

CHAPTER 1

INTRODUCTION

Background

1.1 On 22 June 2006, the Senate referred the Financial Transaction Reports Amendment Bill 2006 ('the Bill') to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 1 August 2006.

1.2 The Explanatory Memorandum to the Bill explains that the Bill's primary purpose is to vary the amendments to the *Financial Transaction Reports Act 1988* (FTR Act) made by Schedule 9 of the *Anti-Terrorism (No.2) Act 2005* (AT Act). Schedule 9 of the AT Act comes into force on 14 December 2006. The EM states that the Bill needs to come into operation by that date. The amendments proposed by the Bill are to the new Division 3A which Schedule 9 of the AT Act inserted at Part II of the FTR Act.¹

1.3 According to the EM, the FTR Act requires identification of persons opening or becoming a signatory to an account with a 'cash dealer'. It also requires reporting of certain transactions and transfers and creates certain record-keeping obligations. The purpose of the FTR Act is to reduce the incidence and facilitate the tracking of money laundering and terrorist financing.²

1.4 The Federal Government is currently considering a range of other reforms which are designed to improve and strengthen Australia's anti-money laundering (AML) and counter-terrorism financing (CTF) system, in line with international standards issued by the Financial Action Task Force on Money Laundering (FATF).

1.5 These international standards are contained in the FATF Forty Recommendations on AML, which were revised in June 2003 (FATF Recommendations), and the Nine Special Recommendations on Terrorist Financing (Special Recommendations) which were adopted following the terrorist attacks in the US on 11 September 2001.³ Notably in the context of the Bill, Special

1 p. 1.

2 p. 1.

3 The FATF Recommendations on AML are available at http://www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html#40recs. The Special Recommendations on Terrorist Financing are available at http://www.fatf-gafi.org/document/9/0,2340,en_32250379_32236920_34032073_1_1_1_1,00.html. Also see Senate Legal and Constitutional Legislation Committee, *Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005*, April 2006, Chapter 1.

Recommendation VII (SR VII) requires that funds transfer instructions include customer information about the sender of the funds.⁴

1.6 As it currently stands, when Division 3A of Part II of the FTR Act comes into force on 14 December 2006, it will require cash dealers in Australia to include certain required information about the ordering customer with an International Funds Transfer Instructions (IFTI) when transmitting the IFTI out of Australia. It also creates offences for failure to include this information.⁵

1.7 The amendments in the Bill are designed to address concerns raised during the Attorney-General's Department's consultation in relation to the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill (AML/CTF Bill).⁶

1.8 The proposed amendments to Division 3A of Part II of the FTR Act are:

- an amendment to the definition of 'account' for the purposes of Division 3A of Part II of the FTR Act;
- clarification of the definition of 'customer information' in section 17FA of the FTR Act;
- an amendment to the definition of 'customer information' for incoming IFTIs under section 17FB of the FTR Act; and
- an amendment to restrict the application of Division 3A of Part II of the FTR Act to Authorised Deposit-taking Institutions (ADIs) (which are, for example, banks).⁷

1.9 The EM states that the Bill's proposed measures will assist industry by reducing the number of systems changes required at an institutional level. In particular, the EM notes that, if the amendment to restrict the application of Division 3A of Part II of the FTR Act to ADIs is not made, then certain legitimate non-bank money remitters may be put out of business.⁸

4 EM, p. 1.

5 EM, p. 1.

6 See Senator The Hon. Eric Abetz, Minister for Fisheries, Forestry and Conservation, Second Reading Speech, *Senate Hansard*, 21 June 2006, p. 2; and Attorney-General's Department's *Anti-Money Laundering Reform Online* at <http://www.ag.gov.au/agd/WWW/agdhome.nsf/Page/RWP8B2E91AF7CF4CFCACA2570C900112F4C>, and in particular the *Background to the AML/CTF Reform Process* at <http://www.ag.gov.au/agd/WWW/agdhome.nsf/AllDocs/A6CEBB2B6C809A1CCA2571A3000984A9?OpenDocument>. A copy of the revised exposure draft of the AML/CTF Bill 2006, released on 13 July 2006, is available at [http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(85861BE64F280B2D8725056734D25146\)~Revised+exposure+draft+Bill+2006.PDF/\\$file/Revised+exposure+draft+Bill+2006.PDF](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(85861BE64F280B2D8725056734D25146)~Revised+exposure+draft+Bill+2006.PDF/$file/Revised+exposure+draft+Bill+2006.PDF).

7 EM, p. 1.

8 p. 2.

Conduct of the inquiry

1.10 The committee advertised the inquiry in *The Australian* newspaper on 27 June 2006 and 5 July 2006, and invited submissions by 10 July 2006. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to 54 organisations and individuals.

1.11 The committee received seven submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.12 Due to the limited number of submissions and the largely technical nature of the matters raised, the committee decided to conduct the inquiry on the papers, and a number of questions were placed on notice to the Attorney General's Department. The Department's answers are Submissions 6 and 6A.

Acknowledgement

1.13 The committee thanks those organisations and individuals who made submissions, particularly given the short time frame of the inquiry.

