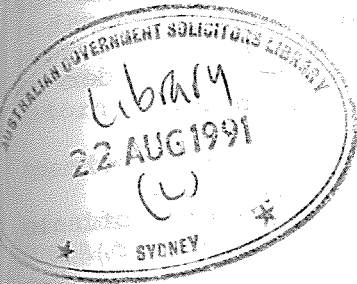


1991

*C. King*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA



SENATE

PROCEEDS OF CRIME LEGISLATION AMENDMENT BILL 1991

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Attorney-General,  
the Hon. Michael Duffy MP)



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## PROCEEDS OF CRIME LEGISLATION AMENDMENT BILL 1991

## OUTLINE

The amendments to be moved by the Government have the purpose of clarifying the power of the Attorney-General to delegate the power of direction concerning the disposal of assets forfeited to the Commonwealth under the *Proceeds of Crime Act 1987* and the narcotics provisions of the *Customs Act 1901*.

The scheme of the legislation is that, generally, forfeited property shall be sold and the proceeds of sale paid to the Confiscated Assets Trust Fund. However, provision is made for the Attorney-General to direct that the property be disposed of in some other manner, for example by giving a direction that the property be made available for use by a law enforcement agency. This power of direction is contained in proposed subsection 208DA(4) of the Customs Act (inserted by clause 9 of the Bill) and proposed subsections 20(3A) and 30(4A) of the Proceeds of Crime Act (inserted by clauses 15 and 17 of the Bill respectively).

The legislation also provides that the Attorney-General may authorise another person to exercise the power of direction. The amendments to be moved by the Government will limit the class of persons to whom this power of direction may be delegated. The power will be delegable only to a Senior Executive Service Officer in Attorney-General's Department.

The Attorney-General will consult with the Minister with responsibility for the Australian Customs Service concerning the procedures for submitting matters to the Attorney-General with a view to the possible making of a direction under new subsection 208DA(4) of the Customs Act.

## FINANCIAL IMPACT

The amendments will not have any financial impact.

## NOTES ON AMENDMENTS

*Amendment Number 1 (amends clause 9)*

Clause 9 proposes to insert a new section 208DA in the Customs Act. Amendment number 1 will include a further defined expression, of "prescribed officer", in new subsection 208DA(1). The expression is defined to mean an officer in the Senior Executive Service (SES) of Attorney-General's Department.

*Amendment Number 2 (amends clause 9)*

Amendment number 2 will alter proposed subsection 208DA(4), which contains the reserve power of direction conferred upon the Attorney-General. The amendment will alter the word "person" to "prescribed officer". The result will be that the power of direction under subsection 208DA(4) will be delegable only to an SES officer in Attorney-General's Department.

*Amendment Number 3 (amends clause 14)*

Clause 14 of the Bill amends section 4 (Interpretation) of the Proceeds of Crime Act. Amendment number 3 amends clause 14 so that a further definition, of "prescribed officer", is inserted in section 4 of the Principal Act. The new definition is identical with that inserted in subsection 208DA(1) of the Customs Act by amendment number 1.

*Amendment Number 4 (amends clause 15)*

Clause 15 amends section 20 of the Proceeds of Crime Act. In particular, proposed subsection 20(3A) contains the reserve power of direction to be conferred upon the Attorney-General. Amendment number 4 will alter new subsection 20(3A) so that the power of direction is delegable only to a prescribed officer as defined.

*Amendment Number 5 (amends clause 17)*

Clause 17 amends section 30 of the Proceeds of Crime Act. In particular, proposed subsection 30(4A) contains the reserve power of direction to be conferred upon the Attorney-General. Amendment number 5 will alter new subsection 30(4A) so that the power of direction is delegable to a prescribed officer as defined.