

TASMANIA

FINANCIAL TRANSACTION REPORTS AMENDMENT BILL 2013

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**FINANCIAL TRANSACTION REPORTS
AMENDMENT BILL 2013**

*(Brought in by the Minister for Justice, the Honourable Brian
Neal Wightman)*

A BILL FOR

An Act to amend the *Financial Transaction Reports Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Financial Transaction Reports Amendment Act 2013*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Financial Transaction Reports Act 1993** is referred to as the Principal Act.

4. Long title amended

The Principal Act is amended as follows:

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- (a) by inserting in the long title “**or documents**” after “**further information**”;
- (b) by omitting from the long title “**suspect transactions**” first occurring and substituting “**matters**”;
- (c) by inserting in the long title “**or the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 of the Commonwealth**” after “**Commonwealth**”.

5. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by omitting the definition of *Commonwealth Act* from subsection (1) and substituting the following definition:

AMLCTF Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth;

- (b) by inserting the following definitions after the definition of *court* in subsection (1):

designated authority means –

- (a) the Commissioner of Police; or

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- (b) a police officer who is carrying out an investigation arising from, or relating to matters referred to in, information communicated to the AUSTRAC CEO;

FTR Act means the *Financial Transaction Reports Act 1988* of the Commonwealth;

- (c) by omitting from subsection (2) “Commonwealth Act” and substituting “FTR Act or the AMLCTF Act”.

6. Section 6 amended (Further information about matters reported by cash dealers under FTR Act)

Section 6 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:
 - (1) This section applies if a cash dealer communicates information to the AUSTRAC CEO under section 16(1) or (1A) of the FTR Act.
 - (1A) A designated authority may request the cash dealer to give to the designated authority the further information stated in the request.

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- (b) by omitting from subsection (2) “is to” and substituting “must”.

7. Section 6A inserted

After section 6 of the Principal Act, the following section is inserted:

6A. Further information or documents about matters reported by reporting entities under AMLCTF Act

- (1) This section applies if a reporting entity communicates information to the AUSTRAC CEO under section 41, 43 or 45 of the AMLCTF Act.
- (2) A designated authority may give a written notice to the reporting entity requesting the reporting entity, within the period and in the way stated in the notice, to –
 - (a) give to the designated authority the further information stated in the notice; or
 - (b) produce to the designated authority the documents about the matter to which the communication under section 41, 43 or 45 of the AMLCTF Act relates that are stated in the notice.

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- (3) The further information or documents must be information or documents that –
- (a) may be relevant to the investigation of, or prosecution of a person for, an offence against the law of the State; or
 - (b) may be of assistance in the enforcement of the *Crime (Confiscation of Profits) Act 1993*.
- (4) The reporting entity must comply with the request to the extent that the reporting entity has the further information or documents.

Penalty: Fine not exceeding 400 penalty units or imprisonment for a term not exceeding 2 years, or both.

8. Section 7 amended (Reports by cash dealers of suspect transactions not reported under FTR or AMLCTF Act)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:
 - (1) This section applies if –
 - (a) a cash dealer is a party to a transaction; and

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- (b) the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction –
 - (i) may be relevant to the investigation of, or prosecution of a person for, an offence against the law of the State; or
 - (ii) may be of assistance in the enforcement of the *Crime (Confiscation of Profits) Act 1993*; and
- (c) the cash dealer is not required to report the transaction under any of the following provisions, whether or not the cash dealer is required to report the transaction under Division 1 of Part II of the FTR Act:
 - (i) Division 2 of Part II of the FTR Act;

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(ii) if the cash dealer is a reporting entity – Division 2, 3 or 4 of Part 3 of the AMLCTF Act.

(2) The cash dealer must, as soon as practicable after forming the suspicion mentioned in subsection (1)(b), prepare a report of the transaction and communicate the information contained in it to the AUSTRAC CEO.

Penalty: Fine not exceeding 400 penalty units or imprisonment for a term not exceeding 2 years, or both.

(b) by omitting from subsection (3)(a) “Director for the purposes of section 16 of the Commonwealth Act” and substituting “AUSTRAC CEO for the purposes of section 41 of the AMLCTF Act”;

(c) by inserting in subsection (3)(b) “as required under the AMLCTF Rules for the purposes of that section” after “transaction”;

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- (d) by omitting from subsection (3)(c) “subsection (1)” and substituting “subsection (1)(b)”;
- (e) by omitting from subsection (4) “Director” first occurring and substituting “AUSTRAC CEO”;
- (f) by omitting from subsection (4)(a) “Director” and substituting “AUSTRAC CEO”;
- (g) by omitting from subsection (4)(b) “Director” and substituting “AUSTRAC CEO”;
- (h) by omitting subsections (5), (6), (7), (8) and (9).

9. Section 7A inserted

After section 7 of the Principal Act, the following section is inserted:

7A. Further information about suspect transactions not reported under FTR Act or AMLCTF Act

- (1) This section applies if a cash dealer communicates information to the AUSTRAC CEO under section 7(2).
- (2) A designated authority may request the cash dealer to give to the designated authority the further information stated in the request.

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- (3) The further information must be information that –
- (a) may be relevant to the investigation of, or prosecution of a person for, an offence against the law of the State; or
 - (b) may be of assistance in the enforcement of the *Crime (Confiscation of Profits) Act 1993*.
- (4) The cash dealer must comply with the request to the extent that the cash dealer has the further information.

Penalty: Fine not exceeding 400 penalty units or imprisonment for a term not exceeding 2 years, or both.

10. Section 8 amended (Protection of cash dealers, reporting entities, &c.)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “a cash dealer” and substituting “an entity”;
- (b) by omitting from subsection (1)(a) “cash dealer” second occurring and substituting “entity”;
- (c) by omitting from subsection (1)(b) “a cash dealer” and substituting “an entity”;

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(d) by omitting subsection (2) and substituting the following subsections:

(2) If an entity, or a person who is an officer, employee or agent of an entity, communicates or gives information or produces documents under section 16 of the FTR Act, section 41, 43 or 45 of the AMLCTF Act or section 6, 6A, 7 or 7A of this Act, the entity or person is taken, for the purposes of Part 6A of the *Crime (Confiscation of Profits) Act 1993*, not to have been in possession of the information at any time.

(3) In this section –

entity means a cash dealer or a reporting entity.

11. Section 9 amended (False or misleading statements)

Section 9(b) of the Principal Act is amended as follows:

- (a) by omitting “any matter” and substituting “anything”;
- (b) by omitting “matter” second occurring and substituting “thing”.

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12. Section 10A inserted

After section 10 of the Principal Act, the following section is inserted:

10A. Legal professional privilege not affected

For the avoidance of doubt, nothing in this Act affects the law relating to legal professional privilege.

13. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.