

## EXPLANATORY MEMORANDUM

### FINANCIAL TRANSACTION REPORTS AMENDMENT BILL 2018

#### **Overview of the Bill**

The Financial Transaction Reports Amendment Bill 2018 makes amendments that will enable Western Australia Police to access information and documents reported under the Commonwealth's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AMLCTF Act). The amendments will update the WA *Financial Transaction Reports Act 1995* which was the result of an agreement by the Standing Committee of Attorneys General to model State legislation requiring cash dealers to provide information to State Police regarding offences against State laws.

#### **Clause 1 – Short title**

This clause proposes that the short title is the *Financial Transaction Reports Amendment Act 2018*.

#### **Clause 2 – Commencement**

This clause proposes that sections 1 and 2 of the Act will come into operation on the day on which this Act receives Royal Assent, and that the remainder of the Act will come into operation on the day after Royal Assent is received.

#### **Clause 3 – Act amended**

This clause proposes that the Act amends the *Financial Transaction Reports Act 1995*.

#### **Clause 4 – Long title amended**

This clause proposes the deletion of “suspect transactions reported under the *Financial Transaction Reports Act 1988* of the Commonwealth” in the long title and the insertion of “matters reported under the *Financial Transaction Reports Act 1988* (Commonwealth) or the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Commonwealth)”.

#### **Clause 5 – Section 4 amended**

This clause proposes replacing the definition of “Commonwealth Act” with definitions for the *AMLCTF Act* and the *Financial Transaction Reports Act 1988* (Commonwealth) (FTR Act). This clause also proposes replacing a further reference to “Commonwealth Act” in section 4(2) with the FTR Act or the AMLCTF Act.

### **Clause 6 – Section 6 amended**

This clause replaces section 6(1) and inserts new section 6(1A) and 6(1B) which applies if a cash dealer communicates information to the AUSTRAC CEO under the FTR Act section 16(1) or (1A).

Proposed section 6(1A) provides that the Commissioner of Police, or a Police Officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information may request the cash dealer to give the Commissioner or police officer, within the period specified in the request, the further information specified in the request.

Proposed section 6(1B) specifies a period of at least 14 days for supplying the requested information unless the person making the request considers that a shorter period is necessary and is reasonable in the circumstances. The flexibility provided in complying with a request for information mirrors the approach used in the AMLCTF Act.

Proposed amendment to section 6(2) provides that “is to” is replaced by “must” in accordance with modern drafting standards.

Section 6(3) provides that the cash dealer must comply with the request to the extent that the cash dealer has the further information. The proposed amendment to the way in which the penalty provision is drafted reflects modern drafting standards and there is no change to the penalty provision itself.

### **Clause 7 – Section 6A inserted**

This clause proposes the insertion of a new section 6A after section 6 and deals with further reports of suspect transactions under the AMLCTF Act. It refers to requests by the Commissioner of Police or a police officer, for information and the producing of documents to be provided within a specified time frame of at least 14 days after the day the request is made, unless a shorter period is considered necessary and the shorter period is considered reasonable. In addition to information, documentary evidence is important in the event that a matter progresses to a criminal charge. The penalty provision mirrors the current penalties under the Act.

### **Clause 8 – Section 7 amended**

Proposed amendment to section 7(1) provides for an updated reference to the AUSTRAC CEO. The change to the way in which the penalty provision is drafted in this section reflects modern drafting standards and there is no change to the penalty provision itself.

Section 7(2) is amended to provide for an updated reference to the AMLCTF Act Part 3 Division 2, 3 or 4.

Proposed amendments to section 7(3)(a) provides for updated references to the AUSTRAC CEO and the FTR Act section 16.

Proposed amendment to section 7(4) provide for updated references to the AUSTRAC CEO.

Proposed sections 7(5A), 7(6) and 7(6A) replace section 7(6). These provide the mechanism for requests for additional information or documents by the Commissioner of Police or a police officer when a cash dealer communicates information to the AUSTRAC CEO under section 7(1). The information and the producing of documents is to be provided within a specified time frame of at least 14 days after the day the request is made, unless a shorter period is considered necessary and the shorter period is considered reasonable.

Proposed amendment to section 7(7) reflects that the requested documents must be relevant to the investigation of, or prosecution of a person for, an offence against the law of the State, or may be of assistance in the enforcement of the *Criminal Property Confiscation Act 2001*.

Proposed amendment to section 7(8) reflects that the cash dealer must comply with the request to the extent that the cash dealer has the documents (in addition to “information”). The change to the way in which the penalty provision is drafted reflects modern drafting standards and there is no change to the penalty provision itself.

Proposed amendment to section 7(9) provides for reportable details, in relation to a transaction, to mean the details of the transaction that are referred to in the FTR Act Schedule 4.

#### **Clause 9 – Section 8 amended**

Proposed amendment to section 8(1) and (2) provides for the insertion of “or reporting entity” after each occurrence of “cash dealer”.

Proposed amendment to section 8(3) provides that when a cash dealer or a reporting entity gives information or provides documents they will be protected from prosecution under *The Criminal Code* in relation to the possession of information. The purpose of this provision is to encourage cash dealers, or their employees or agent, to fulfil their reporting obligations under the Commonwealth and State legislation.

#### **Clause 10 – Section 9 amended**

The change to the way in which the penalty provision is drafted in section 9 reflects modern drafting standards and there is no change to the penalty provision itself.

**Clause 11 – Section 10 amended**

The change to the way in which the penalty provision is drafted in section 10 reflects modern drafting standards and there is no change to the penalty provision itself.

**Clause 12 – Section 11 amended**

Proposed amendment to section 11(1) by the insertion of a reference to proposed new section “6A” after the reference to “section 6”.