



NSW Legislative Assembly Hansard

Criminal Assets Recovery Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 25 May 2005.

Second Reading

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [10.19 a.m.], on behalf of Mr Carl Scully: I move:

That this bill be now read a second time.

I am pleased to introduce the Criminal Assets Recovery Amendment Bill 2005. The Criminal Assets Recovery Act 1990 provides the framework for a system of civil forfeiture. Under the Act, the New South Wales Crime Commission or the Police Integrity Commission is able to set in train confiscation proceedings against any person the Supreme Court finds has been more probably than not engaged in serious criminal activity. Proceedings under the Act are separate from the criminal process, and are not dependent on a conviction being obtained. For many offenders the risk of prosecution and imprisonment is part of the cost they are prepared to pay for eventually enjoying the proceeds of often extremely lucrative criminal activity.

Asset confiscation is therefore a highly effective tool because it strips away those ill-gotten gains, either in addition to or instead of a gaol sentence. With these amendments the impact on criminals and their associates will be even greater. Taking the proceeds of crime also reduces the chance of a gang re-offending by removing the tools of the criminal trade—the buy money and fast cars which criminals rely on, making the commissioning of future crimes more difficult. Confiscating criminally acquired assets also sends an important message to our community. It assists in dispelling the notion that after a period of incarceration a person will be free to enjoy the proceeds of their crime. It re-enforces that crime really does not pay. The Criminal Assets Recovery Act was originally enacted as the Drug Trafficking (Civil Proceedings) Act 1990 and was limited to serious drug-related activity.

In 1997 an amending bill was introduced, which broadened the operation of the Act to include serious criminal activity, namely indictable offences or offences that are punishable by imprisonment for five years or more and involving, for example, fraud, theft, extortion, violence or corruption. To reflect this broader application, the Act was renamed the Criminal Assets Recovery Act. A working party co-chaired by the Ministry for Police and the Attorney General's Department produced the report "Review of New South Wales Asset Confiscation Legislation" outlining a series of recommendations. As a result of the work undertaken by all members of the working party, I am now able to bring forward this bill to amend the Criminal Assets Recovery Act 1990. The amendments will substantially increase the scope and effectiveness of the Act.

The asset confiscation regime under the Criminal Assets Recovery Act has been extremely effective, with approximately \$98 million confiscated over the last 14 years since its introduction. This includes approximately \$17 million in the 2003-04 financial year, comprising of cash, bank accounts, real estate and even jewellery, cars and boats. These funds are used to support victims of crime as well as community crime prevention and drug education programs. Confiscated proceeds are also being used to fund the highly successful Taskforce Gain and the recovered assets pool. Taskforce Gain was established in 2003 to target gang and gun crime in south-west Sydney. Its rolling operations, raids and arrests have met with regular success. Over 1,200 arrests have been made, with over 2,800 charges since the commencement of Taskforce Gain.

The recovered assets pool provides funding to assist police with investigations and operations. In the first six months of the 2004-05 financial year successful applications have been allocated \$746,300 under the recovered assets pool. The recovered assets pool funding is being used for operations and investigations targeting activities such as the manufacture and distribution of drugs, large-scale motor vehicle theft and even murder. Improving the operation of the Criminal Assets Recovery Act will not only result in a greater impact on the lifestyles of criminals, but will also result in even more available funds for these worthwhile programs. I would now like to discuss in more detail the amendments to the Criminal Assets Recovery Act. Firstly, we are increasing the scope of the Act by expanding the definition of serious crime-related activity for the purpose of the Act. In particular, child pornography, sexual servitude and specific firearms offences will now come within the remit of the Criminal Assets Recovery Act.

Dishonest damage to property in situations where the damage incurred is greater than \$500 and the possession of precursors with intent as defined under the Drugs Misuse and Trafficking Act 1985 will also form part of the definition of serious crime-related activity. Targeting these offences is consistent with the strong stance the New South Wales Government has taken on matters threatening the safety and security of our community. Those engaged in these offences not will be faced with the full force of the law, but with the prospect of losing any criminally acquired assets too. The Act was groundbreaking when it was introduced, and

we want to ensure we stay at the forefront of impacting criminals through asset confiscation. A number of amendments are designed to do exactly that—target areas where criminals thought they could evade asset confiscation.

The Carr Government made an election commitment that assets held under a fraudulently acquired false identity would be forfeit unless the holder can prove they were not obtained through illegal activity. I am pleased to announce this bill fulfils this election commitment and demonstrates our desire to better target the growing crime of identity fraud. Organised criminals often use fraudulent identities to assist in staging other crimes such as major fraud, money laundering, tax evasion and even terrorist activities, or simply to evade identification. To support this new provision, the New South Wales Crime Commission will be able to seek monitoring orders where there is a reasonable suspicion that an account is opened in a fraudulently acquired false identity.

A monitoring order requires a financial institution to provide information to the New South Wales Crime Commission with respect to the transactions of the account. It is accepted that there may be instances where assets are held under false identities for reasonably legitimate reasons. For example, a victim of domestic violence may hold assets under a fraudulently acquired identity to avoid detection by a violent spouse. In such cases, one only needs to provide evidence that the assets were not acquired through illegal activities and confiscation will not occur. A number of additional safeguards have also been incorporated into the provision to ensure innocent parties are not unduly impacted. We are also closing a significant loophole in our asset confiscation regime.

Criminals using criminally acquired money to pay for legitimate activities or services for their friends and families can now be subject to confiscation proceedings. No longer can the friends or families of criminals enjoy an all-expenses-paid skiing trip to Aspen or have their university degree paid for with criminally acquired funds. We will be able to initiate confiscation proceedings to force repayment of criminal funds that these friends or families have knowingly spent. Experience has shown that major criminals and their families often live a lavish and expensive lifestyle whilst their legitimate income is very low. Now we have the ability to impact the lifestyles of not only criminals but also their families and friends if criminally acquired funds are being used to bankroll these opulent lifestyles.

As the House would be aware, crime can easily transcend State and national boundaries and has no regard for different jurisdictions. Co-operation and co-ordination between all law enforcement agencies are essential to effectively target crime and to recover the proceeds of criminal activities. To ensure criminals cannot use State borders to evade confiscation proceedings, the Criminal Assets Recovery Act will extend to appropriate offences outside New South Wales. Persons living in New South Wales but who possess assets that are the proceeds of crimes committed in other States or Territories will be liable for confiscation proceedings. Should the jurisdiction in which the crime was committed choose not to pursue confiscation proceedings, we will now be able to do so. We are also introducing a number of other measures to promote co-ordination and co-operation.

For example, evidence of a criminal offence for the purpose of the Act will include offences against the law of other jurisdictions. The Act will also provide recognition of interstate forfeiture orders. The New South Wales Crime Commission will continue to actively pursue serious criminals. The links the commission has forged with other agencies such as NSW Police, the Australian Crime Commission and the Australian Federal Police will contribute not only to the apprehension of criminals but the stripping of their criminally acquired assets. We also rely on the co-operation of the private sector, and in particular financial institutions. Without this co-operation our jobs would be all the more difficult. In recognition of this, financial institutions that comply with a written voluntary request from New South Wales Crime Commission to provide a report on a specific customer will be granted indemnity as defined under the Act.

A number of other amendments have been made to provide us with an even more effective regime which I would now like to discuss. For example, the bill will allow us to target mortgage and loan repayments made with criminally acquired funds. Even if the deposit for a property is made with legitimate funds, New South Wales Crime Commission will be able to seize any repayments on a mortgage made with illegal funds. The bill will give the New South Wales Crime Commission the power not only to request relevant existing documents, but also to require the generating of a document. For instance, financial institutions may be required to generate a report from their database on a particular customer or New South Wales Crime Commission may request the manipulation of data or the entering of passwords to access information.

This will make it more difficult for persons to hinder investigations or to hide relevant information. The New South Wales Crime Commission is currently able to settle matters prior to court proceedings. Settlement is based on a statement provided by the defendant outlining their assets. It has been found that these lists are often inaccurate as criminals are understandably reluctant to specify all their assets. To address this, any assets that are not declared under warranty will be forfeit. A copy of an indictment where there is a guilty plea is now admissible in civil confiscation proceedings and evidence that has been introduced in failed or abandoned criminal cases is now admissible for civil actions. This recognises that the Criminal Assets Recovery Act actions are civil, not criminal, so there should be no barrier to reusing the evidence.

We are also amending the Act so that statements, documents or things produced by a person before the court are inadmissible in later proceedings only when production is objected to at that time. In addition to the above provisions of the bill, a few procedural amendments are included which will increase the effectiveness and efficiency of matters conducted under the Act. For example, restraining orders can now be sought via telephone in urgent circumstances to prevent moneys being transferred in the time it currently takes for a restraining order to be granted. This should stem the flow of untraceable moneys that are rapidly transferred from one account to another, often ending up overseas and out of the reach of law enforcement agencies. In addition, a restraining order will now remain in force for two working days rather than 48 hours to reduce unnecessary complications for operations conducted over public holidays or weekends.

The procedure for obtaining assets forfeiture orders has been streamlined. Now, where assets are already lawfully held by the New South Wales Crime Commission, it will be possible to apply directly to the Supreme Court for an assets forfeiture order. In other cases the New South Wales Crime Commission will be able to apply to the Supreme Court for a restraining order and an assets forfeiture order simultaneously. The Criminal Assets Recovery Act is important legislation in the ongoing fight against serious organised crime. We are determined to send a strong message to the community that crime will not pay. The additional amendments, which I have outlined above, will provide us with the means to ensure this is the case in New South Wales.

As I have already mentioned, the Criminal Assets Recovery Act has established an effective system of asset confiscation, resulting in numerous offenders being deprived of the proceeds of their serious criminal activities. By passing this bill the Parliament will not only extend the current scope and operation of the Criminal Assets Recovery Act but will ensure a more effective and efficient regime. We are sending a clear message to those who commit serious criminal activity—do not. I commend this bill to the House.