

Hon Kiri Allan
Minister of Justice

Proactive release – Criminal Proceeds (Recovery) Amendment Act 2023: Regulations and Commencement Order

Date of issue: 7 August 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (23) 4, on the basis that there would be no grounds to withhold if requested under the Official Information Act 1982.

No.	Document	Comments
1	Criminal Proceeds (Recovery) Amendment Act 2023: Regulations and Commencement Order <i>Cabinet paper</i> Office of the Minister of Justice 22 June 2023	Released in full. Note that the copies of the regulations and commencement order provided to Ministers alongside this paper have been withheld in accordance with section 131 of the Legislation Act 2019 and section 9(2)(h) of the Official Information Act 1982, to maintain legal professional privilege. The legislative instruments approved by the Executive Council are publicly available at www.legislation.govt.nz <ul style="list-style-type: none">• Criminal Proceeds (Recovery) Amendment Regulations 2023• Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023
2	Criminal Proceeds (Recovery) Amendment Act 2023 Regulations and Commencement Order <i>Cabinet Legislation Committee Minute</i> Cabinet Office Meeting date: 22 June 2023	Released in full. This decision was confirmed by Cabinet on 26 June 2023 [CAB-23-MIN-0261 refers].

In Confidence

Office of the Minister of Justice

Cabinet Legislation Committee

Criminal Proceeds (Recovery) Amendment Act 2023: Regulations and Commencement Order

Proposal

- 1 This paper seeks authorisation to submit to the Executive Council:
 - 1.1 the Criminal Proceeds (Recovery) Amendment Regulations 2023 (the **Regulations**); and
 - 1.2 the Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023 (the **Commencement Order**).

Policy

- 2 The Criminal Proceeds (Recovery) Amendment Act 2023 (the **Act**) passed on 28 March 2023. The Act amended the Criminal Proceeds (Recovery) Act 2009 (**CPRA**), by creating new orders to facilitate the forfeiture of illicit assets:
 - 2.1 new type 2 assets forfeiture orders where a person is associated with an organised criminal group and their readily-available legitimate property is shown to have been insufficient to have acquired the specific property subject to the order; and
 - 2.2 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.
- 3 The purpose of CPRA is to deter significant criminal activity, which the new orders do by making it harder to profit from organised and transnational crime.
- 4 Cabinet made relevant policy decisions on 3 May 2021 [CBC-21-MIN-0040; CAB-21-MIN-0138 refers], and 19 April 2022 [CAB-22-MIN-0146 refers]. On 5 September 2022, Cabinet approved the draft Bill for introduction [CAB-22-MIN-0366 refers]. The associated paper noted that regulations were required, and the Act included a delayed commencement to allow regulations to be made.
- 5 No new policy decisions are required, as the Regulations prescribe forms for the new orders created by the Act. Section 173 of CPRA allows regulations to be made by Order in Council. The Regulations also make some minor amendments to existing forms, to reflect the amendments in the Act.

Timing and 28-day rule

- 6 The Regulations and the Commencement Order will come into force on 27 July 2023, 28 days following notification in the *New Zealand Gazette*.

Compliance

- 7 The Regulations comply with each of the following:
- 7.1 the principles of the Treaty of Waitangi;
 - 7.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions (not applicable);
 - 7.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 7.4 the principles and guidelines set out in the Privacy Act 2020;
 - 7.5 relevant international standards and obligations;
 - 7.6 the Legislation Guidelines (2021 edition).

Regulations Review Committee

- 8 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House under Standing Orders.

Certification by Parliamentary Counsel

- 9 The Regulations were certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 10 A Regulatory Impact Summary (RIS) was submitted when Cabinet approved the policies for amending CPRA [CAB-21-MIN-0138 refers]. An internal Ministry of Justice quality assurance panel reviewed the RIS and considered the information and analysis **partially met** the quality assurance criteria.
- 11 Cabinet subsequently made refinements to these policies. This second Cabinet Paper was exempt from providing a RIS 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 refers].

Publicity

- 12 No publicity is planned for the Regulations or Commencement Order. A press statement was published on the Beehive website on 28 March 2023, following passage of the Act.

Proactive Release

- 13 I propose to proactively release this paper within 30 business days, subject to any appropriate redactions consistent with the Official Information Act 1982.

Consultation

- 14 In developing the Regulations, the Ministry of Justice consulted New Zealand Police, Crown Law Office, and the Ministry of Business, Innovation and Employment (Office of the Official Assignee). The Department of the Prime Minister and Cabinet has been informed.
- 15 In developing the policy for the Act, the Ministry of Justice consulted the above agencies, and also Te Puni Kōkiri, Ministry for Women, New Zealand Customs Service, the Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment, the Treasury, and the Inland Revenue Department.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 5 September 2022 Cabinet approved the Criminal Proceeds (Recovery) Amendment Bill for introduction [CAB-22-MIN-0366 refers], which included a delayed commencement to allow regulations to be made prescribing forms for the newly created orders and minor amendments to existing orders;
- 2 **note** that the Criminal Proceeds (Recovery) Amendment Act 2023 passed its third reading on 28 March 2023, and received Royal Assent on 31 March 2023;
- 3 **note** that the Criminal Proceeds (Recovery) Amendment Regulations 2023 and the Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023 will give effect to the decision referred to in paragraph 1 above;
- 4 **note** that the Criminal Proceeds (Recovery) Amendment Regulations 2023 and the Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023 will come into force on 27 July 2023;
- 5 **authorise** the submission to the Executive Council of the Criminal Proceeds (Recovery) Amendment Regulations 2023 and the Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



Cabinet Legislation 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) Amendment Act 2023 Regulations and Commencement Order

Portfolio **Justice**

On 22 June 2023, the Cabinet Legislation Committee:

- 1 **noted** that on 5 September 2022 Cabinet approved the Criminal Proceeds (Recovery) Amendment Bill for introduction, which included a delayed commencement to allow regulations to be made prescribing forms for the newly created orders and minor amendments to existing orders [CAB-22-MIN-0366];
- 2 **noted** that the Criminal Proceeds (Recovery) Amendment Regulations 2023 and the Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023 will give effect to the decision referred to in paragraph 1 above;
- 3 **noted** that the Criminal Proceeds (Recovery) Amendment Regulations 2023 and the Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023 come into force on 27 July 2023;
- 4 **authorised** the submission to the Executive Council of the:
 - 4.1 Criminal Proceeds (Recovery) Amendment Regulations 2023 [PCO 25598/2.0];
 - 4.2 Criminal Proceeds (Recovery) Amendment Act 2023 Commencement Order 2023 [PCO 25606/2.0].

Rebecca Davies
Committee Secretary

Present:
Hon Andrew Little (Chair)
Hon Willow-Jean Prime
Hon Dr Duncan Webb

Officials present from:
Office of the Prime Minister
Officials Committee for LEG