

CRIMINAL PROCEEDS CONFISCATION BILL 2002

AMENDMENTS AGREED TO IN COMMITTEE

1 Clause 2—

At page 20, lines 5 to 9—

omit, insert—

‘2 Commencement

‘(1) This Act, other than the following provisions, commences on 1 January 2003—

- (a) chapter 12, part 3A;
- (b) section 283 and schedule 3, items 49 and 50;
- (c) section 328 and schedule 4, to the extent the schedule amends the *Trustee Companies Act 1968*.

‘(2) Schedule 3, items 49 and 50 are taken to have commenced on 1 January 2002.

‘(3) The following provisions commence on assent—

- (a) chapter 12, part 3A;
- (b) section 283;
- (c) section 328 and schedule 4, to the extent the schedule amends the *Trustee Companies Act 1968*.’.

2 Clause 30—

At page 34, after line 7—

insert—

- ‘(e) a lawyer representing anyone mentioned in paragraphs (a) to (d).’.

3 Clause 121—

At page 81, after line 4—

insert—

‘(e) a lawyer representing anyone mentioned in paragraphs (a) to (d).’.

4 Clause 296—

At page 168, lines 19 to 21—

omit, insert—

‘(2) The application—

(a) may be made without notice to any party; and

(b) must—

(i) be sworn and state the grounds on which the order is sought; and

(ii) include information required under a regulation about any’.

5 Clause 300—

(1) At page 177, lines 24 and 25, ‘serious crime derived’—

omit, insert—

‘illegally acquired’.

(2) At page 178, lines 4 to 8—

omit, insert—

‘(a) a proceeding for a forfeiture order or a restraining order under the Confiscation Act; or’.

6 After clause 300—

At page 179, after line 5—

insert—

‘PART 3A—AMENDMENT OF CRIMINAL CODE

‘300A Code amended in pt 3A

‘This part amends the Criminal Code.

‘300B Amendment of s 1 (Definitions)

‘Section 1—

insert—

‘**“DPP presenter”**, for chapter 60,¹ see section 559A.’.

‘300C Insertion of new s 559A

‘Chapter 60, before section 560—

insert—

‘559A Definition for ch 60

‘In this chapter—

“DPP presenter” means a person, other than a Crown prosecutor, appointed or employed in, or engaged by, the Office of the Director of Public Prosecutions who is authorised in writing by the director of public prosecutions to present an indictment for the director.’.

‘300D Amendment of s 560 (Presenting indictments)

‘(1) Section 560(2), after ‘Crown Law Officer’—

insert—

‘, a Crown prosecutor’.

‘(2) Section 560(3), ‘the director of public prosecutions’—

omit, insert—

‘a Crown Law Officer’.

‘(3) Section 560(4), ‘director of public prosecutions’—

omit, insert—

‘Crown Law Officer’.

1 Chapter 60 (Indictments)

(4) Section 560—

insert—

(5) Also, if an indictment is signed by a person authorised to sign the indictment under this section, a DPP presenter may present the indictment to the court stated in the indictment.’.

‘300E Amendment of s 561 (Ex officio informations)

(1) Section 561, heading, ‘informations’—

omit, insert—

‘indictments’.

(2) Section 561(1), after ‘may’—

insert—

‘sign and’.

(3) Section 561(2), from ‘An’ to ‘jurisdiction may’—

omit, insert—

‘A Crown prosecutor or a person appointed by the Governor in Council to sign and present indictments in any court of criminal jurisdiction may sign and’.

(4) Section 561—

insert—

(3) Also, if an indictment is signed by a person authorised to sign the indictment under this section, a DPP presenter may present the indictment to the court stated in the indictment.’.

‘300F Amendment of s 562 (Arrest of person charged in ex officio information)

‘Section 562, heading, ‘information’—

omit, insert—

‘indictment’.

‘300G Amendment of s 563 (Nolle prosequi)

‘Section 563(2), ‘An officer’—

omit, insert—

‘A Crown prosecutor or a person’.

‘300H Amendment of s 695 (Practice to be applied on ex officio information)

‘Section 695, heading, ‘information’—

omit, insert—

‘indictment’.

‘300I Amendment of pt 9, heading (Transitional provisions)

‘Part 9, heading, after ‘TRANSITIONAL’—

insert—

‘AND VALIDATION’.

‘300J Insertion of new pt 9, ch 77

‘Part 9—

insert—

**‘CHAPTER 77—VALIDATION PROVISION FOR
CRIMINAL PROCEEDS CONFISCATION ACT 2002****‘714 Validation provision for Criminal Proceeds Confiscation
Act 2002—presentation of indictment**

‘(1) This section applies to an indictment presented before the commencement of this section by a person, appointed or employed in, or engaged by, the Office of the Director of Public Prosecutions, who was not authorised under an Act to present the indictment.

‘(2) The indictment is taken to have been presented by the director of public prosecutions.

‘(3) Any proceedings taken, or other thing done, in relation to the indictment is taken to be as valid as if the proceedings were taken, or other thing done, in relation to an indictment presented by the director of public prosecutions.’.

7 After clause 322—

At page 186, after line 9—

insert—

‘322A Amendment of s 116 (Monitoring order application)

‘Section 116(2)—

omit, insert—

‘(2) The application—

- (a) may be made without notice to any party; and
- (b) must—
 - (i) be sworn and state the grounds on which the order is sought; and
 - (ii) include information required under the responsibilities code about any monitoring orders issued within the previous year in relation to an account held with the financial institution by the named person.’.

8 Clause 327—

At page 191, line 14, after ‘proceeding’,—

insert—

‘ “property-tracking document”.’.

9 Schedule 4—

At page 220, after line 5—

insert—

‘TRUSTEE COMPANIES ACT 1968

- 1 Schedule 2, part 2, entry for ANZ Executors & Trustee Company Limited, paragraph (b), from ‘and no shares’ to ‘minor’—**

omit.

- 2 Schedule 2, part 2, entry for ANZ Executors & Trustee Company Limited, paragraphs (c) and (d)—**

omit.

- 3 Schedule 2, part 2, entry for ANZ Executors & Trustee Company Limited, paragraph (e)—**

renumber as paragraph (c).

- 4 Schedule 2, part 2, entry for Permanent Trustee Company Limited, paragraph (a)—**

omit.

- 5 Schedule 2, part 2, entry for Permanent Trustee Company Limited, paragraph (b), ‘(b)’—**

omit.

- 6 Schedule 2, part 2, entry for Permanent Trustee Company Limited, paragraph (b), ‘\$5 000 000’—**

omit, insert—

‘\$2 000 000’.

- 7 Schedule 2, part 2, entry for Perpetual Trustees Australia Limited, paragraph (b), from ‘and no shares’ to ‘minor’—**

omit.

- 8 Schedule 2, part 2, entry for Perpetual Trustees Australia Limited, paragraphs (c) and (d)—**

omit.

- 9 Schedule 2, part 2, entry for Perpetual Trustees Queensland Limited, paragraph (b), from ‘and no shares’ to ‘minor’—**

omit.

- 10 Schedule 2, part 2, entry for Perpetual Trustees Queensland Limited, paragraph (c)—**

omit.

- 11 Schedule 2, part 2, entry for Trust Company of Australia Limited, paragraph (a)—**

omit, insert—

‘(a) A member must not be the beneficial holder of more than 15% of the capital of the company from time to time on issue.’.

- 12 Schedule 2, part 2, entry for Trust Company of Australia Limited, paragraphs (b) to (d)—**

omit.

- 13 Schedule 2, part 2, entry for Trust Company of Australia Limited, paragraph (e)—**

renumber as paragraph (b).’.

- 10 After schedule 4—**

After page 220—

insert—

‘SCHEDULE 4A**‘DE FACTO PARTNER**

schedule 5, definition “de facto partner”

‘1 Meaning of “de facto partner”

‘(1) In this Act, a reference to a “**de facto partner**” is a reference to either 1 of 2 persons who are living together as a couple on a genuine domestic basis but who are not married to each other or related by family.

‘(2) In deciding whether 2 persons are living together as a couple on a genuine domestic basis, any of their circumstances may be taken into account, including, for example, any of the following circumstances—

- (a) the nature and extent of their common residence;
- (b) the length of their relationship;
- (c) whether or not a sexual relationship exists or existed;
- (d) the degree of financial dependence or interdependence, and any arrangement for financial support;
- (e) their ownership, use and acquisition of property;
- (f) the degree of mutual commitment to a shared life, including the care and support of each other;
- (g) the care and support of children;
- (h) the performance of household tasks;
- (i) the reputation and public aspects of their relationship.

‘(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether 2 persons are living together as a couple on a genuine domestic basis.

‘(4) Two persons are not to be regarded as living together as a couple on a genuine domestic basis only because they have a common residence.

‘(5) For subsection (1)—

- (a) the gender of the persons is not relevant; and

- (b) a person is related by family to another person if the person and the other person would be within a prohibited relationship within the meaning of the *Marriage Act 1961 (Cwlth)*, section 23B, if they were parties to a marriage to which that section applies.

‘(6) This schedule and the definition “de facto partner” in the dictionary in schedule 5 expire on the commencement of the *Discrimination Law Amendment Act 2002*, section 4.’.

11 Schedule 5—

- (1) At page 223, lines 19 to 21—

omit, insert—

‘**“de facto partner”** see schedule 4A.²’.

- (2) At page 228, lines 2 to 5—

omit.

- (3) At page 229, line 15, from ‘includes’—

omit, insert—

‘includes—

- (a) a former spouse; and
 (b) a person who is or has been a de facto partner.’.

2 Schedule 4A (Meaning of “de facto partner”)