



CONFISCATION OF PROCEEDS OF CRIME LEGISLATION AMENDMENT BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Organised criminal networks present some of the most serious threats to the safety of our community. They are profit driven, constantly looking for new opportunities to exploit and operate across national and international borders in order to engage in illicit drug activity, organised fraud, money laundering, cyber-crime and violent offending.

Consequently, organised crime imposes significant economic costs on taxpayers in NSW. The Australian Institute of Criminology has estimated that organised crime cost the Australian community between **\$24.8 and \$60.1 billion** in 2020-21 alone, with prevention and response costs estimated at up to **\$16.4 billion** over the same period.

For these reasons, organised crime remains a focus for all stakeholders with an interest in law enforcement around the world and there is a rightful expectation among the community that illegitimate assets will be swiftly confiscated by law enforcement agencies.

The *Confiscation of Proceeds of Crime Act 1989* and the *Criminal Assets Recovery Act 1990* are valuable tools for law enforcement agencies in NSW to target proceeds of crime and unexplained wealth. However, both Acts have proven to be overly complicated, resource intensive and inefficient.

While our law enforcement agencies undergo significant efforts to confiscate proceeds of crime, the current legislation is limiting the ability of law enforcement agencies to take swift confiscation action in relation to illegally acquired assets. Stronger legislation is available in other Australian jurisdictions such as Western Australia, South Australia and the Commonwealth.

The proposed reforms in this Bill seek to support State confiscation of proceeds derived from criminal and illicit activity by approaching the issue from various angles. The proposed automatic forfeiture scheme following a conviction, and administrative forfeiture under the *Criminal Assets Recovery Act 1990*, will reduce costs for the courts and the State to fund proceedings when there is no objection by the respondent or where it is clear that the person is guilty of a serious offence.

In its 2020-21 Annual Report, the NSW Crime Commission reported almost all networks being investigated by the Commission were involved in the importation and distribution of prohibited drugs, which continues to be the mainstay income for organised crime in Australia. The proposed drug trafficker provisions in the Bill targets those involved in, and sustaining the drug trafficking business in NSW, by establishing an alternative assets forfeiture process for convicted drug offenders who are most likely to be linked to serious and organised crime.

The amendments to the unexplained wealth provisions in the *Criminal Assets Recovery Act 1990* will make it easier to recover illegally acquired wealth from criminals. This will especially assist with targeting the higher ranking members of criminal networks who are removed from the actual commission of a serious offence, by no longer having to reasonably satisfy the Court that a person is engaged in a serious criminal activity. This is consistent with the NSW Crime Commission's findings that organised criminal networks are increasingly compartmentalising their criminal operations to thwart law enforcement attempts.

The Bill also supports the Crime Commission's mission in disrupting serious and organised criminal activity by allowing witness evidence derived from coercive hearings before the

Commission to be used in confiscation proceedings under the *Criminal Assets Recovery Act 1990*. Finally, the Bill implements recommendations that arose from the 2020 statutory review of the *Crime Commission Act 2012*, which underwent consultation with a range of interested stakeholders.

Objectives: What is the policy's objective couched in terms of the public interest?

The public policy objective of this Bill is to protect the community from the anti-social consequences of organised crime by reducing its prevalence. The Bill will achieve this objective by enabling the Government to more effectively and efficiently confiscate proceeds of crime and unexplained wealth from serious and organised criminal networks, and by improving the general operation and effectiveness of the NSW Crime Commission.

Confiscating the proceeds of crime and unexplained wealth removes the profit motivator driving serious criminal enterprises and prevents the reinvestment of ill-gotten gains into future criminal ventures that would otherwise be pursued. In turn, confiscation reduces organised criminal activities from taking place and the subsequent damage it causes to the community.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The reforms can only be achieved through legislative amendment.

However, various options for achieving the objectives of this Bill could be considered. Key options included:

1. No change.
2. Introduce some amendments to partly address the issues identified.
3. Introduce a comprehensive suite of measures across a range of legislation to support NSW law enforcement authorities more efficiently recover proceeds of crime and unexplained wealth and to improve the operation of the NSW Crime Commission (the approach in this Bill).

Analysis: What were the pros/cons and benefits/costs of each option considered?

1. Option 1: No change

If no reform is progressed, existing legislative challenges that hamper State confiscation of proceeds of crime and unexplained wealth will continue to persist.

Continuing with the legislative framework as is would also signal to criminals operating in NSW who have managed to evade successful prosecutions that they can continue to protect their illegally acquired wealth.

Further, the Government would not be able to implement recommendations made by the statutory review of Crime Commission legislation to improve the operation of the Act in meeting the Act's objectives.

2. Option 2: Introduce some amendments to partly address the issues identified, for example in relation to unexplained wealth only.

This option would meet the law enforcement objectives proposed in the Bill by seeking to strengthen some of NSW's confiscation laws in response to serious and organised crime.

However, this would have a limited impact on disrupting widespread serious criminal activity across NSW.

The model in the Bill adopts a more holistic approach to address the organised crime threat by amending provisions in both the *Confiscation of Proceeds of Crime Act 1989* and the *Criminal Assets Recovery Act 1990*, with amendments to provisions relating to assets forfeiture orders, restraining orders, search, seizure and other investigative powers.

3. Option 3: Introduce a comprehensive suite of measures across a range of legislation to support NSW law enforcement authorities more efficiently recover proceeds of crime and unexplained wealth and to improve the operation of the NSW Crime Commission (the approach in this Bill)

This option is the reform proposed in the Bill.

The Bill overcomes current law enforcement challenges by introducing streamlined processes to enable the efficient and effective confiscation of proceeds of crime and unexplained wealth from serious criminal networks. These measures include:

- Automatic forfeiture of restrained or frozen property following conviction of a serious offence, and
- Forfeiture of property from declared drug traffickers unless they can establish the property was lawfully acquired, and
- Providing that the Crime Commission can forfeit property connected to serious criminal activity which has been seized by or is in the possession of an investigative agency without the need for a Court order, and
- Amending the existing grounds for making an unexplained wealth order to provide that the Supreme Court must make an unexplained wealth order if the Court finds there is a reasonable suspicion that a person's current or previous wealth is greater than the value of the person's lawfully acquired wealth by \$250,000 money (including cash, money held in bank accounts and digital currency) or \$2 million in assets other than money.

These reforms are focussed on capturing serious organised criminals which is achieved by the introduction of higher thresholds that must be met before a person is captured by the proposed legislation.

The Bill also equips law enforcement with reasonable investigative powers to identify and take action against persons reasonably suspected of having proceeds of crime and unexplained wealth. This will assist law enforcement in gathering the necessary evidence to be able to initiate confiscation action against the person.

Also, the Bill introduces measures that will reduce the administrative burden on the criminal justice system by introducing an automatic forfeiture scheme under the *Confiscation of Proceeds of Crime Act 1989* and an administrative forfeiture scheme under the *Criminal Assets Recovery Act 1990*. Automatic or administrative forfeiture will save time and costs for the courts and law enforcement agencies which are appropriate in the context of a person being convicted of a serious offence or where a matter is uncontested.

The proposed reforms are balanced by appropriate safeguards to protect the interests of innocent third parties and defendants. The impact of the reforms can be reviewed as part of the proposed statutory review two years after the Bill's operation to determine if the provisions are meeting the intended objectives.

Overall, the Bill should result in long-term community benefits by supporting the efficient recovery of proceeds of crime and unexplained wealth. Funds that are recovered under NSW confiscation legislation are reinvested into the Victims Support Fund, among other programs relating to crime prevention, supporting safer communities, drug rehabilitation and education.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill is proposed to commence on **1 February 2023** along with other recent reforms introduced by the Government that are designed to address organised crime.

This will provide adequate lead time for key agencies within the NSW criminal justice system to implement necessary arrangements for the reforms.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Yes. Various stakeholders were consulted during the developments of these reforms, including NSW government and Commonwealth Government agencies in the law enforcement and criminal justice areas, and the Local, District, Supreme and Children's Courts. External stakeholders who were consulted include representatives from the legal sector, and representatives from the finance industry including the Australian Banking Association and the Customer Owned Banking Association. Stakeholders were given an opportunity to provide written comment on the draft Bill. All consultation feedback was considered as part of the finalisation of the Bill.

The statutory review of the Crime Commission Act also involved extensive consultation with a range of stakeholders including law enforcement and legal stakeholders.