

PROCEEDS OF CRIME BILL

EXPLANATORY NOTE

THIS Bill makes provision for depriving persons convicted of serious offences of the proceeds of, and the benefits derived from, their offending. It has particular relevance in the context of drug-dealing offences, and in this respect it gives effect, in part, to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The drafting of the Bill follows closely the provisions of the Proceeds of Crime Act 1987 of the Commonwealth of Australia.

The principal features of the Bill are as follows:

- (a) The Bill provides for the commencement of confiscation proceedings in respect of a person who is convicted on indictment of an offence punishable by imprisonment for a term of 5 years or more. Special provision is made for persons who are charged with such an offence but who abscond before conviction.

Two kinds of order may be sought in confiscation proceedings. Forfeiture orders provide for the forfeiture to the Crown of identifiable property. Pecuniary penalty orders provide for the imposition of a monetary penalty as a measure of the benefits gained by a person from an offence.

In the context of drug-dealing offences, a special rule applies in respect of calculating the benefits derived from drug-dealing. All the property of the defendant at the time of the confiscation proceedings and any property that has passed through the defendant's hands in the previous 2 years is presumed to have been derived from the drug offences on which the proceedings are based. It is for the defendant to show that the property is not derived from that source:

- (b) The Bill provides for the issue of search warrants authorising the search for and seizure of property that may be liable to forfeiture under the Bill or may be required to satisfy a pecuniary penalty order. The Commissioner of Police is to hold seized property until it is dealt with under the Bill:
- (c) The Bill provides for the making of restraining orders in relation to property that may be subject to a forfeiture order or a pecuniary penalty order. The effect of a restraining order is that the property may not be disposed of or dealt with except as permitted by the Court.

The Official Assignee may be directed to administer the property while it remains subject to the restraining order, and where a forfeiture order or a pecuniary penalty order is made in respect of the property, to discharge that order out of the property:

- (d) The Bill provides special powers to enable property gained from drug-dealing offences to be traced.

Production orders may be granted by a Court requiring any person to produce or make available to a police officer any document relevant to identifying, locating, or quantifying property that may be subject to confiscation proceedings under the Bill.

Monitoring orders may be granted by a Court requiring a financial institution to supply to the Police information about financial transactions conducted through that institution.

Clause by Clause Analysis

Clause 1 relates to the Short Title and date of commencement. The Bill is to come into force on *1 April 1991*.

PART I

PRELIMINARY PROVISIONS

Interpretation

Clauses 2 to 5 define certain terms used in the Bill. Of particular importance in this context is the application of the Bill to persons who are charged with an offence but who subsequently abscond. *Clause 3 (1) (e)* treats such a person as having been convicted of the offence. *Clause 4* defines the circumstances when a person is treated as having absconded.

Application

Clause 6 provides that the Bill binds the Crown.

Clause 7: Subclause (1) provides that the Bill applies to serious offences (as defined) whenever they were committed, whether before or after the commencement of the Bill.

Subclause (2) provides that the Bill does not apply to convictions entered before the commencement of the Bill.

PART II

CONFISCATION

Applications for Confiscation Orders

Clauses 8 to 13 make provision for the making of confiscation orders in respect of the proceeds of, or the benefits derived from, a serious offence of which a person is convicted on indictment. (A serious offence, as defined in *clause 2*, is an offence punishable by imprisonment for a term of 5 years or more.) Confiscation orders are of 2 kinds:

- (a) Forfeiture orders, which may be made in respect of the property used in connection with an offence or the proceeds of the offence;
- (b) Pecuniary penalty orders, which may be made in respect of benefits derived by an offender from the commission of an offence.

An application for a confiscation order may be made by the Solicitor-General or a Crown Solicitor, and must be made within 6 months after the date on which the offender is convicted, or is treated as having been convicted, of the relevant offence (*clause 8*).

Notice of an application for a forfeiture order or a pecuniary penalty order must be served on the person whose conviction gives rise to the application. In addition, notice of an application for a forfeiture order must be served on any

other person who has an interest in the property to which the application relates, and may be required to be served on any other person that the Court directs (*clause 10*).

An application for a confiscation order may be amended, but there are restrictions on amendments that would increase the property or the benefit to which the application relates (*clause 11*).

There are special requirements when a Court is asked to make a confiscation order in respect of a person who has absconded without a conviction having been entered for the relevant offence. In these circumstances, the Court is not to make the order unless it is satisfied, on the balance of probabilities, that the person has in fact absconded, and that having regard to all the evidence before the Court, a reasonable jury, properly instructed, would find the person guilty of the offence (*clause 12*).

Forfeiture Orders

Clauses 14 to 21 make further provision for forfeiture orders.

The effect of a forfeiture order against property is that the property vests absolutely in the Crown (*clause 15 (1)*). However, the Crown may not dispose of the forfeited property while the forfeiture order or the conviction on which it is based is the subject of a possible appeal. Once the appeal period has expired, the property is to be disposed of or otherwise dealt with at the direction of the Minister of Justice (*clause 15 (4)*).

Provision is made for third parties who have an interest in forfeited property, or in property which may be forfeited, to apply to a Court for relief (*clause 16*). On such an application, the Court, if it is satisfied that the applicant is not involved in any way in the offending, may exclude the applicant's interest from the operation of the forfeiture order, or direct the Crown to transfer the interest to the applicant or pay an amount equal to the value of the interest (*clause 17*).

Persons who previously had an interest in forfeited property may buy that interest back from the Crown on payment of an amount equal to the value of the interest (*clause 20*).

Provision is also made for a person who is entitled to have an interest in forfeited property returned to that person to purchase other interests in the property if the previous owner of that interest does not object (*clause 21*).

Pecuniary Penalty Orders

Clauses 22 to 27 make further provision for pecuniary penalty orders.

A pecuniary penalty order may be made in respect of benefits derived by a person from the commission of a serious offence (as defined in *clause 2*). The Court is required to assess the value of the benefits so derived and order the person to pay a pecuniary penalty to the Crown. The penalty is enforceable as if it were an order made in civil proceedings instituted by the Crown to recover a debt (*clause 23*).

Clauses 25 and 26 set out the method of assessing the value of the benefits derived by a person from the commission of an offence. In making the assessment, the Court is to look at such things as the value of the property that came into the defendant's hands by reason of the commission of the offence, the value of any other benefits provided to the defendant by reason of the commission of the offence, and the value of the defendant's property before and after the commission of the offence.

Clause 26 creates certain presumptions that benefits have been derived from the commission of an offence where the value of the defendant's assets after the commission of an offence exceed the value before the commission of the offence.

Where an application for a pecuniary penalty order is made in relation to a drug-dealing offence, all the property of the defendant at the time the application is made, and all of the defendant's property in the previous 2 years, is presumed to be derived from the commission of the offence.

The presumptions created by *clause 26* may be rebutted by the defendant.

Clause 27 provides that a Court, in assessing the benefits derived by a person from the commission of an offence, may treat as property of the person any property that is subject to the effective control of that person. For that purpose, the Court may look at such things as shareholdings in companies that own the property, trusts that have a relationship to the property, and family and other relationships between the defendant and persons who have interests in the property.

PART III

SEARCH WARRANTS

Issue of Search Warrants

Clauses 28 to 33 make provision for the issue, by a District Court Judge, of a warrant to search for and seize property that may be liable to forfeiture under the Bill or that may be required to satisfy a pecuniary penalty order. A warrant may be issued only on the application of a commissioned officer of the Police. An information need not have been laid in respect of an offence, but if it has not been, the Judge must not issue a warrant unless satisfied that an information will be laid within 48 hours (*clause 28*).

Clause 30 sets out the powers of a police officer in the execution of a search warrant issued under *clause 28*. He or she is authorised to enter premises and search for property believed on reasonable grounds to be tainted property (i.e., property used in connection with the commission of an offence, or the proceeds of the offence). The kind of property to be searched for and seized is to be specified in the warrant, along with the offence to which the warrant relates. *Subclause (3)* permits a police officer to seize tainted property found in the course of executing the warrant, even though the property is not of a kind specified in the warrant, or is not tainted property in respect of the offence specified in the warrant, where seizure is necessary to prevent the loss, destruction, or concealment of the property.

Where property is seized under a search warrant, the property is to be held by the Commissioner of Police until it is dealt with under the Bill (*clause 33*).

Dealing With Seized Property

Clauses 34 to 36 detail how property seized under a search warrant issued under *clause 28* is to be dealt with. The general rule is that the property is to be returned to its owner within 14 days of seizure. The qualifications to that rule include the following:

- (a) If, at the time the property was seized, an information had not been laid in respect of the offence in relation to which the warrant was issued, and such an information is not laid within 48 hours of the seizure, the property must be returned as soon as practicable after that 48 hour period expires:
- (b) Where the property is seized, and an application is made for a restraining order or a forfeiture order in respect of the property and refused, the property is to be returned as soon as practicable after that refusal:
- (c) If a restraining order is made before the expiry of any period after which the property must be returned, the property may be dealt with in accordance with that order, or the Commissioner of Police may apply

for a Court order to permit the retention of the property if it may afford evidence of the commission of the offence in respect of which the search warrant was issued:

- (d) A person claiming an interest in the property may apply to a District Court for the return of the property, and the Court may order its return if it is satisfied that the property is not tainted property.

PART IV

RESTRAINING ORDERS

Applications for Restraining Orders

Clauses 37 and 38 provide for applications for restraining orders and for the service of notice of such applications. Such orders may be sought by the Solicitor-General or a Crown Solicitor where a person has been convicted on indictment of a serious offence, or has been, or is about to be, charged with such an offence. The order may be sought in respect of specified property of the defendant or another person, or against all the property of the defendant, or against all the property of the defendant other than specified property.

Granting of Restraining Orders

Clauses 39 to 43 provide for the granting of restraining orders. A restraining order may direct that property is not to be disposed of or otherwise dealt with except as provided in the order, or may direct the Official Assignee to take custody and control of property.

The grounds for making a restraining order are set out in *clause 40*.

Clause 41 sets out special requirements that must be satisfied before a restraining order may be made in respect of a person who has not been charged with, or convicted of, an offence.

Clause 42 provides for the giving, on behalf of the Crown, of undertakings with respect to the payment of damages and costs in relation to the making or operation of a restraining order.

Further Orders

Clauses 44 to 46 provide for the making of ancillary and other orders in relation to property against which a restraining order has been made. Such ancillary orders may include the following:

- (a) An order varying the property to which the restraining order relates:
- (b) An order for the examination of—
 - (i) Any person whose property is subject to the restraining order; or
 - (ii) Any other person,—
 before the Court or the Registrar of the Court concerning the nature and location of any property to which the restraining order relates:
- (c) Where the restraining order directs the Official Assignee to take custody and control of property,—
 - (i) An order regulating the manner in which the Official Assignee may exercise his or her powers or perform his or her duties under the restraining order:
 - (ii) An order directing the owner of the property to furnish to the Official Assignee, within the time specified in the order, a statement on oath setting out such particulars of the property of that person as the Court thinks fit:
- (d) An order with respect to the carrying out of any undertaking given by the Crown under *clause 42*.

Clause 45 provides for a person having an interest in property that is subject to a restraining order to apply for the exclusion of that interest from the order.

Clause 46 provides that where an order for an examination of a person is made under *clause 44 (2) (c)*, information given by that person in the course of the examination is not admissible against that person in any civil or criminal proceedings, other than proceedings for perjury or proceedings for a restraining order, a forfeiture order, or a pecuniary penalty order.

Operation of Restraining Orders

Clauses 47 to 58 relate to the operation of restraining orders.

Where the Official Assignee is directed, by a restraining order, to take custody and control of property, the Official Assignee may do anything reasonably necessary to preserve the property. He or she may be directed by a Court to discharge a pecuniary penalty order out of the property that is subject to the order, and for that purpose may sell or otherwise dispose of the property and pay the proceeds to the Crown (after deducting the Official Assignee's costs) (*clause 48*).

The Official Assignee may be directed by the Minister of Justice to discharge a forfeiture order made against the property that is subject to the restraining order (*clause 51*).

Clause 52 provides that where property is subject to both a restraining order and a pecuniary penalty order, a charge is imposed on that property to secure the payment of the pecuniary penalty order.

Clauses 53 and 54 provide for the registration of restraining orders, and charges created by restraining orders.

Clause 55 makes it an offence to dispose of or otherwise deal with any property knowing that a restraining order is in force in respect of the property.

Clause 56 makes special provision for the situation where property of a person is subject to a restraining order, and a creditor's petition is filed against that person under the Insolvency Act 1967, or the person becomes bankrupt.

Clause 57 relates to the liability of the Official Assignee for any rates, land tax, or other statutory charges imposed in respect of property in his or her custody and control under a restraining order.

Clause 58 provides that the Official Assignee is entitled to receive fees in respect of the exercise of his or her functions under the Act in respect of property that is subject to a restraining order. The fees will be set by regulation.

Revocation and Termination of Restraining Orders

Clauses 59 to 61 provide for the revocation of restraining orders, and set out when a restraining order is to cease to be in force. The general rule is that such orders last for only 6 months, but provision is made for their extension in appropriate cases. Exceptions to the general rule are set out in *clause 60 (2) and (3)*.

PART V

INFORMATION GATHERING POWERS

Interpretation

Clause 62 defines certain terms for the purposes of *Part V*.

Production Orders

Clauses 63 to 69 provide for the High Court to make production orders. Such orders may be made only on the application of a commissioned officer of the Police. An application may be made where a person is convicted of a drug-dealing offence (as defined in *clause 2*), or is believed to have committed such an offence, and it is believed that any person has possession or control of any document that is relevant to identifying, locating, or quantifying property that may be subject to confiscation proceedings under the Bill in relation to that offence.

A production order may require a person to produce or make available to a police officer any document or class of documents specified in the order. However, a production order may not require accounting records used in the ordinary course of banking to be produced, but may require them to be made available for inspection.

Clause 66 sets out the powers and duties of police officers under a production order. Documents produced or made available under such an order may be inspected, and extracts may be made, and copies taken. Documents ordered to be produced may be retained for as long as is reasonably necessary for the purposes of the Bill, but in such circumstances the police officer is required, on request, to provide certified copies of the documents and permit inspections to be made, extracts taken, and copies made.

Clause 67 provides that production orders may be made, and are to have effect, notwithstanding any enactment or rule of law that imposes an obligation of secrecy or confidentiality on any person. However, documents produced or made available by any person in compliance with a production order, and information, documents, or things obtained as a consequence of such compliance, are not admissible against that person in criminal proceedings (other than proceedings for a confiscation order or a restraining order).

Clause 68 provides for the variation of production orders.

Clause 69 makes it an offence—

- (a) To fail to comply with a production order; or
- (b) To produce or make available a document in a purported compliance with such an order, knowing that the document is false or misleading in a material particular and without pointing that fact out to the police officer concerned.

Monitoring Orders

Clauses 70 to 73 make provision for the issue, by the High Court, of monitoring orders. Such an order may be made only on the application of a commissioned officer of the Police. A Judge may make a monitoring order only if the Judge is satisfied that there are reasonable grounds for believing that the person in respect of whom the order is sought has committed, or is about to commit, a drug-dealing offence (as defined in *clause 2*), or has benefited, or is about to benefit, from the commission of such an offence.

The effect of a monitoring order is to direct a financial institution (as defined in *clause 2*) to supply to the Commissioner of Police information obtained by the institution about transactions conducted through an account held by a particular person with the institution. A monitoring order may have effect for up to 3 months.

Clause 71 makes it an offence for a financial institution to fail to comply with a monitoring order, or to supply false or misleading information in purported compliance with the order.

Clauses 72 and 73 impose restrictions on the disclosure of the existence and operation of a monitoring order, and make it an offence to contravene those restrictions.

PART VI

MISCELLANEOUS PROVISIONS

Appeals

Clauses 74 and 75 relate to appeals against forfeiture orders, pecuniary penalty orders, orders under *clause 27 (3)*, and refusals to make any such orders.

Miscellaneous Provisions

Clause 76 makes it an offence for a person to dispose of or otherwise deal with property that is subject to a forfeiture order before the Crown's interest in the property has been registered.

Clause 77 provides that with the exception of *clause 12*, questions of fact to be determined under the Bill are to be determined on the balance of probabilities.

Clause 78 provides for the awarding of costs to persons who successfully bring proceedings to prevent a forfeiture order or restraining order being made against the person's property, or to have property of that person excluded from such an order.

Clauses 79 and 80 provide for the making of regulations and rules of Court for the purposes of the Bill.

Clause 81 provides that the Bill does not limit or affect the operation of any other enactment that provides for the forfeiture of property or the imposition of a monetary penalty.

Clause 82 makes consequential amendments to the Summary Proceedings Act 1957.

PROCEEDS OF CRIME

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A BILL INTITULED

An Act—

- (a) To provide for confiscation of the proceeds of serious criminal offending; and**
- (b) To provide for matters incidental thereto**

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BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Proceeds of Crime Act 1990.

(2) This Act shall come into force on the **1st day of April 1991**.

PART I

10

PRELIMINARY PROVISIONS

Interpretation

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Confiscation order” means a forfeiture order or a pecuniary penalty order:

“Document” has the same meaning as in section 2 (1) of the Official Information Act 1982:

5 “Drug-dealing offence” means any offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug, a Class B controlled drug, or a Class C controlled drug, where the quantity of the controlled drug involved is equal to or greater than
10 the quantity specified in respect of that drug in subsection (6) of that section:

“Encumbrance”, in relation to property, includes any interest, mortgage, charge, right, or claim in respect of the property:

15 “Financial institution” means any person (including a body of persons whether incorporated or not), who carries on the business of borrowing and lending money, or providing financial services, or both, and without limiting the generality of the foregoing includes—

20 (a) A life insurance company, being a company as defined in section 2 of the Life Insurance Act 1908; and includes any branch, division, or office of that company; and

25 (b) A building society as defined in section 2 of the Building Societies Act 1965; and

(c) A registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and

30 (d) A friendly society or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982; and

(e) A registered society within the meaning of the Industrial and Provident Societies Act 1908; and

35 (f) A specified person or class of persons (including a body or bodies of persons, whether incorporated or not) engaged in the business of borrowing and lending money, or providing financial services, or both, who is or are declared by the Governor-General, by Order in Council, to be a financial institution or institutions for the purposes of **Part V** of this Act:

40 “Forfeiture order” means an order under **section 14 (1)** of this Act:

“Interest”, in relation to property, means—

45 (a) A legal or equitable estate or interest in the property; or

- (b) A right, power, or privilege in connection with the property:
- “Minister” means the Minister of Justice:
- “Official Assignee” means the Official Assignee for New Zealand: 5
- “Pecuniary penalty order” means an order under **section 23 (1)** of this Act:
- “Proceeds”, in relation to a serious offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence: 10
- “Production order” means an order under **section 64 (1)** of this Act:
- “Property” means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and includes an interest in any such real or personal property: 15
- “Relevant application period”, in relation to a person’s conviction of a serious offence, means the period of 6 months after— 20
- (a) The day on which the person was convicted, where **section 3 (1) (a)** of this Act applies:
- (b) The day on which the person was discharged without conviction, where **section 3 (1) (b)** of this Act applies: 25
- (c) The day on which the person is treated as having absconded in connection with the offence, where **section 3 (1) (c)** of this Act applies:
- “Relevant serious offence” or “relevant offence”, in relation to tainted property, means the offence by reason of the commission of which the property is tainted property: 30
- “Restraining order” means an order under **section 39** of this Act: 35
- “Serious offence” means an offence punishable by imprisonment for a term of 5 years or more:
- “Tainted property”, in relation to a serious offence, means—
- (a) Property used in connection with the commission of the offence; or 40
- (b) Proceeds of the offence;—
- and when used without reference to a particular offence means tainted property in relation to any serious offence. 45

(2) A reference in this Act to a person being charged with an offence is a reference to an information being laid against the person for the offence.

(3) A reference in this Act to a benefit derived by a person
5 includes a reference to—

(a) A benefit derived, directly or indirectly, by the person;
and

(b) A benefit derived, directly or indirectly, by another
person at the request or direction of the first person.

10 (4) For the purposes of this Act, 2 serious offences are related to one another if the elements of the 2 offences comprise substantially the same act or omission.

3. Meaning of “conviction”, etc., of an offence—(1) For the purposes of this Act, a person shall be treated as having
15 been convicted on indictment of a serious offence if—

(a) The person is proceeded against by indictment and convicted of the offence:

(b) The person is proceeded against by indictment and found
20 guilty of the offence but is discharged without conviction:

(c) The person absconds in connection with the offence.

(2) For the purposes of this Act, a person’s conviction of an offence shall be treated as having been quashed—

25 (a) Where **subsection (1)(a)** of this section applies, if the conviction is quashed or set aside:

(b) Where **subsection (1)(b)** of this section applies, if the finding of guilt is quashed or set aside:

30 (c) Where **subsection (1)(c)** of this section applies, if, after the person has been brought before a Court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.

(3) Where a person is treated as having been convicted of an offence by reason of **subsection (1)(c)** of this section, a reference
35 in this Act to the commission of the offence by the person shall be read as a reference to the alleged commission of the offence by that person.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 5

4. Meaning of “absconding”—(1) For the purposes of this
40 Act, a person shall be treated as having absconded in connection with an offence only if—

(a) An information is laid charging the person with the commission of the offence; and

(b) A warrant for the arrest of the person is issued in relation to that information; and

(c) One of the following occurs:

(i) The person dies without the warrant being executed: 5

(ii) At the end of the period of 6 months after the warrant was issued the person cannot be found or, for any other reason, the person is not amenable to justice.

(2) If, at the end of the period referred to in **subsection (1) (c) (ii)** 10
of this section, extradition or rendition proceedings are underway in respect of the offence, the person shall not be treated as having absconded unless and until those proceedings terminate without an order for the person's extradition being made or, as the case may be, without the issue or endorsement 15
of a warrant, or the making of an order, authorising the rendition of that person.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 6

5. Meaning of “dealing with property”—For the purposes of this Act, dealing with property of a person includes— 20

(a) If a debt is owed to that person, making a payment to any person in reduction of the debt:

(b) Removing the property from New Zealand:

(c) Receiving or making a gift of the property. 25

Cf. Proceeds of Crime Act 1987 (Aust.), s. 9

Application

6. Act to bind the Crown—This Act binds the Crown.

7. Application—(1) Subject to **subsection (2)** of this section, this Act applies to serious offences committed, or believed to have been committed, at any time, whether before or after the commencement of this Act. 30

(2) This Act does not apply to a person's conviction of an offence if the person was convicted of the offence before the commencement of this Act. 35

Cf. Proceeds of Crime Act 1987 (Aust.), s. 13

PART II

CONFISCATION

Applications for Confiscation Orders

5 **8. Application for confiscation order**—(1) Where a person is convicted on indictment of a serious offence, the Solicitor-General or a Crown Solicitor may, at any time before the expiration of the relevant application period, apply to the appropriate Court for one or both of the following orders:

10 (a) A forfeiture order against property that is tainted property in respect of the offence:

(b) A pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.

15 (2) For the purposes of this section, the appropriate Court, in relation to the person in respect of whose conviction for a serious offence a confiscation order is sought, is—

(a) The Court before which that person was sentenced, or is due to appear for sentence, in respect of that offence; or

20 (b) Where that person is treated as having been convicted of the offence by reason of **section 3 (1) (c)** of this Act, the High Court.

(3) An application may be made under this section in relation to one or more serious offences.

25 (4) If an application under **paragraph (a) or paragraph (b) of subsection (1)** of this section has been made and finally determined in respect of a person's conviction, no further application may be made under that paragraph in relation to the same conviction, except with the leave of the Court.

30 Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 14

9. Application to identify tainted property or benefit—

Every application made under **section 8** of this Act in respect of a serious offence shall,—

35 (a) In the case of an application for a forfeiture order, identify the property that is alleged to be tainted property in respect of the offence:

(b) In the case of an application for a pecuniary penalty order, identify the benefits that are alleged to have been derived from the commission of the offence.

40 **10. Notice of application**—(1) Where an application is made for a forfeiture order against property in respect of a person's conviction of a serious offence,—

- (a) The applicant shall serve notice of the application on that person and on any other person the applicant has reason to believe may have an interest in the property:
- (b) The Court may, at any time before the final determination of the application, direct the applicant to serve notice of the application on a specified person or class of persons, in such manner and within such time as the Court thinks fit: 5
- (c) The person in respect of whose conviction the application is made and any other person who claims an interest in the property are entitled to appear and to adduce evidence at the hearing of the application. 10
- (2) Where an application is made for a pecuniary penalty order against a person convicted of a serious offence,— 15
- (a) The applicant shall serve notice of the application on that person:
- (b) The person is entitled to appear and to adduce evidence at the hearing of the application. 20
- Cf. Proceeds of Crime Act 1987 (Aust.), s. 15 20

- 11. Amendment of application**—(1) Subject to subsection (2) of this section, the Court hearing an application for a confiscation order may amend the application either of its own motion or at the request of the applicant.
- (2) The Court shall not amend the application— 25
- (a) To include additional property in an application for a forfeiture order; or
- (b) To include an additional benefit in an application for a pecuniary penalty order—
- unless the Court is satisfied that— 30
- (c) The property or benefit was not reasonably capable of identification when the application was made; or
- (d) Evidence necessary to support the application in relation to that property or benefit became available only after the application was made. 35
- (3) Where the application is amended in the manner described in subsection (2) of this section, the Court shall—
- (a) Direct the applicant to serve notice of the amendment on the person in respect of whose conviction the application was made: 40
- (b) In the case of an application for a forfeiture order, direct the applicant to serve notice of the application (as so amended) on any person whom the applicant has

reason to believe may have an interest in the additional property included in the application.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 16

5 **12. Making of confiscation order where a person has absconded**—Where a person is, by reason of **section 3 (1) (c)** of this Act, treated as having been convicted of a serious offence, a Court shall not make a confiscation order in respect of that conviction unless—

10 (a) The Court is satisfied, on the balance of probabilities, that the person has absconded; and

(b) The Court is satisfied, having regard to all the evidence before the Court, that a reasonable jury, properly instructed, would find the person guilty of the offence.

15 Cf. Proceeds of Crime Act 1987 (Aust.), s. 17

13. Procedure on application—(1) Where an application for a confiscation order is made in respect of a person's conviction of a serious offence, the Court may, in determining the application, take into account—

20 (a) Any evidence given in the proceedings against that person for the offence:

(b) Any sanction imposed pursuant to the person's conviction (whether imposed on sentence or prescribed by law), being a sanction in the nature of a pecuniary penalty or forfeiture of property.

25 (2) If an application is made to the Court before which the person is due to appear for sentence, the Court may defer the passing of sentence until it has determined the application for the confiscation order.

30 Cf. Proceeds of Crime Act 1987 (Aust.), s. 18

Forfeiture Orders

35 **14. Forfeiture orders**—(1) On the hearing of an application for a forfeiture order in respect of a person's conviction of a serious offence, the Court may, if it is satisfied that property specified in the application is tainted property in respect of the offence, order that such of the property as is specified by the Court is forfeited to the Crown.

40 (2) In considering whether or not to make an order under **subsection (1)** of this section in respect of particular property, the Court may have regard to—

- (a) The use that is ordinarily made, or was intended to be made, of the property; and
 - (b) Any hardship that is reasonably likely to be caused to any person by the operation of such an order; and
 - (c) In addition to the matter referred to **section 13 (1) (b)** of this Act, any other matter relating to the nature and circumstances of the offence or the offender, including the gravity of the offence. 5
- (3) A Court that makes a forfeiture order against property may, if it considers that it is appropriate to do so, by order,— 10
- (a) Declare the nature, extent, and value of any person's interest in the property; and
 - (b) Declare that the forfeiture order may, to the extent to which it relates to the interest, be discharged pursuant to **section 20** of this Act. 15
- (4) Where the Court orders that property (other than money) is forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time the order is made.
- (5) Where a Court makes a forfeiture order, the Court may give such directions as are necessary and convenient for giving effect to the order. 20
- (6) Without limiting the generality of **subsection (5)** of this section, where a Court makes a forfeiture order against any property title to which is passed by registration on a register maintained pursuant to 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. 25

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 19 30

15. Effect of forfeiture order—(1) Where a Court makes a forfeiture order against property, the property shall vest absolutely in the Crown to the extent of the interest specified in the order.

(2) Nothing in **subsection (1)** of this section affects the operation of section 99 of the Land Transfer Act 1952 in relation to a forfeiture order made in respect of an estate or interest under that Act. 35

(3) Where a Court makes a forfeiture order in respect of an estate or interest in land, the order shall be transmitted by the Registrar of the Court to the District Land Registrar 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. 40

(4) Where a Court makes a forfeiture order against any property,—

5 (a) Except with the leave of the Court that made the forfeiture order, the property that is forfeited to the Crown under the order shall not be disposed of, or otherwise dealt with, by or on behalf of the Crown, until the expiry of the relevant appeal period; and

10 (b) On the expiry of the relevant appeal period, if the forfeiture order has not been discharged, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister.

(5) For the purposes of this section “expiry of the relevant appeal period”, in relation to a forfeiture order made in reliance on a person’s conviction of a serious offence, means—

15 (a) The end of the appeal period in relation to the making of the forfeiture order; or

(b) The end of the appeal period in relation to the person’s conviction on which the order is based,—

whichever is the later.

20 (6) For the purposes of this section, “appeal period”, in relation to the making of a forfeiture order or the entering of a person’s conviction, means the period ending—

25 (a) When the time for bringing an appeal against the decision of the Court expires, if no such appeal has been brought; or

(b) If an appeal against the decision of the Court has been brought, when the appeal lapses or is finally determined.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 20

30 **16. Third parties may apply for relief**—(1) Where an application is made for a forfeiture order, a person who claims an interest in any of the property specified in the application may apply, before the forfeiture order is made, to the Court for an order under **section 17** of this Act.

35 (2) Where a Court makes a forfeiture order against any property, any person who claims an interest in any of the property specified in the order may apply to the Court for an order under **section 17** of this Act at any time within the period of 6 months from the date on which the forfeiture order was made or such further period as the Court allows on application made for that purpose either before or after the expiry of that period of 6 months.

40 (3) A person on whom notice of the application for a forfeiture order, or of any amendment to the application, was

served, or who appeared at the hearing of the application, may not apply under **subsection (2)** of this section except with the leave of the Court.

(4) The Court shall not grant leave under **subsection (3)** of this section unless there are special reasons for doing so. 5

(5) Without limiting the generality of **subsection (4)** of this section, the Court may grant leave under **subsection (3)** of this section if it is satisfied—

(a) That the applicant had good reason for failing to attend the hearing of the application for the forfeiture order; 10
or

(b) Evidence proposed to be adduced by the applicant in connection with the application under **subsection (2)** of this section was not reasonably available to the applicant at the time of the hearing of the application 15
for the forfeiture order.

(6) A person who makes an application under **subsection (1)** or **subsection (2)** of this section shall serve notice of the application on the Solicitor-General, who shall be a party to any proceedings upon that application. 20

Cf. Proceeds of Crime Act 1987 (Aust.), s. 21

17. Court may grant relief to third party—Where a person applies to the Court under **subsection (1)** or **subsection (2)** of **section 16** of this Act in respect of the applicant's interest in property, and the Court is satisfied that— 25

(a) The applicant was not, in any respect, involved in the commission of the offence in respect of which forfeiture of the property is or was sought; and

(b) The applicant acquired the interest in the property in good faith and for value, without knowing or having 30
reason to believe that the property was, at the time of the acquisition, tainted property,—

the Court shall make an order—

(c) Declaring the nature, extent, and value of the applicant's interest in the property; and 35

(d) Either—

(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 40
interest declared by the Court; or

(iii) In the case of an application under **section 16 (1)** of this Act, directing that the interest shall not be

included in a forfeiture order made in respect of the proceedings that gave rise to the application.

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 21 (6)

5 **18. Discharge of forfeiture order on appeal or by quashing of conviction**—(1) Where a Court makes a forfeiture order against property in respect of a person's conviction of a serious offence, and the conviction is subsequently quashed, the quashing of the conviction shall operate to discharge the forfeiture order.

10 (2) Where a forfeiture order in respect of any property is discharged as provided in **subsection (1)** of this section or by a Court hearing an appeal against the making of the order, the Solicitor-General shall—

15 (a) As soon as practicable after the discharge of the order, serve notice of the discharge of the forfeiture order on any person the Solicitor-General has reason to believe may have had an interest in the property immediately before the making of the order; and

20 (b) If required to do so by a Court, serve notice of the discharge of the forfeiture order on any specified person or class of persons, in such manner and within such period as is directed by the Court.

(3) Every notice under **subsection (2)** of this section shall include a statement that a person claiming an interest in the property may apply under **subsection (4)** of this section for the transfer of the interest to that person.

30 (4) Where a forfeiture order is discharged in either of the ways referred to in **subsection (2)** of this section, any person claiming an interest in the property immediately before the making of the forfeiture order may apply to the Minister, in writing, for the transfer of the interest to that person.

(5) If the Minister is satisfied that any claim made under **subsection (4)** of this section in respect of any interest in property is valid, the Minister shall,—

35 (a) If the interest is still vested in the Crown, arrange for the interest to be transferred to the claimant; or

(b) In any other case, and subject to **section 19** of this Act, arrange for payment to the claimant of an amount equal to the value of the interest.

40 Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 22

19. Double benefit not permitted—Where, on any application made under **section 16** of this Act in respect of any interest in any property, the Court has made an order under

section 17 (d) (ii) of this Act declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the Court, an amount equal to the amount so declared shall be deducted from any amount required to be paid, under **section 18 (5) (b)** of this Act, to that applicant in respect of that interest. 5

20. Person may buy back interest in forfeited property—Where a Court—

- (a) Makes a forfeiture order against any property; and
 - (b) Makes an order under **subsection (3) of section 14** of this Act in respect of an interest in the property,—
- the payment to the Crown, while the interest is still vested in the Crown, of the amount specified in the order under that subsection as the value of the interest shall operate to discharge the forfeiture order to the extent to which it relates to the interest, and the Minister shall arrange for the interest to be transferred to the person in whom it was vested immediately before the forfeiture order was made. 10 15

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 33

21. Buying out other interests in forfeited property— 20

(1) Where—

- (a) Any property is forfeited to the Crown under a forfeiture order; and
 - (b) An interest in that property is required to be transferred to any person (in this section called “the purchaser”) under **section 18 (5) or section 20** of this Act or under a direction given under **section 17 (d) (i)** of this Act; and
 - (c) Immediately before the forfeiture took place, there existed other interests in that property,—
- the purchaser may give written notice to each other person who had such an interest in the property that the purchaser intends to purchase that other interest from the Crown. 25 30

(2) Any person who receives such a notice may, within 21 days after receipt of the notice, lodge a written objection to the purchase of that interest with the Minister. 35

(3) Where the purchaser complies with the requirements of **subsection (1)** of this section, and, in respect of any other interest in the property,—

- (a) A written objection to the purchase of the interest is not lodged with the Minister within the period referred to in **subsection (2)** of this section; and 40

- (b) The purchaser pays to the Crown, while that interest is still vested in the Crown, an amount equal to the value of that interest,—
the Minister shall arrange for that interest to be transferred to the purchaser.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 34

Pecuniary Penalty Orders

22. Application—Sections 23 to 27 of this Act apply to—

- (a) Benefits that are provided to or derived by a person either within or outside New Zealand and either before or after the commencement of this Act:
(b) Property that comes into the possession, or under the control, of a person either within or outside New Zealand and either before or after the commencement of this Act.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 24

23. Pecuniary penalty orders—(1) On the hearing of an application for a pecuniary penalty order in respect of benefits derived by a person from the commission of a serious offence, the Court may, if it is satisfied that the person derived benefits from the commission of that offence,—

- (a) Assess, in accordance with sections 25 and 26 of this Act, the value of the benefits so derived; and

- (b) Order the person to pay to the Crown a pecuniary penalty not greater than the penalty amount.

(2) The penalty amount is the value of the benefits assessed under sections 25 and 26 of this Act, reduced by—

- (a) An amount equal to the value of any property that has been forfeited, or is proposed to be forfeited, to the Crown under this Part of this Act as proceeds of the relevant serious offence; and

- (b) An amount equal to the value of any pecuniary penalty that has already been imposed, in respect of the benefit, under this Act or any other enactment; and

- (c) Any further amount which the Court considers appropriate to take into account, after having regard to the matter referred to in section 13 (1) (b) of this Act.

(3) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by that person to the Crown.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 26 (1)–(5), (9)

24. Variation of pecuniary penalty order—(1) Where—

- (a) A Court makes a pecuniary penalty order; and
- (b) In calculating the penalty amount, the Court took into account a forfeiture of, or proposed forfeiture order in respect of, any property; and
- (c) The forfeiture order is discharged on appeal against the making of the order, or the proceedings for the proposed forfeiture order terminate without the proposed order being made,—

the Solicitor-General may apply to the Court for a variation of the pecuniary penalty order to increase the amount payable to the Crown by the value of the property taken into account under **section 23 (2) (a)** of this Act.

(2) On an application under **subsection (1)** of this section, the Court may, if it considers it appropriate to do so, vary the pecuniary penalty order accordingly.

Cf. *Proceeds of Crime Act 1987* (Aust.), s. 26 (6)

25. Assessment of pecuniary penalty—(1) In this section and in **section 26** of this Act, the term “offence period”, in relation to an application for a pecuniary penalty order in respect of 2 or more serious offences, means the period commencing when the earlier or earliest of those offences was committed and ending when the later or latest of those offences was committed.

(2) For the purposes of an application for a pecuniary penalty order, the value of the benefits derived by a person (in this subsection referred to as the “defendant”) from the commission of an offence or offences shall be assessed by the Court having regard to evidence before the Court concerning all or any of the following matters:

- (a) The money, or the value of the property other than money, that came into the possession or under the control of—

- (i) The defendant; or

- (ii) Another person at the request or direction of the defendant—

by reason of the commission of the offence or any of the offences:

- (b) The value of any other benefit provided to—

- (i) The defendant; or

- (ii) Another person at the request or direction of the defendant—

by reason of the commission of the offence or any of the offences:

(c) The value of the defendant's property—

(i) Where the application relates to a single offence, before and after the commission of the offence; or

5 (ii) Where the application relates to 2 or more offences, before, during, and after the offence period.

(3) In calculating, for the purposes of a pecuniary penalty order, the value of benefits derived by a person from the commission of an offence or offences, any expenses or outgoings of that person in connection with the commission of
10 the offence or offences shall be disregarded.

(4) For the purposes of this section and **section 26** of this Act, where property of a person vests in the Assignee under the Insolvency Act 1967 by reason of a person's bankruptcy, the property shall continue to be treated as the property of that
15 person.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 27 (1), (2), (8), (9)

26. Further provisions relating to assessment of pecuniary penalty—

(1) Where an application for a pecuniary penalty order is made in respect of a single offence, and
20 evidence is given that the value of the defendant's property after the commission of the offence exceeded the value of the defendant's property before the commission of the offence, then, for the purposes of **section 25** of this Act, the Court may, subject to **subsection (3)** of this section, treat the value of the
25 benefits derived by the defendant from the commission of the offence as being not less than the amount of the excess.

(2) Where an application for a pecuniary penalty order is made in respect of 2 or more offences, and evidence is given that the value of the defendant's property at any time during or
30 after the offence period exceeded the value of the defendant's property before the offence period, then, for the purposes of **section 25** of this Act, the Court may, subject to **subsection (3)** of this section, treat the value of the benefits derived by the defendant from the commission of the offences as being not
35 less than the amount of the excess.

(3) If, after evidence of the kind referred to in **subsection (1)** or **subsection (2)** of this section is given, the defendant satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the offence or offences, the
40 excess or that part of the excess, as the case may be, shall not be included, for the purposes of **section 25** of this Act, in the value of benefits derived by the defendant from the commission of the offence or offences.

- (4) Where an application for a pecuniary penalty order is made in relation to 1 or more drug-dealing offences,—
- (a) All the property of the defendant at the time the application is made; and
- (b) All the property of the defendant at any time—
- (i) Within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
- (ii) Within the period of 2 years immediately before the day on which the application is made,—
- whichever is the shorter—

shall be presumed, unless the contrary is proved, to be property that came into the possession or under the control of the defendant by reason of the commission of the offence or offences.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 27 (4)-(6)

27. Court may lift corporate veil, etc.—(1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the Court may treat as property of that person any property that the Court is satisfied is subject to the effective control of the person whether or not the person has—

- (a) Any legal or equitable estate or interest in the property; or
- (b) Any right, power, or privilege in connection with the property.
- (2) Without limiting the generality of **subsection (1)** of this section, 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
- (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)** of this subsection or trusts of the kind referred to in **paragraph (b)** of this subsection, and any other persons.
- (3) Where a Court, for the purposes of making a pecuniary penalty order against a person, treats particular property as that person's property under **subsection (1)** of this section, the Court may, on application by the Solicitor-General, make an order declaring that the property is available to satisfy the order.
- (4) Where a Court declares that property is available to satisfy a pecuniary penalty order,—

- (a) The pecuniary penalty order may be enforced against the property as if the property were the property of the person against whom the order is made; and
- 5 (b) A restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (5) Where the Solicitor-General applies for an order under **subsection (3)** of this section that property is available to satisfy a pecuniary penalty order against a person,—
- 10 (a) The Solicitor-General shall serve notice of the application on that person and on any person whom the Solicitor-General has reason to believe may have an interest in the property; and
- 15 (b) That person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 28

PART III

SEARCH WARRANTS

Issue of Search Warrants

- 20 **28. Warrant to search and seize tainted property—**
- (1) Any District Court Judge who, on an application in writing made on oath, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing any property
- 25 that is tainted property in respect of a serious offence may issue a search warrant in respect of that tainted property.
- (2) An application for a warrant under **subsection (1)** of this section may be made only by a commissioned officer of the Police.
- 30 (3) A District Court Judge shall not issue a warrant under **subsection (1)** of this section unless the application contains, or the applicant otherwise supplies to the Judge, such information as the Judge requires concerning the grounds on which the warrant is sought.
- 35 (4) A warrant may be issued under **subsection (1)** of this section in relation to tainted property whether or not an information has been laid in respect of the relevant serious offence, but where an information has not been laid in respect of that offence at the time when the application for the warrant is
- 40 made, the District Court Judge shall 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.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 36

29. Form and content of search warrant—(1) Every warrant issued under **section 28** of this Act shall be in the prescribed form.

(2) Every warrant issued under **section 28** of this Act shall be directed to any member of the Police by name, or to any class of members of the Police specified in the warrant, or generally to every member of the Police. 5

(3) Every warrant issued under **section 28** of this Act shall be subject to such special conditions (if any) as the District Court Judge may specify in the warrant. 10

(4) Every warrant issued under **section 28** of this Act shall contain the following particulars:

- (a) The place or thing that may be searched pursuant to the warrant:
- (b) The offence or offences in respect of which the warrant is issued: 15
- (c) A description of the kind of property that is authorised to be seized:
- (d) The period during which the warrant may be executed, being a period not exceeding 14 days from the date of issue: 20
- (e) Any conditions specified by the Judge pursuant to **subsection (3)** of this section.

30. Powers conferred by warrant—(1) Subject to any special conditions specified in the warrant pursuant to **section 29 (3)** of this Act, every warrant issued under **section 28** of this Act shall authorise the member of the Police executing the warrant— 25

- (a) To enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant; and 30
- (b) To use such assistants may be reasonable in the circumstances for the purpose of the entry and search; and
- (c) To use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place searched; and 35
- (d) To search for and seize any property of the kind described in the warrant that the person executing the warrant believes on reasonable grounds to be tainted property in respect of the relevant serious offence. 40

(2) Every person called upon to assist any member of the Police executing a warrant issued under **section 28** of this Act

shall have the powers described in paragraphs (c) and (d) of subsection (1) of this section.

5 (3) If a member of the Police, in the course of executing a warrant issued under section 28 of this Act, finds any property that the member of the Police believes, on reasonable grounds, to be—

(a) Tainted property in respect of a serious offence other than an offence specified in the warrant; or

10 (b) Tainted property in relation to any offence specified in the warrant, although not of a kind specified in the warrant,—

the warrant shall be sufficient authority to seize that property if the member of the Police believes on reasonable grounds that seizure is necessary to prevent the loss, destruction, or
15 concealment of the property.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 36 (3), (4), (8), (9)

31. Person executing warrant to produce evidence of authority—Every member of the Police executing any warrant issued under section 28 of this Act—

20 (a) Shall have that warrant with him or her; and

(b) Shall produce it on initial entry and, if requested, at any subsequent time; and

(c) Shall, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of
25 the warrant within 7 days after the request is made.

32. Notice of execution of warrant—Every member of the Police who executes a warrant issued under section 28 of this Act shall, not later than 7 days after the seizure of any property pursuant to that warrant, give to the owner or occupier of the
30 place or thing searched, and to every other person whom the member of the Police has reason to believe may have an interest in the property seized, a written notice specifying—

(a) The date and time of the execution of the warrant; and

(b) The identity of the person who executed the warrant; and

35 (c) The property seized under the warrant.

33. Commissioner of Police to hold property—Where property is seized pursuant to a warrant issued under section 28 of this Act, the Commissioner of Police shall arrange for the property to be kept until it is dealt with in accordance with
40 another provision of this Act.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 39

Dealing With Seized Property

- 34. Return of seized property**—(1) Subject to subsections (2) to (4) of this section and to sections 35 and 36 of this Act, where any property is seized pursuant to a warrant issued under section 28 of this Act, the property shall be returned to the person from whose possession it was seized not later than 14 days after the date on which it was seized. 5
- (2) Subject to sections 35 and 36 of this Act, where—
- (a) Any property is seized pursuant to a warrant issued under section 28 of this Act; and 10
- (b) At the time when the property was seized, an information had not been laid in respect of a relevant serious offence; and
- (c) No such information is laid within 48 hours after the time when the property was seized,— 15
- the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after that period of 48 hours has expired.
- (3) Subject to sections 35 and 36 of this Act, where—
- (a) Any property is seized pursuant to a warrant issued under section 28 of this Act; and 20
- (b) Either—
- (i) Before the property was seized, a person had been convicted of a relevant serious offence or an information had been laid in respect of a relevant serious offence; or 25
- (ii) An information was laid in respect of a relevant serious offence within 48 hours after the time when the property was seized; and
- (c) No forfeiture order has been made against the property within the period of 14 days after the property was seized,— 30
- the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the period of 14 days has expired. 35
- (4) Where—
- (a) Any property has been seized pursuant to a warrant issued under section 28 of this Act; and
- (b) An application for a restraining order or a forfeiture order is made in respect of the property and refused; and 40
- (c) The property is in the possession of the Commissioner of Police at the time the application is refused,—

the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the refusal.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 40 (3), (4), (8)

5 **35. Retention of seized property where forfeiture order or restraining order made—**(1) Where—

(a) Any property is seized pursuant to a warrant issued under **section 28** of this Act; and

10 (b) But for this subsection, the Commissioner of Police would be required, pursuant to **subsection (2)** or **subsection (3) of section 34** of this Act, to arrange for any property to be returned to a person as soon as practicable after the end of a particular period; and

15 (c) Before the end of that period, a restraining order is made in relation to the property,—

the following provisions shall apply:

20 (d) If the restraining order directs the Official Assignee to take custody and control of the property, the Commissioner of Police shall arrange for the property to be given to the Official Assignee in accordance with that order:

25 (e) If the Court that made the restraining order has made an order under **subsection (2)** of this section in relation to the property, the Commissioner of Police shall arrange for the property to be kept until it is dealt with in accordance with this Act.

30 (2) Where a restraining order is made in relation to property within the period referred to in **subsection (1) (c)** of this section, the Commissioner of Police may apply to the Court that made the restraining order for an order that the Commissioner retain possession of the property, and the Court may, if it is satisfied that there are reasonable grounds for believing that the property may afford evidence of the commission of a relevant offence, make an order that the Commissioner may retain the
35 property for so long as the property is required as evidence of the commission of that offence.

40 (3) Where a forfeiture order is made in respect of any property that is in the possession of the Commissioner of Police pursuant to **section 33** of this Act, the Commissioner shall deal with the property as required by the order.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 40 (5), (6), (9)

36. Application for return of seized property—

(1) Where any property has been seized pursuant to a warrant

issued under **section 28** of this Act, any person who claims an interest in the property may apply to a District Court for an order that the property be returned to the person.

(2) An application may be made under **subsection (1)** of this section at any time before the property is returned or otherwise dealt with in accordance with any of the provisions of **sections 34 and 35** of this Act. 5

(3) Where any person makes an application under **subsection (1)** of this section in respect of any property, and the Court is satisfied that— 10

(a) The applicant is entitled to possession of the property; and

(b) The property is not tainted property in relation to a relevant serious offence; and

(c) The person in respect of whose conviction, charging, or proposed charging the property was seized has no interest in the property,— 15

the Court shall order the Commissioner of Police to arrange for the property to be returned to the applicant.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 40 (1), (2) 20

PART IV

RESTRAINING ORDERS

Applications for Restraining Orders

37. Application for restraining order—(1) Where a person (in this section and **sections 40, 41, and 45** of this Act referred to as the “defendant”)— 25

(a) Has been convicted on indictment of a serious offence; or

(b) Has been, or is about to be, charged with a serious offence,—

the Solicitor-General or a Crown Solicitor may apply to the appropriate Court for a restraining order under **section 39** of this Act. 30

(2) A restraining order may be sought and made in respect of—

(a) Specified property of the defendant; or 35

(b) All the property of the defendant (including property acquired after the making of the order); or

(c) All the property of the defendant (including property acquired after the making of the order) other than specified property; or 40

(d) Specified property of a person other than the defendant.

(3) For the purposes of this section, the appropriate Court is the Court before which the person in respect of whose

conviction, charging, or proposed charging the restraining order is sought was tried on indictment or is liable to be tried on indictment.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 43 (1)

5 **38. Notice of application**—Where an application is made for a restraining order against property,—

- (a) The applicant shall serve notice of the application on—
 - (i) The owner of the property; and
 - 10 (ii) Any other person the applicant has reason to believe may have an interest in the property; and
 - (iii) The Official Assignee, in any case where the applicant seeks an order of the kind referred to in **section 39 (1) (b)** of this Act; and
- 15 (b) The Court may, at any time before the final determination of the application, direct the applicant to serve notice of the application on a specified person or class of persons, in such manner and within such time as the Court thinks fit; and
- 20 (c) The owner of the property and any other person who claims an interest in the property are entitled to appear and to adduce evidence at the hearing of the application.

Cf. Proceeds of Crime Act 1987 (Aust.), ss. 45, 46

Granting of Restraining Orders

25 **39. Court may make restraining order**—(1) Where an application is made to a Court for a restraining order against any property, the Court may, subject to **sections 40 and 41** of this Act, by order,—

- 30 (a) Direct that the property, or such part of the property as is specified in the order, is not to be disposed of or otherwise dealt with by any person except as provided in the order; or
- (b) If the Court is satisfied that it is desirable to do so, direct the Official Assignee to take custody and control of
- 35 the property, or of such part of the property as is specified in the order.

40 (2) A restraining order against a person's property may be made subject to such conditions as the Court thinks fit, which conditions may include, but are not limited to, conditions which make provision for meeting, out of the property included in the order, all or any of the following:

- (a) The reasonable living expenses of the person and the person's dependants, if any:
- (b) The person's reasonable business expenses:
- (c) The person's reasonable expenses in defending any criminal proceedings (including any proceedings under this Act): 5
- (d) Any specified debt incurred by the person in good faith:
- (e) Any other expense allowed by the Court.
- (3) In determining whether or not to make provision of the type described in **subsection (2)** of this section, the Court shall have regard to the ability of the person to meet the expense or debt concerned out of property that is not subject to a restraining order. 10

Cf. Proceeds of Crime Act 1987 (Aust.), s. 43 (2)-(4)

40. Grounds for making restraining order—(1) Where an application under **section 37** of this Act seeks a restraining order against specified property of the defendant, the Court shall not make an order against the property unless the Court is satisfied that there are reasonable grounds for believing that— 15

- (a) The property is tainted property in relation to the relevant serious offence; or 20
- (b) The defendant derived a benefit, directly or indirectly, from the commission of the offence.

(2) Where an application under **section 37** of this Act seeks a restraining order against all the property of the defendant or against all the property of the defendant other than specified property, the Court shall not make an order against the property unless the Court is satisfied that there are reasonable grounds for believing that the defendant derived a benefit, directly or indirectly, from the commission of the offence concerned. 25 30

(3) Where an application under **section 37** of this Act seeks a restraining order against specified property of a person other than the defendant, the Court shall not make an order against the property unless the Court is satisfied that there are reasonable grounds for believing that— 35

- (a) The property is tainted property in relation to the relevant serious offence; or
- (b) The property is subject to the effective control of the defendant, and the defendant derived a benefit, directly or indirectly, from the commission of the offence. 40

(4) In determining, for the purposes of **subsection (3) (b)** of this section, whether there are reasonable grounds to believe that

property is subject to the effective control of the defendant, the Court may have regard to the matters referred to in **section 27 (2)** of this Act.

5 (5) Subject to **subsections (1) to (3)** of this section, the Court may make a restraining order in respect of property whether or not the Court considers there is a risk of the property being disposed of, or otherwise dealt with, in such a manner as would defeat the operation of this Act.

10 (6) A Court shall not make a restraining order unless the application contains, or the applicant otherwise supplies to the Court, such information as the Court requires concerning the grounds on which the order is sought.

Cf. *Proceeds of Crime Act 1987* (Aust.), s. 44 (5)–(9)

41. Restraining orders where defendant not charged with or convicted of offence—(1) Where an application is made for a restraining order and the defendant has not been convicted of the offence to which the application relates, the Court shall not make a restraining order unless the Court is satisfied that there are reasonable grounds for believing that
20 the defendant committed the offence.

(2) Where an application is made for a restraining order and the defendant has not been charged with the offence to which the application relates, the Court shall not make a restraining order unless it is satisfied that the defendant will be charged
25 with the offence or a related offence within 48 hours of the making of the order.

Cf. *Proceeds of Crime Act 1987* (Aust.), s. 44 (3), (4)

42. Undertakings as to damages or costs—For the purposes of an application under **section 37** of this Act,—

30 (a) The Solicitor-General may, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, in relation to the making or operation of the restraining order as are required by the Court; and

35 (b) The Court may decline to make a restraining order if the Crown fails to give to the Court such undertakings with respect to the payment of damages or costs, or both, as the Court considers appropriate.

Cf. *Proceeds of Crime Act 1987* (Aust.), s. 44 (10), (11)

43. Notice of restraining orders—Where a restraining order is made against a person's property, the applicant shall serve notice of the order on that person.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 47

Further Orders

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44. Further orders—(1) Where a Court makes a restraining order against any property, the Court may, at the time it makes the order or at any later time, make such ancillary orders in relation to the property as the Court considers appropriate.

(2) Without limiting the generality of **subsection (1)** of this section, the Court may, under that subsection, make any one or more of the following orders:

10

(a) An order varying the property to which the restraining order relates:

(b) An order varying any condition to which the restraining order is subject: 15

(c) An order for the examination of—

(i) Any person whose property is subject to the restraining order; or

(ii) Any other person,— 20

before the Court or the Registrar of the Court concerning the nature and location of any property to which the restraining order relates:

(d) An order with respect to the carrying out of any undertaking given by the Crown under **section 42** of this Act: 25

(e) Where the restraining order directs the Official Assignee to take custody and control of property,—

(i) An order regulating the manner in which the Official Assignee may exercise his or her powers or perform his or her duties under the restraining order: 30

(ii) An order determining any question relating to the property, including any question relating to the liabilities of the owner of the property or the exercise of the powers, or the performance of the duties, of the Official Assignee: 35

(iii) An order directing the owner of the property to furnish to the Official Assignee, within the time specified in the order, a statement on oath setting out such particulars of the property of that person as the Court thinks fit. 40

(3) An order under **subsection (1)** of this section may be made on application by—

- (a) The Solicitor-General or a Crown Solicitor; or
- (b) The person whose property is subject to the restraining order; or
- 5 (c) Where the restraining order directs the Official Assignee to take custody and control of property, the Official Assignee; or
- (d) With the leave of the Court, any other person.

10 (4) A person who makes an application under **subsection (3)** of this section in relation to a restraining order shall serve notice of that application on each other person who is entitled, by virtue of that subsection, to make an application under this section in relation to the restraining order.

Cf. Proceeds of Crime Act 1987 (Aust.), ss. 48 (1), (2), 58 (1)

15 **45. Application for exclusion of interest from restraining order**—Where a person having an interest in property that is subject to a restraining order applies to the Court under **section 44** of this Act for variation of the order to exclude the person's interest from the order, the Court shall grant the application if,—

20 (a) Where the applicant is not the defendant, and the restraining order was made pursuant to **section 40 (3)** of this Act, the Court is satisfied that—

- (i) The interest is not tainted property; and
- (ii) Either—

25 (A) The applicant's interest in the property is not subject to the effective control of the defendant; or

(B) A pecuniary penalty order cannot be made against the defendant:

30 (b) In any other case where the applicant is not the defendant, the Court is satisfied that the interest is not tainted property:

(c) Where the applicant is the defendant, the Court is satisfied that—

- 35 (i) The interest is not tainted property; and
- (ii) A pecuniary penalty order cannot be made against the defendant:

(d) In any case, the Court is satisfied that it is in the public interest to do so, having regard to all the circumstances, including,—

- 40 (i) Any hardship that is reasonably likely to be caused to any person if the interest remains subject to the restraining order:
- (ii) The gravity of the offence:

(iii) The likelihood that the interest will be subject to a forfeiture order or be required to satisfy a pecuniary penalty order.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 48 (3)

46. Admissibility of evidence given in course of examination—Where any person is examined before a Court or a Registrar of a Court pursuant to an order made pursuant to **section 44 (2) (c)** of this Act, a statement or disclosure made by the person in answer to a question put in the course of the examination is not admissible against that person in any civil or criminal proceedings, except—

- (a) A proceeding for giving false evidence in the course of the examination; or
- (b) Proceedings on an application for a restraining order, a forfeiture order, or a pecuniary penalty order.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 48 (6)

Operation of Restraining Orders

47. Powers of Official Assignee—Where the Official Assignee is given a direction under **section 39 (1) (b)** of this Act in relation to any property, the Official Assignee may do anything that is reasonably necessary to preserve the property, including—

- (a) Taking, or becoming a party to, any civil proceedings affecting the property; and
- (b) Ensuring that the property is insured; and
- (c) If the property consists, in whole or in part, of securities or investments, realising or otherwise dealing with the securities or investments; and
- (d) If the property consists, in whole or in part, of a business, doing anything that is necessary or convenient for carrying on the business.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 43 (6)

48. Official Assignee to discharge pecuniary penalty order—(1) Where—

- (a) A pecuniary penalty order is made against a person (in this subsection referred to as “the defendant”) in reliance on the defendant’s conviction of a serious offence; and
- (b) Either—

(i) At the time when the pecuniary penalty order is made, the Official Assignee has custody and control

of property under a restraining order made, in relation to the offence or a related offence, against—

(A) Property of the defendant; or

5 (B) Property of another person in relation to which an order under **section 27 (3)** of this Act is made; or

(ii) A restraining order is subsequently made against—

(A) Property of the defendant; or

10 (B) Property of another person in relation to which an order under **section 27 (3)** of this Act is in force—

in relation to the offence, and that restraining order includes a direction that the Official Assignee take custody and control of the property,—

15 the Court making the pecuniary penalty order or, as the case may be, the restraining order may include in that order a direction that the Official Assignee pay to the Crown, out of that property, in accordance with this section, an amount equal
20 to the amount payable under the pecuniary penalty order.

(2) Subject to **section 56** of this Act, where the Official Assignee is given a direction under **subsection (1)** of this section in relation to any property, the Official Assignee shall, as soon as practicable after the expiry of the relevant appeal period,—

25 (a) If the property is money,—

(i) Apply the money in payment of the fees payable to the Official Assignee under **section 58** of this Act in relation to the restraining order; and

30 (ii) Subject to **subsection (3)** of this section, pay the remainder of the money to the Crown; and

(b) If the property is not money,—

(i) Sell or otherwise dispose of the property; and

35 (ii) Apply the proceeds of the sale or disposition in payment of the fees payable to the Official Assignee under **section 58** of this Act in relation to the restraining order; and

(iii) Subject to **subsection (3)** of this section, pay the remainder of those proceeds to the Crown.

(3) Where the money or proceeds referred to in **paragraph (a) (ii)** or **paragraph (b) (iii)** of **subsection (2)** of this section exceeds the pecuniary penalty, the excess shall be paid to the person whose property was subject to the restraining order.

(4) For the purposes of this section, “expiry of the relevant appeal period”, in relation to a pecuniary penalty order made
45 in reliance on a person’s conviction of an offence, means—

- (a) The end of the appeal period in relation to the making of the pecuniary penalty order; or
- (b) The end of the appeal period in relation to the person's conviction on which the order is based,—

whichever is the later.

5

(5) For the purposes of this section, “appeal period”, in relation to the making of a pecuniary penalty order or the entering of a person's conviction, means the period ending—

- (a) When the time for bringing an appeal against the decision of the Court expires, if no such appeal has been brought; or
- (b) If an appeal against the decision of the Court has been brought, when the appeal lapses or is finally determined.

10

Cf. Proceeds of Crime Act 1987 (Aust.), s. 49 (1), (2), (6), (7), (9)–(11)

15

49. Further provisions relating to discharge of pecuniary penalty order—

(1) For the purposes of enabling the Official Assignee to comply with a direction by a Court under **section 48 (1)** of this Act, the Court may, at any time, appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest, or right in such of the property under the Official Assignee's control as the Court specifies and to do anything necessary to give validity and operation to the deed or instrument.

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(2) The execution of the deed or instrument by the person so appointed has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest, or right in the property.

30

Cf. Proceeds of Crime Act 1987 (Aust.), s. 49 (3), (4)

50. Payment to Crown discharges pecuniary penalty order—Where the Official Assignee, in accordance with a direction under **section 48 (1)** of this Act, pays money to the Crown in respect of the liability of a person under a pecuniary penalty order, the person's liability under the order shall, to the extent of the payment, be discharged.

35

Cf. Proceeds of Crime Act 1987 (Aust.), s. 49 (8)

51. Official Assignee to discharge forfeiture order—

(1) Where—

40

- (a) A Court makes a forfeiture order against any property; and

- (b) At the time when the forfeiture order is made, the Official Assignee has custody and control of that property under a restraining order,—
 the Minister may direct the Official Assignee—
- 5 (c) To retain the property until the expiry of the relevant appeal period referred to in **section 15** of this Act; and
- (d) On the expiry of that relevant appeal period,—
- 10 (i) If the property is money, to apply the money in payment of the fees payable to the Official Assignee under **section 58** of this Act in relation to the restraining order; or
- (ii) If the property is not money,—
- (A) To sell or otherwise dispose of the property; and
- 15 (B) To apply the proceeds of the sale or disposition in payment of the fees payable to the Official Assignee under **section 58** of this Act in relation to the restraining order; and
- 20 (e) To pay the remainder of the money or proceeds to the Crown.
- (2) Any direction given under **subsection (1)** of this section shall be subject to the provisions of **sections 16 to 21** of this Act.
- (3) Nothing in this section limits the power of the Minister to
- 25 give directions under **section 15 (4)** of this Act relating to the disposition of property that is subject to a forfeiture order.

52. Charge on property subject to restraining order—

- (1) Where—
- 30 (a) A pecuniary penalty order is made against a person in reliance on the person's conviction of a serious offence; and
- (b) A restraining order, in relation to the offence, is or has been made against—
- 35 (i) Property of the defendant; or
- (ii) Property of another person in relation to which an order under **section 27 (3)** of this Act is, or has been, made,—
- then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to
- 40 secure the payment to the Crown of the amount payable under the pecuniary penalty order.
- (2) Where a charge is created by **subsection (1)** of this section on property of a person, the charge ceases to have effect in respect of the property—

- (a) Upon the quashing of the conviction in reliance on which the pecuniary penalty order was made; or
- (b) Upon payment to the Crown of the amount payable under the pecuniary penalty order, where that payment is made in satisfaction of that order; or 5
- (c) Upon the discharge of the pecuniary penalty order or the restraining order by a Court hearing an appeal against the making of the order; or
- (d) Upon the person becoming a bankrupt; or
- (e) Upon the sale or disposition of the property,— 10
 - (i) Pursuant to an order under **section 48** of this Act; or
 - or
 - (ii) By the owner of the property with the consent of the Court that made the pecuniary penalty order; or 15
 - or
 - (iii) If the Official Assignee was directed to take custody and control of the property, by the owner of the property with the consent of the Official Assignee; or
- (f) Upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge,— 20

whichever occurs first.

- (3) A charge created by **subsection (1)** of this section on property— 25
 - (a) Is subject to every encumbrance to which the property was subject immediately before the charge was created and that would, apart from this subsection, have priority over the charge; but
 - (b) Has priority over all other encumbrances; and 30
 - (c) Subject to **subsection (2)** of this section, is not affected by any change of ownership of the property.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 50 (1)–(3)

53. Registration of charge created by restraining order—(1) Where a charge is created by **section 52** of this Act on property of a particular kind, and the provisions of any New Zealand enactment provide for the registration of title to, or charges over, property of that kind, the applicant for the pecuniary penalty order secured by that charge may cause the charge to be registered under the provisions of that enactment. 35
40

(2) If the charge is registered under **subsection (1)** of this section, a person who purchases or acquires an interest in the property after the registration of the charge shall, for the

purposes of **section 52 (2) (f)** of this Act, be deemed to have notice of the charge at the time of the purchase or acquisition.

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 50 (4)

54. Registration of restraining orders—(1) Where a
5 restraining order applies to property of a particular kind, and the provisions of any New Zealand enactment provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions shall, if requested to do so by the applicant for the restraining
10 order, record on the register the particulars of the restraining order.

(2) If the particulars are so recorded on the register, any person who subsequently deals with the property shall, for the purposes of **section 55** of this Act, be deemed to have notice of
15 the restraining order at the time of the dealing.

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 51

55. Contravention of restraining orders—(1) Every person commits an offence who, knowing that a restraining order has been made in respect of property, disposes or
20 otherwise deals with the property in contravention of the order.

(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
25 not exceeding 2 years or a fine not exceeding \$20,000;

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

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 52

56. Bankruptcy—(1) Where, after the Official Assignee has
30 been directed by an order under **section 48 (1)** of this Act to pay an amount to the Crown out of property of a person, 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—

35 (a) Shall refrain from taking action to sell or dispose of the property pursuant to that direction; and

(b) Shall not pay the Crown any money pursuant to that direction,—

until the petition has been withdrawn, or has been disposed of.

40 (2) Where—

(a) Property of a person is in the custody and control of the Official Assignee in accordance with a restraining order; and

(b) The person becomes bankrupt,—
the property shall cease to be in the custody and control of the Official Assignee under this Act and shall be deemed to be vested in the Assignee of the bankrupt's property under section 42 of the Insolvency Act 1967. 5

(3) Notwithstanding anything in section 87 (2) of the Insolvency Act 1967, a pecuniary penalty order made against any person shall be provable in the bankruptcy of that person. 10

Cf. Proceeds of Crime Act 1987 (Aust.), s. 53

57. Official Assignee not liable for payment of rates, etc., on property subject to restraining order—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 property in the custody and control of the Official Assignee pursuant to a restraining order— 15

(a) Except where the rates, land tax, or statutory charge fall due on or after the date of the restraining order; and 20

(b) Where **paragraph (a)** of this subsection applies, only to the extent of the rents and profits received by the Official Assignee in respect of the property on or after that date. 25

Cf. Proceeds of Crime Act 1987 (Aust.), s. 54 (3)

58. Fees payable to Official Assignee—Where the Official Assignee—

(a) Takes custody and control of property pursuant to a restraining order; and 30

(b) Complies with—

(i) Any direction given under **section 48 (1)** of this Act in respect of that property; or

(ii) Any direction given pursuant to **section 51** of this Act in respect of that property,— 35

the Official Assignee shall be entitled to receive, in respect of the exercise of the Official Assignee's functions under this Act in respect of that property, such fees as may be prescribed.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 55

Revocation and Termination of Restraining Orders

- 59. Revocation of restraining order**—(1) Where a Court has made a restraining order against a person's property, the Court may, on application by that person, revoke the order if—
- 5 (a) The person gives to the Court satisfactory undertakings concerning the person's property; or
 - (b) Where the order was made in respect of that person's conviction of a serious offence or the alleged commission by that person of a serious offence, the person gives to the Court satisfactory security for the payment of any pecuniary penalty that may be imposed on the person under this Act in respect of the offence or a related serious offence.
- (2) A person who makes an application under **subsection (1)** of this section in relation to a restraining order shall serve notice of that application on the Solicitor-General and, where the order directed the Official Assignee to take custody and control of the property, the Official Assignee.

Cf. Proceeds of Crime Act 1987 (Aust.) ss. 56, 58 (2)

- 60. Duration and termination of restraining order**—
- 20 (1) Subject to **subsections (2) and (3)** of this section and to **section 61** of this Act, every restraining order shall expire at the end of the period of 6 months after the making of the order, and, on the expiry of a restraining order, that order, and any ancillary
 - 25 order made under **section 44** of this Act in relation to that order, shall cease to be in force.
 - (2) Where a restraining order is made in reliance on the proposed charging of a person with a serious offence, the order shall cease to be in force at the end of the period of 48 hours
 - 30 after the making of the order if the person has not been charged with the offence, or a related serious offence, before the period expires.
 - (3) Where a restraining order is made—
 - 35 (a) In reliance on a person's conviction of a serious offence or the charging of a person with such an offence; or
 - (b) In reliance on the proposed charging of a person with a serious offence and the person is, within the period of 48 hours after the making of that order, charged with the offence or a related serious offence,—
 - 40 the following provisions shall apply:
 - (c) If, before the order would otherwise expire under **subsection (1)** of this section, the charge is withdrawn and the person is not charged with a related serious

- offence by the time the charge is withdrawn, the restraining order shall cease to be in force when the charge is withdrawn:
- (d) If, before the order would otherwise expire under **subsection (1)** of this section, the person is acquitted of the charge or the conviction is quashed and the person has not been charged with a related serious offence by the time of the acquittal or quashing, the restraining order shall cease to be in force when the acquittal or quashing occurs:
- (e) If a Court makes a confiscation order in reliance on the person's conviction of the offence or a related serious offence, and the confiscation order is satisfied or otherwise ceases to be in force, the restraining order shall cease to be in force when that order is satisfied or otherwise ceases to be in force, unless, at that time,—
- (i) An application for another confiscation order in respect of the person's conviction of the offence or a related serious offence awaits determination; or
- (ii) Another confiscation order in respect of the person's conviction of the offence or a related serious offence is in force:
- (f) If a Court refuses an application for a confiscation order made in reliance on the person's conviction of the offence or a related serious offence, the restraining order ceases to be in force when the Court refuses the application unless, at that time,—
- (i) An application for another confiscation order in respect of the person's conviction of the offence or a related serious offence awaits determination; or
- (ii) Another confiscation order in respect of the person's conviction of the offence or a related serious offence is in force:
- (g) If, before the restraining order would otherwise expire under **subsection (1)** of this section, an application is made to a Court under **section 61** of this Act for an order extending the period of operation of the restraining order, and the application is granted, the restraining order shall cease to be in force at such time as is specified in the Court's order under that section.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 57 (1), (2)

61. Extension of operation of restraining order—

(1) Where a Court has made a restraining order against a person's property, the Solicitor-General or a Crown Solicitor may, before that order expires under **section 60 (1) or section 60 (2)**
 5 **(g)** of this Act, apply to that Court for an extension, or a further extension, of the period of operation of the restraining order.

(2) Where an application is made under **subsection (1)** of this section, and the restraining order is still in force, the Court may, by order, extend the operation of the restraining order
 10 for a period not exceeding 6 months if the Court is satisfied that there are reasonable grounds for believing—

- (a) That a forfeiture order will still be made in respect of the property or part of the property; or
- 15 (b) That a pecuniary penalty order will still be made against the person in respect of whose conviction or alleged commission of a serious offence the restraining order was made.

(3) On making any order under **subsection (2)** of this section, the Court may give any additional directions it considers
 20 appropriate in relation to the operation of the restraining order, including a direction specifying whether all or part of the property is to remain subject to the restraining order during the extended period of operation.

(4) An applicant for an order under **subsection (2)** of this section shall serve notice of the application on any person
 25 whose property is the subject of the application, and that person shall be entitled to appear and to adduce evidence at the hearing of the application.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 57 (3), (4)

30

PART V

INFORMATION GATHERING POWERS

Interpretation

62. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

35 “Bankers’ books” means any accounting records used in the ordinary course of banking;

“Property-tracking document”, in relation to a drug-dealing offence, means—

- 40 (a) A document relevant to identifying, locating, or quantifying property of a person who committed the offence; or

(b) A document relevant to identifying, locating, or quantifying tainted property in relation to the offence.

Production Orders

63. Application for production order—(1) A 5
commissioned officer of the Police may apply to a Judge of the High Court for a production order under **section 64** of this Act in any case where—

(a) Either—

(i) A person has been convicted of a drug-dealing 10
offence; or

(ii) The officer has reasonable grounds for believing that a person has committed a drug-dealing offence; and

(b) The officer has reasonable grounds for believing that a 15
person has possession or control of one or more property-tracking documents in relation to the offence.

(2) Every application under this section shall be made in 20
writing and on oath, and shall contain the following particulars:

(a) The grounds on which the application is made:

(b) A description of the document or documents production 25
of which is sought:

(c) A description of the property or type of property to which the document or documents are believed to relate: 25

(d) The reasons why it is considered necessary to obtain a production order in relation to the identification, location, or quantification of that property.

Cf. *Proceeds of Crime Act 1987* (Aust.), s. 66 (1)

30

64. Court may make production order—(1) Where an application is made under **section 63** of this Act to a Judge of the High Court for a production order against a person, the Judge may, subject to **subsection (4)** of this section, make an order that the person—

35

(a) Produce to a member of the Police any specified document or class of documents of the kind referred to in **section 63 (1) (b)** of this Act that are in the person's possession or control; or

(b) Make available to a member of the Police, for inspection, 40
any specified document or class of documents of that kind that are in the person's possession or control—

if the Judge is satisfied that there are reasonable grounds for making the order.

(2) A Judge shall not make an order under **subsection (1)** of this section unless the application contains, or the applicant otherwise supplies to the Judge, such information as the Judge requires concerning the grounds on which the application is sought.

(3) Where, on an application under **section 63** of this Act for a production order in respect of an offence, the Judge is satisfied that there are reasonable grounds to believe that—

(a) The person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(b) Property specified in the application is subject to the effective control of that person,—

the Judge may, having regard to the matters referred to in **section 27 (2)** of this Act, treat any document relevant to identifying, locating, or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) An order under **subsection (1) (a)** of this section shall not be made in respect of bankers' books.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 66 (2)–(6)

65. Time and place of production—A production order requiring a person to produce or make available any document to a member of the Police—

(a) Shall specify the time when the document is to be produced or made available:

(b) May specify—

(i) The place where the document is to be produced or made available:

(ii) The member of the Police to whom the document is to be produced or made available.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 66 (7), (8)

66. Powers and duties of police officers under production order—(1) A member of the Police to whom a document is produced or made available for inspection in accordance with a production order under **section 64** of this Act may do one or more of the following:

(a) Inspect the document:

(b) Take extracts from the document:

(c) Make copies of the document:

(d) In the case of an order under **subsection (1)(a)** of that section, retain the document for as long as is reasonably necessary for the purposes of this Act.

(2) Where a member of the Police retains a document pursuant to a production order, the member of the Police shall, on request by the person to whom the order was addressed,—

(a) Give the person a copy of the document certified by the member of the Police, in writing, to be a true copy of the document; or

(b) Permit the person to inspect, take extracts from, and make copies of, the document.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 66 (9)–(11)

67. Production order to operate notwithstanding any other enactment or rule of law—(1) **Section 64** of this Act applies notwithstanding any enactment, or any rule of law, that obliges any person to maintain secrecy in relation to, or not to disclose, any matter, and any compliance with an order made under that section is not a breach of the relevant obligation of secrecy or non-disclosure or of the enactment or rule of law by which the obligation is imposed.

(2) No person shall be excused from producing or making available any document, when required to do so by a production order,—

(a) On the ground that the production of that document could or would tend to incriminate that person or subject that person to any penalty or forfeiture; or

(b) On the ground of any other privilege that could otherwise be claimed by that person in relation to the production of the document in any proceedings in a Court.

(3) Where a person produces or makes available a document pursuant to a production order, neither the production or making available of the document, nor any information, document, or thing obtained as a consequence of the production or making available of the document, is admissible against that person in any criminal proceedings except for an offence against **section 69** of this Act.

(4) For the purposes of **subsection (3)** of this section, proceedings on an application for a restraining order, a forfeiture order, or a pecuniary penalty order are not criminal proceedings.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 66 (12)–(14)

68. Variation of production orders—(1) Where a Judge of the High Court makes an order under **section 64 (1) (a)** of this Act, the person against whom the order is made may apply to the Judge or to another Judge of the High Court for variation of
5 the order.

(2) Where, on hearing any application made under **subsection (1)** of this section by any person in respect of any document, the Judge is satisfied that the document is essential to the business activities of the person, the Judge may vary the production
10 order in respect of that document so that the order requires the document to be made available for inspection in accordance with **section 64 (1) (b)** of this Act.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 67

69. Failure to comply with production order—(1) Every
15 person commits an offence against this section who, being a person against whom a production order is made,—

(a) Fails, without reasonable excuse, to comply with the order; or

(b) In purported compliance with the order, produces or
20 makes available to a member of the Police a document which the person knows is false or misleading in a material particular, where that person fails to indicate to the member of the Police the respect in which the document is false or misleading.

(2) Every person who commits an offence against this section
25 is liable on summary conviction,—

(a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding
\$5,000:

(b) In the case of a body corporate, to a fine not exceeding
30 \$20,000.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 68

Monitoring Orders

70. Monitoring orders—(1) A Judge of the High Court
35 may, on the application of a commissioned officer of the Police, make an order directing a financial institution to supply to the Commissioner of Police information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(2) A Judge may make a monitoring order only if the Judge is
40 satisfied that there are reasonable grounds for believing that the person in respect of whom the order is sought—

- (a) Has committed, or is about to commit, a drug-dealing offence; or
- (b) Has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a drug-dealing offence. 5
- (3) Every monitoring order shall specify—
 - (a) The name or names in which the account is believed to be held; and
 - (b) The class of information that the institution is required to supply; and 10
 - (c) The manner in which the information is to be supplied; and
 - (d) The period for which the order is to be in force.
- (4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order (being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the day of the order). 15
- (5) A reference in this section to a transaction conducted through an account includes a transaction through the facility of a safety deposit box. 20

Cf. Proceeds of Crime Act 1987 (Aust.), s. 73 (1)–(6), (8)

71. Failure to comply with monitoring order—Every financial institution commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 if, where that financial institution has been given notice of a monitoring order, that financial institution— 25

- (a) Fails, without reasonable excuse, to comply with the order; or
- (b) Knowingly supplies information that is false or misleading in purported compliance with the order. 30

Cf. Proceeds of Crime Act 1987 (Aust.), s. 73 (7)

72. Monitoring order not to be disclosed—(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except— 35

- (a) The Commissioner of Police or a member of the Police who is authorised by the Commissioner to receive the information; or
- (b) An officer or agent of the institution, for the purpose of ensuring compliance with the order; or 40
- (c) A barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(2) No person referred to in **paragraph (a) of subsection (1)** of this section to whom disclosure of the existence or operation of a monitoring order has been made shall disclose the existence or operation of the order except to another person of the kind
 5 referred to in that subsection, for the purpose of the performance of the first-mentioned person's duties.

(3) No person referred to in **paragraph (b) of subsection (1)** of this section to whom disclosure of the existence or operation of a monitoring order has been made shall disclose the existence or
 10 operation of the order except to another person of the kind referred to in that subsection, for the purpose of ensuring that the order is complied with or obtaining legal advice or representation in relation to the order.

(4) No person referred to in **paragraph (c) of subsection (1)** of this
 15 section to whom disclosure of the existence or operation of a monitoring order has been made shall disclose the existence or operation of the order except to a person of the kind referred to in that subsection for the purpose of giving legal advice or making representations in relation to the order.

20 (5) Nothing in **subsections (1) to (4)** of this section shall prevent the disclosure of the existence or operation of a monitoring order in connection with, or in the course of, proceedings before a Court.

Cf. *Proceeds of Crime Act 1987 (Aust.)*, s. 74 (1)-(4)

25 **73. Offence to disclose existence or operation of monitoring order**—Every person who knowingly contravenes any of **subsections (1) to (4)** of **section 72** of this Act commits an offence and is liable on summary conviction,—

30 (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000:

(b) In the case of a body corporate, to a fine not exceeding \$20,000.

PART VI

35 MISCELLANEOUS PROVISIONS

Appeals

40 **74. Appeals**—(1) In this section, “relevant conviction”, in relation to a forfeiture order, a pecuniary penalty order, or an order under **section 27 (3)** of this Act, means the conviction of a serious offence which was relied on to support the order.

(2) A person who has an interest in property against which a forfeiture order is made may appeal against that order as if the

order were a sentence imposed on that person in respect of the relevant conviction.

(3) A person against whom a pecuniary penalty order is made may appeal against that order as if the order were a sentence imposed on the person in respect of the relevant conviction. 5

(4) Where a Court makes a pecuniary penalty order and makes an order under **section 27 (3)** of this Act declaring that certain property is available to satisfy the order, a person who has an interest in that property may appeal against the order under **section 27 (3)** of this Act as if the order were a sentence imposed on the person in respect of the relevant conviction. 10

(5) The Solicitor-General may appeal against a forfeiture order, a pecuniary penalty order, or an order under **section 27 (3)** of this Act, or against the refusal of a Court to make any such order, as if the order or refusal were a sentence imposed in respect of the relevant conviction. 15

Cf. *Proceeds of Crime Act 1987* (Aust.), s. 100

75. Procedure on appeal—(1) An appeal under **section 74** of this Act against a forfeiture order or a pecuniary penalty order or an order under **section 27 (3)** of this Act, or against the refusal of a Court to make any such order, shall be made to the Court of Appeal, and the provisions of Part XIII of the *Crimes Act 1961* shall, with all necessary modifications, apply as if the appeal were an appeal under section 383 of that Act. 20 25

(2) On an appeal under **section 74** of this Act against a forfeiture order, a pecuniary penalty order, or an order under **section 27 (3)** of this Act, the order may be confirmed, discharged, or varied.

Miscellaneous Provisions 30

76. Dealings with forfeited property—(1) Every person commits an offence against this section who, knowing that a forfeiture order has been made in respect of any property (being property title to which is passed by registration on a register maintained pursuant to any New Zealand enactment), and knowing that the forfeiture order remains in force, 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. 35

(2) Every person who commits an offence against this section is liable on conviction on indictment,— 40

(a) In the case of an individual, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$20,000:

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

Cf. Proceeds of Crime Act 1987 (Aust.), s. 97

77. Standard of proof—Subject to **section 12** of this Act, any question of fact to be determined by a Court or a Judge on an application under this Act is to be determined on the balance of
10 probabilities.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 99

78. Costs—Where—

(a) A person brings or appears in proceedings under this Act in order—

15 (i) To prevent a forfeiture order or restraining order being made against property of the person; or
(ii) To have property of the person excluded from a forfeiture order or restraining order; and

(b) The person is successful in the proceedings; and

20 (c) The Court is satisfied that the person was not involved in the commission of the offence in respect of which the order was sought or made,—

25 the Court may order the Crown to pay all the costs incurred by the person in connection with the proceedings or such part of those costs as the Court thinks fit.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 101

79. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

30 (a) Prescribing the forms of applications, notices, and other documents for the purposes of this Act, and requiring the use of such forms:

35 (b) Prescribing the procedure for the service of notices and other documents for the purposes of this Act, and providing for service to be dispensed with in such circumstances as are specified in the regulations:

(c) Prescribing the fees payable to the Official Assignee under **section 58** of this Act:

40 (d) Providing for such other matters as are contemplated by or are necessary for giving full effect to this Act and for its due administration.

80. Rules of procedure—The Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of Courts in proceedings under this Act.

81. Operation of other laws not affected—Nothing in this Act limits or restricts the operation of any other enactment providing for the forfeiture of property or the imposition of a pecuniary penalty. 5

82. Summary Proceedings Act 1957 amended—Part II of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, after the item relating to the Post Office Act 1959 (as inserted by section 237 (2) of that Act), the following item: 10

“The Proceeds of Crime Act 1990	55	Contravention of restraining orders	15
	76	Dealings with forfeited property.”	