



## **Australian Government**

Australian Government response to the report:

*Review of the Intergovernmental Agreement on the National  
Cooperative Scheme on Unexplained Wealth*

**November 2024**

## **Australian Government response to the *Review of the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth***

### **Opening Comment**

The Government thanks Mr Andrew Cappie-Wood AO for his considered and comprehensive independent review of the *National Cooperative Scheme on Unexplained Wealth* (the National Scheme). The National Scheme enhances the ability of Commonwealth, State and Territory law enforcement agencies to trace, identify and seize assets that cannot be connected to a lawful source.

Unexplained wealth and asset confiscation are important in preventing serious and organised crime in Australia. Removing the financial incentive from participation in crime acts as a powerful deterrent for those who facilitate and benefit from organised crime groups from a distance and ensures any profits received cannot be reinvested into further criminal activity. The National Scheme is critical in equipping law enforcement agencies with the powers to enhance cross-jurisdictional unexplained wealth and asset investigations and confiscations.

The Government is committed to ensuring integrity, transparency and accountability within public administration while also ensuring that law enforcement has the tools to keep the community safe against the risks posed by serious and organised crime groups. This review enables the Government to further enhance the measures being taken in disrupting serious and organised crime for the benefit of the Australian community.

The Government provides the following responses to the recommendations on the National Scheme. Unless stated otherwise, the Government will seek to implement its responses to the recommendations as part of broader reform to the National Cooperative Scheme on Unexplained Wealth.

# A Reframed National Scheme

## Recommendation 1

It is recommended that the National Cooperative Scheme on Unexplained Wealth be reframed as a National Scheme on Unexplained Wealth and Criminal Assets Confiscation. The scope of the reframed Scheme should be extended beyond unexplained wealth to all aspects of asset confiscation, including to conviction-based, non-conviction-based, administrative and automatic asset confiscation.

The objectives of the reframed Scheme should continue to focus on supporting interjurisdictional collaboration to remove the proceeds, instruments and benefits from serious and organised crime.

**The Government agrees with this recommendation in principle.**

The Government agrees in principle with the recommendation to reframe and expand the scope of the National Scheme to the '*National Scheme on Unexplained Wealth and Criminal Assets Confiscation*', and that a scheme that captures all aspects of asset confiscation would enhance interjurisdictional collaboration to remove the proceeds, instruments and benefits from serious and organised crime. The Government notes that such reframing would be subject to consultation with other participating jurisdictions.

## Recommendation 2

It is recommended that all jurisdictions be engaged in the process of reframing the Scheme and be invited to participate in a truly national effort to tackle serious and organised crime. Currently there is a divide between those jurisdictions participating in the Scheme and those operating independently. A reframed Scheme provides an opportunity to re-engage all Australian jurisdictions in a national collaborative effort.

It is proposed that the reframed Scheme be structured with two levels of involvement. The first level would cover the equitable sharing arrangements. The second level would be for those jurisdictions that wish to go further and access the information gathering powers of the Commonwealth and enable the Commonwealth to utilise state-based predicate offences to pursue asset confiscation matters. The two-level structure of the reframed Scheme will enable all jurisdictions to participate at a level that best works with their own asset confiscation framework.

**The Government agrees with this recommendation in principle.**

The Government agrees to engage with all Australian jurisdictions to maximise national collaboration on unexplained wealth and asset confiscation, and will work toward implementing two levels of involvement for jurisdictions as part of the revised scheme. This will enable all jurisdictions to participate at a level that best works with their own asset confiscation framework, hopefully leading to all jurisdictions participating in the Scheme.

## Recommendation 3

It is recommended that the core legislative components of the current Scheme be reframed and/or amended as follows:

1. The information gathering provisions under the *Proceeds of Crime Act 2002* (Cth), which may be utilised by participating jurisdictions for unexplained wealth matters, should be amended to enable utilisation for all asset confiscation matters.
2. The Commonwealth's ability to rely on relevant participating jurisdictions' offences to pursue unexplained wealth matters, could be extended to allow for their use in asset confiscation proceedings under the *Proceeds of Crime Act 2002* (Cth). An extension of this nature would require a referral of powers from the states and territories to the Commonwealth. An assessment of the need and potential utility for such power should be undertaken prior to any action to advance a referral of powers.

**The Government agrees to this recommendation in principle.**

The Government recognises the importance of providing both the Commonwealth and participating jurisdictions with appropriate information gathering powers to combat unexplained wealth and confiscated assets matters. Consultation will be required with relevant agencies, states and territories to consider the utility and risks of full implementation of this recommendation, and to conduct an assessment on the need for a referral of powers.

## Recommendation 4

It is recommended that the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth be amended to reflect the scope and structure of the reshaped Scheme and to cover all Australian asset confiscated legislation in the equitable sharing arrangements.

Presently, changes must be made to Appendix A and B to the Agreement every time there is any new or amended proceeds of crime legislation. It is proposed that Appendix A and B to the Agreement be removed and replaced with a "catch-all" clause. This will support the expansion of the Scheme from unexplained wealth to asset confiscation and, in doing so, support cross-jurisdictional collaboration on a wider range of matters.

**The Government agrees with this recommendation.**

The Government will consult with Commonwealth, state and territory agencies to implement changes in support of the reframing of the National Scheme and its objectives. The equitable sharing arrangements for unexplained wealth are a key component of the National Scheme. Amending the National Scheme to cover all Australian asset confiscated legislation will solidify the Governments approach to serious and organised crime ensuring that coordinated and targeted enforcement action across multiple jurisdictions is available and will enhance Commonwealth, state and territory capabilities for asset confiscation.

## Information Gathering Powers

### Recommendation 5

It is recommended that the Scheme's current public reporting requirements on each participating jurisdictions' use of the Commonwealth information gathering powers under the *Proceeds of Crime Act 2002* (Cth), be retained.

**The Government agrees with this recommendation.**

The Government agrees that current reporting requirements on participating jurisdictions' use of Commonwealth information sharing powers should remain in place.

## Recommendation 6

It is recommended that a detailed ‘user manual’ be developed for jurisdictions, to support the use of the Commonwealth information gathering powers. The user manual should detail the application of, procedures required to access, and the scope of, the Commonwealth information gathering powers under the Scheme.

### **The Government agrees with this recommendation.**

The Government agrees to develop a detailed ‘user manual’ to support current and future participating jurisdictions when utilising information gathering powers and will distribute the guide through the Cooperating Jurisdictions Committee.

The Government will seek to implement this in advance of broader reform to the National Cooperative Scheme on Unexplained Wealth.

## Information Sharing

### Recommendation 7

It is recommended that further work be undertaken through the reframed Scheme to improve the appropriate sharing of information between jurisdictions in the pursuit of asset confiscation matters.

Information sharing is critical to supporting the objectives of the Scheme and the effective detection, investigation and litigation of asset confiscation matters. Where there are procedural or operational barriers to sharing relevant information, there needs to be focused national effort to explore how they can be overcome. Under a reframed Scheme the Cooperating Jurisdictions Committee should be given responsibility for identifying and pursuing information sharing improvements.

### **The Government agrees with this recommendation.**

See response to recommendation 8 below.

### Recommendation 8

It is recommended that the reframed Scheme work with key agencies, such as the Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Taxation Office (ATO), Australian Border Force (ABF), and Services Australia to create nationally consistent procedures for requesting, accessing and sharing relevant information from these agencies.

### **The Government agrees with this recommendation.**

The Government acknowledges the importance of creating efficient and effective processes that will aid in a more streamlined approach to information sharing between Commonwealth, state and territory agencies. Collaboration will be undertaken to identify whether any agency limitations can be mitigated to support the creation of a nationally consistent procedure for requesting and accessing relevant information and improve processes for participating states and territories.

# Equitable Sharing

## Recommendation 9

It is recommended that the equitable sharing arrangements be retained as a primary component of the reframed Scheme.

The current equitable sharing arrangements have proven to be successful in encouraging interjurisdictional collaboration. Building on this success, all jurisdictions should be invited to participate in these arrangements. As such, all jurisdictions would have appropriate representation on the Cooperating Jurisdictions Committee.

### **The Government agrees with this recommendation.**

The Government agrees that equitable sharing arrangements under the National Scheme have been effective in supporting collaborative action from participating jurisdictions. The Government will consult jurisdictions to address existing barriers including the additional approval procedures required when making decisions on equitable sharing between participating and non-participating jurisdictions.

## Recommendation 10

It is recommended the notification threshold under the equitable sharing arrangements of the reframed Scheme be lifted from \$100,000 to \$500,000. This will reduce administrative reporting requirements and help focus collaborative efforts on the more serious matters.

### **The Government agrees with this recommendation.**

The Government will work with states and territories to establish new, higher threshold that would reduce administrative burden and focus efforts on higher level organised crime.

## Recommendation 11

It is recommended that consideration be given to funding the Australian Federal Police to develop an online portal to support the reporting of equitable sharing notifications and the administration of the Cooperating Jurisdictions Committee.

### **The Government notes this recommendation.**

The Government will work with agencies to consider technological and administrative solutions that better support the reporting of equitable sharing notifications and the administration of the Cooperating Jurisdictions Committee.

Any funding would be subject to Government consideration.

# Supporting the Reframed Scheme

## Recommendation 12

It is recommended that the functioning of the reframed Scheme continue to be supported by the Cooperating Jurisdictions Committee.

The CJC would, in addition to its oversighting of the equitable sharing provisions, be charged with driving the objectives of the Scheme, promoting and improving information sharing, and improving procedures in support of cross-jurisdictional asset confiscation matters. Reporting on the progress of these responsibilities would assist in maintaining focus and momentum on improving collaboration action.

### **The Government agrees with this recommendation.**

The Government will work with the Australian Federal Police as the lead agency responsible for the Cooperating Jurisdictions Committee to support the implementation of this recommendation.

## **Recommendation 13**

It is recommended that consideration be given to further the development of specialised capabilities, such as forensic accountants, that support the investigation and litigation of asset confiscation matters.

This initiative could include investment in training, retention and the application of specialised personnel across jurisdictions. There is also scope for jurisdictions to collaborate in the development and/or funding of specialised qualifications. The increasing sophistication of means used to hide, disguise and launder proceeds, benefits and instruments of crime must be matched by the development of specific skills. These skills are in short supply and their lack of availability can act as a hand-brake on the efforts to tackle serious and organised crime.

**The Government agrees with this recommendation in principle.**

The Government will consider how best to implement this recommendation to ensure that the Cooperating Jurisdictions Committee and participating jurisdictions are well-equipped to contribute effectively to the reframed National Scheme and in combatting serious and organised crime as a whole.

Any funding would be subject to Government consideration.

## **Recommendation 14**

It is recommended that consideration be given by the governments of each jurisdiction to utilising confiscated criminal assets to fund the development and deployment of specialised personnel for asset confiscation matters.

Utilising confiscated funds in this way would recognise the significant benefits to the Australian community in removing the proceeds, benefits and instruments of serious and organised crime.

**The Government notes this recommendation.**

The Government agrees that unexplained wealth and asset confiscation investigations are complex and require a substantial amount of specialist capabilities, time and resources. The Government will work closely with Commonwealth, state and territory agencies to determine how they might support dedicated personnel and ongoing specialist training and development.

Any funding would be subject to Government consideration.

## **Recommendation 15**

It is recommended that the reframed Scheme explore opportunities to harmonise key procedural and definitional legislative provisions where possible, through a relevant forum such as the Australian Transnational, Serious and Organised Crime Committee or similar.

An example of potential harmonised definitions includes that of financial institutions, digital and crypto assets. Harmonising definitions where possible, will reduce procedural and operational barriers to cross-jurisdictional collaboration.

**The Government agrees with this recommendation in principle.**

The Government acknowledges the importance of clear and consistent procedural and definitional legislation to support the intended operation of the revised Scheme and will consider this recommendation as part of a broader reform to the National Scheme of Unexplained Wealth, including how best to consult with jurisdictions through existing forums.