

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) BILL 1987

REPLACEMENT
EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen
M.P. Deputy Prime Minister and Attorney-General)

This memorandum replaces the Explanatory Memorandum presented to the House of Representatives on 30 April 1987.

PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) BILL 1987

Outline

The purpose of this Act is to make amendments to certain Acts as a consequence of the Proceeds of Crime Act 1987 and to increase penalties for certain offences so as to ensure consistency with the penalties for offences created in the Proceeds of Crime Act 1987.

Financial Impact

There is no financial impact from this Bill as far as the Commonwealth is concerned. The financial impact of the Proceeds of Crime Act 1987 is addressed in the Explanatory Memorandum for that Act.

NOTES ON CLAUSES

Clauses 1 and 2

The first two clauses of the Bill provide for the short title and the commencement of the legislation. Clause 2 provides that the legislation will come into force on the day the Proceeds of Crime Act 1987 comes into force.

Clause 3

This clause is the first clause in Part I of the Bill which deals with amendments to the Bankruptcy Act 1966 and is definitional.

Clause 4

This clause inserts additional definitions in section 5 of the Bankruptcy Act 1966.

Clause 5

This clause inserts a new sub-section 12(1C) into the Bankruptcy Act 1966 which will permit the Inspector-General to exercise his powers of inquiry and investigation at the request of the Director of Public Prosecutions in relation to an application, or proposed application, for a confiscation order; and at the request of a person who is entitled to apply for orders under a corresponding law in relation to an application, or proposed application, for an interstate confiscation order.

Clause 6

This clause amends sub-section 58(5A) of the Bankruptcy Act 1966 so as to enable pecuniary penalty orders, and interstate pecuniary penalty orders, to be enforced against a bankrupt, or against any property of a bankrupt that is not vested in the trustee of the bankrupt.

Clause 7

This clause inserts a new sub-section 60(4A) into the Bankruptcy Act 1966 and provides that a Court exercising jurisdiction in bankruptcy does not have power to stay proceedings under the Proceeds of Crime Act 1987 or a corresponding law.

Clause 8

This clause inserts a new sub-section 82(3A) into the Bankruptcy Act 1966 which provides that an amount payable under a pecuniary penalty order, or an interstate pecuniary penalty order, is a debt provable in bankruptcy and also makes consequential amendments to sub-section 82(3) of the Bankruptcy Act 1966.

Clause 9

This clause amends section 148 of the Bankruptcy Act 1966 so as to enable a Court having jurisdiction in bankruptcy to order that any surplus not be paid to a bankrupt if the Director of Public Prosecutions, or a person who is entitled to apply for an interstate confiscation order under a corresponding law, applies for such an order and the court is satisfied that proceedings are pending under the Proceeds of Crime Act 1987, or a corresponding law, and the property of the bankrupt may be the subject of a forfeiture order or an interstate forfeiture order, or be required to satisfy a pecuniary penalty order or an interstate pecuniary penalty order.

Clause 10

This clause amends sub-section 153(2) of the Bankruptcy Act 1966 and provides that the discharge of a bankrupt from a bankruptcy does not release the bankrupt from any liability under a pecuniary penalty order under the Proceeds of Crime Act 1987 or an interstate pecuniary penalty order under a corresponding law.

Clause 11

This clause is the first clause in Part II of the Bill, which deals with amendments to the Cheques and Payment Orders Act 1986 and is definitional.

Clause 12

This clause amends section 68 of the Cheques and Payment Orders Act 1986 and provides that where a bank obtains possession of a paid cheque, or a copy of a paid cheque, drawn on the bank it shall retain the cheque, or a copy of the cheque, for 7 years after the date of the cheque.

Similarly, where a cheque has been presented for payment otherwise than by exhibiting the cheque to the drawee bank, the collecting bank, or another financial institution on whose behalf the collecting bank duly presented the cheque, is required to retain the cheque, or a copy of the cheque, on behalf of the drawee bank for 7 years after the date of the cheque. An exception to the 7 year retention period is made in respect of cheques drawn for sums less than \$200 (or such other amount as is prescribed) and cheques drawn by public authorities as defined.

A financial institution which contravenes the retention provisions in this clause is liable to be penalised by a fine not exceeding \$10,000.

Nothing in the clause is intended to alter existing obligations and property rights in respect of paid cheques. Rights of access to cheques by persons, such as drawers, true owners and auditors which currently exist apart from the legislation are preserved and any obligation that a financial institution may have (eg at common law) to retain the original of a cheque on behalf of any of these parties is not affected. A person with a right to possession of a cheque as against the drawee bank may require that bank to make a request under sub-clause (4) to a relevant financial institution (usually the 'collecting bank') which is retaining the cheque for delivery up of the cheque.

Clause 13

This clause amends section 112 of the Cheques and Payment Orders Act 1986 which deals with paid payment orders. The clause creates obligations, and an offence, with respect to paid payment orders in similar terms to the obligations, and offence, created in clause 12 with respect to paid cheques.

Clause 14

This clause is the first clause in Part III of Bill which deals with amendments to the Crimes Act 1914 and is definitional.

Clause 15

This clause amends section 18A of the Crimes Act 1914 so as to remove pecuniary penalties imposed under the Proceeds of Crime Act 1987 from the operation of the section as the enforcement of pecuniary penalties is specifically dealt with under that Act.

Clause 16

This clause amends section 36 of the Crimes Act 1914 by increasing the maximum penalty for the offence of fabricating evidence from imprisonment for 2 years to imprisonment for 5 years.

Clause 17

This clause amends section 39 of the Crimes Act 1914 by increasing the maximum penalty for the offence of destroying evidence from imprisonment for 2 years to imprisonment for 5 years.

Clause 18

This clause amends section 43 of the Crimes Act 1914 by increasing the maximum penalty for the offence of attempting to pervert justice from imprisonment for 2 years to imprisonment for 5 years.