

Chapter 9

ACHIEVING THE OBJECTIVES OF THE LEGISLATION

Introduction

9.1 This chapter looks into the extent to which the administration of the FTR Act has achieved the objectives recited in section 4 of the Act. It looks at:

- the effectiveness of the usage of FTR data by clients of AUSTRAC and the direct and indirect results, or likely results, achieved therefrom, including the amounts recovered by way of taxation and other revenue measures;
- the longer term benefits of enhanced law enforcement techniques and strategic intelligence on an understanding of the cash economy and the combating of money laundering and other serious criminal activity; and
- the role of the legislation and AUSTRAC in facilitating coordination of the activities of Commonwealth and State law enforcement agencies and in fulfilling Australia's international obligations.

The Objectives

9.2 The objectives set out in section 4 of the Act are:

- to facilitate the administration and enforcement of taxation laws;
- to facilitate the administration and enforcement of laws of the Commonwealth and of the Territories, and
- to make information collected for the purposes referred to available to State authorities to facilitate the administration and enforcement of laws of the States.

9.3 The Act achieves these aims in two ways:

- i) by tracing proceeds of crime and other untaxed cash income through the paper trail created by the Act to identify money launderers, participants in organised crime and tax evaders who might not otherwise be successfully prosecuted;
- ii) by forcing criminals and tax evaders to either give up their criminal activity or find more risky ways of operation outside the legitimate financial system and fostering hostility to tax evasion and money laundering amongst cash dealers.¹

9.4 The Act itself is directed at capturing financial intelligence for use by law enforcement agencies in the pursuit of serious crime and cooperation between those agencies in attacking the financial base of organised crime and tax evasion.

9.5 The processes provided by the Act were intended to help detect major crime. In the second reading speech the then Minister said:

This Bill represents one of the most significant initiatives to counter the underground cash economy, tax evasion and money laundering. It is notorious that the underground cash economy provides great scope for tax evasion, both domestically and internationally. It is clear that traditional investigative techniques have been ineffective in identifying financiers of major crime, because of the ease with which such persons are able to distance themselves from the actual criminal conduct. However, experience both in Australia and overseas has shown that the financiers are more closely associated with the profits of crime. That experience also shows that cash is an important part of financing criminal activity.

This Bill will give law enforcement agencies the ability to monitor the movement of large amounts of cash and thus to identify the recipients of proceeds of crime. The legislation is consistent with calls by a number of royal commissions and other inquiries in recent years for stronger measures to deal with the widespread abuse of the facilities of financial institutions in relation to tax fraud and other criminal activities. The Bill implements a scheme for the reporting of certain large currency transactions conducted through various institutions and certain transfers of currency into and out of Australia.

The reporting of large scale cash transactions conducted through certain types of cash dealers, the reporting of the export of foreign currency and the reporting of the import of foreign and Australian currency, together with the verification of the identity of persons who open, or operate, accounts with certain financial institutions, are essential measures to enable the cash economy to be controlled

1 Attorney-General's Department Submission No. 35, p. 30.

and to minimise tax evasion. The reports will also be of great value in following the money trail in relation to proceeds of all criminal activities, including tax evasion, and in detecting financiers of criminal activity such as drug trafficking. The thrust of the scheme is broadly similar to the successful scheme in operation in the United States.

My recent visit to the United States has confirmed my conviction that the ability to monitor the movements of large amounts of cash, both domestically and internationally, is an essential aspect of the fight against organised crime and has very substantial benefits in the effective collection of revenue. United States officials informed me that several hundred million dollars were recovered last year from their export/import reporting requirements alone.²

The Criminal Environment

9.6 Internationally organised crime is recognised as a very serious threat to democratic institutions and social stability. There is considerable fear amongst law enforcement agencies in Australia that criminal organisations traditionally associated with other parts of the world such as Colombia and Hong Kong are seeking to expand their operations into the Australian market. This fear has been expressed by law enforcement agencies on a number of occasions.³ Such internationally organised groups are involved in a vast range of criminal activity including drug trafficking, major fraud, tax evasion and other financial crime.

9.7 AUSTRAC states there is ample evidence to indicate that organised crime is a significant and escalating threat to Australia.⁴ Casinos pose a particular risk in this area because of the international nature of their operations and of the banking system through which they function. At the domestic end, on the other hand, the more obvious ways of money laundering through casinos have been eliminated, largely through the requirements of the FTR Act.⁵

2 *House of Representatives Hansard*, 13 May 1987, p. 3104 (Mr Bowen).

3 See paper by Bill Coad and David Richardson, "Reducing Market Opportunities for Organised Crime", delivered for Australian Academy of Forensic Science, Sydney, 20 May 1993, pp. 9-11 and G. Pinner, "The Money Trail - Looking Ahead and Reflecting Upon the Past", AUSTRAC Papers 1992, p. 1.14.

4 *Ibid*, Coad and Richardson, p. 11.

5 Dr. Chaikin, *Evidence*, p. 116.

9.8 Since Costigan, it has become recognised that focussing on the financial aspects of organised crime is the most effective strategy to counter it. AUSTRAC and the FTR Act assist this strategy by erecting barriers in the financial sector against illicit money and by extracting information from the financial sector for law enforcement purposes in the fight against organised crime and major tax evasion. It is widely recognised that organised crime is motivated by profit and that the illicit source of that profit is disguised through money laundering.

Loopholes

9.9 Money laundering is a term used to describe the process by which illegal income is disguised to make it appear legitimate. This has been identified as a process with three stages⁶ -

"placement"	-	the physical disposal of bulk cash,
"layering"	-	a series of transactions which spreads the money through a series of accounts, and
"integration"	-	moving the funds to legitimate organisations.

9.10 It is generally accepted that funds are most vulnerable to identification at the point at which they enter the legitimate financial system, that is 'placement'. The FTR reporting system acts upon this assumption by focussing on the point of entry into the finance system to provide the necessary link in the money trail.⁷ It is achieved through:

- the identification of new account holders; and
- the requirements to report the deposit (and withdrawal) of large sums of cash and of transactions which arouse suspicion.

9.11 Breaking the paper trail not only frustrates the identification of the origin of the funds but also makes confiscation of assets acquired with

6 W.S. Weerasooria, *Money Laundering, Cash Transactions Legislation and the Banker-Customer Relationship*, June 1991, *Journal of Banking and Finance Law and Practice*

7 Discussed by Pinner, G., AUSTRAC Papers 1992, p. 1.10.

those funds difficult. Money laundering is achieved in a multitude of ways, including:

- exchange for another currency;
- investment in apparently legitimate property or businesses; and
- mixing it with legitimate funds.

9.12 There is no comprehensive definition of money laundering or conclusive list of possible activities constituting it. Dr Chaikin submitted to the Committee that virtually every facility for commerce and trade is potentially available for money laundering. He warns against trying to regulate them all at great economic cost to the community.⁸

9.13 Technological advances have depersonalised the finance industry eg, through the introduction of automated teller machines (a development which is incompatible with requirements for banks to identify and know their customers), thus increasing the potential for money laundering activity.

9.14 In AUSTRAC's view this argument cannot apply to account opening as this usually requires direct contact between bank staff and customer.⁹ Once the relationship of bank and customer is established, however, depersonalised banking follows. But, electronically generated transactions can and are being electronically screened (particularly IFTIs) and computer scanning is capable of detecting unusual conduct (eg. ScreenIT, AUSTRAC's analysis system on IFTIs to provide early warning to certain agencies on major movements of funds).

9.15 The Act does not cover all movements of moneys off-shore and there are also many domestic financial transactions which are not reportable. It might be useful, say, for AUSTRAC to have access to information on all financial transactions, not just those presently covered by the Act. However, it is generally recognised that such a solution would be costly and impractical and likely to lead to unacceptable detriment to financial markets.

8 Submission No. 39, p. 2.

9 See AUSTRAC Submission No. 55, p. 9.

9.16 Dr Chaikin argues that the extension of the Act to cover IFTIs is a form of exchange control which may undermine Australia's attraction as a place for foreign investment.¹⁰ On the other hand, jurisdictions which show little interest in the way financial and other institutions are used by criminals are obvious targets for money launderers.¹¹

9.17 Another loophole identified by Dr Chaikin is the underground banking system which is beyond the reach of the FTR Act. Underground banking relies on alternatives to the banking system for methods of moving money. For example the Chinese underground banking system operates through gold shops, trading companies, commodity houses, travel agencies and money changers.

9.18 Other examples are discussed by Dr Chaikin in his paper 'Money Laundering: An Investigatory Perspective' attached to Submission 39. They do not usually involve transfers of money as such but rather operate on unrecorded systems of remote debits and credits and are thus difficult to detect.

9.19 As the reporting of IFTIs develops and confiscation laws become more successful it is alleged that the underground banking system will become more popular for money launderers. To date underground banking has not been found to be widespread in Australia. (The AFP submission refers to underground banking operating in an ethnic community nationwide which was discovered as a result of a number of suspect transaction reports.¹²) Underground banking does involve greater risks, however, for the user.

9.20 Dr Chaikin also says that to attack money launderers we need to know who they are.

9.21 AUSTRAC's response is that the FTR Act makes it more difficult for banks and casinos to be involved.¹³ Its audits of cash dealers

10 Chaikin Submission No. 39, p. 6.

11 NSW Crime Commission, Submission No. 51, p. 2.

12 Submission No. 25, p. 4.

13 Submission No. 55, p. 7.

for compliance assists in being constantly on the alert for new areas of opportunity for money laundering on both the domestic and international front. Gold bullion dealers and solicitors are being closely considered and a specific case has drawn attention to negotiable instruments.¹⁴

9.22 As the NCA points out, 'in practice it is not always possible to identify the precise extent of money laundering, or those involved, due to the secretive nature of the activity and to money laundering methods always changing to avoid detection'.¹⁵ Its report 'Taken to the Cleaners: Money Laundering in Australia' identified vulnerable areas. The NCA and the NSW Crime Commission consider that AUSTRAC information is essential to the identification of money launderers. AUSTRAC regards its watchful approach as essential to the maintenance of the integrity of the FTR system.

The Role of Financial Institutions

9.23 At the time the Act was introduced, the finance industry endorsed it, recognising the 'need for corporate citizenship on the part of banks and the other financial institutions to defeat organised crime and the drug trade'.¹⁶ On that basis they have taken a cooperative approach to the operation and further development of the legislation since its inception.

9.24 The support of the finance industry continues, but in view of the considerable costs incurred, its representatives have asked - Is it the most efficient way of achieving the Act's objectives? Is it appropriate for banks to be acting as law enforcement agencies?¹⁷

9.25 The NSW Crime Commission takes the view that because money laundering is a difficult offence to detect, and because use of the financial system is an element of money laundering, reporting by banks is appropriate. 'The time when the mythical ethic of not dobbing people in for millions of

14 See document tabled by AUSTRAC entitled *A "care and watch" strategy both finding and deterring organised crime and tax evasion*.

15 NCA Submission No. 58, p. 3.

16 Mr Cullen, Australian Bankers Association, Evidence, p. 225.

17 Evidence, Mr Chapman, Westpac, 9 June 1993, p. 77.

dollars of fraud on revenue', whether it be for social security or tax evasion, has passed.¹⁸

9.26 There is no doubt that the cooperation of cash dealers is essential to the successful operation of the FTR scheme. If that cooperation is to continue for the foreseeable future, the Government needs to ensure that the issue of the compliance cost to financial institutions is kept high on the agenda. The evidence before the Committee¹⁹ clearly indicates that 'account opening' is the greatest cost to financial institutions. This is discussed elsewhere in this report²⁰ and the changes recommended there will save a large proportion of cash dealers' compliance costs.

9.27 Cash dealers drew the Committee's attention to the amount of legislation governing the finance industry, including the FTR Act.²¹ It can be said, however, that the finance industry functions in an orderly manner because there is a regulatory scheme within which its institutions can operate. AUSTRAC submitted that most banks would accept that, since the introduction of the FTR Act, standards, particularly of customer identification, have improved. In addition, the auditing by AUSTRAC of a cash dealer's compliance with the legislation helps identify residual opportunities for money laundering within that organisation.²²

9.28 Before the FTR Act, if a bank or other cash dealer was suspicious about the nature of transactions being conducted by a customer, the reporting of their suspicion would be a matter for the common law. A banker's obligation of customer confidentiality was considered to be a matter of implied contract, subject to four well-known qualifications²³. Disclosure by the bank of information relating to the customer's account can be disclosed where:

18 Mr Bradley, Evidence, p. 91.

19 Discussed in Chapter 6 'Account Opening Procedures'

20 See Chapter 12 'Cost Effectiveness'

21 Evidence, Mr Edwards 8 June 1993, p. 40 ff

22 Evidence, Mr Coad 10 June 1993, p. 245

23 See *Barclays Bank plc -v- Taylor* [1989] 3 All ER 563 which also cites *Tournier -v- National Provincial and Union Bank of England* [1924] 1KB 461

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- disclosure is under compulsion by law;
 - there is a duty to the public to disclose;
 - the interests of the bank require disclosure; or
 - disclosure is made by express or implied consent of the customer.

9.29 The FTR Act makes it clear that a cash dealer who makes a report in compliance with an obligation under the Act, or mistaken belief that they are so obliged, (being a suspect transaction report or an IFTI report) is protected from any suit or other proceeding arising from that report.²⁴

9.30 The Committee is satisfied that the effectiveness of the Act is attributable to the cooperation of the finance industry. It urges Government and cash dealers to continue to approach the objectives of attacking the financial base of organised crime and tax evasion cooperatively.

Early Days

9.31 The FTR Act was passed by Parliament in 1988, but very few of its provisions actually commenced at that time:

- Suspect transaction reporting commenced on 1 January 1990.
- Significant cash transaction reporting and international currency transfer reports commenced on 1 July 1990.
- Identification of new account holders and new signatories to accounts applied from 1 February 1991.
- International funds transfer instruction reporting commenced on 6 December 1992.

9.32 It was put to the Committee that financial crime is often very complex and the process of investigation and subsequent prosecution takes

²⁴ See subsection 16(5) and 17D *Financial Transaction Reports Act 1988*

a long time²⁵. Some can take 5 years from the identification of suspicious activity to conviction and then confiscation of the proceeds of the activity. If this is the case, it can be expected that as time goes on the benefits will increase and that immediately significant results would be unlikely.

9.33 The ATO²⁶ and the CJC²⁷ expressed the view that success rates will increase over time, particularly as investigators recognise more opportunities to use the data as they interrogate the database more and the more familiar they become with it.

9.34 The NSW Crime Commission submission listed a number of factors which influence the realisation of the full potential of AUSTRAC information as follows:

- a) In law enforcement terms the methodology is still relatively new, as are the offences of money laundering and confiscation schemes. There is a low level of awareness among investigators and prosecutors.
- b) Most money laundering offences require proof of some 'predicate' crime. There can be a great deal of evidence indicating acquisition of funds inconsistent with licit sources, but the actual source is often difficult to prove. Therefore, prosecutions for money laundering are difficult to prove.
- c) A system, designed to stop unlawful exchanges of cash, needs to be alert to changes in practices to defeat the system. Criminals now have a high level of awareness. The legislators should respond by broadening the category of persons required to report, eg. solicitors, because such avenues of evasion reduce the effectiveness of the legislation.
- d) In some respects the perception of a failure to capitalise on AUSTRAC information is inaccurate. There have been few convictions in this State due to the delay in court processes. There are some worthwhile cases in the pipeline. Also it should be noted that the role of AUSTRAC information, in targeting an offender for prosecution or confiscation action, is not always apparent. ... it is

25 Evidence, Ms Johnson p. 247.

26 Submission No. 43, p. 2.

27 Submission No. 14, p. 8.

usually a combination of AUSTRAC information and other intelligence. The AUSTRAC intelligence is often converted into evidence without attribution to AUSTRAC.²⁸

These matters suggest to the Committee that it would be premature to make a judgement on the effectiveness of this Act.

9.35 In a supplementary submission²⁹ AUSTRAC asserts that in more recent times strategic and tactical financial work is being taken up by law enforcement efforts on organised crime. They have pointed to 5 ways AUSTRAC data can be used for law enforcement purposes:

- as a monitoring device for deterrent and information purposes;
- as information imputed into law enforcement operations of a traditional kind - part of the information to build a case of drug trafficking;
- as information for proceeds of crime and other confiscation matters helps to construct the money trail;
- as a core part of the identification of the financial and corporate structures of organised crime enterprises;
- as an audit base for AUSTRAC to monitor compliance by cash dealers and identify firms that may be facilitating money laundering.

9.36 These methods will require a high level of expertise in understanding what might be very complex financial arrangements which the average, traditional-thinking, investigating officer may be unable to recognise. AUSTRAC information can often be ignored.

9.37 Training of all relevant investigators, but particularly police on the use of financial data and the development of specialist expertise in this kind of investigation would clearly improve the usage of AUSTRAC data in the ways listed above. AUSTRAC has suggested that bodies like the Criminal Justice Commission, the NSW Crime Commission and the National

28 Submission No. 51, p. 1.

29 Submission No. 55, p. 5.

Crime Authority might be best placed to tackle this role³⁰ and develop the necessary expertise. Until this kind of approach is widely adopted in the law enforcement community the potential usage of FTR data will remain limited. To quote from the CJC's submission³¹:

9.38 If agencies in Australia are to reap the benefits of the achievements of AUSTRAC, they will have to organise and resource themselves better to undertake the type of investigations to which sophisticated information sources are most relevant.

Conclusion

9.39 The Committee has considered the evidence available on the results achieved to date, in both the recovery of tax revenue and the prosecution of criminal activity, under the FTR Act and through AUSTRAC. There is evidence as to the forensic value of FTR data and AUSTRAC analysis but it is too early to make a final judgment as to the degree of effectiveness in the use of that data by law enforcement and revenue agencies.

9.40 The Government has announced in the budget context a review of Commonwealth law enforcement arrangements. The Minister for Justice, Duncan Kerr said in announcing the review: 'Existing enforcement arrangements, including the roles of the Australian Federal Police, the National Crime Authority, AUSTRAC, the Australian Securities Commission, the Australian Bureau of Criminal Intelligence and other portfolio agencies, will be examined in light of the emergence of new criminal threats and the options for Australia to meet its responsibilities in this area.'³²

9.41 AUSTRAC has argued along with the CJC³³ 'that more effort is needed to develop financial and corporate profiles of the principal

30 AUSTRAC Submission No. 55, p. 6.

31 CJC Submission No. 14, p. 12.

32 Attorney-General's Department Media Release, 17 August 1993

33 AUSTRAC Supplementary Submission No. 55, p. 6.

organised crime groups to develop strategies to curtail the growth of those empires'. Specifically AUSTRAC's proposals are as follows:

- to have some specific area of law enforcement expertise at a Commonwealth level which focuses on the commercial enterprises of organised crime and their financial underpinning. Some of the work of the National Crime Authority is heading in this direction;
- that police training on the use of financial data bases be continued;
- that work continue to ensure that the financial reporting requirements are not circumvented by money laundering activities of criminal groups and their facilitators, so as to maintain the hostility of our financial sector against international organised crime. Work in this respect is being done by AUSTRAC and the Australian Federal Police and I would like to see it continue to be encouraged.

The Place of FTR Data in Investigations

9.42 The Australian Federal Police has said that information collected by AUSTRAC is proving to be extremely valuable in the identification of assets of drug and organised crime figures.³⁴ Its submission describes a number of situations in which AUSTRAC data has been instrumental. In evidence before the Committee the AFP also referred to some specific investigations in which FTR information played a significant part, such as 'Operation Elastin'.³⁵

9.43 Mr Valentin of the AFP had this to say on the matter³⁶:

We say that the legislation is an essential part of that package of legislation which over recent years has been provided to law enforcement agencies and which now the AFP finds itself reliant upon to effectively achieve its objectives.

34 Australian Federal Police Submission No. 25, p. 3.

35 Evidence, Det Constable Westra, pp. 8 -9.

36 Evidence, p. 22.

9.44 This view is supported by submissions of the NCA, AUSTRAC and the NSW Crime Commission and evidence of their representatives before the Committee.³⁷

9.45 For the ATO the information has proved useful, in the current self-assessment regime, in identifying taxpayers most deserving of further scrutiny. ATO points to four areas of the Act which contribute to the enforcement of taxation laws:³⁸

- account opening procedures, linked with tax file number requirements,
- suspect transaction reporting which accounts for 90 per cent of its direct results,
- significant cash reporting which identifies geographic areas and large amounts of cash which warrant further inquiry, and
- more recently, international funds transfers (previously costly and time consuming to acquire) enhance ATO efforts against international tax evasion.

9.46 The NCA says the usefulness of the AUSTRAC database increases as the volume of data increases. 'This allows a better perspective to be obtained of various transactions recorded on it, and to assist in establishing patterns of activity by, for example, identification, locality etc.'³⁹ It goes on to describe macro analysis of the data as:

37 Mr Coad tabled a document titled *Direct Results from Suspect Transaction Reports*, Mr Power of AUSTRAC discussed Operation Quit (Evidence pp. 11-13), Mr Sherman referred to AUSTRAC information as 'very real and important intelligence on criminal activity' (Evidence, p. 17) and Mr Bradley of the NSW Crime Commission discussed the use made of AUSTRAC data by that agency (Evidence, pp. 87-90)

38 Evidence, Mr Mitchell pp. 235 - 237.

39 NCA Submission No. 58, p. 3.

... analysing on a large scale regions, industries or some other common elements to identify patterns of potential money laundering or some other form of unlawful activity.⁴⁰

9.47 The NCA said that it has committed significant resources to its involvement in this kind of analysis and this has produced significant results for the agency:

One of its senior financial investigators is devoted to liaison with AUSTRAC and to making various types of enquiries on the database in an attempt to identify various unlawful activities. This form of enquiry has for example led to (a) the ultimate arrest of 6 persons involved in the theft of travellers cheques valued at \$32 million and other related offences, and (b) a referral to the Australian Federal Police of a matter which was believed to involve a significant drug importation.⁴¹

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.

Evidence or Intelligence?

9.48 The NSW Crime Commission said that the role of AUSTRAC information in targeting an offender for prosecution or confiscation action is not always apparent. AUSTRAC information, in combination with other intelligence, is often turned into evidence without being attributed to AUSTRAC.⁴² The methodology for using AUSTRAC information is still new, and there is a low level of awareness among investigators and prosecutors.

9.49 There was some debate before the Committee about whether FTR information is regarded only as evidence, to be available as such in a

40 Ibid, p.4.

41 ibid, p. 4.

42 Submission No. 51 (NSW Crime Commission) pp. 1-2.

prosecution, or whether the database really represents a reservoir of intelligence to which law enforcement agencies can go to look for leads in their investigations.

- The NCA's view was that it should be a body of intelligence.⁴³
- The NSW Office of State Revenue described it as a trigger from which a systematic trace of what suspected tax evaders are up to can follow.⁴⁴

9.50 The AFP said the distinction was not clear:

... in many cases AUSTRAC information may start a line of inquiry which would ultimately require the production in evidence of some of the base material that might have come from the financial institution as proof of the conduct alleged. In many another case, it could be that a course of inquiry is well and truly under way anyway, and that in the course of that inquiry, we are directed towards some financial activity which may in its own way then become proof of the conduct alleged or ultimately become evidentiary in the sense of proceeds of crime action or some other subsequent action perhaps beyond the main stream of criminal processes...⁴⁵

9.51 AUSTRAC information is usually part of a general brief which goes towards the investigation of a drug conspiracy or other breach of criminal law or a case of tax evasion. There will be times when suspect transaction reports alone will produce direct results in the form of prosecutions.⁴⁶ In most cases, however, AUSTRAC information will play a more indirect, but nonetheless important, part in detecting breaches of the criminal law and revenue legislation.

Results on Suspect Transaction Reports

9.52 It is difficult to quantify precisely the results achieved thus far through suspect reporting. The Committee received ample evidence from

43 Mr Sherman, Evidence, p. 62.

44 Mr Buchanan, Evidence p. 83.

45 Mr Valentin, Evidence, p. 63.

46 See document tabled by Mr Coad, 'Direct Results from Suspect Transaction Reports'

both law enforcement bodies⁴⁷, the Attorney-General's Department⁴⁸, AUSTRAC⁴⁹ and the ATO⁵⁰ about the amount of tax revenue recovered, criminal investigations undertaken and prosecutions completed or commenced as a result of reports under the FTR Act.

9.53 There are also unquantifiable results attributable to the 'compliance mentality' which is encouraged by having this legislation in place, such as tax paid by people who would have continued to evade tax but for the existence of the Act. There would also be a significant amount of major criminal activity diverted elsewhere or not undertaken as a result of the hostile environment created by this legislation.

... the benchmark of cash reporting coupled with inspection (audit) powers, provides a useful tool in making the financial sector more difficult for the laundering of money and tax evasion.⁵¹

9.54 AUSTRAC provided the Committee with a list⁵² of cases in which suspect transaction reports played a key role in police inquiries.

- All the listed cases have resulted in charges being laid against offenders, some have been sentenced or fined.
- Some have led to major money laundering inquiries and recovery of tax owing.
- In a number of other cases the suspect transaction report has supplemented police intelligence.
- 100 or so other matters of less significance were also referred to.

47 Evidence, pp. 8-13, 15-22.

48 Attorney-General's Department Submission No. 35, p. 30.

49 AUSTRAC Submission, p. 77 & ff

50 ATO Submission No. 43, pp. 5-6.

51 AUSTRAC Submission No. 13, p. 123.

52 AUSTRAC: Direct Results from Suspect Transaction Reports. Submission No. 48.

9.55 Frequent mention has been made in submissions and evidence of a joint investigative task force in which AUSTRAC data has played a significant role, known as Operation Quit. This operation has to date enabled the recovery of significant sums of evaded State tobacco taxes. Other such joint operations were also discussed at length during evidence.

9.56 Results in terms of successful prosecutions which can actually be sheeted home to one or more pieces of FTR data are small in number. This might, in any event, be an artificial measure of effectiveness when considering the many ways in which the data may be used in the course of an inquiry or investigation.

Taxation Revenue Results

9.57 The ATO says it has achieved considerable success in detecting tax evasion through the use of valuable AUSTRAC data⁵³ which was not previously readily available to it. Before the FTR Act it was often difficult to follow the money trail. Combined with the Tax File Number legislation, the FTR Act encourages voluntary compliance with taxation laws.

9.58 The ATO is upgrading its systems and processes to make more use of AUSTRAC data. ATO said it is confident that the revenue yield, especially from significant cash transaction reports, will increase significantly over the coming years.⁵⁴ The submission points to additional tax and penalties to date as a direct result of use of AUSTRAC data by ATO (mainly through follow up of suspect transaction reports) of over \$30 million. This is described as extra revenue the ATO may not otherwise have collected.

9.59 In the general scheme of taxation gathering, this may not be regarded as a significant achievement. However, the view of both AUSTRAC and ATO is that this will increase with the improvements in processes and with increase in the information on the database.

53 ATO Submission No. 43, p. 1.

54 ATO Submission No. 43, p. 2.

Some problems relating to the usage of AUSTRAC data by tax officers were encountered early on.⁵⁵ These are discussed in the ATO Submission, along with the measures undertaken to correct them:

- *Data integrity*

Problems of inaccurate information reported by cash dealers has been overcome by AUSTRAC undertaking an audit and cleansing to fix up the incorrect data.

- *Access to the AUSTRAC system*

Low usage by ATO officers has been solved by better distribution of computer terminals and improved computer literacy. Computer systems used have had inconsistent keyboard functions which is being addressed through user feedback and redevelopment of the system.

- *Printing*

Overcoming delays in printing reports is presently being investigated by AUSTRAC and ATO jointly.

- *Initial information time-lag*

The delay between reports being made and checking against tax returns had an effect on results in early days. These timing differences are no longer relevant.

- *Procedures*

Inconsistent handling procedures between different ATO offices is being addressed by the ATO Cash Economy Working Party which was established to identify best practices and recommend procedures for national implementation.

Training has also been identified as an issue. Staff trained in the initial burst when the legislation commenced have moved on and gradual reduction in knowledge about AUSTRAC has resulted. The

⁵⁵ See ATO Submission No. 43, p. 25.

solution in progress is greater efforts by ATO's national office to keep branch officers informed and continuing training requirements are to be met along with higher level liaison with AUSTRAC through the placement of a Senior ATO officer within AUSTRAC.

9.60 With these problems being overcome, the future benefits the ATO expects are:

On the basis of results so far and the expansion of the types of transaction covered by cash reporting, it would not be unreasonable to expect recovery of evaded tax to exceed \$20 million per annum with the systematic approaches now being implemented across Australia.⁵⁶

9.61 ATO also expects to achieve major results from the availability of IFTI information. Such information will assist intelligence efforts in international tax evasion.⁵⁷

9.62 On the other hand the ATO has been criticised for making insufficient usage of AUSTRAC data, given the principal object in section 4 of the Act - 'to facilitate the administration and enforcement of taxation laws'. The Privacy Commissioner's view was that AUSTRAC basically acts as agent for the ATO⁵⁸, and yet they only take further action on 70 per cent of the body of data obtained.⁵⁹ The ATO stated that it has been concentrating on suspect transaction reports. However, significant cash transactions and movements of cash through airports was described as 'useful'.⁶⁰

9.63 There appears to be considerable room for greater usage of AUSTRAC data by the ATO, although some of the past deficiencies are being addressed as discussed above. These are really operational issues in the main and the Committee considers that the ATO may need to take the

56 ATO Submission No. 43, p. 5.

57 Mr Mitchell, Evidence p. 236-7.

58 Evidence, Mr O'Connor, p. 252.

59 Evidence, Mr Mitchell, p. 256.

60 Submission No. 43, p. 6.

FTR Act on board in a more positive and active way to take proper account of the principal object of the Act.

9.64 As with the results to date in the detection and prosecution of serious crime, it may be too early to make a judgement on the value of AUSTRAC data to the revenue. ATO is still developing its methods and usage of the data with an expectation of greater gains. Some account has to be taken of the delay that normally exists between the notification of an irregularity and the recovery of the relevant unpaid tax.

Recommendation

9.65 The Committee is concerned to see that progress on the better and more efficient usage by ATO of AUSTRAC data, as discussed above, is undertaken.

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.

9.66 The Committee notes the ATO view that other benefits which stem from the FTR Act and which are not readily quantified include increased voluntary compliance, positive community attitudes, improved productivity in the ATO, more efficient practices in the ATO and fewer opportunities for law breakers.⁶¹

⁶¹ Mr Mitchell, Evidence p. 238.

9.67 In the system of self-assessment that now exists in the tax area, there needs to be in place a number of incentives for tax payers to accurately assess their tax liability. The ATO argues ⁶² that public knowledge of the reporting requirements, particularly in relation to large cash transactions, and the fact that the information is available to the ATO has an effect on the correctness of statements in tax returns. This kind of result is not measurable.

9.68 AUSTRAC data also helps ATO identify areas of the community which are worth a closer look because of risk to the revenue. This assists the ATO's risk management approach. The account opening procedures also provide accurate information about account holders and identify tax payers who are not returning correct amounts of income from investments.⁶³

Interaction of AUSTRAC with Law Enforcement Agencies

9.69 An underlying theme in the Costigan report was the need for cooperation between agencies in dealing with organised crime. The National Crime Authority has a major role in this. The NCA's charter is to investigate certain types of criminal activity including offences:

- carrying a penalty of imprisonment of three years or more;
- involving two or more offenders;
- involving substantial planning and organisation;
- using sophisticated methods and techniques;
- of a kind ordinarily committed in conjunction with other like offences, and involve theft, fraud, tax evasion, illegal drug dealings, currency and company violations etc.⁶⁴

9.70 The NCA has investigated such activity by groups operating interstate and overseas in relation to breaches of both Commonwealth and State/Territory laws. The NCA operates in cooperation with other law

62 Submission No. 43, p. 8.

63 Mr Mitchell, Evidence, p. 235. The areas of ATO which make most use of AUSTRAC data are Taxpayer Audit and Lodgment Enforcement.

64 NCA Submission No. 27, p. 2.

enforcement agencies and establishes joint task forces for investigations of specific criminal activity.⁶⁵

9.71 AUSTRAC is seen by law enforcement agencies as a tactical and philosophical ally in the response to organised crime.⁶⁶ AUSTRAC's role in the national and cooperative strategies against organised crime is described in one of its own submissions as follows:

AUSTRAC is not an agency in competition with police. AUSTRAC is a service agency for the various law enforcement bodies which investigate organised crime. AUSTRAC also provides a service to the Australian Taxation Office for the purpose of identifying tax evasion. AUSTRAC is also the main regulatory agency to achieve the Costigan inspired reforms of the financial sector to make it more hostile to organised crime.⁶⁷

9.72 A number of cooperative task forces have been set up to which AUSTRAC, the NCA and the AFP frequently referred in the course of evidence. Some of these have also involved the ATO. To date there have been significant results achieved by these cooperative ventures.⁶⁸

9.73 AUSTRAC describes its place in the Australian law enforcement scene in the following way:⁶⁹

Australia has a number of agencies with a degree of complementary powers relevant to money laundering work. To be effective in respect of money laundering and the financial underpinning of organised crime, these various powers need to be used in a complementary way. In a number of areas, cooperative effort to this effect is in early stages. Properly developed it could provide a major brake on organised crime in Australia.

65 *ibid*, p. 3.

66 CJC Submission No. 14, p. 2.

67 AUSTRAC Submission No. 49: Reducing Market Opportunities for Organised Crime, p. 20.

68 See the discussions of Operation Quit, NCA Submission No. 27, p. 7, Evidence, Mr Power, p. 11-13.

69 AUSTRAC Submission No. 13, p. 131.

9.74 The CJC supports the multi-disciplinary, team based organisation of investigators with a strong financial analysis component, not a universal practice, eg. very few law enforcement agencies would have accountants employed.

9.75 The Committee draws attention to its earlier remarks on the need for a clear statutory authority for AUSTRAC's participation in such task forces.

International Obligations

9.76 Finally there is the question of whether Australia has gone further than necessary in meeting its international obligations. This was particularly argued by the Australian Bankers Association.⁷⁰ They acknowledged that Australia leads the way in the implementation of the recommendations of the Financial Action Task Force (FATF) to improve the fight against money laundering but queried whether the costs involved in Australia's implementation approach were out of proportion to what is required to meet the FATF obligations.

9.77 On the other hand there is the argument put by Mr Sherman in evidence to the Committee that in the context of attacking the problem of money laundering:

... the international community is now moving more and more towards ensuring that our legal structures and financial systems are alert and doing their best to detect the phenomenon of money laundering throughout the world. In considering the AUSTRAC legislation and the AUSTRAC regime, I think it needs to be considered as part of Australia's response and part of a wider international response to this particular problem.⁷¹

9.78 He goes on to point to two benefits of the AUSTRAC regime:

Firstly, it has a deterrent effect on money launderers throughout the world. If people see that Australia is serious in its mechanisms, they are less likely to use our systems. ... If people in the international community and money

⁷⁰ ABA, Submission No. 26, pp. 1 & 5.

⁷¹ Evidence, p. 16.

launderers see that Australia does have mechanisms and is on guard and watching ... it is a very valuable deterrent.

... The other great benefit that the law enforcement community derives out of AUSTRAC processes ... is very real and important intelligence on criminal activity.⁷²

9.79 Mr Sherman also says that twenty one of the twenty six member countries of the Financial Action Task Force (FATF) now permit the reporting of suspect transactions and nine require such reporting. As president of FATF, Mr Sherman's view is that the figure of nine will increase over time. He also informed the Committee that twenty one of the twenty six members require authentication of bank accounts in some form.⁷³

9.80 With adjustments, discussed elsewhere, to the account opening requirements and the substantial reliance on electronic reporting on which the FTR Act operates, the costs to the finance industry can be kept down to a reasonable level.

9.81 The Committee considers Australia should continue to strive to adopt all possible methods of reducing, if not eliminating, opportunities for money laundering in the Australian financial system and thus of deterring the growth of organised crime in this country.

Conclusion

9.82 Clearly the full potential for the FTR Act has not yet been realised. The Committee is not satisfied that law enforcement agencies are doing all they can to fully develop that potential with a view to achieving the stated objectives of the Act to a maximum degree.

9.83 In particular, there has been some criticism of the ATO's usage of AUSTRAC data, given the principal object of the Act and the direct access to the AUSTRAC database the ATO has which other agencies do not enjoy. The Committee considers that the ATO should be closely

72 Evidence, p. 17.

73 Evidence, p. 17.

examining ways to increase its usage of all forms of AUSTRAC data with a view to increasing the revenue results.

9.84 Other law enforcement agencies also need to devote greater resources and attention to encouraging better usage by investigators of the information, through training and concentrated development of expertise in the investigation of financial crime.

9.85 The cooperation of the finance industry in the achievement of the objects of the Act is extremely valuable and needs to be encouraged by receptiveness to the misgivings in that industry about the costs involved and the unfamiliar role of informer.