

## SECOND READING SPEECH

### FINANCIAL TRANSACTION REPORTS AMENDMENT BILL 2018

The Western Australian *Financial Transaction Reports Act 1995* (WA) was the result of an agreement by the then Standing Committee of Attorneys-General in 1992 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. This initiative stemmed from Australia's membership of the Financial Action Task Force, which is an international intergovernmental body established in 1989 by the ministers of its member jurisdictions. The objectives of the task force are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

The Western Australian *Financial Transaction Reports Act 1995* (WA) complemented the Commonwealth's *Financial Transaction Reports Act 1988* (Cth) in its requirement for all cash transactions over a certain sum, international fund transfers and suspicious matters to be reported to specified authorities. For Commonwealth purposes, the authority is the Australian Transaction Reports and Analysis Centre, known as AUSTRAC, and in this state the authority is the WA Police Force. In 2006, the Commonwealth enacted the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), which gave AUSTRAC a new regulatory role and expanded its enforcement and compliance powers. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) has largely superseded the reporting requirements of the Commonwealth's *Financial Transaction Reports Act 1988* (Cth), although that Act contains residual operating provisions.

Under the state's *Financial Transaction Reports Act 1995* (WA), the WA Police Force is able to obtain information from a cash dealer who has provided a suspect transaction report to AUSTRAC under the Commonwealth's *Financial Transaction Reports Act 1988* (Cth). The WA Police Force is 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 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). Amending the Western Australian *Financial Transaction Reports Act 1995* (WA) is necessary to reflect the new reporting obligations in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). It will enable the WA 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* (Cth).

The amendments provide that a reporting entity that communicates information to AUSTRAC under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) is also required to provide information and documents to the WA Police Force when requested to do so, and when the information and documents 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 *Criminal Property Confiscation Act 2000* (WA). The amendments also provide that a reporting entity that communicates information to the AUSTRAC CEO that is not reported under the Commonwealth *Financial Transaction Reports Act 1988* (Cth) or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) may nevertheless

be required to report that information to AUSTRAC and provide information and documents to the WA Police Force if required.

The requirement to produce documents is a new feature. Currently the WA Police Force obtains documents using an "Order to Produce" pursuant to the *Criminal Investigation Act 2006 (WA)*. 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.

Timeframes for compliance are also introduced through the amendments, but they do not replace the requirements to comply as soon as practicable. The amendments ensure consistency with the timeframe for requesting information by Commonwealth enforcement agencies under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*. The new period for compliance is appropriate to prevent any delay in the provision of the information and documents that is crucial to investigations and to prevent and intercept the movement of funds.

Several other jurisdictions, including Victoria, Queensland, South Australia and the Northern Territory, have amended their legislation to include a new provision to reflect the new reporting obligations in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*, thereby enabling police in those jurisdictions to legally obtain information and documents under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*. Each jurisdiction has taken a slightly different approach to align with the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* that is not based on nationally-agreed model legislation.

In summary, this bill will update Western Australia's *Financial Transaction Reports Act 1995 (WA)* to give the WA Police Force powers to obtain information and reports from cash dealers under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*. It will assist Western Australian law enforcement authorities in their investigation and prosecution of money-laundering and terrorist-financing activities, which will ultimately be of benefit to the entire community.

While the *Financial Transaction Reports Act 1995 (WA)* is a mirror law, a question remains whether Legislative Council Standing Order 126 applies to this Bill. I have been advised of the approach of the Standing Committee on Uniform Legislation and Statutes Review in its recent reports, including that relating to the *Aquatic Resources Management Bill 2015* and the *Child Support (Adoption of Laws) Amendment Bill 2012*. The Committee's position has been that it will only consider that a matter falls within Standing Order 126 if it materially changes the operation of an existing Uniform Legislation scheme, implements an additional scheme or implements an additional governmental agreement.

It appears that the Bill does not introduce a new uniform scheme or implement a new inter-governmental agreement. Each jurisdiction has taken a different approach to amending their legislation. There has been no indication that the Commonwealth has sought to create consensus or impose rules on how that is to occur.

As to whether the proposed amendments materially change the operation of an existing Uniform Legislative scheme, the Bill will amend the *Financial Transaction Reports Act 1995* (WA) to introduce provisions that support, and operate by reference to, the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). WA Police will have the same powers as previously available prior to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) becoming operational in 2008. The Bill makes some improvements to the Act to ensure that WA Police may effectively respond and freeze funds that relate to criminal activity.

Given that there are questions as to whether the Bill is a Uniform Legislative scheme, I am of the view that it is prudent that the Bill be referred to the Standing Committee on Uniform Legislation and Statutes Review for consideration pursuant to Standing Order 126(1).

I commend the Bill to the House and table the Explanatory Memorandum.