

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

*PROCEEDS OF CRIME AMENDMENT BILL 1996*

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General and Minister for Justice  
the Honourable Daryl Williams AM QC MP)



# **PROCEEDS OF CRIME AMENDMENT BILL**

## **GENERAL OUTLINE**

1. The Bill achieves major savings by providing for the annual transfer of the nett balance of the Confiscated Assets Trust Fund to the Consolidated Revenue Fund.
2. The Bill also enables the Commonwealth to receive money from a foreign country, which is paid in recognition of assistance provided by the Commonwealth's law enforcement agencies to foreign countries in recovering the proceeds of crime.
3. The Bill also extends the equitable sharing program to the international arena. It authorises the Commonwealth to share the proceeds of unlawful activity recovered by the Commonwealth with a foreign country in circumstances where that country's law enforcement agencies have made a significant contribution to the Commonwealth's recovery of proceeds or the investigation of unlawful activity.

## **FINANCIAL IMPACT**

4. Savings of \$7.246 M in 1996/97, and \$1.875M in each of the years thereafter to the year 2000, will be achieved by transferring the nett balance of the Confiscated Assets Trust Fund to Consolidated Revenue.
5. By establishing an international sharing program, Australia should benefit substantially by receiving a nett inflow of confiscated proceeds. That amount cannot be quantified as it is dependent upon the levels and results of law enforcement investigative work.

## NOTES ON CLAUSES

### Clause 1 - Short Title

6. This is a formal clause. The Act may be cited as the *Proceeds of Crime Amendment Act 1996*.

### Clause 2 - Commencement

7. The Act commences on the day on which it receives Royal Assent.

### Clause 3 - Schedule

8. The *Proceeds of Crime Act 1987* is amended as specified in Schedule 1 to this Bill.

## SCHEDULE 1

### AMENDMENT OF THE *PROCEEDS OF CRIME ACT 1987*

#### Overview of the Amendments

9. The *Proceeds Of Crime Act 1987* makes provision for the sharing of the proceeds of crime by the Commonwealth with a State or Territory where law enforcement agencies have made a significant contribution to the Commonwealth's recovery of proceeds of crime, or to the investigation or prosecution of the relevant criminal activity. The program encourages cooperation between Commonwealth and State/Territory law enforcement agencies in the investigation of criminal activity and the confiscation of the proceeds of crime.

10. The Bill extends the equitable sharing regime to the international arena. The principle underpinning Australia's domestic equitable sharing program is equally applicable to the proposed international sharing arrangement.

#### Explanation of the Amendments

##### Clause 1 - Definition of "Equitable Sharing Program"

11. The definition of "equitable sharing program" in ss 4(1) of the *Proceeds of Crime Act 1987* is amended by removing the words "either or both" from the chapeau of the definition and replacing them with the words "any or all". This amendment is necessary as the amendment described in clause 2 of the Bill installs a third category of equitable sharing.

## **Clause 2 - Equitable Sharing With Foreign Countries**

12. The proposed amendment authorises payments to be made to foreign countries from the Confiscated Assets Trust Fund.

13. In addition to the Commonwealth sharing the proceeds of crime that have been recovered with Australian States and Territories, the amendment authorises the Commonwealth to share a proportion of the proceeds of any unlawful activity under a Commonwealth law, with a foreign country.

14. The Attorney-General has a discretion to authorise the payment to a foreign country where in the opinion of the Attorney-General, the foreign country has made a significant contribution to the recovery of the proceeds of an unlawful activity under a Commonwealth law, or the investigation or prosecution of such unlawful activity.

## **Clause 3 - Payment of Money To The Trust Fund**

15. The amendment to ss 34B(1) makes reciprocal provision for a foreign country to share proceeds of crime with Australia. New paragraph 34B(1)(g) provides authority for money that is paid to the Commonwealth by a foreign country in recognition of assistance provided by Commonwealth law enforcement agencies, to be paid to the Confiscated Assets Trust Fund. That is in addition to money paid to the Commonwealth by a foreign country under a treaty or arrangement providing for mutual assistance in criminal matters.

## **Clause 4 - Payments to Foreign Countries**

16. Consistent with the amendment provided by clause 2 of the Bill, “foreign countries” is inserted into subparagraph 34C(1)(a)(i) of the Act. That will include as a purpose of the Confiscated Assets Trust Fund, making payments to foreign countries as the Attorney-General considers appropriate.

## **Clause 5 - Payments to Government Business Enterprises**

17. Existing paragraph 34C(1)(b) is repealed. It is replaced by a new subparagraph which is identical in meaning and effect to the repealed subparagraph 34C(1)(b)(i). It effects the removal of the purpose of making payments in accordance with section 34D and is consistent with the amendment which removes section 34D from the Act. Funds will no longer be applied for purposes related to law enforcement and drug rehabilitation and education.

## **Clause 6 - Transfer of Funds to Consolidated Revenue**

18. Existing section 34D of the Act is repealed and is replaced by new section 34D.

19. Under proposed subsection 34D(1), once in each financial year, the Attorney-General must determine the balance of funds that are not required for the purposes set out in section 34C.

20. Under proposed subsection 34D(2), once that determination is made, the balance of funds must be paid to the Consolidated Revenue Fund.