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**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

JUSTICE LEGISLATION AMENDMENT BILL 2020

SUPPLEMENTARY EXPLANATORY STATEMENT

SET B – Relating to sheet J2020-1224 D05

**Presented by
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JUSTICE LEGISLATION AMENDMENT BILL 2020

INTRODUCTION

This supplementary explanatory statement relates to the further Government amendments to the Justice Legislation Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Government amendments and help inform debate on them. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the further Government amendments and the Bill. It is not, and is not intended to be, a comprehensive description of the Bill and the Government amendments. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The purpose of the Government amendments is to include in the Bill amendments to the *Confiscation of Criminal Assets Act 2003* (COCA).

The amendments seek to address a gap in the unexplained wealth scheme identified during implementation planning for the scheme. The scheme was passed by the ACT Legislative Assembly on 23 July 2020 with the *Confiscation of Criminal Assets (Unexplained Wealth) Amendment Act 2020* (UW Act) which will commence by ministerial notice. The amendments broadly extend the existing exclusion order provisions in COCA, Part 6 (Exclusion of property) to apply to unexplained wealth restraining orders (UWRO).

The COCA, Part 6, allows a person to make an application to the court for an exclusion order in circumstances where property is restrained in relation to an ordinary offence; serious offence; or unclaimed tainted property.

The UW Act does not specifically provide for exclusion orders to be made where property has been restrained under an UWRO. Further, questions may arise as to whether Part 6 of COCA will apply to property restrained under an UWRO. The amendments allow a person to make an application to the court in relation to property that is the subject of an application for a UWRO, or in relation to property already restrained under an UWRO.

If an application is made by the person in relation to whom the UWRO has been made or is sought (the relevant person), the court must only make an exclusion

order if satisfied that the property was lawfully acquired; is not tainted property; is not required to satisfy an unexplained wealth order; and does not have evidentiary value in any criminal proceeding.

The requirement that the property in question is not required to satisfy a final unexplained wealth order (section 77A(2)(c)), ensures that the property will be available to satisfy a final unexplained wealth order should one be made.

Where a person the subject of a UWRO or application for an UWRO makes an application to exclude property, the requirement in section 77A(2)(c) is intended to prevent a situation where property is excluded from the order and disposed of before the conclusion of the unexplained wealth proceedings, thereby frustrating the Territory's ability to satisfy the unexplained wealth order.

If an application is made by another person, the court must only make an exclusion order if satisfied that the applicant has an interest in the property; the applicant was not party to the serious criminal activity; the interest is not subject to the effective control of the relevant person; the property is not tainted property; the property was acquired honestly (if acquired from the relevant person); and the property does not have evidentiary value in any criminal proceeding.

There are no further human rights implications arising from the Government amendments beyond those that arise under the *Confiscation of Criminal Assets (Unexplained Wealth) Amendment Bill 2020*. The Explanatory Statement for the Bill provides a comprehensive human rights proportionality assessment.

The further Government amendments provide an important further safeguard for the UW scheme to allow the court to make orders to exclude property from an UWRO in appropriate circumstances.

CLAUSE NOTES—GOVERNMENT AMENDMENTS

Amendment 1

Clause 3, proposed new dot point Page 4, line 2

This amendment amends the list of legislation amended in the Bill to include the *Confiscation of Criminal Assets Act 2003*.

Amendment 2

Proposed new part 6A

Page 14, line 18

This amendment inserts new part 6A into the Bill to amend the *Confiscation of Criminal Assets Act 2003*.

Clause 27A – Meaning of *exclusion order*, Section 72, definition of *exclusion order*, paragraph (a)

This clause amends the meaning of *exclusion order* in section 72 to specify that it does not include an order in relation to restrained property that has been used to satisfy an unexplained wealth order.

Clause 27B – Effect of exclusion order, Section 74(b)

This clause amends the explanation of the effect of an exclusion order in section 74 to specify that an exclusion order will not affect restrained property that has been used to satisfy an unexplained wealth order.

Clause 27C – Exclusion orders—application, Section 75

This clause amends section 75 to clarify that an application for an exclusion order cannot be made in relation to property that has been used to satisfy an unexplained wealth order.

Clause 27D – New section 77A

This clause inserts new section 77A which provides that an application may be made for an exclusion order for property if an unexplained wealth order has been applied for in relation to property or the property has been restrained under an UWRO. The section sets out the criteria that the court must apply when making an exclusion order in relation to an unexplained wealth restraining order. The listed criteria broadly reflect the criteria under existing provisions in Part 6 relating to the making of exclusion orders.