

## CRIMES (PUBLICATIONS) BILL

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### EXPLANATORY NOTE

This bill makes provision for the public interest in relation to the publication of recollections of serious criminal offending by convicted persons.

This legislation is not intended in any way to constrain freedom of expression. There is however a clear public interest in preventing criminals from profiting from their crimes, in effect at the expense of their victims, through the distribution and sale of reports on their criminal conduct.

*Clause 2* provides a broad definition of “publication” for the purposes of the bill. It draws on provisions in the Films, Videos, and Publications Classification Act 1993 and the Copyright Act 1994, and is intended to catch all mediums by which relevant information may be distributed to or accessed by the public.

*Clause 3* sets out the purpose of the bill.

*Clause 4* provides for the Attorney-General to give directions in writing in relation to certain publications. Under *subclause (1)*, the publications are those made either by convicted persons (who include, by virtue of *clause 2 (2)*, certain persons who have been discharged without conviction or acquitted on the ground of insanity or who have absconded) or for the financial or other material benefit of such persons or their families, and that comprise or depict, in whole or in part, the convicted persons’ recollections of serious offences that are punishable, as in the case of the Proceeds of Crime Act 1991, by imprisonment for no less than 5 years.

*Subclause (2)* sets out the directions that the Attorney-General will have discretion to give. They may be given where the Attorney-General considers it necessary or desirable to do so because to permit a criminal to profit from selling the story of their crime would be repugnant to justice and contrary to the public interest. Directions may be given in relation to treating royalties and other income and payments and any other material benefits received or derived from publications by convicted persons or their families as the proceeds or a benefit derived from the commission of an offence. Further directions may be given in relation to the payment of such income and payments and other benefits to a trust fund and their application to the benefit of victims of crime and their families or to victim support organisations.

*Clause 5* sets out additional considerations that the Attorney-General must take into account in giving directions in the public interest. The Attorney-General must take particular account of the application of the New Zealand Bill of Rights Act 1990 to the proposed direction. The bill is not intended to change that Act in any way. The Act itself, in section 5 on justified limitations, provides that the rights and freedoms contained in it may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. If it is considered that freedom of expression may be affected, either generally or in the particular case, by a proposed direction, it would be a matter for the Attorney-General to determine whether the direction would nevertheless be a justified limitation on the freedom. It is appropriate for such assessments to be made by the Attorney-General, who already has the function under section 7 of the Act to report to the House of Representatives if Bill of Rights issues arise under legislation introduced into the House.

*Clause 5 (2)* recognises that publications may not be wholly or even substantially concerned with a person's recollections of crime. It limits the income and payments and other benefits from a publication that the Attorney-General can regard as the proceeds of crime to the proportion that the recollections represent in the publication and their prominence in the promotion of the publication, unless the Attorney-General considers that a greater assessment is reasonable in all the circumstances of the case.

*Clause 6* provides for offences in relation to wilful non-compliance with the Attorney-General's directions.

*Clause 7* provides for the application of the Proceeds of Crime Act where necessary to secure payment of the income and payments and other benefits.

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**CRIMES (PUBLICATIONS)**

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ANALYSIS

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A BILL INTITULED

**An Act to make provision for the public interest in relation to publication of recollections of crimes by persons convicted of serious criminal offending**

5 BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title**—This Act may be cited as the Crimes (Publications) Act 1999.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

10 “Publication” means any distribution of information to the public or availability of information for access by any person, whether in writing, print, sound, or picture or any other image, electromagnetically or electronically, or in any other form or recording or reproduction.

15 (2) For the purposes of this Act, “convicted” includes:  
(a) Discharged without conviction where the person concerned was found guilty of, or pleaded guilty to, the offence:  
20 (b) Acquitted on the ground of insanity:  
(c) Absconded in connection with the offence, “absconded” having the same meaning as in section 4 of the Proceeds of Crime Act 1991.

**3. Purpose**—The purpose of this Act is to prevent any person convicted of a serious offence from gaining financial or other material benefit from selling the story of that person's crime.

**4. Attorney-General may give directions in relation to publications on crimes**—(1) This section applies to any publication— 5

- (a) That is by any person who has been convicted of any serious offence punishable by imprisonment for a term of 5 years or more or from which the person or the family or any member of the family of that person derives financial or other material benefit; and 10
- (b) That comprises or depicts, in whole or in part, that person's recollections of the offence.

(2) The Attorney-General may, if he or she considers it necessary or desirable to do so where a publication is or would be repugnant to justice and contrary to the public interest, give directions to any person, by notice in writing, in relation to the following matters: 15

- (a) Treat the whole or part of any income from the sale or any other dealing in a publication, and of any copyright royalties and other payments and any other material benefits in respect of a publication, received or derived by any convicted person or the family or any member of the family of that person, as the proceeds, or a benefit derived by a person from the commission, of an offence: 20
- (b) Pay such income and payments and other benefits into a trust fund established for the purpose and operated, on such terms and conditions as the Attorney-General considers fit, for the purpose specified in paragraph (c): 25
- (c) Apply such income and payments and other benefits, in such manner as the Attorney-General considers fit, to the benefit of the victims of the crime and members of their families or to such organisations for the support of victims of crime as the Attorney-General considers appropriate. 30 35

**5. Additional considerations applying to directions by Attorney-General**—(1) Without limiting the generality of the considerations which the Attorney-General may take into account when acting in the public interest under section 4, the Attorney-General must, before giving any direction under that 40

section, take full account of the application of the New Zealand Bill of Rights Act 1990 to the proposed direction.

5 (2) Where the publication is not wholly or substantially concerned with the person's recollections of an offence, **section 4(2)** applies only in respect of that proportion of the  
10 publication that the Attorney-General assesses to relate to such recollections, unless the Attorney-General considers that it is reasonable in all the circumstances of the case (including the prominence given to the recollections in the promotion of the  
15 publication) for a greater portion of the income and payments and other benefits to be treated as the proceeds, or a benefit derived by a person from the commission, of an offence.

**6. Persons must comply with directions**—Every person commits an offence, and is punishable on summary conviction  
15 to imprisonment for a term not exceeding 6 months or a fine not exceeding \$50,000, who wilfully fails to comply with a direction by the Attorney-General under **section 4**.

**7. Application of Proceeds of Crime Act 1991**—  
20 (1) Where necessary to secure payment of the income and payments and other benefits to which **section 4** applies, the Proceeds of Crime Act 1991 may, subject to this Act, be applied to such income and payments and other benefits as if they were the proceeds, or a benefit derived by a person from  
25 the commission, of a serious offence.

(2) The Proceeds of Crime Act 1991 applies with all necessary modifications for the purposes of this section.