

## PRESENTERS



### **Jacinda Foster, Almao Douch, Hamilton**

Jacinda is an experienced trial lawyer. With a background at the criminal bar and in civil and commercial litigation she joined the office of the Crown Solicitor at Hamilton in 2003. Now a partner of the firm Jacinda has particular expertise in fraud, organised crime, actions to recover criminal proceeds and insolvency work.



### **Dr Heather McKenzie, Raymond Donnelly & Co, Christchurch**

Heather is a Crown prosecutor at Raymond Donnelly & Co, the Christchurch Crown Solicitor's office. She specialises in departmental prosecutions, regulatory advisory work, health and safety in employment law, and proceeds of crime. Heather has previously worked at Meredith Connell and Chapman Tripp and has experience representing both the prosecution and defence. Before that, she was a Judges' Clerk at the Auckland High Court.

Cover and text stocks used in this publication are from Forestry Stewardship Council certified mills, manufactured under the environmentally responsible paper manufactured environmental management system ISO 14001, using pulp from well managed forests and other controlled sources.

# CONTENTS

<b>1. FOREWORD.....</b>	<b>1</b>
<b>2. THIS SEMINAR .....</b>	<b>3</b>
<b>3. A NEW ACT: FUNDAMENTAL DRIVERS, KEY CONCEPTS AND PRINCIPLES, AND DIFFERENCES FROM THE 1991 ACT .....</b>	<b>3</b>
FUNDAMENTAL DRIVERS .....	3
KEY CONCEPTS AND PRINCIPLES .....	3
<i>The Act's purpose.....</i>	3
<i>Tainted property.....</i>	6
<i>Qualifying instrument forfeiture offence .....</i>	8
<i>Effective control orders.....</i>	8
ROLE OF THE COMMISSIONER OF POLICE .....	8
ROLE OF THE OFFICIAL ASSIGNEE .....	9
COSTS .....	10
TIMING OF PROCEEDINGS .....	11
<i>Interaction between conclusions of fact finder in criminal jurisdiction and civil fact finder determining forfeiture application. ....</i>	13
HIGH COURT MUST APPROVE SETTLEMENT.....	13
ARRANGEMENTS TO AVOID OPERATION OF THE ACT OR SENTENCING ACT 2002.....	14
DIFFERENCES FROM THE 1991 ACT.....	14
TABLE SUMMARISING TYPES OF ORDER .....	15
<b>4. THE ACT.....</b>	<b>19</b>
OVERVIEW OF THE ACT'S SCHEME.....	19
CIVIL AND CRIMINAL PROCEEDINGS DISTINGUISHED .....	19
THE PROCEEDS OF CRIME REGULATIONS 2009 .....	21
SENTENCING (INSTRUMENT FORFEITURE ORDERS) AMENDMENT REGULATIONS 2009 .....	21
APPLICATION OF HIGH COURT RULES AND DISTRICT COURTS RULES .....	21
APPLICATION OF THE SEARCH AND SURVEILLANCE ACT 2012 .....	21
APPEALS .....	22
<b>5. RESTRAINT.....</b>	<b>23</b>
PURPOSE AND DISTINCTION FROM FORFEITURE.....	23
ON OR WITHOUT NOTICE APPLICATION FOR RESTRAINING ORDER .....	24
RESTRAINT IN RELATION TO TAINTED PROPERTY – SECTION 24 .....	25
RESTRAINT IN RELATION TO ALL OR PART OF RESPONDENT'S PROPERTY – SECTION 25 .....	26
RESTRAINT IN RELATION TO AN INSTRUMENT OF CRIME – SECTION 26.....	26
REGISTRATION OF RESTRAINING ORDER ON PROPERTY TITLE – SECTION 27.....	27
DEALINGS SET ASIDE WHERE MADE FROM RESTRAINED PROPERTY .....	27
OFFENCE TO DEAL WITH RESTRAINED PROPERTY .....	28
CONDITIONS ON RESTRAINING ORDER AND EXCLUSION OF SEVERABLE INTEREST .....	28
DURATION OF RESTRAINING ORDER.....	28
FURTHER ORDERS RELATED TO RESTRAINING ORDERS.....	29
<i>Immediate sale orders as a species of further order .....</i>	30
<b>6. FORFEITURE.....</b>	<b>31</b>
CRIMINAL FORFEITURE .....	31
<i>The setting of criminal forfeiture.....</i>	31
EFFECT OF INSTRUMENT FORFEITURE ORDER ON SENTENCE .....	33
CIVIL FORFEITURE .....	34
<i>General.....</i>	34
<i>Civil forfeiture – asset forfeiture orders.....</i>	35
<i>Civil forfeiture – profit forfeiture orders.....</i>	36
<b>7. INVESTIGATIVE POWERS.....</b>	<b>39</b>
SEARCH WARRANTS .....	39
PRODUCTION ORDERS .....	41
EXAMINATION ORDERS .....	41

ABILITY TO REVIEW EXAMINATION ORDERS .....	43
OFFENCE TO FAIL TO COMPLY WITH PRODUCTION OR EXAMINATION ORDER .....	43
PRIVILEGE AND IMMUNITIES FOR COMPLIANCE WITH EXERCISE OF INVESTIGATIVE POWERS .....	44
<b>8. RELIEF FROM FORFEITURE.....</b>	<b>47</b>
RELIEF FROM AN INSTRUMENT FORFEITURE ORDER .....	47
<i>Relief from instrument forfeiture order – application under s 142J.....</i>	47
<i>Relief from instrument forfeiture order – appeal.....</i>	50
RELIEF FROM RESTRAINT AND FROM CIVIL FORFEITURE .....	50
<i>Relief from restraint – ss 28 and 30 .....</i>	50
<i>Relief from restraint by excluding severable interest from restraining order – s 30.....</i>	53
<i>Relief from restraint by way of further orders – ss 33 to 35.....</i>	54
<i>Relief from civil forfeiture orders.....</i>	54
<i>Relief from asset forfeiture order because of undue hardship on respondent – s 51.....</i>	54
RELIEF FOR PERSONS OTHER THAN THE RESPONDENT – S 61 AND FOLLOWING.....	55
RELIEF FROM UNLAWFUL EXERCISE OF SEARCH (ETC) POWERS.....	56
<i>Via challenge to admissibility of evidence.....</i>	56
<b>9. FIVE YEARS IN: HOW HAS THE ACT PERFORMED?.....</b>	<b>59</b>
RESTRAINT.....	59
FORFEITURE .....	59
ASSETS FORFEITED: FROM GEMSTONES TO HELICOPTERS .....	60
<b>10. CONCLUSION.....</b>	<b>63</b>