

Passed by both Houses



New South Wales

Crimes Amendment (Money Laundering) Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Crimes Amendment (Money Laundering) Bill 2022

Act No _____, 2022

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 Act 2022* and the *Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Act 2022*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

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

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 193A Definitions

Insert in alphabetical order—

cause includes—

- (a) direct, or
- (b) facilitate.

proceeds of general crime 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—

- (a) the State, or
- (b) the Commonwealth, another State or a Territory, or
- (c) another country.

[2] Section 193A, definition of “deal with”

Insert after paragraph (b)—

- (b1) send or cause to be sent out of New South Wales, including transfer or cause to be transferred by electronic communication, or

[3] Section 193B, heading

Insert “—**proceeds of crime**” after “**laundering**”.

[4] Section 193BA

Insert after section 193B—

193BA Money laundering—proceeds of general crime

- (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—
 - (a) being reckless as to whether it is proceeds of general crime, and
 - (b) intending to conceal or disguise features of the property.Maximum penalty—Imprisonment for 15 years.
- (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—
 - (a) the nature of the money or other property,
 - (b) the value of the money or other property,
 - (c) the source of the money or other property,
 - (d) the location of the money or other property,
 - (e) any disposition of the money or other property,
 - (f) any movement of the money or other property,
 - (g) any rights in relation to the money or other property,
 - (h) the identity of a person who has rights in relation to the money or other property,
 - (i) the identity of a person who has effective control of the money or other property.

- (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.
Maximum penalty—Imprisonment for 10 years.
- (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] Section 193C Dealing with property suspected of being proceeds of crime

Insert before section 193C(1)—

- (1AA) A person is guilty of an offence if—
- (a) the person deals with property, and
 - (b) there are reasonable grounds to suspect the property is proceeds of crime, and
 - (c) at the time of the dealing, the value of the property is \$5 million or more.
- Maximum penalty—Imprisonment for 8 years.
- (1AB) A person is guilty of an offence against this subsection if the person commits an offence under subsection (1AA) in circumstances of aggravation.
Maximum penalty—Imprisonment for 10 years.

[6] Section 193C(1)(c)

Insert “but less than \$5 million” after “\$100,000 or more”.

[7] Section 193C(3)

Omit the subsection.

[8] Section 193C(5) and (6)

Insert after section 193C(4)—

- (5) For subsection (1AB), *circumstances of aggravation* mean circumstances in which—
- (a) the person used a position of professional trust or fiduciary duty to commit the offence, or
 - (b) the offence was committed in the context of a criminal group, serious crime organisation or serious criminal activity, or
 - (c) the offence was committed to fund or support terrorism, or
 - (d) the person provided finance to enable part or all of the dealings in property, or
 - (e) the offence was committed for the purposes of transferring the value of the property out of New South Wales.
- (6) In this section—
criminal group has the same meaning as in section 93S.
criminal organisation has the same meaning as in the *Crimes (Criminal Organisations Control) Act 2012*.
serious criminal activity has the same meaning as in the *Crimes (Criminal Organisations Control) Act 2012*.

[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—
 - (i) has stated that the dealing was engaged in on behalf of or at the request of another person, and
 - (ii) has not provided information enabling the other person to be identified and located.

(2) This section does not limit section 193C(1AA)(b), (1)(b) or (2)(b).

193CB Controlled operations and proceeds of crime or general crime

- (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.
- (2) The property is, for the purposes of this Part, taken to be—
 - (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
 - (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.
- (3) In this section—
controlled operation has the same meaning as in the *Law Enforcement (Controlled Operations) Act 1997*.

[10] Section 193E Alternative verdicts

Insert “or section 193BA(1) or (2)” after “section 193B (2) or (3)” in section 193E(1).

[11] Section 193E(2)

Insert “or section 193BA(1) or (3)” after “section 193B (3)”.

[12] Section 193E

Insert after section 193E(2)—

- (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.

[13] Section 193E(2A)

Insert “(1AA),” after “section 193C”.

[14] Section 193E(2AB)–(2AD)

Insert after section 193E(2A)—

- (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.
- (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

may find the accused not guilty of the offence charged but guilty of the other offence, and the accused is liable to punishment accordingly.

- (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.

[15] Section 193F Proof of other offences not required

Insert after section 193F(2)—

- (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—
- (a) an offence or a type of offence was committed in relation to the property,
 - (b) a particular person committed an offence or a type of offence in relation to the property.

[16] Schedule 11 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Crimes Amendment (Money Laundering) Act 2022

Application of amendments

An amendment made to this Act by the *Crimes Amendment (Money Laundering) Act 2022* applies 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 1 Indictable offences triable summarily

Insert “193BA(3),” after “193B (3),” in item Table 1, Part 2, item 3(c).