



New South Wales

Crimes Amendment (Money Laundering) Bill 2022

Explanatory note

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

The following Bills are cognate with this Bill—

Dedicated Encrypted Criminal Communication Device Prohibition Orders Bill 2022

Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Bill 2022

Overview of Bill

The object of this Bill is to prevent and disrupt organised and other serious crime by making amendments to the *Crimes Act 1900* (***the Act***) and the *Criminal Procedure Act 1986* to—

- (a) create new offences relating to money laundering, and
- (b) set out the circumstances in which there are reasonable grounds to suspect property is the proceeds of crime, and
- (c) provide for circumstances where there are reasonable grounds for suspecting property is the proceeds of crime, including circumstances where representations about property being the proceeds of crime or proceeds of general crime are obtained in the course of a controlled operation, and
- (d) enable alternative verdicts to be reached for an offence of money laundering relating to the proceeds of general crime, and
- (e) provide that there is no requirement to prove an offence was committed in relation to property that is the proceeds of general crime to prove an offence under the Act, Part 4AC, and
- (f) provide that an offence under the Act, section 193BA(3) is a summary offence.

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 Crimes Act 1900 No 40

Schedule 1[1] inserts definitions of *cause* and *proceeds of general crime* for Part 4AC.

Schedule 1[2] amends the definition of *deal with* for Part 4AC.

Schedule 1[4] inserts proposed section 193BA into the Act to make it an offence to deal with proceeds of general crime being reckless as to whether it is proceeds of general crime and intending to conceal features of the property. The maximum penalty for the offence is imprisonment for 15 years. The proposed section sets out matters that may be relevant to whether a person intended to conceal or disguise features of money or other property. The proposed section also makes it an offence to deal with the proceeds of general crime being reckless as to whether it is proceeds of general crime with a maximum penalty of imprisonment for 10 years. **Schedule 1[3]** makes a consequential amendment.

Schedule 1[5] inserts proposed section 193C(1AA) and (1AB) into the Act. Section 193C(1AA) makes it an offence to deal with property valued at \$5 million or more where there are reasonable grounds to suspect the property is the proceeds of crime. The maximum penalty for the offence under subsection (1AA) is imprisonment for 8 years. Section 193C(1AB) provides that, where the offence under section 193C(1AA) is committed in circumstances of aggravation, the penalty for the offence is imprisonment for 10 years. **Schedule 1[6]** makes a consequential amendment to the offence in section 193C(1).

Schedule 1[8] inserts proposed section 193C(5) and (6) into the Act to define *circumstances of aggravation* for section 193C(1AB) and *criminal group*, *criminal organisation* and *serious criminal activity* for the section.

Schedule 1[9] inserts proposed sections 193CA and 193CB into the Act to set out the circumstances in which there are reasonable grounds to suspect property is the proceeds of crime under section 193C and to provide for circumstances in which property is taken to be proceeds of crime when, in the course of a controlled operation, the property is represented to be proceeds of crime or the proceeds of general crime. **Schedule 1[7]** makes a consequential amendment.

Schedule 1[10]–[14] amend the Act, section 193E to enable alternative verdicts to be reached for an offence of money laundering relating to the proceeds of general crime.

Schedule 1[15] inserts proposed section 193F(3) into the Act to make it clear there is no requirement to prove an offence was committed in relation to property that is the proceeds of general crime to prove an offence under Part 4AC of the Act.

Schedule 1[16] inserts a transitional provision into the Act, Schedule 11 to make it clear that an amendment made by the proposed Act apply only in relation to an offence committed, or alleged to have been committed, on or after the commencement of the amendment.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

Schedule 2 makes an offence under the *Crimes Act 1900*, section 193BA(3) an offence that may be dealt with summarily.



New South Wales

Crimes Amendment (Money Laundering) Bill 2022

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New South Wales

Crimes Amendment (Money Laundering) Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *Crimes Act 1900* to create new offences relating to money laundering; and to make related amendments.

See also the *Dedicated Encrypted Criminal Communication Device Prohibition Orders Bill 2022* and the *Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Bill 2022*.

The Legislature of New South Wales enacts—

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1 Name of Act

2

This Act is the *Crimes Amendment (Money Laundering) Act 2022*.

3

2 Commencement

4

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

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1] Section 193A Definitions		2
Insert in alphabetical order—		3
<i>cause</i> includes—		4
(a) direct, or		5
(b) facilitate.		6
<i>proceeds of general crime</i> means money or other property that is wholly or partly derived or realised, directly or indirectly, by a person from the commission of an offence against a law of—		7
(a) the State, or		8
(b) the Commonwealth, another State or a Territory, or		9
(c) another country.		10
[2] Section 193A, definition of “deal with”		11
Insert after paragraph (b)—		12
(b1) send or cause to be sent out of New South Wales, including transfer or cause to be transferred by electronic communication, or		13
[3] Section 193B, heading		14
Insert “— proceeds of crime ” after “ laundering ”.		15
[4] Section 193BA		16
Insert after section 193B—		17
193BA Money laundering—proceeds of general crime		18
(1) A person is guilty of an offence if the person deals with proceeds of general crime with a value of \$100,000 or more—		19
(a) being reckless as to whether it is proceeds of general crime, and		20
(b) intending to conceal or disguise features of the property.		21
Maximum penalty—Imprisonment for 15 years.		22
(2) Without limiting subsection (1)(b), the following may be relevant to whether a person intended to conceal or disguise features of money or other property—		23
(a) the nature of the money or other property,		24
(b) the value of the money or other property,		25
(c) the source of the money or other property,		26
(d) the location of the money or other property,		27
(e) any disposition of the money or other property,		28
(f) any movement of the money or other property,		29
(g) any rights in relation to the money or other property,		30
(h) the identity of a person who has rights in relation to the money or other property,		31
(i) the identity of a person who has effective control of the money or other property.		32

(3)	A person is guilty of an offence if the person deals with proceeds of general crime with a value of \$100,000 or more being reckless as to whether it is proceeds of general crime.	1 2 3
	Maximum penalty—Imprisonment for 10 years.	4
(4)	It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant deals with the proceeds of crime to assist the enforcement of a law of the Commonwealth, a State or a Territory.	5 6 7 8
[5]	Section 193C Dealing with property suspected of being proceeds of crime	9
	Insert before section 193C(1)—	10
(1AA)	A person is guilty of an offence if—	11
(a)	the person deals with property, and	12
(b)	there are reasonable grounds to suspect the property is proceeds of crime, and	13 14
(c)	at the time of the dealing, the value of the property is \$5 million or more.	15
	Maximum penalty—Imprisonment for 8 years.	16
(1AB)	A person is guilty of an offence against this subsection if the person commits an offence under subsection (1AA) in circumstances of aggravation.	17 18
	Maximum penalty—Imprisonment for 10 years.	19
[6]	Section 193C(1)(c)	20
	Insert “but less than \$5 million” after “\$100,000 or more”.	21
[7]	Section 193C(3)	22
	Omit the subsection.	23
[8]	Section 193C(5) and (6)	24
	Insert after section 193C(4)—	25
(5)	For subsection (1AB), <i>circumstances of aggravation</i> mean circumstances in which—	26 27
(a)	the person used a position of professional trust or fiduciary duty to commit the offence, or	28 29
(b)	the offence was committed in the context of a criminal group, serious crime organisation or serious criminal activity, or	30 31
(c)	the offence was committed to fund or support terrorism, or	32
(d)	the person provided finance to enable part or all of the dealings in property, or	33 34
(e)	the offence was committed for the purposes of transferring the value of the property out of New South Wales.	35 36
(6)	In this section—	37
	<i>criminal group</i> has the same meaning as in section 93S.	38
	<i>criminal organisation</i> has the same meaning as in the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	39 40
	<i>serious criminal activity</i> has the same meaning as in the <i>Crimes (Criminal Organisations Control) Act 2012</i> .	41 42

[9] Sections 193CA and 193CB

Insert after section 193C—

193CA Reasonable grounds to suspect property is proceeds of crime

- (1) For section 193C, there are reasonable grounds to suspect that property is proceeds of crime in each of the following circumstances—
- (a) for section 193C(1AA)(a) or (1)(a)—the dealing involves a number of transactions structured or arranged to avoid the reporting requirements of the *Financial Transaction Reports Act 1988* of the Commonwealth that would otherwise apply to the transactions,
 - (b) the dealing involves a number of transactions structured or arranged to avoid the reporting requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth that would otherwise apply to the transactions,
 - (c) the dealing amounts to an offence against section 139, 140 or 141 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth,
 - (d) the dealing involves a significant cash transaction, within the meaning of the *Financial Transaction Reports Act 1988* of the Commonwealth, and the defendant—
 - (i) has contravened the defendant’s obligations under that Act relating to reporting the transaction, or
 - (ii) has given false or misleading information in purported compliance with those obligations,
 - (e) the dealing involves a threshold transaction, within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth, and the defendant—
 - (i) has contravened the defendant’s obligations under that Act relating to reporting the transaction, or
 - (ii) has given false or misleading information in purported compliance with those obligations,
 - (f) the dealing involves using one or more accounts held with authorised deposit-taking institutions in false names,
 - (g) the defendant had, in the defendant’s physical possession, more than \$100,000 in cash without lawful excuse,
 - (h) the value of the property involved in the dealing is, in the opinion of the trier of fact, grossly out of proportion to the defendant’s income and expenditure over a reasonable period within which the dealing occurs,
 - (i) the dealing involved the use of a token or other unique identifier that preserves the anonymity of one or more of the parties to the dealing,
 - (j) the dealing involved the use or possession of—
 - (i) falsely subscribed telecommunication services, or
 - (ii) a dedicated encrypted communication device within the meaning of the *Dedicated Encrypted Criminal Communication Device Prohibition Orders Act 2022*,
 - (k) the defendant possessed or accessed instructions that, in the opinion of the trier of fact, are consistent with money laundering,
 - (l) the dealing involved a clandestine meeting or the use of a concealed compartment,

(m)	the defendant—	1
(i)	has stated that the dealing was engaged in on behalf of or at the request of another person, and	2
(ii)	has not provided information enabling the other person to be identified and located.	3
(2)	This section does not limit section 193C(1AA)(b), (1)(b) or (2)(b).	4
193CB	Controlled operations and proceeds of crime or general crime	5
(1)	This section applies if, in the course of a controlled operation, property is represented, whether verbally, in writing or by conduct, to be proceeds of crime or proceeds of general crime for the purposes of dealing with the property.	6
(2)	The property is, for the purposes of this Part, taken to be—	7
(a)	if the property is represented to be proceeds of crime—proceeds of crime whether or not the property is actually the proceeds of crime, or	8
(b)	if the property is represented to be proceeds of general crime—proceeds of general crime whether or not the property is actually the proceeds of general crime.	9
(3)	In this section—	10
	<i>controlled operation</i> has the same meaning as in the <i>Law Enforcement (Controlled Operations) Act 1997</i> .	11
[10]	Section 193E Alternative verdicts	12
	Insert “or section 193BA(1) or (2)” after “section 193B (2) or (3)” in section 193E(1).	13
[11]	Section 193E(2)	14
	Insert “or section 193BA(1) or (3)” after “section 193B (3)”.	15
[12]	Section 193E	16
	Insert after section 193E(2)—	17
(2AA)	If on the trial of a person for an offence under section 193B(3), the jury is not satisfied the accused is guilty of the offence charged, but is satisfied the accused is guilty of an offence under section 193BA(3), the jury may find the accused not guilty of the offence charged but guilty of the other offence, and the accused is liable to punishment accordingly.	18
[13]	Section 193E(2A)	19
	Insert “(1AA),” after “section 193C”.	20
[14]	Section 193E(2AB)–(2AD)	21
	Insert after section 193E(2A)—	22
(2AB)	If on the trial of a person for an offence under section 193BA(1), the jury is not satisfied the accused is guilty of the offence charged, but is satisfied the accused is guilty of an offence under section 193BA(3), the jury may find the accused not guilty of the offence charged but guilty of the other offence, and the accused is liable to punishment accordingly.	23
(2AC)	If on the trial of a person for an offence under section 193BA(1) or (3), the jury is not satisfied the accused is guilty of the offence charged, but is satisfied the accused is guilty of an offence under section 193C(1AA), (1) or (2), the jury	24

	may find the accused not guilty of the offence charged but guilty of the other offence, and the accused is liable to punishment accordingly.	1 2
(2AD)	If on the trial of a person for an offence under section 193C(1AA), the jury is not satisfied the accused is guilty of the offence charged, but is satisfied the accused is guilty of an offence under section 193C(1) or (2), the jury may find the accused not guilty of the offence charged but guilty of the other offence, and the accused is liable to punishment accordingly.	3 4 5 6 7
[15]	Section 193F Proof of other offences not required	8
	Insert after section 193F(2)—	9
(3)	To avoid doubt, it is not necessary to establish the following in order to prove, for the purposes of an offence under this Part, that property is proceeds of general crime—	10 11 12
(a)	an offence or a type of offence was committed in relation to the property,	13 14
(b)	a particular person committed an offence or a type of offence in relation to the property.	15 16
[16]	Schedule 11 Savings, transitional and other provisions	17
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	18
Part	Crimes Amendment (Money Laundering) Act 2022	19
	Application of amendments	20
	An amendment made to this Act by the <i>Crimes Amendment (Money Laundering) Act 2022</i> applies only in relation to an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	21 22 23 24

Schedule 2	Amendment of Criminal Procedure Act 1986 No 209	1
		2
Schedule 1	Indictable offences triable summarily	3
	Insert “193BA(3),” after “193B (3),” in item Table 1, Part 2, item 3(c).	4