



**National Organisation for the Reform of Marijuana Laws, New Zealand Inc.**

PO Box 3307 Auckland Aotearoa. Tel: (09) 302 5255 Fax: (09) 303 1309

E-mail: [norml@norml.org.nz](mailto:norml@norml.org.nz) Internet: [www.norml.org.nz](http://www.norml.org.nz)

# **Submission to the Law & Order Committee**

**on the**

## **Criminal Proceeds (Recovery) Bill**

**16 May 2007**

### **1. Submission Summary:**

**The Criminal Proceeds (Recovery) bill should be rejected in its current form, and along with the Proceeds of Crime Act 1991 should be amended to:**

- restore the defendant's right to presumption of innocence;
- require a criminal burden of proof and conviction for all property seizures;
- ensure property that is not proved to have been gained through illegal means is not subject to seizure, especially family or ancestral property;
- ensure defendant's right to legal representation, to know they face proceedings and to mount a defence, and to not facing "double jeopardy" through both civil and criminal proceedings.

**We would like to speak further about our submission, should the committee hold oral hearings.**

## **2. Discussion**

The Criminal Proceeds (Recovery) Bill is a significant erosion of civil liberties and will almost certainly see the innocent punished

The bill proposes to seize people's assets even though they have not been convicted of any crime. It violates fundamental norms of justice, such as the presumption of innocence and the prohibition on double jeopardy, and could also breach the New Zealand Bill of Rights Act.

The bill would allow both conviction-based forfeiture and confiscation which requires no conviction for property that is said to be the proceeds of crime or unlawfully derived income. NORML is concerned the same person may be the subject of criminal prosecution and confiscation action under the civil process.

We are further concerned those who are acquitted can still have their assets seized for unproved and unspecified crimes. They would not even have to be prosecuted to have their assets seized. Furthermore, if they are prosecuted they could not use their disputed assets to fund their defence.

In a departure from the accepted norms of natural justice, people who are targeted must prove themselves innocent. The bill allows the government to use an absurdly low standard of proof - "reasonable cause to believe" - to seize assets.

With insufficient evidence for a conviction, police may approach a High Court judge with a lower standard of proof to seize assets. Suspects may not even know they face action and may have no opportunity to defend themselves.

The bill specifies that "the court may not allow legal expenses to be paid out of the restrained property", denying suspects the fundamental right to legal representation.

The retrospective provisions in the Bill made it even more contemptible.

### **2.1 The Proceeds of Crime Act 1991**

Under the existing Proceeds of Crime Act 1991, which the new bill would replace, almost the entire total amount confiscated has been from cannabis growers.

To seize property the police need only show that the property has been "tainted" - they don't need to prove it was paid for using drug incomes. Furthermore, they only need show a *civil* burden of proof, i.e. a "balance of probabilities" rather than the usual proof "beyond all reasonable doubt".

The Proceeds of Crime Act 1991 should be repealed.

### **2.2 Maori**

Maori are at particular risk of having their ancestral lands taken by the Crown - for a second time. Many Iwi and Hapu have only marginal lands left. Faced with little prospect of farming this land, little hope of legitimate employment and ongoing land rates to pay, some have chosen to use the opportunity cannabis prohibition has presented them with. Money may not grow on

trees, but it does grow on cannabis plants that are almost worth their weight in gold.

If they are caught Maori face not only a harsher average sentence but may have their ancestral lands confiscated under the Proceeds of Crimes Act, despite the obvious fact that the land could not have been paid for using illicit drug money.

### **2.3 Police corruption**

Asset forfeiture laws encourage corruption. There have been several reports of police impropriety in attempting to seize property including planting evidence and lying under oath. Here is one example:

In one of the biggest sums awarded against police, in August 1999 Judge Michael Lance awarded Great Barrier Island man Colin Moore \$54,000 towards the \$100,000 he spent defending charges of cultivating cannabis and fighting to keep the family farm. Police did not photograph the evidence or give Moore the chance to look at the plants. They also left out evidence during the trial. The Police helicopter was allegedly spotted delivering a load of cannabis to Mr Moore's farm. The farm had been in the family for generations and could not have been paid for with drug money.

The Judge was scathing of the Proceeds of Crime Act. "It's an invasion of personal privacy when a person is presumed innocent," said Lance. "The legislation needs some careful attention."

The government seemingly does not agree. It believes other countries have been more successful in seizing assets from suspected criminals.

In New South Wales assets are often frozen under *ex parte* orders - issued without the defendant or their lawyer present. Brisbane criminal lawyer Ian Dearden, president of the Queensland Council for Civil Liberties, says a similar law in Queensland has caused some appalling miscarriages of justice.

"It's classically opinion-poll driven legislation that seeks to wipe out the rights of people who legitimately own property by seizing that property on what's often no more than a suspicion. The onus is then on the owner of that property to prove otherwise. It can be very hard to prove income was legally derived without documented evidence."

- *New Zealand Herald*, 27 November 2004

### **3. About NORML NZ Inc.**

NORML appreciates the opportunity to make this submission.

Submission completed by Chris Fowlie, president of New Zealand's National Organisation for the Reform of Marijuana Laws (NORML NZ Inc.)

NORML New Zealand was founded in 1979 as an independent non-profit incorporated society that campaigns for an end to marijuana prohibition. NORML is the *de facto* union that represents the interests of New Zealand's half-million cannabis users, and the million adults who have tried cannabis despite what the law says.

NORML supports the right of all adults to use, possess and grow their own cannabis. We recognise that some commercial market for marijuana will always exist, and we therefore call for ways to best to control that market.

#### **3.1 Our aims are:**

- To reform New Zealand's marijuana laws
- To provide neutral, unbiased information about cannabis and its effects
- To engage in political action appropriate to our aims
- To inform people of their rights
- To give advice and support to victims of prohibition

NORML is committed to reducing harms from drug use. NORML believes that current measures ostensibly taken to "prevent" harms related to drug use are in reality designed to reduce use, whether harmful, non-harmful or even beneficial. Such an approach is inherently unjust (being an attack on those who use drugs responsibly) and risks inflicting greater harms on those punished by the preventive measures than would be caused by the drugs themselves.

#### **3.2 NORML believes drug policy should:**

- have realistic goals;
- be regularly evaluated, be shown to be effective or be changed;
- take account of the different patterns and types of harms caused by specific drugs;
- separate arguments about the consequences of drug use from arguments about morals;
- be developed in the light of the costs of control as well as the benefits;
- ensure that the harms caused by the control regimes themselves do not outweigh the harms prevented by them;
- provide the greatest level of harm reduction for drug users, their families and their communities;
- minimise the number of drug users who experience problems resulting from their drug use;
- be evidence based, as well as having the support of the community.

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