

Mutual Assistance in Criminal Matters Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Criminal Proceeds (Recovery) Bill as reported from the Law and Order Committee. The committee of the whole House has further amended the bill and has divided it into the following bills:

- Criminal Proceeds (Recovery) Bill comprising Parts 1 and 2
 - This Bill comprising subpart 1 of Part 3
 - Sentencing Amendment Bill comprising subpart 2 of Part 3
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**Mutual Assistance in Criminal Matters
Amendment Bill**

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Simon Power

Mutual Assistance in Criminal Matters Amendment Bill

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**Mutual Assistance in Criminal Matters
Amendment Bill**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Mutual Assistance in Criminal Matters Amendment Act **2009**.

- 2 Commencement** 5
This Act comes into force on **1 December 2009**.

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230A Principal Act amended

This **subpart** amends the Mutual Assistance in Criminal Matters Act 1992.

231 Purpose of subpart

The purpose of this **subpart** is to amend the Mutual Assistance in Criminal Matters Act 1992 so that it applies to foreign restraining order and foreign forfeiture order schemes that are civil, as well as criminal, in nature. 5

232 Principal Act amended

~~This subpart amends the Mutual Assistance in Criminal Matters Act 1992.~~ 10

233 Interpretation

(1) Section 2(1) is amended by inserting the following definition above the definition of **Central Authority**:

“**assets forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**”. 15

(2) The definitions of **document** and **financial institution** in section 2(1) are repealed and the following definitions substituted:

“**Commissioner** means the Commissioner of Police

“**document** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**” 20

“**examination order** means an order issued under **section 114** of the Criminal Proceeds (Recovery) Act **2006**

“**financial institution** has the same meaning as in section 3 of the Financial Transactions Reporting Act 1996”. 25

(3) The definition of **foreign drug-dealing offence** in section 2(1) is repealed.

(4) The definition of **foreign forfeiture order** in section 2(1) is repealed and the following definition substituted:

“**foreign forfeiture order** means— 30

“(a) an order made under the law of a foreign country by a court or other judicial authority for the forfeiture of property that is—

- “(i) tainted property (as defined in relation to Part 3);
or
“(ii) property of a person who has unlawfully benefited from significant foreign criminal activity; or
“(iii) an instrument of crime (as defined in relation to Part 3); or 5
“(b) a foreign pecuniary penalty order”.
- (5) The definition of **foreign pecuniary penalty order** in section 2(1) is repealed and the following definitions are substituted:
“**foreign order** means a foreign forfeiture order or a foreign restraining order 10
“**foreign pecuniary penalty order** means an order, made under the law of a foreign country by any court or other judicial authority, imposing a pecuniary penalty in respect of benefits derived by a person from significant foreign criminal activity (whether proved to a civil or criminal standard); but does not include an order for the payment of a sum of money by way of compensation, restitution, or damages to an injured person”. 15
- (6) The definition of **foreign restraining order** is repealed and the following definition substituted: 20
“**foreign restraining order** means an order made under the law of a foreign country by a court or other judicial authority that—
“(a) restrains a particular person, or all persons, from dealing with the property specified in the order; and 25
“(b) relates to—
“(i) tainted property (as defined in relation to Part 3);
or
“(ii) property of a person who has, or who may have, unlawfully benefited from significant foreign criminal activity; or 30
“(iii) an instrument of crime (as defined in relation to Part 3); or
“(iv) property that will satisfy some or all of a foreign pecuniary penalty order”. 35

- (7) The definition of **foreign serious offence** in section 2(1) is repealed and the following definition substituted in its appropriate alphabetical order:
- “**foreign qualifying forfeiture offence** means—
- “(a) an offence in a foreign country that is punishable in that country by a maximum term of imprisonment of 5 years or more (including an attempt to commit, conspiring to commit, or being an accessory to an offence if the maximum term of imprisonment for that attempt, conspiracy, or activity is 5 years or more); and
- “(b) an offence under the law of a foreign country that is a party to the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000, if—
- “(i) it is punishable by imprisonment for a term of 4 years or more; and
- “(ii) there are reasonable grounds to suspect that it is transnational in nature (as defined in articles 3(2) and 18(1) of that convention) and involves an organised criminal group (as defined in article 2(a) of that convention)”.
- (8) The definition of **forfeiture order** in section 2(1) is repealed.
- (8A) The following definitions are inserted in section 2(1) in their appropriate alphabetical order:
- “**forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**
- “**instrument forfeiture order** has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**
- “**instrument of crime**,—
- “(a) in relation to Part 2, has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**; and
- “(b) in relation to Part 3, means any property used, wholly or in part, to commit or facilitate the commission of a foreign qualifying forfeiture offence”.
- (9) The definition of **monitoring order** in section 2(1) is repealed.
- (10) The definition of **pecuniary penalty order** in section 2(1) is repealed.

- (11) The definition of **Proceeds of Crime Act** in section 2(1) is repealed.
- (12) The definition of **production order** in section 2(1) is repealed and the following definitions are substituted:
 “**production order** means an order made under **section 113** 5
 of the Criminal Proceeds (Recovery) Act **2006**
 “**profit forfeiture order** has the same meaning as in **section**
5(1) of the Criminal Proceeds (Recovery) Act **2006**”.
- (13) The definitions of **property** and **property-tracking docu-** 10
ment in section 2(1) are repealed and the following definitions
 substituted:
 “**property** has the same meaning as in **section 5(1)** of the
 Criminal Proceeds (Recovery) Act **2006**
 “**qualifying instrument forfeiture offence** has the same
 meaning as in **section 5(1)** of the Criminal Proceeds (Re- 15
 covery) Act **2006**”.
- (14) The definitions of **restraining order**, **serious offence**, and
tainted property in section 2(1) are repealed and the follow-
 ing definitions substituted:
 “**restraining order** has the same meaning as in **section 5(1)** 20
 of the Criminal Proceeds (Recovery) Act **2006**
 “**significant criminal activity** has the same meaning as in
section 5(1) of the Criminal Proceeds (Recovery) Act **2006**
 “**significant foreign criminal activity**—
 “(a) means an activity engaged in by a person in a foreign 25
 country that if proceeded against as a criminal offence
 in that country—
 “(i) would amount to offending—
 “(A) that consists of, or includes, 1 or more
 offences punishable by a maximum term 30
 of imprisonment of 5 years or more; or
 “(B) from which property, proceeds, or benefits
 of a value of \$30,000 or more have, di-
 rectly or indirectly, been acquired or de-
 rived; and 35
 “(ii) whether or not—
 “(A) the person has been charged with or con-
 victed of the offending; or

- “(B) the person has been acquitted of the offending; or
- “(C) the person’s conviction for the offending has been quashed or set aside; and
- “(b) includes an offence under the law of a foreign country that is a party to the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000, if—
- “(i) it is punishable by imprisonment for a term of 4 years or more; and
- “(ii) there are reasonable grounds to suspect that it is transnational in nature (as defined in articles 3(2) and 18(1) of that convention) and involves an organised criminal group (as defined in article 2(a) of that convention)
- “**tainted property**,—
- “(a) in relation to Part 2, has the same meaning as in **section 5(1)** of the Criminal Proceeds (Recovery) Act **2006**; and
- “(b) in relation to Part 3,—
- “(i) means any property that has, wholly or in part, been—
- “(A) acquired as a result of significant foreign criminal activity; or
- “(B) directly or indirectly derived from significant foreign criminal activity; and
- “(ii) includes any property that has been—
- “(A) acquired as a result of more than 1 activity if at least 1 of those activities is a significant foreign criminal activity; or
- “(B) directly or indirectly derived from more than 1 activity if at least 1 of those activities is a significant foreign criminal activity
- “**unlawfully benefited from significant foreign criminal activity** means a person has knowingly, directly or indirectly, derived a benefit from significant foreign criminal activity (whether or not the person deriving the benefit undertook or was involved in the significant foreign criminal activity)”.

- (15) Section 2(2) is repealed and the following subsection substituted:
- “(2) A reference in this Act to criminal proceedings or a criminal investigation includes proceedings or investigations into the following matters: 5
- “(a) revenue (including taxation and customs and excise duties):
- “(b) foreign exchange control:
- “(c) the forfeiture of property as a result of the commission of an offence: 10
- “(d) the restraint of dealings with property or the freezing of assets that may be forfeited as a result of the commission of an offence:
- “(e) imposing or recovering pecuniary penalties under, and restraining dealing with property needed to satisfy, a foreign pecuniary penalty order imposed as a result of the commission of an offence.” 15
- 234 New sections 2A and 2B inserted**
- The following sections are inserted after section 2:
- “2A Certain investigations relating to civil proceedings deemed to be criminal investigations 20**
- “(1) An investigation certified by the Attorney-General to have commenced in New Zealand relating to the restraint or forfeiture of property that is, or is suspected on reasonable grounds to be or to be likely to be, any of the things in **subsection (2)** must be treated as a criminal investigation for the purposes of Part 2 despite the related proceedings being civil in nature. 25
- “(2) The things referred to in **subsection (1)** are—
- “(a) tainted property (as defined in relation to Part 2); or
- “(b) property of a person who has unlawfully benefited from significant criminal activity. 30
- “(3) An investigation in a foreign country certified by the Central Authority for that country to have commenced in that country relating to the restraint or forfeiture of property that is, or is suspected on reasonable grounds to be or to be likely to be, any of the things referred to in **subsection (4)** must be treated as a criminal investigation for the purposes of Part 3 despite the related proceedings being civil in nature. 35

- “(4) The things referred to in **subsection (3)** are—
- “(a) tainted property (as defined in relation to Part 3); or
 - “(b) property of a person who has unlawfully benefited from significant criminal activity; or
 - “(c) an instrument of crime (as defined in relation to Part 3); 5
or
 - “(d) property that will satisfy all or part of a pecuniary penalty order.
- “(5) Investigations treated as criminal investigations under this section are criminal matters for the purposes of Parts 2 and 3. 10
- “**2B Certain civil proceedings deemed to be criminal proceedings**
- “(1) A proceeding certified by the Attorney-General to have been instituted in respect of the forfeiture or restraint of property that is, or is suspected on reasonable grounds to be or to be 15
likely to be, any of the things referred to in **subsection (2)** must be treated as a criminal proceeding for the purposes of Part 2 despite being civil in nature.
- “(2) The things referred to in **subsection (1)** are—
- “(a) tainted property (as defined in relation to Part 2); or 20
 - “(b) property of a person who has unlawfully benefited from significant criminal activity.
- “(3) A proceeding certified by the Central Authority of the requesting country to have been instituted in respect of the forfeiture or restraint of property that is, or is suspected on reasonable 25
grounds to be or to be likely to be, any of the things referred to in **subsection (4)** must be treated as a criminal proceeding despite being civil in nature.
- “(4) The things referred to in **subsection (3)** are—
- “(a) tainted property (as defined in relation to Part 3); or 30
 - “(b) property of a person who has unlawfully benefited from significant foreign criminal activity; or
 - “(c) an instrument of crime (as defined in relation to Part 3);
or
 - “(d) property that will satisfy all or part of a foreign pecu- 35
niary penalty order.

“(5) Proceedings treated as criminal proceedings under this section are criminal matters for the purposes of Parts 2 and 3.”

235 Object of Act

Section 4 is amended by repealing paragraphs (g) to (j) and substituting the following paragraphs: 5

“(g) the forfeiture of—

“(i) tainted property; and

“(ii) property of persons who have unlawfully benefited from significant criminal activity or significant foreign criminal activity; and 10

“(iii) instruments of crime; and

“(iv) property that will satisfy all or part of a foreign pecuniary penalty order:

“(h) the location of property that may be forfeited:

“(i) the recovery of property to satisfy foreign pecuniary penalty orders: 15

“(j) the restraining of dealings with property, or the freezing of assets, that may be forfeited.”

236 New headings and sections 21 and 22 substituted

The heading above section 21, section 21, the heading above section 22, and section 22 are repealed and the following headings and sections substituted: 20

“Request to enforce orders under Criminal Proceeds (Recovery) Act 2006

“**21 Request to enforce orders under Criminal Proceeds (Recovery) Act 2006** 25

“(1) The Attorney-General may, if the circumstances in **subsection (2)** exist, request a foreign country to make arrangements to enforce any of the following in that country:

“(a) an assets forfeiture order: 30

“(b) a profit forfeiture order:

“(c) an instrument forfeiture order:

“(d) a restraining order.

“(2) The circumstances are that the Attorney-General has reasonable grounds to believe that some or all of the property to which the order relates is located in the foreign country. 35

*“Request to issue warrant or order in foreign
country*

“22 Request to issue warrant or order in foreign country

“(1) The Attorney-General may, if a criminal matter has arisen in New Zealand in respect of any of the things referred to in **subsection (2)**, request a foreign country to issue a warrant or order similar to the following warrants or orders made under the Criminal Proceeds (Recovery) Act **2006** in that country:

“(a) a restraining order:

“(b) a search warrant of the kind issued under **section 107, 109, or 116** of that Act:

“(d) a production order:

“(e) an examination order.

“(2) The things referred to in **subsection (1)** are—

“(a) tainted property (as defined in relation to Part 2); or 15

“(b) property of a person who has unlawfully benefited from significant criminal activity; or

“(c) an instrument of crime (as defined in relation to Part 2).”

237 Refusal of assistance

(1) Section 27(1) is amended by inserting the following paragraph after paragraph (a): 20

“(ab) the request relates to the bringing of proceedings of the kind described in **section 2B(3)** that relate to an activity of a political character; or”.

(2) Section 27(1) is amended by inserting the following paragraph after paragraph (b): 25

“(ba) there are substantial grounds for believing that the request has been made with a view to bringing proceedings of the kind described in **section 2B(3)** that are of a political character; or”.

(3) Section 27(1) is amended by inserting the following paragraph after paragraph (c): 30

“(ca) there are substantial grounds for believing that the request has been made for the purpose of bringing proceedings of the kind described in **section 2B(3)** on account of a person’s colour, race, ethnic origin, sex, religion, nationality, or political opinions; or”.

- (4) Section 27(2) is amended by inserting the following paragraph after paragraph (a):
- “(ab) the request relates to proceedings of the kind described in **section 2B(3)** in respect of conduct that, if it had occurred in New Zealand, would not have constituted significant criminal activity in New Zealand; or” 5
- (5) Section 27(2) is amended by inserting the following paragraphs after paragraph (b):
- “(ba) the request relates to proceedings of the kind described in **section 2B(3)** in respect of conduct that occurred, or is alleged to have occurred, outside the foreign country and similar conduct occurring outside New Zealand in similar circumstances would not have constituted significant criminal activity; or 10
- “(bb) the request relates to proceedings of the kind described in **section 2B(3)** in respect of conduct that, if it had occurred in New Zealand at the same time, could not have been the subject of proceedings of that kind because of lapse of time or for any other reason; or” 15
- (6) Section 27(2)(e) is repealed and the following paragraph substituted: 20
- “(e) the provision of the assistance requested could prejudice—
- “(i) a criminal investigation or criminal proceeding in New Zealand; or 25
- “(ii) a proceeding of any kind under the Criminal Proceeds (Recovery) Act **2006** or **sections 142A to 142Q** of the Sentencing Act 2002; or”.
- (7) Section 27(2)(g) is repealed and the following paragraph substituted: 30
- “(g) the provision of assistance—
- “(i) would impose an excessive burden on the resources of New Zealand; or
- “(ii) relates to a matter that is trivial in nature; or”.
- 238 New sections 54 to 62A and headings substituted** 35
- The heading above section 54, sections 54 to 62, and the heading above section 59 are repealed and the following sections and headings substituted:

*“Requests to enforce foreign restraining orders
and foreign forfeiture orders*

“54 Request to enforce foreign restraining order

- “**(1)** A foreign country may request the Attorney-General to assist in enforcing a foreign restraining order that relates to property that is believed to be located in New Zealand. 5
- “**(2)** The Attorney-General may authorise the Commissioner to apply to the High Court to register a foreign restraining order in New Zealand if satisfied—
- “**(a)** that the request from the foreign country relates to— 10
- “**(i)** tainted property (as defined in relation to Part 3); or
 - “**(ii)** property of a person who has unlawfully benefited from significant foreign criminal activity; or
 - “**(iii)** an instrument of crime (as defined in relation to Part 3); or 15
 - “**(iv)** property that will satisfy some or all of a foreign pecuniary penalty order; and
- “**(b)** that there are reasonable grounds to believe some or all of the property that is able to be restrained under the foreign restraining order is located in New Zealand. 20
- “**(3)** An authority issued under **subsection (2)** must be in writing.

“55 Request to enforce foreign forfeiture order

- “**(1)** A foreign country may request the Attorney-General to assist in enforcing a foreign forfeiture order that relates to property that is reasonably believed to be located in New Zealand. 25
- “**(2)** The Attorney-General may authorise the Commissioner to apply to the High Court to register the foreign forfeiture order in New Zealand if satisfied—
- “**(a)** that the request from the foreign country relates to property that may be forfeited under the foreign forfeiture order and is specific property that— 30
- “**(i)** is tainted property (as defined in relation to Part 3); or
 - “**(ii)** belongs to a person who has unlawfully benefited from significant foreign criminal activity; or 35

- “(iii) is an instrument of crime (as defined in relation to Part 3); or
- “(iv) will satisfy some or all of a foreign pecuniary penalty order; and
- “(b) that there are reasonable grounds to believe that some or all of the property to which the order relates is located in New Zealand. 5
- “(3) An authority issued under **subsection (2)** must be in writing.
- “**56 Method for registering foreign orders in New Zealand**
- “(1) If the High Court is satisfied that a foreign order that the Commissioner has applied to register under **section 54 or 55** is in force in a foreign country, the High Court must make an order that it be registered in New Zealand. 10
- “(3) A foreign order, or an amendment to a foreign order (an **amendment**), may be registered in the High Court in New Zealand by registering either of the following under the prescribed procedure: 15
- “(a) a copy of the foreign order or amendment sealed by the court or other judicial authority who made it; or
- “(b) a copy of the foreign order or amendment authenticated in accordance with section 63. 20
- “(4) A copy of an amendment (whether made before or after registration) may be registered in the same way as a foreign order.
- “(5) ~~An amendment~~ A foreign order or an amendment to a foreign order does not have effect under this Act or the Criminal Proceeds (Recovery) Act **2006** until it is registered. 25
- “(6) An exact copy of a sealed or authenticated copy of a foreign order or an amendment must for the purposes of this Act be treated as if it is the sealed or authenticated copy.
- “(7) However, registration of an exact copy ceases to have effect on the expiry of the period of 21 days commencing on the date of registration unless, before the expiry of that period, the sealed or authenticated copy is registered. 30

“57 Effect of registering foreign orders in New Zealand

“(1) A foreign restraining order registered in New Zealand under **section 56** has effect, and may be enforced, as if it is a restraining order—

“(a) made by the High Court under the Criminal Proceeds (Recovery) Act **2006**; and

“(b) entered on the date it is registered.

“(2) **Subsection (1)** is subject to **sections 142 to 146** of the Criminal Proceeds (Recovery) Act **2006**.

“(3) A foreign forfeiture order registered in New Zealand under **section 56** has effect, and may be enforced, as if it is a forfeiture order—

“(a) made by the High Court under the Criminal Proceeds (Recovery) Act **2006**; and

“(b) entered on the date it is registered. 15

“(4) **Subsection (3)** is subject to **sections 147 to 155** of the Criminal Proceeds (Recovery) Act **2006**.

“58 Cancelling registration of foreign orders in New Zealand

“(1) The Attorney-General may at any time direct the Commissioner to apply to the High Court to cancel the registration in New Zealand of—

“(a) a foreign restraining order; or

“(b) a foreign forfeiture order.

“(2) Without limiting **subsection (1)**, the Attorney-General may give a direction of that kind if the Attorney-General is satisfied—

“(a) that the order has, since being registered in New Zealand, ceased to have effect in the foreign country in which it was made; or

“(b) that cancelling the order is appropriate having regard to arrangements entered into between New Zealand and the foreign country in relation to the enforcing of orders of that kind; or

“(c) that the registration of the order in New Zealand contravened **section 56**; or 35

“(d) that, in the case of a foreign restraining order registered in New Zealand, 1 year has passed since the foreign country made the order; or

- “(e) that, after consultation with the foreign country where the order was made, it is desirable that the registration of the foreign order be cancelled; or
- “(f) that the foreign order has been discharged, wholly or in part. 5
- “(3) The High Court must cancel the registration of a foreign order in New Zealand if the Commissioner applies, under a direction under **subsection (1)**, to the High Court to cancel the registration.
- “Requests by foreign countries for orders or warrants in New Zealand 10*
- “59 Request for search warrant in New Zealand**
- “(1) A foreign country may request the Attorney-General to obtain the issue of a search warrant in New Zealand in respect of a criminal investigation or criminal proceedings relating to— 15
- “(a) tainted property (as defined in relation to Part 3); or
- “(b) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
- “(c) an instrument of crime (as defined in relation to Part 3); or 20
- “(d) property that will satisfy some or all of a foreign pecuniary penalty order.
- “(2) After a request is made, the Attorney-General may, if satisfied of the matters in **subsection (3)**, do any of the following:
- “(a) authorise a member of the police to apply under **section 130** of the Criminal Proceeds (Recovery) Act **2006** for a search warrant under **section 107** of that Act in relation to that property: 25
- “(b) authorise the Commissioner to apply under **section 131** of the Criminal Proceeds (Recovery) Act **2006** for a search warrant under **section 109** of that Act in relation to that property: 30
- “(c) authorise the Official Assignee to apply under **section 132** of the Criminal Proceeds (Recovery) Act **2006** for a search warrant under **section 116** of that Act in relation to that property. 35
- “(3) The matters referred to in **subsection (2)** are—

- “(a) that the request relates to a criminal investigation or criminal proceedings relating to—
 - “(i) tainted property (as defined in relation to Part 3); or
 - “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or 5
 - “(iii) an instrument of crime (as defined in relation to Part 3); or
 - “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and 10
- “(b) that there are reasonable grounds for believing the property is located in New Zealand.

“60 **Interim foreign restraining order**

- “(1) A foreign country may request the Attorney-General to obtain the issue of an interim foreign restraining order in respect of property that is believed to be located in New Zealand. 15
- “(2) After a request is made, the Attorney-General may authorise the Commissioner to make an application under **section 134** of the Criminal Proceeds (Recovery) Act **2006** for an interim foreign restraining order if the Attorney-General is satisfied that— 20
 - “(a) there is a criminal investigation in relation to—
 - “(i) tainted property (as defined in relation to Part 3); or 25
 - “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
 - “(iii) an instrument of crime (as defined in relation to Part 3); or 30
 - “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
 - “(b) there are reasonable grounds to believe all or part of the property to which the criminal investigation relates is located in New Zealand. 35

“62 Request for production order in New Zealand

- “(1) A foreign country may request the Attorney-General to make an application for a production order in New Zealand.
- “(2) After a request is made, the Attorney-General may authorise the Commissioner to make an application to a Judge under **section 112** of the Criminal Proceeds (Recovery) Act **2006** if the Attorney-General is satisfied that—
- “(a) the request relates to a criminal investigation that relates to—
 - “(i) tainted property (as defined in relation to Part 3); 10
or
 - “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal activity; or
 - “(iii) an instrument of crime (as defined in relation to 15
Part 3); or
 - “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
 - “(b) there are reasonable grounds to believe that all or part of the property to which the criminal investigation relates 20
is located in New Zealand.

“62A Request for examination order in New Zealand

- “(1) A foreign country may request the Attorney-General to make an application for the issue of an examination order in New Zealand. 25
- “(2) After a request is made, the Attorney-General may authorise the Commissioner to make an application under **section 113A** of the Criminal Proceeds (Recovery) Act **2006** if the Attorney-General is satisfied—
- “(a) that the request relates to a criminal investigation that 30
relates to—
 - “(i) tainted property (as defined in relation to Part 3);
or
 - “(ii) property that belongs to a person who has unlawfully benefited from significant foreign criminal 35
activity; or
 - “(iii) an instrument of crime (as defined in relation to
Part 3); or

- “(iv) property that will satisfy some or all of a foreign pecuniary penalty order; and
“(b) that there are reasonable grounds to believe that all or part of the property to which the criminal investigation relates is located in New Zealand.” 5

239 Certificates given by Attorney-General

Section 64(2) is amended by omitting “Proceeds of Crime Act” and substituting “Criminal Proceeds (Recovery) Act 2006”.

240 Savings and transitional provisions 10

The Mutual Assistance in Criminal Matters Act 1992 continues in force as it did before the commencement of this Act for the purpose of completing any request or any matter relating to or arising from a request made under that Act before the commencement of this Act, including, without limitation,— 15

- (a) taking action in relation to any matter relating to an application under the Mutual Assistance in Criminal Matters Act 1992; and
(b) continuing or completing any proceedings or other matter commenced under that Act; and 20
(c) enforcing orders made or registered under that Act; and
(d) the exercise of any power or function under the Act in relation to any matter in **paragraph (a)**.

*Consequential amendment to Customs and
Excise Act 1996* 25

241 Amendment to Customs and Excise Act 1996

Section 242 amends the Customs and Excise Act 1996.

242 Return of goods detained under section 166A

Section 166D(3)(b) is repealed and the following paragraph substituted: 30

- “(b) a foreign country makes a request to the Attorney-General under any of the following sections of the Mutual Assistance in Criminal Matters Act 1992:

**Mutual Assistance in Criminal Matters
Amendment Bill**

- “(i) **section 54** (relating to a request to enforce a foreign restraining order); and
“(ii) **section 60** (relating to an interim foreign restraining order).”

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Legislative history

31 March 2009

Divided from Criminal Proceeds (Recovery) Bill (Bill 81-2) by committee of the whole House as Bill 81-3A
Third reading
