

CHAPTER 2

OVERVIEW OF THE BILL

2.1 This chapter briefly outlines the main provisions of the Bill.

Main provisions of the Bill

Schedule 1

Item 1

2.2 Item 1 inserts 'Division 3A of Part II' before the reference to 'Part VIA' in subsection 3(1) (definition of 'account') into the FTR Act. The purpose of the amendment is to restrict the new definition of 'account', inserted by item 2 of the Bill, to Division 3A of Part II of the FTR Act.

2.3 Division 3A of Part II of the FTR Act implements Special Recommendation VII (SR VII), which requires the inclusion, with funds transfer instructions, of customer information about the customer sending the funds. According to the EM, SR VII was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs.¹

2.4 Currently, Division 3A of Part II of the FTR Act contains sections 17FA (Customer information in international funds transfer instructions transmitted out of Australia) and 17FB (Customer information in international funds transfer instructions transmitted into Australia).²

Item 2

2.5 Item 2 inserts a definition of the term 'account' into Division 3A for the purposes only of Division 3A of Part II of the FTR Act. New section 17FAA will define the term 'account' to include a credit card account, a loan account (other than a credit card account) and an account of money held in the form of units in either a cash management trust or a trust of a kind prescribed by the regulations. In order to avoid any doubt, it is immaterial whether an account has a nil balance or whether any transactions have been allowed in relation to an account.

2.6 It is intended that the new definition of 'account' should only be applicable, and confined, to Division 3A of Part II of the FTR Act. The other existing definitions of 'account' as defined as subsection 3(1) and section 40C (Part VIA) of the FTR Act

1 p. 3.

2 EM, p. 4.

will be retained. That is, the meaning of account (as defined at subsection 3(1)) will still be applicable for all parts of the FTR Act except for Part VIA of the FTR Act and Division 3A of Part II of the FTR Act.³

Items 3-9 and 11-16

2.7 Items 3-9 and 11-16 omit the reference to 'cash dealer' and substitute the term 'ADI' (Authorised Deposit Taking Institution) in paragraph 17FA(1)(a), paragraph 17FA(2)(a), paragraph 17FA(2)(b), subsection 17FA(3), paragraph 17FB(1)(a) and subsections 17FB(2), 17FB(4), 17FB(5) respectively. The term 'ADI' is defined in subsection 3(1) to mean:

- a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- the Reserve Bank of Australia; or
- a person who carries on state banking within the meaning of paragraph 51(xiii) of the Constitution.

2.8 Item 4 repeals current paragraph 17FA(1)(b) and substitutes new paragraph 17FA(1)(b) to state that the ADI is acting on behalf of, or at the request of, another person who is not an ADI.

2.9 According to the EM, this amendment is intended to restrict the application of Division 3A of Part II of the FTR Act to ADIs only. The reason for this restriction is due to problems that have arisen with the current application of Division 3A of Part II of the FTR Act to non-bank money remittance businesses. Presently, the FTR Act does not distinguish between non-bank International Funds Transfer Instructions (IFTIs) which are 'same-institution' funds transfer instructions and non-bank IFTIs involving 'multiple' institutions.⁴

2.10 The EM states that it is impracticable to require IFTIs sent from one institution in one country to the same institution in another country to include originator information because, in effect, this would require the institution to 'pass on' the information to itself. In these situations, funds transfer requests are registered on a single internal system of the institution, while the actual transfer of funds is effected through net settlements between the institution's various accounts around the world.⁵

2.11 Presently, non-bank money remitters report IFTIs to the Australian Transaction Reports and Analysis Centre (AUSTRAC). This means that ordering customer information is currently available to law enforcement authorities. The

3 EM, p. 4.

4 pp. 4-5.

5 p. 5.

amendment to restrict Division 3A of Part II of the FTR Act to ADIs will not alter this position.⁶

Item 10

2.12 Item 10 repeals current paragraph 17A(3)(b) and substitutes a new paragraph 17A(3)(b) to make clear that either an account number or an identification code can be used. The EM states that some customers sending money by an IFTI will not be an account holder with a financial institution and clearly in this instance an identification code should be able to be used.⁷

2.13 In practice, financial institutions can transmit multiple numbers of IFTIs in batch form and even if some or all are on behalf of account holders it is more practicable to use one identification code to cover all of the IFTIs being transmitted in a particular batch. This amendment is intended to clarify that an account number is only required to be included in, or with, the instruction when the instruction relates to transferring money directly from a single account held by the customer with the ADI. In all other cases, an identification code should be permitted instead of an account number.⁸

Item 17

2.14 Item 17 omits the words 'if the ordering customer does not have an account with the ordering organisation' from subparagraph 17FB(6)(c)(ii) of the FTR Act. The effect of this amendment is that the customer's account number or the identification code is now given equal standing for incoming IFTIs received by Australian ADIs under section 17FB of the FTR Act. The purpose of the amendment is to overcome the potential practical difficulties faced by Australian ADIs and AUSTRAC in determining whether a foreign customer has an account with a foreign ordering organisation.⁹

6 EM, p. 5.

7 p. 5.

8 EM, p. 5.

9 EM, p. 5.

