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**An Act to amend the Proceeds of Crime Act 2003.**

(23 June 2017)

**The Parliament of the Cook Islands enacts as follows—**

- 1 Title**  
This Act is the Proceeds of Crime Amendment Act 2017.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the assent of the Queen's Representative.
- 3 Principal Act amended**  
This Act amends the Proceeds of Crime Act 2004.
- 4 Definitions**
  - (1) The definition of **defendant** in section 3(1) is amended by omitting “; and, for proceedings for a restraining order, includes a person who is likely to be charged with a serious offence”.

- (2) The definition of **proceeds** in section 3(1) is repealed and the following definition substituted—
- “**proceeds of an offence**, in relation to property, means any property, whether located in the Cook Islands or elsewhere, that is derived, obtained or realised, directly or indirectly, from or through the commission of a serious offence, and includes (without limitation)—
- “(a) any property into which such property is converted, transformed, or intermingled, whether in full or in part; and
- “(b) any interest, income, capital gains, or other economic gains derived or realised from the use of such property”.
- (3) The definition of **realisable property** is repealed.
- (4) The definition of **tainted property** in section 3(1) is repealed and the following definition substituted—
- “**tainted property** means any of the following property, whether located in the Cook Islands or elsewhere—
- “(a) any proceeds of an offence:
- “(b) property that is or has been used in or in connection with the commission of a serious offence:
- “(c) property that is intended to be used, or is allocated to be used, in or in connection with the commission of a serious offence.
- (5) The following definition is inserted in section 3(1) in its appropriate alphabetical location—
- “**suspect**, in relation to a restraining order under Part 3, means any person who there are reasonable grounds to suspect has committed a serious offence”.

**5 Section 6 repealed**

Section 6 is repealed.

**6 Section 10 repealed**

Section 10 is repealed.

**7 Section 30 amended**

Paragraph (a) of section 30(1) is repealed and the following paragraph substituted—

- “(a) the values at that time of all property held by the person, less—
- “(i) the total amounts payable under any obligation having priority at that time; and
- “(ii) any amount against which a forfeiture order is in force or is proposed to be made under this or any other Act; and”

**8 Section 48 amended**

Section 48 is repealed and the following section substituted—

- “(1) The Solicitor-General may apply to the Court for a restraining order against—
- “(a) any property of a defendant or suspect (other than property against which a forfeiture order is in force or is proposed to be made under this or any other Act); or

- “(b) property, held by someone other than the defendant or suspect, that is—
  - “(i) tainted property;
  - “(ii) under the effective control of the defendant or suspect.
- “(2) An application for a restraining order may be made *ex parte*.
- “(3) The application must be in writing and be accompanied by an affidavit stating—
  - “(a) that the Solicitor-General knows or suspects that the relevant offence occurred no more than 6 years before the date of the application; and
  - “(b) if the application relates to property of a person other than the defendant or suspect, that the Solicitor-General knows or suspects that the property is—
    - “(i) tainted property; and
    - “(ii) under the effective control of the defendant or suspect; and
  - “(c) the grounds on which the Solicitor-General knows or suspects the matters in paragraphs (a) and (b).

**9 Section 50 amended**

- (1) Subsection (1) of section 50 is repealed and the following subsection substituted—
  - “(1) The Court may make a restraining order against property if it is satisfied that—
    - “(a) the property is—
      - “(i) property of a defendant or suspect (other than property against which a forfeiture order is in force or is proposed to be made under this or any other Act); or
      - “(ii) property, held by someone other than a defendant or suspect, that is tainted property and under the effective control of the defendant or suspect; and
    - “(b) if the order relates to property of, or under the effective control of, a defendant, that the defendant has either been convicted of, or charged with, a serious offence; and
    - “(c) if the order relates to property of, or under the effective control of, a suspect, that the suspect is likely to be charged with a serious offence within the period that the restraining order applies.”
- (2) Section 50(3) is amended by omitting “the defendant” and substituting “a person”.

**10 Section 51 repealed**  
Section 51 is repealed.

**11 Section 53 amended**  
Section 53(2)(e) is amended by inserting “or the suspect” after “defendant”.

**12 Section 57 amended**  
Section 57(1)(a) is amended by inserting “or suspect” after “defendant”.

**13 Section 58 amended**

Section 58(5) is amended by repealing paragraph (a) and substituting the following paragraph—

- “(a) if the order is made against a suspect, when the Court, on application by the suspect, cancels the order on the grounds that all investigations of the suspect for a serious offence have ceased; or”

**14 Section 60 amended**

(1) Section 60(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs—

- “(i) any property held by the defendant (other than property against which a forfeiture order is in force or is proposed to be made under this or any other Act); or
- “(ii) property, held by someone other than the defendant, that is tainted property and under the effective control of a defendant.

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This Act is administered by the Crown Law Office.  
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