets have been seized	Assessed by whether the victim has legal representation
The risk that the assets/cash will dissipate	

Source: Victorian Auditor-General's Office from Victoria Police data.

These 'common sense' principles used in assessing cases are weighted towards victims of crime cases, with a lack of focus on automatic and civil forfeiture cases, as this reflects a majority of the cases received by CPS.

If these principles are followed as documented above, then there is a risk that prioritisation will not be undertaken appropriately and action to investigate will not start in a timely way. The consequence is that assets may dissipate before action can be taken, reducing the likelihood of the Scheme's objectives being met.

Subsequent advice from CPS on prioritisation indicates that other criteria determine how CPS prioritises. It has advised that 'each case is determined on its merits with regard to the likelihood of a successful prosecution and the potential application of the *Confiscation Act 1997*'. These further criteria demonstrate confusion around the prioritisation process, and exacerbate the risks of dissipation.

Allocation

Acting quickly to restrain assets automatically forfeited is essential to avoid the assets being dissipated. Victoria Police advised that automatic forfeiture cases ‘nearly always’ have priority over victims’ compensation cases. Based on Victoria Police’s prioritisation model, forfeiture cases should always take priority over victims’ cases. Weaknesses in the way CPS record their data means it is not possible to get accurate information for all cases. However, it is evident that forfeiture cases are not always prioritised. Nor is there prompt action to allocate cases, despite the time criticality of restraining assets to minimise the risk of asset dissipation. Of the 515 cases pending, allocated and finalised between 2009 and March 2013:

- there were 46 victims cases and eight forfeiture cases pending allocation
- of the eight forfeiture cases, three had no date of receipt, meaning it is not possible to determine how long they have been pending—one case had been pending for at least 27 weeks
- there were two examples of victims’ cases allocated before pending forfeiture case.

CPS needs to take action to address these weaknesses by developing and enforcing the consistent use of case prioritisation and allocation techniques. This should include improvements to the way that it records this information in its systems.

4.4 Restraining, managing and disposing of assets

Restraining property, through the use of restraining orders, is an important stage in the asset confiscation process. Its purpose is to prevent the disposal of property so that it will be available for a potential forfeiture order, an automatic forfeiture, a pecuniary penalty order, or for restitution or compensation.

Broadly, this process involves POC applying for restraining orders in the County and Supreme Courts, and ACO identifying the assets in the restraining order. Delays in obtaining restraining orders and securing assets increases the risk that the assets will be dissipated.

While these agencies’ functions are necessarily reactive—POC reacting to the outcome of CPS investigations, and ACO reacting to the outcome of the restraining order application process—both are performing this part of their roles effectively and efficiently.

4.4.1 Restraining assets

POC is performing its core role, which is to obtain restraining orders. It is evident, through documentation, file review and observation, that it is performing functions including finalising the development of affidavits, attending court to obtain restraining orders, and participating in exclusion application processes.

The data POC keeps to record the timeliness of its processes and the outcomes of restraining order applications contains weaknesses. This includes missing fields for earlier years and a small number of duplicate entries and errors. However, it is still possible to ascertain that restraining orders are dealt with efficiently, particularly from a timeliness perspective, and are effective in terms of the very high rate of successful applications. This was also the case for its role in providing restraining orders to both ACO and CPS.

POC's activities are supported by comprehensive policies and procedures.

4.4.2 Managing and disposing of assets

The final stage in asset confiscation process is managing and disposing of restrained and forfeited assets. This is the role of ACO.

ACO has policies and procedures in place to guide its activities around asset management and disposal. However, there are a range of weaknesses with the policies and procedures that, while not material, have the potential to lead to inconsistent approaches to managing and disposing of restrained and forfeited assets. These weaknesses include incomplete sections of the procedures and unclear guidance around seeking advice and competitive procurement processes.

At the present time, the procedures are understood and used by staff in ACO. This is because ACO's staff base has been stable over a number of years. However, ACO should properly document its processes and procedures to ensure they better describe the work undertaken. This is particularly important to ensure that effective and efficient processes currently in place are not lost, should staff leave ACO. ACO has advised that it has recently reviewed the manual, and will consolidate three chapters dealing with similar issues. It has also started work to complete the remainder of the manual.

Managing, maintaining and disposing of property

ACO's practices and controls around the management, maintenance and disposal of forfeited assets are generally effective and economical. Efficiency, in terms of timeliness for real property, is discussed in Part 2.

Real property

Real property is the most complex asset that ACO disposes of because a range of scenarios can arise during the disposal process. ACO cannot access this property before it registers the Attorney General's interest on the property title. Until this time, ACO can only view the property from the street.

For real property, such as land and houses, adequate processes exist to maximise the return to the state and minimise management costs. Independent valuations are sought from the Valuer-General, with the assessed market value set as the reserve price. Having the properties independently valued ensures that the process of setting a reserve price for auction is transparent. ACO will not sell a property that does not meet the reserve price.

ACO has sound processes that enable it to assess what work it needs to do before it can sell the property. It undertakes only essential work so that the property is safe and presentable for sale. Additionally, ACO has a range of processes in place to demonstrate transparent processes, minimised costs and maximised returns to the state. These processes include competitive procurement processes for maintenance, as well as engaging someone to sell the property.

Motor vehicles and other property

Victoria Police sells forfeited motor vehicles and other smaller property on behalf of ACO, governed by a memorandum of understanding. The disposal of assets is undertaken under contracts that Victoria Police has in place with three third party providers specialising in the auction of cars, jewellery and other goods.

The memorandum of understanding specifies performance expectations, particularly in relation to the timely collection and disposal of assets as required by ACO. The performance indicators above do not specify the quality of the service offered to ACO, and there are no details as to what constitutes the timely collection or disposal of assets. However, as many of the assets are held by Victoria Police, ACO has little control over the collection and disposal process.

Bank accounts, shares and cash

ACO has sound processes for recovering money in bank accounts where the court has ordered forfeiture. This includes processes where the amount of recovered funds differs from what was expected, and processes for transferring forfeited funds into a trust account.

Shares make up a very small number of the forfeited assets that ACO deals with. While 15 share portfolios have been forfeited since 2007–08, apart from one significant year, the gross value of this asset class ranges from between \$0 (in two years) to \$200 000. Processes are in place to manage this asset, although they lack clarity around competitive procurement—particularly for portfolios in excess of \$1 million.

Given that ACO adopts a request for quotation process for the sale of houses that do not exceed \$1 million, and also for maintenance works that do not exceed \$1 000 at times, the process for larger share sales should also be transparent. There is a need for ACO to adopt a consistent approach to the sale of various classes of assets.

Cash is typically seized by Victoria Police at the time of arrest and kept as evidence. At the time of arrest, if the cash seized is included in the affidavit for restraint, this cash is forfeited. ACO has adequate processes to ensure that any seized cash is transferred to it, and subsequently transferred to ACO's trust fund.

Asset Confiscation Operations trust fund

ACO manages a trust fund which it uses to deposit monies from the disposal of forfeited property. The trust fund was established to provide a safeguard to mitigate any claims for damages that may be made against the Director of Public Prosecutions, for undertakings he gives to the court for assets subject to the operation of the restraining order.

ACO has adequate procedures and controls in place to manage the trust fund, including controls for cash movements and financial transfers. Case files include appropriate evidence of financial transactions and provide the required assurance around the use of controls.

ACO's processes and controls are linked into, and dependent on, DOJ. ACO has oversight of the funds it manages, but it does not have autonomous control over the trust fund. ACO also adheres to the financial delegations of DOJ, rather than the higher delegations that the ACO's assistant director has. Both these controls help to ensure that ACO manages the risk of fraud occurring within ACO. ACO also monitors its financial position through monthly reconciliations.

Recommendations

Victoria Police should:

18. refocus the Criminal Proceeds Squad's investigations to be predominantly focused on profit-motivated, serious and organised crime
19. reallocate responsibility across the organisation for assisting victims of crime in identifying and restraining assets
20. redevelop practices to ensure that investigative tools are used to their full potential
21. develop and implement a Criminal Proceeds Squad training strategy that includes consistent, compulsory inductions for new staff members
22. establish processes for routine and regular review of criminal proceeds guidance
23. develop, document and enforce the consistent use of case prioritisation and allocation procedures
24. improve the way that the Criminal Proceeds Squad records prioritisation and allocation information to enable better management reporting.

The Department of Justice should:

25. review and update the procedures for the Asset Confiscation Operations unit.
-

Appendix A.

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994* a copy of this report was provided to the Department of Justice, the Office of Public Prosecutions and Victoria Police.

The submissions and comments provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Response provided by:

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RESPONSE provided by the Secretary, the Department of Justice



Department of Justice

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23 AUG 2013



Our ref: CD/13/319114

Mr John Doyle
Auditor-General
Victorian Auditor-General's Office
Level 24, 35 Collins Street
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Dear Mr Doyle

Performance Audit - Asset Confiscation Scheme

Thank you for providing me with the audit report on the Asset Confiscation Scheme (ACS). As the department responsible for the management and governance of the Scheme, we welcome the report as a constructive contribution to our commitment to fight serious crime and organised crime in Victoria. We will work with our Scheme partner agencies, Victoria Police and the Office of Public Prosecutions, to respond to the findings and recommendations.

I note in particular the recommendations in relation to scheme governance and performance in future works, and advise that work is already well advanced to improve these aspects of the ACS Operation.

The department also welcomes the finding that the Asset Confiscation Operations (ACO) is generally performing its core asset confiscation functions efficiently and effectively.

Yours sincerely

Greg Wilson
Secretary



RESPONSE provided by the Solicitor for Public Prosecutions, Office of Public Prosecutions Victoria



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23 August 2013

Our Ref: CH:ed

Mr John Doyle
Auditor-General
Victorian Auditor-General's Office
Level 24, 35 Collins Street
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Dear Mr Doyle

Performance Audit Report *Asset Confiscation Scheme*

Thank you for providing me with the proposed report on the Asset Confiscation Scheme.

I welcome the finding that the Office of Public Prosecutions is generally performing its core asset confiscation functions effectively and efficiently. I also note the recommendations and opportunities for improvement, at Scheme level and within the Office of Public Prosecutions (OPP).

As recognised in the report, the OPP has started work to develop a comprehensive performance framework that will enable performance to be assessed against proceeds of crime outputs and outcomes (Recommendation 6). This framework will enhance the OPP's existing datasets, referred to in the report as showing that *"restraining orders are dealt with efficiently, particularly from a timeliness perspective, and are effective in terms of the very high rate of successful applications"*.

The OPP is working to improve data quality and enhance quality assurance processes around data collection and reporting (Recommendation 7), as part of the development of a new practice management system. Recent redevelopment work has been commissioned to optimise core workflows, compliance and reporting capability for proceeds of crime activity.

Whilst, as noted in the report, the OPP's proceeds of crime activities are supported by comprehensive policies and procedures, work has commenced to further support these activities through more effective planning, internally and at Scheme level (Recommendation 17). At an operational level, the OPP's proceeds of crime lawyers and Victoria Police Criminal Proceeds

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RESPONSE provided by the Solicitor for Public Prosecutions, Office of Public Prosecutions Victoria –continued

Squad have been able to quickly build on existing close, cooperative relationships to begin to capture and align planning activities in a more effective way.

At a Scheme level, all partner agencies are working collaboratively to develop a strategic plan for the Scheme in conjunction with broader activities to implement Recommendations 1, 2, 3, 9, 10, 11, 12 and 13. These activities, driven by the Asset Confiscation Scheme Executive Management Group, include the review and clarification of governance arrangements for the Scheme, strategic planning - encompassing the articulation of objectives, direction, priorities and risks for the Scheme - and the development of a new performance framework for the Scheme.

The OPP is proud to have contributed, with the Scheme partners, in depriving criminals of around \$125 million since 1998-9 (\$96 million since 2007-8), of which \$17 million has been returned to victims of crime. This is no reason for complacency and it is timely to identify opportunities for improvement to the Scheme as it embraces the challenge of operating in an increasingly sophisticated proceeds of crime environment. The Performance Audit Report *Asset Confiscation Scheme* is a welcome contribution to improving the operation of the Asset Confiscation Scheme in Victoria.

Yours sincerely



CRAIG HYLAND
Solicitor for Public Prosecutions

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RESPONSE provided by the Chief Commissioner, Victoria Police



VICTORIA POLICE



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Mr John Doyle
Auditor General
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Dear Mr Doyle

Re: Proposed Performance Audit Report – Asset Confiscation Scheme

Thank you for providing Victoria Police with the opportunity to respond to the Proposed Performance Audit Report (the report) on the Asset Confiscation Scheme. As you will be aware, this audit has come at a time when the Victoria Police Criminal Proceeds Squad is undergoing significant change in the way it conducts its work.

I welcome the insights and recommendations arising from this audit process as a constructive contribution to improving the performance of the Scheme and I look forward to any opportunity to improve the clarity around your audit processes and expectations for Victoria Police.

I advise there is no information within the report that would prejudice any criminal investigation or proceeding known to Victoria Police.

In relation to the recommendations in the report relevant to Victoria Police, I can advise Victoria Police accepts each of the recommendations.

Yours sincerely,


Ken D Lay APM
Chief Commissioner

28/8/2013

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Report title	Date tabled
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