

25 October 2022

Che
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Dear Che

Request for information

Thank you for your Official Information Act 1982 (OIA) request of 29 September 2022 in which you have asked for copy of the Memorandum of Understanding between the Solicitor-General and the Commissioner of the New Zealand Police.

Please find attached in full a copy of the requested Memorandum.

Yours sincerely



Ian Barnes
Assurance Manager, Police Instructions and Forms
Assurance Group



Solicitor General, The

Table of Contents

Table of Contents	2
The Solicitor General - Criminal Proceeds (Recovery) Act 2009	3
Background	3
Part I: Purpose of Memorandum	4
Purpose	4
Part II: Respective roles	5
Part III: Procedures in relation to civil forfeiture proceedings and related restraint proceedings	6
Procedures in relation to the Commissioner	6
Timely instruction of Crown Solicitor	6
Provision of information, evidence and assistance	6
Procedures in relation to the Crown Solicitor	6
Observance of the law	6
Consultation with and reporting to the Commissioner and Official Assignee	6
Part IV: Procedures in relation to instrument forfeiture orders and related restraint proceedings	7
Procedures in relation to the officer in charge	7
Potential instruction of Crown Solicitor	7
Provision of information, evidence and assistance upon instruction	7
Procedures in relation to the Crown Solicitor when so instructed	7
Observance of the law	7
Consultation with and reporting to the Commissioner and Official Assignee	7
Part V: Variation of Memorandum of Understanding	8
Execution and date:	8

The Solicitor General - Criminal Proceeds (Recovery) Act 2009

Memorandum of understanding **between**

The Commissioner of Police

And

The Solicitor General (on behalf of Crown Solicitors).

Background

- A. The Criminal Proceeds (Recovery) Act 2009 (the Act) comes into force on 1 December 2009.
- B. A newly-formed Police group, the Police Assets Recovery Unit (the Unit), will manage civil forfeiture proceedings and related restraint proceedings under the Act on behalf of the Commissioner of Police (the Commissioner).
- C. The Unit will have personnel in Auckland, Hamilton, Wellington and Christchurch and will support both Police District and Government Agency investigations into financial and organised crime.
- D. Officers in charge of indictable prosecutions will be responsible for the restraint and confiscation of the instruments of crime under the Act.
- E. The Crown Solicitor network is available to assist the Police in the efficient and effective operation of the Act.

Part I: Purpose of Memorandum

Purpose

1. The purpose of this Memorandum is to:

- 1.1. Achieve an understanding of the respective roles of Commissioner of Police (the Commissioner), officer in charge of an indictable prosecution (the officer in charge), and Crown Solicitor in relation to the Act;
- 1.2. Outline procedures for the efficient and effective operation of the Act;
- 1.3. Provide a framework by which the Commissioner and officer in charge may develop and maintain an effective working relationship with the Crown Solicitor under the Act;
- 1.4. Facilitate the provision of responsive, quality advice and representation by the Crown Solicitor in relation to the Act.

Part II: Respective roles

2. The role of the Commissioner is to:
 - 2.1. Investigate potential civil forfeiture proceedings and related restraint orders under the Act;
 - 2.2. Bring such proceedings.
3. The role of the officer in charge is to:
 - 3.1. Investigate potential instruments of crime and related forfeiture and restraint orders under the Act;
 - 3.2. Bring such proceedings.
4. The role of the Crown Solicitor is to:
 - 4.1. Advise the Commissioner in relation to potential civil forfeiture proceedings and related restraint orders under the Act;
 - 4.2. Represent the Commissioner on such proceedings;
 - 4.3. When instructed by the officer in charge, to advise upon potential instruments of crime and related forfeiture and restraint orders under the Act;
 - 4.4. When instructed by the officer in charge, to bring such proceedings under the Act.

Part III: Procedures in relation to civil forfeiture proceedings and related restraint proceedings

Procedures in relation to the Commissioner

Timely instruction of Crown Solicitor

5. The Commissioner shall instruct the Crown Solicitor in a timely fashion, when practicable, in relation to civil forfeiture proceedings and related restraint proceedings under the Act (civil forfeiture proceedings).

Provision of information, evidence and assistance

6. The Commissioner shall in relation to civil forfeiture proceedings:
 - 6.1. Provide the Crown Solicitor with all relevant information and evidence;
 - 6.2. Conduct service and further inquiries, as required;
 - 6.3. Advise the Crown Solicitor of any change in circumstance affecting such proceedings.

Procedures in relation to the Crown Solicitor

Observance of the law

7. The Crown Solicitor shall comply with the Act and any regulations and rules including, where applicable, the rules of civil procedure in relation to civil forfeiture proceedings.

Consultation with and reporting to the Commissioner and Official Assignee

8. The Crown Solicitor shall in relation to civil forfeiture proceedings:
 - 8.1. Consult the Commissioner upon material decisions;
 - 8.2. Report in a timely fashion to the Commissioner;
 - 8.3. Provide relevant orders in a timely fashion to the Commissioner, and Official Assignee when applicable;
 - 8.4. Consult the Official Assignee before seeking to:
 - 8.4.1. Place any property into the Official Assignee's custody and control;
 - 8.4.2. Deal with any property in the Official Assignee's custody and control.

Part IV: Procedures in relation to instrument forfeiture orders and related restraint proceedings

Procedures in relation to the officer in charge

Potential instruction of Crown Solicitor

9. Following Police Prosecution Service approval, the officer in charge may instruct the Crown Solicitor in relation to applications for forfeiture orders of the instruments of crime and related restraint proceedings under the Act (instructed instrument proceedings) having regard to the:
 - 9.1. Nature of the property in issue (the property);
 - 9.2. Apparent ownership of or effective control over the property;
 - 9.3. Potential existence of a third party claim or a potential claim for relief in relation to the property;
 - 9.4. Potential complexity of the proceeding;
 - 9.5. Court seized or to be seized of the proceeding;
 - 9.6. Carriage of an associated prosecution by the Crown Solicitor;
 - 9.7. Carriage of associated civil forfeiture proceedings by the Crown Solicitor.

Provision of information, evidence and assistance upon instruction

10. The officer in charge shall in relation to instructed instrument proceedings:
 - 10.1. Provide the Crown Solicitor with all relevant information and evidence;
 - 10.2. Conduct service and further inquiries, as required;
 - 10.3. Advise the Crown Solicitor of any change in circumstance affecting such proceedings.

Procedures in relation to the Crown Solicitor when so instructed

Observance of the law

11. The Crown Solicitor shall comply with the Act and any regulations and rules including, where applicable, the rules of civil procedure in relation to instructed instrument proceedings.

Consultation with and reporting to the Commissioner and Official Assignee

12. The Crown Solicitor shall in relation to instructed instrument proceedings:
 - 12.1. Consult the officer in charge upon material decisions;
 - 12.2. Report in a timely fashion to the officer in charge;
 - 12.3. Provide relevant orders in a timely fashion to the officer in charge, and Official Assignee when applicable;
 - 12.4. Consult the Official Assignee before seeking to:
 - 12.4.1. Place any property into the Official Assignee's custody and control;
 - 12.4.2. Deal with any property in the Official Assignee's custody and control.

Part V: Variation of Memorandum of Understanding

13. The Commissioner and the Solicitor General may from time to time review and vary this Memorandum. The provisions shall not be varied except by a written agreement duly signed on behalf of the Parties thereto.

Execution and date:

Dated this 1st day of December 2009.

Howard Broad Commissioner of Police	Dr David Collins QC Solicitor-General
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