

**PORTFOLIO COMMITTEE AMENDMENTS TO  
PREVENTION OF ORGANISED CRIME AMENDMENT BILL  
[B 2—99]**

*(As agreed to by the Portfolio Committee on Justice (National Assembly))*

**PORTEFEULJEKOMITEE-AMENDEMENTE OP  
WYSIGINGSWETSONTWERP OP DIE VOORKOMING VAN GEORGANISEERDE  
MISDAAD  
[B 2—99]**

*(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))*

**NEW CLAUSE**

1. That the following be a new Clause to follow the Enactment Clause:

**Amendment of Preamble to Act 121 of 1998**

1. The Preamble to the Prevention of Organised Crime Act, 1998 (hereinafter referred to as the principal Act) is hereby amended by the insertion, in the Afrikaans text, of the following heading:

**"AANHEF".**

**CLAUSE 1**

1. On page 2, from line 4, to omit all the words from "(hereinafter" up to "reference:" in line 6 and to substitute:

is hereby amended—

- (a) by the substitution in the Afrikaans text in item 21 for the expression "misdad" of the expression "onregmatige aktiwiteite";
- (b) by the substitution in the Afrikaans text for the heading **"INSTANDHOUDING VAN EIENDOM"** of the following heading:

**"EIENDOMSINSTANDHOUDINGSBEVELE";**

- (c) by the substitution in the Afrikaans text in item 61 for the expression "gedinge" of the expression "aansoeke"; and

(d) by the substitution for the reference to Schedules 2 and 3 of the following reference:

## NEW CLAUSES

1. That the following be new Clauses to follow Clause 1:

### Amendment of section 1 of Act 121 of 1998

3. Section 1 of the principal Act is hereby amended—

(a) by the substitution for the definition of "Committee" in subsection (1) of the following definition:

" 'Committee' means **[a committee]** the Criminal Assets Recovery Committee established in terms of section 65;";

(b) by the substitution for the definition of "Ainstrumentality of an offence" in subsection (1) of the following definition:

" **[Ainstrumentality]** instrumentality of an offence' means any property which is concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;"

(c) by the substitution in the definition of "proceeds of unlawful activities" in subsection (1) for the words preceding paragraph (a) for the following words:  
" 'proceeds of unlawful activities', means any property **[or part thereof]** or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in connection with or as a result of any unlawful activity carried on by any person, whether in the Republic or elsewhere, except for purposes of Chapter 5 where it means—";

**[(d) by the substitution for the definition of "property" in subsection (1) for the following definition:**

**" 'property' means money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof, except for purposes of Chapter 7 where it means any movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof;";]** and

(d) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"For the purposes of this Act a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached are those which would

have been reached by a reasonably diligent and vigilant person having both—".

#### **Amendment of section 2 of Act 121 of 1998**

4. Section 2 of the principal Act is hereby amended—

(a) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of the following subparagraphs:

"(i) receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and

(ii) knows or ought reasonably to have known that such property is so derived [**directly or indirectly**]; and  
**[from a pattern of racketeering activity; and]**";

(b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of the following subparagraph:

"(ii) **[who]** knows or ought reasonably to have known that such property derived or is derived from or through a pattern or racketeering activity;"

(c) by the substitution for subparagraph (ii) of paragraph (c) of subsection (1) of the following subparagraph:

"(ii) **[who]** knows or ought reasonably to have known that such property derived or is derived from or through a pattern or racketeering activity;" and

(d) by the insertion after paragraph (f) of subsection (1) of the word "or".

#### **Amendment of section 3 of Act 121 of 1998**

5. Section 3 of the principal Act is hereby amended—

(a) by the substitution in the Afrikaans text for subsection (1) of the following subsection:

"(1) Iemand wat skuldig bevind word aan 'n misdryf bedoel in artikel 2(1) is strafbaar met 'n boete van hoogstens R1 000 miljoen of met gevangenisstraf vir 'n tydperk van **[lebenslank]** tot lewenslange gevangenisstraf."; and

(b) by the substitution in the Afrikaans text for the words preceding paragraph (a) of subsection (2) of the following words:

"Ondanks enige ander wet wat handel met die strafjurisdiksie van die streekhof, indien 'n streekhof, nadat hy 'n beskuldigde skuldig bevind het aan 'n misdryf bedoel in artikel 2(1) wat volg op **[n]**—".

#### **Amendment of section 4 of Act 121 of 1998**

6. Section 4 of the principal Act is hereby amended—

(a) by the substitution in the Afrikaans text for the words preceding paragraph (a) of the following words:

"Iemand wat weet of redelikerwys behoort te **[weet]** geweet het dat eiendom die opbrengs van onregmatige aktiwiteite is, en—"; and

(b) by the substitution for paragraph (i) of the following paragraph:

"(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or **[its]** the ownership thereof or any interest which anyone may have in respect thereof; or".

#### **Amendment of section 5 of Act 121 of 1998**

7. Section 5 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby—".

#### **Substitution of section 6 of Act 121 of 1998**

8. The following section is hereby substituted for section 6 of the principal Act:

##### **"Acquisition, possession or use of proceeds of unlawful activities**

6. Any person who—

(a) acquires;

(b) uses; or

(c) has possession of,

**[of]** property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence."

#### **Amendment of section 7 of Act 121 of 1998**

9. Section 7 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"Any person who carries on a business or is in charge of, or manages a business

undertaking or who is employed by a business undertaking and who suspects or ought reasonably to have suspected that—”;

(b) by the substitution for the expression "activity" in subparagraph (ii) of paragraph (c) of subsection (1) of the expression "activities”;

(c) by the substitution in the Afrikaans text for the words following subparagraph (ii) of paragraph (c) of subsection (1) of the following words:

"is verplig om sy of haar suspisie en alle beskikbare inligting rakende die gronde waarop dit berus, binne 'n redelike tyd aan te meld by 'n persoon deur die Minister aangewys en moet alle redelike stappe doen om sodanige verpligting na te kom.”;

(d) by the insertion in the Afrikaans text after paragraph (a) of subsection (3) of the word "en”;

(e) by the substitution for paragraph (a) of subsection (5) for the following paragraph:

"(a) No obligation as to secrecy and no other restriction on the disclosure of information as to the affairs or business of another, whether imposed by any law, the common law or any agreement, shall affect any obligation imposed under this section to report or disclose information or to permit access to any registers, records or other documents unless that obligation of secrecy or other restriction is based on the common law right to professional privilege between an attorney and his or her client in respect of information communicated to the attorney so as to enable him or her to provide advice, to defend the client or to render other legal assistance to the client in connection with an offence under any law in respect of which the client is charged, in respect of which he or she has been arrested or summoned to appear in court or in respect of which an investigation with a view to institute criminal proceedings is being conducted against him or her.”; and

(f) by the substitution in the Afrikaans text for subsection (6) of the following subsection:

"(6) Iemand wat 'n party is tot 'n transaksie ten opsigte waarvan hy of sy 'n suspisie vorm wat na sy of haar mening gerapporteer moet word kragtens subartikel (1), mag met daardie transaksie voortgaan en moet verseker dat alle rekords rakende daardie transaksie behou word en dat alle redelike stappe [**geneem**] gedoen word om die verpligting kragtens hierdie artikel na te kom.”.

#### **Insertion of section 7A in Act 121 of 1998**

10. The following section is hereby inserted after section 7 of the Principal Act:

**"Defence**

[7A. It is a defence to a charge that an offence under sections 4, 5 and 6 had been committed negligently that the accused had reported a suspicion in terms of section 7.]

**New draft:** 7A. If a person is charged with negligently committing an offence under section 4, 5 or 6, that person may raise as a defence the fact that he or she had reported a suspicion in terms of section 7.

#### **Amendment of section 9 of Act 121 of 1998**

11. Section 9 of the principal Act is hereby amended by the substitution for the words following paragraph (c) of subsection (2) of the following words:

"shall be guilty of **[any]** an offence."

#### **Amendment of section 10 of Act 121 of 1998**

12. Section 10 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) If the offence contemplated in section 9 is committed on the premises or grounds of, or within 500 metres of a public or private school, or any other educational institution, during hours in which the facility is open for classes or school related programmes or when minors are using the facility, such **[circumstance]** fact shall be regarded as an aggravating **[factor]** circumstance.

(3) If a court, after having convicted an accused of any offence, other than an offence contemplated in this Chapter, find that the accused was a member of a criminal gang at the time of the commission of the offence, such **[factor]** finding shall be regarded as an aggravating **[factor]** circumstance for sentencing purposes."

#### **Amendment of section 11 of Act 121 of 1998**

13. Section 11 of the principal Act is hereby amended—

(a) by the substitution in the Afrikaans text for paragraph (c) of the following paragraph:

"(c) in 'n besondere kriminele bende se gebied bly of dikwels daar verkeer en hulle styl van **[klere, die]** kleredrag, hulle gebruik van **[hulle]** handtekens, taal of hul tatoeëermerke **[aangeneem het]** aanneem, en met bekende lede van 'n kriminele bende omgaan;" and

(b) by the substitution in paragraph (d) for the expression "activity" of the expression "activities".

#### **Amendment of section 12 of Act 121 of 1998**

14. Section 12 of the principal Act is hereby amended—

- (a) by the insertion after paragraph (a) of item (i) of subsection (1) of the word "or";
- (b) by the insertion after paragraph (a) of item (iv) of subsection (1) of the word "or";
- (c) by the substitution in the Afrikaans text for the expression "kurator" in item (i) of paragraph (a) of subsection (2) of the expression "eksekuteur"; and
- (d) by the substitution for subsection (3) of the following subsection:

"(3) For the purposes of this Chapter, a person has benefited from unlawful activity if he or she has at any time, whether before or after the commencement of this Act, received or retained any advantage, payment, service or reward including any property **[or part thereof]** in connection with any **[criminal]** unlawful activity carried on by him or her or by any other person."

**Option:** "(3) For the purposes of this Chapter, a person has benefited from unlawful **[activity]** activities if he or she has at any time, whether before or after the commencement of this Act, received **[any advantage, payment, service or reward including any property or part thereof in connection with any criminal activity carried on by him or her or by any other person]** or retained any proceeds of unlawful activities."

#### **Amendment of section 15 of Act 121 of 1998**

15. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If at the particular time referred to in subsection (2) the recipient holds—

- (a) the property, other than cash, which he or she received, the value concerned shall be the value of the property at the particular time; or
- (b) property **[, or any part thereof,]** which directly or indirectly represents in his or her hands the property which he or she received, the value concerned shall be the value of the property, in so far as it represents the property which he or she received, at the relevant time."

#### **Amendment of section 19 of Act 121 of 1998**

16. Section 19 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2), the value of a defendant's proceeds of unlawful activities shall be the sum of the values of the **[payments or other] property, services, advantages, benefits or rewards** received by him or her at any time, whether before or after the commencement of this Act, in connection with the criminal activity carried on by him or her or any other person.";

(b) by the substitution in the Afrikaans text for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph:

"(ii) eiendom **[, of 'n deel daarvan,]** te gewees het wat regstreeks of onregstreeks in die verweerder se hande die eiendom verteenwoordig het wat hy of sy in daardie verband ontvang het,"; and

(c) by the substitution in the Afrikaans text for the expression "moes" in paragraph (b) of subsection (2) of the expression "moet".

#### **Amendment of section 20 of Act 121 of 1998**

17. Section 20 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"For the purposes of section **[18(1)(b)] 18(2)(b)** or 21(3)(a), the amount which might be realised at the time of the making of a confiscation order against a defendant shall be the amount equal to the sum of—"; and

(b) by the insertion in the Afrikaans text after subparagraph (ii) of paragraph (a) of subsection (4) of the word "of".

#### **CLAUSE 2**

1. On page 2, from line 16, to omit all the words from "amended" up to "words:" in line 17 and to substitute:  
amended—

(a) by the substitution in the Afrikaans text in subsection (1) for the expression "belang" of the expression "belange";

(b) by the substitution in the Afrikaans text in subsection (2) for the words preceding paragraph (a) of the following words:

"Vir die doeleindes van 'n ondersoek kragtens artikel 18(1), indien bevind word dat 'n hof 'n verweerder beveel het om enige feite kragtens artikel 26(7) te openbaar en dat die verweerder sonder voldoende rede versuim het om sodanige feite te





