

South Australia

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FINANCIAL TRANSACTION REPORTS (STATE PROVISIONS) ACT 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.

This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at 5 July 2003.

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

FINANCIAL TRANSACTION REPORTS (STATE PROVISIONS) ACT 1992

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Financial Transaction Reports (State Provisions) Act 1992
No. 74 of 1992 [Assented to 19 November 1992]¹

as amended by

Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002 No. 26 of 2002 [Assented to 31 October 2002]²

¹ Came into operation 6 December 1992: *Gaz.* 3 December 1992, p. 1688.

² Sched. 3 (cl. 4) came into operation 5 July 2003: *Gaz.* 15 May 2003, p. 1979.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1.

SUMMARY OF PROVISIONS

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

1. This Act may be cited as the *Financial Transaction Reports (State Provisions) Act 1992*.

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Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**Commonwealth Act**" means the *Financial Transaction Reports Act 1988* of the Commonwealth as amended from time to time;

"**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.

(3) Until the commencement of section 4 of the *Cash Transaction Reports Amendment Act 1991* of the Commonwealth, a reference to the Commonwealth Act or to the *Financial Transaction Reports Act 1988* of the Commonwealth is a reference to the *Cash Transaction Reports Act 1988* of the Commonwealth as amended from time to time.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Act binds Crown

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

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Part 2—Reports, enforcement and secrecy**Further reports of suspect transactions**

5. (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) a member of the police force who is carrying out an investigation arising from, or relating to matters referred to in, the information,

give the Commissioner or member of the police force such further information as is specified in the request.

(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 a law of the State; or
- (b) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 1996*.

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

Penalty:

If the offender is a body corporate—Division 3 fine.

If the offender is a natural person—Division 5 fine or division 5 imprisonment or both.

Reports of suspect transactions not reported under Commonwealth Act

6. (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 a law of the State; or
- (b) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 1996*,

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.

Penalty:

If the offender is a body corporate—Division 3 fine.

If the offender is a natural person—Division 5 fine or division 5 imprisonment 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

(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) a member of the police force who is carrying out an investigation arising from, or relating to matters referred to in, the information,

give the Commissioner or member of the police force such further information as is specified in the request.

(7) 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 a law of the State; or

(b) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 1996*.

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

Penalty:

If the offender is a body corporate—Division 3 fine.

If the offender is a natural person—Division 5 fine or division 5 imprisonment or both.

Protection of cash dealers etc

7. (1) A 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—

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- (i) that was required under this Act; or
- (ii) in the mistaken belief that it was required under this Act.

(2) Where a cash dealer or a person who is an officer, employee or agent of a cash dealer complies with section 16 of the Commonwealth Act or section 5 or 6 of this Act in relation to a transaction, the cash dealer or person will not, by reason of his or her involvement in that transaction, be taken to have engaged in money laundering for the purposes of section 138 of the *Criminal Law Consolidation Act 1935*.

False or misleading statements

8. A person must not, in 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.

Penalty:

If the offender is a body corporate—Division 2 fine.

If the offender is a natural person—Division 4 fine or division 4 imprisonment or both.

Secrecy

9. (1) This section applies to a person who is or has been the Commissioner of Police or a member of the police force.

(2) A person must not—

- (a) make a record of protected information; or
- (b) directly or indirectly divulge or communicate protected information,

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

Penalty: Division 5 fine or division 5 imprisonment or both.

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

APPENDIX 1

LEGISLATIVE HISTORY

Section 2:	omitted under <i>Legislation Revision and Publication Act 2002</i> 5.7.03
Section 5(2):	amended by 26, 2002, s. 19(2) (Sched. 3 cl. 4(a))
Section 6(1):	amended by 26, 2002, s. 19(2) (Sched. 3 cl. 4(b))
Section 6(7):	amended by 26, 2002, s. 19(2) (Sched. 3 cl. 4(c))
Section 7(2):	amended by 26, 2002, s. 19(2) (Sched. 3 cl. 4(d))

Financial Transaction Reports (State Provisions) Act 1992**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.