

## Chapter 3

# AUSTRAC

### The Organisation

3.1 AUSTRAC, known as the Cash Transaction Reports Agency until 6 December 1992, is established by section 35 of the FTR Act and comprises the Director and staff<sup>1</sup>. The functions of the Director are prescribed by section 38 of the Act as follows:

- (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 or another Act;
  - (ab) to exercise the powers that the Director is permitted to exercise under a law of a State or Territory;
  - (b) to collect, retain, compile, analyse and disseminate FTR information;
  - (c) to monitor entries made in financial institutions' exemption registers;
  - (d) to provide advice and assistance to the Commissioner in relation to FTR information; and
  - (e) to issue guidelines to cash dealers about their obligations under this Act and the regulations.

3.2 The extent of AUSTRAC's functions was the subject of some discussion during the Committee's inquiry. In particular, there was concern expressed that AUSTRAC may be exceeding its function of analysing and becoming 'investigative'. The following discussion outlines the way in which AUSTRAC stores and analyses the data reported to it.

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<sup>1</sup> As at 31 December 1992 the staff consisted of 50 public service staff, 29 full-time contractors and 8 part-time contractors: Submission No. 13, (AUSTRAC) p. 178.

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## TRAP and TRAQ Databases

3.3 All financial transaction reports received by AUSTRAC are incorporated into the AUSTRAC financial database, called TRAP (the Transaction Reports Application Program). The data stored on TRAP derives from significant cash transaction reports, suspect transaction reports and international currency transfer reports (under section 15 of the FTR Act). International wire transfers (IFTIs) have been added to the database since the start of their reporting on 6 December 1992. AUSTRAC proposes to rename the financial database TRAQ (Transaction Reports Analysis and Query) now that increasing amounts of wire transfer data are stored on the database.<sup>2</sup> TRAQ is an updated model of the TRAP database; it will be phased into operation during 1993 and will replace the TRAP database.

3.4 The TRAQ database will provide some further analytical features not available on TRAP:

The main advantage which TRAQ possesses is that it is able to carry out link analysis artificially. That is, the TRAQ database will automatically link parameters that have associations. As a simple example, if two financial transaction reports from the same person [were] put into the database and on each report the name was spelt differently, then TRAQ would be able to recognise that this variation existed and hence these two reports would be linked. Another feature of this linking process is the ability for TRAQ to link names with similar addresses or similar names with addresses.<sup>3</sup>

## AUSTRAC Analytical Operations

3.5 The Committee was informed that AUSTRAC participates in bilateral projects with criminal law enforcement agencies on criminal matters and with ATO and Customs on revenue matters. AUSTRAC's role is to assist the other agencies in discovering the money trail and to uncover new targets from the data.

3.6 AUSTRAC explained the relationship between itself and investigative agencies in the following terms:

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<sup>2</sup> Submission No. 13, (AUSTRAC) p. 54.

<sup>3</sup> Submission No. 13, (AUSTRAC) pp. 55-56.

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It is common in an analytical project for AUSTRAC to work in a cycle with client law enforcement agencies. AUSTRAC is briefed by the law enforcement agency; AUSTRAC then undertakes an analysis of the FTR data; a report goes to the law enforcement agency; field inquiries are conducted; the law enforcement agency again briefs AUSTRAC on the results and progress of that investigation; and the process starts over again with AUSTRAC's analysis of its holdings.<sup>4</sup>

AUSTRAC's role in providing data and analysis for investigative task forces, and the danger of AUSTRAC exceeding its statutory charter, is discussed at paragraphs 3.19 - 3.26 below.

## The AAU

3.7 Apart from teamwork with law enforcement agencies AUSTRAC has, in addition, established an analysis unit, the AUSTRAC Analysis Unit (AAU). The AAU examines the holdings of AUSTRAC to try to detect unusual cash flows which may indicate money laundering. The AAU is jointly staffed by AUSTRAC, AFP, ATO and the NCA.<sup>5</sup> The AAU is oversighted by meetings of representatives from each participating agency. The meetings are chaired by the Director of AUSTRAC.

3.8 The AAU's work has been in a state of development. One example of this is the linkage of FTR data with other information, such as data from the Reserve Bank (RBA) and Australian Bureau of Statistics (ABS) data. The RBA is a cash dealer<sup>6</sup> and reports its significant cash transactions like any other bank. The RBA's transactions concern cash delivered to, and collected from, branches of commercial banks. This provides a picture of cash flows to and from bank branches involving the RBA, in addition to the reports from other cash dealers of cash flows from other sources. The AAU has developed a computer record of the RBA data which can be manipulated to examine the cash flows of various banks. The data is being used to trigger audits of bank reporting to examine

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<sup>4</sup> Evidence (Mr Power) p. 13.

<sup>5</sup> Submission No. 13, (AUSTRAC) p. 110.

<sup>6</sup> FTR Act section 3, definitions of 'cash dealer', 'financial institution' and 'bank'.

particular branches where money launderers are thought to be placing cash and as a potential tool for the Australian Taxation Office.<sup>7</sup>

3.9 This work has been linked with ABS data to relate statistical demographic factors to aggregate cash flows in designated regions within the Australian economy. This then allows 'cash hot spots' - areas showing an anomaly in the amount of cash circulating proportionate to the business activity in, or population of, the area - to be identified.

### **Caution Needed in AUSTRAC's Work**

3.10 The Committee sounds the following caution. AUSTRAC is a creature of statute, its functions are specified in the FTR Act. It has no inherent or general power to perform functions which are not within the meaning of the Act. In addition to this matter of statutory interpretation, there are reasons of public policy for requiring clear statutory sanction for the actions of an agency possessing a large body of personal information about many thousands of members of the community. An agency such as AUSTRAC should be careful to ensure that there is no doubt that its proposed actions are within its statutory charter. Where there is doubt, legislative change should be sought.

### **How AUSTRAC's Clients use AUSTRAC's Databases**

3.11 AUSTRAC's clients - law enforcement and revenue agencies - provided evidence on the way in which the AUSTRAC database is accessed. ATO advised that it accesses the database in a number of ways:

- on-line access;
- off-line (or batch);
- SQL (Structured Query Language) requests;
- Moneymap; and
- downloading of data by AUSTRAC following a specific request from the ATO.<sup>8</sup>

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<sup>7</sup> Submission No. 13, (AUSTRAC) p. 111.

<sup>8</sup> Submission No. 43, (ATO) p. 9.

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3.12 **On-line access** occurs via the ATO's networked computer system. When the volume of data is not too large it can be viewed visually on screen; on paper after a screen dump; and via system issued reports.

3.13 **Off-line (or batch) access** is used when large quantities of data need to be examined. The search is carried out when demand on the system is low, for example, overnight. 'After the user specifies the search criteria, the enquiry is placed in a waiting queue for later processing. Results are stored for further action, or can be output directly to the printer.'<sup>9</sup>

3.14 **SQL requests** allow access to the AUSTRAC database without going through the TRAP inquiry system. At present, because the request must be programmed in Structured Query Language, the search is carried out by AUSTRAC staff responding to ATO requests for specific information.

In the future it is anticipated that direct access to the SQL enquiry facility will be given to the ATO's computer audit specialists. This will lead to even greater use of the database as our auditors will only need to liaise with ATO staff thereby simplifying the information gathering process.<sup>10</sup>

3.15 **Moneymap** is a computer based analytical tool, which attempts to build links between related transactions on data downloaded from the TRAP system. ATO officers use this tool at AUSTRAC's premises.

3.16 **Downloading** is done where large volumes of data or specific requests relating to data are required. AUSTRAC may download data onto tape, floppy disk or paper. The data can then be transferred to the ATO database for further analysis by ATO staff.

## **AUSTRAC Participation in Bilateral Law Enforcement and Revenue Projects**

3.17 AUSTRAC does participate in bilateral operational projects with law enforcement and revenue agencies. One matter referred to by a

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<sup>9</sup> Submission No. 43, (ATO) p. 10.

<sup>10</sup> *ibid* p. 10.

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number of witnesses from law enforcement and revenue agencies is Operation Quit:

Operation Quit is a multi agency task force coordinated by the NCA investigating alleged State tobacco tax evasion. Prior to the Task Force some States had separate investigations on the same issues. The AUSTRAC contribution to the Task Force was several fold:

- Suspect transaction reports indicated unusual cash flows that helped to define the relevant money trail; the Task Force was established primarily as a result of these reports.
- Significant cash transaction reports expanded and added to the cash flow information.
- Further information and documents were obtained by AUSTRAC for the Task Force, both from banks and cash carriers.
- As time went on entirely new targets appearing to be engaged in the evasion of State tobacco tax were provided by AUSTRAC to the Task Force as a result of AUSTRAC continuing to monitor the data - this monitoring is ongoing.<sup>11</sup>

## **Criticism that AUSTRAC is Exceeding its Statutory Functions**

3.18 The Privacy Commissioner submitted that AUSTRAC had 'extended its role beyond that of a clearing-house providing information to other agencies, towards that of a general intelligence agency monitoring individuals' financial activity. Its activities have included participation in a number of bilateral projects and investigations, and research into such matters as modelling of cash flows within the community.<sup>12</sup>

VCCL put the matter more strongly:

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<sup>11</sup> Submission No. 13, (AUSTRAC) p. 105.

<sup>12</sup> Submission No. 41, (Privacy Commissioner) p. 8.

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It seems clear therefore that the Agency<sup>13</sup> is acting *ultra vires* in undertaking investigative activities and should immediately cease doing so. If the law enforcement agencies are not capable of the investigation undertaken by the Agency then the answer is to increase their capacities rather than give that function to the Agency.

There is an obvious danger that the Agency could develop into an omnipotent FBI-type organisation. That is unlikely under its present management, which is attuned to the civil liberties sensitivities of its activities. However, the unauthorised extension of the Agency's activities in the manner outlined above is a cause for serious concern.<sup>14</sup>

## AUSTRAC Involvement in NCA Task Forces

3.19 The Committee was told of the involvement of AUSTRAC in NCA task forces, the most significant example being the task force known as Operation Quit. This task force was investigating suspected conspiracies to defraud the revenues of Victoria, New South Wales, Queensland and the Northern Territory by attempting to evade tobacco licence fees in those jurisdictions.

3.20 The task force eventually comprised representatives of the revenue offices and police forces of all States and Territories, AUSTRAC, the ATO and the AFP and was coordinated by the NCA.<sup>15</sup>

3.21 The NCA explained the role of AUSTRAC in the task force as follows:

Having brought the suspect transaction reports to the attention of the NCA, AUSTRAC maintains an important role in the task force as a provider of financial transaction reports information (FTR information) relating to the activities of task force targets. That information consists of significant transaction reports and suspect transaction reports. The task force makes extensive use of that information by using it to identify the movement of cash by specific identities. Link charts, profiles and financial analyses incorporating AUSTRAC information have been extensively used as an aid to identifying targets and available intelligence and evidence.

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<sup>13</sup> ie AUSTRAC, formerly the Cash Transaction Reports Agency.

<sup>14</sup> Submission No. 12, (VCCL) p. 47.

<sup>15</sup> Submission No. 27, (NCA) p. 8.

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AUSTRAC information was extremely useful, confirming suspicious activity in some cases and providing a trigger for investigation in others. The information was a very useful tool in identifying bank accounts used by persons of interest to the Task Force and the flow of cash through those accounts. In several cases, further banking information obtained under s.16(4) of the Act led to the identification of 'structuring' offences under s.31 of the Act and was directly responsible for the investigation of criminal activity and resulting criminal proceedings.<sup>16</sup>

3.22 Paragraph 11(1)(c) of the *National Crime Authority Act 1984* provides for the NCA, where it considers it appropriate for the investigation of matters relating to relevant criminal activities, to arrange for the establishment of task forces and to 'coordinate' their activities.

### Need to Stay Within the Statute

3.23 The relevant statutory function of the Director of AUSTRAC which could support the involvement of AUSTRAC in these task forces provides that the Director is to 'collect, retain, compile, analyse and disseminate FTR information'.<sup>17</sup> The Committee believes there is a real issue whether AUSTRAC may have exceeded its charter through its involvement in the manner outlined in NCA task forces. In any event, as a matter of public policy, there should be a more clear mandate from the Parliament before AUSTRAC departs from strict intelligence gathering into mainstream law enforcement activities in the way explained in the NCA submission to the Committee.

3.24 Law enforcement bodies must act within the confines set by Parliament. Where there is doubt as to whether they have the power to carry out a particular activity they consider necessary in the public interest to carry out they should seek legislation from Parliament to make sure they do. They should not act on the basis that they may possibly, or even probably, have the power to do so. The legislation which supports the action should be unequivocal.

3.25 Investigation is a grave matter. Issues of people's rights as citizens living in a free and democratic community, and issues of fairness,

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<sup>16</sup> Submission No. 27, (NCA) p. 8.

<sup>17</sup> Paragraph 26(1)(b) of the FTR Act.



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decency and privacy arise. It is for Parliament to determine the balance to be struck between the public interest in seeing that those attributes are preserved and the public interest in seeing crime curtailed and punished.

**Recommendation 1:** The Committee recommends that AUSTRAC should engage only in those activities which are clearly and unequivocally allowed under the relevant Act. Where there is doubt about an action it proposes to take it should seek the enactment of legislation that unquestionably supports it. For example, it should ensure it has legislative authority to participate in NCA task forces.

## Collecting and Analysing

3.26 AUSTRAC both collects information and analyses it. The moral distinction between collecting material obtained by force of law and without reference to its creator, and analysing it without the knowledge of its producer or supplier, is so narrow as to make it appropriate to treat both processes on the same basis. If it is reasonable for AUSTRAC to gather material, it is reasonable for it to order and deal with it in ways that show up patterns of behaviour and the pursuit of a particular course of conduct.