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## Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002

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Proceeds of Crime (Consequential Amendments and  
Transitional Provisions) Bill 2002

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9 December 2002

# Contents

Purpose . . . . .	1
Background . . . . .	1
Main Provisions . . . . .	2
Schedule 1 - Money Laundering . . . . .	2
Endnotes. . . . .	3

# Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002

**Date Introduced:** 13 March 2002

**House:** House of Representatives

**Portfolio:** Justice and Customs

**Commencement:** The main operational sections of the Bill will commence at the same time as the operational sections of the Proceeds of Crime Act 2002.

## Purpose

The Bill amends a number of finance-related and law enforcement Acts to create or increase linkages with the *Proceeds of Crime Act 2002*. Most notably, the Bill contains a substantially revised set of money laundering offences to replace those in the current *Proceeds of Crime Act 1987*.

## Background

The Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002 (the Bill) is part of a legislative package designed to broaden the Commonwealth regime for the confiscation of the proceeds of crime, including the introduction of provisions that enables confiscation without the need for first obtaining a criminal conviction. Background to the changes is contained in the [Digest](#) to the main Bill, Proceeds of Crime Bill 2002. Both Bills were passed on the 23 September 2002 and received Royal Assent on 11 October.

This Digest only contains a brief overview of the money laundering offences contained in Schedule 1 of the Bill.

**Warning:**

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## Main Provisions

### Schedule 1 - Money Laundering

**Item 1** inserts a new **Part 10.2** into the *Criminal Code Act 1995* (Criminal Code).

**New sections 400.3-400.8** set out offences for dealing with money or other property that is either the proceeds of crime<sup>1</sup> or may become an instrument of crime.<sup>2</sup>

These six sections form a sliding scale of offences depending on the value of the money or property involved. For example, **new section 400.3** deals with situations where the value of the money or property is \$1 million or more. At the other end of the scale, the value need only be 'any value' (ie more than zero) for **new section 400.8** to apply.

Within each section, there are three 'levels' of offence. The levels are determined according to the fault element involved. The most serious level applies if the accused believed the money or property was proceeds or intended it to be used as an instrument. The middle level applies where a person is reckless<sup>3</sup> of this fact. The lowest level is where the accused is negligent<sup>4</sup> of this fact.

Thus overall the appropriate offence provision depends on the value of the money or property involved plus the fault element applying. The penalties are also in a sliding scale, with the fault element being the most important determinant. For example, an offence involving \$1.1 million, if the accused has intent or belief, the maximum prison term is 25 years. For negligence, it is 5 years. For a lower level amount (say \$20,000), if the accused has intent or belief, the maximum prison term is 10 years. For negligence, it is 2 years.

The apparent appropriate offence may be varied if the accused can demonstrate that they had a mistaken but reasonable belief about that value of the property or money: **new section 400.10**. Thus if they could show they had a reasonable belief that say the proceeds of a crime was worth \$800,000 - but in actual fact it was worth \$1.1 million - they could only be found guilty of a **new section 400.4** offence, not the higher level **400.3**. **New subsection 400.10(2)** allows a belief to be based on assessments gained through the accused's previous experience in dealing with the proceeds or instruments of crime.

**New section 400.9** creates an offence of receiving, possessing, concealing, disposing or bringing into / taking out of Australia any money or other property that may reasonably be suspected by the accused of being proceeds of indictable offences, including foreign indictable offences or State indictable offences where they attract certain Commonwealth constitution power. **New subsection 400.9(2)** indicates instances in which the 'reasonable suspicion' requirement will be satisfied include holding bank accounts in false names, or where the accused says they were acting on another's behalf but has not (or cannot) provide information enabling that other person to be identified and located.

The above money laundering offences obviously arise in relation to some other criminal offence - eg drug importation, fraud etc. **New section 400.13** provides that the prosecution

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does not have to prove what the particular related offence was or who was the perpetrator of the offence in order to gain a money laundering conviction.

An Australian national or resident who engages in dealings with money or other property wholly outside Australia will be subject to the above offences by virtue of the application of the Criminal Code Category B extended geographical jurisdiction: **new section 400.15**.

## Endnotes

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- 1 *Instrument of crime* is defined as money or other property used in the commission of, or used to facilitate the commission of, an offence that may be dealt with as an indictable offence. Indictable offences are those punishable by imprisonment for a period exceeding 12 months: **new section 400.1**.
- 2 *Proceeds of crime* is defined as any money or other property that is derived or realised, directly or indirectly, by any person from the commission of an offence that may be dealt with as an indictable offence: **new section 400.1**.
- 3 A person is reckless with respect to a **circumstance** (eg that money is proceeds of crime) if they are aware of a substantial risk that the circumstance exists or will exist *and*, having regard to the circumstances known to them, it is unjustifiable to take the risk. A person is reckless with respect to a **result** (eg that money will become an instrument of crime) if they are aware of a substantial risk that the result will occur, *and* having regard to the circumstances known to them, it is unjustifiable to take the risk. See *Criminal Code Act 1995*, section 5.4.
- 4 A person is negligent with respect to a physical element of an offence if his or her conduct involves such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; *and* such a high risk that the physical element exists or will exist, that the conduct merits criminal punishment for the offence. See *Criminal Code Act 1995*, section 5.5.

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