



New South Wales

Unexplained Wealth (Commonwealth Powers) Bill 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to refer certain matters relating to unexplained wealth and information gathering to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth, which enables State Parliaments to refer matters to the Commonwealth Parliament.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act, including the following: **Commonwealth Proceeds of Crime Act** is defined to mean the *Proceeds of Crime Act 2002* of the Commonwealth, as in force from time to time.

Pre-assent version of the Commonwealth Proceeds of Crime Act is defined to mean the *Proceeds of Crime Act 2002* of the Commonwealth, as originally enacted and as subsequently amended by amendments enacted at any time before the date of assent to the proposed Act.

Clause 4 refers to the Commonwealth Parliament each of the following matters:

- (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 the proposed Act but excluding matters to which that version otherwise relates (referred to in the proposed Act as *text reference 1*),
- (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 the proposed Act but excluding matters to which that version otherwise relates (referred to in the proposed Act as *text reference 2*),
 - (c) the matters relating to unexplained wealth (excluding certain matters) 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 (referred to in the proposed Act as the *amendment reference*).

The following matters are excluded from the amendment reference:

- (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.

Clause 5 defines *unexplained wealth* to mean property or wealth that might not have been lawfully acquired. It also makes it clear that 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.

Clause 6 defines *information gathering* to mean 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.

Clause 7 enables the Governor, by proclamation, to roll back certain express amendments to the Commonwealth Proceeds of Crime Act under the authority given by proposed sections 14G and 14J of that Act.

Clause 8 specifies what are to be treated as relevant offences for the purpose of the Commonwealth Proceeds of Crime Act in its application to the State.

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.

Clause 9 provides for text reference 1 and the amendment reference to terminate on the sixth anniversary of the commencement of proposed section 4 (1) except if the Governor, by proclamation, fixes a later day or an earlier day for the termination.

Clause 10 enables the Governor, by proclamation, to fix a day for the termination of text reference 2.

Clause 11 enables the Governor, by proclamation, to fix a later day than the current termination day for the termination of text reference 1 or the amendment reference.

Clause 12 enables the Governor, by proclamation, to fix an earlier day than the current termination day for the termination of text reference 1 or the amendment reference.

Clause 13 enables the Governor, by proclamation, to fix a day for text reference 1 and the amendment reference 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 certain unexplained wealth provisions. This power will not limit, or affect, any other powers of the Governor under the proposed Act concerning the extension or termination of references made by the proposed Act.

Clause 14 enables the Governor to make regulations for the purposes of the proposed Act.

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

Schedule 1 sets out some of the text of the amendments to the pre-assent version of the Commonwealth Proceeds of Crime Act that form part of text reference 1. These amendments will extend the main unexplained wealth provisions of that Act to relevant offences specified by the proposed Act.

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

Schedule 2 sets out some of the text of the amendments to the pre-assent version of the Commonwealth Proceeds of Crime Act that form part of text reference 1. These amendments will allow information gathering under a proposed National Cooperative Scheme on Unexplained Wealth.

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

Schedule 3 sets out the text of the amendments to the pre-assent version of the Commonwealth Proceeds of Crime Act that form part of text reference 2. These amendments will provide for application of that Act to a State and certain transitional, application and saving matters relating to the proposed National Cooperative Scheme on Unexplained Wealth.

Schedule 4 Amendment of Criminal Assets Recovery Act 1990 No 23

Schedule 4 makes consequential amendments to the *Criminal Assets Recovery Act 1990*.