

Criminal Proceeds (Recovery) Amendment Bill

Government Bill

As reported from the committee of the whole House

Criminal Proceeds (Recovery) Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Kiritapu Allan

Criminal Proceeds (Recovery) Amendment Bill

Government Bill

Contents

		Page
1	Title	4
2	Commencement	4
Part 1		
Amendments to Criminal Proceeds (Recovery) Act 2009		
3	Principal Act	4
4	Section 5 amended (Interpretation)	5
5	New sections 5A and 5B inserted	5
	5A Meanings of associate and organised criminal group	5
	5B Meanings of legitimate property, convertible legitimate property, and exempt proportion	6
6	Section 6 amended (Meaning of significant criminal activity)	7
7	New section 7A and cross-heading inserted	7
<i>Savings, transitional, and related provisions</i>		
	7A Transitional, savings, and related provisions	7
8	Section 13 amended (No identifiable owner required for certain proceedings relating to specific property)	7
9	Section 15 amended (No criminal proceedings required for civil forfeiture order or in registering foreign forfeiture order)	7
10	Section 16 amended (Quashing criminal proceedings does not impact on civil forfeiture)	8
11	Section 17 amended (Multiple forfeiture orders and foreign forfeiture orders)	8
12	Section 18 amended (Applying for restraining order)	8
13	Section 20 amended (Court to which application for restraining order made)	8

Criminal Proceeds (Recovery) Amendment Bill

14	Section 24 amended (Making restraining order relating to specific property)	8
14	<u>Section 24 amended (Making restraining order relating to specific property)</u>	8
15	New section 24A inserted (Making restraining order relating to specific property of associates of certain persons connected to organised criminal group)	8
	24A Making restraining order relating to specific property of associates of certain persons connected to organised criminal group	9
16	Section 30 amended (Excluding severable interest from restrained property)	10
17	Cross-heading above section 49 replaced	10
	<i>Type 1 assets forfeiture order: application and making</i>	
18	Section 49 amended (Application for assets forfeiture order to specify proposed forfeited property, grounds, respondent (if any), and persons with interests (if known))	10
19	Cross-heading above section 50 repealed	10
20	Section 50 amended (Making assets forfeiture order)	10
21	New sections 50A to 50D and cross-heading inserted	11
	<i>Type 2 assets forfeiture order: application and making</i>	
	50A Contents of application for type 2 assets forfeiture order	11
	50B Convertible legitimate property presumed to be property stated in application	12
	50C Making type 2 assets forfeiture order	12
	50D Matters to be specified in type 2 assets forfeiture order	13
22	New cross-heading above section 51 inserted	14
	<i>Exclusion from type 1 or type 2 assets forfeiture order</i>	
23	Section 51 amended (Exclusion of respondent's property from assets forfeiture order because of undue hardship)	14
24	Cross-heading above section 52 replaced	14
	<i>Profit forfeiture order: application and making</i>	
25	Cross-heading above section 53 repealed	14
26	Section 54 amended (High Court must determine maximum recoverable amount)	14
27	Section 58 renumbered and repositioned (Court may treat effective control over property as interest in property)	14
28	Section 60 amended (Civil forfeiture order relating to land)	14
29	Section 66 amended (Making order for relief from civil forfeiture order where person has interest and was not involved in significant criminal activity)	15

Criminal Proceeds (Recovery) Amendment Bill

30	Section 67 amended (Making order for relief from civil forfeiture order on grounds of undue hardship)	15
31	Section 82 amended (Discharge of assets forfeiture order by Official Assignee)	15
32	New section 84A and cross-heading inserted	15
	<i>Discharge of civil forfeiture order applying to interests in KiwiSaver scheme</i>	
	84A Discharge of civil forfeiture order applying to interests in KiwiSaver scheme	16
33	New section 109A and cross-heading inserted	16
	<i>Disclosure of source orders</i>	
	109A High Court may make disclosure of source order	16
34	Sections 112 and 113 replaced	17
	112 Return of seized property that is not subject of forfeiture order	18
	113 Disputed ownership, etc, of seized property to which section 112 applies	18
35	Section 152 amended (Failing to comply with orders and search warrants)	19
36	Section 163 amended (Privilege against self-incrimination no excuse)	19
37	Section 164 amended (Admissibility of evidence)	19
38	Section 165 replaced (Admissibility of self-incriminating statements)	19
	165 Admissibility of self-incriminating statement made in response to production or examination order	19
39	New section 165A inserted (Admissibility of self-incriminating statement made in response to disclosure of source order)	20
	165A Admissibility of self-incriminating statement made in response to disclosure of source order	21
39A	Section 166 amended (Admissibility of evidence given to court or Official Assignee)	21
40	Section 173 amended (Regulations)	21
41	Subpart 10 of Part 2 repealed	21
42	New Schedule 1 inserted	21

Part 2

Amendments to other Acts

Subpart 1—Amendments to KiwiSaver Act 2006

43	Principal Act	22
44	New section 6A inserted (Transitional, savings, and related provisions)	22
	6A Transitional, savings, and related provisions	22

45	Section 127 amended (Member's interest in KiwiSaver scheme not assignable)	22
46	New Schedule 1AA inserted	22
47	Schedule 1 amended	22
	Subpart 2—Amendments to Mutual Assistance in Criminal Matters Act 1992	
48	Principal Act	23
49	Section 2A amended (Certain investigations relating to civil proceedings deemed to be criminal investigations)	23
50	Section 2B amended (Certain civil proceedings deemed to be criminal proceedings)	23
	Subpart 3—Amendment to Sentencing Act 2002	
51	Principal Act	23
52	Section 142I amended (Determining ownership of property)	23
	Schedule 1	24
	New Schedule 1 inserted into Criminal Proceeds (Recovery) Act 2009	
	Schedule 2	26
	New Schedule 1AA inserted into KiwiSaver Act 2006	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Proceeds (Recovery) Amendment Act **2022**.

2 Commencement

- (1) This Act comes into force— 5
- (a) on a date set by Order in Council; or
- (b) to the extent not brought into force earlier, 12 months after Royal assent.
- (2) However, **sections 7, 32, 34, 38, 39A, and 42** and **subpart 1 of Part 2** come into force on the day after Royal assent.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

Part 1

Amendments to Criminal Proceeds (Recovery) Act 2009

3 Principal Act

This Part amends the Criminal Proceeds (Recovery) Act 2009. 15

4 Section 5 amended (Interpretation)

- (1) In section 5(1), replace the definition of **assets forfeiture order** with:

assets forfeiture order means—

- (a) a type 1 assets forfeiture order; or
- (b) a type 2 assets forfeiture order

5

- (2) In section 5(1), insert in their appropriate alphabetical order:

associate, in relation to a member of or participant in an organised criminal group, has the meaning given to it in **section 5A**

convertible legitimate property of a respondent has the meaning given to it in **section 5B**

10

disclosure of source order means an order made under **section 109A(1)**

exempt proportion, in relation to specific property of a respondent, has the meaning given to it in **section 5B**

legitimate property of a respondent has the meaning given to it in **section 5B**

15

organised criminal group has the meaning given to it in **section 5A**

threshold amount, for the purposes of sections 6(1)(b), **24A(1)(d) and (e)**, and **50C(1)(d) and (e)**, means \$30,000 or a prescribed amount that exceeds \$30,000

type 1 assets forfeiture order means an order made under section 50

20

type 2 assets forfeiture order means an order made under **section 50C**

- (3) In section 5(1), definition of **restraining order**, after “24,”, insert “**24A**,”.

- (4) In section 5(1), definition of **specific property**, after “identifiable owner”, insert “(subject to section 13)”.

5 New sections 5A and 5B inserted

25

After section 5, insert:

5A Meanings of associate and organised criminal group

Meaning of associate

- (1) In this Act, unless the context otherwise requires, **associate**, in relation to a member of or participant in an organised criminal group,—

30

- (a) means a person who—

- (i) is associated with the member or participant; and
- (ii) is not a mere acquaintance of the member or participant; and

- (b) includes another member of or participant in the organised criminal group (whether or not a mere acquaintance of the member or participant).

35

- (2) For the purposes of **subsection (1)**, a person is capable of being a participant in an organised criminal group whether or not the person shares the objective or objectives described in **subsection (3)** of the persons comprising the group.
- Meaning of organised criminal group* 5
- (3) In this Act, unless the context otherwise requires, **organised criminal group** means a group of 3 or more people who have as their objective, or one of their objectives, obtaining a material benefit from significant criminal activity.
- (4) In **subsection (3)**, **obtaining a material benefit from significant criminal activity** means obtaining, directly or indirectly, any privilege, pecuniary advantage, property, or other valuable consideration of any kind for— 10
- (a) engaging in that activity; or
- (b) doing any thing that forms part of engaging in that activity.
- (5) For the purposes of **subsection (3)**, a group of persons is capable of being an organised criminal group whether or not— 15
- (a) some of the persons in the group are subordinates or employees of others in the group; or
- (b) only some of the people involved in the group at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or 20
- (c) the membership of the group changes from time to time.
- Compare: 1961 No 43 ss 2(1) (definition of obtain a material benefit), 98A
- 5B Meanings of legitimate property, convertible legitimate property, and exempt proportion**
- Meaning of legitimate property* 25
- (1) In this Act, unless the context otherwise requires, **legitimate property** of a respondent—
- (a) means all property acquired by the respondent, including— 30
- (i) any property gifted or loaned to the respondent (including money available to the respondent by way of credit); and
- (ii) any property acquired by the respondent through another person acting for, on behalf of, or for the benefit of the respondent; but
- (b) does not include any property acquired as a result of, or directly or indirectly derived from, an activity that is engaged in by the respondent or any other person and is an offence. 35
- (2) For the purposes of **subsection (1)(b)**, a person **engages in an activity that is an offence** whether or not—
- (a) they have been charged with or convicted of an offence in connection with the activity; or

	(b) they have been acquitted of an offence in connection with the activity; or	
	(c) their conviction for an offence in connection with the activity has been quashed or set aside.	
	<i>Meaning of convertible legitimate property</i>	
(2A)	In this Act, unless the context otherwise requires, a respondent's convertible legitimate property , for their acquisition of specific property,—	5
	(a) is property that, at the relevant time before the acquisition, was the respondent's legitimate property that they were readily able to use for the acquisition; but	
	(b) excludes any of that legitimate property that they did not use for the acquisition.	10
	<i>Meaning of exempt proportion</i>	
(3)	In this Act, unless the context otherwise requires, exempt proportion , in relation to specific property of a respondent, means the proportion of the value of the specific property that they would have been able to acquire for reasonable market value if they had used only their convertible legitimate property for that acquisition.	15
6	Section 6 amended (Meaning of significant criminal activity)	
	In section 6(1)(b), replace “\$30,000” with “the threshold amount”.	
7	New section 7A and cross-heading inserted	20
	After section 7, insert:	
	<i>Savings, transitional, and related provisions</i>	
7A	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.	25
8	Section 13 amended (No identifiable owner required for certain proceedings relating to specific property)	
	Replace section 13(2) with:	
(2)	Subsection (1) does not apply to—	
	(a) proceedings for an order made under section 24A or a type 2 assets forfeiture order; or	30
	(b) proceedings to register a foreign restraining order.	
9	Section 15 amended (No criminal proceedings required for civil forfeiture order or in registering foreign forfeiture order)	
	In section 15, insert as subsection (2):	35

- (2) In this section, the significant criminal activity on which a type 2 assets forfeiture order is to be treated as being based is significant criminal activity in which any persons (as members ~~or participants of~~ or participants in the organised criminal group that is referred to in **section 50C(1)(a)**) have been involved at any time. 5
- 10 Section 16 amended (Quashing criminal proceedings does not impact on civil forfeiture)**
- After section 16(2), insert:
- (3) In this section, significant criminal activity is to be treated as the basis for a type 2 assets forfeiture order or an application for an order of that kind if it is significant criminal activity in which any persons (as members ~~or participants of~~ or participants in the organised criminal group that is referred to in **section 50C(1)(a)**) have been involved at any time. 10
- 11 Section 17 amended (Multiple forfeiture orders and foreign forfeiture orders)** 15
- In section 17(1)(a), replace “assets” with “~~type 1~~ type 1 assets”.
- 12 Section 18 amended (Applying for restraining order)**
- In section 18(a), after “24”, insert “, **24A**,”.
- 13 Section 20 amended (Court to which application for restraining order made)** 20
- In section 20(a), after “24”, insert “, **24A**,”.
- 14 ~~Section 24 amended (Making restraining order relating to specific property)~~**
- In the heading to section 24, after “**specific**”, insert “**potentially tainted**”.
- 14 Section 24 amended (Making restraining order relating to specific property)** 25
- In the heading to section 24, after “**specific property**”, insert “**that is potentially tainted**”.
- 15 New section 24A inserted (Making restraining order relating to specific property of associates of certain persons connected to organised criminal group)** 30
- After section 24, insert:

24A Making restraining order relating to specific property of associates of certain persons connected to organised criminal group

Grounds and making of order

- (1) A court hearing an application for a restraining order relating to specific property of the respondent may make an order under this section if satisfied that it has reasonable grounds to believe each of the following: 5
- (a) when the respondent acquired the specific property, the respondent was an associate of 1 or more members of or participants in an organised criminal group: 10
 - (b) all or any of those members or participants have, as members of or participants in the group,—
 - (i) been involved in significant criminal activity at any time; or
 - (ii) unlawfully benefited from significant criminal activity at any time: 15
 - (c) the respondent's convertible legitimate property for their acquisition of the specific property would have been insufficient to enable them to acquire the specific property at or near reasonable market value: 20
 - (d) if the application relates to a single item of specific property, the amount calculated in accordance with the formula is at least the threshold amount: 25
 - (e) if the application relates to more than 1 item of specific property, the sum of the amounts calculated in accordance with the formula for each item of specific property is at least the threshold amount.
- (1A) The **formula** is— 25
- $$x - y$$
- where—
- x is the reasonable market value of the specific property when the application was made
 - y is the value represented by the exempt proportion of the specific property when the application was made. 30
- (2) The restraining order that the court may make is an order that the property to which it applies (the **restrained property**)—
- (a) is not to be disposed of, or dealt with, other than as provided for in the restraining order; and
 - (b) is to be under the Official Assignee's custody and control. 35
- Formal valuation not required and estimate of relevant values sufficient*
- (2A) In an application made for the purposes of this section, the Commissioner is not required to provide the court with any formal valuation, and may provide estimates, as evidence of any of the following (the **relevant property values**):

- (a) the value of any property that the Commissioner alleges is the respondent's convertible legitimate property for the respondent's acquisition of the specific property to which the application relates:
- (b) the value of any property, at the relevant time before the respondent acquired the specific property, that the Commissioner alleges is excluded by **paragraph (b)** of the definition of convertible legitimate property in **section 5B(2A)**: 5
- (c) the reasonable market value of specific property at the following dates:
- (i) the date on which it was acquired by the respondent:
- (ii) the date of the application. 10
- (2B) For the purposes of this section, the court may rely on estimates provided by the Commissioner as evidence of the relevant property values.

16 Section 30 amended (Excluding severable interest from restrained property)

- (1) After section 30(2)(b), insert: 15
- (ba) if the order was or is to be made under **section 24A**, that the applicant has not unlawfully benefited from significant criminal activity in which any persons (as members ~~or participants of~~ of or participants in the organised criminal group that is referred to in **section 24A(1)(a)**) have been involved at any time; and 20
- (2) In section 30(3)(b), replace “the significant criminal activity or qualifying” with “any significant criminal activity or the qualifying”.

17 Cross-heading above section 49 replaced

Replace the cross-heading above section 49 with:

Type 1 assets forfeiture order: application and making 25

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

- (1) Replace the heading to section 49 with “**Contents of application for type 1 assets forfeiture order**”. 30
- (2) In section 49, replace “an assets” with “a type 1 assets”.

19 Cross-heading above section 50 repealed

Repeal the cross-heading above section 50.

20 Section 50 amended (Making assets forfeiture order)

- (1) In the heading to section 50, after “**Making**”, insert “**type 1**”. 35

- (2) In section 50(1), (3), (4), and (5), replace “an assets” with “a type 1 assets” in each place.
- (3) After section 50(2), insert:
- (2A) The specific property is presumed to be tainted property if the Commissioner shows, on the balance of probabilities, that the respondent was served with a disclosure of source order in relation to that property and that the respondent— 5
- (a) failed to comply with the order; or
- (b) in purported compliance with the order, made a statement that is false or misleading in a material particular.
- (2B) The presumption may be rebutted if the respondent shows, on the balance of probabilities, that— 10
- (a) the respondent had a reasonable excuse for failing to comply with the order or for making the false or misleading statement (as the case may be); or
- (b) the specific property is not tainted property. 15
- (2BA) The presumption applies (so long as it is not rebutted) whether or not the respondent has been convicted of an offence against section 152.
- (2C) The presumption does not apply if the Court is satisfied that it would not be in the interests of justice for the presumption to apply.
- (4) In section 50(5), replace “the assets” with “the type 1 assets”. 20

21 New sections 50A to 50D and cross-heading inserted

After section 50, insert:

Type 2 assets forfeiture order: application and making

50A Contents of application for type 2 assets forfeiture order

- (1) The Commissioner must specify each of the following in an application for a type 2 assets forfeiture order: 25
- (a) the respondent;
- (b) the specific property of the respondent to which the application relates;
- (c) the reasonable market value of the specific property, as determined by the Commissioner, at the following dates: 30
- (i) the date on which it was acquired by the respondent;
- (ii) the date of the application;
- (d) the property that the Commissioner alleges was the respondent’s convertible legitimate property for the respondent’s acquisition of the specific property (*see section 50B*): 35

(e)	the value of the alleged convertible legitimate property, as determined by the Commissioner, at the relevant time before the respondent acquired the specific property:	
(ea)	the property that the Commissioner alleges is excluded legitimate property:	5
(eb)	the value of the alleged excluded legitimate property, as determined by the Commissioner, at the relevant time before the respondent acquired the specific property:	
(f)	any persons other than the respondent who, to the knowledge of the Commissioner, have an interest in the specific property to which the application relates.	10
(2)	In this section, excluded legitimate property means property of the respondent that is excluded by paragraph (b) of the definition of convertible legitimate property in section 5B(2A) .	
50B	Convertible legitimate property presumed to be property stated in application	15
(1)	For the purposes of section 50C (including when determining the exempt proportion of specific property of the respondent), the respondent's convertible legitimate property for their acquisition of specific property is presumed to consist of the property that the application for the type 2 assets forfeiture order states is that convertible legitimate property.	20
(2)	However, that presumption may be rebutted by the respondent to the extent that the respondent satisfies the court, on the balance of probabilities, that the respondent's convertible legitimate property for the acquisition consisted of—	
(a)	some or all of the property stated in the application and other property;	25
	or	
(b)	other property not stated in the application.	
50C	Making type 2 assets forfeiture order	
(1)	The High Court must make a type 2 assets forfeiture order, in respect of specific property of a respondent to which an application for the order relates, if satisfied, on the balance of probabilities, that,—	30
(a)	when the respondent acquired the specific property, the respondent was an associate of 1 or more members of or participants in an organised criminal group; and	
(b)	all or any of those members or participants have, as members of or participants in the group,—	35
(i)	been involved in significant criminal activity at any time; or	
(ii)	unlawfully benefited from significant criminal activity at any time; and	

- (c) the respondent's convertible legitimate property for their acquisition of the specific property would have been insufficient to enable them to acquire the specific property at or near reasonable market value; and
- (d) if the application relates to a single item of specific property, the amount calculated in accordance with the formula is at least the threshold amount; and 5
- (e) if the application relates to more than 1 item of specific property, the sum of the amounts calculated in accordance with the formula for each item of specific property is at least the threshold amount.
- (2) However, the Court must not make a type 2 assets forfeiture order in respect of specific property if— 10
- (a) the respondent satisfies the Court, on the balance of probabilities, that the specific property is not tainted property; or
- (b) the Court is satisfied that it would not be in the interests of justice to make the order. 15
- (3) *See also* section 51 (exclusion of respondent's property from assets forfeiture order because of undue hardship) and sections 61 to 69 (which relate to relief from a civil forfeiture order for persons other than a respondent).
- (4) The **formula** is— 20
- $$x - y$$
- where—
- x is the reasonable market value of the specific property when the application was made
- y is the value represented by the exempt proportion of the specific property when the application was made. 25
- 50D Matters to be specified in type 2 assets forfeiture order**
- (1) The Court must specify in a type 2 assets forfeiture order the specific property to which the order applies (the **subject property**) and that the subject property— 30
- (a) vests in the Crown absolutely to the extent of the interest specified in the order; and
- (b) is in the custody and control of the Official Assignee.
- (2) The interest that vests in the Crown is to be expressed as a proportion of the value of the subject property that remains after excluding the exempt proportion (if any) of that property. 35
- (3) To the extent that the respondent satisfies the Court, on the balance of probabilities, that a proportion of the value of the subject property is not attributable to significant criminal activity,—

- (a) that proportion is to be treated as the exempt proportion for the purpose of **subsection (2)**; and
- (b) the definition in **section 5B(3)** does not apply for that purpose.
- (4) The proportion of the value that is not attributable to significant criminal activity is the proportion of that value that— 5
- (a) was not acquired by the respondent as a result of significant criminal activity engaged in by any person; and
- (b) was not directly or indirectly derived by the respondent from significant criminal activity engaged in by any person.
- 22 New cross-heading above section 51 inserted** 10
- Before section 51, insert:
- Exclusion from type 1 or type 2 assets forfeiture order*
- 23 Section 51 amended (Exclusion of respondent’s property from assets forfeiture order because of undue hardship)**
- In section 51(2)(c), before “the circumstances”, insert “in the case of a type 1 assets forfeiture order,”. 15
- 24 Cross-heading above section 52 replaced**
- Replace the cross-heading above section 52 with:
- Profit forfeiture order: application and making*
- 25 Cross-heading above section 53 repealed** 20
- Repeal the cross-heading above section 53.
- 26 Section 54 amended (High Court must determine maximum recoverable amount)**
- (1) In section 54(1)(b) and (3), replace “an assets” with “a type 1 assets”.
- (2) In section 54(3), replace “the assets” with “the type 1 assets”. 25
- 27 Section 58 renumbered and repositioned (Court may treat effective control over property as interest in property)**
- (1) Renumber section 58 as **section 17A** and reposition it after section 17.
- (2) In section 58(4), replace “profit forfeiture order and in any restraining order” with “restraining order, any type 2 assets forfeiture order, or any profit forfeiture order”. 30
- 28 Section 60 amended (Civil forfeiture order relating to land)**
- In section 60(1), after “section 50”, insert “, **50C, 50D**,”.

29 Section 66 amended (Making order for relief from civil forfeiture order where person has interest and was not involved in significant criminal activity)

Replace section 66(1)(b) with:

- (b) has not unlawfully benefited from the following significant criminal activity: 5
- (i) in the case of a type 2 assets forfeiture order or proposed type 2 assets forfeiture order, any significant criminal activity in which any persons (as members ~~or participants of~~ of or participants in the organised criminal group that is referred to in **section 50C(1)(a)** have been involved at any time: 10
- (ii) in any other case, the significant criminal activity to which the civil forfeiture order or proposed civil forfeiture order relates.

30 Section 67 amended (Making order for relief from civil forfeiture order on grounds of undue hardship) 15

- (1) In section 67(2)(c), replace “the significant criminal activity to which the property relates” with “any significant criminal activity to which the civil forfeiture order or proposed civil forfeiture order relates”.
- (2) In section 67(2)(d), replace “the significant criminal activity to which the property or order relates” with “any significant criminal activity to which the civil forfeiture order or proposed civil forfeiture order relates”. 20

31 Section 82 amended (Discharge of assets forfeiture order by Official Assignee)

After section 82(3), insert:

- (4) If the assets forfeiture order is a type 2 assets forfeiture order, the property may be disposed of only to the extent of the interest specified in the order. 25
- (5) If that interest is not severable from the property to which it relates, that property may be wholly disposed of, but— 30
- (a) the money resulting from the disposal that is to be applied under subsection (1) is limited to the proportion of the realised amount that is equal to the proportion referred to in **section 50D(2)**; and
- (b) any remaining money must be paid to the former interest holder.

32 New section 84A and cross-heading inserted

After section 84, insert:

*Discharge of civil forfeiture order applying to interests in KiwiSaver scheme***84A Discharge of civil forfeiture order applying to interests in KiwiSaver scheme**

- (1) To the extent that the property specified in a civil forfeiture order is an interest held by a person as a member of a KiwiSaver scheme, the interest must be disposed of in accordance with this section. 5
- (2) At the time that the property is required to be disposed of under section 82 or 83, the Official Assignee must notify the manager of the scheme.
- (3) As soon as practicable after the Official Assignee notifies the manager, the manager must arrange for an amount up to the member's accumulation to be released into the custody and control of the Official Assignee. 10
- (4) In this section,—
- KiwiSaver scheme** has the meaning given to it in section 4(1) of the KiwiSaver Act 2006
- manager**, in relation to a KiwiSaver scheme, means the person who is the manager (as defined in section 6(1) of the Financial Markets Conduct Act 2013) of the scheme 15
- member's accumulation** has the meaning given to it in section 4(1) of the KiwiSaver Act 2006.

33 New section 109A and cross-heading inserted 20

After section 109, insert:

*Disclosure of source orders***109A High Court may make disclosure of source order**

- (1) On application by the Commissioner, the High Court may make an order (a **disclosure of source order**) requiring a respondent to whom a section 24 restraining order relates to give the Commissioner, in the prescribed form and within the period specified in the order, the source information. 25
- (1A) The Commissioner cannot apply for a disclosure of source order on or after applying for a type 1 assets forfeiture order relating to the same property to which the restraining order applies. 30
- (2) The Court may make a disclosure of source order only if satisfied that there are reasonable grounds to believe that the respondent—
- (a) is residing outside New Zealand (whether temporarily or permanently) ~~or absent or is absent~~ from New Zealand; or
- (b) is a corporation that is incorporated outside New Zealand (other than an overseas company that is registered under Part 18 of the Companies Act 1993). 35

- (3) The **source information** is the following information relating to the respondent's property to which the restraining order applies:
- (a) the name of each person who the respondent knows holds, or believes may hold, an interest in the property and the nature of that interest:
 - (b) the circumstances in which the respondent acquired the property, including— 5
 - (i) how they acquired it; and
 - (ii) the source of any funds or other property used for that acquisition:
 - (c) if the property is tangible and movable property that the respondent acquired outside New Zealand and, after that acquisition, was brought into New Zealand,— 10
 - (i) the country or place in which they acquired the property; and
 - (ii) any countries or places through which the property transited before being moved into New Zealand:
 - (d) any other information of a kind specified in the disclosure of source order: 15
 - (e) any documents of a kind specified in the order to substantiate the information referred to in any of **paragraphs (a) to (d)**.
- (4) The period specified in the order must not exceed the period of 2 months after the order is made unless the Court is satisfied that special circumstances exist that make a longer period appropriate. 20
- (5) The Court may,—
- (a) on application by the Commissioner, vary the period specified in the order by way of a further order; or
 - (b) on application by the respondent or on the Court's own motion, extend the period specified in the order by way of a further order. 25
- (6) The order must inform the respondent of the effect of each of the following:
- (a) **section 50(2A) to (2C)** (rebuttable presumption for type 1 assets forfeiture orders):
 - (b) section 152 (offence relating to failure to comply with orders, etc): 30
 - (c) section 163 (privilege against self-incrimination no excuse):
 - (d) **section 165A** (~~self-incriminating~~ admissibility of self-incriminating statement made in response to disclosure of source order).
- (7) In this section, **section 24 restraining order** means an order made under section 24. 35

34 Sections 112 and 113 replaced

Replace sections 112 and 113 with:

- 112 Return of seized property that is not subject of forfeiture order**
- (1) Any property that is transferred to the Official Assignee under section 103, or seized under a warrant issued under section 110, must be returned to the appropriate person in accordance with this section.
- (2) However, this section does not require the return of property if that property is the subject of a forfeiture order—
- (a) when the property is ~~seized or transferred~~ transferred or seized as referred to in **subsection (1)**; or
- (b) when a requirement to return the property to the appropriate person as soon as practicable would otherwise apply under this section.
- (3) If the property was the subject of a restraining order when the relevant search warrant was issued, the property must be returned to the appropriate person as soon as practicable after the expiry of the restraining order.
- (4) If the property was not the subject of a restraining order when the relevant search warrant was issued, the property must be returned to the appropriate person as soon as practicable after the expiry of 28 days after the date on which the property comes into the custody or control of the Official Assignee (the **28-day period**).
- (5) However,—
- (a) if a restraining order is obtained in relation to that property before the expiry of the 28-day period, the property must be returned to the appropriate person as soon as practicable after the order expires; or
- (b) if a restraining order is not obtained in relation to that property before the expiry of the 28-day period but an application for a forfeiture order is made as soon as practicable and before that expiry, the property must be returned as soon as practicable after the application is determined; or
- (c) if an application for a restraining order is made as soon as practicable and before the expiry of the 28-day period, but not determined before that expiry, the property must be returned as soon as practicable after—
- (i) the application is determined if the application is refused; or
- (ii) the expiry of the restraining order if the application is granted.
- (6) This section is subject to **section 113**.
- (7) In this section, the **appropriate person** to whom property must be returned is the owner of the property or the person entitled to possession of it.
- 113 Disputed ownership, etc, of seized property to which section 112 applies**
- (1) The Official Assignee may apply to the District Court for an order under this section if there is a dispute, or the Official Assignee is uncertain (for any reason), about whom property must be returned to under **section 112**.
- (2) On an application under this section, the District Court may—

- (a) order that the property be destroyed; or
- (b) order that the property be delivered to the person appearing to the court to be the owner of the property or entitled to possession of it; or
- (c) if the owner or person entitled to possession cannot be found, make any order with respect to the property's possession or sale that the court thinks fit. 5
- (3) If, after the District Court makes an order under this section in relation to any property, an action is commenced against the ~~Crown or Crown~~ for the recovery of the property or its value, the order and the delivery of the property in accordance with the order may be given and must be received in evidence in bar of the action. 10
- (4) However, the order or delivery does not affect the right of any persons entitled by law to possession of the property to recover the property from any person or body (other than the Crown).
- (5) In this section, **the Crown** includes— 15
- (a) the Commissioner or any Police employee (within the meaning of section 4 of the Policing Act 2008); and
- (b) the Official Assignee or any delegate of the Official Assignee or any other member of staff of the Official Assignee. 20
- Compare: 2012 No 24 s 154 20

35 Section 152 amended (Failing to comply with orders and search warrants)

In section 152(1), replace “or production order” with “, a production order, or a disclosure of source order”.

36 Section 163 amended (Privilege against self-incrimination no excuse)

In section 163, replace “or 107” with “, 107, or **109A**”.

37 Section 164 amended (Admissibility of evidence)

In section 164(1), replace “or 107” with “, 107, or **109A**”.

38 Section 165 replaced (Admissibility of self-incriminating statements)

Replace section 165 with:

165 Admissibility of self-incriminating statement made in response to production or examination order

General

- (1) Any self-incriminating statement that a person makes orally, in the course of doing any of the following in response to a production or examination order, is not admissible against them in any civil or criminal proceedings: 35
- (a) answering any question:

- (b) supplying any information:
(c) producing any document:
(d) providing any explanation.
- (2) **Subsection (1)** applies whether or not the statement is recorded in writing.
- (3) **Subsections (4) to (8)** set out exceptions to **subsection (1)**. 5
Exception for civil proceedings
- (4) Any statement that a person makes in response to a production or examination order may be used in evidence against them in any civil proceedings specified in section 10(1).
Exceptions for criminal proceedings 10
- (5) Any self-incriminating statement referred to in **subsection (1)** that a person makes may be used in evidence against them in any prosecution for an offence against section 109 of the Crimes Act 1961 (which relates to perjury), or an offence against this Act, relating to any evidence given by the person that is inconsistent with that statement. 15
- (6) Any statement that a person makes in relation to their failure to comply with a production or examination order may be used in evidence against them in any prosecution for an offence against section 152 arising from that failure.
- (7) Any false or misleading statement that a person makes in response to a production or examination order may be used in evidence against them in any prosecution for an offence against section 152 arising from making that statement. 20
- (8) Any false or misleading document that a person produces in response to a production or examination order may be used in evidence against them in any prosecution for an offence against section 152 arising from producing that document. 25
Definitions
- (9) In this section,—
false or misleading means false or misleading in a material particular
production or examination order means— 30
(a) a production order made under section 105; or
(b) an examination order made under section 107.
- (10) In this section, doing any thing **in response to a production or examination order** includes doing any thing in response to a requirement of the Commissioner under section 105 or 107.
- 39 New section 165A inserted (Admissibility of self-incriminating statement made in response to disclosure of source order)** 35
After section 165, insert:

165A	Admissibility of self-incriminating statement made in response to disclosure of source order	
	<i>General</i>	
(1)	Any self-incriminating statement that a person makes in response to a disclosure of source order is not admissible against the person in any civil or criminal proceedings.	5
(2)	Subsections (3) to (5) set out exceptions to subsection (1) .	
	<i>Exception for civil proceedings</i>	
(3)	Any statement that a person makes in response to a disclosure of source order may be used in evidence against them in any civil proceedings specified in section 10(1).	10
	<i>Exceptions for prosecution for offences against section 152</i>	
(4)	Any statement that the person makes in relation to their failure to provide information that the order requires them to provide may be used in evidence against them in any prosecution for an offence against section 152 arising from that failure.	15
(5)	Any false or misleading statement that the person makes in response to the order may be used in evidence against them in any prosecution for an offence under <u>against</u> section 152 arising from making that statement.	
	<i>Definition of false or misleading statement</i>	20
(6)	In this section, false or misleading statement means a statement that is false or misleading in a material particular.	
39A	Section 166 amended (Admissibility of evidence given to court or Official Assignee)	
	In section 166(2)(a)(ii), replace “108 of the Crimes Act 1961 (which relates to perjury) or under this Act in relation” with “109 of the Crimes Act 1961 (which relates to perjury), or under this Act, relating”.	25
40	Section 173 amended (Regulations)	
	After section 173(1)(b), insert:	
	(ba) prescribing an amount for the purposes of the definition of threshold amount in section 5(1):	30
41	Subpart 10 of Part 2 repealed	
	Repeal subpart 10 of Part 2.	
42	New Schedule 1 inserted	
	Insert the Schedule 1 set out in Schedule 1 of this Act as the first schedule to appear after the last section of the principal Act.	35

Part 2 Amendments to other Acts

Subpart 1—Amendments to KiwiSaver Act 2006

43	Principal Act	
	This subpart amends the KiwiSaver Act 2006.	5
44	New section 6A inserted (Transitional, savings, and related provisions)	
	After section 6, insert:	
6A	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.	10
45	Section 127 amended (Member’s interest in KiwiSaver scheme not assignable)	
	(1) In section 127(2), replace “However, subsection” with “Subsection”.	
	(2) After section 127(2), insert:	
	(3) Subsection (1) also does not prevent an amount up to the value of the member’s accumulation from being released to the Official Assignee of New Zealand on behalf of the Crown if that release is required because of a civil forfeiture order within the meaning of section 5(1) of the Criminal Proceeds (Recovery) Act 2009.	15
46	New Schedule 1AA inserted	20
	Insert the Schedule 1AA set out in Schedule 2 of this Act as the first schedule to appear after the last section of the principal Act.	
47	Schedule 1 amended	
	In Schedule 1, replace clause 7(2) with:	
	(2) A requirement to release funds from the KiwiSaver scheme under any enactment includes a requirement to release funds from the KiwiSaver scheme by or because of an order of any court under any enactment.	25
	(3) Examples of an order of a court referred to in subsection (2) are—	
	(a) an order made under section 31 of the Property (Relationships) Act 1976; and	30
	(b) a civil forfeiture order within the meaning of section 5(1) of the Criminal Proceeds (Recovery) Act 2009 (<i>see</i> section 84A of that Act).	

Subpart 2—Amendments to Mutual Assistance in Criminal Matters Act 1992

48 Principal Act

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

49 Section 2A amended (Certain investigations relating to civil proceedings deemed to be criminal investigations) 5

After section 2A(2), insert:

- (2A) An investigation certified by the Attorney-General to have commenced in New Zealand relating to the restraint or forfeiture of property must be treated as a criminal investigation for the purposes of Part 2 if the property— 10
- (a) is, or is proposed to be, the subject of an application for—
 - (i) a restraining order under **section 24A** of the Criminal Proceeds (Recovery) Act 2009 (the **CPR Act**); or
 - (ii) a type 2 assets forfeiture order (within the meaning of the CPR Act); or 15
 - (b) is the subject of a restraining order under **section 24A** of the CPR Act.
- (2B) **Subsection (2A)** applies despite the related proceedings being civil in nature.

50 Section 2B amended (Certain civil proceedings deemed to be criminal proceedings)

After section 2B(2), insert: 20

- (2A) A proceeding certified by the Attorney-General to have been instituted in respect of the forfeiture or restraint of property by way of an application for any of the following orders must be treated as a criminal proceeding for the purposes of Part 2 despite being civil in nature:
- (a) a restraining order under **section 24A** of the Criminal Proceeds (Recovery) Act 2009: 25
 - (b) a type 2 assets forfeiture order (within the meaning of that Act).

Subpart 3—Amendment to Sentencing Act 2002

51 Principal Act

This subpart amends the Sentencing Act 2002. 30

52 Section 142I amended (Determining ownership of property)

In section 142I, replace “section 58” with “**section 17A**”.

Schedule 1
New Schedule 1 inserted into Criminal Proceeds (Recovery) Act
2009

s 42

Schedule 1
Transitional, savings, and related provisions

5

s 7A

Part 1
Provisions relating to Criminal Proceeds (Recovery) Amendment
Act 2022

10

1 **Definitions-Definition**

In this Part, **amendment Act** means the Criminal Proceeds (Recovery) Amendment Act **2022**.

2 **Restraining order under section 24A and type 2 assets forfeiture order**

- (1) An order may be made under **section 24A** in respect of any specific property of a respondent whether the respondent acquired that property before, on, or after the commencement of that section. 15
- (2) A type 2 assets forfeiture order may be made in respect of any specific property of a respondent whether the respondent acquired that property before, on, or after the commencement of **section 50C**. 20

3 **Variation of existing restraining order to extend to interest in KiwiSaver scheme**

- (1) A court may make an order under section 35 varying the restrained property to which an existing restraining order relates so that the restrained property is or includes an interest held by a person as a member of a KiwiSaver scheme. 25
- (2) **Subsection (1)** does not limit the generality of section 34(1) or 35(a).
- (3) In this clause, **existing restraining order** means a restraining order made under section 24 or 25 that is in force on the commencement of **section 84A**.

4 **Discharge of civil forfeiture order applying to interest in KiwiSaver scheme**

30

Section 84A applies only in relation to a civil forfeiture order made on or after the commencement of that section.

4A **Disclosure of source orders**

- (1) In **section 109A**,—

- (a) a reference to a section 24 restraining order includes a reference to a section 24 restraining order that is in force on the commencement of **section 109A**; and
- (b) a reference to an application for a type 1 assets forfeiture order includes a reference to an application for an assets forfeiture order made and yet to be determined immediately before that commencement. 5
- (2) In this clause, **section 24 restraining order** means an order made under section 24.
- 5 Return of seized property that is not subject of forfeiture order**
- (1) New **sections 112 and 113** extend to property that was transferred to the Official Assignee under section 103, or seized under a warrant issued under section 110, before the commencement of those new sections if, immediately before that commencement, the property had not yet been returned under section 112 (as in force before its replacement by new **section 112**). 10
- (2) In this clause, a reference to a new section is a reference to the section as inserted by the amendment Act. 15
- 6 Admissibility of self-incriminating statements made in response to production or examination order**
- (1) New **section 165(1), (2), and (5)** extends to any self-incriminating statement that a person makes or has made orally (before the commencement of those provisions) in the course of doing any of the things referred to in new **section 165(1)** in response to a production or examination order made before the commencement of those provisions. 20
- (2) New **section 165(4)** extends to any statement that a person makes or has made (before the commencement of that provision) in response to a production or examination order made before the commencement of that provision. 25
- (3) New **section 165(6) and (7)** extends to any statement referred to in those provisions that a person makes or has made (before the commencement of ~~that provision~~ those provisions) in response to a production or examination order made before the commencement of those provisions. 30
- (4) New **section 165(8)** extends to any false or misleading document that a person produces or has produced (before the commencement of that provision) in response to a production or examination order made before the commencement of that provision.
- (5) In this clause, a reference to a new section is a reference to the section as inserted by the amendment Act. 35
- (6) Any term or expression that is used in this clause and defined in **section 165** has the same meaning as in that section.

Schedule 2
New Schedule 1AA inserted into KiwiSaver Act 2006

s 46

Schedule 1AA
Transitional, savings, and related provisions

5

s 6A

Part 1
Provisions relating to Criminal Proceeds (Recovery) Amendment Act 2022

- 1 Application of amendments relating to civil forfeiture orders under Criminal Proceeds (Recovery) Act 2009** 10
- (1) The relevant provisions extend to a civil forfeiture order made in respect of an interest held in a KiwiSaver scheme that is issued before the commencement of **subpart 1 of Part 2** of the amendment Act.
- (2) However, the relevant provisions apply only in relation to a civil forfeiture order made on or after that commencement. 15
- (3) In this clause,—
- amendment Act** means the Criminal Proceeds (Recovery) Amendment Act **2022**
- civil forfeiture order** has the same meaning as in section 5(1) of the Criminal Proceeds (Recovery) Act 2009 20
- relevant provisions** means the following provisions (as inserted by the amendment Act):
- (a) **section 127(3):**
- (b) **clause 7(3)(b) of Schedule 1.** 25

Legislative history

6 September 2022	Introduction (Bill 163–1)
27 September 2022	First reading and referral to Justice Committee
21 December 2022	Reported from Justice Committee (Bill 163–2)
7 March 2023	Second reading
14 March 2023	Committee of the whole House (Bill 163–3)