

## 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.<sup>1</sup> 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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<sup>1</sup> 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.<sup>2</sup> 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] <sup>3</sup>	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.'<sup>4</sup> 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.'<sup>5</sup>

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.<sup>6</sup> These figures do not suggest any great change in deflecting attention away from DSS fraud.

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

<sup>3</sup> 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.)

<sup>4</sup> Submission No. 35, (Attorney-General's Department) p. 37.

<sup>5</sup> *ibid.*

<sup>6</sup> Submission No. 13, (AUSTRAC) p. 92.

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## 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.<sup>7</sup>

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

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<sup>7</sup> Submission No. 45, (DSS).

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

## 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.<sup>9</sup>

**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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<sup>8</sup> 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.

<sup>9</sup> ANAO report number 25, cited at pp. 94-96 of Submission No. 13, (AUSTRAC).

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nevertheless consume valuable resources which should be devoted to matters of greater significance.<sup>10</sup>

## Evidence from DSS

8.12 DSS advised that it administered over \$30 billion in outlays in 1992/93.<sup>11</sup> 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.<sup>12</sup>

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.'<sup>13</sup> The AFP agreed that some of the matters involving apparent DSS fraud referred to it are low rating in terms of AFP priorities.<sup>14</sup>

8.14 The AFP proposed that the Commissioner of Police be given a discretionary power to provide certain information to the DSS<sup>15</sup> (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

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<sup>10</sup> Submission No. 25, (AFP) p. 5.

<sup>11</sup> Submission No. 45, (DSS).

<sup>12</sup> *ibid.*

<sup>13</sup> Submission No. 45, (DSS).

<sup>14</sup> Submission No. 25, (AFP) p. 2.

<sup>15</sup> *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.<sup>16</sup>

## 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.<sup>17</sup> 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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<sup>16</sup> Submission No. 45, (DSS).

<sup>17</sup> 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).

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**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.<sup>18</sup>

**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<sup>19</sup>; approximately \$20m in assessments in Queensland<sup>20</sup>; and over \$10m of evaded tobacco licence fees in Victoria<sup>21</sup>.

## **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<sup>22</sup>; and \$4.6 billion in 1991/92 in Victoria<sup>23</sup>.

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

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<sup>18</sup> Submission No. 27, (NCA) p. 7.

<sup>19</sup> Submission No. 28, (Minister for Finance and Assistant Treasurer, NSW) p. 3.

<sup>20</sup> Submission No. 33, (Office of State Revenue, Queensland) p. 2.

<sup>21</sup> Submission No. 46, (State Revenue Office, Victoria) p. 2.

<sup>22</sup> Submission No. 28, (Minister for Finance and Assistant Treasurer, NSW) p. 3.

<sup>23</sup> Submission No. 46, (State Revenue Office, Victoria) p. 1.

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- **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.<sup>24</sup>

## 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.<sup>25</sup>

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<sup>24</sup> Submission No. 33, (Office of State Revenue, Queensland) pp. 2-3.

<sup>25</sup> Submission No. 60, (Office of State Revenue, NSW).



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## 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.