

Western Australian Auditor General's Report



Confiscation of the Proceeds of Crime



Report 5: May 2018

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Confiscation of the Proceeds of Crime



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

CONFISCATION OF THE PROCEEDS OF CRIME

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of the overall audit program. They seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed if agencies are effectively and efficiently identifying, confiscating and distributing proceeds of crime.

I wish to acknowledge the staff at the Western Australia Police Force, the Office of the Director of Public Prosecutions, the Department of Justice and the Public Trustee for their cooperation with this audit.

A handwritten signature in black ink, appearing to read "C. Murphy".

COLIN MURPHY
AUDITOR GENERAL
3 May 2018

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Auditor General's overview

By denying criminals their assets, the State government aims to disrupt criminal activity and reduce the incentive for people to engage in crime. The intent is to send a clear message to the community that crime does not pay. My report finds that the agencies responsible are adequately identifying, freezing and confiscating these assets.



However, there is more that can be done to maintain the assets, understand the outcomes to be achieved from funding agencies and identify opportunities to improve efficiency across the confiscations process. This is particularly important given the constrained resources that agencies are currently operating under.

Naturally the community can benefit when assets are confiscated to remove the incentive to commit crimes. While many of these benefits are difficult or impossible to quantify, some performance measures have been put in place.

The agencies involved in the process have differing views on whether there are issues and what needs to be done to address these. I accept these differing views and trust that my independent report will assist in airing and debating these matters.

On a final note, I was pleased to see that the Criminal Proceeds Confiscation Grants Program, which funds community based programs from the sale of confiscated assets, was soundly managed.

Executive summary

Introduction

This audit assessed if agencies are effectively and efficiently identifying and confiscating property, and distributing proceeds of crime.

We focused on how Western Australia Police Force, the Office of the Director of Public Prosecutions and the Department of Justice ensure crime-related assets are seized, frozen and eventually confiscated under the *Criminal Property Confiscation Act 2000*. We considered the Public Trustee's role in managing and disposing of assets on behalf of the Office of the Director of Public Prosecutions and reviewed how the Department of Justice distributes money from the sale of the proceeds of crime.

Background

WA Police regard the confiscation of proceeds of crime as a key strategy for disrupting criminal activity, especially serious and organised crime. Taking away high-value assets serves the public interest by reducing the incentive for engaging in criminal activities.

Under the *Criminal Property Confiscation Act 2000* (Act) property can be confiscated when it is, for example:

- obtained from a criminal offence
- used to commit a crime (crime used)
- results from crime (crime derived)
- owned, controlled or given away by a declared drug trafficker (drug trafficking asset)
- equal in value to a person's unexplained wealth.

Proceeds from the sale of confiscated assets has increased. In 2013-14, \$8 million was deposited into the Confiscation Proceeds Account and \$10 million in 2014-15. This involved 435 and 443 assets respectively, with most of the financial return to the State coming from the sale of real estate.

Confiscations activity

Together, Western Australia Police Force (Police), the Office of the Director of Public Prosecutions (DPP) and the Department of Justice (Justice) coordinate asset confiscation (Figure 1). While not directly involved in confiscations, the Public Trustee is engaged to manage and dispose of some assets on behalf of the State at the request of the DPP.

The Act applies when a person commits a confiscation offence as defined in the Act. For example, an offence punishable with a prison sentence of 2 years or more. Confiscations activity starts when Police identify assets and apply to a Justice of the Peace for a freezing notice. However, Police may seize certain assets before a freezing notice is issued.

The DPP conducts litigation under the Act and is responsible for the control and management of frozen assets, unless the Court appoints another party. Under the Act, the DPP can appoint others to manage frozen property on its behalf. For example, the Public Trustee, Police or the owner of the frozen property.

If a defendant is found guilty and other conditions met, the DPP can lodge the court documents to confirm confiscation, and organise disposal of the assets. Disposal occurs usually in conjunction with the Public Trustee or Police. The DPP banks proceeds from disposal into the Account.

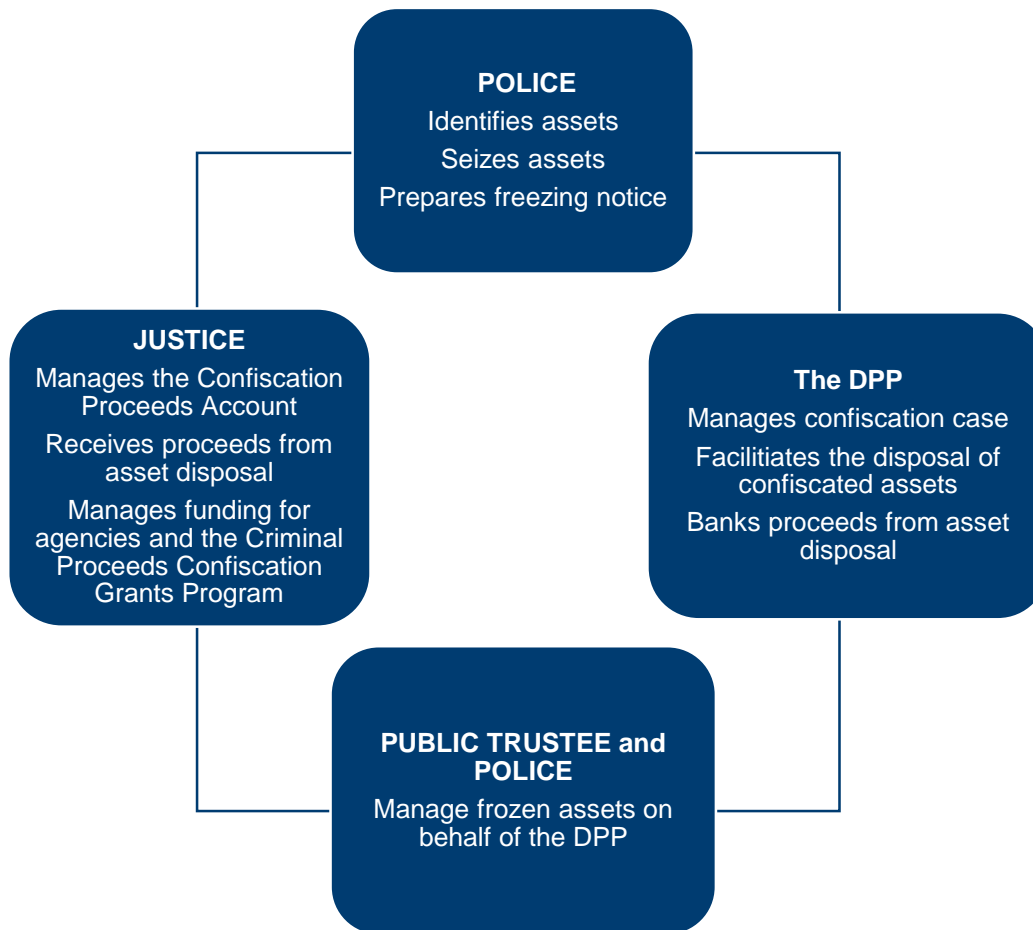


Figure 1: Agencies' roles and responsibilities

If an accused is found not guilty, the freezing notice is usually cancelled and assets returned to the accused. However, a conviction is not always necessary in order for confiscation action to start or proceed. For example, in the case of crime used and crime derived assets.

It is important to note that identifying, stopping and prosecuting crime are the core focus areas for the agencies involved. Crime is not pursued on the basis of assets that can be confiscated.

Confiscation Proceeds Account

Since 2010-11, the annual amount banked into the Account has ranged from \$7.3 million to \$13.0 million. Justice manages the Account. The Confiscation Proceeds Accounts Committee recommends which applications to the Criminal Proceeds Confiscation Grants Program (Grants Program) to fund. Money paid out of the Account (Figure 2) is at the direction of the Attorney General.

Money in the Account is allocated for purposes including:

- administering the Act
- carrying out investigations and operations relating to asset confiscation
- storing seized or frozen assets
- supporting victims of crime
- preventing and reducing drug abuse and drug related crime
- in aid of law enforcement.

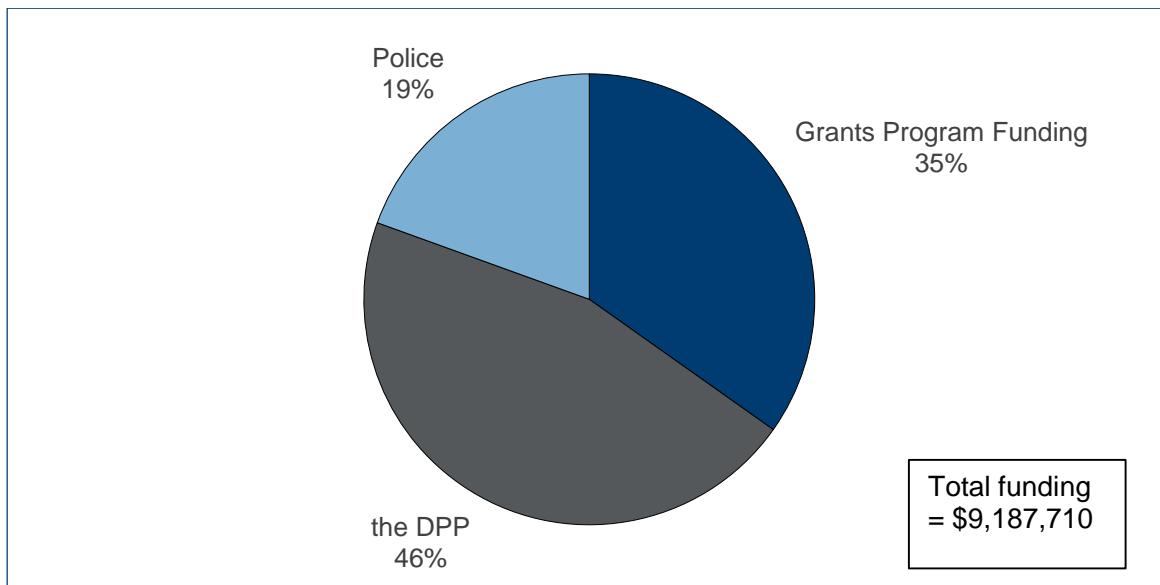


Figure 2: Allocation of funds from the Confiscation Proceeds Account in the 2015-16 financial year

Through a Memorandum of Understanding, Police receive funds from the Account to pay for activities that target organised crime, support public reporting of criminal activity through the Crime Stoppers program, and asset storage. Police’s current funding period runs from July 2016 to June 2018.

The DPP receive Account funds through a Letter of Agreement. The funds are used to operate its confiscations and prosecutions teams. The current funding period runs from 1 July 2017 to 30 June 2021.

When income into the Account exceeds specified annual targets, the DPP and Police become eligible for bonus payments. In 2015 and 2016, the DPP’s target was \$9 million and Police’s target was \$12 million. Bonus payments are subject to the same conditions and acquittal requirements as annual funding.

Neither Justice nor the Public Trustee receive direct funding from the Account. Justice pays for its confiscation activities from its appropriated funding. The Public Trustee fulfils its duties on a fee for service basis using a schedule of predetermined fees and Account funds are used to pay these fees.

In 2015, Justice introduced performance measures into the funding agreements with Police and the DPP. These measure the number of new, ongoing, finalised and successfully prosecuted cases, plus the value of frozen assets and the net proceeds from the disposal of confiscation.

The Account also funds the Grants Program managed by Justice. Grants are paid to a range of organisations, including youth services, charities and religious organisations to fund community based programs supporting victims of crime, and preventing and reducing drug abuse.

Audit conclusion

The DPP and Police follow adequate processes to identify and confiscate the proceeds of crime. Decisions to seize and freeze assets correctly consider the public interest and the likely financial return to the State. However, because the impact of confiscation activities is not easily known or measurable, none of the agencies know what impact confiscating assets is having on crime.

Seized assets need to be better managed to minimise deterioration in condition and value between seizure and sale. Poor management exposes the State to risk if deteriorated assets are returned to their owners, and reduces the financial return available to the State to fund future confiscation activities and the Grants Program.

More clarity is needed around the outcomes that the DPP and Police are to achieve from the \$6.6 million of Account funding they receive each year. This will allow the effectiveness of Account funding paid to these agencies to be assessed. Work is also required to better understand the cost of agencies' confiscation processes and areas where efficiency can be improved. Ensuring Account funds are put to the best use and spent efficiently helps to support the sustainability of confiscations work.

Justice manages the Grants Program well. It has a sound approach for assessing applications, making recommendations for funding and ensuring clear acquittal of funds.

Key findings

The DPP and Police have sound processes to recover property that support confiscations activities and the likely financial return to the State. These include:

- Police's Proceeds of Crime Squad (POCS) follows guidance material to identify the greatest number of assets it can seize in each relevant criminal case.
- POCS staff duly considered asset value and public interest when seizing and freezing assets. We saw instances of cancelled freezing notices when the assets did not meet the value and public interest criteria. This means they are less likely to pursue assets that will not provide a return to the State.
- The DPP adequately completed the necessary steps to progress confiscation matters.

Disposal and banking of proceeds were timely. Our review of case file documentation shows that the DPP took just over 3 months in 2014-15 from the issue of the confiscation declaration, for it to dispose of assets and bank the proceeds to the Account.

Assets are not maintained to maximise their value and therefore the return to the State. We found:

- Agencies are yet to agree on how to maintain frozen assets. In a case we reviewed, the State received \$405,000 less than the original estimated value of a luxury yacht due to inappropriate storage, as well as general depreciation and market changes. The State could be liable to compensation payments if it returns deteriorated assets to their owners.
- Although the DPP has a statutory responsibility to maintain frozen assets, external parties it engages to manage assets on its behalf, such as the real estate owner, Police and the Public Trustee, do not always maintain the assets and the DPP cannot compel them to do so. In one case we reviewed, increased debt and property damage resulted in the State not receiving any money from the sale.

The DPP and Police receive around \$6.6 million in annual funding from the Account but funding agreements provide a limited view into what outcomes are to be achieved. The DPP's most recent agreement, dated 13 September 2017, provides \$21.2 million in funding over the next 4 years, but is silent on what the DPP is to achieve. Similarly, Police receive \$1.15 million each year for combating organised crime but their funding agreement provides no guidance on expected outcomes.

The State does not know if funding to Police and the DPP is spent effectively. Performance measures are assigned to agencies that are not completely empowered to achieve them. For example, Police are required to measure the gross value of frozen assets, but cannot know the ongoing value of frozen assets managed by others.

There is no clear understanding of what it costs the State to carry out confiscation activities. Neither the DPP nor Police assign costs to discrete confiscation processes. We acknowledge that confiscation processes are not the same for every matter and vary in the work required to complete them. However, the State's understanding of the actual cost and sustainability of confiscations work is limited, as are opportunities for the DPP and Police to improve the efficiency of their confiscation processes.

Justice uses a sound approach to distribute Account funds through the Grants Program. We reviewed 36 of the 308 grant applications from 2010 to 2015, and found they were assessed, funded and managed in line with the policy framework and guidelines. All 16 of the successful applicants met the reporting requirements set out by Justice, which included provision of a 6-monthly status and financial report, and a final funding acquittal with project outcomes and audited financial statements. This information provides Justice with a clear view of whether grant recipients spent Account funds correctly.

Recommendations

- 1. By 30 June 2018, Justice, the DPP and Police should agree and implement an approach to maintain frozen assets to preserve asset value and reduce risks of loss to the State.**
- 2. To enhance the governance and accountability for Account funds paid to the DPP and Police, Justice should consider recommending changes to:**
 - a. funding agreements to clarify what outcomes are to be achieved**
 - b. performance measures, to better measure and assess the effectiveness of the use of Account funds.**

Agency responses

Department of Justice

I refer to an email dated 13 April 2018 from your office advising of the amendment to Recommendation 2a in the final report due to the removal of the finding on the use of Confiscation Proceeds Account funding for activities not directly related to confiscations.

While the Department is pleased with this revised finding and the subsequent amendment to the recommendation, I advise that the Department will not be making changes to the funding agreements for the following reasons:

1 Application on the use of Allocated Funds

The Department disagrees with the audit finding that funding agreements for the Office of the Director of Public Prosecutions (DPP) and Western Australia Police Force (Police) provide limited direction on what the money can be spent on. The funding agreements with both agencies were drawn up on advice from the State Solicitor's Office and the Department of Treasury. The funding allocation to the DPP is available for purposes determined by the DPP for its Confiscations Practice (as reflected in the funding agreement), and not just for confiscation activities. The use of allocated funds to the Police is clearly stated in the Memorandum of Understanding (MOU) between the Minister for Police and the Attorney General.

The Department considers there is more than sufficient clarity in the funding arrangements with these agencies; a view shared by the DPP. Both the Department and the DPP have been consistent in our feedback to the Office of the Auditor General (OAG) that under the DPP's funding arrangement with the Attorney General, funds may be used for operational activities not directly related to confiscations. This is in accordance with S131 (2) (g) of the *Criminal Property Confiscations Act 2000* which states that funds may be used 'for any other purpose in aid of law enforcement'.

The intent of the MOU is for allocated funds to be used by Police to increase their capability to combat organised crime in Western Australia. The use of these funds (including what these funds cannot be used for) is clearly stated in the MOU.

These funding arrangements allow the agencies to exercise their discretion in the use of allocated funds within the parameters for which the funds have been allocated. A prescriptive funding arrangement with both agencies would serve little purpose other than severely limiting activities to disrupt crime.

2 Performance Measures / Outcomes

The performance measures were drafted on the advice from the Department of Treasury whose views were:

- Indicators for the DPP appear to strike a good balance between measuring the Confiscation Unit's performance while not using too many resources to compile; and
- Measuring the level and extent of increased police investigations into organized crime fits the intent of the confiscation legislation.

These performance measures provide an indication of outputs and outcomes achieved directly from the efforts invested in confiscation activities. For example, the number of new, ongoing and finalized cases or level and extent of increased investigations into organized crime are good indicators of crime being disrupted. The time and resources used to issue and process freezing notices is secondary as the primary purpose of confiscation activities is to disrupt crime.

Through the performance measures we do know, to some extent, the impact of confiscation activities in disrupting crime.

The Office of the Director of Public Prosecutions

The legislative framework of the *Criminal Property Confiscation Act 2000* ('CPCA') and the fact that different agencies, all of which are independent of each other, have responsibility for different tasks under the CPCA makes it very difficult, if not impossible, for any agency to control or guide the activities of any other agency.

The DPP has long submitted that confiscations activities should be centralised in one agency, with that agency having powers to investigate, issue notices, manage property and conduct confiscation proceedings. This would likely resolve, or at least make possible the resolution of, many of the issues identified by the OAG. Creation of such an agency would require amendment of the CPCA. However, it is understood the scope of this inquiry did not seek to explore the legislative framework or judicial interpretation of it, or the restrictions created thereby.

The DPP does not manage property, lacking the expertise and resources to do so. The responsibility for the management of property, when delegated under the CPCA to the Public Trustee and WA Police, falls upon those agencies. In many, if not most, other cases, the court appoints the owner of the property to manage it. Under the CPCA, it is for those agencies or people to take reasonable steps to appropriately store or manage the property and to appropriately maintain it. The DPP has no power to define the obligation as it applies to others. Further, and in any event, the DPP has no realistic power under the CPCA to enforce compliance with this requirement of the CPCA.

The recommendation that Justice, the DPP and Police should "agree and implement an approach to maintain frozen assets to preserve asset value and reduce risks of loss to the State" fails to address the significant complexities of defining maintenance obligations more specifically than is already contained in the CPCA. It also fails to acknowledge the framework created by the CPCA, the judicial interpretation of obligations under the CPCA, and, again, the inability to enforce compliance, rendering any agreement futile in the case of dispute.

The examples of depreciation in property value cited fail to properly account for some highly significant matters, including the fact that the initial values assigned to property are estimates only, not valuations. Changes in market values of assets can significantly change over the course of a confiscations proceeding, which can take many years to finalise.

In the case of the yacht referred to, the only actual valuation of it (as opposed to estimate) found it would be worth \$300,000 in top condition, and that \$60,000 was required to restore it to that condition. Reasons for any reduction in value over time were not apportioned, rendering attribution of any specific loss to inadequate storage speculative.

It is necessary to strike a balance between expenditure to preserve property and the likely amount to be realised from the sale of the property, if confiscated. The primary purpose of confiscation activities is to disrupt crime, not to generate income. Disproportionate expenditure on maintenance to prevent depreciation, even ordinary depreciation due to the passage of time, may be counterproductive to this purpose if it substantially diverts funds from confiscation and law enforcement activities.

It is unclear what is suggested should have been done to prevent the increase in debt on the frozen house and land. In this regard, as in a number of others, the audit's scope excluded consideration of the critical impact of judicial precedent on the manner in which the DPP complies with its obligations under the CPCA.

The DPP does not disregard factors such as the cost of proceeding or the likely return to the State in conducting confiscations proceedings. However, the complexities of the CPCA and the tasks completed under the CPCA do not allow for a "one size fits all" approach. Analytics are available to enable calculation of annual costs. Identifying exact costs of individual cases or processes would be a costly and wasteful use of resources which are more appropriately spent for the purposes of the CPCA.

The DPP reports its costs to carry out confiscation activities at an aggregate level. Costs are known and reported to the Department of Justice as required under the agreement between the DPP and the Attorney General, which enables the sustainability of the DPP's Confiscations Practice to be determined.

Western Australian Police Force

The Western Australia Police Force generally accepts the findings and recommendations of the Performance Audit: Confiscation of the Proceeds of Crime and will meet the time-frames as specified within the report. However, the Western Australia Police Force is of the view that in accordance with the Key Performance Measures set out in the Memorandum of Understanding – Criminal Property Confiscation Proceeds Funding Arrangements for Organised Crime (2016), detailed information is provided to government outlining key agency operational results and outcomes.

The Western Australia Police Force considers that confiscation funding should be utilised to fund all operational activity of the Proceeds of Crime Squad in managing investigations initiated by them utilising the *Criminal Property Confiscation Act 2000* legislation.

Audit focus and scope

The audit objective was to assess if agencies are effectively and efficiently identifying, confiscating and distributing proceeds of crime. The specific lines of inquiry were:

1. Are agencies effectively identifying and freezing assets acquired through, or used for, criminal activity?
2. Do agencies have a consistent and effective approach for the storage, management and confiscation of the proceeds of crime?
3. Is money distributed from the Criminal Property Confiscation Account in line with the *Criminal Property Confiscation Act 2000*?

In undertaking this audit we:

- analysed information provided by the DPP of all confiscation cases from the 2014 and 2015 financial years
- reviewed a sample of 20 of the DPP's confiscation case files, started between 2007 to 2015 and closed between January 2016 to March 2017
- reviewed a sample of Police confiscation case 'running sheets' from 2017 to assess compliance with Police guidance
- assessed 36 of the 308 applications to the Grants Program received by Justice for Round 9 in 2010 to the latest Round 13 in 2015
- reviewed the funding agreements between Justice and the DPP and Police
- analysed agency financial information
- reviewed publicly available information on confiscation programs in other jurisdictions
- interviewed key staff at the DPP, Justice, Police and the Public Trustee
- visited a seized assets storage facility and interviewed staff.

The audit did not consider confiscations as a result of unexplained wealth.

This was a narrow scope performance audit, conducted under section 18 of the *Auditor General Act 2006* and in accordance with Australian Auditing and Assurance Standards. Performance audits primarily focus on the effective management and operation of agency programs and activities. The approximate cost of tabling this report is \$468,000.

Audit findings

Assets are confiscated properly, but could be better maintained to protect their value

Police and the DPP follow clear processes to confiscate proceeds of crime. This organised approach helps maximise the benefits of confiscations activity and improve the State's return from assets.

Police try to identify the greatest number of assets to maximise the impacts of confiscating them. It has a clear guide on how to identify assets obtained through criminal activity and how to confirm who owns or possesses them. Figure 3 shows the type of assets confiscated in 2014-15, with cash being the most common item. By identifying assets early, Police can intervene before they are moved or licensed to someone else, to avoid detection.

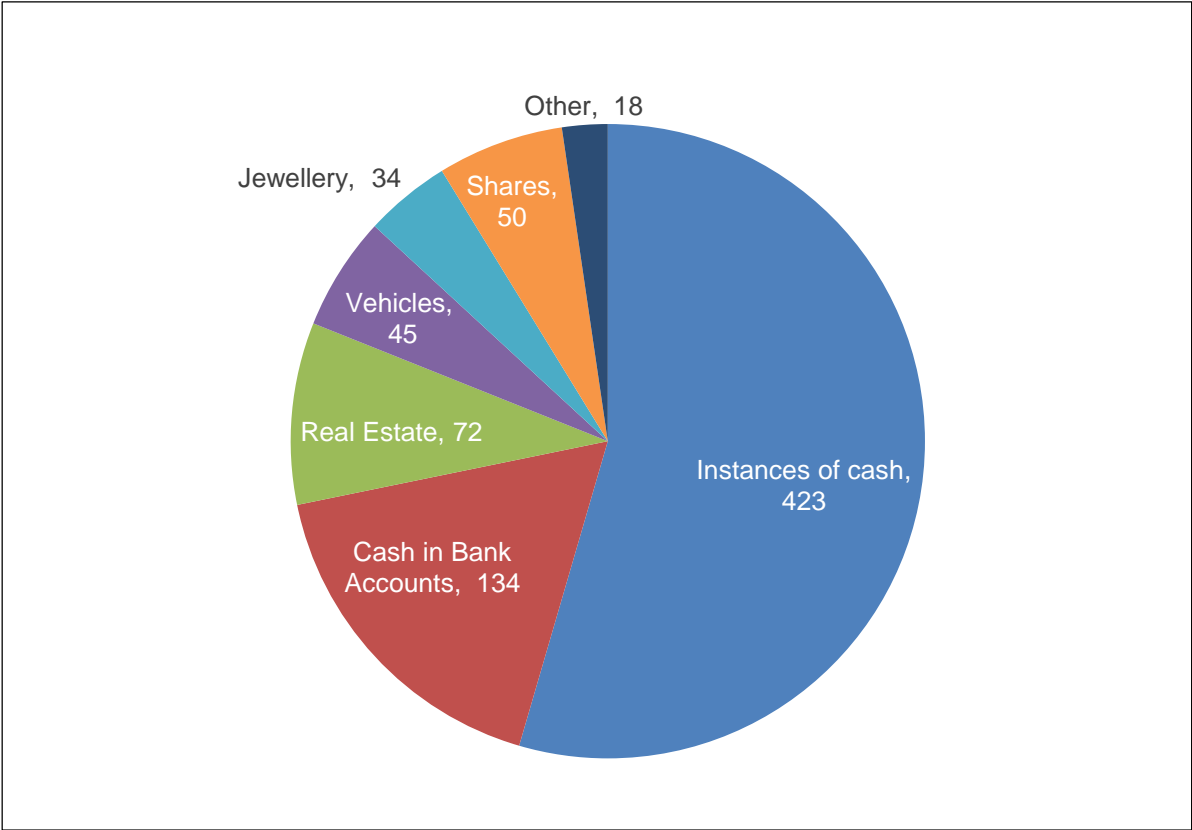


Figure 3: Total number and types of assets confiscated in 2014-15
'Other' includes items such as electrical goods, collectibles and cheques.

Police effectively balances the value of assets and the public interest in its decision-making

Asset value does not determine confiscation. Police's decisions to seize and freeze assets balance public interest in depriving criminals of their assets, with the best use of the State's resources. To do this, Police uses asset value thresholds in its Guidelines for the Proceeds of Crime Squad (POCS). If officers want to seize low value assets that are outside of the thresholds but are in the public interest, they have to seek guidance from senior officers.

We reviewed a sample of case 'running sheets', which detail the steps taken by Police to identify and freeze assets. In all cases, we found that POCS officers followed the processes to make decisions that met the asset value thresholds or public interest criteria.

We also reviewed data from 344 cases in 2013-14 and 2014-15, which showed:

- the number of cases involving frozen real estate reduced from 101 to 72, but the average estimated value increased from around \$499,000 to around \$519,000 (Figure 4)
- the number of cases involving vehicles dropped from 61 to 45 but the average estimated value increased from around \$24,000 to around \$33,000 (Figure 4)
- a slight decrease in the number of low value assets confiscated. The number reduced from 211 to 198.

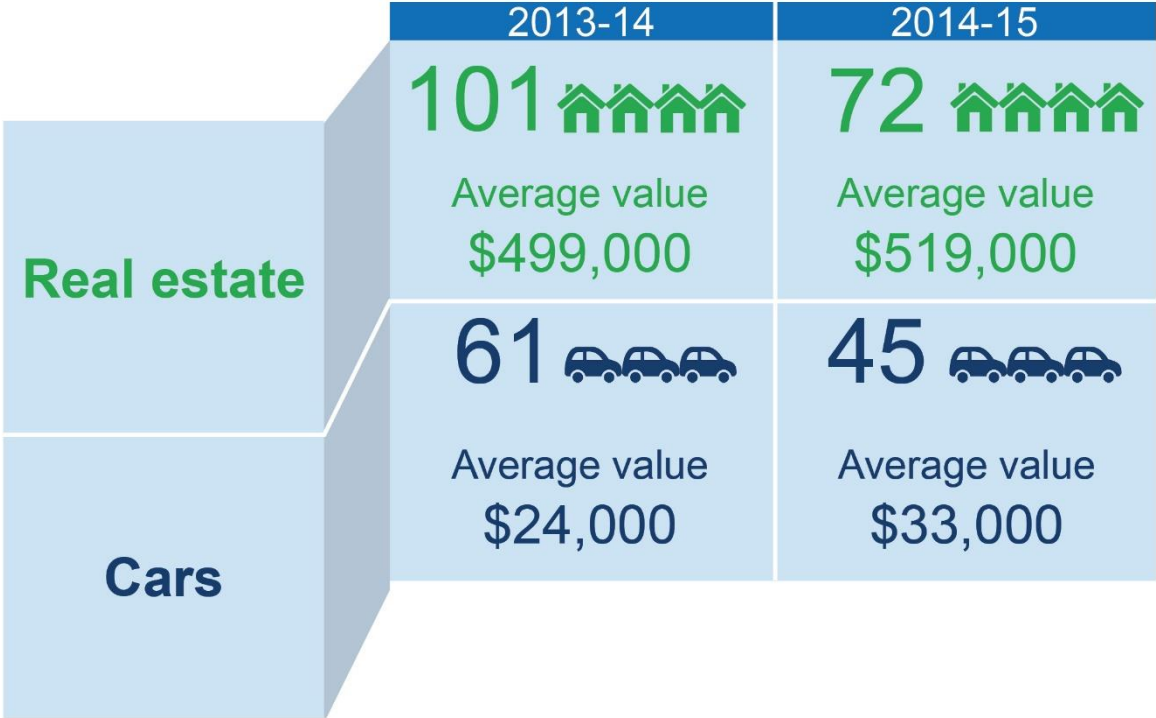


Figure 4: Real estate and vehicle confiscations in 2013-14 and 2014-15

In line with Police’s public interest considerations, we also saw in the running sheets that decisions to confiscate low value assets because of public interest were in line with delegated authority. Police told us of an instance where a low value vehicle used by an accused drug dealer was confiscated to disrupt further criminal activity in a particular community. Clear processes support the transparency of Police’s confiscation activities.

Police and the DPP can cancel freezing notices when assets no longer meet the value or public interest criteria. We found freezing notices cancelled due to low value or public interest no less than 20 times in 2013-14 and 8 times in 2014-15.

We found that the DPP adequately completed the steps it is responsible for, to progress confiscation matters.

Both the DPP and Police described their working relationship as positive with robust communication processes in place. Monthly meetings allow discussion about the 10 oldest unresolved confiscation cases and business improvement opportunities.

Frozen assets could be better managed to preserve their value

The DPP has statutory responsibilities to manage frozen assets but advises that it does not have the expertise or resources to do so. It therefore appoints Police, the Public Trustee and owners of the property to control the assets on its behalf. In some cases, property owners

can be appointed by the Court to manage the frozen property. Irrespective of who manages the frozen assets, there is no common understanding on how to maintain assets or what cost the State will incur in asset maintenance. This increases the risk that property will decline in value before disposal, or that the State will have to compensate owners if the assets are returned.

We found:

- those appointed to control frozen assets are required to ensure the property is appropriately stored and managed. However, as there is no definition as to what this means, there is no basis to assess whether those appointed have complied with their responsibilities. Further, failure to comply with the requirement carries no sanction. Cars, motorbikes and boats might not be serviced or kept undercover, and buildings might not be maintained. This means assets may drop in value more quickly over the time they are frozen, which can be several years.

In one case we reviewed, a yacht originally estimated at \$600,000 was sold for only \$195,000. While some reduction in value was due to depreciation and changes in the market, the case file stated 'it had deteriorated while being stored at a commercial shipping yard'.

- owners were responsible for managing frozen assets, such as real estate, in 54% of cases in 2013-14 and 32% of cases in 2014-15. While the DPP writes to the owner informing them that they are expected to manage the asset while it is in their care, it has no power under the Act to force owners to maintain the assets, or pay expenses such as mortgage repayments or council rates. This increases debt on confiscated assets and reduces the return to the State.

The DPP can oppose an application by an owner to manage their property. However, the DPP only does this if it has significant objections.

We reviewed 7 cases of confiscated property from 2007 to 2015. In the case example shown below, the defendant increased the debt on the property.

An owner granted responsibility for frozen house and land increased the debt between 2011 to 2016, reducing the State's return when the asset was sold. The events that impacted the asset value were:

September 2011

Freezing notice issued. Estimated property value of \$450,000

August 2012

Mortgage of \$280,000 on the property. Estimated return to the State was \$170,000

August 2013 to April 2014

Defendant did not pay mortgage repayments, water rates and council rates

November 2014

Fire damage identified

July 2015

Debt increased to \$395,000, due to accumulating mortgage debt

August 2016

Property sold for \$405,000. After payment of the mortgage, agent's commission, settlement fees and other debts there was no return to the State.

The DPP appropriately sell confiscated assets and bank the proceeds promptly

Once the Court grants a confiscation order, the DPP has the responsibility to arrange for disposal. This can involve activities such as listing a property for sale, putting a car to auction or obtaining frozen cash.

There is no set timeframe for how quickly the DPP should list an asset for sale or sell it. We reviewed the time taken from the issue of the confiscation order to the banking of sale proceeds into the Account for 145 disposals in 2013-14 and 159 disposals in 2014-15. On average, it took 4.5 months for the DPP to sell confiscated assets and bank the proceeds into the Account in 2013-14. This improved in 2014-15 to 2.7 months. In 2016, over \$13 million was banked into the Account (Figure 5).

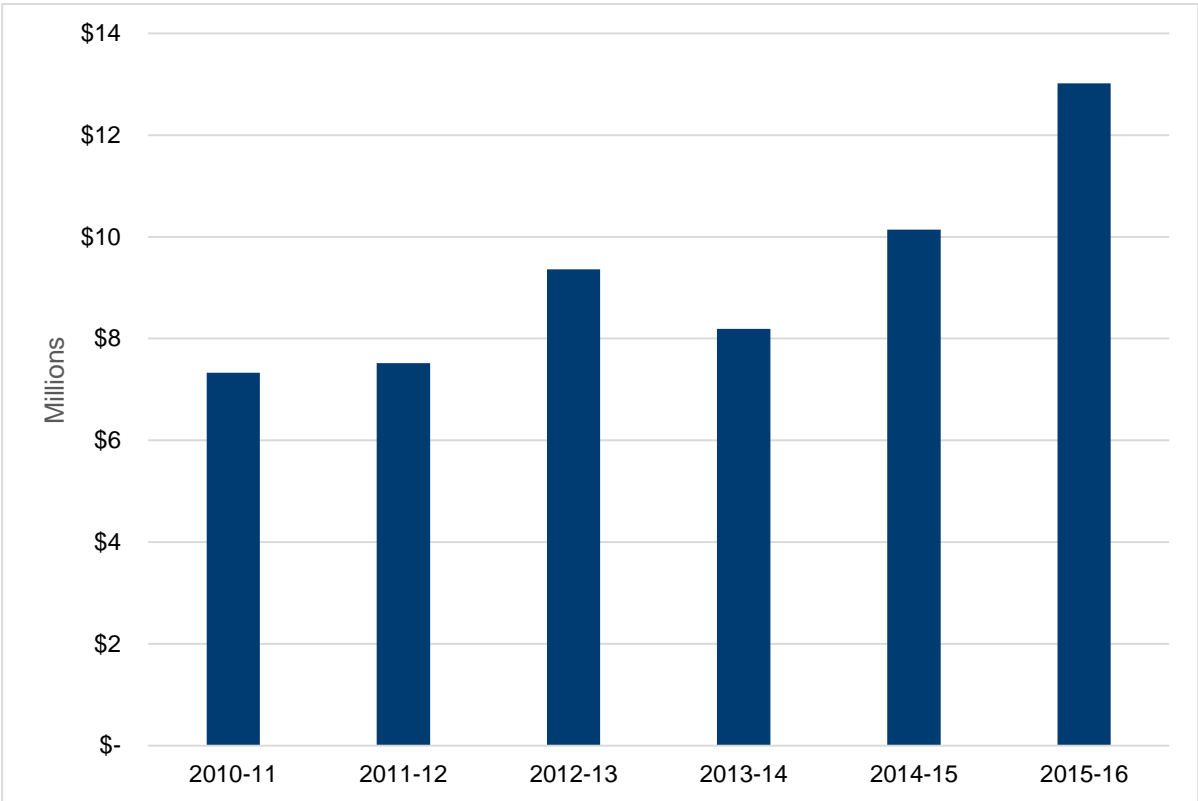


Figure 5: Payments into the Confiscation Proceeds Account 2010-11 to 2015-16

Funding outcomes are unclear, limiting opportunities to assess effectiveness

Agreements provide limited detail on what agencies are to achieve

In each year since 2013-14, Police has received around \$1.8 million from the Account, inclusive of annual bonuses (Figure 6). Police receive \$1.15 million for activities that combat organised crime, and the remaining \$640,000 is to lease storage premises and provide funding to Crime Stoppers WA.

Funding period	Scheduled funding (\$million)	One-off payment (\$million)	Bonus payment (\$million)	Eligible for bonus payment?	Total funding (\$million)
1/7/13 – 31/1/15	2.83	0.00	0.00	No	2.83
1/2/15 – 30/6/16	2.54	0.00	0.31	Yes	2.85
1/7/16 – 30/6/17	1.79	0.00	0.00	No	1.79
Total	7.16	0.00	0.31	–	7.47

Figure 6: Account funding – Police

The agreements have been silent on what Police is to achieve from the \$1.15 million for combating organised crime each year. However, we found Police have clear guidance and governance processes in place to allocate the funds.

Since 2013-14, the DPP has received an average of over \$4.5 million of Account funding each year, inclusive of annual bonuses and one-off payments (Figure 7).

Funding period	Scheduled funding (\$million)	One-off payment (\$million)	Bonus payment (\$million)	Eligible for bonus payment?	Total funding (\$million)
1/7/13 – 31/1/15	5.70	1.20	0.00	No	6.90
1/2/15 – 30/6/16	6.30	0.00	0.80	Yes	7.10
1/7/16 – 30/6/17	4.25	0.00	0.60	Yes	4.85
Total	16.25	1.20	1.40	–	18.85

Figure 7: Account funding – the DPP

The DPP's current funding agreement, dated 13 September 2017, shows that it will receive \$21.2 million over the 4 years from 1 July 2017 to 30 June 2021. The agreement is broad, permitting activities in aid of law enforcement, including confiscation activities. But, it is silent on what the DPP is to achieve.

Prior agreements were more prescriptive on how funding was to be used, including a requirement that the DPP use \$1 million each year for brief out counsel and other costs, with a minimum of 70% to be used directly for brief out counsel. The current agreement does not include this or any other requirement.

Our review of Police's funding acquittals showed how Account funds were allocated each year. The 2016 acquittal broadly correlates with the amounts and purposes outlined in Police's funding agreement including broad categories for asset storage and Crime Stoppers. However, other categories provide limited information on specific activities or what was achieved.

Our review of the DPP's 2016 funding acquittal showed \$1.8 million allocated to prosecutions and \$3.2 million to confiscations. However, we found \$137,531 allocated to expenses the DPP received free of charge. These included internal corporate services, advice from the State Solicitor's Office and land valuations.

Indicators used to measure confiscations activity do not help drive effectiveness

Although Police, the DPP and Justice understand their respective roles, there is no clear objective for confiscations activity. Only Police clearly state that confiscations are intended to disrupt or deter crime. The DPP and Justice include, to 'deprive individuals from benefitting from criminal activity' and 'prevent funding of criminal activity'. Without a clearly defined objective, achievement of it cannot be determined.

In 2015, performance measures were introduced into the funding agreements with the DPP and Police (Figure 8). However, funding is not determined by, or dependent on, whether agencies meet their measures.

KPI	DPP	Police
Number of new, ongoing and finalised cases	√	n/a
Level and extent of increased investigations into organised crime	n/a	√
Number of successful prosecutions for organised crime offences	√	n/a
The gross value of restrained (frozen) assets	√	√
Net proceeds from confiscated assets	√	√

Figure 8: Performance measures for the DPP and Police

The measures do not help agencies know if confiscations activities are effectively disrupting crime. Neither these measures nor other monitoring provides meaningful insight into outputs, activities or if agencies spend funds effectively. For example, the time and resources used to issue and process freezing notices.

The measures are assigned to agencies that are not empowered to achieve them, as Police report on 2 measures that the Act says the DPP is responsible for. These are:

- The gross value of frozen assets: Police estimate the gross value of all assets when they are frozen. But, it cannot know the ongoing value of frozen assets managed by the Public Trustee, the DPP and owners.
- Net proceeds from confiscated assets: the DPP dispose of assets and bank the proceeds into the Account.

Both Police and the DPP expressed concerns to us about the appropriateness of the measures set by Justice.

Across-agency coordination is required to carry out confiscation activities. However, this presents challenges as the different agencies involved have quite distinct and independent roles and responsibilities. In 2004, the Department of Treasury issued advice that across-agency initiatives should identify a lead agency to coordinate and report on services delivered¹. There is a risk that agencies will not appropriately prioritise confiscation activities.

Confiscation costs are unclear, limiting opportunities for agencies to improve the efficiency of their processes

The DPP and Police do not know how much it costs for them to carry out all of their confiscation activities. Neither agency assigns costs to discrete confiscation processes. While costing at this level is not easy, it would provide a good understanding of the cost and sustainability of the State’s confiscations work, and allow the DPP and Police to identify opportunities to improve efficiency.

We expected the DPP and Police to know the cost of the following processes, even when they delegate management of assets to others, but they did not:

- completing freezing notices
- transport of seized and frozen assets
- storage of frozen assets

¹ Outcome Based Management: Guidelines for use in the Western Australian Public Sector

- maintenance of frozen assets
- disposal of frozen assets.

Police roughly estimate confiscation activities cost at least \$5,000 per case. We were not able to determine if the estimate was reasonable as Police could not provide the basis for it. However, we were told that the estimate does not include general policing costs such as those directly related to confiscations work but incurred before the confiscations process begins. Inclusion of these costs would increase the estimate. Soundly based cost estimates, either at the case or process level, would provide Police and the State with opportunities to improve efficiency.

In 2014-15, Police issued 18% more freezing notices than 2013-14. Police do not know if this increased activity resulted from improved efficiencies or by drawing from Police's general operational budget. As such, it is not possible to know if Police's confiscations activities are becoming more efficient over time.

The DPP prosecutes some cases irrespective of the cost or return to the State. As such, the DPP considers that it does not need to know the cost of individual confiscation cases or confiscation processes. However, without this information the State does not know if these activities can be sustained and the DPP cannot capitalise on opportunities to improve efficiency.

The Public Trustee is the only agency involved in confiscations that clearly shows its costs in the confiscation process. By charging a fee for service, it is possible to see the cost of the Public Trustee's confiscation activity at the case level. This strengthens accountability for public money and allows the Public Trustee to measure the efficiency of their processes.

The Grants Program is well-managed so there is visibility on how grants are spent

Through the Grants Program, Justice has granted between around \$1.6 million and \$5.7 million per year over the past 10 years. Grants paid to local government and community based organisations fund activities that support the intentions of the Act. Justice has effective systems to manage applications, grant funds and monitor projects.

Justice uses a sound approach to assess grant applications and make recommendations for funding to the Attorney General. We reviewed 36 applications to rounds between 2011 and 2015. Of these, there were 16 applications recommended for funding and all of these were for projects in line with the objectives of the grants program. Examples include youth development services, programs to reduce drug abuse and counselling for victims of family and domestic violence.

Grant funding agreements clearly state the specific purposes of the funding and set strict criteria for how funding must be acquitted. Recipients must provide financial and project reports to show how they spent the grant and the outputs and outcomes achieved. All projects we reviewed complied with the acquittal criteria.

In 2009, the Public Accounts Committee's report of Inquiry into the Distribution of Grant Funds from the Confiscation Proceeds Account raised concerns about the administration and acquittal of grants. Justice has since improved those processes, by strengthening the funding framework and requiring interim reporting to release the full amount granted. This provide sound assurance of the efficient and effective use of grant funds.

Auditor General's Reports

Report number	2018 reports	Date tabled
4	Opinions on Ministerial Notifications	11 April 2018
3	Opinion on Ministerial Notification	21 March 2018
2	Agency Gift Registers	15 March 2018
1	Opinions on Ministerial Notifications	22 February 2018

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