

# Chapter 1

## Introduction and background

### The referral

1.1 On 5 March 2014, the Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Bill 2014 (the bill) was introduced into the House of Representatives by the Minister for Justice the Hon Michael Keenan MP.<sup>1</sup> On 6 March 2014, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the bill to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 15 May 2014.<sup>2</sup> The reporting date was later extended by the Senate to 5 June 2014.<sup>3</sup>

### Background

1.2 Unexplained wealth laws were added to the *Proceeds of Crime Act 2002* (POC Act) in February 2010<sup>4</sup> as part of 'a suite of reforms to more effectively prevent, investigate and litigate organised crime activity, and target the proceeds of organised crime'.<sup>5</sup> The unexplained wealth provisions in the POC Act 'allow the court to make orders with respect to the restraint and forfeiture of assets where the court is satisfied that there are reasonable grounds to suspect that a person's total wealth exceeds the value of the person's wealth that was lawfully acquired'.<sup>6</sup>

1.3 In July 2011 the Parliamentary Joint Committee on Law Enforcement (PJC-LE) undertook a review of those laws and released a report (which set out 18 recommendations for improvements) in March 2012. In November 2012, the then Labor government introduced the Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012 (the 2012 bill) into the House of Representatives. Schedule 1 of the 2012 bill contained amendments to the POC Act that would have

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1 *House of Representatives Votes and Proceedings*, No. 25, 5 March 2014, p. 349.

2 *Journals of the Senate*, No. 18—6 March 2014, p. 575.

3 *Journals of the Senate*, No. 28—14 May 2014, p. 793.

4 The *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* amended the POC Act to include unexplained wealth provisions. At the time of its introduction, the bill was the subject of inquiry by the Senate Legal and Constitutional Affairs Legislation Committee. In its report the committee recommended that the bill be passed subject to a number (12) of recommendations, some of which were implemented but which would be removed by the current bill.

5 Explanatory Memorandum (EM), p. 16.

6 EM, p. 18.

implemented some of the recommendations of the PJC-LE.<sup>7</sup> The 2012 bill lapsed at the end of the 43<sup>rd</sup> Parliament.<sup>8</sup>

## **The proposed amendments**

1.4 The bill currently before the committee, the Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Bill 2014, is comprised of two schedules.

### ***Schedule 1—Unexplained wealth***

1.5 Schedule 1 seeks to amend the POC Act to strengthen the operation of the unexplained wealth provisions and improve the investigation and litigation of unexplained wealth matters<sup>9</sup> by implementing the PJC-LE's recommendations to:

- include a statement in the objects clause of the POC Act about undermining the profitability of criminal enterprise;
- ensure evidence relevant to unexplained wealth proceedings can be seized under a search warrant;
- streamline affidavit requirements for preliminary unexplained wealth orders;
- allow the time limit for serving notice of applications for certain unexplained wealth orders to be extended by a court in certain circumstances;
- harmonise legal expenses and legal aid provisions for unexplained wealth cases with those for other POC Act proceedings to prevent restrained assets being used to meet legal expenses;
- allow charges to be created over restrained property to secure payment of an unexplained wealth order, as can occur with other types of proceeds of crime order;
- remove a court's discretion to make unexplained wealth restraining orders, preliminary unexplained wealth orders and unexplained wealth orders once relevant criteria are satisfied; and

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7 The Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012 sought to implement recommendations 5, 9, 10, 11, 12 and 13 (in part) of the PJC-LE's 2012 report. Schedule 2 of the 2012 bill contained amendments to the *Criminal Code Act 1995* in relation to trafficking in firearms. Those provisions are not included in the bill currently before the committee.

8 The 2012 bill was the subject of an inquiry by this committee. In its report, which tabled in March 2013, the Senate Legal and Constitutional Affairs Legislation Committee recommended that the Senate pass the bill. The Australian Greens, while 'generally' agreeing with the majority report, made additional comments concerning the proposed amendments that would prevent restrained assets from being used to meet legal expenses. Source: Senate Legal and Constitutional Affairs Legislation Committee, *Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012 [Provisions]*, March 2013, pp 19, 21–22.

9 EM, p. 2.

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- require the Commissioner of the Australian Federal Police (AFP) to report to the PJC-LE annually on unexplained wealth matters and litigation, and to empower the PJC-LE to seek further information from federal agencies in relation to such a report.<sup>10</sup>

1.6 These amendments seek to implement recommendations 1, 5, 8, 10, 11, 12 and 13 (in part), of the PJC-LE's 2012 report.

1.7 Schedule 1 to the bill also contains amendments that would:

- clarify that an unexplained wealth order may be made where a person who is subject to the order fails to appear at an unexplained wealth proceeding;
- ensure that provisions in the POC Act that determine when restraining orders cease to have effect take account of the proposed new provisions allowing charges to be created and registered over restrained property to secure payment of unexplained wealth amounts and the fact that unexplained wealth restraining orders may sometimes be made after an unexplained wealth order;
- streamline the making of preliminary unexplained wealth orders where an unexplained wealth restraining order is in place;
- remove affidavit requirements in support of applications for preliminary unexplained wealth orders;
- ensure that a copy of the affidavit relied upon when a preliminary unexplained wealth order was made must be provided to the person who is subject to the order in light of changes to the affidavit requirements for preliminary unexplained wealth orders; and
- extend the purposes under which information obtained under the coercive powers of the POC Act can be shared with State, Territory and foreign authorities.<sup>11</sup>

1.8 Schedule 2 to the bill contains amendments to correct minor drafting errors in the POC Act.<sup>12</sup>

## **Structure of the report**

1.9 This report comprises two chapters. This chapter provides background to the inquiry and the bill. Chapter 2 addresses concerns raised by stakeholders in respect of the bill. Concerns raised related to items within Schedule 1 of the bill. Schedule 2 of the bill did not attract any comment during the committee's inquiry.

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10 EM, pp 2–3.

11 EM, p. 3.

12 EM, p. 3.

## **Conduct of the inquiry**

1.10 The committee advertised the inquiry in *The Australian* newspaper on 19 March 2014. Details of the inquiry, including links to the bill and associated documents, were published on the committee's website at [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon). The committee also wrote to over 80 organisations and individuals inviting submissions by 3 April 2014.

1.11 The committee received 10 submissions, which are listed at Appendix 1 and were published on the committee's website. A public hearing was held in Canberra on 15 May 2014. A list of witnesses who appeared at the hearing is at Appendix 2. The *Hansard* transcript from the hearing can be accessed on the committee's website.

## **Acknowledgment**

1.12 The committee thanks those stakeholders who made submissions and gave evidence at the public hearing.

## **Note on references**

1.13 References to the committee *Hansard* are to the proof *Hansard*: page numbers may vary between the proof and the official *Hansard* transcript.