



Queensland

Criminal Proceeds Confiscation (Serious and Organised Crime Unexplained Wealth) Amendment Bill 2010



Queensland

Criminal Proceeds Confiscation (Serious and Organised Crime Unexplained Wealth) Amendment Bill 2010

Contents

		Page
Part 1	Preliminary	
1	Short title	6
Part 2	Amendment of Criminal Proceeds Confiscation Act 2002	
2	Act amended	6
3	Amendment of s 153B (References to property that is not available for forfeiture)	6
4	Amendment of s 213 (Forfeited property not to be disposed of during appeal period)	7
5	Insertion of new s 213A	7
	213A Forfeited property not to be disposed of during appeal period—declared drug traffickers	7
6	Insertion of new ch 5A	8
	Chapter 5A Unexplained wealth declarations and declared drug traffickers	
	Part 1 Unexplained wealth declarations	
	Division 1 Interpretation	
	216A Meaning of a person's wealth	8
	216B Meaning of unexplained wealth	9
	216C Meaning of lawfully acquired	10
	216D Meaning of property, benefit, benefit derived and respondent	10
	Division 2 Unexplained wealth declarations	
	216E Application for unexplained wealth declaration.	10
	216F Making unexplained wealth declaration	11
	216G Assessing the value of unexplained wealth	12
	216H Unexplained wealth payable to State	13

Contents

	Division 3	Recovery of unexplained wealth	
	216I	Recovery of unexplained wealth	13
	216J	Use of restrained property to meet liability	13
	216K	Use of effectively controlled property or gifts to meet liability	14
	216L	Confiscable property declaration	14
	216M	Restrictions on confiscation of declared confiscable property	15
	Part 2	Declared drug traffickers	
	216N	Meaning of declared drug trafficker	15
	216O	Drug trafficker's property	16
	Part 3	Other orders	
	216P	Definitions for pt 3.	17
	216Q	Relief from hardship for dependants	18
	216R	Application for an innocent party interest exclusion order	18
	216S	When Supreme Court may give leave for s 216R . . .	19
	216T	Making of innocent party interest exclusion order . . .	20
	216U	What is an innocent party interest exclusion order. . .	20
	Part 4	Notification to and appearance of public interest monitor	
	216V	Application of pt 4.	21
	216W	Definitions.	21
	216X	Public interest monitor must be notified	21
	216Y	Full disclosure to public interest monitor	21
	216Z	Public interest monitor may appear etc.	21
	216ZA	Confidentiality obligations not to apply	22
	216ZB	Public interest monitor to report to Attorney-General about noncompliance	23
	216ZC	Appointment of public interest monitor and deputy public interest monitor	23
	216ZD	Delegation by public interest monitor	23
	216ZE	Protection from liability	24
7		Amendment of s 228 (Matters not to be taken into account in deciding application for legal assistance)	25
8		Amendment of s 263 (Appeals)	25
9		Amendment of sch 6 (Dictionary)	25

Part 3	Amendment of Drugs Misuse Act 1986	
10	Act amended	26
11	Insertion of new s 43AA	26
	43AA Drug trafficking	26

2010

A Bill

for

**An Act to amend the *Criminal Proceeds Confiscation Act 2002*
and the *Drugs Misuse Act 1986* for particular purposes**

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Criminal Proceeds Confiscation
(Serious and Organised Crime Unexplained Wealth)
Amendment Act 2010*. 4
5
6

**Part 2 Amendment of Criminal
Proceeds Confiscation Act
2002** 7
8
9

Clause 2 Act amended 10

This part amends the *Criminal Proceeds Confiscation Act
2002*. 11
12

**Clause 3 Amendment of s 153B (References to property that is not
available for forfeiture)** 13
14

Section 153B, from ‘if’— 15

omit, insert— 16

‘if— 17

(a) the convicted person does not own the property and it is 18
not under the effective control of the convicted person; 19
or 20

(b) in any other case—the property of the convicted person 21
was sold or otherwise disposed of, or can not be found 22
for any other reason.’. 23

Clause 4	Amendment of s 213 (Forfeited property not to be disposed of during appeal period)	1 2
	(1) Section 213(3)— <i>renumber</i> as section 213(4).	3 4
	(2) Section 213— <i>insert</i> —	5 6
	‘(3) This section does not apply to property to which section 213A applies.’.	7 8
Clause 5	Insertion of new s 213A	9
	After section 213— <i>insert</i> —	10 11
	‘213A Forfeited property not to be disposed of during appeal period—declared drug traffickers	12 13
	‘(1) This section applies to property of a declared drug trafficker that is automatically forfeited under section 216O.	14 15
	‘(2) Within the appeal period, the State must not, without the leave of the court that made the declaration—	16 17
	(a) dispose of the property forfeited to the State; or	18
	(b) authorise anyone else to dispose of the property.	19
	‘(3) When the appeal period ends, the State may dispose of the property unless the conviction of the person for the offence under the <i>Drugs Misuse Act 1986</i> in relation to which the declaration was made is quashed.	20 21 22 23
	‘(4) In this section— <i>appeal period</i> means the period ending when all proceedings relating to the conviction under the <i>Drugs Misuse Act 1986</i> in relation to which the declaration was made are finally decided.	24 25 26 27 28

[s 6]

declaration means a declaration under the *Drugs Misuse Act 1986*, section 43AA. 1
2

declared drug trafficker see section 216N.’. 3

Clause 6 **Insertion of new ch 5A** 4

After section 216— 5

insert— 6

‘Chapter 5A **Unexplained wealth** 7
declarations and declared 8
drug traffickers 9

‘Part 1 **Unexplained wealth** 10
declarations 11

‘Division 1 **Interpretation** 12

‘216A **Meaning of a person’s *wealth*** 13

‘(1) For this part, the following property, benefits and benefits 14
derived together make up a person’s *wealth*— 15

(a) all property the person owns, whether the person 16
acquired the property before or after the 17
commencement; 18

(b) all property under the effective control of the person, 19
whether the person acquired effective control of the 20
property before or after the commencement; 21

(c) all property the person has given away, whether before 22
or after the commencement; 23

(d) all other property acquired by the person, whether 24
before or after the commencement, including consumer 25

-
- goods and consumer durables that have been consumed 1
or discarded; 2
- (e) all benefits and benefits derived by the person, whether 3
before or after the commencement; 4
- (f) all property, benefits and benefits derived at the request 5
or direction of the person by another person, whether 6
before or after the commencement, including consumer 7
goods and consumer durables that have been consumed 8
or discarded. 9
- ‘(2) Without limiting subsection (1), a reference in that subsection 10
to property, benefits or benefits derived by a person or by 11
another person at the request or direction of the 12
first-mentioned person includes a reference to anything of 13
monetary value— 14
- (a) acquired, in Australia or elsewhere, from the 15
commercial exploitation of any product, or of any 16
broadcast, telecast or other publication, the commercial 17
value of which depends on or is derived on the person’s 18
involvement in the commission of a serious criminal 19
offence; and 20
- (b) whether or not the thing was lawfully acquired or the 21
person has been charged with or convicted of the serious 22
criminal offence. 23
- ‘(3) In this section— 24
commencement means the commencement of this section. 25

‘216B Meaning of *unexplained wealth* 26

- ‘(1) For this part, a person has *unexplained wealth* if the value of 27
the person’s wealth under subsection (2) is greater than the 28
value of the person’s lawfully acquired wealth under 29
subsection (3). 30
- ‘(2) The value of the person’s wealth is the amount equal to the 31
total of the values of all the items of property, and all the 32
benefits and benefits derived, that together make up the 33
person’s wealth. 34

[s 6]

‘(3) The value of the person’s lawfully acquired wealth is the amount equal to the total of the values of each item of property, and benefit and benefit derived, that together make up the person’s wealth and was lawfully acquired.	1 2 3 4
‘216C Meaning of <i>lawfully acquired</i>	5
‘For this part, any property, benefit or benefit derived is <i>lawfully acquired</i> only if—	6 7
(a) the property, benefit or benefit derived was lawfully acquired; and	8 9
(b) any consideration given for the property, benefit or benefit derived was lawfully acquired.	10 11
‘216D Meaning of <i>property, benefit, benefit derived and respondent</i>	12 13
‘(1) <i>Property</i> see section 19.	14
‘(2) <i>Benefit</i> and <i>benefit derived</i> see section 21.	15
‘(3) <i>Respondent</i> see section 216E(1).	16
‘Division 2 Unexplained wealth declarations	17
‘216E Application for unexplained wealth declaration	18
‘(1) The State may apply to the Supreme Court for an unexplained wealth declaration against a person (the <i>respondent</i>) for any of the respondent’s wealth acquired within 6 years before the day the application for the declaration is made.	19 20 21 22
‘(2) The application may be made in conjunction with an application for a restraining order.	23 24
‘(3) Subject to subsection (5), the State must give notice of the application to the respondent and anyone else (an <i>interested party</i>) who has an interest in any property, benefits or benefits derived that make up all or part of the respondent’s wealth.	25 26 27 28

-
- ‘(4) The court must not hear the application unless the court is satisfied the respondent and any interested party have received reasonable notice of the application.
- ‘(5) Despite subsection (4), the court must consider the application without notice having been given if the DPP asks the court to do so.
- ‘(6) However, the court may, at any time before finally deciding the application, direct the State to give notice of the application to the respondent and any interested party in the way, and within the time, the court considers appropriate.
- ‘(7) The respondent and any interested party may appear at the hearing of the application.

‘216F Making unexplained wealth declaration

- ‘(1) The Supreme Court must declare that the respondent has unexplained wealth if the court finds it more probable than not that the total value of the respondent’s wealth is greater than the total value of the respondent’s lawfully acquired wealth in relation to the respondent’s wealth acquired within 6 years before the declaration is made.
- ‘(2) Any property, benefit or benefit derived that together make up the respondent’s wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.
- ‘(3) Without limiting the matters to which the court may have regard for deciding whether the respondent has unexplained wealth, the court may have regard to—
- (a) the amount of the respondent’s income and expenditure; and
 - (b) submissions made by the public interest monitor.
- ‘(4) When making the declaration, the court must—
- (a) assess the value of the respondent’s unexplained wealth under section 216G; and
 - (b) state the assessed value of the unexplained wealth in the declaration.

[s 6]

‘(5) The court may make any necessary or convenient ancillary orders. 1
2

‘216G Assessing the value of unexplained wealth 3

‘(1) The value of the respondent’s unexplained wealth is the amount equal to the difference between— 4
5

(a) the total value of the respondent’s wealth; and 6

(b) the value of the respondent’s lawfully acquired wealth. 7

‘(2) For subsection (1), the value of any property, benefit or benefit derived that has been given away, used, consumed or discarded, or that is for any other reason no longer available, is the greater of the following— 8
9
10
11

(a) its value when it was acquired; 12

(b) its value immediately before it was given away, or used, consumed or discarded, or otherwise stopped being available. 13
14
15

‘(3) The value of any other property, benefit or benefit derived is the greater of the following— 16
17

(a) its value when it was acquired; 18

(b) its value on the day the application for the unexplained wealth declaration was made. 19
20

‘(4) However, when assessing the value of the respondent’s unexplained wealth, the court must not take account of the following— 21
22
23

(a) any property that has been forfeited under this or any other Act; 24
25

(b) any property, benefit or benefit derived that was taken into account for making an earlier unexplained wealth declaration against the respondent; 26
27
28

(c) any property, benefit or benefit derived in relation to which a restraining order has been made; 29
30

- (d) any property, benefit or benefit derived that was taken 1
into account for making a tainted property substitution 2
declaration against the respondent. 3

‘216H Unexplained wealth payable to State 4

‘When the Supreme Court makes an unexplained wealth 5
declaration, the respondent is liable to pay to the State an 6
amount equal to the amount stated in the declaration as the 7
assessed value of the respondent’s unexplained wealth. 8

‘Division 3 Recovery of unexplained wealth 9

‘216I Recovery of unexplained wealth 10

- ‘(1) The amount payable by a respondent under section 216H is 11
payable within— 12
- (a) 1 month after the date on which the unexplained wealth 13
declaration is made; or 14
- (b) any further time allowed by the Supreme Court. 15
- ‘(2) The court may allow further time even if the date for making 16
payment under subsection (1) has passed. 17
- ‘(3) If part or all of the amount is not paid within the time allowed, 18
the unpaid amount is recoverable by the State from the 19
respondent as a debt. 20

‘216J Use of restrained property to meet liability 21

- ‘(1) Restrained property owned by a respondent may be taken, 22
with the respondent’s consent, in payment or part-payment of 23
an amount payable by the respondent under section 216H. 24
- ‘(2) Subsection (3) applies if part or all of the amount payable by 25
the respondent is not paid within the time allowed under 26
section 216I(1). 27

[s 6]

- ‘(3) Despite any other provision of this Act, any restrained property that is owned by the respondent is available for the purpose of satisfying the respondent’s liability as if the property had been taken from the respondent’s possession under a writ, warrant or other process of execution. 1
2
3
4
5
- ‘(4) Subsection (1) or (3) does not limit any other way of satisfying a debt owing to the State under section 216I(3). 6
7
- ‘216K Use of effectively controlled property or gifts to meet liability 8
9**
- ‘(1) The DPP may apply to the Supreme Court for a confiscable property declaration about property that was under a respondent’s effective control or that a respondent gave away. 10
11
12
- ‘(2) The application may be made during proceedings for an unexplained wealth declaration against the respondent. 13
14
- ‘216L Confiscable property declaration 15**
- ‘(1) This section applies if, on hearing an application under section 216K, the Supreme Court finds it is more probable than not that— 16
17
18
- (a) if the property is restrained property— 19
- (i) it was under the effective control of the respondent when the restraining order was made; or 20
21
- (ii) the respondent gave it away at an earlier time to avoid a declaration being made about the property under this section; or 22
23
24
- (b) if the property is not restrained property— 25
- (i) it was under the effective control of the respondent when the application for the unexplained wealth declaration was made; or 26
27
28
- (ii) the respondent gave it away at an earlier time to avoid a declaration being made about the property under this section. 29
30
31

-
- ‘(2) For subsection (1), it is presumed that the property was under the effective control of the respondent at the material time, or that the respondent gave the property away, unless the respondent establishes the contrary.
- ‘(3) The court may declare that property not owned by the respondent is available to satisfy the respondent’s liability under section 216H.
- ‘(4) The court may make any necessary or convenient ancillary orders.

‘216M Restrictions on confiscation of declared confiscable property

- ‘(1) Property that was under a respondent’s effective control, or was given away by a respondent, is not available to satisfy the respondent’s liability under section 216H unless the property is stated in a confiscable property declaration against the respondent.
- ‘(2) However, the property stated in a confiscable property declaration is only available to satisfy the respondent’s liability—
- (a) under the declaration; and
- (b) to the extent that property owned by the respondent is not available or is insufficient to satisfy the liability.
- ‘(3) In this section—
- respondent* means a respondent to an application under section 216K.

‘Part 2 Declared drug traffickers

‘216N Meaning of *declared drug trafficker*

- ‘(1) For this part, a *declared drug trafficker* is—
- (a) a person who is declared to be a drug trafficker under the *Drugs Misuse Act 1986*, section 43AA(2) as a result

[s 6]

- of being convicted of an offence that was committed, or
is more likely than not to have been committed, after the
commencement; or
- (b) a person who is taken to be a declared drug trafficker
under subsection (2).
- ‘(2) A person is taken to be a declared drug trafficker if—
- (a) the person is charged with a relevant offence within the
meaning of the *Drugs Misuse Act 1986*, section
43AA(1); and
- (b) the offence was committed, or is more likely than not to
have been committed, after the commencement; and
- (c) the person could be declared to be a drug trafficker
under the *Drugs Misuse Act 1986*, section 43AA(2) if he
or she is convicted of the offence; and
- (d) the charge is not disposed of or finally determined; and
- (e) the person absconds in connection with the offence.
- ‘(3) In this section—
- commencement* means the commencement of this section.

‘216O Drug trafficker’s property

- ‘(1) If a person is declared to be a drug trafficker for a relevant
offence committed after the commencement and an appeal
against the person’s conviction for the relevant offence is
dismissed, withdrawn or not made within 6 months after the
conviction, the following property that the person acquired
within 6 years before the declaration was made is forfeited to
the State—
- (a) all property that the person owns or is under the person’s
effective control when the declaration is made;
- (b) all property that the person gave away before the
declaration was made, whether the gift was made before
or after the commencement.

- ‘(2) When a person is taken to be a declared drug trafficker under section 216N(2), the following property that the person acquired within 6 years before the person absconded is forfeited to the State—
- (a) all property that the person owned or was under the person’s effective control when the person absconded;
 - (b) all property that the person gave away before the person absconded, whether the gift was made before or after the commencement.
- ‘(3) Subsections (1) and (2) do not prevent a restraining order from being made against a person in relation to the relevant offence.
- ‘(4) Also, subsections (1) and (2) do not prevent an unexplained wealth declaration from being made under part 1 against a declared drug trafficker or a person who has been charged with an offence that may lead to his or her being declared to be a drug trafficker.
- ‘(5) In this section—
- commencement* means the commencement of this section.
- relevant offence* has the meaning given by the *Drugs Misuse Act 1986*, section 43AA(1).

‘Part 3 Other orders 22

‘216P Definitions for pt 3 23

- ‘In this part— 24
- chapter 5A declaration* means an unexplained wealth declaration or a declaration under the *Drugs Misuse Act 1986*, section 43AA. 25
26
27
- innocent party interest exclusion order* see section 216U. 28
- respondent* means a respondent under part 1 or a declared drug trafficker under part 2. 29
30

unexplained wealth declaration means an unexplained
wealth declaration made under part 1. 1
2

‘216Q Relief from hardship for dependants 3

- ‘(1) If the Supreme Court is satisfied the operation of part 1 or 2
will cause hardship to a dependant of a respondent, the court
may— 4
5
6
- (a) order the State to pay to the dependant out of any
amount recovered or property forfeited under the part an
amount the court considers necessary to prevent
hardship to the dependant; and 7
8
9
10
- (b) if the dependant is under 18 years old, make the
ancillary orders the court considers necessary for
ensuring the proper application of an amount to be paid
to the dependant. 11
12
13
14
- ‘(2) The court must not make an order under subsection (1) in
favour of an adult dependant of the respondent unless the
court is satisfied the dependant had no knowledge of any
serious crime related activities of the respondent. 15
16
17
18
- ‘(3) In this section— 19
- dependant*, for a respondent, means a spouse or child of the
respondent, or a member of the household of the respondent,
dependent for support on the respondent. 20
21
22

**‘216R Application for an innocent party interest exclusion
order 23
24**

- ‘(1) A person who has an interest in particular property to which a
chapter 5A declaration relates may apply to the Supreme
Court for an innocent party interest exclusion order. 25
26
27
- ‘(2) Unless the court gives leave under section 216S— 28
- (a) the application must be made within 6 months after the
chapter 5A declaration is made; and 29
30

-
- (b) for an unexplained wealth declaration, the following persons can not apply for an innocent party interest exclusion order—
- (i) a person who was given notice of the application for the unexplained wealth declaration;
 - (ii) a person who appeared at the hearing of the application for the unexplained wealth declaration.
- ‘(3) For each application made under this section, including an application for leave, the applicant must give a written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the particular property.
- ‘(4) The grounds for the application and the facts relied on must be stated fully in the notice.
- ‘(5) The State must be a party to the application.
- ‘(6) Anyone else who is given notice of the application may appear at the hearing of the application.
- ‘(7) If the State intends to oppose the application, the State must give the applicant—
- (a) notice of intention to oppose the application; and
 - (b) the grounds for opposing the application.
- ‘216S When Supreme Court may give leave for s 216R**
- ‘(1) The Supreme Court may give leave to apply for an innocent party interest exclusion order after the end of the 6 months mentioned in section 216R(2)(a) if it is satisfied the delay in applying was not because of the applicant’s neglect.
- ‘(2) Also, the Supreme Court may give a person mentioned in section 216R(2)(b) leave to apply for an innocent party interest exclusion order only if it is satisfied there are special grounds, including, for example, that—

[s 6]

(a)	the person did not attend the hearing of the application for the unexplained wealth declaration for a good reason even though the person had notice of it; or	1 2 3
(b)	particular evidence proposed to be presented by the person in the application for the order was not available to the person when the application for the unexplained wealth declaration was heard.	4 5 6 7
'216T	Making of innocent party interest exclusion order	8
(1)	The Supreme Court, on an application under section 216R, may make an innocent party interest exclusion order.	9 10
(2)	The Supreme Court must, and may only, make an innocent party interest exclusion order if the applicant proves it is more probable than not that a stated proportion of the value of the interest in property in relation to the chapter 5A declaration is not attributable to the proceeds of an illegal activity.	11 12 13 14 15
(3)	The Supreme Court may make the order only to the extent to which the interest in the property concerned was not acquired using the proceeds of an illegal activity.	16 17 18
'216U	What is an <i>innocent party interest exclusion order</i>	19
	<i>'An innocent party interest exclusion order</i> is an order that—	20
(a)	states the nature, extent and, if necessary for the order, the value, when the order is made, of the interest mentioned in section 216T(2); and	21 22 23
(b)	directs the State to pay to the applicant the value of the interest.	24 25

‘Part 4	Notification to and appearance of public interest monitor	1 2
‘216V Application of pt 4		3
	‘This part applies if the State intends to apply for an unexplained wealth declaration under section 216E.	4 5
‘216W Definitions		6
	‘In this part—	7
	<i>application</i> means an application for an unexplained wealth declaration under section 216E.	8 9
	<i>public interest monitor</i> means the public interest monitor appointed under section 216ZC.	10 11
‘216X Public interest monitor must be notified		12
	‘(1) The State must notify the public interest monitor of an application under arrangements decided by the public interest monitor.	13 14 15
	‘(2) The State must give the public interest monitor—	16
	(a) a copy of the application; and	17
	(b) a copy of any affidavit made in support of the application.	18 19
‘216Y Full disclosure to public interest monitor		20
	‘The State must also fully disclose to the public interest monitor all matters the State is aware of, whether favourable or adverse to the application.	21 22 23
‘216Z Public interest monitor may appear etc.		24
	‘(1) The public interest monitor may—	25

[s 6]

- (a) appear at the hearing of the application to test the validity of the application; and 1
2
- (b) at the hearing— 3
 - (i) ask questions of a person giving information to the Supreme Court; and 4
5
 - (ii) make submissions to the court about the application. 6
7
- ‘(2) Without limiting subsection (1), the public interest monitor may make submissions to the court in person, or by phone, fax, email or another reasonable way. 8
9
10
- ‘(3) As soon as practicable after the application is heard, the public interest monitor must return to the State the documents given by the State to the public interest monitor under this part. 11
12
13
14

‘216ZA Confidentiality obligations not to apply 15

- ‘(1) This section applies to each of the following persons— 16
 - (a) a police officer; 17
 - (b) an appropriate officer. 18
- ‘(2) An obligation to maintain secrecy in relation to, or that otherwise restricts, the disclosure of information or the production of documents in the possession of the person, whether imposed under an Act or by a rule of law, does not apply to the disclosure of information or the production of a document by the person under this part. 19
20
21
22
23
24
- ‘(3) In this section— 25

appropriate officer means a person mentioned in paragraph 26
(a), (b) or (c), if the information or document is in the person’s 27
possession for the purpose of part 1— 28

 - (a) the chairperson; or 29
 - (b) an authorised commission officer; or 30
 - (c) the DPP, a deputy DPP, or a lawyer appointed to assist the DPP in the performance of the DPP’s functions. 31
32

‘216ZB Public interest monitor to report to Attorney-General about noncompliance	1 2
‘(1) Whenever the public interest monitor considers it appropriate, the public interest monitor may give the Attorney-General a report on noncompliance by the State with this part.	3 4 5
‘(2) The public interest monitor must give a copy of the report to—	6 7
(a) the parliamentary commissioner within the meaning of the <i>Crime and Misconduct Act 2001</i> ; and	8 9
(b) the Parliamentary Crime and Misconduct Committee of the Legislative Assembly.	10 11
‘216ZC Appointment of public interest monitor and deputy public interest monitor	12 13
‘(1) The public interest monitor appointed under the <i>Crime and Misconduct Act 2001</i> is the public interest monitor for this part.	14 15 16
‘(2) The deputy public interest monitor appointed under the <i>Crime and Misconduct Act 2001</i> is the deputy public interest monitor for this part.	17 18 19
‘(3) Despite the functions and powers of the public interest monitor or deputy public interest monitor under the <i>Crime and Misconduct Act 2001</i> , for this part—	20 21 22
(a) those functions and powers do not apply; and	23
(b) the public interest monitor and deputy public interest monitor have only the functions and powers conferred under this part.	24 25 26
‘216ZD Delegation by public interest monitor	27
‘(1) The public interest monitor may delegate to a deputy public interest monitor any of the public interest monitor’s powers under this part, other than a power to report to the Attorney-General.	28 29 30 31

[s 6]

- ‘(2) The deputy public interest monitor must, if asked by a person affected by the exercise of a power delegated to the deputy public interest monitor, produce the instrument of delegation, or a copy of the instrument, for the person’s inspection.

‘216ZE Protection from liability

- ‘(1) This section applies to the following persons—
- (a) the public interest monitor;
 - (b) a deputy public interest monitor;
 - (c) the parliamentary commissioner;
 - (d) a parliamentary commissioner officer.
- ‘(2) The person does not incur civil liability for an act done, or omission made, honestly and without negligence under this part.
- ‘(3) If subsection (2) prevents a civil liability attaching to a person, the liability attaches instead to the State.
- ‘(4) The person may not be called to give evidence or produce a document in a court, or in a judicial proceeding, for a matter coming to the person’s knowledge while performing functions under this part.
- ‘(5) In this section—
- parliamentary commissioner* means the parliamentary commissioner within the meaning of the *Crime and Misconduct Act 2001*.
- parliamentary commissioner officer* means—
- (a) an officer or employee of the parliamentary service established under the *Parliamentary Service Act 1988* who is assigned to the parliamentary commissioner; or
 - (b) a person engaged to provide the parliamentary commissioner with services, information or advice.’.

Clause 7	Amendment of s 228 (Matters not to be taken into account in deciding application for legal assistance)	1 2
	(1) Section 228(1), after ‘Act’, second mention—	3
	<i>insert—</i>	4
	‘or subject to an unexplained wealth declaration’.	5
	(2) Section 228(2), after ‘property’—	6
	<i>insert—</i>	7
	‘or unexplained wealth’.	8
Clause 8	Amendment of s 263 (Appeals)	9
	(1) Section 263, after ‘an order’—	10
	<i>insert—</i>	11
	‘or declaration’.	12
	(2) Section 263, after ‘the order’—	13
	<i>insert—</i>	14
	‘, declaration’.	15
Clause 9	Amendment of sch 6 (Dictionary)	16
	Schedule 6—	17
	<i>insert—</i>	18
	‘ <i>benefit</i> , for chapter 5A, see section 216D.	19
	<i>benefit derived</i> , for chapter 5A, see section 216D.	20
	<i>innocent party interest exclusion order</i> , for chapter 5A, see section 216U.	21 22
	<i>lawfully acquired</i> , for chapter 5A, see section 216C.	23
	<i>property</i> , for chapter 5A, see section 216D.	24
	<i>public interest monitor</i> , for chapter 5A, see section 216W.	25
	<i>respondent</i> , for chapter 5A, part 1, see section 216E.	26

unexplained wealth, for chapter 5A, see section 216B. 1

unexplained wealth declaration means a declaration made 2
under section 216F. 3

wealth, for chapter 5A, see section 216A.’. 4

Part 3 **Amendment of Drugs Misuse Act 1986** 5 6

Clause 10 Act amended 7

This part amends the *Drugs Misuse Act 1986*. 8

Clause 11 Insertion of new s 43AA 9 10

Part 5— 11

insert— 12

‘43AA Drug trafficking 13

‘(1) This section applies if a person is convicted of an offence 14
under section 5 (the *relevant offence*). 15

‘(2) The court convicting the person of the relevant offence must, 16
on the application of the prosecuting authority, declare the 17
person to be a drug trafficker. 18

‘(3) An application for a declaration under subsection (2) may be 19
made at the time of the conviction for the relevant offence or 20
at any time within 6 months from the day of the conviction. 21

‘(4) In this section— 22

prosecuting authority means the entity responsible for 23
prosecuting the charge of the relevant offence.’. 24