

# 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.<sup>3</sup>

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<sup>3</sup> *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.<sup>4</sup>

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<sup>5</sup>.

## 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.<sup>6</sup>

## 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

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<sup>4</sup> *Journals of the Senate* No. 55, 22 March 1988, p. 576.

<sup>5</sup> Para. 8.29 of the report on the *Cash Transaction Reports Bill 1987*.

<sup>6</sup> *Senate Hansard* 18 May 1988, p. 2370.

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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.<sup>7</sup>

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.

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<sup>7</sup> *House of Representatives Hansard*, 13 May 1987, P. 3104. (Mr Lionel Bowen)

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## 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 <sup>8</sup>                | } |                 |
| 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<sup>p</sup>] 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;

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<sup>8</sup> 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.

<sup>9</sup> 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.

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- (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.