

South Australia

Financial Transaction Reports (State Provisions) (Miscellaneous) Amendment Act 2013

An Act to amend the *Financial Transaction Reports (State Provisions) Act 1992*.

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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) (Miscellaneous) Amendment Act 2013*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Financial Transaction Reports (State Provisions) Act 1992*

4—Amendment of long title

Long title—after "Commonwealth" insert:

or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth

5—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *Commonwealth Act*—delete the definition and substitute:

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

- (2) Section 3(1), after the definition of *court* insert:

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

- (3) Section 3(2)—delete "Commonwealth Act" and substitute:

AMLCTF Act or the FTR Act

- (4) Section 3(3)—delete subsection (3)

6—Amendment of section 5—Further reports of suspect transactions under FTR Act

- (1) Section 5(1) and (2)—delete subsections (1) and (2) and substitute:

- (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*.

- (2) Section 5(3), penalty provision—delete the penalty provision and substitute:

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—Insertion of new section

After section 5 insert:

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.

8—Amendment of section 6—Reports of suspect transactions not reported under a Commonwealth Act

- (1) Section 6(1) and (2)—delete subsections (1) and (2) and substitute:
 - (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.
- (2) Section 6(3)(a)—delete paragraph (a) and substitute:
- (a) must be in a form approved by the AUSTRAC CEO for the purposes of section 41 of the AMLCTF Act; and
- (3) Section 6(4)—delete "Director" wherever occurring and substitute in each case:
- AUSTRAC CEO
- (4) Section 6(6) and (7)—delete subsections (6) and (7) and substitute:
- (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*.
- (5) Section 6(8), penalty provision—delete the penalty provision and substitute:
- 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.

9—Amendment of section 7—Protection of cash dealers and reporting entities etc

- (1) Section 7(1)—after "cash dealer" wherever occurring insert in each case:
or reporting entity
- (2) Section 7(2)—delete subsection (2) and substitute:
 - (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*.

10—Amendment of section 8—False or misleading statements

Section 8, penalty provision—delete the penalty provision and substitute:

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.

11—Amendment of section 9—Secrecy

- (1) Section 9(1)—delete "or a member of the police force" and substitute:
, a police officer or any other person who has access to protected information in the course of official duties
- (2) Section 9(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$8 000 or imprisonment for 2 years or both.