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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CRIMES (TRAFFIC IN NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES) AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon Michael Duffy M.P.
Attorney-General)



**CRIMES (TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES) AMENDMENT BILL 1992**

OUTLINE

The purpose of the Bill is to help Australia meet certain obligations under the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances by filling in remaining gaps in State/Territory legislation. This will allow Australia to ratify the Convention.

The "gaps" which this Bill fills are provisions which make it an offence to launder property or money derived from serious drug offences. Various offences called "serious State drug offences" involving "dealing in drugs" are defined in the Bill. These are serious offences which are identified by the Convention and which also are State and Territory offences, punishable by at least 12 months imprisonment. The Bill then makes it a Commonwealth offence to launder money or other property known to be derived from a "serious State drug offence".

Passage of this legislation will allow Australia to proceed to ratification of the Convention without delay. It is intended to be only an interim measure until all States and Territories have their own conforming legislation. It will apply only to those States and Territories which have not yet enacted provisions criminalising money laundering as required by the Convention.

FINANCIAL IMPACT STATEMENT

The proposal put forward in this Bill should have no impact on Government expenditure or revenue in the foreseeable future.

ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum:

- Bill: Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Amendment Bill 1992
- Act: Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990
- Convention: 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

NOTES ON CLAUSES

Clause 1 - Short Title etc

1. This clause is a formal provision

Sub-clause (1) gives the short title of the amending Bill.

Sub-clause (2) identifies the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* as the Principal Act.

Clause 2 - Commencement

2. This clause provides for the amendments to come into force upon the commencement of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*, which itself is to commence on a day to be fixed by proclamation in such a way as to coincide with Australia becoming a party to the Convention.

Clause 3 - Interpretation

3. This clause amends section 3 of the Act, the interpretation section, by providing definitions of significant additional expressions used in the Bill. It ensures that consistency of meaning is maintained between the Bill and the Convention.

4. "interest" is defined, in relation to property, to mean various rights relating to property.
5. "property" is defined to mean all forms of assets, whether in Australia or elsewhere.

6. "serious State drug offence" is defined to mean conduct which is both identified as a drug offence by the Convention, and is also a serious offence, punishable by at least 12 months imprisonment under a law of a State or Territory.

Clause 4 - Meaning of "dealing in drugs"

7. This clause adds to and amends Section 6 of the Act which provides shorthand descriptions of a variety of forms of conduct which are designated as "dealing in drugs". The expression "dealing in drugs" is neutral, in that this clause does not create offences.

8. The conduct identified as "dealing in drugs" reflects activities set out in Article 3(1) of the Convention which parties are required to make criminal offences. Most of these activities are already subject to criminal sanction under existing State and Territory laws. This Bill seeks to create new offences of money laundering, within the terms of Convention Article 3.1 paragraphs(b)(i), (b)(ii) and (c)(i), with reference to "serious State drug offences". The adoption of the expressions "dealing in drugs" and "serious State drug offences" is a device to simplify reference to these activities in later provisions.

9. Sub-clause (a) adds to Section 6(1) paragraph (fa) the activities of manufacturing, transporting or distributing equipment, materials or substances knowing that they are to be used for purposes of cultivating, manufacturing or producing narcotic drugs or psychotropic substances.

10. Sub-clause (a) further adds to subsection 6(1) in paragraph (fb) the activities of organising, managing or financing conduct such as cultivation, manufacture, sale or supply of narcotic drugs or psychotropic substances.

11. Sub-clause (b) amends subsection 6(2) so that it designates as "dealing in drugs" conduct which is less directly related to the drugs or substances themselves than the "dealing in drugs" identified in subsection 6(1). This includes conduct such as being a party to a dealing in drugs under subsection 6(1), aiding and abetting conduct which is a dealing in drugs, and being directly or indirectly concerned in conduct that is under subsection (1) a dealing in drugs.

Clause 4A - Proof of knowledge, intent or purpose

12. This clause adopts the phrasing of the Convention Article 3.2 to provide that objective factual circumstances can be used to infer knowledge, intent or purpose when it constitutes an element of an offence against the Bill.

Clause 5 - New sections inserted after section 15

13. This clause inserts three new sections into Part 2 - "Offences".

Proposed section 15A - Knowingly converting etc property derived from a serious State drug offence

14. This provision is based on Article 3.1(b)(i) of the Convention, and follows its terminology closely.

15. The proposed section makes it an offence punishable by 20 years imprisonment to convert or transfer property, other than in a prescribed State or prescribed Territory, knowing that it was derived from a serious State drug offence as defined in Section 6, in order to conceal its illicit origin, or to assist another person involved in the commission of the offence to evade the legal consequences of that involvement.

Proposed section 15B - Knowingly concealing etc property derived from a serious State drug offence

16. The proposed section is based on Article 3.1(b)(ii) of the Convention, and follows its terminology closely.

17. The proposed section makes it an offence punishable by 20 years imprisonment, in a State or Territory other than a prescribed State or Territory, to conceal or disguise the identity of owners of property, rights with respect to property or the nature, source, location, or any movement of property, knowing that it was derived from a serious State drug offence as defined in section 6.

Proposed section 15C - Knowingly acquiring etc property derived from a serious State drug offence

18. The proposed section is based on Article 3.1(c)(i) of the Convention and follows its terminology closely.

19. The proposed section makes it an offence punishable by 20 years imprisonment, to acquire, have or use any property, in a State or Territory other than a prescribed State or Territory, knowing when it was received that it was derived from a serious State drug offence as defined in section 6.

Clause 6 - New Section added

20. This clause adds a new section to the Act.

Proposed section 22 - Regulations

21. This proposed section in subsection (1) empowers the Governor-General to make regulations which are not inconsistent with the legislation covering all matters which are required or permitted by the legislation to be prescribed to give effect to the legislation.

22. Proposed subsection 22(2) provides for regulations to be made for the purposes of proposed sections 15A, 15B, and 15C. The regulations are to prescribe a State or Territory only if the Governor-General is satisfied that conduct that, immediately before making the regulations, is an offence against sections 15A, 15B, and 15C, is also an offence against the law of that State or Territory.

23. This proposed subsection will allow regulations to be made to limit the operation of sections 15A, 15B, and 15C to those States and Territories which are not prescribed, being those in which conduct which is an offence against sections 15A, 15B, and 15C is not also an offence against the law of that State or Territory.

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