

# **Criminal Proceeds (Recovery) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill seeks to make more effective provision for the confiscation of property that either represents the profits of criminal offending or was used to facilitate the commission of crime.

The policy objectives are—

- to confiscate property from persons who have engaged in or profited from significant criminal activity;
- to reduce the rewards from crime for the individual;
- to reduce the attraction of crime for potential offenders;
- to reduce the resources that could potentially be used for criminal activity.

The existing Proceeds of Crime Act 1991 provides for confiscation of property only where the owner has been convicted of a criminal offence. Experience has shown that this is insufficient to deal with persons who are involved in the organisation of criminal enterprises, but have succeeded in distancing themselves from the commission of specific offences. The total amount confiscated under that Act has been relatively small.

Other jurisdictions, in Australia, Ireland, and the United Kingdom, have introduced legislation that enables criminal proceeds to be targeted without a conviction necessarily being obtained. These regimes are proving considerably more effective than previous laws in terms of the value of criminal proceeds confiscated. This Bill will introduce a similar approach in New Zealand. It will also facilitate co-operation with other jurisdictions by allowing foreign restraining and confiscation orders to be enforced in New Zealand.

In addition, the opportunity is being taken to improve provisions enabling confiscation of property where there has been a conviction for a criminal offence.

Accordingly, this Bill will repeal the Proceeds of Crime Act 1991. It replaces it with a conviction-based forfeiture regime limited to instruments of crime (items used to commit or facilitate the commission of criminal activity) and a non-conviction-based confiscation regime to deal with all other property representing the proceeds of crime or assessed to be the value of a person's unlawfully derived income.

The non-conviction-based regime or civil regime will operate completely independently of any criminal proceedings that may be in course or contemplated. Consequently, the same person may be the subject of both criminal prosecution (including potential forfeiture of instruments of crime) and confiscation action under the civil process.

### **Civil proceedings**

Civil action will be able to target property that has been acquired as a result of unlawful activity, even though it may not be possible to prove beyond reasonable doubt that the owner has committed a specific criminal offence. It will enable 2 types of confiscation orders to be made: one for the forfeiture of property to a specified value that represents the profits of significant criminal activity; the other for forfeiture of a specific asset or assets derived directly or indirectly from significant criminal activity. There is also provision for a restraining order to be made to preserve property while the Crown is gathering evidence to support an application for forfeiture.

The test for making a restraining order is that there is reasonable cause to believe that the property concerned falls within the scope of one of the types of forfeiture orders.

In order to ensure that action under the new legislation is appropriately targeted, the Bill sets a threshold for the use of these orders. The threshold is that the property concerned derives from "significant criminal activity", which is defined as either an offence punishable by at least 5 years imprisonment, or activity that has generated profits to a value of at least \$30,000.

The civil forfeiture orders are referred to in the Bill as profit forfeiture orders and asset forfeiture orders, respectively.

*Profit forfeiture order*

A profit forfeiture order will apply in cases where a person has profited from significant criminal activity (whether committed by that person, or by others on that person's behalf), but has managed to conceal, convert, or dispose of the property that was unlawfully acquired. The court will be able to order forfeiture of any property to meet the value of benefits that have been derived from crime, even though the property itself may be lawfully acquired.

For a profit forfeiture order to be made, the Crown will have to prove on the balance of probabilities that the profit derived from relevant criminal activity was received not more than 7 years prior to an application for a restraining order (or, if no restraining order was applied for, the application for a forfeiture order).

The 7-year period is set to allow for confiscation of wealth derived from unlawful activity over a significant period, without going so far back in time as to give rise to a high risk of unreliable assessments being made.

The Crown will not be required to establish the value of the profit derived from significant criminal activity, as this would be too onerous a test. Rather, the onus will be on the respondent to an order to establish, on the balance of probabilities, that the value specified in the application is too great.

The justification for this reverse onus is the difficulty of obtaining evidence showing the unlawful origins of property, as against the expectation that if property is derived from lawful activity the owner should be able to establish that.

*Assets forfeiture order*

An assets forfeiture order is directed against property rather than a person. It may be made in relation to any specific property that is the proceeds of significant criminal activity, or derived from such proceeds (defined in the Bill as tainted property). There is no need for the property to be linked to any identifiable person benefiting from significant criminal activity.

If any person produces evidence of a claim to an interest in the property it will be for the Crown to prove, on the balance of probabilities, that it represents tainted property.

Where property has been subject to a restraining order for 2 years and no interest has been claimed, an order can be made for forfeiture.

### *Recovery body*

Action to confiscate proceeds of crime under the civil regime will be the responsibility of a recovery body, being an agency designated for that purpose by the Attorney-General. The Director of the recovery body will have the power to act independently in relation to decisions to investigate or take proceedings against any person with a view to forfeiture.

The Bill provides a range of powers to search for and seize evidence for the purposes of applying for profit or asset forfeiture orders. On obtaining a restraining order the Director of the recovery body will have the power (without further application to the court) to require the person who is the subject of the investigation, or whose property is suspected of being derived from crime, to produce documents or to answer questions.

The Director will also have the power to require any financial institution to produce documents on matters relevant to an investigation or proceedings once a restraining order is made.

Other third parties will, however, only be obliged to produce documents relevant to an investigation if the Director obtains a court order for that purpose.

The recovery body will be able to seek information from other government agencies in relation to persons under investigation. Particular safeguards are provided in relation to information that may be obtained from the Inland Revenue Department.

### **Conviction-based proceedings**

The new legislation will link proceeds forfeiture to conviction only in respect of instruments of crime. Instruments are defined as property used to commit or facilitate a serious offence (ie, an offence punishable by at least 5 years imprisonment).

As such property may have been lawfully acquired, instrument forfeiture is limited to situations where there has been a conviction and will be considered by the court as part of the sentencing process. This avoids the possibility of someone being, in effect, more

severely punished for an offence simply because he or she owns a substantial asset that was used to facilitate the offending.

Many provisions of the existing Proceeds of Crime Act 1991 are carried over into the instruments of crime forfeiture regime. Significant changes to facilitate and improve the effectiveness of conviction-based forfeiture include clarifying the role of the Official Assignee (and providing that person with the necessary powers to undertake his or her functions) and broadening the circumstances when restraint orders and *ex parte* restraint orders can be obtained.

### Part by Part analysis

The Bill consists of 3 Parts. It is intended that, at the Committee of the whole House stage, *subparts 1 and 2 of Part 3* will be divided from the rest of the Bill to become a separate Mutual Assistance in Criminal Matters Amendment Bill and a separate Sentencing Amendment Bill. *Parts 1 and 2* will remain as the Criminal Proceeds (Recovery) Bill and on commencement replace the Proceeds of Crimes Act 1991.

#### *Title and commencement*

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill is to come into force 8 months after the day on which it receives the Royal assent.

### Part 1 Preliminary provisions

*Part 1* sets out the Bill's preliminary provisions, including—

- the purpose of *Parts 1 and 2*; and
- an overview of *Parts 1 and 2*; and
- definitions of terms used in *Parts 1 and 2*; and
- other preliminary matters, such as the application of those Parts.

#### *Interpretation*

The following definitions contained in *clauses 5 to 7* are particularly noteworthy:

- **instrument of crime** in *clause 5(1)* means property used (wholly or in part) to commit or facilitate the commission of

an offence punishable by a term of imprisonment of at least 5 years, and, in the case of a financing of terrorism offence under the Terrorism Suppression Act 2002, includes the funds allocated for committing that offence:

- **interest** in *clause 5(1)* includes legal or equitable estate or interest in property and all other rights, powers, or privileges connected with property:
- **significant criminal activity** in *clause 6* is defined as an activity that if proceeded against as a criminal offence would amount to offending—
  - punishable by a maximum term of imprisonment of at least 5 years; or
  - that results in property, proceeds, or benefits of at least \$30,000 (whether acquired or derived directly or indirectly). For the purposes of the Bill, an activity of that kind does not require criminal proceedings and is not affected by the outcome of any criminal proceedings:
- **tainted property** in *clause 5(1)* is any property that has been acquired as a result of significant criminal activity or, directly or indirectly, derived from such activity:
- **unlawfully benefited from significant criminal activity** in *clause 7* means knowingly, directly or indirectly, deriving benefit from significant criminal activity, whether or not the person who derived the benefit was actually involved in it.

### *Application*

*Parts 1 and 2* apply in respect of significant criminal activity, foreign significant criminal activity, qualifying forfeiture offences, and foreign qualifying forfeiture offences whether engaged in or committed before, on, or after the commencement of *clause 9*.

## **Part 2**

### **Criminal proceeds and instruments forfeiture regime**

#### Subpart 1—General provisions

This subpart clarifies matters of general application to the criminal proceeds recovery regime, including the following:

- that certain proceedings under the regime are civil in nature, while proceedings relating to an instrument forfeiture order are proceedings under the Sentencing Act 2002 (or in relation

to an appeal from an instrument forfeiture order, proceedings under the Crimes Act 1961) (*clause 10*):

- an order to forfeit property under the regime may, but need not, be preceded by an order restraining the same property (that is an order that puts the property in the custody and control of the Official Assignee) (*clause 11*);
- property that is subject to a restraining order (**restrained property**) continues, for the purposes of the restraining order and any forfeiture order made in relation to the property, to be restrained property, even if the property is converted into another form (*clause 12*);
- in the case of proceedings for a restraining order or an assets forfeiture order relating to specific property, there is no need to identify an owner of that property (*clause 13*);
- property may be forfeited on grounds that differ from those on which the property was (if applicable) restrained (*clause 14*);
- there is no need for criminal proceedings to be taken in respect of the significant criminal activity or significant foreign criminal activity on which a civil forfeiture order or foreign forfeiture order is based (*clause 15*);
- if any significant criminal activity gives rise to criminal proceedings and also to proceedings for an assets forfeiture order or a profit forfeiture order, the criminal proceedings have no effect on the forfeiture order or on an application for the order. This applies even if any conviction entered in the criminal proceedings is quashed or set aside (*clause 16*);
- the same instance of significant criminal activity may give rise to more than 1 assets forfeiture order, instrument forfeiture order, or profit forfeiture order (*clause 17*). However, in such a case a person who is subject to a profit forfeiture order is given credit for any amount forfeited under an existing assets forfeiture order relating to the same significant criminal activity (*clause 17(2)*).

### Subpart 2—Restraining orders

A restraining order is an order that—

- restrains the property to which it relates from being disposed of, or dealt with, otherwise than in accordance with the order; and
- places the property in the custody and control of the Official Assignee.

The basis for making a restraining order with a view to civil forfeiture is that there are reasonable grounds to believe that specific property is tainted property (*clause 24*) or that the person against whom the order is made (the respondent) has unlawfully benefited from significant criminal activity (*clause 25*).

In the case of a restraining order relating to an instrument of crime (*clause 26*), the respondent must have been charged with a qualifying forfeiture offence (ie, an offence punishable by a maximum term of imprisonment of at least 5 years) with which the instrument of crime is associated, or there must be reasonable grounds to believe that the person is about to be charged with an offence of that kind.

Applications for restraining orders with a view to eventual civil forfeiture may be made by the Director of Criminal Proceeds Confiscation (the **Director**) or, if the application relates to an instrument of crime, by the prosecutor in the proceeding for the offence with which the instrument of crime is associated (*clause 18*).

An application for a restraining order must be heard in the District Court if the application relates to an instrument of crime used in an offence that has been, or will be, tried in a District Court (*clause 20(b)(ii)*). All other applications for restraining orders are heard in the High Court (*clause 20(a) and (b)(i)*).

A court may make a restraining order subject to any conditions the court thinks fit (*clause 28*). The court may allow, but is not limited to allowing, the following to be met out of the respondent's restrained property as a condition of a restraining order:

- the reasonable living costs of the respondent and any of his or her dependants;
- the reasonable business expenses of the respondent;
- the payment of any specified debt incurred by the respondent in good faith;
- any other expenses allowed by the court.

However, the court may not allow legal expenses to be paid out of the restrained property and must, when deciding whether or not to apply any conditions to a restraining order, have regard to the respondent's ability to meet certain expenses or debts out of property that is not restrained property.

The court may require an applicant for a restraining order, or an extension of a restraining order, to make certain undertakings as to damages or costs (*clause 29*).

Under *clause 30*, a person who has a severable interest in restrained property or proposed restrained property may apply to the court for the interest to be excluded from a restraining order at the time it is made, or at a later time.

The court must grant the application for exclusion of the severable interest if the applicant proves (*clause 30(2)*) that—

- the applicant has an interest in the property to which the restraining order relates; and
- the applicant—
  - has not benefited from the significant criminal activity to which the restraining order relates (in the case of restraint relating to specific property or all of or part of a respondent's property); or
  - was not involved in the qualifying forfeiture offence to which the restraining order relates (in the case of restraint relating to an instrument of crime).

If the applicant cannot establish those conditions, the court may exclude the interest if it considers that it is in the public interest to do so, having regard to all the circumstances, including—

- any undue hardship that is reasonably likely to be caused; and
- the gravity of the significant criminal activity or qualifying forfeiture offence to which the property relates; and
- the likelihood that the interest will become subject to a forfeiture order (ie, a permanent order for forfeiture that will supersede the restraining order).

A restraining order may be accompanied or followed by a number of further orders (*clause 34*). These include, but are not limited to, orders for the examination of any person by a court or by the Official Assignee about the nature or location of any restrained property, and orders requiring interest holders in restrained property to furnish sworn statements about their interests (*clause 35*). A person subject to such examination is not excused from answering questions or furnishing information on the ground of self-incrimination (*clause 36*).

As a general rule, a restraining order expires 1 year after it is made or on any earlier date on which a forfeiture order is made or declined in respect of the restrained property (*clause 37*). There are a number of exceptions to that general rule, some of which shorten and others of which extend that 1-year period.

A restraining order may be extended for a period not exceeding another year by the court that made it (*clause 41*). Certain restraining orders have a more limited life. Thus, a restraining order obtained without notice lasts for only 7 days unless in that period an application for another restraining order is made on notice (*clause 39*). In that case, the restraining order obtained without notice lasts until the application on notice is disposed of. Another exception is a restraining order that is made to restrain an alleged instrument of crime. If the order was made before any related charges were laid, the order expires at the end of 48 hours unless the defendant has been charged by that time (*clause 40*).

### Subpart 3—Civil forfeiture orders

There are 2 types of civil forfeiture orders: assets forfeiture orders and profit forfeiture orders. Applications for civil forfeiture orders are heard in the High Court (*clause 44*). The only person who can apply for such orders is the Director (*clause 43*).

An assets forfeiture order confiscates specific property that is tainted property. If the High Court is satisfied on the balance of probabilities that specific property is tainted property, the Court must make the order (*clause 50*). The order must specify the interest in the property covered by the order and that interest vests in the Crown absolutely and is placed in the custody and control of the Official Assignee.

A profit forfeiture order deprives a respondent who has benefited from significant criminal activity of interests in property that represent the value of that benefit (*clause 55*). The relevant significant criminal activity from which the benefit has been derived can date back over a period of 7 years before the date on which an application for a related restraining order was made or, in the absence of such an order, the date of the application for the profit forfeiture order (*see the definition of **relevant period of criminal activity** in clause 5(1)*).

To obtain a profit forfeiture order, the Director must prove on the balance of probabilities that the respondent has, in the relevant period of criminal activity, derived benefits from significant criminal activity. Once that is proved, the value of those benefits is presumed to be the value stated in the application (*clause 53*). It is then for the respondent to rebut that presumption on the balance of probabilities.

A profit forfeiture order must specify the value of the benefits determined, the property that is to be realised, and the maximum

recoverable amount that is liable to forfeiture (*clause 55*). In determining the maximum recoverable amount, the Court must take the value of the benefits derived by the respondent, and deduct from it the value of any property forfeited to the Crown as a result of an assets forfeiture order that relates to the same significant criminal activity.

A profit forfeiture order is enforceable as an order made as a result of civil proceedings instituted by the Crown and is recoverable by the Official Assignee as a debt due to the Crown (*clause 55(4)*).

A respondent may apply to have his or her property excluded from inclusion in the property that is to be realised under the profit forfeiture order (*clause 56(1) and (2)*). However, an exclusion of this kind does not restrict the respondent from later realising the excluded property if he or she elects to do so in order to meet any remaining debt owed to the Crown (being the remainder of the maximum recoverable amount) (*clause 56(3)*).

Under *clause 57*, a profit forfeiture order may be made even if the respondent has absconded.

If the Court is satisfied that a respondent has effective control over property, the Court may treat the respondent as having an interest in the property, even though, technically, the respondent has no interest in the property (*clause 58*). This will extend the reach of profit forfeiture orders to cases where property is held in the names of parties (such as companies, trusts, or nominees) who act in accordance with the directions or wishes of the respondent.

*Clauses 59 and 60* provide for additional matters relating to the making of civil forfeiture orders, including matters relating to the transfer of the title to property on registers (*clause 59*) and that civil forfeiture orders do not affect the operation of section 99 of the Land Transfer Act 1952 (*clause 60*).

On an application for a civil forfeiture order, anyone (other than the respondent) who claims an interest in the property that is at risk of forfeiture may seek relief under *clause 61*.

If an order has been made, anyone (other than the respondent) who claims an interest in the forfeited property may seek relief within 6 months after the date of the order (*clause 62*). The Court may extend that 6-month-period, but, if the person who asks for an extension has been served in, or participated in, the proceeding for the civil forfeiture order, the Court may do so only for special reasons.

The Court must grant relief if the applicant for relief proves on the balance of probabilities that the applicant—

- has an interest in the property to which the order relates;
- has not unlawfully benefited from the significant criminal activity to which the application relates (*clause 66*).

An applicant who cannot establish those conditions may still be granted relief, at the court's discretion, if the court considers that, having regard to all the circumstances, undue hardship is reasonably likely to be caused to the applicant if relief is not granted (*clause 67*).

*Clause 68* provides for matters associated with relief from civil forfeiture orders where the excluded interest is severable. While *clause 69* provides for matters associated with relief of a non-severable interest.

#### Subpart 4—Instrument forfeiture orders

*Subpart 4* deals with a number of topics relating to instrument forfeiture orders. The majority of matters associated with instrument forfeiture orders are set out in *subpart 2 of Part 3* as they are amendments to the Sentencing Act 2002.

Matters dealt with in this subpart include—

- the effects of an instrument forfeiture order (*clauses 70 to 72*);
- time restraints on the disposal by the Crown of forfeited property (*clause 73*);
- the discharge of instrument forfeiture orders on appeal or by the quashing of a conviction and related procedural provisions (*clauses 74 to 76*);
- the grounds on which a person may make an application for relief under *new section 142J* of the Sentencing Act 2002 (*clause 77*);
- appeals by third parties against the making of an instrument forfeiture order (*clause 78*) and the power of an appeal court to vary an offender's sentence on appeal (*clause 79*).

#### Subpart 5—Official Assignee

This subpart sets out the Official Assignee's duties in respect of property that is subject to a forfeiture order and certain property in his or her custody and control as a result of being seized under a warrant (*clause 80*). In the case of property subject to—

- an **assets forfeiture order** (see *clause 82*), the Official Assignee must generally defer the disposal of the property by 6 months (from the date of bringing, withdrawing, or determining of appeals) to allow for claims for relief, but after that period may pay out the proceeds in the following order:
  - by paying the Official Assignee's recoverable costs under *clause 87*;
  - by paying the Legal Services Agency the amount (if any) payable by way of legal aid granted to the person whose interest in the property has been forfeited (less any contributions paid by that person);
  - by paying any outstanding fines and sentences of reparation imposed on that person;
  - by paying any remainder of the money to the Crown;
- a **profit forfeiture order** (see *clause 83*), the Official Assignee must generally defer the disposal of the property by 6 months (from the date of bringing, withdrawing, or determining of appeals) to allow for claims for relief, but after that period may pay out the proceeds in the following order:
  - by recovering the Official Assignee's recoverable costs under *clause 87*;
  - by paying the Legal Services Agency the amount (if any) payable by way of legal aid granted to the person whose interest in the property has been forfeited (less any contributions paid by that person);
  - by paying any outstanding fines and sentences of reparation imposed on that person;
  - by paying the Crown the maximum recoverable amount that the Court determined on making the order (less the sum of all prior payments made out of the proceeds);
  - by paying any remainder of the money to the person whose interest in the property has been forfeited.
- an **instruments forfeiture order** (see *clause 85*), the Official Assignee must, defer the sale of the property to allow for any appeals against the order, and must then pay the proceeds in the same order set out above for an assets forfeiture order.

If the person against whom a profit forfeiture order is made becomes bankrupt, the property is dealt with under the Insolvency Act 1967 and the amount specified in the order is provable in the bankruptcy of the person (*clause 84*).

*Clause 86* provides for the discharge of registered foreign forfeiture orders by the Official Assignee. In those circumstances, once the Official Assignee has recovered costs, under *clause 87*, the remaining money is paid to the Attorney-General for disposal at his or her discretion.

*Clause 87* sets out the costs that are recoverable by the Official Assignee.

*Clause 88* provides for how the Official Assignee may go about delegating certain functions and powers under *Parts 1 and 2*.

*Clause 89* sets out the effect of acting under a delegation and *clause 90* sets out how a delegation is revoked.

### Subpart 6—Recovery body

*Subpart 6* of the Bill deals with matters associated with the recovery body. Some of the key features of *subpart 6* are—

- a provision indicating that the title of the chief executive of the recovery body is the Director of Criminal Proceeds Confiscation (see *clause 92*);
- a provision stating that the Director acts independently of the Attorney-General in any matter relating to any decision to investigate any person or property or to take proceedings under the Bill (see *clause 93*);
- provisions limiting the ability to review decisions of the Director to take proceedings under the Bill and providing that if the exercise or discharge of any power or duty is subject to a legal challenge, the continued exercise or discharge of that power or duty by the Director cannot be prevented pending a final decision (see *clauses 94 and 95*);
- a provision dealing with the consequences of a final decision that the exercise of any power by the Director is unlawful (*clause 96*);
- a provision requiring the High Court to approve any settlement entered into by the Director and any person in regard to any property or sum of money to be forfeited to the Crown (see *clause 97*);
- provisions dealing with the delegation of functions or powers of the Director (*clause 98*) and the appointment of outside investigators (*clause 99*);
- provisions regulating information exchange and disclosure (see *clauses 100 to 105*).

### Subpart 7—Investigative powers

*Subpart 7* sets out the investigative powers available to members of the police, the Director, and the Official Assignee. The key features of *subpart 7* include the following:

- any member of the police may obtain a warrant to search for and seize instruments of crime or evidence as to the nature and extent of any person's interest in or control over property that is an instrument of crime (see *clause 107*);
- the Director may obtain a warrant to search for and seize tainted property, property that is the subject of a restraining order obtained by the Director, and evidence relating to the nature and extent of any person's interests and control over particular property (see *clause 109*);
- the Director may require a person whose property is the subject of a restraining order, or any officer of a financial institution who has information about property that is the subject of a restraining order, to produce documents relevant to the Director's investigation or to any proceedings under *Parts 1 and 2* (see *clause 111*);
- the Director may obtain from a Judge a production order requiring any person to produce documents relevant to the Director's investigation or to any proceedings under the Bill (see *clauses 112 and 113*);
- the Director may issue an examination notice to require any person whose property is subject to a restraining order to attend before the Director and answer questions and supply information relevant to an investigation by the Director or to any proceedings under the Bill (see *clause 114*);
- the Director may obtain a search warrant if there is non-compliance with a production notice, production order, or examination notice (see *clause 115*);
- the Official Assignee may obtain a warrant to search for and seize property that is the subject of a restraining order or a forfeiture order, or in certain circumstances, the subject of an application for a restraining order (see *clause 116*);
- property seized by a member of the police or the Director (other than evidential material) is in general transferred to the Official Assignee, who deals with it in accordance with the provisions of the Bill (see *clauses 108, 110, and 117*);
- there are rules governing the retention or return of seized property (see *clauses 118 and 119*);

- there are common rules governing the method of applying for search warrants, the form and content of search warrants, the powers conferred by search warrants, and duties of persons executing search warrants (see *clauses 120 to 128*). These rules draw on work carried out by the Law Commission;
- there are common rules governing the form and content of notices (see *clause 129*);
- there are rules for how the general warrant, notice, and order provisions apply in circumstances relating to foreign restraint and foreign forfeiture (see *clauses 130 to 133*).

### Subpart 8—Foreign restraint and foreign forfeiture

This subpart deals with various matters associated with foreign restraint and foreign forfeiture.

*Clause 134* provides for applications for interim foreign restraining orders in circumstances where the Director is authorised under *new section 60* of the Mutual Assistance in Criminal Matters Act 1992. All of *subpart 2* (except *clauses 37 to 42*, which relate to the duration of restraining orders), applies to the making of interim foreign restraining orders in New Zealand and an application to register one is to be treated in all respects (other than duration) as if it is an application for a restraining order (see *clause 134(3)*).

*Clauses 135 to 137* provide for matters relating to the expiry and duration of interim foreign restraining orders.

*Clauses 138 to 146* deal with the registration of foreign restraining orders in New Zealand. Matters of particular importance include—

- that the Director may apply to register a foreign restraining order if authorised under *new section 54* of the Mutual Assistance in Criminal Matters Act 1992 (see *clause 138*);
- that an application for registration must be made to the High Court (see *clause 139*);
- that the effect of registering a foreign restraining order under *new section 56* of the Mutual Assistance in Criminal Matters Act 1992 is that the property that is the subject of the order is not to be disposed of other than is provided in the order and is under the Official Assignee's custody and control;
- how various provisions of *subpart 2* are to apply to the registration of a foreign restraining order (see *clause 140*);
- matters associated with the expiry and duration of the registration of a foreign restraining order (see *clauses 142 to 146*).

*Clauses 147 to 155* deal with the registration of foreign forfeiture orders in New Zealand. Matters of particular importance include—

- that the Director may apply to register a foreign forfeiture order if authorised under *new section 55* of the Mutual Assistance in Criminal Matters Act 1992 (see *clause 147*);
- that an application must be made to the High Court (see *clause 148*);
- that notice of registering a foreign forfeiture order should be served on every person who the Director knows has an interest in the property to which the orders relates and on the Official Assignee (see *clause 149*);
- that the effect of registering a foreign forfeiture order is that the property specified in the order vests in the Crown absolutely and is in the custody and control of the Official Assignee (see *clause 150*);
- that relief may be sought from a foreign forfeiture order that is registered in New Zealand (see *clause 154*) and that relief may not be granted if the applicant has unlawfully benefited from the significant foreign criminal activity to which the order relates or acquired the interest in bad faith (see *clause 155*).

### Subpart 9—Miscellaneous

*Subpart 9* deals with a range of issues including—

- offences (see *clauses 156 to 162*);
- the effect of compliance with *subpart 7* (see *clause 163*);
- indemnities (see *clause 164*);
- the operation of other laws (see *clause 165*);
- the effect of the exercise of powers on the protection of confidentiality (see *clauses 166 to 169*);
- the admissibility of evidence obtained under *Parts 1 and 2* (see *clauses 170 to 172*);
- arrangements to avoid the effect of *Parts 1 and 2* or the Sentencing Act 2002 (see *clause 173*);
- the giving of notices (see *clause 174*);
- the effect of the death of a person whose property is subject to restraint or forfeiture under the Bill (see *clauses 175 and 176*);
- repeals (see *clause 177*);
- transitional provision (see *clause 178*);
- regulations and rules (see *clauses 179 and 180*).

*Subpart 9* creates the following offences:

- contravention of a restraining order or foreign restraining orders (see *clause 156*);
- contravention of forfeiture orders or foreign forfeiture orders (see *clause 157*);
- failure to comply with notices, orders, and search warrants (see *clause 158*);
- unlawful disclosure of the existence and operation of any search order (see *clause 160*);
- obstruction of persons exercising powers or carrying out functions under the Bill (see *clause 161*);
- unlawful disclosure of secrets by members of the recovery body (see *clause 162*).

No proceedings may be brought against any person because of the person's compliance with provisions in *subpart 7 of Part 2* (see *clause 163*).

Every enforcement officer who exercises powers or carries out functions under the Bill on behalf of the Crown, is to be indemnified unless the person acts in bad faith (see *clause 164*).

The Bill does not affect the operation of any other enactment providing for the forfeiture of property or the imposition of pecuniary penalties (see *clause 165*).

The powers given to the Director to require the production of information or the answering of certain questions override obligations of secrecy or non-disclosure, apart from legal professional privilege. The privilege against self-incrimination cannot be invoked as an excuse. Certain classes of officials are exempt from requirements imposed by the Director (see *clauses 166 to 169*).

Information obtained in response to requirements imposed by the Director is generally admissible in proceedings. However, self-incriminating statements are not, in general, admissible in any prosecution against the person who made them (see *clauses 170 to 172*).

### Subpart 10—Related amendments

*Subpart 10 of Part 2* of the Bill makes amendments to a number of enactments that are consequential in nature. The most notable amendments are those made to the Crimes Act 1961, the Evidence Act 1908, and the Legal Services Act 2000.

*Clause 183* amends section 312J of the Crimes Act 1961. Section 312J relates to records of information that the Police have lawfully

obtained from the interception of private communications. Section 312J requires the destruction of those records as soon as it appears that no proceedings will be taken in which the information is likely to be produced in evidence. The amendment clarifies that the term **proceedings** includes proceedings under *Parts 1 and 2* or *new sections 142A to 142Q* of the Sentencing Act 2002.

*Clause 184* amends section 312N of the Crimes Act 1961. Section 312N prevents evidence of private communications obtained through an interception device (intercepted evidence) from being given in court unless the evidence relates to an offence listed in paragraphs (a) to (h) of that section (that list includes, by way of example, serious violent offences, terrorist offences, and drug dealing offences). The amendment allows intercepted evidence to be used in a proceeding under *Parts 1 and 2* or *new sections 142A to 142Q* of the Sentencing Act 2002, if—

- the evidence relates to an offence listed in paragraphs (a) to (h) of section 312N of the Crimes Act 1961;
- the evidence is relevant to the proceeding.

*Clause 190* amends section 13A of the Evidence Act 1908. Section 13A of that Act protects the identity of undercover police officers who are called to be witnesses in certain indictable proceedings. The amendment extends the protection provided by section 13A of the Evidence Act 1908 to include undercover police officers who are witnesses in proceedings under the Criminal Proceeds (Recovery) Bill 2006, or *new sections 142A to 142Q* of the Sentencing Act 2002.

*Clause 215* amends section 9 of the Legal Services Act 2000. Section 9 of that Act sets out merits criteria for the granting of legal aid in civil matters. The amendment provides that the Legal Services Agency may grant legal aid to an applicant in respect of a civil proceeding under *Parts 1 and 2* if the Agency considers (in accordance with specified criteria) that the interests of justice require that legal aid be granted.

*Clause 216* amends the definition of disposable capital in Schedule 1 of the Legal Services Act 2000. The amendment excludes from the calculation of disposable capital the value of any property that is the subject of a restraining order under *Parts 1 and 2*.

### **Part 3**

## **Amendments to Mutual Assistance in Criminal Matters Act 1992 and Sentencing Act 2002**

### **Subpart 1—Amendments to Mutual Assistance in Criminal Matters Act 1992**

*Subpart 1 of Part 3* amends the Mutual Assistance in Criminal Matters Act 1992.

*Clause 233* amends a large number of the definitions in the Mutual Assistance in Criminal Matters Act 1992 to reflect the new terminology borrowed from *Parts 1 and 2* of the Bill. More significant definitions include the following:

- foreign forfeiture order:
- foreign pecuniary penalty order:
- foreign restraining order:
- foreign qualifying forfeiture offence:
- significant foreign criminal activity.

*Clause 234* inserts 2 new sections into the Mutual Assistance in Criminal Matters Act 1992. *New section 2A* provides that certain investigations certified by the Attorney-General to have commenced in New Zealand or certified by a Central Authority to have commenced in a foreign country (being investigations relating to forfeiture and restraint of property) are to be treated as criminal investigations for the purposes of Parts 2 and 3 of the Mutual Assistance in Criminal Matters Act 1992, even if the related proceedings are civil in nature.

Similarly, *new section 2B* provides that certain proceedings certified by the Attorney-General to have been instituted in New Zealand or certified by a Central Authority to have been instituted in a foreign country (being proceedings relating to forfeiture and restraint of property) are to be treated as criminal investigations for the purposes of Parts 2 and 3 of the Mutual Assistance in Criminal Matters Act 1992, even if they are civil in nature.

*Clause 235* amends section 4 of the Mutual Assistance in Criminal Matters Act 1992 to reflect that certain civil proceedings relating to forfeiture and restraint are able to be pursued for the purposes of mutual assistance under the Mutual Assistance in Criminal Matters Act 1992.

*Clause 236* reinserts *new sections 21 and 22* into the Mutual Assistance in Criminal Matters Act 1992. *New section 21* relates to

requests by New Zealand to have certain orders made under the Bill enforced in foreign countries.

*New section 22* provides for New Zealand to seek assistance with the enforcement of certain warrants, orders, or notices made under the Criminal Proceeds (Recovery) Bill in foreign countries.

*Clause 237* amends section 27 of the Mutual Assistance in Criminal Matters Act 1992 to reflect the fact that certain matters relating to forfeiture and restraint that are able to be enforced under the Act may be civil rather than criminal in nature. The grounds of refusal to assist have been modified to reflect this new situation.

*Clause 238* inserts *new sections 54 to 62A* into the Mutual Assistance in Criminal Matters Act 1992. In general terms those new sections provide for—

- how a request from a foreign country to enforce a foreign restraining order is to be dealt with in New Zealand (*new section 54*); and
- how a request from a foreign country to enforce a foreign forfeiture order is to be dealt with in New Zealand (*new section 55*); and
- the method for registering foreign orders (being both foreign restraining orders and foreign forfeiture orders) in New Zealand (*new section 56*); and
- the effect of registering a foreign order in New Zealand (*new section 57*); and
- the effect of cancelling the registration of a foreign order (*new section 58*); and
- how a request from a foreign country for a search warrant is to be dealt with in New Zealand (*new section 59*); and
- requests from foreign countries for the making of interim foreign restraining orders in New Zealand (*new section 60*);
- how requests from a foreign country for a production notice, production order, or examination notice is to be dealt with (*new sections 61 to 62A*).

*Clause 240* sets out the savings and transitional regime for matters commenced under the Mutual Assistance in Criminal Matters Act 1992 before the amendments described above were made. The majority of matters commenced under that Act before amendment are to be completed under that Act as if the proposed amendments had not been made.

## Subpart 2—Amendments to Sentencing Act 2002

*Subpart 2 of Part 3* amends the Sentencing Act 2002 to include provisions which integrate the making of instrument forfeiture orders into the sentencing process. It has a number of key features.

*New section 10A* of the Sentencing Act 2002 requires a court, in sentencing an offender for an offence punishable by a maximum term of imprisonment of 5 years or more (a **qualifying forfeiture offence**) to take into account, among other matters,—

- any instrument forfeiture order made, or to be made, in respect of property used to commit, or to facilitate the commission of, the offence;
- any forfeiture of that property by any other order or means arising from the offender's conviction;
- any order for relief made in respect of that property and the nature of the relationship between the person who obtained the relief and the offender.

In determining the weight to be given to these matters the sentencing court must take account of—

- the value of the property that is the subject of the instrument forfeiture order or is otherwise forfeited;
- the nature and extent of the offender's interest in that property.

*New sections 142A to 142Q* of the Sentencing Act 2002 establish a regime relating to the imposition of instrument forfeiture orders as part of the sentencing process.

*New section 142B* of the Sentencing Act 2002 requires the prosecutor to notify the court in writing if an offender is convicted of a qualifying forfeiture offence and the prosecutor considers that the sentencing court ought to consider making an instrument forfeiture order. The court, if of the opinion that it should consider making an instrument forfeiture order, must require any person known to have an interest in the property to be notified and advised of his or her right to seek relief. The court may also—

- direct the prosecutor, the offender, or any person who applies for relief to provide further information to the court on a range of issues;
- seek an independent valuation of the property that may be made the subject of the forfeiture order;
- order the offender or any other person to complete a declaration of ownership.

Persons who have an interest in the relevant property or who could suffer undue hardship as a consequence of its forfeiture may apply for relief under *new section 142J* of the Sentencing Act 2002.

*New section 142K* of the Sentencing Act 2002 requires a hearing to be convened to determine whether an instrument forfeiture order should be made or any application for relief should be granted.

*New section 142L* of the Sentencing Act 2002 sets out the applicable criteria in relation to decisions about the grant of relief to a person who establishes an interest in the property.

*New section 142M* of the Sentencing Act 2002 sets out the applicable criteria in relation to the grant of relief on the grounds of undue hardship.

*New section 142N* of the Sentencing Act 2002 sets out the criteria to be applied by the sentencing court when determining whether to make an instrument forfeiture order.

*New section 142O* of the Sentencing Act 2002 makes it an offence to provide false or misleading information to a court in response to a direction by a court under *new section 142F* of the Sentencing Act 2002 requiring further information.

*New section 142P* of the Sentencing Act 2002 deals with evidential matters.

*New section 142Q* of the Sentencing Act 2002 clarifies that the instrument forfeiture regime does not affect the provisions of the Sentencing Act 2002 dealing with vehicle confiscation.

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*Hon Mark Burton*

## **Criminal Proceeds (Recovery) Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Criminal Proceeds (Recovery) Act **2006**.

**2 Commencement**

This Act comes into force on the date that is 8 months after the day on which it receives the Royal assent.

5

**Part 1**  
**Preliminary provisions**

*Purpose*

**3 Purpose**

- (1) The primary purpose of **Parts 1 and 2** is to establish a regime for the forfeiture of property—
- (a) that has been derived directly or indirectly from significant criminal activity; or
  - (b) that represents the value of a person's unlawfully derived income.
- (2) The criminal proceeds and instruments forfeiture regime established under **Part 2** proposes to—
- (a) eliminate the chance for persons to profit from undertaking or being associated with significant criminal activity; and
  - (b) deter significant criminal activity; and

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- (c) reduce the ability of criminals and persons associated with crime or significant criminal activity to continue or expand criminal enterprise; and
- (d) deal with matters associated with foreign restraint and foreign forfeiture that arise in New Zealand. 5

### *Overview*

#### **4 Overview**

- (1) In general terms, **Parts 1 and 2**—
  - (a) provide for the restraint and forfeiture of property derived as a result of significant criminal activity without the need for a conviction; and 10
  - (b) set out certain procedural matters relating to the forfeiture of instruments of crime if a conviction has been or may be entered. Many aspects of the conviction-based forfeiture regime are included in the Sentencing Act 2002. 15
- (2) More specifically,—
  - (a) this Part deals with preliminary matters including, without limitation, interpretation and the application of **Parts 1 and 2**; and 20
  - (b) **subpart 1 of Part 2** deals with general matters relating to the criminal proceeds and instruments forfeiture regime; and
  - (c) **subpart 2 of Part 2** deals with the restraint of property that may later become the subject of a forfeiture order; and 25
  - (d) **subpart 3 of Part 2** deals with civil forfeiture orders (which are assets forfeiture orders and profit forfeiture orders); and
  - (e) **subpart 4 of Part 2** deals with certain procedural matters associated with conviction-based instrument forfeiture orders; and 30
  - (f) **subpart 5 of Part 2** sets out the powers of the Official Assignee; and
  - (g) **subpart 6 of Part 2** sets out the powers of the recovery body; and 35
  - (h) **subpart 7 of Part 2** provides for investigative powers for various agencies; and
  - (i) **subpart 8 of Part 2** deals with foreign restraint and foreign forfeiture; and 40

- (j) **subpart 9 of Part 2** deals with certain miscellaneous matters; and
  - (k) **subpart 10 of Part 2** sets out consequential amendments.
- (3) This overview is by way of explanation only. If any provision of **Parts 1 and 2** conflicts with this overview, the other provision prevails. 5

### *Interpretation*

## **5 Interpretation**

- (1) In **Parts 1 and 2**, unless the context otherwise requires,—
- all or part of a respondent's property** means all or part of the property in which an identifiable respondent has an interest 10
- assets forfeiture order** means an order made under **section 50(1)**
- benefit** includes proceeds and property 15
- civil forfeiture order** means an assets forfeiture order or a profit forfeiture order
- convert** means, in relation to property, to change it from one form to another, whether by sale or by some other means (for example, selling a car and buying a boat with the proceeds of the sale) 20
- dealing with property** includes—
- (a) if a debt is owed by a person, making a payment to any person to reduce that debt; and
  - (b) removing property from New Zealand; and 25
  - (c) receiving or making a gift of property; and
  - (d) registering an interest in property
- department** has the same meaning as in section 2(1) of the State Sector Act 1988
- Director** or **Director of Criminal Proceeds Confiscation** means the chief executive of the recovery body 30
- document**—
- (a) means a document in any form (including, without limitation, a document in an electronic form); and
  - (b) includes (without limitation) any of the following: 35
    - (i) any writing on any material;
    - (ii) information recorded or stored by means of a tape recorder, computer, or other device:

- (iii) material subsequently derived from information recorded or stored in the manner described in **subparagraph (ii)**:
  - (iv) labels, markings, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means: 5
  - (v) books, maps, plans, graphs, or drawings:
  - (vi) photographs, films, negatives, tapes, or any other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced 10
- financial institution** has the same meaning as in section 3 of the Financial Transactions Reporting Act 1996
- foreign country** has the same meaning as in section 2(1) of the Mutual Assistance in Criminal Matters Act 1992 15
- foreign forfeiture** means all matters associated with a foreign forfeiture order (including, without limitation, registering a foreign forfeiture order in New Zealand)
- foreign forfeiture order** has the same meaning as in section 2(1) of the Mutual Assistance in Criminal Matters Act 1992 20
- foreign order** means a foreign forfeiture order or a foreign restraining order
- foreign qualifying forfeiture offence** has the same meaning as in section 2(1) of the Mutual Assistance in Criminal Matters Act 1992 25
- foreign restrained property** means property that is the subject of a foreign restraining order
- foreign restraining order** has the same meaning as in section 2(1) of the Mutual Assistance in Criminal Matters Act 1992 30
- foreign restraint** means all matters associated with a foreign restraining order (including, without limitation, registering a foreign restraining order in New Zealand)
- forfeited property** means property that is the subject of a forfeiture order 35
- forfeiture order** means an assets forfeiture order, a profit forfeiture order, or an instrument forfeiture order

- former interest holder** means, in relation to a forfeiture order, any person whose interest in property has been forfeited by the order
- instrument forfeiture order** means an order made under **section 142N** of the Sentencing Act 2002 5
- instrument of crime** means—
- (a) property used (wholly or in part) to commit or facilitate the commission of a qualifying forfeiture offence; and
  - (b) in relation to a qualifying forfeiture offence that is an offence against section 8(1) or (2A) of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purposes of committing that offence 10
- interest**, in relation to property of any kind (including, without limitation, restrained property or forfeited property), means— 15
- (a) a legal or equitable estate or interest in the property; or
  - (b) a right, power, or privilege in connection with the property
- interim foreign restraining order** means an order applied for under **section 134** 20
- lawyer** means a barrister or solicitor, as those terms are defined in section 2 of the Law Practitioners Act 1982
- Official Assignee** means the Official Assignee for New Zealand 25
- organisation** means an organisation listed in Part 2 of Schedule 1 of the Ombudsmen Act 1975
- profit forfeiture order** means an order made under **section 55**
- property** means real or personal property of any kind— 30
- (a) whether situated in New Zealand or a foreign country; and
  - (b) whether tangible or intangible; and
  - (c) whether movable or immovable
- proposed restrained property** means property in relation to which a restraining order is sought 35
- prosecutor**—
- (a) means, in relation to an application for a restraining order relating to an instrument of crime or to any matter relating to an instrument forfeiture order, the person

- who is for the time being in charge of the file or files that relate to the criminal proceeding for the qualifying forfeiture offence to which the restraining order or instrument forfeiture order relates; and
- (b) includes— 5
- (i) any other employee of the person or agency by whom the prosecutor is employed who has responsibilities for any matter directly connected with the proceedings; and
- (ii) any counsel representing the person who laid the information in the proceedings; and 10
- (iii) in the case of a private prosecution, the person who laid the information and any counsel representing that person
- qualifying forfeiture offence—** 15
- (a) means an offence punishable by a maximum term of imprisonment of 5 years or more; and
- (b) includes an attempt to commit, conspiring to commit, or being an accessory to an offence if the maximum term of imprisonment for that attempt, conspiracy, or activity is 5 years or more 20
- recovery body** means the department or organisation for the time being designated by the Attorney-General as the recovery body
- relevant period of criminal activity**, in relation to an application for a profit forfeiture order, means the period that ends on the date the application is made and starts 7 years before— 25
- (a) the date of the application for the relevant restraining order, if the application for the profit forfeiture order relates, wholly or in part, to restrained property; or 30
- (b) the date of the application for the profit forfeiture order, if the application for the profit forfeiture order does not relate to restrained property
- respondent** means—
- (a) in relation to an application for a restraining order or forfeiture order, the person identified in that application as the respondent (if any); and 35
- (b) in relation to a restraining order or forfeiture order that has been made, the person in relation to whom that order is made (if any) 40

- restrained property** means property that is the subject of a restraining order
- restraining order** means an order made under **section 24, 25, or 26**
- significant criminal activity** has the meaning given to it in **section 6** 5
- significant foreign criminal activity** has the same meaning as in section 2(1) of the Mutual Assistance in Criminal Matters Act 1992
- specific property** means identifiable property in relation to which there may, but need not, be a person who is an identifiable owner 10
- tainted property**—
- (a) means any property that has, wholly or in part, been—
    - (i) acquired as a result of significant criminal activity; or 15
    - (ii) directly or indirectly derived from significant criminal activity; and
  - (b) includes any property that has been acquired as a result of, or directly or indirectly derived from, more than 1 activity if at least 1 of those activities is a significant criminal activity 20
- unlawfully benefited from significant criminal activity** has the meaning given to it in **section 7**.
- (2) A reference in **Parts 1 and 2** to benefits, proceeds, or property being derived by a person (**person A**) includes benefits, proceeds, or property derived—
    - (a) directly or indirectly by person A; and 25
    - (b) by another person at the request or direction of person A. 30
- 6 Meaning of significant criminal activity**
- (1) In **Parts 1 and 2**, unless the context otherwise requires, **significant criminal activity** means an activity engaged in by a person that if proceeded against as a criminal offence would amount to offending— 35
    - (a) that consists of, or includes, 1 or more offences punishable by a maximum term of imprisonment of 5 years or more; or

- (b) from which property, proceeds, or benefits of a value of \$30,000 or more have, directly or indirectly, been acquired or derived.
- (2) A person is undertaking an activity of the kind described in **subsection (1)** whether or not— 5
- (a) the person has been charged with or convicted of an offence in connection with the activity; or
- (b) the person has been acquitted of an offence in connection with the activity; or
- (c) the person’s conviction for an offence in connection with the activity has been quashed or set aside. 10
- (3) Any expenses or outgoings used in connection with an activity of the kind described in **subsection (1)** must be disregarded for the purposes of calculating the value of any property, proceeds, or benefits under **subsection (1)(b)**. 15
- 7 Meaning of unlawfully benefited from significant criminal activity**
- In **Parts 1 and 2**, unless the context otherwise requires, a person has **unlawfully benefited from significant criminal activity** if the person has knowingly, directly or indirectly, derived a benefit from significant criminal activity (whether or not that person undertook or was involved in the significant criminal activity). 20
- Application*
- 8 Parts 1 and 2 to bind the Crown** 25
- Parts 1 and 2** bind the Crown.
- 9 Application**
- Parts 1 and 2** apply in respect of—
- (a) qualifying forfeiture offences or, if applicable, foreign qualifying forfeiture offences committed, or believed to have been committed, before, on, or after the commencement of this section; and 30
- (b) significant criminal activity or, if applicable, significant foreign criminal activity engaged in, or believed to have been engaged in, before, on, or after the commencement of this section. 35

## Part 2

### Criminal proceeds and instruments forfeiture regime

#### Subpart 1—General provisions

- 10 Nature of proceedings**
- (1) Proceedings relating to any of the following are civil proceedings: 5
- (a) a restraining order:
  - (b) an order excluding an interest from restrained property:
  - (c) an assets forfeiture order:
  - (d) a profit forfeiture order: 10
  - (e) an order for relief from a civil forfeiture order:
  - (f) an interim foreign restraining order:
  - (g) registering a foreign restraining order in New Zealand:
  - (h) registering a foreign forfeiture order in New Zealand:
  - (i) an order for relief from a foreign restraining order or foreign forfeiture order registered in New Zealand. 15
- (2) Proceedings relating to an instrument forfeiture order are proceedings under the Sentencing Act 2002 and, in relation to an appeal from an instrument forfeiture order, the Crimes Act 1961. 20
- Compare: Criminal Assets Recovery Act 1990 s 5 (NSW)
- 11 Restraint not necessary before forfeiture**
- Property may, but need not, be restrained property or foreign restrained property before it becomes forfeited property or the subject of a foreign forfeiture order registered in New Zealand. 25
- 12 Conversion of restrained property and foreign restrained property**
- (1) Restrained property converted into another form (**converted property**) remains restrained property for the purposes of the restraining order to which it is subject and for the purposes of any forfeiture order made in relation to that property, despite the converted property not being property that was originally restrained. 30
- (2) Foreign restrained property converted into another form (**converted property**) remains foreign restrained property for the purposes of any foreign restraining order registered in New Zealand. 35

Zealand and for the purposes of any foreign forfeiture order registered in New Zealand in relation to that property, despite the converted property not having been property that was originally restrained.

- 13 No identifiable owner required for certain proceedings relating to specific property** 5
- (1) In proceedings for a restraining order or an assets forfeiture order relating to specific property, an owner of that specific property need not be identified.
- (2) **Subsection (1)** does not apply to proceedings to register a foreign restraining order. 10
- 14 Differing grounds for restraining and later forfeiting property**
- If proceedings for a forfeiture order or to register a foreign forfeiture order in New Zealand involve restrained property or property that was the subject of a foreign restraining order registered in New Zealand, the forfeiture order or the registration of a foreign forfeiture order may be sought on grounds that differ from those on which the restraining order was made or the foreign restraining order was registered. 15  
20
- 15 No criminal proceedings required for civil forfeiture order or in registering foreign forfeiture order**
- The significant criminal activity or significant foreign criminal activity on which a civil forfeiture order or registration of a foreign forfeiture order in New Zealand is based does not need to be, or to have been, the subject of any criminal proceedings in New Zealand or a foreign country. 25
- 16 Quashing criminal proceedings does not impact on civil forfeiture**
- (1) **Subsection (2)** applies if criminal proceedings are commenced or pending or have been withdrawn or determined in respect of any significant criminal activity that is the basis for— 30
- (a) an assets forfeiture order or a profit forfeiture order; or
- (b) an application for an order of that kind.
- (2) If this subsection applies, the order or application is not affected by the criminal proceedings, even if any conviction 35

entered in those proceedings is or has been quashed or set aside.

- 17 Multiple forfeiture orders and foreign forfeiture orders**
- (1) Nothing in **Parts 1 and 2** restricts a court from making 1 or more of the following types of orders in relation to the same instance of significant criminal activity: 5
- (a) assets forfeiture orders;
  - (b) instrument forfeiture orders;
  - (c) profit forfeiture orders.
- (2) **Subsection (1)** is subject to **section 54(1)(b)**. 10
- (3) Nothing in **Parts 1 and 2** restricts a court from registering 1 or more foreign forfeiture orders in New Zealand in relation to the same instance of significant foreign criminal activity.

## Subpart 2—Restraining orders

### *Applying for restraining order* 15

- 18 Applying for restraining order**
- The following persons may apply for a restraining order:
- (a) the Director may apply for a restraining order of the kind described in **section 24 or 25** (which relate to restraining specific property or all or part of a respondent's property): 20
  - (b) a prosecutor may apply for a restraining order of the kind described in **section 26** (which relates to restraining an instrument of crime).
- Compare: 1991 No 120 s 39(1) 25

- 19 Application for restraining order to identify proposed restrained property, respondent (if any), and interest holders**
- An application for a restraining order must identify the following: 30
- (a) the proposed restrained property; and
  - (b) the respondent (if any); and
  - (c) any other persons who, to the knowledge of the applicant, have an interest in the proposed restrained property. 35

- 20 Court to which application for restraining order made**  
 An application for a restraining order must be made to,—
- (a) in the case of an application made under **section 24 or 25**, the High Court; and
  - (b) in the case of an application made under **section 26**,—
    - (i) the High Court; or
    - (ii) if the charge of the offence with which the instrument of crime is associated has been or is to be tried in a District Court, the District Court.
- Compare: 1991 No 120 s 39(1) 10
- Applications for restraining order made on and without notice*
- 21 Application for restraining order on notice**
- (1) An applicant for a restraining order must,—
    - (a) so far as is practicable, serve a copy of the application on any person who, to the knowledge of the applicant, has an interest in the proposed restrained property (including, if applicable, the respondent); and
    - (b) serve a copy of the application on the Official Assignee.
  - (2) The court hearing an application for a restraining order may, at any time before the application is finally determined, direct the applicant to serve a copy of the application on a specified person or class of persons, in the manner and within the time that the court thinks fit.
- Compare: 1991 No 120 s 40(a), (b) 25
- 22 Application for restraining order without notice**
- (1) A court which receives an application for a restraining order may, on the request of the applicant, consider the application without notice being given to the persons mentioned in **section 21(1)(a)** if the court is satisfied that there is a risk of the proposed restrained property being destroyed, disposed of, altered, or concealed if notice were given to those persons.
  - (2) If an application is made for a restraining order without notice, the court must, so far as it is practicable and consistent with the interests of justice, ensure that the application is dealt with speedily.

- (3) Any provisions of this subpart that relate to restraining orders applied for on notice apply, with any necessary modifications, to restraining orders applied for without notice.

Compare: 1991 No 120 s 41(1), (6)

*Being heard at hearing for restraining order* 5

**23 Who may be heard at hearing for restraining order**

- (1) The following persons are entitled to appear and adduce evidence at the hearing of an application for a restraining order:
- (a) the applicant;
  - (b) any person who holds an interest in the proposed restrained property (including, if applicable, the respondent); 10
  - (c) the Official Assignee.

- (2) **Subsection (1)** is subject to **section 22**.

Compare: 1991 No 120 s 40(c) 15

*Making restraining orders*

**24 Making restraining order relating to specific property**

A court hearing an application for a restraining order relating to specific property that has reasonable grounds to believe that the property it specifies in the order (the **restrained property**) is tainted property may make an order that the restrained property— 20

- (a) is not to be disposed of, or dealt with, other than is provided for in the restraining order; and
- (b) is to be under the Official Assignee's custody and control. 25

**25 Making restraining order relating to all or part of respondent's property**

- (1) A court hearing an application for a restraining order relating to all or part of a respondent's property that has reasonable grounds to believe that the respondent has unlawfully benefited from significant criminal activity may make an order that the property it specifies in the order— 30

- (a) is not to be disposed of, or dealt with, other than is provided for in the restraining order; and 35
- (b) is to be under the Official Assignee's custody and control.

- (2) A restraining order made under **subsection (1)** may relate to any of the following:
- (a) all or part of a respondent's property;
  - (b) all of a respondent's property other than specifically excluded property; 5
  - (c) property acquired by a respondent after the making of the order.

Compare: 1991 No 120 ss 39(2)(b), (c), 42(1)

**26 Making restraining order relating to instrument of crime** 10

- (1) A court hearing an application for a restraining order relating to an instrument of crime may, if either of the circumstances in **paragraph (a) or (b) of subsection (2)** exist, make an order that the property it specifies in the order—
- (a) is not to be disposed of, or dealt with, other than is provided for in the restraining order; and 15
  - (b) is to be under the Official Assignee's custody and control.
- (2) The circumstances are—
- (a) that— 20
    - (i) the respondent has been charged with a qualifying forfeiture offence; and
    - (ii) the court has reasonable grounds to believe that the property referred to in the application is an instrument of crime used to facilitate that qualifying forfeiture offence; or 25
  - (b) that the court has reasonable grounds to believe—
    - (i) that the respondent will be charged with a qualifying forfeiture offence within 48 hours; and
    - (ii) that the property referred to in the application is an instrument of crime used to facilitate that qualifying forfeiture offence. 30

Compare: 1991 No 120 s 42(1)

*Registration of restraining orders*

**27 Registration of restraining orders on registers** 35

- (1) **Subsection (2)** applies if a restraining order is made against property of a kind that is covered by a New Zealand enactment that enables the registration of—
- (a) title to that property; or

- (b) charges over that property.
- (2) If this subsection applies, any authority responsible for administering an enactment of the kind referred to in **subsection (1)** must, if requested to do so by the applicant for the restraining order, record on the register the particulars of the restraining order. 5
- (3) If the particulars are so recorded on the register, any person who subsequently deals with the property is deemed to have notice of the restraining order at the time of those dealing. 10
- Compare: 1991 No 120 s 57

*Conditions on restraining order*

- 28 Conditions on restraining order**
- (1) A court may make a restraining order subject to any conditions the court thinks fit including, without limitation, conditions that provide for the following to be met out of a respondent's restrained property: 15
- (a) the reasonable living costs of the respondent and any of his or her dependants:
- (b) the reasonable business expenses of the respondent:
- (c) the payment of any specified debt incurred by the respondent in good faith: 20
- (d) any other expenses allowed by the court.
- (2) Despite **subsection (1)(d)**, a court may not allow any legal expenses to be met out of a respondent's restrained property.
- (3) In determining whether or not to make a restraining order subject to a condition, the court must have regard to the ability of a respondent to meet the reasonable living costs, expenses, or debt concerned out of property that is not restrained property. 25
- (4) In this section a **dependant** is a person who is dependent on the respondent and who is either or both— 30
- (a) a child of the respondent:
- (b) a member of the household of the respondent.

Compare: 1991 No 120 s 42(2), (3)

*Undertakings as to damages or costs in relation to  
restraining orders*

- 29 Undertakings as to damages or costs in relation to  
restraining orders**
- (1) A court may require an applicant for a restraining order, or an applicant for an extension of the duration a restraining order under **section 41**, to give satisfactory undertakings with respect to the payment of damages or costs, or both, in relation to the making, operation, or extension of the duration of the restraining order. 5  
10
- (2) A court may decline to make or extend the duration of a restraining order if the applicant for the order or extension fails to give the court the undertakings with respect to the payment of damages or costs, or both, that the court requires.
- (3) Any expense incurred by the Crown in satisfaction of an undertaking given on behalf of the Crown under **subsection (1)** may be incurred without further appropriation than this section. 15

Compare: 1991 No 120 s 45

*Excluding severable interest from restrained property* 20

- 30 Excluding severable interest from restrained property**
- (1) A person (other than the respondent) who has a severable interest in proposed restrained property or restrained property may apply to the court that is to consider, or has considered, the application for a restraining order to have that person's severable interest excluded from— 25
- (a) a restraining order that the court may make; or
- (b) a restraining order the court has made.
- (2) The court must exclude the severable interest from the restrained property at, or after, the time a restraining order is made if the applicant proves on the balance of probabilities that— 30
- (a) the applicant has an interest in the property to which the restraining order relates; and
- (b) the applicant— 35
- (i) has not unlawfully benefited from the significant criminal activity to which the restraining order relates, if the order is made under **section 24 or 25**;  
or

- (ii) was not involved in the qualifying forfeiture offence to which the restraining order relates, if the order is made under **section 26**.
- (3) The court may exclude the severable interest from the restrained property if it considers that it is in the public interest to do so, having regard to all the circumstances, including, without limitation,—
- (a) any undue hardship that is reasonably likely to be caused to any person by the severable interest in property being made or having been made restrained property: 10
  - (b) the gravity of the significant criminal activity or qualifying forfeiture offence with which the property in which the person has a severable interest is associated:
  - (c) the likelihood that the interest will become subject to a forfeiture order. 15

Compare: 1991 No 120 s 48

### **31 Excluding severable interest from restrained property when applicant mortgagee**

- (1) **Subsection (2)** applies if—
- (a) an applicant to exclude a severable interest from proposed restrained property or restrained property under **section 30(1)** is a mortgagee; and
  - (b) as a result of the mortgagee's application, a court excludes the mortgagee's interest; and 25
  - (c) the property that is the subject of the mortgage is sold in order to exclude the mortgagee's interest from the restrained property.
- (2) If this subsection applies, any proceeds resulting from the sale of the property that are payable to the mortgagor are, if the restraining order is made, restrained property, despite the proceeds from the sale not being property that the court originally restrained. 30

Compare: 1991 No 120 s 48

*Disposition or dealings set aside from restrained property*

- 32 Certain disposition or dealing set aside from restrained property**
- (1) A successful applicant for a restraining order may apply to the court that made the restraining order for an order that a disposition or dealing be set aside on the ground that restrained property was disposed of, or otherwise dealt with, in contravention of the restraining order. 5
- (2) On an application under **subsection (1)**, the court may— 10
- (a) set the disposition or dealing aside—
- (i) as from the day on which the disposition or dealing took place; or
- (ii) as from the day of the order; and
- (b) declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order. 15

Compare: 1991 No 120 s 59

*Further orders associated with restraining orders*

- 33 Applying for further orders** 20
- (1) An application for a further order may be made by—
- (a) the applicant for the restraining order with which the further order is associated; or
- (b) a person with an interest in the restrained property or proposed restrained property with which the further order is associated; or 25
- (c) the Official Assignee; or
- (d) with the leave of the court, any other person.
- (2) The application must be served on every person (other than the applicant) who is a party to the proceeding in which— 30
- (a) the making of the restraining order is to be considered; or
- (b) a restraining order was made.

Compare: 1991 No 120 s 47(3)

- 34 Making further orders** 35
- (1) A court that makes a restraining order may, if it considers it appropriate, make further orders in relation to the restrained

property (which may, but need not, be an order of any 1 or more of the types referred to in **section 35**).

- (2) A further order may be made—
- (a) at the time the restraining order is made; or
  - (b) at any later time before the expiry of the restraining order with which it is associated. 5

Compare: 1991 No 120 s 47(1)

### 35 Types of further order

Without limiting the generality of **section 34(1)**, a court may make 1 or more of the following further orders in relation to restrained property: 10

- (a) an order varying the restrained property to which a restraining order relates:
- (b) an order varying any condition to which a restraining order is subject: 15
- (c) an order for any person (including, without limitation, the respondent) to be examined by the court or the registrar of the court concerning the nature and location of any restrained property:
- (d) an order relating to the carrying out of any undertaking given under **section 29**: 20
- (e) an order relating to the Official Assignee that—
  - (i) regulates the manner in which the Official Assignee may exercise his or her powers or perform his or her duties under a restraining order: 25
  - (ii) determines any question relating to the property (including any question relating to the liabilities of any person holding an interest in the property), or the exercise of the powers, or the performance of the duties, of the Official Assignee: 30
  - (iii) requires the examination, before the Official Assignee, of any person holding an interest in the property or any other person, concerning the nature and location of property:
  - (iv) directs any person holding an interest in the property to furnish the Official Assignee, within the time specified in the order, with a statement on oath setting out any particulars of that interest or that property that the court thinks fit: 35

- (v) directs the Official Assignee to sell restrained property (including, without limitation, a business) in order to preserve the value of the restrained property:
- (vi) directs the Official Assignee to make mortgage payments or payments in respect of any other encumbrance from the restrained property. 5

Compare: 1991 No 120 s 47(2)

### 36 Impact of certain further orders

- (1) A person to whom an order made under **section 35(c) or (e)(iii) or (iv)** applies, is not excused from answering any question, or furnishing any information, on the ground that compliance with that requirement could or would tend to incriminate that person or subject that person to any penalty or forfeiture. 10
- (2) An examination by the Official Assignee under an order made under **section 35(e)(iii)** is a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). 15
- (3) A person required to be examined under an order made under **section 35(c) or (e)(iii)** must, before being required to comply with any requirements imposed by the order, be given a reasonable opportunity to arrange for a lawyer to accompany the person. 20
- (4) The proceeds of a sale resulting from an order made under **section 35(e)(v)** are restrained property, despite the proceeds from the sale not being property that the court originally restrained. 25

Compare: 1991 No 120 s 47(5), (6)

#### *Duration of restraining orders and further orders*

- 37 **Duration of restraining orders and further orders** 30
- (1) A restraining order expires on the earlier of the following:
  - (a) the date that is the end of the period that is 1 year after the date on which the restraining order is made;
  - (b) the date of the making or declining of a forfeiture order associated with the same property. 35
- (2) Despite **subsection (1)**,—
  - (a) if a court declines to make a forfeiture order, but the applicant indicates that the applicant will appeal that

- decision, a restraining order expires on the date specified in **section 38**; and
- (b) if a restraining order is applied for without notice, it expires on the date specified in **section 39**; and
  - (c) if a restraining order relates to an instrument of crime and the circumstances in **section 40** apply to it, the restraining order expires on the date specified in that section; and
  - (d) if the duration of a restraining order is extended by a court, the restraining order expires on the date specified by the court under **section 41**; and
  - (e) if a restraining order relates to property in which no person has claimed an interest, the restraining order expires on the date that the relevant application for a forfeiture order is determined, which must not be determined earlier than 1 year after the making of the restraining order.
- (3) On the expiry of a restraining order, any further order associated with that restraining order also expires.
- Compare: 1991 No 120 s 65(1)

### **38 Duration of restraining order when application for forfeiture order declined**

A restraining order that is in force at the time that a court declines to make a forfeiture order that is associated with the same property does not expire until—

- (a) the date that is the end of a period of 7 working days from the date of that decision, if an appeal has not been lodged in the court by that date; or
- (b) if an appeal has been lodged in the court by that date, on the date of the withdrawal or determination of that appeal, or, if a further appeal is lodged, on the date of the withdrawal or determination of that further appeal.

### **39 Duration of restraining order when application without notice**

- (1) A restraining order made as a result of an application made without notice under **section 22 (restraining order A)** ceases to be in force on the date that is the end of the period of 7 days commencing on the date on which restraining order A is made.

- (2) However, if, before restraining order A expires, an application is made with notice for a restraining order on notice (**restraining order B**) in relation to the same property to which restraining order A relates (whether or not the application also relates to any other property), restraining order A continues in force until the application for restraining order B is finally disposed of. 5
- (3) An applicant for restraining order B must prosecute the application with all due diligence, and if the applicant does not do so, the court may, on the application of any party to the proceedings, order that the proceedings be struck out. 10
- (4) If an application is made for restraining order B, the court must, so far as it is practicable and consistent with the interests of justice, ensure that the application is dealt with speedily. 15
- Compare: 1991 No 120 s 41(2)–(5)

#### **40 Duration of restraining order relating to instrument of crime in certain circumstances**

- (1) A restraining order in relation to an instrument of crime made under **section 26(2)(b)** expires at the end of the period of 48 hours after the making of the order (the **48-hour period**) if the defendant has not been charged with the offence, or a related qualifying forfeiture offence, with which the instrument of crime is associated before the expiry of the 48-hour period. 20
- (2) **Subsection (3)** applies if— 25
- (a) a restraining is made in reliance on— 25
- (i) a person’s conviction for a qualifying forfeiture offence under **section 26(2)(a)** or the charging of a person with a qualifying forfeiture offence; or
- (ii) the proposed charging of a person with a qualifying forfeiture offence under **section 26(2)(b)**, and the person is, within the 48-hour period, charged with the offence or a related qualifying forfeiture offence; and 30
- (b) either of the following occurs: 35
- (i) the charge is withdrawn and the person is not charged with a related qualifying forfeiture offence by the time the charge is withdrawn:
- (ii) the person is acquitted of the charge or the conviction is quashed and the person has not been

charged with a related qualifying forfeiture offence by the time of the acquittal or quashing.

- (3) If this subsection applies, the restraining order expires on the date when—
- (a) the charge is withdrawn; or 5
  - (b) the acquittal or quashing occurs.

Compare: 1991 No 120 s 65

#### **41 Extending duration of restraining order**

- (1) If a court has made a restraining order, the applicant for that order may, before the restraining order expires, apply to that court to extend its duration. 10
- (2) If an application is made under **subsection (1)**, the court may order that the operation of the restraining order be extended for a period not exceeding 1 year.
- (3) The duration of a restraining order may be extended more than once under this section. 15
- (4) If, before a restraining order would otherwise expire under **section 37(1)**, an application is made to a court under this section and the application is granted, the restraining order ceases to be in force on the date specified in the court's order. 20

Compare: 1991 No 120 s 66(1), (2)

#### **42 Additional matters relating to extending duration of restraining order**

- (1) On making any order under **section 41(2)**, the court may vary the restraining order in any way it considers fit, including, without limitation, by specifying whether all or part of the restrained property is to remain subject to the restraining order during the extended period of operation. 25
- (2) An applicant for an order under **section 41(1)** must serve a copy of the application on any person who, to the knowledge of the applicant, has an interest in the property that is the subject of the application. 30

Compare: 1991 No 120 s 66(3), (4)

## Subpart 3—Civil forfeiture orders

*Applications for civil forfeiture orders*

- 43 Who may apply**  
The Director may apply for a civil forfeiture order.  
Compare: 1991 No 120 s 8(1) 5
- 44 Application to High Court**  
An application for a civil forfeiture order must be made to the High Court.  
Compare: 1991 No 120 s 8(2)
- Notice and entitlement to be heard in relation to civil forfeiture orders* 10
- 45 Application for civil forfeiture order on notice**
- (1) The Director must serve a copy of the application for a civil forfeiture order, so far as is practicable to do so, on every person who, to the knowledge of the Director, has an interest in the property to which the application relates (including, if applicable, the respondent). 15
- (2) The Director must also serve a copy of the application on the Official Assignee.
- (3) On an application for a civil forfeiture order, the High Court may, at any time before the application is finally determined, direct the Director to serve notice of the application on a specified person or class of persons, in the manner and within the time the Court thinks fit. 20
- Compare: 1991 No 120 s 10(1) 25
- 46 Who may be heard at hearing for civil forfeiture order**  
The following persons are entitled to appear and be heard at the hearing of an application for a civil forfeiture order:
- (a) the applicant; and
- (b) any person on whom the application is served (including, if applicable, the respondent); and 30
- (c) any other person who claims an interest in the property to which the application relates.
- Compare: 1991 No 120 s 10(2)

*Matters relating to application for civil forfeiture order*

- 47 Amending application for civil forfeiture order**
- (1) The High Court may amend an application for a civil forfeiture order—
- (a) on the Court’s own initiative; or 5
  - (b) at the request of the Director.
- (2) However, the Court must not amend an application for a civil forfeiture order to include additional property, proceeds, or benefits unless the Court is satisfied that—
- (a) the additional property, proceeds, or benefits were not reasonably able to be identified when the application for the civil forfeiture order was made; or 10
  - (b) the evidence necessary to support the application in relation to the additional property, proceeds, or benefits only became available after the application for the civil forfeiture order was made. 15
- (3) If the Court amends an application under this section, the Court must direct the Director to serve notice of the amendment on—
- (a) every person referred to in **section 46**; and 20
  - (b) any person who the Director has reason to believe may have an interest in any additional property included in the application by the amendment.
- Compare: 1991 No 120 s 12
- 48 Notice of application for civil forfeiture order may be recorded on registers** 25
- (1) **Subsection (2)** applies if an application is made for a civil forfeiture order against property of a kind that is covered by a New Zealand enactment that enables the registration of—
- (a) title to that property; or 30
  - (b) charges over that property.
- (2) If this subsection applies, the High Court hearing the application may, at any time before finally determining it, order any authority responsible for administering an enactment of the kind referred to in **subsection (1)** (an **Authority**) to enter on the register a note of the fact that an application has been made for a civil forfeiture order against the property. 35
- (3) The Court must order an Authority to cancel an entry made on a register under **subsection (2)** if—

- (a) the application to which the entry relates is finally determined and the specified period (as described in **section 82(2)** for assets forfeiture orders and **section 83(2)** for profit forfeiture orders) has expired; or
- (b) proceedings for the application to which the entry relates are discontinued for any reason (including, without limitation, because the application is withdrawn); or
- (c) the application to which the entry relates is amended so as to exclude the property in respect of which the entry is made.

Compare: 1991 No 120 s 11

*Application for assets forfeiture order*

**49 Application for assets forfeiture order to specify proposed forfeited property, grounds, respondent (if any), and persons with interests (if known)**

The Director must specify the following in an application for an assets forfeiture order:

- (a) the property that the Director alleges is tainted property; and
- (b) the grounds for the Director's belief that the property is tainted property; and
- (c) the respondent (if any); and
- (d) any other persons who, to the knowledge of the Director, have an interest in the property to which the application relates.

Compare: 1991 No 120 s 9

*Making assets forfeiture order*

**50 Making assets forfeiture order**

- (1) If, on an application for an assets forfeiture order, the High Court is satisfied on the balance of probabilities that specific property is tainted property, the Court must make an assets forfeiture order in respect of that specific property.
- (2) **Subsection (1)** is subject to **section 51**.
- (3) The Court must specify in the assets forfeiture order the interest in the property to which the order applies and that the specified interest—
  - (a) vests in the Crown absolutely; and
  - (b) is in the custody and control of the Official Assignee.

- (4) Despite **subsection (1)**, the Court may not make an assets forfeiture order in relation to property that no person has claimed an interest in, unless the Court is satisfied, on the balance of probabilities, of the following additional matters:
- (a) that a restraining order was earlier made in relation to the same property; and 5
  - (b) that the restraining order has been in place for a period of at least 1 year; and
  - (c) that the Director has contacted or made all reasonable efforts to contact any person the Director believes may have an interest in the property. 10

Compare: 1991 No 120 ss 15(1), 16(1)

**51 Exclusion of respondent's property from assets forfeiture order because of undue hardship**

- (1) The High Court may, on an application made by the respondent before an assets forfeiture order is made, exclude certain property from an assets forfeiture order if it considers that, having regard to all of the circumstances, undue hardship is reasonably likely to be caused to the respondent if the property is included in the assets forfeiture order. 15 20
- (2) The circumstances the Court may have regard to under **subsection (1)** include, without limitation,—
- (a) the use that is ordinarily made, or was intended to be made, of the property that is, or is proposed to be, the subject of the assets forfeiture order; and 25
  - (b) the nature and extent of the respondent's interest in the property; and
  - (c) the circumstances of the significant criminal activity to which the order relates.

*Application for profit forfeiture order* 30

**52 Contents of application for profit forfeiture order**

An application for a profit forfeiture order must—

- (a) name the respondent; and
- (b) describe the significant criminal activity within the relevant period of criminal activity from which the respondent is alleged to have unlawfully benefited; and 35
- (c) state the value of those benefits; and

- (d) identify the property in which the respondent holds interests and the nature of those interests.

Compare: 1991 No 120 s 9

*Making profit forfeiture order*

- 53 Value of benefits presumed to be value in application** 5
- (1) If the Director proves, on the balance of probabilities, that the respondent has, in the relevant period of criminal activity, unlawfully benefited from significant criminal activity, the value of those benefits is presumed to be the value stated in—
- (a) the application under **section 52(c)**; or 10
- (b) if the case requires, the amended application.
- (2) The presumption stated in **subsection (1)** may be rebutted by the respondent on the balance of probabilities.
- 54 High Court must determine maximum recoverable amount** 15
- (1) Before the High Court makes a profit forfeiture order, the Court must determine the maximum recoverable amount by—
- (a) taking the value of the benefits determined in accordance with **section 53**; and
- (b) deducting from that the value of any property forfeited to the Crown as a result of an assets forfeiture order made in relation to the same significant criminal activity to which the profit forfeiture order relates. 20
- (2) In determining the value of any property under **subsection (1)(b)**, the Court may, at its own discretion or at the request of either party to the proceedings, seek an independent valuation as to the value of the property. 25
- (3) If an assets forfeiture order relating to a determination under this section is discharged on appeal, the Court may, on application by the Director, vary the maximum recoverable amount in the profit forfeiture order to reflect that there is no longer a deduction to be made on account of the assets forfeiture order. 30
- 55 Making profit forfeiture order**
- (1) The High Court must make a profit forfeiture order if it is satisfied on the balance of probabilities that— 35

- (a) the respondent has unlawfully benefited from significant criminal activity within the relevant period of criminal activity; and
    - (b) the respondent has interests in property.
  - (2) The order must specify— 5
    - (a) the value of the benefits determined in accordance with **section 53**; and
    - (b) the maximum recoverable amount determined in accordance with **section 54**; and
    - (c) the property that is to be realised in accordance with **Parts 1 and 2**, being property in which the respondent has, or is treated as having, interests. 10
  - (3) **Subsections (1) and (2)** are subject to **section 56**.
  - (4) A profit forfeiture order is enforceable as an order made as a result of civil proceedings instituted by the Crown against the person to recover a debt due to it, and the maximum recoverable amount is recoverable from the respondent by the Official Assignee on behalf of the Crown as a debt due to it. 15
- 56 Exclusion of respondent’s property from profit forfeiture order because of undue hardship** 20
- (1) The High Court may, on an application made by the respondent before a profit forfeiture order is made, exclude certain property from being realised under **section 55(2)(c)** if it considers that, having regard to all of the circumstances, undue hardship is reasonably likely to be caused to the respondent if the property were realised. 25
  - (2) The circumstances the Court may have regard to under **subsection (1)** include, without limitation,—
    - (a) the use that is ordinarily made, or was intended to be made, of the property that is, or is proposed to be, the subject of the profit forfeiture order; and 30
    - (b) the nature and extent of the respondent’s interest in the property; and
    - (c) the circumstances of the significant criminal activity to which the profit forfeiture order relates. 35
  - (3) After a profit forfeiture order is made, nothing in this section prohibits a respondent from realising the property that was excluded from being realised under **section 55(2)(c)** if—
    - (a) after realising other property under that section there is still a debt owed to the Crown under **section 55(4)**; and 40

- (b) the respondent agrees to realise the excluded property in order to pay all of part of that debt.

**57 Profit forfeiture order if respondent has absconded**

- (1) The High Court may make a profit forfeiture order even if the respondent has absconded. 5
- (2) In **subsection (1)**, a respondent has absconded if the respondent—
  - (a) is unable to be found; or
  - (b) by reason of being outside New Zealand, is not amenable to justice. 10

**58 Court may treat effective control over property as interest in property**

- (1) If the High Court is satisfied that a respondent has effective control over property, the Court may, on an application made by the Director, order that the property is to be treated as though the respondent had an interest in the property specified by the Court. 15
- (2) An order under **subsection (1)** may—
  - (a) be made even if the respondent has no interest in the property; and 20
  - (b) specify an interest that differs from the interest that the respondent has in the property.
- (3) Without limiting the generality of **subsections (1) and (2)**, the Court may have regard to—
  - (a) shareholdings in, debentures over, or directorships of, any company that has an interest (whether direct or indirect) in the property; and 25
  - (b) any trust that has a relationship to the property; and
  - (c) family, domestic, and business relationships between persons having an interest in the property or in companies of the kind referred to in **paragraph (a)** or in trusts of the kind referred to in **paragraph (b)**, and any other persons. 30
- (4) Property that is subject to an order under **subsection (1)** may be included in any profit forfeiture order and in any restraining order that is made against the respondent. 35
- (5) If the Director applies for an order under **subsection (1)**,—

- (a) the Director must, so far as it is practicable to do so, serve notice of the application on the respondent and on any person who, to the knowledge of the Director, has an interest in the property; and
- (b) the respondent and any other person who claims an interest in the property may appear and be heard at the hearing of the application. 5

Compare: 1991 No 120 s 29

*Matters associated with making civil forfeiture order*

**59 Additional matters in respect of making civil forfeiture order** 10

- (1) In making a civil forfeiture order, the High Court may do all or any of the following:
  - (a) declare the nature, extent, and value of any person's interest in property specified in the civil forfeiture order: 15
  - (b) give any directions that may be necessary and convenient for giving effect to the civil forfeiture order.
- (2) Without limiting the generality of **subsection (1)(b)**, if a Court makes a civil forfeiture order against any property the title to which is passed by registration on a register maintained under any New Zealand enactment, the Court may direct an officer of the Court to do anything reasonably necessary to obtain possession of any document required to effect the transfer of the property and for that purpose may, by warrant, authorise an officer to enter and search any place or thing and seize any document. 20 25
- (3) **Sections 121 to 128**, so far as applicable and with all necessary modifications, apply in relation to a warrant issued under **subsection (2)** as if it were a warrant issued under **section 107** to a member of the police. 30

Compare: 1991 No 120 s 15(3)–(7)

**60 Civil forfeiture order relating to land**

- (1) Nothing in **section 50 or 55** affects the operation of section 99 of the Land Transfer Act 1952 in relation to a civil forfeiture order made in respect of an estate or interest in land under that Act. 35

- (2) If the High Court makes a civil forfeiture order in respect of an estate or interest in land, the order must be transmitted by the Registrar of the Court to the Registrar-General of Land or the Registrar of Deeds, as the case may be, for the purposes of registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require. 5

Compare: 1991 No 120 s 16(2), (3)

*Relief from civil forfeiture order*

**61 Person may apply for relief before civil forfeiture order made or declined** 10

At any time after an application for a civil forfeiture order has been made and before the civil forfeiture order is made or declined, a person (other than the respondent) who claims an interest in the property sought to be forfeited under a civil forfeiture order may apply for an order for relief. 15

**62 Person may apply for relief for limited period after civil forfeiture order made**

- (1) **Subsection (2)** applies at any time after a civil forfeiture order is made and before— 20
- (a) the date that is 6 months from the date on which the civil forfeiture order was made; or
  - (b) the date that is the expiry of any further time allowed by the High Court.
- (2) A person (other than the respondent) who claims an interest in the property to which the civil forfeiture order relates may apply for an order for relief. 25
- (3) However, if the applicant who seeks relief appeared at the hearing of the application or amended application for the civil forfeiture order or was served with that application, the Court may not grant relief in the absence of special reasons. 30
- (4) Special reasons under **subsection (3)** include, without limitation, that the Court is satisfied—
- (a) that the applicant had good reason for failing to attend the hearing of the application for the civil forfeiture order; or 35
  - (b) that evidence proposed to be adduced by the applicant in connection with the application under **subsection (2)** was not reasonably available to the applicant at the time

of the hearing of the application for the civil forfeiture order.

Compare: 1991 No 120 s 17(1), (2), (4)–(6)

- 63 Application for relief from civil forfeiture order to identify nature and reasons for relief sought** 5
- An application for an order for relief from a civil forfeiture order made under **section 61 or 62** must specify the following:
- (a) the property and the interest in that property in respect of which the person seeks relief; and
  - (b) the reasons why the applicant should be given relief in relation to that interest. 10
- 64 Application for relief from civil forfeiture on notice**
- An application for an order for relief from a civil forfeiture order made under **section 61 or 62** must serve notice of the application on the following persons: 15
- (a) the Director;
  - (b) the Official Assignee;
  - (c) any other person (including any former interest holder) who claims an interest in the property sought to be affected by the order for relief. 20
- 65 Appearing at hearing for relief from civil forfeiture order**
- The following persons may appear and be heard at the hearing of an application for an order for relief from a civil forfeiture order made under **section 61 or 62**: 25
- (a) the applicant;
  - (b) the Director;
  - (c) the Official Assignee;
  - (d) any other person (including any former interest holder) who claims an interest in the property sought to be affected by the relief order. 30
- 66 Making order for relief from civil forfeiture order where interest**
- On receipt of an application for an order for relief from a civil forfeiture order under **section 61 or 62**, the High Court must grant the relief that the Court considers appropriate if, the 35

applicant proves on the balance of probabilities that the applicant—

- (a) has an interest, or would but for any civil forfeiture order have an interest, in the property to which the application relates; and 5
- (b) has not unlawfully benefited from the significant criminal activity to which the application relates.

**67 Making order for relief from civil forfeiture order on grounds of undue hardship**

- (1) On an application for an order for relief from a civil forfeiture order under **section 61 or 62**, the High Court may grant the application if it considers that, having regard to all of the circumstances, undue hardship is reasonably likely to be caused to the applicant if relief is not granted. 10
- (2) The circumstances the Court may have regard to under **subsection (1)** include, without limitation,— 15
  - (a) the use that is ordinarily made, or was intended to be made, of the property that is, or is proposed to be, the subject of the civil forfeiture order; and
  - (b) the nature and extent of any person’s interest in the property; and 20
  - (c) the degree, if any, to which the person had knowledge of the significant criminal activity to which the property relates; and
  - (d) the circumstances of the significant criminal activity to which the property or order relates. 25

**68 Matters associated with relief from civil forfeiture order when interest severable**

- A High Court that grants relief from a civil forfeiture order under **section 66 or 67** in respect of a severable interest must— 30
- (a) in the case of an application made under **section 61**, direct that the severable interest not be included in any civil forfeiture order; or
  - (b) in the case of an application made under **section 62**, direct the Official Assignee to transfer the severable interest to the applicant. 35

- 69 Matters associated with relief from civil forfeiture order when interest not severable**  
 A High Court that grants relief from a civil forfeiture order under **section 66 or 67** in respect of an interest that is not severable from the property that is, or is to be, the subject of a civil forfeiture order must direct the Crown to pay the applicant an amount equal to the value of that interest. 5
- Subpart 4—Instrument forfeiture orders**  
*Effect of instrument forfeiture order*
- 70 Effect of instrument forfeiture order** 10  
 An instrument forfeiture order made under **section 142N** of the Sentencing Act 2002 must specify the interest in the property to which the instrument forfeiture order relates and that the interest—  
 (a) vests in the Crown absolutely; and 15  
 (b) is in the custody and control of the Official Assignee.  
 Compare: 1991 No 120 s 16(1), (3)
- 71 Additional matters in respect of making instrument forfeiture order**
- (1) In making an instrument forfeiture order, the court may do all or any of the following: 20  
 (a) declare the nature, extent, and value of any person’s interest in property specified in the order:  
 (b) give any directions that may be necessary and convenient for giving effect to the instrument forfeiture order. 25
- (2) Without limiting the generality of **subsection (1)(b)**, if a court makes an instrument forfeiture order against any property the title to which is passed by registration on a register maintained under any New Zealand enactment, the court may direct an officer of the court to do anything reasonably necessary to obtain possession of any document required to effect the transfer of the property and for that purpose may, by warrant, authorise an officer to enter and search any place or thing and seize any document. 30
- (3) **Sections 121 to 128**, so far as applicable and with all necessary modifications, apply in relation to a warrant issued under 35

**subsection (2)** as if it were a warrant issued under **section 107** to a member of the police.

Compare: 1991 No 120 s 15(3)–(7)

- 72 Instrument forfeiture order relating to land**
- (1) Nothing in **section 70** affects the operation of section 99 of the Land Transfer Act 1952 in relation to an instrument forfeiture order made in respect of an estate or interest under that Act. 5
- (2) If a court makes an instrument forfeiture order in respect of an estate or interest in land, the order must be transmitted by the registrar of the court to the Registrar-General of Land or the Registrar of Deeds, as the case may be, for the purposes of registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require. 10
- Compare: 1991 No 120 s 16(2), (3)
- Disposal of forfeited property under instrument forfeiture order in certain circumstances* 15
- 73 Time restraints on disposal of property forfeited under instrument forfeiture order**
- (1) Unless a court that makes an instrument forfeiture order grants leave, property forfeited to the Crown under the instrument forfeiture order must not be disposed of, or otherwise dealt with, by or on behalf of the Crown by the Official Assignee, until the expiry of the relevant appeal period. 20
- (2) On the expiry of the relevant appeal period, if the instrument forfeiture order has not been discharged under **section 74**, the property may be disposed of, or otherwise dealt with, by the Official Assignee in accordance with **section 85**. 25
- (3) The expiry of the relevant appeal period is— 30
- (a) on the date when the time for taking appeals against the order expires and no appeals have been filed; or
- (b) on the date when all appeals in respect of the order have been withdrawn or finally determined.

Compare: 1991 No 120 s 16(4), (5)

- 74 Discharge of instrument forfeiture order on appeal or quashing of conviction**
- (1) If a court makes an instrument forfeiture order as part of the sentence or orders imposed on a person convicted of a qualifying forfeiture offence, and the conviction is subsequently quashed, the quashing of the conviction discharges the instrument forfeiture order. 5
- (2) If an instrument forfeiture order that is discharged as provided in **subsection (1)** or by a court hearing an appeal against the making of the order, the prosecutor must— 10
- (a) as soon as practicable after the discharge of the instrument forfeiture order, serve notice of the discharge on—
- (i) any person the prosecutor has reason to believe may be a former interest holder; and 15
- (ii) the Director; and
- (b) if required to do so by a court, serve notice of the discharge of the instrument forfeiture order on any specified person or class of persons, in any manner and within any period directed by the court. 20
- (3) If an instrument forfeiture order is discharged in either of the ways referred to in **subsection (2)**, the Official Assignee must,—
- (a) if any interest in the property is still vested in the Crown, arrange for the interest to be transferred to the former interest holder (if known); or 25
- (b) in any other case, and subject to **section 76**, arrange for payment to the person (if known) of an amount equal to the value of the person's interest.

Compare: 1991 No 120 s 19

- 75 Official Assignee may apply for directions regarding discharge of instrument forfeiture order under section 74** 30
- (1) In any case where there is any question as how to exercise his or her powers under **section 74(3)**, the Official Assignee may apply to a court for directions concerning the matter, and the court may give any directions in the matter that it considers just. 35
- (2) If an application is made under **subsection (1)**,—
- (a) the Official Assignee must serve notice of the application on every person that the Official Assignee has 40

reason to believe may have an interest in the application:

- (b) the court may, at any time before the final determination of the application, direct the Official Assignee to serve notice of the application on a specified person or class of persons, in any manner and within any time that the court thinks fit: 5
- (c) every person who claims an interest in the application is entitled to appear and to adduce evidence at the hearing of the application. 10

Compare: 1991 No 120 s 20

#### **76 Double benefit not permitted**

If, on any application for relief made under **section 142J** of the Sentencing Act 2002 in respect of any interest in any property, a court has made an order under **section 142L(2)(b)(ii)** or **142M(2)(a)** of that Act, an amount equal to the amount payable by the Crown under that order must be deducted from any amount required to be paid, under **section 74(3)(b)**, to that applicant in respect of that interest. 15

Compare: 1991 No 120 s 21 20

#### *Applications for relief relating to instrument forfeiture order*

#### **77 Applications for relief from instrument forfeiture order**

- (1) A person (other than a person referred to in **subsection (2)**) may make an application for relief from an instrument forfeiture order under **section 142J** of the Sentencing Act 2002— 25
  - (a) if the person claims an interest in property described in a notice issued under **section 142B** of the Sentencing Act 2002; or
  - (b) on the ground that, having regard to all of the circumstances, undue hardship is reasonably likely to be caused to the person making the application or another person (other than a person referred to in **subsection (2)**) by the operation of an instrument forfeiture order. 30
- (2) A person who has been convicted of the qualifying forfeiture offence to which a notice issued under **section 142B** of the Sentencing Act 2002 relates may not make an application for relief under **section 142J** of that Act in respect of any interest in property described in that notice. 35

*Third party appeals from instrument forfeiture order*

- 78 Third party appeals from instrument forfeiture order**
- (1) If a court makes an instrument forfeiture order under **section 142N** of the Sentencing Act 2002, any person (other than the person who has been convicted of the qualifying forfeiture offence to which a notice issued under **section 142B** of the Sentencing Act 2002 relates) who claims to be a former interest holder in the property that is the subject of the order may appeal against the making of the order. 5
- (2) For the purposes of **subsection (1)**— 10
- (a) the provisions of sections 115 and 116 to 144B of the Summary Proceedings Act 1957 apply as if every reference to a defendant were a reference to a person referred to in **subsection (1)**;
- (b) the provisions of sections 383, 383A, and 385 to 399 of the Crimes Act 1961 apply as if every reference to a person convicted on indictment were a reference to a person referred to in **subsection (1)**; 15
- (c) the court with jurisdiction to consider the appeal must determine— 20
- (i) in the case where an application for relief was made and determined under **sections 142J to 142M** of the Sentencing Act 2002, whether the decision of the court was correct;
- (ii) in the case where no application for relief was made before sentence was imposed, whether— 25
- (A) there is any good reason why the appellant failed to make an application for relief before the instrument forfeiture order was made; and 30
- (B) if so, whether relief ought to be granted, having regard to the requirements set out in **section 142L or 142M** of the Sentencing Act 2002 (whichever is applicable);
- (d) any notice or other document required to be given to either the prosecutor or the offender (whether under any provisions referred to in **paragraph (a)** or otherwise) must be given to both those persons. 35
- (3) Any appeal by an offender against sentence does not affect the right of any other person who claims to have an interest in the 40

property that is the subject of the appeal to bring an appeal under this section.

**79 Power of appeal court to vary offender's sentence**

If an appeal by any person against the making of an instrument forfeiture order is successful, the court that allows the appeal may exercise the same powers in respect of any sentence or order imposed on the offender as it would be able to exercise on an appeal against sentence brought by the prosecutor or the offender.

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**Subpart 5—Official Assignee**

10

*Preserving value of certain property*

**80 Preserving value of certain property**

(1) The Official Assignee may do anything reasonably necessary to preserve the value of—

- (a) restrained property in his or her custody and control under a restraining order; and
- (b) foreign restrained property under his or her custody and control under a foreign restraining order registered in New Zealand; and
- (c) property in his or her custody and control under **section 117**.

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(2) Without limiting the generality of **subsection (1)**, the Official Assignee may do any of the following:

- (a) take, or become a party to, any civil proceedings affecting the property;
- (b) ensure that the property is insured;
- (c) if the property consists, wholly or in part, of securities or investments, realise or otherwise deal with the securities or investments;
- (d) if the property consists, wholly or in part, of a business, do anything that is necessary or convenient for carrying on that business.

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Compare: 1991 No 120 s 50

*No liability for certain payments***81 Official Assignee not liable for certain payments on certain property**

- (1) The Official Assignee is not personally liable for the payment of any rates, land tax, or other statutory charge imposed by or under any enactment in respect of restrained property or foreign restrained property in his or her custody and control under a restraining order or foreign restraining order registered in New Zealand, or in respect of any other property in his or her custody and control under **section 117** unless—
- (a) the rates, land tax, or statutory charge fall due on or after the date of the making of the restraining order or registering of the foreign restraining order or the date on which the property was seized, as the case may be; and
  - (b) only to the extent of any rents and profits received by the Official Assignee in respect of the property on or after that date.
- (2) The Official Assignee may not make mortgage payments in relation to restrained property or foreign restrained property unless directed by the court that made the restraining order or registered the foreign restraining order to do so out of the restrained property or foreign restrained property.

Compare: 1991 No 120 s 61

*Discharge of assets forfeiture orders by Official Assignee***82 Discharge of assets forfeiture order by Official Assignee**

- (1) If a court makes an assets forfeiture order, the Official Assignee must, as soon as practicable after the expiry of the specified period (as described in **subsection (2)**), dispose of the property specified in the order and apply the money resulting from the disposal as follows:
- (a) first, by paying the costs recoverable by the Official Assignee under **section 87**;
  - (b) secondly, by paying to the Legal Services Agency the amount (if any) payable by way of legal aid granted to the former interest holder (less any contributions paid by the former interest holder);
  - (c) thirdly, by paying any outstanding fines and sentences of reparation imposed on the former interest holder;
  - (d) fourthly, by paying any remaining money to the Crown.
- (2) The specified period expires—

- (a) on the date that is 6 months after the time for bringing any appeal against the assets forfeiture order expires, if no appeal has been filed; or
- (b) on the date that is 6 months after all appeals in respect of the order have been withdrawn or finally determined, if an appeal or any appeals have been filed. 5
- (3) Despite **subsections (1) and (2)**, if the period for bringing an appeal against the assets forfeiture order has expired and no appeal has been filed or all appeals have been withdrawn or finally determined, the Official Assignee— 10
- (a) may realise any asset that makes up the property that is the subject of the assets forfeiture order; but
- (b) must, if he or she does so, hold the proceeds of realising those assets until the expiry of the specified period. 15
- Compare: 1991 No 120 s 54

*Discharge of profit forfeiture order by Official Assignee*

- 83 Discharge of profit forfeiture order by Official Assignee**
- (1) If the High Court makes a profit forfeiture order, the Official Assignee must, as soon as practicable after the expiry of the specified period (as described in **subsection (2)**), dispose of the property specified in the order and apply the money resulting from the disposal as follows: 20
- (a) first, by paying the costs recoverable by the Official Assignee under **section 87**:
- (b) secondly, by paying to the Legal Services Agency the amount (if any) payable by way of legal aid granted to the former interest holder (less any contributions paid by the former interest holder): 25
- (c) thirdly, by paying any outstanding fines and sentences of reparation imposed on the former interest holder: 30
- (d) fourthly, by paying to the Crown the following amount, less the sum of the payments made under **paragraphs (a) to (c)**,—
- (i) if the sum resulting from realising the property is equal to, or more than, the maximum recoverable amount specified by the Court under **section 55**, the maximum recoverable amount: 35
- (ii) if the sum resulting from realising the property is less than the maximum recoverable amount, the sum resulting from realising the property: 40

- (e) fifthly, by paying any remaining money to the former interest holder.
  - (2) The specified period expires—
    - (a) on the date that is 6 months after the time for bringing any appeal against the profit forfeiture order expires, if no appeal has been filed; or 5
    - (b) on the date that is 6 months after all appeals in respect of the order have been withdrawn or finally determined, if an appeal or any appeals have been filed.
  - (3) Despite **subsections (1) and (2)**, if the period for bringing an appeal against the profit forfeiture order has expired and no appeal has been filed or all appeals have been withdrawn or finally determined, the Official Assignee— 10
    - (a) may realise any asset that makes up the property that is the subject of the profit forfeiture order; but 15
    - (b) must, if he or she does so, hold the proceeds of realising those assets until the expiry of the specified period.
  - (4) Nothing in **subsection (1)(d)(ii)** limits **section 55(4)**.
  - (5) This section is subject to **section 84**. 20
- Compare: 1990 No 120 s 51 20

#### **84 Bankruptcy in relation to profit forfeiture order**

- (1) If, after a profit forfeiture order is made, the Official Assignee is given notice in writing of the filing of a creditor's petition against the person under section 23 of the Insolvency Act 1967, the Official Assignee must, until the petition has been withdrawn or been disposed of, refrain from taking, or continuing to take, any of the following actions: 25
  - (a) selling or disposing of the property specified in the order:
  - (b) paying the amounts specified in **section 83**. 30
- (2) If a person whose property is the subject of a profit forfeiture order becomes bankrupt, the property that is the subject of the profit forfeiture order, if it has not yet been disposed of, ceases to be in the custody and control of the Official Assignee and is deemed to be vested in the Assignee of the bankrupt's property under section 42 of the Insolvency Act 1967. 35
- (3) A profit forfeiture order made against a person is provable in the bankruptcy of that person.

- (4) To avoid doubt, **subsection (3)** applies despite anything in section 87(2) of the Insolvency Act 1967.

Compare: 1991 No 120 s 60

*Discharge of instrument forfeiture order by Official Assignee*

- 85 Discharge of instrument forfeiture order by Official Assignee** 5
- If a court makes an instruments forfeiture order, the Official Assignee must, as soon as practicable after the expiry of the relevant appeal period (defined in **section 73(3)**), dispose of the property specified in the order and apply the money resulting from the disposal as follows: 10
- (a) first, by paying the costs recoverable by the Official Assignee under **section 87**:
  - (b) secondly, by paying to the Legal Services Agency the amount (if any) payable by way of legal aid granted to the former interest holder (less any contributions paid by the former interest holder): 15
  - (c) thirdly, by paying any outstanding fines and sentences of reparation imposed on the former interest holder:
  - (d) fourthly, by paying any remaining money to the Crown. 20

*Discharge of foreign forfeiture order registered in New Zealand by Official Assignee*

- 86 Discharge by Official Assignee of foreign forfeiture order registered in New Zealand**
- (1) If a foreign forfeiture order is registered in New Zealand, the Official Assignee must, as soon as practicable after the expiry of the specified period (described in **subsection (2)**), dispose of the property specified in the order by— 25
- (a) paying the costs recoverable under **section 87**; and
  - (b) paying the remaining money to the Attorney-General for disposal at his or her discretion. 30
- (2) The specified period expires—
- (a) on the date that is 6 months after the time for bringing any appeal against the registration of the foreign forfeiture order expires, if no appeal has been filed; or 35
  - (b) on the date that is 6 months after all appeals in respect of the registration of the order have been withdrawn or finally determined, if an appeal or any appeals have been filed.

- (3) Despite **subsections (1) and (2)**, if the period for bringing an appeal against the registration of a foreign forfeiture order has expired and no appeal has been filed or all appeals have been withdrawn or finally determined, the Official Assignee—
- (a) may realise any asset that makes up the property that is the subject of the registered foreign forfeiture order; but
  - (b) must, if he or she does so, hold the proceeds of realising those assets until the expiry of the specified period.

*Costs recoverable by Official Assignee*

**87 Costs recoverable by Official Assignee** 10

- (1) The Official Assignee is entitled to recover, in respect of the exercise or performance, by the Official Assignee or any delegate of the Official Assignee, of functions or powers under **Parts 1 and 2** in respect of property, costs as may be prescribed or provided for in regulations made under **Parts 1 and 2** if the Official Assignee—
- (a) takes custody and control of property under a restraining order, forfeiture order, or foreign forfeiture order registered in New Zealand; and
  - (b) deals with or disposes of property under a forfeiture order or foreign forfeiture order registered in New Zealand.
- (2) For the purposes of **subsection (1)**, the costs that may be prescribed or provided for in regulations made under **Parts 1 and 2** include—
- (a) costs, charges, and expenses properly incurred or payable by or on behalf of the Official Assignee in connection with the exercise or performance, by the Official Assignee or any delegate of the Official Assignee, of functions or powers under **Parts 1 and 2** in respect of the property;
  - (b) proper remuneration for work undertaken by any person (being the Official Assignee or any delegate of the Official Assignee or any other member of the staff of the Official Assignee) in connection with the exercise or performance, by the Official Assignee or any delegate of the Official Assignee, of functions or powers under **Parts 1 and 2** in respect of the property.

Compare: 1991 No 120 s 63

*Delegation by Official Assignee*

- 88 Delegation by Official Assignee**
- (1) The Official Assignee may from time to time—
- (a) delegate all or any of the functions and powers conferred or imposed on the Official Assignee by or under **Parts 1 and 2** to the following persons:
    - (i) the Deputy Official Assignee for New Zealand; or
    - (ii) an Official Assignee or Deputy Official Assignee appointed under the State Sector Act 1988; and
  - (b) delegate all or any of the functions and powers conferred or imposed on the Official Assignee under **subpart 7** to any member of the police or any class of member of police.
- (2) A delegation under **subsection (1)**—
- (a) must be in writing; and
  - (b) may not include the power to delegate under **subsection (1)** unless it is a delegation to the Deputy Official Assignee.
- (3) The power of the Official Assignee to delegate under **subsection (1)** does not limit any power of delegation conferred on the Official Assignee by any other Act.
- Compare: 1991 No 120 s 86(1)–(4)
- 89 Acting under delegation from Official Assignee**
- (1) A person to whom any functions or powers are delegated under **section 88** may exercise or perform those functions or powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this section and not by delegation.
- (2) Despite **subsection (1)**, any delegated functions or powers must be exercised subject to any general or special directions given or conditions imposed by the Official Assignee.
- (3) A person purporting to act pursuant to any delegation under **section 88** must, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (4) Any delegation under **section 88** may be made—
- (a) subject to any restrictions and conditions that the Official Assignee thinks fit;

- (b) either generally or in relation to any particular case or class of cases.
- (5) No delegation under **section 88** may—
  - (a) affect or prevent the exercise or performance of any functions or powers by the Official Assignee; or 5
  - (b) affect the responsibility of the Official Assignee for the actions of any person acting under the delegation.
- (6) Any person purporting to exercise or perform any functions or powers of the Official Assignee by virtue of a delegation under **section 88** must, when required to do so, produce evidence of that person's authority to exercise or perform the functions or powers. 10

Compare: 1991 No 120 s 86(5) (9)

#### **90 Revocation of delegation from Official Assignee**

- (1) Every delegation under **section 88** is revocable in writing. 15
- (2) A delegation under **section 88**, until it is revoked, continues in force according to its tenor, even though the Official Assignee by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of the Official Assignee. 20

Compare: 1991 No 120 s 87

### Subpart 6—Recovery body

#### **91 Interpretation**

In this subpart, unless the context otherwise requires,—

**designated member**, in relation to the recovery body,— 25

- (a) means the Director and any other member of the recovery body who is designated by the Director as a person whose position in the recovery body enables him or her to exercise the functions and powers conferred on the Director by **Parts 1 and 2**; and 30
- (b) includes any member or members of the police to whom the Director delegates his or her functions or powers under any provision in **subpart 7**; but
- (c) does not include any person who is deemed to be a member of the recovery body in accordance with **section 99(2)** 35

**employee**, in relation to the recovery body,—

- (a) means the Director and any other person employed by the recovery body, whether paid by salary, wages, or otherwise:
- (b) includes, for the period of his or her secondment, any person seconded to the recovery body from any other department or other employer: 5
- (c) does not include a person appointed under **section 99(1) member**, in relation to the recovery body, means any employee of the recovery body, and includes any member of the police who is a designated member of the recovery body and, for the purposes of a particular investigation, any person who is deemed to be a member in accordance with **section 99(2)**. 10

*Director of Criminal Proceeds Confiscation*

- 92 Director of Criminal Proceeds Confiscation**  
The chief executive of the recovery body is called the Director of Criminal Proceeds Confiscation (the Director). 15

**93 Independence**

- (1) In any matter relating to any decision to investigate any person or property or to take any proceedings under **Parts 1 and 2**, the Director is not responsible to the Attorney-General and must act independently. 20
- (2) Nothing in this section limits or affects any power that may be exercised by the Attorney-General in relation to any proceedings.

*Challenge to exercise of Director's decisions, powers, and duties* 25

**94 Review of Director's decisions**

- (1) This section applies to any decision by the Director to bring proceedings under **Parts 1 and 2**.
- (2) Any decision to which this section applies may not be challenged, reviewed, quashed, or called in question in any court, except in proceedings brought by the Director under **Parts 1 and 2**. 30
- (3) Nothing in this section or **sections 95 and 96** applies to decisions relating to foreign restraint or foreign forfeiture. 35

Compare: 1990 No 51 s 20

- 95 Effect of proceedings relating to Director's powers and duties**
- (1) This section applies if any person makes any challenge in any proceeding in any court in respect of—
- (a) the exercise by the Director of any power conferred by **Parts 1 and 2:** 5
  - (b) the discharge of any duty imposed on the Director by **Parts 1 and 2.**
- (2) If this section applies, until a final decision (as described in **subsection (4)**) in relation to those proceedings is given, the power or duty may be, or may continue to be, exercised or discharged as if no such proceedings of that kind had been commenced, and no person is excused from fulfilling any obligation under **Parts 1 and 2** by reason of those proceedings. 10
- (3) This section applies despite any other provision of any enactment or rule of law or equity. 15
- (4) A **final decision** does not include a decision in proceedings for an interim order under section 8 of the Judicature Amendment Act 1972.
- Compare: 1990 No 51 s 21 20
- 96 Effect of final decision that exercise of powers unlawful**
- (1) This section applies in any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred on the Director by **Parts 1 and 2**, that the exercise of any powers conferred on the Director by **Parts 1 and 2** is unlawful. 25
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful the Director must ensure that immediately after the decision of the court is given—
- (a) any information obtained as a consequence of the exercise of powers declared to be unlawful, and any record of that information, is destroyed: 30
  - (b) any documents, or extracts from documents, or other things removed as a consequence of the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under his or her control, and any copies of those documents or extracts are destroyed: 35
  - (c) any information derived from or based on such information, documents, extracts, or things is destroyed. 40

- (3) Despite **subsection (2)**, the court may, in the court's discretion, order that any information, record, or copy of any document or extract may, instead of being destroyed,—
- (a) be returned to the person from whom it was obtained; or
  - (b) be retained by the recovery body subject to any terms and conditions that the court imposes. 5
- (4) No information obtained, and no documents or extracts from documents or other things removed, as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or documents,— 10
- (a) is admissible as evidence in any proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
  - (b) may be used in connection with the exercise of any power conferred by **Parts 1 and 2** unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence. 15
- Compare: 1990 No 51 s 22 20

*Approval of settlements*

**97 High Court must approve settlement between Director and other party**

- (1) The Director may enter into a settlement with any person as to the property or any sum of money to be forfeited to the Crown. 25
- (2) A settlement does not bind the parties unless the High Court approves it.
- (3) The High Court must approve the settlement if it is satisfied that it is consistent with— 30
- (a) the purposes of **Parts 1 and 2**; and
  - (b) the overall interests of justice.

*Delegation of functions or powers of recovery body*

**98 Delegation of functions or powers of recovery body**

- (1) The provisions of the State Sector Act 1988 relating to the delegation of functions or powers apply in all respects to the recovery body. 35

- (2) However, no delegation of any function or power of the Director is valid unless it is—
- (a) in writing; and
  - (b) to a designated member.
- (3) For the purposes of the provisions of the State Sector Act 1988 relating to the delegation of functions or powers, any person who is seconded to the recovery body and any member of the police who is not a seconded member but to whom any function or power of the Director under **subpart 7** is to be delegated by the Director must be treated as if that person were an employee of the recovery body. 5 10

Compare: 1990 No 51 s 33

*Outside investigators appointed by Director*

**99 Exercise of powers by outside investigators**

- (1) Any person who is appointed by the Director to investigate the affairs, or any aspect of the affairs, of any other person may be authorised by the Director—
- (a) to exercise, in the company of a designated member of the recovery body, all or any of the powers conferred by **sections 111 to 114:** 15 20
  - (b) to assist any designated member of the recovery body to execute any search warrant issued under **Parts 1 and 2.**
- (2) Any person appointed under **subsection (1)** is deemed to be a member of the recovery body for the purposes of the investigation in respect of which he or she is appointed. 25

Compare: 1990 No 51 s 34

*Information exchange and disclosure*

**100 Director may enter agreements with overseas agencies**

- (1) The Director may enter into any agreement or agreements with any person in any other country whose functions are or include the detection and investigation of offences, if—
- (a) the agreement relates to a particular case or cases involving property, proceeds, or benefits derived from offences; and 30
  - (b) in the case of an agreement providing for the supply of information by the recovery body,— 35
    - (i) the Director is satisfied that compliance with the agreement will not substantially prejudice the

- performance of the recovery body's functions in relation to any other investigations; and
- (ii) the Director has recommended to the Attorney-General that the agreement be entered into and the Attorney-General has accepted the recommendation. 5
- (2) Any agreement under **subsection (1)**—
- (a) may be made orally or in writing;
- (b) may provide for the supply or the receipt of information by the recovery body: 10
- (c) must contain a condition that no person who receives information under the agreement may disclose the information except for any purpose specified in the agreement or with the consent of all the parties to the agreement. 15
- (3) Nothing in this section limits the general powers of the Director to enter into agreements.
- (4) This section is subject to **sections 101 to 105**.  
Compare: 1990 No 51 s 51
- 101 Secrecy of certain information** 20
- (1) Every member of the recovery body must observe the strictest secrecy in relation to—
- (a) information supplied to or obtained by the Director under or in connection with the exercise of any power conferred by **sections 111 to 114** or in the course of executing any search warrant issued under **Parts 1 and 2**: 25
- (b) information derived from or based on any such information;
- (c) information relating to the exercise or possible exercise of any power conferred on the Director by **Parts 1 and 2**. 30
- (2) No member of the recovery body may disclose any information referred to in **subsection (1)** in any way whatever to any person who is not a member of the recovery body.
- (3) Despite **subsections (1) and (2)**, the Director may disclose information referred to in **subsection (1)**, or authorise any other member of the recovery body to disclose that information,— 35
- (a) if the person who disclosed the information to the recovery body consents to that disclosure; or

- (b) to the extent that the information is available to the public under any Act; or
  - (c) for the purposes of **Parts 1 and 2** or in connection with the exercise of powers under **Parts 1 and 2**; or
  - (d) for the purposes of any prosecution anywhere or for the purpose of commencing or conducting any proceedings under **Parts 1 and 2**; or
  - (e) to any person who the Director is satisfied has a proper interest in receiving such information.
- (4) This section is subject to **sections 102 to 105**.
- (5) This section does not apply to foreign restraint or foreign forfeiture.

Compare: 1990 No 51 s 36

## **102 Information exchange and disclosure**

- (1) The purpose of this section is to facilitate—
- (a) the disclosure of information by the Director to any department for law enforcement purposes;
  - (b) the disclosure of information by any department to the Director for law enforcement purposes.
- (2) For the purposes of this section, the Director may from time to time, in accordance with arrangements in writing made between the Director and the chief executive of any department, supply to that chief executive or receive from that chief executive any information about an individual identified by that chief executive or the Director, as the case may be.
- (3) The Director or, as the case requires, the chief executive of the department may supply the information requested to any officer, employee, or agent of the department who is authorised for the purpose by the chief executive or, as the case requires, to any officer, employee, or agent of the recovery body who is authorised for the purpose by the Director.
- (4) Information supplied under **subsection (2)** may be supplied in any form that is determined by agreement between the Director and the chief executive of the department concerned.
- (5) This section—
- (a) does not authorise the disclosure by the Director of any information that was received by the Director from the

- Commissioner of Inland Revenue to the chief executive, officer, employee, or agent of another department; but
- (b) does not limit the disclosure of that information under any other provision. 5
- 103 Secrecy of information protected under other Acts**
- (1) Every member of the recovery body must observe the strictest secrecy in relation to any information that is protected under any Act, other than **Parts 1 and 2** and the Tax Administration Act 1994 (the protection of which is dealt with in **sections 101, 102, and 104**). 10
- (2) Despite **subsection (1)** or anything in the Act that protects the information,—
- (a) any member of the recovery body may disclose any such information to any other member of the recovery body for the purpose of investigating or bringing any proceedings under **Parts 1 and 2**; and 15
- (b) the Director may disclose any such information, or authorise any other member of the recovery body to disclose any such information,— 20
- (i) with the consent of the person who disclosed the information to the recovery body, to any other person:
- (ii) to any Judge for the purpose of obtaining a search warrant or a production order under **Parts 1 and 2**; 25
- (iii) to any person commencing or conducting any proceedings under **Parts 1 and 2** or in connection with **sections 142A to 142Q** of the Sentencing Act 2002. 30
- Compare: 1990 No 51 s 39 30
- 104 Disclosure to Director of information held by Inland Revenue Department**
- (1) For the purposes of this section—
- associated person** has the same meaning as in sections OB 1, OD 7, and OD 8 of the Income Tax Act 2004 35
- authorised person** means—
- (a) the Commissioner of Inland Revenue or any officer of the Inland Revenue Department who is authorised by

- the Commissioner to disclose and receive information under this section; or
- (b) the Director and any employee, officer, or agent of the recovery body who is authorised by the Director to disclose and receive information under this section. 5
- (2) No obligation as to secrecy or other restrictions imposed by any enactment or otherwise on the disclosure of information prevents—
- (a) an authorised person referred to in **paragraph (b)** of the definition of **authorised person** in **subsection (1)** from disclosing the name of any person to an authorised person referred to in **paragraph (a)** of that definition: 10
- (b) an authorised person referred to in **paragraph (a)** of the definition of **authorised person** in **subsection (1)** from disclosing any information held by the Department of Inland Revenue about a person whose name is supplied under **paragraph (a)** of this subsection, or any associated person, to an authorised person referred to in **paragraph (b)** of that definition who requires the information for the purpose of establishing whether a prima facie case exists for taking civil recovery action under **Parts 1 and 2**. 15 20
- (3) Information obtained under **subsection (2)(b)** must not be disclosed, except—
- (a) to an authorised person; or
- (b) to the person in respect of whom the information was obtained or to an associated person; or 25
- (c) in connection with proceedings taken or to be taken under **Parts 1 and 2**.
- (4) Any disclosure of information under this section must be in accordance with arrangements made from time to time in writing between the Commissioner of Inland Revenue and the Director, which may include arrangements— 30
- (a) further defining and limiting the use of information supplied under this section:
- (b) about the storage of that information and security precautions to be undertaken: 35
- (c) subject to **section 105**, which provides for the destruction of information supplied under this section.
- (5) This section and **section 105** do not apply to matters associated with foreign restraint or foreign forfeiture. 40

- 105 Destruction of information supplied under section 104**
- (1) The Director must ensure that the information obtained under **section 104** is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence. 5
- (2) Nothing in **subsection (1)** applies to—
- (a) any reference to information obtained under **section 104** contained in another document, generated by, or on behalf of, the Director or any member of the recovery body; or 10
- (b) any record of information adduced in proceedings in any court; or
- (c) any case where the defendant pleads guilty to any record of any information that, in the opinion of the Judge, would have been adduced had the matter come to trial. 15

#### Subpart 7—Investigative powers

- 106 Interpretation**
- In this subpart, unless the context otherwise requires,— 20
- Judge** means a District Court Judge or a High Court Judge
- occupier**, in relation to any place or thing, means a person of or over 16 years who resides in, or appears to be in charge of, the place or thing.

#### *Police powers* 25

- 107 Police may obtain warrant to search for and seize evidence and property**
- (1) Any Judge may issue a warrant to search any place or thing, if the Judge is satisfied, on an application in writing made on oath, that there are reasonable grounds for believing that property or evidence of the kind referred to in **subsection (2)** is in or on the place or thing, or will come into or onto the place or thing, while the warrant is in force. 30
- (2) The property or evidence in respect of which a search warrant may be issued under **subsection (1)** is— 35
- (a) evidence as to the nature and extent of any person's interest in or control over property that is an instrument of crime:

- (b) an instrument of crime.
- (3) An application for a warrant under **subsection (1)** may be made—
- (a) by a member of the police;
- (b) before, on, or after the making of a restraining order. 5
- (4) A warrant may be issued under **subsection (1)** whether or not an information has been laid in respect of the relevant qualifying forfeiture offence.
- (5) However, if an information has not been laid in respect of that offence at the time when the application for the warrant is made, the Judge must not issue a warrant unless the Judge is satisfied that an information will be laid in respect of the offence within 48 hours of the issue of the warrant. 10

Compare: 1991 No 120 s 30

**108 Commissioner of Police to transfer property to Official Assignee** 15

If any property is seized pursuant to a warrant issued under **section 107** (other than documents or other material believed to be evidence establishing the nature and extent of any person's interest in or control over an instrument of crime), the Commissioner of Police must arrange for the property to be placed in the custody and control of the Official Assignee as soon as practicable after it is seized, unless otherwise directed by the court that issues the warrant. 20

Compare: 1991 No 120 s 35 25

*Director's powers*

**109 Director may obtain warrant to search for and seize evidence and property**

- (1) Any Judge may issue a warrant to search any place or thing if, on an application in writing made on oath, the Judge is satisfied that there are reasonable grounds for believing property or evidence of the kind referred to in **subsection (2)** is in or on the place or thing, or will come into or onto the place or thing, while the warrant is in force. 30
- (2) The property or evidence in respect of which a warrant may be issued under **subsection (1)** is— 35
- (a) tainted property; or

- (b) evidence establishing the nature and extent of any person's interest in or control over property that is tainted property; or
- (c) evidence establishing the nature and extent of the interest in or control over property of any person who has unlawfully benefited from significant criminal activity; or 5
- (d) property that is the subject of a restraining order (other than a restraining order obtained on the application of a prosecutor). 10
- (3) An application for a warrant under **subsection (1)** may be made—
- (a) by the Director;
- (b) before, on, or after the making of a restraining order;
- (c) whether or not the Director has exercised any power under any of **sections 111 to 114**. 15
- (4) A warrant may not be issued under **subsection (1)** in respect of any evidence or property solely because it is believed to relate to, or be, an instrument of crime.

**110 Director to transfer property to Official Assignee** 20

If any property is seized pursuant to a warrant under **section 109(1)** (other than documents or other material believed to be evidence establishing the nature and extent of any person's interest in or control over property), the Director must arrange for the property to be placed in the custody and control of the Official Assignee as soon as practicable after it is seized, unless otherwise directed by the court that issued the warrant. 25

Compare: 1991 No 120 s 35

*Director may require production of documents*

**111 Power to require production of documents** 30

- (1) The Director may, by notice in writing, require any relevant person, at the time and place specified in the notice, to produce for inspection any specified document or class of documents that the Director has reason to believe are in the person's possession or control and are relevant to an investigation by the Director under **Parts 1 and 2** or to any proceedings under **Parts 1 and 2**. 35

- (2) Every production notice must contain the following particulars:
- (a) the provision under which the notice is issued:
  - (b) a description of the document or documents in relation to which production is sought: 5
  - (c) a description of the property or other thing or type of property or other thing to which the document or documents are believed to relate.
- (3) If any document is produced under this section, the Director may do any one or more of the following things: 10
- (a) retain the original document produced, provided that a copy of the document is taken and returned as soon as practicable after the document is produced:
  - (b) take copies of the document, or of extracts from the document: 15
  - (c) if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document.
- (4) If any person is required to produce any document under this section and fails to do so, the Director may require that person to state, to the best of his or her knowledge or belief, where the document is. 20
- (5) A notice issued under **subsection (1)** is in force for a period specified in the notice (not exceeding 3 months after the date on which the notice is issued). 25
- (6) In this section **relevant person** means—
- (a) a person whose property is the subject of a restraining order:
  - (b) any officer of a financial institution who the Director believes has information about property that is the subject of a restraining order. 30

Compare: 1990 No 51 s 5; 1991 No 120 s 68(2)

*Court may require any person to produce documents on application by Director* 35

## 112 Application for production order

- (1) The Director may apply to a Judge for a production order under **section 113** if the Director has reason to believe that a

person has possession or control of documents that are relevant to an investigation by the Director under **Parts 1 and 2** or to any proceedings under **Parts 1 and 2**.

- (2) Every application under this section must be made in writing and on oath, and must contain the following particulars: 5
- (a) the grounds on which the application is made:
  - (b) a description of the document or documents production of which is sought:
  - (c) a description of the property or other thing or type of property or other thing to which the document or documents are believed to relate. 10

Compare: 1991 No 120 s 68

### **113 Court may make production order**

- (1) If an application is made under **section 112**, the Judge may, if satisfied that the Director has reasonable grounds for applying for the order, make an order that the person— 15
- (a) produce to the Director or any designated member of the recovery body any specified document or class of documents of the kind referred to in **section 112(1)** that are in the person's possession or control while the order is in force; or 20
  - (b) make available to the Director or any designated member of the recovery body, for inspection, any specified document or class of documents of that kind that are in the person's possession or control while the order is in force. 25
- (2) Every production order must contain the following particulars:
- (a) the grounds on which the order is issued:
  - (b) a description of the document or documents production of which is required: 30
  - (c) a description of the property or other thing or type of property or other thing to which the document or documents are believed to relate.
- (3) An order made under **subsection (1)** is in force for the period specified in the order (not exceeding 3 months after the date on which the order is made). 35
- (4) A Judge must not make an order under **subsection (1)** unless the application contains, or the applicant otherwise supplies to the

Judge, any information that the Judge requires concerning the grounds on which the order is sought.

- (5) If any document is produced under this section, the Director may do any one or more of the following things:
- (a) retain the original document produced, provided that a copy of the document is taken and returned as soon as practicable after the document is produced: 5
  - (b) take copies of the document, or of extracts from the document:
  - (c) if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document. 10
- (6) If any person is required to produce any document under this section and fails to do so, the Director may require that person to state to the best of his or her knowledge or belief where the document is. 15

Compare: 1991 No 120 s 69

*Director may issue examination notice*

- 114 Power to require attendance before Director, production of documents, etc** 20
- (1) The Director may, by notice in writing, require any person whose property is the subject of a restraining order that was made on the application of the Director to do 1 or more of the things specified in **subsection (3)** at the time and place specified in the notice. 25
- (2) A notice under **subsection (1)** must contain the following particulars:
- (a) the provision under which the notice is issued:
  - (b) a description of the information that is sought: 30
  - (c) a description of the document or documents production of which is sought:
  - (d) a description of the property or other thing or type of property or other thing to which the document or documents are believed to relate. 35
- (3) The things referred to in **subsection (1)** are—
- (a) to attend before the Director:

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- (b) to answer questions with respect to any matter that the Director has reason to believe may be relevant to the investigation or to any proceedings under **Parts 1 and 2:**
- (c) to supply any information specified in the notice with respect to any matter that the Director has reason to believe may be relevant to the investigation or to any proceedings under **Parts 1 and 2:** 5
- (d) to produce for inspection any documents that are specified in the notice and that the Director has reason to believe are in the person's possession or control and may be relevant to the investigation or to any proceedings under **Parts 1 and 2.** 10
- (4) If any document is produced under this section, the Director may do any one or more of the following things: 15
- (a) retain the original document produced, provided that a copy of the document is taken and returned as soon as practicable after the document is produced: 15
- (b) take copies of the document, or of extracts from the document:
- (c) require the person producing the document to provide an explanation of the history, subject matter, and contents of the document and to answer any other questions that arise from that explanation and that the Director has reason to believe may be relevant to the investigation: 20
- (d) if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document. 25
- (5) If any person is required to produce any document under this section and fails to do so, the Director may require that person to state, to the best of his or her knowledge and belief, where the document is. 30
- (6) If any person is required to supply any information under this section, and does so by producing a document containing that information, the powers conferred by **subsection (4)** apply in all respects to that document. 35
- (7) Any person who is required to attend before the Director under this section, must, before being required to comply with

any requirements imposed under this section, be given a reasonable opportunity to arrange for a lawyer to accompany him or her.

Compare: 1990 No 51 s 9

*Non-compliance with production notice, production order,  
or examination notice* 5

**115 Power to obtain search warrant for non-compliance with  
production notice, production order, or examination  
notice**

- (1) The Director may, on application in writing made on oath, apply to any Judge for a warrant to search any thing or place specified in the application. 10
- (2) Any Judge may issue a warrant in the prescribed form if the Judge is satisfied—
- (a) that there are reasonable grounds for believing that— 15
- (i) a person has failed to produce all of the documents specified in a notice given under **section 111 or 114** or a production order made under **section 113**; or
- (ii) any information supplied under **section 114** is intentionally false or misleading in a material particular; or 20
- (iii) a person has failed to comply with any obligation imposed under **section 114**; or
- (iv) the service of a notice under **section 111** or **114** might seriously prejudice the investigation; and 25
- (b) that there are reasonable grounds for believing that there is, at the place or thing specified in the application, or will come into or onto the place or thing, while the warrant is in force— 30
- (i) any document or information required to be produced or supplied under **section 111, 113, or 114**; or
- (ii) if **paragraph (a)(iv)** applies, any document or information that could have been sought under **section 111, 113, or 114.** 35

Compare: 1990 No 51 s 6

*Official Assignee's powers*

- 116 Official Assignee may apply for warrant to search for and seize property**
- (1) Any Judge may issue a warrant to search any place or thing if, on an application in writing made on oath, the Judge is satisfied—
- (a) that there are reasonable grounds for believing that property of the kind referred to in **subsection (2)** is in or on the place or thing, or will come into or onto the place or thing, while the warrant is in force; and
- (b) in the case of property referred to in **subsection (2)(a)**, that the Official Assignee has complied with **subsection (4)**.
- (2) The property in respect of which a search warrant may be issued under **subsection (1)** is—
- (a) any proposed restrained property that is the subject of an application for a restraining order;
- (b) any property that is the subject of a restraining order;
- (c) any property that is the subject of a forfeiture order.
- (3) An application for a warrant under **subsection (1)** may be made—
- (a) by the Official Assignee;
- (b) before, on, or after the making of a restraining order or a forfeiture order.
- (4) The Official Assignee may not make an application under **subsection (1)** in respect of any property referred to in **subsection (2)(a)** unless—
- (a) the Official Assignee wishes to assess the nature and condition of any property that is the subject of an application for a restraining order to ensure that it is not at risk of damage, alteration, removal, or being treated in any other way to diminish its value; or
- (b) the Official Assignee has reasonable grounds to believe that any property of that kind is at risk of damage, alteration, removal, or being treated in any other way to diminish its value.

Compare: 1991 No 120 s 30

- 117 Official Assignee to hold property**
- If property is seized pursuant to a warrant issued under **section 116**, or transferred to the Official Assignee under **section 108** or **110**, the Official Assignee must arrange for the property to be

kept until it is dealt with in accordance with another provision of **Parts 1 and 2**.

Compare: 1991 No 120 s 35

### **118 Return of seized property**

- (1) If any property is seized pursuant to a warrant issued under **section 116** or transferred to the Official Assignee under **section 108 or 110** the property must, unless it is the subject of a forfeiture order, be returned to the person,—
- (a) if the property was subject to a restraining order when the relevant search warrant was issued, after the expiry of the restraining order to which the property relates: 10
  - (b) if the property is property referred to in **section 107(2)(b)** or **109(2)(a)** that was not the subject of a restraining order when the relevant search warrant was issued, after—
    - (i) the expiry of 28 days from the date on which the property comes into the control or custody of the Official Assignee; or 15
    - (ii) if a restraining order is obtained in respect of the property before the expiry of the period referred to in **subparagraph(i)**, the expiry of the restraining order to which the property relates; or 20
    - (iii) if a restraining order is not obtained in respect of the property before the expiry of the period referred to in **subparagraph(i)** but an application for a forfeiture order is made within that period, the determination of that application. 25
- (2) This section is subject to **section 119**.

### **119 Retention of seized property if forfeiture order made**

- (1) **Subsection (2)** applies if—
- (a) any property is seized pursuant to a warrant issued under **section 116** or is transferred to the Official Assignee under **section 108 or 110**; and 30
  - (b) but for this subsection, the Official Assignee would be required, under **section 118**, to arrange for any property to be returned to a person as soon as practicable after the expiry of a restraining order or the determination of an application for a forfeiture order; and 35
  - (c) at, or before, the end of that period, a forfeiture order is made in relation to the property.

- (2) If a forfeiture order is made in respect of any property that is in the possession of the Official Assignee under **section 117** or subsequently comes into the possession of the Official Assignee, the Official Assignee must deal with the property as required by the order.

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*General rules about search warrants*

**120 Application of sections 121 to 128**

The provisions of **sections 121 to 128** apply in respect of every search warrant applied for, or issued, under **Parts 1 and 2**.

**121 Application for search warrant**

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- (1) An application for a search warrant must contain, in reasonable detail, the following particulars:
- (a) the name of the applicant;
  - (b) the grounds on which the application is made;
  - (c) the address or other description of the place or thing proposed to be searched;
  - (d) a description of the item or items believed to be in or on the place or thing that are sought by the applicant.
- (2) The Judge may require the applicant to supply further information concerning the grounds on which the search warrant is sought.
- (3) The applicant must disclose in the application—
- (a) details of any other applications for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place or thing proposed to be searched;
  - (b) the result of that application or those applications.
- (4) The applicant must, before making an application for a search warrant, make reasonable inquiries for the purpose of complying with **subsection (3)**.
- (5) The Judge may authorise the search warrant to be executed on more than one occasion if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

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**122 Form and content of search warrant**

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- (1) Every search warrant issued must be in the prescribed form.
- (2) Every search warrant issued must be directed to,—

- (a) in the case of a warrant issued under **section 107**, every member of the police:
- (b) in the case of a warrant issued under **section 109** or **115**, the Director and every designated member of the recovery body: 5
- (c) in the case of a warrant issued under **section 116**, the Official Assignee and every delegate of the Official Assignee.
- (3) A search warrant issued—
  - (a) may be executed by all or any of the persons to whom it is directed: 10
  - (b) may be subject to any conditions specified in the warrant that the Judge considers reasonable:
  - (c) may be executed only once, unless execution on more than one occasion has been authorised. 15
- (4) Every search warrant must contain, in reasonable detail, the following particulars:
  - (a) the place or thing that may be searched:
  - (b) the provision authorising the issue of the warrant:
  - (c) a description of what may be seized: 20
  - (d) the period during which the warrant may be executed, being a period not exceeding 14 days from the date of issue:
  - (e) any conditions specified by the Judge under **subsection (3)(b)**: 25
  - (f) if the warrant may be executed on more than one occasion, the number of times or the period of time over which the warrant may be executed.
- 123 When search warrant is executed** 30
 

A search warrant is executed when the person executing the warrant—

  - (a) has seized all the items specified in the warrant; or
  - (b) leaves the place or thing being searched and does not return within 4 hours.
- 124 Powers conferred by search warrant** 35
  - (1) Every search warrant issued under **Parts 1 and 2** authorises the person executing it—
    - (a) to enter and search the place or thing specified in the warrant, and any item or items found in that place or

- thing, at any time that is reasonable in the circumstances:
- (b) to request any person to assist in the execution of the warrant:
  - (c) to use any force that is reasonable for the purposes of executing the warrant: 5
  - (d) to seize any thing authorised by the warrant:
  - (e) to bring and use in or on the place or thing searched any equipment, to use any equipment found on the place or thing, and to extract any electricity from the place or thing to operate the equipment that is reasonable to use in the circumstances, for the purposes of executing the warrant: 10
  - (f) to copy any document, or part of a document, that may be seized under the warrant: 15
  - (g) to require any person to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in any document that may be seized under the warrant:
  - (h) to take photographs or video recordings of the place or thing searched, and of any thing found in that place, if the person executing the warrant has reasonable grounds to believe that the photographs or video recordings may be relevant in any proceedings arising from the execution of the warrant. 20 25
- (2) The person executing the search warrant may seize any item or items that he or she, or any person assisting him or her, finds in the course of executing the warrant if the person executing the warrant has reasonable grounds to believe that he or she or any other person who can apply for a search warrant under **Parts 1 and 2** could obtain a warrant to seize it under **Parts 1 and 2** or any other enactment. 30
- (3) The person executing a search warrant may, in a manner and for the duration that is reasonable for the purposes of executing the warrant,— 35
- (a) secure the place or thing searched, any area within that place or thing, or any thing found within that place or thing;
  - (b) exclude any person from the place or thing searched, or any area within the place or thing if the person executing the warrant has reasonable grounds to believe that 40

the person to be excluded will obstruct or hinder the execution of the warrant.

- (4) The powers conferred by this section are subject to any conditions imposed under **section 122(3)(b)**.
- (5) Section 198B of the Summary Proceedings Act 1957 applies in respect of every search warrant as if for each reference to a constable there were substituted a reference to a person authorised to execute the search warrant. 5

### **125 Powers of persons called to assist**

- (1) Every person called on to assist a person executing a search warrant may— 10
- (a) enter the place or thing to be searched:
  - (b) while in the company and under the direction of the person executing the warrant, use reasonable force in respect of any property for the purposes of executing the warrant: 15
  - (c) search areas within the place or thing that the person executing the warrant has determined may lawfully be searched:
  - (d) seize any thing that the person executing the warrant has determined may lawfully be seized: 20
  - (e) take photographs and video recordings of the place or thing and things found in the place or thing if the person executing the warrant has determined that those things may be lawfully taken: 25
  - (f) bring on to the place and use any equipment, make use of any equipment found on the place or thing, or extract electricity from the place or thing for the purposes of operating the equipment that the person executing the warrant has determined may be lawfully used or extracted: 30
  - (g) copy any document, or part of a document, that the person executing the warrant has determined may be lawfully copied.
- (2) If a member of the police is assisting another person executing a search warrant, that member of the police may exercise any power ordinarily exercisable by him or her in executing a search warrant. 35
- (3) The person executing a search warrant must—

- (a) accompany any assistant on the first occasion when the assistant enters the place or thing to be searched; and
- (b) provide such other supervision of any assistant as is reasonable in the circumstances.
- (4) The powers conferred by this section are subject to any conditions imposed under **section 122(3)(b)**. 5
- 126 Person executing warrant to produce evidence of authority**
- (1) Before or on initial entry in or on the place or thing the search warrant authorises to be searched, the person executing the search warrant must— 10
- (a) announce his or her intention to enter and search the place or thing pursuant to a search warrant:
- (b) identify himself or herself:
- (c) give the occupier of the place or thing a copy of the warrant that he or she may keep, except where this is not reasonably practicable. 15
- (2) The person executing the search warrant is not required to comply with **subsection (1)** if he or she believes on reasonable grounds that no person is lawfully present in or on the place or thing to be searched. 20
- (3) The person executing the search warrant may use reasonable force in order to effect entry in or on the place or thing—
- (a) if **subsection (2)** applies; or
- (b) if, following a request, the person present refuses entry or does not allow entry within a reasonable time. 25
- (4) On completion of the execution of the search warrant, the person executing it must provide written notice containing the following particulars:
- (a) the date and time of the commencement and completion of execution of the warrant: 30
- (b) the name of the person executing the warrant who had overall responsibility for that execution:
- (c) the address of the police station or other office to which enquiries should be made: 35
- (d) if nothing is seized, the fact that nothing was seized:
- (e) if anything was seized, the fact that seizure occurred and that an inventory of the things seized will be provided to the occupier no later than 7 days after the seizure. 40

- (5) If the occupier is not present at any time during the execution of the warrant, or if it is not reasonably practicable to comply with **subsection (1)(c)**, the person executing the warrant must on completion of execution leave a copy of the warrant and the notice required by **subsection (4)** in a prominent position on the place or thing, except where this is not reasonably practicable. 5
- (6) This section is subject to **section 128**.

### 127 Inventory of items seized

- (1) The person who executed the search warrant must, not later than 7 days after the seizure of any property or evidence, provide to the occupier, and to every other person whom the person who executed the search warrant has reason to believe may have an interest in what was seized,— 10
- (a) written notice specifying what was seized; and
- (b) a copy of the warrant and the written notice required by **section 126(4)**. 15
- (2) A person who executes a search warrant must make reasonable enquiries for the purposes of complying with **subsection (1)**.
- (3) This section is subject to **section 128**.

### 128 Compliance with certain provisions unnecessary in some circumstances 20

A person executing a search warrant is not required to comply with **section 126(1), (4), and (5)** or **section 127** if the person has reasonable grounds to believe that—

- (a) compliance would endanger the safety of any person; or 25
- (b) compliance would prejudice the successful execution of the warrant; or
- (c) compliance would prejudice ongoing investigations under **Parts 1 and 2** or executions of the warrant on subsequent occasions. 30

### *Notices*

#### 129 Form and content of notices

- (1) Every notice issued under this **subpart** must be in the prescribed form.
- (2) Any information or document is sufficiently specified in a notice of that kind if the information or document is described— 35

- (a) in a general rather than a specific way; or  
 (b) by reference only to its class, nature, content, or effect.
- (3) The time at which any thing is required to be done is sufficiently specified in a notice of that kind if the time is described as— 5  
 (a) immediately; or  
 (b) any other stated time.
- (4) Every notice under this **subpart** that requires attendance before the Director must inform the person to whom it is addressed that the person may, if that person so wishes, be accompanied by a lawyer. 10
- (5) Every notice under this **subpart** must inform the person to whom it is addressed of the relevant offences set out in **subpart 9**.
- Warrants, powers, notices, and orders associated with foreign restraint and foreign forfeiture* 15
- 130 Warrants associated with foreign restraint and foreign forfeiture**
- (1) A member of the police, if authorised under **section 59(2)(a)** of the Mutual Assistance in Criminal Matters Act 1992 to apply for a search warrant under **section 107**, may apply for a search warrant of that kind. 20
- (2) **Section 107(1) to (3), section 108, and sections 118 and 119** apply, with any necessary modifications, to an application under **subsection (1)**. 25
- 131 Powers of Director in relation to warrants associated with foreign restraint and foreign forfeiture**
- (1) The Director, if authorised under **section 59(2)(b)** of the Mutual Assistance in Criminal Matters Act 1992 to apply for a search warrant under **section 109**, may apply for a search warrant of that kind. 30
- (2) **Section 109, section 110, and sections 118 and 119** apply, with any necessary modifications, to an application under **subsection (1)**.
- 132 Powers of Official Assignee in relation to warrants associated with foreign restraint and foreign forfeiture** 35
- (1) The Official Assignee, if authorised under **section 59(2)(c)** of the Mutual Assistance in Criminal Matters Act 1992 to apply for a

- search warrant under **section 116**, may apply for a search warrant of that kind.
- (2) **Sections 116 to 119** apply, with any necessary modifications, to an application under **subsection (1)**.
- 133 Warrants, notices, and orders associated with foreign restraint and foreign forfeiture** 5
- The following provisions apply, with any necessary modifications, to an application for a warrant under any of **sections 130 to 132**:
- (a) **section 121** (application for search warrant): 10
- (b) **section 122** (form and content of search warrant):
- (c) **section 123** (when search warrant is executed):
- (d) **section 124** (powers conferred by search warrant):
- (e) **section 125** (powers of persons called to assist):
- (f) **section 126** (person executing warrant to produce evidence of authority): 15
- (g) **section 127** (inventory of items seized):
- (h) **section 128** (compliance with certain provisions unnecessary in some circumstances).
- Subpart 8—Foreign restraint and foreign forfeiture 20
- Interim foreign restraining orders*
- 134 Interim foreign restraining order**
- (1) The Director may apply for an interim foreign restraining order if authorised by the Attorney-General under **section 60** of the Mutual Assistance in Criminal Matters Act 1992. 25
- (2) **Subpart 2 of Part 2** (except **sections 37 to 42**) applies to an application made under **subsection (1)**—
- (a) with any necessary modifications:
- (b) without limiting **paragraph (a)**, with the following specific modifications: 30
- (i) a reference to significant criminal activity must be read as a reference to significant foreign criminal activity:
- (ii) the reference in **section 28(2)** to a respondent's legal expenses must be read as including a reference to a person's expenses in defending allegations of the commission of significant foreign criminal activity in a foreign country. 35

- (3) An interim foreign restraining order is to be treated in all respects (other than under **sections 37 to 42**) as if it were a restraining order.
- (4) This section applies, with any necessary modifications, to an application for a restraining order under section 112 of the International Crimes and International Criminal Court Act 2000. 5  
Compare: 1991 No 120 s 66A(1), (2), (6)
- 135 Expiry of interim foreign restraining orders**
- (1) An interim foreign restraining order expires when the earlier of the following occurs: 10
- (a) the date is reached that is the end of 28 days (commencing on the day on which the order is made);
- (b) a foreign restraining order relating to some or all of the property to which the interim foreign restraining order relates is registered in New Zealand. 15
- (2) Despite **subsection (1)**, if the duration of an interim foreign restraining order is extended by a court, the interim foreign restraining order expires on the date specified by the court under **section 136**. 20  
Compare: 1991 No 120 s 66A(3), (4)
- 136 Extending duration of interim foreign restraining order**
- (1) If a court has made an interim foreign restraining order, the applicant for that order may, before the interim foreign restraining order expires, apply to that court to extend its duration. 25
- (2) If an application is made under **subsection (1)**, the court may order that the interim foreign restraining order be extended for a period not exceeding 3 months.
- (3) The duration of an interim foreign restraining order may be extended more than once under this section. 30
- (4) If, before an interim foreign restraining order would otherwise expire under **section 135(1)**, an application is made to a court under this section and the application is granted, the interim foreign restraining order ceases to be in force on the date specified in the court's order, unless it is further extended on an application under this section. 35  
Compare: 1991 No 120 s 66(1), (2)

- 137 Additional matters relating to extending duration of interim foreign restraining order**
- (1) On making an order under **section 136**, the court may vary the interim foreign restraining order in any way it considers fit, including, without limitation, by specifying whether all or part of the property is to remain subject to the interim foreign restraining order during the extended period of operation. 5
- (2) An applicant for an order under **section 136** must serve, so far as is practicable, a copy of the application on any person who, to the knowledge of the applicant, has an interest in the property that is the subject of the application. 10

Compare: 1991 No 120 s 66(3), (4)

*Registering foreign restraining orders*

- 138 Who may apply to register foreign restraining order** 15  
The Director may apply to register a foreign restraining order in New Zealand if authorised by the Attorney-General under **section 54** of the Mutual Assistance in Criminal Matters Act 1992.
- 139 Application to register foreign restraining order made to High Court** 20  
If authorised to register a foreign restraining order in New Zealand under **section 54** of the Mutual Assistance in Criminal Matters Act 1992, the Director may apply to the High Court.
- 140 Provisions of subpart 2 of Part 2 applying to registering foreign restraining orders** 25
- (1) The following sections of **subpart 2 of Part 2** apply, with all necessary modifications, if an application is made to register a foreign restraining order in New Zealand under **section 54** of the Mutual Assistance in Criminal Matters Act 1992 or an application is made to register a restraining order under section 112(2) of the International Crimes and International Criminal Court Act 2000: 30
- (a) **section 19** (application to identify proposed restrained property, respondent (if any), and interest holders): 35
- (b) **section 21** (application for restraining order on notice):
- (c) **section 22** (application for restraining order without notice):

- (d) **section 23** (who may be heard at hearing for restraining order):
  - (e) **section 27** (registration of restraining orders on registers):
  - (f) **section 28** (conditions on restraining order): 5
  - (g) **section 29** (undertakings as to damage or costs in relation to restraining orders):
  - (h) **section 32** (certain dispositions or dealings set aside):
  - (i) **section 33** (applying for further order):
  - (j) **section 34** (making further orders): 10
  - (k) **section 35** (types of further order):
  - (l) **section 36** (impact of certain further orders).
- (2) Without limiting **subsection (1)**, a reference in any of the provisions listed in **subsection (1)** to a restraining order must be read as a reference to a foreign restraining order. 15
- (3) **Sections 30 and 31** (relating to relief) apply in relation to a foreign restraining order registered in New Zealand only if the person applying for relief—
- (a) has not already been a party to proceedings associated with the making of the foreign restraining order in the foreign country where it was made; and 20
  - (b) has good reason for failing to have attended the hearing connected with the making of the foreign restraining order in the foreign country where it was made; and
  - (c) has not unlawfully benefited from the significant foreign criminal activity to which the foreign restraining order relates. 25

Compare: 1991 No 120 s 66B(1)

- 141 Effect of registering foreign restraining order in New Zealand** 30
- (1) If a foreign restraining order is registered in New Zealand under **section 56** of the Mutual Assistance in Criminal Matters Act 1992, the property specified in the foreign restraining order that is located in New Zealand—
- (a) is not to be disposed of, or dealt with, other than is provided for in the order; and 35
  - (b) is to be under the Official Assignee's custody and control.

- (2) If a foreign restraining order is registered in New Zealand, the Director must give written notice of the order to any persons whose property is the subject of the order.

*Duration of foreign restraining order and further orders*

**142 Duration of foreign restraining order registered in New Zealand and associated further orders** 5

- (1) The registration of a foreign restraining order in New Zealand expires on the earliest of the following dates:
- (a) the date when the foreign restraining order to which it relates expires or is revoked: 10
  - (b) the date that is the end of 1 year after the date on which the foreign restraining order is registered in New Zealand:
  - (c) the date when the Director registers a foreign forfeiture order in New Zealand in respect of some or all of the property specified in the foreign restraining order: 15
  - (d) the date on which the registration of the foreign restraining order in New Zealand is cancelled by the High Court, on an application from the Director made with the approval of the Attorney-General: 20
  - (e) the date on which the registration of the foreign restraining order in New Zealand has been cancelled under **section 58** of the Mutual Assistance in Criminal Matters Act 1992.
- (2) Despite **subsection (1)**,— 25
- (a) if a foreign restraining order is registered in New Zealand without notice, its registration expires as provided in **section 143**; and
  - (b) if the registration of a foreign restraining order in New Zealand is extended as a result of an application to the High Court, it expires on the date specified by the High Court under **section 144**. 30
- (3) On the expiry of the registration of a foreign restraining order in New Zealand, any further order made in relation to the foreign restraining order also expires. 35

**143 Duration of registration of foreign restraining order when application without notice**

- (1) A foreign restraining order registered in New Zealand as a result of an application made without notice under **section**

- 140(1)(i) (foreign restraining order A)** ceases to be registered in New Zealand at the end of the period of 7 days commencing on the date on which it was registered.
- (2) However, if, before the registration of foreign restraining order A expires, an application is made with notice to register a foreign restraining order (**foreign restraining order B**) in New Zealand in relation to the property to which foreign restraining order A relates (whether or not the application also relates to any other property), the registration of foreign restraining order A continues in force until the application to register foreign restraining order B is finally disposed of.
- (3) An applicant to register foreign restraining order B must prosecute the application with all due diligence, and if the applicant does not do so, the High Court may, on the application of any party to the proceedings, order that the proceedings be struck out.
- (4) The High Court must, so far as it is practicable and consistent with the interests of justice, ensure that an application to register foreign restraining order B is dealt with speedily.
- 144 Extension of duration of registration of foreign restraining order**
- (1) If the High Court has registered a foreign restraining order in New Zealand, the applicant for that order may, before the registration of the restraining order expires, apply to the High Court for an extension of the duration of the registration of the foreign restraining order in New Zealand.
- (2) If an application is made under **subsection (1)**, the High Court may order that the registration of a foreign restraining order be extended for a further period not exceeding 1 year.
- (3) If an application is granted under this section, the registration of the foreign restraining order in New Zealand ceases at the time specified in the Court's order.
- 145 Additional matters relating to extension of registration of foreign restraining order**
- (1) On making any order of the kind referred to in **section 141**, the High Court may vary the foreign restraining order in any way it considers fit, including, without limitation, by specifying whether all or part of the property is to remain subject to the

- foreign restraining order during the extended period of registration in New Zealand.
- (2) An applicant for an order under **subsection (1)** must serve a copy of the application on any person who, to the knowledge of the applicant, has an interest in the property that is the subject of the application. 5
- 146 Exclusion of interest from foreign restraining order registered in New Zealand**
- (1) A person (other than the respondent) who has a severable interest in property restrained under a foreign restraining order that is registered in New Zealand may apply to the High Court for the exclusion of that interest if the person—
- (a) has not already been a party to proceedings associated with the making of the foreign restraining order in the foreign country where it was made; and 15
- (b) has good reason for failing to have attended the hearing connected with the making of the foreign restraining order in the foreign country where it was made; and
- (c) has not unlawfully benefited from the significant foreign criminal activity to which the foreign restraining order relates; and 20
- (d) has already made an application (whether granted or not) under **section 30** (as made applicable by **section 140(3)**).
- (2) The High Court may, if it is satisfied of the matters in **subsection (1)**, make an order— 25
- (a) directing the Crown to transfer the interest to the applicant; or
- (b) that the Crown pay to the applicant an amount equal to the value of the interest declared by the Court. 30

*Registering foreign forfeiture orders*

- 147 Who may apply to register foreign forfeiture order**
- The Director may apply to register a foreign forfeiture order in New Zealand if authorised by the Attorney-General under **section 55** of the Mutual Assistance in Criminal Matters Act 1992. 35

- 148 Application to register foreign forfeiture order made to High Court**  
 If authorised to apply to register a foreign forfeiture order in New Zealand under **section 55** of the Mutual Assistance in Criminal Matters Act 1992, the Director may apply to the High Court. 5
- 149 Notice of registration of foreign forfeiture order**
- (1) The Director must serve notice of having applied to register a foreign forfeiture order in New Zealand, so far as it is practicable to do so, on every person who, to the knowledge of Director, has an interest in the property to which the order relates. 10
- (2) The Director must also serve notice of the intention to register the foreign forfeiture order in New Zealand on the Official Assignee. 15
- 150 Registering a foreign forfeiture order**  
 The effect of registering a foreign forfeiture order in New Zealand under **section 56** of the Mutual Assistance in Criminal Matters Act 1992 is that the property specified in the foreign forfeiture order— 20
- (a) vests in the Crown absolutely; and  
 (b) is in the custody and control of the Official Assignee.
- 151 Notice of registration of foreign forfeiture order may be recorded on registers**
- (1) **Subsection (2)** applies if an application is made for a foreign forfeiture order to be registered in New Zealand against property of a kind covered by a New Zealand enactment that enables the registration of— 25
- (a) title to that property; or  
 (b) charges over that property. 30
- (2) If this subsection applies, the High Court may, at any time before finally determining the application, order any authority responsible for administering an enactment of the kind referred to in **subsection (1)** (an **Authority**) to enter on a register a note of the fact that an application has been made to register a foreign forfeiture order against the property in New Zealand. 35
- (3) The Court must order an Authority to cancel an entry made on a register under **subsection (2)** if—

- (a) the foreign forfeiture order to which registration relates is cancelled or expired; or
  - (b) the specified period (as described in **section 86(2)**) has expired; or
  - (c) the foreign forfeiture order in relation to which registration is sought is amended to exclude that property. 5
- 152 Additional matters in respect of registering foreign forfeiture order**
- (1) On registering a foreign forfeiture order in New Zealand, the High Court may do either or both of the following: 10
    - (a) declare the nature, extent, and value of any person's interest in property specified in the order:
    - (b) give any directions that may be necessary and convenient for giving effect to the foreign forfeiture order.
  - (2) Without limiting the generality of **subsection (1)(b)**, if a Court registers a foreign forfeiture order in New Zealand against any property the title to which is passed by registration on a register maintained under any New Zealand enactment, the Court may direct an officer of the Court to do anything reasonably necessary to obtain possession of any document required to effect the transfer of the property and for that purpose may, by warrant, authorise an officer to enter and search any place or thing and seize any document. 15  
20
  - (3) **Sections 121 to 128**, so far as applicable and with all necessary modifications, apply in relation to a warrant issued under **subsection (2)** as if it were a warrant issued under **section 107** to a member of the police. 25
- Compare: 1991 No 120 s 15(3)–(7)
- 153 Registering foreign forfeiture order relating to land**
- (1) Nothing in **section 150** affects the operation of section 99 of the Land Transfer Act 1952 in respect of an estate or interest in land under that Act. 30
  - (2) If the High Court registers a foreign forfeiture order in New Zealand in respect of an estate or interest in land, the order must be transmitted by the Registrar of the Court to the Registrar-General of Land or the Registrar of Deeds, as the case may be, for the purposes of registration under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require. 35

*Relief from foreign forfeiture order registered in  
New Zealand*

- 154 Relief from foreign forfeiture order registered in New Zealand** 5
- A person who claims an interest in property sought to be forfeited under a foreign forfeiture order registered in New Zealand may before the date that is 6 months from the date on which the foreign forfeiture order is registered apply to the High Court for an order under **section 155** if the person—
- (a) has not already been a party to proceedings associated with the making of the foreign forfeiture order in the foreign country where it was made; and 10
  - (b) has good reason for failing to have attended the hearing connected with the making of the foreign forfeiture order in the foreign country where it was made; and 15
  - (c) has not unlawfully benefited from the significant foreign criminal activity to which the foreign forfeiture order relates.
- 155 High Court may grant relief from foreign forfeiture order registered in New Zealand** 20
- (1) The High Court may make an order of the kind described in **subsection (2)** if it is satisfied—
    - (a) of the matters in **section 154**; and
    - (b) that the applicant has an interest in the property to which the order relates. 25
  - (2) The High Court may make an order—
    - (a) directing the Crown to transfer the interest to the applicant; or
    - (b) that the Crown pay to the applicant an amount equal to the value of the interest declared by the Court. 30
  - (3) The Court may refuse to make an order of the kind described in **subsection (2)** if it is satisfied that—
    - (a) the applicant was involved in the significant foreign criminal activity to which the foreign forfeiture order relates; or 35
    - (b) the applicant did not acquire the interest in the property in good faith or for value (without knowing or having reason to believe that the property was tainted property) in circumstances where the applicant acquired the

interest at the time of, or after, the commission of the offence or serious criminal activity.

- (4) Nothing in **subsection (3)** requires the Court to refuse making an order.

## Subpart 9—Miscellaneous

5

### *Offences*

#### **156 Contravention of restraining orders or foreign restraining orders**

- (1) Every person commits an offence who, knowing that a restraining order has been made or that a foreign restraining order has been registered in New Zealand in respect of property, disposes or otherwise deals with that property in contravention of the order. 10
- (2) Every person who commits an offence against this section is liable on conviction on indictment,— 15
- (a) in the case of an individual, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000 or both:
- (b) in the case of a body corporate, to a fine not exceeding \$60,000. 20

Compare: 1991 No 120 s 58

#### **157 Contravention of forfeiture orders or foreign forfeiture orders**

- (1) Every person commits an offence who, knowing that an assets forfeiture order or profit forfeiture order or instrument forfeiture order is in force or a foreign forfeiture order is registered in New Zealand in relation to property to which title is passed by registration on a register maintained under any New Zealand enactment, disposes of or otherwise deals with the property before the Crown's interest in the property has been registered in the manner required by law. 25 30
- (2) Every person who commits an offence against this section is liable on conviction on indictment,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000, or both: 35

- (b) in the case of a body corporate, to a fine not exceeding \$60,000.

Compare: 1991 No 120 s 84

- 158 Failing to comply with notices, orders, and search warrants** 5
- (1) Every person commits an offence who, being a person against whom an examination notice, production notice, or production order is made,—
- (a) fails, without reasonable excuse, to comply with that notice or order; or 10
- (b) in purported compliance with the order or notice, produces or makes available to the Director a document or makes a statement which the person knows is false or misleading in a material particular.
- (2) Every person commits an offence who fails, without reasonable excuse, to comply with a search warrant issued under **Parts 1 and 2** that relates to his or her premises. 15
- (3) Every person who commits an offence against **subsection (1) or (2)** is liable on indictment—
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or a fine not exceeding \$15,000, or both; 20
- (b) in the case of a body corporate, to a fine not exceeding \$40,000.
- Compare: 1991 No 120 s 76 25
- 159 Search order not to be disclosed**
- (1) Any person (including a financial institution) that is, or has been, subject to a search order must not disclose the existence or the operation of the order to any person except—
- (a) the Commissioner of Police or a member of the police who is authorised by the Commissioner to receive the information; or 30
- (b) an officer or agent of the recovery body, for the purpose of ensuring compliance with the order; or
- (c) a lawyer, for the purpose of obtaining legal advice or representation in relation to the order. 35
- (2) A person referred to in **subsection (1)(a)** must not disclose the existence or operation of the order except—
- (a) to another person referred to in **subsection (1)**; and

- (b) for the purpose of the performance of his or her duties.
- (3) A person referred to in **subsection (1)(b)** must not disclose the existence or operation of the order except—
- (a) to another person referred in **subsection (1)**; and
  - (b) for the purpose of ensuring that the order is complied with or obtaining legal advice or representation in relation to the order. 5
- (4) A person referred to in **subsection (1)(c)** must not disclose the existence or operation of the order except—
- (a) to another person referred in **subsection (1)**; and 10
  - (b) for the purpose of giving legal advice or making representations in relation to the order.
- (5) Nothing in **subsections (1) to (4)** prevents the disclosure of the existence or operation of a search order in connection with, or in the course of, proceedings before a court. 15
- (6) In this section and **section 160 search order** means—
- (a) a search warrant;
  - (b) an examination notice, production notice, or production order.
- 160 Offence to disclose existence or operation of search order** 20
- Every person who knowingly contravenes any of **subsections (1) to (4) of section 159** commits an offence and is liable on indictment—
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or a fine not exceeding \$15,000, or both; 25
  - (b) in the case of a body corporate, to a fine not exceeding \$40,000.
- Compare: 1991 No 120 s 81 30
- 161 Offence of obstruction**
- Every person who, without reasonable excuse, intentionally obstructs any person exercising a power or carrying out a duty under **Parts 1 and 2** commits an offence and is liable on indictment— 35
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or a fine not exceeding \$15,000 or both;

- (b) in the case of a body corporate, to a fine not exceeding \$40,000.

**162 Members of recovery body not to disclose secrets**

Every member of the recovery body commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, who knowingly contravenes **section 101 or 103**. 5

*Compliance not actionable*

**163 Compliance not actionable**

No proceedings, civil or criminal, may be brought against any person because of that person's compliance with any provision in **subpart 7**. 10

*Indemnity*

**164 Indemnity for enforcement officers**

- (1) Every enforcement officer is indemnified by the Crown in respect of any liability relating to the exercise or performance, or purported exercise or performance, or omission to exercise or perform, any function or power conferred or imposed on the enforcement officer by or under **Parts 1 and 2 or sections 142A to 142Q** of the Sentencing Act 2002. 15
- (2) **Subsection (1)** does not apply if it is shown that the exercise or performance, or purported exercise or performance, or omission to exercise or perform, the function or power was in bad faith. 20
- (3) The indemnity conferred by **subsection (1)** extends to legal costs in defending a proceeding. 25
- (4) Nothing in this section limits or affects any provision of the Crown Proceedings Act 1950 or the Crimes Act 1961 relating to the liability of the Crown on matters of justification and exercise.
- (5) Any money required for the purposes of this section must be paid out of a Crown bank account without further appropriation. 30
- (6) In this section **enforcement officer**—
- (a) means—
- (i) the Director and any member of the recovery body: 35

- (ii) the Official Assignee:
  - (iii) the Commissioner of Police or any member of the police:
  - (iv) a prosecutor acting on behalf of the Crown:
  - (v) any person referred to in **section 124** who provides assistance in executing a search warrant; and 5
  - (b) includes any delegate of the enforcement officer exercising functions and powers under **Parts 1 and 2** or **sections 142A to 142Q** of the Sentencing Act 2002. 10
- Compare: 1991 No 120 s 62

*Operation of other laws*

**165 Operation of other laws not affected**

- Nothing in **Parts 1 and 2** limits or restricts the operation of any other enactment providing for the forfeiture of property or imposition of pecuniary penalties. 15
- Compare: 1991 No 120 s 91

*Effect of exercise of powers on duties of confidentiality*

**166 Duties as to confidentiality generally overridden**

- (1) **Sections 111 to 114** override every enactment or rule of law that obliges any person to maintain secrecy in relation to, or not to disclose, any matter. 20
  - (2) Compliance by any person with any of **sections 111 to 114** is not a breach of any relevant obligation of secrecy or non-disclosure or of the enactment or rule of law by which the obligation is imposed. 25
  - (3) This section is subject to **sections 167** and **168**. 30
- Compare: 1990 No 51 s 23

**167 Legal professional privilege**

- (1) Nothing in **sections 111 to 114** requires any lawyer to disclose any privileged communication. 30
- (2) Despite **subsection (1)**, the Director may, by notice in writing to any lawyer who the Director has reason to believe may have acted for any person who may be connected with any investigation, require that lawyer to supply to the Director the last known name and address of that client. 35

- (3) For the purposes of this section, a communication is a privileged communication only if—
- (a) it is a confidential communication, whether oral or written or made directly or indirectly through an agent, passing between—
    - (i) a lawyer in his or her professional capacity and another lawyer in that capacity; or
    - (ii) a lawyer in his or her professional capacity and his or her client; and
  - (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
  - (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.
- (4) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with—
- (a) a trust account of the lawyer within the meaning of section 2 of the Law Practitioners Act 1982; or
  - (b) the operation of a financial institution within the meaning of section 3 of the Financial Transactions Reporting Act 1996.
- (5) If any person refuses to disclose any information or document on the ground that it is a privileged communication under this section, the Director or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid.
- (6) For the purposes of determining any application under **subsection (5)**, the District Court Judge may require the information or document to be produced to him or her.
- (7) For the purposes of this section, the term **lawyer** means a barrister or solicitor of the High Court, and references to a lawyer include a firm in which he or she is a partner or is held out to be a partner.

Compare: 1990 No 51 s 24

- 168 Certain provisions not to apply to police, inland revenue, statistics, and reserve bank officers**
- Nothing in **sections 111 to 114** requires any of the following persons to comply with any requirement imposed under any of those sections—
- (a) any person acting in his or her capacity as an officer of the Inland Revenue Department: 5
  - (b) any person acting in his or her capacity as a member of the police or the Police Department:
  - (c) any person acting in his or her capacity as a member of Statistics New Zealand: 10
  - (d) any person acting in his or her capacity as an officer or employee of the Reserve Bank of New Zealand.

Compare: 1990 No 51 s 25

- 169 Privilege against self-incrimination no excuse** 15
- No person is excused from answering any question, supplying any information, producing any document, or providing any explanation under any of **sections 111 to 114** on the ground that to do so would or might incriminate or tend to incriminate that person. 20

Compare: 1990 No 51 s 27

*Admissibility of evidence*

- 170 Admissibility of evidence**
- (1) No evidence that is lawfully obtained under any of **sections 111 to 114** is inadmissible by reason only of the fact that it was so obtained. 25
  - (2) This section is subject to **section 171**.

Compare: 1990 No 51 s 26

- 171 Admissibility of self-incriminating statements**
- (1) A self-incriminating statement made orally by a person (whether or not the statement is recorded in writing) in the course of answering any question, or supplying any information, or producing any document, or providing any explanation, as required under any of **sections 111 to 114**, may be used in evidence against that person only in a prosecution for an offence where the person gives evidence inconsistent with the statement. 30  
35

- (2) Despite **subsection (1)**, any statement made in relation to—
- (a) a refusal or failure to answer any question, supply any information, produce any document, provide any explanation, or comply with any other requirement may be used in evidence against that person in any prosecution for any offence under **section 158** arising from that refusal or failure: 5
  - (b) the answering of any question in a way that is false or misleading in a material particular, or the supply of any information, or the production of any document, or the providing of any explanation that is false or misleading in a material particular, may be used in evidence against that person in any prosecution for any offence under **section 158** arising from that act. 10
- Compare: 1990 No 51 s 28 15

**172 Admissibility of evidence given to court or Official Assignee**

- (1) **Subsection (2)** applies if—
- (a) any person is examined before a court, or a registrar of a court, or the Official Assignee, pursuant to an order made under **Parts 1 and 2**; or 20
  - (b) any person is required to furnish to the Official Assignee a statement on oath.
- (2) If this subsection applies—
- (a) any self-incriminating statement or disclosure made by the person in response to the question or any self-incriminating statement furnished in response to the requirement is not admissible against that person in any civil or criminal proceedings, other than— 25
    - (i) a proceeding for giving false evidence in the course of the examination or, as the case may require, for making any false statement in any statement so furnished; or 30
    - (ii) the prosecution of that person for an offence against section 108 of the Crimes Act 1961; or 35
    - (iii) the proceedings in relation to which the statement was made or the document was given:

- (b) any other evidence provided by the person is admissible in civil or criminal proceedings, subject to any enactment or rule of law to the contrary.

Compare: 1991 No 120 s 49

*Arrangements to avoid operation of Parts 1 and 2 or Sentencing Act 2002* 5

**173 Arrangements to avoid operation of Parts 1 and 2 or Sentencing Act 2002**

- (1) In this section, **arrangement** means—
- (a) any agreement, arrangement, understanding, promise of undertaking whether express or implied and whether or not enforceable or intended to be enforceable at law; and 10
- (b) any scheme, plan, proposal, action, course of action, or course of conduct. 15
- (2) If the High Court (or if the matter relates to an instrument of crime in relation to which proceedings were commenced in the District Court, the District Court) is satisfied that a person has an arrangement for the purposes of directly or indirectly defeating, avoiding, preventing, or impeding the operation of **Parts 1 and 2 or sections 142A to 142Q** of the Sentencing Act 2002 in any way, the court may— 20
- (a) make an order declaring the arrangement to be void wholly or in part; or
- (b) make an order varying the arrangement in whole or in part. 25
- (3) The High Court or District Court may also make other orders that it considers necessary in the circumstances to give effect to an order made under **subsection (2)**, including, without limitation, an order to do all or any of the following: 30
- (a) dispose of property (including selling property):
- (b) pay money to any person:
- (c) dispose of the proceeds of any disposal of the property:
- (d) create a charge on property in favour of a person and enforce that charge. 35
- (4) The High Court or District Court may rescind or vary any order made under this section.

Compare: Criminal Assets Recovery Act 1990 s 59 (NSW)

*Notices***174 Giving of notices**

- (1) If a notice or other document is to be given to a person for the purposes of **Parts 1 and 2**, it may be given—
- (a) by delivering it personally to the person; or 5
  - (b) by delivering it at the usual or last known place of residence or business of the person, including by facsimile; or
  - (c) by sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person. 10
- (2) If a notice or other document is to be given to a corporation for the purposes of **Parts 1 and 2**, service on an officer of the corporation, or on the registered office of the corporation, in accordance with **subsection (1)** is deemed to be service on the corporation. 15
- (3) If a notice or other document is to be given to a partnership for the purposes of **Parts 1 and 2**, service on any one of the partners in accordance with **subsections (1) and (2)** is deemed to be service on the partnership. 20
- (4) If a notice or other document is sent by post to a person in accordance with **subsection (1)(c)**, it is deemed, in the absence of proof to the contrary, to have been given on the 3rd day after the day on which it was posted.

*Effect of death* 25**175 Effect of death**

- (1) Any notice authorised or required to be given to a person under **Parts 1 and 2** is, if the person is dead, sufficiently given if given to the person's legal personal representative.
- (2) A reference in **Parts 1 and 2** to an interest in property of a person is, in the case of a person who is dead, a reference to an interest in the property that the person had immediately before death. 30
- (3) An order can be applied for and made under **Parts 1 and 2**—
- (a) in respect of a person's interest in property even if the person is dead; and 35
  - (b) on the basis of the activities of a person who is dead.

- 176 Effect of death of joint owner of restrained property**
- (1) If a person has an interest in property as joint owner of the property, the person's death after a restraining order is made in respect of the interest does not (while the order is in force) operate to vest the interest in the surviving joint owner or owners and the restraining order continues to apply to the interest as if the person had not died. 5
- (2) An assets forfeiture order or instrument forfeiture order made in respect of that interest applies as if the order took effect in relation to the interest immediately before the person died. 10
- (3) If a restraining order ceases to apply to an interest in property without an assets forfeiture order or instrument forfeiture order being made in respect of that interest, **subsection (1)** is taken not to have applied to the interest.
- Repeal* 15
- 177 Repeals**  
The Proceeds of Crime Act 1991 (1991 No 120) is repealed.
- Transitional provisions*
- 178 Proceeds of Crime Act 1991 continues in force for certain purposes** 20  
Despite **section 177**, the Proceeds of Crime Act 1991 continues in force for the purposes of—
- (a) continuing and completing any proceedings or other matter commenced under that Act before the commencement of **Parts 1 and 2** (including the making or enforcement of any order arising from those proceedings): 25
- (b) the exercise of any power or function under that Act in relation to any matter referred to in **paragraph (a)**.
- Regulations and rules* 30
- 179 Regulations**  
The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing applications, notices, and other documents for the purposes of **Parts 1 and 2** and requiring their use: 35

- (b) prescribing forms for the purposes of **Parts 1 and 2** and requiring their use:
- (c) providing for the service of notices and other documents under **Parts 1 and 2** to be dispensed with in such circumstances as are specified in the regulations: 5
- (d) prescribing or providing for the costs recoverable by the Official Assignee under **section 87**:
- (e) setting out procedures for the return or disposal of documents or other evidence seized, produced, or surrendered under **subpart 7**: 10
- (f) providing for such other matters as are contemplated by, or are necessary for giving full effect to, **Parts 1 and 2** and for its due administration.

Compare: 1991 No 120 s 89

## **180 Rules** 15

The Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of courts in proceedings under **Parts 1 and 2**.

Compare: 1991 No 120 s 90

## Subpart 10—Consequential amendments to other enactments 20

### *Amendments to Crimes Act 1961*

## **181 Amendments to Crimes Act 1961**

**Sections 182 to 184** amend the Crimes Act 1961.

## **182 Defence of enforcement of enactment** 25

Section 244(b) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”.

## **183 Destruction of relevant records made by use of interception device** 30

Section 312J is amended by inserting the following subsection after subsection (1):

“(1A) In subsection (1), **proceedings** includes proceedings under **sections 142A to 142Q** of the Sentencing Act 2002 and any proceedings under the Criminal Proceeds (Recovery) Act **2006**.” 35

- 184 Restriction on admissibility of evidence of private communications lawfully intercepted**  
 Section 312N is amended by repealing paragraph (i) and substituting the following paragraphs: 5
- “(i) offences of 2 or more of those kinds specified in paragraphs (a) to (h); or
- “(j) an offence specified in paragraphs (a) to (h) and the evidence is relevant to a proceeding under the Criminal Proceeds (Recovery) Act **2006** or a proceeding under **sections 142A to 142Q** of the Sentencing Act 2002.” 10
- Amendments to Customs and Excise Act 1996*
- 185 Amendments to Customs and Excise Act 1996**  
**Sections 186 to 188** amend the Customs and Excise Act 1996.
- 186 Detention of goods suspected to be tainted property**
- (1) Section 166A is amended by omitting the heading and substituting the heading “**Detention of goods suspected to be instrument of crime or tainted property**”. 15
- (2) Section 166A is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) he or she has good cause to suspect that the goods are an instrument of crime or tainted property (as those terms are defined in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**).” 20
- 187 Further provisions about detention under section 166A**  
 Section 166C(4)(d) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”. 25
- 188 Return of goods detained under section 166A**  
 Section 166D(3) is amended by repealing paragraph (a) and substituting the following paragraph: 30
- “(a) an information is laid in respect of the relevant qualifying forfeiture offence (as defined in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**); or”.

*Amendment to Evidence Act 1908***189 Amendment to Evidence Act 1908**

**Section 190** amends the Evidence Act 1908.

**190 Undercover police officers**

Section 13A is amended by adding the following subsection: 5

“(10) This section also applies with any necessary modifications in any case where a person is being proceeded against or is to be proceeded against under—

“(a) the Criminal Proceeds (Recovery) Act **2006**; or

“(b) **sections 142A to 142Q** of the Sentencing Act 2002.” 10

*Amendments to Financial Transactions Reporting Act 1996***191 Amendments to Financial Transactions Reporting Act 1996**

**Sections 192 to 201** amend the Financial Transactions Reporting Act 1996. 15

**192 Title amended**

The title is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”.

**193 Verification of identity where money laundering or proceeds of crime suspected** 20

(1) The heading to section 11 is amended by omitting “**proceeds of crime**” and substituting “**significant criminal activity**”.

(2) Section 11(1)(b)(ii) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”. 25

**194 Offences**

Section 13(1)(j)(ii)(B) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”. 30

**195 Financial institutions to report suspicious transactions**

Section 15(1)(b)(ii) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”.

- 196 Auditors may report suspicious transactions**  
Section 16(b) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act 2006”.
- 197 Protection of identity of persons making suspicious transaction reports** 5  
(1) Section 21(2)(b) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act 2006”.  
(2) Section 21(2) is amended by repealing paragraphs (c) and (d) and substituting the following paragraphs: 10  
“(c) any activity relating to an application for a restraining order, assets forfeiture order, or profit forfeiture order under the Criminal Proceeds (Recovery) Act 2006:  
“(d) any activity relating to the making of an instrument forfeiture order under **section 142N** of the Sentencing Act 2002: 15  
“(e) the administration of the Mutual Assistance in Criminal Matters Act 1992.”
- 198 Offences** 20  
Section 22(1)(b)(ii) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act 2006”.
- 199 Commissioner to issue guidelines relating to reporting of suspicious transactions** 25  
Section 24(1)(a)(ii) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act 2006”.
- 200 Application of Privacy Act 1993**  
(1) Section 28(c) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act 2006”. 30  
(2) Section 28 is amended by repealing paragraphs (d) and (e) and substituting the following paragraphs:

- “(d) any activity relating to an application for a restraining order, assets forfeiture order, or profit forfeiture order under the Criminal Proceeds (Recovery) Act **2006**;
- “(c) any activity relating to the making of an instrument forfeiture order under **section 142N** of the Sentencing Act 2002: 5
- “(f) the administration of the Mutual Assistance in Criminal Matters Act 1992.”
- 201 Application of Privacy Act 1993**
- (1) Section 43(b) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”. 10
- (2) Section 43 is amended by repealing paragraphs (c) and (d) and substituting the following paragraphs:
- “(c) any activity relating to an application for a restraining order, assets forfeiture order, or profit forfeiture order under the Criminal Proceeds (Recovery) Act **2006**: 15
- “(d) any activity relating to the making of an instrument forfeiture order under **section 142N** of the Sentencing Act 2002: 20
- “(c) the administration of the Mutual Assistance in Criminal Matters Act 1992.”
- Amendments to International Crimes and International Criminal Court Act 2000*
- 202 Amendments to International Crimes and International Criminal Court Act 2000** 25
- Sections 203 to 207** amend the International Crimes and International Criminal Court Act 2000.
- 203 Interpretation**
- (1) Paragraph (b) of the definition of **forfeiture order** in section 4 is amended by omitting “pecuniary penalty order” and substituting “profit forfeiture order”. 30
- (2) The definition of **tainted property** in section 4 is repealed and the following definition substituted:
- “**tainted property**, in relation to an international crime, means any— 35

- “(a) instrument of crime as defined in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**; or
- “(b) tainted property as defined in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**.”
- 204 Attorney-General may authorise measures** 5  
Section 112(1) is repealed and the following subsection substituted:
- “(1) If the Attorney-General gives authority for the request for assistance in identifying, tracing and freezing, or seizing tainted property to proceed, the Attorney-General may authorise the appropriate New Zealand authority to apply for 1 or more of the following orders or warrants: 10
- “(a) a search warrant under **section 107 or 109** of the Criminal Proceeds (Recovery) Act **2006**;
- “(b) any restraining order made under the Criminal Proceeds (Recovery) Act **2006**; 15
- “(c) a production order under **section 112** of the Criminal Proceeds (Recovery) Act **2006**.”
- 205 Method of registration of order** 20  
Section 128(3) and (4) are amended by omitting “Proceeds of Crimes Act 1991” and substituting in each case “Criminal Proceeds (Recovery) Act **2006**”.
- 206 New sections 130 and 131 substituted** 25  
Sections 130 and 131 are repealed and the following sections substituted:
- “130 Effect of registration of order**
- “(1) A forfeiture order registered under section 128 has effect and may be enforced as if it were a profit forfeiture order—
- “(a) made by the High Court under the Criminal Proceeds (Recovery) Act **2006**; and 30
- “(b) entered on the date of registration.
- “(2) **Subsection (1)** applies subject to sections 132 and 133.
- “(3) If a forfeiture order is registered under section 128,—
- “(a) **subpart 3 of Part 2** of the Criminal Proceeds (Recovery) Act **2006** so far as is applicable and with any necessary modifications, and except to the extent that this Act provides otherwise, applies in relation to the order; and 35

- “(b) the property must be disposed of, or otherwise dealt with, in accordance with the order of, or directions given by, the ICC and the Attorney-General may give such directions as may be necessary to give effect to that order or those directions; and 5
- “(c) if, for any reason, the Attorney-General is not able to dispose of the property in accordance with the ICC’s order or directions, the Attorney-General may, after consulting with the ICC, arrange for the property to be transferred to the person in whom it was vested immediately before the forfeiture order was made. 10
- “(4) A restraining order registered in accordance with section 112(2) has effect, and may be enforced, as if it were a restraining order—
- “(a) made under the Criminal Proceeds (Recovery) Act 2006; 15  
and
- “(b) entered on the date of registration.
- “131 Forfeiture order may be treated as profit forfeiture order**
- “(1) If the Attorney-General is unable to give effect to a forfeiture order, the Attorney-General must take measures to recover— 20
- “(a) the value specified by the ICC as the value of the tainted property ordered by the ICC to be forfeited; or
- “(b) if the ICC has not specified the value of the tainted property, the value that, in the opinion of the Attorney-General, is the value of the tainted property ordered by the ICC to be forfeited. 25
- “(2) In a case to which **subsection (1)** applies, the forfeiture order is to be treated as a profit forfeiture order for the equivalent amount and may be enforced accordingly as if it were a profit forfeiture order— 30
- “(a) made by the High Court under the Criminal Proceeds (Recovery) Act 2006; and
- “(b) entered on the date of registration.”
- 207 Cancellation of registration order** 35
- Section 134(4) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act 2006”.

*Amendments to International War Crimes Tribunals  
Act 1995*

- 208 Amendments to International War Crimes Tribunals Act 1995**  
**Sections 209 to 211** amend the International War Crimes Tribunals Act 1995. 5
- 209 New section 43 substituted**  
 Section 43 is repealed and the following section substituted:
- “43 Effect of registration of order**  
 Subject to sections 44 to 47, a forfeiture order registered in accordance with section 42 has effect and may be enforced as if it were a profit forfeiture order made by the High Court under the Criminal Proceeds (Recovery) Act **2006** and entered on the date of registration.” 10
- 210 Registered forfeiture orders** 15  
 Section 44 is amended by repealing paragraph (a) and substituting the following paragraph:  
 “(a) **subpart 3** of **Part 2** of the Criminal Proceeds (Recovery) Act **2006** so far as is applicable and with any necessary modifications, and except to the extent that this Act provides otherwise, applies in relation to the order; and”. 20
- 211 Cancellation of registration of forfeiture order**  
 Section 47(4) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”. 25

*Amendment to Judicature Act 1908*

- 212 Amendment to Judicature Act 1908**  
**Section 213** amends the Judicature Act 1908.
- 213 Application of Part 4A** 30  
 Rule 458D(1)(a)(xvii) of Schedule 2 is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”.

*Amendments to Legal Services Act 2000***214 Amendments to Legal Services Act 2000**

**Sections 215 and 216** amend the Legal Services Act 2000.

**215 When legal aid may be granted: civil matters**

Section 9 is amended by adding the following subsections: 5

- “(7) The Agency may grant legal aid to an applicant in respect of a civil proceeding under the Criminal Proceeds (Recovery) Act **2006** if the Agency considers that the interests of justice require that the applicant be granted legal aid.
- “(8) In considering whether or not the interests of justice require that an applicant be granted legal aid under **subsection (7)**, the Agency must have regard to—
- “(a) whether there are any serious consequences for the applicant if legal aid is not granted; and
- “(b) whether there are any complex factual, legal or evidential matters in the proceeding that require the applicant to be legally represented. 15
- “(9) Subsections (3) and (4) do not apply to an application for legal aid in respect of a civil proceeding under the Criminal Proceeds (Recovery) Act **2006**.” 20

**216 Schedule 1 amended**

Schedule 1 is amended by repealing clause 3(2)(c) and substituting the following paragraphs:

- “(c) the value of the subject matter of the proceedings, unless the Agency determines a proportion of that value that should be included in the assessment of the person’s total assets; and 25
- “(d) the value of any property that is the subject of a restraining order under the Criminal Proceeds (Recovery) Act **2006**.” 30

*Amendment to Misuse of Drugs Act 1975***217 Amendment to Misuse of Drugs Act 1975**

**Section 218** amends the Misuse of Drugs Act 1975.

- 218 Laundering proceeds of drug offences**  
Section 12B(6)(b) is amended by omitting “Proceeds of Crime Act 1991” and substituting “Criminal Proceeds (Recovery) Act **2006**”.
- Amendment to Summary Proceedings Act 1957* 5
- 219 Amendment to Summary Proceedings Act 1957**  
**Section 220** amends the Summary Proceedings Act 1957.
- 220 Part 2 of Schedule 1 amended**  
Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by omitting the item relating to the Proceeds of Crime Act 1991 and substituting the following item: 10
- |  |     |   |    |
|--|-----|---|----|
| Criminal Proceeds (Recovery) Act <b>2006</b> | 156 | Contravention of restraining orders or foreign restraining orders | 15 |
|  | 157 | Contravention of forfeiture orders or foreign forfeiture orders   |    |
|  | 158 | Failing to comply with notices, orders, and search warrants       |    |
|  | 160 | Offence to disclose existence or operation of search order        | 20 |
|  | 161 | Offence of obstruction  |    |
- Amendment to Tax Administration Act 1994*
- 221 Amendment to Tax Administration Act 1994**  
**Section 222** amends the Tax Administration Act 1994. 25
- 222 Officers to maintain secrecy**
- (1) Section 81(4) is amended by inserting the following paragraph after paragraph (g):  
“(ga) communicating to any authorised person (as defined in **section 104(1)** of the Criminal Proceeds (Recovery) Act **2006**) any information required for the purpose specified in **subsection (2)(h)** of that section:”. 30
- (2) Section 87(4) is amended by inserting the following paragraph after paragraph (d):  
“(da) where it is given to any authorised person (as defined in **section 104(1)** of the Criminal Proceeds (Recovery) Act **2006**), be kept by the Director as a permanent record:”. 35

*Amendments to Terrorism Suppression Act 2002*

- 223 Amendments to Terrorism Suppression Act 2002**  
**Sections 224 to 230** amend the Terrorism Suppression Act 2002.
- 224 Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities** 5  
 Section 9(3)(b) is amended by omitting “section 50 of the Proceeds of Crime Act 1991” and substituting “**section 80** of the Criminal Proceeds (Recovery) Act **2006**”. 10
- 225 Further provisions about detention under section 47A**  
 Section 47C(5)(d) is amended by omitting “Proceeds of Crime Act 1991”, and substituting “Criminal Proceeds (Recovery) Act **2006**”.
- 226 Variation, revocation, or expiry of direction** 15  
 Section 50(3)(b) is repealed and the following paragraph substituted:  
 “(b) on a forfeiture order being made under section 55 in relation to the property concerned, in which case **section 85** of the Criminal Proceeds (Recovery) Act **2006** (as modified and applied by section 57(c) of this Act) applies.” 20
- 227 New section 51 substituted**  
 Section 51 is repealed and the following section substituted:
- “51 Further provisions on management of property subject to section 9** 25  
 The following sections of the Criminal Proceeds (Recovery) Act **2006** apply, with the following (and any other necessary) modifications, to property that is the subject of a direction under section 48, as if the direction were a restraining order under that Act: 30  
 “(a) **section 27** (which relates to the registration of restraining orders):  
 “(b) **section 32** (which relates to applications for orders that certain dispositions or dealings be set aside, except that 35

- the applications must be made by the Attorney-General):
- “(c) **section 80** (which relates to powers of the Official Assignee to preserve the value of property): 5
  - “(d) **section 81** (which relates to the Official Assignee’s liability for payment of rates, etc, on the property):
  - “(e) **section 87** (which relates to costs recoverable by the Official Assignee, and any regulations made under that Act for the purposes of that section apply, with any necessary modifications, accordingly): 10
  - “(f) **sections 88 to 90** (which relate to the Official Assignee making and revoking delegations, except that the delegations must relate only to functions and powers of the Official Assignee under this Act):
  - “(g) **section 156** (which makes it an offence to dispose of or deal with the property in contravention of a restraining order, knowing that the restraining order has been made in respect of the property): 15
  - “(h) **section 164** (which relates to an indemnity for enforcement officers, except that the indemnity must relate only to the exercise or performance, or purported exercise or performance, or omission to exercise or perform, functions and powers of the Official Assignee under this Act).” 20
- 228 New section 57 substituted** 25
- Section 57 is repealed and the following section substituted:
- “**57 Further provisions relating to orders under section 55**
- The following sections of the Criminal Proceeds (Recovery) Act 2006 and the Sentencing Act 2002 apply, with the following (and all other necessary) modifications, to the making, effect, operation, and discharge of an order under section 55, as if the order were an instrument forfeiture order under **section 142N** of the Sentencing Act 2002: 30
- “(a) **sections 70, 72, and 73** of the Criminal Proceeds (Recovery) Act 2006 (which relate to the effect of the order) 35
    - except that—
    - “(i) the reference in **section 73(2)** to the Official Assignee must be read as a reference to the Attorney-General, and the property may be disposed

- of or otherwise dealt with in accordance with any direction of the Attorney-General; and
- “(i) references in **section 73** to an instrument forfeiture order must be read as reference to an order under section 35(2) or section 55 of this Act: 5
- “(b) **section 85** of the Criminal Proceeds (Recovery) Act 2006 (which relates to the Official Assignee discharging the order), except that the relevant appeal period in relation to the making of an order under section 35(2) or section 55 of this Act means the period ending— 10
- “(i) when the time for bringing on appeal against the decision of the Court expires, if no such appeal has been brought; or
- “(ii) if an appeal against the decision of the Court has been brought, when the appeal is finally determined or withdrawn, whichever occurs first: 15
- “(c) **section 142N(3)(a), (4), and (5)** of the Sentencing Act 2002 (which relates to the terms of the order and to any directions that are necessary and convenient for giving effect to it).” 20
- 229 New section 71 substituted**  
Section 71 is repealed and the following section substituted:
- “**71 Criminal Proceeds (Recovery) Act 2006 not affected**  
Nothing in this Act affects the Criminal Proceeds (Recovery) Act 2006.” 25
- 230 Section 81 repealed**  
Section 81 is repealed.

### Part 3

## Amendments to Mutual Assistance in Criminal Matters Act 1992 and Sentencing Act 2002 30

### Subpart 1—Amendments to Mutual Assistance in Criminal Matters Act 1992

- 231 Purpose of subpart**  
The purpose of this subpart is to amend the Mutual Assistance in Criminal Matters Act 1992 so that it applies to foreign 35

restraint and foreign forfeiture schemes that are civil, as well as criminal, in nature.

### 232 Principal Act amended

This subpart amends the Mutual Assistance in Criminal Matters Act 1992.

5

### 233 Interpretation

- (1) Section 2(1) is amended by inserting the following definition before the definition of **Central Authority**:

“**assets forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**”.

10

- (2) The definitions of **document** and **financial institution** in section 2(1) are repealed and the following definitions substituted:

“**Director** or **Director of Criminal Proceeds Confiscation** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**

15

“**document** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**

“**examination notice** means a notice issued under **section 114** of the Criminal Proceeds (Recovery) Act **2006**

20

“**financial institution** has the same meaning as in section 3 of the Financial Transactions Reporting Act 1996”.

- (3) The definition of **foreign drug-dealing offence** in section 2(1) is repealed.

- (4) The definition of **foreign forfeiture order** in section 2(1) is repealed and the following definition substituted:

25

“**foreign forfeiture order** means—

“(a) an order made under the law of a foreign country by a court or other judicial authority for the forfeiture of property that is—

30

“(i) tainted property (as defined in relation to Part 3); or

“(ii) property of a person who has unlawfully benefited from significant foreign criminal activity; or

“(iii) an instrument of crime (as defined in relation to Part 3); or

35

“(b) a foreign pecuniary penalty order”.

- (5) The definition of **foreign pecuniary penalty order** in section 2(1) is repealed and the following definitions substituted:
- “**foreign order** means a foreign forfeiture order or a foreign restraining order
- “**foreign pecuniary penalty order** means an order, made under the law of a foreign country by any court or other judicial authority, imposing a pecuniary penalty in respect of benefits derived by a person from significant foreign criminal activity (whether proved to a civil or criminal standard); but does not include an order for the payment of a sum of money by way of compensation, restitution, or damages to an injured person”.
- (6) The definition of **foreign restraining order** is repealed and the following definition substituted:
- “**foreign restraining order** means an order made under the law of a foreign country by a court or other judicial authority that—
- “(a) restrains a particular person, or all persons, from dealing with the property specified in the order; and
- “(b) relates to—
- “(i) tainted property (as defined in relation to Part 3); or
- “(ii) property of a person who has unlawfully benefited from significant foreign criminal activity; or
- “(iii) an instrument of a crime (as defined in relation to Part 3); or
- “(iv) property that will satisfy some or all of a foreign pecuniary penalty order”.
- (7) The definition of **foreign serious offence** in section 2(1) is repealed and the following definition substituted in its appropriate alphabetical order:
- “**foreign qualifying forfeiture offence** means—
- “(a) an offence in a foreign country that is punishable in that country by a maximum term of imprisonment of 5 years or more (including an attempt to commit, conspiring to commit, or being an accessory to an offence if the maximum term of imprisonment for that attempt, conspiracy, or activity is 5 years or more); and

- “(b) an offence under the law of a foreign country that is a party to the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000 if—
- “(i) it is punishable by imprisonment for a term of 4 years or more; and 5
- “(ii) there are reasonable grounds to suspect that it is transnational in nature (as defined in articles 3(2) and 18(1) of that convention) and involves an organised criminal group (as defined in article 2(a) of that convention)”. 10
- (8) The definition of **forfeiture order** in section 2(1) is repealed and the following definitions substituted:
- “**forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006** 15
- “**instrument forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**
- “**instrument of crime**—
- “(a) in relation to Part 2, has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**; and 20
- “(b) in relation to Part 3, means any property used, wholly or in part, to commit or facilitate the commission of a foreign qualifying forfeiture offence”.
- (9) The definition of **monitoring order** in section 2(1) is repealed. 25
- (10) The definition of **pecuniary penalty order** in section 2(1) is repealed.
- (11) The definition of **Proceeds of Crime Act** in section 2(1) is repealed.
- (12) The definition of **production order** in section 2(1) is repealed and the following definitions substituted: 30
- “**production notice** means a notice issued under **section 111** of the Criminal Proceeds (Recovery) Act **2006**
- “**production order** means an order made under **section 113** of the Criminal Proceeds (Recovery) Act **2006** 35
- “**profit forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**”.

- (13) The definition of **property** and **property-tracking document** in section 2(1) is repealed and the following definitions substituted:
- “**property** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006** 5
- “**qualifying forfeiture offence** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**”.
- (14) The definitions of **restraining order**, **serious offence**, and **tainted property** in section 2(1) are repealed and the following definitions substituted: 10
- “**restraining order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**
- “**significant criminal activity** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**
- “**significant foreign criminal activity**— 15
- “(a) means an activity engaged in by a person in a foreign country that if proceeded against as a criminal offence in that country—
- “(i) would amount to offending—
- “(A) that consists of, or includes, 1 or more 20 offences punishable by a maximum term of imprisonment of 5 years or more; or
- “(B) from which property, proceeds, or benefits of a value of \$30,000 or more have, directly or indirectly, been acquired or 25 derived; and
- “(ii) whether or not—
- “(A) the person has been charged with or convicted of the offending; or
- “(B) the person has been acquitted of the 30 offending; or
- “(C) the person’s conviction for the offending has been quashed or set aside; and
- “(b) includes an offence under the law of a foreign country that is a party to the United Nations Convention against 35 Transnational Organised Crime, done at New York on 15 November 2000 if—
- “(i) it is punishable by imprisonment for a term of 4 years or more; and

- “(ii) there are reasonable grounds to suspect that it is transnational in nature (as defined in articles 3(2) and 18(1) of that convention) and involves an organised criminal group (as defined in article 2(a) of that convention) 5
- “**tainted property**—
- “(a) in relation to Part 2, has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**; and
- “(b) in relation to Part 3,—
- “(i) means any property that has, wholly or in part, been— 10
- “(A) acquired as a result of significant foreign criminal activity; or
- “(B) directly or indirectly derived from significant foreign criminal activity; and 15
- “(ii) includes any property that has been—
- “(A) acquired as a result of more than 1 activity if at least 1 of those activities is a significant foreign criminal activity; or
- “(B) directly or indirectly derived from more than 1 activity if at least 1 of those activities is a significant foreign criminal activity 20
- “**unlawfully benefited from significant foreign criminal activity** means a person has knowingly, directly or indirectly, derived a benefit from significant foreign criminal activity (whether or not the person deriving the benefit undertook or was involved in the significant foreign criminal activity)”. 25
- (15) Section 2(2) is repealed and the following subsection is substituted:
- “(2) A reference in this Act to criminal proceedings or a criminal investigation includes proceedings or investigations into the following matters: 30
- “(a) revenue (including taxation and customs and excise duties):
- “(b) foreign exchange control: 35
- “(c) the forfeiture of property as a result of the commission of an offence:
- “(d) the restraint of dealings with property or freezing assets that may be forfeited as a result of the commission of an offence: 40

“(e) imposing or recovering pecuniary penalties under, and restraining dealing with property needed to satisfy, a foreign pecuniary penalty order imposed as a result of the commission of an offence.”

<b>234</b>	<b>New sections 2A and 2B inserted</b>	<b>5</b>
	The following sections are inserted after section 2:	
<b>“2A</b>	<b>Certain investigations relating to civil proceedings deemed to be criminal investigations</b>	
<b>“(1)</b>	An investigation certified by the Attorney-General to have commenced in New Zealand relating to the restraint or forfeiture of property that is, or is suspected on reasonable grounds to be or to be likely to be, any of the things in <b>subsection (2)</b> must be treated as a criminal investigation for the purposes of Part 2 despite the related proceedings being civil in nature.	<b>10</b>
<b>“(2)</b>	The things referred to in <b>subsection (1)</b> are—	<b>15</b>
	“(a) tainted property (as defined in relation to Part 2); or	
	“(b) property of a person who has unlawfully benefited from significant criminal activity.	
<b>“(3)</b>	An investigation in a foreign country certified by the Central Authority for that country to have commenced in that country relating to the restraint or forfeiture of property that is, or is suspected on reasonable grounds to be or to be likely to be, any of the things referred to in <b>subsection (4)</b> must be treated as a criminal investigation for the purposes of Part 3 despite the related proceedings being civil in nature.	<b>20</b>
<b>“(4)</b>	The things referred to in <b>subsection (3)</b> are—	<b>25</b>
	“(a) tainted property (as defined in relation to Part 3); or	
	“(b) property of a person who has unlawfully benefited from significant criminal activity; or	
	“(c) an instrument of crime (as defined in relation to Part 3); or	<b>30</b>
	“(d) property that will satisfy all or part of a pecuniary penalty order.	
<b>“(5)</b>	Investigations treated as criminal investigations under this section are criminal matters for the purposes of Parts 2 and 3.	<b>35</b>

- “2B Certain civil proceedings deemed to be criminal proceedings**
- “(1) A proceeding certified by the Attorney-General to have been instituted in respect of the forfeiture or restraint of property that is, or is suspected on reasonable grounds to be or to be likely to be, any of the things referred to in **subsection (2)** must be treated as a criminal proceeding for the purposes of Part 2 despite being civil in nature. 5
- “(2) The things referred to in **subsection (1)** are— 10
- “(a) tainted property (as defined in relation to Part 2); or
- “(b) property of a person who has unlawfully benefited from significant criminal activity.
- “(3) A proceeding certified by the Central Authority of the requesting country to have been instituted in respect of the forfeiture or restraint of property that is, or is suspected on reasonable grounds to be or to be likely to be, any of the things referred to in **subsection (4)** must be treated as a criminal proceeding despite being civil in nature. 15
- “(4) The things referred to in **subsection (3)** are— 20
- “(a) tainted property (as defined in relation to Part 3); or
- “(b) property of a person who has unlawfully benefited from significant foreign criminal activity; or
- “(c) an instrument of crime (as defined in relation to Part 3); or
- “(d) property that will satisfy all of part of a foreign pecuniary penalty order. 25
- “(5) Proceedings treated as criminal proceedings under this section are criminal matters for the purposes of Parts 2 and 3.”
- 235 Object of Act**
- Section 4 is amended by repealing paragraphs (g) to (j) and substituting the following paragraphs: 30
- “(g) the forfeiture of—
- “(i) tainted property; and
- “(ii) property of persons who have unlawfully benefited from significant criminal activity or significant foreign criminal activity; and 35
- “(iii) instruments of crime; and
- “(iv) property that will satisfy all of part of a foreign pecuniary penalty order:
- “(h) the location of property that may be forfeited: 40

- “(i) the recovery of property to satisfy foreign pecuniary penalty orders:
- “(j) the restraining of dealings with property, or the freezing of assets, that may be forfeited.”
- 236 New headings and sections 21 and 22 substituted** 5  
 The heading above section 21, section 21, the heading above section 22, and section 22 are repealed and the following headings and sections substituted:
- “*Request to enforce orders under Criminal Proceeds (Recovery) Act 2006* 10
- “21 Request to enforce orders under Criminal Proceeds (Recovery) Act 2006**
- “(1) The Attorney-General may, if the circumstances in **subsection (2)** exist, request a foreign country to make arrangements to enforce any of the following in that country: 15
- “(a) an assets forfeiture order;
- “(b) a profit forfeiture order;
- “(c) an instrument forfeiture order;
- “(d) a restraining order.
- “(2) The circumstances are that the Attorney-General has reasonable grounds to believe that some or all of the property to which the order relates is located in the foreign country. 20
- “*Request to issue warrant, order, or notice in foreign country*
- “22 Request to issue warrant, order, or notice in foreign country** 25
- “(1) The Attorney-General may, if a criminal matter has arisen in New Zealand in respect of any of the things referred to in **subsection (2)**, request a foreign country to issue a warrant, order, or notice similar to the following warrants, orders, or notices made under the Criminal Proceeds (Recovery) Act **2006** in that country: 30
- “(a) a restraining order;
- “(b) a search warrant of the kind issued under **section 107, section 109, or section 116** of that Act: 35
- “(c) a production notice;
- “(d) a production order;
- “(e) an examination notice.

- “(2) The things referred to in **subsection (1)** are—
- “(a) tainted property (as defined in relation to Part 2); or
  - “(b) property of person who has unlawfully benefited from significant criminal activity; or
  - “(c) an instrument of crime (as defined in relation to Part 2).” 5
- 237 Refusal of assistance**
- (1) Section 27(1) is amended by inserting the following paragraph after paragraph (a):
- “(ab) the request relates to the bringing of proceedings of the kind described in **section 2B(3)** that relate to an activity of a political character; or” 10
- (2) Section 27(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) there are substantial grounds for believing that the request has been made with a view to bringing proceedings of the kind described in **section 2B(3)** that are of a political character; or” 15
- (3) Section 27(1) is amended by inserting the following paragraph after paragraph (c):
- “(ca) there are substantial grounds for believing that the request has been made for the purpose of bringing proceedings of the kind described in **section 2B(3)** on account of a person’s colour, race, ethnic origin, sex, religion, nationality, or political opinions; or” 20 25
- (4) Section 27(2) is amended by inserting the following paragraph after paragraph (a):
- “(ab) the request relates to proceedings of the kind described in **section 2B(3)**, in respect of conduct that, if it had occurred in New Zealand, would not have constituted significant criminal activity in New Zealand; or” 30
- (5) Section 27(2) is amended by inserting the following paragraphs after paragraph (b):
- “(ba) the request relates to proceedings of the kind described in **section 2B(3)** in respect of conduct that occurred, or is alleged to have occurred, outside the foreign country and similar conduct occurring outside New Zealand in similar circumstances would not have constituted significant criminal activity; or 35

- “(bb) the request relates to proceedings of the kind described in **section 2B(3)** in respect of conduct that, if it had occurred in New Zealand at the same time, could not have been the subject of proceedings of that kind because of lapse of time or for any other reason; or”. 5
- (6) Section 27(2)(e) is repealed and the following paragraph substituted:
- “(c) the provision of the assistance requested could prejudice—
- “(i) a criminal investigation or criminal proceeding in New Zealand; or 10
- “(ii) a proceeding of any kind under the Criminal Proceeds (Recovery) Act 2006 or **sections 142A to 142Q** of the Sentencing Act 2002; or”.
- (7) Section 27(2)(g) is repealed and the following paragraph substituted: 15
- “(g) the provision of assistance—
- “(i) would impose an excessive burden on the resources of New Zealand; or
- “(ii) relates to a matter that is trivial in nature; or”. 20
- 238 New sections 54 to 62A and headings substituted**
- The heading above sections 54, sections 54 to 62, and the heading above section 59 are repealed and the following sections and headings substituted:
- “Requests to enforce foreign restraining orders and foreign forfeiture orders”* 25
- “54 Request to enforce foreign restraining order**
- “(1) A foreign country may request the Attorney-General to assist in enforcing a foreign restraining order that relates to property that is believed to be located in New Zealand. 30
- “(2) The Attorney-General may authorise the Director to apply to the High Court to register a foreign restraining order in New Zealand if satisfied—
- “(a) that the request from the foreign country relates to—
- “(i) tainted property (as defined in relation to Part 3); 35
- or
- “(ii) property of a person who has unlawfully benefited from significant foreign criminal activity; or

- “(iii) an instrument of crime (as defined in relation to Part 3); or
- “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
- “(b) that there are reasonable grounds to believe some or all of the property that is able to be restrained under the foreign restraining order is located in New Zealand. 5
- “(3) An authority issued under **subsection (2)** must be in writing.
- “55 Request to enforce foreign forfeiture order**
- “(1) A foreign country may request the Attorney-General to assist in enforcing a foreign forfeiture order that relates to property that is reasonably believed to be located in New Zealand. 10
- “(2) The Attorney-General may authorise the Director to apply to the High Court to register the foreign forfeiture order in New Zealand if satisfied— 15
- “(a) that the request from the foreign country relates to property that may be forfeited under the foreign forfeiture order and is specific property that—
- “(i) is tainted property (as defined in relation to Part 3); or 20
- “(ii) belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
- “(iii) is an instrument of crime (as defined in relation to Part 3); or
- “(iv) will satisfy some or all of a foreign pecuniary penalty order; and 25
- “(b) that there are reasonable grounds to believe that some or all of the property to which the order relates is located in New Zealand.
- “(3) An authority issued under **subsection (2)** must be in writing. 30
- “56 Method for registering foreign orders in New Zealand**
- “(1) If the High Court is satisfied that a foreign order that the Director has applied to register under **section 54 or 55** is in force in a foreign country, the High Court must make an order that it be registered in New Zealand. 35
- “(2) The Court must comply with **section 149** of the Criminal Proceeds (Recovery) Act **2006** when registering a foreign order.

- “(3) A foreign order, or an amendment to a foreign order (an **amendment**), may be registered in the High Court in New Zealand by registering either of the following under the prescribed procedure:
- “(a) a copy of the foreign order or amendment sealed by the court or other judicial authority who made it; or
- “(b) a copy of the foreign order or amendment authenticated in accordance with section 63. 5
- “(4) A copy of an amendment (whether made before or after registration) may be registered in the same way as a foreign order. 10
- “(5) An amendment does not have effect under this Act or the Criminal Proceeds (Recovery) Act **2006** until it is registered.
- “(6) An exact copy of a sealed or authenticated copy of a foreign order or an amendment must for the purposes of this Act be treated as if it is the sealed or authenticated copy. 15
- “(7) However, registration of an exact copy ceases to have effect on the expiry of the period of 21 days commencing on the date of registration unless, before the expiry of that period, the sealed or authenticated copy is registered.
- “**57 Effect of registering foreign orders in New Zealand** 20
- “(1) A foreign restraining order registered in New Zealand under **section 56** has effect, and may be enforced, as if it is a restraining order—
- “(a) made by the High Court under the Criminal Proceeds (Recovery) Act **2006**; and 25
- “(b) entered on the date it is registered.
- “(2) **Subsection (1)** is subject to **sections 142 to 146** of the Criminal Proceeds (Recovery) Act **2006**.
- “(3) A foreign forfeiture order registered in New Zealand under **section 56** has effect, and may be enforced, as if it is a forfeiture order— 30
- “(a) made by the High Court under the Criminal Proceeds (Recovery) Act **2006**; and
- “(b) entered on the date it is registered.
- “(4) **Subsection (3)** is subject to **sections 147 to 155** of the Criminal Proceeds (Recovery) Act **2006**. 35

- “58 Cancelling registration of foreign orders in New Zealand**
- “(1) The Attorney-General may at any time direct the Director to apply to the High Court to cancel the registration in New Zealand of—
- “(a) a foreign restraining order; or 5
  - “(b) a foreign forfeiture order.
- “(2) Without limiting **subsection (1)**, the Attorney-General may give a direction of that kind if the Attorney-General is satisfied—
- “(a) that the order has, since being registered in New Zealand, ceased to have effect in the foreign country in which it was made; or 10
  - “(b) that cancelling the order is appropriate having regard to arrangements entered into between New Zealand and the foreign country in relation to the enforcing of orders of that kind; or 15
  - “(c) that the registration of the order in New Zealand contravened **section 56**; or
  - “(d) that, in the case of a foreign restraining order registered in New Zealand, 1 year has passed since the foreign country made the order; or 20
  - “(e) that, after consultation with the foreign country where the order was made, it is desirable that the registration of the foreign order be cancelled; or
  - “(f) that the foreign order has been discharged, wholly or in part. 25
- “(3) The High Court must cancel the registration of a foreign order in New Zealand if the Director applies, under a direction under **subsection (1)**, to the High Court to cancel the registration.
- “Requests by foreign countries for orders or warrants in New Zealand* 30
- “59 Request for search warrant in New Zealand**
- “(1) A foreign country may request the Attorney-General to obtain the issue of a search warrant in New Zealand in respect of a criminal investigation or criminal proceedings relating to— 35
- “(a) tainted property (as defined in relation to Part 3); or
  - “(b) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
  - “(c) an instrument of crime (as defined in relation to Part 3); or 40

- “(d) property that will satisfy some or all of a foreign pecuniary penalty order.
- “(2) After a request is made, the Attorney-General may, if satisfied of the matters in **subsection (3)**, do any of the following:
- “(a) authorise a member of the police to apply under **section 130** of the Criminal Proceeds (Recovery) Act **2006** for a search warrant under **section 107** of that Act in relation to that property: 5
- “(b) authorise the Director to apply under **section 131** of the Criminal Proceeds (Recovery) Act **2006** for a search warrant under **section 109** of that Act in relation to that property: 10
- “(c) authorise the Official Assignee to apply under **section 132** of the Criminal Proceeds (Recovery) Act **2006** for a search warrant under **section 116** of that Act in relation to that property. 15
- “(3) The matters referred to in **subsection (2)** are—
- “(a) that the request relates to a criminal investigation or criminal proceedings relating to—
- “(i) tainted property (as defined in relation to Part 3); 20  
or
- “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
- “(iii) an instrument of crime (as defined in relation to Part 3); or 25
- “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
- “(b) that there are reasonable grounds for believing the property is located in New Zealand. 30
- “60 Interim foreign restraining order**
- “(1) A foreign country may request the Attorney-General to obtain the issue of an interim foreign restraining order in respect of property that is believed to be located in New Zealand.
- “(2) After a request is made, the Attorney-General may authorise the Director to make an application under **section 134** of the Criminal Proceeds (Recovery) Act **2006** for an interim foreign restraining order if the Attorney-General is satisfied that— 35
- “(a) there is a criminal investigation in relation to—

- “(i) tainted property (as defined in relation to Part 3);  
or  
“(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or 5  
“(iii) an instrument of crime (as defined in relation to Part 3); or  
“(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and  
“(b) there are reasonable grounds to believe all or part of the property to which the criminal investigation relates is located in New Zealand. 10
- “61 Request for production notice in New Zealand**
- “(1) A foreign country may request the Attorney-General to obtain the issue of a production notice in New Zealand. 15
- “(2) After a request is made, the Attorney-General may authorise the Director to exercise his or her power under **section 111** of the Criminal Proceeds (Recovery) Act **2006** if the Attorney-General is satisfied—
- “(a) that the request relates to a criminal investigation that relates to— 20  
“(i) tainted property (as defined in relation to Part 3);  
or  
“(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or 25  
“(iii) an instrument of crime (as defined in relation to Part 3); or  
“(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and 30  
“(b) that there are reasonable grounds to believe that all or part of the property to which the criminal investigation relates is located in New Zealand.
- “62 Request for production order in New Zealand**
- “(1) A foreign country may request the Attorney-General to make an application for a production order in New Zealand. 35
- “(2) After a request is made, the Attorney-General may authorise the Director to make an application to a Judge under **section**

**112** of the Criminal Proceeds (Recovery) Act **2006** if the Attorney-General is satisfied that—

- “(a) the request relates to a criminal investigation that relates to—
  - “(i) tainted property (as defined in relation to Part 3); 5  
or
  - “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
  - “(iii) an instrument of crime (as defined in relation to Part 3); or 10
  - “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
- “(b) there are reasonable grounds to believe that all or part of the property to which the criminal investigation relates is located in New Zealand. 15

**“62A Request for examination notice in New Zealand**

- “(1) A foreign country may request the Attorney-General to obtain the issue of an examination notice in New Zealand.
- “(2) After a request is made, the Attorney-General may authorise the Director to exercise his or her power under **section 114** of the Criminal Proceeds (Recovery) Act **2006** if the Attorney-General is satisfied— 20
  - “(a) that the request relates to a criminal investigation that relates to— 25
    - “(i) tainted property (as defined in relation to Part 3);  
or
    - “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or 30
    - “(iii) an instrument of crime (as defined in relation to Part 3); or
    - “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
  - “(b) that there are reasonable grounds to believe that all or part of the property to which the criminal investigation relates is located in New Zealand.” 35

- 239 Certificates given by Attorney-General**  
Section 64(2) is amended by omitting “Proceeds of Crime Act” and substituting “Criminal Proceeds (Recovery) Act 2006”.
- 240 Savings and transitional provisions** 5  
The Mutual Assistance in Criminal Matters Act 1992 continues in force as it did before the commencement of this Act for the purpose of completing any request or any matter relating to or arising from a request made under that Act before the commencement of this Act, including, without limitation,— 10  
(a) taking action in relation to any matter relating to an application under the Mutual Assistance in Criminal Matters Act 1992; and  
(b) continuing or completing any proceedings or other matter commenced under that Act; and 15  
(c) enforcing orders made or registered under that Act; and  
(d) the exercise of any power or function under the Act in relation to any matter in **paragraph (a)**.
- Consequential amendment to Customs and Excise Act 1996*
- 241 Amendment to Customs and Excise Act 1996** 20  
**Section 242** amends the Customs and Excise Act 1996.
- 242 Return of goods detained under section 166A**  
Section 166D(3)(b) is repealed and the following paragraph substituted:  
“(b) a foreign country makes a request to the Attorney-General under any of the following sections of the Mutual Assistance in the Criminal Matters Act 1992: 25  
“(i) **section 54** (relating to a request to enforce a foreign restraining order); and  
“(ii) **section 60** (relating to an interim foreign 30  
restraining order).”
- Subpart 2—Amendments to Sentencing Act 2002
- 243 Principal Act amended**  
This subpart amends the Sentencing Act 2002.

- 244 Purpose**  
The purpose of this subpart is to establish a regime for the forfeiture of instruments of crime as part of the sentencing process.
- 245 Application** 5  
The amendments made to the Sentencing Act 2002 by this subpart apply in respect of qualifying forfeiture offences committed, or believed to have been committed, before, on, or after the commencement of this subpart.
- 246 Interpretation** 10  
Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:  
“**forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**  
“**instrument forfeiture order** means an instrument forfeiture order made under **section 142N** 15  
“**instrument of crime**—  
“(a) means property used (wholly or in part) to commit, or to facilitate the commission of, a qualifying forfeiture offence; and 20  
“(b) includes, in relation to a qualifying forfeiture offence that is an offence against section 8(1) or (2A) of the Terrorism Suppression Act 2002, funds (as defined in section 4(1) of that Act) allocated for the purpose of committing that offence 25  
“**qualifying forfeiture offence**—  
“(a) means an offence punishable by a maximum term of imprisonment of 5 years or more; and  
“(b) includes an attempt to commit, conspiring to commit, or being an accessory to an offence if the maximum term of imprisonment for that attempt, conspiracy, or activity is 5 years or more 30  
“**tainted property** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**”.
- 247 New heading and new section 10A inserted** 35  
The following heading and section are inserted after section 10:

*“Taking account of instrument forfeiture order or successful application for relief*

**“10A Court must take into account instrument forfeiture order or successful application for relief**

- “(1) In sentencing or otherwise dealing with an offender convicted of a qualifying forfeiture offence, the court must take into account—
- “(a) any instrument forfeiture order made, or to be made, in respect of property used to commit, or to facilitate the commission of, the qualifying forfeiture offence: 10
  - “(b) any forfeiture of that property by any other order or means arising from the offender’s conviction:
  - “(c) any order for relief made under **section 142L or 142M** in favour of another person in respect of property used to commit, or to facilitate the commission of, the qualifying forfeiture offence: 15
  - “(d) the nature of the relationship between that person and the offender:
  - “(e) the likely benefit to the offender of any order referred to in **paragraph (c)**. 20
- “(2) In deciding the weight to be given to either matter referred to in **subsection (1)(a), (b), or (d)**, the court must take into account—
- “(a) the value of the property that is the subject of the instrument forfeiture order or that is otherwise forfeited:
  - “(b) the nature and extent of the offender’s interest in that property. 25
- “(3) Without limiting any other powers of a court to adjourn, in any case contemplated by this section a court may adjourn the proceedings until—
- “(a) any property that is the subject of a forfeiture order has been surrendered to the Official Assignee; or 30
  - “(b) any appeal or application for relief in relation to an instrument forfeiture order or any other proceeding under the Criminal Proceeds (Recovery) Act **2006** has been determined.” 35

**248 Power of adjournment for inquiries as to suitable punishment**

Section 25(1) is amended by inserting the following paragraph after paragraph (d):

“(da) to determine whether to impose an instrument forfeiture order and, if so, the terms of that order.”.

**249 Access to reports**

Section 29(1) is amended by inserting “or **section 142F**” after “section 33”.

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**250 New heading and sections 142A to 142Q inserted**

The following heading and sections are inserted after section 142:

*“Instrument forfeiture orders*

**“142A Interpretation of terms used in sections 142B to 142Q**

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For the purposes of **sections 142B to 142Q**, unless the context otherwise requires,—

“**Director** means the Director of Criminal Proceeds Confiscation as defined in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**

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“**prosecutor** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**.”

**“142B Duties of prosecutor if offender guilty of qualifying forfeiture offence**

If a person is convicted of a qualifying forfeiture offence and any property was used to commit, or to facilitate the commission of that offence, the prosecutor must, if in the prosecutor’s opinion the court should consider whether to make an instrument forfeiture order in respect of that property, notify the court in writing of—

20

“(a) the details of that property;

“(b) the name and identifying details of any person (other than the offender) who, to the knowledge of the prosecutor, has an interest in the property.

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**“142C Duties of court on notification**

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On receiving notice under **section 142B**, the court, if it is of the opinion that it should consider making an instrument forfeiture order,—

“(a) must direct the prosecutor to issue and serve any notice required by **section 142E**;

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“(b) may direct the prosecutor to report further information to the court under **section 142F**.

**“142D Notice of possible instrument forfeiture order may be recorded on registers**

- “(1) **Subsection (2)** applies if the court has given a direction under **section 142C** relating to property of a kind that is covered by a New Zealand enactment that enables the registration of—
- “(a) title to that property; or
  - “(b) charges over that property.
- “(2) If this subsection applies, the court may order any authority responsible for administering an enactment of the kind referred to in **subsection (1)** (an **Authority**) to enter on the register a note of the fact that the court will consider whether an instrument forfeiture order may be made against the property.
- “(3) The court must order an Authority to cancel an entry made on a register under **subsection (2)** if—
- “(a) the matter to which the entry relates is finally determined and the relevant appeal period (defined in **section 73(3)** and referred to in **section 85** of the Criminal Proceeds (Recovery) Act 2006) has expired; or
  - “(b) proceedings to which the entry relates are discontinued for any reason.

Compare: 1991 No 120 s 16(2), (3)

**“142E Duties of prosecutor as to service**

- “(1) If a court gives a direction under **section 142C**, the prosecutor must take all reasonable steps to notify every person (other than the offender) whose name was included in the notice given to the court under **section 142B**, any other person whom the prosecutor believes has an interest in the property in question, and the Director—
- “(a) that the property may be made the subject of an instrument forfeiture order;
  - “(b) that the person may, within 10 working days of the date of the notice, apply to the court for relief;
  - “(c) of the grounds set out in **section 77(1)** of the Criminal Proceeds (Recovery) Act 2006 on which an application for relief may be made.

- “(2) A notice given under **subsection (1)** must be given as soon as practicable after the court gives a direction under **section 142C** and in any event not later than 5 working days after the giving of that direction.

**“142F Court may require further information**

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The court may, for the purposes of determining whether to make an instrument forfeiture order or an order for relief from an instrument forfeiture order, or for the purposes of determining the terms of an instrument forfeiture order or an order for relief from an instrument forfeiture order, direct the prosecutor, the offender, or any person who applies for relief to provide further information to the court about—

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“(a) the value of the property that comprises the instrument of crime:

“(b) the nature, extent, and value of the offender’s interest in the property that comprises the instrument of crime:

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“(c) the name of any other person with an interest in the instrument of crime, the nature and extent of that person’s interest, and whether or not that person has been notified of the proceedings:

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“(d) the name of any person who may suffer undue hardship if the property is confiscated and the nature of that hardship:

“(e) any other matter specified by the court.

**“142G Independent valuation of property**

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For the purposes of determining the value of an instrument of crime, a court may, at its own discretion or at the request of either party to the proceedings or any person who claims to have an interest in the property, seek an independent valuation as to the value of the property or any interest in the property.

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**“142H Court may order declaration of ownership to be completed**

- “(1) If a court is considering whether or not to make an instrument forfeiture order, the court may order that the offender, or any other person, complete a declaration of ownership before making the order.

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- “(2) The declaration of ownership must specify—
- “(a) whether the offender owns, or has any interest in, the property in question at the relevant date; and
  - “(b) whether any other person owns, or has any interest in, the property at the relevant date, and, if so, the name of that person and the nature of that interest; and 5
  - “(c) whether the offender has ceased to be the owner of, or to have any interest in, the property in question at any time subsequent to the commission of the offence but before the date of his or her conviction; and 10
  - “(d) if the offender has disposed of his or her interest in the property in question during the period referred to in **paragraph (c)**, to whom the ownership or interest in the property was disposed, the relationship of that person to the offender, and the consideration received by the offender. 15
- “(3) If a court does not make an order under this section that does not affect the validity of any other order of the court.
- “(4) In this section, **relevant date** means the date on which the offender was convicted of the qualifying forfeiture offence. 20

**“142I Determining ownership of property**

For the purpose of determining the nature and extent of any person’s interest in an instrument of crime, the court may apply the provisions of **section 58** of the Criminal Proceeds (Recovery) Act **2006**, which applies with all necessary modifications. 25

**“142J Applications for relief from an instrument forfeiture order**

- “(1) Any person (other than the offender) may make an application for relief from an instrument forfeiture order. 30
- “(2) An application by any person for relief must be made to the court that convicted the offender—
- “(a) on either of the grounds set out in **section 77(1)** of the Criminal Proceeds (Recovery) Act **2006**; and
  - “(b) in the prescribed form (if any); and 35
  - “(c) within—
    - “(i) the time specified in the notice served on the person under **section 142E**; or

- “(ii) if no notice is served on the person, 15 working days after the day on which the offender was convicted of the qualifying forfeiture offence; or
- “(iii) the time allowed by the court, if the court grants an application by the person to make an application for relief after the time by which such an application must be made under **subparagraph (i) or subparagraph (ii)**. 5
- “(3) An applicant for relief from an instrument forfeiture order must serve notice of that application on— 10
- “(a) the prosecutor;
- “(b) the offender;
- “(c) the Director;
- “(d) the Official Assignee;
- “(e) any other person whom the applicant has reason to believe may— 15
- “(i) have an interest in the property that is the subject of the application; or
- “(ii) suffer undue hardship as a consequence of the forfeiture of the property; 20
- “(f) any specified person or class of persons in respect of whom the court directs the applicant to serve notice of the application.
- “(4) An applicant for relief must provide the court and the prosecutor with a list of persons on whom notice of the application has been served. 25
- “142K Hearings concerning instrument forfeiture orders**
- “(1) If a court issues a direction under **section 142C**, it may convene a hearing to determine whether to make an instrument forfeiture order or to grant an application made for relief from an instrument forfeiture order under **section 142J**. 30
- “(2) At the hearing, the prosecutor, the offender, any person making an application for relief from an instrument forfeiture order, and any other person who claims to have an interest in the property that may be the subject of the instrument forfeiture order or who believes that he or she may suffer undue hardship if the property is forfeited, may be heard. 35
- “(3) If a hearing is not held under **subsection (1)**, the matters referred to in that subsection and **subsection (2)** may occur during the sentencing hearing. 40

- “142L Court may grant relief from an instrument forfeiture order to applicant who establishes interest in property**
- “(1) This section applies if—
- “(a) a person applies to the court under **section 142J** for relief from an instrument forfeiture order in respect of an interest in property on the ground set out in **section 77(1)(a)** of the Criminal Proceeds (Recovery) Act 2006; and 5
  - “(b) the court is satisfied, following a hearing under **section 142K**, that the applicant has established on the balance of probabilities that the applicant— 10
    - “(i) has an interest in the property to which the instrument forfeiture order relates; and
    - “(ii) was not involved in the qualifying forfeiture offence to which the order relates. 15
- “(2) If this section applies, the court must make an order—
- “(a) declaring the nature, extent, and value of the applicant’s interest in the property; and
  - “(b) either— 20
    - “(i) directing the Crown to transfer the interest to the applicant; or
    - “(ii) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the court; or
    - “(iii) directing that the interest not be included in an instrument forfeiture order made in respect of the proceedings that gave rise to the application; or 25
    - “(iv) determining, in accordance with **section 142N**, not to make an instrument forfeiture order.
- “(3) Despite **subsection (2)**, the court may, but is not required to, refuse to make an order under **subsection (2)** if it is satisfied that— 30
- “(a) the applicant was, in any respect, involved in the commission of the offence in respect of which forfeiture of the property is or was under consideration; or 35
  - “(b) if the applicant acquired the interest at the time of or after the commission of the offence, the applicant did not acquire the interest in the property in good faith and for value.
- “(4) The court must not make an order under **subsection (2)(b)(ii)** unless it is satisfied that it cannot reasonably make an order 40

under **subsection (2)(b)(i) or (iii)** (for example, because the interest of the applicant is not severable from the other property in question).

- “142M Court may grant relief from an instrument forfeiture order to applicant on grounds of undue hardship** 5
- “(1) This section applies if a person applies to the court under **section 142J** for relief from an instrument forfeiture order on the ground set out in **section 77(1)(b)** of the Criminal Proceeds (Recovery) Act **2006**.
- “(2) If the court is satisfied that, having regard to all the circumstances, undue hardship is likely to be caused to the person making the application or to another person (other than the offender), by the operation of an instrument forfeiture order, the court— 10
- “(a) may order that the person is entitled to be paid a specified amount out of the proceeds of sale of the property, being an amount that the court thinks is necessary to prevent undue hardship to that person; and 15
- “(b) if the person is under 18 years, may make additional orders for the purpose of ensuring the proper application of an amount to be paid to that person. 20
- “(3) The circumstances a court may have regard to under **subsection (2)** include, without limitation,—
- “(a) the use that is ordinarily made, or was intended to be made, of the property that would be the subject of the instrument forfeiture order; and 25
- “(b) the nature and extent of any person’s interest in the property; and
- “(c) any other matter relating to the nature and circumstances of the qualifying forfeiture offence to which the property relates. 30

Compare: 1991 No 120 ss 15(2), 18

**“142N Instrument forfeiture orders**

- “(1) Following a hearing under **section 142K**, the court may, if it is satisfied that the property described in the notice given under **section 142B** is an instrument of crime, order that the instrument of crime or any part of it specified by the court be forfeited to the Crown. 35

- “(2) In considering whether or not to make an instrument forfeiture order under **subsection (1)** in respect of particular property, the court may have regard to—
- “(a) any matter raised in an application for relief under **section 142J**; and 5
  - “(b) the use that is ordinarily made, or was intended to be made, of the instrument of crime; and
  - “(c) any undue hardship that is reasonably likely to be caused to any person by the operation of such an order; and 10
  - “(d) the nature and extent of the offender’s interest in the instrument of crime (if any), and the nature and extent of any other person’s interest in it (if any); and
  - “(e) in addition to the matters referred to in **section 77(1)** of the Criminal Proceeds (Recovery) Act **2006**, any other matter relating to the nature and circumstances of the qualifying forfeiture offence or the offender, including the gravity of the qualifying forfeiture offence. 15
- “(3) A court that makes an instrument forfeiture order may, if it considers that it is appropriate to do so, by order,— 20
- “(a) declare the nature, extent, and value of any person’s interest in an instrument of crime; and
  - “(b) declare that the instrument forfeiture order may, to the extent to which it relates to the interest, be discharged under **section 85** of the Criminal Proceeds (Recovery) Act **2006**. 25
- “(4) If the court orders that property (other than money) be forfeited to the Crown, the court must specify in the order the amount that it considers to be the value of the property at the time the order is made. 30
- “(5) If a court makes an instrument forfeiture order, the court may give any directions that are necessary or convenient for giving effect to the order.
- “**142O Offence of providing false or misleading information under section 142F** 35
- Every person is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 who provides false or misleading information to a court in response to a direction under **section 142F**.

**“142P Evidence in instrument forfeiture order proceedings**

In determining whether or not to make an instrument forfeiture order under **section 142N** as a result of a person’s conviction, the court may take into account evidence given in the proceedings taken against that person for the offence, including, without limitation,—

- “(a) documents, exhibits, or other things connected with the proceedings that the court considers relevant; and
- “(b) notes or transcripts of evidence admitted in the proceedings.

Compare: 1991 No 120 s 14(1)

**“142Q Relationship with other provisions in Act**

Nothing in **sections 142A to 142P** affects sections 127 to 142.”

