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# The long arm of the law reaches into the Digital Age: new powers for police to freeze and seize digital assets

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The growing use of cryptocurrency and digital assets in the commission of organised crime has given rise to the need for a responsive change in policing and law enforcement legislation.

The Major Crime and Community Safety Legislation Amendment Bill 2022 (Vic) (Bill) was introduced in the lower house of the Victorian Parliament earlier this month. The Bill contains a spate of changes to Victorian laws dealing with proceeds of crime, search and seizure, crime scene powers and evidence gathering. Some of these reforms are specifically targeted towards the gathering of evidence relating to, and seizure of, digital assets, such as cryptocurrency, used in the commission of offences.

## Key points

- The Bill will enact changes to the Confiscation Act 1997 (Vic) and the Crimes Act 1958 (Vic) to strengthen police powers in relation to digital assets, such as cryptocurrency, where it is alleged that they are the proceeds of crime.
- The Confiscation Act will be amended so that digital assets can be captured by freezing orders, ensuring that the Magistrates' Court can make orders preventing the dissipation of digital assets in specified accounts.
- Police will have powers to issue information notices requiring the provision of specified information about digital asset accounts.
- Police will also have powers to seize digital assets and the means of accessing them pursuant to a search warrant.
- Additionally, police will be able to direct specified persons, such as a person reasonably suspected of having committed an offence, to provide them with information or assistance to access a device while executing a search warrant.
- The changes also give police the authority to copy data from devices or seek assistance from people with specialised skills or technical knowledge to execute a search warrant.

## What are the changes being introduced?

The Bill will amend and insert new provisions into the Confiscation Act to strengthen police powers.

In particular, the provisions of the Confiscation Act relating to the making of freezing orders will be amended so as to ensure that digital assets (defined as the digital representation of value or contractual rights that may be transferred, stored or traded electronically,<sup>1</sup> examples of which include digital currencies, coins or tokens) are captured by those orders.<sup>2</sup> The Bill importantly amends the definition of a “financial institution” to now include “digital currency exchanges” and makes provision for the addition of other institutions by way of regulation in the future.<sup>3</sup>

The effect of these amendments is that the Magistrates' Court will be able to make orders which prevent transactions being made in relation to digital asset accounts or wallets held with financial institutions.<sup>4</sup> The purpose of these orders will be to ensure that such digital assets cannot be dissipated by a person from a specified account.<sup>5</sup>

Police will also have powers to issue information notices relating to digital asset accounts to financial institutions, which would essentially require the provision of information about the type and quantum or value of the digital asset in those accounts from the financial institution which the notice is directed to.<sup>6</sup>

The Bill also introduces new police powers to ensure that search warrants will be as effective against digital assets as they are against physical assets. For example:

- police will have the power to seize digital assets, or the means of accessing them while executing a search warrant<sup>7</sup>
- police will be able to direct persons — such as a person reasonably suspected of committing the relevant offence or the owner or lessee of the relevant computer, data storage device or thing (such as any item upon which data like code or text has been recorded) or a person who uses or has used the computer, data storage device or

thing — to provide them with information or assistance in order to allow a police officer to access a computer, data storage device or thing while executing a search warrant<sup>8</sup> and

- corresponding changes to the Crimes Act will give a police officer the power under a search warrant to personally take copies of electronic data from computers and storage devices, or seek assistance from people with specialised skills or technical knowledge to execute a search warrant, without those assistants being named in advance in the warrant, where those expert’s skills are necessary to execute the search warrant<sup>9</sup>

## Australian jurisdictions compared

Not all Australian jurisdictions have equivalent legislation which explicitly addresses the issue of digital assets in the context of the commission of a crime.

In October 2021, the Morrison Government published its *Ransomware Action Plan* (RAP), which provided its strategic approach to dealing with digital crime. To implement elements of the RAP, the Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022 (Cth) was introduced earlier this year. Its analogous aims included:<sup>10</sup>

- ensuring that evidence gathering powers and freezing orders made under the Proceeds of Crime Act 2002 (Cth) extended to digital currency and digital currency exchanges and
- amending the Crimes Act 1914 (Cth) and Proceeds of Crime Act to give law enforcement agencies the power to seize digital assets that are reasonably suspected to be evidential material or tainted property

However, that Bill lapsed on the dissolution of the 46th Parliament.<sup>11</sup>

The legislative criminal frameworks in other Australian states and territories do not make explicit provision for digital assets. Those Acts do not include explicit references to digital assets, digital currency exchanges, computers and other data storage devices.<sup>12</sup> For example, the Confiscation of Proceeds of Crime Act 1989 No 90 (NSW) does not explicitly refer to digital assets in the same manner as the proposed Victorian legislative amendments.<sup>13</sup>

However, relevant legislation in the Australian Capital Territory and in South Australia does give police officers executing a search warrant the ability to apply for an order allowing them to direct a stated person to provide assistance or information which would allow them to access data from a computer, copy the data to a data storage device and/or convert it into a documentary form.<sup>14</sup>

## Conclusion

The important changes brought about by the Victorian Bill will ensure that search warrants and freezing orders will be effective against digital assets, including cryptocurrency. It recognises that such digital assets are “property” and as such, they are capable of being frozen. These amendments will allow law enforcement to be responsive and efficient in dealing with the evolution of the commission of crime in an ever increasing digital world. This can be seen as positive development which ensures that criminals will be less able to hide their assets in plain sight within the digital world. The new Victorian approach will help “pave the way” in Australia in regards to the way in which the criminal law reaches into digital assets and will ensure that the “long arm of the law” continues to reach well into the digital age.



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## Author’s note

*This article was written with assistance from Peter Andreakos.*

## Footnotes

1. Major Crime and Community Safety Legislation Amendment Bill 2022 (Vic), cl 3(3).
2. Above, Pt 2 Div 1.
3. Above n 1, cl 3(2).
4. Explanatory Memorandum, Major Crime and Community Safety Legislation Amendment Bill 2022 (Vic) 4; Confiscation Act 1997 (Vic), s 31D.
5. Vic Hansard, Legislative Assembly, 4 August 2022, p 2918.
6. Above n 1, cl 9.
7. Above n 1, cl 14.
8. Above n 1, cl 12.
9. Above n 1, cl 74.
10. Parliament of Australia *Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022* Bills Digest No 62 (2021–22) p 3.
11. Bill Details, Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022, <https://parlwork.aph.gov.au/bills/r6855>.
12. Crime (Confiscation of Profits) Act 1993 (Tas), Pts 2 and 4; Criminal Property Confiscation Act 2000 (WA), Pt 4; Criminal Property Forfeiture Act 2002 (NT), Pt 4; Criminal Proceeds

- Confiscation Act 2002 (Qld), Chs 2 and 8; Confiscation of Criminal Assets Act 2003 (ACT), Pts 4 and 13; Criminal Assets Confiscation Act 2005 (SA), Pts 2 and 6 Div 5.
13. Confiscation of Proceeds of Crime Act 1989 No 90 (NSW), Pt 3 Divs 1–1A.
14. Confiscation of Criminal Assets Act, above n 12, s 220; Criminal Assets Confiscation Act, above n 12, s 176.