

40TH PARLIAMENT



Report 113

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Financial Transaction Reports Amendment Bill 2018

Presented by
Hon Michael Mischin MLC (Chairman)

June 2018

Standing Committee on Uniform Legislation and Statutes Review

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EXECUTIVE SUMMARY

- 1 The Financial Transaction Reports Amendment Bill 2018 (Bill) amends the *Financial Transaction Reports Act 1995* (Act) to enable Western Australian police to gain access to information and documents reported by banks and other financial institutions under the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AMLCTF Act).
- 2 Currently Western Australian police obtain financial information using an 'order to produce' pursuant to the *Criminal Investigation Act 2006*. The legislative requirements to obtain an order to produce are burdensome. In some cases, essential information and intelligence cannot be obtained as sufficient grounds do not exist to substantiate the order to produce.
- 3 The amendments will enable Western Australian police to gain access to information and documents provided under the AMLCTF Act, without needing to obtain an order to produce.
- 4 The Committee has been unable to consider the agreement that gave rise to the Act as the Department of Justice did not provide a copy of it.
- 5 The Act and subsequent amendments raise no Parliamentary sovereignty or law-making issues.
- 6 There is no intergovernmental agreement for the Bill.
- 7 The Committee has not identified any clauses in the Bill that impact upon the sovereignty and law-making powers of the Parliament of Western Australia.

Findings and recommendation

The findings and recommendation are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 4

The Committee finds there is no intergovernmental agreement for the Financial Transaction Reports Amendment Bill 2018.

FINDING 2

Page 6

The Committee finds that the *Financial Transaction Reports Act 1995* and subsequent amendments raise no Parliamentary sovereignty or law-making issues.

FINDING 3

Page 9

The Committee finds that the Financial Transaction Reports Amendment Bill 2018 raises no Parliamentary sovereignty or law-making issues.

RECOMMENDATION 1

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The Committee recommends that the Legislative Council note the Committee's findings during consideration of the Financial Transaction Reports Amendment Bill 2018.

1 Introduction

- 1.1 On 10 May 2018, the Legislative Council referred the Financial Transaction Reports Amendment Bill 2018 (Bill) to the Standing Committee on Uniform Legislation and Statutes Review (Committee) for consideration and report. The reporting date is 26 June 2018, being the next sitting day after the 45 day period mandated by Standing Order 126.
- 1.2 The Bill amends the *Financial Transaction Reports Act 1995* (Act) which required cash dealers, typically banks, to provide information to Western Australian police regarding offences against Western Australian laws, and protected cash dealers against legal action in relation to providing that information. The amendments will enable Western Australian police to have access to information and documents reported under the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AMLCTF Act).
- 1.3 This report includes discussion and analysis of:
 - relevant Commonwealth legislation
 - the non-provision of both the intergovernmental agreement that underpinned the Act and the model bill upon which the Act was developed
 - the lack of any intergovernmental agreement that underpins the Bill
 - the Act
 - the Bill.

2 Inquiry procedure

- 2.1 The Committee posted the inquiry on its website at [Uniform Legislation Committee homepage](#). The general public was immediately notified of the referral via social media.¹ Given the Committee's terms of reference, the Committee considered that any broader advertising or invitation for submissions from the public was neither necessary nor warranted.

3 Supporting documents

- 3.1 The Committee received copies of the Bill, the second reading speech and the Explanatory Memorandum when the Bill was introduced into the Legislative Council.
- 3.2 Standing Order 126(5) states:

The Member in charge of a Bill referred to the Committee shall ensure that all documentation required by the Committee is provided to the Committee within 3 working days after referral...
- 3.3 Some of the information required under Ministerial Memorandum MM 2007/01 was forwarded to the Committee late on 17 May 2018, five working days after referral of the Bill. On 18 May 2018 Committee staff requested the further information required to be provided under Ministerial Memorandum MM 2007/01. This was provided on 21 May 2018, the seventh working day after referral.
- 3.4 The Committee has strict reporting timeframes and relies on Ministers and their agencies to provide the Committee with supporting documentation in a timely manner. Delay resulted in

¹ Legislative Council, 10 May 2018, retrieved from <https://twitter.com/WALegCouncil>.

the Committee directing time and resources to gathering the information rather than focusing on any issues arising from that information.

- 3.5 Nevertheless, the Committee has discharged its responsibilities as expeditiously as possible, and has completed its functions within the time limit prescribed by the Standing Orders.

Request to report early

- 3.6 The Committee received a request that it 'support ... expediting passage of the Bill through the Legislative Council...'.² The request, from the Minister for Police, and the Committee's response, are attached as Appendix 1 and Appendix 2 respectively.

4 Commonwealth legislation relevant to the Bill

- 4.1 The *Financial Transaction Reports Act 1988* (Cth) (Cth FTR Act) together with a 1992 agreement by the former Standing Committee of Attorneys General (SCAG), led to the introduction of the Act.
- 4.2 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AMLCTF Act) introduced new reporting obligations and effectively superseded the Cth FTR Act.
- 4.3 Both Commonwealth Acts are discussed below to provide background to the Bill.

Financial Transaction Reports Act 1988 (Cth)

- 4.4 The Cth FTR Act was enacted by the Commonwealth Parliament in 1988 to assist in administering and enforcing taxation laws as well as other Commonwealth, State and Territory legislation.
- 4.5 The Cth FTR Act applies to 'cash dealers', which include financial institutions, financial corporations, trustees or a manager of a unit trust, currency and bullion dealers and totaliser agency boards.³
- 4.6 Under the Cth FTR Act, cash dealers must report certain transactions to the Australian Transaction Reports and Analysis Centre (AUSTRAC).⁴ These include 'suspect transactions' under section 16, which provides that a cash dealer must submit a report to AUSTRAC if the cash dealer has reasonable grounds to suspect that:
- information that the cash dealer has concerning the transaction may be relevant to an investigation of an evasion or attempted evasion of a taxation law
 - information that the cash dealer has concerning the transaction may be relevant to an investigation or prosecution of an offence against the law of the Commonwealth or of a Territory
 - information that the cash dealer has concerning the transaction may assist with the enforcement of the *Proceeds of Crime Act 1987* (Cth) or the *Proceeds of Crime Act 2002* (Cth)
 - the transaction is preparatory to the commission of a financing of terrorism offence or information may be relevant to investigating or prosecuting a financing of terrorism offence.⁵

² Hon Michelle Roberts MLA, Minister for Police, Letter, 18 May 2018, p 1.

³ *Financial Transaction Reports Act 1988*, (Cth) s 3.

⁴ AUSTRAC is Australia's financial intelligence agency with regulatory responsibility for anti-money laundering and counter-terrorism financing: <http://www.austrac.gov.au/about-us/austrac> (viewed 23 May 2018).

⁵ *Financial Transaction Reports Act 1988*, (Cth) s 16.

4.7 The Cth FTR Act operates alongside the AMLCTF Act.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)

4.8 In 2006 the Commonwealth Parliament enacted the AMLCTF Act which gave AUSTRAC a new regulatory role and expanded its enforcement and compliance powers to cover financing of terrorism and listed terrorist organisations. It imposed transaction and compliance reporting obligations on 'reporting entities'. These include banks, building societies and credit unions.⁶

4.9 Under the AMLCTF Act there are three types of transaction reports reporting entities must submit to AUSTRAC:

- suspicious matter reports⁷
- threshold transaction reports⁸
- international funds transfer instruction reports.⁹

4.10 The AMLCTF Act effectively superseded the reporting requirements of the Cth FTR Act, although the Cth FTR Act has not been repealed and contains 'residual operating provisions'.¹⁰

5 Intergovernmental Agreements

1992 Standing Committee of Attorneys General Agreement

5.1 The Act resulted from an agreement in 1992 by the former SCAG to pass model state legislation requiring cash dealers, typically banks, to provide information to state police regarding offences against state laws and protecting cash dealers against legal action in relation to providing that information (1992 SCAG Agreement).¹¹

5.2 The Committee has been unable to consider the 1992 SCAG Agreement as 'The Department of Justice has not been able to obtain a copy of a communique or a version of the model legislation'.¹²

Committee comment

5.3 The Committee's inability to consider the 1992 SCAG Agreement has meant that it is unable to report to the Legislative Council whether the agreement raises any issues affecting Western Australian Parliamentary sovereignty or law-making powers, or whether the Act is consistent with the agreement.

⁶ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006, (Cth) ss 5 and 6.*

⁷ *ibid.*, s 41.

⁸ *ibid.*, ss 5 and 43.

⁹ *ibid.*, s 45.

¹⁰ Hon Sue Ellery MLC, Minister portfolio, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 10 May 2018, p 2507.

¹¹ Hon John Quigley MLA, Attorney General, Letter, 21 May 2018, p 1.

¹² *ibid.*

No evidence of any other intergovernmental agreement

- 5.4 The Committee has similarly been unable to scrutinise any other intergovernmental agreements that might be relevant to the Bill:

The Department of Justice has undertaken various enquiries to identify any subsequent intergovernmental agreement for States and Territories to amend their respective legislation to make reference to the Commonwealth *Anti-Money Laundering and Counter-terrorism Financing Act 2006* (Cth). The Department has not found any evidence of an intergovernmental agreement for model amending legislation, or any indication that the Commonwealth has sought to create consensus or impose rules as to how States and Territories are to amend their respective schemes.¹³

- 5.5 Council of Australian Governments (COAG) communiqués from 2002 and 2004 show that COAG considered the need for strengthened Australian law in relation to counter-terrorism and money laundering.¹⁴ Both documents were provided to the Committee.¹⁵ They simply state an intention to reform money laundering laws and to reach agreement out of session for comprehensive money laundering offences. They do not underpin the Bill.
- 5.6 There have been various commitments in relation to Australia's national counter-terrorism strategy. These include agreements between the Commonwealth and all States and Territories in 2004 and 2017 to ensure that legislative arrangements and legal frameworks enable an effective response to the terrorism threat.¹⁶ They are not specific to money-laundering, counter-terrorism financing or financial transaction reports legislation. They do not underpin the Bill.

FINDING 1

The Committee finds there is no intergovernmental agreement for the Financial Transaction Reports Amendment Bill 2018.

6 The *Financial Transaction Reports Act 1995*

- 6.1 The Financial Transaction Reports Bill 1994 (1994 Bill) implemented the 1992 SCAG Agreement. It also complemented the Cth FTR Act in its requirement for all cash transactions over a certain sum, international fund transfers and suspicious matters to be reported to specified authorities. The reporting authority in Western Australia is the Western Australia Police Force.¹⁷

¹³ *ibid.*, p 2.

¹⁴ Council of Australian Governments' Meeting, 5 April 2002, Canberra, *Communique*, p 2 and Council of Australian Governments' Meeting, 25 June 2004, Canberra, *Communique*, p 5.

¹⁵ Hon John Quigley MLA, Attorney General, Letter, 21 May 2018, Attachment A and Attachment B.

¹⁶ *Agreement on Counter-terrorism Laws*, 25 June 2004 and *Intergovernmental Agreement on Australia's National Counter-Terrorism Arrangements*, 5 October 2017.

¹⁷ As noted above, the reporting authority for Commonwealth purposes is AUSTRAC.

- 6.2 The 1994 Bill was introduced into the Legislative Council on 18 May 1995.¹⁸ According to the second reading speech, it:
- requires cash dealers to provide information to state police investigating state offences which are disclosed in suspect transaction reports to AUSTRAC. Secondly, the Bill requires cash transaction dealers to report to the agency information relevant to state offences and state confiscation of profits legislation.
- Finally, the Bill will protect cash dealers from legal action in relation to their providing such information.¹⁹
- 6.3 The 1994 Bill was not referred to a Western Australian Parliamentary committee for consideration and report.²⁰
- 6.4 The Legislative Council passed the 1994 Bill on 13 June 1995²¹ and the Act commenced operation on 1 July 1995.²²
- 6.5 Given the lack of any prior Parliamentary committee scrutiny, the Committee has examined the Act, and subsequent amendments. The Committee provides the following information to assist Members' consideration of the Bill, and for reference in the event of future amendments.

Legislative Framework

- 6.6 The Act was developed by reference to a model Bill drafted by the SCAG. The Department of Justice has a copy of Draft 1 of the model Bill and advised that the Act largely mirrors the provisions contained in that draft.²³ The Department advised it was not able to provide this to the Committee as it was contained within confidential SCAG meeting papers.²⁴
- 6.7 The Committee is unable to make any further comment on the legislative framework of the Act due to its not being provided with a communique or a version of the model legislation.

¹⁸ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 May 1995, p 3328. The Financial Transaction Reports Bill 1994 was introduced into the Legislative Assembly on 19 October 1994 and was second read in that place on 20 October 1994. It did not proceed due to the prorogation of Parliament on 10 March 1995. The Financial Transaction Reports Bill 1994 was restored to the Legislative Assembly Notice Paper on 28 March 1995 and had its second reading on 18 May 1995. It proceeded to the Legislative Council on the same day.

¹⁹ Hon Max Evans MLC, Minister for Finance, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 May 2018, p 3328.

²⁰ Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 20 October 1994, p 5774, and 18 May 1995, p 3419. Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 May 1995, p 3328, and 13 June 1995 p 4395. If the Financial Transaction Reports Bill 1994 had been referred, the relevant Committees would have been the Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements and the Legislative Council Standing Committee on Legislation.

²¹ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 13 June 1995, p 4395.

²² State Law Publisher, 15 May 2018, viewed 16 May 2018, [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/lidocument_t09p.pdf/\\$FILE/Table09.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/lidocument_t09p.pdf/$FILE/Table09.pdf?OpenElement).

²³ Hon John Quigley MLA, Attorney General, Letter, 21 May 2018, p 7.

²⁴ *ibid.*

Amendments to the *Financial Transaction Reports Act 1995*

- 6.8 The Act has been amended twice since it came into operation. The amendments were made by the:
- *Criminal Property Confiscation (Consequential Provisions) Act 2000*. The amendments to the Act were of a minor, technical nature, were not uniform legislation and were not referred to any Western Australian Parliamentary committee for consideration and report.²⁵
 - *Courts Legislation Amendment and Repeal Act 2004*. The amendment to the Act was very minor, was not uniform legislation and was not referred to any committee for consideration and report.²⁶

FINDING 2

The Committee finds that the *Financial Transaction Reports Act 1995* and subsequent amendments raise no Parliamentary sovereignty or law-making issues.

7 Purpose of the Bill

- 7.1 Under the Act, Western Australian police are able to obtain information from a cash dealer who has provided a suspect transaction report to AUSTRAC under the Cth FTR Act. Western Australian police are currently unable to request information in relation to suspicious matter reports, threshold transaction reports and international funds transfer instruction reports made by reporting entities to AUSTRAC under the AMLCTF Act.
- 7.2 The Bill proposes to amend the Act in order to take account of the enactment of the AMLCTF Act.
- 7.3 The Leader of the House said in her second reading speech:
- Amending the Western Australian *Financial Transaction Reports Act 1995* is necessary to reflect the new reporting obligations in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. It will enable the Western Australia Police Force to request information and documents from reporting entities when information has been provided to AUSTRAC under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.²⁷
- 7.4 According to the Attorney General, the proposed amendments are necessary to continue the operation and relevance of the Act:
- The FTR Act currently has limited practical relevance following the enactment of the AMLCTF Act, which effectively supersedes the Commonwealth FTR Act.²⁸

²⁵ The *Criminal Property Confiscation (Consequential Provisions) Act 2000* amended the *Financial Transaction Reports Act 1995* by replacing references to the *Crimes (Confiscation of Profits) Act 1988* with references to the *Criminal Property Confiscation Act 2000*, see s 15(1). It also contained a savings provision to ensure that the *Financial Transaction Reports Act 1995* continued to apply in relation to the enforcement of the *Crimes (Confiscation of Profits Act) 1988*, see s 15(2).

²⁶ The *Courts Legislation Amendment and Repeal Act 2004* amended the *Financial Transaction Reports Act 1995* by replacing the words 'petty sessions' with 'summary jurisdiction', see item 62, Schedule 1.

²⁷ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 10 May 2018, p 2507.

²⁸ Hon John Quigley MLA, Attorney General, Letter, 21 May 2018, p 5.

7.5 He also said:

The reforms will support the efficiency and effectiveness of WA Police investigations of, or prosecution of persons for, offences against WA State laws. It will also support the enforcement of the *Criminal Property Confiscation Act 2000*.²⁹

8 The Financial Transaction Reports Amendment Bill 2018

- 8.1 Two key amendments that are intended to be effected by the Bill are a new requirement to produce documents to Western Australian police (which is in addition to the existing requirement to give information) and a requirement that any request for information or documents must prescribe a timeframe of at least 14 days for compliance.³⁰ No timeframe is currently prescribed.
- 8.2 The Bill amends the Act to provide that a reporting entity that communicates information to AUSTRAC under the AMLCTF Act is also required to provide information and documents to Western Australian police when requested to do so.³¹ The information or documents must be information or documents that may be relevant to the investigation or prosecution of a person for an offence against the law of the State, or may be of assistance in the enforcement of the Western Australian *Criminal Property Confiscation Act 2000*.³²
- 8.3 The amendments also provide that a cash dealer that communicates information to the AUSTRAC Chief Executive Officer that is not reported under the Cth FTR Act or the AMLCTF Act is required to provide information and documents to Western Australian police when requested to do so.³³
- 8.4 The requirement to produce documents is a new feature. Currently, Western Australian police obtain financial information using an 'order to produce' pursuant to the *Criminal Investigation Act 2006*.³⁴ According to the Leader of the House:

This is not ideal because it is difficult at the very early stages of an investigation into money laundering for the WA Police Force to fulfil the more onerous requirements of an order to produce. The ability to request documents, in addition to the information, will improve the efficiency and effectiveness of WA Police Force investigations of, or prosecution of persons for, offences against the WA state laws.³⁵

²⁹ *ibid.*, p 3.

³⁰ Financial Transaction Reports Amendment Bill 2018 cl 7. See proposed new sections 6(1B) and 6A(3) which provide the period specified in the request for giving the information or producing the documents must be at least 14 days unless a shorter period is considered necessary and is reasonable.

³¹ Financial Transaction Reports Amendment Bill 2018 cl 7 inserting proposed new section 6A.

³² Financial Transaction Reports Amendment Bill 2018 cl 7 inserting proposed new section 6A(4).

³³ Financial Transaction Reports Amendment Bill 2018 cl 8, in particular clause 8(6) inserting proposed new sections 7(5A), 7(6) and 7(6A).

³⁴ *Criminal Investigation Act 2006*, Part 6. An application for an order to produce must, among other things, 'describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce' (s 52(f)) and 'state the grounds on which the applicant suspects that the business record or class of business record is a thing relevant to the offence' (s 52(g)).

³⁵ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 10 May 2018, p 2507.

Legislative framework

- 8.5 Several other jurisdictions have amended their legislation to include new provisions to reflect the new reporting obligations in the AMLCTF Act, enabling police in those jurisdictions to legally obtain information and/or documents under the AMLCTF Act.³⁶
- 8.6 The Leader of the House advised that 'Each jurisdiction has taken a slightly different approach to align with the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that is not based on nationally agreed model legislation'.³⁷
- 8.7 The Bill has not been developed by reference to a model Bill.³⁸

Structure of the Bill

- 8.8 The Bill contains 12 clauses.

Clauses that preserve Parliamentary sovereignty and law-making powers

Clause 2

- 8.9 Clause 2 of the Bill provides that sections 1 and 2 of the Act come into operation on the day on which the Act receives the Royal Assent and the rest of the Act comes into operation on the day after that day.
- 8.10 Until the Bill is enacted, Western Australian police will remain unable to access transaction reports made to AUSTRAC under the AMLCTF Act. The Attorney General advised that:
- To ensure commencement as soon as possible sections 1 and 2 of the Act come into operation on the day on which Royal Assent is received, with the rest of the Act coming into operation on the day after Royal Assent is received.³⁹
- 8.11 This clause preserves Parliament's sovereignty by not investing in the Executive the discretion to decide if and when the proposed Act is to come into force.

Clause 9(2)

- 8.12 Clause 9(2) of the Bill provides that when a cash dealer or a reporting entity communicates or gives information or produces documents as required under the Cth FTR Act, the AMLCTF Act or the Act, they are protected from prosecution under *The Criminal Code* in relation to that 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.⁴⁰
- 8.13 If it enacts this provision, the Western Australian Parliament will protect Western Australian cash dealers from otherwise being guilty of a crime and liable to imprisonment for 20 years.
- 8.14 There is no requirement from the Commonwealth for Western Australia to enact such a provision. The Western Australian Parliament would be choosing to define the operation of its own laws.

³⁶ The jurisdictions are Queensland, the Northern Territory, Victoria and South Australia.

³⁷ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 10 May 2018, p 2508.

³⁸ Hon John Quigley MLA, Attorney General, Letter, 21 May 2018, p 7.

³⁹ *ibid.*, p 3.

⁴⁰ Financial Transaction Reports Amendment Bill 2018, *Explanatory Memorandum*, Legislative Council, p 3.

8.15 This clause therefore preserves Western Australian Parliamentary sovereignty and law-making powers.

State discretion to opt in and opt out

8.16 There is no formal arrangement or requirement for the State to enact the Bill. Passing the Bill is solely at the discretion of the Western Australian Parliament.

State discretion to amend or repeal

8.17 There are no restrictions on whether or when the Bill, once enacted, can be amended or repealed.

8.18 The standard legislative process for amending or repealing State legislation applies.

Clauses that may impinge upon Parliamentary sovereignty and law-making powers

8.19 In its analysis of the Bill, the Committee has not identified any clauses that have an impact upon Western Australian Parliamentary sovereignty and law-making powers.

FINDING 3

The Committee finds that the Financial Transaction Reports Amendment Bill 2018 raises no Parliamentary sovereignty or law-making issues.

Other matters

8.20 The Committee draws the following matters to Members' attention, as at first sight they may appear to raise issues of Parliamentary sovereignty and law-making power.

Clause 8(4)

8.21 Clause 8(4) proposes to amend section 7(3)(a) of the Act to substitute for 'the Director' a reference to the 'AUSTRAC CEO' for the purposes of section 16 of the Cth FTR Act.

8.22 The effect of the proposed amendment is to make the Commonwealth AUSTRAC Chief Executive Officer responsible for the form of a transaction report, rather than an equivalent Western Australian officer. This does not diminish Western Australian Parliamentary sovereignty as it is an administrative rather than legislative matter.

Clause 8(10)

8.23 Clause 8(10) proposes to amend section 7(9) of the Act by providing that reportable details, in relation to a transaction, means the details of the transaction that are referred to in Schedule 4 of the Cth FTR Act.

8.24 This proposed section merely refers to what are 'reportable details' by referring to the Cth FTR Act. This does not diminish the Western Australian Parliament's sovereignty.

Conclusions

8.25 There is no intergovernmental agreement for the Bill.

8.26 Under its terms of reference, the Committee is confined to investigating whether the Bill has an impact upon the sovereignty and law-making powers of the Parliament of Western Australia.

8.27 The Committee has not identified any clauses in the Bill that impact upon the sovereignty and law-making powers of the Parliament of Western Australia.

RECOMMENDATION 1

The Committee recommends that the Legislative Council note the Committee's findings during consideration of the Financial Transaction Reports Amendment Bill 2018.

A handwritten signature in blue ink, appearing to read 'Mischin', with a stylized circular flourish at the beginning.

Hon Michael Mischin MLC
Chairman

APPENDIX 1

LETTER FROM THE MINISTER FOR POLICE



Minister for Police & Road Safety



Our ref: 63-07028

Hon. Michael Mischin MLC
Chair
Legislative Council Uniform Legislation and Statutes Review Committee
Parliament House
WEST PERTH WA 6005

Dear Chair

Financial Transaction Reports Amendment Bill 2018

I refer to the above Bill which was referred to your Committee for consideration on 10 May 2018.

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.

In 2006, the Commonwealth enacted the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*. However the Western Australian *Financial Transaction Reports Act 1995* hasn't kept pace with those Commonwealth reforms.

The effect is that police officers have to resort to other means, such as Orders to Produce (OTP) under the *Criminal Investigation Act 2006*, in order to seek more information from these financial institutions. The legislative requirements to obtain an OTP under the *Criminal Investigation Act 2006* are burdensome and in some cases, essential information and intelligence cannot be obtained, as sufficient grounds do not exist to substantiate an OTP. The amendments contained in the Bill will streamline the process for police officers to obtain information from the financial institutions.

Officers from WA Police Force are ready to provide more information to your Committee if required. I welcome any support you may be able to give in expediting passage of the Bill through the Legislative Council to give police additional powers to target organised crime, money launderers and the like.

Yours sincerely

HON MICHELLE ROBERTS MLA
MINISTER FOR POLICE

18 MAY 2018

PUBLIC
5/16/18 mpr

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APPENDIX 2

COMMITTEE RESPONSE TO THE MINISTER FOR POLICE

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW



Your ref: 63-07028
Our ref: A691389

5 June 2018

Hon Michelle Roberts MLA
Minister for Police
Level 12, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister

Financial Transaction Reports Amendment Bill 2018

I refer to the above and to your letter to the Standing Committee on Uniform Legislation and Statutes Review (Committee) dated 18 May 2018.

As you say, on 10 May 2018 the Legislative Council referred the Financial Transaction Reports Amendment Bill 2018 (Bill) to the Committee for consideration and report. The reporting date is 26 June 2018, being the next sitting day after the 45 day period mandated by Legislative Council Standing Order 126.

You have requested the Committee's support in expediting passage of the Bill through the Legislative Council. From this, and an informal conversation between us on 16 May 2018, I infer that you are asking the Committee to report on the Bill as early as possible before the due date, so that the Bill can be passed before the winter recess. In that regard, the Committee notes and thanks you for your offer of assistance from the Western Australia Police should the Committee require further information in relation to the Bill.

In relation to your request, the Committee notes:

- The Bill was introduced into the Legislative Assembly on 20 February 2018. The Government did not move to have the Bill declared 'urgent' under Legislative Assembly Standing Order 168 or arrange its business to expedite the Bill's passage.
- The Bill was not brought on for debate in the Legislative Assembly until 8 May 2018.
- The Leader of the House in the Legislative Council, who represents the Attorney General, did not indicate that the Bill was urgent when she introduced it on 10 May 2018.
- During her second reading speech, the Leader of the House stated that given there were questions as to whether the Bill was a uniform legislative scheme, it was prudent the Bill be referred to the Committee under Standing Order 126. The Leader of the House, on behalf of the Government, did not move to shorten the Committee's reporting period, or ask the Committee to expedite its consideration.

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- The Leader of the House has not subsequently informed the Committee of any urgency in having the Bill passed, or indicated that it is a bill to which the Government give priority to passing before the House rises for the winter recess on 28 June 2018.

The Committee also notes that the Attorney General, whose Bill it is, has made no request to have the passage of the Bill expedited. In fact, the supporting documents for the Bill required to be provided under Ministerial Memorandum 2007/01 within three working days after referral were not provided by the Department of Justice until the seventh working day after referral. The Committee has strict reporting timeframes and relies on Ministers and their agencies to provide the Committee with supporting documentation in a timely manner. Delay resulted in the Committee directing time and resources to gathering the information rather than focusing on any issues arising from that information.

At present, and in the absence of a resolution by the Legislative Council directing the Committee to report prior to the current reporting date, the Committee expects to table its report within the time prescribed by the Legislative Council Standing Orders.

Nevertheless, the Committee will bear your request for expedition in mind and, should the report be completed before the due date, the Committee will table the report early.

If you have any queries, please telephone the Committee's Advisory Officer (Legal), Ms Felicity Mackie on 9222 7406 or email unileg@parliament.wa.gov.au

Yours sincerely



Hon Michael Mischin MLC
Chairman

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GLOSSARY

| Term | Definition |
|----------------------------|---|
| Act | <i>Financial Transaction Reports Act 1995</i> |
| AMLCTF Act | <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)</i> |
| AUSTRAC | Australian Transaction Reports and Analysis Centre |
| Bill | Financial Transaction Reports Amendment Bill 2018 |
| COAG | Council of Australian Governments |
| Committee | Standing Committee on Uniform Legislation and Statutes Review |
| Cth FTR Act | <i>Financial Transaction Reports Act 1988 (Cth)</i> |
| SCAG | Standing Committee of Attorneys General |
| 1992 SCAG Agreement | An agreement in 1992 by the former Standing Committee of Attorneys General |
| 1994 Bill | Financial Transaction Reports Bill 1994 |





Standing Committee on Uniform Legislation and Statutes Review

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee is established.*
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
 - (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
 - (d) to review the form and content of the statute book; and
 - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.'



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