



Financial Transaction Reports Amendment (Transitional Arrangements) Bill 2008

Jonathan Chowns
Economics Section

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Financial Transaction Reports Amendment (Transitional Arrangements) Bill 2008

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Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

This Bill makes minor amendments to the *Financial Transaction Reports Act 1988* ('the FTR Act') to ease the transition from the existing financial transactions reporting arrangements under the FTR Act to the new arrangements under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ('the AML/CTF Act').

Background and basis of policy commitment

Until 2006 the principal anti-money laundering legislation was the FTR Act. This is still in operation and is administered by the Australian Transaction Reports and Analysis Centre ([AUSTRAC](#)). That Act has as its principal object the administration and enforcement of taxation laws.¹

In 2006, the AML/CTF Act was passed. It is also administered by AUSTRAC and manifests Australia's attempt to comply with the recommendations of the [Financial Action Task Force on Money Laundering](#) ('the FATF'). The FATF is international organisation which promotes policies to combat money-laundering and the implementation of those policies in domestic laws. Originally concerned primarily with the impacts of money laundering on taxation revenue, it has, more recently, made recommendations about the reporting of financial transactions that might be linked to terrorist activity. The complex history of this legislation is recorded in the [Bills Digest](#) for the AML/CTF Bill 2006 and the [Bills Digest](#) for the *Anti-Money Laundering and Counter-Terrorism Financing*

1 Section 4 of the Financial Transaction Reports Act 1988

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Amendment Bill 2007 that amended it in 2007. A wealth of background information is on the [anti-money laundering section](#) of the website of the Attorney-General's Department.

Both of these Acts place obligations — principally obligations to report certain kinds of transactions — on financial, bullion and gambling services providers. Some conduct previously regulated under the FTR Act will move to be regulated under the newer Act and transitional arrangements have been put in place to facilitate certain aspects of this.² The arrangements for the transition from the old to the new scheme are being implemented over the two year period that began on 12 December 2006. Insofar as those arrangements affect cash dealers and solicitors, those parties would — but for the amendments proposed by this Bill — be regulated under the new arrangements from 12 December 2008. 'Cash dealer' is a defined broadly and at length in the FTR Act.³

However, the Explanatory Memorandum says that some cash dealers, who would be expected to move to the new reporting regime on 12 December 2008, will not be fully compliant with the new obligations by that time. This Bill proposes amendments which will give those parties the option of continuing to report relevant under the existing FTR Act scheme until they are compliant under the new scheme or until 11 March 2010, whichever is earliest.

Committee consideration

At the date of this digest, the Bill has not been referred to any committee.

Financial implications

The Explanatory Memorandum says that the amendments have no financial impact on Government revenue.

2 Anti-Money Laundering and Counter-Terrorism Financing(Transitional Provisions and Consequential Amendments) Bill 2006

3 Section 3 of the FTR Act defines 'cash dealer' to include financial institutions, foreign corporations that would, if incorporated in Australia, be financial corporations within the meaning of paragraph 51(xx) of the Constitution; insurers, certain financial services licensees; trustees and managers of unit trusts, certain persons dealing in travellers cheques; bullion sellers; certain persons involved in the transfer of funds into and out of Australia; operators of casinos and gambling houses and bookmakers.

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Main provisions

Item 1 amends subparagraph 7(1)(f)(ii) of the FTR Act. Section 7 requires cash dealers to give reports of significant cash transactions to AUSTRAC, except in certain circumstances. A significant cash transaction is one of \$10,000 or more. One such circumstance is if, amongst other things, the transaction occurred after the commencement of Division 3 of Part 3 of the AML/CTF Act (at which point the latter Act would apply). By amending this subparagraph, cash dealers will be able report transactions to AUSTRAC under the existing FTR provision as long as they take place before 11 March 2010, even if Division 3 of Part 3 of the AML/CTF Act has commenced.

The amendment made by **item 2** complements the above amendment by allowing the cash dealer to comply with either the old or new reporting requirements. It provides that, if the cash dealer complies with the new reporting requirements of section 43 of the AML/CTF Act (which is in Division 3 Part 3 of that Act), the reporting requirement in section 7 of the FTR Act does not apply.

Some transactions or classes of transaction are eligible for exemption and need not be reported to AUSTRAC. Under section 11 of the FTR Act, these must be entered in an exemption register. An exception to this registration requirement is if the transaction takes place after the commencement of Division 1 of Part 3 the AML/CTF Act where similar recording requirements are found (provided the cash dealer is also a 'reporting entity' under that Act). As some financial institutions are not ready to move to the new regime for recording exempt transactions, **item 3** amends the recording exception by allowing financial institutions to continue to use the FTR exemption register until 11 March 2010 regardless of whether Division 1 of Part 3 the AML/CTF Act has come into operation.

Items 4, 5 and 6 deal with the reporting obligations of solicitors. These amendments are similar in nature to those made by Items 1 and 2 except that these amendments concern solicitors and not cash dealers. Currently, solicitors have reporting obligations under section 15A of the FTR Act until 12 December 2008 and similar obligations under the AML/CTF Act from that date. As some solicitors are expected to be non-compliant with the new rules by 12 December 2008, **item 5** amends section 15A to allow them to continue to report significant non-exempt transactions under the FTR Act rather than the AML/CTF Act. However, if they are compliant with the new arrangements, there is no need to also comply with the FTR Act obligations (**item 6**).

Items 7, 8 and 9 deal with the obligations under the FTR Act on cash dealers to report 'suspect transactions'. Suspect transactions are those that may or may not be 'significant transactions' (and therefore already reportable) which raise a suspicion of certain kinds of wrongdoing. The changes made here mirror those made to the reporting obligations of cash dealers for 'significant transactions' (**items 1 and 2**) and those made to the reporting obligations of solicitors (Items 4,5 and 6). That is, there is currently an obligation to report such transactions under section 16 of the FTR unless the transaction takes place

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after Division 1 of Part 3 the AML/CTF Act has come into operation. As some cash dealers are expected not to be compliant with the new reporting arrangements, the amendment made by **item 8** to subsection 16(4A) allows them to continue to report under the FTR Act until 11 March 2010. However, if they are compliant with the new arrangements, there is no need or requirement to also comply with the FTR Act obligations (**item 9**).

Items 10 and 11 deal with the obligations on cash dealers to report international funds transfer instructions (IFTIs). Until 12 December 2008, cash dealers have reporting obligations under the FTR Act but, from that date, these obligations will be replaced with obligations under the AML/CTF Act. As some cash dealers are expected to be non compliant on that date, amendments are proposed to section 17B by **items 10 and 11** to allow cash dealers to continue to report IFTIs under the FTR Act rules until 12 March 2010 (**item 10**). However, if they are compliant with the new arrangements, there is no obligation to also comply with the FTR Act obligations (**item 11**).

Concluding comments

In the absence of any express allegations of mismanagement of the existing transition process — either by the regulated parties, the administrator of the scheme or anyone else — the Bill appears to be uncontroversial.

This Bill anticipates that certain cash dealers and solicitors may not be prepared for the commencement of the AML/CTF rules and obligations that commence later in 2008. The AML/CTF regime has significant compliance rules and it was not intended that those groups be penalised if they were not prepared for the changeover by December 2008. It is worth noting that when the AML/CTF Act was enacted the government noted its intention to repeal the FTR Act once the AML/CTF Act was in full operation. This Bill simply allows more time to those moving into the new arrangements.

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