

FIRST PRINT

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 so.

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



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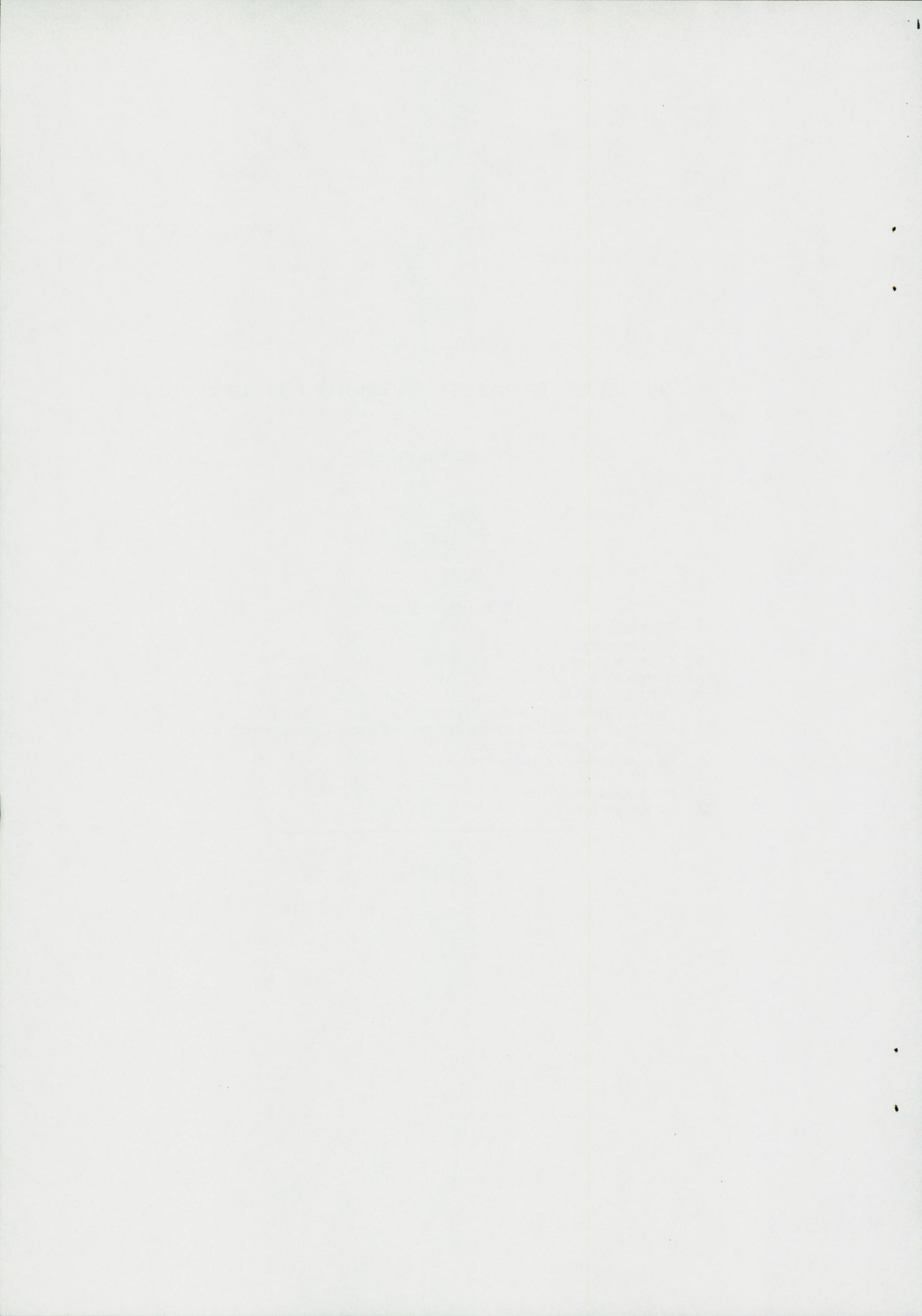
FINANCIAL TRANSACTION REPORTS BILL 1992

NEW SOUTH WALES



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FINANCIAL TRANSACTION REPORTS BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for the giving of further information in relation to suspect transactions reported under the Financial Transaction Reports Act 1988 of the Commonwealth and the giving of information in relation to other suspect transactions, and for related purposes.

Financial Transaction Reports 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Financial Transaction Reports Act 1992.

5 **Commencement**

2. This Act commences on 6 December 1992.

Object of Act

3. The object of this Act is to facilitate the enforcement of the laws of the State.

10 **Interpretation**

4. (1) In this Act:

“Commonwealth Act” means the Financial Transaction Reports Act 1988 of the Commonwealth;

15 “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“protected information” means information that is obtained under this Act.

(2) Unless the contrary intention appears, expressions used in the Commonwealth Act have the same respective meanings in this Act.

20 NOTE: The text of section 3 (1) of the Commonwealth Act (interpretation), including the amendments to that section made by the Cash Transaction Reports Amendment Act 1991 of the Commonwealth, is set out in the Note at the end of this Act.

Act binds Crown

25 5. This Act binds the Crown in right of the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Further reports of suspect transactions

30 6. (1) If a cash dealer communicates information to the Director under section 16 (1) of the Commonwealth Act, the cash dealer must, if requested to do so by:

(a) the Commissioner of Police; or

(b) the Chairperson of the New South Wales Crime Commission; or

(c) the Commissioner for the Independent Commission Against Corruption; or

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(d) a police officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information, give such further information as is specified in the request to the person requesting it.

(2) The further information is to be information that: 5

(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 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. 10

(3) The cash dealer must comply with the request to the extent that the cash dealer has the further information.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both. 15

Reports of suspect transactions not reported under Commonwealth Act

7. (1) A cash dealer who is a party to a transaction, and has reasonable grounds to suspect that information that the cash dealer has concerning the transaction: 20

(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 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, 25

must, as soon as practicable after forming the suspicion, prepare a report of the transaction and communicate the information contained in it to the Director.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both. 30

(2) Subsection (1) applies whether or not the cash dealer is required to report the transaction under Division 1 of Part II of the Commonwealth Act, but only if the cash dealer is not required to report the transaction under Division 2 of Part II of the Commonwealth Act. 35

(3) The report must:

(a) be in the form approved by the Director for the purposes of section 16 of the Commonwealth Act; and

(b) contain the reportable details of the transaction; and

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- (c) contain a statement of the grounds on which the cash dealer holds the suspicion mentioned in subsection (1); and
 - (d) be signed by the cash dealer.
- (4) The communication to the Director of the information contained in
5 the report must be made:
- (a) by giving the Director a copy of the report; or
 - (b) in any other way approved by the Director.
- (5) An approval for the purposes of subsection (4) (b):
- (a) must be in writing; and
 - 10 (b) may relate to a specified cash dealer or class of cash dealers.
- (6) If a cash dealer communicates information to the Director under subsection (1), the cash dealer must, if requested to do so by:
- (a) the Commissioner of Police; or
 - (b) the Chairperson of the New South Wales Crime Commission; or
 - 15 (c) the Commissioner for the Independent Commission Against Corruption; or
 - (d) a police officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information,
- 20 give such additional information as is specified in the request to the person requesting it.
- (7) The additional information is to 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
 - 25 (b) 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.
- (8) The cash dealer must comply with the request to the extent that the cash dealer has the further information.
- 30 Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.
- (9) In this section:
- 35 “reportable details”, in relation to a transaction, means the details of the transaction that are referred to in Schedule 4 to the Commonwealth Act.

NOTE: The text of Schedule 4 to the Commonwealth Act is set out in the Note at the end of this Act.

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Protection of cash dealers etc.

- 8. (1)** An action, suit or proceeding does not lie against:
- (a) a cash dealer in relation to anything done by the cash dealer:
 - (i) that was required under this Act; or
 - (ii) in the mistaken belief that it was required under this Act; or
 - (b) an officer, employee or agent of a cash dealer in relation to anything done by the person in the course of the person's appointment, employment or agency:
 - (i) that was required under this Act; or
 - (ii) in the mistaken belief that it was required under this Act.
- (2)** If a cash dealer, or a person who is an officer, employee or agent of a cash dealer, communicates or gives information under section 16 of the Commonwealth Act or section 6 or 7 of this Act, the cash dealer or person is taken, for the purposes of section 73 (Money laundering) of the Confiscation of Proceeds of Crime Act 1989, not to have been in possession of the information at any time.

False or misleading statements

- 9.** A person must not, in communicating or giving information under this Act:
- (a) make a statement that the person knows is false or misleading in a material particular; or
 - (b) omit anything from a statement knowing that without the thing the statement is misleading in a material particular.
- Maximum penalty: 1,000 penalty units or imprisonment for 5 years, or both.

Secrecy

- 10. (1)** This section applies to a person who is or has been:
- (a) the Commissioner of Police; or
 - (b) the Chairperson of the New South Wales Crime Commission or a member of the staff of the Commission within the meaning of the New South Wales Crime Commission Act 1985; or
 - (c) the Commissioner for the Independent Commission Against Corruption or an officer of the Commission within the meaning of the Independent Commission Against Corruption Act 1988; or
 - (d) a police officer.
- (2)** A person must not:
- (a) make a record of protected information; or

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(b) whether directly or indirectly, divulge or communicate any such information,

unless the record is made, or the information divulged or communicated, in the performance of duties relating to the enforcement of the laws of the State, the Commonwealth, another State or a Territory.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

(3) A person is not required to divulge or communicate information obtained under this Act to a court unless it is necessary to do so for the enforcement of the laws of the State, the Commonwealth, another State or a Territory.

Proceedings for offences

11. (1) Proceedings for an offence against this Act are to be dealt with on indictment, except as provided by this section.

15 (2) Proceedings for an offence under section 6 or 7 may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone if:

(a) the prosecutor proposes that it be so dealt with; and

20 (b) the Local Court is satisfied that it is appropriate for the offence to be so dealt with.

(3) If proceedings for an offence under section 6 or 7 are brought in a Local Court, the maximum penalty that the Court may impose for the offence is, despite any other provision of this Act, 100 penalty units or imprisonment for 12 months, or both.

25 **Review of Act**

12. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

30 (2) A review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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NOTE

Section 3 (1) of the Commonwealth Act (definitions)

(1) In this Act, unless the contrary intention appears:

- “acceptable referee” means a person in a class of persons declared by the Minister, by notice in the *Gazette*, to be acceptable referees for the purposes of this definition; 5
- “account” means any facility or arrangement by which a cash dealer does any one or more of the following:
- (a) accepts deposits of currency;
 - (b) allows withdrawals of currency;
 - (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer; 10
- and includes a facility or arrangement for a safety deposit box or for any other form of safe deposit;
- “acting member of the NCA” has the same meaning as “acting member” has in the NCA Act; 15
- “AFP member” means a member or special member of the Australian Federal Police;
- “approved” means approved by the Director, in writing, for the purposes of the provision in which the term occurs;
- “approved cash carrier” means a cash dealer declared by the Director to be an approved cash carrier under section 8; 20
- “AUSTRAC” means the Australian Transaction Reports and Analysis Centre;
- “Australia”, when used in a geographical sense, includes the external Territories;
- “authorised officer” means a member of the staff of AUSTRAC, or a person engaged under section 40A, who is specified by the Director, in writing, as an authorised officer for the purposes of this Act; 25
- “bank” means:
- (a) the Reserve Bank of Australia;
 - (b) a bank within the meaning of the *Banking Act 1959*; or
 - (c) a person who carries on State banking within the meaning of paragraph 51 (xiii) of the Constitution; 30
- “building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under a law relating to such societies that is in force in a State or Territory;
- “cash dealer” means:
- (a) a financial institution; 35
 - (b) a body corporate that is, or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;
 - (c) an insurer or an insurance intermediary;
 - (d) a securities dealer; 40

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NOTE—*continued*

- (e) a futures broker;
- (f) a Registrar or Deputy Registrar of a Registry established under section 14 of the *Commonwealth Inscribed Stock Act 1911*;
- 5 (g) a trustee or manager of a unit trust;
- (h) a person who carries on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;
- (j) a person who carries on a business of dealing in bullion;
- (k) a person (other than a financial institution) who carries on a business of:
- 10 (i) collecting currency, and holding currency collected, on behalf of other persons;
- (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; and
- (iii) delivering currency (including payrolls);
- 15 (m) a person who carries on a business of operating a gambling house or casino; and
- (n) a bookmaker, including a totalisator agency board and any other person who operates a totalisator betting service;
- “cash transaction” means a transaction involving the physical transfer of currency from one person to another;
- 20 “citizenship certificate”, in respect of a person, means a certificate, declaration or other instrument in respect of the person’s status as an Australian citizen or British subject, or otherwise in respect of the person’s nationality, issued under:
- (a) the *Australian Citizenship Act 1948*;
- (b) the *Nationality Act 1920*; or
- 25 (c) the *Naturalisation Act 1903*;
- or under regulations made under any of those Acts;
- “commercial goods carrier” means a person who, in the normal course of a lawful business, carries goods or mail for reward;
- “commercial passenger carrier” means a person who, in the normal course of a lawful business, carries passengers for reward;
- 30 “Commissioner” means the Commissioner of Taxation;
- “credit union” means a society or other body of persons that is registered or incorporated as a credit union or credit society under a law in force in a State or Territory relating to credit unions or credit societies;
- 35 “currency” means the coin and paper money of Australia or of a foreign country that:
- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- 40 “customs officer” means the Comptroller-General of Customs or an officer of customs within the meaning of the *Customs Act 1901*;

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NOTE—*continued*

- “Director” means the Director of AUSTRAC;
- “established customer”, in relation to a financial institution as at a particular time, means a person who has been a customer of the financial institution for not less than 12 months immediately preceding that time; 5
- “financial institution” means:
- (a) a bank;
 - (b) a building society; or
 - (c) a credit union;
- “foreign currency” means the currency of a foreign country; 10
- “FTR information” means information obtained by the Director under Part II and includes:
- (a) information included in a notice under subsection 18 (5), (5A) or (7) or 22 (1) or in a copy of a record given under subsection 24 (5); and
 - (b) information obtained by the Director under section 243D of the ASC Law of a State or Territory; 15
- “futures broker” means a person who is a futures broker for the purposes of the *Futures Industry Act 1986* or for the purposes of a law of a State or Territory that corresponds to that Act;
- “given name” means a name other than a surname; 20
- “identification document” means a primary identification document or a secondary identification document;
- “identifying cash dealer” means a cash dealer in respect of whom a declaration under section 8A is in force;
- “insurance broker” means a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds; 25
- “insurance business” means the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include: 30
- (a) business as a registered health benefits organisation, a registered medical benefits organisation or a registered hospital benefits organisation carried on by an organisation that is a registered organisation within the meaning of Part VI of the *National Health Act 1953*; 35
 - (b) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to the person’s liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody; or 40

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NOTE—*continued*

- (c) the business of insuring property of a religious organisation where the person carrying on the business does not carry on any other insurance business;
- “insurance intermediary” means a person who:
- 5 (a) for reward; and
 (b) as an agent for one or more insurers or as an agent of intending insureds; arranges contracts of insurance in Australia or elsewhere, and includes an insurance broker;
- 10 “insured” means a person (other than the insurer) who is entitled to a benefit under a contract of life insurance;
- “insurer” means a person who carries on an insurance business but does not include a person to whom paragraph 5 (2) (ga) of the *Insurance Act 1973* applies;
- “Inter-Governmental Committee” means the Inter-Governmental Committee referred to in section 8 of the *NCA Act*;
- 15 “international funds transfer instruction” means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind;
- “member of the *NCA*” has the same meaning as “member” has in the *NCA Act*;
- 20 “member of the staff of the *NCA*” has the same meaning as “member of the staff of the Authority” has in the *NCA Act*;
- “*NCA*” means the National Crime Authority;
- “*NCA Act*” means the *National Crime Authority Act 1984*;
- “non-reportable cash transaction” means a cash transaction:
- 25 (a) to which a cash dealer is a party; and
 (b) that is not a significant cash transaction or is an exempt cash transaction;
- “non-reportable currency transfer” means a transfer of currency out of Australia or into Australia in respect of which a report under section 15 is not required;
- “police officer” means:
- 30 (a) an AFP member; or
 (b) a member of the police force of a State or Territory;
- “primary identification document”, in relation to a person in a particular name, means:
- 35 (a) a certified copy of, or of an extract of, a birth certificate in relation to the person’s birth and showing that name as the person’s name;
 (b) a certified copy of a citizenship certificate issued in respect of the person and showing that name as the person’s name; or
 (c) a passport held by the person and showing that name as the person’s name;

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NOTE—*continued*

“produce” includes permit access to;

“public authority” means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by or under a law of the Commonwealth or of a State or Territory;

5

“reporting period”, in relation to a significant cash transaction, means:

- (a) if the transaction involves foreign currency—the period ending at the end of the day after the day on which the transaction takes place or such longer period as is prescribed by the regulations;
- (b) if the transaction does not involve foreign currency—the period ending at the end of 15 days after the day on which the transaction takes place;

10

“required details”, in relation to an identification document, means:

- (a) in the case of a birth certificate—the name and date of birth of the person in respect of whose birth the certificate is given and the date and office of issue of the certificate;
- (b) in the case of a citizenship certificate—the name and date of birth of the person in respect of whom the certificate is issued, the date of issue of the certificate and the name of the person who issued the certificate;
- (c) in the case of a passport—the name and date of birth of the person to whom the passport is issued and the country and date of issue and the number of the passport; and
- (d) in the case of a secondary identification document—the name shown in the document as the name of the person to whom or in respect of whom the document was issued, the date of birth of that person (if shown), the address of that person (if shown), the kind of document, the person who or the authority that issued the document, the identifying number (if any) of the document and the date of issue or expiry (if any) of the document;

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25

“retail business” means a business:

- (a) the principal element of which is the provision of goods to ultimate consumers; and
- (b) the takings or receipts of which include substantial amounts of currency;

30

“secondary identification document”, in relation to a person in a particular name, means a document (other than a primary identification document) which establishes the identity of the person in that name;

“securities dealer” means a person who is a dealer for the purposes of the *Securities Industry Act 1980* or for the purposes of a law of a State or Territory that corresponds to that Act;

35

“send”, in relation to currency, includes send through the post;

“signatory”, in relation to an account with a cash dealer, means the person, or one of the persons, on whose instructions (whether required to be in writing or not and whether required to be signed or not) the cash dealer conducts transactions in relation to the account;

40

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NOTE—*continued*

“significant cash transaction” means a cash transaction involving the transfer of currency of not less than \$10,000 in value;

“State” includes the Northern Territory;

5 “surname” includes a family name;

“taxation law” has the same meaning as in the *Taxation Administration Act 1953*;

“taxation officer” means:

- (a) a Second Commissioner of Taxation;
- (b) a Deputy Commissioner of Taxation; and
- 10 (c) an officer or employee of the Australian Public Service performing duties in the Australian Taxation Office;

“Territory” does not include the Northern Territory;

15 “totalisator agency board” means a board or authority established by or under a law of a State or Territory for purposes that include the purpose of operating a betting service;

“unit trust” means a trust to which a unit trust scheme relates and includes:

- (a) a cash management trust;
- (b) a property trust; and
- 20 (c) an arrangement declared by the Minister, by notice in writing published in the *Gazette*, to be a unit trust for the purposes of this definition;

but does not include an arrangement declared by the Minister, by notice in writing published in the *Gazette*, not to be a unit trust for the purposes of this definition;

25 “unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

Schedule 4 to the Commonwealth Act (containing the reportable details of a transaction to which a cash dealer is a party)

- 30 1. The name, address and business of the cash dealer
- 2. The nature of the transaction
- 3. The date of the transaction
- 4. The place where the transaction was conducted by the cash dealer
- 35 5. The names of, or other means of identifying, the persons conducting the transaction on behalf of the cash dealer
- 6. The identity of any other cash dealer known by the person preparing the report to be involved in the transaction

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NOTE—*continued*

7. Details, so far as known to the person preparing the report, of the identity of:
- (a) each person conducting the transaction other than the persons referred to in item 5; and
 - (b) any person on whose behalf the transaction was so conducted; including; 5
 - (c) the name; and
 - (d) the business and residential address; and
 - (e) the postal address (if different from the address referred to in paragraph (d));
 - (f) the occupation or, where appropriate, the business or principal activity; and
 - (g) the date of birth of each person to whom paragraph (a) applies 10
8. The methods used to ascertain and verify the details referred to in item 7
9. If a cheque is part of the transaction;
- (a) the name of the drawer of the cheque; and
 - (b) the name of the payee of the cheque; and
 - (c) if the payee of the cheque is not the beneficiary of the amount of the cheque— 15
the name of the beneficiary;
- so far as known to the person preparing the report
10. The type, and identifying number, of any account known by the person preparing the report to be affected by the transaction
11. The amounts involved in the transaction 20
12. The beneficiary of those amounts, so far known to the person preparing the report
13. The currencies involved in the transaction
14. The name of the person preparing the report
15. The title of the office of the person preparing the report
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FINANCIAL TRANSACTION REPORTS ACT 1992 No. 99

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FINANCIAL TRANSACTION REPORTS ACT 1992 No. 99

NEW SOUTH WALES



Act No. 99, 1992

An Act to provide for the giving of further information in relation to suspect transactions reported under the Financial Transaction Reports Act 1988 of the Commonwealth and the giving of information in relation to other suspect transactions, and for related purposes. [Assented to 3 December 1992]

Financial Transaction Reports Act 1992 No. 99

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Financial Transaction Reports Act 1992.

Commencement

2. This Act commences on 6 December 1992.

Object of Act

3. The object of this Act is to facilitate the enforcement of the laws of the State.

Interpretation

4. (1) In this Act:

“Commonwealth Act” means the Financial Transaction Reports Act 1988 of the Commonwealth;

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“protected information” means information that is obtained under this Act.

(2) Unless the contrary intention appears, expressions used in the Commonwealth Act have the same respective meanings in this Act.

NOTE: The text of section 3 (1) of the Commonwealth Act (interpretation), including the amendments to that section made by the Cash Transaction Reports Amendment Act 1991 of the Commonwealth, is set out in the Note at the end of this Act.

Act binds Crown

5. This Act binds the Crown in right of the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Further reports of suspect transactions

6. (1) If a cash dealer communicates information to the Director under section 16 (1) of the Commonwealth Act, the cash dealer must, if requested to do so by:

- (a) the Commissioner of Police; or
- (b) the Chairperson of the New South Wales Crime Commission; or
- (c) the Commissioner for the Independent Commission Against Corruption; or

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(d) a police officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information, give such further information as is specified in the request to the person requesting it.

(2) The further information is to 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 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.

(3) The cash dealer must comply with the request to the extent that the cash dealer has the further information.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

Reports of suspect transactions not reported under Commonwealth Act

7. (1) A cash dealer who is a party to a transaction, and has reasonable grounds to suspect that information that the cash dealer has concerning the transaction:

- (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 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, as soon as practicable after forming the suspicion, prepare a report of the transaction and communicate the information contained in it to the Director.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

(2) Subsection (1) applies whether or not the cash dealer is required to report the transaction under Division 1 of Part II of the Commonwealth Act, but only if the cash dealer is not required to report the transaction under Division 2 of Part II of the Commonwealth Act.

(3) The report must:

- (a) be in the form approved by the Director for the purposes of section 16 of the Commonwealth Act; and
- (b) contain the reportable details of the transaction; and

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- (c) contain a statement of the grounds on which the cash dealer holds the suspicion mentioned in subsection (1); and
- (d) be signed by the cash dealer.

(4) The communication to the Director of the information contained in the report must be made:

- (a) by giving the Director a copy of the report; or
- (b) in any other way approved by the Director.

(5) An approval for the purposes of subsection (4) (b):

- (a) must be in writing; and
- (b) may relate to a specified cash dealer or class of cash dealers.

(6) If a cash dealer communicates information to the Director under subsection (1), the cash dealer must, if requested to do so by:

- (a) the Commissioner of Police; or
- (b) the Chairperson of the New South Wales Crime Commission; or
- (c) the Commissioner for the Independent Commission Against Corruption; or
- (d) a police officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information,

give such additional information as is specified in the request to the person requesting it.

(7) The additional information is to 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 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.

(8) The cash dealer must comply with the request to the extent that the cash dealer has the further information.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

(9) In this section:

“reportable details”, in relation to a transaction, means the details of the transaction that are referred to in Schedule 4 to the Commonwealth Act.

NOTE: The text of Schedule 4 to the Commonwealth Act is set out in the Note at the end of this Act.

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Protection of cash dealers etc.

8. (1) An action, suit or proceeding does not lie against:
- (a) a cash dealer in relation to anything done by the cash dealer:
 - (i) that was required under this Act; or
 - (ii) in the mistaken belief that it was required under this Act; or
 - (b) an officer, employee or agent of a cash dealer in relation to anything done by the person in the course of the person's appointment, employment or agency:
 - (i) that was required under this Act; or
 - (ii) in the mistaken belief that it was required under this Act.

(2) If a cash dealer, or a person who is an officer, employee or agent of a cash dealer, communicates or gives information under section 16 of the Commonwealth Act or section 6 or 7 of this Act, the cash dealer or person is taken, for the purposes of section 73 (Money laundering) of the Confiscation of Proceeds of Crime Act 1989, not to have been in possession of the information at any time.

False or misleading statements

9. A person must not, in communicating or giving information under this Act:

- (a) make a statement that the person knows is false or misleading in a material particular; or
- (b) omit anything from a statement knowing that without the thing the statement is misleading in a material particular.

Maximum penalty: 1,000 penalty units or imprisonment for 5 years, or both.

Secrecy

10. (1) This section applies to a person who is or has been:
- (a) the Commissioner of Police; or
 - (b) the Chairperson of the New South Wales Crime Commission or a member of the staff of the Commission within the meaning of the New South Wales Crime Commission Act 1985; or
 - (c) the Commissioner for the Independent Commission Against Corruption or an officer of the Commission within the meaning of the Independent Commission Against Corruption Act 1988; or
 - (d) a police officer.
- (2) A person must not:
- (a) make a record of protected information; or

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(b) whether directly or indirectly, divulge or communicate any such information,

unless the record is made, or the information divulged or communicated, in the performance of duties relating to the enforcement of the laws of the State, the Commonwealth, another State or a Territory.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

(3) A person is not required to divulge or communicate information obtained under this Act to a court unless it is necessary to do so for the enforcement of the laws of the State, the Commonwealth, another State or a Territory.

Proceedings for offences

11. (1) Proceedings for an offence against this Act are to be dealt with on indictment, except as provided by this section.

(2) Proceedings for an offence under section 6 or 7 may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone if:

- (a) the prosecutor proposes that it be so dealt with; and
- (b) the Local Court is satisfied that it is appropriate for the offence to be so dealt with.

(3) If proceedings for an offence under section 6 or 7 are brought in a Local Court, the maximum penalty that the Court may impose for the offence is, despite any other provision of this Act, 100 penalty units or imprisonment for 12 months, or both.

Review of Act

12. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) A review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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NOTE

Section 3 (1) of the Commonwealth Act (definitions)

(1) In this Act, unless the contrary intention appears:

“acceptable referee” means a person in a class of persons declared by the Minister, by notice in the *Gazette*, to be acceptable referees for the purposes of this definition;

“account” means any facility or arrangement by which a cash dealer does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer;

and includes a facility or arrangement for a safety deposit box or for any other form of safe deposit;

“acting member of the NCA” has the same meaning as “acting member” has in the NCA Act;

“AFP member” means a member or special member of the Australian Federal Police;

“approved” means approved by the Director, in writing, for the purposes of the provision in which the term occurs;

“approved cash carrier” means a cash dealer declared by the Director to be an approved cash carrier under section 8;

“AUSTRAC” means the Australian Transaction Reports and Analysis Centre;

“Australia”, when used in a geographical sense, includes the external Territories;

“authorised officer” means a member of the staff of AUSTRAC, or a person engaged under section 40A, who is specified by the Director, in writing, as an authorised officer for the purposes of this Act;

“bank” means:

- (a) the Reserve Bank of Australia;
- (b) a bank within the meaning of the *Banking Act 1959*; or
- (c) a person who carries on State banking within the meaning of paragraph 51 (xiii) of the Constitution;

“building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under a law relating to such societies that is in force in a State or Territory;

“cash dealer” means:

- (a) a financial institution;
- (b) a body corporate that is, or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;
- (c) an insurer or an insurance intermediary;
- (d) a securities dealer;

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- (e) a futures broker;
- (f) a Registrar or Deputy Registrar of a Registry established under section 14 of the *Commonwealth Inscribed Stock Act 1911*;
- (g) a trustee or manager of a unit trust;
- (h) a person who carries on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;
- (j) a person who carries on a business of dealing in bullion;
- (k) a person (other than a financial institution) who carries on a business of:
 - (i) collecting currency, and holding currency collected, on behalf of other persons;
 - (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; and
 - (iii) delivering currency (including payrolls);
- (m) a person who carries on a business of operating a gambling house or casino; and
- (n) a bookmaker, including a totalisator agency board and any other person who operates a totalisator betting service;

“cash transaction” means a transaction involving the physical transfer of currency from one person to another;

“citizenship certificate”, in respect of a person, means a certificate, declaration or other instrument in respect of the person’s status as an Australian citizen or British subject, or otherwise in respect of the person’s nationality, issued under:

- (a) the *Australian Citizenship Act 1948*;
- (b) the *Nationality Act 1920*; or
- (c) the *Naturalisation Act 1903*;

or under regulations made under any of those Acts;

“commercial goods carrier” means a person who, in the normal course of a lawful business, carries goods or mail for reward;

“commercial passenger carrier” means a person who, in the normal course of a lawful business, carries passengers for reward;

“Commissioner” means the Commissioner of Taxation;

“credit union” means a society or other body of persons that is registered or incorporated as a credit union or credit society under a law in force in a State or Territory relating to credit unions or credit societies;

“currency” means the coin and paper money of Australia or of a foreign country that:

- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

“customs officer” means the Comptroller-General of Customs or an officer of customs within the meaning of the *Customs Act 1901*;

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“Director” means the Director of AUSTRAC;

“established customer”, in relation to a financial institution as at a particular time, means a person who has been a customer of the financial institution for not less than 12 months immediately preceding that time;

“financial institution” means:

- (a) a bank;
- (b) a building society; or
- (c) a credit union;

“foreign currency” means the currency of a foreign country;

“FTR information” means information obtained by the Director under Part II and includes:

- (a) information included in a notice under subsection 18 (5), (5A) or (7) or 22 (1) or in a copy of a record given under subsection 24 (5); and
- (b) information obtained by the Director under section 243D of the ASC Law of a State or Territory;

“futures broker” means a person who is a futures broker for the purposes of the *Futures Industry Act 1986* or for the purposes of a law of a State or Territory that corresponds to that Act;

“given name” means a name other than a surname;

“identification document” means a primary identification document or a secondary identification document;

“identifying cash dealer” means a cash dealer in respect of whom a declaration under section 8A is in force;

“insurance broker” means a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds;

“insurance business” means the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include:

- (a) business as a registered health benefits organisation, a registered medical benefits organisation or a registered hospital benefits organisation carried on by an organisation that is a registered organisation within the meaning of Part VI of the *National Health Act 1953*;
- (b) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to the person’s liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody; or

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NOTE—*continued*

(c) the business of insuring property of a religious organisation where the person carrying on the business does not carry on any other insurance business;

“insurance intermediary” means a person who:

(a) for reward; and

(b) as an agent for one or more insurers or as an agent of intending insureds;

arranges contracts of insurance in Australia or elsewhere, and includes an insurance broker;

“insured” means a person (other than the insurer) who is entitled to a benefit under a contract of life insurance;

“insurer” means a person who carries on an insurance business but does not include a person to whom paragraph 5 (2) (ga) of the *Insurance Act 1973* applies;

“Inter-Governmental Committee” means the Inter-Governmental Committee referred to in section 8 of the *NCA Act*;

“international funds transfer instruction” means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind;

“member of the NCA” has the same meaning as “member” has in the *NCA Act*;

“member of the staff of the NCA” has the same meaning as “member of the staff of the Authority” has in the *NCA Act*;

“NCA” means the National Crime Authority;

“NCA Act” means the *National Crime Authority Act 1984*;

“non-reportable cash transaction” means a cash transaction:

(a) to which a cash dealer is a party; and

(b) that is not a significant cash transaction or is an exempt cash transaction;

“non-reportable currency transfer” means a transfer of currency out of Australia or into Australia in respect of which a report under section 15 is not required;

“police officer” means:

(a) an AFP member; or

(b) a member of the police force of a State or Territory;

“primary identification document”, in relation to a person in a particular name, means:

(a) a certified copy of, or of an extract of, a birth certificate in relation to the person’s birth and showing that name as the person’s name;

(b) a certified copy of a citizenship certificate issued in respect of the person and showing that name as the person’s name; or

(c) a passport held by the person and showing that name as the person’s name;

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NOTE—*continued*

“produce” includes permit access to;

“public authority” means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by or under a law of the Commonwealth or of a State or Territory;

“reporting period”, in relation to a significant cash transaction, means:

- (a) if the transaction involves foreign currency—the period ending at the end of the day after the day on which the transaction takes place or such longer period as is prescribed by the regulations;
- (b) if the transaction does not involve foreign currency—the period ending at the end of 15 days after the day on which the transaction takes place;

“required details”, in relation to an identification document, means:

- (a) in the case of a birth certificate—the name and date of birth of the person in respect of whose birth the certificate is given and the date and office of issue of the certificate;
- (b) in the case of a citizenship certificate—the name and date of birth of the person in respect of whom the certificate is issued, the date of issue of the certificate and the name of the person who issued the certificate;
- (c) in the case of a passport—the name and date of birth of the person to whom the passport is issued and the country and date of issue and the number of the passport; and
- (d) in the case of a secondary identification document—the name shown in the document as the name of the person to whom or in respect of whom the document was issued, the date of birth of that person (if shown), the address of that person (if shown), the kind of document, the person who or the authority that issued the document, the identifying number (if any) of the document and the date of issue or expiry (if any) of the document;

“retail business” means a business:

- (a) the principal element of which is the provision of goods to ultimate consumers; and
- (b) the takings or receipts of which include substantial amounts of currency;

“secondary identification document”, in relation to a person in a particular name, means a document (other than a primary identification document) which establishes the identity of the person in that name;

“securities dealer” means a person who is a dealer for the purposes of the *Securities Industry Act 1980* or for the purposes of a law of a State or Territory that corresponds to that Act;

“send”, in relation to currency, includes send through the post;

“signatory”, in relation to an account with a cash dealer, means the person, or one of the persons, on whose instructions (whether required to be in writing or not and whether required to be signed or not) the cash dealer conducts transactions in relation to the account;

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NOTE—*continued*

“significant cash transaction” means a cash transaction involving the transfer of currency of not less than \$10,000 in value;

“State” includes the Northern Territory;

“surname” includes a family name;

“taxation law” has the same meaning as in the *Taxation Administration Act 1953*;

“taxation officer” means:

- (a) a Second Commissioner of Taxation;
- (b) a Deputy Commissioner of Taxation; and
- (c) an officer or employee of the Australian Public Service performing duties in the Australian Taxation Office;

“Territory” does not include the Northern Territory;

“totalisator agency board” means a board or authority established by or under a law of a State or Territory for purposes that include the purpose of operating a betting service;

“unit trust” means a trust to which a unit trust scheme relates and includes:

- (a) a cash management trust;
- (b) a property trust; and
- (c) an arrangement declared by the Minister, by notice in writing published in the *Gazette*, to be a unit trust for the purposes of this definition;

but does not include an arrangement declared by the Minister, by notice in writing published in the *Gazette*, not to be a unit trust for the purposes of this definition;

“unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

Schedule 4 to the Commonwealth Act (containing the reportable details of a transaction to which a cash dealer is a party)

1. The name, address and business of the cash dealer
2. The nature of the transaction
3. The date of the transaction
4. The place where the transaction was conducted by the cash dealer
5. The names of, or other means of identifying, the persons conducting the transaction on behalf of the cash dealer
6. The identity of any other cash dealer known by the person preparing the report to be involved in the transaction

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NOTE—*continued*

7. Details, so far as known to the person preparing the report, of the identity of:
- (a) each person conducting the transaction other than the persons referred to in item 5; and
 - (b) any person on whose behalf the transaction was so conducted; including;
 - (c) the name; and
 - (d) the business and residential address; and
 - (e) the postal address (if different from the address referred to in paragraph (d));
 - (f) the occupation or, where appropriate, the business or principal activity; and
 - (g) the date of birth of each person to whom paragraph (a) applies
8. The methods used to ascertain and verify the details referred to in item 7
9. If a cheque is part of the transaction;
- (a) the name of the drawer of the cheque; and
 - (b) the name of the payee of the cheque; and
 - (c) if the payee of the cheque is not the beneficiary of the amount of the cheque—the name of the beneficiary;
- so far as known to the person preparing the report
10. The type, and identifying number, of any account known by the person preparing the report to be affected by the transaction
11. The amounts involved in the transaction
 12. The beneficiary of those amounts, so far known to the person preparing the report
 13. The currencies involved in the transaction
 14. The name of the person preparing the report
 15. The title of the office of the person preparing the report

*[Minister's second reading speech made in—
Legislative Council on 18 November 1992
Legislative Assembly on 25 November 1992]*