DISSENTING STATEMENT BY SENATOR SPINDLER

The legal profession is currently exempt from the reporting requirements of the Financial Transaction Reports Act 1988.

The Committee does not recommend any change in this area and my dissent from the Committee's Report is limited to this issue.

On balance I have reached the view that the Financial Transaction Reports Act 1988 should be amended to require legal practitioners to report all cash transactions above $5000. The reporting requirement should not extend to "suspicious" transactions to avoid possible conflict with the practitioners duty to safeguard his or her client's interest.

During the course of the Inquiry the Committee heard compelling evidence about the involvement of members of the legal profession in money laundering. The Chairperson of the National Crime Authority informed the Committee that:

> there are some aspects of money laundering that it is virtually impossible to perpetrate unless you have the assistance of lawyers. By that, I mean the conversion of funds and the integration of funds by the purchase of real estate and setting up companies and so on.[17]

This evidence was not in the form of unsupported generalisations. Twenty seven case studies were provided to the Committee and most disclosed the involvement of legal practitioners. For example, in one case study a solicitor received $42,000 from a client to form part of the funds for a property transaction. The money was recorded in the trust account ledger, and banked, on eight different days over a two week period. No amount exceeded $8,000. The solicitor explained this conduct by saying '.... that if someone deposited that much cash in one go it was bound to give rise to some sort of inquiry.'[18]

---

17 Evidence (Mr Sherman) p 128.

18 Submission no. 29 (AUSTRAC and NCA joint submission) Appendix 1, Case Study 12 p 34.

Other case studies illustrated the use of complex and unusual arrangements to finance property transactions,[19] and wilful blindness to the use of false names to operate bank accounts and to acquire property.[20] Other case studies were appended to the joint submission by AUSTRAC and the NCA.

In response to this evidence the Law Society of NSW and the Law Institute of Victoria referred to the role that solicitors have in keeping the justice system functioning, the duty which solicitors have to keep client information confidential and the fiduciary duty owed by a solicitor to the client.

In response to these arguments the NCA pointed out that the law on solicitor-client confidence admits there are exceptions to the duty of confidence. In evidence to the Inquiry the NCA chair quoted the case of *Gartside -v- Outram* (1856) 26 LJ Ch 113 'there is no confidence as to the disclosure of iniquity'.

Earlier in 1991 the NCA had completed an exhaustive 12 month inquiry into money laundering in Australia carried out by four multi-disciplinary NCA teams and recommended that the definition of 'cash dealers' in the Financial Transaction Reports Act be widened to include solicitors. This recommendation was not accepted by the Government.

'Cash dealers' are required to report suspicious transactions and significant cash transactions (cash transactions of $10,000 or more). The NCA's proposal to extend the definition of 'cash dealer' to include solicitors was again advanced in the current Inquiry as the NCA's proposal and does not involve 'any great violation of the common law' according to the Chair of the NCA.[21] In any event, Parliament can qualify the common law and does so regularly in a considered way.

My own proposal does not go as far as the NCA's proposal. I accept that the reporting of suspicious transactions does pose a greater risk to the integrity of the solicitor-client relationship than does the mechanical reporting of all cash transactions above a certain amount. A witness for the Law Society of NSW told the Committee that there is a distinction to be made between the two types of reporting when he said in evidence:

> In very broad principle, I have no objection to the reporting of facts of an objective nature - by that, I mean significant cash

---

19 ibid, case study no. 27, p 43.

20 ibid, case study no. 20, p 38.

21 Evidence (Mr Sherman) p 129

> transactions. But I wonder whether I am sufficiently taking into account the position of clients when I say that we would have no objection to objective reporting. On the other hand, the Law Society is totally opposed to the Act being extended to solicitors in regard to suspect transaction reporting.[22]

I appreciate the distinction which was drawn by the representative of the NSW Law Society, and I understand the concerns that some solicitors would have about suspect transaction reporting. Accordingly, I believe that solicitors should be required to report as objective facts all cash transactions of $5,000 or more but should not be required to report suspect transactions. The lower threshold for the reporting of cash transactions would reduce the possibility of transactions being split in order to avoid the reporting threshold. Of course, any evidence of splitting of transactions detected by Law Society auditors should be investigated as possible evidence of professional misconduct.

I recommend that the *Financial Transaction Reports Act 1988* be amended to require that solicitors report to AUSTRAC all cash transactions to which they are a party of $5,000 or more.

Senator Sid Spindler

---

22 Evidence (Mr Norton) p 121.