

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE

Question No. 138

Senator Stott-Despoja asked the following question at the hearing on 31 October 2006:

The AUSTRAC Annual Report shows an increase in the number of suspect transaction reports under the Financial Transaction Reports Act (FTRA) increasing by 44% in the last year to more than 24,000.

(a) Can AUSTRAC confirm that these reports are based entirely on subjective criteria applied by employees of financial institutions, that they remain on an AUSTRAC database indefinitely with access by (currently 29) partner agencies, and that the individuals who are subject to the reports are never allowed to know that a report exists, due to a prohibition on notification and exemption from the FOI Act?

(b) What is the current total number of suspect transaction reports held by AUSTRAC compiled cumulatively since 1989, amounting to a secret blacklist with no natural justice safeguards?

The answer to the honourable senator's question is as follows:

(a) Section 16 of the FTRA requires reporting where there are "reasonable" grounds to suspect that information concerning a transaction may be relevant to investigation of tax evasion or to investigation of, or prosecution of a person for, an offence against the law of the Commonwealth or a Territory, or may be of assistance in the enforcement of the Proceeds of Crimes Acts 1987 and 2002. AUSTRAC issues information circulars and guidelines to reporting entities to assist their staff to identify suspect transactions in accordance with section 16 of the FTRA. Cash dealers use a range of manual and automated systems to detect suspect transactions. The obligation to report rests on the "cash dealer". Employees of a financial institution have no obligation to make reports. Each "cash dealer" has internal operating procedures based on AUSTRAC information circulars and guidelines to assist in deciding whether to report a transaction.

Suspect transaction reports remain on the AUSTRAC database indefinitely. On-line access to suspect reports is controlled by Memorandums of Understanding between the Director of AUSTRAC and the Chief Executive of each of the 29 partner agencies authorised under the Act to access the reports within each agency, on-line access is restricted to officials who need to access those reports on-line. Other persons within each of the agencies can seek dissemination of the suspect reports upon request.

Where a cash dealer has communicated a report of a suspect transaction to the Director of AUSTRAC, under section 16(5A) of the FTRA the cash dealer must not disclose to any other person that the cash dealer has formed the suspicion; that the information has been communicated to the Director; or any other information from which the person may infer that a suspicion has been formed or that a report has been provided to the Director. This is essential to prevent the person taking action which prevents an effective law enforcement response if the report subsequently leads to an investigation and prosecution.

Suspect transaction reports are exempt from disclosure under the FOI Act.

(b) As at 30 September, 2006, the number of suspect transaction reports communicated to AUSTRAC since commencement of the relevant provisions of the Financial Transactions Reports Act in 1990, is 139,653.

AUSTRAC does not maintain a secret blacklist. AUSTRAC maintains a database of financial transaction information. That information is an intelligence resource for law enforcement and regulatory agencies. Those agencies can only use that information in accordance with the laws that govern the exercise of any investigation or prosecution or regulatory compliance action by that individual agency. The information on the AUSTRAC database cannot have itself found criminal or regulatory penalties.

The information held on the database is ultimately factual. A suspect transaction report contains information about the actions of a person or organisation.