



Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Act 2015

No. 6, 2015

**An Act to amend legislation relating to the criminal
law, and for related purposes**

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**An Act to amend legislation relating to the criminal
law, and for related purposes**

[Assented to 25 February 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment
(Unexplained Wealth and Other Measures) Act 2015*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Unexplained wealth

Proceeds of Crime Act 2002

1 After paragraph 5(d)

Insert:

(da) to undermine the profitability of criminal enterprises; and

2 Subsection 20A(1)

Omit “may order”, substitute “must order”.

3 Subsections 20A(3A) to (3C)

Repeal the subsections.

4 Subsection 20A(4)

Omit all the words from and including “if” to and including “the order” substitute:

if the court is satisfied that:

- (a) there are not reasonable grounds to suspect that the person’s *total wealth exceeds by \$100,000 or more the value of the person’s *wealth that was *lawfully acquired; or
- (b) it is not in the public interest to make the order.

5 Subsection 20A(4A)

Omit “subsection (1)”, substitute “this section”.

6 Subsection 20A(5)

Omit “may”, substitute “must”.

7 After subsection 45(6)

Insert:

Restraining orders and charges relating to unexplained wealth orders

(6A) If:

- (a) a *restraining order referred to in paragraph 179SA(1)(b) would otherwise cease to be in force under this section at a particular time; but
- (b) a charge on the property against which the restraining order was made is created by subsection 179SA(1) before that time;

then despite anything in subsection (1), (2), (3) or (6) of this section, the restraining order does not cease to be in force until the charge ceases to have effect in respect of the property in accordance with subsection 179SA(2).

Section does not apply to unexplained wealth restraining orders

8 Subsection 45A(1)

Repeal the subsection, substitute:

Restraining orders made before application for unexplained wealth order

- (1) A *restraining order made under section 20A ceases to be in force if:
 - (a) no application for an *unexplained wealth order had been made in relation to the *suspect to whom the restraining order relates before the restraining order was made; and
 - (b) no such application has been made in relation to the suspect within 28 days after the restraining order was made.

9 Paragraph 45A(2)(c)

Repeal the paragraph, substitute:

- (c) the court refuses to make either:
 - (i) a *preliminary unexplained wealth order in connection with the application for the unexplained wealth order; or
 - (ii) the unexplained wealth order itself; and

10 After subsection 45A(3)

Insert:

Restraining orders made after application for unexplained wealth order

- (3A) A *restraining order made under section 20A ceases to be in force if:
- (a) the restraining order was made at the same time as or after an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and
 - (b) the court refuses to make either:
 - (i) a *preliminary unexplained wealth order in connection with the application for the unexplained wealth order; or
 - (ii) the unexplained wealth order itself; and
 - (c) one of the following applies:
 - (i) the time for an appeal against the refusal has expired without an appeal being lodged;
 - (ii) an appeal against the refusal has lapsed;
 - (iii) an appeal against the refusal has been dismissed and finally disposed of.
- (3B) A *restraining order made under section 20A ceases to be in force if:
- (a) the restraining order was made at the same time as or after an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and
 - (b) the court makes the unexplained wealth order (whether before or after the restraining order was made or applied for); and
 - (c) either:
 - (i) the unexplained wealth order is complied with; or
 - (ii) an appeal against the unexplained wealth order has been upheld and finally disposed of.

11 Before subsection 45A(4)

Insert:

Court may make costs order if restraining order ceases

12 Subsection 45A(4)

Omit “or (2)”, substitute “, (2) or (3A)”.

13 Section 179B (heading)

Repeal the heading, substitute:

179B Making a preliminary unexplained wealth order requiring a person to appear

14 Subsection 179B(1)

Omit “may make an order”, substitute “must make an order”.

15 Subsection 179B(2)

Repeal the subsection, substitute:

Effect of restraining orders

- (1A) Paragraphs (1)(b) and (c) do not apply if a *restraining order made under section 20A in relation to the person:
- (a) is in force; or
 - (b) has been revoked under section 44.
- (1B) If subsection (1A) applies, the court may, in considering making an order under subsection (1), take into account:
- (a) an affidavit of an *authorised officer that:
 - (i) supported the application for the *restraining order made under section 20A; and
 - (ii) met the requirements of subsection 20A(3); and
 - (b) any material that an authorised officer or *proceeds of crime authority provided, in the proceedings under section 20A, relating to the requirements of subsection 20A(3); and
 - (c) any other material that an authorised officer or proceeds of crime authority provides in the proceedings under this section.

This subsection does not limit the court’s power to take other material into account.

Affidavit requirements

- (2) An application for an *unexplained wealth order in relation to a person must be supported by an affidavit of an *authorised officer that:
- (a) states that the authorised officer suspects that the person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and
 - (b) includes the grounds on which the authorised officer holds that suspicion.

16 Before subsection 179B(3)

Insert:

Considering application without notice

17 At the end of section 179B

Add:

Refusal to make preliminary unexplained wealth order

- (4) Despite subsection (1), the court may refuse to make the *preliminary unexplained wealth order if the court is satisfied that there are not reasonable grounds to suspect that the person's *total wealth exceeds by \$100,000 or more the value of the person's *wealth that was *lawfully acquired.

18 Subsection 179E(1)

Omit “may make an order”, substitute “must make an order”.

19 Subsection 179E(4)

Repeal the subsection, substitute:

- (4) To avoid doubt:
- (a) when considering whether to make an order under subsection (1), the court may have regard to information not included in the application; and
 - (b) the court may make an order under subsection (1) in relation to a person even if the person failed to appear as required by the *preliminary unexplained wealth order.

20 Subsection 179E(6)

Omit all the words after “may refuse to make an order under that subsection”, substitute:

if the court is satisfied that:

- (a) the person’s *unexplained wealth amount is less than \$100,000; or
- (b) it is not in the public interest to make the order.

21 Paragraph 179N(2)(b)

Repeal the paragraph, substitute:

- (b) provide to the person a copy of the application for the unexplained wealth order, and a copy of:
 - (i) the affidavit referred to in subsection 179B(2); or
 - (ii) if, because of subsection 179B(1A), there is no such affidavit—the affidavit referred to in paragraph 179B(1B)(a).

22 After subsection 179N(2)

Insert:

- (2A) The court may make an order extending the period during which the things referred to in subsection (2) must be done, by a period not exceeding 28 days, if:
 - (a) the *responsible authority applies for the order before the end of the period (including that period as previously extended); and
 - (b) the court is satisfied that it is appropriate to do so.
- (2B) The period referred to in subsection (2) may be extended more than once.

23 Subsection 179S(3)

Repeal the subsection, substitute:

- (3) The court may, on application by the *responsible authority, make a *restraining order under section 20A in respect of the property as if:
 - (a) the property were the *person’s property; and

-
- (b) the requirements in paragraphs 20A(1)(c) to (g) were satisfied.

24 Section 179SA

Repeal the section, substitute:

179SA Charge on property subject to restraining order

- (1) If:
- (a) an *unexplained wealth order is made against a person; and
 - (b) the person is the *suspect in relation to a *restraining order that is or has been made against:
 - (i) the *person's property; or
 - (ii) another person's property in relation to which an order under subsection 179S(1) is, or has been, made;
- then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Commonwealth of the person's *unexplained wealth amount.
- (2) The charge ceases to have effect in respect of the property:
- (a) upon the discharge of the *unexplained wealth order or the *restraining order by a court hearing an appeal against the making of the order; or
 - (b) upon payment to the Commonwealth of the *unexplained wealth amount in satisfaction of the unexplained wealth order; or
 - (c) upon the sale or other disposition of the property:
 - (i) under an order under Division 4 of Part 4-1; or
 - (ii) by the owner of the property with the consent of the court that made the unexplained wealth order; or
 - (iii) if the restraining order directed the *Official Trustee to take custody and control of the property—by the owner of the property with the consent of the Official Trustee; or
 - (d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge; or

(e) upon the *responsible authority for the unexplained wealth order or restraining order determining, by writing, that the charge should cease to have effect in respect of the property; whichever first occurs.

(3) The charge:

(a) is subject to every *encumbrance on the property (other than an encumbrance in which the person referred to in paragraph (1)(a) has an *interest) that came into existence before the charge and that would, apart from this subsection, have priority over the charge; and

(b) has priority over all other encumbrances; and

(c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note: The effect of this subsection is that the priority between the charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

(5) A determination made under paragraph (2)(e) is not a legislative instrument.

179SB Charges may be registered

(1) If:

(a) a charge is created by section 179SA on property of a particular kind; and

(b) the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind;

the *Official Trustee or the *responsible authority for the *unexplained wealth order or *restraining order referred to in that section may cause the charge so created to be registered under the provisions of that law.

(2) A person who purchases or otherwise acquires an *interest in the property after the registration of the charge is taken, for the

purposes of paragraph 179SA(2)(d), to have notice of the charge at the time of the purchase or acquisition.

(3) In this section:

registration of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data only if regulations are made for the purposes of paragraph 148(c) of that Act.

25 Before subsection 179U(2)

Insert:

Appearing before the Committee

26 At the end of section 179U

Add:

Report about unexplained wealth investigations and proceedings

- (3) The Commissioner of the Australian Federal Police must give the Committee a report in respect of each financial year that contains the following information:
- (a) the number of matters investigated in the year, by each *enforcement agency, in respect of which a likely outcome may, or will, be the initiation of proceedings under this Part, and the basis for determining that number;
 - (b) the number and results of applications in the year for:
 - (i) *restraining orders under section 20A; and
 - (ii) *unexplained wealth orders;
 - (c) any other information of a kind prescribed by the regulations.
- (4) The report must be given as soon as practicable after the report under section 67 of the *Australian Federal Police Act 1979* in respect of the financial year is laid before a House of the Parliament in accordance with that section.

- (5) If the Commissioner of the Australian Federal Police requests the *DPP or the Chief Executive Officer (however described) of an *enforcement agency to give the Commissioner information that the Commissioner considers necessary to prepare the report, the DPP or Chief Executive Officer must comply with the request.

27 After paragraph 227(1)(h)

Insert:

- (ha) that the warrant authorises the seizure of other things found at the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be *things relevant to unexplained wealth proceedings; and

28 After paragraph 228(1)(d)

Insert:

- (da) to seize other things found at the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be *things relevant to unexplained wealth proceedings; and

29 Subparagraph 256(1)(b)(ii)

Omit “and”, substitute “or”.

30 At the end of paragraph 256(1)(b)

Add:

- (iii) a *thing relevant to unexplained wealth proceedings;
and

31 Subsection 266A(2) (after table item 2A)

Insert:

2B	Authority of a State, or a *self-governing Territory, that has a function under a *corresponding law of the State or Territory	Any one or more of the following purposes: (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
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		proceedings of a kind referred to in paragraph (a) or (b)
2C	<p>Authority of a foreign country that has one or more of the following functions:</p> <p>(a) investigating or prosecuting offences against a law of the country;</p> <p>(b) identifying, locating, tracing, investigating or confiscating *proceeds or *instruments of crime under a law of the country</p>	<p>Assisting in identification, location, tracing, investigation or confiscation of *proceeds or *instruments of crime, if the identification, location, tracing, investigation or confiscation could take place under this Act, or under a *corresponding law of a State or a *self-governing Territory, if the proceeds or instruments related to an offence against a law of the Commonwealth, State or Territory</p>

32 Subsection 304(2)

Omit “42 to 45, 142 and 169”, substitute “42 to 45A, 142, 169 and 179SA”.

33 Section 338

Insert:

thing relevant to unexplained wealth proceedings means a thing (including a thing in electronic form) as to which there are reasonable grounds for suspecting that it may be relevant for the purposes of initiating or conducting proceedings under section 20A or Part 2-6.

34 Application of amendments

- (1) Section 20A of the *Proceeds of Crime Act 2002*, as amended by this Schedule, applies in relation to a restraining order applied for under that section on or after the commencement of this item, whether the application relates to:
- (a) property or wealth acquired before, on or after that commencement; or
 - (b) an offence suspected of having been committed before, on or after that commencement.

- (2) Sections 45 and 45A of the *Proceeds of Crime Act 2002*, as amended by this Schedule, apply in relation to a restraining order made on or after the commencement of this item, whether the order relates to:
 - (a) property or wealth acquired before, on or after that commencement; or
 - (b) an offence suspected of having been committed before, on or after that commencement.
 - (3) Sections 179B and 179E of the *Proceeds of Crime Act 2002*, as amended by this Schedule, apply in relation to an unexplained wealth order applied for on or after the commencement of this item, whether the application relates to wealth acquired before, on or after that commencement.
 - (4) Section 179N of the *Proceeds of Crime Act 2002*, as amended by this Schedule, applies in relation to a preliminary unexplained wealth order made on or after the commencement of this item, whether the relevant application for an unexplained wealth order:
 - (a) was made before, on or after that commencement; or
 - (b) relates to wealth acquired before, on or after that commencement.
 - (5) Section 179S of the *Proceeds of Crime Act 2002*, as amended by this Schedule, applies in relation to an unexplained wealth order made on or after the commencement of this item:
 - (a) whether the unexplained wealth order relates to wealth acquired before, on or after that commencement; and
 - (b) whether the property to which the order under subsection 179S(1) relates becomes subject to the effective control of the person subject to the unexplained wealth order before, on or after that commencement.
 - (6) Despite the repeal of section 179SA of the *Proceeds of Crime Act 2002* made by this Schedule, that section, as in force immediately before that repeal, continues to apply in relation to an unexplained wealth order made before the commencement of this item.
 - (7) Sections 179SA and 179SB of the *Proceeds of Crime Act 2002*, as substituted by this Schedule, apply in relation to an unexplained wealth order made on or after the commencement of this item:
-

- (a) whether the unexplained wealth order relates to wealth acquired before, on or after that commencement; and
 - (b) whether the restraining order referred to in subsection 179SA(1) is made before, on or after that commencement.
- (8) Subsections 179U(3) to (5) of the *Proceeds of Crime Act 2002*, as added by this Schedule, apply in relation to the financial year starting on or after the day on which this item commences, and future financial years.
- (9) Sections 227, 228 and 256 of the *Proceeds of Crime Act 2002*, as amended by this Schedule, apply in relation to a search warrant that is applied for under that Act on or after the commencement of this item, whether the thing relevant to unexplained wealth proceedings relates to:
 - (a) property or wealth acquired before, on or after that commencement; or
 - (b) an offence suspected of having been committed before, on or after that commencement.
- (10) Section 266A of the *Proceeds of Crime Act 2002*, as amended by this Schedule, applies, on or after the commencement of this item, in relation to information obtained before, on or after that commencement.

Schedule 2—Other amendments

Proceeds of Crime Act 2002

1 Subparagraph 54(a)(i)

Omit “*terrorism”, substitute “*serious”.

2 Section 338 (subparagraph (b)(ii) of the definition of *indictable offence of Commonwealth concern*)

Omit “paragraph 51(xx)”, substitute “paragraph 51(v)”.

*[Minister’s second reading speech made in—
House of Representatives on 5 March 2014
Senate on 30 September 2014]*

(19/14)
