

**CRIMES (SERIOUS CRIME PREVENTION ORDERS) BILL 2016**  
**CRIMINAL LEGISLATION AMENDMENT (ORGANISED CRIME AND PUBLIC SAFETY) BILL 2016**

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**Bill introduced on motion by Mr Troy Grant, read a first time and printed.**

**Second Reading**

**Mr TROY GRANT** (Dubbo—Deputy Premier, Minister for Justice and Police, Minister for the Arts, and Minister for Racing) [4.27 p.m.]: I move:

That these bills be now read a second time.

The Government is pleased to introduce the Crimes (Serious Crime Prevention Orders) Bill 2016 and the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016. The purpose of these bills is to deliver on the Government's election commitment to introduce tough new powers to give police the upper hand in the fight against serious crime. These powers include United Kingdom-style serious crime prevention orders to disrupt the activities of serious criminals. Public safety orders will also prevent people from going to certain places where they are likely to present a serious risk to public safety.

Serious and organised crime affects our community, economy and way of life. The effects of these crimes can be felt across the community, whether through investment scams, cyber attacks, clandestine drug labs in suburban areas or acts of violence between criminal groups on our streets. Serious and organised crime also has a broader impact on the Australian economy. The Australian Crime Commission [ACC] conservatively estimates that serious and organised crime costs Australia in excess of \$15 billion every year. However, the actual figure is likely to be much higher. Operationally, the NSW Police Force is working effectively with Commonwealth bodies via the National Anti-Gang Taskforce and other joint operations.

Within New South Wales strike forces Talon and Raptor have been effective in curbing gun and organised crime, arresting more than 4,400 persons and seizing more than 1,000 firearms. This Government has already responded to the growing concern of organised crime by creating a modernised consorting offence that has been upheld by the High Court. It has created new offences that target the activities of criminal groups, including an offence of participating in the activities of a criminal group, punishable by five years imprisonment and introduced offences targeting those that direct the activities of criminal groups, punishable by up to 15 years imprisonment.

The New South Wales Government has also created a new aggravated offence for shooting at a dwelling in the context of organised criminal activity, punishable by up to 16 years imprisonment. Other effective measures include amendments to enhance firearm prohibition orders as well as amendments to the Restricted Premises Act 1943 to increase police capacity to disrupt, prevent and detect organised crime through increased penalties, and search and seizure provisions. The new powers in these bills build on these reforms to ensure that law enforcement agencies continue to respond quickly and forcefully to the organised crime threat.

Under this new package of reforms the bills will introduce serious crime prevention orders to restrict the activities of persons or businesses that are involved in serious crime; allow senior police to issue temporary public safety orders to prevent people from attending places or events where they are expected to engage in violence or present a serious threat to public safety or security; improve our ability to confiscate the assets of serious criminals; and enhance money-laundering offences of

dealing with the proceeds of crime.

I now turn to the detail of the Crimes (Serious Crime Prevention Orders) Bill 2016. This bill allows the Supreme and District courts to make serious crime prevention orders against persons or corporations when sought by eligible applicants to prevent, restrict or disrupt involvement by certain persons in serious crime-related activities and terrorism offences. These reforms have adopted some aspects of the United Kingdom's serious crime prevention order provisions in the Serious Crime Act 2007—United Kingdom—adapted to suit the New South Wales legislative framework.

The reforms will allow the court to make an order against a person on the application of the Director of Public Prosecutions, the Crime Commission or the Commissioner of Police, which may place certain requirements or restrictions on that person if there are reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime. Clauses 3 and 4 of the bill define specific words and expressions that are used in the proposed Act. The bill defines an eligible applicant to clarify that only the New South Wales Crime Commission, the Director of Public Prosecutions or the Commissioner of Police can apply to the appropriate court for a serious crime prevention order.

The definition of appropriate court clarifies that an order made post-conviction can only be made by the District or Supreme court and an order made pre-conviction can only be made by the Supreme Court. The term "serious criminal offence" has the same meaning as in the Criminal Assets Recovery Act 1990, which includes offences such as prescribed drug trafficking offences under the Drug Misuse and Trafficking Act 1985 or an offence that is punishable by imprisonment for five years or more and involves theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, or obtaining or offering a secret commission, as examples. The term "serious crime related activity" is defined to mean anything done by a person that was at the time a serious criminal offence whether or not the person has been charged with the offence or, if charged, whether or not the person has been tried, acquitted or convicted.

Clause 4 goes on to define when a person is "involved in serious crime related activity". This includes where the person has engaged in serious crime-related activity; or where the person has engaged in conduct that has facilitated or is likely to facilitate their own engagement in serious crime-related activity, or that of another person. Clause 5 enables the appropriate court, on the application of an eligible applicant, to make a serious crime prevention order against a person aged 18 years or older, or against a corporation, if the court is satisfied that either the person has been convicted of a serious criminal offence, or the person has been involved in serious crime-related activity. The court, in making the order, must be satisfied that there are reasonable grounds to believe that the making of the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime-related activities. Safeguards and procedural fairness have been preserved in these provisions.

The applicant must serve the order by means of personal service at least 14 days before the hearing date for the application. The person against whom a serious crime prevention order is sought, and any other person whose interests may be affected by the making of the order, can appear at the hearing of the application and make submissions to the court in relation to that application. Importantly, clause 5 (5) provides that the court may admit and take into account hearsay evidence if the court is satisfied that the evidence is from a reliable source and is of probative value.

However, the evidence must be served on the person against whom the order is sought prior to its admission in the hearing. Clause 6 outlines the requirements of a serious crime prevention order. An order can contain such prohibitions, restrictions, requirements and other provisions as the court

considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting the person's involvement in serious crime-related activities. This could include restrictions in relation to an individual's financial, property or business dealings or holdings, working arrangements, communication means, premises to which an individual has access, an individual's use of an item or an individual's travel.

The new Act provides for further safeguards for the person the subject of the order. Consistent with the United Kingdom scheme, clause 6 (2) specifies the kinds of provisions that a serious crime prevention order cannot contain, such as those requiring the person to answer questions or provide information orally or where the order requires the person to answer questions in writing or provide documents or other information that are subject to legal professional privilege. Clause 7 states that a serious crime prevention order commences when it is served on the person or on a later date specified in the order. For example, this allows an order to be served on a person when they are in custody but allows for greater flexibility in allowing the order to commence at a later date when a person is released. A serious crime prevention order cannot last for a period of more than five years.

Clause 8 contains the offence provision. It is an offence to contravene the terms of the serious crime prevention order. The maximum penalty for the offence is 1,500 penalty units for a corporation, and 300 penalty units or five years imprisonment, or both, for a person. Clause 9 specifies that where a corporation is convicted of breaching an order, an application will be permitted to the Supreme Court to wind up the company. The Supreme Court may make an order to wind up a corporation where the court is satisfied that the corporation has been convicted of breaching the order, that there are no further avenues of appeal available to the corporation, and it is in the public interest and just and equitable for the corporation to be wound up. As required under the Corporations Agreement 2002, the New South Wales Government has obtained the relevant approvals to introduce this provision to displace the relevant provisions of the Corporations Act 2001.

Similarly, clause 10 enables an eligible applicant to apply to the Supreme Court for a compulsory dissolution order requiring the dissolution of a partnership where that partnership has been convicted of breaching a serious crime prevention order and it is in the public interest and just and equitable for the partnership to be dissolved. Clause 11 provides for a right of appeal against a decision of the relevant court in the making of a serious crime prevention order. Appeals can be made by the person the subject of the order and the applicant. The Act clarifies that an appeal lies as of right on a question of law and with leave on a question of fact.

Clause 12 enables the court that made a serious crime prevention order to vary or revoke the order at any time, either on the application of the applicant or the person the subject of the order. Part 3, clause 13 clarifies that proceedings for serious crime prevention orders are civil, meaning that the court must be satisfied on the balance of probabilities in determining whether to make an order. Finally, the New South Wales Government wants to ensure that these reforms operate effectively and for their intended purpose. Accordingly, the Act requires the Minister to review the Act after three years of its operation to determine whether the policy objectives of the Act remain valid. The findings will be tabled in Parliament.

I now turn to the detail of the Criminal Legislation Amendment (Organised Crime and Public Safety) Bill. Schedule 1 makes amendments to the Confiscation of Proceeds of Crime Act 1989 to enable the Supreme Court to make a forfeiture order in respect of property of a person convicted of a serious criminal offence in substitution for other property that the person used in or in connection with the offence if that property is not available for forfeiture. For example, this could occur where the convicted person used a car to commit an offence, however the car was owned by an innocent third party.

Schedule 2 amends the Crimes Act 1900 to recast the offence of dealing with property suspected of being proceeds of crime so as to adopt certain provisions of the corresponding offence in the Commonwealth Criminal Code Act 1995. The amendments create two levels of the offence of dealing with property suspected of being the proceeds of crime, with a maximum penalty of three years imprisonment if the property is valued under \$100,000 and five years imprisonment if valued at \$100,000 or more. The increased penalties will provide a strong deterrent to moving criminal proceeds, which is a significant enabler of organised crime.

Drawing on the provisions in the Commonwealth Criminal Code Act 1995, the amendments also provide for a non-exhaustive list of conduct and circumstances that can constitute reasonable grounds to suspect that property is the proceeds of crime. For example, this could include dealings that are structures to avoid certain reporting requirements, or dealings that involve using one or more accounts held in false names. Clause 2 of schedule 2 allows the section 193C offence to be the subject of an alternative verdict in the trial for an offence of money laundering in section 193B of the Crimes Act 1900. Schedule 2, clause 3 allows several contraventions of money laundering offences under Part 4AC of the Crimes Act 1900 to be combined in a single charge.

Schedule 3 amends the Criminal Assets Recovery Act 1990 to enhance the Crime Commission's assets confiscation powers and provide a stronger deterrent to committing serious crime. Organised criminals who use intermediaries to distance themselves from their crimes would be key targets of this legislation. Clauses 1 to 3 of schedule 3 insert new definitions into the Criminal Assets Recovery Act that are consequential to the amendments. For example, "serious crime use property" is taken to mean property that was used in or in connection with a serious crime-related activity. Schedule 3 clause 8 enables the Supreme Court to make a substituted serious crime use property declaration in respect of property of a person who engaged in serious crime-related activity if the property is unavailable for forfeiture. This means that where a criminal uses property owned by another person in the commission of a serious offence the bill will allow the court to make a "substitution order".

A substitution declaration can be made over property that is worth the same or less than the property used to commit the crime and, if practicable, property of the same kind as the property used to commit the crime. The bill clarifies that half of the value of goods confiscated from criminals as crime-used property under the Criminal Assets Recovery Act will be paid into the Victims Support Fund. Schedule 4 makes consequential amendments to the Criminal Procedure Act 1986 to enable the new section 193C (1) and (2) offences of dealing with property suspected of being proceeds of crime in the Crimes Act 1900 to be dealt with summarily in certain cases.

Schedule 5 amends the Law Enforcement (Powers and Responsibilities) Act 2002 to enable a senior police officer to make a public safety order to prohibit a person from being present at a public event or at premises or another area if the person's presence poses a serious risk to public safety or security. These provisions have been largely modelled on similar provisions in place in South Australia. The new proposed section 87R enables a senior police officer to issue a public safety order on a person or class of persons if they are satisfied that their presence at a public event or premises or other area poses a serious risk to public safety or security and the order is reasonably necessary in the circumstances to mitigate this risk.

In determining whether making a public safety order is reasonably necessary, the senior police officer may take into account certain matters, such as whether the place, which is the subject of the order, is a place of work at which the person is regularly employed, an education institution at which the person is enrolled, or a place of worship that the person regularly attends, for example. To limit the application of the powers, the police officer will also be required to take into account the nature of the person or group and any history of behaviour that previously gave rise to a serious risk to public safety.

Further safeguards have been incorporated into the bill to clarify that a public safety order must not be issued to prevent non-violent advocacy, protest or dissent, or industrial action. A public safety order also cannot be issued to prevent a person from entering their principal place of residence. Proposed section 87R (5) defines "serious risk to public safety or security" to mean that there is a serious risk that the presence of the person or persons might result in the death of or serious physical harm to a person, or serious damage to property. This is a high threshold test to ensure that the use of public safety orders will be appropriate in the circumstances.

Section 87R (6) defines "damage" as it relates to property to include destruction of property, alteration of property that depreciates its value, rendering the property useless or inoperative, and, in relation to an animal, injuring, wounding or killing the animal. New section 87S prescribes the requirements for the content and duration of a public safety order. The order must specify the public event or premises or other area to which it applies, and the person or class of persons to which it applies. A public safety order can last for no longer than 72 hours; however, where the order relates to an event that occurs over a period longer than 72 hours, the order would last for the duration of an event.

Safeguards have been included in proposed section 87R (4) to ensure that successive orders cannot be issued to circumvent the 72-hour limit; however, a public safety order may be issued for consecutive evenings, such as multiple Friday nights covering the same event. Section 87T prescribes the service and notification requirements for making or varying a public safety order. A senior police officer must personally serve a copy of the order made or varied on each person named in the order.

The public safety order must be in writing and must also contain the reasons for making or varying the public safety order. However, this does not require the senior police officer to disclose any information that is considered to be criminal intelligence or other criminal information. If the person the subject of a public safety order is a child under the age of 18 years or has impaired intellectual functioning, proposed section 87T (2) requires the senior police officer to also serve a copy of the order on the person's parent or guardian, if it is reasonably practicable to do so. However, a failure to do so does not invalidate the order.

The bill also provides for a regulation-making power to provide for further safeguards for vulnerable persons who may be subject to a public safety order. The bill adopts the same definition of "vulnerable person" as the existing definition in the Law Enforcement (Powers and Responsibilities) Act 2002. However, proposed section 87T (6) also provides a mechanism for urgent public safety orders to be made. The provisions allow a senior police officer to make or vary a public safety order if satisfied that the order should become binding on the person as a matter of urgency. In this case, the senior police officer may verbally communicate the contents of the order to the person; however, a copy of the order and the required notification must be made available for collection by the person within 12 hours at a police station reasonably accessible by the person.

Proposed section 87U provides for the variation and revocation of a public safety order. Provision is made for any senior police officer to vary or revoke a public safety order. However, an order that is originally made or varied by the Commissioner of Police can only be varied or revoked by the Commissioner. Proposed section 87U also requires the Commissioner of Police to revoke a public safety order if the commissioner becomes aware that the order was made in error, or if the grounds for making the order no longer exist. The relevant safeguards are still retained, whereby any variations to the order must be personally served.

Proposed division 3 outlines the appeals process for public safety orders. An appeal may only be made if the public safety order lasts for longer than 72 hours. Proposed section 87W clarifies that a

person can appeal the making of, or a variation of, an order that lasts for more than 72 hours; however, the appeal must be made before the order ceases to be in force. The provisions also clarify that the appeal does not affect the operation of the order. Proposed section 87X provides for a mechanism for the Commissioner of Police to make an application to the Supreme Court to protect the disclosure of information that is considered to be criminal intelligence or other criminal information that has been used in connection with making or varying the public safety order. The Supreme Court may protect the disclosure of criminal intelligence information from the public and the person the subject of the order if the court considers that it is in the interests of justice to do so.

In making this decision, the court may take into account certain factors regarding the effect of the disclosure of such information, including whether it would have a prejudicial effect on the prevention, investigation or prosecution of an offence; whether it may reveal the existence or identity of a confidential source of information for law enforcement purposes; or whether the disclosure might endanger a person's life or safety. Proposed section 87Y clarifies that an appeal to the Supreme Court will consist of a merits review, which means that the court may take into account all relevant factual material and any applicable legislation or common law. Proposed section 87ZA prescribes the offence of contravening a public safety order, which carries a maximum penalty of five years. However, this offence may also be dealt with summarily in certain cases.

Proposed section 87ZB enables police officers to search premises or vehicle without a warrant if they have reasonable grounds to suspect that the person to whom the public safety order applies is within those premises or vehicle. The police officer may detain a vehicle for as long as is reasonably necessary to conduct a search under this section. These reforms will commence on proclamation. Time for implementation of these changes is needed to ensure that all required systems are updated and relevant training and resources are in place for the police, judiciary and legal profession. These reforms are a priority and the Government will ensure they commence as soon as possible.

The reforms contained in these bills build on the New South Wales Government's existing reforms to target serious and organised crime, such as reforms to the consorting offence and firearms reforms, which have proved successful and are having a significant effect on numerous criminal groups. The measures contained in these bills provide law enforcement agencies with a more effective means of reducing serious and organised crime by targeting their business dealings and restricting their behaviour. The bills deliver on the New South Wales Government's election commitment to introduce tough new powers to give police the upper hand in the fight against organised crime. I commend the bills to the House.

**Debate adjourned on motion by Mr Guy Zangari and set down as an order of the day for a future day.**