



Recovering the proceeds of crime

Referral to the Asset Recovery Units: A guide for environmental enforcement agencies

Purpose of this guide

This is a guide for frontline environmental enforcement agencies. It explains the process of referring environmental offending to the Asset Recovery Units (ARUs) within Police under the Criminal Proceeds (Recovery) Act 2009 (CPRA). It explains the referral criteria and process, and what to be aware of when making a referral.

Introduction

Recovering the proceeds of crime (recovery) is a new frontier in environmental law. Recovering the financial gains of offending will have a deterrence effect on would-be offenders and should, as a result, improve compliance with environmental law. The legislation also stops the expansion of criminal enterprise, eliminating the chance for a person to profit from significant criminal activity.

Recovery is common in other areas of criminal activity, such as drug-related offending, organised crime and fraud. Penalties for environmental crimes like forest and wetland destruction, land-use intensification, water discharge and wildlife harm are generally low compared to other areas of crime, as environmental crimes are often considered to be 'victimless'.

It is in everyone's interest to bring offenders to justice and ensure that they are not able to retain the money or assets they have gained from breaking the law and damaging public goods (for example, by polluting the environment).

Criminal proceeds refers to the value of benefit derived from the offending or assets tainted by funds generated from the offending.

Where an offender has benefitted financially from an illegal activity, there is an opportunity for regulatory agencies to recover these financial gains via Proceeds of Crime Recovery.

What are the Asset Recovery Units?

- ARUs are teams within Police dedicated to the confiscation of specific assets derived from crime or the benefits or profit derived from criminal activity.
- ARUs deliver the responsibilities and obligations of the Commissioner of Police pursuant to the CPRA.
- The Commissioner supports the crime prevention and enforcement activities of all government agencies which is why Police advance civil proceedings for asset recovery alongside IRD, MSD, MBIE, Customs, SFO and others.
- Confiscations (restraining or forfeiture of assets) occur through the Civil High Court, and convictions or charges are not a pre-requisite to advance this process.
- ARU main offices are in Auckland, Hamilton, Wellington, and Christchurch with satellite offices in Whangārei, Tauranga, Hastings, Palmerston North, Blenheim, and Dunedin.

Since the CPRA came into force in December 2009, Police have restrained property derived from significant criminal activity to the value of \$1 billion.

Case study

Auckland Council referred a major case to a Police Asset Recovery Unit which resulted in the restraint of assets to the value of \$570,000 in October 2021.

Restraining orders were served on four individuals and two companies in relation to several bank accounts and properties in Manurewa and Remuera. The value of benefit derived from their offending was calculated on the financial benefit the parties involved were estimated to have gained from the rent charged from the illegal structures and the avoidance of required building and resource consents.

The case relates to a former bingo hall operating an unconsented boarding house where dozens of migrant workers lived in indoor cabins found to pose serious fire risks and with no hot water, proper heating, or laundry facilities. The defendants faced charges under the Building Act 2004 and the Resource Management Act 1991 for the construction of multiple portable cabins without building consent and the use of a boarding house in contravention of the Auckland Council Unitary Plan.

Two of the three defendants have already been convicted and fined, although one has since lodged an appeal in the High Court against the quantum of fine imposed. The third defendant is defending the charges and was scheduled for trial in August. This has been postponed due to lockdown.

Any government agency can make a referral to the Unit. It provides an important additional tool in the toolbox for ensuring that people cannot make and keep profits of unlawful environmental actions.



When can I make a referral to an ARU?

You can refer a case to an ARU if it constitutes 'significant criminal activity' under the CPRA.

Types of forfeiture

The court can authorise the forfeiture of assets (eg, vehicles) and profits (eg, cash) of 'significant criminal activity'. It can also authorise the forfeiture of instruments, but these apply to offending where the penalty is five years or more in jail (unusual in environmental offending).



Asset forfeiture

Asset forfeiture targets property (known as 'tainted property') that has been acquired as a result of, or derived from, significant criminal activity. No criminal prosecution or conviction is required. The owner of the assets need not be the offender.



Profit forfeiture

Profit forfeiture targets the assets of those who have knowingly derived a benefit from significant criminal activity. No criminal prosecution or conviction is required. The targeted assets need not have been acquired from the offending. The owner of the assets need not be the offender.



Instrument forfeiture

Instrument forfeiture is available for assets used to commit offences punishable by five years or more.

Further considerations

The Police will consider whether the individual or company:

- within the last seven years, knowingly derived benefit from an activity which would amount to offending:
 - punishable by at least five years, or
 - from which at least \$30,000 has been derived
- has assets that can be forfeited.

Significant criminal activity means an activity engaged in by a person that if proceeded against as a criminal offence would amount to offending—

- (a) that consists of, or includes, 1 or more offences punishable by a maximum term of imprisonment of 5 years or more; or
- (b) from which property, proceeds, or benefits of a value of \$30,000 or more have, directly or indirectly, been acquired or derived.

Tainted property—

- (a) means any property that has, wholly or in part, been—
 - (i) acquired as a result of significant criminal activity; or
 - (ii) directly or indirectly derived from significant criminal activity; and
- (b) includes any property that has been acquired as a result of, or directly or indirectly derived from, more than 1 activity if at least 1 of those activities is a significant criminal activity

Steps in the process

1



Initial contact with ARU

Take up contact early. This assists the process of investigation by the Asset Recovery Unit. It also means the ARU may be able to better assist in the early stages of an investigation by providing the investigating authority with advice and guidance.

Referring agencies may administer their own guidance on their internal process for making a referral or may have existing relationships and agreements with Police (eg, MOUs) that should be considered.

2



Formal referral to ARU

All referrals should be treated confidentially. If a target learns of the referral, they may try to conceal assets or transfer asset ownership. This can make it difficult to find and recover assets.

3



ARU assessment and decision

Factors that the ARU will consider in determining whether to investigate include:

- quality of information available
- seriousness of the offending
- environmental harm
- public interest
- corruption / links to organised crime
- deterrence of future criminal activity
- an active investigation or prosecution
- an existing conviction.

Referrals are subject to prioritisation in line with available resources. The ARU decision-making process is a Police matter.

4



ARU gathers information to support investigation

The ARU is likely to request information collected during the investigation or the response to the incident(s) in question. Officers may be asked to provide an affidavit or other supporting information from the investigation to assist in seeking the proceeds of crime.

It is possible to exchange information for law enforcement purposes, subject to relevant legal obligations. In the first instance, referring agencies should discuss concerns with ARU, and also obtain legal advice, to develop formal information exchange mechanisms as required. It is important these are recorded.

Referring agencies may need to assist with subject matter expertise beyond the scope of the ARU (eg, value gained from unlawful vegetation removal, consent costs averted, etc).

5



ARU pursues proceeds while referring agency focuses on remedial and punitive actions

A referral does not imply a transfer of responsibility from the referring agency to the ARU. The agency charged with enforcement of their own legislation should continue pursuing punitive and/or remedial actions as appropriate. They will also continue with the investigation; the ARU does not conduct the investigation.

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Court authorises forfeiture, funds are deposited into Crown account, case closed

Money forfeited pursuant to the CPRA is deposited into the Proceeds of Crime Fund. The fund was established in 2009 and is administered by the Proceeds of Crime Fund Secretariat within the Ministry of Justice. The distribution of funds to agencies is made on application and must meet at least one of the Fund's four criteria.

How are funds allocated?

The funds are contestable and any of the 39 service departments, as defined by Te Kawa Mataaho Public Service Commission, can apply via a two-stage process. There are two rounds annually.

A panel considers the applications for shortlisting. The panel is made up of senior representatives from the Ministry of Justice, Ara Poutama Aotearoa (Department of Corrections), Te Puni Kōkiri, Ministry of Health, Ministry of Education, New Zealand Police, The Treasury, Oranga Tamariki and the Chief Science Advisor.

Presently, fund expenditure must adhere to any of the following four categories:

- expansion of alcohol and other drug treatment services
- initiatives to fight organised criminal groups dealing in methamphetamine and other drugs
- initiatives to address mental health issues within the criminal justice system
- initiatives that address crime-related harm to communities and improve community wellbeing.

The current categories do not explicitly include funding for environmental initiatives. However, there may be scope to widen the pool for funding for environmental initiatives once the fund contains criminal proceeds from environmental offending.

ARU contact details

Email: dl_fcgaruoc's@police.govt.nz

Send enquiries to the Asset Recovery Unit's common email address where they can be appropriately redirected to your nearest office for triage and discussion.

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