

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.10 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This bill rectifies anomalies relating to restraining orders, based on a recent decision by the High Court of Australia.

It does this in two ways: by amending the Criminal Assets Recovery Act 1990 and by amending the Confiscation of Proceeds of Crime Act 1989.

These amendments will ensure that the New South Wales Crime Commission can continue their excellent work in seizing the ill-gotten gains of serious and organised criminals.

In summary, CARA would now provide that in the making of a restraining order, the Supreme Court:

May cause notice of the application by the Crime Commission to be served on the persons with an interest in the application;

May take submissions by those persons who may attend the hearing;

Must be satisfied that the information in the affidavit provides reasonable suspicion that the person is engaged in serious criminal activity or the assets are derived from criminal activity or the assets are fraudulently acquired.

If the Court determines that the application is not to be dealt with *ex parte*, that is, in the absence of the other party, there will be no restraint on the assets until the party is notified and appears (if they so choose) to adduce evidence at the hearing.

The effect of the restraining order remains the same, to prevent persons or entities subject to possible confiscation orders disposing of their property before the substantive confiscation matter can be determined.

The Court may, on application, set aside a restraining order if the application is made within 28 days and on the basis of certain criteria and exceptions.

To give proper effect to the High Court decision, these amendments separate the restraining order process from the forfeiture order process.

The amendments include provisions that by force of statute validate existing forfeiture orders and make transitional provisions regarding 'current former restraining orders' and 'former restraining orders' effective from the date of the High Court decision.

In relation to the Confiscation of Proceeds of Crime Act (CoPoCA), similar amendments to those in CARA will be made to make it abundantly clear that the evidence provided by the other party at a hearing of the restraining order application may be considered by the Court in making the order, and that the Court retains the power to set aside or vary the order.

These provisions do not change the process for restraining orders under CoPoCA but merely clarify and confirm those processes in line with the High Court decision.

This bill addresses the problems identified by the High Court majority and not only remedies those anomalies, but improves and tightens the processes within both CARA and CoPoCA.

From now on there will be distinct processes for applying for, notifying persons of and hearing restraining orders.

Followed by distinct processes for forfeiture orders.

The new process balances procedural fairness and certainty and ensures that the Crime Commission and the Police Force will continue to fight the good fight against criminals, especially those involved in organised and

serious crime, by taking from them that which they desire most—their mone