

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CRIMES LEGISLATION AMENDMENT BILL (No 2) 1989

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf
of the Government

(Circulated by authority of the Attorney-General,
the Hon Lionel Bowen MP)

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CRIMES LEGISLATION AMENDMENT BILL (No 2) 1989

OUTLINE

The following amendments and new clauses have the purpose of amending the account verification provisions of the Cash Transaction Reports Act 1988 (the CTR Act) in order to promote four objects:

- . (a) to provide cash dealers with greater flexibility as to the manner in which the verification process is carried out;
- . (b) to minimise the inconvenience to account signatories in complying with the verification procedures;
- . (c) to enhance the integrity of the verification process from the law enforcement perspective; and
- . (d) to make minor drafting changes.

Amendment number 10 will insert a new subsection 20(8) into the Cash Transaction Reports Act which will enable the regulations to prescribe a verification procedure for the purpose of verifying the identity of a signatory. This prescribed verification method, which will be available to "identifying cash dealers", will be an alternative to the requirement under sections 20 and 21 that the signatory produce an identification reference.

It is envisaged that the prescribed verification method will involve the identifying cash dealer carrying out a required minimum number of checks from a prescribed list of around 12 separate checks. The list will include such checks as an electoral roll check, the examination of a primary identification document, a check with the employer of the signatory (to check name and address and date of birth) and so on.

Financial Impact

The amendments and new clauses will not have any significant financial impact.

Notes on Amendments and New Clauses

Amendments No's 1-4 amend clause 2 (Commencement)

1. This amendment is consequential upon the proposal to insert a new clause 37A into the Bill (amendment number 7). Amendment number 1 will ensure that clause 37A will commence on the day that the Bill receives the Royal Assent.

Amendment No 2

2. Amendment number 2 is consequential upon the inserting of a new clause 44A into the Bill (amendment number 12). Amendment number 2 will ensure that clause 44A will commence immediately after the commencement of section 18 of the CTR Act.

Amendment No 3

3. Amendment number 3 inserts two subclauses, subclauses 2(8A) and 2(8B), into clause 2 (Commencement). Proposed subclause 2(8A) is consequential upon the proposal to insert a new clause 40A into the Bill (amendment number 10) which amends section 19 of the CTR Act. Subclause 2(8A) will ensure that the commencement of clause 40A is linked to the commencement of section 19 of the CTR Act, which is yet to be proclaimed.

4. Proposed subclause 2(8B) is consequential upon the proposal to insert a new clause 40B into the Bill (amendment number 10) which amends section 20 of the CTR Act. Subclause 2(8B) will ensure that the commencement of clause 40B is linked to the commencement of section 20 of the CTR Act which also has not yet been proclaimed.

Amendment No 4

5. Amendment number 4 is consequential upon the proposal to insert a new clause 41A into the Bill (amendment number 11) which amends section 23 of the CTR Act. Proposed subclause 2(9A) will ensure that the commencement of clause 41A is linked to the commencement of section 23 of the CTR Act which is yet to be proclaimed.

Amendments No's 5-6 amend clause 37 (Interpretation)

6. Amendment number 5 inserts a new paragraph (da) into clause 37 of the Bill, which amends section 3 of the CTR Act ("Interpretation"). New subclause 37(da) will make a minor consequential amendment to the definition of "CTR information" in section 3. As a result of the amendment information obtained by the Director of the Cash Transaction Reports Agency (CTRA) under the new subsection 18(5A) will be included within the definition of "CTR information".

Amendment No 6

7. Amendment number 6 inserts a new paragraph (f) into clause 37. Paragraph (f) is a definition of the expression

"identifying cash dealer". This expression is used in proposed section 8A of the CTR Act, which will be inserted by clause 37A of the Bill (amendment number 7).

Amendment No 7

8. Amendment number 7 proposes the insertion into the Bill of clause 37A, which in turn will insert a new section 8A into the CTR Act. New subsection 8A(1) will enable a cash dealer to apply in writing to the Director of the CTRA to be declared an identifying cash dealer.

9. New subsection 8A(2) provides that an application for approval must be accompanied by a written undertaking in the form approved. It should be noted that new subsection 8A(7) provides that the Director of the CTRA may approve different forms of undertaking for different classes of cash dealer. Thus, for example, one form might be approved for use by a financial institution, and another for the purposes of an insurer making application to be declared an identifying cash dealer.

10. New subsection 8A(2) provides that the applicant must give undertakings as to various matters specified in the subsection. New paragraph 8A(2)(d) will give the Director of the CTRA the flexibility to require further undertakings in a particular case. Thus this provision could be used where the Director felt it was necessary to require the applicant to undertake to have external auditors conduct an audit of compliance with the account verification procedures and to provide a copy of a report to the Director.

11. New subsection 8A(3) requires that the application for approval and the undertaking shall be signed by the applicant personally where the applicant is a natural person. Where the applicant is a body corporate the documents shall be signed by the principal executive officer. (The expression "principal executive officer" is defined by new subsection 8A(8)). The intent of new subsection 8A(3) is to ensure that, because of the importance of the undertakings required of the applicant, the undertakings are given by the applicant personally or by the senior executive officer of an applicant company.

12. New subsection 8A(4) will require that a declaration as an identifying cash dealer is notified in the Gazette.

13. New subsection 8A(5) confers on the Director of the CTRA an express power to revoke or suspend the approval of an identifying cash dealer. It may be noted that section 8 of the CTR Act gives the Director of the CTRA power to declare a cash dealer as "an approved cash carrier" but does not confer any express power of revocation. For the purposes of section 8 of the CTR Act it is sufficient to rely upon the general power to revoke which is conferred by section 33 of the Acts Interpretation Act 1901. This general power is not sufficient for the purposes of new section 8A in two respects:

- . the account verification procedure is central to the integrity of the reporting regime under the CTR Act. An identifying cash dealer will be able to verify the

identity of an account holder by a process which is internal to the cash dealer. (Details of this procedure will be prescribed by regulations under new paragraph 18(2A)(a)). Accordingly, if there is at any time doubt whether an identifying cash dealer is properly applying the prescribed verification procedure, it may be necessary to suspend the approval of the cash dealer until the matter has been investigated and remedial steps taken in order to protect the integrity of the verification regime; and

- . the general power of revocation conferred by the Acts Interpretation Act is silent as to the grounds upon which the power of revocation may be exercised.

The express power conferred by new subsection 8A(5) will enable the Director to suspend, as well as revoke, an approval. The new subsection also specifies the grounds upon which the power may be exercised.

14. The power to suspend may be exercised by suspending the approval either for a specified period or until a specified act is done (eg until an investigation has been completed or a report has been prepared).

15. New subsection 8A(6) provides that the consequence of the revocation or suspension of a declaration under section 8A is that the declaration stops being in force. Therefore the cash dealer will be disentitled from applying the prescribed verification procedure under new subsection 20(8).

16. New subsection 8A(7) provides that the Director of the CTRA may approve different forms to be used by different classes of applicants.

17. New subsection 8A(8) is definitional.

Amendment No 8

18. Amendment number 8 amends clause 38 of the Bill (which inserts new section 14A into the CTR Act) by replacing proposed subsection 14A(4). New section 14A will empower the Director of the CTRA to audit systems used by a cash dealer for the purpose of complying with obligations imposed upon them under the CTR Act. New subsection 14A(4) will ensure that the provision empowers the Director to audit systems used by an identifying cash dealer for the purpose of complying with obligations imposed under new section 8A and new subsection 20(8). The new provision will also empower the auditing of compliance with section 7 ("Reports of significant cash transactions").

Amendment No 9

19. Amendment number 9 amends clause 40 of the Bill which in turn amends section 18 of the CTR Act ("Information to be provided when bank account etc. opened"). Section 18 deals with the blocking of certain accounts until certain information that is to be provided about the account or its signatories is provided.

20. New subsection 18(2A) provides that where an account is held with an identifying cash dealer and the signatory gives the cash dealer a verification statement (under section 20) which is not accompanied by an identification reference under section 21, then the account becomes or remains blocked until one of three things occurs:

- . the cash dealer completes the prescribed verification procedure under new subsection 20(8) and that procedure verifies the identity of the signatory; or
- . the signatory gives the cash dealer an identification reference under section 21; or
- . the Director of the CTRA gives a notice under subsection 19(2).

21. New subsection 18(2B) operates in similar fashion to existing subsection 20(4) of the CTR Act . Thus an account will not become, or remain, blocked under new subsection 18(2A) if the signatory has been previously identified pursuant to either the prescribed verification procedure under new subsection 20(8) or the existing requirements of section 20. Where the signatory has been previously identified in respect of another account with the cash dealer it will be necessary that the identifying cash dealer record, in relation to the later account, sufficient particulars of the earlier account to enable it to be identified. This will create a trail for the purposes of a compliance audit.

22. It is also proposed to replace subsection 18(5) of the CTR Act. At present subsection 18(5) has the effect of requiring that the cash dealer give notice to the Director of the CTRA of any blockings that occur under section 18 by the end of the day after the infringement day. The cash dealer commits an offence if this notice is not given within that time.

23. Following the inserting of new subsection 18(2A) it will become possible for an account to be blocked under either or both of two provisions, existing subsection 18(2) or new subsection 18(2A). The effect of new subsection 18(5) will be that the identifying cash dealer will be obliged to report blockings which occur pursuant to existing subsection (2) by the end of the day following the infringement day. Pursuant to new subsection 18(5A) a blocking pursuant to new subsection 18(2A) must be reported to the Director of the CTRA at the end of 14 days from the infringement day. However it will not be necessary to give notice under new subsection 18(5A) if the appropriate notice has been given already under subsection 18(5) because the account was previously blocked under subsection 18(2) as the unblocking of an account is itself the subject of a notice under subsection 18(7).

24. Amendments 9(e), 9(f) and 9(g) make consequential amendments to subsection 18(7) of the CTR Act by including a reference to new subsection 18(5A) in paragraph (7)(a), replacing paragraph (7)(b) and some words from the concluding words of the subsection. As a result the cash dealer will be required to notify the Director of the CTRA if

the unverified signatory subsequently provides a verification statement or an identification reference, or the cash dealer verifies the identity of the signatory under the prescribed verification method (under subsection 20(8)).

25. Amendment 9(h) makes a consequential amendment to subsection 18(9) by including a reference to new subsection 18(5A) in that subsection. This will ensure that a failure to comply with the requirements of the new subsection will be an offence.

26. Amendments 9(j) and 9(k) amend subsection 18(10) of the CTR Act. The new paragraph 18(10)(d) to be inserted by amendment 9(k) will enable the 14 day period specified in new subsection 18(5A) to be altered by regulation.

Amendment No 10

27. Amendment 10 inserts two new clauses, 40A and 40B, into the Bill. New clause 40A amends section 19 ("Unblocking or forfeiture of account") by replacing paragraph 19(2)(b). New paragraph 19(2)(b) will require the Director of the CTRA to give notice to the cash dealer and to the signatory if the Director is satisfied that the unverified signatory has subsequently given a verification statement or identification statement and, as a result, the account should not be blocked.

28. Clause 40B amends section 20 of the CTR Act ("Form of statement"). The amendment to subsections 20(2) and (3) is a drafting change.

29. New subsection 20(4A) is consequential upon the inserting of new subsection 20(8) which will allow for an alternative method of verifying the identity of a signatory. As a result of the new subsection 20(4A) the cash dealer will not be obliged to include an identification reference with the statement in relation to an account if:

- . the cash dealer has verified the identity of the signatory under new subsection 20(8) in relation to another account; or
- . the cash dealer is not obliged to apply new subsection 20(8) because of the operation of new subsection 20(9) (ie because the cash dealer has verified the person's identity in relation to an earlier account).

30. New subsection 20(7), which is inserted by subclause 40B(c), relieves a signatory to an account with an identifying cash dealer from including an identification reference under paragraph 20(2)(b) or 20(3)(b) with his or her statement in relation to the account. An identifying cash dealer will verify the identity of a signatory using the alternative method to be prescribed under new subsection 20(8).

31. New subsection 20(8) is the key amendment as the alternative method of verifying the identity of a signatory (which will be available to identifying cash dealers) will be prescribed under this subsection. The prescribed method will

involve the identifying cash dealer carrying out a required number of checks from a prescribed list.

32. As the verification of the identity of a signatory would be a transaction within the meaning of section 16 ("Reports of suspect transactions") it would be necessary for the identifying cash dealer to report as a suspect transaction any anomalies that occur during the carrying out of the prescribed verification method if the anomaly gives rise to the suspicion referred to in paragraph 16(1)(b). This report may be required even if the checks do, on balance, verify the identity of the signatory. The verification of the identity of the signatory is not incompatible with the transaction giving rise to the suspicion referred to in section 16.

33. New subsection 20(9) will, in effect, provide the signatory to an account with an identifying cash dealer with the option of providing an identification reference under section 21 or of relying upon the cash dealer to apply the prescribed method of identification under new subsection 20(8). If the signatory provides the identifying cash dealer with an identification reference under section 21 then the cash dealer need not proceed with the prescribed method of identification.

Amendment No 11

34. Amendment number 11 inserts a new clause 41A into the Bill which, in turn, amends section 23 of the CTR Act ("Cash dealer to keep documents"). New subsection 23(1A), which is inserted by clause 41A(a), will require an identifying cash dealer to retain a record of any information which is obtained by it in the course of carrying out the prescribed verification method (under new subsection 20(8)) for a period of 7 years after the closure of the account.

35. New subclause 41A(b) is a drafting change. New subclause 41A(c) inserts a new paragraph 23(2)(ba) into the CTR Act. This new paragraph will link the requirement under subsection 24(5) (dealing with the recording of second or other names) with the requirement under new subsection 20(8) (recording the results of the prescribed verification procedure). Pursuant to the new paragraph 23(2)(ba) these two records must be maintained together.

36. Subclause 41A(d) makes a minor consequential amendment to paragraph 23(2)(c) of the CTR Act.

37. Subclause 41A(e) inserts a reference to new subsection 23(1A) into subsection 23(3) of the CTR Act. As a result a breach of the new subsection will be an offence.

38. Subclause 41A(f) amends paragraph 23(4)(b) of the CTR Act. Subsection 23(4) deals with the situation where an identification reference is used as an identification reference in relation to more than one account. The amended provision will require that the identification reference be retained until 7 years after the closure of the last account to which it relates.

39. Subclause 41A(g) inserts a new subsection 23(4A) into the CTR Act. The new subsection (4A) complements subsection (4) where a verification under the prescribed verification method (under subsection 20(8)) is used as the verifier in relation to more than one account. Subsection (4A) will require the cash dealer to retain the record until 7 years after the closure of the last account to which it relates.

40. Subclause 41A(h) makes a minor consequential change to subsections (5), (6) and (7).

Amendment No 12

41. Amendment number 12 inserts a new clause 44A into the Bill, which in turn amends section 29 of the CTR Act ("False or misleading information"). New paragraph 29(4)(aa) will create a new offence where a person makes a statement which is false or misleading and which is capable of misleading an identifying cash dealer in carrying out the prescribed verification procedure under new subsection 20(8).

