

CLAUSE NOTES

Financial Transaction Reports Amendment Bill 2013

- Clause 1:** Short Title
- Clause 2:** Commencement
- Clause 3:** Principal Act - *Financial Transaction Reports Act 1993*
- Clause 4:** Amends the Long Title of the Principal Act to include reference to “documents” in addition to “further information”, replacing “suspect matters” with “matters”; inserting reference to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth, and replacing the word “transactions” with the word “matters”.
- Clause 5:** Amends section 4 of the Principal Act by: inserting a new definition of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth in subsection (1); omitting the definition of *Commonwealth Act* from subsection (1); inserting definitions of “designated authority” and FTR Act in subsection (1); and omitting from subsection (2) “Commonwealth Act” and substituting “FTR Act or the AMLCTF Act”.
- Clause 6:** Amends section 6 of the Principal Act to take account of: the new terminology of “designated authority”; and the removal of references to the “Commonwealth Act”. Information is now to be provided under this section to the Chief Executive Officer of the

Australian Transaction Report and Analysis Centre (the AUSTRAC CEO) under the *Financial Transaction Reports Act 1988* of the Commonwealth (FTR Act).

Provides that the section is to apply if a cash dealer is required to communicate information to the Chief Executive Officer of the Australian Transaction Report and Analysis Centre under the Commonwealth *Financial Transaction Reports Act 1988*. In that case, a cash dealer can be requested to provide further information to the State under the Principal Act.

Provides that the change to subsection (2) from “is to” to “must” limits the information which a designated authority may require a cash dealer to provide to that described in paragraphs (a) and (b) of subsection (2). That is, the power cannot be exercised to obtain extraneous information.

Clause 7: Inserts a new section 6A which applies to a reporting entity required to provide information or documents under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.

The section is expressed to apply if a reporting entity is required to communicate information to the Chief Executive Officer of the Australian Transaction Report and Analysis Centre under section 41, 43 or 45 of the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. In that case, a reporting entity can be requested by a

designated authority to provide it with further information.

Provides in subsection (3) that the further information or documents which a designated authority may require a reporting entity to provide is limited to information or documents which may be relevant to the investigation of, or prosecution of a person for, an offence against the law of the State or may be of assistance in the enforcement of the *Crime (Confiscation of Profits) Act 1993*. That is, it ensures that the power is not exercised to obtain extraneous information.

Provides in subsection (4) that it is an offence for a reporting entity to fail to comply with a request from a designated authority to the extent that the reporting entity has the further information or documents.

Clause 8: Amends section 7 of the Principal Act.

Provides that a cash dealer is required to report transactions which it would not otherwise be required to report under the Commonwealth law.

Provides in subclause (a) that section 7 is amended by omitting existing subsections (1) and (2) and substituting them with a requirement for a cash dealer to prepare a report of a suspicious transaction and to provide information in relation to it, to the Chief Executive Officer of the Australian Transaction Report and Analysis Centre.

Provides that a cash dealer must, as soon as practicable after forming a suspicion, on reasonable grounds, that it has information concerning a transaction which may be relevant to the investigation of, or prosecution of a person for, an offence against a law of the State, or that the information may assist in the enforcement of the *Crime (Confiscation of Profits) Act 1993*, prepare a report of the transaction and communicate the information contained in it to the Chief Executive Officer of the Australian Transaction Report and Analysis Centre.

Provides that section 7 is to apply where a cash dealer is not required to report a suspect transaction under specified Divisions of Parts of the *Financial Transaction Reports Act 1988 (Cth)* or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (C'th)*, whether or not the cash dealer was required to report the transaction under Division I of Part II of the *Financial Transaction Reports Act 1988 (C'th)*.

Provides that it is an offence if a cash dealer does not prepare a report of a suspicious transaction and communicate the information contained in it to the Chief Executive Officer of the Australian Transaction Report and Analysis Centre.

Provides that subclause (b) amends subsection (3)(a) to provide that reporting is now required to be to the Chief Executive Officer of the Australian Transaction Report and Analysis Centre.

Provides that subclause (c) amends subsection (3)(b) to provide that a report is to be made in the form required under the *Anti-Money Laundering and Counter-Terrorism Financing Rules*.

Provides that subclause (d) amends subsection (3)(c) by replacing “subsection (1)” with “subsection (1)(b)”.

Provides that subclause (e) amends subsection (4) by replacing the word “Director” with “AUSTRAC CEO”.

Provides that subclause (f) amends subsection (4)(a) by replacing the word “Director” with “AUSTRAC CEO”.

Provides that subclause (g) amends subsection (4)(b) by replacing the word “Director” with “AUSTRAC CEO”.

Provides that subclause (h) omits subsections (5), (6), (7), (8) and (9), the content of which has been replaced by clause 8(a).

Clause 9: Inserts a new section 7A which compels a cash dealer to give a designated authority the further information about a suspect transaction that is provided to the Commonwealth under section 7(2) of the Principal Act.

Provides that a designated authority may only request information that may be relevant to the investigation of, or prosecution of a person for, an offence against a law of the State, or

that the information may assist in the enforcement of the *Crime (Confiscation of Profits) Act 1993*.

Provides that it is an offence for a cash dealer to fail to comply with a request under this section to the extent that the cash dealer has the further information.

- Clause 10:** Amends section 8 of the Principal Act:
- to introduce the defined term, “entity”, and to substitute it for existing references in subsections (1)(a) and (1)(b) to, “cash dealer”; and
 - to replace subsection (2) with a new subsection (2) which protects entities, officers, employees and agents of an entity from the operation of Part 6A (Money laundering) of the *Crime (Confiscation of Profits) Act 1993* by providing that they are not, by reason of having provided information and documents under the Act, considered to have been in possession of the relevant information.
- Clause 11:** Amends section 9 by omitting references to “any matter” and “matter” and replacing them with the words “anything” or “thing” respectively.
- Clause 12:** Inserts a section 10A which provides that for the avoidance of doubt, nothing in the Act affects the law relating to legal professional privilege.
- Clause 13:** Provides for the repeal of this Act.