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NSW Legislative Council Hansard

CRIMINAL ASSETS RECOVERY AMENDMENT BILL

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Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [6.02 p.m.]: 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 [CARA] 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 money and fast cars which criminals rely on—making the future commission of 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. CARA was originally enacted as the Drug Trafficking (Civil Proceedings) Act 1990 and was limited to serious drug-related activity.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. I seek leave to incorporate the remainder of the second reading speech in *Hansard*.

Leave granted.

A Working Party co-chaired by the Ministry for Police and the Attorney General's Department produced the report "Review of NSW 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 CARA has been extremely effective, with approximately \$98 million confiscated over the last fourteen 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 programmes. 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 ReAP. ReAP 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 CARA 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 programmes.

I would now like to discuss in more detail the amendments to CARA.

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 CARA. 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 Drug 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 NSW Government has taken on matters threatening the safety and security of our community. Those engaged in these offences will not only 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 NSW 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 NSW 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 having 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. Cooperation and coordination between all law enforcement agencies is essential to effectively target crime and to recover the proceeds of criminal activities.

To ensure criminals cannot use state borders to evade confiscation proceedings, CARA will extend to appropriate offences outside NSW. Persons living in NSW 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 coordination and cooperation. 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 NSW 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 cooperation of the private sector, and in particular financial institutions. Without this cooperation, our job would be all the more difficult. In recognition of this, financial institutions that comply with a written voluntary request from NSW 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, NSW Crime Commission will be able to seize any repayments on a mortgage made with illegal funds.

The Bill will give the NSW 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 NSW 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 NSW 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 CARA 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 monies being transferred in the time it currently takes for a restraining order to be granted. This should stem the flow of untraceable monies that are rapidly transferred from one account to another, often ending up overseas and out of the reach of law enforcement agencies.

In addition, 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 NSW Crime Commission, it will be possible to apply directly to the Supreme Court for an assets forfeiture order. In other cases, the NSW 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 NSW.

As I have already mentioned, CARA 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 CARA, but will ensure a more effective and efficient regime. We are sending a clear message to those who commit serious criminal activity—don't.

I commend this Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [6.05 p.m.]: The Opposition does not oppose

the Criminal Assets Recovery Amendment Bill. In fact, I wholeheartedly congratulate the former Greiner Government of 1990 on introducing the legislation in the first place. If it were not for the former Liberal-National Government of 1990 this legislation may never have hit the decks, because I have little confidence that a Carr Labor Government would introduce such legislation. It was introduced in 1990 at a time when there was real concern in the community that not enough was being done to target drug barons and serious criminals in our community, which sent a clear message that something had to be done. Less than two years after coming to office Premier Nick Greiner ensured that the legislation was passed. History shows that, along with this legislation and other similar changes, Nick Greiner also put in place the Independent Commission Against Corruption [ICAC], significant measures that changed forever the ability of criminals to avoid detection and enjoy the proceeds of their criminal activity.

This is an important bill. I suspect that there will be very little debate, apart from one or two members of this Chamber, but it is important to acknowledge the value of the bill. However, that does not mean there is no room for improvement. Over the coming months as we continue to debate the future of New South Wales beyond 2007, the bill will provide an opportunity for members in this Chamber and in the other place to express their views on what action should be taken to further target criminals who are very well resourced, and not only through cash. They have access to the brightest minds in the law, taxation and business to help them elude detection by ensuring that their assets are widely dispersed and difficult to detect. They will do everything they can to keep the proceeds of their criminal activity.

This amending bill broadens the areas of criminal activity in which people can be targeted beyond what is currently recognised. The New South Wales Crime Commission focuses on seizing the assets and funds from drug traffickers, people involved in the illegal gun trade, serious fraud offenders, people involved in car rebirthing and so on. This bill will extend those powers to allow asset confiscation for those involved in the trafficking of firearms, child pornography and property damage. I asked the Minister in reply to provide the reason for including in the bill the term "property damage". In particular, new section 6 (2) (h) states:

an offence under section 197 of the *Crimes Act 1900*, being an offence involving the destruction of or damage to property having a value of more than \$500.

To put it simply, \$500 is an insignificant amount in terms of property damage. It would be worthwhile if, before this debate concludes, the Parliamentary Secretary could clarify exactly what is meant to be targeted by the \$500 property damage limit. The legislation goes further. It will target for confiscation moneys spent by associates of criminals. Indeed, friends, relatives and those who have money or assets passed to them as a means of avoiding detection will also be targeted. The legislation will also enable New South Wales authorities to target criminals who have broken similar laws in other States.

Obviously, this legislation has come from the coalface; it has come from people involved in targeting criminals involved in this level of crime. Therefore, I suspect that the recommendations from the New South Wales Crime Commission and the Police Integrity Commission would have been on the books for some time. These offences are not new. For example, it would never be suggested that firearms trafficking is a new offence. It would be interesting to know how long the Government and the Attorney General have been considering these amendments. I would hate to think that the Attorney General has been dragging his feet on these important amendments. Be that as it may, passage of this amending legislation should not be delayed any further.

The bill provides for the indemnity of banks or other financial institutions that provide police or the Crime Commission with reports on customers. That is important. The bill also provides for the immediate seizure of assets held under false identities unless a person can prove that they were not illegally acquired. Again, those much-needed changes are sensible. But as I said at the outset, it is not the end of the changes. I suspect that more changes will be necessary. It will be a question of whether the House, or indeed the respective political parties in the State, are up to the challenge. As I said, the changes will evolve over the next few months as people consider the exact role of the Crime Commission in targeting this level of crime and what we must do to make the provisions more effective. The Opposition does not oppose the bill.

The Hon. Dr PETER WONG [6.12 p.m.]: I support the Criminal Assets Recovery Amendment Bill, which is a response to recommendations of the Drug Summit. It also arises from the recommendations of a working party co-chaired by the Attorney General's Department and the New South Wales police service. I hope that this improved bill will become the basis for a considerably enhanced deterrent against crime. I urge the New South Wales Crime Commission to undertake increased activity in the area of white collar crime and corruption in our community. I say this because, while our goals are ever expanding with petty criminals, and a great deal of the justice system's effort is targeted towards children and young people, the reality is that white collar crime makes up the greatest portion of the criminal costs to our society.

For too long this area of criminal enterprise has been allowed to flourish in our community with very little effort to control it from either the State or the victims of that type of crime—big businesses. For too long big business has been more than happy to simply flush out such criminals and quietly send them on their way. It

did this because it did not want knowledge of the true extent of corporate criminality to negatively affect their trade, either through disgruntled customers or, more importantly, because of disgruntled shareholders. I note that the Minister spoke about the legislation raising \$98 million over the past 14 years. That is only a drop in the bucket, representing a mere \$7 million per annum. If the New South Wales Crime Commission were to target white collar criminal activities, I am sure that this figure could easily be increased tenfold and would lead to massive improvements in our State's economy. Having said that, however, this is still good legislation. I congratulate the Government on introducing this bill.

Reverend the Hon. FRED NILE [6.14 p.m.]: The Christian Democratic party is pleased to support the Criminal Assets Recovery Amendment Bill, which will amend the Criminal Assets Recovery Act 1990 to increase the capacity of the New South Wales Crime Commission to seize the proceeds of crime. I am pleased that the bill has been introduced into the Parliament, but I am concerned about the long delay between the Drug Summit recommendations in 1999 and debate on this bill in 2005. The Government and the Premier should ensure that the Attorney General provides leadership and makes sure that the legislation is proceeded with. This bill came from the Minister for Police. I imagine that bills can drop through the cracks when there is a change in portfolios, but the Premier's Department must ensure that it gives priority to acting on the recommendations promptly.

This bill will extend the powers to confiscate assets and funds from drug traffickers, gun runners, fraudsters, car rebirthers and a range of other offenders. I am particularly pleased that more action will be taken against drug traffickers. In some ways it has become a joke that people involved in drug trafficking seem to have massive homes and luxury assets without ever being arrested or affected in any way, whether it is the Australian National Crime Commission or State crime commissions. The bill provides another means to hurt these people, not only by finally convicting them of drug trafficking offences but also removing their assets, which they have probably already passed to members of their family in the hope that they can disguise the proceeds of their crime.

As I said, this bill extends the current legislation to provide for the confiscation of assets. It will target people who have spent the money of criminal associates, such as enjoying overseas travel and accommodation, for confiscation purposes. Also, it provides for New South Wales authorities to target criminals who have broken laws in other States and Territories if those jurisdictions have not moved to seize their assets. New South Wales will provide leadership to the other States which may be lax in some areas. Indeed, some other States, particularly Queensland, are very lax. The bill provides for the indemnity of banks and other financial institutions that provide New South Wales Police or the Crime Commission with reports on customers, and it provides for the immediate seizure of assets held under false identities unless the person can prove they were not illegally acquired.

During the past weekend I spent time with Bob Bottom, whose campaign against organised crime is well known. Indeed, he has played a major role over the years in helping governments, particularly the Federal Government, to establish the National Crime Commission and then the Australian Crime Commission. During the weekend he addressed the conference where I was speaking, which was held in Parliament House in Queensland. I was interested in the information he provided which I do not believe was confidential. He spoke about how serious organised crime is in Australia, particularly crime associated with drugs. He mentioned that the serious developments of organised crime has been assessed, and that he had participated in the Victorian police organised crime strategy group.

As we know, there have been 27 gangland murders in Melbourne in recent years, and the Victorian Government set up a crime strategy group to devise a five-year strategy to combat organised crime. One of its roles, in association with the Australian Crimes Commission, is to gather intelligence on organised crime groups in Australia. It conducted an assessment, and Mr Bottom stated that as against just 13 crime syndicates in Australia identified by the National Crime Authority 20 years ago there are now 97 organised crime groups. The number has not decreased, it has dramatically increased. The Australian Crime Commission says that 32 of these crime groups are deemed to be of high risk.

By comparison, on 26 April there was a major organised crime crackdown in Chicago, and as a result there are now only four crime syndicates in Chicago. Australia has 97. According to the Australian Crime Commission there are 10 organised crime groups in Sydney—2½ times as many as in Chicago. There are eight organised crime groups in Melbourne, four in Adelaide, one less in Brisbane, three in Perth, and half as many in Darwin; and in Canberra there are two operating in the shadows of our Commonwealth Parliament House. I am sure all honourable members will agree that that is disturbing information that was released only last weekend. It highlights how important this bill is in removing assets from organised crime gangs and putting their members behind bars.

Ms LEE RHIANNON [6.22 p.m.]: This bill should address the power of the New South Wales Crime Commission but, again, the opportunity has been missed. The New South Wales Crime Commission is an enormously powerful and secretive organisation, one that has really minimal—a more correct word would be "token"—accountability. The bill should include mechanisms to make the New South Wales Crime

Commission more accountable. Two ways to do that would be more effective reporting to Parliament and public review mechanisms, but the bill provides for nothing like that.

I would like to go through one case that clearly reveals the enormous power of the New South Wales Crime Commission. Some of this information comes from an investigation undertaken by *Sydney Morning Herald* reporter Neil Mercer. It deals with an extraordinary case before Justice Spigelman and concerns Irene Plizga. She was convicted of shoplifting about five sweaters from David Jones. One would not think that was a major crime but, as Justice Spigelman detailed, the New South Wales Crime Commission has the power to seize assets deemed to be proceeds of crime, and it moved in on this hapless shoplifter. In his judgment, Justice Spigelman appears to be quite unimpressed with the action of the Crime Commission. One has to come to the conclusion that this came about because the New South Wales Crime Commission operates in almost total secrecy and is unaccountable.

Reverend the Hon. Fred Nile: It was still the result of crime.

Ms LEE RHIANNON: I put it to Reverend Nile that stealing five jumpers is quite different from taking the Mercedes and other property she owned.

Reverend the Hon. Fred Nile: But it was still a crime.

Ms LEE RHIANNON: Okay, I accept the interjection and apologise. The Premier announced that the New South Wales Crime Commission would be given a role in terrorism. I find that extraordinary. An entire floor of the commission's Kent Street office has been set up to handle this new reference into terrorism. The commission was set up in 1985 to investigate drugs but has quietly grown into an agency that can secretly inquire into almost anything, as is shown in the case I am referring to. Anyone called before the commission is sworn to secrecy. Apart from a lawyer you cannot tell anyone, and you cannot necessarily have the lawyer of your choice. The commission has the power to veto a particular solicitor or barrister.

Detailing the background of the case I have just referred to of the stolen jumpers, Justice Spigelman said that the commission had frozen Ms Plizga's assets on 9 December 1997 under the Criminal Assets Recovery Act. Although she was convicted of larceny and given three months periodic detention, the sentence was quashed on appeal and replaced with a \$500 good behaviour bond. I suggest to members that this shows there is not enough monitoring of these bodies and that Parliament must have a greater role to ensure such terrible things do not occur. Ms Plizga did not lose all her property. I understand the forfeiture order was vacated in 1998 and she agreed to pay \$87,500 to Treasury. Although she did not lose everything, to my mind she lost a lot.

People often think it is only the Greens and the Council for Civil Liberties who complain about these bodies, but that is no longer the case. A number of senior detectives are angry with some of the activities of the commission. This is the body that obtained a listening device warrant in December 2000, just after the Olympics. It named more than 100 police, many of them detectives with unblemished records. The device was one of many worn by a corrupt police officer codenamed M5 who had turned informer. Asked about the warrant, former Commissioner of Police Peter Ryan explained that more than 100 names were on the warrant because M5 was going to a social function attended by a large number of people and the law requires that everyone who might be recorded has to be named, even if they have done nothing wrong. That is just out of control. As I said, this bill is a missed opportunity.

The State Crime Commission needs to come under more scrutiny. People not engaged in serious crime have no place being investigated by the commission. The Crime Commission remains unaccountable—and, again, accountability is critical. The Greens advocate that accountability should be achieved by more effective reporting to Parliament and by public review mechanisms. At the moment the commission is a highly secretive body, and therefore a very dangerous body, and the recovery of assets from criminals is supported by a government committed to a law and order agenda. People are having their assets taken away from them and are then being found not guilty of the crime that supposedly resulted in the acquisition of those assets. That is a ridiculous contradiction that again shows how inadequate the bill is.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I welcome to the gallery professional soccer players from the Central Coast Mariners.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.28 p.m.], in reply: I thank honourable members for their contributions. I have raised with the Minister the question asked by the Leader of the Opposition, and the Minister will contact the honourable member within the next 24 hours to give him a detailed answer. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[*The Deputy-President (The Hon. Christine Robertson) left the chair at 6.30 p.m. The House resumed at 8.00*]

p.m.]

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