



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.