

[AS REPORTED FROM THE COMMERCE AND MARKETING
COMMITTEE]

House of Representatives, 30 July 1992.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. D. A. M. Graham

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

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A BILL INTITULED

An Act to facilitate the provision and obtaining of international assistance in criminal matters

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

5 **1. Short Title and commencement**—(1) This Act may be cited as the Mutual Assistance in Criminal Matters Act 1992.

Struck Out

(2) This Act shall come into force on the 1st day of October 1992.

New

10 (2) Except as provided in section 65 (3) of this Act, this Act shall come into force on the 1st day of April 1993.

PART I

PRELIMINARY PROVISIONS

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

20 “Central Authority”, in relation to any foreign country, means the person or authority for the time being designated by that country for the purposes of transmitting or receiving requests made under or pursuant to this Act:

“Criminal investigation” means,—

(a) In **Part II** of this Act, an investigation certified by the Attorney-General to have commenced in New Zealand in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of New Zealand: 5

(b) In **Part III** of this Act, in relation to a foreign country, an investigation certified by the Central Authority for that country to have commenced in the foreign country in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of that country: 10

“Criminal matter” means criminal investigations and criminal proceedings: 15

“Criminal proceedings” means,—

(a) In **Part II** of this Act, proceedings certified by the Attorney-General to have been instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of New Zealand; and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence: 20

(b) In **Part III** of this Act, proceedings certified by the Central Authority of the requesting country to have been instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of the country; and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence: 25

“Document” has the same meaning as in section 2 (1) of the Official Information Act 1982: 35

“Financial institution” has the same meaning as in section 2 (1) of the Proceeds of Crime Act:

“Foreign country” means any country other than New Zealand:

“Foreign drug-dealing offence” means a foreign serious offence that consists of or includes conduct which, if it occurred in New Zealand, would be a drug-dealing offence within the meaning of the Proceeds of Crime Act: 40

5 “Foreign forfeiture order” means an order, made under the law of a foreign country by any Court or other judicial authority, for the forfeiture of property that is tainted property in respect of an offence against the law of that country:

10 “Foreign law immunity certificate” means a certificate given, or a declaration made, by a foreign country or under the law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required—

- 15 (a) To answer a specified question; or
(b) To provide a specified document:

20 “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 the commission of an offence against the law of that country; 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:

25 “Foreign prisoner” means a person who is being held in legal custody in a foreign country—

- (a) Pending trial for, or sentence for; or
(b) Pursuant to a sentence of imprisonment for,—
an offence against the law of that foreign country:

30 “Foreign restraining order” means an order—

- (a) That is made under the law of a foreign country by any Court or other judicial authority in respect of—

35 (i) Property that is or may be tainted property in respect of an offence against the law of that country; or

(ii) Benefits that have been derived, or may have been derived, by a person from the commission of such an offence; and

40 (b) That restrains a particular person, or all persons, from dealing with property:

“Foreign serious offence” means an offence under the law of a foreign country punishable by imprisonment for a term of 5 years or more:

45 “Forfeiture order” means an order made under section 15 (1) of the Proceeds of Crime Act:

- “Judge” means a Judge of the High Court:
- “Judicial records” means judgments, orders, and decisions of Courts, and other records held by judicial authorities:
- “Minister” means the Minister of Justice: 5
- “Monitoring order” means an order made under section 77 (1) of the Proceeds of Crime Act:
- “Official records” means documents held by Government departments or agencies or prosecution authorities:
- “Pecuniary penalty order” means an order made under section 25 (1) of the Proceeds of Crime Act: 10
- “Penal institution” has the same meaning as in section 2 of the Penal Institutions Act 1954:
- “Prescribed foreign country” means any country (other than New Zealand) that is declared by regulations made under this Act to be a foreign country to which **Part III** of this Act applies: 15
- “Prisoner” means a person who is for the time being in the legal custody of the Superintendent of any penal institution: 20
- “Proceeds of Crime Act” means the Proceeds of Crime Act 1991:
- “Process” means any summons, warrant, order, or other document issued out of any Court, or by any Judge, Master, District Court Judge, Justice, or Registrar: 25
- “Production order” means an order made under section 69 (1) of the Proceeds of Crime Act:
- “Property” has the same meaning as in section 2 (1) of the Proceeds of Crime Act:
- “Property-tracking document” has the same meaning as in section 67 of the Proceeds of Crime Act: 30
- “Requesting country”, in relation to a request for assistance made under **Part III** of this Act, means the foreign country that made the request:
- “Restraining order” means an order made under section 42 of the Proceeds of Crime Act: 35
- “Serious offence” means an offence against the law of New Zealand punishable by imprisonment for a term of 5 years or more:
- “Tainted property” has the same meaning as in section 2 (1) of the Proceeds of Crime Act. 40
- (2) A reference in this Act to criminal proceedings or a criminal investigation includes proceedings or investigations into matters—

- (a) Relating to revenue (including taxation and customs and excise duties); or
- (b) Relating to foreign exchange control; or
- 5 (c) Relating to the forfeiture or confiscation of property in respect of an offence; or
- (d) Relating to the imposition or recovery of a pecuniary penalty in respect of an offence; or
- 10 (e) Relating to the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed in respect of an offence,—

whether arising under New Zealand law or the law of a foreign country.

15 (3) A reference in this Act to a benefit derived by a person includes a reference to—

- (a) A benefit derived, directly or indirectly, by the person; and
- 20 (b) A benefit derived, directly or indirectly, by another person at the request or direction of the first-mentioned person.

(4) Where—

- 25 (a) Any foreign country consists of a federation of states, or has more than one system of law, or has any one or more autonomous territorial organisations; and
- (b) More than one Central Authority is appointed for that foreign country,—

30 a reference in this Act to the Central Authority of that foreign country, in relation to a request made pursuant to this Act, means the Central Authority for that foreign country that, in the circumstances of the particular case, is the appropriate Central Authority to transmit or, as the case may be, receive the request.

35 (5) A reference in this Act to the law of a foreign country includes a reference to the law of a part of, or the law in force in part of, the country.

3. Act to bind the Crown—This Act binds the Crown.

40 **4. Object of Act**—The object of this Act is to facilitate the provision and obtaining, by New Zealand, of international assistance in criminal matters, including—

- (a) The identification and location of persons;
- (b) The obtaining of evidence, documents, or other articles;
- (c) The production of documents and other articles:

- (d) The making of arrangements for persons to give evidence or assist investigations:
- (e) The service of documents:
- (f) The execution of requests for search and seizure:
- (g) The forfeiture or confiscation of tainted property: 5
- (h) The recovery of pecuniary penalties in respect of offences:
- (i) The restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences: 10
- (j) The location of property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 5 15

5. Act not to limit other provision of assistance—

Nothing in this Act—

- (a) Derogates from existing forms of co-operation (whether formal or informal) in respect of criminal matters between New Zealand and any other country; nor 20
- (b) Prevents the development of other forms of such co-operation.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 6

6. Act not authority for extradition of any person— 25

Nothing in this Act authorises—

- (a) The extradition or rendition of any person; or
- (b) The arrest or detention, with a view to extradition or rendition, of any person.

PART II 30

REQUESTS BY NEW ZEALAND

Preliminary Provisions

7. Application of this Part—A request for assistance pursuant to this Part of this Act may be made to any foreign country. 35

8. Requests to be made by Attorney-General—Requests by New Zealand for assistance under this Part of this Act shall be made by the Attorney-General.

Assistance in Locating or Identifying Persons

5 **9. Assistance in locating or identifying persons**—Where the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in any foreign country, a person who—

- (a) Is or might be concerned in or affected by; or
- (b) Could give or provide evidence or assistance relevant to,—

10 any criminal matter in New Zealand, the Attorney-General may request that foreign country to assist in locating or, if the person's identity is unknown, in identifying and locating that person.

Assistance in Obtaining Evidence

15 **10. Assistance in obtaining evidence**—Where the Attorney-General is satisfied that there are reasonable grounds for believing that evidence or information relevant to any criminal matter in New Zealand may be obtained if—

- (a) Evidence is taken in a foreign country; or
- (b) Documents or other articles in a foreign country are produced,—

20 the Attorney-General may request that foreign country to assist in obtaining that evidence or information.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 12

25 *New*

10A. Assistance in obtaining evidence for use in New Zealand court—

30 (1) Where the Attorney-General is satisfied that there are reasonable grounds for believing that evidence or information relevant to any criminal proceedings in New Zealand may be obtained if a Court or other judicial authority in a foreign country is requested—

- (a) To take, or cause to be taken, the evidence of any specified person; or
- (b) To order the production of any specified document by any person,—

35 the Attorney-General may request that foreign country to assist in arranging for that evidence to be taken or that document to be produced.

40 (2) Any deposition (by whatever name called) that is received from a foreign country pursuant to a request made under

New

subsection (1) of this section and that purports to have been signed by the deponent and the person taking the evidence or to have been certified as a correct record by the person taking the evidence may, subject to the rules of law relating to the admission of evidence, be put in as evidence at the hearing of the criminal proceedings to which the request relates. 5

(3) Any document (other than a deposition) received from a foreign country pursuant to a request made under subsection (1) of this section may, subject to the rules of law relating to the admission of evidence, be put in as evidence at the hearing of the criminal proceedings to which the request relates as if produced by the person who produced the document pursuant to the order of the Court or other judicial authority of that foreign country. 10 15

(4) All courts shall take judicial notice of any seal or signature impressed, affixed, appended, or subscribed on or to any deposition (by whatever name called) tendered in evidence under this section.

Assistance in Arranging Attendance of Person in New Zealand 20

11. Assistance in arranging attendance of person—

(1) Where the Attorney-General is satisfied that there are reasonable grounds for believing that a person in a foreign country could give or provide evidence or assistance relevant to any criminal matter in New Zealand, the Attorney-General may request that foreign country to assist in arranging the attendance of the person in New Zealand to give or provide that evidence or, as the case may be, that assistance. 25

(2) Where the Attorney-General is satisfied that a person in respect of whom a request is made to a foreign country under subsection (1) of this section consents to travel to New Zealand to give or provide evidence or assistance pursuant to that request, the Attorney-General may make arrangements with that foreign country for the purposes of— 30

(a) The removal of the person to New Zealand: 35

(b) In the case of a foreign prisoner, the custody of that person while in New Zealand:

(c) The return of the person to the foreign country:

(d) Other relevant matters.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 16

5 **12. Certificate that attendance required**—(1) For the purposes of enabling the grant of a temporary permit under the Immigration Act 1987 to any person in respect of whom a request is made under **section 11** of this Act, the Attorney-General may issue a certificate, in writing, that the attendance of that person in New Zealand is necessary for the purposes of
10 giving or providing evidence or assistance pursuant to that request.

 (2) The Attorney-General may, at any time, by notice in writing, cancel any certificate issued under **subsection (1)** of this section in respect of any person who is in New Zealand
15 pursuant to a request made under **section 11** of this Act, if the Attorney-General is satisfied that the attendance of that person in New Zealand is no longer necessary for the purpose to which the request relates.

13. Penalty not to be imposed for refusal to consent—
20 Where, pursuant to **section 11** of this Act, the Attorney-General requests the assistance of a foreign country in arranging the attendance, in New Zealand, of any person, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that
25 person's refusal or failure to consent to attend as requested.

14. Custody of foreign prisoners—(1) Where—
 (a) A person who is to be brought to New Zealand from a foreign country pursuant to a request made under
 section 11 (1) of this Act is a foreign prisoner; and
30 (b) That foreign country requests that the person be kept in custody while he or she is in New Zealand,—
that person shall, while that person is in New Zealand or is travelling to or from New Zealand pursuant to the request, be kept in such custody as the Minister directs in writing.

35 (2) A direction given pursuant to **subsection (1)** of this section in respect of any foreign prisoner shall be sufficient authority for the detention of that person in accordance with the terms of the direction.

40 (3) Where, pursuant to **subsection (1)** of this section, a foreign prisoner who is in New Zealand pursuant to a request made under **section 11 (1)** of this Act is directed to be detained in a penal institution, the Penal Institutions Act 1954, so far as

applicable and with all necessary modifications, shall apply with respect to that foreign prisoner as if he or she were a person who has been sentenced to imprisonment for an offence against the law of New Zealand and is liable to be detained in a penal institution under such a sentence. 5

(4) Where the Attorney-General is satisfied, in respect of a foreign prisoner who is in New Zealand pursuant to a request made under **section 11 (1)** of this Act, that the attendance of that person in New Zealand is no longer necessary for the purpose to which the request relates, the Attorney-General may order, in writing, that the person be removed from New Zealand, and such an order shall be sufficient authority for that person's removal from New Zealand by such means as the Attorney-General directs. 10

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), ss. 18, 22 15

15. Release of foreign prisoner upon request by foreign country—Where—

(a) A foreign prisoner is being held in custody in accordance with a direction of the Minister under **section 14** of this Act; and 20

(b) The foreign country from which the person has been brought requests the release of the person from custody,—

the Minister shall direct that the person be released from custody. 25

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 23

16. Immunities and privileges—(1) Subject to **subsection (3)** of this section, where a person (including a person who is a foreign prisoner) is in New Zealand pursuant to a request made under **section 11** of this Act, the person shall not— 30

(a) Be detained, prosecuted, or punished in New Zealand for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request; or 35

(b) Be subjected to any civil proceedings in New Zealand in respect of any act or omission that is alleged to have occurred, or that occurred, before the person's departure from the foreign country pursuant to the request, being civil proceedings to which the person could not be subjected if the person were not in New Zealand; or 40

- (c) Be required to give or provide evidence or assistance in relation to any criminal matter in New Zealand other than the criminal matter to which the request relates; or
- 5 (d) Be required, in the proceedings or investigation to which the request relates, to answer any question that the person would not be required to answer if those proceedings or that investigation were taking place in the foreign country; or
- 10 (e) Be required, in the proceedings or investigation to which the request relates, to produce any document or article that the person would not be required to produce if those proceedings or that investigation were taking place in the foreign country.
- 15 (2) For the purposes of **subsection (1)** of this section, a duly authenticated foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.
- (3) **Subsection (1)** of this section shall not apply in relation to a
- 20 person where—
- (a) The person has left New Zealand and then returns otherwise than pursuant to the same or another request; or
- (b) The person has had the opportunity to leave New Zealand
- 25 and has remained in New Zealand otherwise than for—
- (i) The purpose to which the request relates; or
- (ii) The purpose of giving evidence in any criminal proceedings in New Zealand certified by the
- 30 Attorney-General, in writing, to be proceedings in which it is desirable that the person give evidence; or
- (iii) The purpose of giving assistance in relation to an investigation in New Zealand certified by the
- 35 Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.
- (4) A certificate given by the Attorney-General for the purposes of **subparagraph (ii) or subparagraph (iii) of subsection (3) (b)** of this section has effect from the day specified in the certificate
- 40 (which may be a day before the day on which the certificate is given).

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 19

17. Limitation on use of evidence—Where—

(a) A person is in New Zealand pursuant to a request made under **section 11** of this Act; and

(b) That person gives evidence in any criminal proceedings, being—

(i) The criminal proceedings to which the request relates or any criminal proceedings consequent on the investigation to which the request relates; or

(ii) Criminal proceedings certified by the Attorney-General pursuant to **section 16 (3) (b) (ii)** of this Act in relation to that person,—

that evidence shall not be admitted or otherwise used in any prosecution of the person for any offence against the law of New Zealand, except on the trial of the person for perjury within the meaning of the Crimes Act 1961 in respect of the giving of that evidence.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 21

Assistance in Serving Documents

18. Assistance in serving documents—The Attorney-General may request a foreign country to assist in effecting service of any process where the Attorney-General is satisfied that, for the purposes of, or in connection with, any criminal matter, it is necessary or desirable to serve that process on a person or an authority in the foreign country.

Assistance in Obtaining Articles or Things

Struck Out

19. Assistance in obtaining article or thing—Where the Attorney-General is satisfied that there are reasonable grounds for believing that an article or thing is in a foreign country and would, if produced, be relevant to any criminal matter in respect of an offence against the law of New Zealand punishable by imprisonment for a term of 2 years or more, the Attorney-General may request the foreign country to assist in obtaining, by search and seizure if necessary, the article or thing.

New

- 5 **19. Assistance in obtaining article or thing**—(1) Subject to subsection (2) of this section, where the Attorney-General is satisfied that there are reasonable grounds for believing that an article or thing is in a foreign country and would, if produced, be relevant to any criminal matter in New Zealand, the Attorney-General may request the foreign country to assist in obtaining, by search and seizure if necessary, the article or thing.
- 10 (2) No request may be made under this section for assistance in obtaining an article or thing by search and seizure unless the Attorney-General is satisfied that there are reasonable grounds for believing that the article or thing would, if produced, be relevant to any criminal matter in respect of an offence against
- 15 the law of New Zealand punishable by imprisonment for a term of 2 years or more.

Requests for Enforcement of Orders Made Under Proceeds of Crime Act

- 20 **20. Requests for enforcement of orders made under Proceeds of Crime Act**—The Attorney-General may request a foreign country to make arrangements for the enforcement of a forfeiture order, a pecuniary penalty order, or a restraining order, where there are reasonable grounds for believing that some or all of the property in respect of which the order is
- 25 made is located in that foreign country.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 32

Requests for Issue of Warrants or Orders in Foreign Country

- 30 **21. Requests for issue of warrants or orders in foreign country**—Where any criminal matter arises in New Zealand in respect of a serious offence, the Attorney-General may request a foreign country to assist in obtaining the issue in that foreign country, in respect of the offence, of a warrant, order, or other instrument similar in nature to any of the following warrants or
- 35 orders under the Proceeds of Crime Act:
- (a) A restraining order:
 - (b) A search warrant for tainted property:
 - (c) A production order:

(d) A monitoring order.

Cf. Mutual Assistance in Criminal Matters Act 1987
(Aust.), s. 33

Miscellaneous Provisions

22. Restriction on use of evidence—Any evidence, information, document, or article that is obtained, provided, or produced pursuant to a request made under this Part of this Act shall be used by a New Zealand authority only for the purposes of, or in connection with, the criminal matter to which the request relates, unless—

(a) The foreign country to which the request was made; and

(b) In the case of any evidence, information, document, or article obtained from, or provided or produced by, a person while he or she is in New Zealand pursuant to a request made under **section 11** of this Act, that person—

consents to the use of the evidence, information, document, or article for any other purpose.

PART III

REQUESTS TO NEW ZEALAND

Preliminary Provisions

23. Application of this Part—Subject to any regulations made under this Act, a request for assistance pursuant to this Part of this Act may be made by any prescribed foreign country.

24. Requests to be made to Attorney-General—(1) Every request by a foreign country for assistance in a criminal matter pursuant to this Part of this Act shall be made—

(a) To the Attorney-General; or

(b) To a person authorised by the Attorney-General, in writing, to receive requests by foreign countries under this Part of this Act.

(2) Where a request by a foreign country is made to a person authorised under **subsection (1) (b)** of this section, the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.

Cf. Mutual Assistance in Criminal Matters Act 1987
(Aust.), s. 11 (1), (3)

25. Form of request—Every request by a foreign country for assistance under this Part of this Act shall—

- (a) Specify the purpose of the request and the nature of the assistance being sought; and
- (b) Identify the person, agency, or authority that initiated the request; and
- 5 (c) Be accompanied by—
 - (i) A certificate from the Central Authority of the foreign country that the request is made in respect of a criminal investigation or criminal proceedings within the meaning of this Act; and
 - 10 (ii) A description of the nature of the criminal investigation or criminal proceedings and a statement setting out a summary of the relevant facts and law; and
 - 15 (iii) Details of the procedure that the foreign country wishes to be followed by New Zealand in giving effect to the request, including details of the manner and form in which any information, document, or thing is to be supplied to the foreign country pursuant to the request; and
 - 20 (iv) A statement setting out the wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes; and
 - (v) Details of the period within which the foreign country wishes the request to be complied with; and
 - 25 (vi) If the request involves a person travelling from New Zealand to the foreign country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person, while the person is in the foreign country pursuant to the request; and
 - 30 (vii) Any other information required to be included with the request under a treaty or other arrangement between New Zealand and the foreign country; and
 - 35 (viii) Any other information that may assist in giving effect to the request.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 11 (2)

- 26. Refusal of assistance—**(1) A request by a foreign country for assistance under this Part of this Act shall be refused if, in the opinion of the Attorney-General,—
- 40 (a) The request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been

- committed or was committed, an offence of a political character; or
- (b) There are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character; or 5
- (c) There are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing, or otherwise causing prejudice to a person on account of the person's colour, race, ethnic origin, sex, religion, nationality, or political opinions; or 10
- (d) The request relates to the prosecution of a person for an offence in a case where the person—
- (i) Has been acquitted, convicted, or pardoned by a competent tribunal or authority; or 15
- (ii) Has undergone the punishment provided by law,—
- whether in the foreign country, in New Zealand, or elsewhere, in respect of that offence or of another offence constituted by the same act or omission as that offence; or 20
- (e) The request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in New Zealand, would have constituted an offence under the military law of New Zealand but not also under the ordinary criminal law of New Zealand; or 25
- (f) The granting of the request would prejudice the sovereignty, security, or national interests of New Zealand; or 30
- (g) In the case of a request made pursuant to **section 36** or **section 37** of this Act for the attendance of any person in that foreign country, the person to whom the request relates is not prepared to give his or her consent to the transfer; or 35
- (h) The request is for assistance of a kind that cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken; or
- (i) The requesting country is not a prescribed foreign country. 40
- (2) Subject to **subsections (3) and (4)** of this section, a request by a foreign country for assistance under this Part of this Act may be refused if, in the opinion of the Attorney-General,—

- 5 (a) The request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in New Zealand, would not have constituted an offence against New Zealand law; or
- 10 (b) The request relates to the prosecution or punishment of a person 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 an offence against New Zealand law; or
- 15 (c) The request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in New Zealand at the same time and had constituted an offence against New Zealand law, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason; or
- 20 (d) In the case of a request made pursuant to **section 37** of this Act in respect of a person who is a prisoner in New Zealand, the granting of the request—
(i) Would not be in the public interest; or
(ii) Would not be in the interests of the person to whom the request relates; or
- 25 (e) The provision of the assistance requested could prejudice a criminal investigation or criminal proceedings in New Zealand; or
- 30 (f) The provision of the assistance would prejudice, or would be likely to prejudice, the safety of any person (whether that person is in New Zealand or not); or
- (g) The provision of the assistance would impose an excessive burden on the resources of New Zealand; or
- (h) The request does not comply with the requirements of **section 25** of this Act.
- (3) No request shall be refused solely on the grounds contained in **subsection (2) (g)** of this section unless—
- 35 (a) The Attorney-General has first consulted with the Central Authority of the requesting country about the terms and conditions on which the request may be complied with; and
- 40 (b) The Attorney-General has been unable to reach agreement with the Authority in that regard.
- (4) No request shall be refused solely on the grounds contained in **subsection (2) (h)** of this section unless the Attorney-General has first requested further information from the requesting country and that country has failed or refused to provide that information.
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(5) Subject to **subsection (1)** of this section, the Attorney-General may grant a request even though the request does not comply with the requirements of **section 25** of this Act.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 8 5

27. Notification of refusal—If a request by a foreign country for assistance under this Part of this Act is refused in whole or in part, notice of the refusal shall be given by the Attorney-General to the Central Authority of the requesting country together with the reasons for the refusal. 10

28. Assistance may be provided subject to conditions—Assistance under this Part of this Act may be provided to a requesting country subject to such conditions as the Attorney-General determines in any particular case or class of cases. 15

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 9

Assistance in Locating or Identifying Persons

29. Assistance in locating or identifying persons—(1) A prescribed foreign country may request the Attorney-General to assist in locating, or identifying and locating, a person who is believed to be in New Zealand. 20

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied— 25

(a) That the request relates to a criminal matter in the foreign country; and

(b) That there are reasonable grounds for believing that the person to whom the request relates— 30

(i) Is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and

(ii) Is in New Zealand,—

the Attorney-General may authorise, in writing, assistance in accordance with this section. 35

(3) Where, in relation to a request made under **subsection (1)** of this section, the Attorney-General authorises assistance in accordance with this section, the Attorney-General shall

forward the request to the appropriate agency in New Zealand, and that agency shall use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates, and shall advise the Attorney-General of the outcome of those endeavours.

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(4) On receipt of such advice, the Attorney-General shall inform the requesting country of the result of the inquiries made pursuant to the request.

Assistance in Obtaining Evidence in New Zealand

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30. Assistance in obtaining evidence in New Zealand—

(1) A prescribed foreign country may request the Attorney-General to assist in arranging—

(a) The taking of evidence in New Zealand; or

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(b) The production of documents or other articles in New Zealand.

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied—

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(a) That the request relates to criminal proceedings in the foreign country; and

(b) That there are reasonable grounds for believing that the evidence can be taken or, as the case may be, the documents or other articles can be produced in New Zealand,—

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the Attorney-General may authorise, in writing, assistance in accordance with this section.

(3) Where, under **subsection (2)** of this section, the Attorney-General authorises the taking of evidence, a Judge may, subject to **sections 31 and 32** of this Act and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge, and shall—

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(a) Cause the evidence to be put in writing and certify, in the prescribed form, that the evidence was taken by the Judge; and

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(b) Cause the writing to be sent to the Attorney-General.

(4) Where, under **subsection (2)** of this section, the Attorney-General authorises the production of documents or other articles, a Judge may, subject to **sections 31 and 32** of this Act and to any regulations made under this Act, require the production of the documents or other articles, and, unless the Judge otherwise orders, shall cause the documents, or copies of the

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documents certified by the Judge to be true copies, or the other articles, to be sent to the Attorney-General.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 13 (1), (2)

31. Further provisions relating to obtaining evidence—(1) Subject to **section 32** of this Act, the laws of New Zealand with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions, and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of New Zealand shall apply, so far as they are capable of application and with all necessary modifications, with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions, and produce documents or other articles, for the purposes of **section 30** of this Act. 5 10 15

(2) Where, pursuant to **section 30** of this Act, a foreign country requests the production of documents that are judicial records or official records, and that are not publicly available in New Zealand, those records may be produced or examined only to the extent that they could be produced or examined if the criminal proceedings to which the request relates were pending in a New Zealand Court. 20

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 13 (6)

32. Protection of witnesses—(1) For the purposes of **section 30** of this Act, the person to whom the criminal proceedings in the foreign country relates is competent but not compellable to give evidence. 25

(2) No person who is required, pursuant to **section 30** of this Act, to give evidence, or to produce documents or other articles, for the purposes of any proceedings in a foreign country shall be required to give any evidence, or to produce any document or article, that the person could not be compelled to give or produce in the proceedings in the foreign country. 30 35

(3) A duly authenticated foreign law immunity certificate is admissible, for the purposes of **subsection (2)** of this section, as prime facie evidence of the matters stated in the certificate.

(4) Every person who is required, pursuant to **section 30** of this Act, to give evidence, or produce documents or other articles, for the purposes of any proceedings in a foreign country shall have the same privileges in relation to the answering of 40

questions and the production of documents and things as if the proceedings were pending in a New Zealand Court.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 13 (7), (8)

5 **33. Certain persons entitled to appear and be legally represented at proceedings**—(1) The following persons may appear, and may be represented by counsel, at any hearing held under **subsection (3) or subsection (4) of section 30** of this Act:

10 (a) The person to whom the proceedings in the foreign country relate:

 (b) Any other person giving evidence or producing documents or other articles at the hearing:

 (c) The relevant authority of the foreign country.

15 (2) The certificate by the Judge under **section 30 (3) (a)** of this Act shall state whether or not any of the persons listed in **subsection (1)** of this section were present at the hearing and, if so, whether or not they were legally represented.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 13 (4), (5)

20 **34. Powers of Judge may be exercised by Registrar**—(1) Any Judge may authorise a Registrar of the High Court to exercise the powers of a Judge under **section 30** of this Act in respect of any particular case.

25 (2) Any authorisation given under **subsection (1)** of this section may be revoked at any time by any Judge.

30 (3) Where any matter in respect of which he or she has jurisdiction under any authorisation given under **subsection (1)** of this section appears to the Registrar to be one of special difficulty, he or she may refer the matter to a Judge, who may dispose of the matter or may refer it back to the Registrar with such directions as the Judge thinks fit.

 (4) Nothing in this section shall prevent the exercise, by any Judge, of any jurisdiction or powers conferred on any Registrar under this section.

35 Cf. 1908, No. 56, s. 48B, 1962, No. 34, s. 4

35. Evidence Act 1908 not affected—Nothing in **sections 30 to 34** of this Act limits or affects the provisions of sections 48 to 48j of the Evidence Act 1908 or Part IV of the Evidence Amendment Act (No. 2) 1980.

Assistance in Obtaining Attendance of Persons in Foreign Country

36. Assistance in arranging attendance of person to give evidence in foreign country—(1) A prescribed foreign country may request the Attorney-General to assist in arranging the attendance, in that country, of a person in New Zealand (not being a person to whom **section 37** of this Act applies) for the purposes of giving or providing evidence or assistance in relation to a criminal matter in the foreign country. 5

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied— 10

- (a) That the request relates to a criminal matter in the foreign country; and
- (b) That there are reasonable grounds for believing that the person concerned could give or provide evidence or assistance relevant to that criminal matter; and 15
- (c) That the person concerned has freely consented to attend as requested; and
- (d) That the foreign country has given adequate undertakings in respect of the matters specified in **paragraphs (a), (b), (c), and (e) of (section 38 (1)) section 38** of this Act,— 20

the Attorney-General may authorise, in writing, assistance in accordance with this section, and may assist in the making of arrangements to facilitate that attendance. 25

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), ss. 26, 27

37. Assistance in arranging attendance of prisoner—

(1) A prescribed foreign country may request the Attorney-General to assist in arranging the attendance, in that country, of a person in New Zealand who is— 30

- (a) A prisoner; or
- (b) On parole; or

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- (c) Subject to conditions imposed pursuant to section 91 (3) of the Criminal Justice Act 1985; or 35
- (d) At large pursuant to section 21 of the Penal Institutions Act 1954—

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- (c) Subject to any conditions imposed by or pursuant to section 91 (3) or section 107 of the Criminal Justice Act 1985; or
- 5 (d) At large pursuant to section 21 of the Penal Institutions Act 1954; or
- (e) Subject to a community-based sentence (within the meaning of section 2 of the Criminal Justice Act 1985)—

10 for the purposes of giving evidence in relation to any criminal proceedings in the foreign country.

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied—

- 15 (a) That the request relates to the attendance of the person concerned at a hearing in connection with any criminal proceedings in the foreign country; and
- (b) That there are reasonable grounds for believing that the person is capable of giving evidence relevant to the
- 20 proceedings; and
- (c) That the person has freely consented to give evidence in the foreign country; and
- (d) That the foreign country has given adequate undertakings in respect of the matters specified in (**section 38 (1)**)
- 25 **section 38** of this Act,—

the Attorney-General may authorise, in writing, assistance in accordance with this section.

(3) Where assistance is authorised in accordance with **subsection (2)** of this section, the Attorney-General may,—

- 30 (a) In the case of a person who is a prisoner, direct that the prisoner be released from the penal institution in which that person is detained for the purpose of travelling to the foreign country to give evidence at the hearing, and may make arrangements for the
- 35 prisoner to travel to the foreign country in the custody of a member of the Police or a prison officer;
- (b) In the case of any other person, approve and arrange the travel of the person to the foreign country to give evidence at the hearing, and may obtain such
- 40 approvals, authorities, and permissions as are required for the purpose, including the variation,

discharge, or suspension of the conditions of the person's release, or the variation, cancellation, or suspension of the person's sentence, or of the conditions of the person's sentence.

(4) A direction given, pursuant to **subsection (3) (a)** of this section, by the Attorney-General in respect of a prisoner shall be sufficient authority for the release of the prisoner from the penal institution in which he or she is detained for the purposes of the direction. 5

(5) Every person released under a direction given pursuant to **subsection (3) (a)** of this section shall, while that person is in New Zealand during the period of that release, be deemed, for the purposes of section 120 of the Crimes Act 1961 (which relates to escaping from lawful custody) and for that purpose only, to continue to be in the legal custody of the Superintendent of the penal institution from which he or she is so released. 10 15

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 26

38. Undertakings required from foreign country—
Where, pursuant to **section 36** or **section 37** of this Act, a foreign country requests the assistance of the Attorney-General in arranging the attendance, in that country, of a person to whom either of those sections applies, the Attorney-General shall, before authorising assistance in accordance with either of those sections in that case, obtain undertakings from the foreign country in relation to the following matters: 20 25

- (a) That the person to whom the request relates shall not—
- (i) Be detained, prosecuted, or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from New Zealand; or 30
 - (ii) Be subjected to any civil proceedings in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from New Zealand, being civil proceedings to which that person could not be subjected if the person were not in the foreign country; or 35
 - (iii) Be required to give or provide evidence or assistance in respect of any criminal matter in the foreign country other than the matter to which the request relates— 40
- unless the person has left the foreign country, or has had the opportunity of leaving the foreign country

and has remained in that country otherwise than for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates:

- 5 (b) That any evidence given by the person in the criminal proceedings to which the request relates shall be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence:
- 10 (c) That the person will be returned to New Zealand in accordance with arrangements agreed by the Attorney-General as soon as practicable after giving the evidence:
- 15 (d) In a case where the request relates to a person who is a prisoner in New Zealand and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country,—
- 20 (i) That appropriate arrangements will be made for that purpose; and
- (ii) That the person will not be released from custody in the foreign country without the prior approval of the Attorney-General; and
- 25 (iii) If the person is released in the foreign country, at the request of the Attorney-General, before the completion of the proceedings to which the request relates, that the person's accommodation and expenses will be met by the foreign country:
- 30 (e) Such other matters (if any) as the Attorney-General thinks appropriate.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 26 (3)

39. Penalty not to be imposed for refusal to consent—

- 35 Where, pursuant to **section 36** or **section 37** of this Act, a foreign country requests the assistance of the Attorney-General in arranging the attendance, in that country, of any person, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason
- 40 only of that person's refusal or failure to consent to attend as requested.

40. Effect of removal to foreign country on prisoner's term of imprisonment—Where a prisoner who is serving a

term of imprisonment for an offence against the law of New Zealand is released from a New Zealand penal institution pursuant to a request by a foreign country under **section 37** of this Act, the prisoner shall, while in custody in connection with the request (including custody outside New Zealand), be deemed to be continuing to serve that term of imprisonment. 5

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 28

41. Custody of persons in transit—(1) A person who is in custody in one foreign country and has consented to give evidence in criminal proceedings, or to give assistance in relation to a criminal investigation, in another foreign country may be transported through New Zealand, in custody, to that other foreign country. 10

(2) Where one of the countries is a prescribed foreign country, the person being transported through New Zealand in custody may, if an aircraft or ship by which the person is being transported lands or calls at a place in New Zealand, be kept in such custody while in transit in New Zealand as the Minister directs in writing until his or her transportation is continued. 15 20

(3) Where—

(a) A person is being held in custody pursuant to a direction under **subsection (2)** of this section; and

(b) The person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time,— 25

the Attorney-General may direct, in writing, that the person be transported in custody to the country from which the person was first transported, and such a direction shall be sufficient authority for that person's removal from New Zealand by such means as the Attorney-General directs. 30

(4) **Section 14 (3)** of this Act shall, so far as applicable and with all necessary modifications, apply with respect to any person detained in custody in accordance with this section.

(5) For the purposes of enabling the grant of a temporary permit under the Immigration Act 1987 to any person whom it is proposed to transport through New Zealand pursuant to this section, the Attorney-General may issue a certificate, in writing, that the person is to be transported through New Zealand pursuant to this section. 35 40

(6) The Attorney-General may, at any time, by notice in writing, cancel any certificate issued under **subsection (5)** of this section in respect of any person who is in New Zealand for the purposes of being transported through New Zealand pursuant

to this section if the Attorney-General is satisfied that that person's presence in New Zealand is no longer necessary for that purpose.

5 Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 29

Search Warrants

42. Assistance in obtaining article or thing by search and seizure—(1) A prescribed foreign country may request the Attorney-General to assist in obtaining an article or thing by search and seizure.

10 (2) Where, on receipt of a request made under subsection (1) of this section by a foreign country, the Attorney-General is satisfied—

15 (a) That the request relates to a criminal matter in that foreign country in respect of an offence punishable by imprisonment for a term of 2 years or more; and

(b) That there are reasonable grounds for believing that an article or thing relevant to the proceedings is located in New Zealand,—

20 the Attorney-General may authorise a member of the Police, in writing, to apply to a District Court Judge for a search warrant in accordance with section 43 of this Act.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 15 (1)

25 **43. Search warrants**—(1) Any District Court Judge who, on an application in writing made an oath, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing—

30 (a) Any thing upon or in respect of which any offence under the law of a foreign country punishable by imprisonment for a term of 2 years or more has been, or is suspected of having been, committed; or

(b) Any thing which there are reasonable grounds for believing will be evidence as to the commission of any such offence; or

35 (c) Any thing which there are reasonable grounds for believing is intended to be used for the purpose of committing any such offence,—

may issue a search warrant in respect of that thing.

40 (2) An application for a warrant under subsection (1) of this section may be made only by a member of the Police authorised under section 42 (2) of this Act.

44. Form and content of search warrant—(1) Every warrant issued under **section 43** of this Act shall be in the prescribed form.

(2) Every warrant issued under **section 43** of this Act shall be directed to any member of the Police by name, or to any class of members of the Police specified in the warrant, or generally to every member of the Police. 5

(3) Every warrant issued under **section 43** of this Act shall be subject to such special conditions (if any) as the District Court Judge may specify in the warrant. 10

(4) Every warrant issued under **section 43** of this Act shall contain the following particulars:

- (a) The place or thing that may be searched pursuant to the warrant: 15
- (b) The offence or offences in respect of which the warrant is issued: 15
- (c) A description of the articles or things that are authorised to be seized:
- (d) The period during which the warrant may be executed, being a period not exceeding 14 days from the date of issue: 20
- (e) Any conditions specified by the Judge pursuant to **subsection (3)** of this section.

45. Powers conferred by warrant—(1) Subject to any special conditions specified in the warrant pursuant to **section 44 (3)** of this Act, every warrant issued under **section 43** of this Act shall authorise the member of the Police executing the warrant— 25

- (a) To enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant; and 30
- (b) To use such assistants as may be reasonable in the circumstances for the purpose of the entry and search; and
- (c) To use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place searched; and 35
- (d) To search for and seize any thing referred to in **section 43 (1)** of this Act.

(2) Every person called upon to assist any member of the Police executing a warrant issued under **section 43** of this Act shall have the powers described in **paragraphs (c) and (d) of subsection (1)** of this section. 40

46. Person executing warrant to produce evidence of authority—Every member of the Police executing any warrant issued under **section 43** of this Act—

- (a) Shall have that warrant with him or her; and
- 5 (b) Shall produce it on initial entry and, if requested, at any subsequent time; and
- (c) Shall, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of the warrant within 7 days after the request is made.

10 **47. Notice of execution of warrant**—Every member of the Police who executes a warrant issued under **section 43** of this Act shall, not later than 7 days after the seizure of any thing pursuant to that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the

15 member of the Police has reason to believe may have an interest in the thing seized, a written notice specifying—

- (a) The date and time of the execution of the warrant; and
- (b) The identity of the person who executed the warrant; and
- (c) The thing seized under the warrant.

20 **48. Custody and disposal of things seized**—(1) Where any member of the Police seizes any thing pursuant to a warrant issued under **section 43** of this Act, that member of the Police shall deliver the thing into the custody of the Commissioner of Police.

25 (2) Where a thing is delivered into the custody of the Commissioner of Police under **subsection (1)** of this section, the Commissioner of Police shall arrange for the thing to be kept for a period not exceeding 1 month from the day on which the thing was seized pending a direction in writing from the

30 Attorney-General as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an appropriate authority of a foreign country).

(3) Where, before the expiry of the period referred to in **subsection (2)** of this section, the Attorney-General gives a

35 direction in respect of the thing, the thing shall be dealt with in accordance with the direction.

(4) If no direction is given by the Attorney-General before the expiry of the period referred to in **subsection (2)** of this section, the Commissioner of Police shall arrange for the thing to be

40 returned to the person from whose possession it was seized as soon as practicable after that period has expired.

49. Attorney-General to provide certificate as to search and seizure—Where, pursuant to a request made under **section 42** of this Act by a foreign country, a search warrant is issued under **section 43** of this Act, the Attorney-General shall, at the request of the Central Authority of that foreign country, provide such certification as that Central Authority may require concerning the result of any search conducted pursuant to the warrant, the place and circumstances of the seizure of any thing pursuant to the warrant, and the custody of any thing so seized.

Assistance in Arranging Service of Process

50. Assistance in arranging service—(1) A prescribed foreign country may request the Attorney-General to assist in effecting the service of process on a person in New Zealand.

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied—

- (a) That the request relates to a criminal matter in the foreign country; and
- (b) That there are reasonable grounds for believing that the person to be served is in New Zealand; and
- (c) Where the request relates to the service of a summons to appear as a witness in the foreign country, that the foreign country has given an adequate undertaking in respect of the matters specified in **section 51** of this Act,—

the Attorney-General may authorise assistance in accordance with this section.

(3) Where service is authorised under **subsection (2)** of this section, the Attorney-General shall direct the appropriate authority to arrange service, and in such a case the authority shall—

- (a) Use its best endeavours to have the process served—
 - (i) In accordance with procedures proposed in the request; or
 - (ii) If those procedures would be unlawful or inappropriate in New Zealand, or if no procedures are so proposed, in accordance with the law of New Zealand; and
- (b) If the document—
 - (i) Is served, transmit to the Attorney-General for transmission to the foreign country making the request a certificate as to service; or

(ii) Is not served, transmit to the Attorney-General for transmission to the foreign country a statement of the reasons which prevented the service.

5 Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 38

51. Undertaking required from foreign country—

Where, pursuant to **section 50** of this Act, a foreign country requests the assistance of the Attorney-General in effecting the service, on any person, of a summons to appear as a witness in that foreign country, the Attorney-General shall, before authorising assistance in accordance with that section, obtain an undertaking from the foreign country that the person to whom the request relates will not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to comply with the summons, notwithstanding any contrary statement in the summons.

52. Penalty not to be imposed for failure to comply with summons—

Where, pursuant to **section 50** of this Act, a foreign country requests the assistance of the Attorney-General in effecting the service, on any person, of a summons to appear as a witness in that foreign country, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to comply with the summons, notwithstanding any contrary statement in the summons.

Requests for Enforcement of Foreign Confiscation Orders and Foreign Restraining Orders

53. Request for enforcement of foreign confiscation order—(1) A prescribed foreign country may request the Attorney-General to assist with the enforcement of—

- (a) A foreign forfeiture order, made in respect of a foreign serious offence, against property that is reasonably believed to be located in New Zealand; or
- (b) A foreign pecuniary penalty order, made in respect of a foreign serious offence, where some or all of the property available to satisfy the order is reasonably believed to be located in New Zealand.

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country in respect of a foreign forfeiture order or a foreign pecuniary penalty order, the Attorney-General is satisfied—

- (a) That a person has been convicted of the offence in respect of which the foreign order was made; and
 - (b) That the conviction and the order are not subject to further appeal in the foreign country,—
- the Attorney-General may authorise the Solicitor-General, in writing, to apply to the High Court for the registration of the order. 5

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 34 (1)

54. Request for enforcement of foreign restraining order—(1) A prescribed foreign country may request the Attorney-General to assist with the enforcement of a foreign restraining order in respect of property that is believed to be located in New Zealand. 10

(2) Where, on receipt of a request made under **subsection (1)** of this section, the Attorney-General is satisfied— 15

- (a) That the request relates to a criminal investigation, or criminal proceedings, in respect of a foreign serious offence; and

- (b) That there are reasonable grounds for believing that some or all of the property to which the order relates is located in New Zealand,— 20

the Attorney-General may authorise the Solicitor-General, in writing, to apply to the High Court for the registration of the order. 25

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 34 (2)

55. Method of registration of foreign orders—(1) Where the Solicitor-General applies to the High Court for the registration of a foreign order in accordance with an authorisation given under **section 53 or section 54** of this Act, the Court shall, subject to **subsections (3) to (5)** of this section, if it is satisfied that the order is in force, order that the order be registered. 30

(2) On registering a foreign forfeiture order in accordance with this section, the Court shall comply with **section 23a** of the Proceeds of Crime Act. 35

(3) An order, or an amendment of an order, shall be registered in the Court by the registration, in accordance with the prescribed procedure, of— 40

- (a) A copy of the appropriate order or amendment sealed by the Court or other authority making that order or amendment; or

(b) A copy of that order or amendment duly authenticated in accordance with **section 62** of this Act.

5 (4) Where an order is registered in the High Court in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order, but the amendments do not, for the purposes of this Act and of the Proceeds of Crime Act, have effect until they are so registered.

10 (5) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order shall be regarded for the purposes of this Act as the same as the sealed or authenticated copy, but registration effected by means of the facsimile copy shall cease 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.

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 34 (1)-(4), (8)-(10)

20 **56. Effect of registration of foreign orders**—(1) Subject to **sections 23B to 23D** of the Proceeds of Crime Act, a foreign forfeiture order registered in accordance with **section 55** of this Act has effect, and may be enforced, as if it were a forfeiture order made by the High Court under that Act and entered on the date of registration.

25 (2) A foreign pecuniary penalty order registered in accordance with **section 55** of this Act has effect, and may be enforced, as if it were a pecuniary penalty order made by the High Court under the Proceeds of Crime Act and entered on the date of registration.

30 (3) Subject to **section 66B** of the Proceeds of Crime Act, a foreign restraining order registered in accordance with **section 55** of this Act has effect, and may be enforced, as if it were a restraining order made by the High Court under that Act and entered on the date of registration.

35 Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 34 (5)-(7)

57. Cancellation of registration of foreign orders—

(1) Where—

- 40 (a) A foreign forfeiture order; or
(b) A foreign pecuniary penalty order; or
(c) A foreign restraining order—

has been registered in accordance with **section 55** of this Act, the Attorney-General may direct the Solicitor-General to apply to the High Court for cancellation of the registration of the order.

(2) Without limiting the generality of **subsection (1)** of this section, the Attorney-General may give a direction under that subsection in relation to an order if the Attorney-General is satisfied— 5

- (a) That the order has, since its registration in New Zealand, ceased to have effect in the foreign country in which the order was made; or 10
- (b) That cancellation of the order is appropriate having regard to the arrangements entered into between New Zealand and the foreign country in relation to the enforcement of orders of that kind; or
- (c) That the order was registered in contravention of **section 55** of this Act. 15

(3) Where, in accordance with a direction given under **subsection (1)** of this section, the Solicitor-General applies to the High Court for cancellation of the registration of an order, the Court shall cancel the registration accordingly. 20

(4) Where, pursuant to the Proceeds of Crime Act, a foreign forfeiture order or a foreign pecuniary penalty order or a foreign restraining order registered in accordance with **section 55** of this Act is discharged (in whole or in part) or is revoked, that discharge or revocation may be a ground for an application for cancellation of the order under this section. 25

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 34 (11)–(13)

Requests by Foreign Countries for Orders or Warrants in New Zealand 30

58. Request for search warrant in respect of tainted property—(1) A prescribed foreign country may request the Attorney-General to obtain the issue of a search warrant in respect of tainted property believed to be located in New Zealand. 35

(2) Where, on receipt of a request made under **subsection (1)** of this section, the Attorney-General is satisfied—

- (a) That the request relates to a criminal investigation, or criminal proceedings, in respect of a foreign serious offence; and 40
- (b) That there are reasonable grounds for believing that tainted property in respect of the offence is in New Zealand,—

the Attorney-General may authorise a commissioned officer of the Police to make an application under **section 38A** of the Proceeds of Crime Act for the search warrant requested.

5 Cf. Mutual Assistance in Criminal Matters Act 1987
(Aust.), s. 35

59. Request for restraining order—(1) A prescribed foreign country may request the Attorney-General to obtain the issue of a restraining order in respect of property that is believed to be located in New Zealand.

10 (2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied—

15 (a) That criminal proceedings have been commenced in the foreign country in respect of a foreign serious offence;
and

(b) That there are reasonable grounds for believing that property that may be made, or is, the subject of a foreign restraining order is located in New Zealand,—
20 the Attorney-General may authorise the Solicitor-General to make an application under **section 66A** of the Proceeds of Crime Act for the order requested.

Cf. Mutual Assistance in Criminal Matters Act 1987
(Aust.), s. 36

25 **60. Requests for production order**—(1) A prescribed foreign country may request the Attorney-General to obtain the issue of a production order in respect of one or more property-tracking documents.

30 (2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied—

(a) That the request relates to a criminal matter in the foreign country in respect of a foreign drug-dealing offence; and

35 (b) That there are reasonable grounds for believing that one or more property-tracking documents in relation to the offence are located in New Zealand,—

the Attorney-General may authorise a commissioned officer of the Police to make an application under **section 76A** of the Proceeds of Crime Act for the order requested.

40 Cf. Mutual Assistance in Criminal Matters Act 1987
(Aust.), s. 37 (1)

61. Requests for monitoring order—(1) A prescribed foreign country may request the Attorney-General to obtain the issue of a monitoring order.

(2) Where, on receipt of a request made under **subsection (1)** of this section by a foreign country, the Attorney-General is satisfied— 5

(a) That the request relates to a criminal matter in the foreign country in respect of a foreign drug-dealing offence; and

(b) That there are reasonable grounds for believing that information about transactions conducted through an account held by a particular person with a financial institution in New Zealand is relevant to the matter,— 10

the Attorney-General may authorise a commissioned officer of the Police to make an application under **section 81A** of the Proceeds of Crime Act for the order requested. 15

Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 37 (3)

PART IV 20

MISCELLANEOUS PROVISIONS

62. Authentication of documents—

Struck Out

(1) In any proceedings under this Act, or any proceedings under or pursuant to the Proceeds of Crime Act that arise directly or indirectly from a request made under this Act, any document that is duly authenticated is admissible in evidence. 25

New

(1) Subject to **section 22** of this Act and to the rules of law relating to the admission of evidence, any document that is obtained, provided, or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence in any criminal proceedings. 30 35

(2) A document is duly authenticated for the purposes of subsection (1) of this section if—

(a) It purports to be a signed or certified by a Judge, Magistrate, or official in or of a foreign country; and

5 (b) Either—

(i) It is verified by the oath of a witness, or of an official of the Government of a foreign country; or

10 (ii) It purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or official of the Government, of a foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of New Zealand.

15 Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 43

63. Certificates given by Attorney-General—(1) Where the Attorney-General receives a request made pursuant to this Act, the Attorney-General may give a certificate, in the prescribed form, certifying all or any of the following facts:

20 (a) That a request for assistance under this Act has been made by a foreign country:

(b) That the request meets the requirements of this Act:

25 (c) That the acceptance of the request has been duly made under and in accordance with this Act.

(2) In any proceedings under this Act, or any proceedings under or pursuant to the Proceeds of Crime Act that arise directly or indirectly from a request made under this Act, a certificate purporting to have been given under subsection (1) of this section shall (be received as conclusive proof), in the absence of proof to the contrary, be sufficient evidence of the matters certified by the certificate.

64. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

35 (a) Prescribing the foreign countries in respect of which Part III of this Act applies:

(b) Prescribing the forms of applications, notices, certificates, and other documents for the purposes of this Act, and requiring the use of such forms:

40 (c) Prescribing the procedure to be followed in dealing with requests made under this Act, and providing for

- notification of the results of action taken pursuant to any such request:
- (d) Prescribing the procedures for obtaining evidence, or producing documents or articles, pursuant to a request made under **section 30** of this Act: 5
 - (e) Providing for the payment of fees, travelling allowances, and expenses to any person in New Zealand who gives or provides evidence or assistance pursuant to a request made under this Act:
 - (f) Prescribing conditions for the protection of any property sent to or by a foreign country pursuant to a request made under this Act; and making provision for the return of property in New Zealand pursuant to a request: 10
 - (g) Providing for such other matters as are contemplated by or are necessary for giving full effect to this Act and for its due administration. 15
- (2) Regulations made pursuant to **subsection (1)(a)** of this section may state that the application of **Part III** of this Act to a prescribed foreign country may— 20
- (a) Be subject to such conditions, exceptions, or qualifications as are specified in the regulations:
 - (b) Be subject to such limitations, conditions, exceptions, or qualifications as are necessary to give effect to a treaty between New Zealand and that country and relating (in whole or in part) to the provision of assistance in criminal matters, being a treaty a copy of which is set out in the regulations. 25
- Cf. Mutual Assistance in Criminal Matters Act 1987 (Aust.), s. 44 30

PART V

AMENDMENTS TO PROCEEDS OF CRIME ACT 1991

65. Part to be read with Proceeds of Crime Act 1991—

- (1) This Part of this Act shall be read together with and deemed part of the Proceeds of Crime Act 1991* (in this Part referred to as the principal Act). 35

Struck Out

- (2) This Part of this Act shall come into force on the **1st day of October 1992.**

New

(2) Except as provided in subsection (3) of this section, this Part of this Act shall come into force on the 1st day of April 1993.

5 (3) Sections 71, 71A, and 73 of this Act shall come into force on the day after the date on which this Act receives the Royal assent.

66. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

10 “ ‘Criminal proceedings’, in relation to a foreign serious offence, has the same meaning as in the **Mutual Assistance Act**:

“ ‘Foreign drug-dealing offence’ has the same meaning as in the **Mutual Assistance Act**:

15 “ ‘Foreign forfeiture order’ has the same meaning as in the **Mutual Assistance Act**:

“ ‘Foreign pecuniary penalty order’ has the same meaning as in the **Mutual Assistance Act**:

20 “ ‘Foreign restraining order’ has the same meaning as in the **Mutual Assistance Act**:

“ ‘Foreign serious offence’ has the same meaning as in the **Mutual Assistance Act**:

“ ‘Mutual Assistance Act’ means the **Mutual Assistance in Criminal Matters Act 1992**.”

25 **67. Application**—(1) Section 7 of the principal Act is hereby amended by inserting, immediately before the words “This Act applies”, the words “Subject to subsection (2) of this section,”.

(2) Section 7 of the principal Act is hereby amended by adding the following subsection:

30 “(2) Subsection (1) of this section does not apply in respect of foreign forfeiture orders, foreign pecuniary penalty orders, or foreign restraining orders.”

68. New heading and sections (relating to forfeiture orders in respect of foreign serious offences) inserted—

35 The principal Act is hereby amended by inserting, after section 23, the following heading and sections:

“Registered Foreign Forfeiture Orders

“23A. **Registered foreign forfeiture orders**—Where a foreign forfeiture order against property is registered in New

Zealand in accordance with **section 55** of the **Mutual Assistance Act**,—

“(a) This Part of this Act (other than sections 15 (3), 16 (4) to (6), and 17 to 23), so far as applicable and with all necessary modifications, shall apply in relation to the order; and 5

“(b) The property may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised, in writing, by the Attorney-General for the purposes of this paragraph. 10

Cf. Proceeds of Crime Act 1987 (Aust.), s. 23

“**23B. Third parties to be notified of registration of foreign forfeiture order**—Where, in accordance with **section 55** of the **Mutual Assistance Act**, the High Court orders the registration in New Zealand of a foreign forfeiture order against property, the Court shall direct the Solicitor-General to serve notice of the registration— 15

“(a) On a specified person or specified persons (other than a person convicted of a foreign serious offence in respect of which the foreign forfeiture order was made) whom the Court has reason to believe may have an interest in the property; and 20

“(b) In such manner and within such time as the Court thinks fit. 25

Cf. Proceeds of Crime Act 1987 (Aust.), s. 23A (2)

“**23c. Third parties may apply for relief**—(1) Where a foreign forfeiture order against property is registered in New Zealand in accordance with **section 55** of the **Mutual Assistance Act**, any person (other than a person convicted of a foreign serious offence in respect of which the order was made) who claims an interest in any of the property to which the order relates, may apply to the High Court for an order under **section 23D** of this Act. 30

“(2) A person on whom notice of the hearing held in connection with the making of the foreign forfeiture order was served, or who appeared at the hearing, may not apply under **subsection (1)** of this section except with the leave of the Court. 35

“(3) The Court shall not grant leave under **subsection (2)** of this section unless there are special reasons for doing so. 40

“(4) Without limiting the generality of **subsection (3)** of this section, the Court may grant leave under **subsection (2)** of this section if it is satisfied—

“(a) That the applicant had good reason for failing to attend the hearing held in connection with the making of the foreign forfeiture order; or

5 “(b) The evidence proposed to be adduced by the applicant in connection with the application under **subsection (1)** of this section was not reasonably available to the applicant at the time of that hearing.

“(5) Subject to **subsection (6)** of this section, an application under **subsection (1)** of this section shall be made before the 10 expiry of the period of 2 months beginning on the date on which the foreign forfeiture order is registered in the Court.

“(6) The Court may grant a person leave to apply under **subsection (1)** of this section outside the period referred to in **subsection (5)** of this section if the Court is satisfied that the 15 person’s failure to apply within that period was not due to any neglect on the person’s part.

“(7) A person who makes an application under **subsection (1)** of this section shall serve notice of the application on the Solicitor-General, who shall be a party to any proceedings on the 20 application.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 23A (3)–(6), (8)–(11)

“23D. **Court may grant relief to third party**—(1) Where—

25 “(a) A person applies to the Court under **section 23c (1)** of this Act in respect of an interest in property; and

“(b) The Court is satisfied that the applicant’s claim to that interest is valid,—

the Court shall, subject to **subsection (2)** of this section, make an order—

30 “(c) Declaring the nature, extent, and value of the applicant’s interest in the property; and

“(d) Either—

“(i) Directing the Crown to transfer the interest to the applicant; or

35 “(ii) Declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the Court.

“(2) The Court may refuse to make an order under **subsection (1)** of this section if it is satisfied that—

40 “(a) The applicant was, in any respect, involved in the commission of the offence in respect of which the foreign forfeiture order was made; or

“(b) If the applicant acquired the interest at the time of or after the commission of the offence, the applicant

did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, tainted property,—
 but nothing in this subsection shall be taken to require such a refusal.” 5

Cf. Proceeds of Crime Act 1987 (Aust.), s. 23A (7)

69. Registered foreign pecuniary penalty orders—The principal Act is hereby amended by inserting, after section 29, the following section: 10

“29A. Where a foreign pecuniary penalty order is registered in New Zealand in accordance with section 55 of the **Mutual Assistance Act**, any amount paid (whether in New Zealand, in the foreign country in which the order was made, or elsewhere) in satisfaction of the order shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the order in New Zealand.” 15

Cf. Proceeds of Crime Act 1987 (Aust.), s. 29

70. New sections (relating to search warrants in relation to foreign offences) inserted—The principal Act is hereby amended by inserting, after section 38, the following heading and sections: 20

“Search Warrants in Relation to Foreign Offences

“38A. **Search warrant may be issued in relation to foreign offence**—(1) Where a commissioned officer of the Police is authorised, under section 58 of the **Mutual Assistance Act**, to apply for a search warrant under this Part of this Act in relation to tainted property in respect of a foreign serious offence, the officer may apply for the search warrant accordingly. 25 30

“(2) This Part of this Act (other than sections 30 (4), 32 (3), and 36 to 38), so far as applicable and with all necessary modifications, shall apply in relation to an application made pursuant to subsection (1) of this section, and to any search warrant issued as a result of any such application, as if references in this Part of this Act to tainted property were references to tainted property in relation to a foreign serious offence. 35

Cf. Proceeds of Crime Act 1987 (Aust.), s. 42 (1)

“38B. **Powers conferred by warrant in relation to foreign serious offence**—Without limiting subsections (1) 40

and (2) of section 32 of this Act (as applied by section 38A (2) of this Act), if a member of the Police, in the course of executing a warrant issued under section 30 of this Act in relation to a foreign serious offence, finds any property that the member of the Police believes on reasonable grounds to be—

5 “(a) Tainted property in relation to the foreign serious offence although not of a kind specified in the warrant; or

10 “(b) Tainted property in relation to another foreign serious offence in respect of which a search warrant issued under section 30 of this Act is in force,—

the warrant shall be sufficient authority to seize that property if the member of the Police believes, on reasonable grounds, that seizure is necessary to prevent the loss, destruction, or concealment of the property.

15 Cf. Proceeds of Crime Act 1987 (Aust.), s. 42 (2)

“38c. **Return of seized property**—Where—

20 “(a) Property is seized pursuant to a warrant issued under section 30 of this Act in respect of a foreign serious offence; and

“(b) At the end of the period of 1 month commencing on the day after the day on which the property was seized,—

25 “(i) Neither a foreign restraining order nor a foreign forfeiture order in relation to the property has been registered in New Zealand under the **Mutual Assistance Act**; and

30 “(ii) A restraining order in respect of the property has not been made under this Act in relation to the foreign serious offence,—

the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period of 1 month.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 42 (5)

35 “38d. **Retention of seized property**—(1) Where—

“(a) Any property is seized pursuant to a warrant issued under section 30 of this Act in respect of a foreign serious offence; and

40 “(b) Before the end of the period referred to in section 38c of this Act,—

“(i) A foreign restraining order in relation to the property is registered in New Zealand under the **Mutual Assistance Act**; or

“(ii) A restraining order in respect of the property is made under this Act in relation to the foreign serious offence,—

the following provisions shall apply:

- “(c) If there is in force, at the end of that period, a direction 5
by a Court that the Official Assignee take custody and control of the property, the Commissioner of Police shall arrange for the property to be given to the Official Assignee in accordance with the direction: 10
- “(d) If there is in force at the end of that period an order 10
under **subsection (2)** of this section in relation to the property, the Commissioner shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act: 15
- “(e) If neither **paragraph (c)** nor **paragraph (d)** of this subsection 15
applies, the Commissioner of Police shall deal with the property in accordance with the terms of the foreign restraining order or, as the case may require, the restraining order made under this Act. 20
- “(2) Where—
- “(a) Any property is seized pursuant to a warrant issued 20
under section 30 of this Act in respect of a foreign serious offence; and
- “(b) Either— 25
- “(i) A foreign restraining order in respect of the property is registered in New Zealand under the **Mutual Assistance Act**; or
- “(ii) A restraining order in respect of the property 30
is made under this Act in relation to the foreign serious offence; and
- “(c) At the time when the restraining order is made or 30
registered, the property is in the possession of the Commissioner of Police,—
- the Commissioner may apply to the High Court for an order 35
that the Commissioner retain possession of the property, and the Court may, if it is satisfied that the property is required by the Commissioner to be dealt with in accordance with a request made under the **Mutual Assistance Act** by the foreign country that 40
requested the registration of, or the obtaining of, the restraining order, make an order that the Commissioner may retain the property for so long as the property is required for that purpose.
- “(3) Where—

“(a) Any property is seized pursuant to a warrant issued under section 30 of this Act in relation to a foreign serious offence; and

5 “(b) While the property is in the possession of the Commissioner of Police, a foreign forfeiture order in respect of the property is registered in New Zealand under the **Mutual Assistance Act**,—

the Commissioner shall deal with the property as required by the forfeiture order.

10 Cf. Proceeds of Crime Act 1987 (Aust.), s. 42 (6)–(8)

“**38E. Application for return of seized property—**

15 (1) Where any property has been seized pursuant to a warrant issued under section 30 of this Act in respect of a foreign serious offence, any person who claims an interest in the property may apply to a District Court for an order that the property be returned to the person.

20 “(2) An application may be made under **subsection (1)** of this section at any time before the property is returned or otherwise dealt with in accordance with any of the provisions of **sections 38c and 38d** of this Act.

“(3) Where a person makes an application under **subsection (1)** of this section in respect of any property, and the Court is satisfied—

25 “(a) That the applicant is entitled to possession of the property; and

“(b) That the property is not tainted property in relation to the relevant foreign serious offence; and

30 “(c) That the person who is alleged to have committed the relevant foreign serious offence has no interest in the property,—

the Court shall order the Commissioner of Police to arrange for the property to be returned to the applicant.”

Cf. Proceeds of Crime Act 1987 (Aust.), s. 42 (3), (4)

35 **71. Official Assignee not liable for payment of rates, etc., on property subject to restraining order—**Section 61 of the principal Act is hereby amended by omitting from paragraph (b) the word “subsection”, and substituting the word “section”.

New

71A. Costs recoverable by Official Assignee—Section 63 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Proper remuneration for work done by any person 5
(being the Official Assignee or any delegate of the Official Assignee or any other member of the staff of the Official Assignee) in connection with the exercise or performance, by the Official Assignee or any delegate of the Official Assignee, of functions, 10
duties, or powers under this Act in respect of the property.”

72. New sections (relating to foreign restraining orders) inserted—The principal Act is hereby amended by inserting, after section 66, the following heading and sections: 15

“Foreign Restraining Orders

“66A. **Interim restraining order in respect of foreign serious offence**—(1) Where the Solicitor-General is authorised, under section 59 of the **Mutual Assistance Act**, to apply for a restraining order under this Act in respect of a foreign serious offence, the Solicitor-General may apply for the order accordingly. 20

“(2) This Part of this Act (other than sections 43 (1), 43 (2), 44 (2), 48, 51 to 56, 65, and 66), so far as applicable, shall apply in relation to an application made pursuant to subsection (1) of this section, and to any restraining order made as a result of the application, with all necessary modifications, and with the following specific modifications, namely,— 25

“(a) A reference in this Part of this Act to a serious offence shall be read as a reference to a foreign serious offence: 30

“(b) A reference in this Part of this Act to a person being charged with a serious offence shall be read as a reference to the commencement in a foreign country of criminal proceedings alleging the commission of a foreign serious offence: 35

“(c) The reference in section 42 (2) (c) of this Act to a person’s reasonable expenses in defending any criminal proceedings shall be read as including a reference to

the person's reasonable expenses in defending such proceedings in a foreign country.

5 “(3) Subject to **subsections (4) and (5)** of this section, a restraining order made in respect of a foreign serious offence ceases to be in force at the end of the period of 28 days commencing on the day on which the order is made.

10 “(4) Where the High Court makes a restraining order in respect of a foreign serious offence, the Court may, on application by the Solicitor-General before the end of the period referred to in **subsection (3)** of this section, extend the period of operation of the restraining order.

“(5) Where—

15 “(a) A restraining order against property is made in respect of a foreign serious offence; and

20 “(b) Before the end of the period referred to in **subsection (3)** of this section (or, where the period of operation of the order is extended pursuant to **subsection (4)** of this section, the period as so extended), a foreign restraining order against the property is registered in New Zealand under the **Mutual Assistance Act**,—
the first-mentioned restraining order shall cease to be in force when the foreign restraining order is registered.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 59

25 “**66B. Registered foreign restraining orders**—(1) Where a foreign restraining order is registered in New Zealand in accordance with **section 55** of the **Mutual Assistance Act**, this Part of this Act (other than sections 47 to 55, 64, 65, and 66), so far as applicable, shall apply in relation to the restraining order with all necessary modifications, and with the following specific
30 modifications, namely,—

“(a) A reference in this Part of this Act to a restraining order directing the Official Assignee to take custody and control of property shall be read as a reference to an order under **section 66c** of this Act:

35 “(b) A reference in this Part of this Act to an order under section 51 (1) of this Act shall be read as a reference to an order under **section 66E** of this Act:

40 “(c) The reference in section 63 of this Act to a restraining order shall be read as a reference to an order under **section 66c** of this Act.

“(2) A foreign restraining order registered in New Zealand under the **Mutual Assistance Act** ceases to be in force when the registration is cancelled in accordance with that Act.

Cf. Proceeds of Crime Act 1987 (Aust.), ss. 60, 65

- “66c. Management of property under registered foreign restraining order—**(1) Where a foreign restraining order against property is registered in the High Court under the **Mutual Assistance Act**, the Court may, if satisfied, on application by the Solicitor-General, that is desirable to do so, by order direct the Official Assignee to take custody and control of the property, or of such part of the property as is specified in the order. 5
- “(2) Where an application is made for an order under **subsection (1)** of this section against property,— 10
- “(a) The Solicitor-General shall give written notice of the application to—
- “(i) The owner of the property; and
- “(ii) Any other person that the Solicitor-General has reason to believe may have an interest in the property; and 15
- “(iii) The Official Assignee; and
- “(b) The Court may, at any time before the final determination of the application, direct the Solicitor-General to give or publish notice of the application to a specified person or class of persons, in such manner and within such time as the Court thinks fit; and 20
- “(c) The owner of the property and any other person who claims an interest in the property are entitled to appear and to adduce evidence at the hearing of the application. 25
- “(3) Where an order is made under **subsection (1)** of this section against a person’s property, the Solicitor-General shall give the person written notice of the order. 30
- “(4) Where an order is made under **subsection (1)** of this section in respect of property of a person, the Court may, at the time it makes the order or at any later time, make any one or more of the following orders:
- “(a) An order regulating the manner in which the Official Assignee may exercise his or her powers or perform his or her duties pursuant to the order under **subsection (1)** of this section: 35
- “(b) An order determining any question relating to the property, including any question relating to— 40
- “(i) The liabilities of the owner of the property; or
- “(ii) The exercise of the powers, or the performance of the duties, of the Official Assignee pursuant to the order under **subsection (1)** of this section: 45

5 “(c) An order for the examination, before the Court, or the Registrar of the Court, or the Official Assignee, of any person whose property is subject to the order under subsection (1) of this section, or any other person, concerning the nature and location of the property:

10 “(d) An order directing the owner of the property to furnish to the Official Assignee, within the time specified in the order, a statement on oath, setting out such particulars of the property of that person as the Court thinks fit.

15 “(5) Where the Official Assignee is given a direction under subsection (1) of this section in relation to any property, the Official Assignee may do anything that is reasonably necessary to preserve the property, including—

“(a) Taking, or becoming a party to, any civil proceedings affecting the property; and

“(b) Ensuring that the property is insured; and

20 “(c) If the property consists, in whole or in part, of securities or investments, realising or otherwise dealing with the securities or investments; and

“(d) If the property consists, in whole or in part, of a business, doing anything that is necessary or convenient for carrying on the business.

25 “(6) Where the High Court makes an order under paragraph (c) or paragraph (d) of subsection (4) of this section, subsections (5) and (6) of section 47 and section 49 of this Act, so far as applicable and with all necessary modifications, shall apply,—

30 “(a) In the case of an order made under subsection (4) (c) of this section, as if that order were an order made under section 47 (2) (e) (iii) of this Act:

“(b) In the case of an order made under subsection (4) (d) of this section, as if that order were an order made under section 47 (2) (e) (iv) of this Act.

35 Cf. Proceeds of Crime Act 1987 (Aust.), s. 61

“66D. Undertakings as to damages or costs in relation to foreign restraining order—(1) Where—

40 “(a) A foreign restraining order against property is registered in the High Court in New Zealand under the Mutual Assistance Act; or

“(b) The High Court makes an order under section 66c of this Act in respect of property,—

the Court may, on application by a person claiming an interest in the property, make an order requiring the Solicitor-General,

on behalf of the Crown, to give or carry out an undertaking with respect to the payment of damages or costs, or both, in relation to the registration, making, or operation of the order.

“(2) Any money payable by the Crown in satisfaction of any undertaking given under subsection (1) of this section shall be paid out of the Crown Bank Account without further appropriation than this section. 5

Cf. Proceeds of Crime Act 1987 (Aust.), s. 62

“66E. **Official Assignee to discharge foreign pecuniary penalty order**—(1) Where— 10

“(a) A foreign restraining order made against property of a person in reliance on the person’s conviction, or alleged commission, of a foreign serious offence is registered in the High Court in New Zealand under the **Mutual Assistance Act**; and 15

“(b) A foreign pecuniary penalty order made in reliance on the person’s conviction of the offence or a related foreign serious offence has been or is registered in the High Court in New Zealand under the **Mutual Assistance Act**; and 20

“(c) An order has been made or is made under section 66c of this Act directing the Official Assignee to take custody and control of the property,—
the High Court may, by order, direct the Official Assignee to pay to the Crown out of that property, in accordance with this section, an amount equal to the amount payable under that pecuniary penalty order. 25

“(2) For the purposes of enabling the Official Assignee to comply with an order under subsection (1) of this section, the Court may, at any time,— 30

“(a) Direct the Official Assignee to sell or otherwise dispose of such of the property under the Official Assignee’s control as the Court specifies; and

“(b) Appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest, or right in the property and to do any thing necessary to give validity and operation to the deed or instrument. 35

“(3) The execution of the deed or instrument by the person so appointed has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest, or right in the property. 40

“(4) Subject to section 60 of this Act, where the Official Assignee is given a direction under **subsection (1)** of this section in relation to any property, the Official Assignee shall, as soon as practicable after the direction is given,—

5 “(a) If the property is money,—

“(i) Apply the money in payment of the costs recoverable by the Official Assignee under section 63 of this Act in relation to the order under **section 66c** of this Act in respect of the property; and

10 “(ii) Subject to **subsection (5)** of this section, pay the remainder of the money to the Crown; and

“(b) If the property is not money,—

“(i) Sell or otherwise dispose of the property; and

15 “(ii) Apply the proceeds of the sale or disposition in payment of the costs recoverable by the Official Assignee under section 63 of this Act in relation to the order under **section 66c** of this Act in respect of the property; and

20 “(iii) Subject to **subsection (5)** of this section, pay the remainder of those proceeds to the Crown.

“(5) Notwithstanding anything in **subsection (4)** of this section, in no case shall the amount applied under **paragraph (a) (i)** or **paragraph (b) (ii)** of that subsection exceed the amount payable under the foreign pecuniary penalty order.

25 “(6) Where the money or proceeds referred to in **paragraph (a) (ii)** or **paragraph (b) (iii)** of **subsection (4)** of this section, together with the amount applied in payment of the costs recoverable by the Official Assignee under section 63 of this Act, exceed the amount payable under the foreign pecuniary penalty order, the excess shall be paid to the person whose property was subject to the order under **section 66c** of this Act.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 63 (1)–(5)

35 “**66F. Payment to Crown discharges foreign pecuniary penalty order**—(1) Where the Official Assignee, in accordance with a direction under **section 66E (1)** of this Act, pays money to the Crown in respect of the liability of a person under a foreign pecuniary penalty order, the person’s liability under the order shall, to the extent of the payment, be discharged.

“(2) Where—

40 “(a) A foreign restraining order made against property of a person in reliance on the person’s conviction, or alleged commission, of a foreign serious offence is registered in the High Court in New Zealand under the **Mutual Assistance Act**; and

“(b) A foreign pecuniary penalty order made in reliance on the person’s conviction of the offence or a related foreign serious offence has been or is registered in the High Court in New Zealand under the **Mutual Assistance Act**; and

5

“(c) An order has been made or is made under **section 66c** of this Act directing the Official Assignee to take custody and control of the property,—

any amount applied under **paragraph (a) (i) or paragraph (b) (ii) of subsection (4) of section 66E** of this Act in payment of any costs recoverable by the Official Assignee under **section 63** of this Act in relation to the order made under **section 66c** of this Act shall, for the purposes of **subsection (1)** of this section, be deemed to be money paid to the Crown in respect of the liability of the first-mentioned person under the foreign pecuniary penalty order.

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Cf. Proceeds of Crime Act 1987 (Aust.), s. 63 (6)

“**66c. Charge on property subject to foreign restraining order—**(1) Where—

“(a) A foreign restraining order made against property of a person in reliance on the person’s conviction, or alleged commission, of a foreign serious offence is registered in the High Court in New Zealand under the **Mutual Assistance Act**; and

20

“(b) A foreign pecuniary penalty order made in reliance on the person’s conviction of the offence or a related foreign serious offence has been or is registered in the High Court in New Zealand under the **Mutual Assistance Act**,—

25

then, upon the registration of the foreign restraining order or the foreign pecuniary penalty order, whichever last occurs, there is created, by force of this section, a charge on the property to secure the payment to the Crown of the amount payable under the foreign pecuniary penalty order.

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“(2) Where a charge is created by **subsection (1)** of this section on property of a person, the charge ceases to have effect in respect of the property—

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“(a) Upon payment to the Crown of the amount payable under the foreign pecuniary penalty order, where that payment is made in satisfaction of that order; or

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“(b) Upon the person becoming bankrupt; or

“(c) Upon the sale or disposition of the property,—

“(i) Pursuant to an order under **section 66E** of this Act; or

“(ii) By the owner of the property with the consent of the High Court; or

5 “(iii) If the Official Assignee was directed to take custody and control of the property pursuant to an order under **section 66c** of this Act, by the owner of the property with the consent of the Official Assignee; or

10 “(d) Upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge; or

15 “(e) Upon the cancellation of the registration of either the foreign pecuniary penalty order or the foreign restraining order, in accordance with the **Mutual Assistance Act**,—

whichever occurs first.

“(3) A charge created by **subsection (1)** of this section on property—

20 “(a) Is subject to every encumbrance to which the property was subject immediately before the charge was created and that would, apart from this subsection, have priority over the charge; but

25 “(b) Has priority over all other encumbrances, except where—

“(i) By virtue of prior registration under the provisions of any enactment, another encumbrance is entitled to priority over the charge; and

30 “(ii) The person claiming priority by virtue of that prior registration proves that at the time when that person acquired, or became entitled to, the benefit of the encumbrance under which that person claims, that person had no notice of the charge; and

35 “(c) Subject to **subsection (2)** of this section, is not affected by any change of ownership of the property.

Cf. Proceeds of Crime Act 1987 (Aust.), s. 64 (1)–(3)

40 “**66H. Registration of charge created by foreign restraining order**—(1) Where a charge is created by **section 66G** of this Act on property of a particular kind, and the provisions of any New Zealand enactment provide for the registration of title to, or charges over, property of that kind, the Solicitor-General may cause the charge to be registered under the provisions of that enactment.

“(2) If the charge is registered under **subsection (1)** of this section, a person who purchases or acquires an interest in the property after the registration of the charge shall, for the purposes of **section 66G (2) (d)** of this Act, be deemed to have notice of the charge at the time of the purchase or acquisition.” 5

Cf. Proceeds of Crime Act 1987 (Aust.), s. 64 (4)

73. Court may make production order—Section 69 (1) of the principal Act is hereby amended by omitting from paragraph (a) the expression “section 69 (1) (b)”, and substituting the expression “section 68 (1) (b)”. 10

74. Production orders in relation to foreign serious offences—The principal Act is hereby amended by inserting, after section 76, the following section:

“76A. (1) Where a commissioned officer of the Police is authorised, under **section 60** of the **Mutual Assistance Act**, to apply to a Judge of the High Court for a production order under this Act in respect of a foreign drug-dealing offence, the officer may apply for the order accordingly, and sections 68 to 76 of this Act, so far as applicable and with all necessary modifications, shall apply to the application and to any production order made as a result of the application. 15 20

“(2) Where a member of the Police takes possession of a document pursuant to a production order made in respect of a foreign serious offence, the document may be retained for a period not exceeding 1 month pending a written direction from the Attorney-General as to the manner in which it is to be dealt with, and, if any such direction is given, shall be dealt with in accordance with the direction.” 25

Cf. Proceeds of Crime Act 1987 (Aust.), s. 69

75. Monitoring orders in relation to foreign offences— 30
The principal Act is hereby amended by inserting, after section 81, the following section:

“81A. (1) Where a commissioned officer of the Police is authorised, under **section 61** of the **Mutual Assistance Act**, to apply to a Judge of the High Court for a monitoring order under this Act in respect of a foreign drug-dealing offence, the officer may apply for the order accordingly, and sections 77 to 81 of this Act, so far as applicable and with all necessary modifications, shall apply to the application and to any monitoring order made as a result of the application. 35 40

“(2) Where information is supplied to the Commissioner of Police pursuant to a monitoring order made in relation to a

foreign drug-dealing offence, the Commissioner shall, as soon as practicable after receiving the information, pass the information on to the Attorney-General.”

Cf. Proceeds of Crime Act 1987 (Aust.), s. 75

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PART VI

AMENDMENTS TO IMMIGRATION ACT 1987

76. Part to be read with Immigration Act 1987—(1) This Part of this Act shall be read together with and deemed part of the Immigration Act 1987* (in this Part referred to as the principal Act).

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(2) This Part of this Act shall come into force on the **1st day of (October 1992) April 1993.**

*1987, No. 74

Amendments: 1988, No. 191; 1989, Nos. 87, 144; 1990, No. 90; 1991, Nos. 113, 134

77. Certain persons not eligible for exemption or permit—Section 7 (3) (a) of the principal Act is hereby amended by inserting, after subparagraph (ii), the following subparagraph:

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“(iia) If it is granted for the sole purpose of enabling that person—

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“(A) To be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made pursuant to **section 11 of the Mutual Assistance in Criminal Matters Act 1992;** or

25

“(B) To be transported through New Zealand pursuant to **section 41 of that Act;** or”.

78. Temporary permits granted for purposes of Mutual Assistance in Criminal Matters Act 1992—(1) The principal Act is hereby amended by inserting, after section 27, the following section:

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“27A. (1) This section applies to—

“(a) A temporary permit that is granted pursuant to **section 7 (3) (a) (iia)** of this Act:

“(b) A temporary permit—

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“(i) That is granted to a person who, but for the fact that a certificate has been issued under **section 12 or section 41 (5) of the Mutual Assistance in Criminal Matters Act 1992** in respect of that person, would not have been eligible, under the policy of the Government relating to the granting of temporary permits, for the grant of a temporary permit; and

40

“(ii) That is granted for the sole purpose of enabling that person—

“(A) To be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made pursuant to **section 11** of the **Mutual Assistance in Criminal Matters Act 1992**; or

“(B) To be transported through New Zealand pursuant to **section 41** of that Act.

“(2) A temporary permit to which this section applies may be granted subject to the condition that the holder of the permit has no right to apply for another temporary permit (of whatever type) or a residence permit.”

(2) Section 17 of the principal Act (as substituted by section 9 of the Immigration Amendment Act 1991) is hereby consequentially amended by adding to subsection (1) (b) the words “(other than a temporary permit that is subject to the condition specified in **section 27A (2)** of this Act)”.

(3) Section 25 of the principal Act (as substituted by section 14 of the Immigration Amendment Act 1991) is hereby consequentially amended by adding to subsection (1) (c) the words “(other than a temporary permit that is subject to the condition specified in **section 27A (2)** of this Act)”.

(4) Section 27 (7) of the principal Act is hereby consequentially amended by inserting, after the word “section”, the words “, but not including the condition specified in **section 27A (2)** of this Act”.

(5) Section 29 (1) of the principal Act is hereby consequentially amended by inserting, after the words “temporary permit” where they first appear, the words “(other than a temporary permit that is subject to the condition specified in **section 27A (2)** of this Act)”.

(6) Section 30 (1) of the principal Act is hereby consequentially amended by omitting the words “(of whatever type)”, and substituting the words “(of whatever type, other than a temporary permit that is subject to the condition specified in **section 27A (2)** of this Act)”.

79. Revocation of temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992—The principal Act is hereby amended by inserting, after section 33, the following section:

“33A. (1) Where, pursuant to **section 12 (2)** or **section 41 (6)** of the **Mutual Assistance in Criminal Matters Act 1992**, the Attorney-General cancels a certificate issued under **section 12 (1)** or **section 41 (5)** of

that Act in respect of a person who is the holder of a temporary permit to which **section 27A** of this Act applies, the Attorney-General shall forthwith notify the Minister of the cancellation of that certificate.

5 “(2) Where the Minister receives notification, under **subsection (1)** of this section, in respect of any person who is the holder of a temporary permit, the Minister may, by notice in writing served on the holder of that permit, revoke that permit.

10 “(3) Any notice given under **subsection (2)** of this section shall be served by personal service only.

“(4) A notice given under **subsection (2)** of this section shall—

“(a) Give the reasons for the revocation of the permit; and

“(b) Specify a date by which the holder of the permit is required to leave New Zealand.

15 “(5) The date required to be specified by **subsection (4)** of this section shall not be earlier than 7 days after the date on which the notice is served on the holder of the permit, and the revocation shall become effective on the date so specified.

20 “(6) Nothing in this section shall apply in respect of any permit that is deemed, by section 41 of this Act, to have expired.”

80. Removal orders where temporary permit granted for purposes of Mutual Assistance in Criminal Matters Act 1992—The principal Act is hereby amended by inserting, after section 54, the following section:

25 “54A. Notwithstanding anything in this Act, where a person is in New Zealand unlawfully by reason of the expiry of a temporary permit that was granted to that person subject to the condition specified in **section 27A (2)** of this Act,—

30 “(a) In relation to any removal order made in respect of that person,—

“(i) Section 51 (1) (c) of this Act shall be read as if for the expression ‘42 days’ there were substituted the expression ‘7 days’:

35 “(ii) Section 51 (1) (d) of this Act shall not apply:

“(iii) Section 51 (1) (e) of this Act shall be read as if for the expression ‘, or to appeal, within 42 days’ there were substituted the expression ‘within 7 days’:

40 “(iv) Section 52 (1) (a) of this Act shall be read as if for the expression ‘42 days’ there were substituted the expression ‘7 days’:

“(v) Section 52 (1) (b) of this Act shall be read as if the words ‘, or such shorter period after that date as

the Removal Review Authority may determine on an appeal under section 63B of this Act' were omitted:

“(vi) Section 52 (1) (c) of this Act shall be read as if the expressions ‘or section 63A or section 63B’ and ‘or section 115A’ were omitted: 5

“(vii) Sections 61 (e), 62 (3) (b), and 63A to 63E of this Act shall not apply:

“(viii) Section 64 (1) (a) of this Act shall be read as if for the expression ‘42-day period’ there were substituted the expression ‘7-day period’: 10

“(ix) Section 64 (1) (b) of this Act shall not apply:

“(x) Section 64 (3) (c) of this Act shall be read as if for the expression ‘42-day period’ there were substituted the expression ‘7-day period’: 15

“(xi) Section 64 (3) of this Act shall be read as if for paragraph (d) there were substituted the following paragraph:

“(d) The person named in the order has not, within that 7-day period, left New Zealand; and’: 20

“(xii) Section 66 (1) (a) (i) of this Act shall be read as if for the expression ‘42 days’ there were substituted the expression ‘7 days’:

“(xiii) Section 66 (1) (a) of this Act shall be read as if for subparagraphs (ii) to (iv) there were substituted the following subparagraph: 25

“(ii) Until a District Court Judge has endorsed the removal order under section 64 of this Act; or’: 30

“(b) In relation to a warrant of commitment issued under section 55 of this Act in respect of that person, section 56 (1) of this Act shall be read as if the expression ‘or section 63E’ were omitted.”