



## ANALYSIS.

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2004, No. 9

An Act to amend the Proceeds of Crime Act 2003

(1 June 2004)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title This Act may be cited as the Proceeds of Crime Amendment Act 2004 and shall be read together with and deemed part of the Proceeds of Crime Act 2003 ("the principal Act").

2. Definitions - Section 3(1) of the principal Act is amended by –

(a) Deleting the definition of "reporting financial institution";

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- (b) inserting after the definition of relevant application period”, the following new definition -

““reporting institution” has the same meaning as in the Financial Transactions Reporting Act 2004;”

- (c) inserting immediately after the definition of “tainted property” the following new definition -

““terrorist property” has the same meaning as given by section 3 of the Terrorist Suppression Act 2004;”

3. Application for forfeiture order or pecuniary penalty order on conviction – Section 11(1) of the principal Act is amended by deleting the word “may” and substituting the word “shall”.

4. Certain tainted property excluded from forfeiture order – Section 16 of the principal Act is amended by adding after the words “Cook Islands Act 1915”, the words “or an occupation right granted pursuant to section 46 of the Cook Islands Amendment Act 1946.”

5. Forfeiture order on conviction - Section 17(1) of the principal Act is amended by deleting the word “may” and substituting the word “shall”.

6. Forfeiture order against property of organised criminal group – The principal Act is amended by inserting after section 17, the following new section -

“17A. Forfeiture order against property of organised criminal group - (1) If -

- (a) the Solicitor-General applies to the Court for a forfeiture order against property of an organised criminal group; and
- (b) the Court is satisfied that the property is property of an organised criminal group,

the Court may order that the property, or so much of the property as is specified by the Court in the order, be forfeited to the Crown.

(2) “Organised criminal group” for the purposes of this section has the same meaning as given to it in section 109A of the Crimes Act 1969.

(3) In deciding whether property is property of an organized criminal group, the Court may infer, -

- (a) if the evidence establishes that the property was in the possession of, or under the effective control of, the group at the time of, or immediately after the offence was committed, and that the property was used in, or in connection with, the commission of the offence; and
- (b) if the evidence establishes that the property was found during investigations by the police before or after the person was arrested for and charged with the offence in a building, vehicle, receptacle or place in the possession of the group or under the control of the group,

that the property was derived, obtained or realised as a result of the person's committing the offence."

7. Payment instead of forfeiture order – Section 23 of the principal Act is amended by inserting the following new paragraph -

"(e) is property that is native freehold land under the Cook Islands Act 1915 or an occupation right granted pursuant to section 46 of the Cook Islands Amendment Act 1946."

8. Pecuniary penalty order on conviction – Section 26(1) of the principal Act is amended by deleting the word "may" and substituting the word "shall".

9. Rules for determining benefit and assessing value – The principal Act is amended by repealing section 27 and substituting the following new section -

"27. Rules for determining benefit and assessing value - (1) If a person obtains property as the result of, or in connection with, the commission of a serious offence, the person's benefit is the value of the property so obtained.

(2) If a person derives an advantage as the result of, or in connection with, the commission of a serious offence, the person's advantage is taken to be a sum of money equal to the value of the advantage so derived.

(3) Unless the contrary is proved, the Court in determining whether a person has benefited from the commission of a serious offence, or from that offence taken together with other serious offences, shall deem -

(a) all property appearing to the Court to be:

(i) held by the person on the day when the application is made; and

(ii) all property appearing to the Court to be held by the person at any time, -

(A) if the offence or earliest offence was committed more than 5 years before the application is made, within 5 years before the day on which the application is made; and

(B) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made,

whichever is longer,

to be property that came into the possession or under the control of the person by reason of the commission of that serious offence or those other serious offences for which the person was convicted; and

(b) any expenditure by the person in the time mentioned in subparagraph (a)(ii) is taken to be expenditure met out of property received by the person as a result of, or in connection with, the commission of the offence or offences; and

- (c) any property received or taken to have been received by the person at any time as a result of, or in connection with, the commission of the offence or offences is taken to have been received free of any other interests; and
- (d) if evidence is given at the hearing of the application that the value of the person's property increased after committing an offence, the increase is taken to be part of the person's benefit from the offence unless the person satisfies the Court that the whole or part of the increase was due to causes unrelated to the commission of the serious offence.

(4) If a pecuniary penalty order has previously been made against a person in relation to an offence, any of the person's benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under the earlier order must be disregarded."

10. Warrant to search land etc. for tainted property – Section 35 of the principal Act and the heading to that section are amended by inserting after the words "tainted property", the words "or terrorist property".

11. Police may seize tainted property – Section 36(a) of the principal Act and the heading to that section are amended, by inserting after the words "tainted property" the words "or terrorist property".

12. Return of seized property – general rule – Section 37(2)(b) of the principal Act is amended, by inserting after the words "tainted property" the words "or terrorist property".

13. Return of seized property if no information laid – Section 38(1)(b) of the principal Act is amended, by inserting after the word "tainted" the words "or is terrorist property".

14. Application of sections 43 to 47 – Section 42(1) of the principal Act is amended, by inserting after the words "tainted property" the words "or terrorist property".

15. Police may seize tainted property – Section 43(1) of the principal Act and paragraph (a) of that subsection are amended, by inserting after the words "tainted property" (in two places) the words "or terrorist property".

16. Return of seized property – general rule – Section 44(2)(b) of the principal Act is amended, by inserting after the words "tainted property" the words "or terrorist property".

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This Act is administered by the Crown Law Office