Unexplained Wealth Legislation Amendment Act 2018

No. 126, 2018

An Act relating to the national cooperative scheme on unexplained wealth, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Unexplained Wealth Legislation Amendment Act 2018

No. 126, 2018

An Act relating to the national cooperative scheme on unexplained wealth, and for related purposes

[*Assented to 3 October 2018*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Unexplained Wealth Legislation Amendment Act 2018*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 October 2018
2. Schedules 1 to 8	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—State reference or adoption for the purposes of the national cooperative scheme on unexplained wealth

Proceeds of Crime Act 2002

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

What this section is about

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

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National unexplained wealth provisions

(2) 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.

Main unexplained wealth provisions

(3) 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).

Participating jurisdiction information gathering provisions

(4) 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).

Unexplained wealth machinery and transitional provisions

(5) 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***

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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).

Application in participating States

(6) 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.

Application in non-participating States

(7) 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

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(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

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(b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Application in a self-governing Territory

(11) 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.

Application outside Australia

(12) 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*?

Participating State

(1) 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));

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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*.

Text reference 1

(2) ***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.

Text reference 2

(3) ***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.

Amendment reference

(4) 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.

Post-amended version 1 of this Act

(5) ***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

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(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.

Post-amended version 2 of this Act

(6) ***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.

Certain things do not affect a participating State's status

(7) 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

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(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.

When a State ceases to be a participating State

(8) 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.

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Other definitions

(11) 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.

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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

States that have referred text references 1 and 2

(1) 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 purposes 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.

States that have adopted the post-amended versions of this Act

(2) 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

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(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 purposes 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

When this section applies

(1) 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.

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Application of this Act to proceedings

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

Proceedings for restraining orders

(3) 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.

Proceedings for unexplained wealth orders

(4) 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.

Proceedings for other orders

(5) 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

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(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

When this section applies

(1) 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.

Application of this Act to proceedings

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

Proceedings for restraining orders

(3) 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.

Proceedings for unexplained wealth orders

(4) Proceedings are covered by this subsection if:

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(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.

Proceedings for other orders

(5) 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

When this section applies

(1) 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.

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Application of this Act to the application, order or notice

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

Applications for production orders

(3) 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.

Notices to financial institutions

(4) 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

When this section applies

(1) 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.

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Application of this Act to the application, order or notice

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

Applications for production orders

(3) 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.

Notices to financial institutions

(4) 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

Concurrent operation of laws

(1) 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.

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(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;

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(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.

This section does not affect section 14A

(5) 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).

Application of this section

(6) 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.

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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).

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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.

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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

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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;

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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

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(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.

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(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

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(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:

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(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.

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Schedule 2—Extending the main unexplained wealth provisions to certain offences against the laws of participating States

Proceeds of Crime Act 2002

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:

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

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

Insert:

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

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

Insert:

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

8 Section 338

Insert:

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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.

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Schedule 3—Extending the main unexplained wealth provisions to offences against the laws of self-governing Territories

Proceeds of Crime Act 2002

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

Omit "or a *State offence that has a federal aspect", substitute ", a *State offence that has a federal aspect or a *Territory offence".

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

Omit "or a State offence that has a federal aspect", substitute ", a State offence that has a federal aspect or a Territory offence".

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

Omit "or a *State offence that has a federal aspect", substitute ", a *State offence that has a federal aspect or a *Territory offence".

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

Omit "or a State offence that has a federal aspect", substitute ", a State offence that has a federal aspect or a Territory offence".

5 At the end of paragraph 179E(1)(b)

Add:

; (iv) a *Territory offence.

6 At the end of paragraph 179E(2)(b)

Add:

(iv) a *Territory offence;

7 Subparagraph 322(4A)(a)(iii)

Omit "and".

8 At the end of paragraph 322(4A)(a)

Add:

(iv) a *Territory offence; and

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9 Section 338

Insert:

> ***Territory offence*** means an offence against a law of a *self-governing Territory.

10 Application of amendments

The amendments made by this Schedule apply to an application made after the commencement of this Schedule for an order in relation to a State offence that has a federal aspect or an offence against a law of a self-governing Territory, whether or not:

(a) the offence is committed, or is suspected of having been committed, before or after that commencement; or

(b) the application relates to wealth that is acquired before or after that commencement; or

(c) the application relates to property that is acquired before or after that commencement; or

(d) the application relates to property that becomes subject to the effective control of a person before or after that commencement.

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Schedule 4—Information gathering under the national cooperative scheme on unexplained wealth

Proceeds of Crime Act 2002

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:

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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

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(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:

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(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.

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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

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(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.

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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

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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;

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(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:

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(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;

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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.

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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	Any one or more of the following purposes: (a) engaging in proceedings under

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Recipients and purposes of disclosure		
Item	**Authority to which disclosure may be made**	**Purpose for which disclosure may be made**
	of the State or Territory	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
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

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(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.

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Schedule 5—Sharing proceeds under the national cooperative scheme on unexplained wealth

Proceeds of Crime Act 2002

1 Before section 295

Insert:

Division 1—Establishment, crediting and payments out of the Account

2 Paragraph 296(1)(e)

Repeal the paragraph, substitute:

(e) amounts paid to the Commonwealth by a State or *self-governing Territory under the *equitable sharing program; and

(ea) amounts paid to the Commonwealth by a State or self-governing Territory under the *national cooperative scheme on unexplained wealth; and

3 Paragraph 296(1)(h)

Repeal the paragraph, substitute:

(h) the remainder of the money referred to in paragraph 35G(1)(b) of the *Mutual Assistance Act; and

(i) the remainder of the proceeds referred to in paragraph 35G(2)(c) of the Mutual Assistance Act; and

(j) the remainder of the proceeds referred to in paragraph 9A(c) of the *Crimes Act 1914*; and

(k) the money referred to in paragraph 208DA(3)(a) of the *Customs Act 1901*; and

(l) the remainder of the proceeds referred to in subparagraph 208DA(3)(b)(iii) of the *Customs Act 1901*; and

(m) the amount referred to in subsection 243B(4) of the *Customs Act 1901*; and

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(n) the remainder of the money referred to in paragraph 243G(6)(a) of the *Customs Act 1901*; and

(o) the remainder of the proceeds referred to in subparagraph 243G(6)(b)(iii) of the *Customs Act 1901*.

4 Paragraphs 296(3)(e) to (fa)

Repeal the paragraphs, substitute:

(e) the amount referred to in subsection 140(1), to the extent it has been paid to the Commonwealth;

(f) the amount referred to in subsection 167(1), to the extent it has been paid to the Commonwealth;

(fa) the amount referred to in subsection 179R(1), to the extent it has been paid to the Commonwealth;

5 Paragraphs 296(3)(i) to (p)

Repeal the paragraphs, substitute:

(i) amounts paid to the Commonwealth in settlement of proceedings connected with this Act.

6 Paragraph 296(4)(a)

After "any *unlawful activity", insert "(other than *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement))".

7 Paragraph 296(4)(c)

After "any unlawful activity", insert "(other than proceeds of confiscated assets that are shareable (within the meaning of the NCSUW agreement))".

8 Paragraph 297(a)

Repeal the paragraph, substitute:

(a) making any payments by way of financial assistance to the States or *self-governing Territories that the Minister considers are appropriate under the *equitable sharing program;

(aa) making any payments to foreign countries that the Minister considers are appropriate under the equitable sharing program;

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(ab) making any payments by way of financial assistance to the States or self-governing Territories in accordance with the *national cooperative scheme on unexplained wealth;

(ac) making any payments to foreign countries in accordance with the national cooperative scheme on unexplained wealth;

9 After section 297

Insert:

Division 2—The national cooperative scheme on unexplained wealth

297A The scheme

(1) The ***national cooperative scheme on unexplained wealth*** is a scheme under which any or all of the following happen:

(a) the Commonwealth shares with a foreign country, in accordance with section 297B, any *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement);

(b) the Commonwealth shares with a State or *self-governing Territory, in accordance with section 297C, any proceeds of confiscated assets that are shareable (within the meaning of the NCSUW agreement);

(c) a *participating State, *cooperating State or self-governing Territory shares with the Commonwealth, in accordance with a law of the State or Territory, any corresponding proceeds of the State or Territory (within the meaning of the NCSUW agreement) that are shareable (within the meaning of that agreement);

(d) a *non-participating State (other than a cooperating State) shares with the Commonwealth any corresponding proceeds of the State (within the meaning of the NCSUW agreement) that are shareable (within the meaning of that agreement).

(2) The ***NCSUW agreement*** is the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth, as in force from time to time.

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297B Sharing with foreign countries

(1) This section sets out the process under the *national cooperative scheme on unexplained wealth for sharing with a foreign country *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement).

(2) If the Minister decides that:
  (a) a foreign country has made a contribution in relation to the recovery of the proceeds; and
  (b) it is appropriate that a specified amount of the proceeds be payable to the country;

then the specified amount is payable to the country under the *national cooperative scheme on unexplained wealth.

(3) However, the specified amount must not exceed the amount of the proceeds, reduced by any amounts for the making of payments referred to in paragraphs 297(fa), (ga) and (h) in relation to the proceeds.

297C Sharing with States and Territories

What this section is about

(1) This section sets out the process under the *national cooperative scheme on unexplained wealth for sharing with a State or *self-governing Territory *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement).

Amount of proceeds to be shared

(2) The proceeds are to be reduced by:
  (a) any amount of the proceeds that is payable to a foreign country under subsection 297B(2); and
  (b) any amounts for the making of payments referred to in paragraphs 297(fa), (ga) and (h) in relation to the proceeds.

The resulting amount is the ***net amount***.

The subcommittee of the Cooperating Jurisdiction Committee

(3) The Cooperating Jurisdiction Committee established under the *NCSUW agreement must establish a subcommittee for the

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purposes of deciding matters under this section in relation to the net amount.

(4) The subcommittee must consist of the following members of the Cooperating Jurisdiction Committee:

(a) the Commonwealth;

(b) if, in the decision-making period referred to in subsection (9), the Cooperating Jurisdiction Committee makes a unanimous decision that one or more *participating States, *cooperating States or *self-governing Territories made a contribution (within the meaning of the *NCSUW agreement) in relation to the recovery of the proceeds—each of those States and Territories.

Non-participating States' share

(5) If, in the decision-making period referred to in subsection (9), 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 on unexplained wealth.

Participating States', cooperating States' and Territories' share

(6) If the subcommittee includes one or more *participating States, *cooperating States or *self-governing Territories, then:

(a) any part of the net amount that remains after an application of subsection (5) is to be divided into equal proportions between the Commonwealth and each of those States or Territories; and

(b) the resulting proportion for each of those States or Territories is payable to the State or Territory under the *national cooperative scheme on unexplained wealth.

(7) However, if, in the decision-making period referred to in subsection (9), the subcommittee makes a unanimous decision that:

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(a) it is inappropriate for the sharing arrangements referred to in subsection (6) to apply; and

(b) it is appropriate that a specified proportion, of any part of the net amount that remains after any application of subsection (5), be payable to each of those States or Territories;

then:

(c) the sharing arrangements referred to in subsection (6) do not apply; and

(d) the specified proportion for each of those States or Territories, of any part of the net amount that remains after any application of subsection (5), is payable to the State or Territory under the *national cooperative scheme on unexplained wealth.

Making of decisions

(8) Decisions may be made under this section in relation to an amount before the amount becomes *proceeds of confiscated assets or the net amount.

Note: For example, if an unexplained wealth order is made that requires a person to pay to the Commonwealth 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 becomes proceeds of confiscated assets (which it will become when it is paid to the Commonwealth) or the net amount.

Decision-making period

(9) For the purposes of subsections (4), (5) and (7), 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 on unexplained wealth; or

(b) if paragraph (a) does not apply—the period prescribed by the regulations as being the decision-making period for the purposes of that scheme.

(10) The *NCSUW agreement and the regulations may specify that the decision-making period starts or ends at a time before an amount becomes *proceeds of confiscated assets.

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Note: For example, the NCSUW agreement or regulations may provide that, for proceeds of confiscated assets that are an amount that has been paid to the Commonwealth under an unexplained wealth order (see section 179R), the decision-making period starts when the order is made (which is before the time the amount becomes proceeds of confiscated assets under paragraph 296(3)(fa)).

Payment period

(11) If an amount is payable to a *participating State, *cooperating State or *self-governing Territory under this section, then the Minister must cause the amount to be paid to the 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 on unexplained wealth; or

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

10 Before section 298

Insert:

Division 3—Programs for expenditure on crime prevention etc.

11 Section 338

Insert:

national cooperative scheme on unexplained wealth has the meaning given by subsection 297A(1).

NCSUW agreement has the meaning given by subsection 297A(2).

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Schedule 6—Sharing information under the national cooperative scheme on unexplained wealth

Telecommunications (Interception and Access) Act 1979

1 Subsection 5(1)

Insert:

main unexplained wealth provisions has the same meaning as in the *Proceeds of Crime Act 2002*.

participating State has the same meaning as in the *Proceeds of Crime Act 2002*.

unexplained wealth legislation has the same meaning as in the *Proceeds of Crime Act 2002*.

2 After paragraph 5B(1)(bd)

Insert:

(be) a proceeding under, or a proceeding relating to a matter arising under, the main unexplained wealth provisions; or

(bf) a proceeding under, or a proceeding relating to a matter arising under, the unexplained wealth legislation of a participating State, the Australian Capital Territory or the Northern Territory; or

3 After paragraph 6L(1)(b)

Insert:

(ba) in the case of the Australian Federal Police—a proceeding under, or a proceeding relating to a matter arising under:

(i) the main unexplained wealth provisions; or

(ii) the unexplained wealth legislation of a participating State, the Australian Capital Territory or the Northern Territory; or

(bb) in the case of the Police Force of a participating State, the Australian Capital Territory or the Northern Territory—a proceeding under, or a proceeding relating to a matter arising

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under, the unexplained wealth legislation of that State or Territory; or

4 After paragraph 6L(2)(a)

Insert:

(aa) in the case of the Crime Commission—a reference to:

(i) a proceeding by way of a prosecution for a prescribed offence that is an offence against the law of New South Wales and to which a prescribed investigation relates or related; or

(ii) a proceeding under a law of New South Wales for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence; or

5 Paragraph 6L(2)(b)

Omit "the Crime Commission,".

6 At the end of section 6L

Add:

(3) A reference in this Act, in relation to an agency that is an interception agency, to a relevant proceeding is a reference to a proceeding under, or a proceeding relating to a matter arising under:

(a) the main unexplained wealth provisions; or

(b) the unexplained wealth legislation of a participating State, the Australian Capital Territory or the Northern Territory.

7 After subparagraph 68(c)(i)

Insert:

(ia) the subject matter of a proceeding under, or in relation to a matter arising under, the main unexplained wealth provisions; or

8 After subparagraph 68(d)(i)

Insert:

(iaa) the subject matter of a proceeding under, or in relation to a matter arising under, the unexplained wealth

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legislation of a participating State, the Australian Capital Territory or the Northern Territory; or

9 Application

The amendments of the *Telecommunications (Interception and Access) Act 1979* made by this Schedule (except the amendment of subsection 5(1) of that Act) apply to proceedings begun on or after the commencement of this Schedule.

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Schedule 7—Review of the national cooperative scheme on unexplained wealth

Proceeds of Crime Act 2002

1 After section 327

Insert:

327A Review

(1) The Minister must cause an independent review to be undertaken of:

(a) the *national unexplained wealth provisions; and

(b) any other matter that the *NCSUW agreement specifies is to be reviewed under this section.

(2) The review must be undertaken as soon as practicable after the fourth anniversary of the commencement of the *Unexplained Wealth Legislation Amendment Act 2018*.

(3) Before the review is undertaken, the Minister must consult the appropriate Ministers of the *participating States, *cooperating States and *self-governing Territories about the terms of the review and the appointment of the persons who are to undertake the review.

(4) The persons who undertake the review must:

(a) consult the appropriate Ministers of the *participating States, *cooperating States and *self-governing Territories for the purposes of undertaking the review; and

(b) give a written report of the review to the Minister and the Ministers referred to in paragraph (a).

(5) 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.

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Schedule 8—Unexplained wealth legislation of a State or Territory

Proceeds of Crime Regulations 2002

1 At the end of Part 3

Add:

13A Unexplained wealth legislation of a State or Territory

New South Wales

(1) For the definition of ***unexplained wealth legislation*** in section 338 of the Act, the unexplained wealth legislation of New South Wales is Division 2 of Part 3 of the *Criminal Assets Recovery Act 1990* of New South Wales, and the other provisions of that Act that relate to that Division.

Note: Section 6 of that Act (which defines ***serious crime related activity***) is an example of a provision that relates to Division 2 of Part 3 of that Act because Division 2 refers to that term.

Northern Territory

(2) For the definition of ***unexplained wealth legislation*** in section 338 of the Act, the unexplained wealth legislation of the Northern Territory is Division 1 of Part 6 of the *Criminal Property Forfeiture Act* of the Northern Territory, and the other provisions of that Act that relate to that Division.

Note: Section 100 of that Act (which allows a court to order that restrained property is forfeit to the Northern Territory if an unexplained wealth declaration has been made against a person who owns or effectively controls the property) is an example of a provision that relates to Division 1 of Part 6 of that Act because it relates to unexplained wealth declarations (which are made under that Division).

[*Minister's second reading speech made in—*
House of Representatives on 20 June 2018
Senate on 21 August 2018]

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