



New South Wales

Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Criminal Assets Recovery Act 1990* to provide that the Supreme Court must make an unexplained wealth order if satisfied, on the balance of probabilities, that the total value of the person's current or previous wealth is greater than the value of the person's lawfully acquired wealth. The burden of proof is on the person to prove that the person's current or previous wealth is lawfully acquired.

Currently, the Supreme Court must make an unexplained wealth order if the Court finds a reasonable suspicion that the person has engaged in serious crime related activities or acquired property from another's person's serious crime related activity.

The Bill also enables the Director of Public Prosecutions to make an application for an unexplained wealth order in addition to the NSW Crime Commission, who may currently make the application.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Criminal Assets Recovery Act 1990 No 23**

Schedule 1 makes the amendments referred to in the above overview.



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New South Wales

Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2022

No. , 2022

A Bill for

An Act to amend the *Criminal Assets Recovery Act 1990* to provide that an unexplained wealth order may be made where a court is satisfied a person's total wealth is greater than the person's lawfully acquired wealth; and for other purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

2

This Act is the *Criminal Assets Recovery Amendment (Unexplained Wealth) Act 2022*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Criminal Assets Recovery Act 1990 No 23	1
		2
[1] Section 26A Application for proceeds assessment or unexplained wealth order		3
Omit section 26A(2). Insert instead—		4
(2) The Director of Public Prosecutions may apply to the Supreme Court under section 28A for an unexplained wealth order.		5
(2A) The Supreme Court cannot make both a proceeds assessment order and an unexplained wealth order but must make the order that requires the payment of the greater amount.		6
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[2] Section 28A Making of unexplained wealth order		10
Insert “or the Director of Public Prosecutions” after “Commission” in section 28A(1).		11
[3] Section 28A(2) and (3)		12
Omit the subsections. Insert instead—		13
(2) The Supreme Court must make an unexplained wealth order if the Court is satisfied, on the balance of probabilities, that the total value of the person’s current or previous wealth is greater than the value of the person’s lawfully acquired wealth.		14
(3) The burden of proof in proceedings against a person for an unexplained wealth order is on the person to prove that the person’s current or previous wealth is lawfully acquired.		15
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[4] Section 28A(5)		21
Omit section 28A(5).		22
[5] Section 28B, heading		23
Omit the heading. Insert instead—		24
28B Assessment of person’s wealth		25
[6] Section 28B(1)–(3)		26
Omit the subsections.		27
[7] Section 28B(5)		28
Omit “the Commission has not”. Insert instead “the Court has not been”.		29
[8] Section 28B(5A)		30
Insert after section 28B(5)—		31
(5A) In assessing the unexplained wealth of a person, the Supreme Court may, without limitation, consider the person’s income and expenditure.		32
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