



3 **Bills for Introduction**

Out of scope



303 AGO0052/07CS Attorney-General's Item (Michael Atkinson)
APPROVED

Out of scope



walked-in
28/5/07

LOCKED

AGO0052/07CS

CABINET COVER SHEET

- 1. **TITLE:** **CONFISCATION OF LITERARY PROCEEDS -** Clause 6(1)
- 2. **MINISTER:** **THE HON. M.J. ATKINSON M.P. ATTORNEY-GENERAL**
- 3. **PURPOSE:** To seek Cabinet approval for the introduction of a Bill to ensure that Clause 6(1) will not profit from any proceeds on account of the behaviour and experiences that led to 6(1) conviction of a terrorism offence
- 4. **IDENTIFY THE RELEVANT GOVERNMENT POLICY OR TARGET IN SOUTH AUSTRALIA'S STRATEGIC PLAN OR BOTH:** The proposal is not relevant to the Plan.
- 5. **I.C.T. COMPONENT:** Does the submission have a material I.C.T. Component? Yes No
- 6. **RESOURCES REQUIRED FOR FULFILMENT:** None
- 7. **PUBLIC AND ENVIRONMENTAL EFFECT:** None
- 8. **RISKS:** Aside from the political risk that the State Government will be blamed for Clause 6(1) profiting in any way, there is a risk that the Commonwealth Government will legislate on the same topic and make the State law inoperative to the extent of the inconsistency.
- 9. **CONSULTATION:** None
- 10. **COMMUNICATION STRATEGY:** None

303

11. URGENCY:

Very urgent

12. RECOMMENDATION:

4.1 I recommend that Cabinet approve the introduction of the *Criminal Assets Confiscation (Serious Offences) Amendment Bill 2007*.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

MICHAEL ATKINSON M.P.

PORTFOLIO:

DATE:



ATTORNEY-GENERAL

25 May 2007

Contact Officer:

Matthew Goode
(08) 8207 1579

to

THE HON. THE PREMIER FOR CABINET

about

Clause 6(1)

PROFITING FROM CRIME

1. PROPOSAL

- 1.1 I propose that Cabinet approve the introduction of the *Criminal Assets Confiscation (Serious Offences) Amendment Bill 2007*.

2. BACKGROUND

- 2.1 The background to the conviction of Clause 6(1) is well known. The question has arisen whether, under South Australian law, Clause 6(1) may profit from accounts of Clause 6(1) experiences.
- 2.2 The device used under criminal assets confiscation legislation is what is called a literary proceeds order under Division 2 of Part 5 of the *Criminal Assets Confiscation Act 2005*. A literary proceeds order is made against (relevantly) the proceeds from the commercial exploitation of the person's notoriety resulting from the person's committing a serious offence. A serious offence means an indictable offence and some (irrelevant) summary offences.
- 2.3 The phrase 'indictable offence' must mean a South Australian indictable offence. Clause 6(1) has committed no offence against the laws of South Australia. That being so, the Act does not now apply to him. Other difficulties arise. It may be that Clause 6(1) has committed no offence against the laws of Australia. It is commonly said by the Commonwealth Government that that is why he could not be brought back to Australia and tried here.
- 2.4 The Commonwealth has tried to deal with Clause 6(1). The Commonwealth *Proceeds of Crime Act* extends similar literary order provisions to foreign indictable offences. The meaning of a foreign indictable offence is set out in section 337A. It covers offences of a law of a foreign country. The section was intended to pick up offences dealt with by the U.S. Military Commission but may not do so at the current time. Section 337A(3) extends the Commonwealth regime to an offence triable by a military commission of the United States of America established under a Military Order of 13 November, 2001 made by the President of the United States of America and entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism". This is the correct reference to the regime that applied before it was declared invalid by the United States Supreme Court and re-established by subsequent legislation.

3. DISCUSSION

- 3.1 The Government has determined that Mr Hicks will not be allowed to profit from any account of his exploits. The existing structure of the *Criminal Assets Confiscation Act 2005* should apply according to its terms to this question. The simple solution is that 'serious offence' should be amended to include any foreign offence declared by regulation to be a serious offence. This will apply to benefits obtained after the Act comes into force, whether the offence to which the benefits relate occurred before or after the commencement date.
- 3.2 A regulation will then be drafted (and subsequently promulgated) declaring any offence for which a defendant is convicted by the United States Military Commission constituted under Title 10 U.S.C. Sec 948d, the *Military Commissions Act 2006*. That will match the specification of the charge on the indictment to which ^{Clause 6(1)} pleaded guilty.
- 3.3 The current literary proceeds provisions of the *Criminal Assets Confiscation Act 2005* operate so as to prevent any person profiting on behalf of the defendant. Section 110(3) of the Act says:

A court may, in determining—
(a) whether a person has derived literary proceeds; or
(b) the value of literary proceeds that a person has derived,
treat as property of the person any property that, in the court's opinion—
(c) is subject to the person's effective control; or
(d) was not received by the person, but was transferred to,
or (in the case of money) paid to, another person at the person's direction.

It follows that if, for example, ^{Clause 6(1)} profits from the story, the profits will be subject to forfeiture if the profits are controlled by ^{Clause 6(1)} (whoever actually possesses them or receives them) or if they are directed by ^{Clause 6(1)}

Impact statements

Budget impacts

- 3.4 There will be no budget impacts.

Business impacts

- 3.5 There will be no impact on business.

Regulatory Effect Statement

- 3.6 There will be no regulatory effect.

Information and Communication Technology (I.C.T.) Requirements

- 3.7 There is no I.C.T. component to these proposals.

Family Effect Statement

3.8 There is no effect on families in general.

Environmental Effect Statement

3.9 There is no environmental impact.

Regional Effect Statement

3.10 There will be no specific regional impact.

Risks

3.11 There are obvious political risks. The fate of **Clause 6(1)** has proved to be a hot political topic with strong and opposing views firmly held, within and outside Government.

3.12 The Commonwealth Government has promised to legislate to deal with **Clause 6(1)** literary proceeds. If that is done, it is highly likely that the South Australian provision will be inoperable to the extent of the inconsistency by operation of section 109 of the *Constitution*.

Consultation

3.13 There has not been any consultation. The Premier has announced the policy.

Communication strategy

3.14 No communication strategy is appropriate for the drafting of the Bill.

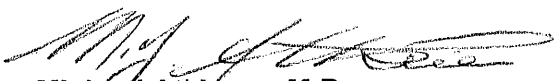
Implementation Strategy

3.15 No implementation strategy is proposed.

4. RECOMMENDATION

4.1 I recommend that Cabinet approve the Introduction of the *Criminal Assets Confiscation (Serious Offences) Amendment Bill 2007*.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

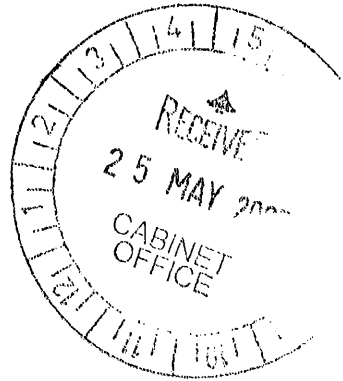

Michael Atkinson M.P.
Attorney-General

25 May 2007

In Cabinet

28 MAY 2007

APPROVED



Attachments to Cabinet submission

Attachment 1 –

Criminal Assets Confiscation (Serious Offences)

Amendment Bill 2007 – Draft Bill

(2 pages)

Refused in full – Exemption clause 10(1) – Legal professional privilege

Attachment 2 –

Criminal Assets Confiscation (Serious Offences)

Amendment Bill 2007 – Report

(3 pages)

Refused in full – Exemption clause 10(1) – Legal professional privilege