

South Australia

# 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 or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth and the giving of information in relation to other suspect transactions and for related purposes.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

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

### 3—Interpretation

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

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

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

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

*protected information* means information that is obtained under this Act.

- (2) Unless the contrary intention appears, expressions used in the AMLCTF Act or the FTR Act have the same respective meanings in this Act.

#### **4—Act binds Crown**

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.

## **Part 2—Reports, enforcement and secrecy**

### **5—Further reports of suspect transactions under FTR Act**

- (1) If a cash dealer communicates information to the AUSTRAC CEO under section 16 of the FTR Act, the cash dealer must, if requested to do so by the Commissioner of Police or a police officer, give the Commissioner or police officer such further information, within the period specified in the request, as is specified in the request.
- (2) Further information that may be specified in a request under subsection (1) is information directly or indirectly related to the original communication 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) relates to any other purpose, function or power of South Australia Police under any Act or law; or
  - (c) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 2005* or the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.
- (3) The cash dealer must comply with the request for further information to the extent that the cash dealer has the further information.

Maximum penalty:

- (a) If the offender is a body corporate—\$30 000.
- (b) If the offender is a natural person—\$8 000 or imprisonment for 2 years or both.

### **5A—Further reports of suspect transactions under AMLCTF Act**

- (1) If a reporting entity communicates information to the AUSTRAC CEO under section 41, 43 or 45 of the AMLCTF Act, the reporting entity must, if requested to do so by the Commissioner of Police or a police officer, give the Commissioner or police officer such further information, within the period specified in the request, as is specified in the request.
- (2) Further information that may be specified in a request under subsection (1) is information directly or indirectly related to the original communication 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) relates to any other purpose, function or power of South Australia Police under any Act or law; or
  - (c) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 2005* or the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.
- (3) The reporting entity must comply with the request for further information to the extent that the reporting entity has the further information.

Maximum penalty:

- (a) If the offender is a body corporate—\$30 000.
- (b) If the offender is a natural person—\$8 000 or imprisonment for 2 years or both.

## 6—Reports of suspect transactions not reported under a Commonwealth Act

- (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) relates to any other purpose, function or power of South Australia Police under any Act or law; or
  - (c) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 2005* or the *Serious and Organised Crime (Unexplained Wealth) Act 2009*,

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

Maximum penalty:

- (a) If the offender is a body corporate—\$30 000.
  - (b) If the offender is a natural person—\$8 000 or imprisonment for 2 years or both.
- (2) Subsection (1) does not apply if the cash dealer is required to report the transaction under—
- (a) Division 2 of Part II of the FTR Act; or
  - (b) if the cash dealer is a reporting entity—Division 2 of Part III of the AMLCTF Act.
- (3) The report must—
- (a) must be in a form approved by the AUSTRAC CEO for the purposes of section 41 of the AMLCTF 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 AUSTRAC CEO of the information contained in the report must be made—
  - (a) by giving the AUSTRAC CEO a copy of the report; or
  - (b) in any other way approved by the AUSTRAC CEO.
- (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 AUSTRAC CEO under subsection (1), the cash dealer must, if requested to do so by the Commissioner of Police or a police officer, give the Commissioner or police officer such further information, within the period specified in the request, as is specified in the request.
- (7) Further information that may be specified in a request under subsection (6) is information directly or indirectly related to the original communication 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) relates to any other purpose, function or power of South Australia Police under any Act or law; or
  - (c) may be of assistance in the enforcement of the *Criminal Assets Confiscation Act 2005* or the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.
- (8) The cash dealer must comply with the request for further information to the extent that the cash dealer has the further information.

Maximum penalty:

- (a) If the offender is a body corporate—\$30 000.
- (b) If the offender is a natural person—\$8 000 or imprisonment for 2 years or both.

## **7—Protection of cash dealers and reporting entities etc**

- (1) A proceeding does not lie against—
  - (a) a cash dealer or reporting entity in relation to anything done by the cash dealer or reporting entity—
    - (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 or reporting entity 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 reporting entity, or a person who is an officer, employee or agent of a cash dealer or reporting entity, complies with section 16 of the FTR Act, section 41, 43 or 45 of the AMLCTF Act, or section 5, 5A or 6 of this Act, the cash dealer, reporting entity 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*.

## 8—False or misleading statements

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.

Maximum penalty:

- (a) If the offender is a body corporate—\$40 000.
- (b) If the offender is a natural person—\$15 000 or imprisonment for 4 years or both.

## 9—Secrecy

- (1) This section applies to a person who is or has been the Commissioner of Police, a police officer or any other person who has access to protected information in the course of official duties.
- (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.
- Maximum penalty: \$8 000 or imprisonment for 2 years 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.

## Legislative history

### Notes

- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1992	74	<i>Financial Transaction Reports (State Provisions) Act 1992</i>	19.11.1992	6.12.1992 ( <i>Gazette 3.12.1992 p1688</i> )
2002	26	<i>Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002</i>	31.10.2002	Sch 3 (cl 4)—5.7.2003 ( <i>Gazette 15.5.2003 p1979</i> )
2005	19	<i>Criminal Assets Confiscation Act 2005</i>	9.6.2005	Sch 1 (cll 6 & 7)—2.4.2006 ( <i>Gazette 16.2.2006 p578</i> )
<b>2013</b>	<b>4</b>	<b><i>Financial Transaction Reports (State Provisions) (Miscellaneous) Amendment Act 2013</i></b>	<b>28.2.2013</b>	<b>1.4.2013 (<i>Gazette 28.3.2013 p919</i>)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<b>Long title</b>	<b>amended by 4/2013 s 4</b>	<b>1.4.2013</b>
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	5.7.2003
s 3		
s 3(1)	<i>Commonwealth Act deleted by 4/2013 s 5(1)</i>	1.4.2013
AMLCTF Act	<b>inserted by 4/2013 s 5(1)</b>	<b>1.4.2013</b>
FTR Act	<b>inserted by 4/2013 s 5(2)</b>	<b>1.4.2013</b>
s 3(2)	<b>amended by 4/2013 s 5(3)</b>	<b>1.4.2013</b>
s 3(3)	<i>deleted by 4/2013 s 5(4)</i>	1.4.2013
Pt 2		
s 5		

<b>s 5(1)</b>	<b>substituted by 4/2013 s 6(1)</b>	<b>1.4.2013</b>
s 5(2)	amended by 26/2002 s 19(2) (Sch 3 cl 4(a))	5.7.2003
	amended by 19/2005 Sch 1 cl 6	2.4.2006
	<b>substituted by 4/2013 s 6(1)</b>	<b>1.4.2013</b>
<b>s 5(3)</b>	<b>amended by 4/2013 s 6(2)</b>	<b>1.4.2013</b>
<b>s 5A</b>	<b>inserted by 4/2013 s 7</b>	<b>1.4.2013</b>
s 6		
s 6(1)	amended by 26/2002 s 19(2) (Sch 3 cl 4(b))	5.7.2003
	amended by 19/2005 Sch 1 cl 7(1)	2.4.2006
	<b>substituted by 4/2013 s 8(1)</b>	<b>1.4.2013</b>
<b>s 6(2)</b>	<b>substituted by 4/2013 s 8(1)</b>	<b>1.4.2013</b>
<b>s 6(3)</b>	<b>amended by 4/2013 s 8(2)</b>	<b>1.4.2013</b>
<b>s 6(4)</b>	<b>amended by 4/2013 s 8(3)</b>	<b>1.4.2013</b>
<b>s 6(6)</b>	<b>substituted by 4/2013 s 8(4)</b>	<b>1.4.2013</b>
s 6(7)	amended by 26/2002 s 19(2) (Sch 3 cl 4(c))	5.7.2003
	amended by 19/2005 Sch 1 cl 7(2)	2.4.2006
	<b>substituted by 4/2013 s 8(4)</b>	<b>1.4.2013</b>
<b>s 6(8)</b>	<b>amended by 4/2013 s 8(5)</b>	<b>1.4.2013</b>
s 7		
<b>s 7(1)</b>	<b>amended by 4/2013 s 9(1)</b>	<b>1.4.2013</b>
s 7(2)	amended by 26/2002 s 19(2) (Sch 3 cl 4(d))	5.7.2003
	<b>substituted by 4/2013 s 9(2)</b>	<b>1.4.2013</b>
<b>s 8</b>	<b>amended by 4/2013 s 10</b>	<b>1.4.2013</b>
<b>s 9</b>		
<b>s 9(1)</b>	<b>amended by 4/2013 s 11(1)</b>	<b>1.4.2013</b>
<b>s 9(2)</b>	<b>amended by 4/2013 s 11(2)</b>	<b>1.4.2013</b>

## Historical versions

Reprint No 1—5.7.2003

2.4.2006