FINANCIAL TRANSACTION REPORTS AMENDMENT BILL 2018

Second Reading

Resumed from 18 September.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [3.09 pm]: As I indicated on the last occasion I spoke on the Financial Transaction Reports Amendment Bill 2018, I am addressing the house in two capacities, as not only the lead speaker for the opposition on the merits of the bill, but also Chairman of the Standing Committee on Uniform Legislation and Statutes Review. I had reached the stage of dealing with elements of report 113 of the committee, which was tabled in June this year in discharge of the committee's function under the standing orders to essentially consider the legislation in the context of its remit to assist the house on its implications for Western Australia's parliamentary sovereignty. When we left off, I had been about to embark on comments regarding the time that the bill had taken to reach this place and be debated.

Members will recall that I commended the government on clause 2 of the bill, which provides that the substantive parts of the bill will take effect on the day after royal assent is received. One curiosity was the urgency that was placed upon this legislation. I had mentioned that the bill was first introduced in the other place on 20 February this year. The second reading speech took place on that occasion, presented by the Attorney General. The bill was debated on 8 May 2018. A month beforehand, on 10 April, a replacement explanatory memorandum was tabled in the Assembly to subsume the one that had accompanied the bill when it was first read in. It was explained that there were certain errors and infelicities of language in the original explanatory memorandum. Nevertheless, the debate in the other place was resolved in a remarkably short space of time. The member for Hillarys, who was dealing with the bill on the opposition's behalf in the other place, took some 38 minutes to dispose of it; there was a speech by the member for Girrawheen, which took up just short of half an hour; and the debate was resolved relatively quickly with, I think, a summing up by the Attorney General. The bill then came to this place, it having been passed by the Assembly on 8 May, and was introduced on 10 May this year and read into the chamber. The second reading speech occurred on that same day, 10 May.

As a matter of course, the bill was referred to the Standing Committee on Uniform Legislation and Statutes Review. The committee then received a request for expedited consideration of the legislation. Members will know that the committee has 45 days to deliberate on any bill referred to it and to report on it. Of course, that is no bar to the presentation of a report in advance of that 45-day time limit. One of the factors that comes into play is, of course, the provision of satisfactory and timely information by the minister responsible for the legislation and any response to requests for information sought by the committee. In this case, we also received a representation from the Minister for Police; Road Safety, Hon Michelle Roberts. She wrote to the committee on 18 May, some eight days after the bill had been referred. The letter was received by the committee on 23 May. A copy of that letter appears as appendix 1 to our report. I will not read the letter out in full, but the substance of it was a request for the expeditious passage of the bill. I quote paragraph 2 of the letter, which says —

> The expeditious passage of the Bill will be of considerable benefit to the WA Police Force in the fight against serious and organised crime, as it will allow officers to more readily obtain information from financial institutions concerning transactions that these bodies have reported to Austrac.

There was an offer to provide more information and a request that the committee expedite its deliberations on the bill. I had received a behind-the-Chair representation from the minister that, if possible, it would be very desirable that the bill be passed before the winter recess, which of course was not possible. Members will be able to see in appendix 2 the committee's response to those representations from the minister.

What was curious about the approach was that the bill was not considered an urgent bill when it was introduced into the Assembly, notwithstanding that it must have been apparent that the bill would be one that, more likely than not, would be referred to the standing committee here for consideration. There was no particular expedition on the part of the government to have the legislation dealt with there. There was no move, which is one that is available in the Assembly, to have the bill declared urgent under standing order 168 of the Legislative Assembly. The bill was not brought on for debate there until 8 May. I remind members that the Leader of the House, representing the Attorney General, did not indicate the bill was urgent when she introduced it on 10 May. During her second reading speech, the Leader of the House stated that given there were questions as to whether the bill was a uniform legislation scheme, it was prudent that it be referred to our committee under standing order 126. But she did not move to shorten the time limit of 45 days, indicate any particular desire to pass the bill before the winter recess, or ask the committee, as has been the case from time to time, to expedite its deliberations. I should add that that is something the committee does to accommodate the government and its legislative program if at all possible and if it is feasible to do so, having regard to other work it is doing. There was no information from the Leader of the House subsequently of any urgency in passing the bill. Interestingly enough, it was not the minister who was responsible for the bill—namely, the Attorney General through the Leader of the House—who was

requesting that the committee expedite its consideration of the bill and expressing the desirability of the passage of the bill at the earliest opportunity, and hopefully before the winter recess.

I mention this for two reasons. Firstly, wearing my committee chair hat, a function is imposed upon us under standing orders as part of the purpose of the committee to assist this house with the consideration of legislation to satisfy the house about whether there would be a potential impact on parliamentary sovereignty. Several years ago, the time limit was extended from 30 days to 45 days because of the burden it put on the committee to deal with matters effectively. As I mentioned, approaches by the government to expedite the committee's consideration of the bill and to provide a report earlier rather than later is something that we will always assess on its merits and will entertain. We are not oblivious to the need to sometimes deal with legislation expeditiously to facilitate its passage through Parliament; however, it would be helpful if we could be alerted to this sort of thing at the time that the bill is being presented to this place. It would also be helpful in our assessment of the merits of such a request if it could come from the minister who is responsible for the bill rather than the minister who is not responsible for the bill. As I mentioned, this is a bill from the Attorney General and was managed by him in the other place. The Minister for Police may, of course, have an interest in it. Here I wear my member of the opposition hat and say that it seems to suggest some dysfunction in the government that the Minister for Police and the Attorney General do not have the same priorities with the Attorney General's legislation. If this bill were so important for law enforcement—something that the Minister for Police publicly said in the course of a media statement in which she criticised the previous government for not having dealt with this matter—and the minister cannot persuade the Attorney General, whose bill it is, to declare it urgent when he is introducing it and have through his representative in this place some representation about its urgency, some explanation about why it is urgent and some expression of the desirability of it being passed by a certain date, that is not something for which this house ought to be responsible. It suggests a disconnect within the cabinet and certainly between those ministers who are exercising responsibility for the administration of justice and effective law enforcement in this state. Nevertheless, we delivered the report at the earliest available opportunity and, despite the urgency expressed by the Minister for Police, it is only now being brought on for debate some several months after the winter recess; indeed, some three months. Our due date for tabling the report was 28 June. We tabled it on 14 June. We did the best we could with what we had and it was first brought on on 18 September. The urgency expressed by the Minister for Police seems not to have been communicated to those responsible for the management of government business in this place. I mention that as a curiosity, but also because although we will of course entertain legitimate requests for us to turn our attention to and dispose of the bills for which we are responsible in the committee, I would discourage ministers from crying wolf too often and saying, "Can you please deal with this as early as practicable? It's really important", and then if we do so, finding that the government does not actually share that opinion of the urgency of the legislation that we are dealing with.

I turn back to the merits of the legislation. I have dealt with clause 2 of the bill. Clauses 3, 4 and 5 are of no particular importance from the point of view of parliamentary sovereignty. There was a question about clause 9(2), which provides that when a cash dealer or a reporting entity communicates, gives information or produces documents as required under the commonwealth Financial Transaction Reports Act, the Anti–Money Laundering and Counter-Terrorism Financing Act, or this act, our principal act, the Financial Transaction Reports Act of Western Australia, they are protected from prosecution under the Criminal Code in respect of that information. The purpose of that provision is to encourage cash dealers, their employees or agents to fulfil their reporting obligations under the commonwealth and state legislation. It will, if enacted, protect Western Australian cash dealers from otherwise being guilty of a crime under the Criminal Code and liable to potential imprisonment of 20 years. There is no requirement from the commonwealth for WA to enact such a provision, but it does preserve Western Australian parliamentary sovereignty and lawmaking powers, and provides protection to those people who are providing this information that might otherwise be the basis of an offence. Otherwise, there are no clauses that the committee found raised any issue of parliamentary sovereignty or lawmaking for the state of Western Australia. Two subclauses—8(4) and 8(10)—at first sight might appear to have raised issues of parliamentary sovereignty and lawmaking power. That was the substitution of a reference from "director" to the "Australian Transaction Reports and Analysis Centre CEO", but we concluded that that did not diminish Western Australian parliamentary sovereignty as it was an administrative rather than a legislative matter. Otherwise, amendments to section 7(9) of the act, by providing that reportable details of a transaction means the details of transaction that are referred to in schedule 4 of the commonwealth Financial Transaction Reports Act prescribes certain information that is reportable, and that can change over time depending on what the commonwealth does. Given that this legislation is not seeking to impose an obligation on Western Australian authorities but rather is about providing access to the same information that is provided to AUSTRAC and federal bodies and allowing the commonwealth discretion to say, "This is information that is reported", and allowing the state, through the facility of the Financial Transaction Reports Act, to get access to that information, this legislation is not an impingement on state parliamentary sovereignty.

In summary, the committee had not identified any clauses in the bill that had an impact on the sovereignty or the lawmaking powers of the Western Australian Parliament. More generally, for the reasons that have been expressed in the second reading speech by the Leader of the House on behalf of the Attorney General as the policy imperatives underpinning the bill, the opposition supports the legislation. It is a useful facility for Western Australian authorities in the fight against crime, particularly organised crime and fraud.

The only questions I would pose to the Leader of the House—I hope she may be able to answer them in her reply to the second reading debate, which would obviate the need for us to go into Committee of the Whole House—are about the penalties prescribed. I draw the Leader of the House's attention to clause 6 of the Financial Transaction Reports Amendment Bill 2018, particularly subclause (3), which proposes in section 6(3) of the principal act to delete the penalty and insert the penalty of a fine of $20 000 and imprisonment for two years. I likewise draw the Leader of the House's attention to proposed section 6A(5), introduced by clause 7 of the bill. For failure on the part of a reporting entity to comply with a request, proposed section 6A(5) provides for a penalty of $20 000 and imprisonment for two years. It seems to me that a fine of $20 000 on a reporting entity, which may very well be a bank or other financial institution that thinks it is too much like hard work to go through its records and provide relevant information, may not be a sufficient incentive to require compliance with what is said to be a very important facility for the police in Western Australia to obtain information potentially regarding organised crime. I wonder whether consideration has been given to an increase in the penalties; there may be a very good reason why the penalties have been set at that level. Perhaps the Leader of the House can assist us in understanding what the basis was for having a monetary penalty of only $20 000 and up to only two years' imprisonment as a deterrent to those responsible. Of course, if it is a financial institution that is operating in respect of various people effectively making the decisions, it may be low-level employees who are simply adopting policy or taking instructions from someone else; we are not likely to start jailing them and we cannot jail a corporation. I would appreciate the Leader of the House's assistance in that regard, and to find out whether any prosecutions have taken place under the current legislation.

There is also an amendment to section 10(2) of the principal act through clause 11 of the bill, and, once again, an amendment to section 9 under clause 10 of the bill to provide for slightly more robust penalties of a fine of $50 000 and imprisonment for five years. Perhaps the Leader of the House can go through the nature of those offences for us, why those figures have been chosen, and why it is that the government believes those penalties will provide adequate incentive for compliance and deterrence against a refusal. Otherwise, I congratulate the government on bringing this legislation before the house. If we can get those answers during the course of the Leader of the House's reply to the second reading debate, I do not see any need for us to go into Committee of the Whole House at this time.

HON CHARLES SMITH (East Metropolitan) [3.33 pm]: I rise to say a few words on the Financial Transaction Reports Amendment Bill 2018. One Nation is broadly supportive of the bill in principle, and I commend the Attorney General for pushing it forward.

Money laundering is a serious issue in Australia. I have spoken on this issue in Parliament before when talking about the property market. I again cite a report by Dick Smith which states, according to my notes —

> […] the report also pointed out that some foreign purchases of Australian property are invariably funded with black, corrupt or laundered money from countries whose governments are attempting to crack down on corruption. Indeed, the global anti–money laundering regulator, the Paris-based Financial Action Task Force, found that Australian housing is a haven for laundered money, particularly from China.

In July 2017 the ABC itself reported —

> AUSTRAC, Australia's financial crimes regulator, said in a report two years ago that the laundering of illicit funds through real estate was "an established money laundering method in Australia".
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> It said around $1 billion in suspicious transactions came from Chinese investors into Australian property in 2015–16.

A few years back, in 2015, the global regulator of money laundering released its mutual evaluation report. This report found that Australian homes are a haven for laundered funds, again particularly from China. In June 2017 it also placed Australia on a watchlist for failing to comply with money laundering and terrorism financing reforms. Even as late as March last year, Transparency International ranked Australia as having the weakest anti–money laundering laws in the Anglosphere, failing in all 10 priority areas. In February just gone, the Tax Justice Network released its "Financial Secrecy Index" for 2018. It joined the conga line shaming Australia for failing to police the international dirty money flooding into the housing market.

Today, Australia's property market has been labelled a prime target for money laundering, due to a lack of regulations. Consequently, young Australians have been forced to pay more for their housing. However, it is not

just the housing market that is being used for money laundering, as we all know. I am sure members recall last year when the Commonwealth Bank was embroiled in a scandal involving its so-called Smart ATMs, which the media reported, and I quote —

> … may have allowed terrorists and criminals to launder millions of dollars.

AUSTRAC alleged that the CBA failed to report over 53 000 transactions—allegedly turning a blind eye and facilitating money laundering.

When New Zealand was exposed by the Panama Papers some years back, it took action. Australia has had case after case of money laundering taking place under its nose and has done very, very little to combat it. Although I think a great deal more can be done to combat money laundering at the state and, indeed, federal level, this legislation is at long last a step in the right direction to at least allow authorities to more quickly and readily commence investigations into money laundering.

HON ALISON XAMON (North Metropolitan) [3.37 pm]: I rise on behalf of the Greens as the lead speaker to say a few words about the Financial Transaction Reports Amendment Bill 2018. The bill amends the Financial Transaction Reports Act 1995. That act makes available to Western Australian authorities information provided under commonwealth law about financial transactions for the purposes of investigation or prosecution under our laws, and also for the potential enforcement of the Criminal Property Confiscation Act. Essentially, the bill updates the Western Australian act so that it refers to and reflects the two relevant commonwealth acts, the Financial Transaction Reports Act and the Anti–Money Laundering and Counter-Terrorism Financing Act. I note that when the legislation was being updated to reflect these provisions, the drafters took the opportunity to also modernise some of the wording, without changing the substance.

The principal act already provides that if a cash dealer reports information under the Financial Transaction Reports Act and the Western Australia Police Force carries out an investigation arising from and relating to the matters in that information, Western Australia police can request further information from the cash dealer, if the further information may be relevant to a state offence or may assist in enforcing the Criminal Property Confiscation Act. This bill will add to that provision a time limit that mirrors the commonwealth provision, to assist with promptly obtaining freezing orders to ensure that the money will stay in Western Australia. The bill also contains a similar provision on information communicated by a reporting entity under the other commonwealth act—the Anti–Money Laundering and Counter-Terrorism Financing Act 2006. I note that the police can also request documents about the matter to which the communication relates. The reason is to get evidence to ensure that a prosecution can be supported if the matter proceeds that far. The bill also provides that a cash dealer who is a party to a transaction but who is not required to report it must report it if they have reasonable grounds to suspect that the information may be relevant to an investigation or a prosecution of a state offence or, again, if it may assist in enforcing the Criminal Property Confiscation Act. Police carrying out an investigation arising from or relating to matters referred to in that information can request further information if it may be relevant to an investigation or prosecution of a state offence. The bill extends this to the other commonwealth act—the Anti–Money Laundering and Counter-Terrorism Financing Act and enables police to request documents about the matter to which the communication relates and similarly inserts a time limit.

In relation to the issues around this bill, I note that the police in particular have supported the bill and have said that this bill is necessary because, although the information can be obtained in the usual way via a notice to produce under the Criminal Investigation Act 2006, it currently takes longer to obtain—the threshold is higher and the penalty for noncompliance is lower. These concerns have been raised as they could increase the chance of the target hiding the moneys or moving the moneys out of the jurisdiction before a freezing order can be obtained. I note that appendix 1 of the committee's report contained a letter from the Minister for Police, which stated that the bill will be of considerable benefit to police as it will allow them to more readily obtain information from financial institutions about transactions that the institutions have reported to the Australian Transaction Reports and Analysis Centre. The alternative of orders to produce under the Criminal Investigation Act 2006 is burdensome and since the threshold is higher, sometimes essential information cannot be obtained.

The main concerns that the Greens have with bills of this type relate to getting the balance right and ensuring that protections against discrimination and protections for privacy are in place. Under the legislation, a person providing the information is safe from action against them if what they did was required under the act or, importantly, if they mistakenly believed that it was required under the act. Therefore, it will be really important to educate those using the act to use it correctly. I have a question for the minister, particularly in respect of cash dealers who will be affected by the provisions within this bill. I would appreciate it if the minister is able to confirm whether any awareness campaigns will be conducted to educate cash dealers about the extent of their responsibilities or, indeed, whether any discussions or dialogue have already been entered into.

Under section 126 of the Anti–Money Laundering and Counter-Terrorism Financing Act, AUSTRAC can authorise the WA police or the Corruption and Crime Commission to access AUSTRAC information for the

purpose of their functions in exercising their powers. Also, the agency must undertake that it and its officials will comply with the Australian privacy principles in respect of the information obtained. The briefing that I received went into the circumstances in which the information is accessed and used, and I was satisfied with the response to that. My main concern is to ensure that there is a proper oversight to ensure compliance and that any breaches are detected and dealt with. Members are aware that every so often a media story will come out about how some official or other within Australia has improperly accessed private information. A common breach is when people inappropriately access information of an ex-partner. I would like the minister to confirm for this house that the state has in place robust procedures to detect and properly respond to any wrongful access to other people's private information. The second thing that I hope the minister can confirm is that police access to AUSTRAC information is being very closely monitored internally and also that it is subject to oversight by the CCC. I would also appreciate it if the minister could explain, in detail ideally, what monitoring processes are in place and what will happen if a breach is detected in order to prevent recurrence. I hope that the minister can clarify those two points during her second reading reply. Otherwise, the Greens indicate that we will be supporting this legislation.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.45 pm] — in reply: I thank members for their contribution to the debate and for their support for the Financial Transaction Reports Amendment Bill 2018. I also thank the Standing Committee on Uniform Legislation and Statutes Review for the work that it did in preparing the report. I have information available for part of Hon Michael Mischin's questions. With respect to the last question that he asked about whether any offences have been prosecuted under the current legislation, best endeavours are being made right now to run a check over the database. It may be completed by the time I have completed my remarks. If not, I can certainly give an undertaking to provide that information to him subsequent to the house dealing with the bill.

Hon Michael Mischin: I do not see that as being fatal to the progress of the bill if it is not available, but I would be interested.

Hon SUE ELLERY: With respect to the penalties that Hon Michael Mischin drew attention to, in section 6(3) of the principal act and proposed section 6A(5) in the bill, although the WA Police Force already has powers under part 6 of the Criminal Investigation Act 2006 to apply for an order to produce a business record, which may include the relevant documents, the requirements that police must satisfy are different and more onerous and the penalties for failure to comply are far less. The penalty under the Criminal Investigation Act 2006 is a fine of $12 000 and imprisonment for 12 months. This compares with the penalty in the WA Financial Transaction Reports Act 1995, which is a fine of $20 000 and imprisonment for two years. Analysis was done of the fines and penalties in other jurisdictions, which identified that the penalty in all jurisdictions was imprisonment of two years for noncompliance. The fine amounts varied, from $8 000 in South Australia, up to 400 penalty units, or a $52 220 equivalent, in the Queensland jurisdiction. Western Australia's penalty sits in the mid-range at $20 000. Those penalty rates are not amended in this bill. South Australia is in a somewhat unique situation as it identifies separate penalties for a natural person versus a body corporate. For the body corporate, the fine is $30 000 and for a natural person, the fine is $8 000 or imprisonment for two years or both. If the information about the database check comes in, I will give it to the honourable member. If not, I undertake to give it to the honourable member outside of consideration of the bill.

Hon Alison Xamon asked whether an educative campaign would be undertaken to ensure that cash dealers were aware of the changes to the framework. The answer is yes. The Western Australia Police Force and the Australian Transaction Reports and Analysis Centre have prepared a strategy to ensure that all cash dealers and reporting entities are adequately notified of the legislative change and are aware of the new obligations to produce information and documents related to relevant Western Australia Police Force applications, prosecutions and confiscation proceedings. Cash dealers and reporting entities that operate at a national level are already familiar with those requirements where they have been implemented in other Australian jurisdictions, so they will be anticipating those, but a strategy is in place to make sure that the whole is captured.

Hon Alison Xamon also asked about monitoring and oversight. I am advised that the Western Australia Police Force treats breaches of information and unauthorised access to restricted records very seriously. Any identified breaches are investigated by the professional standards portfolio. Officers are investigated against statutory offences, the Western Australia Police Force policy and the code of conduct. All investigations undertaken by the Western Australia Police Force are oversighted by the Corruption and Crime Commission. Under section 21A of the Corruption, Crime and Misconduct Act, the Commissioner of Police must report matters that concern or may concern reviewable police action. Anyone else, including members of the public, may also report alleged police misconduct to the commission. Once an allegation is assessed, the commission will decide whether to investigate or take action itself, investigate or take action in cooperation with an independent agency or appropriate authority, refer the matter to an independent agency or appropriate authority for action, or take no action, in which case the commission will advise whoever made the report.

Did the honourable member ask a question about privacy as well?

Hon Alison Xamon: Raised concerns about privacy.

Hon SUE ELLERY: The 2016 statutory review of the commonwealth Anti–Money Laundering and Counter-Terrorism Financing Act and associated regulatory instruments included, amongst other things, that an improved approach to managing privacy risks was needed. In some areas the regulatory regime was identified as being too restrictive and that there was a need to expand the permissible uses and sharing of AUSTRAC information. On the other hand, there was a need to ensure better targeting of protections, safeguards and controls of the various confidential and sensitive information collected under commonwealth legislation. That statutory review concluded that a principles-based approach may provide a more appropriate contemporary framework for information sharing under the commonwealth Anti–Money Laundering and Counter-Terrorism Financing Act. I understand that those matters are now before the commonwealth government and it is considering its position.

Western Australia's Financial Transaction Reports Act states how privacy risks are managed by the Western Australia Police Force. Existing section 10 of Western Australia's Financial Transaction Reports Act deals with privacy. It provides that a person who is or has been a Commissioner of Police or a police officer must not make a record or divulge protected information. Protected information means information obtained under the act. The penalty for that is $20 000 or two years' imprisonment. They are able to make a record or divulge when it is done in the performance of their duties and relating to the enforcement of laws. Existing section 10(3) provides that in court proceedings a person is not required to divulge or communicate protected information unless it is necessary to do so for the enforcement of laws. In addition, Western Australia Police Force operations are governed by statutory provisions, legal oversight and management by the Western Australia Police Force legal services and information management unit. The Western Australia Police Force privacy statement provides an overarching framework for the agency. In addition, the Western Australia Police Force employs security safeguards to protect personal information, which include auditing systems to detect and respond to any breaches of conduct that expose privacy risks. Information will be disclosed only to the extent that it is necessary for the primary purpose of law enforcement. The code of conduct also binds employees of the Western Australia Police Force and breaches of that code of conduct may be subject to internal investigation and reporting to the Corruption and Crime Commission. Serious breaches of privacy by Western Australia Police Force employees may be dealt with by criminal charges in the Criminal Code. Training associated with the confidentiality of information is provided to all Western Australia Police Force officers and is reinforced through the application of the Western Australia Police Force code of conduct, to which all officers are required to adhere.

I thank members for their contributions to the debate and commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.