



New South Wales

Unexplained Wealth (Commonwealth Powers) Act 2018 No 42

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Unexplained Wealth (Commonwealth Powers) Act 2018 No 42

Act No 42, 2018

An Act to refer certain matters relating to unexplained wealth and information gathering to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth; and for other purposes. [Assented to 21 August 2018]

The Legislature of New South Wales enacts:

1 Name and purpose of Act

- (1) This Act is the *Unexplained Wealth (Commonwealth Powers) Act 2018*.
- (2) The main purpose of this Act is to refer certain matters relating to unexplained wealth and information gathering to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

- (1) In this Act:

amendment reference means the reference to the Parliament of the Commonwealth of the matters covered by section 4 (1) (c).

assent date means the date of assent to this Act.

commencement day means the day on which section 4 (1) comes into operation.

Commonwealth Proceeds of Crime Act means the *Proceeds of Crime Act 2002* of the Commonwealth, as in force from time to time.

express amendment of the Commonwealth Proceeds of Crime Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of the Commonwealth Proceeds of Crime Act.

pre-assent version of the Commonwealth Proceeds of Crime Act means the *Proceeds of Crime Act 2002* of the Commonwealth, as originally enacted and as subsequently amended by amendments enacted at any time before the assent date.

prescribed termination day means the day on which text reference 1 and the amendment reference are to terminate as set out in section 9 (1).

reference means:

- (a) text reference 1, or
- (b) text reference 2, or
- (c) the amendment reference.

relevant offence means an offence of a kind specified in section 8.

text reference 1 means the reference to the Parliament of the Commonwealth of the matters covered by section 4 (1) (a).

text reference 2 means the reference to the Parliament of the Commonwealth of the matters covered by section 4 (1) (b).

unexplained wealth—see section 5.

unexplained wealth provisions means:

- (a) section 20A and Part 2-6 of the Commonwealth Proceeds of Crime Act, and
- (b) the other provisions of that Act in so far as they relate to section 20A and Part 2-6 of that Act, and
- (c) instruments made under that Act for the purposes of a provision referred to in paragraph (a) or (b).

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act (except in Schedules 1–4) do not form part of this Act.

4 Reference of matters

- (1) The following matters are referred to the Parliament of the Commonwealth:
- (a) the matters to which the pre-assent version of the Commonwealth Proceeds of Crime Act would relate if express amendments were made to it in the terms, or substantially in the terms, of the text set out in Schedules 1 and 2 to this Act but excluding matters to which that version otherwise relates,
 - (b) the matters to which the pre-assent version of the Commonwealth Proceeds of Crime Act would relate if express amendments were made to it in the terms, or substantially in the terms, of the text set out in Schedule 3 to this Act but excluding matters to which that version otherwise relates,
 - (c) the matters relating to unexplained wealth (not including a matter excluded by subsection (2)) and to information gathering, but only to the extent of the making of laws with respect to those matters by making express amendments of the Commonwealth Proceeds of Crime Act.
- (2) The following matters are excluded for the purposes of subsection (1) (c):
- (a) the matter of including a provision in section 20A or Part 2-6 of the Commonwealth Proceeds of Crime Act that requires a person to pay an amount otherwise than by order of a court,
 - (b) the matter of including a provision in section 20A or Part 2-6 of the Commonwealth Proceeds of Crime Act that requires or permits property to be restrained, forfeited or seized otherwise than by order of a court.
- (3) The operation of each paragraph of subsection (1) is not affected by any other paragraph.
- (4) The reference of a matter under subsection (1) has effect only:
- (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth), and
 - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (5) To avoid doubt, it is the intention of the Parliament of the State that:
- (a) the Commonwealth Proceeds of Crime Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of subsection (1) by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from under the references under subsection (1), and
 - (b) the Commonwealth Proceeds of Crime Act may have its operation affected, otherwise than by express amendment, at any time after the commencement of subsection (1) by provisions of instruments made or issued under that Act.
- (6) Despite any other provision of this section, a reference under subsection (1) has effect for a period:
- (a) beginning at the beginning of the commencement day, and
 - (b) ending at the beginning of the day fixed under this Act as the day on which the reference is to terminate,
- but no longer.

5 Meaning of “unexplained wealth”

- (1) For the purposes of section 4 (1) (c), *unexplained wealth* means property or wealth that might not have been lawfully acquired.
- (2) For the purposes of subsection (1) and section 4 (2) (b), the meaning of *lawfully acquired*, *property* and *wealth* includes, but is not limited to, the meaning of those terms in the pre-assent version of the Commonwealth Proceeds of Crime Act.

6 Meaning of “information gathering”

For the purposes of section 4 (1) (c), *information gathering* means the production or provision of information for the purposes of, or relevant to, the taking of action, or the institution of proceedings, under a law of the State.

7 Rollback of particular express amendments

- (1) For the purposes of section 14G of the Commonwealth Proceeds of Crime Act, the Governor may, by proclamation published on the NSW legislation website, declare that an express amendment of that Act (other than Subdivision B of Division 2 of Part 1-4) is not to apply to proceedings covered by subsection (3), (4) or (5) of that section.

Note. To be effective for the purposes of section 14G of the Commonwealth Proceeds of Crime Act, the proclamation must come into force in the period of 6 months beginning on the day the amendment is enacted. On the coming into force of the proclamation, that Act applies to the proceedings as if the amendment had not been enacted.

- (2) For the purposes of section 14J of the Commonwealth Proceeds of Crime Act, the Governor may, by proclamation published on the NSW legislation website, declare that an express amendment of that Act (other than Subdivision B of Division 2 of Part 1-4) is not to apply to:
 - (a) an application covered by subsection (3) of that section, or
 - (b) an order made as a result of an application referred to in paragraph (a) of this subsection, or
 - (c) a notice covered by subsection (4) of that section.

Note. To be effective for the purposes of section 14J of the Commonwealth Proceeds of Crime Act, the proclamation must come into force in the period of 6 months beginning on the day the express amendment is enacted. On the coming into force of the proclamation, that Act applies to the application, order and notice as if the amendment had not been enacted.

8 Relevant offences

For the purpose of the Commonwealth Proceeds of Crime Act in so far as it relates to an offence of a kind that is specified by this Act, an offence referred to in section 6 (2) of the *Criminal Assets Recovery Act 1990* is specified except:

- (a) an offence covered by paragraph (b) of that subsection by force of paragraph (f) of the definition of *drug trafficking offence* in section 6 (3) of that Act, or
- (b) an offence referred to in paragraph (c) or (i) of section 6 (2) of that Act.

9 Termination of text reference 1 and amendment reference

- (1) Subject to earlier termination under subsection (2), text reference 1 and the amendment reference terminate on the day that is the sixth anniversary of the commencement day or on a later day fixed by the Governor by proclamation under section 11 (1).
- (2) Text reference 1 or the amendment reference terminates on a day that is earlier than the prescribed termination day if the Governor fixes that earlier day by proclamation

under section 12 (1) (a) or (b) or section 13 (2) or (4) as the day on which the reference is to terminate.

10 Termination of text reference 2

- (1) The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which text reference 2 is to terminate.
- (2) The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (1).
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

11 Extension of period of reference by proclamation

- (1) The Governor may, at any time before the prescribed termination day, by proclamation published on the NSW legislation website, fix a day that is later than the prescribed termination day as the day on which text reference 1 and the amendment reference are to terminate.
- (2) More than one proclamation may be made under subsection (1).

12 Earlier termination of reference by proclamation

- (1) The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day that is earlier than the prescribed termination day as the day on which:
 - (a) text reference 1 is to terminate, or
 - (b) the amendment reference is to terminate.
- (2) The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 9 (2)) never to have been published.
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.
- (5) A proclamation under subsection (1) has effect despite any earlier proclamation published under section 11 (1).

13 Termination in particular circumstances

- (1) Nothing in this section limits, or affects the operation of, section 9, 10, 11 or 12.
- (2) The Governor may, by proclamation published on the NSW legislation website, fix a day as the day on which text reference 1 and the amendment reference are to terminate if the Commonwealth Parliament enacts an express amendment of the Commonwealth Proceeds of Crime Act that, in the opinion of the Governor, is inconsistent with the fundamental attributes of the unexplained wealth provisions.
- (3) Without limiting subsection (2), an express amendment of the Commonwealth Proceeds of Crime Act that is inconsistent with the fundamental attributes of the unexplained wealth provisions includes an amendment to section 20A or Part 2-6 of that Act that has the effect of allowing a restraining order, payment order, seizure

order or forfeiture order to be made under those provisions otherwise than by order of a court.

- (4) For the purposes of section 14F of the Commonwealth Proceeds of Crime Act, the Governor may, by proclamation published on the NSW legislation website, fix a day as the day on which both text reference 1 and the amendment reference are to terminate, or the amendment reference only is to terminate, if the Commonwealth Parliament enacts an express amendment of section 14G or 14J (about rollback), or Division 2 of Part 4-3 (about sharing proceeds), of the Commonwealth Proceeds of Crime Act.
- (5) The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (2) or (4), in which case the revoked proclamation is taken (for the purposes of section 9 (2)) never to have been published.
- (6) A revoking proclamation has effect only if published before the day fixed under subsection (2) or (4).
- (7) The revocation of a proclamation published under subsection (2) or (4) does not prevent publication of a further proclamation under that subsection.
- (8) A proclamation under subsection (2) or (4) has effect despite any earlier proclamation published under section 11 (1).

14 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may deal with matters of a transitional, application or savings nature relating to an offence becoming, or ceasing to be, a relevant offence.

Schedule 1 Text for amendments extending the main unexplained wealth provisions to certain offences against the laws of participating States

1 Subparagraph 20A(1)(g)(i)

After “*foreign indictable offence”, insert “, a *relevant offence of a *participating State”.

2 Subparagraph 20A(1)(g)(ii)

After “foreign indictable offence”, insert “, a relevant offence of a participating State”.

3 Subparagraph 20A(3)(c)(i)

After “*foreign indictable offence”, insert “, a *relevant offence of a *participating State”.

4 Subparagraph 20A(3)(c)(ii)

After “foreign indictable offence”, insert “, a relevant offence of a participating State”.

5 After subparagraph 179E(1)(b)(ii)

Insert:

(ia) a *relevant offence of a *participating State;

6 After subparagraph 179E(2)(b)(ii)

Insert:

(ia) a *relevant offence of a *participating State;

7 After subparagraph 322(4A)(a)(ii)

Insert:

(ia) a *relevant offence of a *participating State;

8 Section 338

Insert:

relevant offence of a *participating State means an offence of a kind that is specified by the *referral Act or *adoption Act of the State.

Schedule 2 Text for amendments concerning information gathering under the national cooperative scheme on unexplained wealth

1 At the end of Division 2 of Part 1-4

Add:

Subdivision D—Other matters

14M Information gathering by participating States and self-governing Territories

Schedule 1 has effect.

2 At the end of paragraph 266A(1)(b)

Add “or clause 18 of Schedule 1”.

3 Section 338

Insert:

authorised State/Territory officer has the meaning given in subclause 1(2) of Schedule 1.

4 Section 338 (definition of *production order*)

After “202(1)”, insert “, or subclause 1(1) of Schedule 1,”.

5 Section 338

Insert:

unexplained wealth legislation of a State or *self-governing Territory means a law of the State or Territory that is prescribed by the regulations.

6 In the appropriate position

Insert:

Schedule 1—Information gathering by participating States and self-governing Territories

Note: See section 14M.

Part 1—Production orders

1 Making production orders

- (1) A magistrate may make an order (a *production order*) requiring a person to:
- (a) produce one or more documents referred to in subclause (6) to an *authorised State/Territory officer of a *participating State or *self-governing Territory; or
 - (b) make one or more documents referred to in subclause (6) available to an authorised State/Territory officer of a participating State or self-governing Territory for inspection.

- (2) An ***authorised State/Territory officer*** of a *participating State or *self-governing Territory means:
- (a) a person who may apply for, or make an affidavit in support of, a restraining order under a *special confiscation law of the State or Territory; or
 - (b) if New South Wales is a participating State—the Commissioner and Assistant Commissioners of the New South Wales Crimes Commission; or
 - (c) for a self-governing Territory—a person of a kind prescribed by the regulations in relation to the Territory.
- (3) However:
- (a) the magistrate must not make a *production order unless the magistrate is satisfied by information on oath that the person is reasonably suspected of having possession or control of such documents; and
 - (b) a production order cannot require documents that are not:
 - (i) in the possession or under the control of a body corporate; or
 - (ii) used or intended to be used in the carrying on of a business; to be produced or made available to an *authorised State/Territory officer of the *participating State or *self-governing Territory concerned; and
 - (c) a production order cannot require any accounting records used in the ordinary business of a *financial institution (including ledgers, day-books, cash-books and account books) to be produced to an authorised State/Territory officer of the participating State or self-governing Territory concerned.
- (4) The *production order can only be made on application by an *authorised State/Territory officer of a *participating State or *self-governing Territory.
- (5) The *authorised State/Territory officer need not give notice of the application to any person.
- (6) Each of the following is a document that may be the subject of a *production order:
- (a) a document relevant to identifying, locating or quantifying property of a person for the purposes of:
 - (i) determining whether to take any action in relation to the person under the *unexplained wealth legislation of the *participating State or *self-governing Territory concerned; or
 - (ii) proceedings in relation to the person under the unexplained wealth legislation of the participating State or self-governing Territory concerned;
 - (b) a document relevant to identifying or locating any document necessary for the transfer of property of such a person;
 - (c) a document that would assist in the reading or interpretation of a document referred to in paragraph (a) or (b).

2 Contents of production orders

- (1) A *production order must:
 - (a) specify the nature of the documents required; and
 - (b) specify the place at which the person must produce the documents or make the documents available; and
 - (c) specify the time at which, or the times between which, this must be done; and
 - (d) specify the form and manner in which those documents are to be produced; and
 - (e) specify the name of the *authorised State/Territory officer of the State or Territory who, unless he or she inserts the name of another authorised State/Territory officer of the State or Territory in the order, is to be responsible for giving the order to the person; and
 - (f) if the order specifies that information about the order must not be disclosed—set out the effect of clause 9 (disclosing existence or nature of production orders); and
 - (g) set out the effect of clause 10 (failing to comply with an order).
- (2) The time or times specified under paragraph (1)(c) must be:
 - (a) at least 14 days after the day on which the *production order is made; or
 - (b) if the magistrate who makes the production order is satisfied that it is appropriate, having regard to the matters specified in subclause (3), to specify an earlier time—at least 3 days after the day on which the production order is made.
- (3) The matters to which the magistrate must have regard for the purposes of deciding whether an earlier time is appropriate under paragraph (2)(b) are:
 - (a) the urgency of the situation; and
 - (b) any hardship that may be caused to the person required by the *production order to produce documents or make documents available.

3 Powers under production orders

The *authorised State/Territory officer may inspect, take extracts from, or make copies of, a document produced or made available under a *production order.

4 Retaining produced documents

- (1) The *authorised State/Territory officer may also retain a document produced under a *production order for as long as is necessary for the purposes of the *unexplained wealth legislation of the *participating State or *self-governing Territory concerned.
- (2) The person to whom a *production order is given may require the *authorised State/Territory officer to:
 - (a) certify in writing a copy of the document retained to be a true copy and give the person the copy; or

- (b) allow the person to do one or more of the following:
 - (i) inspect the document;
 - (ii) take extracts from the document;
 - (iii) make copies of the document.

5 Privilege against self-incrimination etc. does not apply

- (1) A person is not excused from producing a document or making a document available under a *production order on the ground that producing the document or making it available:
 - (a) would tend to incriminate the person or expose the person to a penalty; or
 - (b) would breach an obligation (whether imposed by an enactment or otherwise) of the person not to disclose the existence or contents of the document; or
 - (c) would disclose information that is the subject of *legal professional privilege.
- (2) However, in the case of a natural person, the document is not admissible in evidence in a *criminal proceeding against the person, except in proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

6 Varying production orders

- (1) A person who is required to produce a document to an *authorised State/Territory officer under a *production order may apply to:
 - (a) the magistrate who made the order; or
 - (b) if that magistrate is unavailable—any other magistrate;to vary the order so that it instead requires the person to make the document available for inspection.
- (2) The magistrate may vary the *production order if satisfied that the document is essential to the person's business activities.

7 Jurisdiction of magistrates

A magistrate in a State or a *self-governing Territory may issue a *production order relating to one or more documents that are located in:

- (a) that State or Territory; or
- (b) another State or self-governing Territory if he or she is satisfied that there are special circumstances that make the issue of the order appropriate; or
- (c) a *non-governing Territory.

8 Making false statements in applications

A person commits an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and

- (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, an application for a *production order.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

9 Disclosing existence or nature of production orders

- (1) A person commits an offence if:
 - (a) the person is given a *production order; and
 - (b) the order specifies that information about the order must not be disclosed; and
 - (c) the person discloses the existence or nature of the order to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) A person commits an offence if:
 - (a) the person is given a *production order; and
 - (b) the order specifies that information about the order must not be disclosed; and
 - (c) the person discloses information to another person; and
 - (d) that other person could infer the existence or nature of the order from that information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subclauses (1) and (2) do not apply if:
 - (a) the person discloses the information to an employee, *agent or other person in order to obtain a document that is required by the *production order in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or
 - (b) the disclosure is made to obtain legal advice or legal representation in relation to the order; or
 - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subclause (3): see subsection 13.3(3) of the *Criminal Code*.

10 Failing to comply with production orders

- (1) A person commits an offence if:
 - (a) the person is given a *production order; and
 - (b) the person fails to comply with the order; and
 - (c) the person has not been notified of sufficient compliance under subclause (2).

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

- (2) A person is notified of sufficient compliance under this subclause if:
- (a) the person gives an *authorised State/Territory officer of the *participating State or *self-governing Territory concerned a statutory declaration stating that the person does not have possession or control of the document specified in the *production order; and
 - (b) the officer notifies the person in writing that the statutory declaration is sufficient compliance with the order.
- (3) It is a defence to an offence against subclause (1) if:
- (a) the person fails to comply with the *production order only because the person does not produce the document specified in the order within the time specified in the order; and
 - (b) the person took all reasonable steps to produce the document within that time; and
 - (c) the person produces the document as soon as practicable after that time.

Note: A defendant bears an evidential burden in relation to the matters in subclause (3) (see subsection 13.3(3) of the *Criminal Code*).

11 Destroying etc. documents subject to production orders

A person commits an offence if:

- (a) the person destroys, defaces or otherwise interferes with a document; and
- (b) a *production order is in force requiring the document to be produced or made available.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Part 2—Notices to financial institutions

12 Giving notices to financial institutions

- (1) An official specified in subclause (3) of a *participating State or *self-governing Territory may give a written notice to a *financial institution requiring the institution to provide to an *authorised State/Territory officer of the participating State or the Territory any information or documents relevant to any one or more of the following:
- (a) determining whether an *account is or was held by a specified person with the financial institution;
 - (b) determining whether a particular person is or was a signatory to an account;
 - (c) if a person holds an account with the institution, the current balance of the account;
 - (d) details of transactions on an account over a specified period of up to 6 months;
 - (e) details of any related accounts (including names of those who hold or held those accounts);
 - (f) determining whether a *stored value card was issued to a specified person by a financial institution;
 - (g) details of transactions made using such a card over a specified period of up to 6 months;

- (h) a transaction conducted by the financial institution on behalf of a specified person.
- (2) The official must not issue the notice unless the official reasonably believes that giving the notice is required:
 - (a) to determine whether to take any action under the *unexplained wealth legislation of the State or Territory; or
 - (b) in relation to proceedings under the unexplained wealth legislation of the State or Territory.
- (3) The officials of a *participating State or *self-governing Territory who may give a notice to a *financial institution are:
 - (a) the Commissioner or head (however described) of the police force or police service of the State or Territory; or
 - (b) the Director of Public Prosecutions, or a person performing a similar function, appointed under a law of the State or Territory; or
 - (c) if New South Wales is a participating State—the Commissioner and Assistant Commissioners of the New South Wales Crimes Commission; or
 - (d) for a self-governing Territory—a person of a kind prescribed by the regulations in relation to the Territory.

13 Contents of notices to financial institutions

- (1) The notice must:
 - (a) state that the official giving the notice believes that the notice is required:
 - (i) to determine whether to take any action under the *unexplained wealth legislation of the State or Territory; or
 - (ii) in relation to proceedings under the unexplained wealth legislation of the State or Territory; and
 - (b) specify the name of the *financial institution; and
 - (c) specify the kind of information or documents required to be provided; and
 - (d) specify the form and manner in which that information or those documents are to be provided, having regard to the record keeping capabilities of the financial institution (to the extent known to the official); and
 - (e) specify that the information or documents must be provided no later than:
 - (i) 14 days after the giving of the notice; or
 - (ii) if the official giving the notice believes that it is appropriate, having regard to the matters specified in subclause (2), to specify an earlier day that is at least 3 days after the giving of the notice—that earlier day; and
 - (f) if the notice specifies that information about the notice must not be disclosed—set out the effect of clause 16 (disclosing existence or nature of a notice); and
 - (g) set out the effect of clause 17 (failing to comply with a notice).

- (2) The matters to which the official giving the notice must have regard in deciding whether to specify an earlier day under subparagraph (1)(e)(ii) are:
 - (a) the urgency of the situation; and
 - (b) any hardship that may be caused to the *financial institution required by the notice to provide the information or documents.

14 Protection from suits etc. for those complying with notices

- (1) No action, suit or proceeding lies against:
 - (a) a *financial institution; or
 - (b) an *officer, employee or *agent of the institution acting in the course of that person's employment or agency;in relation to any action taken by the institution or person under a notice under clause 12 or in the mistaken belief that action was required under the notice.
- (2) A *financial institution, or person who is an *officer, employee or *agent of a financial institution, who provides information under a notice under clause 12 is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

15 Making false statements in notices

A person commits an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, a notice under clause 12.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

16 Disclosing existence or nature of notices

A person commits an offence if:

- (a) the person is given a notice under clause 12; and
- (b) the notice specifies that information about the notice must not be disclosed; and
- (c) the person discloses the existence or nature of the notice.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

17 Failing to comply with notices

- (1) A person commits an offence if:
 - (a) the person is given a notice under clause 12; and
 - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

- (2) It is a defence to an offence against subclause (1) if:
- (a) the person fails to comply with the notice only because the person does not provide the information or a document within the period specified in the notice; and
 - (b) the person took all reasonable steps to provide the information or document within that period; and
 - (c) the person provides the information or document as soon as practicable after the end of that period.

Note: A defendant bears an evidential burden in relation to the matters in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Part 3—Disclosure of information

18 Disclosure

- (1) This clause applies if a person obtains information:
- (a) as a direct result of the exercise of a power (by the person or someone else), or performance (by the person) of a function, under Part 1 or 2; or
 - (b) as a result of a disclosure, or a series of disclosures, under this clause.
- (2) The person may disclose the information to an authority described in an item of the following table for a purpose described in that item if:
- (a) the person believes on reasonable grounds that the disclosure will serve that purpose; and
 - (b) a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

Recipients and purposes of disclosure

Item	Authority to which disclosure may be made	Purpose for which disclosure may be made
1	Authority of a State or *self-governing Territory that has a function under a *corresponding law of the State or Territory	Any one or more of the following purposes: <ul style="list-style-type: none"> (a) engaging in proceedings under that corresponding law; (b) engaging in proceedings for the forfeiture of things under a law of that State or Territory; (c) deciding whether to institute proceedings of a kind referred to in paragraph (a) or (b)
2	Authority of the Commonwealth with one or more functions under this Act	Facilitating the authority's performance of its functions under this Act

Recipients and purposes of disclosure

Item	Authority to which disclosure may be made	Purpose for which disclosure may be made
3	Authority of the Commonwealth, or of a State or *self-governing Territory, that has a function of investigating or prosecuting offences against a law of the Commonwealth, State or Territory	Assisting in the prevention, investigation or prosecution of an offence against that law that is punishable on conviction by imprisonment for at least 3 years or for life
4	Australian Taxation Office	Protecting public revenue

(3) In a *criminal proceeding against a person who produced or made available a document under a *production order, none of the following that is disclosed under this clause is admissible in evidence against the person:

- (a) the document;
- (b) information contained in the document.

(4) Subclause (3) does not apply in a proceeding under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

Note: Subclauses (3) and (4) reflect subclause 5(2).

(5) To avoid doubt:

- (a) this clause does not prohibit the disclosure under section 266A of any information disclosed under this clause; and
- (b) this clause does not affect the admissibility in evidence of any information, document or thing obtained as an indirect consequence of a disclosure under this clause.

19 Parliamentary supervision of the operation of this Schedule

- (1) The operation of this Schedule is subject to the oversight of the Parliamentary Joint Committee on Law Enforcement.
- (2) The Committee may require an authority of a *participating State or *self-governing Territory that is the recipient of any information disclosed as the result of the operation of this Schedule to appear before it from time to time to give evidence.

20 Reports about the operation of this Schedule

- (1) The Commissioner or head (however described) of a police force or police service of a *participating State or *self-governing Territory must give the Minister a written report in respect of each financial year that contains the following information:
 - (a) the number and results of applications for *production orders under clause 1 in the year by an *authorised State/Territory officer of the State or Territory;
 - (b) the number of notices to *financial institutions issued under clause 12 in the year by an official specified in subclause 12(3) of the State or Territory;
 - (c) any other information of a kind prescribed by the regulations.

- (2) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Schedule 3 Text for amendments concerning State reference or adoption for the purposes of the national cooperative scheme on unexplained wealth

1 Before section 12

Insert:

Division 1—General

2 After section 14

Insert:

14A Concurrent operation of State and Territory laws

- (1) This Act does not exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.
- (2) Subsection (1) does not apply to the *national unexplained wealth provisions.

Note: For the interaction between the national unexplained wealth provisions and a law of a State or Territory, see section 14L.

Division 2—The national unexplained wealth provisions

Subdivision A—General

14B Constitutional basis of the national unexplained wealth provisions

(1) What this section is about

This section sets out the constitutional basis of the *national unexplained wealth provisions.

(2) National unexplained wealth provisions

The *national unexplained wealth provisions* are:

- (a) the *main unexplained wealth provisions; and
- (b) the *participating jurisdiction information gathering provisions; and
- (c) the *unexplained wealth machinery and transitional provisions.

(3) Main unexplained wealth provisions

The *main unexplained wealth provisions* are:

- (a) section 20A and Part 2-6; and
- (b) the other provisions of this Act in so far as they relate to that section or that Part; and
- (c) instruments made under this Act for the purposes of a provision referred to in paragraph (a) or (b).

(4) **Participating jurisdiction information gathering provisions**

The *participating jurisdiction information gathering provisions* are:

- (a) section 14M and Schedule 1; and
- (b) the other provisions of this Act in so far as they relate to that section or that Schedule; and
- (c) instruments made under this Act for the purposes of a provision referred to in paragraph (a) or (b).

(5) **Unexplained wealth machinery and transitional provisions**

The *unexplained wealth machinery and transitional provisions* are:

- (a) the following provisions (the *main machinery and transitional provisions*):
 - (i) sections 14A to 14L and 14N;
 - (ii) the definitions of *adoption Act, amendment reference, cooperating State, express amendment, information gathering, main machinery and transitional provisions, main unexplained wealth provisions, national unexplained wealth provisions, non-participating State, participating jurisdiction information gathering provisions, participating State, post-amended version 1 of this Act, post-amended version 2 of this Act, pre-amended version of this Act, referral Act, relevant law 1, relevant law 2, special confiscation law, text reference 1, text reference 2, unexplained wealth* and *unexplained wealth machinery and transitional provisions* in section 338;
 - (iii) Schedule 2; and
- (b) the other provisions of this Act in so far as they relate to any of the main machinery and transitional provisions; and
- (c) instruments made under this Act for the purposes of a provision referred to in paragraph (a) or (b).

(6) **Application in participating States**

The application of the *national unexplained wealth provisions in a *participating State is based on:

- (a) the legislative powers that the Commonwealth Parliament has because of a reference or an adoption by the Parliaments of the participating States under paragraph 51(xxxvii) of the Constitution; and
- (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

(7) **Application in non-participating States**

The application of the *national unexplained wealth provisions (other than the *unexplained wealth machinery and transitional provisions) in a *non-participating State is based on:

- (a) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxxvii)) and section 122 of the Constitution; and
- (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

- (8) The application of the *unexplained wealth machinery and transitional provisions in a *non-participating State that:
- (a) was a *participating State because it had referred to the Commonwealth Parliament:
 - (i) *text reference 1; and
 - (ii) *text reference 2; and
 - (iii) the *amendment reference; and
 - (b) ceased to be a participating State because it terminated either or both of the following:
 - (i) the referral of text reference 1;
 - (ii) the referral of the amendment reference; and
 - (c) has not terminated the referral of text reference 2;
- is based on:
- (d) the legislative powers that the Commonwealth Parliament has because of the referral of text reference 2 under paragraph 51(xxxvii) of the Constitution; and
 - (e) the other legislative powers that the Commonwealth Parliament has under the Constitution.
- (9) The application of the *unexplained wealth machinery and transitional provisions in a *non-participating State that:
- (a) was a *participating State because it had:
 - (i) adopted *post-amended version 1 of this Act; and
 - (ii) adopted *post-amended version 2 of this Act; and
 - (iii) referred to the Commonwealth Parliament the *amendment reference; and
 - (b) ceased to be a participating State because it terminated either or both of the following:
 - (i) the adoption of post-amended version 1 of this Act;
 - (ii) the referral of the amendment reference; and
 - (c) has not terminated the adoption of post-amended version 2 of this Act;
- is based on:
- (d) the legislative powers that the Commonwealth Parliament has because of the adoption of post-amended version 2 of this Act under paragraph 51(xxxvii) of the Constitution; and
 - (e) the other legislative powers that the Commonwealth Parliament has under the Constitution.
- (10) The application of the *unexplained wealth machinery and transitional provisions in a *non-participating State not covered by subsection (8) or (9) is based on:
- (a) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxxvii)) and section 122 of the Constitution; and
 - (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

(11) **Application in a self-governing Territory**

The application of the *national unexplained wealth provisions in a *self-governing Territory is based on:

- (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
- (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Despite section 2H of the *Acts Interpretation Act 1901*, the national unexplained wealth provisions as applying in a self-governing Territory are laws of the Commonwealth.

(12) **Application outside Australia**

The application of the *national unexplained wealth provisions outside *Australia is based on:

- (a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
- (b) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxix)) and section 122 of the Constitution; and
- (c) the other legislative powers that the Commonwealth Parliament has under the Constitution.

14C What is a *participating State*?

(1) **Participating State**

A State is a *participating State* if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:

- (a) has, by its *referral Act, referred to the Commonwealth Parliament:
 - (i) *text reference 1 (see subsection (2)); and
 - (ii) *text reference 2 (see subsection (3)); and
 - (iii) the *amendment reference (see subsection (4));before the enactment of the *Unexplained Wealth Legislation Amendment Act 2018*; or
- (b) has, by its *adoption Act:
 - (i) adopted *post-amended version 1 of this Act (see subsection (5)); and
 - (ii) adopted *post-amended version 2 of this Act (see subsection (6)); and
 - (iii) referred to the Commonwealth Parliament the amendment reference;after the enactment of the *Unexplained Wealth Legislation Amendment Act 2018*.

(2) **Text reference 1**

Text reference 1 of a State means the matters to which the *pre-amended version of this Act would relate if *express amendments were made to it in the terms, or substantially in the terms, of *relevant

law 1, but excluding matters to which the pre-amended version of this Act otherwise relates.

(3) **Text reference 2**

Text reference 2 of a State means the matters to which the *pre-amended version of this Act would relate if *express amendments were made to it in the terms, or substantially in the terms, of *relevant law 2, but excluding matters to which the pre-amended version of this Act otherwise relates.

(4) **Amendment reference**

The *amendment reference* of a State means the matters relating to:

- (a) *unexplained wealth (see section 14D); and
- (b) *information gathering (see section 14E);

to the extent of making laws with respect to those matters by making *express amendments of this Act.

(5) **Post-amended version 1 of this Act**

Post-amended version 1 of this Act, in relation to the *adoption Act of a State, means this Act as amended by:

- (a) *relevant law 1; and
- (b) any other *express amendments of this Act that:
 - (i) were enacted at any time after the enactment of relevant law 1 but before the enactment of the adoption Act; and
 - (ii) were not amendments of the *main machinery and transitional provisions (see subsection 14B(5));

to the extent that this Act as so amended is a law with respect to *text reference 1 or the *amendment reference referred to the Commonwealth Parliament by the Parliament of another State for the purposes of paragraph 51(xxxvii) of the Constitution.

(6) **Post-amended version 2 of this Act**

Post-amended version 2 of this Act, in relation to the *adoption Act of a State, means this Act as amended by:

- (a) *relevant law 2; and
- (b) any other *express amendments of this Act that:
 - (i) were enacted at any time after the enactment of relevant law 2 but before the enactment of the adoption Act; and
 - (ii) were amendments of the *main machinery and transitional provisions (see subsection 14B(5));

to the extent that this Act as so amended is a law with respect to *text reference 2 or the *amendment reference referred to the Commonwealth Parliament by the Parliament of another State for the purposes of paragraph 51(xxxvii) of the Constitution.

(7) **Certain things do not affect a participating State's status**

A State is a *participating State* even if the State's referral Act or adoption Act provides that:

- (a) the reference to the Commonwealth Parliament of *text reference 1, *text reference 2 or the *amendment reference is to terminate in particular circumstances; or

- (b) the adoption of *post-amended version 1 of this Act or *post-amended version 2 of this Act is to terminate in particular circumstances; or
 - (c) the reference to the Commonwealth Parliament of the amendment reference does not include the matter of including a provision in section 20A or Part 2-6 that:
 - (i) requires a person pay an amount otherwise than by order of a court; or
 - (ii) requires or permits property (within the meaning of subsection 14D(2)) to be restrained, forfeited or seized otherwise than by order of a court; or
 - (d) the reference to the Commonwealth Parliament of text reference 1, text reference 2 or the amendment reference has effect only:
 - (i) if and to the extent that the matter is not included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); or
 - (ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (8) **When a State ceases to be a participating State**
- A State ceases to be a *participating State* if:
- (a) in the case where the Parliament of the State has referred to the Commonwealth Parliament *text reference 1 and *text reference 2—either or both of those references terminate; or
 - (b) in the case where the Parliament of the State has adopted the *post-amended version 1 of this Act and *post-amended version 2 of this Act—either or both of those adoptions terminate.
- (9) A State ceases to be a *participating State* if:
- (a) the State’s referral of the *amendment reference terminates; and
 - (b) subsection (10) does not apply to the termination.
- (10) A State does not cease to be a *participating State* because of the termination of its referral of the *amendment reference if:
- (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
 - (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
 - (c) that State’s amendment reference, and the amendment reference of every other State, terminates on the same day.
- (11) **Other definitions**
- In this Act:
- adoption Act*, of a State, means the Act of the State that:
- (a) adopts *post-amended version 1 of this Act; and
 - (b) adopts *post-amended version 2 of this Act; and

(c) refers the *amendment reference to the Commonwealth Parliament.

express amendment of this Act means the direct amendment of the text of this Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act.

pre-amended version of this Act, in relation to the *referral Act of a State, means this Act as originally enacted and as subsequently amended by amendments enacted at any time before the enactment of the referral Act of the State.

referral Act, of a State, means the Act of the State that refers *text reference 1, *text reference 2 and the *amendment reference to the Commonwealth Parliament.

relevant law 1 means Schedules 2 and 4 to the *Unexplained Wealth Legislation Amendment Act 2018*.

relevant law 2 means Schedule 1 to the *Unexplained Wealth Legislation Amendment Act 2018*.

14D Meaning of unexplained wealth

- (1) For the purposes of the *amendment reference of a State (see subsection 14C(4)), **unexplained wealth** means property or wealth that might not have been lawfully acquired.
- (2) The meaning of **lawfully acquired**, **property** and **wealth** in subsection (1) includes, but is not limited to, the meaning of those terms in this Act as in force immediately before the enactment of the first *referral Act of a State.

14E Meaning of information gathering

For the purposes of the *amendment reference of a State (see subsection 14C(4)), **information gathering** means the production or provision of information for the purposes of, or relevant to, the taking of action, or the institution of proceedings, under a law of the State.

14F When a non-participating State is a cooperating State

- (1) **States that have referred text references 1 and 2**
A *non-participating State is a **cooperating State** if:
 - (a) an *express amendment of section 14G or 14J (about rollback), or Division 2 of Part 4-3 (about sharing proceeds), was enacted; and
 - (b) before the amendment was enacted, the State was a *participating State; and
 - (c) after the amendment was enacted, the State ceased to be a participating State because it terminated either or both of the following:
 - (i) the referral of *text reference 1;
 - (ii) the referral of the *amendment reference; and
 - (d) the termination was effected by a proclamation that was made under the State's *referral Act for the purpose of this section; and

(e) the State has not terminated its referral of *text reference 2.

Note: Under Division 2 of Part 4-3 (which is about sharing proceeds of confiscated assets under the national cooperative scheme), a non-participating State that is a cooperating State is treated in the same way as a participating State.

(2) **States that have adopted the post-amended versions of this Act**

A *non-participating State is also a *cooperating State* if:

- (a) an *express amendment of section 14G or 14J (about rollback), or Division 2 of Part 4-3 (about sharing proceeds), was enacted; and
 - (b) before the amendment was enacted, the State was a *participating State; and
 - (c) after the amendment was enacted, the State ceased to be a participating State because it terminated either or both of the following:
 - (i) the adoption of *post-amended version 1 of this Act;
 - (ii) the referral of the *amendment reference; and
 - (d) the termination was effected by a proclamation that was made under the State's *adoption Act for the purpose of this section; and
 - (e) the State has not terminated its adoption of *post-amended version 2 of this Act.
- (3) Despite subsections (1) and (2), a *non-participating State ceases to be, or is not, a *cooperating State* if a declaration under subsection (4) is in force in relation to the State.
- (4) The Minister may, by legislative instrument, declare that a State is not a *cooperating State.
- (5) A declaration made under subsection (4) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

Subdivision B—Rollback of particular express amendments

14G Effect of rollback by participating States on unexplained wealth proceedings

(1) **When this section applies**

This section applies if:

- (a) a proclamation is made under the *referral Act or *adoption Act of a *participating State for the purposes of this section; and
- (b) the proclamation declares that an *express amendment of this Act (other than this Subdivision) is not to apply to proceedings covered by subsection (3), (4) or (5); and
- (c) the proclamation comes into force in the period of 6 months beginning on the day the amendment is enacted.

(2) **Application of this Act to proceedings**

This Act applies to the proceedings as if the amendment had not been enacted.

(3) **Proceedings for restraining orders**

Proceedings are covered by this subsection if:

- (a) the proceedings are instituted while the proclamation is in force; and
- (b) the proceedings are for the making of a *restraining order under section 20A in relation to a *suspect; and
- (c) the affidavit supporting the application for the order states that an *authorised officer suspects either or both of the following:
 - (i) that the suspect has committed a *relevant offence of a *participating State;
 - (ii) that the whole or any part of the suspect's *wealth was derived from a relevant offence of a participating State.

(4) **Proceedings for unexplained wealth orders**

Proceedings are covered by this subsection if:

- (a) the proceedings are instituted while the proclamation is in force; and
- (b) the proceedings are for the making of an *unexplained wealth order (including a *preliminary unexplained wealth order) in relation to a *suspect; and
- (c) the application for the order states that an *authorised officer suspects that the whole or any part of the suspect's *wealth was derived from a *relevant offence of a *participating State.

(5) **Proceedings for other orders**

Proceedings are covered by this subsection if:

- (a) the proceedings are instituted while the proclamation is in force; and
- (b) the proceedings are for the making of an order that relates to:
 - (i) a *restraining order made in proceedings covered by subsection (3); or
 - (ii) an *unexplained wealth order (including a *preliminary unexplained wealth order) made in proceedings covered by subsection (4).

14H Effect of rollback by self-governing Territories on unexplained wealth proceedings

(1) **When this section applies**

This section applies if:

- (a) a law (the *disapplying law*) of a *self-governing Territory is made for the purposes of this section; and
- (b) the law declares that an *express amendment of this Act (other than this Subdivision) is not to apply to proceedings covered by subsection (3), (4) or (5); and
- (c) the disapplying law comes into force in the period of 6 months beginning on the day the amendment is enacted.

(2) **Application of this Act to proceedings**

This Act applies to the proceedings as if the amendment had not been enacted.

(3) Proceedings for restraining orders

Proceedings are covered by this subsection if:

- (a) the proceedings are instituted while the disapplying law is in force; and
- (b) the proceedings are for the making of a *restraining order under section 20A in relation to a *suspect; and
- (c) the affidavit supporting the application for the order states that an *authorised officer suspects either or both of the following:
 - (i) that the suspect has committed a *Territory offence;
 - (ii) that the whole or any part of the suspect's *wealth was derived from a Territory offence.

(4) Proceedings for unexplained wealth orders

Proceedings are covered by this subsection if:

- (a) the proceedings are instituted while the disapplying law is in force; and
- (b) the proceedings are for the making of an *unexplained wealth order (including a *preliminary unexplained wealth order) in relation to a *suspect; and
- (c) the application for the order states that an *authorised officer suspects that the whole or any part of the suspect's *wealth was derived from a *Territory offence.

(5) Proceedings for other orders

Proceedings are covered by this subsection if:

- (a) the proceedings are instituted while the disapplying law is in force; and
- (b) the proceedings are for the making of an order that relates to:
 - (i) a *restraining order that has been made in proceedings covered by subsection (3); or
 - (ii) an *unexplained wealth order (including a *preliminary unexplained wealth order) that has been made in proceedings covered by subsection (4).

14J Effect of rollback by participating States on action taken under State reference information gathering provisions

(1) When this section applies

This section applies if:

- (a) a proclamation is made under the *referral Act or *adoption Act of a *participating State for the purposes of this section; and
- (b) the proclamation declares that an *express amendment of this Act (other than this Subdivision) is not to apply to:
 - (i) an application covered by subsection (3); or
 - (ii) an order made as a result of an application covered by subsection (3); or
 - (iii) a notice covered by subsection (4); and
- (c) the proclamation comes into force in the period of 6 months beginning on the day the amendment is enacted.

(2) **Application of this Act to the application, order or notice**

This Act applies to the application, order or notice as if the amendment had not been enacted.

(3) **Applications for production orders**

This subsection covers an application if:

- (a) the application is made while the proclamation is in force; and
- (b) the application is for the making of a *production order under clause 1 of Schedule 1; and
- (c) the application is made by an *authorised State/Territory officer of the State.

(4) **Notices to financial institutions**

This subsection covers a notice if:

- (a) the notice is given while the proclamation is in force; and
- (b) the notice is given to a *financial institution under clause 12 of Schedule 1; and
- (c) the notice is given by an official of the State specified in subclause 12(3) of Schedule 1.

14K Effect of rollback by self-governing Territories on action taken under State reference information gathering provisions

(1) **When this section applies**

This section applies if:

- (a) a law (the *disapplying law*) of a *self-governing Territory is made for the purposes of this section; and
- (b) the disapplying law declares that an *express amendment of this Act (other than this Subdivision) is not to apply to:
 - (i) an application covered by subsection (3); or
 - (ii) an order made as a result of an application covered by subsection (3); or
 - (iii) a notice covered by subsection (4); and
- (c) the disapplying law comes into force in the period of 6 months beginning on the day the amendment is enacted.

(2) **Application of this Act to the application, order or notice**

This Act applies to the application, order or notice as if the amendment had not been enacted.

(3) **Applications for production orders**

This subsection covers an application if:

- (a) the application is made while the disapplying law is in force; and
- (b) the application is for the making of a *production order under clause 1 of Schedule 1; and
- (c) the application is made by an *authorised State/Territory officer of the Territory.

(4) **Notices to financial institutions**

This subsection covers a notice if:

- (a) the notice is given while the disapplying law is in force; and
- (b) the notice is given to a *financial institution under clause 12 of Schedule 1; and
- (c) the notice is given by an official of the Territory specified in subclause 12(3) of Schedule 1.

Subdivision C—Interaction of the national unexplained wealth provisions and orders with State and Territory laws and orders

14L Concurrent operation of State and Territory laws with national unexplained wealth provisions

(1) **Concurrent operation of laws**

The *national unexplained wealth provisions do not exclude or limit the operation of a law of a State or Territory (including a *special confiscation law) to the extent that the law is capable of operating concurrently with those provisions.

(2) A *corresponding law of a State or Territory is a *special confiscation law* while the State is a *participating State or the Territory is a *self-governing Territory.

(3) Without limiting subsection (1), the *national unexplained wealth provisions do not exclude or limit the concurrent operation of a *special confiscation law merely because:

- (a) that law, or an order made under that law:
 - (i) prevents or restricts a person from disposing of, or dealing with, property (for example, by way of a restraining order made under that law); or
 - (ii) confiscates or forfeits property of a person (for example, by way of a forfeiture order made under that law); or
 - (iii) requires the person to pay an amount (for example, by way of an unexplained wealth order made under that law); or
 - (iv) deals with a matter prescribed by the regulations; and
- (b) the national unexplained wealth provisions, or an order made under those provisions, also:
 - (i) prevent or restrict the person from disposing of, or dealing with, the property (for example, by way of a restraining order under section 20A); or
 - (ii) require the person to pay an amount (for example, by way of an *unexplained wealth order); or
 - (iii) deal with a matter prescribed by the regulations.

(4) Subsection (3) applies even if the *special confiscation law, or order made under that law, does any one or more of the following:

- (a) prevents or restricts a person from disposing of, or dealing with, property in circumstances in which a *restraining order under section 20A could not be obtained to prevent or restrict such disposal or dealing;

- (b) prevents or restricts, in particular circumstances, disposal of, or dealing with, more or less property than could be covered by a restraining order under section 20A in those circumstances;
 - (c) prevents or restricts disposal of, or dealing with, property that is or could be excluded from a restraining order under section 20A;
 - (d) confiscates or forfeits, in particular circumstances, property of a greater or lesser value than the *unexplained wealth amount of a person under an *unexplained wealth order that is or could be made in those circumstances;
 - (e) requires payment of an amount that is greater or lesser than the amount that is or could be payable under an unexplained wealth order;
 - (f) deals with a matter prescribed by the regulations.
- (5) **This section does not affect section 14A**
- This section does not by implication affect section 14A (which deals with the concurrent operation of this Act, except the *national unexplained wealth provisions, and laws of States and Territories).
- (6) **Application of this section**
- This section applies in relation to the operation of the *national unexplained wealth provisions and a law of a *participating State or *self-governing Territory in the period referred to in subsection (7), including in relation to:
- (a) orders that are made under a *special confiscation law in that period in relation to proceedings that are instituted under the special confiscation law before or in that period; and
 - (b) orders that are made under a special confiscation law before that period and that are in force at any time in that period; and
 - (c) orders that are made under the national unexplained wealth provisions in that period in relation to proceedings that are instituted under the national unexplained wealth provisions before or in that period.
- (7) For the purposes of subsection (6), the period is as follows:
- (a) for a *participating State that has a *referral Act—the period starts at the commencement of this section and ends only if the State ceases to be a participating State, in which case, the period ends at the time the State so ceases;
 - (b) for a participating State that has an *adoption Act—the period starts at the commencement of the State’s adoption Act and ends only if the State ceases to be a participating State, in which case, the period ends at the time the State so ceases;
 - (c) for a *self-governing Territory—the period starts at the commencement of this section and does not end.

3 At the end of Subdivision D of Division 2 of Part 1-4

Add:

14N Transitional, application and saving provisions relating to the national cooperative scheme on unexplained wealth

Schedule 2 has effect.

4 Section 15

Repeal the section.

5 Section 338

Insert:

adoption Act has the meaning given by subsection 14C(11).

amendment reference has the meaning given by subsection 14C(4).

cooperating State has the meaning given by subsections 14F(1), (2) and (3).

express amendment has the meaning given by subsection 14C(11).

information gathering:

(a) in relation to the *amendment reference of a State—has the meaning given by section 14E; and

(b) otherwise—has its ordinary meaning.

main machinery and transitional provisions has the meaning given by paragraph 14B(5)(a).

main unexplained wealth provisions has the meaning given by subsection 14B(3).

national unexplained wealth provisions has the meaning given by subsection 14B(2).

non-participating State means a State that is not a *participating State.

participating jurisdiction information gathering provisions has the meaning given by subsection 14B(4).

participating State has the meaning given by subsections 14C(1), (7), (8), (9) and (10).

post-amended version 1 of this Act has the meaning given by subsection 14C(5).

post-amended version 2 of this Act has the meaning given by subsection 14C(6).

pre-amended version of this Act has the meaning given by subsection 14C(11).

referral Act has the meaning given by subsection 14C(11).

relevant law 1 has the meaning given by subsection 14C(11).

relevant law 2 has the meaning given by subsection 14C(11).

special confiscation law has the meaning given by subsection 14L(2).

text reference 1 has the meaning given by subsection 14C(2).

text reference 2 has the meaning given by subsection 14C(3).

unexplained wealth:

(a) in relation to the amendment reference of a State—has the meaning given by section 14D; and

(b) otherwise—has its ordinary meaning.

unexplained wealth machinery and transitional provisions has the meaning given by subsection 14B(5).

6 At the end of the Act

Add:

Schedule 2—Transitional, application and saving provisions relating to the national cooperative scheme on unexplained wealth

Note: See section 14N.

Part 1—General

Division 1—Termination of State reference or adoption

1 Effect of termination on things that happened beforehand etc.

- (1) This clause applies if a *participating State ceases to be a participating State because it has terminated its reference or adoption as described in subsection 14C(8) or (9).
- (2) The termination does not:
 - (a) revive anything not in force or existing at the time at which the termination takes effect; or
 - (b) affect the previous operation of the *national unexplained wealth provisions before the termination; or
 - (c) affect any proceedings instituted under or in relation to the national unexplained wealth provisions before the termination; or
 - (d) affect any order made under or in relation to the national unexplained wealth provisions before the termination; or
 - (e) affect any thing done under or in relation to the national unexplained wealth provisions before the termination; or
 - (f) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in relation to the national unexplained wealth provisions before the termination; or
 - (g) affect any penalty, forfeiture or punishment incurred under or in relation to the national unexplained wealth provisions before the termination; or
 - (h) affect any investigation, action, proceedings or remedy in relation to any matter referred to in paragraph (c), (d), (e), (f) or (g).

Paragraphs (a) to (h) do not limit each other.

- (3) Without limiting subclause (2) but subject to subclause (4):
 - (a) any proceedings instituted under or in relation to the *national unexplained wealth provisions before the termination continue after the termination as if the termination had not occurred; and
 - (b) any order made under or in relation to the national unexplained wealth provisions before the termination continues in force after the termination as if the termination had not occurred; and
 - (c) any proceedings or remedy in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be instituted, continued, obtained or enforced after the termination as if the termination had not occurred; and

- (d) any investigation in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be continued after the termination as if the termination had not occurred; and
- (e) any action in relation to any proceedings, order, remedy or investigation referred to in a paragraph of this subclause may be taken after the termination as if the termination had not occurred.

Paragraphs (a) to (e) of this subclause do not limit each other.

- (4) This Act, as in force immediately before the termination, continues to apply after the termination in relation to any matter referred to in paragraphs (2)(c) to (h) or (3)(a) to (e) as if the termination had not occurred.

2 Effect of termination on the sharing of certain proceeds of confiscated assets

- (1) If:
 - (a) a State ceases to be a *participating State because it has terminated its reference or adoption as described in subsection 14C(8) or (9); and
 - (b) the State has not terminated:
 - (i) if the State referred *text reference 2—that referral; or
 - (ii) if the State adopted *post-amended version 2 of this Act—that adoption; and
 - (c) *proceeds of confiscated assets are credited to the *Confiscated Assets Account after the termination; and
 - (d) the amount credited as referred to in paragraph (c) is the amount of an *unexplained wealth order to the extent it has been paid to the Commonwealth (see paragraph 296(3)(fa)); and
 - (e) the unexplained wealth order relates to a *relevant offence of the State;

then Division 2 of Part 4-3 applies in relation to the sharing of those proceeds as if the State were a participating State.

Note: Division 2 of Part 4-3 is about sharing proceeds of confiscated assets under the national cooperative scheme.

- (2) Subclause (1) does not apply if the State is a *cooperating State.
Note: If the State is a cooperating State, it will be treated in the same way as a participating State for all proceeds of confiscated assets (and not just proceeds that are amounts payable under unexplained wealth orders).

3 Effect of termination—regulations

- (1) The regulations may make provision in relation to circumstances that arise because a State ceases to be a *participating State.
- (2) Subclause (1) and clauses 1 and 2 do not limit each other.

Division 2—Ceasing to be a relevant offence of a State

4 Effect of cessation on things that happen beforehand etc.

- (1) This clause applies if an offence against a law of a *participating State ceases to be a *relevant offence of that State.

- (2) The cessation does not:
- (a) revive anything not in force or existing at the time at which the cessation takes effect; or
 - (b) affect the previous operation of the *national unexplained wealth provisions before the cessation; or
 - (c) affect any proceedings instituted under or in relation to the national unexplained wealth provisions before the cessation; or
 - (d) affect any order made under or in relation to the national unexplained wealth provisions before the cessation; or
 - (e) affect any thing done under or in relation to the national unexplained wealth provisions before the cessation; or
 - (f) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in relation to the national unexplained wealth provisions before the cessation; or
 - (g) affect any penalty, forfeiture or punishment incurred under or in relation to the national unexplained wealth provisions before the cessation; or
 - (h) affect any investigation, proceedings or remedy in relation to any right, privilege, obligation, liability, penalty, forfeiture or punishment referred to in paragraph (f) or (g).

Paragraphs (a) to (h) do not limit each other.

- (3) Without limiting subclause (2) but subject to subclause (4):
- (a) any proceedings instituted under or in relation to the *national unexplained wealth provisions before the cessation continue after the cessation as if the cessation had not occurred; and
 - (b) any order made under or in relation to the national unexplained wealth provisions before the cessation continues in force after the cessation as if the cessation had not occurred; and
 - (c) any proceedings or remedy in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be instituted, continued, obtained or enforced after the cessation as if the cessation had not occurred; and
 - (d) any investigation in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be continued after the cessation as if the cessation had not occurred; and
 - (e) any action in relation to any proceedings, order, remedy or investigation referred to in a paragraph of this subclause may be taken after the cessation as if the cessation had not occurred.

Paragraphs (a) to (e) of this subclause do not limit each other.

- (4) This Act, as in force immediately before the cessation, continues to apply after the termination in relation to any matter referred to in paragraphs (2)(a) to (h) or (3)(a) to (e) as if the cessation had not occurred.

5 Effect of cessation—regulations

- (1) The regulations may make provision in relation to circumstances that arise because an offence against a law of a *participating State ceases to be a *relevant offence of that State.
- (2) Subclause (1) and clause 4 do not limit each other.

Part 2—Unexplained Wealth Legislation Amendment Act 2018

6 Definitions

In this Part:

amending Act means the *Unexplained Wealth Legislation Amendment Act 2018*.

commencement means the commencement of the amending Act.

7 Amendments made by Schedule 2 to the amending Act

The amendments made by Schedule 2 to the amending Act (which is about extending the *main unexplained wealth provisions to certain offences against the laws of *participating States) apply to an application made after commencement for an order in relation to an offence against a law of a participating State, whether or not:

- (a) the offence is committed, or is suspected of having been committed, before or after commencement; or
- (b) the application relates to property or wealth that is acquired before or after commencement; or
- (c) the application relates to property or wealth that is derived or realised, directly or indirectly, before or after commencement; or
- (d) the application relates to property or wealth that becomes subject to the *effective control of a person before or after commencement.

8 Amendments made by Schedule 4 to the amending Act

- (1) Part 1 of Schedule 1, as inserted by Schedule 4 to the amending Act, applies in relation to *production orders applied for after commencement in relation to a document, whether or not:
 - (a) the document is created before or after commencement; or
 - (b) the document relates to property that is acquired before or after commencement; or
 - (c) the document relates to property that is derived or realised, directly or indirectly, before or after commencement; or
 - (d) the document relates to property that becomes subject to the *effective control of a person before or after commencement; or
 - (e) the document relates to the transfer of property before or after commencement; or
 - (f) the document is relevant for the purposes of:
 - (i) determining whether to take action under the *unexplained wealth legislation of a *participating State or *self-governing Territory in relation to a matter occurring before or after commencement; or

- (ii) proceedings under the unexplained wealth legislation of a participating State or self-governing Territory instituted before or after commencement.
- (2) Part 2 of Schedule 1, as inserted by Schedule 4 to the amending Act, applies in relation to notices to *financial institutions given after commencement in relation to information or a document, whether or not:
 - (a) the information is obtained or the document is created before or after commencement; or
 - (b) the information or document relates to property that is acquired before or after commencement; or
 - (c) the information or document relates to property that is derived or realised, directly or indirectly, before or after commencement; or
 - (d) the information or document relates to property that becomes subject to the *effective control of a person before or after commencement; or
 - (e) the information or document relates to an *account held by a person before or after commencement; or
 - (f) the information or document relates to a *stored value card issued before or after commencement; or
 - (g) the information or document relates to a transaction conducted by a financial institution on behalf of a person before or after commencement; or
 - (h) the information or document is relevant for the purposes of:
 - (i) determining whether to take action under the *unexplained wealth legislation of a *participating State or *self-governing Territory in relation to a matter occurring before or after commencement; or
 - (ii) proceedings under the unexplained wealth legislation of a participating State or self-governing Territory instituted before or after commencement.

Schedule 4 Amendment of Criminal Assets Recovery Act 1990 No 23

[1] Section 32 Establishment and use of Proceeds Account

Insert after section 32 (2):

- (2A) Without limiting subsection (2), there is to be paid to the credit of the Proceeds Account:
- (a) amounts paid to the State by the Commonwealth or another State or Territory under the national cooperative scheme (as defined by section 32A (1)), and
 - (b) amounts paid to the State by the Commonwealth or another State or Territory or a foreign country, or an authority of the Commonwealth or another State or Territory or a foreign country, under any program or agreement for the sharing of confiscated proceeds.
- (2B) The Treasurer, in consultation with the Minister, may waive payment of the whole or any part of an amount payable to the Proceeds Account under any program or agreement mentioned in subsection (2A) (b) if the Treasurer is of the opinion that it is appropriate to do so having regard to any matters that the Treasurer considers relevant.

[2] Section 32 (3) (a2) and (a3)

Insert after section 32 (3) (a1):

- (a2) to the Commonwealth or another State or Territory—any amounts that are payable to it in accordance with section 32A, and
- (a3) to the Commonwealth or another State or Territory or a foreign country, or an authority of the Commonwealth or another State or Territory or a foreign country—any amounts from time to time determined by the Minister as payable to it under any program or agreement for the sharing of confiscated proceeds in recognition of the contribution made by it in relation to the recovery of the proceeds, and

[3] Section 32 (3) (c)

Omit the paragraph. Insert instead:

- (c) to the credit of the Victims Support Fund established under the *Victims Rights and Support Act 2013*:
 - (i) half of the proceeds of serious crime use property assets forfeiture orders, proceeds assessment orders and unexplained wealth orders paid to the Proceeds Account (calculated after deducting from the proceeds any amounts payable under paragraph (a2), (a3) or (b)), and
 - (ii) half of any amounts payable to the Proceeds Account under subsection (2A), and

[4] Section 32A

Insert after section 32:

32A The national cooperative scheme

- (1) In this section:
cooperating State has the meaning given by section 14F of the Commonwealth Proceeds of Crime Act.

corresponding proceeds of a State or Territory has the meaning given by the NCSUW agreement.

national cooperative scheme means a scheme under which any or all of the following happen:

- (a) the State shares with the Commonwealth or another State or Territory, in accordance with this section, any corresponding proceeds of the State that are shareable,
- (b) the Commonwealth, in accordance with a law of the Commonwealth, shares with the State any proceeds of confiscated assets that are shareable,
- (c) a State (whether a participating State or a non-participating State) or a Territory, in accordance with a law of the State or Territory, shares with the State any corresponding proceeds of the State or Territory that are shareable.

NCSUW agreement means the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth, as in force from time to time.

non-participating State has the meaning given by section 338 of the Commonwealth Proceeds of Crime Act.

participating State has the meaning given by section 14C of the Commonwealth Proceeds of Crime Act.

proceeds of confiscated assets has the meaning given by section 296 (3) of the Commonwealth Proceeds of Crime Act.

shareable, in relation to the proceeds of confiscated assets, has the meaning given by the NCSUW agreement.

- (2) This section sets out the process under the national cooperative scheme for sharing with the Commonwealth or another State or Territory any corresponding proceeds of the State that are shareable.
- (3) The corresponding proceeds of the State that are shareable with the Commonwealth or another State or Territory under the national cooperative scheme are to be reduced by any amount that is payable under section 32 (3) (a1) or (b).
- (4) The amount left after any reduction is made under subsection (3) is the net amount.
- (5) The Cooperating Jurisdiction Committee established under the NCSUW agreement must establish a subcommittee for the purposes of deciding matters under this section in relation to the net amount.
- (6) The subcommittee must consist of the following members of the Cooperating Jurisdiction Committee:
 - (a) the State,
 - (b) if, in the decision-making period referred to in subsection (11), the Cooperating Jurisdiction Committee makes a unanimous decision that the Commonwealth, one or more other States (whether a participating State or a cooperating State) or Territories made a contribution (within the meaning of the NCSUW agreement) in relation to the recovery of the proceeds—each of those contributing jurisdictions.
- (7) If, in the decision-making period referred to in subsection (11), the subcommittee makes a unanimous decision that:

- (a) a non-participating State (other than a cooperating State) made a contribution (within the meaning of the NCSUW agreement) in relation to the recovery of the proceeds, and
 - (b) it is appropriate that a specified proportion of the net amount be payable to that State,then the specified proportion of the net amount is payable to that State under the national cooperative scheme.
- (8) If the subcommittee includes the Commonwealth, one or more participating States, cooperating States or Territories, then:
 - (a) any part of the net amount that remains after an application of subsection (7) is to be divided into equal proportions between the State and each of the other jurisdictions represented on the subcommittee, and
 - (b) the resulting proportion for each of those other jurisdictions is payable to the jurisdiction under the national cooperative scheme.
- (9) However, if in the decision-making period referred to in subsection (11), the subcommittee makes a unanimous decision that:
 - (a) it is inappropriate for the sharing arrangements referred to in subsection (8) to apply, and
 - (b) it is appropriate that a specified proportion, of any part of the net amount that remains after an application of subsection (7), be payable to each of the jurisdictions represented on the subcommittee other than the State,then:
 - (c) the sharing arrangements referred to in subsection (8) do not apply, and
 - (d) the specified proportion for each of those jurisdictions, of any part of the net amount that remains after an application of subsection (7), is payable to the jurisdiction under the national cooperative scheme.
- (10) Decisions may be made under this section in relation to an amount before the amount is paid to the Proceeds Account or becomes the net amount.

Note. For example, if an unexplained wealth order is made that requires a person to pay to the State an amount, the Cooperating Jurisdiction Committee may establish a subcommittee, and the subcommittee may make decisions under this section about the sharing of that amount, before the amount is paid to the Proceeds Account or becomes the net amount.
- (11) For the purposes of subsections (6), (7) and (9), the *decision-making period* is:
 - (a) the period specified in the NCSUW agreement as being the decision-making period for the purposes of the national cooperative scheme, and
 - (b) if paragraph (a) does not apply—the period prescribed by the regulations as being the decision-making period for the purposes of the national cooperative scheme.
- (12) The NCSUW agreement and the regulations may specify that the decision-making period starts or ends at a time before an amount is paid to the Proceeds Account.
- (13) If an amount is payable to the Commonwealth or another State or Territory under this section, then the Treasurer must cause the amount to be paid to the Commonwealth or the other State or Territory in the period that is:
 - (a) the period specified in the NCSUW agreement as being the payment period for the purposes of the national cooperative scheme, and

- (b) if paragraph (a) does not apply—the period prescribed by the regulations as being the payment period for the purposes of the national cooperative scheme.

[Second reading speech made in—
Legislative Assembly on 6 June 2018
Legislative Council on 14 August 2018]