THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

CHECKING THE CASH

A REPORT ON THE EFFECTIVENESS OF THE *FINANCIAL TRANSACTION REPORTS ACT 1988*

Report by the
Senate Standing Committee on
Legal and Constitutional Affairs

November 1993

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Checking the Cash

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Terms of Reference

The Senate referred the following matters to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report on or before [18 November 1993[1]]:

> The operation and effectiveness of the *[Financial[2]] Transaction Reports Act 1988* (the Act) with particular reference to:
>
> (a) the scope and reach of the Act, the adequacy of its provisions and whether relevant international obligations to which Australia is subject have been met;
>
> (b) the extent of public awareness of and support for the Act;
>
> (c) the legal effectiveness of the Act, including relevant matters of law which have emerged or which may emerge;
>
> (d) the extent to which the Act has achieved its objectives;
>
> (e) the cost-effectiveness of the Act, including the possibility or desirability of cost-recovery;
>
> (f) any unforeseen or unintended effects of the Act; and
>
> (g) any other matters relevant to the effective operation of the Act.

Journals of the Senate No 203, 12 November 1992, pp. 3045-6.

---

[1] The reporting deadline was extended from 30 June 1993 to 30 September 1993: *Senate Hansard* 25 May 1993 p. 1202. The reporting deadline was subsequently extended to 18 November 1993: Journals of the Senate 28 September 1993 p. 513 and Journals of the Senate 28 October 1993, p. 742.

[2] The *Cash Transaction Reports Amendment Act 1991* amended the short title of the Act from the Cash Transaction Reports Act to the Financial Transaction Reports Act, with effect from 6 December 1992. This was said to reflect the shift in the focus of the Act towards non-cash transactions.

Abbreviations

AAPBS	Association of Australian Permanent Building Societies
AAU	AUSTRAC Analysis Unit
ABA	Australian Bankers' Association
ABS	Australian Bureau of Statistics
AD(JR) Act	*Administrative Decisions (Judicial Review) Act 1977*
AFC	Australian Finance Conference
AFP	Australian Federal Police
ANAO	Australian National Audit Office
ARC	Administrative Review Council
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
ANZ	ANZ Banking Corporation
CJC	Queensland Criminal Justice Commission
CTRA	Cash Transaction Reports Agency
CUSCAL	Credit Union Financial Services (Australia) Ltd
Customs	Australian Customs Service
DPP	Director of Public Prosecutions
DSS	Department of Social Security
FATF	Financial Action Task Force
FTR Act	*Financial Transaction Reports Act 1988* (formerly the *Cash Transaction Reports Act 1988*)
FTR information	Financial Transaction Reports information
ICAC	NSW Independent Commission Against Corruption
IFTI	International Funds Transfer Instruction (also called wire transfers)
IPPs	Information Privacy Principles under section 14 of the *Privacy Act 1988*
LEA	Law enforcement agency
NAB	National Australia Bank
NCA	National Crime Authority
RBA	Reserve Bank of Australia
SQL	Structured Query Language

TRAP	Transaction Reports Application Program (AUSTRAC financial database)
TRAQ	Transaction Reports Analysis and Query (AUSTRAC financial database)
VCCL	Victorian Council for Civil Liberties

Recommendations

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. (Para 3.25)

Recommendation 2: The Committee recommends that the reporting threshold for significant cash transaction reports should not be allowed to erode significantly through inflation. To achieve this the threshold should be adjusted periodically after consultation with cash dealers. The aim of the adjustment should be to maintain the threshold at, or near, the present amount in real terms. (Para 4.22)

Recommendation 3: The Committee recommends that those cash dealers engaging in a sufficient number of significant cash transactions to warrant the measure should endeavour to provide the reports by electronic means. (Para 4.22)

Recommendation 4: The Committee recommends that suspect reporting be retained in its present form. Privacy interests should be better protected than at present by adopting Recommendations 7-10 below. (Para 5.39)

Recommendation 5: The Committee recommends that the present account opening requirements of the FTR Act should no longer be a mandatory minimum procedure. Instead the Act should impose upon cash dealers an obligation to take reasonable steps to satisfy themselves of the identity of signatories to an account. The present mandatory procedures should become standard procedures to apply in most cases. Cash dealers should have the discretion to depart from the standard procedures where the circumstances so warrant. The onus should be on the cash dealer to prove that the circumstances warranted a departure from the standard procedure and that in its opinion the customer's identity has been established. (Para 6.30)

Recommendation 6: AUSTRAC should have the function, and the necessary resources, to audit the performance of cash dealers in complying with the statutory duty to satisfy themselves of the identity of their customers. (Para 6.30)

Recommendation 7: The Committee recommends that the FTR Act be amended so that ATO no longer has a *right* of access to FTR data but has access to FTR data on the same basis as law enforcement agencies, that is, on the basis of a Memorandum of Understanding entered into with the Director, AUSTRAC. (Para 7.28)

Recommendation 8: The Committee recommends that a civil liberties representative be appointed to the Ministerial Advisory Committee on the FTR Act. (Para 7.32)

Recommendation 9: The Committee recommends that the advice of the Privacy Commissioner be sought by the Director of AUSTRAC whether to appoint a civil liberties representative either to an existing AUSTRAC advisory committee, or to establish a separate advisory committee on privacy and civil liberties issues. (Para 7.32)

Recommendation 10: The Committee recommends that the FTR Act be amended to give the Director of AUSTRAC power to authorise the deletion of FTR information from the AUSTRAC database in appropriate circumstances. (Para 7.35)

Recommendation 11: The Committee recommends that the Department of Social Security not be given access to FTR information. (Para 8.15)

Recommendation 12: The Committee recommends that State and Territory revenue authorities be given access to FTR information on the basis of a Memorandum of Understanding to be entered into with the Director of AUSTRAC and subject to such conditions as the Director requires. The Director should ensure that access is permitted only to a small number of key officers of each authority. Access should be permitted only if the authority undertakes to comply with privacy safeguards equivalent to the IPPs and satisfies the Director of AUSTRAC that the FTR information will be rigorously protected by it. (Para 8.22)

Recommendation 13: The Committee recommends that Commonwealth law enforcement agencies better utilise the AUSTRAC database to obtain maximum benefit in the pursuit of major crime. (Para 9.47)

Recommendation 14: The Committee notes the sparing use of the full range of AUSTRAC information by the ATO. The Committee recommends that the ATO review its application of resources to:

- the training of ATO officers;
- the further development of the relationship between AUSTRAC and ATO; and
- the usage of AUSTRAC information by its officers

to maximise the benefit to the revenue from the use of AUSTRAC information. (Para 9.65)

Recommendation 15: The Committee recommends that a definition of 'transaction' be inserted in the Act to make clear that an uncompleted transaction is caught by the reporting requirements of the Act. (Para 10.17)

Recommendation 16: The Committee recommends that the best way to deal with the protection of the identity of tellers as witnesses is:

- agreements between AUSTRAC and law enforcement agencies be drawn up along the lines of the draft agreement with the AFP referred to at para 10.26;
- the essence of such agreements be taken into account by the DPP;
- State law enforcement agencies and prosecuting authorities should be encouraged to take the same approach;
- at the same time legislative protection for the identity of the officer who initiates a suspect report should be provided in the FTR Act, but without excluding the possibility of calling the relevant officer in those few cases where it may prove to be necessary. (Para 10.28)

Recommendation 17: The Committee considers that there should not be strict liability under section 31. It should be required that the prosecution establish that the defendant conducted the relevant transactions with the intent of evading the reporting requirements of the FTR Act. (Para 10.38)

Recommendation 18: The Committee recommends that section 15 be amended:

- to increase the reporting threshold for import or export of currency to $10,000, and
- to define the point at which currency transferred by post or consignment should be deemed to have been exported. (Para 10.44)

Recommendation 19: The Committee recommends that the FTR Act be amended to require the identification of customers in transactions for the sale and purchase of bullion through bullion dealers. (Para 10.50)

Recommendation 20: The Committee recommends that section 42 of the FTR Act be amended so that administrative decisions made under the Act are reviewable under the AD(JR) Act. The advice of the Administrative Review Council should be sought as to whether certain decisions should be included in Schedule 2 of the AD (JR) Act so that reasons for decisions may not be required. (Para 10.53)

Recommendation 21: The Committee recommends that FTR information be specifically exempted from FOI under section 38 of the FOI Act by appropriate amendment to the FTR Act. (Para 10.55)

Recommendation 22: The Committee recommends that the definition of 'cash dealer' in the *Financial Transactions Reports Act 1988* not be widened to include solicitors. (Para 11.25)

Recommendation 23: The Committee recommends that the FTR Act be reviewed again in a further three years. (Para 11.27)

Chapter 1

INTRODUCTION

1987 Report

1.1 The *Cash Transaction Reports Bill 1987* was introduced in the 35th Parliament by the then Minister for Justice, Senator Michael Tate. On 15 December 1987 the Senate resolved that the following matters relating to the Bill be referred to the Standing Committee on Legal and Constitutional Affairs for inquiry and report by 31 May 1988:

(a) the effectiveness of the proposals in the Bill to meet the objective of countering the underground cash economy, tax evasion and money laundering;

(b) the cost of implementation of the Bill by cash dealers;

(c) the cost-effectiveness of the proposals contained in the Bill;

(d) the effectiveness of alternative means of limiting the use of banking and financial institutions as a means of laundering money, disguising profits illegally obtained or hiding the profits of tax evasion;

(e) those matters relating to the provisions of the Bill which would normally have been reported on by the Business Regulation Review Unit;

(f) the likelihood of financial institutions passing on the costs of the scheme to their customers through new account charges or otherwise;

(g) the implications (if any) of excluding land transactions from the scope of the Bill;

(h) whether the proposed limit of $1,000 on accounts that do not attract the verification procedures is appropriate; and

(i) any other matters relevant to the Bill.[3]

---

[3] *Journals of the Senate* No 39, 15 December 1987, p. 422.

The Senate later extended the time for presentation of the Committee's report to 30 April 1988.[4]

1.2 The Committee tabled its report on the *Cash Transaction Reports Bill* on 28 April 1988. The Committee recommended that, if the Bill were enacted, minor technical amendments be made to two clauses of the Bill. The Committee also recommended that the operation of the Bill be reviewed after a suitable period of time, preferably not longer than 3 years, and that the review include the economic, taxation, privacy and law enforcement implications of the Bill[5].

Government Response

1.3 On 18 May 1988 the then Minister for Justice, Senator Michael Tate, provided the government response to the Committee's report. The Minister stated that:

> It will take time for the Cash Transaction Reports Agency to be established and operational. Much work needs to be done to educate the private sector and the public at large on the requirements of the legislation. In order to ensure that there is a reasonable time in which the legislation can prove its worth, and I have no doubt that it will, the Government will require that the operation of the legislation be reviewed and a report tabled in Parliament no later than three years after the coming into force of the cash transaction reporting provisions.[6]

Focus Upon Major Crime

1.4 The FTR Act is directed at the financial underpinning of major criminal activity, including evasion of the revenue. This is reflected in the debate in 1987 when the *Cash Transaction Reports Bill 1987* was introduced. The debate revolved around the need to identify the financiers of major crime and the threat posed by organised crime. Parliament was told that the legislation was 'consistent with calls by a number of Royal

---

4 *Journals of the Senate* No. 55, 22 March 1988, p. 576.

5 Para. 8.29 of the report on the *Cash Transaction Reports Bill 1987.*

6 *Senate Hansard* 18 May 1988, p. 2370.

Commissions and other enquiries in recent years for stronger measures to deal with the widespread abuse of the facilities provided by financial institutions in relation to tax fraud and other criminal activities.[7]'

1.5 On this basis Parliament supported the legislation, making the judgment that the intrusive measures in the Bill were warranted by the significant evil which it addressed.

1.6 This context for the legislation became important during the Committee's inquiry because of the proposals put to the Committee that access to FTR information should be extended to allow the Department of Social Security and State and Territory revenue authorities to have access to the data.

1.7 As discussed in chapter 8 of the report, the Committee concluded that great care must be taken to ensure that access to the very sensitive personal information contained in the AUSTRAC database is limited to those bodies with a focus on the investigation of major criminal activity and revenue evasion. This would, for example, prevent DSS having access to it because most of the crime it is concerned with is minor. Where a major fraud arises investigation of it is conducted by the AFP, who are presently allowed access to FTR information.

1.8 Minor matters not investigated by the AFP are handled by DSS, who sought access to FTR information to assist with their investigations. The Committee rejects this proposal.

1.9 A fundamental purpose of AUSTRAC is the detection of large scale tax evasion. It is for this purpose that State and Territory revenue agencies want access to AUSTRAC's database. Given this, it is reasonable to allow a small group of State revenue officers access to information gathered by AUSTRAC. This should be at the discretion of the Director of AUSTRAC.

---

[7] *House of Representatives Hansard*, 13 May 1987, P. 3104. (Mr Lionel Bowen)

Commencement of the Legislation

1.10 The Bill was enacted and received the Royal Assent on 15 June 1988. The various cash reporting and other requirements introduced by the Act commenced progressively over the following years as follows:

Establishment of AUSTRAC[8] Offence of operating a false name account	1 July 1988
Suspect transaction reporting	1 January 1990
Cash transaction reporting	1 July 1990
Reporting of cash transfers into or out of Australia	1 July 1990
Account opening procedures	1 February 1991

Further Review of the Act

1.11 On 12 November 1992 the Senate resolved to refer to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report the following matters:

> The operation and effectiveness of the *[Financial[9]] Transaction Reports Act 1988* (the Act) with particular reference to:
>
> (a) the scope and reach of the Act, the adequacy of its provisions and whether relevant international obligations to which Australia is subject have been met;

[8] At the time the agency established by the Act was known as the Cash Transaction Reports Agency. As from 6 December 1992 the agency's name was changed to AUSTRAC.

[9] The *Cash Transaction Reports Amendment Act 1991* amended the short title of the Act from the Cash Transaction Reports Act to the Financial Transaction Reports Act, with effect from 6 December 1992. This was said to reflect the shift in the focus of the Act towards non-cash transactions.

(b) the extent of public awareness of and support for the Act;

(c) the legal effectiveness of the Act, including relevant matters of law which have emerged or which may emerge;

(d) the extent to which the Act has achieved its objectives;

(e) the cost-effectiveness of the Act, including the possibility or desirability of cost-recovery;

(f) any unforeseen or unintended effects of the Act; and

(g) any other matters relevant to the effective operation of the Act.

[*Journals of the Senate* No 203, 12 November 1992, pp. 3045-6.]

Conduct of the Inquiry

1.12 Advertisements were placed in the major national newspapers seeking submissions from interested persons. In addition, the Committee wrote to particular persons and organisations known to have an interest in the legislation.

1.13 The Committee received 66 written submissions. The list of individuals, organisations and agencies making submissions to the Committee is attached as Appendix I to this report.

1.14 On 8 June 1988 the Committee inspected the AUSTRAC premises at Chatswood, Sydney.

Public Hearings

1.15 The Committee held public hearings in Sydney and Melbourne in June 1993. The list of witnesses who appeared at those hearings is attached as Appendix II to this report.

Chapter 2

FINANCIAL TRANSACTION REPORTS ACT 1988

Overview of the FTR Act

2.1 According to the submission from the Attorney-General's Department, the FTR Act

> forms one element of a package of relatively recent Commonwealth laws directed specifically at attacking criminal activity through the prevention and detection of offences connected with the cash economy, which notoriously provides almost unlimited scope for the evasion of taxation and is an essential part of the financing and concealing of criminal activity, domestically and internationally. Other elements of this package are the *Telecommunications (Interception) Amendment Act 1987*, the *Mutual Assistance in Criminal Matters Act 1987*, and the *Proceeds of Crime Act 1987*.[1]

2.2 In its submission AUSTRAC said that the FTR Act was part of a 'clutch of legislation directed at money laundering and particularly money laundering associated with drug trafficking and tax evasion.'[2]

2.3 The genesis of the legislation was said to be the work of the Costigan and Stewart Royal Commissions in the 1980s:

> Both reports noted that money was moved from the illicit or underground economy into the legitimate economy and that once that had occurred it was virtually impossible to trace the cleansed funds back to the tainted source. Both reports noted that the laundering of funds was greatly facilitated by the widespread use of false name accounts opened with financial institutions.[3]

---

1 Submission No. 35, from Commonwealth Attorney-General's Department, p. 49.

2 Submission No. 13, from AUSTRAC, p. 7.

3 Submission No. 13, (AUSTRAC) p. 7.

Requirements of the FTR Act

2.4 The regime imposed by the FTR Act is as follows:

- cash dealers are required to report to AUSTRAC all cash transactions of $10,000 or more (Section 7 FTR Act);
- members of the public are required to report to Customs (for forwarding to AUSTRAC) all transfers of cash, into and out of Australia, of $5 000 or more (Section 15 FTR Act);
- cash dealers are required to report to AUSTRAC all suspicious transactions, whether or not involving cash and of any value (Section 16 FTR Act[4]);
- cash dealers are required to verify the identity of signatories to accounts (Part III of the FTR Act). Coupled with this requirement is the prohibition of the opening or operating of an account in a false name (Section 24 FTR Act); and
- cash dealers are required to report to AUSTRAC all telegraphic instructions for the transfer of funds into or out of Australia (Section 17B FTR Act). This requirement commenced on 6 December 1992.

Wire Transfers

2.5 The *Cash Transaction Reports Amendment Act 1991* amended the FTR Act to include a requirement for cash dealers to report international telegraphic transfers, where a customer sends funds in or out of Australia. This reporting requirement commenced on 6 December 1992. Because this requirement is still in its infancy the Committee will not include an evaluation of wire transfer reporting in this report.

[4] Separate requirements to report suspicious transactions are imposed upon cash dealers by section 243D of the *Australian Securities Commission Law* and by a range of State and Territory legislation.

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[1]. 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.

---

[1] 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.

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.[2] 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.[3]

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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2 Submission No. 13, (AUSTRAC) p. 54.

3 Submission No. 13, (AUSTRAC) pp. 55-56.

> 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.[4]

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.[5] 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[6] 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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4 Evidence (Mr Power) p. 13.

5 Submission No. 13, (AUSTRAC) p. 110.

6 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.'[7]

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.[8]

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[7] Submission No. 13, (AUSTRAC) p. 111.

[8] Submission No. 43, (ATO) p. 9.

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.'[9]

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.[10]

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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[9] Submission No. 43, (ATO) p. 10.

[10] ibid p. 10.

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.[11]

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.'[12]

VCCL put the matter more strongly:

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[11] Submission No. 13, (AUSTRAC) p. 105.

[12] Submission No. 41, (Privacy Commissioner) p. 8.

> It seems clear therefore that the Agency[13] 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.[14]

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.[15]

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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[13] ie AUSTRAC, formerly the Cash Transaction Reports Agency.

[14] Submission No. 12, (VCCL) p. 47.

[15] Submission No. 27, (NCA) p. 8.

> 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.[16]

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'.[17] 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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[16] Submission No. 27, (NCA) p. 8.

[17] Paragraph 26(1)(b) of the FTR Act.

decency and privacy arise. It is for Parliament to determine the balance to be struck between the public interest in seeing that those attibutes 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.

Chapter 4

SIGNIFICANT CASH TRANSACTION REPORTS

Statutory Requirements

4.1 Section 7 of the FTR Act requires a cash dealer who is party to a cash transaction involving $10,000 or more (called a 'significant cash transaction') to report the transaction to the Director of AUSTRAC within the reporting period. If the transaction involves foreign currency the reporting period is by the end of the day following that on which the transaction takes place. In any other case, the reporting period is the at end of 15 days after that on which the transaction takes place.

There are three exceptions to the obligation to report:

- a cash dealer is not required to report an exempt transaction. An exempt transaction is one involving a financial institution and another person and which has been entered in the institution's exemption register or which falls within a class of transactions entered in the exemption register;[18]

- a cash dealer is not required to report a transaction which is eligible for exemption when it occurs and becomes an exempt transaction during the reporting period. The transactions which are eligible for exemption are specified at section 10 of the FTR Act; and

- cash dealers who are approved cash carriers are not required to report any significant cash transactions. The Director of AUSTRAC may declare a cash dealer to be an approved cash carrier if the Director is satisfied that:

    - the cash dealer maintains records containing the required details of significant cash transactions to which the cash dealer is a party; and

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[18] Section 9 FTR Act.

- the declaration, by the Director of AUSTRAC, of the cash dealer as an approved cash carrier would not be inconsistent with the objects of the Act (section 8 FTR Act).

Approved cash carriers are the only category of cash dealers exempted from reporting all significant cash transactions to which they are party. All other exemptions are based upon the nature of the other party to the transaction or upon the nature of the transaction itself.

Number of Reports Lodged

4.2 The requirement to report significant cash transactions commenced on 1 July 1990. The number of reports lodged until 31 March 1993 was as follows:

Table 4.1 Total Reports to 31 March 1993

1 July 1990 - 30 June 1991	335,632
1 July 1991 - 30 June 1992	702,113[19]
1 July 1992 - 31 March 1993	569,621[20]
TOTAL	1,607,366

These reports were lodged, in the main, by the four major trading banks (Westpac, NAB, ANZ and the Commonwealth Bank). In more detail[21], the reports were lodged as follows:

[19] Submission No. 13, (AUSTRAC) p. 28.

[20] AUSTRAC Updated Statistics. Document tabled by Director of AUSTRAC at the Committee's public hearings in Sydney on 8 June 1993.

[21] ibid.

Table 4.2 Reports Lodged to 31 March 1993

Cash Transaction Reports	1 July 90 - 30 June 91	1 July 91 - 30 June 92	1 July 92 - 31 March 93
Four major trading banks		627,866	515,235
Other banks		57,295	40,273
Other cash dealers		16,952	14,113
TOTAL	335,632	702,113	569,621

How is the Data Used by Law Enforcement Agencies?

4.3 The material provided through significant cash transaction reports is added to the AUSTRAC database and may be accessed by authorised agencies in the manner described earlier. The evidence provided to the Committee on the usage of FTR data by law enforcement agencies was patchy and inconclusive. This was particularly so for data other than that coming from suspect transaction reports. ATO advised that:

> Apart from suspect transaction reports, ATO results from using other types of AUSTRAC information have been minor. This is not to say that information such as significant cash transactions and movements of cash through airports is not useful, but rather to say that we have been concentrating up to now on suspect transactions. As indicated earlier, the ATO is confident that the value of AUSTRAC information will increase exponentially over the coming years as we rise up the learning curve and as the size of the database increases.[22]

4.4 Other organisations commented that skill in the usage of FTR data is still evolving. This evidence is discussed later.

22 Submission No. 43, (ATO) p. 6.

Methods of Delivery of Cash Transaction Report Data

4.5 Approximately 90 per cent of significant cash transaction reports are delivered to AUSTRAC in electronic, rather than in paper, format[23]. Electronic reporting takes various forms:

- online reporting. This is by means of encrypted, direct link to AUSTRAC via the cash dealer's own computer system;
- magnetic tape reporting. This involves the cash dealer recording the required details of the transactions upon magnetic tapes and sending those tapes to AUSTRAC for downloading onto the AUSTRAC database;
- diskette reporting is similar to the magnetic tape procedure, the difference being that diskettes are used to record the details of the transactions instead of magnetic tapes; and
- electronic data interchange (EDI) procedures are also used. This involves the use by cash dealers of an encrypted electronic mail box system via OTC to report the transactions.[24]

Cost of Reporting

4.6 Some of the major cash dealers provided information on the compliance costs stemming from the requirements of the FTR Act. This information is discussed in more detail in the chapter on the cost and benefit of the legislation. So far as the cost of significant cash transaction reporting is concerned, the information provided to the Committee is discussed below.

4.7 The ABA conducted a survey in January 1993, covering 18 of its 30 member banks. The survey indicated that the estimated 1993 annual operating cost of significant cash transaction reporting was $2.5m, broken up as follows:

[23] Submission No. 13, (AUSTRAC) p. 30.

[24] ibid.

Table 4.3 Annual Operating Cost

Staff Costs	$2,108,000
Other Branch Costs	$ 117,000
Other Administrative Costs	$ 229,000
TOTAL	$2,454,000[25]

4.8 CUSCAL estimated that the annual ongoing cost to credit unions of significant cash transaction reporting was $1m. This information, like the ABA data, was based upon a survey of CUSCAL's member credit unions.[26]

4.9 The AFC conducted a survey of its member finance companies in January 1993 to estimate the compliance costs of the legislation. So far as significant cash transaction reports are concerned the survey showed that the ongoing cost was estimated to be $17,830 broken up as follows:

Table 4.4 Compliance Costs

Staff Costs	$ 7,070
Other Branch Costs	$ 2,115
Other Administrative Costs	$ 8,645
TOTAL	$17,830

The AFC estimated that the cost per report was between $9 and $50.[27]

[25] Submission No. 26, (Australian Bankers Association) pp. 13-15. The ABA advised that 'staff expenses' include on-costs and overtime, and relate to costs associated with dealing with customers, data input, ongoing training and branch verification and checking processes. 'Other branch costs' include stationery not otherwise needed. 'Other administrative costs' include legal, management costs and data storage capacity costs. (ABA submission Attachment B.)

[26] Submission No. 34, (CUSCAL) p. 3.

[27] Submission No. 38, (AFC) pp. 4-5.

4.10 Electronic reporting appears to minimise the cost and inconvenience to cash dealers of lodging significant cash transaction reports. The VCCL noted in its submission that 'there have been significant costs for the banks and other financial institutions in setting up systems to meet the reporting requirements. But with these systems established, the reports are made almost automatically and cause little inconvenience or disruption.'[28] AUSTRAC also made the point that the cost to some banks of providing significant cash transaction reports may have been increased through the use of paper based systems.

> [Westpac] had the reports prepared by its branches on paper forms and sent to a central point where they were keyed onto diskette for sending to AUSTRAC. Westpac thus honoured an early undertaking by executives of the major banks that they would deliver the data to AUSTRAC by electronic means. Westpac has now moved to a system similar to that of NAB; AUSTRAC and Westpac are monitoring the effectiveness of that. The cost to Westpac of that original paper-based scheme must have been considerable - considering the large number of reports that had to be made and the necessary paperwork to achieve that.[29]

4.11 Westpac confirmed that electronic reporting does allow cash dealers to minimise the cost of reporting. The bank advised that:

> The introduction of electronic reporting reduced the number of Westpac administrative staff by 6. Our research indicates that the savings obtained by these salary cuts overtime, together with the benefits and savings obtained by:
>
> * increased accuracy of reporting
> * improved productivity for front line staff due to less processing
> * less detail to complete due to data fields prefilled on screens
>
> will outweigh the initial outlay to install the system.[30]

4.12 AFC agreed that compliance costs can be lowered markedly through the use of computer aided processes (and increased markedly if manual processes must be used):

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[28] Submission No. 12, (VCCL) p. 15.

[29] Submission No. 13 (AUSTRAC) p. 37.

[30] Submission No. 56, (Westpac) p. 1.

> ... the cost incurred by an institution in compliance with legislative requirements are essentially correlated to the effectiveness and efficiency of processes employed in meeting legal (or for that matter, business) requirements and the extent of automation/computerisation utilised within the relative processing tasks.
>
> This is particularly evident in one AFC member's case (as an example), where the high unit cost ($175.00) for suspect transaction reporting is due to very low processing volumes and the application of manual-based processing system with minimal computer intervention. In contrast, the unit costs in relation to account opening and significant cash transaction reporting ($8.00 and $9.00 respectively) are significantly reduced due to the high processing volumes which are supported by high level of computer-based processing with minimal levels of manual intervention in the overall processes.[31]

Erroneous Data

4.13 Although electronic reporting does offer an advantage to cash dealers in terms of lower costs, there are difficulties stemming from its use. Initially there was a problem with transactions being reported incorrectly as significant cash transactions. Data provided by AUSTRAC indicated the magnitude of this problem. The Committee was advised that this problem arose because of the variation between the concept of 'cash' in the FTR Act (which is defined to mean the coin and paper money of Australia or a foreign country) and the notion of 'cash' in bank parlance (where the expression includes other transactions, such as transfers between accounts and certain types of cleared cheques).[32]

4.14 The problem was clearly a major one. AUSTRAC established a 'clean-up' task force to address the non-cash issue. The banks concerned were required to audit reports lodged, and to introduce computing changes to eliminate the cause of the problem. Large numbers of reports were deleted from the AUSTRAC database[33]:

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[31] Submission No. 53, (AFC) p. 1.

[32] Submission No. 13, (AUSTRAC) p. 34.

[33] Submission No. 13, (AUSTRAC) p. 35.

Table 4.5 Reports Deleted from AUSTRAC Database

Significant Cash Transaction Reports	Total reported	Later deleted	Remainder
1990/91	429,685	94,053 (21.9%)	335,632
1991/92	763,696	61,583 (8.1%)	702,113
TOTAL	1,193,381	155,636 (13.0%)	1,037,745

Civil Liberties Issues

4.15 Legislation requiring a bank or other financial institution to report transactions with its customers because they are in cash and exceed a monetary limit does erode banker-customer confidentiality and impinges on their civil liberties. The VCCL noted the civil liberties issues but also acknowledged the sound reason for requiring the reporting of such transactions:

> From the civil liberties point of view, such legislation is therefore intrinsically repugnant. However, the evidence of the Costigan and Stewart Royal Commissions revealed that widespread tax avoidance, money laundering and other criminality were carried on in the cash economy. Those Commissions recommended mechanisms for following the money trail to counter this criminality. The obligation to report large cash transactions is the principal such mechanism.
>
> To adhere without reservation to the principle of banker-customer confidentiality in the face of the widespread criminality revealed by the Costigan and Stewart Royal Commissions is not, in VCCL's view, justifiable. Accordingly, VCCL accepts the obligation to report CTRs as required by the Act, subject to certain modifications discussed below. VCCL takes this view not only because of the nature and extent of the evil which CTRs combat, but also because the intrusion into the customer's affairs is limited.[34]

[34] Submission No. 12, (VCCL) p. 16.

Proposals for Reform

4.16 VCCL stated that, over time, inflation will erode the present threshold (ie $10,000) for the reporting of significant cash transactions. It argued that on a projection of average CPI increases of 4 per cent pa for the rest of the decade, the reportable threshold in the year 2000 would be approximately 6,900 1990 dollars. Accordingly, VCCL recommended that the threshold for significant cash transaction reports should be indexed in 1990 dollars and adjusted at intervals (not exceeding five years) to be determined following discussions with the banks.[35] A similar recommendation was made by the Privacy Commissioner[36] who said that indexation will ensure that transaction reporting remains 'significant' in times of high inflation.

4.17 AUSTRAC did not oppose indexation in principle, but pointed out that it should occur infrequently:

> If you[37] are going to increase [the threshold], I would suggest that it be indexed in some way. We would hope that it be done in big licks rather than in little ones - and not too quickly. Generally, we agree with Mr Dupé's observations that anything like this incurs cost, particularly for those in the financial sector and AUSTRAC as well which has significant computer applications.[38]

The Importance of Containing Costs

4.18 The cost of compliance for cash dealers loomed large in the evidence provided to the Committee. There is no doubt that the compliance costs have proven to be far greater than were anticipated by the Government when the legislation was introduced in 1987. On that occasion the Minister stated that 'the Bill will have only a modest impact on cash dealers required to report cash transaction information as the legislation provides sufficient flexibility to enable the Director of the Agency to develop

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[35] Submission No. 12, (VCCL) pp. 17-18.

[36] Submission No. 41, (Privacy Commissioner) p. 13.

[37] ie the Committee.

[38] Evidence (Mr Coad) p. 35.

the most cost-effective measures for cash dealers to record and communicate information to the Agency.'[39]

4.19 In fact the compliance costs for cash dealers have been substantial. As is discussed in more detail later in this report, the costs associated with the account opening procedures and suspect transaction reporting have been the major components of these costs. However, the cost of reporting cash transactions of $10,000 and above has been a smaller, but not insignificant, component of the total compliance costs.

4.20 Indexation of the reporting threshold would itself add to the cost of compliance, because of the need to rewrite computer software for electronic reporting. This was recognized by the VCCL who commented that:

> Indexation would require cash dealers to make periodic adjustments to their reporting systems. There could be inconvenience and expense involved in this so it should not necessarily be annual. Instead, indexation should occur at regular intervals which could be timed to coincide with necessary modifications to reporting systems.[40]

4.21 On the other hand, to leave the threshold indefinitely at present levels will, of itself, add to cost as more and more transactions are caught by the reporting requirement. The AAPBS stated that:

> a reduction in the existing $10,000 threshold will mean a significant increase in the number of reports coming from building societies. Surveys of members suggest that a reduction from $10,000 to $5,000 will lift the number of reports by 75 per cent to 100 per cent. An increase of $5,000 in the threshold could reduce the number by some 25 per cent.[41]

The Committee's Views

4.22 The Committee believes that significant cash transaction reporting should be retained generally in its present format. In part this is

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[39] *Senate Hansard* 25 November 1987, p. 2413.

[40] Submission No. 12, (VCCL) p. 18.

[41] Submission No. 40, (AAPBS) p. 1.

because, despite three years of operation, it is not possible to form a concluded view on the forensic value of the information collected by this reporting requirement. The Committee is of the view that efforts must be taken to contain the costs imposed upon cash dealers.

Recommendation 2: The Committee recommends that the reporting threshold for significant cash transaction reports should not be allowed to erode significantly through inflation. To achieve this the threshold should be adjusted periodically after consultation with cash dealers. The aim of the adjustment should be to maintain the threshold at, or near, the present amount in real terms.

Recommendation 3: The Committee recommends that those cash dealers engaging in a sufficient number of significant cash transactions to warrant the measure should endeavour to provide the reports by electronic means.

Chapter 5

SUSPECT TRANSACTION REPORTS

Introduction

5.1 Suspect transaction reporting was the subject of a large amount of comment and criticism in evidence provided to the Committee. The requirement to report such transactions was criticised on the basis that the legislation was dangerously subjective and vague; that it imposed an undue responsibility upon bank staff; that reporting was costly; and that it was grossly intrusive upon personal privacy. These issues will be discussed in this chapter.

Statutory Requirement

5.2 Section 16 of the FTR Act provides that where a cash dealer is a party to a transaction and has reasonable grounds to suspect that information it has concerning the transaction may have value for certain purposes related to taxation or criminal law the cash dealer must, as soon as practicable after forming the suspicion, prepare a report of the transaction and communicate it to the Director of AUSTRAC. The transaction need not be in cash, and may be of any value. The required suspicion is that the information concerning the transaction:

- may be relevant to an investigation of tax evasion, actual or attempted;
- may be relevant to investigation of, or prosecution for, a Commonwealth or Territory offence; or
- may assist in enforcement of the Commonwealth's legislation providing for the confiscation of criminal assets.

5.3 Having made a suspect transaction report, a cash dealer must, if able to do so, give further information requested by the Director of AUSTRAC or by the AFP, NCA, ATO or Customs. The extent of the obligation to provide 'further information' under subsection 16(4) of the FTR Act was a matter of dispute in evidence provided to the Committee.

Reasonable Suspicion Test

5.4 The trigger for the requirement to lodge a suspect transaction report - that the cash dealer has reasonable grounds to suspect - was the subject of considerable discussion and criticism in evidence given to the Committee.

5.5 AUSTRAC has provided a guideline for cash dealers to assist them in determining whether or not a suspect transaction report should be lodged. This guideline states that:

> The suspicion relates to a transaction considering all the circumstances of the transaction. As a general principle, any transaction which causes a cash dealer to have a feeling of apprehension or mistrust about the transaction considering:
>
> - its unusual nature or circumstances or
> - the person or group of persons with whom they are dealing
>
> and based on the bringing together of all relevant factors including knowledge of the person's or persons' business or background (as well as behavioural factors) should be reported as a suspect transaction.[1]

5.6 This guideline is based upon an analysis of a number of cases such as *Queensland Bacon Pty Ltd -v- Rees* (1966) 115 CLR 266, a bankruptcy case concerning voidable preferences, and *Hussein -v- Chong Fook Kam* [1970] AC 942, a case concerning police power to arrest a person on 'reasonable suspicion' that the person has been involved in an offence.

5.7 VCCL argued that the principles distilled from this case law were not relevant in guiding a decision to lodge a report under section 16 of the FTR Act[2]. In relation to the Queensland Bacon case VCCL argued that the legal subject matter (the mental state of a creditor towards a potential bankrupt) was too far removed from the suspicion required under section 16 for the remarks to be of any assistance in interpreting section 16 of the FTR Act[3].

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[1] AUSTRAC (then CTRA) Information Circular No. 1 Section 5.

[2] Submission No. 12, (VCCL) pp. 19-23.

[3] ibid pp. 20-21.

5.8 In relation to the Hussein case VCCL pointed out that suspicion alone would rarely justify an arrest because of the countervailing force that if a police officer institutes proceedings without prima facie proof he or she will run the risk of an action for malicious prosecution. No such countervailing force operates to check the power to lodge a suspect transaction report under section 16.[4]

5.9 The AUSTRAC guideline also referred to the decision in *Holmes -v- Thorpe* [1925] SASR 286 where Angas Parsons J said (at p. 291):

> The gradation in mental assent is 'suspicion' which falls short of belief, 'belief' which approaches to conviction, and 'knowledge' which excludes doubt.

5.10 VCCL commented on this case that the critical element of Angas Parsons J's decision was that the three categories (suspicion, belief and knowledge) were mutually exclusive. Applying this to section 16 would mean that if a cash dealer *believed* or *knew* that a customer was engaged in illegal activity the cash dealer would be in breach of its duty of confidentiality if it lodged a suspect transaction report.[5]

5.11 The Committee has noted that, in any event, the decision in *Holmes -v- Thorpe* that the three categories are mutually exclusive is regarded as 'discredited'. In *Raynal -v- Samuels* (1974) 9 SASR 264 at p. 268 the Court (Hogarth ACJ, Walters and Jacobs JJ) stated:

> In *Holmes -v- Thorpe* the judgment of *Angas Parsons* J seems to us to have proceeded on the now discredited basis that the evidence disclosed that the police witness had information as a result of which he *believed* that the goods had been stolen or unlawfully obtained, and that belief was different from suspicion.[6] (Emphasis in original.)

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4 ibid p. 22.

5 ibid pp. 23-25.

6 ibid p. 268.

5.12 Similarly, in *Fisher -v- McGee* [1947] VLR 324, at pp 327-328 Herring CJ commented that the views of Angas Parsons J 'can, I think, no longer be regarded as an accurate statement of the law.'

Number of Reports Lodged

5.13 The requirement to report suspect transaction reports commenced on 1 January 1990. The number of reports lodged to 31 March 1993 is as follows:

Table 5.1 Total Number of Suspect Transaction Reports

1 January 1990 - 30 June 1991	8,135
1 July 1991 - 30 June 1992	4,582[7]
1 July 1992 - 31 March 1993	3,362[8]
TOTAL	16,079

5.14 These reports were lodged, in the main, by the four major trading banks. In more detail[9], the break up of the number of suspect reports lodged according to type of cash dealer is as follows:

[7] Submission No. 13, (AUSTRAC) p. 27.

[8] AUSTRAC Updated Statistics. Document tabled by the Director, AUSTRAC at the Committee's public hearings in Sydney on 8 June 1993.

[9] ibid.

Table 5.2 Breakup of Number of Suspect Reports

Suspect reports	1 Jan 90- 30 June 91	1 July 91- 30 June 92	1 July 92- 31 March 93	Total
Major banks (Big 4)	3,726	2,080	1,631	7,437
Other Banks	2,496	1,183	939	4,618
Other Cash Dealers	1,913	1,319	792	4,024
Total	8,135	4,582	3,362	16,079

How Is the Data Used by Law Enforcement Agencies?

5.15 The Committee was informed that suspect transaction reports had provided the bulk of the law enforcement and revenue successes attributable to the FTR Act to date. ATO gave evidence that 'apart from suspect transaction reports, ATO results from using other types of AUSTRAC information have been minor.'[10] In fact, suspect reports account for 90 per cent of the tax results attributed to the use of AUSTRAC data.[11] ATO stated that the results have been achieved 'mainly through the follow-up of suspect transaction reports which identified, in the majority of cases, tax evasion activities the ATO was unaware of. Therefore, almost all of these results represent extra revenue the ATO may not otherwise have collected.'[12]

5.16 The results, in the form of enhanced tax recoveries, stemming from the use of AUSTRAC data are discussed in more detail in chapter 12 which discusses the cost and benefit of the legislation. However, as most of the tax recoveries are attributable to the use of suspect transaction reports the tax results will be discussed here in summary form.

[10] Submission No. 43, (ATO) p. 6.

[11] ibid p. 15; evidence (Mr Mitchell) p. 236.

[12] Submission No. 43, (ATO) p. 6.

5.17 ATO provided figures showing the tax recoveries attributable to the use of AUSTRAC data to be as follows[13]:

5.3 Total of Tax Recoveries

Branch Office	**1991**	**1992**	**1993**	**Total since 1 July 90**
SA				
Adelaide	293,477	1,389,831	289,728	1,973,036
QLD				
Brisbane	884,895	682,921	1,747,147	3,314,963
Chermside			78,367	78,367
Upper Mt Gravatt			2,518	2,518
Townsville		536,946	4,508	541,454
ACT				
Canberra	268,211	851,270	257,406	1,376,887
NSW				
Chatswood	337,396	621,447	124,944	1,083,787
Parramatta	43,789	1,174,206	2,184,684	3,402,679
Penrith	1,029	469,673	42,435	513,137
Sydney CBD	3,887	1,072,059	700,361	1,776,307
Sydney South	713,142	305,502	2,228,117	3,246,761
Bankstown			646,569	646,569
Newcastle	12,818	114,236		127,054

[13] Submission No. 43, (ATO) p. 33.

VIC				
Albury Wodonga		685,250	323,277	1,008,527
Dandenong	94,246	1,361,509	246,415	1,702,170
Melbourne	633,515	2,987,705	1,889,642	5,510,862
Moonee Ponds	184,793	148,377	268,397	601,567
Box Hill			193,115	193,115
Moorabbin			358,123	358,123
TAS				
Hobart		430,061	1,806,145	2,236,206
WA				
Perth	54,471	407,533		462,004
Cannington			47,845	47,845
Northbridge			6,970	6,970
TOTAL	$3,525,669	$13,238,526	$13,446,713	$30,210,908

5.18 Approximately $27m of this total amount is claimed to be attributable to the use of suspect transaction reports. However, the usage by ATO of suspect report data as shown by the table above is somewhat patchy in that more than two-thirds of the recoveries are sourced in NSW and Victoria. ATO attribute this to the facts that 14 of the organisation's 22 branch offices are in NSW and Victoria and to the relative size of those economies[14]. The following table correlates the ATO performance on a State basis[15]:

[14] ibid p. 6.

[15] ibid pp. 6-7.

5.4 ATO Performance on State Basis

State	% of AUSTRAC results	Distribution of suspect transaction reports
NSW	37%	37%
VIC	32%	27%
QLD	14%	16%
WA	2%	10%
SA	7%	8%
TAS	8%	2%

The Blockey Report

5.19 During 1992 AUSTRAC commissioned a report from a consultant, F G Blockey and Associates, on the use and value of suspect transaction reports. The substance of the consultant's report is set out in the AUSTRAC submission to the Committee.[16] The report indicated some general matters of interest, including the following. (Further observations are set out in the AUSTRAC submission):

- Most of the reports do not result in any direct action. Less than 10 per cent of reports result in any immediate law enforcement or taxation enquiry, however some of those left untouched in the first instance are taken up later on when they are related to other facts such as significant cash transactions by the same or a related person;

- The use of reports by ATO for auditing tax evaders has been more pronounced in certain regional offices, notably Brisbane, Melbourne, Albury and Adelaide.

[16] Submission No. 13 (AUSTRAC) pp. 71-91.

5.20 The consultant noted that utilization of the reports by ATO varied from region to region, apparently depending upon the methods used to target tax evasion, how individuals see the best way of going about their audit task and the types of tax audit work in a region. The consultant noted that:

> some ATO Branch Offices are interrogating the whole AUSTRAC database without relying on [suspect transaction reports]. Results obtained from information in Significant Transaction Reports are not included in any of the above figures ... All things being equal, the level of return to the ATO from AUSTRAC data should increase as the database use by the ATO increases.[17]

Scope Of The Obligation To Report Suspect Transactions

5.21 One aspect of the obligation to report suspect transactions which attracted much attention in the evidence provided to the Committee was the ambit of the reporting obligation. In particular, it was suggested that the obligation was too vague and subjective. In its place, it was argued, the obligation to report should turn on more objective criteria.

5.22 VCCL examined the various guidelines which have been issued by AUSTRAC to assist cash dealers with their obligation to report a transaction if the cash dealer has 'reasonable grounds to suspect that information that the cash dealer has concerning the transaction' may be relevant to the investigation of a Commonwealth offence, or to possible tax evasion or the enforcement of the *Proceeds of Crime Act 1987*. VCCL concluded that:

> the task of reducing to some legislative or quasi-legislative form the circumstances in which a person should form a reasonable suspicion of illegal activity is hopeless and futile.'[18]

And VCCL again:

> [Section 16] is egregiously wide and uncertain. It turns bank tellers into snoops threatening their employers with criminal sanctions if they do not report the

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[17] Submission No. 13, (AUSTRAC) p. 81.

[18] Submission No. 12, (VCCL) p. 31.

> merest suspicion of any illegal activity, however minor. It bases this obligation on a subjective and inappropriate test. In its attempts to give some meaningful content to the reasonable suspicion test of s.16, the Agency has called for reports of much innocent behaviour and probably induced numerous breaches of banker-customer confidentiality.[19]

5.23 The Privacy Commissioner was also critical of the scope of section 16, although in less vehement fashion than VCCL. The Commissioner felt that the scope of section 16 was very wide and required inexperienced bank staff to make complex judgments which are usually made by police officers or investigators with training in these matters.[20]

5.24 The Blockey report included some preliminary analysis on the reasons for suspicion that led to the filing of reports. Table 1 sets out the result of aggregating the reasons for suspicion into broad categories for the three years in which reporting has occurred.

5.25 This report was itself the subject of further analysis by AUSTRAC's banking consultant, Mr John Wiseheart. Mr Wiseheart examined a sample of 500 suspect transaction reports, which he divided into three broad categories:

- cash transactions;
- non-cash transactions (other than credit applications and reviews); and
- credit applications and reviews.

Grounds For Suspicion - Cash Transactions

5.26 Some of the factors which were cited as contributing to the grounds for suspicion in cash transactions within the sample group were:

- the size of the transaction;
- the frequency of transactions and whether or not in character with a customer's business;
- changing smaller denomination notes for larger notes;
- the condition of the cash and how carried; and

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[19] ibid p. 33.

[20] Submission No. 41, (Privacy Commissioner) pp. 11-12.

- cashing of cheques received for work performed.

Table 5.4

Year	Offence Type								
	False Name A/C	Money Laundering	No Offence	Other Offence	State Matters	DSS[21] Fraud	Struct-uring[22]	Tax Evasion	Unemploy-ment Benefit Fraud
1990 [Total: 9150]	306 (3.34%)	1509 (16.49%)	468 (5.11%)	502 (5.49%)	539 (5.89%)	393 (4.3%)	379 (4.14%)	4507 (49.26%)	547 (5.98%)
1991 [Total: 8461	309 (3.65%)	610 (7.21%)	98 (1.16%)	555 (6.56%)	718 (8.49%)	690 (8.16%)	1176 (13.9%)	3943 (46.6%)	362 (4.28%)
1992 [Total: 6589]	188 (2.85%)	654 (9.93%)	53 (0.8%)	366 (5.55%)	479 (7.27%)	641 (9.73%)	1007 (15.28%)	2857 (43.36%)	344 (5.22%)
Total: 24 200	803 (3.32%)	2 773 (11.46%)	619 (2.56%)	1 423 (5.88%)	1 736 (7.17%)	1 724 (7.12%)	2 562 (10.59%)	11 307 (46.72%)	1 253 (5.18%)

[21] Department of Social Security.

[22] ie the splitting of a transaction in order to avoid the $10 000 threshold for the reporting of significant cash transactions. Structuring is an offence under section 31 of the FTR Act.

5.27 However the three principal factors in relation to cash were structuring the transaction to just below the reporting threshold for significant cash transaction reports ($10 000); cash remitted overseas by telegraphic transfer or draft; and cash transactions with persons who were strangers to the branch. Structuring was a ground for suspicion in 28 per cent of the reports. Many of the reports (20 per cent) were prompted because the customer chose to reduce the amount of cash to below $10 000 after being asked to sign a significant cash transaction report. International transfers of substantial amounts of cash accounted for 10 per cent of the reports, and cash transactions with strangers to the branch made up 6 per cent of the reports.[23]

Grounds For Suspicion - Non-Cash Transactions

5.28 Grounds for suspicion for non-cash transactions included use of false names; newspaper reports relating to criminal activity; unusual appearance/behaviour of the customer; suspected fraud; visa/immigration irregularities; transfer of large balances overseas by telegraphic transfer or draft; and grounds suggesting social security fraud/cheating.

5.29 The most common of the circumstances suggestive of social security fraud was the incidence of salary or wages being credited to the account of customers known to be recipients of unemployment benefit (14 per cent of the 500 sample reports). Transactions involving large transfers of assets by persons in receipt of a social security benefit and family benefits paid to the credit of accounts of non-residents accounted for 5 per cent of the sample.[24]

Grounds For Suspicion - Credit Applications and Reviews

5.30 Suspicion of social security fraud accounted for 12 per cent of the sample. This usually related to disclosure of income in addition to social security benefits when demonstrating ability to meet repayments in relation to housing finance or credit card applications.

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[23] Submission No. 13, (AUSTRAC) Appendix 3 pp. 15-16.

[24] ibid pp. 16-17.

5.31 Admission by applicants that false income and expenditure statements, understating net profits, had been provided to the ATO prompted 6 per cent of the reports.[25]

Proposed Modifications to Section 16

5.32 VCCL proposed three modifications to section 16:

(i) the obligation to report illegal behaviour should be restricted to specific offences enumerated in the legislation;

(ii) the subjective 'reasonable suspicion' test should be replaced by objective criteria requiring reports of particular kinds of behaviour described in the legislation; and

(iii) the information produced by suspect reports should be a secondary investigative tool only, and should not be used to instigate an investigation.[26]

5.33 The Privacy Commissioner recommended that the definition of suspect transactions should be tightened. To overcome the problem that junior staff are required to form a complex judgment the Privacy Commissioner suggested that front line staff 'should not bear direct legal responsibility for reporting suspect transactions. Many banks have instituted a two tier system where a suspicion will be examined at a more senior level before reporting. This should become mandatory, with senior officers carrying any legal responsibility.'[27] However, the evidence provided to the Committee indicated that such a process is already adopted by most financial institutions. For example, the AFC gave evidence that:

> Each financial institution would have in place a layer of management to review transaction reports before they are put through. In that, too, you would get those

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[25] ibid p. 17.

[26] Submission No. 12, (VCCL) pp. 33-34.

[27] Submission No. 41, (Privacy Commissioner) p. 13.

> who perhaps could be overzealous in wishing to report. But my concern is at the other end where there are those who feel very uncomfortable about it.[28]

5.34 The Director, AUSTRAC also gave evidence to this effect:

> **Mr Coad** - ..... The only issue I would add is that it is not usual in an institution that the staff member at the front counter is the final arbiter as to what is filed. It will go through a filtering process which varies from institution to institution.
>
> **Senator KEMP** - So if a staff member dealing with a customer were suspicious, they would refer their suspicion to the manager?
>
> **Mr Coad** - Quite often that is the case. Of course, the legal responsibility to file is not against the teller; the legal responsibility to file is against the cash dealer or the bank.[29]

5.35 Mr Coad emphasised this point when giving evidence at a public hearing in Melbourne:

> **Mr Coad** - I say again that there is a myth that keeps being put forward that the front-line staff are the ones who file the reports. That is not correct. In most banks it goes through a series of stages. But it was suggested somewhere in the submissions ...... that there should be some requirement on banks to have appropriate procedures inside the banks before the suspect transaction reports are filed. They do have that anyway, but if it were included in the law I do not think that would be the worst thing in the world. It could be a duty of AUSTRAC to ensure that it was there. We already do have a role to make sure they have procedures for the filing of suspect transaction reports.[30]

5.36 Other bankers gave evidence that the existence of the managerial overlay for filtering suspect transaction reports was costly for cash dealers.[31]

5.37 The VCCL, apparently on the assumption that the filtering processes referred to above did not exist, argued that 'it was easy to envisage harassment of migrants by means of such reports in an anti-migration

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[28] Evidence (Mr Edwards, AFC) p. 58.

[29] Evidence (Mr Coad) p. 59.

[30] Evidence (Mr Coad) p. 191.

[31] Evidence (Mr Chapman, Westpac) p. 79.

political climate.'[32] The Committee is satisfied that the filtering processes already in place operate as a check on the lodgment of baseless or frivolous reports.

The Committee's Conclusions on the Scope of Section 16

5.38 The Committee is concerned that a very large, and growing, body of personal information is held in the AUSTRAC database. However, the Committee is satisfied that any attempt to narrow the collection point for the information would seriously impair, and perhaps destroy, the efficacy of the suspect transaction reporting system.

5.39 However, the Committee is convinced that more can be done to better protect the privacy interests of the community. The Committee's views on this matter are set out in Chapter 7, Privacy and Civil Liberties Issues.

> **Recommendation 4:** The Committee recommends that suspect reporting be retained in its present form. Privacy interests should be better protected than at present by adopting Recommendations 7-10 below.

[32] Submission No. 12, (VCCL) p. 28.

Chapter 6

ACCOUNT OPENING PROCEDURES

Introduction

6.1 The account opening provisions of the FTR Act (Part III) commenced operation on 1 February 1991. The procedures oblige cash dealers to verify the identity of a person becoming a signatory to an account in accordance with the Act and the regulations. Until the person's identity is so verified the account is blocked to withdrawals by the person.

6.2 The account opening provisions were the subject of much comment in the evidence to the Committee, particularly as to the cost imposed upon cash dealers from compliance with them and as to the inflexibility of the procedures themselves.

Initial Requirements for the Opening of Accounts

6.3 The FTR Act contained verification requirements which were amended before commencement, and on a number of occasions thereafter. (The most recent changes commenced on 1 February 1993, during the course of the Committee's inquiry.) The Act originally required that the identity of signatories to accounts opened with cash dealers which either reached a credit balance exceeding $1 000 or an aggregate of credits exceeding $2 000 over any 30 day period, were required to be verified. Similar identification requirements applied to a safety deposit facility.

6.4 Initially the only verification procedure available required the signatory to provide to the cash dealer an 'identification reference'. This is a statement signed by a person within one of the classes of approved referees who has known the signatory for a period of at least 12 months, certifying that the signatory has been commonly known by the stated name during that period and that the referee has sighted various combinations of identification documents.

6.5 In 1990, before the commencement of the account opening procedures, the FTR Act was amended to enable an alternative method of

identification to be used. This method prescribed a lengthy list of checks of identity in the FTR Regulations, each of which is allotted a point weighting according to the reliability of the check. The signatory's identity is taken to be verified once he or she has collected 100 points under the system. The method is known as the 100 point method, and is not available to all cash dealers. The method may be used only by those cash dealers declared to be 'identifying cash dealers' by the Director of AUSTRAC.

Amendment of the Account Opening Procedures After Commencement

6.6 The account opening procedures have been revised substantially since they commenced operation on 1 February 1993:

- Statutory Rules 1990 No. 340 and 341 established the detail of the 100 point identification system;
- Statutory Rules 1991 No. 7 modified the procedure in relation to the signatories to accounts held in trust;
- Statutory Rules 1991 No. 89 varied the procedure in relation to the reporting by cash dealers of accounts blocked to withdrawals by unverified signatories;
- Statutory Rules 1991 No. 166 streamlined the 100 point system in a number of ways;
- Statutory Rules 1992 No. 90 made further changes to the 100 point procedure, eg in relation to long term clients;
- Statutory Rules 1992 No. 423 further amended the regulations to make further extensive provision for the verification of identity.[1]

6.7 In addition to the changes to the regulations, a number of amendments were made to Part III of the FTR Act dealing with the opening of accounts. The most extensive of these changes commenced on 1 February 1993.

6.8 The number of changes made to the procedures over such a short period of operation (two years) is itself an indication that the account

1 Submission No. 35, (Attorney-General's Department) pp. 55-56.

opening procedures are unsatisfactory. Attorney-General's Department conceded that:

> the 'account opening' procedures as originally drafted were unnecessarily inflexible. Following extensive consultation with cash dealers, the procedures have been adjusted to a point where they should be considerably less onerous than initially without loss of effectiveness in preventing easy opening of false name accounts.[2]

6.9 Elsewhere the Department conceded that not all problems may yet have been addressed:

> In addition, the Department has become aware of some other groups with special problems providing evidence of identity and has made special provision in the FTR Regulations for their situations. The Department will need to continue to monitor the effects of the 'account opening' procedures on disadvantaged groups and others who may have difficulty with identification requirements. Should additional problem groups come to light, comparable arrangements will be made for them.[3]

The Evidence Received on the Cost of the Account Opening Procedures

6.10 Much of the evidence provided to the Committee about the account opening procedures concerned the compliance cost for cash dealers. That evidence is summarised below.

6.11 The AFC advised that the costs associated with account opening were:

• Staff costs	$ 445,184
• Other branch costs	$ 20,616
• Other administrative on-going costs	$1,088,070

2 Submission No. 35, (Attorney-General's Department) p. 44.

3 ibid p. 38.

6.12 This resulted in an average cost per account opened of between $8 and $200.[4]

6.13 The wide variation in average cost is due to the diversity of financial service providers, some of which are large volume/small loan financiers and others are small volume/large loan financiers. The AFC was unable to indicate a median or most common cost for each account opened.[5]

6.14 For the banks the cost of account opening was very large. The ABA advised that the estimated 1993 annual operating cost for account opening was $21.7m (which is 85.8 per cent of the total compliance costs of $25.3m). This amount was broken up as follows:

- Staff costs $20,644,000
- Other branch costs $ 221,000
- Other administrative costs $ 841,000[6]

6.15 CUSCAL estimated the recurrent cost from the account opening procedures to be $10m.[7] In evidence CUSCAL advised that the high cost of the account opening procedures 'is largely because of the sort of global approach that has been taken in the legislation and a lack of flexibility which, since the introduction of the legislation, has slowly been brought back to more operational reality.'[8] The cost arose from the extra time required to open each account, the rigid document retention requirements and the computer systems needed to retain certain information.[9]

6.16 The AAPBS pointed out that the compliance costs result in higher borrowing costs for individuals and lower yields for investors.[10]

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[4] Submission No. 38, (AFC) p. 5.

[5] Submission No. 53, (AFC).

[6] Submission No. 26, (ABA) pp. 14-15.

[7] Submission No. 34, (CUSCAL) p. 3.

[8] Evidence (Mr Dupé) p. 22.

[9] ibid p. 23.

[10] Submission No. 40, (AAPBS) p. 1.

6.17 Attorney-General's Department argued that the cost of the mandatory account opening procedures was only a 'small increment'[11] over the costs which would be borne in any event by cash dealers from applying their own voluntary system arising from the commercial and prudential need for banks to 'know their customers':

- The great bulk of the cost to cash dealers of compliance with the FTR Act lies in the 'account opening' procedures. The costs of reporting significant cash transactions and IFTIs, once systems have been established to capture the information, are quite low. Only a small percentage of transactions are ever considered as possibly suspect. By contrast, every time an account is opened or a signatory added information has to be acquired or previous holdings checked, using staff time.

- The ABA had previously advised that banks adhered to its code of conduct, which required checking of the identity of persons opening accounts. The Department believes that the 100-point scheme, as modified after extensive discussions with cash dealers, places obligations on cash dealers with respect to account opening checks not dissimilar to those imposed on banks by the ABA code of conduct. Any difference in cost between complying with the statutory scheme and the voluntary code would only amount to a small increment over the cost the banks would have faced anyway.[12]

6.18 The Department was not in a position to provide an assessment of the cost to cash dealers of compliance with the FTR Act.[13]

6.19 On the question of the compliance cost of the account opening procedures the Committee prefers the evidence of the cash dealers, who were unanimous on the point that the costs were very high. The Committee notes the remark by Attorney-General's Department that it (the Department) 'is not in a position to provide an assessment of the cost to cash dealers of compliance with the FTR Act.'[14]

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[11] Submission No. 35, (Attorney-General's Department) p. 34.

[12] ibid pp. 33-34.

[13] ibid p. 33.

[14] ibid p. 33.

Suggestions for an Alternative System of Account Opening

6.20 Cash dealers were almost unanimous in calling for a more flexible, more deregulated approach to account opening:

> CUSCAL strongly urges the Committee to recommend a self-regulatory approach to account opening with penalties for inadequate procedures. In all likelihood, credit unions and other cash dealers will not vary their procedures significantly from the Weight of Evidence 100 Points method other than to reassign more sensible ratings to particular checks and documents which better reflect their particular customer base and provide *greater* integrity to the process. These procedures could be subject to audit by AUSTRAC as part of the Identifying Cash Dealer Audit Program.[15] (Emphasis added.)

6.21 This was stressed again in evidence where Mr Dupé stated that 'we believe it would be more sensible, now that the legislation has been in place for a number of years, for financial institutions to simply be required to know their customers. They could satisfy themselves as to a person's identity in a way which was more cost-efficient and effective by their choosing the method which best suits their membership or customer base ... We think that can both reduce costs *and the likelihood of false accounts being established.*'[16] (Emphasis added.)

6.22 The ABA made a similar proposal:

> 28. The 100 point check system is costly and the identification documents associated with it are too specific and therefore unduly onerous for the ordinary bank customer, and can be avoided through false documentation. Account opening procedures make up the vast bulk of the cost to banks of operating the Act.
>
> 29. Banks accept the obligation to know their customers and believe it would be better for customers to have that rule applied on a flexible basis rather than through the prescriptive account opening arrangements in the Act.[17]

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[15] Submission No. 34, (CUSCAL) p. 4.

[16] Evidence (Mr Dupé) p. 24.

[17] Submission No. 26, (ABA) p. 10.

6.23 The AAPBS also submitted that the procedure should not be prescribed in legislation:

> The process has standardized procedures across financial institutions especially in regard to account opening processes. Provided this continues to be flexibly administered, receptive to change in community habits, new systems and technology, then a uniform approach is not a bad thing. There is concern however, that account opening is enshrined in this legislation with the attendant risk that in the longer term rigidity and inflexibility is built into the system. We recommend therefore that the account opening processes be taken out of the Cash Transaction Reports Act and located elsewhere, possibly in a code of banking conduct, or in an account opening code of conduct overseen by an existing Commonwealth agency.[18]

6.24 The AFC stated that the Director of AUSTRAC was now provided with a substantial discretion to approve alternative account opening procedures for particular cash dealers (by the amendments which commenced on 1 February 1993). The AFC argued that the legislative requirement could be reduced to a bald statement of the general duty placed upon a cash dealer and the lengthy prescriptive requirements of the FTR Act and Regulations could be omitted:

> I am thinking of a parallel with the Corporations Law, particularly the prospectus provisions of the Corporations Law. At one time we had very long, technical prospectus provisions. They have been largely replaced by a provision ... of a couple of lines which says that the prospectus needs to contain everything which the investor or individual reasonably requires. If we could have that sort of approach in terms of the account opening provisions under the legislation, it would go a long way towards solving many of the problems of financial institutions without in any way circumscribing the ability of the agency to pursue its objectives.[19]

6.25 VCCL was also critical of the account opening procedures. They argued that the procedures were inflexible and operated to exclude some people from access to the banking system because they were unable to comply with the requirements of the identification procedure:

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[18] Submission No. 40, (AAPBS) p. 2.

[19] Evidence (Mr Bills) p. 29.

> Whilst most customers can produce sufficient identification, certain groups face difficulties. These include pensioners, Aborigines, persons living in remote locations, recent arrivals in Australia, homeless youths and non-residents.[20]

6.26 VCCL asserted that the procedures attempt to ensure that a procedure is available for all persons seeking to open a bank account and that no one falls between the cracks. However, the procedures 'are not, and cannot be, framed well enough to ensure that no-one suffers that fate and is excluded from the banking system. Such exclusion can cause significant hardship, particularly in light of the increased use of banks to deposit social security benefits, salaries etc.'[21]

6.27 VCCL proposed that the rigid procedures should be discarded. The present procedure

> should be replaced by a system which requires banks (and other relevant cash dealers) to form a reasonable opinion of a person's identity. The present mandatory identification procedures should become recommended procedures to apply in the majority of cases. The bank should, however, have a discretion to depart from the statutory procedures where it is reasonable to do so, having regard to the customer's status, the likelihood of hardship to the customer and the likelihood of fraud by the customer. The onus should be on the bank to establish that the circumstances warranted a departure from the statutory criteria and that the opinion it formed of the customer's identity was reasonable.
>
> Such provisions would leave intact the current procedures for the overwhelming majority of cases. They merely give banks the capacity to fill those cracks through which some customers can still fall.[22]

6.28 AUSTRAC did not oppose the proposal to introduce more flexibility into the procedure but emphasised the need for integrity in any replacement account opening procedure:

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[20] Submission No. 12, (VCCL) p. 10.

[21] ibid p. 11.

[22] ibid p. 13. VCCL clarified that the expression 'the customer's status' refers to whether the customer is a member of a vulnerable group having access to few forms of documentary identification. VCCL also clarified that an opinion on the likelihood of fraud by the customer might be formed by having regard to the length of the relationship between the customer and the bank, and whether the bank is aware of any adverse matters about the customer. (Telephone discussion between the Committee Secretary and Mr Pearce of VCCL 29 July 1993.)

> If you were to move to bring about more flexibility, which we are not opposing, we would suggest that there is the need to balance the general requirements in order for there to be some integrity in what is done .... against the need for flexibility......
>
> ..... Whilst we support generally a move to have more flexibility, it should be tempered with the sort of thing Mr Sherman[23] raised which was the need for there to be integrity.[24]

6.29 Indeed AUSTRAC expressed support for the VCCL proposal:

> I think what is being said now is that, instead of having this 100 points regime, maybe there ought to be more flexibility; perhaps you ought to have some general code which calls up a broad 'know your customer' type thing and let us not have 100 points. The Victorian Council for Civil Liberties' submission, as I recall it, perhaps has a more attractive theme - and I might leave that to the organisation - which sort of keeps this as some baseline standard but allows a bit more flexibility.[25]

6.30 The Committee notes that it was expected when the legislation was debated in Parliament that the cost of the account opening procedures to cash dealers would be modest. For example, the then Attorney-General, the Honourable Lionel Bowen MP, informed Parliament that:

> Banks have their own mechanisms of verification. A verification mechanism might be a tax file number. It is not very difficult to take down a tax file number. The only other form of verification could be the production of a passport or a birth certificate. If they cannot be obtained, a citizenship certificate or some other identification which, in the opinion of the financial institutions, would sufficiently establish the persons identity would be acceptable. Where is the cost in that? I just cannot imagine. When a person opens a bank account all they will be asked to do is prove who they are. The banks do that now under their voluntary code.[26]

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[23] Chairman, NCA.

[24] Evidence (Mr Coad) p. 34.

[25] Evidence (Mr Coad) pp. 47-48.

[26] *House of Representatives Hansard, 4 June 1987, p. 4036 (Mr Bowen)*

Recommendation 5: The Committee recommends that the present account opening requirements of the FTR Act should no longer be a mandatory minimal procedure. Instead the Act should impose upon cash dealers an obligation to take reasonable steps to satsify themselves of the identity of signatories to an account. The present mandatory procedures should become standard procedures to apply in most cases. Cash dealers should have the discretion to depart from the standard procedures where the circumstances so warrant. The onus should be on the cash dealer to prove that the circumstances warranted a departure from the standard procedure and that in its opinion the customer's identity has been established.

Recommendation 6: AUSTRAC should have the function, and the necessary resources, to audit the performance of cash dealers in complying with the statutory duty to satisfy themselves of the identity of their customers.

Chapter 7

PRIVACY AND CIVIL LIBERTIES ISSUES

Introduction

7.1 The FTR Act contains a number of features that are of concern to civil liberties groups. These were summarised by the Privacy Commissioner as follows:

- the legislation sanctions information gathering techniques which apply to the community at large, or to a significant section of the community, and which involve routine monitoring of certain activity;
- the legislation contains a very wide definition of the social objectives of the initiative - typically encompassing loosely defined law enforcement, revenue protection or efficiency goals;
- the legislation is justified on the basis of a public interest accompanied by estimates of large anticipated financial savings;
- there is no significant consideration of alternatives (particularly more focused or targeted options);
- the legislation requires secrecy of operation, especially as regards individuals affected;
- the information collected under the Act is circulated relatively widely amongst a significant number of Commonwealth and State agencies, and a wide range of officers within those agencies;
- the Act reposes significant administrative discretion as to the circulation of information with the head of the agency;
- there is a suggestion that external accountability mechanisms, such as the Ombudsman and the Privacy Commissioner, furnish adequate protection of the individual interests affected; and
- the legislation gradually expands to new areas.[1]

7.2 Parliament has procedures in place to ensure that legislation coming before it is scrutinised carefully, both as to the substantive policy

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1 Submission No. 41, (Privacy Commissioner) p. 1.

contained in the bill and also as to general compliance with accepted norms protective of the rights of individuals. For example, all bills introduced into the Senate are examined by the Senate Standing Committee for Scrutiny of Bills. This is a multi-party committee which looks at whether the bill:

- trespasses unduly on personal rights and liberties;
- makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers, or on non-reviewable decisions;
- inappropriately delegates legislative powers; or
- insufficiently subjects the exercise of legislative power to parliamentary scrutiny.[2]

7.3 These procedures themselves are an indication of the importance which Parliament attaches to ensuring that the rights of individuals are limited only after the most thorough scrutiny, and with the clear approval of Parliament. Thus it is important to ensure that intrusive powers are conferred in express language and are not disguised in empowering provisions of too much generality. It is for this reason that the Committee has concluded, as discussed in chapter 3 above, that AUSTRAC must take care to ensure that its actions are clearly within the terms of its statutory charter. In cases of doubt, AUSTRAC should seek a suitable amendment to the legislation.

7.4 The legislation does restrict rights that people would otherwise have under the law. It does this in seeking to cutrail and detect the commission of major crime.

7.5 The question as to where the balance between the need to maintain a free and democratic society and the need to ensure crime is prevented and punished is a difficult one.

7.6 However, it must be said that the processes of AUSTRAC should not be aimed at detecting minor crime, for example, lesser offences against the Social Security Act.

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2 Senate Standing Order 24(1)(a).

7.7 These areas of concern were examined during the Committee's inquiry.

AUSTRAC's Functions

7.8 In bilateral projects the role of AUSTRAC was explained as follows:

- by using known criminal target information (*provided by the lead law enforcement agency*) specific related reports are identified and analysis conducted;

- from examination of data for relevant geographic areas, AUSTRAC will prepare profiles of cash flows as indicated by its holdings;

- an initial report is made to the lead agency and this may result in further analysis, effectively repeating the cycle;

- records from banks and other cash dealers may be requested either by AUSTRAC or the lead agency depending on the circumstances;

- similar data might be requested from those cash carriers that are exempt from reporting;

- AUSTRAC may use its (civil) audit powers to go into cash dealers in appropriate cases ....; and

- the identified relevant financial data held is integrated into the law enforcement operation.

This process is not a rigid one, it is changing as experience grows.[3] (Emphasis added.)

7.9 While it may be that AUSTRAC has exceeded its charter by participating in NCA task forces, as noted in Chapter 3, AUSTRAC has been very conscious of civil liberties issues. The Director of AUSTRAC, Mr Coad, satisfied the Committee that it had these issues well in mind.

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[3] Submission No. 13, (AUSTRAC) p. 104.

Investigations and Intelligence Gathering

7.10 In considering the criticisms that AUSTRAC has exceeded its statutory functions, it is essential to keep in mind the difference in character between the investigations carried out by policing bodies such as the National Crimes Authority, the Australian Securities Commission and the Australian Taxation Office, and an intelligence gathering entity such as AUSTRAC.

7.11 Policing bodies have the ability to obtain information from people by compulsion or in circumstances which may cause them to make statements unfair to themselves.

7.12 A police interview can be a daunting affair even if carried out on a voluntary basis. Questioning by compliance officers of the Immigration Department can be quite frightening to someone suspected of breaching the relevant Act no matter how polite they might be. People subject to these sorts of investigations may provide evidence which is flawed and disadvantageous to them.

7.13 AUSTRAC does not engage in these sorts of enquiries. It deals with material which, though supplied by the force of law, is created without compulsion and in the absence of state authority. Thus the risk of it being tainted to the disadvantage of the supplier is markedly reduced.

AUSTRAC and the IPPs

7.14 As set out in paragraphs 3.17-3.26 it is essential that AUSTRAC always acts within the legislation which underpins it.

7.15 It is fundamental to the effective operation of civil rights that Parliament determines what powers law enforcement bodies will have and the framework within which they may be exercised.

7.16 The operations of AUSTRAC and the discretion of the Director to allow access to information held by AUSTRAC are subject to the

Information Privacy Principles (IPPs) under the *Privacy Act 1988.* AUSTRAC detailed its compliance with the relevant IPPs as follows[4]:

The Privacy Principles	How AUSTRAC Complies
Principle 1 - Ensuring collection of information is lawful and fair	
Agencies must not collect personal information unless: (i) it is collected for a lawful purpose directly related to a function or act of the agency; and (ii) the means of collection are lawful and fair.	*Financial Transaction Reports Act 1988.*
Principle 2 - Informing people why information is collected.	
Agencies must ensure that people from whom they solicit personal information are generally aware, before collection, or as soon as practical thereafter, of: (i) the purpose of collection; (ii) and legal authority for the collection; and (iii) third parties to which the collecting agency discloses such information as a usual practice.	Advertisements in press, brochures Guidelines Media interviews Airport signs - in various languages Advice from financial institutions to their clients. International currency report forms have their purpose clearly stated on them.

4 AUSTRAC Security and Privacy Manual section 5.2, draft document tabled at the Committee hearing on 10 June 1993 (Evidence, Mr Coad, p. 192).

Principle 3 -	**Ensuring personal information collected is of good quality and not too intrusive.**
Where an agency solicits personal information (whether from the person that information is about or otherwise), it must take reasonable steps to ensure (i) that the information is relevant to the purpose of collection, up-to-date, complete, and (ii) that its collection does not unreasonably intrude upon the person's personal affairs.l	AUSTRAC is not able to fully control the quality of the data which financial institutions gather and subsequently report. Guidelines are issued, there is a statutory requirement to report and AUSTRAC carries out audits of financial institutions. When the reports are lodged AUSTRAC takes the following steps to ensure quality information. Quality Control Unit functions • cleansing • checking suspect transaction reports twice after data entry • suspension/return of non-cash transactions for correction • with electronic data delivery systems the ability to return data for correction.
Principle 4 -	**Ensuring proper security of personal information**
An agency must protect personal information against misuse by reasonable security safeguards, including doing everything within its power to ensure that authorised recipients of the information do not misuse it.	Physical personal and data security procedures. Section 27 - statutory restriction on access Memoranda of Understanding required from agencies accessing FTR information. Logging access. Recording summary and other types of report details.

Principle 5 - Allowing people to know what personal information is collected and why.	
Any person has a right to know whether an agency holds any personal information (whether on him or her or not) and if so: (a) its nature; (b) the main purpose for which it is used; (c) the classes of persons about whom it is kept; (d) the period for which each type of record is kept; (e) the persons who are entitled to have access to it; and under what conditions; and (f) how to obtain access to it. Each agency must maintain an inspectable register of this information, and inform the Privacy Commissioner annually of its contents.	As for Principle 2 (ie) advertisements, guidelines, brochures, media interviews, airport signs, advice from banks etc to their clients and Responding to general enquiries from public. Publishing outline on AUSTRAC holdings in the agency Privacy Digest. FOI Statement provided to anyone who asks for information - FOI requests are processed in accordance with the guidelines set out in the FOI Statement.
Principle 6 - Allowing people access to their own records.	
A person has a right of access to personal information held by an agency subject to exceptions provided in the *Freedom of Information Act 1982* of any other law.	AUSTRAC provides information in response to FOI requests.

Principle 7 - Ensuring that personal information stored is of good quality, including allowing people to obtain corrections where it is not.	
Agency must make corrections, deletions and additions to personal information to ensure that it is: (i) accurate; and (ii) relevant, up-to-date, complete and not misleading (given the purpose of collection and related purposes), subject to exceptions provided in the *Freedom of Information Act 1982* or any other law. Agencies are required to add a reasonable statement by a person to that person's record on request.	Quality Control Unit (QCU) functions. Where AUSTRAC becomes aware that poor quality data has been sent to it then steps are taken to correct it. At the same time poor quality data may be suspended to eliminate access to it. To ensure that suspect reports are accurately reflected in database and QCU checks them <u>twice</u> after data entry. With electronic data delivery systems poor quality data can more easily be returned for correction.
Principle 8 - Ensuring that personal information is of good quality before use.	
Agencies must take reasonable steps to ensure that personal information is accurate, up-to-date and complete (given the purpose of collection and related purposes) before using it.	See Privacy Principle 3 & 7. AUSTRAC suspends poor quality data if necessary to ensure that clients cannot use it. Data processed manually is carefully vetted to ensure highest possible quality of data.
Principle 9 - Ensuring the personal information is relevant before use.	
Agencies may only use personal information for purposes to which it is relevant.	AUSTRAC has responsibility for ensuring that the information released to its clients is for an appropriate purpose - also see Privacy Principle 4. AUSTRAC staff are made aware of the importance of the need to ensure that, as far as they can, they are convinced that the information supplied to clients is consistent with the stated purpose it was requested for and consistent with the MOU.

Principle 10 - Limiting the use of personal information to the purposes for which it was collected.	
Agencies may not use personal information for purposes other than for which it was collected, except: (a) with the consent of the person; (b) to prevent a serious and imminent threat to a person's life or health; (c) as required or authorised by law; (d) where reasonably necessary for the enforcement of criminal or revenue laws; or (e) for a directly related purpose. In the case of exception (d), but not otherwise the use must be logged.	AUSTRAC must ensure that information is not given to clients unless directly relevant to work and in accordance with conditions set out in FTR Act and MOUs.
Principle 11 - Preventing the disclosure of personal information outside the agency.	
Agencies may not disclose to anyone else personal information, with the same exceptions as in Principle 10(a)-(d), plus an additional exception where the subject of the information is reasonably likely to be aware of the practice of disclosure (or reasonably likely to have been made aware under Principle 2). The recipient of information under one of these exceptions may only use it for the purpose for which it was disclosed	This provides for release of information but it is also why releases of information must be carefully considered and recorded.

AUSTRAC Security Procedures

7.17 AUSTRAC impressed the Committee with its consciousness of the need to secure the sensitive information which is provided to it. For

example AUSTRAC adheres to a range of security procedures designed to protect this information. The range of security procedures is as follows:

- **Physical security.** The AUSTRAC head office at Chatswood, Sydney is a secure building. For example, guards are located on its floors at key risk times; external doors are fitted with card access facilities and are subject to a security monitoring system; staff are issued with photo ID cards; and sensitive areas, such as the computer facility, have digital combination locks and passive infra red detectors.

- **Personnel security.** Every person working within AUSTRAC premises (whether employees, contractors or otherwise) is security cleared.

- **Data security.** Data is protected from corruption and misuse. The security measures include a requirement that all internal access be controlled through the issue of log-on and protected passwords; all PCs linked to the system have the floppy media drive disabled; clear desk rules are applied; and all secure waste is either shredded on the premises or contracted out to a security waste firm for pulping and recycling.[5]

7.18 All information received by AUSTRAC, whether received by electronic means or via paper reporting, is treated as confidential.

7.19 In April 1991 the Privacy Commissioner conducted a privacy audit of AUSTRAC, focusing on suspect transaction reports. The auditors concluded that AUSTRAC had a moderately high level of inherent risk. However, this finding 'was modified by the assessment that there also existed a high level of security in place and a strong security culture exhibited' within AUSTRAC.[6]

Access to FTR Information

7.20 The FTR Act states that the Commissioner of Taxation and ATO officers are entitled to access to FTR data, and that other specified agencies can access the data at the discretion of the Director of

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5 Submission No. 13, (AUSTRAC) pp. 180-183.

6 *Privacy Act 1988* Section 27(1)(h) - Cash Transaction Reports Agency - Suspect Transaction Reports - Audit Report - Information Privacy Principles 4-11. Document tabled by Mr Coad on 10 June 1993. (Evidence, Mr Coad, p. 192.)

AUSTRAC.[7] Apart from the ATO, the other agencies which may have access to FTR information are the AFP, NCA, ASC, State and Territory police forces, NSW Crime Commission, NSW ICAC and the Queensland CJC.

7.21 Online access to the AUSTRAC database is set at six levels, as follows:

Level 0	No access
Level 1	Indicator of a report - name and address response with a message that the report is restricted.
Level 2	Abridged details of a report - transaction summary - date, report type, amount, transaction type, postcode of cash dealer, BSB number (bank branch identification code), account number, report number.
Level 3	Access to significant cash transaction report, international currency report and abridged suspect transaction report. Full details from a suspect report are available only when AUSTRAC has specifically referred the suspect report to that agency.
Level 4	AUSTRAC access only - to all reports other than suspect transaction report specials (see level 5).
Level 5	AUSTRAC access only - to a special database on reports including suspect transaction report specials. These include suspect reports concerning law enforcement personnel which may be subject to internal affairs investigations.[8]

7.22 The number of officers (excluding AUSTRAC) having access to the database at levels 1,2 and 3 is as follows[9]:

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[7] FTR Act Section 27. Also see the discussion later in this chapter under the heading 'Should ATO have statutory right of access to FTR data?'

[8] Submission No. 13, (AUSTRAC) p. 63.

[9] AUSTRAC - Updated Statistics. Document tabled by Director AUSTRAC on 8 June 1993. (Evidence, Mr Coad, pp. 6-7.)

Table 7.1 Officers Having Access to Database

Access Level	Agency	Suspect Reports	Significant Cash Reports
Indicator of a report (Level 1)	ATO	277	–
	State law enforcement agencies (LEAs)	–	–
	Commonwealth law enforcement agencies	39	–
Abridged report (Level 2)	ATO	185	–
	State LEAs	59	–
	Commonwealth LEAs	194	–
Full report (Level 3)	ATO	234[10]	696
	State LEAs	25	84[11]
	Commonwealth LEAs	78	311

7.23 AUSTRAC provided data on the number of searches, and the type of searches, made of the database between 1 July 1992 and 31 December 1992. Those details are as follows[12]:

[10] Full report of a suspect transaction is available only to an agency when AUSTRAC has specifically referred the report to that Agency.

[11] State law enforcement agencies have access only to significant cash transaction reports reported in their home state.

[12] Submission No. 12, (AUSTRAC) p. 60.

Table 7.2 AUSTRAC Data on Searches

	AUSTRAC	Total AUSTRAC clients	ATO	Federal Agencies	State Agencies
System Access					
Number of log ons	5,746	11,931	6,516	4,349	1,066
Average number per work day	45	93	51	34	8
Searches:					
By name	38,894	64,293	32,775	25,871	5,647
Other	51,039	30,649	15,154	12,510	2,985
Total	89,933	94,942	47,929	38,381	8,632
Average number of searches per log on:	15.7	8	7.4	8.8	8.1
Information Retrieved (000's)					
Name searches	649	673	343	275	55
Other searches	46	26	14	11	1
Total	695	699	357	286	56

Number of ATO Officers with Access to FTR Data

7.24 The Australian National Audit Office (ANAO) carried out a security audit of AUSTRAC, including issues relevant to data security. Amongst other things, the audit recommended that persons who had not logged on to the AUSTRAC database for a considerable period should lose

their access privilege to do so. As a result, AUSTRAC followed the practice of deleting persons who had not logged on for six months or more. So far as ATO are concerned this resulted in the removal of access privileges from almost 28 per cent of the ATO officers with access to the AUSTRAC database:

Table 7.3 Number of Officers With Online Access to AUSTRAC Data

User Agency	June 1991	June 1992	June 1993
ATO	550	966	696
Commonwealth Law Enforcement Agencies	223	360	311
State Law Enforcement Agencies	135	117	84
AUSTRAC	51	68	64
TOTAL	959	1511	1155

(The June 1993 figure follows the culling referred to above.)[13]

7.25 These figures suggest that ATO has not used the AUSTRAC data to the extent originally anticipated and that access privileges were granted more widely than was in fact necessary.

7.26 During public hearings the following exchange took place on this point:

> **Senator O'CHEE** - The number of on-line users at the ATO has been culled quite substantially. Do you have any information as to the basis of that culling?
>
> **Mr Coad** - Yes. It was culled by us. In our submission we say that, at the outset, we judge the on-line access to law enforcement on our assessments. That will be debated a little more in Melbourne, because some will say that we have gone too

[13] Submission No. 13, (AUSTRAC) pp. 61 and 185-186, and document entitled AUSTRAC Updated Statistics tabled by Mr Coad during the Committee's public hearings on 8 June 1993.

far. Basically, the on-line access to law enforcement is to the key intelligence areas of the police forces.

As far as the Tax Office is concerned, AUSTRAC does not have any final say as to the access because the Act permits any tax officer to have access to the database. In practice, I signed an agreement with Mr Boucher, the then commissioner, that would circumscribe that access in light of the privacy principles, but the actual degree of access was very much left to the Tax Office. Since it was enthusiastic to try it, probably in the early days it was given wider scope than what the utility of it would later produce. There are many primary audit areas and whatnot where the data would be unlikely to produce any information that was relevant to it.

When we were audited last year by the Australian National Audit Office, it made a suggestion to us that we should consider culling the database. We adopted that suggestion; we cull it every six months. The Taxation Office's figures fell significantly. I think that was largely because we overdid it in the first instance.

Senator O'CHEE - I think you are right. Many of the officers who do the primary investigation in the ATO would probably not really get much utility from the information that is provided. A cynical person could say that they probably would not have the skills to utilise it either. But it still concerns me that we have 696 ATO people as at June 1993 who are on-line users of AUSTRAC data yet we only have 311 people in the Commonwealth law enforcement agencies and 84 people in State law enforcement agencies.

Senator KEMP - Do you want more?

Senator O'CHEE - It seems that we have many people who perhaps are not getting a lot of utility out of it.[14]

Should ATO have Statutory Right of Access to FTR Data?

7.27 The FTR Act provides that the Commissioner of Taxation and ATO officers are *entitled* to access to the data and that law enforcement agencies (including Customs) can access the data only at the discretion of the Director of AUSTRAC. This distinction in terms of the basis for access to FTR data between the revenue agency and law enforcement agency would seem to have resulted in access that is too indiscriminate, bearing in mind the privacy sensitive nature of the data in question. Also, the

[14] Evidence (Mr Coad) pp. 55-56.

substantial culling of users carried out in 1993 suggests that wide access is unnecessary for ATO purposes. AUSTRAC conceded this point in its submission where it is remarked that 'in the first instance, the granting of online access (particularly to the Australian Taxation Office) may have been too wide. The culling of users, consistent with the Australian National Audit Office's recommendations ... appears to have wound back the online access to what may be more permanent levels.'[15]

7.28 It is desirable that access to FTR data should be closely guarded. Obviously, it should not be accessible by any person who does not have a genuine need to do so. In the case of ATO it seems that access has been too generous and should be limited.

Recommendation 7: The Committee recommends that the FTR Act be amended so that ATO no longer has a *right* of access to FTR data but has access to FTR data on the same basis as law enforcement agencies, that is, on the basis of a Memorandum of Understanding entered into with the Director, AUSTRAC.

Civil Liberties Representation on Advisory Committees

7.29 The VCCL pointed out that there was limited external scrutiny of AUSTRAC through the auditing function of the Privacy Commissioner and the Australian National Audit Office. However VCCL argued that privacy interests could be safeguarded through allowing for civil liberties representation on key advisory committees.

7.30 The Attorney-General established a Ministerial Advisory Committee on the Financial Transaction Reports Act in 1991. That Committee is chaired by the Secretary of Attorney-General's Department, and includes representation by the ABA, AAPBS, CUSCAL, the finance sector unions as well as AUSTRAC. The other key advisory committee is AUSTRAC's own liaison committee. AUSTRAC has a liaison committee which liaises with cash dealers, and another which liaises with law

[15] Submission No. 13, (AUSTRAC) p. 53.

enforcement and revenue agencies. The Director of AUSTRAC has raised with VCCL the possibility of a separate civil liberties committee.[16]

7.31 There is considerable merit in having civil liberties representation on key advisory committees. There should be a civil liberties representative on the Ministerial Advisory Committee on the FTR Act, and also on one of AUSTRAC's advisory committees (or on a separate civil liberties committee established by the Director of AUSTRAC).

7.32 The Director of AUSTRAC indicated during evidence to the Committee his support for this proposal:

> In relation to the civil liberties advisory group, I agree that we should have such a body. I would hope that the representatives on that body would not see us as 'big brother', and that we would be able to make a positive contribution to it. I will seek to set up such a group on the advice of the Privacy Commissioner.[17]

Recommendation 8: The Committee recommends that a civil liberties representative be appointed to the Ministerial Advisory Committee on the FTR Act.

Recommendation 9: The Committee recommends that the advice of the Privacy Commissioner be sought by the Director of AUSTRAC whether to appoint a civil liberties representative either to an existing AUSTRAC advisory committee, or to establish a separate advisory committee on privacy and civil liberties issues.

Deletion of Data

7.33 The FTR Act makes no provision for the deletion of old or spent FTR information from the AUSTRAC database. Indeed, paragraph 38(1)(b) of the Act requires the Director of AUSTRAC 'to collect, *retain*, compile, analyse and disseminate FTR information'. (Emphasis added.) The retention of large, and growing, volumes of quite sensitive personal financial data is a matter of obvious concern to civil liberties groups.

[16] Submission No. 12, (VCCL) p. 51.

[17] Evidence (Mr Coad) p. 210.

7.34 Interestingly, the problem of volume of data also appears to be a matter of concern for AUSTRAC itself. Attorney-General's Department noted in its submission that in 1992 'the Director [of AUSTRAC] sought guidance on whether some records concerning transactions worth less than $10,000 could be destroyed after 3 months' retention in order to facilitate analysis of the residual information.'[18] The Department commented that 'permanent retention of information considered to be of no use may ultimately hamper use of that part of the retained information which is possibly relevant to criminal activity or tax evasion, thus undermining objectives such as facilitating administration of the laws of the Commonwealth and maximising use of FTR information for taxation purposes.'[19]

7.35 The Department took the view that the Director could delete the information but only if prior approval had been obtained from Australian Archives, because the information constituted 'Commonwealth records' within the meaning of the *Archives Act 1983*. This difficulty could be overcome by specific provision in the FTR Act or Regulations empowering the Director of AUSTRAC to authorise deletion of FTR information from the database because the Archives Act does not apply where destruction of Commonwealth records is allowed by a law.

Recommendation 10: The Committee recommends that the FTR Act be amended to give the Director of AUSTRAC power to authorise the deletion of FTR information from the AUSTRAC database in appropriate circumstances.

[18] Submission No. 35, (Attorney-General's Department) p. 150.

[19] ibid p. 151.

Chapter 8

ACCESS TO THE AUSTRAC DATABASE

Introduction

8.1 The FTR Act provides that ATO has a right of access to FTR information, whilst other law enforcement and revenue agencies specified in the Act have access at the discretion of the Director of AUSTRAC. Apart from ATO, the other agencies which may have access to FTR information are the AFP, NCA, ASC, State and Territory police forces, NSW Crime Commission, NSW ICAC and the Queensland CJC. Generally, the Director of AUSTRAC has authorised access by these agencies pursuant to Memoranda of Understanding (MOUs) executed by AUSTRAC and the relevant agency.

8.2 During the course of the Committee's inquiry evidence was given that access to FTR information should be widened (to allow access by the Department of Social Security (DSS) and by State and Territory revenue authorities) and that access should be narrowed (such that access is not authorised on a general basis pursuant to MOUs, but on a request by request basis).

Reports Relating to DSS Fraud

8.3 A large number of suspect transaction reports lodged with AUSTRAC relate to apparent social security fraud.

8.4 The original guidelines issued by AUSTRAC (then the CTRA) in relation to suspect transaction reporting included indicators of social security fraud. The fact that DSS fraud was included in the reporting scheme led to some criticism of the scheme.[1] It was argued that the reporting of DSS fraud deflected the FTR reporting scheme away from its primary focus upon major crime.

8.5 In mid-1992, in response to the criticism of the initial guideline on suspect transaction reporting, AUSTRAC issued a revised guideline

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[1] The criticism is summarised at pp. 91-98 of Submission No. 13, (AUSTRAC).

which sharpened the focus upon major crime and excluded references to DSS fraud.[2] The effect of the revised guideline upon reporting levels was discussed in evidence before the Committee. The number of suspect transaction reports lodged was reported as follows:

1 Jan 90-30 June 91 [18 months - average 452/month]	8135
1 July 91-30 June 92 [12 months - average 382/month]	4582
1 July 92-31 March 93 [9 months - average 374/month][3]	3362

8.6 The Attorney-General's Department commented that 'early suspect transaction reports gave disproportionate prominence to social security fraud, often, but not always, of a minor character.'[4] However, the Department stated, 'the issue of revised guidelines on suspect transaction reporting by AUSTRAC, emphasising means of identifying major crime, appears to have redressed the balance. However, the corresponding fall-off in overall numbers of reports under s.16 suggests that this measure in turn may have had unforeseen effects.[5]'

8.7 However, other figures provided to the Committee show that, whilst the total number of reports has declined, the proportion of reports relating to DSS fraud has increased. In calendar year 1990 16.9 per cent of all suspect transaction reports related to apparent fraud on DSS; in 1991 the percentage rose to 22.9 per cent and in 1992 rose again to 23.2 per cent.[6] These figures do not suggest any great change in deflecting attention away from DSS fraud.

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[2] Both the initial CTRA guideline, and the revised AUSTRAC guideline, on suspect transaction reporting are attached to Submission No. 12 (VCCL).

[3] AUSTRAC Updated Statistics, document tabled by the Director of AUSTRAC (Mr W Coad) at the Committee's public hearing in Sydney on 8 June 1993. (Evidence, Mr Coad, p. 6.)

[4] Submission No. 35, (Attorney-General's Department) p. 37.

[5] ibid.

[6] Submission No. 13, (AUSTRAC) p. 92.

Handling of Reports Concerning DSS Fraud

8.8 DSS is not one of the agencies specified in the FTR Act to which the Director of AUSTRAC may allow access to FTR information. Accordingly, all reports suggestive of DSS fraud are referred by AUSTRAC to either the AFP (as the body with general responsibility for the investigation of breaches of Commonwealth law) or the ATO (where the indicators of DSS fraud also include indicators of tax evasion). The opinion of Attorney-General's department is that the AFP can pass AUSTRAC information to DSS only where it is necessary for the performance of AFP functions. The AFP should not inform DSS that AUSTRAC information has been obtained, nor reveal the content of the information, unless it is necessary for the purpose of the investigation.[7]

8.9 The processing of the reports then depends upon the internal priorities of the agency concerned. In evidence to the House of Representatives Standing Committee on Legal and Constitutional Affairs in connection with another inquiry the Director of AUSTRAC advised as follows:

> **Mr COAD** - The Cash Transaction Reports Act, particularly the suspect transaction reporting requirement, talks about a breach of all Commonwealth law and taxation law. The focus of our work is clearly on money laundering and tax evasion of a reasonably major nature. In the reporting, a lot of front-line bank staff see what they believe to be social security fraud and so they file suspect transaction reports and then expect something to be done about it. We have been giving those to the Australian Federal Police because we cannot give them to the Department of Social Security under our Act.
>
> The Federal Police will then ask the Social security Department if the person is entitled to the benefit. I guess at that point that the Social security Department might realise that something has been raised elsewhere about this issue and maybe they will look at their file. But the fact is that the Federal Police cannot give it to Social security for other than the reason of finding out whether there is an issue for prosecution. They cannot give it to Social security for the purpose of

[7] Submission No. 45, (DSS).

> removing the benefits. If Social Security draws the inference by the question being asked maybe they would review the file themselves.[8]

Administrative Inefficiency of Existing Procedures

8.10 In 1990/91 the Auditor-General undertook an 'Efficiency and Effectiveness of Fraud Investigations' audit of the AFP. In the report the Auditor-General concluded that the present procedures were inefficient:

> **2.4.9** At the time of audit all reports referred to the AFP by the CTRA related to suspicious transactions and the majority involved transactions with a value of less than $10,000. As a result the AFP was investigating matters that were not high priority in terms of the Ministerial Direction. It was also conducting the initial investigation of possible fraud occurring in agencies. This activity was identified in recommendations of the review of fraud as the prime responsibility of the agencies.
>
> **2.4.10** The fact that the AFP is unable to pass on reports emanating from the CTRA may result in the AFP accepting work that would normally be handled by the agencies. Whilst the CTRA referrals represent a significant increase in work for the AFP the initial indications are that much of this work could be more appropriately dealt with by agencies.
>
> **2.4.11** The current arrangements will lead to inequities in the treatment of cases of fraud. It was accepted by Government that minor instances of fraud should be dealt with by administrative remedy wherever appropriate. Under current CTRA legislation the AFP must deal with the matter itself and, as it is unable to apply administrative sanctions, either it will not investigate the matters due to other priorities, or alternatively it will prosecute them. The ANAO is of the opinion that this inconsistency in treatment of routine instances of fraud arising from CTRA reports should be addressed.[9]

8.11 The AFP agreed that this procedure was inefficient, informing the Committee that a large number of DSS matters are referred to the AFP which 'are often of minor value, low in the order of AFP priorities, but

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[8] Evidence (Mr Coad) given before the House of Representatives Standing Committee on Legal and Constitutional Affairs in Melbourne on 20 October 1992. Reproduced in Submission No. 13 (AUSTRAC) pp. 97-98.

[9] ANAO report number 25, cited at pp. 94-96 of Submission No. 13, (AUSTRAC).

nevertheless consume valuable resources which should be devoted to matters of greater significance.'[10]

Evidence from DSS

8.12 DSS advised that it administered over $30 billion in outlays in 1992/93.[11] The Department emphasised that it had an extensive network designed to minimise the level to which the income security system is misused, and the experience it had in the conduct of investigations into the entitlements or otherwise to income security payments. In 1991/92 DSS conducted 2.5m reviews of eligibility throughout the country, with cancellation or reduction of payment resulting in 170 000 cases.[12]

8.13 DSS also felt that the existing arrangements for the handling of suspect transactions relating to possible DSS fraud were not cost effective. 'The majority of cases referred to the AFP involving potential DSS fraud do not require the AFP's investigative skills. These cases could readily be investigated by DSS staff. If this were permitted the demand on the AFP's resources would be reduced and it would be possible to give more attention to the larger fraud cases.'[13] The AFP agreed that some of the matters involving apparent DSS fraud referred to it are low rating in terms of AFP priorities.[14]

8.14 The AFP proposed that the Commissioner of Police be given a discretionary power to provide certain information to the DSS[15] (presumably information relating to matters which the AFP would not intend to investigate with a view toward prosecution). DSS suggested a similar procedure, 'under which AUSTRAC reports were initially referred

[10] Submission No. 25, (AFP) p. 5.

[11] Submission No. 45, (DSS).

[12] ibid.

[13] Submission No. 45, (DSS).

[14] Submission No. 25, (AFP) p. 2.

[15] ibid pp. 2 & 5.

to the AFP so it could select any cases it wished to pursue after which it would refer all unselected cases to DSS for investigation.[16]'

Privacy Concerns

8.15 The Committee stresses that AUSTRAC was established to respond to major crime, not lesser breaches of the law such as more minor breaches of the Social Security Act. Further, the Committee is aware of incidents involving the illegal disclosure of DSS information exposed in the report of the NSW ICAC. FTR information is particularly sensitive and intrusive. Accordingly, the Committee is not minded to recommend that DSS have access to such data, and certainly not in the manner proposed by the AFP and DSS. AUSTRAC was established to enable law enforcement agencies to strike at major crime and that is what it should continue to do.

Recommendation 11: The Committee recommends that the Department of Social Security not be given access to FTR information.

Operation Quit

8.16 Various State and Territory revenue agencies provided submissions to the Committee proposing that they should have access to FTR information.[17] State Revenue Offices have been aware of the usefulness of FTR information through their involvement in the NCA task force named Operation Quit. This is an investigation into suspected conspiracies to defraud the revenues of Victoria, NSW, Queensland and the Northern Territory by attempting to evade tobacco licence fees in each jurisdiction.

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[16] Submission No. 45, (DSS).

[17] Submission No. 16, (State Revenue Office, Tasmania); Submission No. 20, (South Australian Taxation Office); Submission No. 28, (Minister for Finance and Assistant Treasurer, NSW); Submission No. 32, (Treasurer, Northern Territory); Submission No. 33, (Office of State Revenue, Queensland); Submission No. 46, (State Revenue Office, Victoria); Submission No. 60, (Office of State Revenue, NSW, supplementary submission).

> 4.3 A task force was established following a preliminary investigation by the NCA into suspect transaction reports received from the CTRA (as it then was) in April 1990. These transaction reports comprised deposits to a bank in the Northern Territory totalling $1.6m which were remitted from New South Wales and Victoria. On inquiry, by the NCA in co-operation with the relevant State and Territory revenue offices, it appeared that the transactions were part of a scheme by some wholesalers and retailers of tobacco products to evade licence fees in several jurisdictions.[18]

8.17 With the imminent winding up of the NCA Operation Quit Task Force the State Revenue Offices will cease to have access to FTR information. Submissions to the Committee indicated the substantial amount of evaded State and Territory revenue which had been recouped through Operation Quit: $20m in assessments of NSW state tobacco licence fees[19]; approximately $20m in assessments in Queensland[20]; and over $10m of evaded tobacco licence fees in Victoria[21].

Role of State and Territory Revenue Authorities

8.18 The State and Territory revenue agencies are responsible for the administration of a large body of revenue legislation, including stamp duties, payroll tax, land tax, bank account debit taxes as well as liquor and tobacco licence fees. The amount of revenue for which the authorities are responsible is very large: for example $8.2 billion for 1992/93 in NSW[22]; and $4.6 billion in 1991/92 in Victoria[23].

8.19 The Queensland Office of State Revenue explained how the Office would use FTR information to protect State revenue:

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[18] Submission No. 27, (NCA) p. 7.

[19] Submission No. 28, (Minister for Finance and Assistant Treasurer, NSW) p. 3.

[20] Submission No. 33, (Office of State Revenue, Queensland) p. 2.

[21] Submission No. 46, (State Revenue Office, Victoria) p. 2.

[22] Submission No. 28, (Minister for Finance and Assistant Treasurer, NSW) p. 3.

[23] Submission No. 46, (State Revenue Office, Victoria) p. 1.

- **Tobacco licensing fees:** AUSTRAC information would form the cornerstone of some investigations by assisting in the identification of illicit tobacco products traders and their associates. Associates identified may include suppliers, storage and transport entities. With the help of AUSTRAC a profile of transactions may illustrate the nexus between the offenders.

- **Stamp duty investigations:** The Stamp Act imposes duty on conveyances of real property and certain other property. Duty is calculated on the higher of the full unencumbered value of the property or the consideration paid/payable. AUSTRAC information would be used in identifying under-declarations of consideration. Parties to a conveyance sometimes seek to evade the correct amount of stamp duty by making 'cash payments' in addition to the consideration disclosed on relevant documents. The Committee is probably aware of allegations of organised crime syndicates buying Gold Coast properties for more than the disclosed purchase prices.

- **Pay-roll tax:** The information could be useful in detecting under-declarations of wages where 'wages' are paid in cash.

- **Racing and betting taxes:** Tax is calculated on the value of bets (turnover) placed with bookmakers. Bank account information may reveal likely undeclaration of turnover.

- **Recovery of unpaid taxes:** Where persons allege that they are unable to meet their taxation obligations or are applying to pay on instalment, AUSTRAC information would assist by revealing, for example, undisclosed bank accounts.

- **Prosecution cases:** AUSTRAC information can afford evidence for prosecution for breaches of a revenue Act detected by an investigation.[24]

Security of the Information

8.20 Generally, State revenue authorities are not subject to any State privacy legislation equivalent to the Commonwealth *Privacy Act 1988*. However, the NSW Office of State Revenue said that it would be prepared to comply with privacy safeguards equivalent to the IPPs if given access to FTR information.[25]

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[24] Submission No. 33, (Office of State Revenue, Queensland) pp. 2-3.

[25] Submission No. 60, (Office of State Revenue, NSW).

State and Territory Legislation for Reporting Suspect Transactions

8.21 Another relevant consideration is that each State and Territory (apart from Western Australia and Tasmania) has now enacted its own legislation which provides for the reporting to AUSTRAC of transactions involving a suspected breach of State or Territory law. Accordingly, a body of information on the AUSTRAC database will relate to breaches of State law, including State revenue law. It would be anomalous if AUSTRAC received this information but was unable to pass on the data to the State agency charged with securing compliance with the revenue law in question (although it could pass the information to the relevant State police force).

Recommendation

8.22 There is a strong public interest in assisting State and Territory revenue authorities to protect the public revenue. The importance of the information in improving compliance with State revenue law has been established by the experience with Operation Quit.

> **Recommendation 12:** The Committee recommends that State and Territory revenue authorities be given access to FTR information on the basis of a Memorandum of Understanding to be entered into with the Director of AUSTRAC and subject to such conditions as the Director requires. The Director should ensure that access is permitted only to a small number of key officers of each authority. Access should be permitted only if the authority undertakes to comply with privacy safeguards equivalent to the IPPs and satisfies the Director of AUSTRAC that the FTR information will be rigorously protected by it.

Chapter 9

ACHIEVING THE OBJECTIVES OF THE LEGISLATION

Introduction

9.1 This chapter looks into the extent to which the administration of the FTR Act has achieved the objectives recited in section 4 of the Act. It looks at:

- the effectiveness of the usage of FTR data by clients of AUSTRAC and the direct and indirect results, or likely results, achieved therefrom, including the amounts recovered by way of taxation and other revenue measures;

- the longer term benefits of enhanced law enforcement techniques and strategic intelligence on an understanding of the cash economy and the combating of money laundering and other serious criminal activity; and

- the role of the legislation and AUSTRAC in facilitating coordination of the activities of Commonwealth and State law enforcement agencies and in fulfilling Australia's international obligations.

The Objectives

9.2 The objectives set out in section 4 of the Act are:

- to facilitate the administration and enforcement of taxation laws;
- to facilitate the administration and enforcement of laws of the Commonwealth and of the Territories, and
- to make information collected for the purposes referred to available to State authorities to facilitate the administration and enforcement of laws of the States.

9.3 The Act achieves these aims in two ways:

i) by tracing proceeds of crime and other untaxed cash income through the paper trail created by the Act to identify money launderers, participants in organised crime and tax evaders who might not otherwise be successfully prosecuted;

ii) by forcing criminals and tax evaders to either give up their criminal activity or find more risky ways of operation outside the legitimate financial system and fostering hostility to tax evasion and money laundering amongst cash dealers.[1]

9.4 The Act itself is directed at capturing financial intelligence for use by law enforcement agencies in the pursuit of serious crime and cooperation between those agencies in attacking the financial base of organised crime and tax evasion.

9.5 The processes provided by the Act were intended to help detect major crime. In the second reading speech the then Minister said:

> This Bill represents one of the most significant initiatives to counter the underground cash economy, tax evasion and money laundering. It is notorious that the underground cash economy provides great scope for tax evasion, both domestically and internationally. It is clear that traditional investigative techniques have been ineffective in identifying financiers of major crime, because of the ease with which such persons are able to distance themselves from the actual criminal conduct. However, experience both in Australia and overseas has shown that the financiers are more closely associated with the profits of crime. That experience also shows that cash is an important part of financing criminal activity.
>
> This Bill will give law enforcement agencies the ability to monitor the movement of large amounts of cash and thus to identify the recipients of proceeds of crime. The legislation is consistent with calls by a number of royal commissions and other inquiries in recent years for stronger measures to deal with the widespread abuse of the facilities of financial institutions in relation to tax fraud and other criminal activities. The Bill implements a scheme for the reporting of certain large currency transactions conducted through various institutions and certain transfers of currency into and out of Australia.
>
> The reporting of large scale cash transactions conducted through certain types of cash dealers, the reporting of the export of foreign currency and the reporting of the import of foreign and Australian currency, together with the verification of the identity of persons who open, or operate, accounts with certain financial institutions, are essential measures to enable the cash economy to be controlled

1 Attorney-General's Department Submission No. 35, p. 30.

and to minimise tax evasion. The reports will also be of great value in following the money trail in relation to proceeds of all criminal activities, including tax evasion, and in detecting financiers of criminal activity such as drug trafficking. The thrust of the scheme is broadly similar to the successful scheme in operation in the United States.

My recent visit to the United States has confirmed my conviction that the ability to monitor the movements of large amounts of cash, both domestically and internationally, is an essential aspect of the fight against organised crime and has very substantial benefits in the effective collection of revenue. United States officials informed me that several hundred million dollars were recovered last year from their export/import reporting requirements alone.[2]

The Criminal Environment

9.6 Internationally organised crime is recognised as a very serious threat to democratic institutions and social stability. There is considerable fear amongst law enforcement agencies in Australia that criminal organisations traditionally associated with other parts of the world such as Colombia and Hong Kong are seeking to expand their operations into the Australian market. This fear has been expressed by law enforcement agencies on a number of occasions.[3] Such internationally organised groups are involved in a vast range of criminal activity including drug trafficking, major fraud, tax evasion and other financial crime.

9.7 AUSTRAC states there is ample evidence to indicate that organised crime is a significant and escalating threat to Australia.[4] Casinos pose a particular risk in this area because of the international nature of their operations and of the banking system through which they function. At the domestic end, on the other hand, the more obvious ways of money laundering through casinos have been eliminated, largely through the requirements of the FTR Act.[5]

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2 *House of Representatives Hansard*, 13 May 1987, p. 3104 (Mr Bowen).

3 See paper by Bill Coad and David Richardson, "Reducing Market Opportunities for Organised Crime", delivered for Australian Academy of Forensic Science, Sydney, 20 May 1993, pp. 9-11 and G. Pinner, "The Money Trail - Looking Ahead and Reflecting Upon the Past", AUSTRAC Papers 1992, p. 1.14.

4 Ibid, Coad and Richardson, p. 11.

5 Dr. Chaikin, Evidence, p. 116.

9.8 Since Costigan, it has become recognised that focussing on the financial aspects of organised crime is the most effective strategy to counter it. AUSTRAC and the FTR Act assist this strategy by erecting barriers in the financial sector against illicit money and by extracting information from the financial sector for law enforcement purposes in the fight against organised crime and major tax evasion. It is widely recognised that organised crime is motivated by profit and that the illicit source of that profit is disguised through money laundering.

Loopholes

9.9 Money laundering is a term used to describe the process by which illegal income is disguised to make it appear legitimate. This has been identified as a process with three stages[6] -

"placement"	-	the physical disposal of bulk cash,
"layering"	-	a series of transactions which spreads the money through a series of accounts, and
"integration"	-	moving the funds to legitimate organisations.

9.10 It is generally accepted that funds are most vulnerable to identification at the point at which they enter the legitimate financial system, that is 'placement'. The FTR reporting system acts upon this assumption by focussing on the point of entry into the finance system to provide the necessary link in the money trail.[7] It is achieved through:

- the identification of new account holders; and
- the requirements to report the deposit (and withdrawal) of large sums of cash and of transactions which arouse suspicion.

9.11 Breaking the paper trail not only frustrates the identification of the origin of the funds but also makes confiscation of assets acquired with

6 W.S. Weerasooria, *Money Laundering, Cash Transactions Legislation and the Banker-Customer Relationship*, June 1991, Journal of Banking and Finance Law and Practice

7 Discussed by Pinner, G., AUSTRAC Papers 1992, p. 1.10.

those funds difficult. Money laundering is achieved in a multitude of ways, including:

- exchange for another currency;
- investment in apparently legitimate property or businesses; and
- mixing it with legitimate funds.

9.12 There is no comprehensive definition of money laundering or conclusive list of possible activities constituting it. Dr Chaikin submitted to the Committee that virtually every facility for commerce and trade is potentially available for money laundering. He warns against trying to regulate them all at great economic cost to the community.[8]

9.13 Technological advances have depersonalised the finance industry eg, through the introduction of automated teller machines (a development which is incompatible with requirements for banks to identify and know their customers), thus increasing the potential for money laundering activity.

9.14 In AUSTRAC's view this argument cannot apply to account opening as this usually requires direct contact between bank staff and customer.[9] Once the relationship of bank and customer is established, however, depersonalised banking follows. But, electronically generated transactions can and are being electronically screened (particularly IFTIs) and computer scanning is capable of detecting unusual conduct (eg. ScreenIT, AUSTRAC's analysis system on IFTIs to provide early warning to certain agencies on major movements of funds).

9.15 The Act does not cover all movements of moneys off-shore and there are also many domestic financial transactions which are not reportable. It might be useful, say, for AUSTRAC to have access to information on all financial transactions, not just those presently covered by the Act. However, it is generally recognised that such a solution would be costly and impractical and likely to lead to unacceptable detriment to financial markets.

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8 Submission No. 39, p. 2.

9 See AUSTRAC Submission No. 55, p. 9.

9.16 Dr Chaikin argues that the extension of the Act to cover IFTIs is a form of exchange control which may undermine Australia's attraction as a place for foreign investment.[10] On the other hand, jurisdictions which show little interest in the way financial and other institutions are used by criminals are obvious targets for money launderers.[11]

9.17 Another loophole identified by Dr Chaikin is the underground banking system which is beyond the reach of the FTR Act. Underground banking relies on alternatives to the banking system for methods of moving money. For example the Chinese underground banking system operates through gold shops, trading companies, commodity houses, travel agencies and money changers.

9.18 Other examples are discussed by Dr Chaikin in his paper 'Money Laundering: An Investigatory Perspective' attached to Submission 39. They do not usually involve transfers of money as such but rather operate on unrecorded systems of remote debits and credits and are thus difficult to detect.

9.19 As the reporting of IFTIs develops and confiscation laws become more successful it is alleged that the underground banking system will become more popular for money launderers. To date underground banking has not been found to be widespread in Australia. (The AFP submission refers to underground banking operating in an ethnic community nationwide which was discovered as a result of a number of suspect transaction reports.[12]) Underground banking does involve greater risks, however, for the user.

9.20 Dr Chaikin also says that to attack money launderers we need to know who they are.

9.21 AUSTRAC's response is that the FTR Act makes it more difficult for banks and casinos to be involved.[13] Its audits of cash dealers

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10 Chaikin Submission No. 39, p. 6.

11 NSW Crime Commission, Submission No. 51, p. 2.

12 Submission No. 25, p. 4.

13 Submission No. 55, p. 7.

for compliance assists in being constantly on the alert for new areas of opportunity for money laundering on both the domestic and international front. Gold bullion dealers and solicitors are being closely considered and a specific case has drawn attention to negotiable instruments.[14]

9.22 As the NCA points out, 'in practice it is not always possible to identify the precise extent of money laundering, or those involved, due to the secretive nature of the activity and to money laundering methods always changing to avoid detection'.[15] Its report 'Taken to the Cleaners: Money Laundering in Australia' identified vulnerable areas. The NCA and the NSW Crime Commission consider that AUSTRAC information is essential to the identification of money launderers. AUSTRAC regards its watchful approach as essential to the maintenance of the integrity of the FTR system.

The Role of Financial Institutions

9.23 At the time the Act was introduced, the finance industry endorsed it, recognising the 'need for corporate citizenship on the part of banks and the other financial institutions to defeat organised crime and the drug trade'.[16] On that basis they have taken a cooperative approach to the operation and further development of the legislation since its inception.

9.24 The support of the finance industry continues, but in view of the considerable costs incurred, its representatives have asked - Is it the most efficient way of achieving the Act's objectives? Is it appropriate for banks to be acting as law enforcement agencies? [17]

9.25 The NSW Crime Commission takes the view that because money laundering is a difficult offence to detect, and because use of the financial system is an element of money laundering, reporting by banks is appropriate. 'The time when the mythical ethic of not dobbing people in for millions of

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14 See document tabled by AUSTRAC entitled *A "care and watch" strategy both finding and deterring organised crime and tax evasion.*

15 NCA Submission No. 58, p. 3.

16 Mr Cullen, Australian Bankers Association, Evidence, p. 225.

17 Evidence, Mr Chapman, Westpac, 9 June 1993, p. 77.

dollars of fraud on revenue', whether it be for social security or tax evasion, has passed.[18]

9.26 There is no doubt that the cooperation of cash dealers is essential to the successful operation of the FTR scheme. If that cooperation is to continue for the foreseeable future, the Government needs to ensure that the issue of the compliance cost to financial institutions is kept high on the agenda. The evidence before the Committee[19] clearly indicates that 'account opening' is the greatest cost to financial institutions. This is discussed elsewhere in this report[20] and the changes recommended there will save a large proportion of cash dealers' compliance costs.

9.27 Cash dealers drew the Committee's attention to the amount of legislation governing the finance industry, including the FTR Act.[21] It can be said, however, that the finance industry functions in an orderly manner because there is a regulatory scheme within which its institutions can operate. AUSTRAC submitted that most banks would accept that, since the introduction of the FTR Act, standards, particularly of customer identification, have improved. In addition, the auditing by AUSTRAC of a cash dealer's compliance with the legislation helps identify residual opportunities for money laundering within that organisation.[22]

9.28 Before the FTR Act, if a bank or other cash dealer was suspicious about the nature of transactions being conducted by a customer, the reporting of their suspicion would be a matter for the common law. A banker's obligation of customer confidentiality was considered to be a matter of implied contract, subject to four well-known qualifications[23]. Disclosure by the bank of information relating to the customer's account can be disclosed where:

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18 Mr Bradley, Evidence, p. 91.

19 Discussed in Chapter 6 'Account Opening Procedures'

20 See Chapter 12 'Cost Effectiveness'

21 Evidence, Mr Edwards 8 June 1993, p. 40 ff

22 Evidence, Mr Coad 10 June 1993, p. 245

23 See *Barclays Bank plc -v- Taylor* [1989] 3 All ER 563 which also cites *Tournier -v- National Provincial and Union Bank of England* [1924] 1KB 461

- disclosure is under compulsion by law;
- there is a duty to the public to disclose;
- the interests of the bank require disclosure; or
- disclosure is made by express or implied consent of the customer.

9.29 The FTR Act makes it clear that a cash dealer who makes a report in compliance with an obligation under the Act, or mistaken belief that they are so obliged, (being a suspect transaction report or an IFTI report) is protected from any suit or other proceeding arising from that report.[24]

9.30 The Committee is satisfied that the effectiveness of the Act is attributable to the cooperation of the finance industry. It urges Government and cash dealers to continue to approach the objectives of attacking the financial base of organised crime and tax evasion cooperatively.

Early Days

9.31 The FTR Act was passed by Parliament in 1988, but very few of its provisions actually commenced at that time:

- Suspect transaction reporting commenced on 1 January 1990.
- Significant cash transaction reporting and international currency transfer reports commenced on 1 July 1990.
- Identification of new account holders and new signatories to accounts applied from 1 February 1991.
- International funds transfer instruction reporting commenced on 6 December 1992.

9.32 It was put to the Committee that financial crime is often very complex and the process of investigation and subsequent prosecution takes

24 See subsection 16(5) and 17D *Financial Transaction Reports Act 1988*

a long time[25]. Some can take 5 years from the identification of suspicious activity to conviction and then confiscation of the proceeds of the activity. If this is the case, it can be expected that as time goes on the benefits will increase and that immediately significant results would be unlikely.

9.33 The ATO[26] and the CJC[27] expressed the view that success rates will increase over time, particularly as investigators recognise more opportunities to use the data as they interrogate the database more and the more familiar they become with it.

9.34 The NSW Crime Commission submission listed a number of factors which influence the realisation of the full potential of AUSTRAC information as follows:

> a) In law enforcement terms the methodology is still relatively new, as are the offences of money laundering and confiscation schemes. There is a low level of awareness among investigators and prosecutors.
>
> b) Most money laundering offences require proof of some 'predicate' crime. There can be a great deal of evidence indicating acquisition of funds inconsistent with licit sources, but the actual source is often difficult to prove. Therefore, prosecutions for money laundering are difficult to prove.
>
> c) A system, designed to stop unlawful exchanges of cash, needs to be alert to changes in practices to defeat the system. Criminals now have a high level of awareness. The legislators should respond by broadening the category of persons required to report, eg. solicitors, because such avenues of evasion reduce the effectiveness of the legislation.
>
> d) In some respects the perception of a failure to capitalise on AUSTRAC information is inaccurate. There have been few convictions in this State due to the delay in court processes. There are some worthwhile cases in the pipeline. Also it should be noted that the role of AUSTRAC information, in targeting an offender for prosecution or confiscation action, is not always apparent. ... it is

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25 Evidence, Ms Johnson p. 247.

26 Submission No. 43, p. 2.

27 Submission No. 14, p. 8.

> usually a combination of AUSTRAC information and other intelligence. The AUSTRAC intelligence is often converted into evidence without attribution to AUSTRAC.[28]

These matters suggest to the Committee that it would be premature to make a judgement on the effectiveness of this Act.

9.35 In a supplementary submission[29] AUSTRAC asserts that in more recent times strategic and tactical financial work is being taken up by law enforcement efforts on organised crime. They have pointed to 5 ways AUSTRAC data can be used for law enforcement purposes:

- as a monitoring device for deterrent and information purposes;
- as information imputed into law enforcement operations of a traditional kind - part of the information to build a case of drug trafficking;
- as information for proceeds of crime and other confiscation matters helps to construct the money trail;
- as a core part of the identification of the financial and corporate structures of organised crime enterprises;
- as an audit base for AUSTRAC to monitor compliance by cash dealers and identify firms that may be facilitating money laundering.

9.36 These methods will require a high level of expertise in understanding what might be very complex financial arrangements which the average, traditional-thinking, investigating officer may be unable to recognise. AUSTRAC information can often be ignored.

9.37 Training of all relevant investigators, but particularly police on the use of financial data and the development of specialist expertise in this kind of investigation would clearly improve the usage of AUSTRAC data in the ways listed above. AUSTRAC has suggested that bodies like the Criminal Justice Commission, the NSW Crime Commission and the National

28 Submission No. 51, p. 1.

29 Submission No. 55, p. 5.

Crime Authority might be best placed to tackle this role [30] and develop the necessary expertise. Until this kind of approach is widely adopted in the law enforcement community the potential usage of FTR data will remain limited. To quote from the CJC's submission[31]:

9.38 If agencies in Australia are to reap the benefits of the achievements of AUSTRAC, they will have to organise and resource themselves better to undertake the type of investigations to which sophisticated information sources are most relevant.

Conclusion

9.39 The Committee has considered the evidence available on the results achieved to date, in both the recovery of tax revenue and the prosecution of criminal activity, under the FTR Act and through AUSTRAC. There is evidence as to the forensic value of FTR data and AUSTRAC analysis but it is too early to make a final judgment as to the degree of effectiveness in the use of that data by law enforcement and revenue agencies.

9.40 The Government has announced in the budget context a review of Commonwealth law enforcement arrangements. The Minister for Justice, Duncan Kerr said in announcing the review: 'Existing enforcement arrangements, including the roles of the Australian Federal Police, the National Crime Authority, AUSTRAC, the Australian Securities Commission, the Australian Bureau of Criminal Intelligence and other portfolio agencies, will be examined in light of the emergence of new criminal threats and the options for Australia to meet its responsibilities in this area.'[32]

9.41 AUSTRAC has argued along with the CJC[33] 'that more effort is needed to develop financial and corporate profiles of the principal

30 AUSTRAC Submission No. 55, p. 6.

31 CJC Submission No. 14, p. 12.

32 Attorney-General's Department Media Release, 17 August 1993

33 AUSTRAC Supplementary Submission No. 55, p. 6.

organised crime groups to develop strategies to curtail the growth of those empires'. Specifically AUSTRAC's proposals are as follows:

- to have some specific area of law enforcement expertise at a Commonwealth level which focuses on the commercial enterprises of organised crime and their financial underpinning. Some of the work of the National Crime Authority is heading in this direction;
- that police training on the use of financial data bases be continued;
- that work continue to ensure that the financial reporting requirements are not circumvented by money laundering activities of criminal groups and their facilitators, so as to maintain the hostility of our financial sector against international organised crime. Work in this respect is being done by AUSTRAC and the Australian Federal Police and I would like to see it continue to be encouraged.

The Place of FTR Data in Investigations

9.42 The Australian Federal Police has said that information collected by AUSTRAC is proving to be extremely valuable in the identification of assets of drug and organised crime figures.[34] Its submission describes a number of situations in which AUSTRAC data has been instrumental. In evidence before the Committee the AFP also referred to some specific investigations in which FTR information played a significant part, such as 'Operation Elastin.'[35]

9.43 Mr Valentin of the AFP had this to say on the matter[36]:

> We say that the legislation is an essential part of that package of legislation which over recent years has been provided to law enforcement agencies and which now the AFP finds itself reliant upon to effectively achieve its objectives.

34 Australian Federal Police Submission No. 25, p. 3.

35 Evidence, Det Constable Westra, pp. 8 -9.

36 Evidence, p. 22.

9.44 This view is supported by submissions of the NCA, AUSTRAC and the NSW Crime Commission and evidence of their representatives before the Committee.[37]

9.45 For the ATO the information has proved useful, in the current self-assessment regime, in identifying taxpayers most deserving of further scrutiny. ATO points to four areas of the Act which contribute to the enforcement of taxation laws:[38]

- account opening procedures, linked with tax file number requirements,
- suspect transaction reporting which accounts for 90 per cent of its direct results,
- significant cash reporting which identifies geographic areas and large amounts of cash which warrant further inquiry, and
- more recently, international funds transfers (previously costly and time consuming to acquire) enhance ATO efforts against international tax evasion.

9.46 The NCA says the usefulness of the AUSTRAC database increases as the volume of data increases. 'This allows a better perspective to be obtained of various transactions recorded on it, and to assist in establishing patterns of activity by, for example, identification, locality etc.'[39] It goes on to describe macro analysis of the data as:

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37 Mr Coad tabled a document titled *Direct Results from Suspect Transaction Reports*, Mr Power of AUSTRAC discussed Operation Quit (Evidence pp. 11-13), Mr Sherman referred to AUSTRAC information as 'very real and important intelligence on criminal activity' (Evidence, p. 17) and Mr Bradley of the NSW Crime Commission discussed the use made of AUSTRAC data by that agency (Evidence, pp. 87-90)

38 Evidence, Mr Mitchell pp. 235 - 237.

39 NCA Submission No. 58, p. 3.

> ... analysing on a large scale regions, industries or some other common elements to identify patterns of potential money laundering or some other form of unlawful activity.[40]

9.47 The NCA said that it has committed significant resources to its involvement in this kind of analysis and this has produced significant results for the agency:

> One of its senior financial investigators is devoted to liaison with AUSTRAC and to making various types of enquiries on the database in an attempt to identify various unlawful activities. This form of enquiry has for example led to (a) the ultimate arrest of 6 persons involved in the theft of travellers cheques valued at $32 million and other related offences, and (b) a referral to the Australian Federal Police of a matter which was believed to involve a significant drug importation.[41]

Recommendation 13: The Committee recommends that Commonwealth law enforcement agencies better utilise the AUSTRAC database to obtain maximum benefit in the pursuit of major crime.

Evidence or Intelligence?

9.48 The NSW Crime Commission said that the role of AUSTRAC information in targeting an offender for prosecution or confiscation action is not always apparent. AUSTRAC information, in combination with other intelligence, is often turned into evidence without being attributed to AUSTRAC.[42] The methodology for using AUSTRAC information is still new, and there is a low level of awareness among investigators and prosecutors.

9.49 There was some debate before the Committee about whether FTR information is regarded only as evidence, to be available as such in a

40 Ibid, p.4.

41 ibid, p. 4.

42 Submission No. 51 (NSW Crime Commission) pp. 1-2.

prosecution, or whether the database really represents a reservoir of intelligence to which law enforcement agencies can go to look for leads in their investigations.

- The NCA's view was that it should be a body of intelligence.[43]

- The NSW Office of State Revenue described it as a trigger from which a systematic trace of what suspected tax evaders are up to can follow.[44]

9.50 The AFP said the distinction was not clear:

> ... in many cases AUSTRAC information may start a line of inquiry which would ultimately require the production in evidence of some of the base material that might have come from the financial institution as proof of the conduct alleged. In many another case, it could be that a course of inquiry is well and truly under way anyway, and that in the course of that inquiry, we are directed towards some financial activity which may in its own way then become proof of the conduct alleged or ultimately become evidentiary in the sense of proceeds of crime action or some other subsequent action perhaps beyond the main stream of criminal processes..."[45]

9.51 AUSTRAC information is usually part of a general brief which goes towards the investigation of a drug conspiracy or other breach of criminal law or a case of tax evasion. There will be times when suspect transaction reports alone will produce direct results in the form of prosecutions.[46] In most cases, however, AUSTRAC information will play a more indirect, but nonetheless important, part in detecting breaches of the criminal law and revenue legislation.

Results on Suspect Transaction Reports

9.52 It is difficult to quantify precisely the results achieved thus far through suspect reporting. The Committee received ample evidence from

43 Mr Sherman, Evidence, p. 62.

44 Mr Buchanan, Evidence p. 83.

45 Mr Valentin, Evidence, p. 63.

46 See document tabled by Mr Coad, `Direct Results from Suspect Transaction Reports'

both law enforcement bodies[47], the Attorney-General's Department[48], AUSTRAC[49] and the ATO[50] about the amount of tax revenue recovered, criminal investigations undertaken and prosecutions completed or commenced as a result of reports under the FTR Act.

9.53 There are also unquantifiable results attributable to the 'compliance mentality' which is encouraged by having this legislation in place, such as tax paid by people who would have continued to evade tax but for the existence of the Act. There would also be a significant amount of major criminal activity diverted elsewhere or not undertaken as a result of the hostile environment created by this legislation.

> ... the benchmark of cash reporting coupled with inspection (audit) powers, provides a useful tool in making the financial sector more difficult for the laundering of money and tax evasion.[51]

9.54 AUSTRAC provided the Committee with a list[52] of cases in which suspect transaction reports played a key role in police inquiries.

- All the listed cases have resulted in charges being laid against offenders, some have been sentenced or fined.
- Some have led to major money laundering inquiries and recovery of tax owing.
- In a number of other cases the suspect transaction report has supplemented police intelligence.
- 100 or so other matters of less significance were also referred to.

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47 Evidence, pp. 8-13, 15-22.

48 Attorney-General's Department Submission No. 35, p. 30.

49 AUSTRAC Submission, p. 77 & ff

50 ATO Submission No. 43, pp. 5-6.

51 AUSTRAC Submission No. 13, p. 123.

52 AUSTRAC: Direct Results from Suspect Transaction Reports. Submission No. 48.

9.55 Frequent mention has been made in submissions and evidence of a joint investigative task force in which AUSTRAC data has played a significant role, known as Operation Quit. This operation has to date enabled the recovery of significant sums of evaded State tobacco taxes. Other such joint operations were also discussed at length during evidence.

9.56 Results in terms of successful prosecutions which can actually be sheeted home to one or more pieces of FTR data are small in number. This might, in any event, be an artificial measure of effectiveness when considering the many ways in which the data may be used in the course of an inquiry or investigation.

Taxation Revenue Results

9.57 The ATO says it has achieved considerable success in detecting tax evasion through the use of valuable AUSTRAC data[53] which was not previously readily available to it. Before the FTR Act it was often difficult to follow the money trail. Combined with the Tax File Number legislation, the FTR Act encourages voluntary compliance with taxation laws.

9.58 The ATO is upgrading its systems and processes to make more use of AUSTRAC data. ATO said it is confident that the revenue yield, especially from significant cash transaction reports, will increase significantly over the coming years.[54] The submission points to additional tax and penalties to date as a direct result of use of AUSTRAC data by ATO (mainly through follow up of suspect transaction reports) of over $30 million. This is described as extra revenue the ATO may not otherwise have collected.

9.59 In the general scheme of taxation gathering, this may not be regarded as a significant achievement. However, the view of both AUSTRAC and ATO is that this will increase with the improvements in processes and with increase in the information on the database.

53 ATO Submission No. 43, p. 1.

54 ATO Submission No. 43, p. 2.

Some problems relating to the usage of AUSTRAC data by tax officers were encountered early on. [55] These are discussed in the ATO Submission, along with the measures undertaken to correct them:

- *Data integrity*

  Problems of inaccurate information reported by cash dealers has been overcome by AUSTRAC undertaking an audit and cleansing to fix up the incorrect data.

- *Access to the AUSTRAC system*

  Low usage by ATO officers has been solved by better distribution of computer terminals and improved computer literacy. Computer systems used have had inconsistent keyboard functions which is being addressed through user feedback and redevelopment of the system.

- *Printing*

  Overcoming delays in printing reports is presently being investigated by AUSTRAC and ATO jointly.

- *Initial information time-lag*

  The delay between reports being made and checking against tax returns had an effect on results in early days. These timing differences are no longer relevant.

- *Procedures*

  Inconsistent handling procedures between different ATO offices is being addressed by the ATO Cash Economy Working Party which was established to identify best practices and recommend procedures for national implementation.
  Training has also been identified as an issue. Staff trained in the initial burst when the legislation commenced have moved on and gradual reduction in knowledge about AUSTRAC has resulted. The

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55 See ATO Submission No. 43, p. 25.

solution in progress is greater efforts by ATO's national office to keep branch officers informed and continuing training requirements are to be met along with higher level liaison with AUSTRAC through the placement of a Senior ATO officer within AUSTRAC.

9.60 With these problems being overcome, the future benefits the ATO expects are:

> On the basis of results so far and the expansion of the types of transaction covered by cash reporting, it would not be unreasonable to expect recovery of evaded tax to exceed $20 million per annum with the systematic approaches now being implemented across Australia.[56]

9.61 ATO also expects to achieve major results from the availability of IFTI information. Such information will assist intelligence efforts in international tax evasion.[57]

9.62 On the other hand the ATO has been criticised for making insufficient usage of AUSTRAC data, given the principal object in section 4 of the Act - 'to facilitate the administration and enforcement of taxation laws'. The Privacy Commissioner's view was that AUSTRAC basically acts as agent for the ATO[58], and yet they only take further action on 70 per cent of the body of data obtained.[59] The ATO stated that it has been concentrating on suspect transaction reports. However, significant cash transactions and movements of cash through airports was described as 'useful.'[60]

9.63 There appears to be considerable room for greater usage of AUSTRAC data by the ATO, although some of the past deficiencies are being addressed as discussed above. These are really operational issues in the main and the Committee considers that the ATO may need to take the

56 ATO Submission No. 43, p. 5.

57 Mr Mitchell, Evidence p. 236-7.

58 Evidence, Mr O'Connor, p. 252.

59 Evidence, Mr Mitchell, p. 256.

60 Submission No. 43, p. 6.

FTR Act on board in a more positive and active way to take proper account of the principal object of the Act.

9.64 As with the results to date in the detection and prosecution of serious crime, it may be too early to make a judgement on the value of AUSTRAC data to the revenue. ATO is still developing its methods and usage of the data with an expectation of greater gains. Some account has to be taken of the delay that normally exists between the notification of an irregularity and the recovery of the relevant unpaid tax.

Recommendation

9.65 The Committee is concerned to see that progress on the better and more efficient usage by ATO of AUSTRAC data, as discussed above, is undertaken.

Recommendation 14: The Committee notes the sparing use of the full range of AUSTRAC information by the ATO. The Committee recommends that the ATO review its application of resources to:

- the training of ATO officers;
- the further development of the relationship between AUSTRAC and ATO; and
- the usage of AUSTRAC information by its officers

to maximise the benefit to the revenue from the use of AUSTRAC information.

9.66 The Committee notes the ATO view that other benefits which stem from the FTR Act and which are not readily quantified include increased voluntary compliance, positive community attitudes, improved productivity in the ATO, more efficient practices in the ATO and fewer opportunities for law breakers.[61]

61 Mr Mitchell, Evidence p. 238.

9.67 In the system of self-assessment that now exists in the tax area, there needs to be in place a number of incentives for tax payers to accurately assess their tax liability. The ATO argues [62] that public knowledge of the reporting requirements, particularly in relation to large cash transactions, and the fact that the information is available to the ATO has an effect on the correctness of statements in tax returns. This kind of result is not measurable.

9.68 AUSTRAC data also helps ATO identify areas of the community which are worth a closer look because of risk to the revenue. This assists the ATO's risk management approach. The account opening procedures also provide accurate information about account holders and identify tax payers who are not returning correct amounts of income from investments.[63]

Interaction of AUSTRAC with Law Enforcement Agencies

9.69 An underlying theme in the Costigan report was the need for cooperation between agencies in dealing with organised crime. The National Crime Authority has a major role in this. The NCA's charter is to investigate certain types of criminal activity including offences:

- carrying a penalty of imprisonment of three years or more;
- involving two or more offenders;
- involving substantial planning and organisation;
- using sophisticated methods and techniques;
- of a kind ordinarily committed in conjunction with other like offences, and involve theft, fraud, tax evasion, illegal drug dealings, currency and company violations etc.[64]

9.70 The NCA has investigated such activity by groups operating interstate and overseas in relation to breaches of both Commonwealth and State/Territory laws. The NCA operates in cooperation with other law

62 Submission No. 43, p. 8.

63 Mr Mitchell, Evidence, p. 235. The areas of ATO which make most use of AUSTRAC data are Taxpayer Audit and Lodgment Enforcement.

64 NCA Submission No. 27, p. 2.

enforcement agencies and establishes joint task forces for investigations of specific criminal activity.[65]

9.71 AUSTRAC is seen by law enforcement agencies as a tactical and philosophical ally in the response to organised crime.[66] AUSTRAC's role in the national and cooperative strategies against organised crime is described in one of its own submissions as follows:

> AUSTRAC is not an agency in competition with police. AUSTRAC is a service agency for the various law enforcement bodies which investigate organised crime. AUSTRAC also provides a service to the Australian Taxation Office for the purpose of identifying tax evasion. AUSTRAC is also the main regulatory agency to achieve the Costigan inspired reforms of the financial sector to make it more hostile to organised crime.[67]

9.72 A number of cooperative task forces have been set up to which AUSTRAC, the NCA and the AFP frequently referred in the course of evidence. Some of these have also involved the ATO. To date there have been significant results achieved by these cooperative ventures. [68]

9.73 AUSTRAC describes its place in the Australian law enforcement scene in the following way:[69]

> Australia has a number of agencies with a degree of complementary powers relevant to money laundering work.
> To be effective in respect of money laundering and the financial underpinning of organised crime, these various powers need to be used in a complementary way. In a number of areas, cooperative effort to this effect is in early stages. Properly developed it could provide a major brake on organised crime in Australia.

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65 ibid, p. 3.

66 CJC Submission No. 14, p. 2.

67 AUSTRAC Submission No. 49: Reducing Market Opportunities for Organised Crime, p. 20.

68 See the discussions of Operation Quit, NCA Submission No. 27, p. 7, Evidence, Mr Power, p. 11-13.

69 AUSTRAC Submission No. 13, p. 131.

9.74 The CJC supports the multi-disciplinary, team based organisation of investigators with a strong financial analysis component, not a universal practice, eg. very few law enforcement agencies would have accountants employed.

9.75 The Committee draws attention to its earlier remarks on the need for a clear statutory authority for AUSTRAC's participation in such task forces.

International Obligations

9.76 Finally there is the question of whether Australia has gone further than necessary in meeting its international obligations. This was particularly argued by the Australian Bankers Association. [70] They acknowledged that Australia leads the way in the implementation of the recommendations of the Financial Action Task Force (FATF) to improve the fight against money laundering but queried whether the costs involved in Australia's implementation approach were out of proportion to what is required to meet the FATF obligations.

9.77 On the other hand there is the argument put by Mr Sherman in evidence to the Committee that in the context of attacking the problem of money laundering:

> ... the international community is now moving more and more towards ensuring that our legal structures and financial systems are alert and doing their best to detect the phenomenon of money laundering throughout the world. In considering the AUSTRAC legislation and the AUSTRAC regime, I think it needs to be considered as part of Australia's response and part of a wider international response to this particular problem.[71]

9.78 He goes on to point to two benefits of the AUSTRAC regime:

> Firstly, it has a deterrent effect on money launderers throughout the world. If people see that Australia is serious in its mechanisms, they are less likely to use our systems. ... If people in the international community and money

70 ABA, Submission No. 26, pp. 1 & 5.

71 Evidence, p. 16.

> launderers see that Australia does have mechanisms and is on guard and watching ... it is a very valuable deterrent.
> ... The other great benefit that the law enforcement community derives out of AUSTRAC processes ... is very real and important intelligence on criminal activity.[72]

9.79 Mr Sherman also says that twenty one of the twenty six member countries of the Financial Action Task Force (FATF) now permit the reporting of suspect transactions and nine require such reporting. As president of FATF, Mr Sherman's view is that the figure of nine will increase over time. He also informed the Committee that twenty one of the twenty six members require authentication of bank accounts in some form.[73]

9.80 With adjustments, discussed elsewhere, to the account opening requirements and the substantial reliance on electronic reporting on which the FTR Act operates, the costs to the finance industry can be kept down to a reasonable level.

9.81 The Committee considers Australia should continue to strive to adopt all possible methods of reducing, if not eliminating, opportunities for money laundering in the Australian financial system and thus of deterring the growth of organised crime in this country.

Conclusion

9.82 Clearly the full potential for the FTR Act has not yet been realised. The Committee is is not satisfied that law enforcement agencies are doing all they can to fully develop that potential with a view to achieving the stated objectives of the Act to a maximum degree.

9.83 In particular, there has been some criticism of the ATO's usage of AUSTRAC data, given the principal object of the Act and the direct access to the AUSTRAC database the ATO has which other agencies do not enjoy. The Committee considers that the ATO should be closely

72 Evidence, p. 17.

73 Evidence, p. 17.

examining ways to increase its usage of all forms of AUSTRAC data with a view to increasing the revenue results.

9.84 Other law enforcement agencies also need to devote greater resources and attention to encouraging better usage by investigators of the information, through training and concentrated development of expertise in the investigation of financial crime.

9.85 The cooperation of the finance industry in the achievement of the objects of the Act is extremely valuable and needs to be encouraged by receptiveness to the misgivings in that industry about the costs involved and the unfamiliar role of informer.

Chapter 10

LEGAL EFFECTIVENESS AND LEGAL ISSUES

Introduction

10.1 This chapter examines the legal effectiveness of the provisions of the Act including matters of law which have emerged in the initial years of operation of the legislation, or which may emerge in the future. This includes the following:

- the precision of terms such as `account' and `transaction';
- the extent to which tellers should be required to give evidence in prosecution proceedings;
- the structuring offence in the FTR Act;
- the import/export of currency provisions; and
- the extent to which decisions under the Act should be subject to administrative review.

Definition of Account

10.2 Section 3 of the FTR Act defines "account" as follows:

> "account" means any facility or arrangement by which a cash dealer does any of the following:
>
> (a) accepts deposits of currency;
> (b) allows withdrawals of currency;
> (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer;
>
> and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit, but does not include an arrangement

for a loan that sets out the amounts and times of advances and repayments, being amounts and times from which the borrower and lender may not depart during the term of the loan"

10.3 The term is significant to the scheme of the Act in a number of ways. The identification requirements in relation to signatories to accounts in Part III of the Act operate when an account is opened, together with the provisions relating to the blocking of an account about which the information is not available. The offence in section 24 of the Act applies to a person who opens or operates an account with a cash dealer in a false name.

10.4 The definition has been amended twice since its enactment:

i) The *Crimes Legislation Amendment Act 1989* inserted words to clarify that a facility used by a cash dealer to collect payments for itself was not an account and to add a safe deposit box.

ii) The *Crimes Legislation Amendment Act 1992* made it clear that an arrangement for a loan under which amounts and times of advances and repayments are fixed was not included.

10.5 AUSTRAC has advised cash dealers that "the broad principles on which characterisation of accounts for the purpose of the FTR Act are based, significantly focus on the ability to withdraw or deposit cash and in the case of loans and credit facilities, on the degree of flexibility of payments".[1]

10.6 Advice has been given to AUSTRAC by Senior Counsel that a comprehensive meaning of the first two elements of the definition is not possible.[2] The NCA supports AUSTRAC's approach to the definition but considers that difficulties with interpretation may affect the application of the Act and therefore recommends a review of the definition.[3]

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1 Submission No. 13, p. 149.

2 See reference to NCA Report *Taken to the Cleaners: Money Laundering in Australia* in NCA Submission No. 27, p. 16.

3 Submission No. 27, p. 17.

10.7 A number of changes have been called for:

- that it should be extended to non-cash facilities,
- that it exclude Casino-hotel safe deposit facilities, and
- that the status of credit and debit facilities as accounts should be clarified.

10.8 Some financial institutions feel disadvantaged by the need to comply with the Act compared to those only offering non-cash facilities. The Attorney-General's Department has stated:

> The definition does not cover financial facilities under which deposits and withdrawals can only be made by cheque, not cash. Some financial institutions have proposed that the definition of 'account' be extended to cover such facilities on the ground that the present position places them at a disadvantage compared with cash dealers who offer only non-cash facilities.[4]

10.9 Also, such institutions would not be affected by the requirements to report significant cash transactions. The Attorney-General's Department disagrees on the basis that all financial institutions are free to offer non-cash facilities if they so desire. Also there is no need to extend the Act to facilities which can only be operated by cheque because there is no risk that illicit funds can enter the financial system untraced.

10.10 It is clear that an entity becomes a "cash dealer" within the meaning of the FTR Act even if only one of its activities is caught by the definition of "cash dealer" in section 3. The result of this is that the provisions of the Act apply to that entity in respect of all its activities.

> ... an entity which falls within the definition of "cash dealer" has the associated obligation in relation to all its activities. There is nothing in the Act to suggest otherwise and this interpretation is consistent with the underlying policy objective of including all entities (not just particular activities) thought sufficiently vulnerable to money-laundering.[5]

10.11 Because of this situation, casino-hotels claim a commercial disadvantage compared to other hotels by the need to identify customers

4 Submission No. 35, pp. 4-5.

5 See Attorney-General's Department Submission No. 35, p. 24.

who wish to open a safety deposit box in the hotel merely because the casino activities of that hotel make it a cash dealer within the meaning of the Act. On the other hand other commercial advantages are available to a hotel that runs a casino.

10.12 The Committee was not persuaded by the evidence that an exemption should be allowed.

10.13 Metway bank's submission advocates the exclusion of 'fixed interest fixed term loan accounts' from the definition.[6] It is possible that such accounts would already be excluded by the approach to the definition taken by AUSTRAC, together with the 1992 amendment discussed above. There was little evidence available to support this proposal.

Meaning of Transaction

10.14 The Act does not currently define the term "transaction". This was noted by the Committee in 1988[7] but it was not pressed in light of adequate definition of "cash transaction" and reliance was placed on its ordinary meaning. The lack of such a definition has, however, raised some questions in relation to the reporting of suspect transactions.

10.15 AUSTRAC was advised that it would include, in this context, preliminary negotiation, going beyond merely answering an inquiry, not leading to a contractual arrangement or dealing,[8] involving positive activity on the part of the negotiating party.[9]

10.16 There has been some debate about this interpretation and Hewett and Kalyk, in their book *Understanding the Cash Transaction*

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6 Submission No. 10, p. 2.

7 See paragraph 2.10 of Report on the Cash Transaction Reports Bill 1987, by the Senate Standing Committee on Legal and Constitutional Affairs

8 Attorney-General's Department, Submission No. 35, p. 24.

9 NCA Submission No. 27, p. 15.

Reports Act (CCH, Australia 1990) have argued that negotiations which do not conclude in a dealing will not always constitute a transaction.[10]

10.17 In its money laundering report, the NCA has concluded that AUSTRAC's approach is correct, pointing out that it has the investigative advantage of bringing a wider range of activity within the ambit of the Act. In their submission to this Committee they have recommended that consideration be given to a definition of 'transaction' to make it certain on the face of the Act.[11] The Attorney-General's Department supports this view. The Department points out that in some situations suspicion may actually arise only from the fact that the person did not complete the transaction and this may come about upon learning of a requirement of the Act.

Recommendation 15: The Committee recommends that a definition of 'transaction' be inserted in the Act to make clear that an uncompleted transaction is caught by the reporting requirements of the Act.

Tellers as Witnesses

10.18 Cash dealers' submissions to the inquiry have called for consideration of ways to avoid the need for tellers who originate a suspect transaction report to be called as witnesses in subsequent prosecution proceedings.[12] The Australian Bankers Association voiced concern about the potential for bank staff to be subject to retribution by customers. The issue as it has been experienced so far in the context of the FTR Act was put in evidence as follows by Mr Riches of the Commonwealth Bank [13]:

> All the guidelines and assurances from AUSTRAC, the Australian Federal Police and the Director of Public Prosecutions concerning the involvement and protection of witnesses in prosecutions are of no ultimate protection as the legislation, by its terms, clearly contemplates and may require the

10 Referred to in NCA Submission No. 27, p. 15.

11 Submission No. 27, p. 15.

12 CUSCAL Submission No. 34, p. 6, ABA Submission No. 26, pp. 2, 8.

13 Evidence, p. 74.

> involvement of the bank and its staff. The bank considers the reliance on agreements and assurances, the terms of which sit oddly with the legislative provisions and often lead to ambiguity and uncertainty, to be most unsatisfactory. The reality is that in almost every case, where subpoenaed by the prosecution or defence, the bank officer will become involved.

10.19 Cash dealers contend that staff should only be required to give evidence in exceptional circumstances. They do not appear to be comfortable with assurances from law enforcement agencies that staff will only be called as a last resort. Mr Aub Chapman of Westpac[14] suggested that reports as such ought not to be the basis on which charges should be laid but rather treated as intelligence only, pointing to normal bank documents as a better basis for charges.

10.20 Cash dealers are concerned that if tellers continue to be subpoenaed to give evidence about a suspect transaction report they have made, they will be discouraged from forming any suspicion at all on which they would be required to make a report. This might lead to a breakdown of the reporting requirements and erode the level of intelligence AUSTRAC provides to law enforcement.

10.21 The Attorney-General's Department, the NCA and the DPP do not favour a complete exclusion of the option to call the teller whether by legislative provision or otherwise. In a letter from the Commonwealth Director of Public Prosecutions to AUSTRAC on this issue[15] Mr Rozenes has pointed to recognition in the "Prosecution Policy of the Commonwealth"[16] that criminal charges should not automatically be laid in every case where an offence can be proved. This depends on the level of criminality involved.

10.22 He has clearly stated that whenever possible the DPP would prosecute without calling the teller but in some cases there may be no alternative. The letter then sets out the steps available to protect the security and identity of the witness in the event that his or her evidence is regarded as essential. The question of how and when these steps will be

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14 Evidence, p. 80.

15 AUSTRAC Submission No. 13, Appendix 5

16 Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth*, 2nd ed, (1990).

accepted by the court depends on the court and the State or Territory in which the proceedings are conducted.

10.23 It may be possible to make legislative provision in the FTR Act for protection of the identity of the teller who initiates a suspect transaction report to override the relevant State/Territory law. The Committee was referred to the example of the *Telecommunications (Interception) Act 1979* which in section 61 makes provision for evidence about the facts relating to the execution of an interception warrant to be given in the form of a conclusive certificate by the Managing Director of the relevant carrier. This restricts the need to call the person, usually the employee of a carrier, who actually carried out the interception. Mr Reaburn of the Attorney-General's Department said in evidence:

> This is designed so that, as a matter of normal practice, any court examination of evidence resulting from a telephone interception, as it were, starts from an assumption based on the certificate that the interception was properly carried out - properly in the technical sense...[17]

10.24 The danger in making such a provision, however, could be the cutting off what might be a crucial option for a prosecutor or defence lawyer.

10.25 The Privacy Commissioner commented in the course of giving evidence on his concerns with suspect transaction reporting that it is not possible to give a guarantee that the teller who initiates the report will not be caught up in criminal proceedings. It is very difficult therefore to address their wish not to be identified as they are in truth the source of information which is adverse to another.[18]

10.26 AUSTRAC has attempted to address the discomfort of cash dealers about this issue by agreements with law enforcement agencies and cash dealers on guidelines for investigating suspect transactions. A tabled draft clearly states that the DPP will only make reference to a suspect transaction report and the teller who made the report if there is no practical

17 Evidence, p. 164.

18 Evidence, Mr O'Connor, p. 186.

alternative.[19] It goes on to say that, if possible, such evidence will be introduced through an officer of the cash dealer rather than the officer who files the report.

10.27 Such agreements unfortunately do nothing to restrict the power of defence counsel to call the bank teller as a witness. Some defence counsel may even use such a mechanism to discourage tellers from making reports.

10.28 The Committee has concluded that with the approach of the DPP in place and a legislative protection of the identity of the teller, counter officers would be sufficiently protected to allow them to freely exercise their obligations under the Act. This would supplement the protection already provided against civil suit for filing a report given by subsection 16(5) of the Act.

Recommendation 16: The Committee recommends that the best way to deal with the protection of the identity of tellers as witnesses is:

- agreements between AUSTRAC and law enforcement agencies be drawn up along the lines of the draft agreement with the AFP referred to at para 10.26;
- the essence of such agreements be taken into account by the DPP;
- State law enforcement agencies and prosecuting authorities should be encouraged to take the same approach;
- at the same time legislative protection for the identity of the officer who initiates a suspect report should be provided in the FTR Act, but without excluding the possibility of calling the relevant officer in those few cases where it may prove to be necessary.

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19 Operational Guidelines for Investigating Suspect Transactions - Draft Agreement Between AFP, AUSTRAC, Cash Dealer Groups and Bank Employee Unions. Document tabled by Mr Coad 8 June 1993.

10.29 In formulating the appropriate protection it will be necessary to be mindful of what might be a contradiction in the arguments of the cash dealers on this issue.

- On the one hand they have called for evidence that suspect transaction reports are producing direct results for law enforcement rather than mere corroborative evidence of intelligence obtained from other sources.

- On the other hand, in the context of counter staff as witnesses, cash dealers may be asking that the suspect reports themselves be excluded from a prosecution case.

10.30 If evidence of the making of a suspect report is not to be available for testing in subsequent prosecutions there may be a tendency on the part of law enforcement to seek out other evidence to support the case. Thus the benefits of AUSTRAC data will be diminished and additional delay and costs will be incurred which might otherwise have been avoided.

10.31 Another related issue is whether objective criteria for forming a suspicion [20] might increase the likelihood of tellers being called as witnesses. There is some fear that such criteria, particularly if specified in the legislation, may increase the incidence of calling tellers as witnesses in prosecution proceedings.

- It may become necessary to have them give evidence in person in order for the parties to ascertain whether the provisions of the legislation have been complied with.

- It would presumably be necessary to do this in order to evaluate the admissibility of the evidence.

- This might be the case whether evidence is required with regard to the report itself or some other evidence which has been identified as a result of the report.

At this stage no conclusion on this aspect is possible.

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20 Discussed in more detail chapter 4 in the context of suspect transaction reporting.

Structuring

10.32 Section 31 makes it an offence for a person to conduct 2 or more transactions in such a way that it would be reasonable to conclude that the sole or dominant purpose was to ensure, or attempt to ensure that the transaction would not give rise to a significant cash transaction report under s.7 or a currency transfer report under s.15. The offence is punishable by a maximum of 5 years imprisonment and/or $10,000.

10.33 A number of difficulties with this section have been brought to the attention of the Committee.

i) The Law Council of Australia suggests[21] that the offence is couched in such terms that a cash dealer who facilitated a transaction for a customer which came within the relevant description could be committing an offence as they may be regarded as party to the transaction through the service they have provided. It proposes that section 31 be amended to make it clear that cash dealers are exempt except when actively participating in the transaction.

ii) The Law Council also claims a cash dealer who observes conduct which arouses a suspicion that the conduct may be leading to a structuring situation may, if they allow their services to be used for the transaction, be aiding and abetting the commission of an offence against section 31. A legislative amendment to make it clear that the cash dealer is not required to refuse to provide services to a customer in these circumstances was proposed.

10.34 It is quite clearly not the intention of section 31 to catch the legitimate activity of cash dealers in either of these circumstances, although a literal interpretation of the provisions could support the Law Council's conclusion. The Committee's view is that prosecutorial discretion would adequately deal with both of these issues and that there is no need to amend the section as proposed.

iii) Another aspect of section 31 raised for the Committee is that of the appropriate mental element for an offence to be established. The

21 Submission No. 44, p. 4.

VCCL's submission [22] recommends the amendment of section 31 so that it only applies when there is an intention on the part of the alleged offender to evade the provisions of the Act. It is argued that the present formulation creates a strict liability offence and that this represents a departure from currently accepted criminal law principles. This was expanded upon during the course of evidence.[23]

10.35 Establishing intent for the offence apparently relies upon an objective test based upon what another person would reasonably conclude from the behaviour of the defendant. The VCCL argues that the actual intent of the person making the transactions is not relevant.

10.36 The Attorney-General's Department submission[24] recommends the inclusion of mental elements in all the offences in the FTR Act where there is presently none specified.

10.37 The issue with section 31, as raised by VCCL, is that there is a clear statement as to the mental element but the question is whether that is an appropriate one. A person commits an offence against the section if it would be reasonable for someone else to conclude from the 'manner and form in which the transactions were conducted' that they were so conducted with the intention to evade the reporting requirements of the Act.

10.38 This formulation doubtless was intended to make it easier to establish the commission of the offence than would be the case if it was necessary to prove that the person actually had the required intention. However, a strict liability offence can infringe unacceptably upon the personal rights and liberties of individuals. The present formulation of section 31 creates a strict liability offence because it is not necessary to prove the guilty mind of the defendant.

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22 Victorian Council of Civil Liberties Submission No. 12, p. 39.

23 Mr Pearce, Evidence, pp. 202-203.

24 Submission No. 35, pp. 26 and 44.

Recommendation 17: The Committee considers that there should not be strict liability under section 31. It should be required that the prosecution establish that the defendant conducted the relevant transactions with the intent of evading the reporting requirements of the FTR Act.

Import/Export Provisions

10.39 Section 15 of the FTR Act requires a person to report the transfer into or out of Australia of currency of $5,000 or more. It includes currency which is carried personally or consigned by ship or posted. The following issues were raised about section 15:

i) The Australian Customs Service (Customs) has primary responsibility for enforcing the reporting requirements in relation to the movement of cash into and out of Australia pursuant to section 15. Its submission points to the variation between incoming and outgoing amounts of cash and the number of declarants, saying this may indicate insufficient obligation placed on people to make declarations. [25]

ii) The NCA has noted that the majority of reports to AUSTRAC under section 15 relate to people carrying money into or out of Australia and leave aside shipping or mailing of currency.

iii) AUSTRAC and Customs have worked together to ensure the accuracy of records relating to such movements, in light of the money laundering implications of inaccurate records. [26]

iv) Customs recommends that cash sent by post or consignment should be deemed exported once it is irrevocably committed to export to close a loophole in the import\export requirements. The Committee accepts that such an amendment would bring the effect of the provision on mailed or consigned currency into line with its effect on the physical carriage of currency in subsections 15(7B), (7C) and (8A).

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25 Australian Customs Service, Submission No. 15, pp 1 and 3.

26 National Crime Authority Submission No. 27, p. 12.

v) Customs suggests that it should be up to the offender to prove that currency did not come from an illicit source. This would allegedly bring the provision into line with the money laundering provisions of the *Proceeds of Crime Act 1987*. Customs also suggests that a person wishing to send money overseas should be required to identify himself or herself, consistent with the account opening provisions of the Act.

10.40 Such amendments may make the offences easier to prove and allow for seizure of the relevant funds in more circumstances than is now possible. However, there are certain threats to the rights and liberties of individuals in taking these kinds of measures and there was insufficient evidence before the Committee to conclude that the risks are balanced by the needs of law enforcement.

10.41 The Committee is wary of extending s.15 in this way without the opportunity of weighing up evidence as to the additional administrative burden which might be involved. Should there prove to be evidence of increased activity in these areas, further consideration may need to be given to the proposals.

vi) Threshold

10.42 The Attorney-General's Department has proposed that the threshold for reporting import and export of currency should be raised from $5,000 to $10,000. This would bring section 15 into line with significant cash transaction reporting. The Department points out that the original threshold related to the now repealed Banking (Foreign Exchange) Regulations, which section 15 replaced.

10.43 It appears that almost all cases involving prosecutions under section 15 have involved amounts of more than $10,000. It is not expected therefore that such a change would undermine the integrity of the provision.

vii) Alternative formulation

10.44 The DPP has proposed that the offence in section 15 be re-formulated to make it an offence to import or export without permission.[27] This would arguably make things easier at the barrier for the Customs

27 See Attorney-General's Department Submission No. 35, p. 9.

officer, discovering undisclosed currency, to seize that currency. Such a formulation is not supported by the Attorney-General's Department as it is contrary to the policy of minimum regulation of money movement and would require substantial bureaucratic support.

Recommendation 18: The Committee recommends that section 15 be amended:

- to increase the reporting threshold for import or export of currency to $10,000, and

- to define the point at which currency transferred by post or consignment should be deemed to have been exported.

Gold Bullion

10.45 Both the AFP and the NCA have expressed concern about movements of gold bullion out of the country[28]. Gold is a commodity of high value and great transferability. This is currently not reportable under any of the import/export related provisions of the FTR Act.

10.46 AUSTRAC informed the Committee that:

- bullion dealers in Australia now appear to be converting $1 million to $1.5 million in cash per week into gold bullion;

- structuring of transactions to avoid the cash reporting requirement appears rife;

- failure to report transactions of $10 000 cash or more is common; and

28 See AFP Submission No. 25, p. 5 and NCA Submission No. 27, para 5.9.

- the gold frequently appears to be taken out of Australia to Vietnam and Thailand.[29]

10.47 Whilst bullion dealers are cash dealers within the FTR Act [30] it is possible for customers to conduct transactions with them in such a way as to not be reportable. Further, customers may avoid the need to prove identity under the Act.[31]

10.48 AUSTRAC has been able to overcome the non-reporting aspect but there still remains some deficiency in the requirements for bullion dealers to identify their customers. The NCA has recommended that bullion dealers be required to identify their customers.[32]

10.49 Including bullion in the import/export provisions in section 15 would go some way towards closing what appears to be a serious loophole in the legislation's attempt to prevent, or at least trace, the movement of funds into and out of Australia.

10.50 The Committee notes the evidence that the transfer of bullion, and other precious commodities, into and out of Australia is not presently reportable under the FTR Act. There was insufficient evidence before the Committee to enable it to make a recommendation on this point. The Committee suggests that the Attorney-General seek advice on the need for legislative amendment to deal with this issue.

Recommendation 19: The Committee recommends that the FTR Act be amended to require the identification of customers in transactions for the sale and purchase of bullion through bullion dealers.

29 Submission No. 13 (AUSTRAC) p. 121.

30 See section 3, FTR Act

31 See Evidence, Mr Coad and Mr Sherman, pp. 37-39.

32 NCA Submission No. 27, p. 12.

Administrative Review and FOI

10.51 Section 42 of the FTR Act expressly excludes appeals under the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) against almost all decisions made under the FTR Act and there is no provision for appeals to the Administrative Appeals Tribunal. The Attorney-General's Department opposes any expansion of administrative review of decisions under the FTR Act.[33] The Department's view is that review could prejudice criminal investigations. It also pointed out that whilst some decisions under the Act are subject to limited review, for example, decisions under subsection 19(2) and 19(3) concerning forfeiture of property, other decisions where appeal is not available do not affect personal rights.

10.52 This lack of appeal rights has been criticised in the past by both the Democrats and the Opposition.[34] The Administrative Review Council has consistently pressed for the application of administrative review to decisions under the FTR Act.[35] Alternatively, the Council contends that if the FTR Act is to remain exempt from judicial review, that exemption should be provided in the AD(JR) Act rather than the FTR Act.

10.53 The Committee supports the views of the ARC.

> The Council considers that the ambit of the AD(JR) Act should parallel the constitutionally-prescribed jurisdiction of the High Court to undertake review of the actions of officers of the Commonwealth. ... In summary, all of the decisions under the FTR Act would be subject to the High Court's original jurisdiction under sections 75(iii) and (v) of the Constitution and the Federal Court's jurisdiction under section 39B of the Judiciary Act 1903. In these circumstances, no practical advantage is likely to be gained by excluding AD(JR) Act review since aggrieved persons will be able to invoke other judicial review procedures.[36]

33 See Attorney-General's Department Submission No. 35, p. 17.

34 Parliamentary Debates, Senate, 25 May 1988, pp. 2948-2949 and 19 February 1991 at p. 811.

35 Administrative Review Council, Submission No. 42.

36 Administrative Review Council Submission No. 42, p. 2.

Recommendation 20: The Committee recommends that section 42 of the FTR Act be amended so that administrative decisions made under the Act are reviewable under the AD(JR) Act. The advice of the Administrative Review Coucil should be sought as to whether certain decisions should be included in Schedule 2 of the AD(JR) Act so that reasons for decisions may not be required.

Freedom of Information

10.54 Section 38 of the *Freedom of Information Act 1982* (FOI Act) exempts documents or information protected by secrecy provisions to which section 38 is expressly applied. AUSTRAC has received advice that documents containing FTR information are not currently exempted by section 38. This section provides for the exemption from disclosure pursuant to a Freedom of Information request, of documents to which secrecy provisions apply, provided section 38 expressly applies. As section 38 is presently drafted it does not specifically exempt FTR information.

10.55 For reasons of protecting the integrity of information relating to law enforcement investigations and to the privacy of the individuals to whom FTR information relates, such documents should not be available under the FOI Act. The Attorney-General's Department has recommended that the FTR Act be amended to provide specifically that section 38 of the FOI Act applies to FTR information.[37]

Recommendation 21: The Committee recommends that FTR information be specifically exempted from FOI under section 38 of the FOI Act by appropriate amendment to the FTR Act.

37 Attorney-General's Department Submission No. 35, p. 29.

Chapter 11

SOLICITORS AS CASH DEALERS

The N.C.A.'s Position

11.1 In paragraph 3.42 of its 1991 report on money laundering, *Taken to the Cleaners: Money Laundering in Australia*, the National Crime Authority made this recommendation.

> [T]he definition of 'cash dealers' in the Cash Transactions Reports Act be widened to include solicitors.

The NCA made further reference to this matter in its submission to this Committee in February 1993, to which it attached a copy of the above report.[1]

11.2 In making its recommendation the NCA was looking to inhibit money laundering through solicitors' trust accounts. Although a cash deposit of $10,000 into a trust account would be reportable by the solicitor's bank, such reports would not identify the person paying the money to the lawyer who in fact is the one who pays it into the bank holding the trust account. This is because the deposit would usually be put into the bank as part of an aggregation of the cash lodged with the solicitor on a particular day. The solicitor then pays the total sum collected into the bank. Accordingly, the reports are of limited use to law enforcement agencies. AUSTRAC knows who the solicitor is who makes the aggregate deposit but do not know who it is that gives the component sums to the lawyer.

11.3 The NCA Report provided numerous examples of the involvement of solicitors, and particularly through their trust accounts, in money laundering schemes especially involving real estate transactions.[2] As solicitors are currently required to keep records of all transactions relating to their trust accounts, the NCA considered little additional work would be involved in preparing significant and suspect transaction reports.

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1 Submission No. 27, (NCA) pp. 9-10.

2 *Taken to the Cleaners* Volume 2, Chapter 7

The Attorney-General's Department's Position

11.4 The Attorney-General's Department, in its submission to this Committee, commented upon proposals for broader coverage in the definition of 'cash dealer' as follows:

> There would need to be significant benefits to outweigh the increase in paper reporting (and ethical problems in the case of solicitors) which would result from the suggested expansion of the definition.[3]

Its submission was that the FTR Act does not override legal professional privilege, and therefore suspect transaction reporting would be excluded.[4] That view is examined later in this chapter.

AUSTRAC's Submission

11.5 In a supplementary submission, AUSTRAC attached a paper prepared in conjunction with the NCA, *Solicitors and the Financial Reports Act 1988*. This paper examined:

- data held by AUSTRAC on significant cash transaction reports made at banks involving solicitors, and
- case studies provided by various police forces and others to the analyst, Mr Phillip Hetherington, who prepared the report.

The paper found that solicitors in some areas of Australia are handling significant amounts of cash on behalf of their clients. With no reporting of the identities of these clients the money trail is effectively broken.

11.6 Examination of data accumulated in the study revealed a high proportion of reported transactions in the suburbs of Sydney and Melbourne, and in the Gold Coast area of Queensland. Other data showed these areas had a low number of firms with 10 or more solicitors; therefore

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[3] Submission No. 35, (A-G's) p. 6.

[4] ibid p. 36.

it was smaller firms in these regions which were responsible for a high number of significant cash transactions.[5]

Volume of Transactions

11.7 The evidence showed solicitors as a group were the subject of a greater number of significant cash transactions than is the case with some existing categories of cash dealers. The total number approached that for bookmakers and TABs.[6]

11.8 Tables 10.1 and 10.2 below illustrate the comparisons between various cash dealers and include a separate table for solicitors (Table 10.2A). These statistics are not exhaustive, but provided a perspective of the likely volume of reporting should solicitors be included with other cash dealers.[7]

11.9 The Committee considered these figures provided sufficient evidence of the significance of cash handling by solicitors to establish a prima facie case for their inclusion in the definition of 'cash dealer' in the FTRA.

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[5] Submission No. 29, p. 15.

[6] ibid p. 4.

[7] ibid pp. 18-19.

Table 11.1 - Reports Lodged BY Cash Dealer Groups 1 July 1990 - 30 June 1992

Cash Dealer	Cash No. of Reports	Inwards Cash Reported ($'000)	Cash No. of Reports	Outwards Cash Reported ($'000)
Securities Dealers	34	393	11	299
Bullion Dealers	44	541	6	117
Bookmakers	8	337	986	16,318
TABs	642	13,543	1,528	33,602

Table 11.2 - Reports ABOUT Cash Dealer Groups 1 July 1990 - 30 June 1992

Cash Dealer	Cash No. of Reports	Inwards Cash Reported ($'000)	Cash No. of Reports	Outwards Cash Reported ($'000)
Securities Dealers	256	3,765	167	3,073
Bullion, Futures & Commodities Dealers	1,101	18,741	189	2,792
Occupation Code 9143 TABs, Bookmakers	2,398	38,718	602	13,367

Table 11.2A - Reports Lodged About Solicitors 1 July 1990 - 30 June 1992

Solicitors	1,670	40,100	955	18,600

The Proposed Extension

11.10 To include solicitors in the definition of cash dealer would have the effect of requiring them to report:

- those transactions where they received amounts of $10,000 or more, and international funds transfers of any amount to or from their trust accounts; and
- any transaction (whether involving the transfer of funds or not) where a solicitor has reasonable grounds to suspect that information he or she has concerning the transaction:

  (i) may be relevant to investigation of an evasion, or attempted evasion, of a taxation law;

  (ii) may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a Territory; or

  (iii) may be of assistance in the enforcement of the *Proceeds of Crime Act* 1987 or the regulations made under that Act.[8]

[8] *Financial Transactions Reports Act 1988* Section 16.

The Solicitor-Client Relationship

11.11 The relationship between a solicitor and his or her client is a fiduciary one, imposing special obligations on the solicitor.[9] One aspect of the relationship is the duty of a solicitor not to disclose to third parties certain information confidentially revealed to him or her in his or her capacity as a solicitor, and that duty continues after the relationship of solicitor and client has ceased.[10]

Legal Privilege

11.12 Mr. Justice Murphy who was one of the majority in *Baker -v- Campbell* (1983) 153 C.L.R. 52 had this to say at page 86:

> "*Scope of the Privilege.*
>
> Under common law as recently declared for Australia, client's legal privilege protects from disclosure any oral or written statement, or other material, which has been created solely for the purpose of advice, or for the purpose of use in existing or anticipated litigation *(Grant -v- Downs (83);* see also *National Employers' Mutual General Insurance Association Ltd. -v- Waind (84)).* This defines the scope of the privilege more narrowly than elsewhere. In the United Kingdom it is enough if the dominant purpose for coming into existence of the material is legal advice or litigation *(Waugh -v- British Railways Board (85)).*
>
> The privilege does not attach to documents which constitute or evidence transactions (such as contracts, conveyances, declarations of trust, offers or receipts) even if they are delivered to a solicitor or counsel for advice or for use in litigation. It is not available if a client seeks legal advice in order to facilitate the commission of crime or fraud or civil offence (whether the adviser knows or does not know of the unlawful purpose) (see *Reg. -v- Cos and Railton (86); Bullivant -v- Attorney-General (Vict.)(87); R. -v- Smith (88));* but is of course available where legal advice or assistance is sought in respect of past crime, fraud or civil offence. Hence the subject matter of the privilege is closely confined; in brief it extends only to oral or other material brought into existence for the sole and innocent purpose of obtaining legal advice or assistance."

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[9] *Nocton v Ashburton* [1914] AC 932 at 952.

[10] *Ott v Fleishman* [1983] 5 WWR 721, BC.

11.13 Dawson J who like Murphy J was part of the majority in *Baker -v- Campbell* said at p.132:

> "To view legal professional privilege as being no more than a rule of evidence would, in my view, be to inhibit the policy which supports the doctrine. Indeed, now that there appears to be a tendency to compel the disclosure of evidence as an adjunct to modern administrative procedure (see, e.g. *Commissioners of Customs and Exise -v- Harz (83))*, it may well be necessary to emphasize the policy lest it be effectively undermined. For there can be no doubt that freedom of communication between a legal adviser and his client may be greatly diminished by a requirement that the information might eventually be used in some action against the client, whether in administrative or judicial proceedings.
>
> In my view, the doctrine of legal professional privilege is, in the absence of some legislative provision restricting its application, applicable to all forms of compulsory disclosure of evidence."

11.14 The Law Society of NSW made the following summary points about privilege:

- it is conducive to justice for clients to be assured that communications between them and their solicitors will remain confidential, or at least not to be disclosed beyond the implied authority given to the solicitor by them;

- our system of law requires solicitors to refrain from making judgments impugning the veracity of what their clients tell them, unless they have reason to make further inquiry of the client. Requiring solicitors to inform authorities of their personal suspicions about the conduct of clients is wholly incapable of being reconciled with this fundamental principle of our legal system;

- solicitors are, for the purposes of the solicitor-client relationship, agents of their client and are thus not free to act beyond the scope of their authority;

- the client privilege flowing from the solicitor-client relationship is subject to a number of restraints imposed by the common law and express legislative dictate, such as:
  - the sole purpose test;[11]
  - the rule that privilege does not extend to communications in furtherance of a crime or fraud;[12]
  - the rule that privilege can be abrogated by Act of Parliament, etc.[13]

11.15 As Murphy J said in the passage quoted at paragraph 11.12, the privilege is limited. *Allen Allen & Hemsley -v- Deputy Commissioner of Taxation* considered the position of a taxation auditor who sought access to the trust account ledgers of a firm of solicitors. The auditor was acting under an authorisation form the Commissioner of Taxation under section 263 of the *Income Tax Assessment Act 1936*. The firm declined to give access, claiming that legal professional privilege attached to entries in the ledgers. The Court held that while the doctrine of legal privilege was not excluded by section 263, **only in the most exceptional circumstances can an entry in a solicitor's trust account be privileged as disclosing the contents of communication between solicitor and client.**[14]

Cash Deposits Made With Solicitors

11.16 Legal professional privilege in its precise application may not cover matters to do with the deposit of cash by clients with their solicitors. However the policy behind the doctrine is relevant when considering whether the definition of "cash dealers" should be extended to cover them.

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[11] *Grant v Downs* supra.

[12] *R v Cox and Railton* (1884) 14 QBD 153

[13] *Corporate Affairs Commission of NSW v Yuill* (1991) 172 CLR 319

[14] *Allen Allen & Hemsley v Deputy Commissioner of Taxation* (1989) FCR 576. See also *Nickmar Pty Ltd & Anor v. Perservatrice Skandia Insurance Ltd* (1985) 3NSWLR p. 44) for further discussion about the limit of the privilege

11.17 On the other hand the doctrine reflects the need for confidentiality in the relationship between solicitors or clients. This should not as Murphy J says be available for use as a cloak for the commission of crime. But it is AUSTRAC's function to gather intelligence not to carry out active policing duties by questioning suspects or possible witnesses to an offence or by manifesting a pressure to deter the commission of crime. Before that becomes part of AUSTRAC's function the proposal should be debated in Parliament.

Trust Accounts and Audit

11.18 Both the NSW Law Society[15] and the Law Institute of Victoria[16] provided information on the operation of solicitors trust accounts, and the role of audit inspections of those accounts. The Law Society in its earlier submission made this point. ' Solicitors are specifically required by regulation to maintain all ledger accounts in the name of the person on whose behalf monies are received or held'.

11.19 In response to a question whether this requirement was sufficient to control any conscious involvement in money laundering by solicitors, the Attorney-General's Department said:

> No. The function of an auditor is too narrow to address the full breadth of the problem. In any case, the proposal to make solicitors cash dealers is intended to do more than simply discourage solicitors from intentionally engaging in money laundering. Primarily it is intended to close a loophole in the system of reporting and maintain the integrity of the money trail.[17]

11.20 The Committee considered, however efficient the audit procedures undertaken by the solicitor governing bodies may be, those procedures are not geared toward law enforcement. Even if they were, such examinations usually occur well after the event when the trail is cold.

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[15] Submission Nos. 36 & 62, (Law Society of NSW)

[16] Submission No. 49, (Law Institute of Victoria)

[17] Submission No. 59, (A-G's) p. 2.

Deterrence

11.21 The NCA submitted the following in response to the specific question of solicitors as cash dealers.

> The inclusion of solicitors within the definition of 'cash dealer' may deter solicitors from accepting cash from clients, and clients from paying solicitors in cash because the transaction would be reported in the same way as a deposit made directly to a bank. This in turn would reduce the volume of transactions reported to AUSTRAC and, importantly, reduce the avenues available to those wishing to launder money.[18]

11.22 The Committee agrees there is deterrence value in the reporting of cash transactions by solicitors. But this may be a reason for not extending the definitions of cash dealer to include solicitors. The purpose of AUSTRAC is to act as an intelligence gathering body not as a policing one. A function of policing is to deter and if AUSTRAC is to take on this character that should be made clear. Before this happens issues of civil liberties arise which would need to be addressed.

Suspect Transactions

11.23 The aspect of the FTRA which attracted fiercest opposition from the legal profession was the reporting of suspect transactions. Mr Hugh Norton, a member of the Law Society of NSW, said in evidence:

> In very broad principle, I have no objection to the reporting of facts of an objective nature - by that, I mean significant transactions. But I wonder whether I am sufficiently taking into account the position of clients when I say that we would have no objection to objective reporting. On the other hand, the Law Society is totally opposed to the Act being extended to solicitors in regard to suspect transaction reporting.[19]

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[18] Submission No. 58 (NCA) p. 2.

[19] Evidence (Mr Norton) p. 121.

The objection can perhaps best be summarised by the comment that 'it will make solicitors informers on their own clients'.[20]

11.24 The Committee considered submissions made about the conduct of some members of the legal profession. Evidence was put before it of flawed practices particularly in areas such as the Gold Coast and the suburbs of Sydney and Melbourne. This issue is referred to in paragraphs 11.26 to 11.28 immediately below.

11.25 The public interest that is served through a system of compelled informers must be balanced against the public interest in preserving confidentiality and trust between clients and their legal advisers.

Recommendation 22: The Committee recommends that the definition of 'cash dealer' in the *Financial Transactions Reports Act 1988* not be widened to include solicitors.

Increase in and Extension of Law Enforcement Powers

11.26 From time to time, law enforcement agencies in the proper discharge of their responsibilities seek further powers and greater jurisdiction from Government. Government should not readily grant them.

11.27 Because law enforcement mechanisms are prone to impact heavily on the life and liberty of members of the community they must, in a free and open society, be instituted only after close analysis and with considerable caution. Other than in exceptional circumstances evidence on the basis of which they are established should be comprehensive, complete and compelling.

11.28 For example, the case to have solicitors included within the definition of cash dealers under the FTR Act has not, as yet, been made out. The evidence produced does not show widespread and endemic conduct by the legal profession which would justify the imposition of onerous obligations upon them. Nor does that evidence go into close detail about the issue.

[20] Submission No. 62 (NSW Law Society) p. 7.

Further Inquiry by Committee

11.29 The work of AUSTRAC is still developing. The undoubted contribution it already makes to law enforcement, and will make in the future, is still being realised and assessed. As time goes by fresh developments may justify an extension of its powers.

11.30 Given all this it would be a wise and useful move were the Committee to hold a further inquiry into the activities of AUSTRAC three years from the tabling of this report.

Recommendation 23: The Committee recommends that the FTR Act be reviewed again in a further three years.

Chapter 12

COST EFFECTIVENESS

Essence

12.1 The Committee found a number of components to the assessment of cost effectiveness of the legislation. They included:

- the agency (AUSTRAC) costs
- tax and other revenues
- costs of compliance
- improved practices
- costs to user agencies
- operational benefits
- privacy aspects
- community benefits
- reimbursement of cash dealers
- cost recovery

Costs of AUSTRAC

12.2 Total expenditure for the period 1989 to 1992/93 for the cash/suspect reporting program was $22.5 million. The international funds transfer program has so far cost $12.7 million, representing initial investment with the program now coming into operation. In providing these details AUSTRAC informed the Committee that it had remained within budget allocations agreed by the government for its programs.[1]

12.3 The total costs of AUSTRAC so far are $35.123 million. Of that figure some $12.7 million relates to the international funds transfer program. Therefore the cost of cash and suspect transaction reporting was the net amount of $22.4 million.

12.4 The main cost factor for AUSTRAC is computing. The breakdown between cash/suspect reporting costs and international funds transfer costs (ITT) over the period 1988/89 to 1992/93 is described in Table 12.1 below,

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[1] Submission No. 61, (Supplementary AUSTRAC Submission)

while Table 12.2 provides the breakdown by expenditure category over the same period.

Table 12.1 - Total Yearly Costs ($ Million)

	CASH/SUSP	ITT	TOTAL
1988/89	0.790		0.790
1989/90	4.315		4.315
1990/91	5.103		5.103
1991/92	5.603	3.925	9.528
1992/93	6.627	8.760	15.387
TOTAL	22.438	12.685	35.123

Table 12.2 - Expenditure Breakdown 1988/89 to 1992/93 ($'000)

	1988/89	1989/90	1990/91	1991/92	1992/93
Salaries	153	713	1,069	1,430	1,687
General Administration	300	742	791	1,170	1,300
Computing Costs					
Hardware					
Purchase				1,895	5,416
Lease		380	1,667	1,684	2,255
On-going staff (on contract)		254	1,214	1,137	1,124
Development IT (on contract)		1,125		289	2,013

Property Operating					
Rent	337	311	362	590	1,580
Fitout		790		1,333	12
TOTAL	790	4,315	5,103	9,528	15,387

Cash Dealers - Costs of Compliance

12.5 The following is evidence provided about costs in this area from some of the cash dealers and their representative bodies.

Banks

12.6 The ABA provided information on two surveys it had conducted on the costs of compliance with the FTR Act. In 1992 it found annual operating costs in this area were $18.9 million and establishment costs amounted to $6.4 million. All of its 29 banks were approached and 18 responded to the ABA's survey. These 18 represented 91 per cent of the industry's assets. Table 8.3 provides details of establishment and on-going costs incurred by these member banks during the period 1 March 1987 to 31 December 1991.

Table 12.3 - Costs of Compliance 1 March 87 to 31 December 91

Establishment	$ m	On-going	$ m
Systems Development	1.9	Staff	18.0
Legal	0.5	Other Branch Costs	0.5
Staff Expenses	3.4	Other Administrative	0.4
Capital Costs	0.1		
Other	0.5		
TOTAL	**6.1**		**18.9**

12.7 Another survey was conducted in January 1993 covering 18 of ABA's member banks, or 88 per cent of the industry's assets. The results showed establishment costs associated with the International Funds transfer instructions of $0.8m and estimated 1993 annual operating costs as follows:[2]

	$ m
Account Opening	21.7
Significant Cash	2.5
Suspect Transactions	0.7
IFTI's	0.4
Total	25.3

These costs are broken down by component in the following Table.

[2] Submission No. 26, (ABA) pp. 13-15.

Table 12.4 - Estimated 1993 Operating Costs by Component ($'000)

	Account Opening	Signi-ficant	Suspect	IFTI	Total
Staff Costs	20,644	2,108	495	197	23,444
Other Branch	221	117	8	20	366
Other Admin.	841	229	179	194	1,443
TOTAL	**21,679***	**2,454**	**682**	**411**	**25,253**

**Additions according to the Submission*

12.8 In a separate submission the Metway Bank found a per item cost of $3.53 as it:

> calculated its 1992 maintenance costs (staff, reporting, training, system time etc), plus a projected factor of reporting international transactions, at $344,136 or $3.53 per item reported. This factor disregards all initial design and implementation expenses.[3]

Other Cash Dealers

12.9 CUSCAL conducted a survey of credit unions' annual costs of compliance and provided the following figures.

	$ m
• account opening	10
• significant cash transactions	1
• suspect transactions	0.44

[3] Submission No. 10, (Metway Bank) p. 2.

The total on-going recurrent annual cost is $11.44 million.[4] Credit unions have also incurred software development costs of about $583 000 to meet FTR requirements, including the costs of installing the software in 234 credit union sites.

12.10 The AFC has 34 member finance companies, each of which is a cash dealer.

> From a survey conducted on 10 AFC member companies it is clear that the costs of compliance with the FTRA can vary considerably according to -
>
> - the size of the company;
> - its distribution and marketing structure;
> - the nature and structure of the products offered; and
> - the characteristics of the customers.[5]

12.11 The AAPBS, representing some thirty individual building societies operating in Australia, estimated $4.5 million per annum as the on going costs to societies in meeting FTR requirements.[6]

In its submission the AFC goes on to provide the results of the survey which are summarised in the following table.

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[4] Submission No. 34, (CUSCAL) p. 3.

[5] Submission No. 38, (AFC) p. 4.

[6] Submission No. 40, (AAPBS) p. 2.

Table 12.5 - Compliance Costs by Legislative Requirement

	Suspect Transaction Reporting $	Acc.Opening Identific[n] Requirements $	Significant Cash Transac[n] Reporting $
Staff Costs	55,660	445,184	7,070
Other Branch Costs	5,765	20,617	2,115
Other Admin On-going Costs	30,210	1,088,070	8,645
Estimated Cost per Transaction Report	$36 to $175	$8 to $200	$9 to $50

Account Opening

12.12 The proportion of total costs associated with account opening requirements was in excess of 85 per cent for the three groups of cash dealers which provided that degree of breakdown.

12.13 The Committee found the evidence from the gambling industry (bookmakers, TABs and casinos) related not so much to direct problems of costs, but to ancillary problems such as reduction in turnover associated with compliance. Particularly with the commencement of the new account opening procedures, the TABs specifically mentioned reductions in numbers of new accounts as a result of the legislation, but said those numbers had now recovered.[7]

12.14 The following Table summarises details of on-going costs as provided by ABA, AAPBS, AFC and CUSCAL.

[7] Submission No. 11, (TAB Qld) p. 2.

Table 12.6 - On-going Compliance Costs ($ million)

Cash Dealer	Costs Per Annum
ABA	25.3
AAPBS	4.5
AFC	1.66
CUSCAL	11.44
TOTAL	42.9

Generally on Compliance Costs

12.15 The Committee found the most serious complaints from cash dealers related to the account opening procedures. Costs of reporting significant transactions and IFTIs are low once systems have been established, having been minimised by the development of electronic reporting. Only a small percentage of suspect transactions is considered as suspect, so total costs here are also low. However, there is significant staff time involved in opening or varying accounts.

Costs to User Agencies

12.16 The Committee noted this factor, to recognise there are costs associated with the use of AUSTRAC data. However, no attempt has been made to quantify them and, in the absence of any cost recovery regime, no evidence was received which suggested costs in this area were a negative consideration in the use of AUSTRAC.

Revenue

12.17 Generally, it is additional taxation receipts which provide most of the revenue accruing from application of the FTR legislation.

Taxation Receipts

12.18 The Australian Taxation Office provided details of additional tax and penalties amounting to over $30 million raised as a direct result of AUSTRAC data being used by ATO auditors.[8] They are summarised in the table below.

Table 12.7 - Additional Tax & Penalties 1990/91 to 31 March 93 ($)

1990/91	1991/92	1992/93	Total 1/7/90 to 31/3/93
3,525,669	13,238,526	13,446,713	30,210,908

12.19 The Committee found these results disappointing, but did note the following comments by the ATO on page 1 of its submission.

> While these results are encouraging, the ATO will shortly implement plans for even more systematic and extensive use of AUSTRAC data to detect non-lodgers, quantify understatements of income and assist in the recovery of tax and child support payments from people evading their obligations. As our knowledge and ability to action AUSTRAC information evolves we are further developing better ways to concentrate on areas of high risk. Nationally consistent procedures, high-level liaison with AUSTRAC and improved communication and training are supporting this process.

Other Revenue

12.20 The other revenue benefits of the FTR Act are increased confiscation of the proceeds of crime and the less quantifiable benefit of financial intelligence for law enforcement investigations. There is also revenue from fines collected from prosecution under the FTR Act itself.

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[8] Submission No. 43, (ATO) Attachment A

12.21 A significant example of revenue recovery was from the operation of the joint Commonwealth and State Taskforce (Operation Quit), coordinated by the National Crime Authority, which in January 1991 commenced investigations of widespread evasion of tobacco licence fees levied by States and Territories. As a result of that work in excess of $33 million of evaded licence fees has been assessed and recovery instituted.

Expenditure and Revenue Summary

12.22 Overall, the total costs so far in setting up and operating AUSTRAC of $22.4 million (or $35.1 million if the fledgling ITT system is included) have been more than recovered by two factors alone:

- $30.2 million in additional tax revenue, and
- $33+ million from 'Operation Quit'.

The total revenue returns would of course be greater, and can reasonably be expected to increase substantially in future years.

12.23 The Committee therefore found at least a prima facie cost effectiveness in the operation of the FTR Act. However, other factors were also considered.

'The Intangibles'

12.24 The Committee considers there are costs to the community associated with the loss of some personal privacy in the operation of the FTR Act. Of course there are also benefits to that same community from the control of tax evasion, money laundering and related evil which the FTR Act targets. Where the balance is between these costs and benefits, or where it should be, is to some extent a value or moral judgment. The Committee considered the balance is positive in favour of the legislation.

For the Cash Dealers

12.25 Compliance costs have been discussed in some detail earlier in this chapter. The Committee found there were benefits to cash dealers associated with compliance, and to the industries in which they operate.

More integrity in the opening and operation of individual accounts, together with the monitoring of out-of-the-ordinary transactions, must lead to a greater private and public confidence in respect of the cash dealer organisations.

12.26 Regarding the most costly aspect of compliance - the account opening procedures - Mr Larkey, Executive Director of the Australian Association of Permanent Building Societies said:

> On the standards, I think we do agree with Mr Coad that a common standard has been reached in the financial industry - and that is not a bad thing. I am not saying the system we have reached is probably the best way to get there. But all institutions now adhere to these account opening standards. That is a position which institutions I represent would not want to undermine.[9]

Cost Recovery

12.27 In Term of Reference (e) the Committee was required to inquire and report on the cost-effectiveness of the Act, *including the possibility or desirability of cost recovery.*

12.28 AUSTRAC is clearly opposed to a user-pays regime.

> AUSTRAC is decidedly opposed to its clients having to pay a money cost for AUSTRAC services. That is because the FTR Act is part of a program being promoted by the Government and the Parliament to better focus law enforcement and revenue administrators on issues concerning financial misbehaviour and certain types of tax evasion.[10]

12.29 The Attorney-General's Department supported this view, noting the efficiency of AUSTRAC not being in doubt and there being no need to discipline its expenditure. It also said:

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[9] Evidence (Mr Larkey) p. 49.

[10] Submission No. 13, (AUSTRAC) p. 207.

> An underlying point of the Act is to make available to law enforcement agencies, and encourage them to adopt, new, more sophisticated investigative techniques. At present AUSTRAC is still seeking to educate users in the use of the services it can offer. While the uses show considerable enthusiasm for this free service, they might well have second thoughts about a service for which they were required to pay, no matter how useful.[11]

Another View

12.30 A major client of AUSTRAC is the Australian Taxation Office. At the Committee hearing on 10 June 1993 the following interchange took place between Mr Cullen, Executive Director of the Australian Bankers Association and Mr Mitchell, First Assistant Commissioner, Audit, Australian Taxation Office.

> **Mr Cullen** - Yes. I would regard the Tax Office as being a sophisticated user, in the sense of being accustomed to the analysis of financial data and so on. I would really like Mr Mitchell to tell the committee whether he would use the information on a full cost absorbed basis.
>
> **Mr Mitchell** - User pays is a very popular concept these days. We are subject to that in a variety of different places. I guess we would be prepared to make some contribution to the total costs but, before we did that, we would want to analyse the stated costs by other parties to make sure they would stand up to scrutiny.[12]

Reimbursement of Cash Dealers

12.31 Aside from the administrative complexities, the Committee considered as a matter of principle, there was no merit in the proposal to reimburse cash dealers for their costs of compliance.

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[11] Submission No. 35, (A-G's Department) pp. 34-35.

[12] Evidence p. 238.

12.32 The Committee's recommendations elsewhere in this report, particularly in relation to account opening, will, if implemented, relieve cash dealers of a major part of the present cost of compliance.

User Pays

12.33 The view of AUSTRAC on a possible user pays system is noted at paragraph 12.28. The Attorney-General's Department supports that view to the extent of not considering it desirable, at present, to charge users of FTR data.[13] The Committee accepts there is evidence of a need for changes in the culture of law enforcement as the emphasis moves more toward the detection and prevention of financial crime.

12.34 Mr Cullen of the ABA pointed to the need for a rigorous view to be taken of the value of the FTR regime. An alternative to the present arrangement would be to fully cost the system and reports to be provided to agencies 'on a user-pays basis so the agencies can decide whether they really have value'.[14] In response the this, Mr Coad of AUSTRAC spoke of the growing cooperation between law enforcement agencies and repeated the need for such changes in culture in law enforcement. 'If you make it user-pays right now, you will pull the plug on it..'.[15]

12.35 From the user agency perspective, the view of the ATO was outlined in paragraph 12.30. A less equivocal view was expressed by the Australian Customs Service.

> There may be a variety of ways to recover costs but Customs is of the opinion that any introduction of charges for access to information would have a negative impact on the future effectiveness of the Act. The about-to-be acquired ability to obtain information about international telegraphic funds transfers is expected to be of considerable benefit to the ASC revenue collection role. That benefit should not be compromised by the imposition of charges that may have a limiting effect on the use of the information.

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[13] Submission No. 35, (A-G's) p. 34.

[14] Evidence (Mr Cullen) p. 227.

[15] Evidence (Mr Coad) p. 230.

> If a cost recovery regime were to be introduced then the ACS would have to consider its role in collecting reports required under the Act, and, whether it would have to take up the issue of cost recovery with AUSTRAC for the performance of this function on its behalf.[16]

12.36 The Committee notes the Budget decision to impose a charging regime on AUSTRAC. In the light of that decision the Committee considers it unnecessary to make a recommendation on imposing charges. However, on the basis of the evidence before it, the Committee is not persuaded that a cost recovery regime for AUSTRAC is justified. Given the relative infancy of this whole system of financial reporting, and the encouragement needed for user agencies to explore and improve their use of the system, the imposition of charging for that use would, at best, create some additional costs and complications for both AUSTRAC and its clients. At worst it could damage the aims and intentions of the FTR legislation for no benefit.

Wrong Concepts

12.37 The dominant difficulty the Committee has with the proposition that law enforcement agencies should be made to pay for the use of those mechanisms which they need to properly carry out their duties is the concept of government upon which it is based.

12.38 The idea that fundamental obligations of government can be more or less met, or not met at all, depending upon the ability or willingness of its instruments to pay for information that will or may help them carry out their functions is ill-founded.

12.39 Government must discharge those functions which are basic to its purpose. Seeing that justice is done is one of these. To allow the meeting of that purpose to be determined by market forces would be amazing.

Conclusion

12.40 The Committee found the operation of the FTR Act to be cost effective.

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[16] Submission No.15 (ASC) p. 4.

DISSENTING STATEMENT BY SENATOR SPINDLER

The legal profession is currently exempt from the reporting requirements of the Financial Transaction Reports Act 1988.

The Committee does not recommend any change in this area and my dissent from the Committee's Report is limited to this issue.

On balance I have reached the view that the Financial Transaction Reports Act 1988 should be amended to require legal practitioners to report all cash transactions above $5000. The reporting requirement should not extend to "suspicious" transactions to avoid possible conflict with the practitioners duty to safeguard his or her client's interest.

During the course of the Inquiry the Committee heard compelling evidence about the involvement of members of the legal profession in money laundering. The Chairperson of the National Crime Authority informed the Committee that:

> there are some aspects of money laundering that it is virtually impossible to perpetrate unless you have the assistance of lawyers. By that, I mean the conversion of funds and the integration of funds by the purchase of real estate and setting up companies and so on.[17]

This evidence was not in the form of unsupported generalisations. Twenty seven case studies were provided to the Committee and most disclosed the involvement of legal practitioners. For example, in one case study a solicitor received $42,000 from a client to form part of the funds for a property transaction. The money was recorded in the trust account ledger, and banked, on eight different days over a two week period. No amount exceeded $8,000. The solicitor explained this conduct by saying '.... that if someone deposited that much cash in one go it was bound to give rise to some sort of inquiry.'[18]

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17 Evidence (Mr Sherman) p 128.

18 Submission no. 29 (AUSTRAC and NCA joint submission) Appendix 1, Case Study 12 p 34.

Other case studies illustrated the use of complex and unusual arrangements to finance property transactions,[19] and wilful blindness to the use of false names to operate bank accounts and to acquire property.[20] Other case studies were appended to the joint submission by AUSTRAC and the NCA.

In response to this evidence the Law Society of NSW and the Law Institute of Victoria referred to the role that solicitors have in keeping the justice system functioning, the duty which solicitors have to keep client information confidential and the fiduciary duty owed by a solicitor to the client.

In response to these arguments the NCA pointed out that the law on solicitor-client confidence admits there are exceptions to the duty of confidence. In evidence to the Inquiry the NCA chair quoted the case of *Gartside -v- Outram* (1856) 26 LJ Ch 113 'there is no confidence as to the disclosure of iniquity'.

Earlier in 1991 the NCA had completed an exhaustive 12 month inquiry into money laundering in Australia carried out by four multi-disciplinary NCA teams and recommended that the definition of 'cash dealers' in the Financial Transaction Reports Act be widened to include solicitors. This recommendation was not accepted by the Government.

'Cash dealers' are required to report suspicious transactions and significant cash transactions (cash transactions of $10,000 or more). The NCA's proposal to extend the definition of 'cash dealer' to include solicitors was again advanced in the current Inquiry as the NCA's proposal and does not involve 'any great violation of the common law' according to the Chair of the NCA.[21] In any event, Parliament can qualify the common law and does so regularly in a considered way.

My own proposal does not go as far as the NCA's proposal. I accept that the reporting of suspicious transactions does pose a greater risk to the integrity of the solicitor-client relationship than does the mechanical reporting of all cash transactions above a certain amount. A witness for the Law Society of NSW told the Committee that there is a distinction to be made between the two types of reporting when he said in evidence:

> In very broad principle, I have no objection to the reporting of facts of an objective nature - by that, I mean significant cash

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19 ibid, case study no. 27, p 43.

20 ibid, case study no. 20, p 38.

21 Evidence (Mr Sherman) p 129

> transactions. But I wonder whether I am sufficiently taking into account the position of clients when I say that we would have no objection to objective reporting. On the other hand, the Law Society is totally opposed to the Act being extended to solicitors in regard to suspect transaction reporting.[22]

I appreciate the distinction which was drawn by the representative of the NSW Law Society, and I understand the concerns that some solicitors would have about suspect transaction reporting. Accordingly, I believe that solicitors should be required to report as objective facts all cash transactions of $5,000 or more but should not be required to report suspect transactions. The lower threshold for the reporting of cash transactions would reduce the possibility of transactions being split in order to avoid the reporting threshold. Of course, any evidence of splitting of transactions detected by Law Society auditors should be investigated as possible evidence of professional misconduct.

I recommend that the *Financial Transaction Reports Act 1988* be amended to require that solicitors report to AUSTRAC all cash transactions to which they are a party of $5,000 or more.

Senator Sid Spindler

22 Evidence (Mr Norton) p 121.

Appendix I

Written Submissions Release for Publication

Sub No.	Organisation/Citizen	Date of Submission
1	Brownlee, Mr T., QLD	21/12/92
2	Australian Securities Commission, NSW	08/01/93
3	Sweeney, Ms D., NSW	13/01/93
4	Maulette, Mr P., OECD, PARIS CEDEX 16	05/01/93
5	Kennedy, Mr J.G., NSW	18/01/93
7	Scanlan, Mr K.,	22/01/93
8	Totalisator Agency Board, NSW	28/01/93
9	NSW Crime Commission, NSW	29/01/93
10	Metway Bank, QLD	21/01/93
11	The Totalisator Administration Board of QLD	28/01/93
12	Victorian Council for Civil Liberties, VIC	28/01/93
13	Australian Transaction Reports & Analysis Centre, NSW	01/02/93
14	Criminal Justice Commission, QLD	28/01/93
15	Australian Customs Service, ACT	03/02/93
16	State Revenue Office, TAS	29/01/93
17	Victorian Bookmakers' Association Ltd., VIC	02/02/93
18	South Australian Police Department, SA	04/02/92
19	Victorian Casino Control Authority, VIC	05/02/93
20	South Australian Taxation Office, SA	09/02/93
21	Victorian Police, VIC	26/01/93
22	Commonwealth Director of Public Prosecutions, ACT	16/02/93
23	Law Institute of Victoria, VIC	19/02/93
24	Reserve Bank of Australia, NSW	16/02/92
25	Office of the Commissioner of Police, ACT	18/02/93
26	Australian Bankers' Association, VIC	undated
27	National Crime Authority, VIC	19/02/93
28	Minister for Finance & Assistant Treasurer, NSW	24/02/93
29	Australian Transaction Reports & Analysis Centre, NSW (*Supplementary Submission*)	24/02/93

30	The National Committee on Violence Against Women, ACT	26/02/93
31	Commonwealth Bank Officers' Association, NSW	24/02/93
32	Treasurer, NT	25/02/93
33	Office of State Revenue, QLD	01/03/93
34	Credit Union Financial Services (Australia) Ltd., NSW	05/03/93
35	Attorney-General's Department, ACT	19/02/93
36	Law Society of NSW (The)	15/03/93
37	Commonwealth Bank, NSW	16/03/93
38	Australian Finance Conference, NSW	08/04/93
39	Chaikin, Dr D.A., NSW	13/04/93
40	Australian Association of Permanent Building Societies, ACT	16/04/93
41	Human Rights Australia, NSW	20/04/93
42	Administrative Review Council, ACT	26/04/93
43	Australian Taxation Office, ACT	06/05/93
44	Law Council of Australia, ACT	26/05/93
45	Department of Social Security, ACT	28/05/93
46	State Revenue Office, VIC	01/06/93
47	NSW Police Service, NSW	07/06/93
48	Hamilton, Mr B., NSW	11/06/93
49	Law Institute of Victoria, VIC	23/06/93
50	National Crime Authority, NSW	23/06/93
51	NSW Crime Commission, NSW	23/06/93
52	Liberty Liquors, WA	28/06/93
53	Australian Finance Conference, NSW (*Supplementary Submission*)	01/07/93
54	Australian Transaction Reports & Analysis Centre, NSW (*Supplementary Submission*)	24/06/93
55	Australian Transaction Reports & Analysis Centre, NSW (*Supplementary Submission*)	02/07/93
56	Westpac Banking Corporation, NSW	01/07/93
57	Commonwealth Bank of Australia, NSW	30/06/93
58	National Crime Authority, NSW	02/07/93
59	Attorney-General's Department, Criminal & Security Law Division, ACT	06/07/93
60	Office of State Revenue, NSW	22/07/93
61	Australian Transaction Reports & Analysis Centre, NSW (*Supplementary Submission*)	22/07/93
62	The Law Society of New South Wales, NSW	10/06/93

63	Law Institute of Victoria, VIC (*Supplementary Submission*)	30/07/93
64	Minister for Justice, ACT	14/07/93
65	Human Rights Australia, NSW (*Supplementary Submission*)	17/08/93
66	Law Society of NSW	27/08/93

Appendix II

Witnesses who Appeared at Public Hearings

SYDNEY, 8 June 1993

BILLS, Mr John Maxwell, Associate Director, Australian Finance Conference, 68 Pitt Street, Sydney, New South Wales

COAD, Mr Bill, Director, AUSTRAC, PO Box 5516, Chatswood, New South Wales

DUPÉ, Mr Kevin, Senior Manager, Legislative Services, Credit Union Services Corporation (Australia) Ltd, 51 Druitt Street, Sydney, New South Wales

DWYER,
Mr Patrick, Compliance Manager, Credit Union Services Corporation (Australia) Ltd, 51 Druitt Street, Sydney, New South Wales

EDWARDS,
Mr Stephen Mark, Associate Director, Legal, Australian Finance Conference, 68 Pitt Street, Sydney, New South Wales

FLOREZ,
Ms Mary, Compliance Coordinator, AUSTRAC, 12th floor, Zenith Centre, 821 Pacific Highway, Chatswood, New South Wales

GIBB, Detective Sergeant Russell, South Australian Police Department, Grenfell Street, Adelaide, South Australia

JENSEN,
Mr Neil, Director's Representative, AUSTRAC, GPO Box 5322BB, Melbourne, Victoria

LARKEY,
Mr James, Executive Director, Australian Associated Permanent Building Society, 8 Thesiger Court, Deakin, Australian Capital Territory

PINNER,
Mr Graham, Deputy Director, AUSTRAC, PO Box 5516W, West Chatswood, New South Wales

POWER,
Mr Richard, Manager, Analytical Services, AUSTRAC, 12th floor Zenith Centre, 821 Pacific Highway, Chatswood, New South Wales

SHERMAN,
Mr Tom, Chairperson, National Crime Authority, 453 Kent Street, Sydney, New South Wales

VALENTIN,
Mr John, Assistant Commissioner, Investigations, Australian Federal Police, PO Box 401, Canberra City, Australian Capital Territory

WESTRA,
Constable Tina, Australian Federal Police, La Trobe Street, Melbourne, Victoria

SYDNEY, 9 June 1993

BOSTOCK,
Mr Thomas Edward, Law Institute of Victoria, 470 Bourke Street, Melbourne, Victoria

BRADLEY,
Mr Phillip, New South Wales Crime Commission, Level 3, 175 Liverpool Street, Sydney, New South Wales

BUCHANAN,
Mr Bruce Douglas, Executive Director, New South Wales Office of State Revenue, 132 Marsden Street, Parramatta, New South Wales

CHAIKIN,

Dr David, Barrister, Frederick Jordan Chambers, 53 Martin Place, Sydney, New South Wales

CHAPMAN,

Mr William Aubrey, Senior Manager, Product Processes, Westpac Banking Corporation, 60 Martin Place, Sydney, New South Wales

COAD,

Mr Bill, Director, AUSTRAC, PO Box 5516W, West Chatswood, New South Wales

COLEMAN,

Mr Alan Richard, Solicitor, Commonwealth Bank of Australia, 48 Martin Place, Sydney, New South Wales

EDDINGTON,

Mr Robert Charles, General Manager, Operations, Commonwealth Bank of Australia, Box 2719, GPO, Sydney, New South Wales

FAIR,

Mr Patrick, Councillor, Law Society of New South Wales, 170 Phillip Street, Sydney, New South Wales

HETHERINGTON,

Mr Philip, Financial Investigator, National Crime Authority, 453-463 Kent Street, Sydney, New South Wales

JENSEN,

Mr Neil, Director's Representative, AUSTRAC, GPO Box 5322BB, Melbourne, Victoria

LEVINE,

Ms Jane Rue, Chairman, Banking, Finance and Consumer Credit Committee, Law Council of Australia, 19 Torres Street, Braddon, Australian Capital Territory

MANLEY,

Ms Pamela, Manager, Legal Unit, Retail Banking Group, Westpac Banking Corporation, 60 Martin Place, Sydney, New South Wales

MARCHHART,

Ms Michelle, Assistant to Manager, Legal Unit, Retail Banking Group, Westpac Banking Corporation, 60 Martin Place, Sydney, New South Wales

NORTON,

Mr Hugh, Member, Law Society of New South Wales, 170 Phillip Street, Sydney, New South Wales

PINNER,

Mr Graham, Deputy Director, AUSTRAC, PO Box 5516W, West Chatswood, New South Wales

RICHES,

Mr Ronald Walter, Chief Manager, Banking Operations, Commonwealth Bank of Australia, Box 2719 GPO, Sydney, New South Wales

SHERMAN,

Mr Tom, Chairperson, National Crime Authority, 453 Kent Street, Sydney, New South Wales

SMITH,

Mr Ian, Director, Compliance, New South Wales Treasury, Office of State Revenue, 132 Marsden Street, Parramatta, New South Wales

MELBOURNE, 10 June 1993

BECK,

Mr Anthony, Joint National Assistant Secretary, Finance Sector Union of Australia, 341 Queen Street, Melbourne, Victoria 3000

COAD,

Mr Bill, Director, AUSTRAC, PO Box 5713, Chatswood, New South Wales

CORNALL,

Mr Robert, Executive Director, Law Institute of Victoria, 470 Bourke Street, Melbourne, Victoria

CULLEN,
Mr Alan Charles, Executive Director, Australian Bankers Association, 55 Collins Street, Melbourne, Victoria 3000

HARDING,
Mr John, Manager, Administrative Services, Group Productivity and Operational Services, National Australia Bank Ltd, 500 Bourke Street, Melbourne, Victoria 3000

HEALEY,
Mr Gary Hugh, Director, Research, Australian Bankers Association, 55 Collins Street, Melbourne, Victoria 3000

JOHNSON,
Ms Laurel Eva, Acting Assistant Secretary, Criminal Law Branch, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

MERKEL,
Mr Ronald, Committee Member and Former President, Victorian Council for Civil Liberties, 601 Bourke Street, Melbourne, Victoria

MITCHELL,
Mr Vincent Thomas, First Assistant Commissioner, Audit, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2000

O'CONNOR,
Mr Kevin Patrick, Privacy Commissioner, 388 George Street, Sydney, New South Wales 2000

PEARCE,
Mr Michael Richard, Member, Victorian Council for Civil Liberties, 601 Bourke Street, Melbourne, Victoria

PINNER,
Mr Graham Charles, Deputy Director, AUSTRAC, 821 Pacific Highway, Sydney, New South Wales

REABURN,
Mr Norman, Deputy Secretary, Attorney-General's Department, National Circuit, Parkes, Australian Capital Territory 2600

SCOTT, Mr Kevin Charles, Federal Secretary, Commonwealth Bank Officers Association, 8 Quay Street, Haymarket, New South Wales 2000

SMITH, Mr Peter Gerard, Assistant Commissioner, Audit (Business and Individuals), Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2000