APPENDIX 3

ACC Proposal Flowchart

See overleaf

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Unexplained Wealth – Use of ACC Coercive Powers

Board Approval

ACC Board approves ACC to conduct special investigation into Unexplained Wealth (UW) matters.

Event

An event occurs (such as a large cash seizure) indicating evidence of UW.*

Intelligence

ACC or partners identify a Person of Interest (POI) suspected to have UW derived from an offence. (*)

Application to Independent Examiner

Intelligence presented to an independent ACC Examiner to determine whether this is an appropriate matter in which to use ACC coercive powers for the purpose of the Board approved UW special investigation. If relevantly satisfied, the ACC examiner may issue

(a) a summons or a notice; and(b) an ACC Act emergency restraining order

Use of Coercive Powers

Witness (POI or related person) appears or documents are produced to ACC Examiner

1

Explained

Evidence indicates UW can be legitimately explained.

2

Unexplained

Evidence indicates UW cannot be legitimately explained. (** & ***)

5

ACC Act offence / contempt

POI fails to attend, refuses to answer, gives false / misleading evidence or commits contempt.

Examiner must lift ACC restraining order. Depending on the outcomes of the Examination, a referral may be made to an appropriate agency (eg ATO) for tax/fees payable.

Used as evidence in court as a basis for the forfeiture of assets.

Evidence of ACC Act offence or contempt may be used as prima facie evidence for the forfeiture of assets.

- * Subject to referral of powers from the states and territories, this would need to be a Commonwealth offence.
- ** Legislation needs to consider explanations and their subsequent use in court proceedings.
- *** A suspect matter could be referred to the CACT as an example.

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