



New South Wales

Crimes Amendment (Corrupt Benefits for Trustees) Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* (*the Act*) to—

- (a) substitute the offence in the Act, section 249E in relation to corrupt benefits for trustees and others to—
 - (i) specify that the offering, giving, receiving or soliciting of the benefit must be corrupt, and
 - (ii) exclude the requirement to obtain the consent of each person beneficially entitled to the property or the Supreme Court in certain circumstances, and
 - (iii) exclude the requirement for the Attorney General's consent to commence proceedings for an offence under the section, and
- (b) provide that proposed section 249E and sections 249F and 316 apply and extend to conduct engaged in before the commencement of the proposed Act and that section 249E, as in force before its substitution, no longer applies to conduct that occurred before the commencement.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1[1] substitutes the offence in the Act, section 249E in relation to the offering, giving, receiving or soliciting of benefits to or from a person entrusted with property as an inducement or reward for the appointment of a person to be a person entrusted with property. The proposed section—

- (a) specifies that the offering, giving, receiving or soliciting of the benefit must be corrupt, and
- (b) excludes the requirement to obtain the consent of each person beneficially entitled to the property or the Supreme Court if a benefit is provided to a person entrusted with property, and
- (c) excludes the requirement for the Attorney General’s consent to commence proceedings for an offence under the section.

The term “corruptly” would include dishonestly offering, giving, receiving or soliciting the benefit. This is consistent with other offences in the Act, Part 4A.

Schedule 1[2] inserts savings and transitional provisions in relation to sections 249E, 249F and 316, including to provide that—

- (a) proposed section 249E applies and extends to conduct engaged in before the commencement of the proposed Act and that section 249E, as in force before the commencement, no longer applies to conduct engaged in before the commencement other than in limited circumstances, and
- (b) sections 249F and 316 extend to a person who, before the commencement of the proposed Act, aided, abetted, counselled, procured, solicited, incited or concealed conduct engaged in before the commencement of the proposed Act.



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New South Wales

Crimes Amendment (Corrupt Benefits for Trustees) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Crimes Act 1900* in relation to corrupt benefits for trustees and others.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Crimes Amendment (Corrupt Benefits for Trustees) Act 2023*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1]	Section 249E	2
	Omit the section. Insert instead—	3
	249E Corrupt benefits for trustees and others	4
	(1) A person is guilty of an offence if—	5
	(a) the person corruptly offers or gives a benefit to a person entrusted with property as an inducement or reward for the appointment of a person to be a person entrusted with the property, or	6 7 8
	(b) the person is entrusted with property and corruptly receives or solicits a benefit for any person as an inducement or reward for the appointment of a person to be a person entrusted with the property.	9 10 11
	Maximum penalty—imprisonment for 7 years.	12
	(2) In this section, a <i>person entrusted with property</i> means the following—	13
	(a) a trustee of the property,	14
	(b) an executor or administrator appointed for the purpose of dealing with the property,	15 16
	(c) a person who, because of a power of attorney or a power of appointment, has authority over the property,	17 18
	(d) a person managing or administering the property, or appointed or employed to manage or administer the property, under the <i>NSW Trustee and Guardian Act 2009</i> .	19 20 21
	(3) A reference to the appointment of a person includes—	22
	(a) joining in the appointment of the person, and	23
	(b) assisting in the appointment of the person.	24
[2]	Schedule 11 Savings, transitional and other provisions	25
	Insert at the end of the schedule, with appropriate part and clause numbering—	26
Part	Crimes Amendment (Corrupt Benefits for Trustees) Act 2023	27 28
	Application of sections 249E, 249F and 316	29
	(1) Section 249E, as inserted by the amendment Act, applies and extends to conduct engaged in before the commencement in the same way as if the conduct occurred after the commencement.	30 31 32
	(2) Without limiting subclause (1), section 249E, as in force before the commencement, no longer applies in relation to conduct engaged in before the commencement.	33 34 35
	(3) Subclauses (1) and (2) have no effect in relation to a conviction for an offence under section 249E that occurred before the commencement.	36 37
	(4) Sections 249F and 316—	38
	(a) extend to a person who, before the commencement, aided, abetted, counselled, procured, solicited, incited or concealed engagement in conduct mentioned in section 249E as inserted by the amendment Act, and	39 40 41 42

- (b) no longer apply in relation to aiding, abetting, counselling, procuring, soliciting, inciting or concealing engagement in conduct referred to in section 249E, as in force before the commencement. 1
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- (5) Despite subclauses (1) and (4)(a), section 249E as inserted by the amendment Act and sections 249F and 316 do not apply or extend to conduct engaged in before the commencement in relation to property with the consent of— 4
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- (a) each person beneficially entitled to the property, or 7
- (b) the Supreme Court. 8
- (6) To avoid doubt, the *Interpretation Act 1987*, section 30 does not apply in relation to engagement in conduct mentioned in section 249E, or the application of section 249E, before the commencement. 9
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- (7) In this clause— 12
- amendment Act** means the *Crimes Amendment (Corrupt Benefits for Trustees) Act 2023*. 13
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- commencement** means the commencement of the *Crimes Amendment (Corrupt Benefits for Trustees) Act 2023*. 15
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