

FINANCIAL TRANSACTION REPORTS BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill complements the Financial Transaction Reports Act 1988 of the Commonwealth ("the Commonwealth Act"). That Act assists in the enforcement of taxation and other Commonwealth laws and makes information collected for Commonwealth purposes available for State law enforcement agencies.

Section 16 (1) of the Commonwealth Act requires a cash dealer (e.g. a financial institution such as a bank) to report to the Director of the Australian Transaction Reports and Analysis Centre (previously the Cash Transaction Reports Agency) when the cash dealer has reasonable grounds to suspect that a transaction to which the cash dealer is a party may be relevant to the investigation of an evasion of a taxation law or an offence against a law of the Commonwealth or may be of assistance in the enforcement of the Proceeds of Crimes Act 1987 of the Commonwealth. Under section 16 (4) of the Commonwealth Act, if the cash dealer reports to the Director under section 16 (1), the cash dealer is also required, if requested to do so by the Director, an investigating officer (e.g. a taxation officer carrying out an investigation arising from matters in the report) or a relevant authority (e.g. the Commissioner of the Australian Federal Police) to provide further information specified in the request.

The Commonwealth Act does not, however, enable New South Wales police or other relevant New South Wales authorities to obtain further information from cash dealers which would assist in the investigation of State offences or in the enforcement or administration of certain New South Wales legislation.

The object of this Bill is to enable New South Wales police, the Chairperson of the New South Wales Crime Commission or the Commissioner for the ICAC to obtain further information from cash dealers about suspect cash transactions so as to assist in the investigation of offences against the laws of the State or in the enforcement of the Confiscation of Proceeds of Crime Act 1989 or the Drug Trafficking (Civil Proceedings) Act 1990 or in the administration of the Independent Commission Against Corruption Act 1988. The Bill also provides that cash dealers are protected against legal action in relation to providing such information.

The Bill is substantially uniform with corresponding legislation that is expected to be enacted in the other States and Territories.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on 6 December 1992.

Clause 3 sets out the object of the proposed Act as facilitating the enforcement of the laws of the State.

Clause 4 defines the "Commonwealth Act" as the Financial Transaction Reports Act 1988 of the Commonwealth. Expressions used in the Commonwealth Act, such as "cash dealer" and "cash transaction", have the same respective meanings in the proposed Act. Examples of a "cash dealer", as defined in the Commonwealth Act, are a financial institution (e.g. a bank), a financial corporation within the meaning of paragraph 51 (xx) of the Commonwealth Constitution, an insurer, a securities dealer, a trustee or manager of a unit trust and a person who carries on the business of operating a casino. A "cash transaction" is defined as a transaction involving the physical transfer of currency from one person to another.

Clause 5 provides that the proposed Act binds the Crown.

Clause 6 provides that if a cash dealer communicates information to the Director of the Australian Transaction Reports and Analysis Centre under the Commonwealth Act about a suspect cash transaction, the cash dealer must (if requested to do so by the NSW Commissioner of Police, the Chairperson of the NSW Crime Commission, the Commissioner for the ICAC or a police officer) give such further information as is specified in the request. The further information is to be such information that may be relevant to the investigation of, or prosecution of a person for, a State offence or that may assist in the enforcement of the Confiscation of Proceeds of Crime Act 1989 or the Drug Trafficking (Civil Proceedings) Act 1990 or in the administration of the Independent Commission Against Corruption Act 1988.

Clause 7 provides that a cash dealer who is a party to a transaction and has reasonable grounds to suspect that information concerning the transaction may be relevant to the investigation of, or prosecution of a person for, a State offence or may be of assistance in the enforcement of the Confiscation of Proceeds of Crime Act 1989 or the Drug Trafficking (Civil Proceedings) Act 1990 or in the administration of the Independent Commission Against Corruption Act 1988, must prepare a report on the transaction and communicate the information contained in it to the Director. This requirement applies whether or not the cash dealer is required to report the transaction under Division 1 (cash transaction reports) of Part II of the Commonwealth Act, but only applies if the cash dealer is not already required to report the transaction under Division 2 (reports of suspect transactions) of that Part. The requirements of proposed section 7 are similar to those contained in section 16 of the Commonwealth Act.

Clause 8 provides that cash dealers and their staff are protected against legal action in relation to providing information about suspect cash transactions.

Clause 9 prohibits a person when giving information under the proposed Act from making a false or misleading statement.

Clause 10 prohibits the Commissioner of Police, the Chairperson of the NSW Crime Commission (or a member of the staff of that commission), the Commissioner for the ICAC (or an officer of the ICAC) or a police officer from making a record of information obtained under the Act or divulging it to another person except in the performance of duties relating to the enforcement of the laws of the State, the Commonwealth or of another State or Territory.

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Clause 11 provides that proceedings for offences against the proposed Act are to be dealt with on indictment. Certain offences may, however, be dealt with summarily before a Local Court if it is proposed by the prosecution and the Court is satisfied that it is appropriate to do

Clause 12 requires the Minister to carry out a review of the proposed Act after 5 years.
