



New South Wales

Crimes (Serious Crime Prevention Orders) Bill 2016

Explanatory note

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

The *Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016* is cognate with this Bill.

Overview of Bill

The object of this Bill is to enable the Supreme Court and the District Court to make serious crime prevention orders, on the application of the Commissioner of Police, the Director of Public Prosecutions or the New South Wales Crime Commission, so as to prevent, restrict or disrupt involvement by certain persons in serious crime related activities.

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, the term *serious criminal offence* is defined to have the same meaning as in the *Criminal Assets Recovery Act 1990*.

The proposed section also defines the *appropriate court*, in relation to an application for, or the making of, a serious crime prevention order against a person, to mean:

- (a) if the ground for making the order is that the person has been convicted of a serious criminal offence—either the Supreme Court or the District Court, or

- (b) if the ground for making the order is that the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence—the Supreme Court.

The term *eligible applicant* is defined to mean any of the following:

- (a) the Commissioner of Police,
(b) the Director of Public Prosecutions,
(c) the New South Wales Crime Commission.

The term *serious crime related activity* is defined to mean anything done by a person that is or was at the time a serious criminal offence, whether or not:

- (a) the person has been charged with the offence, or
(b) if charged, the person:
(i) has been tried, or
(ii) has been tried and acquitted, or
(iii) has been convicted (even if the conviction has been quashed or set aside).

Clause 4 defines when a person is *involved in serious crime related activity* to mean:

- (a) the person has engaged in serious crime related activity, or
(b) the person has engaged in conduct that has facilitated another person engaging in serious crime related activity, or
(c) the person has engaged in conduct that is likely to facilitate serious crime related activity (whether by the person or another person).

Part 2 Serious crime prevention orders

Clause 5 enables an appropriate court, on the application of an eligible applicant, to make a serious crime prevention order against a specified person if:

- (a) in the case of a natural person—the person is 18 years old or older, and
(b) the court is satisfied that:
(i) the person has been convicted of a serious criminal offence, or
(ii) the person has been involved in serious crime related activity for which the person has not been convicted of a serious criminal offence (including by reason of being acquitted of, or not being charged with, such an offence), and
(c) the court is satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime related activities.

Clause 6 provides for the kinds of provisions that can, and cannot, be included in a serious crime prevention order.

Clause 7 provides that a serious crime prevention order takes effect when it is served on the person against whom it is made (or on a later date, if any, specified in the order) and has effect for the period specified in the order. The proposed section also provides that the period specified in a serious crime prevention order for its duration must not exceed a period of 5 years.

Clause 8 makes it an offence for a person against whom a serious crime prevention order is in effect to contravene the order. The maximum penalty for the offence will be 1,500 penalty units for a corporation (currently \$165,000) and 300 penalty units (currently \$33,000) or imprisonment for 5 years, or both, for a natural person.

Clause 9 enables an eligible applicant to apply to the Supreme Court for a compulsory winding up order requiring the winding up of a company under the *Corporations Act 2001* of the Commonwealth or an association registered under the *Associations Incorporation Act 2009* that has been convicted of an offence against proposed section 8. The proposed section also includes

provisions to displace the winding up provisions of the *Corporations Act 2001* of the Commonwealth to facilitate the making and implementation of such orders.

Clause 10 enables an eligible applicant to apply to the Supreme Court for a compulsory dissolution order requiring the dissolution of a partnership if the partnership has, or one or more of the partners have, been convicted of an offence against proposed section 8.

Clause 11 enables both the applicant for a serious crime prevention order and a person against whom such an order is made to appeal to the Court of Appeal against a decision of the Supreme Court or the District Court in relation to the order.

Clause 12 enables the court that makes a serious crime prevention order to vary or revoke the order on application by the eligible applicant who applied for the order or the person against whom the order is made.

Part 3 Miscellaneous

Clause 13 makes it clear that proceedings for a serious crime prevention order are civil proceedings and not criminal proceedings. Accordingly, the civil standard of proof on the balance of probabilities will apply.

Clause 14 enables rules of court to be made under the *Civil Procedure Act 2005*, the *Supreme Court Act 1970* and the *District Court Act 1973* for the purposes of the proposed Act.

Clause 15 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 16 provides for the review of the proposed Act in 3 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Consequential amendment of Criminal Procedure Act 1986 No 209

Schedule 2 makes a consequential amendment to the Act to provide for an otherwise indictable offence against proposed section 8 to be dealt with summarily unless the prosecutor or accused person elects otherwise.