

Criminal Proceeds (Recovery) Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Criminal Proceeds (Recovery) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The bill would amend the Criminal Proceeds (Recovery) Act 2009 (the principal Act). It seeks to prevent individuals from profiting from significant criminal activity by improving New Zealand's civil forfeiture regime. In particular, it would do this by targeting the illicit profits of leaders and facilitators of organised crime and transnational offending.

The bill would create new restraining and type 2 assets forfeiture orders. Currently, organised criminal groups can structure their affairs to avoid the existing restraining orders and assets forfeiture orders, which the bill would rename as type 1 assets forfeiture orders.

The Court would be able to make the new restraining order against specific property if satisfied there are reasonable grounds to believe that:

- the respondent was an associate of a member of, or participant in, an organised criminal group
- the respondent's legitimate property would have been insufficient to acquire the specific property at a reasonable market value
- at the time the application was made, the value of the specific property not explained by the respondent's legitimate property exceeded the threshold amount of \$30,000.

If satisfied on the balance of probabilities that these criteria were met, when considering an application for a type 2 assets forfeiture order, the Court would be required to

order forfeiture of the specific property. The Court could not make a forfeiture order if the respondent could prove that the specific property was not derived from significant criminal activity. The Court must also not make a forfeiture order if it would not be in the interests of justice.

The bill would make several other targeted amendments to the principal Act, including:

- new “disclosure of source” orders, allowing the Court to presume that property is tainted (that is, derived from significant criminal activity) if an overseas respondent does not provide information about the source within two months
- allowing KiwiSaver schemes to be the subject of civil forfeiture orders.

The latter change, with associated amendments to the KiwiSaver Act 2006, aims to prevent criminals from exploiting a legal loophole with KiwiSaver schemes, and create consistency with other retirement savings vehicles.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation’s design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Excluding the value of unused legitimate property

Clauses 5 and 21 of the bill state that specific property could only be restrained or forfeited under the new orders if a respondent had insufficient legitimate property to acquire the specific property.

We consider that simply having access to sufficient legitimate property to acquire an asset may not always be a strong enough indication that an asset has been acquired legitimately. An example of this would be a respondent having the financial means to acquire an asset, but there being evidence that those funds were not used in its acquisition.

We recommend amending clause 5 of the bill to add new section 5B(2A). New section 5B(2A) would allow a court to exclude the value of legitimate property if it was satisfied that it was not used to acquire the asset sought to be restrained or forfeited.

The value of specific property would apply cumulatively

Clauses 15 and 21 would insert new sections 24A and 50C respectively. These new sections would allow the restraint and forfeiture of “specific property” that an individual, associated with an organised criminal group, had insufficient known legitimate property to acquire.

We consider that the bill as introduced does not make it clear that the value of assets that comprise “specific property” should be assessed cumulatively when calculating whether the property would meet the threshold amount for restraint and forfeiture. This would mean that the threshold could be met across multiple assets even if individual assets in the specific property were below the threshold.

We recommend amending clauses 15 and 21 to make it clear that the value of “specific property”, for the calculation of the threshold, would be cumulative across multiple assets.

A formal valuation would not be required at restraint

We acknowledge that efforts by the Police to value a respondent’s property can be difficult. In some cases, attempts to obtain a valuation could alert the respondent before the “specific property” could be restrained, which could allow the respondent to dispose of the property. We hold similar concerns about the process for identifying what is legitimate property.

We recommend amending clause 15 to insert new sections 24A(2A) and 24A(2B). These new sections would allow the Commissioner of Police to provide estimates rather than a formal valuation, and would make it clear that the Court could rely on an estimate of the property value at the restraint stage. Once the property was restrained, it would be possible to undertake a formal valuation for forfeiture without the risk of the respondent disposing of the property.

Presumption of convertible legitimate property

Clause 15 inserts new section 24A. This section would require the Commissioner of Police to note in their application for a restraining order what they allege was the respondent’s legitimate property that was available to be used to acquire the “specific property”. As introduced, the property listed in the application would be presumed to be all of the respondent’s available legitimate property, also known as “convertible legitimate property”.

The respondent would be able to challenge (rebut) that presumption. To do this they would need to prove, on the balance of probabilities, that they had access to additional legitimate property which could have been used to acquire the assets that the application is seeking to have restrained.

We consider that this presumption should only be available at the forfeiture stage. At the restraint stage, the Commissioner would only be required to satisfy the Court that there are reasonable grounds to believe the criteria for the proposed new orders were met. As this is a low standard of proof, we consider that the presumption is unnecessary. Further, including the presumption at the restraint stage could risk the list of convertible legitimate property being prematurely determined by the Court, even if the Police’s investigation uncovers more property for forfeiture. We consider that the presumption is still appropriate at the forfeiture stage, where the Court needs to be satisfied on the balance of probabilities, which is a higher standard of proof.

We therefore consider that the presumption is unnecessary at the restraint stage.

We recommend amending new section 24A to remove the presumption about a respondent's convertible legitimate property at the restraint stage.

Removal of due diligence requirements

New section 24A(5), inserted by clause 15, and new section 50B(3), inserted by clause 21, would require the Commissioner of Police to exercise "all due diligence" in identifying a respondent's legitimate property at both the restraint and forfeiture stages.

This requirement was included to protect respondents' rights against unreasonable seizure. In the bill as introduced, the Commissioner could rely on information that was reasonably available, using methods that would not prejudice ongoing asset forfeiture investigations. This provision interacts with the presumption discussed previously. The due diligence requirement was designed to balance the lower evidential burden on the Police that these provisions would create.

We recommend removing the due diligence requirement. With our recommended amendments to new section 24A, we believe the due diligence requirement is no longer needed at restraint. At the forfeiture stage, we consider that it has the potential to create unintended consequences by implying that a higher standard of proof would be required for the new orders than for other types of orders.

We believe that the removal of the due diligence requirement would not undermine respondents' rights. The Police would still be required to take all reasonable steps to present evidence favourable to a respondent at both stages. At forfeiture, the Court could still decline an order if satisfied it would not be in the interests of justice.

Timeframe for the disclosure of source orders

New section 109A(5), introduced by clause 33, specifies that a respondent must provide information in response to a disclosure of source order within 2 months. The Court may provide a longer time period, if satisfied special circumstances exist, when making the order. The Court may also vary the period in response to an application by the Commissioner or respondent. However, as introduced, the Court would not have the ability to extend the time period on its own motion after making the order.

We consider that the Court should have the ability to extend the timeframe by which the respondent would be required to respond to a disclosure of source order on its own motion. This could provide flexibility in response to circumstances such as natural disasters. We recommend amending new section 109A accordingly.

Failure to comply with a disclosure of source order

Clause 20 inserts new section 50(2A). This section relates to the failure of a respondent to comply with a disclosure of source order.

As introduced, the bill is not clear as to whether a respondent must be convicted of an offence under existing section 152 before their assets could be considered tainted if they failed to comply with a disclosure of source order.

We recommend amending clause 20 to make it clear that the property of a respondent who has not complied with an order could be presumed to be tainted, regardless of whether they had been convicted of an offence under section 152.

This reflects that, in most cases, the section 152 offence for noncompliance with an order cannot be enforced against overseas respondents, unless they were to enter New Zealand after a disclosure of source order was issued. Instead, the presumption that property is tainted would create an incentive for compliance with an investigation, in cases where the criminal offence was not enforceable.

Status of self-incriminating statements

Clause 39 would insert new section 165A. New section 165A sets out that any self-incriminating statements made while complying with a disclosure of source order could not be used in most civil or criminal proceedings.

Self-incriminating statements could only be used for civil proceedings about an application for a type 1 assets forfeiture order or a prosecution for an offence against section 152, for failing to comply with a disclosure of source order.

We note that the reference to civil proceedings for disclosure of source orders would be inconsistent with the status of self-incriminating statements made in response to production and examination orders. The case law about existing section 165 indicates that self-incriminating statements made in response to production or examination orders can be used in any civil proceedings under the Act.

We recommend amending new section 165A to make it clear that self-incriminating statements made in response to production orders, examination orders, or disclosure of source orders could be used in any civil proceeding taken under the Act.

We also recommend amending clause 33 to require that respondents be made aware of the effects of new sections 165A and 163 when they are provided with a disclosure of source order.

Transitional provisions

Clause 42 would insert new Schedule 1. This new Schedule would establish transitional provisions, should the bill be enacted. The transitional provisions expressly provide that property in the possession of the respondent at the time of enactment would be covered by the bill. The transitional provisions do not, however, provide for the status of the restraining order that must be in place before a disclosure of source order may be made.

We recommend amending the Schedule to make it clear that a disclosure of source order could apply to property covered by an existing restraining order, as well as restraining orders made after enactment. However, the orders should not be available where a type 1 asset forfeiture order has already been applied for.

We do not believe that disclosure of source orders would need to be extended to property where an application for asset forfeiture has been made. At that stage, the Commissioner would need to be confident that there was already sufficient evidence to

show on the balance of probabilities that the asset was tainted. We recommend amending new section 109A, inserted by clause 33, to make this clear.

Appendix

Committee process

The Criminal Proceeds (Recovery) Amendment Bill was referred to the committee on 27 September 2022. We called for submissions on the bill with a closing date of 26 October 2022. We received and considered five submissions from interested groups and individuals. We heard oral evidence from three submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Paul Goldsmith

Dr Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kiritapu Allan

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Government Bill

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	New Schedule 1 inserted into Criminal Proceeds (Recovery) Act 2009	
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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** of ~~this Act~~ come into force on the day after Royal assent.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 10
3 of the Legislation Act 2019 for publication requirements).

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

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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

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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).

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- (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) ~~carrying out~~ engaging in that activity; or
 - (b) doing any thing that forms part of ~~carrying out~~ 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** 25
- Meaning of legitimate property*
- (1) In this Act, unless the context otherwise requires, **legitimate property** of a respondent— 25
- (a) means all property acquired by the respondent, including—
 - (i) any property gifted or loaned to the respondent (including money available to the respondent by way of credit); and 30
 - (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 ~~carried out~~ engaged in by the respondent or any other person and is an offence. 35
- (2) For the purposes of **subsection (1)(b)**, a person ~~carries out~~ 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) <u>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</u>	
	(b) <u>excludes any of that legitimate property that they did not use for the acquisition.</u>	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 the property that, at the relevant time before they acquired the specific property,—	15
	(a) was their legitimate property; and	
	(b) was readily able to be used by them for that acquisition.	
(3)	<u>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.</u>	20
6	Section 6 amended (Meaning of significant criminal activity)	25
	In section 6(1)(b), replace “\$30,000” with “the threshold amount”.	
7	New section 7A and cross-heading inserted	
	After section 7, insert:	
	<i>Savings, transitional, and related provisions</i>	
7A	Transitional, savings, and related provisions	30
	The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.	
8	Section 13 amended (No identifiable owner required for certain proceedings relating to specific property)	
	Replace section 13(2) with:	35
(2)	Subsection (1) does not apply to—	

- (a) proceedings for an order made under **section 24A** or a type 2 assets forfeiture order; or
- (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)** 5
- In section 15, insert as subsection (2):
- (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 the organised criminal group that is referred to in **section 50C(1)(a)**) have been involved at any time. 10
- 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 the organised criminal group that is referred to in **section 50C(1)(a)**) have been involved at any time. 15
- 11 Section 17 amended (Multiple forfeiture orders and foreign forfeiture orders)** 20
- In section 17(1)(a), replace “assets” with “type 1”.
- 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)** 25
- 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”.
- 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) ~~at the relevant time before the respondent acquired the specific property, the legitimate property of the respondent that was readily able to be used by them to acquire the specific property would have been insufficient to enable them to acquire the specific property at or near reasonable market value:~~ 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) ~~when the application was made, the reasonable market value of the specific property, excluding the value represented by the exempt proportion of that property, was at least the threshold amount.~~ 25
 - (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:
 - (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. 30
- (1A) The formula is—
- $$x - y$$
- where—
- x is the reasonable market value of the specific property when the application was made 35
 - y is the value represented by the exempt proportion of the specific property when the application was made.
- (2) The restraining order that the court may make is an order that the property to which it applies (the **restrained property**)— 40

- (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.
- 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**): 5
- (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: 10
- (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)**:
- (c) the reasonable market value of specific property at the following dates: 15
- (i) the date on which it was acquired by the respondent:
- (ii) the date of the application.
- (2B) For the purposes of this section, the court may rely on estimates provided by the Commissioner as evidence of the relevant property values.
- Legitimate convertible property before acquisition presumed to be property stated in application* 20
- (3) ~~For the purposes of this section (including when determining the exempt proportion of specific property of the respondent), the property that, at a relevant time, was legitimate property of the respondent and readily able to be used by them to acquire specific property is presumed to consist of the property that the application for the restraining order states was, at the relevant time,—~~ 25
- (a) ~~their legitimate property; and~~
- (b) ~~readily able to be used by them for that acquisition.~~
- (4) ~~However, that presumption may be rebutted by the respondent to the extent that the respondent satisfies the court, on the balance of probabilities, that, at the relevant time, the legitimate property of the respondent that was readily able to be used by them to acquire the specific property consisted of—~~ 30
- (a) ~~some or all of the property stated in the application and other property;~~
- ~~or~~
- (b) ~~other property not stated in the application.~~ 35
- Identifying alleged convertible legitimate property*
- (5) ~~In an application for a restraining order under this section, the Commissioner must exercise all due diligence in identifying the property that the Commissioner alleges was, at the relevant time before the respondent acquired specific~~

- property, the legitimate property of the respondent and readily able to be used by the respondent to acquire the specific property.
- (6) ~~However, the Commissioner is required to identify that alleged legitimate property only on the basis of information that is reasonably available to the Commissioner using methods that would not prejudice any ongoing investigation for the purposes of any related type 2 assets forfeiture order.~~ 5
- 16 Section 30 amended (Excluding severable interest from restrained property)**
- (1) After section 30(2)(b), insert:
- (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 the organised criminal group that is referred to in **section 24A(1)(a)**) have been involved at any time; and 10
- (2) In section 30(3)(b), replace “the significant criminal activity or qualifying” with “any significant criminal activity or the qualifying”. 15
- 17 Cross-heading above section 49 replaced**
- Replace the cross-heading above section 49 with:
- Type 1 assets forfeiture order: application and making*
- 18 Section 49 amended (Application for assets forfeiture order to specify proposed forfeited property, grounds, respondent (if any), and persons with interests (if known))** 20
- (1) Replace the heading to section 49 with “**Contents of application for type 1 assets forfeiture order**”.
- (2) In section 49, replace “an assets” with “a type 1 assets”. 25
- 19 Cross-heading above section 50 repealed**
- Repeal the cross-heading above ~~clause~~ section 50.
- 20 Section 50 amended (Making assets forfeiture order)**
- (1) In the heading to section 50, after “**Making**”, insert “**type 1**”.
- (2) In section 50(1), (3), (4), and (5), replace “an assets” with “a type 1 assets” in each place. 30
- (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— 35
- (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 (see section 152).	
(2B) The presumption may be rebutted if the respondent shows, on the balance of probabilities, that—	
(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	5
(b) the specific property is not tainted property.	
(2BA) <u>The presumption applies (so long as it is not rebutted) whether or not the respondent has been convicted of an offence against section 152.</u>	10
(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”.	
21 New sections 50A to 50D and cross-heading inserted	
After section 50, insert:	15
<i>Type 2 assets forfeiture order: application and making</i>	
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:	
(a) the respondent:	20
(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:	
(i) the date on which it was acquired by the respondent:	
(ii) the date of the application:	25
(d) the property that the Commissioner alleges was, at the relevant time before the respondent acquired the specific property, the legitimate property of the respondent that was readily able to be used by the respondent to acquire the specific property (see section 50B):	
(d) <u>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):</u>	30
(e) <u>the value of that the alleged convertible legitimate property, as determined by the Commissioner, at the relevant time before the respondent acquired the specific property:</u>	35
(ea) <u>the property that the Commissioner alleges is excluded legitimate property:</u>	

	(eb) <u>the value of the alleged excluded legitimate property, as determined by the Commissioner, at the relevant time before the respondent acquired the specific property:</u>	
	(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.	5
(2)	<u>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).</u>	
50B	Convertible legitimate property before acquisition presumed to be property stated in application	10
	<i>Presumption</i>	
(1)	For the purposes of section 50C (including when determining the exempt proportion of specific property of the respondent), the property that, at a relevant time, was legitimate property of the respondent and readily able to be used by them to acquire specific property is presumed to consist of the property that the application for the type 2 assets forfeiture order states was, at the relevant time,—	15
	(a) their legitimate property; and	
	(b) readily able to be used by them for that acquisition.	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, at the relevant time, the legitimate property of the respondent that was readily able to be used by them to acquire the specific property 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.	
(1)	<u>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.</u>	30
(2)	<u>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—</u>	35
	(a) <u>some or all of the property stated in the application and other property;</u>	
	<u>or</u>	
	(b) <u>other property not stated in the application.</u>	

Commissioner to exercise all due diligence in identifying alleged convertible legitimate property

- (3) ~~In an application for a type 2 assets forfeiture order, the Commissioner must exercise all due diligence in identifying the property that the Commissioner alleges was, at the relevant time before the respondent acquired specific property, the legitimate property of the respondent and readily able to be used by the respondent to acquire the specific property.~~ 5

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,— 10
- (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,— 15
 - (i) been involved in significant criminal activity at any time; or
 - (ii) unlawfully benefited from significant criminal activity at any time; and
 - (c) ~~at the relevant time before the respondent acquired the specific property, the legitimate property of the respondent that was readily able to be used by them to acquire the specific property would have been insufficient to enable them to acquire the specific property at or near reasonable market value; and~~ 20
 - (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 25
 - (d) ~~when the application was made, the reasonable market value of the specific property, excluding the value represented by the exempt proportion of that property, was at least the threshold amount.~~ 30
 - (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
 - (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. 35
- (2) However, the Court must not make a type 2 assets forfeiture order in respect of specific property if—
- (a) the respondent satisfies the Court, on the balance of probabilities, that the specific property is not tainted property; or 40

- (b) the Court is satisfied that it would not be in the interests of justice to make the order.
- (3) *See also* sections 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). 5
- (4) The formula is—
- $$\frac{x - y}{x + y}$$
- where—
- x is the reasonable market value of the specific property when the application was made 10
- y is the value represented by the exempt proportion of the specific property when the application was made.
- 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— 15
- (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. 20
- (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,— 25
- (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— 30
- (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** 35
- 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,”.	
24	Cross-heading above section 52 replaced	5
	Replace the cross-heading above section 52 with:	
	<i>Profit forfeiture order: application and making</i>	
25	Cross-heading above section 53 repealed	
	Repeal the cross-heading above section 53.	
26	Section 54 amended (High Court must determine maximum recoverable amount)	10
(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”.	
27	Section 58 renumbered and repositioned (Court may treat effective control over property as interest in property)	15
(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”.	
28	Section 60 amended (Civil forfeiture order relating to land)	20
	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:	25
(b)	has not unlawfully benefited from the following significant criminal activity:	
(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 the organised criminal group that is referred to in section 50C(1)(a)) have been involved at any time:	30
(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)

- (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 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”.

5

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

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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.
- (5) If that interest is not severable from the property to which it relates, that property may be wholly disposed of, but—
 - (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.

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32 New section 84A and cross-heading inserted

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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.
- (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.
- (4) In this section,—

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30

KiwiSaver scheme has the meaning given to it in section 4(1) of the KiwiSaver Act 2006

35

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

member's accumulation has the meaning given to it in section 4(1) of the KiwiSaver Act 2006.

5

33 New section 109A and cross-heading inserted

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. 10
- (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. 15
- (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 from New Zealand; or 20
 - (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).
- (3) The **source information** is the following information relating to the respondent's property to which the restraining order applies: 25
 - (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—
 - (i) how they acquired it; and 30
 - (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,—
 - (i) the country or place in which they acquired the property; and 35
 - (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;
- (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. 5
- (5) ~~On application by the Commissioner or the respondent, the Court may vary the period specified in the order by way of a further order.~~
- (5) The Court may,— 10
- (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.
- (6) ~~The order must inform the respondent of the effect of **section 50(2A) to (2C)**. (See also sections 123(5) and 152.)~~ 15
- (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); 20
- (c) section 163 (privilege against self-incrimination no excuse);
- (d) **section 165A** (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. 25

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. 30
- (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 as referred to in **subsection (1)**; or 35
- (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
- (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 10
- (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 15
- (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 20
- (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** 25
- (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 30
- (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. 35
- (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 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.	
(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
(5)	In this section, the Crown includes—	
	(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.	10
	Compare: 2012 No 24 s 154	
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)	15
	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 amended <u>replaced</u> (Admissibility of self-incriminating statements)	20
	In the heading to section 165, after “ statements ”, insert “ made orally ”.	
	Replace section 165 with:	
165	<u>Admissibility of self-incriminating statement made in response to production or examination order</u>	
	<i>General</i>	25
(1)	<u>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:</u>	
	(a) <u>answering any question:</u>	
	(b) <u>supplying any information:</u>	30
	(c) <u>producing any document:</u>	
	(d) <u>providing any explanation.</u>	
(2)	<u>Subsection (1) applies whether or not the statement is recorded in writing.</u>	
(3)	<u>Subsections (4) to (8) set out exceptions to subsection (1).</u>	

	<i>Exception for civil proceedings</i>	
(4)	<u>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).</u>	
	<i>Exceptions for criminal proceedings</i>	5
(5)	<u>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.</u>	10
(6)	<u>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.</u>	
(7)	<u>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.</u>	15
(8)	<u>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.</u>	20
	<i>Definitions</i>	
(9)	<u>In this section,—</u> false or misleading means false or misleading in a material particular production or examination order means—	
	(a) a production order made under section 105; or	25
	(b) an examination order made under section 107.	
(10)	<u>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.</u>	
39	New section 165A inserted (Self-incriminating Admissibility of self-incriminating statement made in response to disclosure of source order) After section 165, insert:	30
165A	<u>Admissibility of self</u>Self-incriminating statement made in response to disclosure of source order	
	<i>General</i>	35
(1)	<u>Any self-incriminating statement or disclosure that a person who is required to comply with a disclosure of source order makes in response to the a disclosure</u>	

of source order is not admissible against the person in any civil or criminal proceedings.

(2) However,—

(a) ~~any statement or disclosure the person makes in response to the order may be used in or for civil proceedings about an application for a type 1 assets forfeiture order (for example, by the respondent to that application, and to show, under **section 50(2B)**, that the property is not tainted property); and~~

(b) ~~any statement or disclosure the person makes in relation to the person's refusal or failure to provide information that the order requires them to provide may be used in evidence against them in any prosecution for an offence under section 152 arising from that refusal or failure; and~~

(c) ~~any statement or disclosure that the person makes in response to the order that is false or misleading in a material particular may be used in evidence against them in any prosecution for an offence under section 152 arising from that act.~~

(2) **Subsections (3) to (5)** set out exceptions to **subsection (1)**.

Exception for civil proceedings

(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).

Exceptions for prosecution for offences against section 152

(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.

(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 section 152 arising from making that statement.

Definition of false or misleading statement

(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”.

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):

41 Subpart 10 of Part 2 repealed

Repeal subpart 10 of Part 2.

42 New Schedule 1 inserted

5

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.

Part 2

Amendments to other Acts

Subpart 1—Amendments to KiwiSaver Act 2006

10

43 Principal Act

This subpart amends the KiwiSaver Act 2006.

44 New section 6A inserted (Transitional, savings, and related provisions)

After section 6, insert:

6A Transitional, savings, and related provisions

15

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

45 Section 127 amended (Member's interest in KiwiSaver scheme not assignable)

(1) In section 127(2), replace “However, subsection” with “Subsection”.

20

(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.

25

46 New Schedule 1AA inserted

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

30

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.
- (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
 - (b) a civil forfeiture order within the meaning of section 5(1) of the Criminal Proceeds (Recovery) Act 2009 (*see* **section 84A** of that Act).

Subpart 2—Amendments to Mutual Assistance in Criminal Matters Act 1992 10

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)

After section 2A(2), insert: 15

- (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—
- (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
 - (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. 25

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

After section 2B(2), insert:

- (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: 30
- (a) a restraining order under **section 24A** of the Criminal Proceeds (Recovery) Act 2009:
 - (b) a type 2 assets forfeiture order (within the meaning of that Act). 35

Subpart 3—Amendment to Sentencing Act 2002

51 Principal Act

This subpart amends the Sentencing Act 2002.

52 Section 142I amended (Determining ownership of property)

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

5

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

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**. 30

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

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 section clause, a reference to a new section is a reference to the section as inserted by the amendment Act.	15
6	<u>Admissibility of self-incriminating statements made in response to production or examination order</u>	
(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) 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.	
(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 section <u>clause</u> ,—

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

relevant provisions means the following provisions (as inserted by the amendment Act): | 20 |
| (a) | section 127(3): | |
| (b) | clause 7(3)(b) of Schedule 1. | 25 |

Legislative history

6 September 2022
27 September 2022

Introduction (Bill 163–1)
First reading and referral to Justice Committee