

UNEXPLAINED WEALTH PROVISIONS

Australian Jurisdiction Comparative Table
Prepared by the Australian Federal Police Association

DEFINITIONS			
	<i>Criminal Property Confiscation Act 2000 (WA)</i>	<i>Criminal Property Forfeiture Act 2002 (NT)</i>	<i>Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009</i>
Definition of 'property' and 'interest'	N/A	Tangible or intangible real or personal property of any description, wherever situated; <u>or</u> legal or equitable interest in any property referred above: s5 Interest, in relation to property, means: (a) a legal or equitable estate or interest in the property; <u>or</u> (b) a right, power or privilege over or in connection with the property: s5	Real or personal property of every description (tangible and intangible), situated in Australia or elsewhere and includes an interest in any such real/personal property: s338 Interest, in relation to property or a thing, means: (a) a legal or equitable estate or interest in the property or thing; <u>or</u> (b) a present or future right, power or privilege in connection with the property or thing. Can be either vested or contingent: s338
Definition of 'wealth'	A person's wealth is constituted by: all property owned/ effectively controlled/or given away by the person, that was acquired <i>any time before or after</i> the Act; all services, advantages and benefits that the person acquired or <i>acquired at the request or direction</i> of the person at any time before or after the Act:	A person's wealth is constituted by: all property owned/ effectively controlled/given away/discarded or consumed by the person, acquired <i>any time before or after</i> the Act; all services, advantages and benefits that the person acquired or <i>acquired at the request or direction</i>	A person's wealth is constituted by: property owned by the person at any time; property under the effective control of the person at any time; property that the person has disposed of/ consumed. Includes property owned/effectively controlled/disclosed /consumed before commencement of this Part: s179G(1)

	s143	of the person at any time before or after the Act; anything of monetary value acquired by the person or another person, in Australia or elsewhere: s70	
Total wealth	Value of the person's wealth is the amount equal to sum of the values of <i>all</i> items of property, services, advantages and benefits that together constitute the person's wealth: s144(2)	Total value of all property, services, advantages and benefits that together constitute the person's wealth: s68(2)	The sum of all the values of property that together constitute the person's wealth: s179B(2) Value of disposed property is the greater value of the value at acquisition and the value immediately prior to disposal/consumption: s179B(3) Value of any other property is the greater value of the value at acquisition and the value on the day of application for unexplained wealth order: s179B(4)
Lawfully acquired wealth	Meaning: if property, service, advantage or benefit was lawfully acquired; <u>and</u> any consideration given for it was lawfully acquired: s149 Total value of lawfully acquired wealth is the amount equal to the sum of the values of each item of property and each service,	Meaning: Property, service, advantage or benefit that was lawfully acquired; <u>and</u> any consideration given for it was lawfully acquired; <u>and</u> any obligation in relation to acquisition is/has been met by lawfully acquired	Meaning: If property or wealth was lawfully acquired <u>and</u> any consideration given for the property or wealth was lawfully acquired: s336A

	<p>advantage and benefit that is a constituent of the person's wealth <u>and</u> lawfully acquired: s144(3)</p>	<p>means: s77(1)</p> <p>Property that is gifted to a person is only lawfully acquired property in the hands of the recipient if it was lawfully acquired by the donor: s77(3)</p> <p>Total value of all property, services, advantages and benefits that constitute the person's wealth <u>and</u> were lawfully acquired: s68(3)</p>	
<p>Assessing value of 'unexplained wealth'</p>	<p>In circumstances where the value of a person's total wealth is greater than the value of that person's wealth which was lawfully acquired: s13(1), s144(1)</p> <p>Value of disposed property, service, advantage or benefit is the greater value of value at time of acquisition and value immediately prior to disposal: s13(2)</p> <p>Value of any other property, service, advantage or benefit is the greater value of value at time of acquisition and value on the day of application for the UW declaration: s13(3)</p>	<p>In circumstances where the value of a person's total wealth is greater than the value of that person's wealth which was lawfully acquired: s68(1), s69</p>	<p>The difference between the person's total wealth and the sum of the values of property that was <i>not</i> derived from: an offence against a law of the Cth, foreign indictable offence, State offence with a federal aspect: s179E(2)</p> <p>[This is an irritatingly convoluted way of referring to 'lawfully acquired wealth' - intentionally legalistic and confusing]</p>
RESTRAINING ORDER			
Restraining,	Application for	NTPol or DPP may	A court with <i>proceeds</i>

<p>freezing, and confiscable orders</p>	<p>confiscable property declaration: DPP can apply to the court for this during proceedings for an UW declaration or at any other time: s11(2), s27(2)</p> <p>DPP can apply to Justice of the Peace for a freezing order: s34(1)</p>	<p>apply to local court for a restraining order: s41(1); or</p> <p>DPP can apply to Supreme Court for a restraining order: s41(2)</p>	<p><i>jurisdiction</i> may issue a restraining order for unexplained wealth if the DPP makes an application <u>and</u> demonstrates: reasonable grounds to suspect person has unexplained wealth; <u>and</u></p> <p>affidavit requirements are satisfied; <u>and</u></p> <p>there are reasonable grounds to suspect person has committed an offence and/or wealth was derived from that offence: s20A</p>
<p>** Specific Requirements</p>			<p>Reasonable grounds Authorising officer has reasonable grounds to suspect that: person has committed an offence against a Cth law, a foreign indictable offence or a State offence with a federal aspect; <u>and/or</u></p> <p>whole or part of the wealth was derived from that offence: s20A(1)(g)</p> <p>Affidavit requirements Authorised officer suspects that total wealth of suspect exceeds the value of their lawfully acquired wealth; <u>and</u></p> <p>officer suspects that the property is subject to the effective control of the suspect (re apps to restrain third party)</p>

			property); <u>and</u> officer suspects person has committed an offence <u>and/or</u> wealth is derived from that offence: s20A(3)(c)
Purpose and scope of restraining order	Freezing order can be made, whether or not the person subject to the order owns or effectively controls property: s43(2)		Restraining order may be made even if there is no risk of property being disposed: s20A(5) Court may also specify property acquired by the suspect after the order: s20A(6)
Refusal of restraining order application			Crt may refuse an application if it is not in the public interest: s20A(4) Court may exclude certain property from an order: s29A
Duration of restraining order			Restraining order ceases after 28 days if no application has been made: s45A
PRELIMINARY ORDER			
Court requirement	N/A	N/A	If the DPP makes an application for a wealth order to a court with <i>proceeds jurisdiction</i> ; <u>and</u> the court is satisfied that that officer has reasonable grounds to suspect; <u>and</u> meets affidavit requirements, the court <i>must</i> make an order for the person to make an appearance for the purpose of deciding

			whether or not make an order in relation to that person: s179B(1)
COURT DECLARATION/ORDER			
Application for court declaration/order	DPP applies to 'the court' for an unexplained wealth declaration against a person: s11(1) [Court is unspecified]	DPP applies to the Supreme Court for an unexplained wealth declaration against a person: s67(1) May be made in conjunction with restraining order: s67(2)	[See preliminary order requirements]
Test for a court declaration/order	If it is more likely than not that value of total wealth exceeds that of lawfully acquired wealth: s12(1)	If it is more likely than not that value of total wealth exceeds that of lawfully acquired wealth: 71(1)	If a court with proceeds jurisdiction has made a preliminary unexplained wealth order in relation to the person; and is not satisfied the total wealth of the person was not derived from one or more of the following: an offence against a Cth law; a foreign indictable offence; or a State offence with a federal aspect: s179E(1)
Onus of proof	Presumption that any property, service, advantage or benefit that is a constituent of respondent's wealth is not be lawfully acquired. Respondent must show that wealth was lawfully acquired: s12(2)	Respondent must show that wealth was lawfully acquired: s71(2)	A preliminary order has been made in relation to the person; and court is not satisfied that the total wealth was not derived from an offence: s179E(3)
Application to revoke an order			Applicant gives written notice to DPP; and

			provides grounds for revocation; and application made w/in 28 days after notice of preliminary order: s179C
Liability – UW payable to State	Respondent is liable to pay the State an amount equal to the amount specified in the declaration as the assessed value of the respondent's UE: s14	Respondent must pay the Territory the amount ordered by the SC in an UW declaration: s72(1)	
Recovery of unexplained wealth	Payable by respondent within one month after the date of the UW declaration; or within any further time allowed by the court: s25(1)		