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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ROYAL COMMISSION INTO THE NEW SOUTH WALES POLICE SERVICE
(ACCESS TO INFORMATION) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice,
the Honourable Duncan Kerr)

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ROYAL COMMISSION INTO THE NEW SOUTH WALES POLICE SERVICE
(ACCESS TO INFORMATION) BILL 1994

OUTLINE

This Bill amends the *Financial Transaction Reports Act 1988* (the FTR Act) and the *Telecommunications (Interception) Act 1979* (the TI Act) to enable information relevant to the terms of reference of the Royal Commission into the New South Wales Police Service to be passed to that Royal Commission.

The proposed amendments to the FTR Act will give the Royal Commission access to AUSTRAC's database of reportable transactions under the FTR Act.

The proposed amendments to the TI Act will enable agencies with the power to conduct interceptions under that Act to communicate relevant information obtained under warrant to the Royal Commission. The proposed amendments will not permit agencies to conduct interceptions for the purposes of obtaining such information. Rather, they will be able to pass to the Royal Commission relevant information which they have obtained in the course of conducting interceptions under warrant for their own purposes.

FINANCIAL IMPACT STATEMENT

The cost of the amendments to AUSTRAC and to intercepting agencies is not expected to be significant.

NOTES ON CLAUSES

Clause 1: Short Title

Clause 1 is a formal provision specifying the short title of the Bill

Clause 2: Commencement

The Bill is to commence on Royal Assent.

Clause 3: Amendments

The *Financial Transaction Reports Act 1988* (the FTR Act) and the *Telecommunications (Interception) Act 1979* are amended as set out in the Schedule to the Bill.

Schedule

Part 1 – Amendment of the Financial Transaction Reports Act 1988

Item 1

This item amends subsection 3(1) of the FTR Act by adding a definition of the “Royal Commission into the New South Wales Police Service”.

Item 2

This item adds the Royal Commission into the New South Wales Police Service to subsection 27(16) of the FTR Act as a law enforcement agency. This has the effect that the Director of AUSTRAC may authorise the Royal Commission to have access to specified FTR information for the purposes of performing its functions.

Item 3

This item adds the person constituting the Royal Commission into the New South Wales Police Service, and member of staff of that Royal Commission to subsection 27(17) of the FTR Act as law enforcement officers. This has the effect that, where the Director has authorised the Royal Commission to have access to FTR information, the Royal Commissioner or a member of staff of the Royal Commission is entitled to access to that information. It also has the effect that those persons are bound by the secrecy provision in subsection 27(6) of the FTR Act.

Part 2 – Amendment of the Telecommunications (Interception) Act 1979

Item 4

This item adds a definition of “Royal Commission into the New South Wales Police Service” for the purposes of the TI Act.

Item 5

This item defines the chief officer of the Royal Commission to be the person constituting the Royal Commission, at present Justice James Roland Tomson Wood. This has the effect that it is the Royal Commissioner to whom information may be communicated under section 68 of the TI Act.

Item 6

This item includes the Royal Commission as an eligible authority for the purposes of the TI Act. This has the effect that lawfully obtained information will be able to be communicated to the Royal Commission under section 68 of the TI Act. It does not enable the Royal Commission to seek the issue of warrants under the TI Act or to conduct interceptions.

Item 7

This item includes the Royal Commissioner and the staff of the Royal Commission in the definition of "officer" for the purposes of the TI Act. This will enable those persons to communicate, make use of or make a record of lawfully obtained information for a permitted purpose of the Royal Commission. In particular, it will enable the Royal Commissioner to communicate information given to him under section 68 to members of the staff of the Royal Commission. A permitted purpose of the Royal Commission is one which falls within paragraph (a) of the definition of "permitted purpose" in subsection 5(1) of the TI Act.

Item 8

This item clarifies that the definition of a "prescribed investigation" applies to an eligible authority of a State which is not a declared agency for the purposes of the TI Act. At present that definition refers only to an agency. In the part of the TI Act in which the definition of "prescribed investigation" appears, "agency" does not include an eligible authority of a State in relation to which a declaration under section 34 is not in force. The part of the TI Act to which the definition is relevant (Part VII) does, however, include such an eligible authority. Accordingly, it is necessary to ensure that the definition of "prescribed investigation" applies to an eligible authority whether or not it has been declared under section 34 of the TI Act.

Item 9

This item includes an investigation which the Royal Commission is conducting under its Letters Patent in the definition of "prescribed investigation". The definition of "prescribed investigation" is relevant to the definition of "relevant offence". This in turn affects what information may be communicated under section 68 to an agency or eligible authority.

Item 10

This item clarifies that the definition of a "relevant offence" applies to an eligible authority of a State which is not a declared agency for the purposes of the TI Act. At present that definition refers only to an agency. In the part of the TI Act in which the definition of "relevant offence" appears, "agency" does not include an eligible authority of a State in relation to which a declaration under section 34 is not in force. The part of the TI Act to which the definition is relevant (Part VII) does, however, include such an eligible authority. Accordingly, it is necessary to ensure that the definition of "relevant offence" applies to an eligible authority whether or not it has been declared under section 34 of the TI Act.

Item 11

This item includes in the definition of “relevant offence”, in relation to the Royal Commission, a prescribed offence which is an offence against the law of New South Wales and which is being investigated by the Royal Commission under its Letters Patent. This has the effect that the chief officer of an agency which has lawfully obtained information under the TI Act which relates or appears to relate to such an offence may communicate it to the Royal Commissioner.

Items 12 to 17

These are technical amendments which add the word “or” at the end of each subparagraph of section 5B.

Item 18

This item makes it clear for the avoidance of doubt that information lawfully obtained under the TI Act may be given in evidence in a proceeding of the Royal Commission under section 74 of that Act.

Item 19

This item includes an investigation by the Royal Commission under its Letters Patent within the definition of an investigation for the purposes of the TI Act. This is particularly important as it means that the Royal Commission can use information communicated to it under the TI Act for a purpose connected with an investigation by it of an offence which falls within the definition of a “prescribed offence” in the TI Act.

Item 20

This item includes a prosecution for a prescribed offence against the law of New South Wales to which an investigation by the Royal Commission under its Letters Patent relates or related in the definition of relevant proceedings for the purposes of the TI Act. This has the effect that the Royal Commission can use information communicated to it under the TI Act for a purpose connected with such a prosecution or with a decision whether or not to begin such a prosecution.

Items 21 and 22

These are technical amendments which add the word “and” at the end of paragraphs 68(a) and (b).

Item 23

This item adds a new paragraph which enables lawfully obtained information to be communicated to the Royal Commissioner if it relates or appears to relate to acts or omissions of police officers or misbehaviour or improper conduct by an officer of a State falling within the Royal Commission’s terms of reference. This amendment is necessary because paragraph 68(b) would only permit communication to the Royal Commission of information relating to matters amounting to criminal offences. It

might be that information is obtained that falls within the Royal Commission's terms of reference but does not amount to a criminal offence. At present the TI Act would only allow such information in respect of the New South Wales Police Service to be passed to the New South Wales Police Commissioner.

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