



New South Wales

Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016

Explanatory note

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

This Bill is cognate with the *Crimes (Serious Crime Prevention Orders) Bill 2016*.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Confiscation of Proceeds of Crime Act 1989* to enable the Supreme Court to make a forfeiture order in respect of the property of a person convicted of a serious criminal offence in substitution for other property that the person used in, or in connection with, the offence that is unavailable for forfeiture, and
- (b) to amend the *Crimes Act 1900* to recast the offence of dealing with property suspected of being proceeds of crime so as to adopt certain provisions of the corresponding offence in the *Criminal Code* of the Commonwealth, and
- (c) to amend the *Criminal Assets Recovery Act 1990*:
 - (i) to enable the Supreme Court to make a forfeiture order in respect of property used in, or in connection with, a serious crime related activity or, if that property is not available for forfeiture, other property of the offender, and
 - (ii) to clarify the circumstances in which an interest in property ceases to be serious crime derived property or illegally acquired property for the purposes of the Act on its sale or disposition, and
- (d) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable a senior police officer to make a public safety order to prohibit a person from being present at a public event or at premises or another area if the person's presence poses a serious risk to public safety or security, and

- (e) to make consequential amendments to the *Criminal Procedure Act 1986*.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90

Schedule 1 enables the Supreme Court to make a substituted tainted property declaration in respect of property of a person convicted of a serious criminal offence in cases where other property was used by the offender in, or in connection with, the offence and that other property is not available for forfeiture. The declaration will enable the substituted property to be dealt with under the Act (including for the purposes of forfeiture) as the tainted property instead of the property used in, or in connection with, the serious criminal offence. The Schedule also makes other consequential amendments.

Schedule 2 Amendment of Crimes Act 1900 No 40

Schedule 2 substitutes the offence of dealing with property suspected of being proceeds of crime. In particular, the provisions to be inserted:

- (a) provide for a maximum penalty for the offence of imprisonment for 3 years (if the property concerned is valued under \$100,000) and imprisonment for 5 years (if the property concerned is valued at \$100,000 or more), and
- (b) provide for a non-exhaustive list of conduct and circumstances that can constitute reasonable grounds to suspect that property is the proceeds of crime, and
- (c) allow several contraventions of Part 4AC of the *Crimes Act 1900* to be combined in a single charge, and
- (d) allow the offence to be the subject of an alternative verdict in a trial for an offence against section 193B (Money laundering) of the *Crimes Act 1900*.

Schedule 3 Amendment of Criminal Assets Recovery Act 1990 No 23

Schedule 3:

- (a) enables the Supreme Court to make a forfeiture order in respect of property (*serious crime use property*) used in, or in connection with, a serious crime related activity, and
- (b) enables the Supreme Court to make a substituted serious crime use property declaration in respect of the property of a person who engaged in serious crime related activity involving serious crime use property if that property is unavailable for forfeiture, and
- (c) requires half of the proceeds of forfeiture orders made in respect of serious crime use property (or substituted serious crime use property) to be paid to the credit of the Victims Support Fund under the *Victims Rights and Support Act 2013*, and
- (d) ensures that no provision is made by the Supreme Court in connection with a restraining order for the payment of legal expenses in relation to a particular interest in property if the Supreme Court is satisfied that the interest is an available interest relating to serious crime use property or the interest is the subject of an application for a substituted serious crime use property declaration, and
- (e) makes it clear that an interest in property does not cease to be serious crime derived property or illegally acquired property for the purposes of the Act if it is sold or disposed of pursuant

to an order of the Supreme Court that does not expressly provide for it to cease to be serious crime derived property or illegally acquired property on its sale or disposition.

Schedule 4 Amendment of Criminal Procedure Act 1986 No 209

Schedule 4 enables the following indictable offences to be dealt with summarily in certain cases:

- (a) an offence under section 193C of the *Crimes Act 1900* (as substituted by the proposed Act),
- (b) an offence under section 87ZA of the *Law Enforcement (Powers and Responsibilities) Act 2002* (as inserted by the proposed Act).

Schedule 5 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 5 enables a senior police officer to make public safety orders to prohibit a person from being present at a public event or at premises or another area if the person's presence poses a serious risk to public safety or security. In particular, the provisions to be inserted:

- (a) specify the circumstances in which such orders may, or may not, be made, and
- (b) place limits on the content and duration of public safety orders, and
- (c) provide for service and notification requirements with respect to public safety orders, and
- (d) enable a police officer to search and enter premises, and stop and search vehicles, if the officer suspects on reasonable grounds that a person to whom a public safety order applies is within the premises to which the order applies, and
- (e) enable a person to whom a public safety order applies to appeal on the merits to the Supreme Court against the order (or a variation of the order) if the order is (or is to be) in force for a period exceeding 72 hours, and
- (f) make it an offence punishable by a maximum penalty of imprisonment for 5 years for a person to whom a public safety order applies not to comply with the order.