



Schedule 6

- 6.1 Schedule 6 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) amends the *Proceeds of Crime Act 2002* (Cth) (POC Act) and the *Director of Public Prosecutions Act 1986* (Cth) (DPP Act) to allow a court to restrict publication of certain matters to prevent prejudice to the administration of justice.
- 6.2 Under the existing Act, Australian Federal Police (AFP) staff are considered 'authorised officers' and have certain powers. The amendments mean that non-members of the AFP and secondees can also be 'authorised officers'.

Existing laws and practices

- 6.3 In 2011, the Government launched a multi-agency Criminal Assets Confiscation Taskforce (the Taskforce) which is led by the AFP and includes the Commonwealth Director of Public Prosecutions (DPP), Australian Crime Commission and Australian Tax Office.
- 6.4 Following legislative amendment in 2011, the Commissioner of the AFP can also conduct proceeds of crime litigation. Previously, only the DPP could do so. This Bill will make several further amendments to facilitate the work of the Taskforce.

Proposed legislative amendments

Director of Public Prosecutions Act 1983 (Cth)

- 6.5 Currently, the court has the power to restrict or prohibit the publication of certain matters contained in affidavits where the DPP has applied for a restraining order and the court considers it to be necessary to make the order to prevent prejudice to the administration of justice. This section is being repealed because a similar section is being inserted in the POC Act.
- 6.6 The court continues to have similar powers to prohibit or restrict disclosure of matters contained in affidavits that are part of an application for a restraining order.

Proceeds of Crime Act 2002 (Cth)

- 6.7 The amendments bring several changes to the POC Act.
- 6.8 Firstly, a new provision is inserted which is similar to the repealed provision in the DPP Act. The practical effect of the new provision is to permit the Commissioner of the AFP as well as the DPP to do certain things when conducting proceeds of crime litigation.
- 6.9 ‘Authorised officer’ would include non-member staff of the AFP and secondees to the AFP. This is important given the multi-agency nature of the Taskforce. Experts and public servants from other agencies often assist the AFP with its investigations. The amendments are needed to enable them to apply for freezing orders, make affidavits in support of restraining or unexplained wealth orders, and exercise certain information gathering tools.
- 6.10 Further, magistrates would be able to make an order prohibiting or restricting the publication of certain matters contained in affidavits in support of freezing orders if it is necessary to prevent prejudice to the administration of justice. This is similar to the powers of magistrates in relation to restraining orders.

Application of amendments

- 6.11 Amendments apply to any restraining and freezing orders made under the POC Act after those amending items commence. This is even if the conduct on which the order is based on occurred before, on or after the commencement of the amendments.

- 6.12 This provides clarity as to which of the provisions in DPP Act and POC Act apply, and is important given that conduct leading to a restraining order may continue over several years or may not be discovered immediately.

Other minor and technical amendments

- 6.13 Schedule 6 of the Bill will make a number of minor and technical amendments to the *Crimes Act 1914* (Cth). The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Committee comment

- 6.14 No significant issues were raised in consultation regarding the amendments proposed in Schedule 6 of the Bill.
- 6.15 The Committee notes the importance of safeguards to protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.
- 6.16 The Committee notes that some items in Schedule 6 apply retrospectively, but considers that the need for retrospective application is adequately detailed in the Bill and Explanatory Memorandum.

Recommendation 7

- 6.17 **The Committee recommends that Schedule 6 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**