

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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Members of the Committee:

Senator Barney Cooney (Victoria), **Chair**
Senator Amanda Vanstone (South Australia), **Deputy Chair**
Senator Chris Ellison (Western Australia) (from 18 August 1993)
Senator Christopher Evans (Western Australia) (from 1 July 1993)
Senator Patricia Giles (Western Australia) (retired 30 June 1993)
Senator Gerry Jones (Queensland) (from 18 to 28 October 1993 inclusive)
Senator Rod Kemp (Victoria) (discharged 18 August 1993)
Senator Julian McGauran (Victoria) (from 1-14 July 1993)
Senator Jim McKiernan (Western Australia) (from 1 July 1993) (discharged from 18 to 28 October 1993 inclusive)
Senator Graham Maguire (South Australia) (retired 30 June 1993)
Senator William O'Chee (Queensland) (discharged from 1 to 14 July 1993)
Senator the Hon Margaret Reynolds (Queensland) (from 1 July 1993)
Senator Sid Spindler (Victoria)
Senator the Hon Peter Walsh (Western Australia) (retired 30 June 1993)

Committee Secretariat:

Committee Secretary: Paul Griffiths
Research Staff: Rod Adams
Virginia Buring
James Warmenhoven
Executive Assistant: Margaret Lindeman (from 27 September 1993)
Angela Misic (8 March 1993 to 10 September 1993)

The Senate
Parliament House
CANBERRA ACT 2600

Telephone: (06) 277 3560

Checking the Cash

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**Appendix I Written Submission Release
for Publication**

**Appendix II Witnesses who Appeared at
Public Hearings**

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 1993¹]:

The operation and effectiveness of the [*Financial²*] *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	<i>Administrative Decisions (Judicial Review) Act 1977</i>
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	<i>Financial Transaction Reports Act 1988</i> (formerly the <i>Cash Transaction Reports Act 1988</i>)
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 <i>Privacy Act 1988</i>
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)