

Hon Kiri Allan
Minister of Justice

Proactive release – Amendments to the Criminal Proceeds (Recovery) Act 2009

Date of issue: 22 March 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Reforms to the Criminal Proceeds (Recovery) Act 2009 to better target illicit assets <i>Cabinet paper</i> Office of the Minister of Justice 19 April 2021	Some information has been withheld in accordance with section 9(2)(h) to maintain legal professional privilege.
2	Criminal Proceeds (Recovery) Act 2009: Proposed Reforms to Better Target Illicit Assets <i>Cabinet Minute</i> Cabinet Office Meeting date: 19 April 2021	Some information has been withheld in accordance with section 9(2)(h) to maintain legal professional privilege.
3	Reforms to the Criminal Proceeds (Recovery) Act 2009 to better target illicit assets <i>Cabinet paper</i> Office of the Minister of Justice 19 April 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none">• 9(2)(f)(iv) to protect the confidentiality of advice;• 9(2)(g)(i) to protect free and frank advice; and• 9(2)(h) to maintain legal professional privilege.
4	Criminal Proceeds (Recovery) Act 2009: Reforms to Better Target Illicit Assets <i>Cabinet Minute</i> Cabinet Office Meeting date: 19 April 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none">• 9(2)(f)(iv) to protect the confidentiality of advice; and• 9(2)(h) to maintain legal professional privilege.

No.	Document	Comments
5	Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction <i>Cabinet paper</i> Office of the Minister of Justice 5 September 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none"> • 9(2)(f)(iv) to protect the confidentiality of advice; • 9(2)(g)(i) to protect free and frank advice; and • 9(2)(h) to maintain legal professional privilege. Note that there is also a separate proactive release for additional material regarding the Criminal Activity Intervention Legislation Bill.
6	Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction <i>Cabinet Minute</i> Cabinet Office Meeting date: 5 September 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none"> • 9(2)(f)(iv) to protect confidentiality of advice; and • 9(2)(h) to maintain legal professional privilege. Note that there is also a separate proactive release for additional material regarding the Criminal Activity Intervention Legislation Bill.

In Confidence

Office of the Minister of Justice

Chair, Cabinet Business Committee

Reforms to the Criminal Proceeds (Recovery) Act 2009 to better target illicit assets

Proposal

1. This paper seeks approval to amend the Criminal Proceeds (Recovery) Act 2009 (**CPRA**) to provide new powers to better respond to significant transnational and organised criminal offending.

Executive Summary

2. Under CPRA, any property in New Zealand that is derived from offending is potentially susceptible to restraint and forfeiture. Restraint is the seizure and preservation of property. Forfeiture is transfer of ownership to the Crown.
3. At present, the complexities of transnational and organised crime can undermine the effectiveness of CPRA. Organised criminal groups can structure their affairs to avoid asset forfeiture; and it is difficult to obtain evidence from foreign jurisdictions.
4. This paper seeks Cabinet agreement to give courts two new powers:
 - 4.1. **A new power to respond to transnational offending:** Following restraint of property, where the respondent is not in New Zealand, the Commissioner of Police can apply to the court for an order requiring the respondent to file a notice of source. The notice would have to show whether the property was legitimately obtained. If the respondent does not file a notice of source, or files a notice that is materially false or misleading, the property would be forfeited unless the respondent provides evidence that the property was legitimately obtained.
 - 4.2. **A new power to respond to organised crime:** The Commissioner of Police can apply to the court for an order to restrain or forfeit the property of a person associated with an organised criminal group, where the person's known legitimate income is likely to have been insufficient to acquire the property. This provides an alternative to proving the property was derived from a particular criminal activity. The property would be forfeited unless the respondent provides evidence that the property was legitimately obtained.
5. The proposed powers would enable restraint and forfeiture in a more efficient and effective manner. Amendments to CPRA's civil regime are likely to be more effective at deterring transnational and organised criminal activity than new criminal offences.
6. The proposed powers are expected to increase the revenue of the Proceeds of Crime Fund by \$25 million per year. In March, Cabinet broadened the scope of the Proceeds of Crime Fund to include initiatives that have a wellbeing focus and address crime-related harm and the drivers of crime [CAB-19-MIN-0087 refers].

7. This paper also proposes a minor amendment to allow for seized property to be retained until the determination of any restraining order application made as soon as practicable within the current 28-day period. This would require Police to apply for a restraining order within 28 days or return the seized property.

Background

8. Transnational and organised crime undermines our economy, financial systems, and causes harm to the wellbeing of individuals, whānau, and communities through offending including illicit drug manufacture and supply, money laundering, and human trafficking [SWC-20-MIN-0074.01 refers].
9. The purpose of CPRA is to eliminate the chance for a person to profit from significant criminal activity and to deter such activity. CPRA creates a civil regime, under which Police investigate and apply to the courts for restraint or forfeiture of property generated from illicit activity. Courts may order restraint or forfeiture of any property derived from significant criminal activity.¹ These orders target property, and can occur without any criminal prosecution against a person for related offending.
10. **Restraint:** to grant a restraining order, the court must be satisfied it has reasonable grounds to believe (an objective and credible basis for thinking) that:
 - 10.1. the property is tainted property (meaning derived from significant criminal activity);² or
 - 10.2. the respondent has unlawfully benefited from significant criminal activity (meaning the person knowingly derived a benefit, directly or indirectly).³
11. Restrained property is held by the Official Assignee for a year or until any application to lift the order is granted (the order can be renewed, more than once, for further periods). This allows time for Police to gather evidence for forfeiture, if sought.
12. **Forfeiture:** to grant a forfeiture order, the court must be satisfied on the balance of probabilities (that it is more probable than not):⁴ that the property is tainted, or the respondent unlawfully benefited from significant criminal activity.
13. Addressing the barriers to CPRA's existing asset recovery mechanisms will result in more tainted property being forfeited. This is likely to deter significant criminal activity. Forfeiting assets can have a greater deterrent effect than criminal prosecutions (that may result in incarceration) against groups whose offending is driven by profit.⁵
14. Increased forfeiture of tainted property reduces harm to the community by ensuring that there is less money available to reinvest in criminal enterprise. Effective and visible forfeiture of tainted property held by criminals or their associates also serves

¹ Criminal Proceeds (Recovery) Act 2009, s 6 *Meaning of significant criminal activity*: any offending with a maximum penalty of 5 years or more imprisonment; or any offending that derived property of \$30,000 or more.

² Ibid, s 24 *Making restraining order relating to specific property*.

³ Ibid, s 25 *Making restraining order relating to all or part of respondent's property*.

⁴ Ibid, ss 50 *Making assets forfeiture order*, 55 *Making profit forfeiture order*.

⁵ If punishment is more certain, it does not need to be severe to be effective. Pratt, Cullen, Blevins, Daigle, and Madensen, "The empirical status of deterrence theory," 2006, in Cullen, Wright and Blevins (eds), "Taking Stock: The Status of Criminological Theory" New Brunswick, NJ: Transaction Books.

as a deterrent by sending the signal that crime does not pay, and deprives those involved in criminal groups of the benefits used to attract prospective members.

15. The Proceeds of Crime Disruption Index (POCDI) is a calculation of the disruptive impact forfeiture has on organised crime:⁶ for every \$1 restrained, \$3.30 of crime is disrupted, and for every \$1 forfeited, \$3.50 of crime is disrupted. Using the POCDI calculation, Police seizures to date have resulted in approximately \$3 billion being removed from the illicit economy.⁷

The proposals align with the government's commitments

16. The proposed amendments contribute to fulfilling the government's election manifesto commitment to "keep up the pressure on tackling organised crime, gangs, and harmful drug use by ensuring Police and other enforcement agencies have the resources and powers to disrupt and prosecute this offending, seize the proceeds of crime, and hold to account the ringleaders of organised crime networks."⁸
17. CPRA is part of a significant cross-government programme of work to prevent and respond to local, national, and transnational organised crime. Optimising legislative tools that target the profits of organised crime is a priority under the New Zealand Transnational Organised Crime Strategy. The amendments to CPRA will complement other efforts to strengthen our legislative settings, such as reforms to the Anti-Money Laundering and Countering the Financing of Terrorism regime.
18. Seizure and forfeiture of assets is also a key focus of Police's new 5-year internal Organised Crime Strategy and the recently launched Operation Tauwhiro, which aims to disrupt the illegal supply and use of firearms by gangs and organised crime groups. The proposed amendments to CPRA will contribute to the success of the Strategy and associated operations by enabling Police to more effectively disrupt and deter organised crime through asset restraint.
19. As part of the organised crime work programme report-back, Cabinet invited the Minister of Justice to seek decisions on amendments to CPRA [SWC-20-MIN-0074.01 refers].

A new power to respond to transnational offending

Problem definition: Evidentiary hurdles in transnational cases impede investigations

20. Police has identified cases of significant assets, derived from offshore offending, being laundered in New Zealand real estate, commercial businesses, and the financial sector. New Zealand's reputation as a safe, secure, and high integrity jurisdiction incentivises efforts to launder illicit funds here (to obtain an aura of legitimacy).
21. Other legislative regimes can detect money derived from overseas offending. However, they may not produce evidence to satisfy the standards required for civil forfeiture. For example, money detected through reporting under the Anti-Money

⁶ McFadden, M (2015). "Development of a Proceeds of Crime Disruption Index," New Zealand Police.

⁷ Applying the above calculation to the \$593 million restrained and \$293 million forfeited by Police.

⁸ Labour Party 2020 Manifesto, Law and Order policy, Factsheet <https://www.labour.org.nz/release-law-and-order-reform-focused-on-wellbeing>

Laundering and Countering the Financing of Terrorism Act 2009 may require further investigation by Police, to supply evidence for the courts to support forfeiture.

22. CPRA investigations of transnational cases are impeded by:
 - 22.1. the inability to use domestic Police powers (e.g. examination orders and production orders or search warrants) in foreign jurisdictions; and
 - 22.2. the time required to utilise transnational mutual legal assistance processes; and
 - 22.3. non-cooperative foreign jurisdictions, or jurisdictions that do not or cannot prioritise requests for assistance; and
 - 22.4. the lack of skill and resources in some jurisdictions to investigate and present evidence of the foreign offending to the standard demanded by the New Zealand High Court.
23. These factors exacerbate the cost and time necessary to restrain and forfeit transnational criminal proceeds. Police advise that such cases are very resource intensive; in one case Police spent 30,000 hours (5 people over three years) to achieve a significant \$43 million seizure. The proposal would allow cases to be progressed more efficiently and successfully, so more investigations could be pursued, deterring further offending.
24. Police report that the inability to obtain sufficient evidence creates a significant number of potential cases (between 40 and 80) for which investigations are not yet feasible. These involve millions of dollars in suspected illicit assets, including the proceeds derived from illicit drug activities, corruption, foreign fraud and tax crime, and international money laundering.

Proposed power for property connected to transnational offending

25. I propose a new power for the courts to order forfeiture of property connected to transnational offending. The process would have the following key elements:
 - 25.1. The court would restrain the property as usual. This means that the court can order restraint if there are reasonable grounds to believe that the property is tainted (meaning acquired as a result of, or derived from, significant criminal activity).
 - 25.2. If the respondent is not in New Zealand, the Commissioner of Police can apply to the court for an order requiring the respondent to file a “notice of source” within 2 months of being served with the order. If the respondent does not file a valid notice, this affects forfeiture (discussed below).
26. The notice of source must specify:
 - 26.1. the jurisdiction(s) the restrained property originated from;
 - 26.2. the jurisdiction(s) through which the restrained property transited prior to its arrival in New Zealand;

- 26.3. the circumstances surrounding the respondent's acquisition of the property, including details of how it was acquired, derived, and funded; and
- 26.4. all persons, natural or legal, who may have an interest in the property, including the nature of any interest.
- 27. The ability to seek a notice of source would put overseas respondents in the same position as domestic respondents, who are subject to production and examination orders. Currently, production and examination orders issued by the court require the production of documents and attendance at an examination to answer questions. However, Police is not able to enforce these orders against respondents who are not in New Zealand.
- 28. The proposed notice of source order would require the respondent to explain the source of the property. This will enable Police to gather evidence in a timely and effective manner (while the property is restrained), and provides a safeguard for the respondent if the funds or assets have been legitimately obtained.
- 29. If the respondent files a notice, then Police must satisfy the same standard for forfeiture as they do currently (with the burden on Police to prove that the property is tainted on the balance of probabilities). If the notice indicates a legitimate source for the property, Police may decide not to proceed.
- 30. In cases where the respondent fails to file a notice of source, or files a materially false or misleading notice, the court must presume that the property is tainted property.
- 31. Respondents will have the opportunity to rebut this presumption. However, the burden shifts to them to prove, on the balance of probabilities, that the property is not tainted (i.e. not acquired as a result of, or derived from, significant criminal activity).

A new power to respond to organised crime

Problem definition: Organised criminal groups disguise criminal origins to impede forfeiture

- 32. At present, the Commissioner of Police must point to particular criminal activity from which property or benefits are derived for restraint or forfeiture to be granted.⁹ Often it is not possible to do so in the organised crime context, even where Police is aware that the respondent's known legitimate income is insufficient to account for the restrained assets.
- 33. Members (especially leaders) of organised criminal groups can insulate themselves from involvement in or knowledge of particular criminal activity. This can hinder or prevent asset recovery under CPRA, despite those members benefiting from the structure in which this criminal activity takes place.
- 34. The success of the current forfeiture regime has driven organised criminal groups to hide or disguise their ownership or control of property under the names of nominees or trusted third parties who are not directly involved in crime. For example, drug-related organised crime is structured to create distance between leaders (who receive a

⁹ Criminal Proceeds (Recovery) Act 2009, ss 5 *Interpretation*, definition of tainted property; 7 *Meaning of unlawfully benefited from significant criminal activity*.

portion of the profits) and the criminal activity. Police's experience with criminal proceeds investigations identifies that use of intermediaries, third party relatives or friends, and legal persons such as companies and trusts are a feature of many cases now investigated.¹⁰

Proposed alternative restraint and forfeiture standard: proof of connection to organised crime

35. I propose a new power¹¹ for the courts to make a restraining order if the Commissioner of Police provides evidence that satisfies a judge that there are reasonable grounds to believe:
- 35.1. the respondent has interests in or control over the restrained property; and
 - 35.2. the respondent is associated with an "organised criminal group". An organised criminal group is a group of 3 or more people who have as their objective, or one of their objectives:
 - 35.2.1. obtaining material benefit from significant criminal activity in New Zealand;
 - 35.2.2. obtaining material benefit from conduct outside New Zealand that, if it occurred in New Zealand, would constitute significant criminal activity; and
 - 35.3. members of, or participants in, the organised criminal group have been involved in, or unlawfully benefited from, significant criminal activity; and
 - 35.4. the respondent's known legitimate income and capital are likely to have been insufficient to acquire the interests in the restrained property.
36. At the forfeiture stage, where the Commissioner of Police could prove these criteria on the balance of probabilities, there would be a presumption that the property is tainted. If the presumption stands (because the respondent fails to successfully challenge it), the court must conclude that the property is tainted, and issue an asset forfeiture order.
37. Respondents will have the opportunity to rebut the presumption. However, the burden shifts to them to prove, on the balance of probabilities, that the property was derived from a legitimate source.

The new powers contain safeguards against unjust forfeiture

38. The processes and criteria for the new powers are designed to:
- 38.1. enable forfeiture in appropriate cases where existing problems currently prevent it; and
 - 38.2. avoid subjecting people to undue burdens or forfeiture where they, in fact, have legitimate interests in property.

¹⁰ See for example the Financial Intelligence Unit's 2019 National Risk Assessment, pages 10-12, <https://www.police.govt.nz/sites/default/files/publications/fiu-nra-2019.pdf>

¹¹ The current tests for restraint and forfeiture are set out in paragraphs 10 and 12 respectively.

39. The safeguards built into the proposals are as follows.
40. Police must first satisfy the courts to the following standards before any presumptions in favour of forfeiture can take effect:
 - 40.1. In transnational cases, Police must meet the existing standard for restraint, plus obtain a court order for a respondent (who is overseas) to file a notice of source. The respondent must have failed to file a notice of source or filed one that is materially false or misleading.
 - 40.2. In organised crime cases, Police must prove that it is more probable than not that the respondent is associated with an organised criminal group and that their known legitimate income is insufficient to acquire the interests in the property.
41. The new powers are designed to be limited only to the kinds of cases where there are currently problems. Police will have to exercise due diligence demonstrating at least one of the circumstances in paragraphs 40.1 and 40.2 apply. In other words, if a respondent:
 - 41.1. is in New Zealand, the presumption (in favour of forfeiture) in transnational cases will not apply;
 - 41.2. is not proven to have an association with an organised criminal group, and known legitimate income is sufficient to have acquired the property, the presumption in organised crime cases will not apply.
42. Respondents can rebut the presumption that their property is tainted. They will be able to provide evidence to the court. If they prove, on the balance of probabilities, that the property has a legitimate origin, their assets will be returned.
43. The final safeguard is the independent role of the courts in evaluating the evidence put forth at various stages of the process: evidence provided by Police for restraint, any further evidence from Police for the higher standard for forfeiture, and evidence from respondents (contesting restraint or forfeiture, or to rebut a presumption if engaged).
44. A diagram is included in the appendix, comparing the proposed new powers against the status quo.

Fixing a gap in Police's authority to retain seized property until a court determination

45. I also recommend a minor technical amendment to facilitate law enforcement. Under section 112 of CPRA certain property seized under a search warrant must be returned:
 - 45.1. After 28 days; or
 - 45.2. If a restraining order is obtained within the 28 days, at the date of expiry of the restraining order; or
 - 45.3. If a forfeiture order application is applied for within 28 days, at the determination of that application.

46. Police can only hold seized property for 28 days, even when an application for a restraining order has been made and they are awaiting the court's determination. By contrast, for forfeiture orders, Police can hold the property until the court has made a determination.
47. In other words, when courts take longer than 28 days to decide on an application, this creates a gap between the 28-day limit and the court's determination on restraint (a gap that does not exist with forfeiture).
48. I recommend an amendment to allow for seized property to be retained until the determination of any restraining order application made as soon as practicable within the 28-day period.

Financial Implications

49. The proposed amendments are expected to increase the number of proceedings that successfully result in forfeiture by 20–30%. It is likely that the increased proceedings would result in additional cost to:
 - 49.1. The courts due to increased cases taken by the Crown;
 - 49.2. Police to prosecute additional cases; and
 - 49.3. The Official Assignee at MBIE (who is responsible for managing restrained assets including storage, insurance, and maintenance during the investigation and court processes until the point that the asset is either forfeited or returned to the respondent).
50. Currently the Commissioner commences on average 50 cases per year. Approximately a third of all cases settle without the need for a forfeiture hearing, and some forfeiture applications are uncontested with these outcomes involving minimal court time. Proceedings that consume the most police time are transnational proceedings; the reforms are expected to simplify and expedite proceedings to either forfeiture or withdrawal of the case by prosecutors.
51. Police baselines already reflect an investment in Police's Asset Recovery Unit (ARU), increasing staff by 50%. Current ARU staffing is 100, increasing to 154 by 2022/23. The flow-on cost of increased court workload has already been incorporated into forecasts. Therefore, any additional cases that are able to be progressed to court will be absorbed within baselines.
52. Assets forfeited under the CPRA go into the Crown's Proceeds of Crime Fund. The costs to Police prosecution and the Official Assignee are cost-recovered from the assets forfeited under the CPRA. Current prosecution fees are forecast at \$3.5 million (19/20), with an estimated increase of \$750,000 per year as a result of the amendments. These additional costs from an increase in proceedings would be fully covered by the increase in assets forfeited. The average value of assets restrained per case is \$1.8 million. With an average of 50 cases per year and an estimated increase of 25% in cases taken to forfeiture, this would return approximately \$25 million per year.

53. The additional \$25 million in revenue of the Proceeds of Crime Fund will increase the money available to invest in programmes that target organised criminal activity. In March 2019, Cabinet broadened the scope of the Proceeds of Crime Fund to include initiatives that have a wellbeing focus and address crime-related harm and the drivers of crime [CAB-19-MIN-0087 refers].
54. We anticipate a further minor impact, consistent with the purpose of CPRA and the amendments to deter significant criminal activity: an increase in civil forfeiture may reduce demands on the criminal court. Making New Zealand a less attractive jurisdiction for illicit assets may have a deterrent impact on transnational and organised criminal offending. This may require less enforcement and judicial resource to combat such offending.

Legislative Implications

55. Legislation is required to implement this policy initiative. A place on the 2021 legislative programme will be sought.¹² The amendments are to the CPRA which binds the Crown (section 8).

Impact Analysis

Regulatory Impact Statement

56. A Regulatory Impact Summary (RIS) analysis has been prepared and is attached to this Cabinet Paper. An internal Ministry of Justice quality assurance panel has reviewed the RIS considers the information and analysis partially meets the quality assurance criteria.
57. The RIS acknowledges that officials did not have an opportunity to consult outside government on the proposals. This consultation may have informed the development of options, assessment of the likely effectiveness of options, and the costs and benefits of each.
58. The RIS also notes other constraints on the analysis, such as data limitations on the potential effectiveness of the proposed changes, and the limited opportunity to assess how particular aspects of the current regime are inadequate against organised criminal groups. Further time to analyse the underlying issues and develop the organised crime proposal may have resulted in more proportionate options that do not infringe on the rights protected in the New Zealand Bill of Rights Act to the same extent as identified with the current proposal.
59. These constraints do, to some extent, undermine the confidence that Ministers can place on the analysis in the RIA. Notwithstanding that these constraints are clearly identified and the analysis is otherwise complete, clear, and convincing, the QA Panel assesses the RIA as partially meeting the quality assurance criteria (complete, convincing, clear and concise, and consulted).

¹² A Bill was included on the previous Government's legislative programme with a category 5 priority (instructions to be provided to Parliamentary Counsel Office in 2020).

Climate Implications of Policy Assessment

60. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population implications

Women

61. There may be gender implications arising from the proposal to restrain and forfeit property in which someone associated with organised crime has an interest. The potentially broad scope of “association” will mean that the proposal could cover friends and family members of those in organised criminal groups. This could disproportionately affect women (for example, spouses of those in organised criminal groups).

Māori

62. The Crown has an obligation to act fairly towards Māori and non-Māori. The principle of equity complements the duty of active protection. Historically however, government policies have discriminated against Māori, leading to significant inequities in justice and social outcomes.
63. The amendments in themselves are not expected to have a differential impact on Māori, but are expected to have a differential impact based on whether an individual is involved in organised crime.
64. The proposed powers will affect gangs and those associated with gangs, groups more commonly involved in organised crime. Māori make up a disproportionate share of gang membership.¹³ Therefore I expect Māori will be a disproportionate share of civil respondents, reflecting this underlying representation in gang membership.
65. Any disproportionate impact on Māori may be mitigated by the following factors:
- 65.1. the deterrent effect from increased forfeiture (signalling that crime does not pay, and depriving the benefits criminal groups use to attract prospective members). This may reduce the likelihood Māori will become involved in organised crime, and the likelihood of Māori being victims of crime (as Māori are significantly more likely to be victims of crime than non-Māori¹⁴);
 - 65.2. the increased investment in programmes that reduce the harm and drivers of offending. This is due to the additional revenue the proposed amendments will generate into the Proceeds of Crime Fund (discussed under Financial Implications); and
 - 65.3. the Resilience to Organised Crime in Communities (ROCC) work programme, in the locations where this work is underway. One of its objectives is to reduce the risk of people being recruited or influenced by organised criminal groups,

¹³ Professor Sir Peter Gluckman, Office of the Prime Minister’s Chief Science Advisor, “Using Evidence to Build a Better Justice System,” 29 March 2018, “What We Know About Gangs,” Pg 21.

¹⁴ Ibid, “Māori considerations,” Pg 19.

which in turn would reduce those ultimately subject to CPRA.¹⁵ ROCC is implementing an innovative approach by combining social and economic intervention with targeted enforcement action. This is a critical component of a successful and sustained response to organised crime. ROCC is community-led, partnering with iwi and local groups to co-design responses to locally identified harms and drivers of organised crime.

Human Rights

66. Section 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
67. Section 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
68. Section 9(2)(h) [REDACTED]
[REDACTED]
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[REDACTED]
69. Section 9(2)(h) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
70. Section 9(2)(h) [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

¹⁵ NZ Police, "Organised Crime & Our Operational Response Strategy: Five Year Strategy," Pg 3, February 2021

https://www.police.govt.nz/sites/default/files/publications/organised_crime_and_our_operational_response.pdf

71. Section 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Section 9(2)(h) [REDACTED]

72. Section 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

Section 9(2)(h) [REDACTED]

73. Section 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. I

recommend that Justice Officials work with Crown Law, Te Puni Kōkiri, Ministry for Women, and Police in refining the proposal, and that this work also includes consideration of the impact on Māori.

74. Section 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

75. Section 9(2)(h) [REDACTED]
[REDACTED] Crown Law will conduct the BORA vet,
as it does for all Ministry of Justice Bills.

Consultation

76. The New Zealand Police, Crown Law, Treasury, Customs, and the Ministry of Foreign Affairs and Trade have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed.

Communications

77. No publicity is proposed for this paper.

Proactive Release

78. I propose to proactively release this paper, with any necessary redactions consistent with the Official Information Act 1982, within 30 business days of decisions by Cabinet.

Recommendations

The Minister of Justice recommends that the Committee:

1. **Agree** to amend the Criminal Proceeds (Recovery) Act 2009 to create regimes for restraining and forfeiting assets with the following elements:

Transnational offending

- 1.1. The court would restrain the property as usual if there are reasonable grounds to believe that any property is tainted property (that is acquired as a result of, or derived from, significant criminal activity);
- 1.2. If the respondent is not in New Zealand, the Commissioner of Police can apply to the court for an order requiring the respondent to file a notice of source within 2 months of being served with the order;
- 1.3. If the respondent has not filed a notice of source, or one that is materially false or misleading, the court must presume that the property is tainted and the onus shifts to the respondent to prove, on the balance of probabilities that the property is not tainted;

Domestic offending

- 1.4. A restraining order can be made if the court has reasonable grounds to believe:
 - 1.4.1. the respondent has interests in the restrained property; and
 - 1.4.2. the respondent is associated with an “organised criminal group,” where an organised criminal group is a group of 3 or more people who have as their objective, or one of their objectives, obtaining material benefit from significant criminal activity or conduct outside New Zealand that, if it occurred in New Zealand, would constitute significant criminal activity; and
 - 1.4.3. members of, or participants in, the organised criminal group have been involved in, or unlawfully benefited from, significant criminal activity; and
 - 1.4.4. the respondent’s known legitimate income and capital are likely to have been insufficient to acquire the interests in the restrained property;
- 1.5. At the forfeiture stage, there will be a presumption that the property is tainted if the court is satisfied of the criteria for restraint on the balance of probabilities;
- 1.6. The presumption can be rebutted if the respondent can prove that the property was derived from a legitimate source;

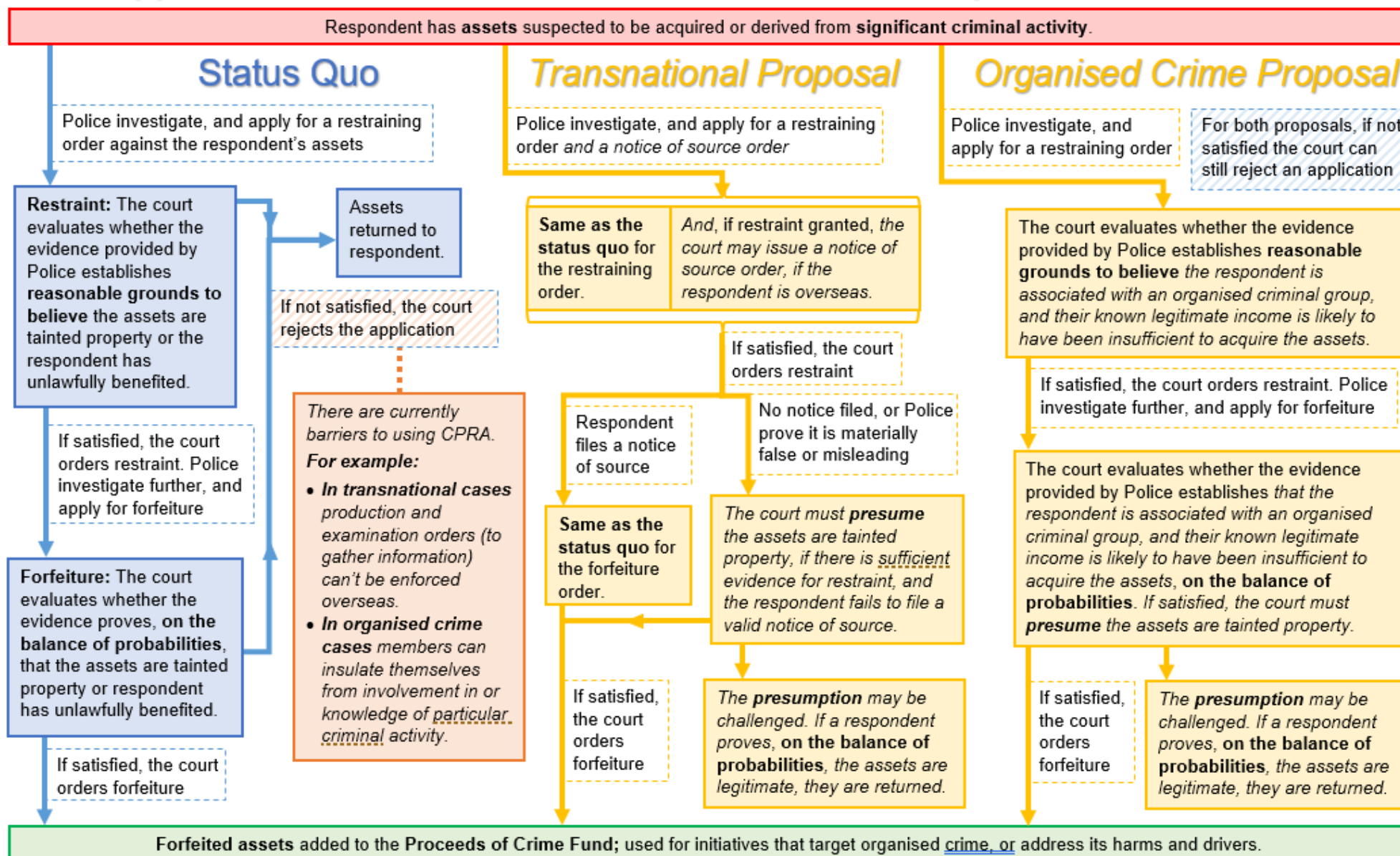
2. **Agree** to a technical amendment to the dates on which property under a search warrant must be returned, allowing time for courts to issue a determination on restraining order;
3. **Section 9(2)(h)**
4. **Note** that the proposals may have population implications, disproportionately affecting certain groups;
5. **Agree** that Justice officials will work with Crown Law, Te Puni Kōkiri, Ministry for Women, and Police to mitigate the concerns in recommendations 3 and 4 during drafting, in particular, the definition of association;
6. **Note** that the Criminal Proceeds (Recovery) Amendment Act will amend an Act that binds the Crown;
7. **Invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations;
8. **Direct** New Zealand Police and the Ministry of Business, Innovation and Employment to include projected costs for the forecast period in future Joint Minister reports, prior to the allocation of Proceeds of Crime funding for cost recovery.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice

Appendix: CPRA Processes: Status Quo and Proposed New Powers





Cabinet Business Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Criminal Proceeds (Recovery) Act 2009: Proposed Reforms to Better Target Illicit Assets

Portfolio Justice

On 19 April 2021, the Cabinet Business Committee:

Transnational offending

- 1 **agreed** to amend the Criminal Proceeds (Recovery) Act 2009 to create regimes for restraining and forfeiting assets with the following elements:
 - 1.1 the court would restrain the property as usual if there are reasonable grounds to believe that any property is tainted property (that is acquired as a result of, or derived from, significant criminal activity);
 - 1.2 if the respondent is not in New Zealand, the Commissioner of Police can apply to the court for an order requiring the respondent to file a notice of source within two months of being served with the order;
 - 1.3 if the respondent has not filed a notice of source, or one that is materially false or misleading, the court must presume that the property is tainted and the onus shifts to the respondent to prove, on the balance of probabilities, that the property is not tainted;

Domestic offending

- 2 **agreed in principle**, subject to the report back in paragraph 6 below, to amend the Criminal Proceeds (Recovery) Act 2009 to create regimes for restraining and forfeiting assets with the following elements:
 - 2.1 a restraining order can be made if the court has reasonable grounds to believe:
 - 2.1.1 the respondent has interests in the restrained property; and
 - 2.1.2 the respondent is associated with an 'organised criminal group', where an organised criminal group is a group of three or more people who have as their objective, or one of their objectives, obtaining material benefit from significant criminal activity or conduct outside New Zealand that, if it occurred in New Zealand, would constitute significant criminal activity; and

- 2.1.3 members of, or participants in, the organised criminal group have been involved in, or unlawfully benefited from, significant criminal activity; and
- 2.1.4 the respondent's known legitimate income and capital are likely to have been insufficient to acquire the interests in the restrained property;
- 2.2 at the forfeiture stage, there will be a presumption that the property is tainted if the court is satisfied of the criteria for restraint on the balance of probabilities;
- 2.3 the presumption can be rebutted if the respondent can prove that the property was derived from a legitimate source;
- 3 **agreed** to a technical amendment to the dates on which property under a search warrant must be returned, allowing time for courts to issue a determination on restraining order;
- 4 **Section 9(2)(h)**
- 5 **noted** that the above proposals may have population implications, disproportionately affecting certain groups;
- 6 **directed** Justice officials to work with Crown Law, Te Puni Kōkiri, Ministry for Women, and Police to mitigate the concerns noted in paragraphs 4 and 5 above, in particular the definition of association, and to report back to the Cabinet Social Wellbeing Committee as soon as practicable;
- 7 **noted** that the proposed Criminal Proceeds (Recovery) Amendment Bill will amend an Act that binds the Crown;
- 8 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 9 **directed** New Zealand Police and the Ministry of Business, Innovation and Employment to include projected costs for the forecast period in future Joint Minister reports, prior to the allocation of Proceeds of Crime funding for cost recovery.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Dr Ayesha Verrall

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

In Confidence

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

Reforms to the Criminal Proceeds (Recovery) Act 2009 to better target illicit assets

Proposal

- 1 This paper seeks approval for policy refinements to the organised crime proposal of the Criminal Proceeds (Recovery) Act 2009 (CPRA) amendments. The refinements are designed to mitigate human rights and population impact concerns.

Relation to government priorities

- 2 The CPRA amendments contribute to fulfilling the government's election manifesto commitment to "keep up the pressure on tackling organised crime, gangs, and harmful drug use by ensuring Police and other enforcement agencies have the resources and powers to disrupt and prosecute this offending, seize the proceeds of crime, and hold to account the ringleaders of organised crime networks."¹
- 3 The CPRA amendments are part of New Zealand's Transnational Organised Crime Strategy (TNOCS Strategy). The TNOCS Strategy is a cross-government programme of work to prevent and respond to local, national, and transnational organised crime. One of the TNOCS Strategy's priorities is to optimise legislative tools to better target the profits of organised crime, including the CPRA amendments and reforms to the Anti-Money Laundering and Countering the Financing of Terrorism regime.
- 4 The CPRA amendments are one part of the work this government is doing on organised crime and gangs. This is the first in a suite of papers that will be proposed to improve the law enforcement response to gangs. This paper will also complement this Government's work to prevent organised crime, such as, providing alternate pathways out of crime. This work is expected to be significantly progressed before the end of 2022.

Executive Summary

- 5 CPRA is a civil regime for restraining and forfeiting property derived from significant criminal activity, so as to deter criminal conduct driven by profit. Restraint is the seizure and preservation of property. Forfeiture is transfer of ownership to the Crown.
- 6 In May 2021, Cabinet agreed, in principle, to allow the restraint and forfeiture of property associated with organised crime (**organised crime orders**), where the respondent's known legitimate income and capital are likely to have been insufficient to acquire the property.
- 7 The proposed amendments were subject to mitigating concerns **Section 9(2)(h)** and about associated population implications.

¹ Labour Party 2020 Manifesto, Law and Order policy, Factsheet <https://www.labour.org.nz/release-law-and-order-reform-focused-on-wellbeing>

Cabinet directed a report back to the Cabinet Social Wellbeing Committee. Section 9(2)(h)

- 8 To address those concerns, I am proposing the following refinements to the organised crime orders: adding a minimum threshold, requiring proportionality, creating a limited judicial discretion, and providing a clarification to guide the court's interpretation of association.
- 9 The refined design strikes a balance between:
- 9.1 Upholding the rule of law (in terms of the effectiveness at seizing illicit assets); and
- 9.2 Safeguarding human rights (to a fair hearing and freedom from unreasonable seizure).
- 10 Section 9(2)(h)
- Vulnerable communities may also benefit from the increase in deterrence of organised crime, and complementary increase in funds for improving wellbeing and resilience to organised crime.
- 11 I further propose an amendment to ensure KiwiSaver funds can be subject to forfeiture orders under CPRA, closing a potential legal loophole.
- 12 Section (9)(2)(f)(iv)

Background

- 13 In May 2021, Cabinet agreed to amend CPRA [CAB-21-MIN-0138 refers]:
- 13.1 to allow forfeiture of property involved in transnational offending, where a respondent who is overseas fails to comply with a notice of source order within 2 months;
- 13.2 to address a gap in the regime by giving Police authority to hold seized property until the determination of a restraining order application; and
- 13.3 in principle, to allow the restraint and forfeiture of property associated with organised crime, where the respondent's known legitimate income and capital are likely to have been insufficient to acquire the property.
- 14 Section 9(2)(h)
- there was also a concern that the proposal may have disproportionate impacts on Māori and women.
- 15 The agreement, in principle, was subject to further work to mitigate the above concerns. Cabinet directed Justice officials to work with Crown Law, Te Puni Kōkiri, Ministry for Women, and New Zealand Police; and to report back to the Cabinet Social Wellbeing Committee.

CPRA enables the state to seize and take control of illicitly derived assets

- 16 The purpose of CPRA is to eliminate the chance for a person to profit from significant criminal activity² and to deter such activity. Any property in New Zealand that is derived from offending is potentially susceptible to restraint and forfeiture by the state.
- 17 CPRA is a civil regime, under which Police investigate and apply to the courts for restraining and forfeiture orders against property derived from significant criminal activity. These orders target property, and can occur without any criminal prosecution against the person who owns the property (the respondent). These two key features are explained below.
- 18 **Restraint:** to grant a restraining order, the court must be satisfied it has *reasonable grounds to believe* (an objective and credible basis for thinking) that:³
- 18.1 the property is tainted (meaning derived from significant criminal activity); or
- 18.2 the respondent has unlawfully benefited from significant criminal activity (meaning the person knowingly derived a benefit, directly or indirectly).
- 19 Restraint ensures that the property cannot be transferred or otherwise disposed of while Police investigate the source of the property further. Restrained property is held by the Official Assignee for a year or until any application to lift the order is granted (the order can also be renewed). This allows time for Police to gather evidence for forfeiture, if sought.
- 20 **Forfeiture:** to grant a forfeiture order, the court must be satisfied *on the balance of probabilities* (that it is more probable than not):⁴ that the property is tainted, or the respondent unlawfully benefited from significant criminal activity. In other words, a link must be proven – either between the *assets* and significant criminal activity, or a person's *profits* and significant criminal activity, respectively.
- 21 If the court makes a forfeiture order, the property is transferred to the Crown and held by the Official Assignee. Money from the sale of forfeited property goes into the Proceeds of Crime Fund, which is used to address organised crime and the harms and drivers of offending.

Cabinet agreed, in principle, to a new organised crime restraint and forfeiture order

- 22 New Zealand is one of only four countries rated by the Financial Action Task Force (FATF) as having a high level of effectiveness for confiscation of proceeds of crime. CPRA restrains approximately 8% of the estimated volume of criminal proceeds in New Zealand, compared with the estimated global average of 2.2%.⁵
- 23 The organised crime orders would further improve CPRA's effectiveness in disrupting organised crime. They will enable more assets to be seized at an earlier stage, compared to the status quo. The existing CPRA powers can take considerable time and resource for the Commissioner of Police to use, which can allow the illicit profits to be reinvested in crime or be used to recruit prospective members before they can be seized.

² CPRA, s 6, any offending liable to 5 years or more imprisonment; or that derived property of \$30,000 or more.

³ Ibid, ss 24-25, Making restraining orders relating to specific property, or all or part of a respondent's property.

⁴ Ibid, ss 50 Making assets forfeiture order, 55 Making profit forfeiture order.

⁵ FATF (2021), "Anti-money laundering and counter-terrorist financing measures – New Zealand, Fourth Round Mutual Evaluation Report," FATF, Paris, paragraph 224, Pg 70.

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html>

- 24 For example, in ongoing forfeiture proceedings against property owned by the former President of the Head Hunters, the Commissioner of Police relied on evidence from 16 different police operations over nearly 20 years. It involved approximately \$10 million worth of property, with much of the alleged criminal activity undertaken by others.⁶

Cabinet directed officials to address concerns with the organised crime proposal

25 **Section 9(2)(h)**

26 As noted in the background, Cabinet’s agreement was subject to mitigating concerns ^{Section 9(2)(h)} and that it could disproportionately impact Māori and women.

27 The organised crime orders have a new set of criteria (as an alternative to proving the assets are tainted or an unlawful benefit⁷). These better respond to the leaders and facilitators of organised crime. These criteria, including the refinements I am proposing in bold below, are as follows:

Refinement:	Proposed changes to the policy in bold:	Paragraphs:
Clarifying the meaning of “association”	<p>A restraining order can be made if the court is satisfied it has reasonable grounds to believe:</p> <ul style="list-style-type: none"> the respondent has interests in or control over property, including a collection of assets; and the respondent is associated with an “organised criminal group,” where association is more than a mere acquaintance, and an organised criminal group is a group of 3 or more people who have as their objective, or one of their objectives, obtaining material benefit from significant criminal activity in New Zealand, or conduct outside New Zealand that, if it occurred in New Zealand, would constitute significant criminal activity; and members of, or participants in, the organised criminal group have been involved in, or unlawfully benefited from, significant criminal activity; and the respondent’s known legitimate income and capital are likely to have been insufficient to acquire the interests in the restrained property; and 	[41]-[44]
A minimum threshold	<ul style="list-style-type: none"> the value of the property not explained by the respondent’s known legitimate income and capital is at least \$30,000. 	[30]-[33]
Proportionality	At the forfeiture stage, if satisfied of the above criteria on the	[34]-[36]

⁶ *Commissioner of Police v Doyle* [2021] NZHC 1783, [14 July 2021].

⁷ The current tests for restraint and forfeiture are set out in paragraphs 18 and 20, respectively.

	balance of probabilities, the court must presume the value of the property that can't be explained by legitimate income is tainted...	
Judicial discretion	... unless it is not in the interests of justice to do so. The respondent has an opportunity to rebut the presumption, by proving on the balance of probabilities that the property is not tainted, or else the court must issue a forfeiture order.	[37]-[40]

Proposed refinements would balance effectiveness and safeguarding rights

28 The package of refinements are intended to further tailor the reforms to the type of complex cases where the issues arise, and safeguard against the risk of unduly subjecting innocent people to state powers. The refinements build on each other to filter out people we do not intend to capture.

29 **Section 9(2)(h)**



The value of the property that can't be explained by legitimate income must be worth at least \$30,000

30 I propose adding a \$30,000 threshold to the organised crime orders, when applying for restraint and forfeiture. This is intended to exclude people who are not leaders and facilitators of organised crime (for example, those whose connection is only as whānau and friends of organised criminal group members). The threshold is crucial to protecting BORA rights.

31 Leaders and facilitators of organised criminal groups are likely to be captured by a \$30,000 threshold.⁸ For context, the median annual earnings of adults in the workforce is approximately \$55,000 (before tax and expenses).⁹ Australia (Commonwealth) and the United Kingdom similarly use thresholds, of \$100,000 and £50,000 respectively.

32 There is a risk that those with illicit assets could attempt to exploit such a threshold. For example, distributing their assets such that no one person holds \$30,000, but do collectively hold that much. I propose to mitigate this risk by allowing the courts to be able to consider where a respondent has effective control over the property, even if the ownership of the property is not officially in their name.¹⁰

⁸ Such as the \$10 million sought in *Commissioner of Police v Doyle* [2021] NZHC 1783, [14 July 2021]. It would also cover the higher end of the broader set of current cases, per FATF (2021), pg 71: the average value of \$113.5 million restrained per year over an average of 95 cases per year.

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html>

⁹ \$1,060 per week as of June 2020; StatsNZ, "Labour market statistics (income): June 2020 quarter," 26 August 2020, "Median weekly earnings from wages and salaries increase" <https://www.stats.govt.nz/information-releases/labour-market-statistics-income-june-2020-quarter> NB: This is a more direct comparison to respondents, as total household income includes more than 1 person on average.

¹⁰ As may be done currently for profit forfeiture orders, under s 58 CPRA.

- 33 A threshold lower than \$30,000¹¹ is likely to have a real risk of inconsistency with BORA. The lower the value of the threshold, the higher the risk of unjust seizures. Such seizures would be unlikely to help achieve the objective of seizing the profits of leaders and facilitators and deterring organised criminal activity.

The new orders must exclude the value of the property that can be explained by legitimate income

- 34 I propose to clarify the way in which the presumption applies, so that the organised crime orders operate in a proportional manner. Officials identified that it was unclear whether all or part of the property in question would be presumed to be tainted (after Police have proven a respondent has insufficient legitimate income to explain their interests in it).
- 35 To make the intent of the policy clear, the presumption that property is tainted should only apply to the value of that property that can't be explained by legitimate income and capital. The key effect of this is to ensure the power excludes from forfeiture the value of any property that *can* be explained by legitimate income.
- 36 This could make a difference where a respondent's property is only in part explained by legitimate income, and is not severable. For example, a house, where the *total* value of which exceeds legitimate income, but that was paid for in part with legitimate income. In such cases, that portion of the value of the property would be returned to the respondent upon the forfeiture and disposal of the assets by the Official Assignee.

Giving the courts a limited discretion in making the presumption that property is tainted

- 37 I propose to provide a limited judicial discretion as part of the process for the organised crime orders, to strengthen the protection of BORA rights.
- 38 Cabinet agreed, in principle, that property would be presumed to be tainted (derived from significant criminal activity), if the criteria set out in paragraphs [27] are proven. In particular, the burden would be on the Commissioner of Police to prove that:
- 38.1 The respondent is associated with an organised criminal group that has been involved in, or unlawfully benefited from, significant criminal activity, and
- 38.2 the respondent's known legitimate income and capital are likely to have been insufficient to acquire the interests in the restrained property.
- 39 Once the presumption is made, the burden shifts to respondents, who would have the opportunity to rebut it. They would have to prove on the balance of probabilities that their property was not derived from significant criminal activity, or else be forfeited.
- 40 I propose to amend this provision to provide that the court has a limited discretion to decline to make this presumption, if it would not be in the interests of justice to do so. It is impossible to predict all the situations that may give rise to unfairness, and officials do not expect these to arise frequently. However, judges having the ability to decline to make the presumption would protect the respondent in those cases. For example, where the associations are so tangential, or the investigation of legitimate income had been inadequate, such that it would jeopardise the fairness of forfeiture.

¹¹ Which aligns with the status quo, under CPRA s 6(1)(b), *Meaning of significant criminal activity*

Leaving the definition of “associated” to the common law, with clarification to guide interpretation

- 41 Cabinet directed officials to consider defining “associated” as a way of mitigating concerns. However, any definition precise enough to limit the scope of the power also opens it up to exploitation by organised criminal groups seeking to defeat the purpose of the reforms.
- 42 Specifying association (in terms of activities or degrees of connection) could drive leaders and facilitators to structure their affairs so as to argue they don’t meet that legal definition. In the worst case, a definition could incentivise transferring illicit assets to the people (such as whānau and friends) that such a definition intends to exclude.
- 43 Instead, I propose that for a respondent to be associated with an organised criminal group, they must be more than a mere acquaintance. “Association” would not be further defined. This will mean that the courts will draw on the common meaning of association.
- 44 The interpretation of “associated” will also be shaped by the purpose of reforms. This purpose is reinforced by the further refinements above that limit the risk of capturing people we do not intend to capture.

The refinements would be highly likely to make the proposal BORA consistent

- 45 The refinements ensure that the organised crime orders strike a balance between:
- 45.1 Upholding the rule of law (in terms of the effectiveness at seizing illicit assets); and
 - 45.2 Safeguarding human rights (as detailed below).
- 46 The details below show how the refinements work together to protect BORA rights. As a whole, they ensure BORA compliance in a manner intended to minimise any trade-off in the effectiveness of seizing illicit assets.

The right to natural justice includes the right to a fair hearing

- 47 The existing CPRA processes provide opportunities for respondents (and others with an interest in the property) to present evidence at hearings for restraint and forfeiture, and to make appeals against any orders made by the courts.
- 48 The right to a fair hearing is further protected by:
- 48.1 Residual judicial discretion to decline to make the presumption where it is not in the interests of justice to do so, to ensure orders are applied consistently with BORA; and
 - 48.2 The opportunity for a respondent to present evidence to rebut the presumption, after it is made. It is appropriate that respondents are able to respond, after Police have proven what they need to in satisfying the court to reverse the burden of proof.

The right to be free from unreasonable seizure necessitates appropriate thresholds for forfeiture

- 49 Under the organised crime orders, the burden of proof remains on Police to satisfy the courts (of the criteria in paragraphs [27] to the relevant standards¹²).
- 50 The refinements further strengthen the reasonableness of forfeiture by:

¹² Reasonable grounds to believe for restraint, and on the balance of probabilities for forfeiture.

- 50.1 Guiding the interpretation of “associated” though excluding mere acquaintances;
 - 50.2 Adding a \$30,000 threshold for cases under the organised crime order to exclude those unlikely to be leaders and facilitators of organised criminal groups; and
 - 50.3 Requiring that the new orders operate proportionally, by excluding legitimate income.
- 51 These ensure the orders only seize the illicit assets of leaders and facilitators of organised crime, as intended. The courts will also still be able to grant relief, such as to children or spouses, by exempting part of the property from forfeiture if it would cause undue hardship.¹³

The proposals themselves do not give rise to inconsistency with other relevant rights

- 52 The refinements also mitigate the risk that the proposed organised crime orders are applied in a way inconsistent with the freedom of association (s 17), freedom from discrimination (s 19), and the privilege against self-incrimination (s 25(3)).
- 53 If engaged, any limitation on the right to freedom of association is likely to be justified where Police can satisfy the court of the existence of an organised criminal group (an organisation with the necessary structure and objectives), that it has committed significant criminal activity, and that the respondent is associated and has insufficient legitimate income. This is due to the significant public interest involved in the forfeiture of illicit assets derived from organised criminal offending.
- 54 Similarly, the refinements that limit the risk of an unreasonable seizure also minimise the possibility of the new orders being used in a discriminatory manner.

The BORA safeguards also mitigate any population impacts under the proposal

- 55 The refinements mitigate any potential disproportionate impact on Māori and women that may have arisen from too broadly capturing those associated with organised criminal groups. This principle of equity aligns with Article 3 of the Treaty of Waitangi.
- 56 There are no reliable estimates of the number or demographics of people associated with organised criminal groups. By their nature, organised criminal groups seek to avoid identification by the state, which makes measuring their numbers and associates difficult.
- 57 I also note the whānau of gangs is not the same as associates of organised criminal groups:
- 57.1 Gangs and organised crime are not synonymous. Gang membership does not inherently entail offending, and an organised criminal group (such as international money laundering or drug trafficking network) need not be a gang.
 - 57.2 Likewise, “association” is broader, including friends and business partners (not just whānau). Conversely, members of organised criminal groups are likely to be fewer than (though partly overlapping with) total gang members.

¹³ CPRA, ss 28 and 30, conditions for respondent or severance for other persons (at restraint), 51 and 56, undue hardship for respondent (at forfeiture), 61-62, 66, and 67 for relief for a person other than the respondent (at forfeiture).

- 58 However, we know Māori make up a disproportionate share of gang membership.¹⁴ Te Puni Kōkiri has estimated that Māori whānau of gangs may make up around 5% of the Māori population. Police's Gang Intelligence Centre indicates there are around 7,500 adult gang members, of which around 5,500 are estimated to be Māori.¹⁵ Te Puni Kōkiri has further estimated that there are approximately 49,500 people who are whānau of these gang members – extended family including spouses, children, parents, siblings, and in-laws. And of this group of gang whānau, 37,000 were estimated to be Māori, which equates to 5% of Māori.
- 59 Regardless of the exact numbers, the proposal and the refinements mitigate the risk of any disproportionate impacts by:
- 59.1 focusing on organised criminal groups (by requiring proof of a group with the relevant criminal intent), not on gang membership;
 - 59.2 focusing on harmful conduct (by requiring proof the group has committed significant criminal activity);
 - 59.3 focusing on the leaders and facilitators of those groups (by limiting cases to those where the value of property not explained by legitimate income is worth at least \$30,000), not on smaller amounts from low-level members involved in offending or their whānau; and
 - 59.4 providing a limited judicial discretion (as to making the presumption unless it is not in the interests of justice to do so).
- 60 And to the extent the proposal deters organised crime, this may benefit those harmed by such offending (and Māori are significantly more likely to be victims of crime than non-Māori¹⁶). Vulnerable communities may also benefit from increased investment from the additional revenue to the Proceeds of Crime Fund, which can reduce the risk of people being recruited or influenced by organised criminal groups.¹⁷

I propose an additional amendment to make KiwiSaver funds subject to CPRA

- 61 I propose to amend CPRA to expressly provide that funds in KiwiSaver may be subject to CPRA. This will close a potential legal loophole where criminals can deposit their proceeds of crime into KiwiSaver accounts, where they are currently not subject to forfeiture until withdrawn. This will also create consistency with other retirement savings vehicles, such as bank accounts and managed funds, which can be subject to CPRA.
- 62 The Court of Appeal recently affirmed that¹⁸ funds held in a KiwiSaver scheme are not subject to forfeiture under CPRA. This is due to section 127 of the KiwiSaver Act 2006, which provides a general prohibition on KiwiSaver funds being passed to another person (such as CPRA's Official Assignee) unless an enactment expressly provides otherwise.

¹⁴ Professor Sir Peter Gluckman, Office of the Prime Minister's Chief Science Advisor, "Using Evidence to Build a Better Justice System," 29 March 2018, "What We Know About Gangs," Pg 21.

<https://www.pmcas.org.nz/wp-content/uploads/Using-evidence-to-build-a-better-justice-system.pdf>

¹⁵ Ibid, consistent with the 70% Māori share of prisoners who are active or former gang members.

¹⁶ Ibid, "Māori considerations," Pg 19.

¹⁷ New Zealand Police, "Organised Crime & Our Operational Response Strategy: Five Year Strategy," Pg 3, February 2021 https://www.police.govt.nz/sites/default/files/publications/organised_crime_and_our_operational_response.pdf

¹⁸ *CIP v Harrison* [2021] NZCA 540, 18 October 2021.

- 63 Section 127 is intended to ensure that KiwiSaver funds are not used for purposes other than retirement. However, it was not the policy intention under CPRA for these funds to be beyond the reach of forfeiture, as this would undermine the purpose of CPRA to prevent people benefitting from criminal activity. The KiwiSaver Act 2006 currently recognises there may be express exceptions to section 127 such as superannuation rights orders made under the Property (Relationships) Act 1976.

Report back on policy work responding to leaders and facilitators of organised crime

- 64 Ministry of Justice and New Zealand Police officials have been progressing policy work on how to optimise New Zealand's legislation to better respond to the leaders and facilitators of transnational organised crime.
- 65 On 16 August 2021, Cabinet invited the Minister of Justice and the Minister of Police to report back on this work [ERS-21-MIN-0027 refers]. I am reporting back on the progress to date of that work as part of this paper, to make best use of Cabinet's limited time, and because this work is thematically linked with CPRA and both are part of the TNOC Strategy.
- 66 Officials have undertaken workshops and meetings with TNOC agencies to understand the system-wide perspectives on TNOC, and the difficulties TNOC agencies have when responding to TNOC in their sectors. Officials have also progressed policy research to understand the complexities of the transnational organised crime landscape, and to identify in more detail the current vulnerabilities New Zealand has in relation to TNOC. Specific areas of focus identified in the TNOC vulnerabilities assessment include the border (both airports and seaports), the maritime domain, the financial sector, and the emerging vulnerability of the cyberspace. Each of these areas have their own complexities, and points of connection with one another. This means the problem of responding to leaders and facilitators of TNOC – who work across all of these areas – is multifaceted and requires a systematic approach.
- 67 Further policy work is required to identify and develop legislative interventions which respond to this problem. Given the scope of this work programme, as well as the evolving and insidious nature of TNOC, officials require more time to undertake the policy development process before briefing me on possible options. When this work is complete, officials will jointly brief myself and the Minister of Police on options that will better respond to the overall TNOC system. These options will seek to specifically address – and make a measurable difference to – how we respond to the leaders and facilitators of transnational organised crime.

Financial Implications

- 68 The previous Cabinet paper estimated the impact of the proposals as a \$25 million increase to the Proceeds of Crime Fund. We do not expect the refinements to significantly alter this assessment. As outlined in the previous Cabinet paper, any costs to the Crown will be met from baselines.

Legislative Implications

- 69 Legislation is required to implement this policy initiative. A Bill is on the Government's 2022 legislative programme with a category 3 priority (to be passed if possible in 2022). Further drafting instructions will be issued to the Parliamentary Counsel Office to incorporate the refinements to which Cabinet agrees. CPRA binds the Crown (section 8).

Impact Analysis

Regulatory Impact Statement

- 70 Treasury's Regulatory Impact Analysis team has determined that the proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement. The proposals relating to organised crime orders are exempt on the grounds that the relevant issues have already been adequately addressed by existing impact analysis, and the revised approach is analysed in this paper. The proposal relating to forfeiture of KiwiSaver funds is exempt on the basis of it having minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment (CIPA)

- 71 The Ministry for the Environment was previously consulted, and confirmed that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 72 Analysis on population implications is included in the analysis at paragraphs [55]-[60].

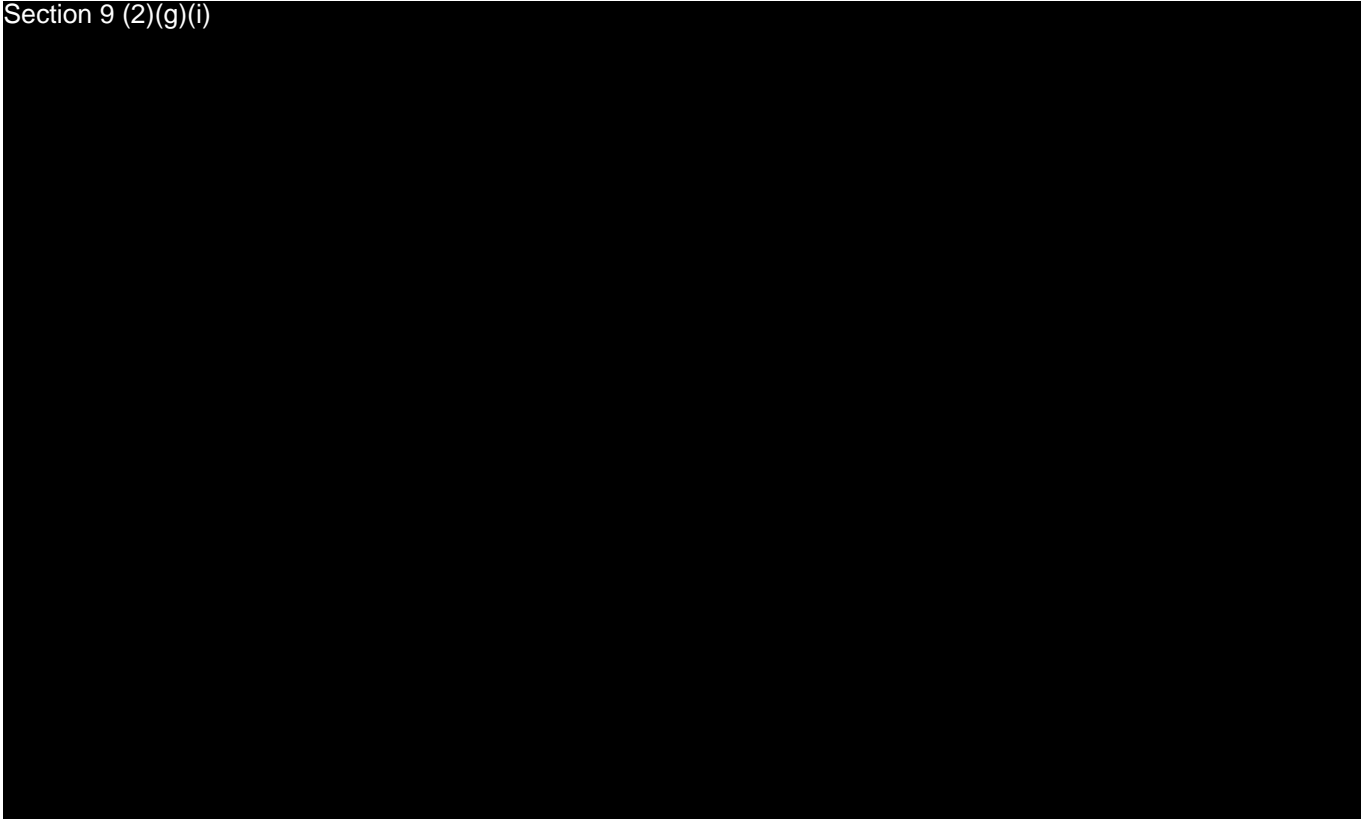
Human Rights

- 73 Analysis on human rights implications is included in the analysis at paragraphs [45]-[54].

Consultation

- 74 Crown Law, Te Puni Kōkiri, Ministry for Women, New Zealand Police, the Ministry of Business, Innovation and Employment (MBIE), Treasury, the Inland Revenue Department (IRD), Customs, and the Ministry of Foreign Affairs and Trade have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Section 9 (2)(g)(i)



88 This discussion is set out in further detail at **Appendix 1**.

89 MBIE, who administers the relevant section of the KiwiSaver Act 2006, IRD, and Police support the KiwiSaver amendment to CPRA. Treasury has no comment.

Communications

90 No publicity is proposed for this paper.

Proactive Release

91 I propose to proactively release this paper, with any necessary redactions consistent with the Official Information Act 1982, within 30 business days of decisions by Cabinet. I propose to also release the previous paper [CBC-21-MIN-0040 refers], for which proactive release was postponed in respect of responding to Cabinet's direction to refine the proposals.

Recommendations

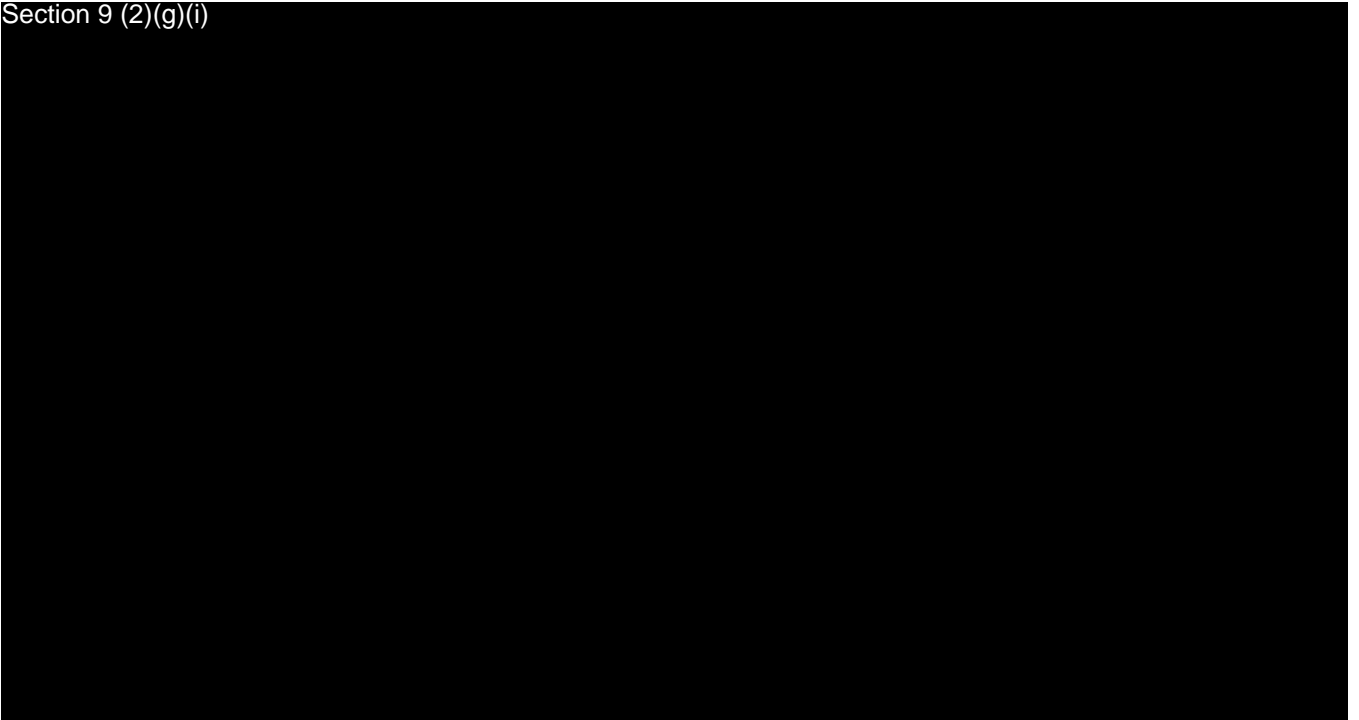
The Minister of Justice recommends that the Committee:

1. **Note** that enhancing the success and efficiency of the Criminal Proceeds (Recovery) Act 2009 will improve our effectiveness in disrupting organised crime;
2. **Note** that in May 2021, Cabinet agreed, in principle, to amend the Criminal Proceeds (Recovery) Act 2009, regarding domestic offending, to create a regime for restraining and forfeiting assets associated with organised criminal groups, subject to the report back in paragraph 3 below [CAB-21-MIN-0138];
3. **Note** that in May 2021, Cabinet directed Justice officials to work with Crown Law, Te Puni Kōkiri, Ministry for Women, and New Zealand Police to mitigate concerns under the New Zealand Bill of Rights Act 1990 and about population impacts, and to report back to the Cabinet Social Wellbeing Committee [CAB-21-MIN-0138];
4. **Agree** to amend the regime referred to in paragraph 2, with the following elements:
 - 4.1. Make the presumption that property is tainted only apply to the value of property that can't be explained by the respondent's known legitimate income and capital;
 - 4.2. Create a limited judicial discretion to decline to make the presumption that property is tainted, where is it not in the interests of justice to do so;
 - 4.3. Clarify that an associate must be more than a mere acquaintance;
5. **Section 9(2)(h)**
[REDACTED]
6. **Note** that a decision on whether to include a minimum threshold for the new orders (for the value of the property not explained by the respondent's known legitimate income and capital) will be made following drafting and vetting for Bill of Rights compliance of the Bill;
7. **Agree** to amend the Criminal Proceeds (Recovery) Act 2009 to expressly provide that funds under a KiwiSaver scheme may be subject to CPRA;
8. **Authorise** the Minister of Justice to resolve minor, technical, or non-controversial amendments to the Criminal Proceeds (Recovery) Act 2009 that arise during drafting without further reference to Cabinet;
9. **Invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs, including drafting options relating to a threshold for consideration by Cabinet;
10. **Section (9)(2)(f)(iv)**
[REDACTED]
11. **Note** the CPRA amendments are one part of the work this government is doing on organised crime and gangs. This is the first in a suite of papers that will be proposed to improve the law enforcement response to gangs. This paper will also complement this Government's work to prevent organised crime, such as, providing alternate pathways out of crime.

Authorised for lodgement

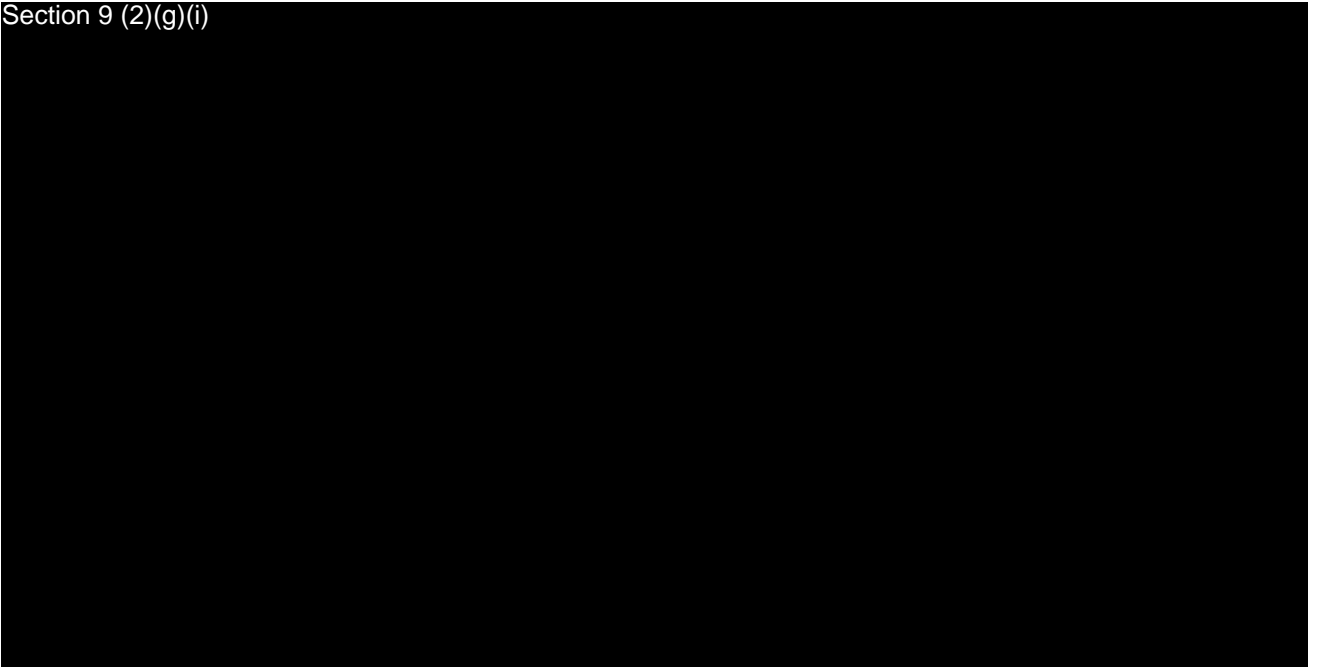
Hon Kris Faafoi
Minister of Justice

Section 9 (2)(g)(i)



IN C O N F I D E N C E

Section 9 (2)(g)(i)



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Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Criminal Proceeds (Recovery) Act 2009 Reforms to Better Target Illicit Assets


Portfolio Justice

On 19 April 2022, following reference from the Cabinet Social Wellbeing Committee (SWC), Cabinet:

- 1 **noted** that enhancing the success and efficiency of the Criminal Proceeds (Recovery) Act 2009 (CPRA) will improve our effectiveness in disrupting organised crime;
- 2 **noted** that in May 2021, Cabinet agreed in principle to amend the CPRA, regarding domestic offending, to create a regime for restraining and forfeiting assets associated with organised criminal groups, subject to the report back in paragraph 3 [CAB-21-MIN-0138];
- 3 **noted** that in May 2021, Cabinet directed Justice officials to work with Crown Law, Te Puni Kōkiri, Ministry for Women, and New Zealand Police to mitigate concerns under the New Zealand Bill of Rights Act 1990 and about population impacts, and to report back to SWC [CAB-21-MIN-0138];
- 4 **agreed** to amend the regime referred to in paragraph 2, with the following elements:
 - 4.1 make the presumption that property is tainted only apply to the value of property that can't be explained by the respondent's known legitimate income and capital;
 - 4.2 create a limited judicial discretion to decline to make the presumption that property is tainted, where it is not in the interests of justice to do so;
 - 4.3 clarify that an associate must be more than a mere acquaintance;
- 5 **Section 9(2)(h)** [REDACTED]
- 6 **noted** that a decision on whether to include a minimum threshold for the new orders (for the value of the property not explained by the respondent's known legitimate income and capital) will be made following drafting and vetting for Bill of Rights compliance of the Bill;
- 7 **agreed** to amend the CPRA to expressly provide that funds under a KiwiSaver scheme may be subject to the CPRA;

- 8 **authorised** the Minister of Justice to resolve minor, technical, or non-controversial amendments to the CPRA that arise during drafting without further reference to Cabinet;
- 9 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs, including drafting options relating to a threshold for consideration by Cabinet;

10 **Section (9)(2)(f)(iv)**



11 **noted** that:

- 11.1 the CPRA amendments are one part of the work this government is doing on organised crime and gangs;
- 11.2 this is the first in a suite of papers that will be proposed to improve the law enforcement response to gangs;
- 11.3 the paper under CAB-22-SUB-0146 will also complement this government's work to prevent organised crime, such as providing alternate pathways out of crime.

Diana Hawker
for Secretary of the Cabinet

In Confidence

Office of the Minister of Police

Office of the Minister of Justice

Cabinet Legislation Committee

Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Criminal Activity Intervention Legislation Bill and the Criminal Proceeds (Recovery) Amendment Bill into the House as soon as possible.

Executive Summary

- 2 The Criminal Activity Intervention Legislation Bill creates new offences, orders and enforcement powers targeted at the specific behaviours associated with gangs and organised criminal groups. It amends the Crimes Act 1961, the Search and Surveillance Act 2012, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), the Arms Act 1983, the Sentencing Act 2002, the Criminal Investigations (Bodily Samples) Act 1995, and the Land Transport Act 1998, to:

- 2.1 create a new offence of discharging a firearm with intent to intimidate; and

- 2.2 make amendments to provide for:

- 2.2.1 a new warrant that allows Police to search and seize weapons within defined areas where gang conflict is occurring;

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- 2.2.3 a new cash seizure power that allows Police to seize and hold cash found in suspicious circumstances and reasonably believed to be over the value of \$10,000 for a period of time;

- 2.2.4 a new prohibition on conducting cash transactions for specified goods above a prescribed cash value amount.

- 3 The Criminal Proceeds (Recovery) Amendment Bill's purpose is to improve the law's effectiveness at restraining and forfeiting property derived from significant criminal activity. It amends the Criminal Proceeds (Recovery) Act 2009 and the KiwiSaver Act 2006 to provide:

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- 3.1 new restraint and forfeiture orders where a person associated with an organised criminal group has legitimate property deemed insufficient to have acquired the specific property subject to the order;
 - 3.2 a new disclosure of source order requiring overseas respondents to provide information on the source of restrained property within 2 months, or else the court may presume the property tainted;
 - 3.3 authorisation for the Official Assignee to hold seized property beyond 28 days if awaiting determination of an application for a restraining order;
 - 3.4 an exception in accordance with the KiwiSaver Act 2006 to allow funds in KiwiSaver schemes to be subject to civil forfeiture orders.
- 4 There is an outstanding policy decision pertaining to the new restraint and forfeiture orders in the Criminal Proceeds (Recovery) Amendment Bill. To resolve this, we seek agreement on the minimum threshold to include for the value of property not explained by the respondent's known legitimate property. We also seek agreement on the meaning of associate for the purposes of the Criminal Proceeds (Recovery) Amendment Bill.

The Criminal Activity Intervention Legislation Bill: policy

- 5 The Criminal Activity Intervention Legislation Bill's purpose is to strengthen New Zealand's criminal legislation to better prevent and respond to the harm caused by criminal activity, including that perpetuated by gangs. The Bill targets specific behaviours associated with the activities of gangs and organised criminal groups.
- 6 The Criminal Activity Intervention Legislation Bill provides Police with a range of new tools to help address gang conflict and mitigate the harm it brings to communities. It supports the Government's manifesto commitments to maintain the pressure on tackling organised crime, gangs, and harmful drug use, by ensuring law enforcement has the tools and powers needed to disrupt and prosecute this offending.
- 7 Legislative amendments are necessary as the provisions create new offences, orders, and enforcement powers that are required to be in primary legislation.
- 8 The Criminal Activity Intervention Legislation Bill amends the Crimes Act 1961, the Search and Surveillance Act 2012, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), the Arms Act 1983, the Sentencing Act 2002, the Criminal Investigations (Bodily Samples) Act 1995, and the Land Transport Act 1998, to:
- 8.1 create a new offence of discharging a firearm with intent to intimidate; and
 - 8.2 make amendments to provide for:
 - 8.2.1 a new warrant that allows Police to search and seize weapons within defined areas where gang conflict is occurring; and

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- 8.2.3 a new cash seizure power that allows Police to seize and hold for a period of time cash found in suspicious circumstances reasonably believed to be over the value of \$10,000; and
- 8.2.4 a new prohibition on conducting cash transactions for specified goods above a prescribed cash value amount.

- 9 Cabinet considered the amendments in the Criminal Activity Intervention Legislation Bill in the policy paper *Gang Harm Intervention*, considered on 4 July 2022 [CAB-22-MIN-0264].

Section (9)(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second-tier policy decisions agreed

- 14 Cabinet delegated authority to us, the Prime Minister, and the Deputy Prime Minister to make second-tier policy decisions as necessary to give effect to the policy contained in the Criminal Activity Intervention Legislation Bill. For this purpose, second-tier decisions were required for the new cash transaction prohibition, cash seizure power, gang-conflict search warrant, and offence of discharging a firearm with intent to intimidate.
- 15 On the new cash transactions prohibition, Ministers with Power to Act made decisions relating to the penalties for not complying with the prohibition. The Bill amends the AML/CFT Act to include the prohibition in section 78 and new section 105A of that Act. This makes it both a civil liability act and criminal

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offence, enabling remedies to be sought through both the civil and criminal pathways (with civil requiring a lower burden of proof).

- 16 The penalty for a civil liability act is capped at \$200,000 for an individual and \$2 million for a body corporate or partnership. The penalty for the new criminal offence is a term of imprisonment of not more than 2 years and a fine of up to \$300,000 for an individual or a fine of up to \$300,000 for a body corporate or partnership.
- 17 Ministers further decided that the new prohibition applies to all persons engaging in cash transactions of the prescribed type “in trade”, rather than to high-value dealers only, to ensure all persons engaging in relevant cash transactions are captured. Officials identified an issue with the definition of high-value dealer that means all relevant transactions may not otherwise be captured if they only occurred occasionally.
- 18 On the cash seizure power, Ministers decided:
 - 18.1 that the definition of “cash” for should be an exhaustive list of items comprising physical currency, bearer-negotiable instruments, and gold bars or gold ingots as they have similar properties to currency and have been used to launder money.
 - 18.2 that the power allows Police to apply to the District Court to hold the cash for a further 28 days after the initial 7-day period, and seek a renewal for a further 28 days, to allow more time when necessary to gather the high degree of evidence needed to initiate restraint proceedings (a maximum of 63 days);
 - 18.3 that cash of any value seized using the new power will be subject to the new regime, so long as it was reasonably suspected to be above the \$10,000 threshold at the time of seizure (i.e. it will not be immediately returned if the actual value is below the \$10,000 threshold).
- 19 On the new gang-conflict search warrant power, we previously indicated that further consideration would be given as to whether ‘associates’ of a gang could be included in the scope of the warrant. However, Ministers with Power to Act have instead agreed that warrant may apply to the vehicles and property of specific non-gang members only if the Judge issuing the warrant is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict. These individuals must be listed in the warrant. Officials consider that this approach better targets the warrant power towards the conflict and reduces the impact on friends or whānau members who are not involved.
- 20 Ministers have also decided that the new warrant power will enable Police to search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s or the non-gang members listed in the warrant, as this will make it easier for Police to locate and seize weapons

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- 21 On the new offence of discharging a firearm with intent to intimidate, Ministers have decided that it should be added to the list of offences that result in a 10-year firearms licence disqualification for the person convicted (amending section 22H of the Arms Act 1983). This is because the new offence is a serious firearms offence and is consistent with those currently listed in section 22H.

The Criminal Activity Intervention Legislation Bill: outstanding policy decisions

- 22 Officials have identified the need to make a further consequential amendment because of the new offence of discharging a firearm with intent to intimidate. The Criminal Investigations (Bodily Samples) Act 1995, Schedule 1, Part 3 needs to be amended to refer to the new offence (new section 308A of the Crimes Act). Currently, section 308 of the Crimes Act is listed in that Schedule. It would be anomalous not to include the new section 308A offence as it has a greater penalty of 5 years and deals with a similar type of offending.
- 23 The effect of this necessary amendment is that any person (including a young person) who is being detained for committing, or who is suspected to have committed, the new section 308A offence, may be requested or required to give a bodily sample for the purpose of confirming or disproving their involvement in the commission of the offence. Any DNA profile derived from the bodily sample may be stored on a DNA profile databank.

The Criminal Proceeds (Recovery) Amendment Bill: policy

- 24 The Criminal Proceeds (Recovery) Amendment Bill amends the Criminal Proceeds (Recovery) Act 2009 (CPRA) and the KiwiSaver Act 2006 to improve the law's effectiveness at restraining and forfeiting property derived from significant criminal activity. This will help to deter profit-driven criminal conduct by reducing opportunities for people to benefit financially from criminal activity.
- 25 Legislative amendments are necessary as the provisions create new orders and enforcement powers that are required to be in primary legislation.
- 26 The Criminal Proceeds (Recovery) Amendment Bill amends CPRA and the KiwiSaver Act 2006 to provide:
- 26.1 new restraint and forfeiture orders where a person is associated with a member of an organised criminal group and their legitimate property is deemed insufficient to have acquired the specific property subject to the order;
 - 26.2 a new disclosure of source order requiring respondents who are overseas to provide information on the source of restrained property within 2 months, or else the court may presume the property was tainted;
 - 26.3 authorisation for the Official Assignee to hold seized property beyond 28 days if awaiting determination of an application for a restraining order;
 - 26.4 an exception in accordance with the KiwiSaver Act 2006 to allow funds in KiwiSaver schemes to be subject to CPRA orders.

- 27 Previous policy papers considered by Cabinet for the amendments in the Criminal Proceeds (Recovery) Amendment Bill were:

27.1 *Criminal Proceeds (Recovery) Act 2009: Proposed Reforms to Better Target Illicit Assets*. Considered by Cabinet Business Committee on 19 April 2021 and Cabinet on 3 May 2021 [CBC-21-MIN-0040; CAB-21-MIN-0138];

27.2 *Criminal Proceeds (Recovery) Act 2009 Reforms to Better Target Illicit Assets*. Considered by Cabinet on 19 April 2022 [CAB-22-MIN-0146].

The Criminal Proceeds (Recovery) Amendment Bill: outstanding policy decisions

- 28 Crown Law's advice is that the Bill as a whole is consistent with the New Zealand Bill of Rights (BORA), subject to Cabinet's decision on the threshold below. In particular, the rights to freedom of association, freedom from unreasonable seizure, and natural justice are engaged (ss 17, 21, and 27 BORA). However, these limitations are reasonable and justified, as the rights are limited no more than is necessary to achieve the important public objective of preventing and deterring organised crime.

Options on the threshold for the new restraint and forfeiture orders

- 29 Cabinet agreed to policy refinements for the new restraint and forfeiture orders in April 2022. Cabinet noted that a decision on whether to include a minimum threshold (for the value of the property not explained by the respondent's known legitimate property) will be made following drafting and vetting for New Zealand Bill of Rights (BORA) compliance of the Bill [CAB-22-MIN-0146 refers].

- 30 PCO drafted 4 different options in the Bill to be vetted for BORA compliance:

30.1 a threshold of \$50,000; or

30.2 a threshold of \$30,000; or

30.3 a threshold of \$10,000; or

30.4 no threshold.

Crown Law advice

- 31 Crown Law's advice is that:

31.1 a threshold is necessary to ensure that the new restraint and forfeiture orders operate in a proportionate manner; and

31.2 a threshold of \$30,000 or \$50,000 threshold would be consistent with BORA as a consequence of the threshold of "significant criminal activity" being set at \$30,000.

32 Crown Law advised that a \$10,000 threshold, or no threshold, would *not* be a justifiable limitation on rights as it would not meet the threshold for “significant criminal activity” and therefore would not be consistent with BORA. Accordingly, both of these options would risk a section 7 report.

[REDACTED]

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Section 9 (2)(g)(i), Section 9(2)(h)

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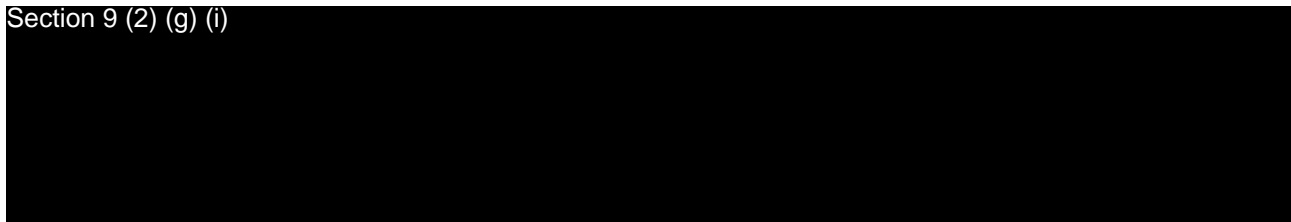
Section 9 (2) (g) (i)

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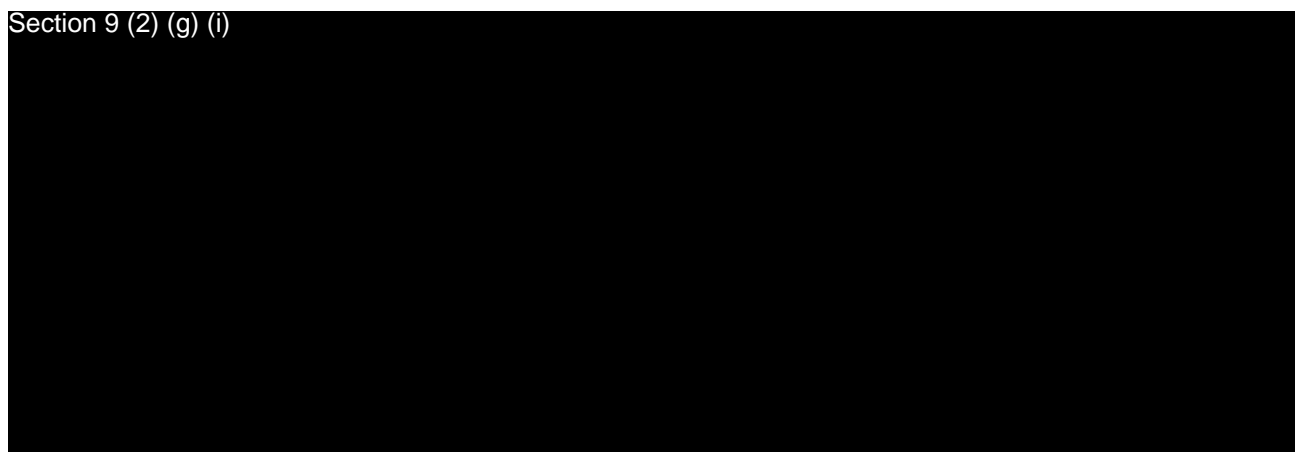
If a threshold is included, Cabinet has the option to allow it be adjusted by regulation

- 46 The draft Bill includes the ability to prescribe a threshold higher than the amount selected above via regulation. This will allow for adjustments (such as for inflation) without requiring amendments to the primary legislation. This would prevent more people from falling within the scope of this new power over time due to the values of property increasing. This option was suggested by Parliamentary Counsel during drafting. Justice officials recommend including this mechanism.
- 47 The alternative would be to set a fixed value in the legislation as the threshold. Police officials prefer this option, which they consider to be more consistent with other forfeiture orders (which cannot be adjusted by regulation).


The meaning of associate

- 48 Cabinet has previously agreed to clarify that an associate must be more than a mere acquaintance [CAB-22-MIN-0146 refers]. This definition is currently included in the Bill. Association is only one of the tests which must be met before an order can be issued; the person must also have assets beyond what their legitimate property could acquire and the threshold (if one is agreed) is met.
- 49 Previous advice from officials on this issue indicated that an overly prescriptive definition of associate could encourage leaders and facilitators of organised crime to deliberately structure their affairs to avoid meeting the definition. This could counterproductively incentivise transferring assets to people intended to be excluded, such as whānau members. The clarification that association did not include 'a mere acquaintance' was intended to avoid shopkeepers, tradespeople, etc from accidentally being caught up as associates. Otherwise, officials advised that it was preferable to allow the courts to draw on a common meaning of association.

Section 9 (2) (g) (i)



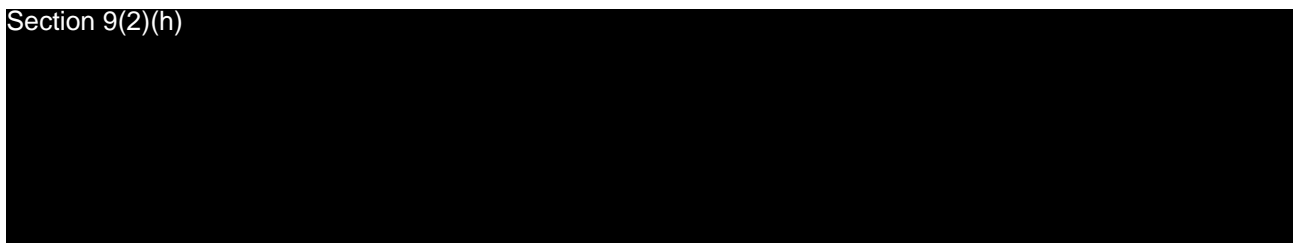
Section 9 (2) (g) (i)



Technical matters to note, arising during drafting of the CPRA amendments

- 53 Cabinet agreed to amend CPRA to expressly provide that funds in KiwiSaver may be subject to forfeiture orders. This is intended to:
- 53.1 deter criminals from depositing any proceeds of crime into KiwiSaver accounts to avoid forfeiture; and
 - 53.2 create consistency with other retirement savings vehicles, such as bank accounts and managed funds, which can be subject to CPRA.
- 54 The KiwiSaver amendments will resolve the issue highlighted by the Court of Appeal:¹ the general prohibition on KiwiSaver funds being passed to another person (including CPRA's Official Assignee) will no longer prevent forfeiture.² This achieves Cabinet's direction regarding CPRA.

Section 9(2)(h)



Section (9)(2)(f)(iv)



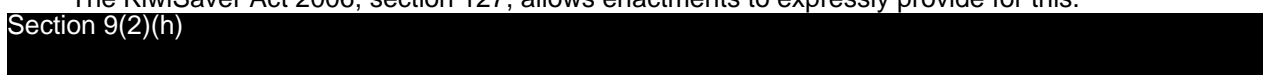
Impact analysis

- 57 For the Criminal Activity Intervention Legislation Bill, a supplementary analysis report (the SAR) has been prepared and is attached to this Cabinet Paper. A cross-agency quality assurance panel comprising New Zealand Police, the

¹ *Commissioner of Police v Harrison* [2021] NZCA 540, 18 October 2021

² The KiwiSaver Act 2006, section 127, allows enactments to expressly provide for this.

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Ministry of Justice and the Ministry of Transport has reviewed this and considers the information and analysis in the SAR **partially meets** the Quality Assurance criteria.

- 58 The SAR has information gaps in the supporting evidence for the size and scale of the problems identified, and in the analysis of impacts, including benefits, costs (particularly monetised costs) and implementation. The gaps and reasons for these (no consultation, time limitations and ministerial direction on specific options) are identified in the limitations/constraints section and in individual sections of the document.
- 59 This lack of evidence varies across the proposals, but in places means that the preferred options are not strongly persuasive. The SAR is relatively long, although reflects that the scope of this work requires analysis of proposals in different regulatory settings. The Panel assesses that, overall, the SAR provides a reasonable basis for Ministers' decision-making while highlighting the significant limitations under which the document was developed.
- 60 For the Criminal Proceeds (Recovery) Amendment Bill, a regulatory impact summary was submitted when Cabinet approved the policies regarding amendments to CPRA [CAB-21-MIN-0138]. The second Cabinet Paper relating to CPRA was exempt from providing another summary because the relevant issues had been adequately addressed by the previous regulatory impact analysis, and the revised approach was analysed in the paper itself [CAB-22-MIN-0146].

Compliance

- 61 The Criminal Activity Intervention Legislation Bill complies with each of the following:
- 61.1 the rights and freedoms contained in the BORA and the Human Rights Act 1993;
 - 61.2 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;
 - 61.3 relevant international standards and obligations;
 - 61.4 the Legislation Guidelines (2021 edition).
- 62 The Criminal Proceeds (Recovery) Amendment Bill complies with each of the following:
- 62.1 the principles of the Treaty of Waitangi;
 - 62.2 the rights and freedoms contained in the BORA and the Human Rights Act 1993, subject to Cabinet's decision on the threshold.
 - 62.3 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;

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- 62.4 the principles and guidelines set out in the Privacy Act 2020;
- 62.5 relevant international standards and obligations;
- 62.6 the Legislation Guidelines (2018 edition).

Criminal Activity Intervention Legislation Bill: New Zealand Bill of Rights Act 1990

63 The measures introduced by the Criminal Activity Intervention Legislation Bill may limit the following rights recognised in the BORA:

- 63.1 the right to freedom of association (section 17),
- 63.2 the right to be free from discrimination (section 19),
- 63.3 the right to be free from unreasonable search and seizure (section 21).

64 However, we consider the potential for limitations on these rights to be justified in the circumstances considering the significant harms caused by ongoing violent gang and organised criminal activity.

65 The potential for unjustifiable limitation is reduced by the fact the amendments are directed at disrupting harmful gang activity and not mere gang membership. We also consider the new powers to have adequate safeguards built into them to prevent their unreasonable exercise e.g. the new gang conflict search warrant requires judicial authorisation.

Criminal Activity Intervention Legislation Bill: potential conflicts with the principles of te Tiriti o Waitangi/the Treaty of Waitangi

66 The Criminal Activity Intervention Legislation Bill introduces measures that target criminal offending commonly associated with gang activities. Because over three quarters of the known adult gang members in Aotearoa New Zealand are Māori men, this response is likely to disproportionately impact Māori and conflict with the equity principle of te Tiriti/the Treaty.

67 However, the prevalence of gang membership within Māori communities also means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is therefore part of the Crown's responsibility to actively protect Māori.

68 Māori have not yet been consulted on the package. However, we expect key Māori organisations and communities to be consulted throughout the legislative process, particularly throughout the select committee process.

Criminal Activity Intervention Legislation Bill: potential conflicts with the principles of the Privacy Act 2020

69 The Privacy Commissioner has been consulted on the Criminal Activity Intervention Legislation Bill and has raised the following concerns:

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- 69.1 The Privacy Commissioner recognises that gang harm is a significant problem and supports the aim of reducing the harm caused by gangs. However, the Commissioner does not consider that sufficient evidence has been provided to demonstrate that the benefits of the new interventions outweigh the intrusion into privacy.
- 69.2 The exercise of search powers is intrinsically privacy-invasive and represents the exercise of State power against individual citizens. As such, any proposals involving search powers need to be evaluated carefully to assess whether the use of this invasive action is justified in the circumstances.
- 69.3 The proposed gang-conflict provisions appear to be a significant departure from the established approach to warrant and search powers, which generally require more specific thresholds and suspicions of offending. This would be the first time that warrant and search powers attach to such a large group, primarily on the basis of membership and association to that group. This carries a high level of privacy risk and the potential to significantly impact third parties – for example tamariki who happen to be living in a property associated with a gang member. The Commissioner is also conscious of the precedent-setting effect that these proposals may have, in enabling the broad warrant and search powers in relation to a group of people, and how this could potentially be expanded in the future.
- 69.4 Given that these are significant, wide-ranging and privacy intrusive powers, if these proposals were to proceed, confining applicability wherever possible would be appropriate. Protections could be added to the legislation including: a presumption that existing powers should be exhausted before using additional powers; requiring Judges to apply thresholds to target the exercise of powers to risk to the public; reducing the time that warrants are applicable; and adding a sunset or review clause for the legislative framework. The Office of the Privacy Commissioner is happy to work with officials on developing mitigations.
- 70 Officials note that the provisions in the Bill extend existing legislative mechanisms. The existing privacy requirements and limitations of search warrants, assets seized under CPRA, and vehicle impoundment under the Land Transport Act, will apply as they currently do. Police have procedures to protect the private information and material they collect using existing warrant powers. Police will need to ensure there are robust internal processes to govern the use of any new warrant powers.

Consultation

- 71 Due to time constraints, consultation on the amendments to date has been limited to government officials. The public (including Māori) will have opportunities for consultation during the progression of the legislative process.
- 72 The Ministry of Transport and Crown Law have been involved in developing the policy and have been consulted on the draft Criminal Activity Intervention

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Legislation Bill. Te Puni Kōkiri, Waka Kotahi, the Department of Internal Affairs, the Department of Corrections, the Treasury, the Department of the Prime Minister and Cabinet, and the Privacy Commissioner have also been consulted on the draft Criminal Activity Intervention Legislation Bill.

- 73 During consultation, Te Puni Kōkiri indicated that it does not support punitive responses and instead encourages and supports more strengths-based and whānau-centred approaches to healing and restoration (like Paiheretia te Muka Tangata and Whānau Ora).
- 74 The following departments have been consulted during the development of the draft Criminal Proceeds (Recovery) Amendment Bill: Crown Law, Te Puni Kōkiri, Ministry for Women, the Ministry of Business, Innovation and Employment, Treasury, the Inland Revenue Department, New Zealand Customs Service, and the Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet has been informed.

Binding on the Crown

- 75 The Acts amended by the Criminal Activity Intervention Legislation Bill and the Criminal Proceeds (Recovery) Amendment Bill are already binding on the Crown [SWC-22-MIN-0122; CAB-22-MIN-0264; CBC-21-MIN-0040; CAB-21-MIN-0138].

Allocation of decision-making powers

Criminal Activity Intervention Legislation Bill

- 76 The Criminal Activity Intervention Legislation Bill allocates two decision making powers to the judiciary. The new gang conflict warrant requires a District or High Court Judge's authorisation before Police may exercise search and seizure powers, and the new cash seizure power requires Court orders to hold seized cash for periods longer than 7 days.
- 77 These new decision-making powers are consistent with:
- 77.1 the warrant preference approach applied by the courts to the powers under the Search and Surveillance Act 2012;
 - 77.2 the general approach that the holding of property seized using search powers should be subjected to appropriate independent scrutiny by a court for continued retention and consideration of claims by those asserting their right to the property.
- 78 The Criminal Activity Intervention Legislation Bill also delegates authority to the executive to issue regulations. This complies with the criteria and procedures set out in the Legislation Design and Advisory Committee Legislation Guidelines 2021 Edition.

Criminal Proceeds (Recovery) Amendment Bill

- 79 The Criminal Proceeds (Recovery) Amendment Bill allocates decision-making powers to the judiciary for issuing the new restraint and forfeiture orders, and the disclosure of source orders.

Associated regulations

Criminal Activity Intervention Legislation Bill

- 80 The new cash transaction prohibition requires regulations to be issued to prescribe the relevant threshold above which cash transactions are prohibited.
- 81 Regulations will be drafted as soon as practicable, to come into force on the date appointed by the Governor-General by Order in Council.

Criminal Proceeds (Recovery) Amendment Bill

- 82 The Criminal Proceeds (Recovery) Amendment Bill requires secondary legislation to give effect to certain CPRA amendments. Regulations are required to prescribe the order and application forms for the new restraint and forfeiture orders and the disclosure of source orders.
- 83 Regulations will be drafted as soon as practicable, to come into force on the date appointed by the Governor-General by Order in Council.

Other instruments

- 84 If Cabinet agrees to allow the threshold for the new restraint and forfeiture orders to be increased later via regulations, the Criminal Proceeds (Recovery) Amendment Bill will need to amend the existing CPRA regulation-making powers under section 173. This would allow the Governor-General to prescribe an amount for the purpose of the threshold by Order in Council.

Commencement of legislation

- 85 The Criminal Activity Intervention Legislation Bill will come into force on the day after the date of Royal assent.
- 86 The Criminal Proceeds (Recovery) Amendment Bill will come into force on the day after the date of Royal assent with the exception of amendments requiring secondary legislation. These amendments will come into force on the date appointed by the Governor-General by Order in Council or 12 months after Royal assent.

Parliamentary stages

- 87 The Criminal Activity Intervention Legislation Bill and the Criminal Proceeds (Recovery) Amendment Bill should be introduced as soon as possible following Cabinet approval.

- 88 We propose that the Bills be referred to the Justice Select Committee for a consideration period of four months.

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Finalising Bills for introduction

- 90 Standing Order 267(1)(a) requires that, for amendments to more than one Act to be included in an Omnibus Bill, the amendments must deal with an interrelated topic that can be regarded as implementing a single broad policy. Advice from the Office of the Clerk is that, due to the disparate nature of the amendments in the Criminal Activity Intervention Legislation Bill, it does not meet the requirement under SO 267(1)(a). However, under SO 267(1)(c) the Business Committee may agree to a Bill's introduction as an Omnibus Bill, even if it does not meet the SO 267(1)(a) requirement.
- 91 If Business Committee does not agree to all the amendments in the Criminal Activity Intervention Legislation Bill being included in one Omnibus Bill, the amendments will need to be split into several stand-alone Amendment Bills.

Proactive Release

- 92 We propose to release this paper proactively after the Bills are introduced.

Recommendations

- 93 The Minister of Police and the Minister of Justice recommend that the Committee:

Criminal Activity Intervention Legislation Bill

- 1 **agree** that the Criminal Activity Intervention Legislation Bill be given a category 3 priority on the 2022 Legislation Programme;
- 2 **agree** to amend the Criminal Investigations (Bodily Samples) Act 1995 to refer to the new offence of discharging a firearm with intent to intimidate in section 308A of the Crimes Act 1961;

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- 5 **note** that Ministers with delegated authority have agreed to the following second-tier policy decisions:
- 5.1.1 that the new cash transactions prohibition be included in the AML/CFT Act as both a civil liability act and criminal offence for reporting entities, and a criminal offence for all other persons “in trade”;
 - 5.1.2 that the prohibition be added to the list of civil liability acts in section 78 of the AML/CFT Act;
 - 5.1.3 that new section 105A be inserted into the AML/CFT Act to make it a criminal offence for any person to contravene the prohibition on conducting certain cash transactions;
 - 5.1.4 that the definition of “cash” for the purpose of the new cash seizure power should be an exhaustive list of items comprising physical currency, bearer-negotiable instruments, and gold bars or gold ingots;
 - 5.1.5 that the new cash seizure power allows Police to apply to the District Court to hold the cash for a further 28 days after the initial 7-day period, and seek a renewal for a further 28 days;
 - 5.1.6 that cash of any value seized using the new power will be subject to the new regime after seizure;
 - 5.1.7 that the new gang-conflict search warrant may apply to the vehicles and property of non-gang members if listed in the warrant and the Judge issuing the warrant is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict;
 - 5.1.8 that the new gang-conflict search warrant enables Police to search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s or the non-gang members listed in the warrant;
 - 5.1.9 that the new offence of discharging a firearm with intent to intimidate be added to the list of offences under section 22H of the Arms Act 1983 that result in a 10-year firearms licence disqualification for the person convicted;
 - 5.1.10 that the new prohibition on conducting cash transactions for specified goods applies to all persons engaging in cash transactions “in trade”;

Criminal Proceeds (Recovery) Amendment Bill

- 6 **note** that the Criminal Proceeds (Recovery) Amendment Bill is on the Government's 2022 Legislation Programme with a category 3 priority;
- 7 **note** that Crown Law's advice is that a threshold of \$30,000 or \$50,000 threshold would be consistent with the New Zealand Bill of Rights, to ensure that the new restraint and forfeiture orders operate in a proportionate manner, and that a \$10,000 or no threshold would not be a justifiable limitation on rights;
- 8 **agree**, for the new restraint and forfeiture orders, to either:
- 8.1 a threshold of \$50,000; or
- 8.2 a threshold of \$30,000; or
- 8.3 a threshold of \$10,000; or
- 8.4 no threshold;

■ Section 9 (2) (g) (i)

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

- 10 **agree** that, if a threshold is included, a higher amount may be prescribed by regulation, to allow for making adjustments (such as for inflation);
- 11 **agree** either;
- 11.1 the definition of associate specifies that an associate cannot be a mere acquaintance, or

■ Section 9 (2) (g) (i)

■ [REDACTED]

- 12 **note** that the amendments resolve the prohibition on KiwiSaver funds being forfeited, putting KiwiSaver in an equivalent position to other retirement savings, Section (9)(2)(f)(iv), Section 9(2)(h)

■ [REDACTED]
[REDACTED]
[REDACTED]

Both Bills

- 13 **note** that the Bills will amend Acts that bind the Crown;

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- 14 **note** that the Parliamentary Counsel Office has indicated that:
- 14.1 it is likely to substitute the Bills between the Cabinet Legislation Committee meeting and the Cabinet meeting in order to make any necessary drafting changes; and
- 14.2 it will continue to make technical changes to the Bills before they are introduced;
- 15 **agree** to instruct Parliamentary Counsel Office to restructure the Criminal Activity Intervention Legislation Bill into a number of Amendment Bills, if Business Committee does not agree to the amendments in Criminal Activity Intervention Legislation Bill being included in one Bill;
- 16 **approve** the Criminal Activity Intervention Legislation Bill, or any Bills it is restructured into, for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 17 **approve** the Criminal Proceeds (Recovery) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 18 **agree** that the Bills be introduced as soon as possible after Cabinet approval;
- 19 **agree** that the government propose that the Bills be:
- 19.1 referred to the Justice Committee for consideration for four months, with a Select Committee report back date of 9 February;

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Authorised for lodgement

Hon Chris Hipkins
Minister of Police

Hon Kiri Allan
Minister of Justice

IN C O N F I D E N C E



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction

Portfolios **Police / Justice**

On 5 September 2022, following reference from the Cabinet Legislation Committee, Cabinet:

Criminal Activity Intervention Legislation Bill

- 1 **agreed** that the Criminal Activity Intervention Legislation Bill be given a Category 3 priority on the 2022 Legislation Programme (to be passed if possible in 2022);
- 2 **agreed** to amend the Criminal Investigations (Bodily Samples) Act 1995 to refer to the new offence of discharging a firearm with intent to intimidate in section 308A of the Crimes Act 1961;
- 3 **noted** that in July 2022, Cabinet authorised the Prime Minister, the Deputy Prime Minister, the Minister of Justice and the Minister of Police (Ministers with delegated authority) to take any second-tier policy decisions necessary to give effect to the decisions agreed by Cabinet [CAB-22-MIN-0264];

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- 6 **noted** that Ministers with delegated authority have agreed to the following second-tier policy decisions:
 - 6.1 that the new cash transactions prohibition be included in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) as both a civil liability act and criminal offence for reporting entities, and a criminal offence for all other persons “in trade”;
 - 6.2 that the prohibition be added to the list of civil liability acts in section 78 of the AML/CFT Act;

- 6.3 that new section 105A be inserted into the AML/CFT Act to make it a criminal offence for any person to contravene the prohibition on conducting certain cash transactions;
- 6.4 that the definition of “cash” for the purpose of the new cash seizure power should be an exhaustive list of items comprising physical currency, bearer-negotiable instruments, and gold bars or gold ingots;
- 6.5 that the new cash seizure power allows Police to apply to the District Court to hold the cash for a further 28 days after the initial 7-day period, and seek a renewal for a further 28 days;
- 6.6 that cash of any value seized using the new power will be subject to the new regime after seizure;
- 6.7 that the new gang-conflict search warrant may apply to the vehicles and property of non-gang members if listed in the warrant and the Judge issuing the warrant is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict;
- 6.8 that the new gang-conflict search warrant enables Police to search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s or the non-gang members listed in the warrant;
- 6.9 that the new offence of discharging a firearm with intent to intimidate be added to the list of offences under section 22H of the Arms Act 1983 that result in a 10-year firearms licence disqualification for the person convicted;
- 6.10 that the new prohibition on conducting cash transactions for specified goods applies to all persons engaging in cash transactions “in trade”;

Criminal Proceeds (Recovery) Amendment Bill

- 7 **noted** that the Criminal Proceeds (Recovery) Amendment Bill is on the Government’s 2022 Legislation Programme with a category three priority;
- 8 **noted** that Crown Law’s advice is that a threshold of \$30,000 or \$50,000 threshold would be consistent with the New Zealand Bill of Rights, to ensure that the new restraint and forfeiture orders operate in a proportionate manner, and that a \$10,000 or no threshold would not be a justifiable limitation on rights;
- 9 **agreed**, for the new restraint and forfeiture orders, to a threshold of \$30,000;
- 10 **agreed** that a higher amount may be prescribed by regulation, to allow for making adjustments (such as for inflation);
- 11 **agreed** to the definition of associate that specifies that an associate cannot be a mere acquaintance;
- 12 **noted** that the amendments resolve the prohibition on KiwiSaver funds being forfeited, putting KiwiSaver in an equivalent position to other retirement savings, Section 9(2)(iv), 6

[REDACTED] ;

Both Bills

- 13 **noted** that Māori are more likely to be the victims of gang related harm;
- 14 **noted** that the Criminal Activity Intervention Legislation Bill and the Criminal Proceeds Acts Amendment Bill (the Bills) will amend Acts that bind the Crown;
- 15 **noted** that the Parliamentary Counsel Office has indicated that it will continue to make technical changes to the Bills before they are introduced;
- 16 **invited** the Minister of Justice to instruct Parliamentary Counsel Office to restructure the Criminal Activity Intervention Legislation Bill into a number of Amendment Bills, if the Business Committee does not agree to the amendments in the Criminal Activity Intervention Legislation Bill being included in one Bill;
- 17 **approved** the Criminal Activity Intervention Legislation Bill [PCO 24852/15.0], or any Bills that it is restructured into, for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 18 **approved** the Criminal Proceeds (Recovery) Amendment Bill [PCO 22596] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 19 **agreed** that the Bills be introduced as soon as possible after Cabinet approval;
- 20 **agreed** that the government propose that the Bills be:
- 20.1 referred to the Justice Committee for consideration, with a report back date of 9 February 2023;

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Rachel Hayward
Acting Secretary of the Cabinet