



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Justice and Law Reform Select Committee
on the Criminal Proceeds (Recovery) Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 38 Nationally Organised Societies and national members. NCWNZ has 31 branches throughout the country attended by representatives of those societies as well as some 150 other societies. The Council's function is to work for the well-being of women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ welcomes the opportunity to make this submission on behalf of our members.

This submission is written by the Justice and Law Reform Standing Committee based on input from branch members and NCWNZ policy.

Introduction

Membership response toward the Bill was clearly divided with some members supportive of the legislation and others strongly opposed.

Members opposed to the Bill viewed it as a breach of our rights. These members did not wish to see our rights sacrificed for the sake of attempting to reduce criminal activity and saw the Bill as too high a price to pay to meet the policy objectives.

The maxim that a person is innocent until proven guilty should apply and the potential for unjust treatment under the proposed legislation could be excessive.

The legislation could lead to people, whether guilty or innocent, being set up by competitors, falsely accused by hostile elements who were wanting to gain ascendancy over a competitor, or even actions of a malicious nature by enemies whether or not from a criminal element.

Some of our members felt that the existing legislation (proceeds of Crime Act 1991), which provides for confiscation of property once a person is convicted of an offence, should remain the status quo. Furthermore, the level of proof would need to be very secure to warrant confiscation without conviction.

While some members favoured the intention of the Bill there was, however, the concern that in the recovery of property presumed to be accumulated through crime the danger existed of an innocent person being targeted. Furthermore, there was a risk that a person may be deemed guilty by suspicion alone. There is also the potential that innocent parties could find their property seized merely through association with a suspect.

Other members who supported the Bill suggested that human rights would only be breached if the legislation were administered without due process to ensure that the targeted person had adequate opportunity to demonstrate legitimate possession of the goods forfeited.





There has always been awareness that others, apart from the criminal, are either directly or indirectly affected when confiscation of property occurs as under the current legislation. It often appears to be families who suffer when confiscations are made and the potential for this to occur under the new legislation was seen as greater. The concern that innocent spouses and/or family members, unaware of fraudulent or criminal activity, may be disadvantaged by this legislation was a recurring response.

Members also questioned whether in the outcome of someone found innocent, their property would be returned to them. It was hoped that in cases of acquittal seized goods would, at the discretion of the judge, be returned to the owner.

Other members voiced their concern that the government was merely using the legislation as a money-making exercise and an example was proffered of losing one's farm if convicted of cultivating cannabis and where the proceeds of this type of conviction would ultimately end up. Even more alarming, however, is the thought of the farmer who was unaware that cannabis was being cultivated on the property, and whether the farm would be confiscated under these circumstances. Under the proposed legislation it appears that the onus would be on the person to prove their innocence.

According to opponents of the Bill a similar law in Britain was used as a money making exercise and there was no evidence it reduced crime.

Specific Comments

Part 1, Clause 3 Section (2) Deter criminal activity

Those members opposed to the Bill clearly felt that this legislation would not act as a deterrent to criminals since offenders do not generally think of the consequences of their actions before committing an offence. Current prison muster in New Zealand clearly demonstrates this. In some states in the United States of America the death penalty can be imposed as a sentence and yet murder rates have not decreased, so therefore even the threat of the death penalty does not necessarily act as a deterrent.

On the other hand members who supported the Bill saw that if the rewards of criminal activity were to be seized without a conviction first being obtained, that in itself may be a deterrent. Furthermore they thought that the Bill might have the potential to impact positively on reducing crime if the process of enforcement were appropriately publicised as a deterrent to others.

Part 1, Clause 6 Section (1) (a) and (b). Meaning of significant criminal activity

Some members felt the threshold regarding the interpretation of significant criminal activity was high. A suggestion was made to set a lower threshold if it were cost effective to seize or recover, for example \$5000, with the discretion at the hands of the relevant authorities (Police, SFO, etc). With the threshold that has been suggested by the Bill, only a certain section of potential offenders would be affected; therefore it is seen as narrow in its target.

Part 2, Clause 13. No identifiable owner required for certain proceedings relating to specific property

This clause created concern for some members as it was felt that the potential for injustice toward women and children was high since property may be under the offender's name while the woman's share may be legitimately held and then unjustifiably forfeited because of her partner's crime.



Part 2, Clause 15. No criminal proceedings required for civil forfeiture order or in registering foreign forfeiture order.

The majority of members expressed great concern regarding the confiscation of property before a person was convicted. Members considered that only after being proven guilty in a court of law should property be confiscated. A suggestion was made that perhaps property or assets be frozen until such time as the offender is proven guilty.

Part 2, subpart 7. Investigative Powers. Clause 107 (3) (a) Police may obtain warrant to search for and seize evidence and property

Some members were concerned that in light of the current negative publicity surrounding some members of the New Zealand police force, there would need to be solid, valid grounds for warrants to be issued for searches as well as forfeiture or restraining orders. We would expect that police would need to provide compelling evidence when obtaining a search warrant.

Conclusion

While NCWNZ wholeheartedly supports the intention of the legislation to reduce the rewards of criminal activity and therefore attempt to make crime less attractive, it is the way this is being addressed that raised serious concerns with the membership.

Some of the concerns could be met by the implementation of certain safeguards. The proceeds of property seized could be paid into a fund, which could be used to reimburse an applicant who proves their property has been wrongly seized including reimbursement of legal fees. Following the fixed expiry date of limitations period, the amount could be added to the legal aid or similar fund. Putting a court order against property and/or possessions, with a seven-year go back period if it has been gained illegitimately, was seen as reasonable.

The grounds for confiscation of property or funds from persons who have profited from significant criminal activity should not necessarily be for forfeiture but perhaps for restitution to their victims or organisations targeted by them.

Bringing the legislation in line with overseas practices was viewed as showing good intent. It was noted that the victim's point of view was not considered in the Bill therefore it was not seen as being of any advantage to victims.

Members suggested there was a potential for giving victims compensation and to stop people from profiting at the expense of others. Offenders should be made to pay retribution for what they have done and not to reap from ill gotten gains.

Since the core business of NCWNZ is to work for the well-being of women, the family and the community at local, national and international levels, one of the most significant issues highlighted by NCWNZ membership was the disadvantage and hardship the legislation could bring upon innocent women and children caught in the middle of the justice system. Therefore we urge you to consult widely before this Criminal Proceeds (Recovery) Bill becomes law.

Christine Low
National President

Sandra Marshall
Convenor, Justice and Law Reform Standing Committee