

SMS' RESPONSE TO SPEECHES BY MP HO GEOK CHOO AND NMP PAULIN STRAUGHAN

First, let me thank both Mdm Ho Geok Choo and Dr Pauline Straughan for speaking in support of the Bill.

2 On the removal of the requirement that the act of concealing criminal proceeds be done for the purpose of avoiding prosecution, let me assure Dr Straughan that even with the amendment, the Prosecution still needs to prove that the accused had carried out some act of concealing, disguising, conversion or transferral of tainted property. Now, in addition, the Prosecution also needs to prove that the accused, in committing the said acts, knew or had reasonable grounds to believe that the money was another person's tainted property. So, in other words, the Prosecution still needs to prove the existence of these two key elements, which are known in criminal law (lawyers amongst us will know) as the actus reus (the act) and the mens rea (the guilty intent).

3 What is removed is the motive, that is, to show that the accused committed the acts for the purpose of assisting another person to avoid prosecution, or the enforcement of a confiscation order.

4 And indeed, as Mdm Ho has said, in fact she hails this move as a “positive one” because as she puts it, “to prove motive for committing the act creates an additional and unnecessary hurdle.”

5 Now, so Mdm Ho is correct. As an analogy (I just put this forward to assure Dr Straughan), if a person receives or retains stolen property, knowing or believing that they are stolen property, he would have committed a crime already under the Penal Code for dishonestly receiving stolen property. There is no need for the Prosecution to go further to show that the accused committed the act for the purpose of helping the thief to avoid prosecution.

6 Indeed, this amendment brings the affected provisions into full conformity with Article 6(1)(a)(ii) of the UN Convention Against Transnational Organised Crime as well as Article 3(1)(b)(i) of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

7 Now, Mdm Ho then makes a further point that the removal of the requirement where the acquisition of proceeds of crime are made for no or inadequate consideration broadens the scope and makes it easier for the innocent to be wrongly caught. Now, let me assure her that this is not the intent of this amendment.

8 The essence of this amendment is to plug the gap where informed criminals may intentionally acquire proceeds of crime at fair value to escape prosecution. So, for example, if a person who is knowledgeable such as an art connoisseur, pays market value for a stolen art work, knowing or having reasonable grounds to believe that the art

work was stolen, currently, he would be able to use the fact that he paid market value as a defence, even though he would have helped to launder the benefits of crime.

9 So, conversely, an innocent person who acquires proceeds of crime without knowing or having reasonable grounds to believe that it is from an illicit source (so be it through internet commerce, or as a pawnshop owner or as a dealer in second hand goods), he will not be guilty of an offence. The onus is, I think, and that is the key point to bear in mind, is that the Prosecution still has to prove beyond reasonable doubt that the person knew or had reasonable grounds to believe that these were proceeds of crime. I think that's the substantive points. Let me give those reassurances.

10 On this procedural point on section 46(5) and section 47(5) which Mdm Ho has pointed out, indeed she is right, that with these amendments, these two sub-sections have become otiose. Let me assure her that they do not affect the interpretation of the Act at all and will be removed at the next available opportunity.