



New South Wales

Criminal Assets Recovery Amendment Bill 2014

Explanatory note

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

The *Mining and Petroleum Legislation Amendment Bill 2014* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Criminal Assets Recovery Act 1990*:

- (a) to provide for proceeds of an activity engaged in by a person to include certain interests, services, advantages or benefits derived or realised (whether directly or indirectly) by other persons if the person engaged in the activity intended that result or knew, or ought reasonably to have known, that it would be likely to be the result, and
- (b) to make it clear that proceeds of an activity can include an increase in the value of an interest in property resulting from the activity, and
- (c) to include provisions of a savings or transitional nature.

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 the date of assent to the proposed Act.

Schedule 1 **Amendment of Criminal Assets Recovery Act 1990 No 23**

Currently, section 4 (1) of the Act defines *proceeds*, in relation to an activity, to include certain interests in property, services, advantages or benefits that are derived or realised by a person (a

secondary person) other than the person engaged in the activity (the *perpetrator*) if it was at the direction or request (given or made directly or indirectly) of the perpetrator.

Schedule 1 [1] amends the definition of *proceeds* to make it clear that it includes an increase in the value of an interest in property resulting from an activity.

Schedule 1 [2] amends the definition of *proceeds* so that it is not necessary to establish that the interest, service, advantage or benefit derived or realised by a secondary person from an activity was at the direction or request of the perpetrator. A new test will be substituted requiring the perpetrator:

- (a) to intend for the secondary person to derive or realise (whether directly or indirectly) the interest, service, advantage or benefit, or
- (b) to know, or to ought reasonably to have known, that the secondary person would be likely to derive or realise (whether directly or indirectly) the interest, service, advantage or benefit.

Schedule 1 [3] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of another Act that amends the Act (including the proposed Act).

Schedule 1 [4] provides for the amendments made to the Act by the proposed Act to extend to:

- (a) activities engaged in, and to proceeds that were derived or realised, before the commencement of the amendments, and
- (b) pending applications for orders under the Act.



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New South Wales

Criminal Assets Recovery Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend the *Criminal Assets Recovery Act 1990* to make further provision with respect to the recovery of proceeds of illegal activities from persons associated with the perpetrators, and for other purposes.

See also the *Mining and Petroleum Legislation Amendment Bill 2014*.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Criminal Assets Recovery Amendment Act 2014*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

Schedule 1	Amendment of Criminal Assets Recovery Act 1990 No 23	1
		2
[1] Section 4 Definitions		3
	Insert “(including, without limitation, an increase in the value of an interest in property)” after “benefit” in the definition of <i>proceeds</i> in section 4 (1).	4 5
[2] Section 4 (1), definition of “proceeds”		6
	Omit paragraph (b). Insert instead:	7
	(b) by another person if the person engaged in the activity:	8
	(i) intended for the other person to derive or realise (whether directly or indirectly) the interest, service, advantage or benefit, or	9 10
	(ii) knew, or ought reasonably to have known, that the other person would be likely to derive or realise (whether directly or indirectly) the interest, service, advantage or benefit.	11 12 13
[3] Schedule 1 Savings and transitional provisions		14
	Insert at the end of clause 1 (1):	15
	any other Act that amends this Act	16
[4] Schedule 1, Part 6		17
	Insert after Part 5:	18
Part 6	Criminal Assets Recovery Amendment Act 2014	19
26	Application of amendments	20
(1)	The amendments made to this Act by the <i>Criminal Assets Recovery Amendment Act 2014</i> extend to:	21 22
(a)	activities engaged in, and to proceeds that were derived or realised, before the commencement of those amendments, and	23 24
(b)	applications for orders under this Act made (but not yet determined) before the commencement of those amendments.	25 26
(2)	Nothing in those amendments affects the validity of any order made under this Act before the commencement of the amendments.	27 28