



## LAWS AND REGULATIONS

### PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,  
the Secretary-General has the honour to communicate the following legislative texts.*

#### AUSTRALIA

Communicated by the Government of Australia

##### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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\*Note by the Secretariat: This document is a direct reproduction of the texts communicated to the Secretariat by the Government of Australia.

## CASH TRANSACTION REPORTS ACT 1988

*Reprinted as at 30 April 1991*

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## CASH TRANSACTION REPORTS ACT 1988

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An Act to provide for the reporting of certain transactions and transfers, to establish a Cash Transaction Reports Agency and to impose certain obligations in relation to accounts, and for related purposes

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Cash Transaction Reports Act 1988*.<sup>1</sup>

#### Commencement

2.<sup>1</sup> (1) Section 1 and this section shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day or days fixed by Proclamation.

#### Interpretation

3. (1) In this Act, unless the contrary intention appears:  
“acceptable referee” means a person in a class of persons declared by the Minister, by notice in the *Gazette*, to be acceptable referees for the purposes of this definition;  
“account” means any facility or arrangement by which a cash dealer does any one or more of the following:  
(a) accepts deposits of currency;  
(b) allows withdrawals of currency;

- (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer;

and includes a facility or arrangement for a safety deposit box or for any other form of safe deposit;

**“acting member of the NCA”** has the same meaning as **“acting member”** has in the NCA Act;

**“AFP member”** means a member or special member of the Australian Federal Police;

**“Agency”** means the Cash Transaction Reports Agency;

**“approved”** means approved by the Director, in writing, for the purposes of the provision in which the term occurs;

**“approved cash carrier”** means a cash dealer declared by the Director to be an approved cash carrier under section 8;

**“Australia”**, when used in a geographical sense, includes the external Territories;

**“authorised officer”** means a member of the staff of the Agency, or a person engaged under section 40A, who is specified by the Director, in writing, as an authorised officer for the purposes of this Act;

**“bank”** means:

- (a) the Reserve Bank of Australia;
- (b) a bank within the meaning of the *Banking Act 1959*; or
- (c) a person who carries on State banking within the meaning of paragraph 51 (xiii) of the Constitution;

**“building society”** means a society registered or incorporated as a building society, co-operative housing society or similar society under a law relating to such societies that is in force in a State or Territory;

**“cash dealer”** means:

- (a) a financial institution;
- (b) a body corporate that is, or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;
- (c) an insurer or an insurance intermediary;
- (d) a securities dealer;
- (e) a futures broker;
- (f) a Registrar or Deputy Registrar of a Registry established under section 14 of the *Commonwealth Inscribed Stock Act 1911*;
- (g) a trustee or manager of a unit trust;
- (h) a person who carries on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;
- (j) a person who carries on a business of dealing in bullion;

- (k) a person (other than a financial institution) who carries on a business of:
  - (i) collecting currency, and holding currency collected, on behalf of other persons;
  - (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; and
  - (iii) delivering currency (including payrolls);
- (m) a person who carries on a business of operating a gambling house or casino; and
- (n) a bookmaker, including a totalisator agency board and any other person who operates a totalisator betting service;

**“cash transaction”** means a transaction involving the physical transfer of currency from one person to another;

**“citizenship certificate”**, in respect of a person, means a certificate, declaration or other instrument in respect of the person’s status as an Australian citizen or British subject, or otherwise in respect of the person’s nationality, issued under:

- (a) the *Australian Citizenship Act 1948*;
- (b) the *Nationality Act 1920*; or
- (c) the *Naturalisation Act 1903*;

or under regulations made under any of those Acts;

**“commercial goods carrier”** means a person who, in the normal course of a lawful business, carries goods or mail for reward;

**“commercial passenger carrier”** means a person who, in the normal course of a lawful business, carries passengers for reward;

**“Commissioner”** means the Commissioner of Taxation;

**“credit union”** means a society or other body of persons that is registered or incorporated as a credit union or credit society under a law in force in a State or Territory relating to credit unions or credit societies;

**“CTR information”** means information obtained by the Director under Part II and includes:

- (a) information included in a notice under subsection 18 (5), (5A) or (7) or 22 (1) or a copy of a record given under subsection 24 (5); and
- (b) information obtained by the Director under section 243D of the ASC Law of a State or Territory;

**“currency”** means the coin and paper money of Australia or of a foreign country that:

- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

**"customs officer"** means the Comptroller-General of Customs or an officer of customs within the meaning of the *Customs Act 1901*;

**"Director"** means the Director of the Cash Transaction Reports Agency;

**"established customer"**, in relation to a financial institution as at a particular time, means a person who has been a customer of the financial institution for not less than 12 months immediately preceding that time;

**"financial institution"** means:

- (a) a bank;
- (b) a building society; or
- (c) a credit union;

**"foreign currency"** means the currency of a foreign country;

**"futures broker"** means a person who is a futures broker for the purposes of the *Futures Industry Act 1986* or for the purposes of a law of a State or Territory that corresponds to that Act;

**"given name"** means a name other than a surname;

**"identification document"** means a primary identification document or a secondary identification document;

**"identifying cash dealer"** means a cash dealer in respect of whom a declaration under section 8A is in force;

**"insurance broker"** means a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds;

**"insurance business"** means the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include:

- (a) business as a registered health benefits organisation, a registered medical benefits organisation or a registered hospital benefits organisation carried on by an organisation that is a registered organisation within the meaning of Part VI of the *National Health Act 1953*;
- (b) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to the person's liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody; or

- (c) the business of insuring property of a religious organisation where the person carrying on the business does not carry on any other insurance business;

**“insurance intermediary”** means a person who:

- (a) for reward; and
- (b) as an agent for one or more insurers or as an agent of intending insureds;

arranges contracts of insurance in Australia or elsewhere, and includes an insurance broker;

**“insured”** means a person (other than the insurer) who is entitled to a benefit under a contract of life insurance;

**“insurer”** means a person who carries on an insurance business but does not include a person to whom paragraph 5 (2) (ga) of the *Insurance Act 1973* applies;

**“Inter-Governmental Committee”** means the Inter-Governmental Committee referred to in section 8 of the NCA Act;

**“member of the NCA”** has the same meaning as **“member”** has in the NCA Act;

**“member of the staff of the NCA”** has the same meaning as **“member of the staff of the Authority”** has in the NCA Act;

**“NCA”** means the National Crime Authority;

**“NCA Act”** means the *National Crime Authority Act 1984*;

**“non-reportable cash transaction”** means a cash transaction:

- (a) to which a cash dealer is a party; and
- (b) that is not a significant cash transaction or is an exempt cash transaction;

**“non-reportable currency transfer”** means a transfer of currency out of Australia or into Australia in respect of which a report under section 15 is not required;

**“police officer”** means:

- (a) an AFP member; or
- (b) a member of the police force of a State or Territory;

**“primary identification document”**, in relation to a person in a particular name, means:

- (a) a certified copy of, or of an extract of, a birth certificate in relation to the person's birth and showing that name as the person's name;
- (b) a certified copy of a citizenship certificate issued in respect of the person and showing that name as the person's name; or
- (c) a passport held by the person and showing that name as the person's name;

**“produce”** includes permit access to;



**“public authority”** means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by or under a law of the Commonwealth or of a State or Territory;

**“reporting period”** , in relation to a significant cash transaction, means:

- (a) if the transaction involves foreign currency—the period ending at the end of the day after the day on which the transaction takes place or such longer period as is prescribed by the regulations;
- (b) if the transaction does not involve foreign currency—the period ending at the end of 15 days after the day on which the transaction takes place;

**“required details”** , in relation to an identification document, means:

- (a) in the case of a birth certificate—the name and date of birth of the person in respect of whose birth the certificate is given and the date and office of issue of the certificate;
- (b) in the case of a citizenship certificate—the name and date of birth of the person in respect of whom the certificate is issued, the date of issue of the certificate and the name of the person who issued the certificate;
- (c) in the case of a passport—the name and date of birth of the person to whom the passport is issued and the country and date of issue and the number of the passport; and
- (d) in the case of a secondary identification document—the name shown in the document as the name of the person to whom or in respect of whom the document was issued, the date of birth of that person (if shown), the address of that person (if shown), the kind of document, the person who or the authority that issued the document, the identifying number (if any) of the document and the date of issue or expiry (if any) of the document;

**“retail business”** means a business:

- (a) the principal element of which is the provision of goods to ultimate consumers; and
- (b) the takings or receipts of which include substantial amounts of currency;

**“secondary identification document”** , in relation to a person in a particular name, means a document (other than a primary identification document) which establishes the identity of the person in that name;

**“securities dealer”** means a person who is a dealer for the purposes of the *Securities Industry Act 1980* or for the purposes of a law of a State or Territory that corresponds to that Act;

**“send”** , in relation to currency, includes send through the post;

**“signatory”**, in relation to an account with a cash dealer, means the person, or one of the persons, on whose instructions (whether required to be in writing or not and whether required to be signed or not) the cash dealer conducts transactions in relation to the account;

**“significant cash transaction”** means a cash transaction involving the transfer of currency of not less than \$10,000 in value;

**“State”** includes the Northern Territory;

**“surname”** includes a family name;

**“taxation law”** has the same meaning as in the *Taxation Administration Act 1953*;

**“taxation officer”** means:

- (a) a Second Commissioner of Taxation;
- (b) a Deputy Commissioner of Taxation; and
- (c) an officer or employee of the Australian Public Service performing duties in the Australian Taxation Office;

**“Territory”** does not include the Northern Territory;

**“totalisator agency board”** means a board or authority established by or under a law of a State or Territory for purposes that include the purpose of operating a betting service;

**“unit trust”** means a trust to which a unit trust scheme relates and includes:

- (a) a cash management trust;
- (b) a property trust; and
- (c) an arrangement declared by the Minister, by notice in writing published in the *Gazette*, to be a unit trust for the purposes of this definition;

but does not include an arrangement declared by the Minister, by notice in writing published in the *Gazette*, not to be a unit trust for the purposes of this definition;

**“unit trust scheme”** means any arrangement made for the purpose, or having the effect, of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

(2) A reference in this Act to a document being signed by a party to a transaction includes a reference to the document being signed on the party's behalf.

(3) A reference in this Act to transferring currency out of Australia is a reference to taking or sending currency out of Australia.

(4) A reference in this Act to transferring currency into Australia is a reference to bringing or sending currency into Australia.

(5) For the purposes of this Act, where a person's name consists of one or more given names and a surname, the following names shall be taken not to be different from one another:

- (a) a name consisting of that given name or those given names and that surname;
- (b) a name consisting of any one or more of those given names and that surname;
- (c) a name consisting of a nickname of the person and that surname;
- (d) a name consisting of a nickname of the person, that given name or those given names and that surname;
- (e) a name consisting of a nickname of the person, one or more of those given names and that surname.

(6) A reference in subsection (5) to a given name of a person includes a reference to a diminutive form or Anglicised form of a given name of the person.

#### **Objects of Act**

4. (1) The principal object of this Act is to facilitate the administration and enforcement of taxation laws.

(2) A further object of this Act is to facilitate the administration and enforcement of laws of the Commonwealth and of the Territories (other than taxation laws).

(3) Without prejudice to the effect of this Act by virtue of subsections (1) and (2), a further object of this Act is to make information collected for the purposes referred to in subsection (1) or (2) available to State authorities to facilitate the administration and enforcement of the laws of the States.

#### **Act to bind Crown**

5. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

#### **Act to apply both within and outside Australia**

6. This Act applies throughout the whole of Australia and also applies outside Australia.

## PART II—TRANSACTION REPORTS

### *Division 1—Cash transaction reports*

#### **Reports of significant cash transactions**

7. (1) Where a cash dealer is a party to a significant cash transaction, the dealer shall, before the end of the reporting period:

- (a) prepare a report of the transaction; and
- (b) communicate the information contained in the report to the Director;

unless:

- (c) the transaction is, at the time when it occurs, an exempt transaction; or
- (d) the transaction is, at the time when it occurs, eligible for exemption and becomes, before the end of the reporting period, an exempt transaction; or
- (e) the cash dealer is an approved cash carrier.

(2) The report shall be prepared in the approved form, contain the reportable details of the transaction and be signed by the cash dealer.

(3) The communication shall be made to the Director:

- (a) by giving the Director a copy of the report; or
- (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.

(4) In this section:

“reportable details”, in relation to a transaction, means the details of the transaction that are referred to in Schedule 1.

#### **Approved cash carriers**

8. (1) The Director may, by notice published in the *Gazette*, declare a cash dealer, being a person referred to in paragraph (k) of the definition of “cash dealer” in subsection 3 (1), to be an approved cash carrier if the Director is satisfied that:

- (a) the cash dealer maintains records containing reportable details of significant cash transactions to which the cash dealer is a party; and
- (b) the declaration of the cash dealer as an approved cash carrier would not be inconsistent with the objects of this Act.

(2) In this section:

“reportable details” has the same meaning as in section 7.

### **Identifying cash dealers**

**8A. (1)** A cash dealer may apply in writing to the Director to be declared an identifying cash dealer.

**(2)** An application must be accompanied by a written undertaking in the approved form, by which the applicant undertakes:

- (a)** to carry out the verification procedures under subsection 20 (8), where that subsection applies, and to take all reasonable steps to complete the procedures promptly in each case; and
- (b)** to report under section 16 in relation to information obtained by the applicant as a result of carrying out the procedures mentioned in paragraph (a); and
- (c)** to give the Director, in respect of such periods as are determined by the Director, written reports on the applicant's compliance with this Act; and
- (d)** to do such other things (if any) as are specified in the form.

**(3)** An application, and the undertaking accompanying it, must be signed by the applicant personally or, if the applicant is a body corporate, by its principal executive officer.

**(4)** On receipt of an application and an undertaking, the Director may, by notice in the *Gazette*, declare the applicant to be an identifying cash dealer if satisfied that such a declaration would not be inconsistent with the objects of this Act.

**(5)** The Director may, by notice in the *Gazette*, revoke a declaration, or suspend it for a specified period or until a specified act is done, if satisfied that the relevant identifying cash dealer has failed to honour the undertaking given by the cash dealer under this section.

**(6)** A declaration stops being in force on its revocation or during a period when it is suspended.

**(7)** The Director may, for the purposes of this section, approve different forms to be used by different classes of applicants.

**(8)** In this section:

“principal executive officer”, in relation to a body corporate means the person who is for the time being its principal executive officer, whether or not the person is a director of the body corporate.

### **Exempt cash transactions**

**9. (1)** Subject to subsection (2), a significant cash transaction between a financial institution and another person is an exempt transaction, so far as the institution is concerned, if:

- (a)** the transaction has been entered in the institution's exemption register; or

(b) the transaction falls within a class of transactions entered in the institution's exemption register against the name of that person.

(2) Where the Director gives a financial institution a direction under subsection 11 (3), a significant cash transaction between the financial institution and another person is not an exempt transaction, so far as the institution is concerned, if exemption of the transaction would be inconsistent with the direction.

(3) Where:

(a) a significant cash transaction between a financial institution and another person is an exempt transaction so far as the financial institution is concerned; and

(b) the other person is a cash dealer;

the transaction is also an exempt transaction so far as the cash dealer is concerned.

(4) A significant cash transaction is also an exempt transaction if the transaction is between a futures broker and a clearing house that is associated with a futures exchange of which the broker is a member.

#### **Transactions eligible for exemption**

10. (1) A significant cash transaction is eligible for exemption if:

(a) the transaction is between a financial institution and another financial institution; or

(b) the transaction is between a cash dealer (not being a financial institution) and a financial institution.

(2) A significant cash transaction is also eligible for exemption if:

(a) the transaction is between a financial institution and another person (in this subsection called the "customer");

(b) the customer is, at the time when the transaction takes place, an established customer of the institution;

(c) the transaction consists of a deposit into, or a withdrawal from, an account maintained by the customer with the institution;

(d) the customer carries on:

(i) a retail business (other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft);

(ii) a business declared by the Minister, by notice in writing published in the *Gazette*, to be an entertainment business or a hospitality business for the purposes of this Act; or

(iii) a business of providing vending machines;

- (e) the account is maintained for the purposes of that business; and
  - (f) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.
- (3) A significant cash transaction is also eligible for exemption if:
- (a) the transaction is between a financial institution and another person (in this subsection called the “customer”);
  - (b) the customer is, at the time when the transaction takes place, an established customer of the institution;
  - (c) the transaction consists of a withdrawal from an account maintained by the customer with the institution;
  - (d) the withdrawal is made for pay-roll purposes;
  - (e) the customer regularly withdraws, from that account, currency of a value not less than \$10,000 to pay the customer’s staff and employees; and
  - (f) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.
- (4) A significant cash transaction to which a financial institution is a party is also eligible for exemption if:
- (a) the other party to the transaction is a public authority; and
  - (b) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the authorised activities of the authority.
- (5) A significant cash transaction is also eligible for exemption if it is declared by the Minister, by notice in writing published in the *Gazette*, to be eligible for exemption for the purposes of this Act.
- (6) Where:
- (a) a person (in this subsection called the “customer” ) has closed an account with a financial institution (in this subsection called the “transferor institution” ) and transferred the money that stood to the credit of that account to an account held by the person with another financial institution (in this subsection called the “transferee institution” ); and
  - (b) a significant cash transaction is conducted through the account held with the transferee institution at a time when the customer is not an established customer of the transferee institution;

the transaction is eligible for exemption if:

- (c) the transaction would, if the customer were an established customer of the transferee institution at that time, be eligible for exemption under another subsection of this section;
- (d) transactions falling within a particular class and conducted through the account held with the transferor institution were exempt transactions immediately before that account was closed; and
- (e) either:
  - (i) the transaction is a transaction that would, had it been conducted through the account held with the transferor institution, have fallen within that class; or
  - (ii) the customer has been a customer of the transferee institution for not less than 3 months immediately preceding that time.

**Financial institution may enter transactions in exemption register**

**11. (1) Where:**

- (a) a financial institution is a party to a significant cash transaction;
- (b) the institution believes that the transaction is eligible for exemption in accordance with section 10; and
- (c) if the other party to the transaction is not a financial institution—the other party signs a written statement to the effect that:
  - (i) the party believes that the transaction is eligible for exemption in accordance with section 10; and
  - (ii) the information provided by the party to the institution in relation to the transaction is, to the best of his or her knowledge and belief, true and correct in all material particulars;

the institution may enter the transaction in its exemption register.

**(2) Where:**

- (a) a financial institution is a party to a significant cash transaction;
- (b) the institution believes that the transaction is eligible for exemption in accordance with section 10;
- (c) the institution believes that:
  - (i) the other party to the transaction is likely to enter, on a regular basis, into transactions of a similar kind with the institution; and



- (ii) all cash transactions of that kind are eligible for exemption in accordance with section 10; and
- (d) if the other party to the transaction is not a financial institution—the other party signs a written statement to the effect that:
  - (i) the party believes that the transaction and proposed transactions of that kind are eligible for exemption in accordance with section 10; and
  - (ii) the information provided by the party to the institution in relation to the transaction and in relation to proposed transactions of that kind is, to the best of his or her knowledge and belief, true and correct in all material particulars;

the institution may enter the class of transactions consisting of transactions of that kind, against the name of the other party, in its exemption register.

(3) Where a financial institution has entered a class of transactions in its exemption register against the name of a person, the Director may, by written notice to the institution, direct the institution:

- (a) to delete the entry from the exemption register; or
- (b) to amend the entry so that it ceases to apply to transactions of a kind specified in the notice.

(4) Where the Director gives a financial institution a direction under subsection (3), the institution:

- (a) shall forthwith comply with the direction;
- (b) if the direction is given under paragraph (3) (a)—shall not enter in its exemption register, against the name of the person concerned, the same or substantially the same class of transactions, or transactions falling within the same or substantially the same class of transactions, while the direction remains in force; and
- (c) if the direction is given under paragraph (3) (b)—shall not enter in its exemption register, against the name of the person concerned, transactions of the kind, or a class of transactions of the kind, specified in the notice.

(5) A financial institution that contravenes subsection (4) is guilty of an offence against this subsection punishable, upon conviction, by a fine not exceeding \$5,000.

(6) Subject to subsection (4), a financial institution may, at any time, delete an entry from, or amend an entry in, its exemption register.

**Financial institution to maintain exemption register**

12. (1) A financial institution shall maintain a register in which the institution enters transactions, and classes of transactions, for the purposes of section 11.

(2) The register shall be maintained in the approved manner and form.

(3) The register shall include the prescribed details in relation to each transaction, or class of transactions, that is entered in the register.

(4) Where:

(a) a transaction, or class of transactions, is entered in a financial institution's exemption register;

(b) the entry contains the prescribed details in relation to the transaction or class of transactions; and

(c) the entry is not in the approved manner and form;

the fact that the entry is not in the approved manner and form shall be disregarded in determining whether or not the transaction, or any transaction falling within that class, is an exempt transaction.

(5) In this section:

“prescribed details”, in relation to a transaction or class of transactions, means the details of the transaction or class of transactions that are referred to in Schedule 2.

**Director to have access to exemption registers**

13. (1) The Director may, by written notice to a financial institution, require the institution to give an authorised officer specified in the notice access to its exemption register on the day and during the hours specified in the notice.

(2) Where the Director gives a financial institution notice under subsection (1), the institution shall comply with the notice.

(3) The hours specified in a notice under subsection (1) shall be during the normal business hours of the financial institution to which the notice is given.

(4) Where an authorised officer may inspect an exemption register, the officer may also make a copy of, or take extracts from, the register.

(5) The Director may, by written notice to a financial institution, require the institution to give the Director, or an authorised officer specified in the notice, a copy of:

(a) its exemption register; or

(b) entries in its exemption register falling within the class of entries specified in the notice;

together with any other information relating to the register, or to the entries, that is specified in the notice.

(6) Where the Director gives a financial institution notice under subsection (5), the institution shall comply with the notice within 30 days after receiving the notice.

#### **Director to have access to certain records**

14. (1) The Director may, by written notice to an approved cash carrier, require the approved cash carrier to give an authorised officer specified in the notice access to such of those records as are specified in the notice (being records relating to significant cash transactions to which the approved cash carrier is a party) on the day and during the hours specified in the notice.

(2) Where the Director gives an approved cash carrier notice under subsection (1), the approved cash carrier shall comply with the notice.

(3) The hours specified in a notice under subsection (1) shall be during the normal business hours of the approved cash carrier to which the notice is given.

(4) Where an authorised officer may inspect records of an approved cash carrier, the officer may also make copies of, or take extracts from, those records.

#### **Inspection of record systems etc.**

14A. (1) The Director may, by written notice to a cash dealer, require the dealer to give the authorised officer specified in the notice access to the dealer's premises so specified on the day and during the hours so specified.

(2) The hours specified in a notice to a cash dealer must occur during the dealer's normal business hours.

(3) A cash dealer must comply with a notice given to the dealer.

(4) Where an authorised officer is given access to premises in compliance with a notice, the officer may:

(a) for the purposes of monitoring the cash dealer's compliance with section 7, inspect:

(i) any records relating to significant cash transactions to which the dealer is a party, being records kept on, or accessible from, the premises; and

(ii) any system used by the dealer at those premises for keeping such records; and

- (b) for the purposes of monitoring the cash dealer's compliance with any undertaking given by it under section 8A, inspect:
  - (i) any records relating to the verification procedures carried out by the cash dealer under subsection 20 (8), being records kept on, or accessible from, the premises; and
  - (ii) any system used by the dealer at those premises for keeping such records.

**Reports in relation to transfer of currency into or out of Australia**

15. (1) Where:

(a) a person:

- (i) transfers Australian currency or foreign currency out of Australia; or
- (ii) transfers Australian currency or foreign currency into Australia; and

(b) the amount of currency involved in the transfer is not less than \$5,000 in value;

the person, subject to subsections (2), (3) and (4), commits an offence against this subsection unless a report in respect of the transfer has been given in accordance with this section.

(2) A commercial passenger carrier need not make a report in respect of currency in the possession of the carrier's passengers.

(3) A commercial goods carrier need not make a report in respect of currency carried on behalf of another person unless the other person has disclosed to the carrier that the goods include currency.

(4) A bank need not make a report in respect of currency transferred, on behalf of the bank, by a commercial goods carrier.

(5) Where:

(a) a person (other than a bank) receives Australian currency or foreign currency transferred to the person from outside Australia; and

(b) the amount of currency received is not less than \$5,000 in value;

the person commits an offence against this subsection unless:

(c) a report in respect of the transfer of the currency into Australia had been made in accordance with subsection (1) before the transfer; or

(d) a report in respect of the receipt of currency is given in accordance with this section before the end of the period of 30 days commencing on the day of the receipt of the currency.

(6) A person who commits an offence against subsection (1) or (5) is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

(7) A report under this section shall:

- (a) be in the approved form;
- (b) contain the reportable details in relation to the matter being reported;
- (c) be signed by the person giving the report; and
- (d) be given to:
  - (i) if the transfer is effected by a person taking the currency out of, or bringing it into, Australia with the person—a customs officer; and
  - (ii) in any other case—the Director or a customs officer.

(7A) A report under this section, other than a report mentioned in paragraph (5) (c) or (d), must be given:

- (a) if subparagraph (7) (d) (i) applies—at the time the currency concerned is brought into, or taken out of, Australia; and
- (b) in any other case—at any time before the transfer takes place.

(8) Where a report under this section is given to a customs officer, the officer shall, as soon as practicable after receipt of the report, forward the report to the Director.

(9) In this section:

“reportable details”, in relation to a matter being reported, means the details of the matter that are referred to in Schedule 3.

### *Division 2—Reports of suspect transactions*

#### **Reports of suspect transactions**

16. (1) Where:

- (a) a cash dealer is a party to a transaction; and
- (b) the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction:
  - (i) may be relevant to investigation of an evasion, or attempted evasion, of a taxation law;
  - (ii) may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a Territory; or

- (iii) may be of assistance in the enforcement of the *Proceeds of Crimes Act 1987* or the regulations made under that Act;

the cash dealer, whether or not required to report the transaction under Division 1, shall, as soon as practicable after forming that suspicion:

- (c) prepare a report of the transaction; and
- (d) communicate the information contained in the report to the Director.

(2) The report shall:

- (a) be prepared in the approved form;
- (b) contain the reportable details of the transaction;
- (c) contain a statement of the grounds on which the cash dealer holds the suspicion referred to in subsection (1); and
- (d) be signed by the cash dealer.

(3) The communication shall be made to the Director:

- (a) by giving the Director a copy of the report; or
- (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.

(4) Where a cash dealer communicates information to the Director under subsection (1), the cash dealer shall, if requested to do so by:

- (a) the Director;
- (b) a relevant authority; or
- (c) an investigating officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information contained in the report;

give such further information as is specified in the request to the extent to which the cash dealer has that information.

(5) An action, suit or proceeding does not lie against:

- (a) a cash dealer; or
- (b) an officer, employee or agent of the cash dealer acting in the course of that person's employment or agency;

in relation to any action taken by the cash dealer or person pursuant to this section.

(6) In this section:

“investigating officer” means a taxation officer, an AFP member, a customs officer (other than the Comptroller-General of Customs) or a member, or member of staff, of the NCA;

**“relevant authority” means:**

- (a) the Commissioner of the Australian Federal Police; or
- (b) the Chairperson of the NCA; or
- (c) the Commissioner of Taxation; or
- (d) the Comptroller-General of Customs;

**“reportable details”**, in relation to a transaction, means the details of the transaction that are referred to in Schedule 4.

**Protection for cash dealer etc. where information communicated under section 16**

17. Where a cash dealer, or a person who is an officer, employee or agent of a cash dealer, communicates or gives information under section 16, the cash dealer or person shall be taken, for the purposes of sections 81 and 82 of the *Proceeds of Crimes Act 1987*<sup>a</sup>, not to have been in possession of that information at any time.

**PART III—ACCOUNTS**

**Information to be provided when bank account etc. opened**

18. (1) This section applies where:

- (a) on a day (in this subsection called the **“transaction day”**) after the commencement of this section, a person:
  - (i) opens an account (other than a facility or arrangement for a safety deposit box or for any other form of safe deposit) with a cash dealer; or
  - (ii) becomes a signatory of such an account with a cash dealer;

and either of the following subparagraphs applies:

- (iii) on a day (in this section called the **“infringement day”**), being the transaction day or a later day, the credit balance of the account exceeds \$1,000;
- (iv) on a day (in this section also called the **“infringement day”**), being at least 30 days after the transaction day, the aggregate of the amounts credited to the account within the last 30 days exceeds \$2,000; or
- (b) on a day after the commencement of this section (in this section also called the **“infringement day”**) a person:
  - (i) opens an account with a cash dealer, being a facility or arrangement for a safety deposit box or for any other form of safe deposit; or
  - (ii) becomes a signatory of such an account with a cash dealer.

(2) If the person (in this section called the “unverified signatory” ) has not, on or before the infringement day, given the cash dealer a statement in accordance with section 20 (in this section called a “verification statement” ) the account becomes blocked by force of this section until the unverified signatory gives the cash dealer a verification statement or the Director gives a notice under subsection 19 (2).

(2A) If, where the account is with an identifying cash dealer, the unverified signatory gives the cash dealer (whether before, on or after the infringement day) a verification statement that is not accompanied by an identification reference in accordance with section 21, the account becomes, or remains, blocked by force of this section until:

- (a) the cash dealer, having completed the verification procedures prescribed for the purposes of subsection 20 (8), verifies the identity of the signatory; or
- (b) the signatory gives the cash dealer an identification reference in accordance with section 21; or
- (c) the Director gives a notice under subsection 19 (2).

(2B) Subsection (2A) does not apply if:

- (a) the cash dealer has verified the identity of the signatory under subsection 20 (8) in respect of another account with the cash dealer; or
- (b) the cash dealer holds an identification reference in accordance with section 21 for the signatory in respect of another account with the cash dealer;

and the verification statement specifies that other account in sufficient detail for the other account to be identified.

(3) At the end of the infringement day, the cash dealer commits an offence against this subsection unless it has made reasonable efforts, on or before that day, to obtain a verification statement from the unverified signatory.

(4) If the unverified signatory makes a withdrawal from the account at any time when the account is blocked, the signatory and the cash dealer each commits an offence against this subsection.

(5) Where an account becomes blocked under subsection (2), the cash dealer commits an offence against this subsection at the end of the day after the infringement day unless it has given the Director written notice stating:

- (a) the reasons why the account became blocked; and
- (b) the name and address of the unverified signatory and sufficient details of the account for the account to be identified.



**(5A)** Where an account becomes blocked under subsection (2A), the cash dealer commits an offence against this subsection at the end of 14 days after the infringement day unless:

- (a) the account was previously blocked under subsection (2) and it had given the Director a written notice under subsection (5); or
- (b) in any other case—it has given the Director a written notice stating the matters mentioned in paragraphs (5) (a) and (b).

**(6)** An offence against subsection (3) or (4) is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

**(7)** Where:

- (a) the cash dealer gives the Director notice under subsection (5) or (5A); and
- (b) after the notice is given or sent by the cash dealer the account becomes unblocked because the unverified signatory gives the cash dealer a verification statement or an identification reference, or the cash dealer verifies the identity of the signatory under subsection 20 (8);

the cash dealer shall, within 14 days after the day on which the statement was given, give the Director written notice that the account has become unblocked for the reason specified in the notice.

**(8)** Where the account has been blocked for 12 months after the infringement day, the cash dealer shall, within 14 days after the end of that period, give the Director written notice of that fact, setting out the balance of the account and such other particulars as are prescribed.

**(9)** A cash dealer who contravenes subsection (5), (5A) (7) or (8) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

**(10)** The regulations may prescribe:

- (a) an amount instead of an amount specified in subparagraph (1) (a) (iii) or (iv); or
- (b) a period instead of the period of 30 days last referred to in subparagraph (1) (a) (iv); or

- (c) a period instead of the day first referred to in subsection (5);  
or
- (d) a period instead of the period specified in subsection (5A).

**Unblocking or forfeiture of account**

**19. (1)** The Director shall, as soon as practicable after receiving a notice under subsection 18 (8), give notice in writing to the signatory or signatories to the account at the address or addresses given to the cash dealer in relation to the account, stating the effect of this section.

**(2)** If, within 3 months after the notice, or the last of the notices, is given under subsection (1), the Director is satisfied that:

- (a) there are reasonable grounds to believe that section 18 did not apply to the account;
- (b) the unverified signatory has given a verification statement or identification reference and the account should not, as a result, be blocked; or
- (c) the unverified signatory has ceased to be a signatory of the account;

the Director shall give written notice of that fact to the cash dealer and the signatory or signatories to the account.

**(3)** If, at the end of the period referred to in subsection (2), the Director is not satisfied that paragraph (2) (a), (b) or (c) applies, the Director shall:

- (a) give written notice of that fact to the cash dealer and the signatory or signatories to the account, setting out the effect of subsections (4) and (5); and
- (b) give a copy of the notice to the Minister.

**(4)** If the Director gives a notice under subsection (3), all rights and interests in relation to the account held by the unverified signatory are forfeited to the Commonwealth, and the Minister, the Director or an officer of the Agency authorised by the Director may, on behalf of the Commonwealth, do whatever is necessary to realise those rights and interests (including closing the account).

**(5)** If:

- (a) the Director's decision under subsection (3) is set aside by a court; or
- (b) a person satisfies the court that:
  - (i) immediately before the time when subsection (4) had effect in relation to the account, the person had a beneficial interest in a right or interest in relation to the account held by the unverified signatory; and

- (ii) an amount standing to the credit of the account immediately before that time had not been derived from unlawful activities;

the court may make such orders as it thinks fit in relation to that amount, including directions to the Commonwealth to make restitution of so much of that amount as has been recovered by the Commonwealth under subsection (4).

(6) An expression used in this section has the same meaning as in section 18.

#### **Form of statement**

**20. (1)** A statement in relation to an account with a cash dealer shall:

- (a) specify the account in sufficient detail for the account to be identified;
- (b) specify whether the account is in:
  - (i) the name of a natural person;
  - (ii) the name of a body corporate;
  - (iii) a business name; or
  - (iv) the name of an unincorporated association;
- (c) specify whether the account is held in trust or not; and
- (d) be signed by the person making the statement.

(2) Subject to this section, a statement in relation to an account shall also:

- (a) set out the full name and residential address of the signatory or each signatory to the account; and
- (b) be accompanied by an identification reference for the signatory or each signatory to the account in accordance with section 21 and:
  - (i) if the account is in the name of a body corporate (other than as trustee)—a copy of the certificate of incorporation (if any) of the body corporate;
  - (ii) if the account is in a business name—a copy of the certificate of registration (if any) of the business name or, if registration has been applied for but not yet obtained, a copy of the application; or
  - (iii) if the account is in the name of an unincorporated association—a copy of the instrument or instruments under which the signatories to the account are authorised to sign.

**(3)** Subject to this section, a statement in relation to a person who becomes a signatory to an account shall also:

- (a)** set out the full name and residential address of that person; and
- (b)** be accompanied by an identification reference for that person in accordance with section 21.

**(4)** A statement in relation to an account with a cash dealer need not be accompanied by an identification reference for a signatory to the account if:

- (a)** the cash dealer holds an identification reference for the signatory in respect of another account with the cash dealer; and
- (b)** the statement specifies that other account in sufficient detail for that other account to be identified.

**(4A)** A statement in relation to an account with a cash dealer need not be accompanied by an identification reference for a signatory to the account if the cash dealer has verified the identity of the signatory under subsection (8) in respect of another account with the cash dealer.

**(5) Where:**

- (a)** a statement under this section in relation to an account must set out the full name of a signatory to the account; and
- (b)** the signatory is commonly known by a name or names different from the name used by the signatory in relation to the account;

the statement shall also set out the other name or names.

**(6)** Subject to the regulations, a statement in relation to an account that is held in trust shall also set out the name of each beneficiary under the trust.

**(7)** A statement in relation to an account with an identifying cash dealer need not be accompanied by an identification reference under paragraph (2) (b) or (3) (b).

**(8)** Subject to subsection (9), where a statement of the kind mentioned in subsection (7) is not accompanied by an identification reference for a signatory to the account concerned, the cash dealer must carry out the prescribed verification procedure for the purpose of identifying the signatory.

**(9)** Where a statement of the kind mentioned in subsection (7) is not accompanied by an identification reference for a signatory to the account concerned but an identification reference for that signatory is

subsequently given to the cash dealer, the cash dealer need not carry out, or continue to carry out, the verification procedure mentioned in subsection (8).

#### **Identification references**

**21. (1)** An identification reference for a signatory to an account is a written reference by an acceptable referee, signed by the referee and setting out the name to be used by the signatory in relation to the account and stating that:

- (a) the referee has known the signatory for the period specified in the reference;
- (b) during the whole of that period, or for so much of that period as is specified in the reference, the signatory has been commonly known by that name; and
- (c) the referee has examined:
  - (i) a specified primary identification document for the signatory in that name;
  - (ii) a specified secondary identification document for the signatory in that name and a specified primary identification document for the signatory in a former name of the person; or
  - (iii) only a specified secondary identification document for the signatory in that name.

**(2)** An identification reference for a person by an acceptable referee shall also set out:

- (a) the name, address and occupation of the referee and the basis on which the referee claims to be an acceptable referee;
- (b) if the reference states that the referee examined a primary identification document for the person in a name different from the name to be used by the person in relation to the account—the explanation that the person gave the referee for the difference in names;
- (c) if the reference states that the referee examined only a secondary identification document for the person—the explanation that the person gave the referee for the failure to produce a primary identification document; and
- (d) the required details of the identification document or documents examined by the referee.

**(3)** An identification reference for a person by an acceptable referee shall be signed by the person in the presence of the referee and shall contain a statement by the referee to the effect that the reference was so signed.

**(3A)** An acceptable referee, or any other person, must not, knowingly or recklessly:

- (a) make a statement in an identification reference that is false or misleading in a material particular; or
- (b) omit from an identification reference any matter or thing without which the reference is misleading in a material particular.

Penalty: \$10,000 or imprisonment for 4 years, or both.

**(4)** For the purposes of this Act, a failure by a person to produce a primary identification document shall not be taken to be sufficiently explained merely by the assertion that a primary identification document is not presently available to the person if the person could obtain a primary identification document within a reasonable time if the person took reasonable steps to obtain it.

**(5)** Nothing in subsection (4) shall be taken to require a person to apply for the issue of a citizenship certificate or a passport.

**Notice to Director if no primary identification document examined**

**22. (1) Where:**

- (a) a statement in relation to an account is given to a cash dealer; and
- (b) an identification reference for the signatory or a signatory to the account states that the referee examined only a secondary identification document for the signatory;

the cash dealer shall give the Director written notice:

- (c) setting out sufficient details of the account for the account to be identified;
- (d) setting out the name used by the signatory in relation to the account; and
- (e) stating that the identification reference for the signatory was not supported by a primary identification document.

**(2)** A cash dealer who contravenes subsection (1) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

**Cash dealer to keep documents**

**23. (1)** Where a statement made in accordance with section 20 is given to a cash dealer in relation to an account, the cash dealer shall retain the statement (including any documents that accompanied the statement) for the period of 7 years after the day on which the account is closed.

**(1A)** Where a cash dealer makes or obtains a record of any information in the course of carrying out a verification procedure under subsection 20 (8), the cash dealer must retain the record for the period of 7 years after the day on which the relevant account is closed.

**(2)** Where a cash dealer makes a record under subsection 24 (5) of a disclosure by a person, the cash dealer shall:

- (a)** if the cash dealer holds an identification reference for the person at the time when the record is made—retain the record, together with the identification reference, for the period for which the identification reference must be retained;
- (b)** if the cash dealer does not hold an identification reference for the person at the time when the record is made but is given an identification reference for the person within the period of 7 years commencing on the day on which the record is made—retain the record, together with the identification reference, for the period for which the identification reference must be retained;
- (ba)** if the cash dealer does not hold an identification reference for the person at the time when the record is made and the cash dealer (whether before or after that time) carries out a verification procedure in relation to the person under subsection 20 (8)—retain the record, together with any record of information made or obtained in the course of carrying out the verification procedure, for the period for which the record of information must be retained; or
- (c)** if the cash dealer does not hold an identification reference for the person at any time during the period of 7 years commencing on the day on which the record is made and paragraph (ba) does not apply—retain the record until the end of that period.

**(3)** A cash dealer who contravenes subsection (1), (1A) or (2) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a)** if the offender is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or

- (b) if the offender is a body corporate—a fine not exceeding \$10,000.
- (4) Where:
  - (a) a statement in relation to an account with a cash dealer is accompanied by an identification reference for the signatory or a signatory to the account; and
  - (b) that account is identified, under subsection 20 (4) or (8), in a statement in relation to another account with the cash dealer;

subsection (1) applies as if the reference to the day on which the account is closed were a reference to the day on which the last of those accounts is closed.

**(4A) Where:**

- (a) a cash dealer makes or obtains a record of any information in the course of carrying out a verification procedure under subsection 20 (8); and
- (b) the relevant account is identified, under subsection 20 (4) or (8), in a statement in relation to another account with the cash dealer;

subsection (1A) applies as if the reference to the day on which the account is closed were a reference to the day on which the last of those accounts is closed.

(5) A cash dealer required to retain documents under subsection (1), (1A) or (2) shall retain and store them in a way that makes retrieval of the documents reasonably practical.

(6) Subsections (1), (1A) and (2) do not limit any other obligation of a cash dealer to retain documents.

(7) Where a cash dealer is required by law to release a document to which subsection (1), (1A) or (2) applies before the end of the period referred to in that subsection, the cash dealer shall retain a complete copy of the document until the period has ended or the document is returned, whichever occurs first.

(8) The cash dealer shall maintain a register of documents released under subsection (7).

(9) A cash dealer who contravenes subsection (7) or (8) is guilty of an offence against this section punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$10,000.



**Opening bank account etc. in false name**

**24. (1)** A person shall not open an account with a cash dealer in a false name.

**(2)** A person shall not operate an account with a cash dealer in a false name.

**(3)** Where a person is commonly known by 2 or more different names, the person shall not use one of those names in opening an account with a cash dealer unless the person has previously disclosed the other name or names to the cash dealer.

**(4)** Where a person is commonly known by 2 or more different names, the person shall not use one of those names in operating an account with a cash dealer unless the person has previously disclosed the other name or names to the cash dealer.

**(5)** Where a person using a particular name in dealings with a cash dealer discloses to the dealer a different name or different names by which the person is commonly known, the dealer shall make a record of the disclosure and shall, upon request in writing from the Director, give the Director a copy of that record.

**(6)** A person who contravenes subsection (1), (2), (3), (4) or (5) is guilty of an offence against this subsection punishable, upon conviction, by:

**(a)** if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or

**(b)** if the offender is a body corporate—a fine not exceeding \$25,000.

**(7)** For the purposes of this section:

**(a)** a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and

**(b)** a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the cash dealer concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known.

## PART IV—SECRECY AND ACCESS

### Secrecy

25. (1) This section applies to:

- (a) the Director;
- (b) a member of the staff of the Agency;
- (ba) a person engaged under section 40A;
- (c) a customs officer; and
- (d) a police officer.

(2) A person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act, or for the purposes of the performance or exercise of the functions or power of the Director or otherwise in connection with the performance of the person's duties under this Act, and either while the person is or after the person ceases to be a person to whom this section applies:

- (a) make a record of any information; or
- (b) divulge or communicate to any person any information;

being information obtained by the person in the course of performing duties under this Act.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) A person to whom this section applies shall not be required:

- (a) to produce in a court any document that has come into the custody or control of the person in the course of, or by reason of, the performance of duties under this Act; or
- (b) to divulge or communicate to any court any matter or thing that has come to the notice of the person in the performance of duties under this Act;

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

### Special provisions in relation to reports of suspect transactions

26. (1) Notwithstanding anything in any other section of this Act or in any other law (other than a law passed after the commencement of this section that expressly excludes the operation of this subsection), where information is communicated to an investigating officer under subsection 16 (4), the officer may communicate the information to:

- (a) where the officer is a taxation officer—the Commissioner of Taxation; or
- (b) where the officer is an AFP member—the Commissioner of the Australian Federal Police; or

- (c) where the officer is a member, or a member of staff, of the NCA—the Chairperson of the NCA; or
- (d) where the officer is a customs officer—the Comptroller-General of Customs.

(2) Notwithstanding anything in any other section of this Act or in any other law (other than a law passed after the commencement of this section that expressly excludes the operation of this subsection), where information is communicated to a relevant authority under subsection 16 (4) or under subsection (1) of this section, the authority may communicate the information to any other relevant authority.

(3) In this section:

“investigating officer” has the same meaning as in section 16;  
“relevant authority” has the same meaning as in section 16.

#### **Access to CTR information**

27. (1) Notwithstanding anything in section 25:

- (a) the Commissioner of Taxation and any taxation officer is entitled to access to CTR information;
- (b) the Director may, in writing, authorise a law enforcement agency to have access to CTR information for the purposes of performing its functions; and
- (c) the Director may, in writing, authorise the Australian Customs Service to have access to CTR information for the purposes of performing its functions.

(2) An authorisation under paragraph (1) (b) or (c) shall specify the CTR information, or the class of CTR information, to which the law enforcement agency or the Australian Customs Service is to have access.

(3) Where a law enforcement agency or the Australian Customs Service is authorised under paragraph (1) (b) or (c) to have access to CTR information, any law enforcement officer performing duties in or for the law enforcement agency or any customs officer, as the case requires, is entitled to access to that CTR information in accordance with the authorisation.

(4) Section 3C of the *Taxation Administration Act 1953* applies in relation to information acquired by a taxation officer under or for the purposes of this Act as if a reference in that section to the *Taxation Administration Act 1953* included a reference to this Act.

(5) Subject to subsections (7), (9) and (10), where the NCA obtains CTR information:

- (a) the NCA may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Inter-Governmental Committee in a report by the NCA under subsection 59 (4) of the NCA Act;
- (b) the NCA may divulge the information in the course of a hearing before the NCA;
- (c) the NCA may communicate the information to a law enforcement officer for the purposes of, or in connection with, the performance of the officer's duties;
- (d) subject to paragraphs (a), (b) and (c), the NCA shall not divulge or communicate the information; and
- (e) a person (not being a law enforcement officer) to whom information has been communicated in accordance with paragraph (b) shall not make a record of the information, or divulge or communicate the information, in any circumstances.

(6) Subject to subsection (7), (9) and (10), where a person who is a law enforcement officer or customs officer obtains CTR information:

- (a) the person shall not, while he or she is a law enforcement officer or customs officer, divulge or communicate the information except to:
  - (i) the NCA for the purposes of, or in connection with, the performance of its functions; or
  - (ii) a law enforcement officer or customs officer for the purposes of, or in connection with, the performance of the officer's duties; and
- (b) the person shall not, when he or she is no longer a law enforcement officer or customs officer, make a record of the information, or divulge or communicate the information, in any circumstances.

(7) Nothing in subsection (5) or (6) prevents:

- (a) the communication of CTR information to a person for the purposes of, or in connection with, legal proceedings or proposed or possible legal proceedings; or
- (b) the communication of CTR information in the course of proceedings before a court.

(8) A person to whom CTR information has been communicated in accordance with paragraph (7) (a) shall not make a record of the information, or divulge or communicate the information, except as permitted by this section.

**(9)** Nothing in subsection (5) or (6) prevents the communication of CTR information in respect of the affairs of a person by the NCA, a law enforcement officer or a customs officer to:

- (a) if the person is not a company—the person;
- (b) if the person is a company:
  - (i) any person who is, or has been, a director or officer of the company; or
  - (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished on behalf of the company; or
- (c) the person who furnished the CTR information.

**(10)** Where subsection (9) permits the communication of CTR information to a person, nothing in subsection (5) or (6) prevents the communication of the CTR information to a barrister or solicitor appearing before the NCA for the purpose of representing the person.

**(11)** Where CTR information is communicated to a person in accordance with subsection (9) or (10), being information that was not furnished by the person and does not relate to the affairs of the person, the person shall not make a record of the information, or divulge or communicate the information, in any circumstances.

**(12)** A person who obtains CTR information shall not be required:

- (a) to produce in a court any document containing CTR information;
- (b) to divulge or communicate to any court any CTR information;

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

**(13)** A person who makes a record of, or divulges or communicates, information in contravention of a provision of this section commits an offence against this section punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

**(14)** A reference in this section to a law enforcement agency is a reference to:

- (a) the NCA; and
- (b) the Australian Federal Police; and
- (c) the Australian Securities Commission.

**(15)** A reference in this section to a law enforcement officer is a reference to:

- (a) a member or acting member of the NCA;
- (b) a member of the staff of the NCA;

- (c) a barrister or solicitor appointed by the Attorney-General to assist the NCA;
- (d) a person assisting a barrister or solicitor so appointed;
- (e) the Commissioner of the Australian Federal Police;
- (f) a member or special member of the Australian Federal Police;
- (g) an officer, employee or other person under the control of the Commissioner of the Australian Federal Police;
- (h) a member or acting member of the Australian Securities Commission; and
- (j) a member of the staff of the Australian Securities Commission.

(16) Without prejudice to its effect by virtue of subsection (14), this section has effect as if a reference in this section to a law enforcement agency included a reference to the Police Force of a State and to the New South Wales Crime Commission.

(17) Without prejudice to its effect by virtue of subsection (15), this section has effect as if a reference in this section to a law enforcement officer included a reference to:

- (a) the commanding officer of the Police Force of a State;
- (b) a member of a Police Force of a State;
- (c) an officer, employee or other person under the control of the commanding officer of the Police Force of a State;
- (d) the Chairperson or acting Chairperson of the New South Wales Crime Commission;
- (e) a member or acting member of that Commission; and
- (f) a member of the staff of that Commission.

## **PART V—ENFORCEMENT**

### **Failure to provide information**

**28. (1)** A cash dealer commits an offence against this section if the cash dealer refuses or fails:

- (a) to communicate information to the Director when and as required under Part II or III; or
- (b) to comply with a notice under subsection 14A (1).

**(2)** A financial institution commits an offence against this section if the institution:

- (a) fails to maintain an exemption register as required under Division 1 of Part II; or
- (b) refuses or fails to comply with a notice under subsection 13 (1) or (5).

- (3) A person who commits an offence against this section is punishable, upon conviction, by:
- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
  - (b) if the offender is a body corporate—a fine not exceeding \$25,000.

**False or misleading information**

29. (1) A cash dealer shall not, in communicating information to the Director as required under Part II or III, knowingly:
- (a) make a statement that is false or misleading in a material particular; or
  - (b) omit from a statement any matter or thing without which the statement is misleading in a material particular.
- (2) A financial institution shall not, in maintaining the institution's exemption register as required under Division 1 of Part II, knowingly:
- (a) make a statement that is false or misleading in a material particular; or
  - (b) omit from a statement any matter or thing without which the statement is misleading in a material particular.
- (3) A person shall not knowingly:
- (a) make a report for the purposes of section 15, a statement for the purposes of section 18 or a declaration for the purposes of section 33, that is false or misleading in a material particular; or
  - (b) omit from such a report, statement or declaration any matter or thing without which the report, statement or declaration is misleading in a material particular.
- (4) A person shall not make a statement, either orally or in writing, or present a document that is, to the person's knowledge, false or misleading in a material particular and is capable of:
- (aa) misleading an identifying cash dealer in the carrying out of a verification procedure under subsection 20 (8);
  - (a) being used for the purposes of inducing a financial institution to enter a transaction or a class of transactions in the institution's exemption register;
  - (b) causing a cash dealer to make a report of a cash transaction that is false or misleading in a material particular; or
  - (c) causing a carrier not to make a report under section 15.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

#### **Incomplete information**

30. (1) A cash dealer commits an offence against this section if the dealer, in communicating information to the Director in relation to a transaction as required under Part II, knowingly does so in such a way that the information is incomplete in relation to the transaction.

(2) A financial institution commits an offence against this section if the institution, in maintaining the institution's exemption register as required under Division 1 of Part II, knowingly does so in such a way that the register is incomplete.

(3) A person who commits an offence against this section is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

#### **Offence to conduct transactions so as to avoid reporting requirements**

31. (1) A person commits an offence against this section if:

- (a) the person is a party to 2 or more non-reportable cash transactions; and
- (b) having regard to:
  - (i) the manner and form in which the transactions were conducted, including, without limiting the generality of this, all or any of the following:
    - (A) the value of the currency involved in each transaction;
    - (B) the aggregated value of the transactions;
    - (C) the period of time over which the transactions took place;
    - (D) the interval of time between any of the transactions;
    - (E) the locations at which the transactions took place;



- (ii) any explanation made by the person as to the manner or form in which the transactions were conducted;

it would be reasonable to conclude that the person conducted the transactions in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that the currency involved in the transactions was transferred in a manner and form that:

- (iii) would not give rise to a significant cash transaction;  
or
- (iv) would give rise to exempt cash transactions.

**(2) A person commits an offence against this section if:**

- (a) the person conducts 2 or more non-reportable transfers of currency; and
- (b) having regard to:
  - (i) the manner and form in which the transfers were conducted, including, without limiting the generality of this, all or any of the following:
    - (A) the value of the currency involved in each transfer;
    - (B) the aggregated value of the currency involved in the transfers;
    - (C) the period of time over which the transfers occurred;
    - (D) the interval of time between any of the transfers;
    - (E) the locations at which the transfers were initiated or conducted; and
  - (ii) any explanation made by the person as to the manner or form in which the transfers were conducted;

it would be reasonable to conclude that the person conducted the transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the currency involved in the transfers would be made under section 15.

**(3) A person who commits an offence against this section is punishable, upon conviction, by:**

- (a) if the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

### **Injunction**

**32. (1)** Where, on the application of the Director, a prescribed court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

- (a) a contravention of Part II or III or this Part;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision;

the court may grant an injunction in such terms as the court determines to be appropriate.

**(2)** Where, in the opinion of a prescribed court, it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

**(3)** The court may rescind or vary an injunction granted under subsection (1) or (2).

**(4)** The power of a prescribed court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

**(5)** The power of a prescribed court to grant an injunction requiring a person to do an act or thing may be exercised:

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing.

**(6)** In this section:

“prescribed court” means the High Court of Australia or the Federal Court of Australia.

**Questioning and search powers**

**33. (1)** Any person who is about to leave Australia shall, if requested to do so by an officer:

- (a) declare whether or not the person has with him or her any Australian currency or foreign currency;
- (b) declare the amount of any Australian currency or foreign currency that the person has with him or her;
- (c) declare whether or not, to the best of the person's knowledge and belief, a report under section 15 has been given in respect of any Australian currency or foreign currency that the person has with him or her; and
- (d) produce to the officer any Australian currency or foreign currency that the person has with him or her.

**(2)** Any person who arrives in Australia shall, if requested to do so by an officer:

- (a) declare whether or not the person has with him or her any Australian currency or foreign currency;
- (b) declare the amount of any Australian currency or foreign currency that the person has with him or her;
- (c) declare whether or not, to the best of the person's knowledge and belief, a report under section 15 has been given in respect of any Australian currency or foreign currency that the person has with him or her; and
- (d) produce to the officer any Australian or foreign currency that the person has with him or her.

**(3)** An officer may, with such assistance as is reasonable and necessary, examine an article which a person has with him or her if the person:

- (a) is about to leave Australia or has arrived in Australia; or
- (b) is about to board or leave, or has boarded or left, any ship or aircraft;

for the purpose of finding out whether the person has with him or her any currency in respect of which a report under section 15 is required.

**(3A)** A police officer or a customs officer (being an officer in respect of whom a declaration under section 196 of the *Customs Act 1901* is in force) may, with such assistance as is reasonable and necessary, search a person if:

- (a) the person is about to leave Australia, or has arrived in Australia, or the person is about to board or leave, or has boarded or left, any ship or aircraft; and

- (b) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, currency in respect of which a report under section 15 is required;

for the purpose of finding out whether the person has with him or her any such currency.

(4) Where an officer has reasonable grounds to believe that currency found in the course of an examination or search under subsection (3) or (3A) may afford evidence as to the commission of an offence against section 15, the officer may seize the currency.

(5) A person shall not be searched under subsection (3A) except by a person of the same sex.

(6) An officer, and any person assisting an officer, may board any ship or aircraft for the purpose of exercising the powers conferred by subsection (1), (2), (3), (3A) or (4).

(7) An officer may, with such assistance as is reasonable and necessary, board any ship or aircraft and examine or search the ship or aircraft and any goods found on the ship or aircraft for the purpose of ascertaining whether there is on board the ship or aircraft any currency in respect of which a report under section 15 is required.

(7A) An officer may, with such assistance as is reasonable and necessary, go onto or enter any prescribed place and examine the place, and any goods found at or in it, for the purpose of finding out whether there is at or in the place, or the goods, any currency in respect of which a report under section 15 is required.

(8) Where an officer has reasonable grounds to believe that currency found in the course of an examination or search under subsection (7) or (7A) may afford evidence as to the commission of an offence against section 15, the officer may seize the currency.

(9) A person who contravenes subsection (1) or (2) commits an offence against this subsection punishable, upon conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(10) In this section:

“offence against section 15” includes:

- (a) an offence against section 6, 7 or 7A of the *Crimes Act 1914* in relation to an offence against section 15; and
- (b) an offence against subsection 86 (1) of the *Crimes Act 1914* by virtue of paragraph (a) of that subsection, being an offence in relation to an offence against section 15;

**“officer”** means:

- (a) a police officer; or
- (b) a customs officer;

**“prescribed place”** means:

- (a) a place for the examination of goods on landing, being a place appointed under section 17 of the *Customs Act 1901*; or
- (b) a warehouse in respect of which a warehouse licence, within the meaning of Part V of that Act, is in force; or
- (c) a port, airport, wharf or boarding station appointed under section 15 of that Act.

#### **Arrest without warrant**

**33A. (1)** Where an officer has reasonable grounds to believe that a person is guilty of an offence against section 15, the officer may arrest the person without warrant.

**(2)** Where an officer has reasonable grounds to believe that a person has assaulted any officer in the execution of that officer's duties, the first-mentioned officer may arrest the person without warrant.

**(3)** A person must not resist, obstruct or prevent the arrest of any person under this section.

Penalty: \$1,000.

**(4)** Where a person is arrested under this section, sections 212 and 213 of the *Customs Act 1901* apply as though the person had been arrested under section 210 of that Act.

**(5)** In this section:

**“offence against section 15”** and **“officer”** have the same respective meanings as in section 33.

#### **Conduct by directors, servants or agents**

**34. (1)** Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

**(2)** Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate:

- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the reasons for the intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

## PART VI—ADMINISTRATION

### Establishment of Agency

35. (1) There is established by this Act an agency by the name of the Cash Transaction Reports Agency.

(2) The Agency consists of the Director and the staff referred to in section 40.

**Director**

36. The Minister may, in writing, appoint a person to be the Director of the Agency.

**Acting Director**

37. (1) The Minister may, in writing, appoint a person to act as Director of the Agency:

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Director is absent from Australia or is, for any reason, unable to perform the duties of the office of Director.

(2) An appointment to act as Director of the Agency may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed under subsection (1) to act during a vacancy in the office of Director shall not continue so to act for more than 12 months.

(4) Where a person is acting as Director otherwise than by reason of a vacancy in the office of Director and the office becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.

(5) While a person is acting as Director, that person may exercise all the powers, and shall perform all the duties, of the Director.

(6) Anything done by or in relation to a person purporting to act under subsection (5) is not invalid on the grounds that:

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

**Functions of Director**

38. (1) The functions of the Director are:

- (a) to perform the functions and exercise the powers that the Director is required or permitted to perform or exercise under this Act;

- (b) to collect, retain, compile, analyse and disseminate CTR information;
  - (c) to monitor entries made in financial institutions' exemption registers; and
  - (d) to provide advice and assistance to the Commissioner in relation to CTR information.
- (2) In performing the Director's functions, the Director shall:
- (a) consult with cash dealers, or the representatives of cash dealers, in relation to the performance of the Director's functions; and
  - (b) take into account any comments made in the course of consultations referred to in paragraph (a).
- (3) In performing the Director's functions, the Director shall have regard to the desirability of:
- (a) avoiding duplication in the analysis of information by the Director and the Commissioner;
  - (b) attaining compatibility and integration of CTR information and other information held by the Commissioner;
  - (c) maximising the utilisation of CTR information for taxation purposes; and
  - (d) consulting with the Commissioner in relation to the performance of the Director's functions.
- (4) In performing the Director's functions, the Director shall:
- (a) take into account any comments made by the Commissioner in the course of consultations referred to in subsection (3); and
  - (b) carry out, as far as is practicable, analysis of CTR information at the request of the Commissioner.

#### **Delegation**

39. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Director, delegate to a member of the staff of the Agency all or any of the Director's powers under this Act or the regulations, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Director.

(3) A delegation under this section does not prevent the exercise of a power by the Director.



**Staff**

40. The staff of the Agency shall be persons appointed or employed under the *Public Service Act 1922*.

**Consultants**

40A. (1) The Director may engage, under written agreements, persons having suitable qualifications and experience to perform services as consultants to the Agency.

(2) The terms and conditions of engagement of persons mentioned in subsection (1) are such as the Director determines from time to time.

**PART VII—MISCELLANEOUS****Act not to limit Commissioner's powers**

41. Nothing in this Act limits any power that the Commissioner has, under any other law, to obtain information.

***Administrative Decisions (Judicial Review) Act 1977* not to apply to decisions under this Act**

42. The *Administrative Decisions (Judicial Review) Act 1977* does not apply to decisions under this Act, other than a decision by the Director under subsection 19 (2) or (3).

**Amendment of Schedules by regulations**

42A. The regulations may amend Schedule 1, 2, 3 or 4:

- (a) by varying or omitting any of the details referred to in the Schedule or any other matter contained in the Schedule; and
- (b) by inserting new details, or other matter, in the Schedule.

**Regulations**

43. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
-

**SCHEDULE 1**

Subsection 7 (4)

**REPORTABLE DETAILS FOR PURPOSES OF SECTION 7****PART A**

The reportable details of a significant cash transaction, to which a cash dealer is a party, that:

- (a) must be included in a report made to the Director under paragraph 7 (3) (a); or
- (b) may be included in a report if the Director has approved, under paragraph 7 (3) (b), reporting by the dealer electronically;

are:

1. In relation to the cash dealer:
    - (a) the name, identifying number and business of the cash dealer; and
    - (b) the name and address of the branch of the cash dealer at which the transaction was conducted.
  2. The nature of the transaction.
  3. The date of the transaction.
  4. For each person conducting the transaction with the cash dealer:
    - (a) the name of the person; and
    - (b) the business or residential address of the person; and
    - (c) the occupation, business or principal activity of the person; and
    - (d) the date of birth of the person; and
    - (e) the signature of the person; and
    - (f) the method used by the cash dealer to verify the identity of the person; and
    - (g) whether the transaction was conducted on behalf of the person or on behalf of another person.
  5. For any person on whose behalf the transaction was conducted:
    - (a) the name of the person; and
    - (b) the address of the person; and
    - (c) the occupation of the person (or, where appropriate, the business or principal activity of the person).
  6. For any cheque or banker's draft involved in the transaction:
    - (a) the name of the drawer of the cheque or banker's draft; and
    - (b) the name of the payee, the favouree or the beneficiary of the cheque or banker's draft (if any); and
    - (c) the name and branch of the financial institution or foreign financial institution on which the cheque or banker's draft was drawn, and the country in which the branch is located.
  7. For any transfer of currency, within a financial institution or from a financial institution or foreign financial institution to another financial institution or foreign financial institution, that forms part of the transaction:
    - (a) the name of the payee, the favouree or the beneficiary of the transfer (if any); and
    - (b) the name and branch of the financial institution or foreign financial institution involved in the transfer, and the country in which the branch is located.
  8. For the purchase or sale of any security that forms part of the transaction:
    - (a) the name of the payee, the favouree or the beneficiary of the security (if any); and
    - (b) the name and branch of the financial institution or foreign financial institution involved in the purchase or sale, and the country in which the branch is located.
  9. The type and identifying number of any account with a cash dealer that is affected by the transaction.
  10. The total amount of currency involved in the transaction.
  11. The total monetary amount of the transaction.
  12. The foreign currency involved in the transaction (if any).
-

**SCHEDULE 1—continued****PART B**

If:

- (a) the Director has approved, under paragraph 7 (3) (b), reporting by a cash dealer electronically; and
- (b) the cash dealer chooses to report the details referred to in this Part instead of the details referred to in Part A;

the reportable details of a significant cash transaction, to which the dealer is a party, that are to be included in the report, are:

1. In relation to the cash dealer:
  - (a) the name, identifying number and business of the cash dealer; and
  - (b) the name and address of the branch of the cash dealer at which the transaction was conducted.
2. The nature of the transaction.
3. The date of the transaction.
4. For each person conducting the transaction with the cash dealer:
  - (a) the name of the person; and
  - (b) the date of birth of the person; and
  - (c) the method used by the cash dealer to verify the identity of the person; and
  - (d) whether the person is a customer of the cash dealer who carries on a business and, if so, the industry code for that business that is published by the Australian Bureau of Statistics in the publication entitled "Australian Standard Industrial Classification", as in force on 1 July 1990.
5. For any person on whose behalf the transaction was conducted:
  - (a) the name of the person; and
  - (b) the business or residential address of the person; and
  - (c) the occupation, business or principal activity of the person; and
  - (d) whether the person is a customer of the cash dealer who carries on a business and, if so, the industry code for that business that is published by the Australian Bureau of Statistics in the publication entitled "Australian Standard Industrial Classification", as in force on 1 July 1990.
6. The type and identifying number of any account with a cash dealer that is affected by the transaction.
7. The total amount of currency involved in the transaction.
8. The total monetary amount of the transaction.

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**SCHEDULE 2**

Subsection 12 (5)

**PRESCRIBED DETAILS FOR PURPOSES OF SECTION 12**

For the purposes of section 12, the following are the prescribed details of a transaction, or class of transactions, conducted by a person with a financial institution:

1. For each person conducting the transaction with the financial institution:
  - (a) the name of the person; and
  - (b) the business or residential address of the person; and
  - (c) the occupation, business or principal activity of the person.
2. A statement whether the exemption covers deposits, withdrawals or both.
3. The total amount of currency involved in the transaction or the range of amounts of currency involved in the class of transactions.

## SCHEDULE 2—continued

- 3A. The total monetary amount of the transaction or the range of monetary amounts of the class of transactions.
- 3B. The amount and types of any foreign currency involved in a transaction.
- 4. The date of the transaction or the period during which the class of transactions is to be exempt.
- 5. The name of, and the office held by, the person making the decision to grant or amend the exemption.

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## SCHEDULE 3

Subsection 15 (9)

### REPORTABLE DETAILS FOR PURPOSES OF SECTION 15

For the purposes of section 15, the following are the reportable details of a transfer or receipt of currency:

- 1. The amount of currency
- 2. Whether the currency is Australian currency or foreign currency and, if foreign currency, which foreign currency
- 3. If the person making the report is to carry the currency into or out of Australia:
  - (a) the name, address, date of birth and occupation (or, where appropriate, the business or principal activity) of the person;
  - (aa) the passport number and country of issue of the passport or passports held by the person;
  - (b) if the person is not an Australian resident—that person's address while in Australia;
  - (c) the name of the city in Australia from which the person is to depart or at which the person will arrive;
  - (d) the name of the foreign country and the city in that country from which the currency is being imported or to which the currency is being exported;
  - (e) if the person is to carry the currency on behalf of another person:
    - (i) the name, address and occupation (or, where appropriate, business or principal activity) of that person; and
    - (ii) the name and address, and occupation, business or principal activity of the person to whom the currency is to be delivered;
  - (f) the day on which the person is to enter or leave Australia and the number of the flight or the name of the vessel on which the person is entering or leaving.
- 4. If the person making the report is mailing or shipping the currency or receiving currency mailed or shipped:
  - (a) the name, address and occupation (or, where appropriate, business or principal activity) of the person;
  - (aa) the method by which the person received the currency or by which the person is to send the currency out of Australia; and
  - (b) the place of despatch and the place of receipt;
  - (c) the name, address, date of birth and occupation (or, where appropriate, business or principal activity) of the recipient or sender; and
  - (d) if the person is mailing, shipping or receiving the currency on behalf of another person:
    - (i) the name, address and occupation (or, where appropriate, business or principal activity) of the other person; and
    - (ii) the name and address, and occupation, business or principal activity of the person to whom the currency is to be delivered;
  - (e) if the person is mailing or shipping the currency—the day on which the mailing or shipping takes place and the day on which the currency is to enter or leave Australia;

**SCHEDULE 3—continued**

- (f) if the person is receiving currency mailed or shipped—the day on which the person receives the currency and, if the person knows, the day on which the currency entered Australia
- 5. If a person is to carry the currency out of Australia—the name and address of that person.

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**SCHEDULE 4**

Subsection 16 (6)

**REPORTABLE DETAILS FOR PURPOSES OF SECTION 16**

For the purposes of section 16, the following are the reportable details of a transaction to which a cash dealer is a party:

- 1. The name, address and business of the cash dealer
  - 2. The nature of the transaction
  - 3. The date of the transaction
  - 4. The place where the transaction was conducted by the cash dealer
  - 5. The names of, or other means of identifying, the persons conducting the transaction on behalf of the cash dealer
  - 6. The identity of any other cash dealer known by the person preparing the report to be involved in the transaction
  - 7. Details, so far as known to the person preparing the report, of the identity of:
    - (a) each person conducting the transaction other than the persons referred to in item 5; and
    - (b) any person on whose behalf the transaction was so conducted; including;
    - (c) the name; and
    - (d) the business or residential address; and
    - (e) the postal address (if different from the address referred to in paragraph (d));
    - (f) the occupation or, where appropriate, the business or principal activity; and
    - (g) the date of birth of each person to whom paragraph (a) applies
  - 8. The methods used to ascertain and verify the details referred to in item 7
  - 9. If a cheque is part of the transaction;
    - (a) the name of the drawer of the cheque; and
    - (b) the name of the payee of the cheque; and
    - (c) if the payee of the cheque is not the beneficiary of the amount of the cheque—the name of the beneficiary;so far as known to the person preparing the report
  - 10. The type, and identifying number, of any account known by the person preparing the report to be affected by the transaction
  - 11. The amounts involved in the transaction
  - 12. The beneficiary of those amounts, so far as known to the person preparing the report
  - 13. The currencies involved in the transaction
  - 14. The name of the person preparing the report
  - 15. The title of the office of the person preparing the report
-

## NOTE

1. The *Cash Transaction Reports Act 1988* as shown in this reprint comprises Act No. 64, 1988 amended as indicated in the Tables below.  
The *Cash Transaction Reports Act 1988* was amended by the *Cash Transaction Reports Regulations*. The amendments are incorporated in this reprint.

Table of Acts

Act	Number and year	Date of Assent	Date of Commencement	Application, saving or transitional provisions
<i>Cash Transaction Reports Act 1988</i>	64, 1988	15 June 1988	Ss. 1, 2: Royal Assent Ss. 3-6, 24, Parts IV, V, VI and VII (sections 25-43): 1 July 1988 (see <i>Gazette</i> 1988, No. S192) Ss. 7-15: 1 July 1990 (see <i>Gazette</i> 1989, No. S359) Ss. 16, 17: 1 Jan 1990 (see <i>Gazette</i> 1989, No. S359) Remainder: 1 Feb 1991 (see <i>Gazette</i> 1990, No. S288)	
<i>Crimes Legislation Amendment Act (No. 2) 1989</i>	4, 1990	17 Jan 1990	Ss. 1, 2, 36-38, 46, 47, 50 (2), 51-53 and Part 4 (sections 54 and 55): Royal Assent Ss. 20-22: 30 June 1990 (see s. 2 (2)) Ss. 39 and 48: 1 July 1990 (see s. 2 (3)) Ss. 40 (1) and 50 (1): 1 July 1990 (see s. 2 (5) and <i>Gazette</i> 1990, No. S158) S. 40 (2): 1 July 1990 (see s. 2 (7) and <i>Gazette</i> 1989, No. S359) Ss. 41-45 and 49: 1 Feb 1991 (see s. 2 (8)-(12) and <i>Gazette</i> 1990, No. S288) Remainder: 17 July 1990	

NOTE—continued  
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Corporations Legislation Amendment Act 1990</i>	110, 1990	18 Dec 1990	S. 17: 1 Jan 1991 (see <i>Gazette</i> 1990, No. S335) (a)	—
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	Ss. 20-22: Royal Assent (b) S. 23: 29 Apr 1991 (see <i>Gazette</i> 1991, No. S108)	—

- (a) The *Cash Transaction Reports Act 1988* was amended by section 17 only of the *Corporations Legislation Amendment Act 1990*, subsection 2 (2) of which provides as follows:  
“(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.”
- (b) The *Cash Transaction Reports Act 1988* was amended by sections 20-23 only of the *Crimes Legislation Amendment Act 1991*, subsections 2 (1) and (2) of which provide as follows:  
“(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.  
“(2) Section 23, paragraph 30 (b), subsection 61 (2) and sections 62, 63, 67 and 73 commence on a day to be fixed by Proclamation, being the day on which Schedule 1 (3) to the *State Drug Crime Commission (Amendment) Act 1990* of New South Wales commences.”

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. Nos. 4 and 110, 1990
S. 8A	ad. No. 4, 1990
S. 14A	ad. No. 4, 1990
S. 15	am. No. 4, 1990
S. 16	am. No. 28, 1991
Ss. 18-21	am. No. 4, 1990
S. 23	am. No. 4, 1990
S. 25	am. No. 4, 1990
S. 26	am. No. 28, 1991
S. 27	am. No. 4, 1990; No. 28, 1991
Ss. 28, 29	am. No. 4, 1990
S. 33	am. No. 4, 1990
S. 33A	ad. No. 4, 1990
S. 40A	ad. No. 4, 1990

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 42A	ad. No. 4, 1990
Schedule 1-3	am. Statutory Rule 1990 No. 162
Schedule 4	am. Statutory Rule 1990 No. 36

# Cash Transaction Reports Amendment Act 1991

No. 188 of 1991

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An Act to amend the *Cash Transaction Reports Act 1988*,<sup>a</sup>  
and for related purposes

[Assented to 6 December 1991]

The Parliament of Australia enacts:

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Cash Transaction Reports  
5 Amendment Act 1991*.

### Commencement

2.(1) Sections 1, 2, 3 and 7 commence on the day on which this  
Act receives the Royal Assent.

10 (2) The remaining provisions of this Act commence on a day to be  
fixed by Proclamation.



(3) If the provisions referred to in subsection (2) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

**PART 2—AMENDMENTS OF THE CASH TRANSACTION REPORTS ACT 1988** 5

**Principal Act**

3. In this Part, “Principal Act” means the *Cash Transaction Reports Act 1988*<sup>1</sup>.

**Amendment of long title** 10

4. The title of the Principal Act is amended by omitting “a Cash Transaction Reports Agency” and substituting “an Australian Transaction Reports and Analysis Centre”.

**Short title**

5. Section 1 of the Principal Act is amended by omitting “Cash” and substituting “*Financial*”. 15

**Interpretation**

6. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘AUSTRAC’ means the Australian Transaction Reports and Analysis Centre; 20

‘FTR information’ means information obtained by the Director under Part II and includes:

(a) information included in a notice under subsection 18(5), (5A) or (7) or 22(1) or in a copy of a record given under subsection 24(5); and 25

(b) information obtained by the Director under section 243D of the ASC Law of a State or Territory;

‘international funds transfer instruction’ means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind;” 30

**Reports in relation to transfer of currency into or out of Australia**

7. Section 15 of the Principal Act is amended:

(a) by inserting after subsection (7A) the following subsections: 35

“(7B) For the purposes of paragraph (7A)(a), the time at which currency is brought into Australia by a person is:

(a) if the person:

- 5
- (i) transfers the currency into Australia when a passenger on an aircraft or ship; and
  - (ii) after disembarking, goes through an area set apart for customs officers to examine the passports and personal baggage of, and perform other duties in respect of, disembarking passengers and for such passengers to collect personal baggage—

10 as soon as the person reaches the place in that area at which customs officers examine personal baggage or, if the person does not go to that place, when the person leaves that area; or

- (b) in any other case—the first opportunity after arrival in Australia that the person has to give the report under this section.

15 “(7C) For the purposes of paragraph (7A)(a), the time at which currency is taken out of Australia by a person is:

- (a) if the person:
  - (i) transfers the currency out of Australia when a passenger on an aircraft or ship; and
  - 20 (ii) before embarking, goes through an area set apart for customs officers to examine the passports of, and perform other duties in respect of, embarking passengers—

25 when the person is at the place in that area at which customs officers examine passports; or

- (b) in any other case—as soon as the person reaches the customs officer who is to examine the person’s passport in relation to the person leaving Australia or, if there is no such examination, the last opportunity before leaving Australia that the person has to give the report under this section.”;

30 (b) by inserting after subsection (8) the following subsections:

“(8A) For the purposes of this section, if a person:

- 35 (a) arranges to leave Australia as a passenger on an aircraft or ship; and
- (b) for the purpose of leaving Australia, goes towards an aircraft or ship through an area described in paragraph (7C)(a); and

- (c) either:
  - 40 (i) takes currency into that area; or
  - (ii) has currency in his or her personal baggage; and
- (d) does not give a report about the currency when at the place described in that paragraph;

the person is taken to have transferred the currency out of Australia.

“(8B) Subparagraph (8A)(c)(i) does not apply to an amount of currency if the person:

- (a) informs a customs officer at the place described in paragraph (7C)(a) of an intention to spend that amount before embarking; and 5
- (b) spends that amount before embarking.”.

**Reports of suspect transactions**

8. Section 16 of the Principal Act is amended by inserting in subsection (1) “or 3” after “Division 1”. 10

9. After section 17A of the Principal Act the following Division is inserted:

***“Division 3—Reports of international funds transfer instructions***

**Reports of international funds transfer instructions** 15

“17B.(1) If:

- (a) a cash dealer in Australia is:
  - (i) the sender of an international funds transfer instruction transmitted out of Australia; or
  - (ii) the recipient of an international funds transfer instruction transmitted into Australia; and 20
- (b) at least one of the following applies:
  - (i) the cash dealer is acting on behalf of, or at the request of, another person who is not a bank;
  - (ii) the cash dealer is not a bank; 25

the dealer must, before the reporting time, prepare a report of the instruction.

“(2) The report must be in the approved form and include the prescribed details.

“(3) Subject to subsection (4), the report must be sent to the Director in the approved way and form before the reporting time. 30

“(4) The Director may, by notice in the *Gazette*, declare that subsection (3) does not apply in relation to a cash dealer in relation to a report or a class of report.

“(5) If, because of the operation of subsection (4), subsection (3) does not apply in relation to a report, the cash dealer must retain the report for 7 years. 35

“(6) For the purposes of this section, if a cash dealer transmits an instruction on behalf of, or at the request of, another person, the cash dealer is taken to be the sender of the instruction. 40

“(7) For the purposes of this section, if a person, not being a cash dealer, transmits an instruction on behalf of, or at the request of, a cash dealer, the cash dealer is taken to be the sender of the instruction.

“(8) In this section:

5 ‘reporting time’, in relation to an instruction, means:

- (a) if the instruction is transmitted into Australia—14 days after the day that the transmission is received or such later time as is specified in the regulations;
- 10 (b) if the instruction is transmitted out of Australia—14 days after the day that the instruction is transmitted or such later time as is specified in the regulations.

**Bank acting on behalf of another bank**

“17C. For the purposes of this Division, if:

- 15 (a) a bank (in this section called the ‘first bank’) is acting on behalf of, or at the request of, another bank (in this section called the ‘second bank’); and
- (b) the second bank is (whether or not as a result of one or more previous applications of this section) acting on behalf of, or at the request of, a person who is not a bank;

20 the first bank is taken to be acting on behalf of that person.

**No cause of action arises from compliance with section 17B**

“17D. A cause of action does not arise in Australia in relation to action taken by a cash dealer or person:

- (a) under section 17B; or
- 25 (b) in the mistaken belief that such action was required under that section.

**Legal action not to be taken under a foreign law as a result of cash dealers etc. providing information**

30 “17E. An action, suit or proceeding arising under a law of, or of a part of, a foreign country does not lie in Australia against:

- (a) a cash dealer; or
- (b) an officer, employee or agent of a cash dealer acting in the course of that person’s employment or agency;

in relation to any action taken by the cash dealer or person:

- 35 (c) under section 17B; or
- (d) in the mistaken belief that such action was required under that section.

**Certain foreign judgments not to be recognised or enforced in Australia**

“17F.(1) If:

- 40 (a) a foreign court has given a judgment against a person; and

(b) the judgment was in connection with action taken by the person under section 17B;  
the judgment must not be recognised or enforced in Australia.

“(2) In this section:  
‘foreign court’ means any court or authority of a foreign country or a part of a foreign country;  
‘judgment’ includes a decree, an order and an injunction.

**Inspection of record systems etc.**

“17G.(1) The Director may, by written notice to a cash dealer, require the dealer to give the authorised officer specified in the notice access to the dealer’s premises so specified on the day and during the hours so specified.

“(2) The hours specified in a notice to a cash dealer must occur during the dealer’s normal business hours.

“(3) A cash dealer must comply with a notice given to the dealer.

“(4) Where an authorised officer is given access to premises in compliance with a notice, the officer may, for the purposes of monitoring the cash dealer’s compliance with section 17B, inspect:

- (a) any records relating to international funds transfer instructions to which the dealer is a party, being records kept on, or accessible from the premises; and
- (b) any system used by the dealer at those premises for keeping such records; and
- (c) any reports retained under that section; and
- (d) any system used by the dealer in connection with:
  - (i) preparing reports under that section; or
  - (ii) sending such reports to the Director; or
  - (iii) retaining such reports.

“(5) Where an authorised officer may inspect records or reports of a cash dealer, the officer may also make copies of, or take extracts from, those records or reports.”

**Failure to provide information**

10. Section 28 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “or 17A(1).” and substituting “, 17A(1) or 17G(1); or”;
- (b) by adding at the end of subsection (1) the following paragraph:
  - “(c) fails to retain reports as required under subsection 17B(5).”.

**Establishment of AUSTRAC**

11. Section 35 of the Principal Act is amended:

- 5       (a) by omitting from subsection (1) “Cash Transaction Reports Agency” and substituting “Australian Transaction Reports and Analysis Centre”;
- (b) by omitting from subsection (2) “The Agency” and substituting “AUSTRAC”.

***Administrative Decisions (Judicial Review) Act 1977* not to apply to decisions under this Act**

- 10       12. Section 42 of the Principal Act is amended by inserting “17B(4) or” after “subsection”.

**Amendments relating to changing the name of the Cash Transaction Reports Agency to the Australian Transaction Reports and Analysis Centre (AUSTRAC)**

- 15       13. The Principal Act is amended as set out in the Schedule.

**Application of amendments**

14. The amendments made by sections 6, 8, 9, 10 and 12 apply in relation to instructions transmitted from, or received in, Australia after the commencement of this section.

20       **Transitional—CTR information to be FTR information**

15. For the purposes of the Principal Act as amended by this Act, information that was CTR information immediately before the commencement of this section is taken to be FTR information.

[ ... ]

**PART 4—CONSEQUENTIAL AMENDMENTS OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987<sup>b</sup>**

**Principal Act**

18. In this Part, “Principal Act” means the *Mutual Assistance in Criminal Matters Act 1987*. 5

**Application of Act**

19. Section 7 of the Principal Act is amended:

- (a) by omitting from subsection (2A) “CTR” and substituting “FTR”;
- (b) by omitting from subsection (4) the definition of “CTR information” and substituting the following definition: 10  
“‘FTR information’ has the same meaning as in the *Financial Transaction Reports Act 1988*.”.

**Heading to Part VIA**

20. The heading to Part VIA of the Principal Act is amended by omitting “CTR” and substituting “FTR”. 15

**Requests for FTR information**

21. Section 37A of the Principal Act is amended:

- (a) by omitting from subsection (1) “Cash Transaction Reports Agency” and substituting “Australian Transaction Reports Analysis Centre”; 20
- (b) by omitting from subsection (1) “CTR” and substituting “FTR”;
- (c) by omitting from subsection (2) the definition of “CTR information” and substituting the following definition: 25  
“‘FTR information’ has the same meaning as in the *Financial Transaction Reports Act 1988*.”.

**Transitional—CTR information to be FTR information**

22. For the purposes of the Principal Act as amended by this Act, information that was CTR information immediately before the commencement of this section is taken to be FTR information. 30

**SCHEDULE**

Section 13

**AMENDMENTS RELATING TO CHANGING THE NAME OF  
THE CASH TRANSACTION REPORTS AGENCY TO THE  
AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS  
CENTRE (AUSTRAC)**

**Subsection 3(1) (definition of “authorised officer”):**

Omit “the Agency”, substitute “AUSTRAC”.

**Subsection 3(1) (definition of “Director”):**

Omit “the Cash Transaction Reports Agency”, substitute “AUSTRAC”.

**Subsection 3(1) (definitions of “Agency” and “CTR information”):**

Omit the definitions.

**Subsection 19(4):**

Omit “the Agency”, substitute “AUSTRAC”.

**Paragraph 25(1)(b):**

Omit “the Agency”, substitute “AUSTRAC”.

**Section 27:**

Omit “CTR” (wherever occurring), substitute “FTR”.

**Section 36:**

Omit “the Agency”, substitute “AUSTRAC”.

**Section 37:**

Omit “the Agency” (wherever occurring), substitute “AUSTRAC”.

**Section 38:**

Omit “CTR” (wherever occurring), substitute “FTR”.

**Subsection 39(1):**

Omit “the Agency”, substitute “AUSTRAC”.

**Section 40:**

Omit “the Agency”, substitute “AUSTRAC”.

**Subsection 40A(1):**

Omit “the Agency”, substitute “AUSTRAC”.



SCHEDULE—continued

**Section 40B:**

Omit “the Agency’s”, substitute “AUSTRAC’s”.

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NOTES

1. No. 64, 1988, as amended. For previous amendments, see Nos. 4 and 110, 1990; and Nos. 28, 122 and 123, 1991.
2. No. 90, 1989, as amended. For previous amendments, see Nos. 41 and 110, 1990; and Nos. 110 and 122, 1991.
3. No. 85, 1987, as amended. For previous amendments, see Nos. 66 and 120, 1988; and No. 123, 1991.

NOTES ABOUT SECTION HEADINGS

1. On the commencement of this Act, the heading to section 27 of the *Cash Transaction Reports Act 1988* is altered by omitting “CTR” and substituting “FTR”.
2. On the commencement of this Act, the heading to section 35 of the *Cash Transaction Reports Act 1988* is altered by omitting “Agency” and substituting “AUSTRAC”.

[ ... ]

# Crimes Legislation Amendment Act (No. 2) 1991

No. 123 of 1991

## TABLE OF PROVISIONS PART 1—INTRODUCTORY

Section	Short title
1.	Commencement
2.	

[ ... ]

## PART 3—AMENDMENTS OF THE CASH TRANSACTION REPORTS ACT 1988

11.	Principal Act
12.	Reports of suspect transactions
13.	Insertion of new section: 17A. Inspection of identifying systems etc.
14.	Cash dealer to keep documents
15.	Access to CTR information
16.	Failure to provide information
17.	Questioning and search powers
18.	Functions of Director
19.	Insertion of new section: 40B. Annual Report

[ ... ]

## PART 7—AMENDMENTS OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987

32.	Principal Act
33.	Application of Act
34.	Insertion of new Part:

## PART VIA—CTR INFORMATION

37A.	Requests for CTR information
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[ ... ]

## PART 10—AMENDMENTS OF THE PROCEEDS OF CRIME ACT 1987

40.	Principal Act
41.	Procedure on application
42.	Assessment of pecuniary penalty
43.	Forfeiture of all restrained property if person convicted of serious offence
44.	Restraining orders
45.	Notice of application for restraining order
46.	Insertion of new section: 45A. Extension of certain restraining orders
47.	Transitional
48.	Court may make further orders
49.	When restraining order ceases to be in force
50.	Production orders
51.	State and Territory courts to have jurisdiction

[ ... ]

# Crimes Legislation Amendment Act (No. 2) 1991

No. 123 of 1991

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## An Act to amend certain Acts in relation to criminal and law enforcement matters, and for related purposes

[Assented to 23 August 1991]

The Parliament of Australia enacts:

### PART 1—INTRODUCTORY

#### Short title

5 1. This Act may be cited as the *Crimes Legislation Amendment Act (No. 2) 1991*.

#### Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10 (2) Sections 5 to 10 (inclusive), Parts 3, 4, 5, 6, 7 and 9 and sections 40 to 50 (inclusive) commence 28 days after the day on which this Act receives the Royal Assent.

(3) Subject to subsections (4) and (5), section 51 and Part 8 commence on a day or days to be fixed by Proclamation.

(4) If the commencement of Part 8 is not fixed by a Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, the Part is repealed on the first day after the end of that period.

(5) If section 51 does not commence under subsection (3) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

[ ... ]

**PART 3—AMENDMENTS OF THE CASH TRANSACTION  
REPORTS ACT 1988<sup>a</sup>**

**Principal Act**

30

11. In this Part, "Principal Act" means the *Cash Transaction Reports Act 1988*<sup>2</sup>.

**Reports of suspect transactions**

12. Section 16 of the Principal Act is amended:

(a) by omitting from subsection (5) everything after "in relation to" and substituting: 35

"any action by the cash dealer or person taken:

(c) under this section; or

(d) in the mistaken belief that such action was required under this section."; 40

(b) by inserting after subsection (5) the following subsections:

5 "(5A) Where a cash dealer communicates to the Director, under subsection (1), information about the cash dealer's suspicion in relation to a transaction to which the cash dealer is a party, the cash dealer must not, unless required to do so under this Act or any other Act, disclose to anyone else:

(a) that the cash dealer has formed the suspicion; or

(b) that information has been communicated to the Director; or

10 (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed or that the first-mentioned information had been communicated.

15 "(5B) A cash dealer who contravenes subsection (5A) is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years, or both.

20 "(5C) Subsection (5A) does not prevent a cash dealer from communicating or disclosing to any court any information, or matter, referred to in that subsection."

13. After section 17 of the Principal Act, the following section is inserted in Part II:

**Inspection of identifying systems etc.**

25 "17A. (1) The Director may, by written notice to a cash dealer, require the dealer to give the authorised officer specified in the notice access to the dealer's premises so specified on the day and during the hours so specified.

30 "(2) The hours specified in a notice must occur during the cash dealer's normal business hours.

"(3) A cash dealer must comply with a notice.

35 "(4) Where an authorised officer is given access to premises under a notice, the officer may, for the purposes of monitoring the cash dealer's compliance with section 16, inspect any system that may be used by the dealer at those premises for identifying and recording transactions that are, or might be, covered by subsection 16 (1) and any records that may be kept on, or may be accessible from, the premises relating to such transactions."

**Cash dealer to keep documents**

- 40 14. Section 23 of the Principal Act is amended:
- (a) by inserting in subsection (1A) “or a copy of it” after “retain the record”;
  - (b) by inserting in paragraphs (2) (a) and (b) “or a copy of it” after “retain the record”;
  - (c) by omitting from paragraph (2) (ba) “, together with any record” and substituting “or a copy of it, together with any record, or copy of any record.”; 5
  - (d) by inserting in paragraph (2) (c) “or a copy of it” after “retain the record”.

**Access to CTR information**

15. Section 27 of the Principal Act is amended:
- (a) by adding at the end of paragraph (1) (a) “and”; 10
  - (b) by adding at the end of subsection (1) the following word and paragraph:
    - “and (d) the Attorney-General is entitled to access to CTR information for the purpose of dealing with a request made by a foreign country to which the *Mutual Assistance in Criminal Matters Act 1987* applies because of regulations made under subsection 7 (2A) of that Act.”; 15
  - (c) by inserting after subsection (3) the following subsection:
    - “(3A) Where the Attorney-General: 20
      - (a) is given access to CTR information under section 37A of the *Mutual Assistance in Criminal Matters Act 1987*; and
      - (b) is satisfied that the foreign country requesting the information has given appropriate undertakings for protecting the confidentiality of the information, and for controlling the use that will be made of it; 25
 the Attorney-General may communicate that information to the foreign country.”;
  - (d) by omitting from subsection (16) everything after “included” and substituting: 30
    - “a reference to:
      - (a) the Police Force of a State; and
      - (b) the New South Wales Crime Commission; and
      - (c) the Independent Commission Against Corruption of New South Wales; and 35
      - (d) the Criminal Justice Commission of Queensland.”;
  - (e) by omitting from paragraph (17) (e) “and”;
  - (f) by adding at the end of subsection (17) the following paragraphs:
    - “(g) the Commissioner for the Independent Commission Against Corruption of New South Wales; 40
    - (h) the Assistant Commissioner for that Commission;
    - (i) a member of staff of that Commission;
    - (j) Counsel appointed to assist that Commission;

- (k) the Chairman of the Criminal Justice Commission of Queensland;
- (l) a member of that Commission; and
- (m) an officer of that Commission.”.

5 **Failure to provide information**

16. Section 28 of the Principal Act is amended by adding at the end of paragraph (1) (b) “or 17A (1)”.

**Questioning and search powers**

10 17. Section 33 of the Principal Act is amended by omitting from subsection (3A) “section 196” and substituting “section 219ZA”.

**Functions of Director**

18. Section 38 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (c) “and”;
- 15 (b) by adding at the end of subsection (1) the following word and paragraph:  
“and (e) to issue guidelines to cash dealers about their obligations under this Act and the regulations.”.

19. After section 40A of the Principal Act the following section is inserted in Part VI:

20 **Annual Report**

“40B. The Director must, as soon as practicable after 30 June in each year, prepare, and give the Minister, a report of the Agency’s operations during the year that ended on that day.”.

[ ... ]

**PART 10—AMENDMENTS OF THE PROCEEDS OF CRIME ACT 1987**

**Principal Act**

40. In this Part, “Principal Act” means the *Proceeds of Crime Act* 30  
*1987*.”.

**Procedure on application**

41. (1) Section 18 of the Principal Act is amended by adding at the end of subsection (1) “and to the evidence given in any such proceeding”.

(2) The amendment made by subsection (1) applies in relation to an application made under subsection 14 (1) of the Principal Act after the commencement of this section for a confiscation order in respect

of a person's conviction, whether the person was convicted before or after that commencement.

**Assessment of pecuniary penalty**

42. (1) Section 27 of the Principal Act is amended:

- 5 (a) by inserting in subsection (1) the following definition:  
    “insolvency trustee” means:
- 10 (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or  
(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or  
(c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X of the *Bankruptcy Act 1966*—the trustee of the deed or the composition; or  
15 (d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate;”;
- 20 (b) by inserting in subparagraphs (2) (d) (i) and (2) (e) (i) “, during” after “before”;
- (c) by inserting in paragraph (4) (a) “during or” before “after”;
- (d) by inserting in paragraph (4) (a) “greatest” before “excess”;
- 25 (e) by omitting from subsection (9) “the Official Trustee by reason of the person's bankruptcy” and substituting “an insolvency trustee”.

30 (2) The amendments made by paragraphs (1) (a) and (e) apply in relation to all assessments made under subsection 27 (2) of the Principal Act after the commencement of this section, whether the application for a pecuniary penalty order was made before or after that commencement.

(3) The amendments made by paragraphs (1) (b), (c) and (d) apply only in relation to an application made under section 14 of the Principal Act for a pecuniary penalty order, after the commencement of this section.

35 **Forfeiture of all restrained property if person convicted of serious offence**

43. (1) Section 30 of the Principal Act is amended by omitting from subsection (8A) “in reliance on a person's conviction of a serious offence, a person” and substituting “in reliance on:

- 40 (a) a person's conviction of a serious offence; or  
(b) the charging or proposed charging of a person with such an offence;

a person”.

(2) The amendment made by subsection (1) applies whether the forfeiture occurred, or the restraining order to which the forfeiture relates was made, before or after the commencement of this section.

#### **Restraining orders**

5

44. Section 43 of the Principal Act is amended:

- (a) by inserting in subsection (1) “one or more of the following” after “against”;
- (b) by omitting paragraph (1) (da);
- (c) by omitting from paragraph (1) (e) “or”.

10

#### **Notice of application for restraining order**

45. Section 45 of the Principal Act is amended:

- (a) by omitting from subsection (2) “subsection (3)” and substituting “section 45A”;
- (b) by omitting subsections (3) and (4);
- (c) by omitting from subsection (5) everything from and including “an application for” to the end of paragraph (b) and substituting “an application for a restraining order,”.

15

46. After section 45 of the Principal Act the following section is inserted:

20

#### **Extension of certain restraining orders**

“45A. (1) Subject to subsection (2), the court may, on application made by the DPP before the end of the period mentioned in subsection 45 (2), extend the period of operation of a restraining order made in reliance on that subsection.

25

“(2) Section 44 (other than subsection 44 (4)) applies, with the necessary changes made, to the extension of the period of operation of a restraining order made in reliance on subsection 45 (2) in the same way as it applies to the making of a restraining order.

“(3) The DPP must give written notice of an application under subsection (1) for the extension of the period of operation of a restraining order to:

30

- (a) the owner of the property against which the restraining order was made; and
- (b) any other person who the DPP has reason to believe may have an interest in the property.

35

“(4) The court may, at any time before the final determination of an application for an extension of the period of operation of a restraining order, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.”.

40



**Transitional**

47. The amendments made by sections 45 and 46 do not apply to an application made under subsection 45 (3) of the Principal Act before the commencement of this section.

5 **Court may make further orders**

48. (1) Section 48 of the Principal Act is amended:

(a) by omitting paragraph (1) (c) and substituting the following paragraph:

10 “(c) an order for the examination on oath before the court or the registrar of the court of any person, including:

(i) a person whose property is the subject of the restraining order (in this section called the ‘owner’);  
or

15 (ii) a person who is the defendant within the meaning of section 43 in relation to the offence to which the restraining order relates (in this subsection called the ‘defendant’);

about the affairs (including the nature and location of any property) of:

20 (iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or the defendant or both—that person;”;

(b) by inserting after paragraph (1) (d) the following paragraph:

25 “(da) an order directing:

(i) the owner; or

(ii) if the owner is not the defendant—the defendant;  
or

30 (iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the court;

to give to:

35 (iv) where the restraining order is, or includes, an order made under paragraph 43 (2) (b)—the Official Trustee; and

(v) in any other case—the applicant for the ancillary order or such other person as the court directs;

40 within a period specified in the ancillary order, a statement sworn on oath setting out such particulars of the property, or dealings with the property, of the owner or the defendant, as the case may be, as the court thinks proper.”;

(c) by omitting subparagraph (1) (e) (iii) and substituting the following subparagraph:

“(iii) an order directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the restraining order;”;

(d) by inserting after subsection (2) the following subsection: 5

“(2A) An ancillary order made before or after the commencement of this subsection in relation to a restraining order that is in force on or after that commencement does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under paragraph 57 (2) (e) or (g).”;

(e) by omitting from subsection (6A) “subsection (1) directs to furnish a statement to the Official Trustee” and substituting “paragraph (1) (da) directs to give a statement”;

(f) by omitting from subsection (6A) “furnishing” and substituting “giving”; 15

(g) by omitting from subsection (6B) “furnishes a statement to the Official Trustee” and substituting “gives a statement”;

(h) by omitting from subsection (6B) “subsection (1)” and substituting “paragraph (1) (f)”. 20

(2) The amendments made by subsection (1) apply in relation to restraining orders made before or after the commencement of this section.

#### When restraining order ceases to be in force

49. (1) Section 57 of the Principal Act is amended: 25

(a) by inserting in subparagraph (2) (e) (i) “that is a pecuniary penalty order” after “confiscation order”;

(b) by omitting from subparagraph (2) (e) (ii) “confiscation order” and substituting “pecuniary penalty order”;

(c) by omitting from paragraph (2) (e) “when the confiscation order is satisfied or otherwise ceases to be in force” and substituting “, upon the pecuniary penalty order being satisfied or otherwise ceasing to be in force, to the extent that the property to which the restraining order relates is the same as the property that is sold or otherwise disposed of to satisfy the pecuniary penalty order and pay the costs, charges, expenses and remuneration referred to in subsection 49 (6)”; 30

(d) by inserting in paragraph (2) (g) “19 or” after “section”. 35

(2) The amendments made by subsection (1) apply in relation to restraining orders made before or after the commencement of this section. 40

**Production orders**

50. Section 66 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (d) "and";
- (b) by omitting paragraph (e).

5 **State and Territory courts to have jurisdiction**

51. Section 98 of the Principal Act is amended:

(a) by omitting from subsection (2) "subsections (3) and (5)" and substituting "this section";

10 (b) by omitting subsection (3) and substituting the following subsections:

"(3) A court cannot make a forfeiture order in respect of property if the court does not have jurisdiction with respect to the recovery of property of that kind.

15 "(3A) A court may make a forfeiture order in respect of property even though, apart from this section, the court does not have jurisdiction with respect to property whose value equals the value of that property.";

(c) by omitting subsection (5) and substituting the following subsections:

20 "(5) Where:

(a) a court makes a pecuniary penalty order of a particular amount; and

25 (b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount, the registrar of the court must issue a certificate containing the prescribed particulars.

"(5A) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the pecuniary penalty order.

30 "(5B) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth."

# Crimes Legislation Amendment Act 1992

No. 164 of 1992

## TABLE OF PROVISIONS

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# Crimes Legislation Amendment Act 1992

No. 164 of 1992

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**An Act to amend certain Acts in relation to criminal or  
law enforcement matters, and for related purposes**

*[Assented to 11 December 1992]*

The Parliament of Australia enacts:

## PART 1—PRELIMINARY

### Short title

- 5 1. This Act may be cited as the *Crimes Legislation Amendment Act 1992*.

### Commencement

- 2.(1) Part 1 and Parts 3 to 11 commence 28 days after the day on which this Act receives the Royal Assent.
- 10 (2) Subject to subsection (3), sections 3 to 17 commence on a day or days to be fixed by Proclamation.

(3) If any of sections 3 to 17 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that section commences on the first day after the end of that period.

**PART 2—AMENDMENT OF THE CASH TRANSACTION REPORTS ACT 1988<sup>a</sup>** 5

**Principal Act**

3. In this Part, “Principal Act” means the *Cash Transaction Reports Act 1988*<sup>1</sup>.

**Interpretation** 10

4. Section 3 of the Principal Act is amended:

- (a) by omitting “, (5A)” from the definition of “FTR information” in subsection (1);
- (b) by omitting from subsection (1) the definitions of “account” and “primary identification document” and substituting the following definitions: 15

“‘account’ means any facility or arrangement by which a cash dealer does any of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency; 20
- (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit, but does not include an arrangement for a loan that sets out the amounts and times of advances and repayments, being amounts and times from which the borrower and lender may not depart during the term of the loan; 25

‘primary identification document’, in relation to a person, in a particular name, means: 30

- (a) a certified copy, or an extract, of a birth certificate of the person; or
- (b) a certified copy of a citizenship certificate of the person; or 35
- (c) an international travel document for the person; or
- (d) any other prescribed document;

that shows that name as the person’s name;”;

- (c) by inserting in subsection (1) the following definitions: 40
- “‘account information’, in relation to an account with a cash dealer, means:

- (a) information identifying the account, including any identifying number; and
- (b) the name in which the account is held; and
- 5 (c) information, and documents, provided to the cash dealer by the holder of the account (whether provided in relation to that account or another account), as follows:
- (i) an address, not being a Post Office Box address, for the holder of the account;
- (ii) if the account is held in:
- 10 (A) the name or names of an individual or individuals; or
- (B) the name of an unincorporated association—that fact;
- (iii) if the account is held in the name of a body corporate (other than as a trustee)—that fact and a copy of the certificate of incorporation (if any) of the body corporate;
- 15 (iv) if the account is held in a business name—that fact and a copy of the certificate of registration of the business name or, if registration was applied for but not yet obtained, a copy of the application;
- 20 (v) if the account is held in trust—that fact and the prescribed details of the trustees and beneficiaries of the trust;
- 25 **'identification record'** has the meaning given by section 20A;  
**'identification reference'** has the meaning given by section 21;  
**'international travel document'** means:
- (a) a current passport; or
- (b) an expired passport that:
- 30 (i) was not cancelled; and
- (ii) was current within the preceding 2 years; or
- (c) another current identity document, having the characteristics of a passport, issued by a government, the United Nations or an Agency of the United Nations for the purposes of international travel;
- 35 **'signatory information'**, in relation to a signatory to an account with a cash dealer, means information and documents (whether obtained by the cash dealer in relation to that account or another account), as follows:
- 40 (a) the name used by the signatory as his or her name in relation to that account;
- (b) if the account is held in the name of an unincorporated association—a copy of the instrument authorising the signatory to sign;

- (c) any other name by which the signatory is commonly known, being a name disclosed to the cash dealer;
- (d) an identification record for the signatory in accordance with section 20A;”.

**Reports of significant cash transactions** 5

5. Section 7 of the Principal Act is amended by inserting in subsection (2) “or otherwise authenticated by the cash dealer in a way approved by the Director” after “signed by the cash dealer”.

**Identifying cash dealers**

6. Section 8A of the Principal Act is amended by omitting from paragraph (2)(a) “subsection 20(8)” and substituting “paragraph 20A(1)(b)”. 10

**Inspection of record systems etc.**

7. Section 14A of the Principal Act is amended by omitting paragraph (4)(b) and substituting the following paragraph: 15

“(b) for the purposes of monitoring the cash dealer’s compliance with section 20 and with any undertaking given under section 8A, inspect:

- (i) any records of account information or signatory information, being records kept on, or accessible from the premises; and 20
- (ii) any system used by the dealer at those premises for keeping such records.”.

8. After section 17G of the Principal Act the following Division is inserted in Part II: 25

***“Division 4—Information provided under other law***

**Information provided under other law**

“17H. For the purposes of this Act, information received by AUSTRAC under another Act or under a law of a State or a Territory is taken to be obtained under this Part.”. 30

**Opening etc. of account with a cash dealer**

9. Section 18 of the Principal Act is amended:

- (a) by omitting subsections (2), (2A) and (2B) and substituting the following subsections:

“(2) If, at the end of the infringement day, the cash dealer does not have the account information about the account, the account is blocked with respect to each signatory until the cash dealer has the information or the Director gives a notice under subsection 19(2). 35



Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

5           “(2A) If, at the end of the infringement day, the cash dealer does not have the signatory information about the person (“unverified signatory”), the account is blocked with respect to that signatory until the cash dealer has that information or the Director gives a notice under subsection 19(2).”;

Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

- 10           (b) by omitting from subsection (3) “a verification statement from the unverified signatory” and substituting “the account information and the signatory information”;
- 10           (c) by omitting subsections (4), (5) and (5A) and substituting the following subsections:

          “(4) If:

- (a) a signatory, knowing that the account is blocked, makes a withdrawal from the account at any time when the account is blocked under subsection (2); or
- 15           (b) the unverified signatory, knowing that the account is blocked, makes a withdrawal from the account at any time when the account is blocked under subsection (2A);
- the signatory commits an offence against this subsection.

          “(4A) If:

- 20           (a) a signatory makes a withdrawal from the account at any time when the account is blocked under subsection (2); or
- (b) the unverified signatory makes a withdrawal from the account at any time when the account is blocked under subsection (2A);
- 25           the cash dealer commits an offence against this subsection.

          “(5) If an account becomes blocked under subsection (2) or (2A), the cash dealer commits an offence against this subsection at the end of the period prescribed for the purposes of this subsection unless it has given the Director a written notice stating:

30           (a) the reasons why the account became blocked; and

- (b) sufficient details of the account for the account to be identified; and
- 35           (c) if the account became blocked because of subsection (2A)—the name of the unverified signatory.”;

- (d) by omitting from subsection (6) “or (4)” and substituting “, (4) or (4A)”;
- 40           (e) by omitting subsection (7) and substituting the following subsection:

“(7) If:

(a) the cash dealer gives the Director a notice under subsection (5); and

(b) as a result of the cash dealer’s obtaining account information or signatory information, the account ceases to be blocked with respect to a signatory with respect to whom it had been blocked;

the cash dealer must, within 14 days of obtaining the information, give the Director written notice that the account has become unblocked to that extent and for that reason.”;

(f) by omitting from subsection (9) “(5A)”;

(g) by omitting from paragraph (10)(b) “or”;

(h) by omitting paragraphs (10)(c) and (d).

**Unblocking or forfeiture of account**

10. Section 19 of the Principal Act is amended by omitting paragraphs (2)(b) and (c) and substituting the following word and paragraphs:

“; or (b) the cash dealer has the account and signatory information and the account should not, as a result, be blocked; or

(c) if the account was blocked only because of subsection 18(2A)—the unverified signatory has ceased to be a signatory of the account;”.

11. Section 20 of the Principal Act is repealed and the following sections are substituted:

**Cash dealers to hold information**

“20.(1) A cash dealer must maintain, in relation to each account, in a way that can be audited:

(a) any account information obtained by the cash dealer; and

(b) any signatory information obtained by the cash dealer in relation to each signatory to the account;

(whether or not subsection 18(1) has applied to the account).

“(2) Subsection (1) does not apply to information obtained by the cash dealer before the commencement of Part 2 of the *Crimes Legislation Amendment Act 1992*.

**Identification record**

“20A.(1) For the purposes of this Act, a cash dealer has an identification record for a signatory to an account if, and only if:

(a) the cash dealer has an identification reference for the signatory (whether or not the reference was obtained in connection with that account); or

(b) the cash dealer is an identifying cash dealer and:

- (i) the cash dealer has carried out, and has a record of, the prescribed verification procedure to identify the signatory; or
- 5 (ii) the cash dealer has carried out, and has a record of, a verification procedure to identify the signatory, being a procedure approved by the Director for the cash dealer; (whether or not the verification procedure was carried out in connection with that account).

10 “(2) A verification procedure that was prescribed for the purposes of subsection 20(8) before the commencement of this section is taken to have been prescribed for the purposes of subparagraph (1)(b)(i).”.

12. After section 21 of the Principal Act, the following section is inserted:

**Change of name**

15 “21A.(1) This section applies to an individual (‘signatory’) who wishes to open, or become a signatory to, an account with an identifying cash dealer in a name by which the signatory intends to be commonly known (‘new name’), being a name:

- (a) which the signatory has adopted by marriage; or
- 20 (b) by which the signatory, being a woman who has previously changed the surname by which she is known to that of her spouse or de facto spouse, was formerly known; or
- (c) which the signatory, being a person who has been the victim of violence or threats of violence, or the dependent child of such a person, has adopted or intends to adopt to ensure his or her personal safety; or
- 25 (d) if the signatory is an Aborigine or Torres Strait Islander— which is a traditional name of the signatory.

30 “(2) If the signatory gives to the identifying cash dealer change of name statements signed by the signatory and by a prescribed person:

- (a) the new name is taken to be a name by which the signatory is commonly known; and
- (b) the statements are taken to constitute an identification reference for the signatory in the new name.

35 “(3) A person must not, knowingly or recklessly:

- (a) make a statement in a change of name statement that is false or misleading in a material particular; or
- (b) omit from a change of name statement any matter or thing without which the change of name statement is misleading in a material particular.
- 40

Penalty: 100 penalty units or imprisonment for 4 years, or both.

“(4) For the purposes of this section:

**'change of name statement'**, in relation to a signatory, means a statement that:

- (a) sets out the name or names by which the signatory has been commonly known; and
- (b) states which paragraph of subsection (1) applies to the signatory; and 5
- (c) sets out the reasons why this section applies to the signatory; and
- (d) sets out the new name; and
- (e) states that the new name is one by which the signatory will be commonly known." 10

**Notice to Director if no primary identification document examined**

13. Section 22 of the Principal Act is amended by omitting all the words in subsection (1) from "Where" to "written notice:" (inclusive) and substituting: 15

"If an identification reference for a signatory to an account is given to a cash dealer and the reference states that the referee examined only a secondary identification document for the signatory, the cash dealer must give the Director written notice:"

**Cash dealer to keep documents** 20

14. Section 23 of the Principal Act is amended:

- (a) by omitting subsections (1), (1A) and (2) and substituting the following subsection:
  - "(1) If a cash dealer makes or obtains a record of any information in the course of obtaining account information or signatory information, the cash dealer must retain the record or a copy of it for 7 years after the day on which the relevant account is closed." 25
- (b) by omitting from subsection (3) ", (1A) or (2)";
- (c) by omitting subsections (4) and (4A) and substituting the following subsection: 30
  - "(4) If any information is part of the account information or signatory information of more than one account with the cash dealer, subsection (1) applies as if the reference to the day on which the account is closed were a reference to the day on which the last of those accounts is closed." 35
- (d) by omitting from subsection (5) ", (1A) or (2)";
- (e) by omitting from subsection (6) "Subsections (1), (1A) and (2) do" and substituting "Subsection (1) does";
- (f) by omitting from subsection (7) ", (1A) or (2)". 40

**False or misleading information**

15. Section 29 of the Principal Act is amended by omitting from paragraph (4)(aa) "subsection 20(8)" and substituting "paragraph 20A(1)(b)".

5 **Functions of Director**

16. Section 38 of the Principal Act is amended:

(a) by inserting in paragraph (1)(a) "or another Act" after "this Act";

(b) by inserting after paragraph (1)(a) the following paragraph:

10 "(ab) to exercise the powers that the Director is permitted to exercise under a law of a State or Territory;"

**Transitional provision in relation to section 23**

17. If, immediately before the commencement of this Part, a cash dealer was required to keep information under section 23 of the Principal Act in relation to an account that had closed, the cash dealer must keep the information for the period specified in that section.

[ ... ]

20 **PART 9—AMENDMENT OF THE MUTUAL ASSISTANCE IN  
CRIMINAL MATTERS ACT 1987<sup>b</sup>**

**Principal Act**

44. In this Part, "Principal Act" means the *Mutual Assistance in Criminal Matters Act 1987<sup>b</sup>*.

**Interpretation**

25 45. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

"'Money-Laundering Convention' means the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990;"

30 46. After section 43 of the Principal Act the following section is inserted:

**Admissibility of certain documents—requests  
under the Money-Laundering Convention**

35 "43A.(1) In any proceeding arising directly or indirectly from a request made by a foreign country for international assistance in a criminal matter (including a proceeding under the Proceeds of Crime Act), a document is admissible in evidence if the Attorney-General provides a certificate stating that the document was provided by a specified Party to the Money-Laundering Convention, in connection  
40 with a request for assistance of the type covered by the Convention.

“(2) The regulations may specify the Parties to the Money-Laundering Convention for the purposes of paragraph (1)(b).”.

**PART 10—AMENDMENT OF THE PROCEEDS OF  
CRIME ACT 1987 c**

**Principal Act**

5

47. In this Part, “Principal Act” means the *Proceeds of Crime Act 1987*⁹.

**Interpretation**

48. Section 4 of the Principal Act is amended by omitting subparagraph (b)(ii) of the definition of “proceeds of crime” in subsection (1). 10

**Effects of forfeiture order**

49. Section 20 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) If a forfeiture order has been made against registrable property: 15

(a) the DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Commonwealth in the property; and 20

(b) any such action by or on behalf of the Commonwealth is not a dealing for the purposes of paragraph (3)(a).”.

**Forfeiture of all restrained property if person convicted of serious offence**

50. Section 30 of the Principal Act is amended by inserting after subsection (3) the following subsection: 25

“(3A) If registrable property has been forfeited to the Commonwealth because of subsection (1):

(a) the DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Commonwealth in the property; and 30

(b) any such action by or on behalf of the Commonwealth is not a dealing for the purposes of paragraph (4)(a).”.

**Official Trustee to discharge pecuniary penalty**

35

51. Section 49 of the Principal Act is amended:

(a) by omitting from paragraph (1)(b) “the Official Trustee has custody and control of property under” and substituting “property is subject to”;

- (b) by adding at the end of paragraph (2)(a) “and”;
- (c) by omitting from paragraph (2)(b) “and”;
- (d) by omitting paragraph (2)(c);
- (e) by inserting after subsection (2) the following subsection:

5

“(2A) If:

(a) a pecuniary penalty order has been made against a person (“the defendant”) in reliance on the defendant’s conviction of an offence; and

(b) a restraining order is in force against:

10

(i) property of the defendant; or

(ii) property of another person in relation to which an order under subsection 28(3) is in force;

the Court may, on application by the DPP, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.”;

15

(f) by omitting from subsection (3) “or (2)” and substituting “, (2) or (2A)”;

20

(g) by omitting from paragraph (3)(a) “under the control of the Official Trustee” and substituting “subject to the restraining order”;

(h) by omitting from subsection (5) “or (2)” and substituting “, (2) or (2A)”;

25

(i) by omitting from paragraph (5)(b) “shall not”;

(j) by omitting from subsection (6) “or (2)” and substituting “, (2) or (2A)”.

## PART 11—REPEALS AND AMENDMENTS OF OTHER ACTS

### Minor and consequential amendments

30 52. The Acts specified in Schedule 1 are amended as set out in that Schedule.

[ ... ]

## SCHEDULE 1

Section 52

[ ... ]

*Proceeds of Crime Act 1987*

**Subsection 48(6B):**

Omit "(1)(f)", substitute "(1)(da)".

**Subsection 53(1):**

Omit "or (2)", substitute ", (2) or (2A)".

**Subsection 53(2):**

Omit "or (2)", substitute ", (2) or (2A)".

**Paragraph 60(c):**

Omit "or (2)", substitute ", (2) or (2A)".

[ ... ]

**NOTES**

1. No. 64, 1988, as amended. For previous amendments, see Nos. 4 and 110, 1990; and Nos. 28, 122, 123 and 188, 1991.
2. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; and Nos. 28, 59, 99 (as amended by No. 145, 1991), 120, 123 and 140, 1991.
3. No. 139, 1991.
4. No. 11, 1977, as amended. For previous amendments, see No. 155, 1979; and No. 70, 1980.
5. No. 145, 1989, as amended. For previous amendments, see No. 153, 1989; No. 123, 1991; and No. 94, 1992.
6. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 9, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; Nos. 23, 24, 78, 108 and 174, 1989; and Nos. 6, 11, 37, 70, 79 and 111, 1990; Nos. 28, 82, 120 and 123, 1991; and Nos. 34, 89 and 104, 1992.
7. No. 113, 1983, as amended. For previous amendments, see Nos. 10 and 165, 1984; Nos. 64 and 166, 1985; No. 88, 1986; Nos. 86 and 141, 1987; Nos. 5 and 120, 1988; No. 108, 1989; Nos. 28 and 122, 1991; and No. 94, 1992.
8. No. 85, 1987, as amended. For previous amendments, see Nos. 66 and 120, 1988; and Nos. 123 and 188, 1991.
9. No. 87, 1987, as amended. For previous amendments, see No. 120, 1987; No. 120, 1988; and Nos. 28, 120 and 123, 1991.

[ ... ]



# Banking (State Bank of South Australia and Other Matters) Act 1994

No. 69 of 1994

## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

Section	
1.	Short title
2.	Commencement

[ ... ]

### PART 3.2—AMENDMENT OF THE FINANCIAL TRANSACTION REPORTS ACT 1988

63.	Object of Part
64.	Principal Act
65.	Insertion of new sections:
23A.	Active bank accounts transferred to another bank—obligations of banks in relation to records of information
23B.	Closed bank accounts transferred to another bank—obligations of banks in relation to records of information

### PART 3.3—AMENDMENT OF THE PROCEEDS OF CRIME ACT 1987

66.	Object of Part
67.	Principal Act
68.	Insertion of new sections:
78A.	Active bank accounts transferred to another bank—obligations of banks in relation to documents
78B.	Closed bank accounts transferred to another bank—obligations of banks in relation to documents

[ ... ]

**PART 3.3—AMENDMENT OF THE PROCEEDS OF  
CRIME ACT 1987<sup>a</sup>**

10

**Object of Part**

66. The object of this Part is to facilitate the transfer of accounts between banks by requiring or authorising the transfer of certain documents relating to those accounts.

15 **Principal Act**

67. In this Part, “Principal Act” means the *Proceeds of Crime Act 1987*.

**Insertion of new sections**

20 68. After section 78 of the Principal Act the following sections are inserted:

**Active bank accounts transferred to another bank—obligations of banks in relation to documents**

*When section applies*

“78A.(1) This section applies to a document if:

- 25 (a) the document is in the possession of a bank (the ‘transferor bank’) in fulfilment of an obligation imposed on the transferor bank by subsection 77(1), (2) or (3) or 78(1); and
- (b) the document relates to an account (the ‘transferred account’) that
- 30 ‘transferee bank’) under:
- (i) a law of the Commonwealth or of a State or Territory; or
  - (ii) an arrangement between the transferor bank and the transferee bank.

*Transferor bank to give documents to transferee bank*

35 “(2) The transferor bank must give the document to the transferee bank within the 120-day period beginning 30 days before the transfer.

*Offence*

“(3) A person who intentionally or recklessly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

*Transferor bank released from obligations under sections 77 and 78* 5

“(4) If the transferor bank complies with subsection (2) of this section in relation to the document, the transferor bank does not contravene section 77 or 78 in relation to the document.

*Obligations of transferee bank—sections 77 and 78*

“(5) If the transferee bank is given a document under subsection (2) of this section, this division applies to the transferee bank in relation to the document as follows: 10

- (a) if the document was covered by subsection 77(1) or 78(1)—as if the document were an essential customer generated financial transaction document in relation to the transferee bank; 15
- (b) if the document was covered by subsection 77(2)—as if the document were a customer generated financial transaction document in relation to the transferee bank and were not an essential customer generated financial transaction document;
- (c) if the document was covered by subsection 77(3)—as if the document were a financial transaction document in relation to the transferee bank and were a document: 20
  - (i) that is not a customer generated financial transaction document; and
  - (ii) whose retention is necessary to preserve a record of the financial transaction concerned; 25
- (d) in any case—as if the minimum retention period applicable to the document were the period of 7 years after the day on which the transferred account is closed.

*Definition* 30

“(6) In this section:

‘document’ includes a copy of a document.

**Closed bank accounts transferred to another bank—obligations of banks in relation to documents**

*When section applies* 35

“78B.(1) This section applies to a document if:

- (a) the document is in the possession of a bank (the ‘transferor bank’) in fulfilment of an obligation imposed on the transferor bank by subsection 77(1), (2) or (3) or 78(1); and

- (b) the document relates to a closed account; and
- (c) the transferor bank complies with an obligation imposed on it under subsection 78A(2) in relation to another bank (the 'transferee bank') during the 120-day period mentioned in that subsection; and
- 5 (d) the transferor bank and the transferee bank agree in writing that the document should be transferred by the transferor bank to the transferee bank during that 120-day period.

*Transferor bank may give documents to transferee bank*

- 10 "(2) The transferor bank may give the document to the transferee bank within that 120-day period.

*Transferor bank released from obligations under sections 77 and 78*

"(3) If the transferor bank gives a document to the transferee bank under subsection (2) of this section, the transferor bank does not contravene section 77 or 78 in relation to the document.

15 *Obligations of transferee bank—sections 77 and 78*

"(4) If the transferee bank is given a document under subsection (2) of this section, this division applies to the transferee bank in relation to the document as follows:

- 20 (a) if the document was covered by subsection 77(1) or 78(1)—as if the document were an essential customer generated financial transaction document in relation to the transferee bank;
- (b) if the document was covered by subsection 77(2)—as if the document were a customer generated financial transaction document in relation to the transferee bank and were not an essential customer
- 25 generated financial transaction document;
- (c) if the document was covered by subsection 77(3)—as if the document were a financial transaction document in relation to the transferee bank and were a document:
  - 30 (i) that is not a customer generated financial transaction document; and
  - (ii) whose retention is necessary to preserve a record of the financial transaction concerned;
- 35 (d) in any case—as if the minimum retention period applicable to the document were the period of 7 years after the day on which the closed account was closed.

*Definition*

"(5) In this section:  
'document' includes a copy of a document."

*Financial Transaction Reports Act 1988*

2. No. 64, 1988, as amended. For previous amendments, see Nos. 4 and 110, 1990; Nos. 28, 122, 123 and 188, 1991; and No. 164, 1992.

*Proceeds of Crime Act 1987*

3. No. 87, 1987, as amended. For previous amendments, see No. 120, 1987; No. 120, 1988; Nos. 28, 120 and 123, 1991; and Nos. 164 and 166, 1992.