

Second Reading Speech by the Minister for Justice on the Proceeds of Crime Bill 2022

Mr. Speaker and members of this honourable House. It gives me great pleasure to introduce the *Proceeds of Crime Bill 2022* (the Bill). The Bill is a consolidation of the *Proceeds of Crime Act 2005* (Principal Act) and the *Proceeds of Crime (Amendment) Act 2015* (Amendment Act).

Mr. Speaker, in 2005, the National Parliament passed the Principal Act which was certified on the 23rd of January 2006. After having been in operation for almost six years, there was a comprehensive review of the Principal Act done between the years 2013 and 2014. In addition to this, the Asia Pacific Group on Money Laundering and the World Bank conducted a review of Papua New Guinea's (PNG) anti-money laundering legislative regime and provided their findings in the Mutual Evaluation Report for PNG. Subsequently, based on the multiple reviews conducted in the preceding years, a further amendment was passed by the National Parliament in July 2015 that saw the enactment of the Amendment Act which was certified on the 20th January, 2016, and the notice published in the National Gazette dated 4th of February 2016 to effect commencement.

Mr. Speaker, the Amendment Act legislated for a broad range of provisions to the Principal Act, including:

1. Strengthening of provisions concerning cross-border movement of currency and other items of value;
2. Adding new powers to the confiscation regime;
3. Strengthening of existing provisions in the confiscation regime;
4. Repealing the Money Laundering Offences, which were repealed from the Principal Act and inserted into the *Criminal Code* by the *Criminal Code (Money Laundering and Terrorist Financing) (Amendment) Act 2015*; and
5. Repealing Part 2 – Measures to Combat Money Laundering, which included the establishment and functions of the Financial Intelligence Unit within the Royal PNG Constabulary. This has been repealed and replaced with the new Anti-Money Laundering and Counter Terrorist Financing (AMLCTF) regulation and supervision regime of the *Anti-Money Laundering and Counter Terrorist Financing Act 2015*.

During the course of preparing the Amendment Act for certification and commencement, the legislative drafters identified errors or irregularities that were made when the Amendment Act was drafted. The errors and irregularities that were identified primarily relate to the numbering, order of divisions and typographical errors.

Given the errors, and considering the importance of the legislation, it was advised that the Principal Act must be reviewed together with the Amendment Act with a view to repeal and replace with a new *Proceeds of Crime Bill*.

Mr. Speaker, currently, both the Principal Act and Amendment Act contain irregularities and structural defects, specifically, the numbering of sections and missing sections that require re-drafting of the law. This does not, in any way, affect the application of the substantive provisions, however, it remains disorderly.

Mr. Speaker, at this juncture, I put forth the two-underlying purpose of the Bill:

1. First, upon the Amendment Act coming into operation, there were irregularities contained in the Principal Act in terms of the structure, specifically relating to the numbering of the provisions. This has impacted the effective use of the law in its entirety; and
2. Second, the Principal Act was not consolidated to include the amended provisions, hence, creating more ambiguity in its application by the relevant authorities concerned.

Mr. Speaker, because of these reasons, my Department, in consultation with relevant stakeholders commenced legislative review to consolidate the Principal Act and the Amendment Act and correct the structural defects.

Mr. Speaker, by consolidating the Principal Act and the Amendment Act, by operation of the law, it will consequently affect the repealing of the two pieces of legislation in their entirety upon the coming into operation of the *Proceeds of Crime Bill*.

Key feature of the revised Proceeds of Crime Bill 2022.

Mr. Speaker, the *Proceeds of Crime Bill* will address technical errors and irregularities, produce a user-friendly consolidated version of both the Principal and the Amendment Acts and will make future amendments easier.

By repealing and replacing the Principal and the Amendment Act, the section numbers, along with the subsection numbers, will change to fill empty sections. Additionally, the *Proceeds of Crime Bill* will capture the necessary transitional and application provisions; and all other consequential amendments.

Furthermore, it is proposed that the *Proceeds of Crime Bill* will be applied retrospectively to and in relation to conduct that occurred on or after 4th February 2016 (the date on which the *Proceeds of Crime (Amendment) Act 2015* came into force). This does not raise any concerns from the perspective of a retrospective criminal liability because all offence provisions by the *Proceeds of Crime Bill* have been enforced since 4th February 2016.

Mr. Speaker, the only difference will be that the proposed Bill will have different section references because of missing sections and subsections that were repealed and never replaced. The section numbers of the *Proceeds of Crime Bill* will need to be renumbered to ensure that there are no empty sections. This will affect cross referencing within the Bill itself and other pieces of legislation. Therefore, all cross references within the *Proceeds of Crime Bill* and other pieces of legislation that refer to the Principal Act will be updated together with minor technical deficiencies to be addressed simultaneously through these amendments.

Unexplained Wealth Orders

Mr. Speaker, the *Proceeds of Crime Bill* also covers provisions on unexplained wealth orders which provides for “current or previous wealth” of a person. Under this regime, the unexplained wealth provisions will be used against a person whose wealth exceeds that which can be explained by their legitimate income. The State would need to demonstrate to the Court that it has legitimate grounds for suspecting that a person has unexplained wealth, to which the person suspected of having unexplained wealth must provide an appropriate explanation and prove that the wealth in question was accumulated legitimately.

Key features of the Unexplained Wealth Provisions

Mr. Speaker, the key features of the unexplained wealth provisions are as follows:

1. The unexplained wealth provisions will apply to “public officials” as defined under the *Organic Law on Independent Commission Against Corruption*.
2. The State may apply to the court for an “unexplained wealth order” against a public official. This application maybe made in conjunction with an application for a restraining order under the *Proceeds of Crime Bill 2022*, or at any other time. That is, a restraining order does not need to have been made in order to apply for an unexplained wealth declaration.
3. The court must make an order against a public official if the court is satisfied that there is a reasonable suspicion that:
 - (i) the public official-
 - has engaged in one or more indictable offence related activities; or
 - has acquired, without giving sufficient consideration, property derived from an indictable offence related activity of someone else, whether or not the person knew or suspected the property was derived from the illegal activity; and
 - (ii) any of the public official’s current or previous wealth was acquired unlawfully.

Mr. Speaker, the value of the unexplained wealth is calculated by subtracting the person’s lawfully acquired wealth from their total wealth. The amount calculated must be paid to the State under the *Proceeds of Crime Bill*.

Mr. Speaker, with that, I now commend the *Proceeds of Crime Bill* to this honourable House.

Hon. Bryan Kramer, MP
Minister for Justice