



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative texts.*

NEW ZEALAND

Communicated by the Government of New Zealand

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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*Note by the Secretariat: This document is a direct reproduction of the texts communicated to the Secretariat by the Government of New Zealand.

1992

Proceeds of Crime Amendment

No. 87

ANALYSIS

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1992, No. 87

An Act to amend the Proceeds of Crime Act 1991¹

[25 September 1992]

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

1. Short Title and commencement—(1) This Act may be cited as the Proceeds of Crime Amendment Act 1992, and shall

be read together with and deemed part of the Proceeds of Crime Act 1991 (hereinafter referred to as the principal Act).

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

(3) Sections 7, 8, and 10 of this Act shall come into force on the day after the date on which this Act receives the Royal assent.

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

“ ‘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:

“ ‘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:

“ ‘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.”²

3. 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:

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

4. New heading and sections (relating to forfeiture orders in respect of foreign serious offences) inserted—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 56 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

“(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.

Cf. Proceeds of Crime Act 1987³ (Aust.), s. 23

“23B. Third parties to be notified of registration of foreign forfeiture order—Where, in accordance with section 56 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—

“(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

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

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 56 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.

“(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.

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

“(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

“(b) That 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 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 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 application.

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

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

“(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—

“(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

“(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—

“(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.”

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

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

“29A. Where a foreign pecuniary penalty order is registered in New Zealand in accordance with section 56 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.”

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

6. 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:

“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 59 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.

“(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.

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)

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—

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

“(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.

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

“38c. Return of seized property—Where—

“(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,—

“(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

“(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)

“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

“(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 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:

“(d) If there is in force at the end of that period an order 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:

“(e) If neither paragraph (c) nor paragraph (d) of this subsection 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.

“(2) 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

“(b) Either—

“(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 is made under this Act in relation to the foreign serious offence; and

“(c) At the time when the restraining order is made or registered, the property is in the possession of the Commissioner of Police,—

the Commissioner may apply to the High Court for an order 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 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

“(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.

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

“38E. Application for return of seized property—

(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.

“(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—

“(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

“(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)

7. 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”.

8. 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 (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, duties, or powers under this Act in respect of the property.”

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

“Foreign Restraining Orders

“66A. Interim restraining order in respect of foreign serious offence—(1) Where the Solicitor-General is authorised, under section 60 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.

“(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,—

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

“(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:

“(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.

“(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.

“(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—

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

“(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

“66B. Registered foreign restraining orders—(1) Where a foreign restraining order is registered in New Zealand in accordance with section 56 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 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:

“(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:

“(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 it 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.

“(2) Where an application is made for an order under subsection (1) of this section against property,—

“(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

“(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

“(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.

“(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.

“(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:

“(b) An order determining any question relating to the property, including any question relating to—

“(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:

“(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:

“(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.

“(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

“(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.

“(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,—

“(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.

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

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

“(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.

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

“66E. Official Assignee to discharge foreign pecuniary penalty 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

“(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

“(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.

“(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,—

“(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 anything necessary to give validity and operation to the deed or instrument.

“(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.

“(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,—

“(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

“(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

“(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

“(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.

“(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)

“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—

“(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

“(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.

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

“(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,—

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.

“(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—

“(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

“(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

“(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

“(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

“(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—

“(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

“(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

“(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

“(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)

“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.”

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

10. 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)”.

11. 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 61 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.

“(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.”

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

12. Monitoring orders in relation to foreign offences—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 62 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.

“(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

1996

Financial Transactions Reporting

No. 9

ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>PART I</p> <p>PRELIMINARY PROVISIONS</p> <p>2. Interpretation</p> <p>3. Definition of "financial institution"</p> <p>4. Amounts not in New Zealand currency</p> <p>5. Act to bind the Crown</p> <p>PART II</p> <p>OBLIGATIONS ON FINANCIAL INSTITUTIONS TO VERIFY IDENTITY</p> <p><i>Obligations on Financial Institutions to Verify Identity</i></p> <p>6. Financial institutions to verify identity of facility holders</p> <p>7. Financial institutions to verify identity of persons conducting certain occasional transactions</p> <p>8. Verification where persons acting on behalf of others in respect of occasional transactions</p> <p>9. Verification where facility holders acting on behalf of others</p> <p>10. Application of sections 8 and 9 in relation to beneficiaries under trust</p> <p>11. Verification of identity where money laundering or proceeds of crime suspected</p> <p><i>Procedures For Verifying Identity</i></p> <p>12. Procedures for verifying identity</p> <p><i>Offences</i></p> <p>13. Offences</p> <p>14. Defence</p>	<p>PART III</p> <p>OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS</p> <p><i>Obligation to Report Suspicious Transactions</i></p> <p>15. Financial institutions to report suspicious transactions</p> <p>16. Auditors may report suspicious transactions</p> <p>17. Protection of persons reporting suspicious transactions</p> <p>18. Immunity from liability for disclosure of information relating to money laundering transactions</p> <p>19. Legal professional privilege</p> <p>20. Suspicious transaction reports not to be disclosed</p> <p>21. Protection of identity of persons making suspicious transaction reports</p> <p>22. Offences</p> <p>23. Defence</p> <p><i>Suspicious Transaction Guidelines</i></p> <p>24. Commissioner to issue guidelines relating to reporting of suspicious transactions</p> <p>25. Consultation on proposed guidelines</p> <p>26. Commissioner to make guidelines available to financial institutions and industry organisations</p> <p>27. Review of guidelines</p> <p><i>Application of Privacy Act 1993</i></p> <p>28. Application of Privacy Act 1993</p> <p>PART IV</p> <p>RETENTION OF RECORDS</p> <p>29. Obligation to keep transaction records</p> <p>30. Obligation to keep verification records</p> <p>31. Obligation to keep prescribed records</p> <p>32. How records to be kept</p> <p>33. When records need not be kept</p> <p>34. Destruction of records</p> <p>35. Other laws not affected</p> <p>36. Offences</p>
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1996, No. 9

An Act to facilitate the prevention, detection, investigation, and prosecution of money laundering, and the enforcement of the Proceeds of Crime Act 1991¹, by—

- (a) Imposing certain obligations on financial institutions in relation to the conduct of financial transactions; and**
- (b) Requiring persons entering or leaving New Zealand to declare cash in excess of a prescribed amount;—**

and to provide for matters incidental thereto

[1 April 1996]

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

1. Short Title and commencement—(1) This Act may be cited as the Financial Transactions Reporting Act 1996.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

(3) Sections 13, 22, and 36 of this Act shall come into force on the expiry of 6 months after the date appointed pursuant to subsection (2) of this section.

PART I

PRELIMINARY PROVISIONS

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

“Cash”—

(a) Means any coin or paper money that is designated as legal tender in the country of issue; and

(b) Except in Part V of this Act, includes—

(i) Bearer bonds:

(ii) Travellers cheques:

(iii) Postal notes:

(iv) Money orders:

“Cash report” means a report made pursuant to section 37 of this Act:

“Collector” has the same meaning as it has in section 2 (1) of the Customs Act 1966:

“Commissioner” means the Commissioner of Police:

“Control of the Customs” has the same meaning as it has in section 16 of the Customs Act 1966, except that, for the purposes of this Act, references in that section to goods shall be read as if they were references to cash:

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

“Facility”, subject to any regulations made under this Act,—

(a) Means any account or arrangement—

(i) That is provided by a financial institution; and

(ii) Through which a facility holder may conduct 2 or more transactions; and

(b) Without limiting the generality of the foregoing, includes—

(i) A life insurance policy:

(ii) Membership of a superannuation scheme:

(iii) The provision, by a financial institution, of facilities for safe custody, including (without limitation) a safety deposit box:

“Facility holder”, in relation to a facility,—

(a) Means the person in whose name the facility is established; and

(b) Without limiting the generality of the foregoing, includes—

- (i) Any person to whom the facility is assigned;
and
 - (ii) Any person who is authorised to conduct transactions through the facility; and
 - (c) In relation to a facility that is a life insurance policy, means any person who for the time being is the legal holder of that policy; and
 - (d) In relation to a facility that consists of membership of a superannuation scheme, means any person who is a member of the scheme within the meaning of section 2 (1) of the Superannuation Schemes Act 1989:
- “Financial institution” has the meaning given to it by section 3 of this Act:
- “Industry organisation” means any organisation the purpose of which, or one of the purposes of which, is to represent the interests of any class or classes of financial institution:
- “Lawyer” means a practitioner within the meaning of section 2 of the Law Practitioners Act 1982:
- “Life insurance policy” means a policy within the meaning of section 2 of the Life Insurance Act 1908:
- “Money laundering offence” means an offence against section 257A of the Crimes Act 1961:
- “Occasional transaction”, subject to any regulations made under this Act, means any transaction—
- (a) That involves the deposit, withdrawal, exchange, or transfer of cash; and
 - (b) That is conducted by any person otherwise than through a facility in respect of which that person is a facility holder:
- “Officer of Customs” has the same meaning as it has in section 2 (1) of the Customs Act 1966:
- “Prescribed amount”,—
- (a) In relation to Part II of this Act, means such amount as is for the time being prescribed for the purposes of that Part of this Act by regulations made under section 56 of this Act:
 - (b) In relation to Part V of this Act, means such amount as is for the time being prescribed for the purposes of that Part of this Act by regulations made under section 56 of this Act:
- “Principal facility holder”, in relation to a facility provided by a financial institution, means the facility holder or facility holders whom that financial institution

reasonably regards, for the time being, as principally responsible for the administration of that facility:

“Real estate agent” has the same meaning as it has in section 3 of the Real Estate Agents Act 1976:

“Real estate transaction” means any matter that involves any work that, by virtue of section 65 of the Law Practitioners Act 1982, may be done only—

(a) By or under the supervision of a lawyer who holds a current practising certificate; or

(b) By a real estate agent who holds a licence in force under the Real Estate Agents Act 1976:

“Search warrant” means a warrant issued under section 44 of this Act:

“Superannuation scheme” means a superannuation scheme within the meaning of the Superannuation Schemes Act 1989; but does not include—

(a) Any superannuation scheme established principally for the purpose of providing retirement benefits to employees (within the meaning of that Act), where—

(i) Contributions to the scheme by employees are made only by way of deduction from the salary or wages of those employees; and

(ii) The trust deed governing the scheme (or, as the case requires, the statute under which the scheme is constituted) does not permit a member to assign his or her interest in the scheme to any other person; or

(b) Any superannuation scheme—

(i) That has no more than 7 members; and

(ii) In respect of which no advertisement has been published inviting the public or any section of the public to become contributors to the scheme:

“Suspicious transaction guideline” means any guideline for the time being in force pursuant to section 24 of this Act:

“Suspicious transaction report” means a report made pursuant to section 15(1) of this Act:

“Transaction”—

(a) Means any deposit, withdrawal, exchange, or transfer of funds (in whatever currency denominated), whether—

(i) In cash; or

- (ii) By cheque, payment order, or other instrument; or
- (iii) By electronic or other non-physical means; and
- (b) Without limiting the generality of the foregoing, includes any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; but
- (c) Does not include any of the following:
 - (i) The placing of any bet:
 - (ii) Participation in any game of chance, New Zealand instant game, New Zealand lottery, or New Zealand prize competition, as those terms are defined in the Gaming and Lotteries Act 1977:
 - (iii) Any transaction that is exempted from the provisions of this Act by or under regulations made under section 56 of this Act.

(2) For the purposes of this Act, a person becomes a facility holder in relation to a facility when that person is first able to use the facility to conduct transactions.

3. Definition of “financial institution”—(1) In this Act, unless the context otherwise requires, and subject to any regulations made under this Act, the term “financial institution” means any of the following:

- (a) A bank, being—
 - (i) A registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; or
 - (ii) The Reserve Bank of New Zealand continued by the Reserve Bank of New Zealand Act 1989; or
 - (iii) Any other person, partnership, corporation, or company carrying on in New Zealand the business of banking;
- (b) A life insurance company, being a company as defined in section 2 of the Life Insurance Act 1908:
- (c) A building society as defined in section 2 of the Building Societies Act 1965:
- (d) A friendly society or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982:
- (e) A licensed casino operator within the meaning of the Casino Control Act 1990:

- (f) A sharebroker within the meaning of section 2 of the Sharebrokers Act 1908:
 - (g) A real estate agent, but only to the extent that the real estate agent receives funds in the course of that person's business for the purpose of settling real estate transactions:
 - (h) A trustee or administration manager or investment manager of a superannuation scheme:
 - (i) A trustee or manager of a unit trust within the meaning of the Unit Trusts Act 1960:
 - (j) The Totalisator Agency Board continued by section 62 of the Racing Act 1971:
 - (k) Any person whose business or a principal part of whose business consists of any of the following:
 - (i) Borrowing or lending or investing money:
 - (ii) Administering or managing funds on behalf of other persons:
 - (iii) Acting as trustee in respect of funds of other persons:
 - (iv) Dealing in life insurance policies:
 - (v) Providing financial services that involve the transfer or exchange of funds, including (without limitation) payment services, foreign exchange services, or risk management services (such as the provision of forward foreign exchange contracts); but not including the provision of financial services that consist solely of the provision of financial advice:
 - (l) A lawyer, but only to the extent that the lawyer receives funds in the course of that person's business—
 - (i) For the purposes of deposit or investment; or
 - (ii) For the purpose of settling real estate transactions:
 - (m) An accountant, but only to the extent that the accountant receives funds in the course of that person's business for the purposes of deposit or investment.
- (2) A person shall not be regarded as a financial institution for the purposes of this Act merely because that person carries on business as a security guard within the meaning of section 4 of the Private Investigators and Security Guards Act 1974.

4. Amounts not in New Zealand currency—(1) Where, for the purposes of any provision of this Act, it is necessary to determine whether or not the amount of any cash (whether alone or together with any other amount of cash) exceeds the

prescribed amount, and the cash is denominated in a currency other than New Zealand currency, the amount of the cash shall be taken to be the equivalent in New Zealand currency, calculated at the rate of exchange on the date of the determination, or, if there is more than one rate of exchange on that date, at the average of those rates.

(2) For the purposes of subsection (1) of this section, a written certificate purporting to be signed by an officer of any bank in New Zealand that a specified rate of exchange prevailed between currencies on a specified day and that at such rate a specified sum in one currency is equivalent to a specified sum in terms of the currency of New Zealand shall be sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currencies.

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

PART II

OBLIGATIONS ON FINANCIAL INSTITUTIONS TO VERIFY IDENTITY

Obligations on Financial Institutions to Verify Identity

6. Financial institutions to verify identity of facility holders—(1) Subject to subsections (3) and (4) of this section, where any request is made to a financial institution for a person to become a facility holder (whether in relation to an existing facility provided by that financial institution or by means of the establishment, by that financial institution, of a new facility), that financial institution shall verify the identity of that person.

(2) Where subsection (1) of this section applies in respect of any request for a person to become a facility holder in relation to a facility, the financial institution shall verify the identity of that person—

(a) Before that person becomes a facility holder in relation to that facility; or

(b) As soon as practicable after that person becomes a facility holder in relation to that facility, in any case where—

(i) That person belongs to a class of persons with whom the financial institution does not normally have face to face dealings; and

(ii) It is impracticable to undertake the verification before the person becomes a facility holder.

(3) Notwithstanding anything in subsection (1) of this section, in any case where, in relation to a facility provided by a

financial institution, there are 3 or more facility holders, it shall not be necessary for that financial institution to have verified the identity of every such facility holder, as long as the financial institution has verified the identity of every person who is, for the time being, a principal facility holder.

(4) Notwithstanding anything in subsection (1) of this section, nothing in that subsection requires a trustee or administration manager or investment manager of a superannuation scheme to verify the identity of any person—

- (a) Who becomes a member of that superannuation scheme by virtue of the transfer, to that scheme, of all the members of another superannuation scheme; or
- (b) Who becomes a member of a section of that superannuation scheme by virtue of the transfer, to one section of that scheme, of all the members of another section of the same scheme.

7. Financial institutions to verify identity of persons conducting certain occasional transactions—(1) Subject to subsection (2) of this section, where any person conducts an occasional transaction through a financial institution, that financial institution shall verify the identity of that person in any case where—

- (a) The amount of cash involved in the transaction exceeds the prescribed amount; or
- (b) The following conditions apply, namely,—
 - (i) That person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; and
 - (ii) The circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe that the transactions have been, or are being, structured to avoid the application of paragraph (a) of this subsection; and
 - (iii) The total amount of cash involved in those transactions exceeds the prescribed amount.

(2) Notwithstanding anything in subsection (1) of this section, nothing in that subsection requires a financial institution to verify the identity of a person who conducts an occasional transaction (in this subsection referred to as “the transactor”) through that financial institution in any case where,—

- (a) That financial institution is unable to readily determine whether or not the transaction involves cash because the funds involved in the transaction are deposited

- by the transactor into a facility (being a facility in relation to which that financial institution is a facility holder) provided by another financial institution; and
- (b) If those funds consisted of or included cash, that other financial institution would be required, under this Part of this Act, to verify the identity of the transactor.
- (3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions are or have been structured to avoid the application of subsection (1)(a) of this section, a financial institution shall consider, for that purpose, the following factors:
- (a) The time frame within which the transactions are conducted:
- (b) Whether or not the parties to the transactions are the same person, or are associated in any way.
- (4) Where subsection (1) of this section applies in respect of any transaction, the financial institution shall verify the identity of the person conducting the transaction,—
- (a) Where paragraph (a) of that subsection applies,—
- (i) Before the transaction is conducted; or
- (ii) As soon as practicable after the transaction is conducted, in any case where—
- (A) The person conducting the transaction belongs to a class of persons with whom the financial institution does not normally have face to face dealings; and
- (B) It is impracticable to undertake the verification before the transaction is conducted:
- (b) Where paragraph (b) of that subsection applies, as soon as practicable after the conditions specified in that paragraph are satisfied in respect of that transaction.
- (5) Where subsection (1) of this section applies in respect of any transaction, the financial institution shall also ask the person who is conducting or, as the case may be, conducted the transaction whether or not the transaction is being conducted or was conducted on behalf of any other person.
- (6) Nothing in subsection (5) of this section limits section 8 of this Act.

8. Verification where persons acting on behalf of others in respect of occasional transactions—(1) Subject to subsection (6) of this section, and without limiting section 7 of this Act, where—

- (a) A person conducts an occasional transaction through a financial institution; and
 - (b) The amount of cash involved in the transaction exceeds the prescribed amount; and
 - (c) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—
- then, in addition to complying with the requirements of section 7 of this Act, the financial institution shall verify the identity of the other person or persons.

(2) Without limiting section 7 of this Act, where a person conducts an occasional transaction through a financial institution and the following conditions apply, namely,—

- (a) That person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; and
- (b) The circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe—
 - (i) That the person is conducting the transactions on behalf of any other person or persons; and
 - (ii) That the transactions have been, or are being, structured to avoid the application of subsection (1) of this section; and
- (c) The total amount of cash involved in those transactions exceeds the prescribed amount,—

then, in addition to complying with the requirements of section 7 of this Act, the financial institution shall verify the identity of the person or persons on whose behalf it is believed the transactions are being conducted.

(3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions have been structured to avoid the application of subsection (1) of this section, a financial institution shall consider, for that purpose, the following factors:

- (a) The time frame within which the transactions are conducted;
- (b) Whether or not the parties to the transactions are the same person, or are associated in any way.

(4) Where subsection (1) of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons—

- (a) Before the transaction is conducted; or
- (b) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, conducted on behalf of the relevant person or persons.

(5) Where subsection (2) of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons as soon as practicable after the conditions specified in that subsection are satisfied.

(6) Nothing in subsection (1) of this section requires a financial institution to verify the identity of any person in any case where—

- (a) The person who is conducting the transaction is a financial institution; and
- (b) The identity of the other person is required, by any provision of this Part of this Act, to be verified by that other financial institution.

9. Verification where facility holders acting on behalf of others—(1) Subject to subsections (6) and (7) of this section, where—

- (a) A person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility; and
- (b) The amount of cash involved in the transaction exceeds the prescribed amount; and
- (c) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—

the financial institution shall verify the identity of the other person or persons.

(2) Where a person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility, and the following conditions apply, namely,—

- (a) That person, or any other person, has also conducted or is conducting one or more other transactions through that facility; and
- (b) The circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe—

- (i) That the person is conducting the transactions on behalf of any other person or persons; and
 - (ii) That the transactions have been, or are being, structured to avoid the application of subsection (1) of this section; and
- (c) The total amount of cash involved in those transactions exceeds the prescribed amount,—
the financial institution shall verify the identity of the other person or persons.
- (3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions are or have been structured to avoid the application of subsection (1) of this section, a financial institution shall consider, for that purpose, the following factors:
 - (a) The time frame within which the transactions are conducted;
 - (b) Whether or not the parties to the transactions are the same person, or are associated in any way.
- (4) Where subsection (1) of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons—
 - (a) Before the transaction is conducted; or
 - (b) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, conducted on behalf of the relevant person or persons.
- (5) Where subsection (2) of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons as soon as practicable after the conditions specified in that subsection are satisfied.
- (6) Nothing in subsection (1) of this section requires a financial institution to verify the identity of any person in any case where—
 - (a) The person who is conducting the transaction is a financial institution; and
 - (b) The identity of the other person is required, by any provision of this Part of this Act, to be verified by the other financial institution.
- (7) Nothing in subsection (1) of this section requires a financial institution to verify the identity of any person (in this subsection referred to as the “other person”) where—
 - (a) The transaction is conducted by any person in his or her capacity as an employee of the other person, or as a

director or principal or partner of the other person;
and

- (b) The financial institution has already verified the identity of the other person pursuant to this Part of this Act.

10. Application of sections 8 and 9 in relation to beneficiaries under trust—Nothing in section 8 or section 9 of this Act requires the verification of the identity of any person, in any case where it is believed—

- (a) That a transaction is being, or has been, conducted on that person's behalf in his or her capacity as the beneficiary under a trust; and
(b) That the person does not have a vested interest under the trust.

11. Verification of identity where money laundering or proceeds of crime suspected—(1) Without limiting any other provision of this Part of this Act, where—

- (a) Any person conducts any transaction through a financial institution (whether or not the transaction involves cash); and
(b) The financial institution has reasonable grounds to suspect—
(i) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or
(ii) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—

that financial institution shall verify the identity of that person.

(2) Where subsection (1) of this section applies in respect of any transaction, the financial institution shall verify the identity of the person as soon as practicable after the financial institution has reasonable grounds to hold, with respect to that transaction, a suspicion of any kind referred to in that subsection.

Procedures For Verifying Identity

12. Procedures for verifying identity—(1) Subject to subsections (3) to (5) of this section, where, by virtue of any provision of this Part of this Act, a financial institution is required to verify the identity of any person, that verification shall be done by means of such documentary or other evidence as is reasonably capable of establishing the identity of that person.

(2) Without limiting the generality of subsection (1) of this section, in verifying the identity of any person, a financial institution may rely (in whole or in part) on evidence used by that financial institution on an earlier occasion to verify that person's identity, if the financial institution has reasonable grounds to believe that the evidence is still reasonably capable of establishing the identity of that person.

(3) Where,—

(a) By virtue of any provision of this Part of this Act, a financial institution is required to verify the identity of any person in relation to any facility; and

(b) Transactions may be conducted through that facility by means of an existing facility—

(i) That is provided by another financial institution; and

(ii) In relation to which that person is a facility holder,—

the first-mentioned financial institution shall be deemed to have complied with the requirement to verify the identity of that person if that financial institution takes all such steps as are reasonably necessary to confirm the existence of the other facility.

(4) Where,—

(a) By virtue of any provision of this Part of this Act, a financial institution is required to verify the identity of any person in relation to an occasional transaction; and

(b) That occasional transaction is conducted by means of an existing facility—

(i) That is provided by another financial institution; and

(ii) In relation to which that person is a facility holder,—

the first-mentioned financial institution shall be deemed to have complied with the requirement to verify the identity of that person if that financial institution takes all such steps as are reasonably necessary to confirm the existence of the facility.

(5) Where,—

(a) By virtue of any provision of this Part of this Act, a trustee or administration manager or investment manager of a superannuation scheme is required to verify the identity of any person by reason that the person has become, or is seeking to become, a member of that scheme; and

- (b) The superannuation scheme is established principally for the purpose of providing retirement benefits to employees,—
that trustee or manager shall be deemed to have complied with the requirement to verify the identity of that person if that person's identity has been verified by his or her employer.

Offences

13. Offences—(1) Every financial institution commits an offence against this section who,—

- (a) In contravention of section 6 (2) (a) of this Act, permits a person to become a facility holder in relation to any facility (being a facility provided by that institution) without first having verified the identity of that person; or
- (b) Where a person becomes a facility holder in relation to any facility provided by that financial institution, fails, in contravention of section 6 (2) (b) of this Act, to verify the identity of that person as soon as practicable after that person becomes a facility holder in relation to that facility; or
- (c) In contravention of section 7 (4) (a) (i) of this Act, permits any person to conduct an occasional transaction through that financial institution, without first having verified the identity of that person, in any case where the amount of cash involved in the transaction exceeds the prescribed amount; or
- (d) Where an occasional transaction is conducted by any person through that financial institution, in any case where the amount of cash involved in the transaction exceeds the prescribed amount, fails, in contravention of section 7 (4) (a) (ii) of this Act, to verify the identity of that person as soon as practicable after the transaction is conducted; or
- (e) Where an occasional transaction is conducted by any person through that financial institution, fails, in contravention of section 7 (4) (b) of this Act, to verify the identity of that person as soon as practicable after the conditions specified in section 7 (1) (b) of this Act are satisfied in respect of that transaction; or
- (f) Where—
 - (i) An occasional transaction is conducted by any person through that financial institution; and
 - (ii) The amount of cash involved in the transaction exceeds the prescribed amount; and

(iii) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—

fails, in contravention of section 8 (4) of this Act, to verify the identity of that other person or, as the case requires, those other persons—

(iv) Before the transaction is conducted; or

(v) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted; or

(g) Where—

(i) An occasional transaction is conducted by any person through that financial institution; and

(ii) The conditions specified in paragraphs (a) to (c) of section 8 (2) of this Act apply in respect of that transaction,—

fails, in contravention of section 8 (5) of this Act, to undertake the verification required by section 8 (2) of this Act as soon as practicable after the conditions specified in section 8 (2) of this Act are satisfied in respect of that transaction; or

(h) Where—

(i) A person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility; and

(ii) The amount of cash involved in the transaction exceeds the prescribed amount; and

(iii) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—

fails, in contravention of section 9 (4) of this Act, to verify the identity of that other person or, as the case requires, those other persons—

(iv) Before the transaction is conducted; or

(v) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted; or

(i) Where—

(i) A person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility; and

(ii) The conditions specified in paragraphs (a) to (c) of section 9 (2) of this Act apply in respect of that

transaction,—

fails, in contravention of section 9 (5) of this Act, to undertake the verification required by section 9 (2) of this Act as soon as practicable after the conditions specified in section 9 (2) of this Act are satisfied in respect of that transaction; or

(j) Where—

(i) A person conducts a transaction through that financial institution; and

(ii) The financial institution has reasonable grounds to suspect—

(A) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

(B) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—

fails, in contravention of section 11 (2) of this Act, to verify the identity of that person as soon as practicable after the financial institution has reasonable grounds to hold that suspicion.

(2) Every financial institution who commits an offence against this section is liable to a fine not exceeding,—

(a) In the case of an individual, \$20,000;

(b) In the case of a body corporate, \$100,000.

14. Defence—(1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, any provision of this Part of this Act if the defendant proves—

(a) That the defendant took all reasonable steps to ensure that the defendant complied with that provision; or

(b) That, in the circumstances of the particular case, the defendant could not reasonably have been expected to ensure that the defendant complied with the provision.

(2) In determining, for the purposes of subsection (1) (a) of this section, whether or not a financial institution took all reasonable steps to comply with a provision of this Part of this Act, the court shall have regard to—

(a) The nature of the financial institution and the activities in which it engages; and

(b) The existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including (without limitation)—

- (i) Staff training; and
 - (ii) Audits to test the effectiveness of any such procedures.
- (3) Except as provided in subsection (4) of this section, subsection (1) of this section shall not apply unless, within 21 days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice—
- (a) Stating that the defendant intends to rely on subsection (1) of this section; and
 - (b) Specifying the reasonable steps that the defendant will claim to have taken.
- (4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (3) of this section shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under subsection (1) of this section.

PART III

OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

Obligation to Report Suspicious Transactions

15. Financial institutions to report suspicious transactions—(1) Notwithstanding any other enactment or any rule of law, but subject to section 19 of this Act, where—

- (a) Any person conducts or seeks to conduct any transaction through a financial institution (whether or not the transaction or proposed transaction involves cash); and
 - (b) The financial institution has reasonable grounds to suspect—
 - (i) That the transaction or proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or
 - (ii) That the transaction or proposed transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—
- the financial institution shall, as soon as practicable after forming that suspicion, report that transaction or proposed transaction to the Commissioner.

(2) Subject to subsection (3) of this section, every suspicious transaction report shall—

- (a) Be in the prescribed form (if any); and

- (b) Contain the details specified in the Schedule to this Act; and
- (c) Contain a statement of the grounds on which the financial institution holds the suspicion referred to in subsection (1) (b) of this section; and
- (d) Be forwarded, in writing, to the Commissioner at Police National Headquarters at Wellington—
 - (i) By way of facsimile transmission; or
 - (ii) By such other means (including, without limitation, electronic mail or other similar means of communication) as may be agreed from time to time between the Commissioner and the financial institution concerned.

(3) Notwithstanding paragraph (a) or paragraph (d) of subsection (2) of this section, where the urgency of the situation requires, a suspicious transaction report may be made orally to any member of the Police authorised for the purpose by the Commissioner, but in any such case the financial institution shall, as soon as practicable, forward to the Commissioner a suspicious transaction report that complies with the requirements of subsection (2) of this section.

(4) The Commissioner may confer the authority to receive a suspicious transaction report under subsection (3) of this section on any specified member of the Police or on members of the Police of any specified rank or class, or on any member or members of the Police for the time being holding any specified office or specified class of offices.

16. Auditors may report suspicious transactions—Notwithstanding any other enactment or any rule of law, any person who, in the course of carrying out the duties of that person's occupation as an auditor, has reasonable grounds to suspect, in relation to any transaction,—

- (a) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or
 - (b) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—
- may report that transaction to any member of the Police.

17. Protection of persons reporting suspicious transactions—(1) Where any information is disclosed or supplied in any suspicious transaction report made, pursuant to section 15 of this Act, by any person, no civil, criminal, or disciplinary proceedings shall lie against that person—

- (a) In respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or
 - (b) For any consequences that follow from the disclosure or supply of that information,—
- unless the information was disclosed or supplied in bad faith.
- (2) Where any information is disclosed or supplied, pursuant to section 16 of this Act, to any member of the Police by any person, no civil, criminal, or disciplinary proceedings shall lie against that person—
- (a) In respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or
 - (b) For any consequences that follow from the disclosure or supply of that information,—
- unless the information was disclosed or supplied in bad faith.
- (3) Nothing in subsection (1) or subsection (2) of this section applies in respect of proceedings for an offence against section 22 of this Act.

18. Immunity from liability for disclosure of information relating to money laundering transactions—Without limiting section 17 of this Act, where,—

- (a) Any person does any act that, apart from section 257A (6) (a) of the Crimes Act 1961, would constitute, or the person believes would constitute, an offence against subsection (2) or subsection (3) of section 257A of that Act; and
- (b) In respect of the doing of that act, that person would have, by virtue of section 257A (6) (a) of that Act, a defence to a charge under that section of that Act; and
- (c) That person discloses, to any member of the Police, any information relating to a money laundering transaction (within the meaning of section 257A (4) of that Act), being a money laundering transaction that constitutes (in whole or in part), or is connected with or related to, the act referred to in paragraph (a) of this section; and
- (d) That information is so disclosed, in good faith, for the purpose of or in connection with the enforcement or intended enforcement of any enactment or provision referred to in section 257A (6) (a) of the Crimes Act 1961; and

(e) That person is otherwise under any obligation (whether arising by virtue of any enactment or any rule of law or otherwise howsoever) to maintain secrecy in relation to, or not to disclose, that information,—
then, notwithstanding that the disclosure would otherwise constitute a breach of that obligation of secrecy or non-disclosure, the disclosure by that person, to that member of the Police, of that information is not a breach of that obligation of secrecy or non-disclosure or (where applicable) of any enactment by which that obligation is imposed.

19. Legal professional privilege—(1) Nothing in section 15 of this Act requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if—

(a) It is a confidential communication, whether oral or written, passing between—

(i) A lawyer in his or her professional capacity and another lawyer in such capacity; or

(ii) A lawyer in his or her professional capacity and his or her client,—
whether made directly or indirectly through an agent of either; and

(b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) It is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer within the meaning of section 2 of the Law Practitioners Act 1982.

(4) For the purposes of this section, references to a lawyer include a firm in which he or she is a partner or is held out to be a partner.

Cf. 1990, No. 51, s. 24

20. Suspicious transaction reports not to be disclosed—(1) A financial institution that has made, or is

contemplating making, a suspicious transaction report shall not disclose the existence of that report or, as the case requires, that the making of such a report is contemplated to any person except—

- (a) The Commissioner or a member of the Police who is authorised by the Commissioner to receive the information; or
- (b) An officer or employee or agent of the financial institution, for any purpose connected with the performance of that person's duties; or
- (c) A barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter; or
- (d) The Reserve Bank of New Zealand, for the purpose of assisting the Reserve Bank of New Zealand to carry out its functions under Part V of the Reserve Bank of New Zealand Act 1989.

(2) No person referred to in paragraph (b) of subsection (1) of this section to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of—

- (a) The performance of the first-mentioned person's duties; or
- (b) Obtaining legal advice or representation in relation to the matter.

(3) No person referred to in paragraph (c) of subsection (1) of this section to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to a person of the kind referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(4) Subject to section 21 of this Act, nothing in any of subsections (1) to (3) of this section shall prevent the disclosure of any information in connection with, or in the course of, proceedings before a court.

Cf. 1991, No. 120, s. 80

21. Protection of identity of persons making suspicious transaction reports—(1) This section applies in respect of the following information:

- (a) Any suspicious transaction report:
- (b) Any information the disclosure of which will identify, or is reasonably likely to identify, any person—
 - (i) As a person who, in his or her capacity as an officer, employee, or agent of a financial institution,

has handled a transaction in respect of which a suspicious transaction report was made; or

(ii) As a person who has prepared a suspicious transaction report; or

(iii) As a person who has made a suspicious transaction report.

(2) No member of the Police shall disclose any information to which this section applies except for one or more of the following purposes:

(a) The detection, investigation, and prosecution of—

(i) Money laundering offences; and

(ii) Any serious offence (within the meaning of section 257A of the Crimes Act 1961), in any case where any property (being property that is suspected of being connected with any money laundering transaction) is suspected of being the proceeds of that serious offence:

(b) The enforcement of the Proceeds of Crime Act 1991:

(c) The detection, investigation, and prosecution of any serious offence (within the meaning of the Proceeds of Crime Act 1991), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act:

(d) The administration of the Mutual Assistance in Criminal Matters Act 1992.²

(3) No person shall be required to disclose, in any judicial proceeding (within the meaning of section 108 of the Crimes Act 1961), any information to which this section applies, unless the Judge or, as the case requires, the person presiding at the proceeding is satisfied that the disclosure of the information is necessary in the interests of justice.

(4) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of subsections (3) to (5) of section 22 of this Act.

22. Offences—(1) Every financial institution commits an offence against this section who, in any case where—

(a) A transaction is conducted or is sought to be conducted through that financial institution; and

(b) That financial institution has reasonable grounds to suspect—

(i) That the transaction or, as the case requires, the proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

(ii) That the transaction or, as the case requires, the proposed transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,— fails, in contravention of section 15 (1) of this Act, to report that transaction or, as the case requires, that proposed transaction to the Commissioner as soon as practicable after forming that suspicion.

(2) Every financial institution who commits an offence against subsection (1) of this section is liable to a fine not exceeding,—

(a) In the case of an individual, \$20,000:

(b) In the case of a body corporate, \$100,000.

(3) Every person commits an offence and is liable to a fine not exceeding \$10,000 who, in making a suspicious transaction report,—

(a) Makes any statement that the person knows is false or misleading in a material particular; or

(b) Omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular.

(4) Every person commits an offence who,—

(a) For the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or

(b) With intent to prejudice any investigation into the commission or possible commission of a money laundering offence,—

contravenes any of subsections (1) to (3) of section 20 of this Act.

(5) Every person commits an offence who,—

(a) Being an officer or employee or agent of a financial institution; and

(b) Having become aware, in the course of that person's duties as such an officer or employee or agent, that any investigation into any transaction or proposed transaction that is the subject of a suspicious transaction report is being, or may be, conducted by the Police; and

(c) Knowing that he or she is not legally authorised to disclose the information; and

(d) Either—

(i) For the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or

(ii) With intent to prejudice any investigation into the commission or possible commission of a money laundering offence,—
discloses that information to any other person.

(6) Every person who commits an offence against subsection (4) or subsection (5) of this section is liable to imprisonment for a term not exceeding 2 years.

(7) Every person who knowingly contravenes any of subsections (1) to (3) of section 20 of this Act commits an offence and is liable,—

(a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000;

(b) In the case of a body corporate, to a fine not exceeding \$20,000.

23. Defence—(1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, section 15 (1) of this Act if the defendant proves—

(a) That the defendant took all reasonable steps to ensure that the defendant complied with that provision; or

(b) That, in the circumstances of the particular case, the defendant could not reasonably have been expected to ensure that the defendant complied with the provision.

(2) In determining, for the purposes of subsection (1)(a) of this section, whether or not a defendant took all reasonable steps to comply with section 15 (1) of this Act, the court shall have regard to—

(a) The nature of the financial institution and the activities in which it engages; and

(b) The existence and adequacy of any procedures established by the financial institution to ensure compliance with that provision, including (without limitation)—

(i) Staff training; and

(ii) Audits to test the effectiveness of any such procedures.

(3) Except as provided in subsection (4) of this section, subsection (1) of this section shall not apply unless, within 21 days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice—

(a) Stating that the defendant intends to rely on subsection (1) of this section; and

(b) Specifying the reasonable steps that the defendant will claim to have taken.

(4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (3) of this section shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under subsection (1) of this section.

Suspicious Transaction Guidelines

24. Commissioner to issue guidelines relating to reporting of suspicious transactions—(1) Subject to section 25 of this Act, the Commissioner shall from time to time issue, in respect of each kind of financial institution to which this Act applies, guidelines—

(a) Setting out any features of a transaction that may give rise to a suspicion—

(i) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

(ii) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991:

(b) Setting out any circumstances in which a suspicious transaction report relating to such a transaction may be made orally in accordance with section 15 (3) of this Act, and the procedures for making such an oral report.

(2) Suspicious transaction guidelines shall be issued in such manner as the Commissioner from time to time determines.

(3) The Commissioner may from time to time issue an amendment or revocation of any suspicious transaction guidelines.

(4) Without limiting subsection (1) of this section, suspicious transaction guidelines issued under this section may relate to 1 or more kinds of financial institution; and such guidelines may make different provision for different kinds of financial institution and different kinds of transactions.

25. Consultation on proposed guidelines—(1) The Commissioner shall, before issuing any suspicious transaction guidelines,—

(a) Consult with, and invite representations from, the Privacy Commissioner under the Privacy Act 1993, and shall have regard to any such representations; and

(b) Give public notice of the Commissioner's intention to issue the guidelines, which notice shall contain a statement—

(i) Indicating the Commissioner's intention to issue the guidelines; and

(ii) Inviting financial institutions that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those financial institutions, to express to the Commissioner, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and

(c) Consult with, and invite representations from, those financial institutions and industry organisations who express such an interest, and shall have regard to any such representations.

(2) Nothing in subsection (1) of this section prevents the Commissioner from adopting any additional means of publicising the proposal to issue any suspicious transaction guidelines or of consulting with interested parties in relation to such a proposal.

(3) This section shall apply in respect of any amendment or revocation of any suspicious transaction guidelines.

26. Commissioner to make guidelines available to financial institutions and industry organisations—On request by any financial institution in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents any such financial institution, the Commissioner shall, without charge,—

(a) Make those guidelines, and all amendments to those guidelines, available for inspection, by that financial institution or, as the case requires, that industry organisation, at Police National Headquarters at Wellington; and

(b) Provide copies of those guidelines, and all amendments to those guidelines, to that financial institution or, as the case requires, that industry organisation.

27. Review of guidelines—(1) The Commissioner shall from time to time review any suspicious transaction guidelines for the time being in force.

(2) Section 25 of this Act shall apply, with all necessary modifications, in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines.

Application of Privacy Act 1993

28. Application of Privacy Act 1993—Any information contained in a suspicious transaction report shall be deemed, for the purposes of the Privacy Act 1993 and any code of practice issued pursuant to that Act, to be obtained only for the following purposes:

- (a) The detection, investigation, and prosecution of offences against this Act:
- (b) The detection, investigation, and prosecution of—
 - (i) Money laundering offences; and
 - (ii) Any serious offence (within the meaning of section 257A of the Crimes Act 1961), in any case where any property (being property that is suspected of being connected with any money laundering transaction) is suspected of being the proceeds of that serious offence:
- (c) The enforcement of the Proceeds of Crime Act 1991:
- (d) The detection, investigation, and prosecution of any serious offence (within the meaning of the Proceeds of Crime Act 1991), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act:
- (e) The administration of the Mutual Assistance in Criminal Matters Act 1992.

PART IV

RETENTION OF RECORDS

29. Obligation to keep transaction records—(1) In relation to every transaction that is conducted through a financial institution, that financial institution shall keep such records as are reasonably necessary to enable that transaction to be readily reconstructed at any time by the Commissioner.

(2) Without limiting the generality of subsection (1) of this section, such records shall contain the following information:

- (a) The nature of the transaction:
- (b) The amount of the transaction, and the currency in which it was denominated:
- (c) The date on which the transaction was conducted:
- (d) The parties to the transaction:

(e) Where applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the financial institution) directly involved in the transaction.

(3) Every financial institution shall retain the records kept by that financial institution, in accordance with this section, in relation to a transaction for a period of not less than 5 years after the completion of that transaction.

30. Obligation to keep verification records—(1) In respect of each case in which a financial institution is required, by section 6 or section 7 or section 8 or section 9 or section 11 of this Act, to verify the identity of any person, that financial institution shall keep such records as are reasonably necessary to enable the nature of the evidence used for the purposes of that verification to be readily identified at any time by the Commissioner.

(2) Without limiting the generality of subsection (1) of this section, such records may comprise,—

(a) A copy of the evidence so used; or

(b) Where it is not practicable to retain that evidence, such information as is reasonably necessary to enable that evidence to be obtained.

(3) Notwithstanding anything in subsections (1) and (2) of this section, in respect of each case in which a financial institution, in reliance on the provisions of subsection (3) or subsection (4) of section 12 of this Act, verifies the identity of any person by confirming the existence of a facility provided by another financial institution, the first-mentioned financial institution shall keep such records as are reasonably necessary to enable—

(a) The identity of the other financial institution; and

(b) The identity of that facility—

to be readily identified at any time by the Commissioner.

(4) Every financial institution shall retain the records kept by that financial institution, in accordance with this section, for the following period:

(a) In the case of records relating to the verification of the identity of any person in relation to any facility, where the verification is carried out for the purposes of section 6 of this Act, for a period of not less than 5 years after that person ceases to be a facility holder in relation to that facility:

- (b) In the case of records relating to the verification of the identity of any person in relation to any facility, where—
 - (i) That person is not a facility holder in relation to that facility; and
 - (ii) The verification is carried out, for the purposes of section 9 of this Act, with respect to a person who is such a facility holder,—
for a period of not less than 5 years after that facility holder ceases to be a facility holder in relation to that facility:
- (c) In the case of any other records relating to the verification of the identity of any person, for a period of not less than 5 years after the verification is carried out.

31. Obligation to keep prescribed records—Every financial institution shall keep such records as may be prescribed by regulations made under section 56 of this Act, and shall retain them for such period as may be prescribed by such regulations.

32. How records to be kept—Records required by section 29 or section 30 or section 31 of this Act to be kept by any financial institution shall be kept either in written form in the English language, or so as to enable the records to be readily accessible and readily convertible into written form in the English language.

33. When records need not be kept—Nothing in section 29 or section 30 or section 31 of this Act requires the retention of any records kept by a financial institution (being a company) in any case where that financial institution has been liquidated and finally dissolved.

34. Destruction of records—(1) Subject to subsection (2) of this section, every financial institution shall ensure that—

- (a) Every record retained by that financial institution pursuant to any provision of this Part of this Act; and
- (b) Every copy of any such record—
is destroyed as soon as practicable after the expiry of the period for which the financial institution is required, by any provision of this Part of this Act, to retain that record.

(2) Nothing in this section requires the destruction of any record, or any copy of any record, in any case where there is a lawful reason for retaining that record.

(3) Without limiting the generality of subsection (2) of this section, there is a lawful reason for retaining a record if the retention of that record is necessary—

- (a) In order to comply with the requirements of any other enactment; or
- (b) To enable any financial institution to carry on its business; or
- (c) For the purposes of the detection, investigation, or prosecution of any offence.

35. Other laws not affected—Nothing in this Part of this Act limits or affects any other enactment that requires any financial institution to keep or retain any record.

36. Offences—(1) Every financial institution commits an offence against this section who,—

- (a) In contravention of section 29 of this Act, fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of that section; or
- (b) In contravention of section 30 of this Act, fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of that section; or
- (c) In contravention of section 31 of this Act, fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of that section.

(2) Every financial institution who commits an offence against this section is liable to a fine not exceeding,—

- (a) In the case of an individual, \$20,000;
- (b) In the case of a body corporate, \$100,000.

PART V

OBLIGATION TO REPORT IMPORTS AND EXPORTS OF CASH

37. Persons arriving in or leaving New Zealand must report cash—(1) Every person who—

- (a) Arrives in New Zealand from another country or is leaving New Zealand; and
- (b) Has on his or her person, or in his or her accompanying baggage, or both, an amount of cash that, in total, exceeds the prescribed amount—

shall make or cause to be made a report in accordance with this section.

(2) Every report required by subsection (1) of this section—

(a) Shall be in writing in the prescribed form (if any); and

(b) Shall contain the following details in relation to the cash to which the report relates:

(i) The nature and amount of each type of cash:

(ii) The total amount of the cash; and

(c) Shall be signed by the person making the report or, as the case requires, on whose behalf the report is made; and

(d) Shall be given to an officer of Customs before the cash leaves the control of the Customs.

(3) Where any person to whom subsection (1) of this section applies is, by reason of age or disability, incapable of complying with the requirements of this section, it shall be the responsibility of the parent or guardian or other person for the time being having the care of that person to comply with those requirements on that person's behalf.

38. Power to search persons—(1) Subject to this section, if any officer of Customs has reasonable cause to suspect—

(a) That any person who arrives in New Zealand from another country or is leaving New Zealand has, on his or her person, or in his or her accompanying baggage, or both, any cash; and

(b) That a cash report is required to be made in respect of that cash; and

(c) Either—

(i) That a cash report has not been made in respect of that cash; or

(ii) That a cash report made in respect of that cash is incomplete, incorrect, false, or misleading in any material respect,—

the officer of Customs may cause that person to be detained and searched, and reasonable force may be used against that person to effect such detention or search.

(2) Any person detained pursuant to subsection (1) of this section may, before being searched, demand to be taken before a Justice of the Peace or a Collector.

(3) The Justice of the Peace or Collector may order the person so detained to be searched, or may discharge the person without search.

(4) The following provisions shall apply in respect of any search conducted pursuant to this section:

- (a) The search shall not be conducted unless the person to be searched has first been informed of his or her right, under subsection (2) of this section, to be taken before a Collector or a Justice of the Peace:
- (b) The search shall be carried out only by a person of the same sex as the person to be searched:
- (c) The search shall not be carried out in view of any person who is not of the same sex as the person to be searched:
- (d) The search shall be conducted with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.
- (5) Any officer of Customs who searches a person pursuant to this section may have the assistance of such assistants as the officer thinks necessary.

Cf. 1966, No. 19, s. 213; 1985, No. 131, s.2 (1)

39. Power to search accompanying baggage—(1) If any officer of Customs has reasonable cause to suspect—

- (a) That there is, in any baggage that is accompanying any person who arrives in New Zealand from another country or who is leaving New Zealand, any cash; and
- (b) That a cash report is required to be made in respect of that cash; and
- (c) Either—
 - (i) That a cash report has not been made in respect of that cash; or
 - (ii) That a cash report made in respect of that cash is incomplete, incorrect, false, or misleading in any material respect,—

that officer of Customs may detain that person and search that baggage, and may for that purpose open any package carried by that person.

(2) For the purposes of effecting the detention of any person, or the search of any baggage that is accompanying any person, pursuant to this section, an officer of Customs may use reasonable force against that person.

Cf. 1966, No. 19, s. 214

40. Offences—(1) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,—

- (a) In contravention of section 37 of this Act, fails, without reasonable excuse, to make or cause to be made a

cash report that satisfies the requirements of that section; or

(b) Without reasonable excuse, makes or causes to be made a cash report knowing that it is false or misleading in any material respect.

(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 who, otherwise than by force, wilfully obstructs any officer of Customs in the exercise or performance of any power or duty conferred or imposed on that officer by this Part of this Act.

(3) It is a defence to a charge under this section against a person in relation to a failure to make or cause to be made a cash report to an officer of Customs before cash leaves the control of the Customs if the defendant proves—

(a) That the failure was due to some emergency or to any other circumstances outside the reasonable control of the defendant; and

(b) That the defendant made or caused to be made a cash report in respect of that cash as soon as practicable after the obligation to make the report arose.

41. Collector may deal with cash reporting offences—

(1) If, in any case to which section 40 (1) (a) of this Act applies, any person admits in writing that he or she has committed the offence, and requests that the offence be dealt with summarily by a Collector, the Collector may, at any time before an information has been laid in respect of the offence, accept from that person such sum, not exceeding \$200, as the Collector thinks just in the circumstances of the case, in full satisfaction of any fine to which the person would otherwise be liable under section 40 of this Act.

(2) If a Collector accepts any sum pursuant to this section, the offender shall not be liable to be prosecuted for the offence in respect of which the payment was made.

Cf. 1966, No. 19, s. 266

42. Information to be forwarded to Commissioner—

(1) Where a cash report is made to an officer of Customs, that officer shall, as soon as practicable, forward the report to the Commissioner.

(2) Where, in the course of conducting a search pursuant to section 38 or section 39 of this Act, an officer of Customs discovers any cash in respect of which a cash report is required to be made but has not been made, that officer shall, as soon

as practicable, report the details of the search, and of the cash discovered, to the Commissioner.

(3) Every report made pursuant to subsection (2) of this section shall be in such form as the Commissioner may from time to time determine after consultation with the Comptroller of Customs.

(4) The Comptroller of Customs shall cause to be made and kept a record of each occasion on which a cash report is made to an officer of Customs, together with details of the identity of the person making the report and the date on which the report is made, and shall ensure that such record is retained for a period of not less than 1 year after the date on which the cash report is made.

43. Application of Privacy Act 1993—Any information contained in any report made to the Commissioner pursuant to section 42 of this Act shall be deemed, for the purposes of the Privacy Act 1993 and any code of practice issued pursuant to that Act, to be obtained by the Police only for the following purposes:

(a) The detection, investigation, and prosecution of—

(i) Money laundering offences; and

(ii) Any serious offence (within the meaning of section 257A of the Crimes Act 1961), in any case where any property (being property that is suspected of being connected with any money laundering transaction) is suspected of being the proceeds of that serious offence:

(b) The enforcement of the Proceeds of Crime Act 1991:

(c) The detection, investigation, and prosecution of any serious offence (within the meaning of the Proceeds of Crime Act 1991), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act:

(d) The administration of the Mutual Assistance in Criminal Matters Act 1992.

PART VI

MISCELLANEOUS PROVISIONS

Search Warrants

44. Search warrants—Any District Court Judge or Justice, or any Registrar (not being a member of the Police), who, on an application in writing made on oath, is satisfied that there

are reasonable grounds for believing that there is in or on any place or thing—

- (a) Any thing upon or in respect of which any offence against this Act or any regulations made under this Act 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
- (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.

Cf. 1993, No. 94, s. 109

45. Form and content of search warrant—(1) Every search warrant shall be in the prescribed form.

(2) Every search warrant 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.

(3) Every search warrant shall be subject to such special conditions (if any) as the person issuing the warrant may specify in the warrant.

(4) Every search warrant shall contain the following particulars:

- (a) The place or thing that may be searched pursuant to the warrant:
- (b) The offence or offences in respect of which the warrant is issued:
- (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:
- (e) Any conditions specified pursuant to subsection (3) of this section.

Cf. 1993, No. 94, s. 110

46. Powers conferred by warrant—(1) Subject to any special conditions specified in the warrant pursuant to section 45 (3) of this Act, every search warrant shall authorise the member of the Police executing the warrant,—

- (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
 - (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
 - (d) To search for and seize any thing referred to in any of paragraphs (a) to (c) of section 44 of this Act; and
 - (e) In any case where any thing referred to in any of those paragraphs is a document,—
 - (i) To take copies of the document, or extracts from the document;
 - (ii) To require any person who has the document in his or her possession or under his or her control to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in the document.
- (2) Every person called upon to assist any member of the Police executing a search warrant shall have the powers described in paragraphs (c) and (d) of subsection (1) of this section.

Cf. 1993, No. 94, s. 111

47. Person executing warrant to produce evidence of authority—Every member of the Police executing any search warrant—

- (a) Shall have that warrant with him or her; and
- (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.

Cf. 1993, No. 94, s. 112

48. Notice of execution of warrant—Every member of the Police who executes a search warrant 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 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.
- Cf. 1993, No. 94, s. 113

49. Custody of property seized—Where property is seized pursuant to a search warrant, the property shall be kept in the custody of a member of the Police, except while it is being used in evidence or is in the custody of any court, until it is dealt with in accordance with another provision of this Act.

Cf. 1993, No. 94, s. 114

50. Procedure where certain documents seized from lawyers' offices—Section 198A of the Summary Proceedings Act 1957, so far as applicable and with all necessary modifications, shall apply in respect of the seizure of any documents under any search warrant as if the search warrant had been issued under section 198 of that Act.

51. Disposal of things seized—(1) This section shall apply with respect to anything seized under a search warrant.

(2) In any proceedings for an offence relating to anything seized under a search warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner as the court thinks fit.

(3) Any member of the Police may at any time, unless an order has been made under subsection (2) of this section, return the thing to the person from whom it was seized, or apply to a District Court Judge for an order as to its disposal. On any such application, the District Court Judge may make any order that a court may make under subsection (2) of this section.

(4) If proceedings for an offence relating to the thing are not brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a District Court Judge for an order that it be delivered to him or her. On any such application, the District Court Judge may adjourn the application, on such terms as he or she thinks fit, for proceedings to be brought, or may make any order that a court may make under subsection (2) of this section.

(5) Where any person is convicted in any proceedings for an offence relating to anything in respect of which a search

warrant has been issued enabling seizure, and any order is made under this section, the operation of the order shall be suspended,—

- (a) In any case until the expiration of the time prescribed by the Summary Proceedings Act 1957 or, as the case may require, the time prescribed by the Crimes Act 1961 for the filing of notice of appeal or an application for leave to appeal; and
 - (b) Where notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
 - (c) Where application for leave to appeal is filed within the time so prescribed, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.
- (6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

Cf. 1993, No. 94, s. 118

Offences

52. Offences punishable on summary conviction—Every offence against this Act or any regulations made under this Act shall be punishable on summary conviction.

53. Liability of employers and principals—(1) Subject to subsection (3) of this section, anything done or omitted by a person as the employee of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.

(2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.

(3) In any proceedings under this Act against any person in respect of anything alleged to have been done or omitted by an employee of that person, it shall be a defence for that person to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing or

omitting to do that thing, or from doing or omitting to do as an employee of that person things of that description.

Cf. 1977, No. 49, s. 33

54. Directors and officers of bodies corporate—Where any body corporate is convicted of an offence against this Act or any regulations made under this Act, every director and every officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission, or consent.

Miscellaneous Provision

55. Non-compliance not excused by contractual obligations—(1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any contract or agreement.

(2) No person shall be excused from compliance with any requirement of this Act by reason only that compliance with that requirement would constitute breach of any contract or agreement.

Regulations

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

- (a) Prescribing the forms of applications, warrants, reports, and other documents required under this Act:
- (b) Prescribing amounts that are required to be prescribed for the purposes of Parts II and V of this Act:
- (c) Prescribing, for the purposes of section 31 of this Act, records to be kept and retained by financial institutions, or any specified class or classes of financial institutions, and the periods for which those records are to be retained:
- (d) Exempting or providing for the exemption of any transaction or class of transactions from all or any of the provisions of this Act:
- (e) Prescribing, for the purposes of this Act, or any provision or provisions of this Act, what accounts and arrangements shall be deemed to be or not to be facilities, and the circumstances and conditions in which any account or arrangement shall be deemed to be or not to be a facility:

- (f) Prescribing, for the purposes of this Act, or any provision or provisions of this Act, what persons or classes of persons shall be deemed to be or not to be financial institutions, and the circumstances and conditions in which any persons or classes of persons shall be deemed to be or not to be financial institutions:
 - (g) Prescribing, for the purposes of this Act, or any provision or provisions of this Act, what transactions shall be deemed to be or not to be occasional transactions, and the circumstances and conditions in which any transaction shall be deemed to be or not to be an occasional transaction:
 - (h) Prescribing the manner in which any notice or other document required by this Act to be given or served by, or to or on, any person is to be so given or served:
 - (i) Prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$2,000, that may, on conviction, be imposed in respect of any such offences:
 - (j) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.
- (2) No regulations may be made pursuant to any of paragraphs (d) to (g) of subsection (1) of this section except on the recommendation of the Minister of Justice, and before making any such recommendation, the Minister shall—
- (a) Do everything reasonably possible on the Minister's part to advise all persons who in the Minister's opinion will be affected by any regulations made in accordance with the recommendation, or representatives of those persons, of the proposed terms of the recommendation, and of the reasons for it; and
 - (b) Give such persons or their representatives a reasonable opportunity to consider the recommendation and to make submissions on it to the Minister, and shall consider any such submissions; and
 - (c) Give notice in the *Gazette*, not less than 28 days before making the recommendation, of the Minister's intention to make the recommendation and state in the notice the matters to which the recommendation relates; and
 - (d) Make copies of the recommendation available for inspection by any person who so requests before any

regulations are made in accordance with the recommendation.

(3) Failure to comply with subsection (2) of this section shall in no way affect the validity of any regulations made under this section.

[...]

Section 15 (2) (b)

SCHEDULE

DETAILS TO BE INCLUDED IN SUSPICIOUS TRANSACTION REPORTS

1. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction (if known to the person making the report).

2. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the transaction is conducted (if known to the person making the report).

3. Where an account with a financial institution is involved in the transaction,—

(a) The type and identifying number of the account:

(b) The name of the person in whose name the account is operated:

(c) The names of the signatories to the account.

4. The nature of the transaction.

5. The amount involved in the transaction.

6. The type of currency involved in the transaction.

7. The date of the transaction.

8. In relation to the financial institution through which the transaction was conducted, the name of the officer, employee, or agent of that financial institution who handled the transaction.

9. The name of the person who prepared the report.
