

Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016 No 16

[2016-16]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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New South Wales

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Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016 No 16



New South Wales

An Act to amend certain Acts to make further provision with respect to organised crime and public safety.

1 Name of Act

This Act is the *Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of **Confiscation of Proceeds of Crime Act 1989** **No 90**

[1] Section 3 Principal objects

Insert “or substitutable tainted property” after “offences” in section 3 (b).

[2] Section 4 Definitions

Omit paragraph (b) (iii) from the definition of **appropriate court** in section 4 (1).

Insert instead:

(iii) a substituted tainted property declaration against a person convicted of a serious offence, or

(iiia) an application for such a forfeiture order, pecuniary penalty order or substituted tainted property declaration, or

[3] Section 4 (1)

Insert in alphabetical order:

substitutable tainted property means any property or any interest in property that is capable of being the subject of a substituted tainted property declaration in relation to the serious offence concerned.

substituted tainted property declaration means a declaration under section 33.

[4] Section 13 Applications for confiscation orders

Insert “or substitutable tainted property” after “tainted property” wherever occurring in section 13 (1) (a), (2) (a) and (6) (a).

[5] Part 2, Division 5

Insert after Division 4:

Division 5 Substituted tainted property declarations

33 Substituted tainted property declaration

- (1) An appropriate officer may apply to an appropriate court for a substituted tainted property declaration against a person.
- (2) A ***substituted tainted property declaration*** is a declaration to the effect that property or an interest in property (or a combination of these) of a person who has been convicted of a serious offence is available for forfeiture instead of tainted property used in, or in connection with, the commission of that offence.
- (3) Any application for a substituted tainted property declaration may be made:
 - (a) in conjunction with an application for a restraining order or forfeiture order,
or
 - (b) at any other time.
- (4) If an appropriate officer applies for a substituted tainted property declaration in respect of a property or interest in property (or a combination of these) of a person:
 - (a) the appropriate officer must give written notice of the application to the person and to any other person the appropriate officer has reason to believe may have an interest in the property or properties concerned, and
 - (b) the person, and any other person who claims an interest in the property or properties concerned, may appear and adduce evidence at the hearing of the application, and
 - (c) the court may, at any time before the final determination of the application, direct the appropriate officer to give or publish notice of the application to a

specified person or class of persons, in the manner and within the time that the court considers appropriate.

- (5) The court must make a substituted tainted property declaration against a person if the court is satisfied that:
- (a) the person has been convicted of a serious offence, and
 - (b) particular property became tainted property because it was used in, or in connection with, the commission of the serious offence, and
 - (c) the tainted property is not available for forfeiture because:
 - (i) the person does not own, and does not have effective control of, the property, or
 - (ii) the property has been sold or otherwise disposed of or cannot be found for any other reason.
- (6) When making a substituted tainted property declaration against a person, the court is to:
- (a) assess the value of the tainted property and specify its value in the declaration, and
 - (b) specify property or an interest in property (or combination of these) of the person that the court considers to be available for forfeiture instead of the tainted property.
- (7) The value of the tainted property is to be assessed for the purposes of subsection (6) (a) by reference to its value at the time of the commission of the serious offence concerned.
- (8) Property or an interest in property (or a combination of these) specified for the purposes of subsection (6) (b):
- (a) must not have a value (or a total combined value) that is greater than the value of the tainted property, and
 - (b) if it is practicable to do so, must be in relation to property of the same kind as the tainted property.
- (9) If the court makes a substituted tainted property declaration, the property or interest in property (or combination of properties or interests) specified in the declaration as being available for forfeiture is to be treated as being the tainted property for the purposes of this Act (including in connection with the making of forfeiture orders) in relation to the serious offence concerned instead of the tainted property that is not available for forfeiture.

[6] Section 35 Definitions

Insert after paragraph (a) of the definition of ***tainted property*** in section 35 (1):

(a1) is, by reason of a declaration or other order of a court of another State, to be treated under the law of that State as being property to which an interstate forfeiture order can apply in substitution for property of the kind referred to in paragraph (a), or

[7] Section 42B Applications for freezing notices

Insert “or substitutable tainted property” after “tainted property” in section 42B (1) (b).

[8] Section 42C Issue of freezing notices

Insert “or substitutable tainted property” after “tainted property” in section 42C (2) (d) (i).

[9] Section 42L Confirmation of freezing notices

Insert “or substitutable tainted property” after “tainted property” in section 42L (3) (a).

[10] Section 43 Restraining orders

Insert “or substitutable tainted property” after “tainted property” in section 43 (2) (a) (ii).

[11] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act

[12] Schedule 1, clause 2 (3)

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

[13] Schedule 1

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

Part Provision consequent on enactment of [Criminal Legislation Amendment \(Organised Crime and Public Safety\) Act 2016](#)

Application of amendments

An amendment made by the [Criminal Legislation Amendment \(Organised Crime and Public Safety\) Act 2016](#) applies only in relation to a serious offence or serious drug

offence that is committed on or after the commencement of the amendment.

Schedule 2 Amendment of [Crimes Act 1900 No 40](#)

[1] Section 193C

Omit the section. Insert instead:

193C Dealing with property suspected of being proceeds of crime

(1) A person is guilty of an offence if:

- (a) the person deals with property, and
- (b) there are reasonable grounds to suspect that the property is proceeds of crime, and
- (c) at the time of the dealing, the value of the property is \$100,000 or more.

Maximum penalty: Imprisonment for 5 years.

(2) A person is guilty of an offence if:

- (a) the person deals with property, and
- (b) there are reasonable grounds to suspect that the property is proceeds of crime, and
- (c) at the time of the dealing, the value of the property is less than \$100,000.

Maximum penalty: Imprisonment for 3 years.

(3) Without limiting subsection (1) (b) or (2) (b), there are reasonable grounds to suspect that property is proceeds of crime in each of the following circumstances:

- (a) in the case of subsection (1) (a)—the dealing involves a number of transactions that are 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 that are 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 involves using one or more accounts held with authorised deposit-taking institutions in false names,

- (d) 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,
 - (e) 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,
 - (f) 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,
 - (g) 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,
 - (h) 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.
- (4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had no reasonable grounds for suspecting that the property was substantially derived or realised, directly or indirectly, from an act or omission constituting an offence against a law in force in the Commonwealth, a State or a Territory or another country.

[2] Section 193E Alternative verdicts

Insert after section 193E (2):

(2A) If on the trial of a person for an offence under section 193B, the jury is not

satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of an offence under section 193C (1) or (2), it 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] Section 193FA

Insert after section 193F:

193FA Combining several contraventions in a single charge

- (1) A single charge of an offence against a provision of this Part may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Part.
- (2) If a single charge is about 2 or more such instances and the value of the property dealt with is an element of the offence in question, that value is taken to be the sum of the values of the property dealt with in each of those instances.

[4] Section 193G Transitional provision

Omit “This Part applies” and “commencement of this Part”.

Insert instead “This Part (as amended by the *Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016*) applies” and “commencement of the amendments made to this Part by that Act”, respectively.

Schedule 3 (Repealed)

Schedule 4 Amendment of [Criminal Procedure Act 1986 No 209](#)

[1] Schedule 1 Indictable offences triable summarily

Insert “, 193C” after “192” in clause 3 (c) of Table 1.

[2] Schedule 1, Table 1

Insert after clause 21A:

21B [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)

An offence under section 87ZA of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[3] Schedule 1, Table 2

Insert “193C,” after “192,” in clause 3 (c).

Schedule 5 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Part 6B

Insert after Part 6A:

Part 6B Public safety orders

Division 1 Interpretation

87P Definitions

In this Part:

long duration public safety order—see section 87V.

public event means a trade, cultural, social or sporting event that is open to the public (including when entry into the event requires the payment of a fee or other charge).

public safety order—see section 87Q.

senior police officer means a police officer of the rank of Inspector or above (including the Commissioner).

Note—

By virtue of the [Interpretation Act 1987](#) (section 48 (2)) a person acting in an office referred to above may exercise the functions of a senior police officer under this Part.

87Q What is a public safety order

A **public safety order** is an order made by a senior police officer that prohibits a specified person (or persons belonging to a specified class of persons) from:

- (a) attending a specified public event (including entering, or being present at, premises being used in connection with the public event), or
- (b) entering, or being present at, specified premises or other specified area at any time during a specified period.

Division 2 Making, variation and revocation of public safety orders

87R Power of senior police officer to make public safety order

- (1) A senior police officer may make a public safety order only if satisfied that:

- (a) the presence of the person (or class of persons) concerned at the public event or premises or other area concerned poses a serious risk to public safety or security, and
- (b) the making of the order is reasonably necessary in the circumstances.

Note—

Section 87S includes provisions about the content of a public safety order, including in relation to its duration.

Section 87T contains provisions concerning the service and notification of variations to public safety orders. In particular, section 87T (4) provides that a statement of the reasons for making or varying a public safety order must not contain information that would result in the disclosure of a criminal intelligence report or other criminal information held in relation to a person.

- (2) In determining whether the making of a public safety order is reasonably necessary in the circumstances, the senior police officer must take into account the following matters and may take into account any other matter that the officer considers relevant:
 - (a) whether the person or persons to whom the order will apply previously behaved in a way that posed a serious risk to public safety or security or have a history of engaging in serious crime related activity within the meaning of the *Criminal Assets Recovery Act 1990*,
 - (b) whether the person or persons to whom the order will apply:
 - (i) are, or have been, members of a declared organisation (within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*), or
 - (ii) are, or have been, subject to control orders under that Act, or
 - (iii) associate, or have associated, with members of a declared organisation or persons subject to control orders within the meaning of that Act,
 - (c) if advocacy, protest, dissent or industrial action is likely to be the primary purpose for the person or persons to whom the order will apply being present at the relevant public event or premises or other area—the public interest in maintaining freedom to participate in such activities,
 - (d) whether the person or persons to whom the order will apply will be prevented from being present at any of the following:
 - (i) a place of work at which the person or persons are regularly employed,
 - (ii) an educational institution attended by the person or persons,
 - (iii) a place of worship attended by the person or persons,

- (iv) a place at which the person or persons receive a health service or welfare service,
 - (v) a place at which the person or persons are provided with legal services by any Australian legal practitioners or by any organisations employing or otherwise using one or more Australian legal practitioners to provide such services,
 - (e) whether the degree of risk involved justifies the imposition of the prohibitions to be specified in the order (having regard, in particular, to any legitimate reason the person or persons to whom the order will apply may have for being present at the relevant event or premises or other area),
 - (f) the extent to which the making of the order will mitigate any risk to public safety or security,
 - (g) the extent to which the order is necessary having regard to other measures reasonably available to mitigate the risk.
- (3) However, a senior police officer must not make a public safety order that would prohibit a person or class of persons from being present at any public event or premises or other area if:
- (a) the officer believes that non-violent advocacy, protest or dissent is likely to be the primary purpose for their presence at the public event or premises or other area, or
 - (b) the officer believes that industrial action is likely to be the primary purpose for their presence at the public event or premises or other area, or
 - (c) the order would prevent them from entering their principal places of residence.
- (4) A senior police officer must not make a public safety order if the period during which the order will be in force would, when added to the period of any previous orders made in connection with the same person or persons and public event or premises or other area, result in the combined period exceeding the maximum period of duration for the kind of order concerned referred to in section 87S (1).
- (5) For the purposes of this section, the presence of a person or persons at a public event or premises or other area poses a **serious risk to public safety or security** if there is a serious risk that the presence of the person or persons might result in:
- (a) the death of, or serious physical harm to, a person, or
 - (b) serious damage to property.

(6) In this section:

damage, in relation to property, includes the following:

- (a) destruction of the property,
- (b) an alteration to the property that depreciates its value,
- (c) rendering the property useless or inoperative,
- (d) in relation to an animal—injuring, wounding or killing the animal.

87S Content and duration of public safety order

(1) A public safety order must specify:

- (a) the public event or premises or other area to which it applies, and
- (b) the person (or class of persons) to which it applies, and
- (c) that a contravention of the order may constitute an offence that carries a maximum penalty of imprisonment for 5 years, and
- (d) in the case of an order that applies to premises or another area other than in connection with a public event—the period during which the order will be in force (being a period not exceeding 72 hours), and
- (e) in the case of an order that applies to a public event:
 - (i) the location or locations in which the event is being held for the purposes of the order, and
 - (ii) if the public event is held over consecutive days—when the event is taken to start and finish for the purposes of the order, and
 - (iii) if the public event is held over non-consecutive days—when the event is taken to start and finish for the purposes of the order for each of the days it is held (being a combined period that does not exceed 72 hours in total).

Note—

Division 3 enables a person to whom a public safety order applies to appeal to the Supreme Court against the order (or a variation of the order) if the order is (or is to be) in force for a period exceeding 72 hours.

- (2) Subject to subsection (3), a public safety order remains in force only for the period or periods specified in the order in accordance with this section.
- (3) A public safety order that applies to a public event that is cancelled ceases to be in force on that cancellation.

87T Service and notification of public safety order or variation of order

- (1) **Ordinary service and notification requirements** A senior police officer who makes or varies a public safety order must ensure that both of the following are served by means of personal service on each person to whom the order applies:
 - (a) a copy of the order as so made or varied,
 - (b) a notification in accordance with this section.
- (2) If the senior police officer considers that a person to whom the order applies is a person under the age of 18 years or has impaired intellectual functioning, the officer must ensure that the order and notification are also served by means of personal service on a parent or guardian (if any) of the person if it is reasonably practicable to do so. However, a failure to do so does not prevent the order or variation from becoming binding when it is served on the person.
- (3) The notification accompanying the order:
 - (a) must be in writing, and
 - (b) must specify the date on which the order or variation was made, and
 - (c) must:
 - (i) subject to subsection (4), include a statement of the reasons for making or varying the public safety order, and
 - (ii) include an explanation of the right of appeal to the Supreme Court against the decision under Division 3.
- (4) Despite any other Act or law, a statement of the reasons for making or varying a public safety order must not contain information that would result in the disclosure of a criminal intelligence report or other criminal information held in relation to a person.
- (5) A public safety order (as made or varied) is not binding on a person to whom the order applies unless the order and notification have been served on that person in accordance with subsection (1).
- (6) Once a public safety order and notification have been served on a person in accordance with subsection (1), the order is binding on the person, regardless of whether any other person or persons to whom the order applies have been so served.
- (7) **Urgent orders** Despite subsections (1)–(6), if a police officer is satisfied that a public safety order (as made or varied) should become binding on a person as a matter of urgency:

- (a) the officer may communicate the contents of the order, or the order as so varied, verbally to any person to whom the order applies and advise such person of the place at which the person may obtain a written copy of the order and a notification in accordance with subsection (8), and
 - (b) on the information described in paragraph (a) being communicated to the person, the order, or the order as so varied, is binding on the person.
- (8) The police officer who verbally communicates the order to the person must ensure that the following are both available for collection by the person at a police station that is reasonably accessible by the person within 12 hours after the communication:
- (a) a copy of the order,
 - (b) the notification that would have been required to accompany the order if the order had been served on the person in accordance with subsection (1).

87U Variation and revocation of public safety order

- (1) Subject to subsection (3), a public safety order may be varied or revoked by a senior police officer before the order ceases to be in force (whether or not he or she is the same officer who made the original order).
- (2) Without limiting subsection (1), the Commissioner must revoke a public safety order if the Commissioner becomes aware that the order was erroneously made or that the grounds for its making no longer exist.
- (3) A public safety order that is made or varied by the Commissioner may be subsequently varied or revoked only by the Commissioner.
- (4) A variation of a public safety order must comply with the requirements of this Part concerning the appropriate content, duration and grounds for making a public safety order.

Note—

See also section 87T concerning the service and notification of variations to public safety orders.

- (5) The revocation of a public safety order takes effect when the person to whom the order applies is served by means of personal service with a written notice of the revocation.
- (6) If a public safety order applies to more than one person and a variation or revocation is served on those persons at different times, the order continues in force in relation to a person to whom the order applies until:
 - (a) in the case of a variation—the varied order is served on, or otherwise brought to the notice of, the person in accordance with section 87T, or

- (b) in the case of a revocation—the written notice of revocation is served on the person.

Division 3 Appeals against long duration public safety orders

87V Application of Division

This Division applies only to a public safety order that is (or is to be) in force for a period exceeding 72 hours (a ***long duration public safety order***).

87W Appeal to Supreme Court against long duration public safety orders

- (1) A person to whom a long duration public safety order applies may appeal to the Supreme Court against:
 - (a) the decision to make the order, or
 - (b) a decision to vary the order (unless the decision operates to reduce the duration of the order to 72 hours or less).
- (2) An appeal under this Division must be made before the long duration public safety order ceases to be in force.
- (3) The making of an appeal under this Division does not affect the operation of the long duration public safety order under appeal.

87X Criminal intelligence reports or other criminal information

- (1) The Commissioner may make an application to the Supreme Court in an appeal under this Division for the Court not to disclose the existence or content of any criminal intelligence report or other criminal information used in connection with the making or variation of the long duration public safety order under appeal.
- (2) The Supreme Court may grant the application if the Court:
 - (a) is satisfied that the information to which the application relates is a criminal intelligence report or other criminal information, and
 - (b) considers that it is in the interests of justice to grant the application.
- (3) In determining whether it is in the interests of justice to grant the application, the Supreme Court is to take into account each of the following matters concerning the effect of disclosure of the criminal intelligence report or other criminal information to which the application relates:
 - (a) whether disclosure will have a prejudicial effect on the prevention, investigation or prosecution of an offence,

- (b) whether disclosure will result in the existence or identity of a confidential source of information relevant for law enforcement purposes being revealed or made discoverable,
 - (c) whether disclosure will result in confidential investigative methods or techniques used by police or security agencies being revealed or made discoverable,
 - (d) whether disclosure will endanger a person's life or physical safety.
- (4) If the Supreme Court grants the application, the Court:
- (a) is to ensure that the Court does not, in the reasons for its decision on the appeal or otherwise, disclose the existence or content of the criminal intelligence report or other criminal information to which the application relates, and
 - (b) in order to prevent the disclosure of the criminal intelligence report or other criminal information, is to receive evidence and hear argument in the appeal in the absence of the public, the appellant, the appellant's representative and any other party, unless the Commissioner approves otherwise.

Note—

Section 87T (4) provides that a statement of the reasons of a senior police officer for making or varying a public safety order must not contain information that would result in the disclosure of a criminal intelligence report or other criminal information held in relation to a person.

- (5) If the Supreme Court refuses the application, the Commissioner is entitled to withdraw the tender of the information to which the application relates as evidence in the appeal.
- (6) Information that is withdrawn by the Commissioner must not be:
- (a) disclosed to any person, or
 - (b) taken into consideration by the Supreme Court in determining an appeal under this Division.

87Y Determination of appeal on the merits

- (1) On an appeal under this Division, the Supreme Court is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
- (a) any relevant factual material,
 - (b) any applicable written or unwritten law.
- (2) In determining the appeal, the Supreme Court may decide:

- (a) to affirm the decision under appeal, or
- (b) to vary the decision under appeal, or
- (c) to set aside the decision under appeal, or
- (d) to set aside the decision under appeal and make a decision in substitution for the decision that is set aside.

87Z Rules of court

Rules of court may be made under the *Civil Procedure Act 2005* and the *Supreme Court Act 1970* for or with respect to the practice and procedure to be followed in respect of an appeal under this Division and any matters incidental to, or relating to, such practice and procedure.

Division 4 Miscellaneous

87ZA Contravention of public safety order

A person to whom a public safety order applies must not contravene the order.

Maximum penalty: Imprisonment for 5 years.

87ZB Power to search premises and other areas and vehicles in connection with public safety order

- (1) A police officer may, without a warrant, enter and search any of the following premises or other areas if the police officer suspects on reasonable grounds that a person to whom a public safety order applies is within the premises or area:
 - (a) premises or other areas specified in the public safety order,
 - (b) premises or other areas in which a public event specified in the public safety order is being held.
- (2) A police officer may, without a warrant, stop and search a vehicle, and anything in or on a vehicle, if the police officer suspects on reasonable grounds that:
 - (a) a person within the vehicle is a person to whom a public safety order applies, and
 - (b) the vehicle is approaching, is in, or has recently left, any public event or premises or other area specified in the public safety order.
- (3) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

87ZC Regulations

- (1) The regulations may make provision for or with respect to the following:
- (a) forms for public safety orders or notices under this Part,
 - (b) the means for effecting personal service of public safety orders and other documents for the purposes of this Part,
 - (c) safeguards for vulnerable persons in connection with the making, service, variation or revocation of public safety orders that apply to them.
- (2) In this section:

vulnerable person means a person who falls into any one or more of the following categories:

- (a) persons who are under the age of 18 years,
- (b) persons who have impaired intellectual functioning,
- (c) persons who have impaired physical functioning,
- (d) persons who are Aboriginal persons or Torres Strait Islanders,
- (e) persons who are of non-English speaking background.

[2] Section 234 Proceedings for offences

Insert “(except section 87ZA)” after “this Act”.