



DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK

[INSERT DATE] 2010

**INFORMATION MEMORANDUM FOR SECRETARY GEITHNER AND DEPUTY  
SECRETARY WOLIN**

**FROM:** James H. Freis, Jr., Director, Financial Crimes Enforcement Network

**SUBJECT:** Regulations Requiring Financial Institutions to Report Cross Border Electronic Transmittals of Funds

**Summary**

The Financial Crimes Enforcement Network (FinCEN) has submitted to the Federal Register a notice of proposed rulemaking (NPRM) that will require banks and money services businesses to report to FinCEN a class of transactions currently subject only to FinCEN recordkeeping requirements: cross-border electronic transmittals of funds (international wire transfers). We expect the NPRM to be available for public inspection on Wednesday, September 29 and published on Thursday, September 30.

The collection of this information will be tremendously valuable to the government's efforts to combat money laundering, drug trafficking, terrorist financing, and tax and customs evasion. The structure of the proposal requires the subset of larger banks as well as money transmitters that handle the cross-border component of these transactions to submit to FinCEN a copy of records already kept in the normal course of business. Additionally, all depository institutions would be required to report taxpayer identification numbers associated with the international funds transfers (information not currently included in the transfer instructions) on an annual basis, which will make the transaction data more readily useful, particularly in support of efforts to reduce U.S. tax evasion involving offshore accounts. This proposal has been reviewed by all relevant policy offices in Treasury, in addition to the IRS, FinCEN, and the Deputy Secretary.

**Background**

Currently, under record keeping rules issued by FinCEN, in part together with the Board of Governors of the Federal Reserve System, financial institutions are required to keep records of all transmittals of funds of \$3,000 or more. The Intelligence Reform and Terrorism Prevention Act of 2004 required Treasury to study the feasibility of making certain aspects of this recordkeeping regime into a reporting regime. If Treasury determined that such a requirement was feasible, the Act required regulations to be issued mandating such reporting to begin once FinCEN had the systems in place to accept such reports. The Act placed a December 2007 deadline for the implementation of this system.

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In 2006, FinCEN completed a Congressionally mandated report titled *Feasibility of a Cross Border Electronic Funds Transfer Reporting System Under the Bank Secrecy Act* (feasibility report). The feasibility report noted that while a system would be feasible, more study was required on the implications for industry and the benefits to law enforcement. The feasibility report further determined that implementation of this system by December 2007 was not possible. To identify the implications for industry and the benefits to law enforcement, FinCEN worked with the Bank Secrecy Act Advisory Group to get input from law enforcement, industry, and regulatory stakeholders, and undertook a study to gather more information. The study found that this information would be reasonably necessary to support a wide range of law enforcement efforts including: counter-terrorism, counter drug trafficking, and trade based money laundering. This study also revealed that provision of this information to FinCEN would impose only a modest cost on a small portion of the financial industry (approximately 300 banks and 700 money transmitters). FinCEN estimates that the impact would be \$94,000 annually for large banks and \$12,000 annually for small banks. The effect on large money transmitters would be \$52,000 annually and the effect on small money transmitters would be \$20,000 annually. In addition, large money transmitters would incur a one-time set-up cost of \$250,000.

Treasury has also periodically considered the reporting of international funds transfers as a method to reduce U.S. tax evasion involving offshore accounts. During FinCEN's study of this issue in 2007-2008, the IRS indicated that it would be able to utilize the information to gain additional information about specific instances of cross-border tax evasion, but only on a limited basis. Specifically, the IRS's ability to use the information would be limited to instances where identifying information of the taxpayer is already available to the IRS. For the IRS to implement a more robust compliance program aimed at identifying taxpayers who are potentially evading U.S. tax obligations, the information reported with respect to cross-border electronic transmittals of funds would need to include taxpayer identification numbers (TINs) (i.e., social security numbers or employer identification numbers).

Also, the Administration's Fiscal Year 2010 Revenue Proposals include a proposal under which certain intermediaries would be required to file an information report, including relevant TINs, regarding transfers of money or property with a value of more than \$10,000 made to or received from a foreign bank, brokerage, or other financial account on behalf of a U.S. person (or on behalf of any entity of which the U.S. person owns, actually or constructively, more than 50 percent of the ownership interest). For the purposes of their international enforcement program, the IRS considers the reporting of TINs to be a key component of any international funds transfer reporting regime.

### **The NPRM**

FinCEN has drafted an NPRM that would implement the reporting requirement of the Intelligence Reform and Terrorism Prevention Act of 2004 and has consulted with the staff of the Board of Governors of the Federal Reserve to gather their perspective on the proposal. During the prior Administration, this NPRM was cleared by Treasury and submitted to OMB for the formal review process in early January, 2009, but was not published prior to the change of Administrations. Since that time, in coordination with the IRS, the Office of Tax Policy, and other pertinent policy offices within the Treasury Department, we have included language

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proposing the collection of tax payer identification numbers from both banks and money transmitters. A brief summary of the framework that the current NPRM establishes is provided in Tab 1.

Accordingly, the current NPRM includes a requirement that for wire transfers reported by money transmitters of \$3,000 or more, the money transmitter must include the taxpayer identification number. Alternatively, banks must provide an annual report with the account number and tax payer identification number of any account that originated or received a cross-border electronic transmittal of funds. FinCEN would then match this data with the transaction data collected throughout the year and compile a comprehensive database which would be available for use by the IRS and for purposes authorized by the Bank Secrecy Act. The applicable section of the preamble to the NPRM requests general, specific, and technical comments on this proposal, including how reporting could be done utilizing technologies and systems similar to existing annual reporting by depository institutions to the IRS (e.g., 1099 forms).

The report of cross-border electronic transmittals of funds will only apply to the approximately 300 banks and 700 money services businesses that process the cross-border component of the transmittal of funds, whereas the annual reporting requirement for TINs would apply to all banks. FinCEN consulted with the IRS to determine that the potential implications for the financial industry of this report would be similar to the implications of filing the IRS series form 1099.

Publishing this NPRM will allow FinCEN to gather comments on the proposal from industry participants. Since this is a proposed rule, Treasury would, of course, still maintain flexibility on the timing and content of any final rule actually implementing the requirements. (FinCEN has already received Congressional support, in the form of appropriated funds, for the development of this system.) Financial institutions will benefit from a long lead time prior to an effective date, which will be no earlier than January 1, 2012.

It is illustrative to note that other jurisdictions currently require institutions with operations in those countries to report cross-border electronic transmittals of funds in a very similar format to that proposed by FinCEN. For example, Australia has been collecting this data for over 15 years and Canada has been collecting it for over five years. Other countries that currently collect this data include Colombia, Croatia, Romania, and the Ukraine, among others, and Mexico will soon begin collecting this data. Thus, while it may not be entirely transferrable, institutions with operations in those countries will have experience with this type and format of reporting.

Lastly, the information technology systems necessary to make effective use of this information have been anticipated as a requirement for FinCEN's broader Bank Secrecy Act Information Technology Modernization program, and will be integrated into that modernized system.

FinCEN cleared this proposal through the Office of Management and Budget, resulting in the addition of language requested by the Office of the Comptroller of the Currency and the Federal Reserve Board discussing the utility for law enforcement, implications on the financial industry, and the protection and security of the reported information. The majority of the additional language was contained in the feasibility report and implications and benefits study associated

INFORMATION MEMORANDUM FOR SECRETARY GEITHNER

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with the NPRM. This proposal has further been cleared by the Office of General Counsel and the Executive Secretary.

**Attachment(s)**

Tab 1: Fact Sheet: Notice of Proposed Rulemaking; Cross-Border Electronic Transmittal of Funds

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**Fact Sheet**  
**Cross-Border Electronic Transmittal of Funds**

- The proposed rule applies to those financial institutions in the United States that are either the first U.S. financial institution to receive an incoming reportable cross-border electronic transmittal of funds (CBETF), or the last U.S. financial institution to process an outgoing CBETF.
- Regarding *banks*, there is no threshold on the amount of a CBETF that must be reported to FinCEN, meaning that all CBETFs must be reported. It is believed that the imposition of a threshold on *banks* would actually increase the cost of compliance by requiring segregation of transactions.
- Regarding *money transmitters*, CBETFs of \$1,000 or more must be reported to FinCEN. It is believed that this is an appropriate threshold for *money transmitters* as the industry, in large part, already observes this threshold and collects this information. For those transactions of \$3,000 or more, *money transmitters* must include the taxpayer identification number (TIN) if available.
- To fulfill reporting requirements, financial institutions can submit to FinCEN a copy of the funds transmittal order. This process is expected to require little additional effort by the financial institution to report data that it currently maintains. The draft rule allows for third party reporting.
- FinCEN is also proposing to require an annual filing by all *banks* of a list of TINs of accountholders who transmitted or received a CBETF. This additional information will facilitate the utilization of the CBETF data, in particular as part of efforts to combat tax evasion by those who would seek to hide assets in offshore accounts.
- All reporting shall be completed electronically unless an institution can demonstrate that this would be unnecessarily onerous. FinCEN will provide for discrete internet-based electronic reporting for institutions that require such a service portal; it is expected that this service will be utilized by small- and medium-sized money transmitters.
- FinCEN proposes to exempt reporting of transfers processed directly between U.S. and foreign banks that do not involve third-party customers, as well as bank transfers processed solely through proprietary systems (e.g. bank transfers processed between branches of a single bank).

**Fact Sheet**  
**Cross-Border Electronic Transfer of Funds Notice of Proposed Rulemaking**

**What would have to be reported:**

*Banks*

All cross-border electronic transmittals of funds (CBETF) made by a last-out or first-in bank (2% of total bank population) would be reported to FinCEN (CBETF Reports).

The account number and taxpayer identification number (TIN) of any accountholder that originated or received a CBETF would be reported by the originator's or beneficiary's bank annually (Annual TIN Report).

*Money Transmitters*

CBETFs of \$1,000 or more made by last-out or first-in money transmitter (4% of total money transmitter population) would also have to be reported (Money Transmitter Report). For transactions of \$3,000 or more the report would include the transmitter's or recipient's TIN.

**Format for reporting:**

CBETF Reports would be made by submitting a copy of the transmittal order in a format approved by FinCEN. It is anticipated that banks would be able to comply with this rule by submitting copies of the MT-103s (a type of SWIFT Message) associated with the reportable CBETFs to FinCEN. If an institution is not able to provide a copy of the MT-103, they would be able to comply by submitting certain information outlined in the draft rule via BSA E-filing (i.e. name and address of sender, amount of transaction, date, name and address of recipient etc.).

- The individual average estimated cost of implementing the CBETF Report would consist of \$94,000 per year for large banks, and \$11,900 for small banks.
- The proposal would impact 300 banks (2% of all banks); including 110 large banks and 190 small banks (1.5% of small banks).
- The total cost of the CBETF Report would be \$12,601,000 annually.

The Annual TIN Report would be reported in a form and manner to be determined by FinCEN (Most-likely a comma-separated file). This report would require two pieces of information per account. Banks already have systems in place used to file IRS Form 1099 that would assist in complying with this requirement.

- FinCEN anticipates that all 15,000 banks would file the Annual TIN Report.
- FinCEN estimates that the time to generate this report would be 1 hour per institution.
- The total cost of the Annual TIN Report would be \$367,000 annually.

The Money Transmitter Report will contain 10 pieces of information that is usual and customary for processing transmittals of funds (i.e. name and address of sender, amount of transaction, date, name and address of recipient etc.). The 694 low-volume money transmitters (4% of total money

transmitters) should report by utilizing FinCEN's BSA E-filing system. The 6 high-volume money transmitters (.03% of total money transmitters) should find it more economical to develop automated reporting software.

- The average estimated cost of implementing the Money Transmitter Report for high-volume money transmitters would be \$300,000 for the first year and \$52,000 each following year.
- The average cost of implementing the Money Transmitter Report for low-volume money transmitters would be \$20,000 per year.
- The proposal will impact 700 money transmitters (4% of all money transmitters); including 6 large money transmitters and 694 small money transmitters (4% of small money transmitters).
- The total cost of the Money Transmitter Report will be \$15,680,000 for the first year and \$14,192,000 for each following year.

**Form and timing of reporting:**

CBETF Reports and Money Transmitter Reports would be required on a weekly basis. The Annual TIN Report would be required once annually. FinCEN is proposing a date of compliance of no earlier than January 1, 2012.

**Exemptions:**

FinCEN is proposing to exempt the following types of transactions:

- U.S. bank to foreign bank transfers where there are no third-party customers involved, and vice versa; and
- Bank transfers handled through proprietary systems.

MEMORANDUM TO: [REDACTED]

FROM: [REDACTED]

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DATE: September 2, 2010

SUBJECT: CONVERSATION WITH SWIFT

I spoke to [REDACTED] at SWIFT-Pan Americas, New York, on the subject of the cost of retransmission of SWIFT messages containing CBETFs to FinCEN, using general alternatives and pricing available to any SWIFT member (i.e., without having to negotiate special treatment or services with SWIFT).

A SWIFT member can copy its incoming and outgoing foreign traffic to FinCEN on a message-by-message real time basis, or on a batch basis.

The cost of the real time option (FIN Copy) for the 600 US banks currently in SWIFT is as follows:

- @ 30 banks (representing 80% of total traffic) would not have to pay anything (they operate at a fixed variable cost)
- @ 70 banks (representing 15% of total traffic) would pay @ Euro 5.5 cents per message
- @ 500 banks (representing the remaining 5% of total traffic) would pay @ Euro 6.1 cents per message

The retransmission of the messages would not involve extra administrative work for the reporting bank: it would suffice to instruct SWIFT once to copy all incoming and outgoing wire transfer traffic (MT 103 and MT 202-COV messages). This option would function only with FinCEN being a SWIFT member.

The cost of the batch (close of business) option (FileAct) for the 600 US banks currently in SWIFT is as follows:

- @ 30 banks (representing 80% of total traffic) would not have to pay anything (they operate at a fixed variable cost)
- @ 70 banks (representing 15% of total traffic) would pay @ Euro 0.25 cents per message
- @ 500 banks (representing the remaining 5% of total traffic) would pay @ Euro 0.6 cents per message

In this second case, the bank would have to extract from its own message database the CBETFs it wants to batch forward to FinCEN. On the other hand, FinCEN would not have to become a full SWIFT member (the cost of software and hardware would be 'minimal').

The average cost of retransmission per message, for each option, is then:

Real time:  $(85\% \times 0.00) + (15\% \times 5.5) + (5\% \times 6.1) = \text{Euro } 1.13 \text{ cents (US\$ } 1.58 \text{ cents)}$

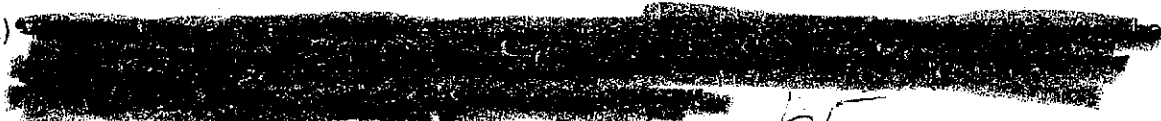
Batch:  $(85\% \times 0.00) + (15\% \times 0.25) + (5\% \times 0.6) = \text{Euro } 0.065 \text{ cents (US\$ } 0.091 \text{ cents)}$



Assimilating the three volume categories (tiers) to the three bank size tiers identified in the Study, the range of variable cost per retransmission (expressed in US\$ cents) would be:

Bank size	Real Time		Batch	
	Per message	Total	Per message	Total
Large	0.0	(1)	0.00	(1)
Medium	7.7	(1)	0.35	(1)
Small	8.5	(1)	0.77	(1)

(1)



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## Supporting Statement

### A. Justification

#### 1. Circumstances Necessitating Collection of Information.

The Financial Crimes Enforcement Network is requesting emergency approval for the attached industry survey. Through this survey, we aim to elicit from members of the U.S. financial services industry information about the conduct of electronic funds transmittals to and from the United States as part of the Bureau's ongoing study of the feasibility of requiring the institutions to report such transactions to the Bureau.

On December 17, 2004, President Bush signed into law S. 2845, the Intelligence Reform and Terrorism Prevention Act of 2004 (Act or Intelligence Reform Act).<sup>1</sup> Among other things, The Intelligence Reform Act requires the Secretary of the Treasury to conduct a study of the feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing." This survey seeks input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, the impact such reporting would have on the industry, and the use and value to law enforcement of making such data available.

The Financial Crimes Enforcement Network must submit its feasibility study to the Secretary by May of 2006. To meet the statutory deadline of enacting the implementing regulation for such a requirement no later than December 17, 2007, the Bureau must initiate its notice and comment process sometime in the summer of 2006. In addition, on the effective date of the implementing regulations (i.e., no later than December 17, 2007), the Secretary must certify that the Department has completed the development of the system that will receive, store, analyze, and disseminate the data and that the system is fully functional. Accordingly, development and deployment of the system must begin in sufficient time to implement the system in less than two years.

The information sought through this survey is vital to the Bureau's efforts to study the feasibility of the proposed requirement and to plan for the development of implementing regulations within the periods dictated in the legislation. The normal notice and comment period required to obtain an OMB Control Number would prevent us from issuing the survey before the deadline for our feasibility study, thus making it impossible to consider the industry responses in our analysis, within the timeframe established by the statute for completing the issuance of the final regulations and the deployment of a fully functional technology system.

#### 2. Method of Collection and use of data.

To implement the survey, the Financial Crimes Enforcement Network will enlist the help of trade groups representing various sectors of the financial services industry. The respondents are members of the U.S. financial services industry that would be subject to the regulations implementing the proposed reporting requirement. As part of our

<sup>1</sup> Pub. L. 108-458, 118 Stat. 3638 (2004).

continuing commitment to creating a transparent financial system, we are now trying to determine what impacts the proposed requirement may have on their business operations, and what issues must be considered in the determination of whether such requirement is in fact feasible.

3. Use of Improved Information Technology to Reduce Burden.

Respondents to the survey can either fax or mail completed surveys. There is no method for electronic filing or use of any automated technology.

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4. Efforts to Identify Duplication

There is no similar information available; thus there is no duplication.

5. Methods to Minimize Burden on Small Businesses or other Small Entities

This collection of information does not impact small entities.

6. Consequences to the Federal Government of not collecting the Information.

FinCEN will be unable to properly assess the impact on the industry of this initiative.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

There are no special circumstances.

8. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

The Paperwork Reduction Act 60-day notice will be published as soon as OMB approval of the survey is received.

9. Payments and Gifts

No payments or gifts were made to respondents.

10. Assurance of Confidentiality of Responses.

Information collected from the survey will not be released. This includes any data that could be used to identify any business or any other party. The industry trade groups assisting FinCEN will aggregate all survey responses and report only the overall summary statistics.

11. Justification of Sensitive Questions.

No sensitive questions are asked.

12. Estimated Annual Hourly Burden.

Frequency: One time.

Estimated Number of Respondents: 23,262.

Estimated Number of Annual Responses: 23,262.

Estimate of Burden: Reporting average of 60 minutes per response.

Estimate of Total Annual Burden on Respondents: 23,262 hours

Estimates were based on time taken to read the instructions and complete the form.

13. Estimated Annual Cost to Respondents for Hour Burdens.

Not applicable.

14. Estimated Annual Cost to the Federal Government.

Not applicable.

15. Reason for Change in Burden.

Not applicable.

16. Plans for Tabulation, Statistical Analysis, and Publication.

This collection of information and statistics may be published in a redacted format for public dissemination at the conclusion of the survey.

17. Request not to Display Expiration Date of OMB Control Number.

Request unnecessary.

18. Exceptions.

There are no exceptions to the certification statement on OMB Form 83-1.

B. Collections of Information Employing Statistical Methods.

The survey will not employ statistical methods. FinCEN will request the assistance of several financial industry trade groups (See item 2 above) to respond to the survey. The following corresponds to the five items of information requested in Part "B."

1. The number of respondents will be up to six trade groups representing members of the U.S. financial services industry. Those trade groups will collect the responses received from their members and pass them along to the Financial Crimes Enforcement Network. We anticipate a relatively low

response rate among member institutions. However, the purpose of the survey is to identify policy-related concerns of the industry members rather than to gather statistical data.

2. The survey does not employ or rely upon any statistical sampling methods. Rather, it invites narrative and generally descriptive responses that help characterize the type of institutions responding and solicits input on policy issues and concerns of the industry members. The survey instrument was developed with the cooperation of members of the U.S. financial services industry, trade groups representing those industry members, and federal government regulatory agencies overseeing their operations.

3. First, the survey instrument was developed with the cooperation of members of the U.S. financial services industry, trade groups representing those industry members, and federal government regulatory agencies overseeing their operations. Second, the survey is distributed through and with the assistance of industry trade groups leveraging the trust already established between the industry members and the trade groups representing the various sectors of the industry rather than requesting a direct and attributable response from a member of the financial services industry and an agency that regulates them. In addition, the trade groups will not identify the specific respondents to the Financial Crimes Enforcement Network. Based on input from industry members and the trade groups, we believe that this will increase the response rate.

4. No tests of procedures or methods are planned.

5. Because statistical methods will not be employed in the analysis of the responses, no such persons have been identified.

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- Bank transfers handled through proprietary systems.

**Michanczyk, Amanda**

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**From:** [REDACTED]  
**Sent:** Thursday, February 18, 2010 11:32 AM  
**To:** [REDACTED]  
**Subject:** Cross-Border

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**Categories:** Cross-Border

**Estimate of Reportable Transmittals**

Reported by Domestic Banks: 233 million  
Reported by Foreign Banks\*: 201-307 million  
Total: 434-540 million

**Estimate of Total Transmittals (Includes non-cross-border transmittals and cross-border transmittals)**

Reported by Domestic Banks: 1 billion  
Reported by Foreign Banks: 140-570 million  
Total: 1.1-1.6 billion

**Break down of total transmittals by institution size (includes non-cross-border transmittals and cross-border transmittals)**

Banks with asset size over one billion: (Average) 10,000,000, (Mean of 23 Respondents) 612,000  
Banks with asset size below one billion: (Average) 27,286, (Mean of 8 Respondents) 1,618  
Banks with assets unknown: (Average) 1,421,185, (Mean of 32 Respondents) 22,000

**Number of Institutions**

Banks: 8,003 (8.4 % have assets over 1 billion)  
Credit Unions: 7634 (2% have assets over 1 billion)  
Total: 15637 (5.3% have assets over 1 billion)

\* Foreign Banks includes only those that operate within the United States.

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## **Financial Transaction Reports Act 1988**

**Act No. 64 of 1988 as amended**

This compilation was prepared on 6 February 2004  
taking into account amendments up to Act No. 122 of 2003

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra

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**An Act to provide for the reporting of certain transactions and transfers, to establish an Australian Transaction Reports and Analysis Centre and to impose certain obligations in relation to accounts, and for related purposes**

**Part I—Preliminary**

**1 Short title** [see Note 1]

This Act may be cited as the *Financial Transaction Reports Act 1988*.

**2 Commencement** [see Note 1]

- (1) Section 1 and this section shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a day or days fixed by Proclamation.

**3 Interpretation**

- (1) In this Act, unless the contrary intention appears:

*ACC* means the Australian Crime Commission.

*acceptable referee* means a person in a class of persons declared by the Minister, by notice in the *Gazette*, to be acceptable referees for the purposes of this definition.

*account* means (except in Part VIA) any facility or arrangement by which a cash dealer does any of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;

**ADI** (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

**AFP member** means a member or special member of the Australian Federal Police.

**approved** means approved by the Director, in writing, for the purposes of the provision in which the term occurs.

**approved cash carrier** means a cash dealer declared by the Director to be an approved cash carrier under section 8.

**AUSTRAC** means the Australian Transaction Reports and Analysis Centre.

**Australia**, when used in a geographical sense, includes the external Territories.

**authorised officer** means a person in respect of whom an appointment as an authorised officer for the purposes of this Act is in force under section 27A.

**banker** includes a body corporate that is an ADI.

**Board of the ACC** means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*.

**bullion seller** means a person who carries on a business of selling bullion.

**business hours**, in relation to a place, means the period between 9 am and 5 pm on a day other than:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a day that is a public holiday in that place.

- transfers, into or out of Australia on behalf of other persons or arranging for such remittance or transfer; or
- (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; or
  - (iii) delivering currency (including payrolls);
- (l) a person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business in Australia of:
- (i) on behalf of other persons, arranging for funds to be made available outside Australia to those persons or others; or
  - (ii) on behalf of persons outside Australia, making funds available, or arranging for funds to be made available, in Australia to those persons or others;
- (m) a person who carries on a business of operating a gambling house or casino; and
- (n) a bookmaker, including a totalisator agency board and any other person who operates a totalisator betting service.

**cash transaction** means a transaction involving the physical transfer of currency from one person to another.

**Centrelink officer** means:

- (a) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997*; or
- (b) a member of that Agency's staff mentioned in subsection 35(1) of that Act.

**Child Support Agency** means the body consisting of the Child Support Registrar (within the meaning of the *Child Support (Registration and Collection) Act 1988*) and all other CSA officers.

**citizenship certificate**, in respect of a person, means a certificate, declaration or other instrument in respect of the person's status as an Australian citizen or British subject, or otherwise in respect of the person's nationality, issued under:

- (a) the *Australian Citizenship Act 1948*;
- (b) the *Nationality Act 1920*; or

**financial institution** means:

- (a) an ADI; or
- (b) a co-operative housing society;

and, in Part VIA, includes:

- (c) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51(xx) of the Constitution; and
- (d) a person who carries on a business of operating a casino; and
- (e) a totalisator agency board.

**foreign currency** means the currency of a foreign country.

**FTR information** means information obtained by the Director under Part II and includes information included in a notice under subsection 18(8A) or 22(1) or in a copy of a record given under subsection 24(5).

**given name** means a name other than a surname.

**identification document** means a primary identification document or a secondary identification document.

**identification record** has the meaning given by section 20A or section 24C, as the context requires.

**identification reference** has the meaning given by section 21.

**identifying cash dealer** means a cash dealer in respect of whom a declaration under section 8A is in force.

**insurance broker** means a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds.

**insurance business** means the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include:

- (i) was not cancelled; and
- (ii) was current within the preceding 2 years; or
- (c) another current identity document, having the characteristics of a passport, issued by a government, the United Nations or an Agency of the United Nations for the purposes of international travel.

**member of the staff of the ACC** has the same meaning as in the *Australian Crime Commission Act 2002*.

**member of the staff of the Police Integrity Commission** means a person who is, for the purposes of the *Police Integrity Commission Act 1996* of New South Wales, a member of the staff of the Commission.

**minimum retention period** has the meaning given by section 40E.

**official**, in relation to a Royal Commission, means:

- (a) a legal practitioner appointed to assist the Commission; or
- (b) a person otherwise assisting the Commission and authorised in writing by the sole Commissioner or a member of the Commission.

**non-reportable cash transaction** means a cash transaction:

- (a) to which a cash dealer is a party; and
- (b) that is not a significant cash transaction or is an exempt cash transaction.

**non-reportable currency transfer** means a transfer of currency out of Australia or into Australia in respect of which a report under section 15 is not required.

**paper money** means money comprising a note written, printed or otherwise made on paper or any other material.

**Police Integrity Commission** means the Police Integrity Commission of New South Wales.

**police officer** means:

- (a) an AFP member; or
- (b) a member of the police force of a State or Territory.



issued, the date of issue of the certificate and the name of the person who issued the certificate;

- (c) in the case of a passport—the name and date of birth of the person to whom the passport is issued and the country and date of issue and the number of the passport; and
- (d) in the case of a secondary identification document—the name shown in the document as the name of the person to whom or in respect of whom the document was issued, the date of birth of that person (if shown), the address of that person (if shown), the kind of document, the person who or the authority that issued the document, the identifying number (if any) of the document and the date of issue or expiry (if any) of the document.

**retail business** means a business:

- (a) the principal element of which is the provision of goods to ultimate consumers; and
- (b) the takings or receipts of which include substantial amounts of currency.

**Royal Commission** has the same meaning as in the *Royal Commissions Act 1902*.

**Royal Commission into the New South Wales Police Service** means the commission established by the Governor of the State of New South Wales by Letters Patent dated 13 May 1994 to inquire into the operations of the New South Wales Police Service, with particular reference to certain matters specified in those Letters Patent.

**RSA** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**secondary identification document**, in relation to a person in a particular name, means a document (other than a primary identification document) which establishes the identity of the person in that name.

**send**, in relation to currency, includes send through the post.

- (c) a person appointed or engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office.

**Territory** does not include the Northern Territory.

**totalisator agency board** means a board or authority established by or under a law of a State or Territory for purposes that include the purpose of operating a betting service.

**transaction**, in Division 2 of Part II, has a meaning affected by subsection 3(7).

**unit trust** means a trust to which a unit trust scheme relates and includes:

- (a) a cash management trust;
- (b) a property trust; and
- (c) an arrangement declared by the Minister, by notice in writing published in the *Gazette*, to be a unit trust for the purposes of this definition;

but does not include an arrangement declared by the Minister, by notice in writing published in the *Gazette*, not to be a unit trust for the purposes of this definition.

**unit trust scheme** means any arrangement made for the purpose, or having the effect, of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

- (2) A reference in this Act to a document being signed by a party to a transaction includes a reference to the document being signed on the party's behalf.
- (3) A reference in this Act to transferring currency out of Australia is a reference to taking or sending currency out of Australia.
- (4) A reference in this Act to transferring currency into Australia is a reference to bringing or sending currency into Australia.

**5 Act to bind Crown**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of Norfolk Island.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Australian Capital Territory or of Norfolk Island liable to be prosecuted for an offence.

**6 Act to apply both within and outside Australia**

This Act applies throughout the whole of Australia and also applies outside Australia.

**6A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 8 Approved cash carriers

- (1) The Director may, by notice published in the *Gazette*, declare a cash dealer, being a person referred to in paragraph (k) of the definition of *cash dealer* in subsection 3(1), to be an approved cash carrier if the Director is satisfied that:
  - (a) the cash dealer maintains records containing reportable details of significant cash transactions to which the cash dealer is a party; and
  - (b) the declaration of the cash dealer as an approved cash carrier would not be inconsistent with the objects of this Act.
- (2) In this section:

*reportable details* has the same meaning as in section 7.

## 8A Identifying cash dealers

- (1) A cash dealer may apply in writing to the Director to be declared an identifying cash dealer.
- (2) An application must be accompanied by a written undertaking in the approved form, by which the applicant undertakes:
  - (a) to carry out the verification procedures under paragraph 20A(1)(b), where that paragraph applies, and to take all reasonable steps to complete the procedures promptly in each case; and
  - (b) to report under section 16 in relation to information obtained by the applicant as a result of carrying out the procedures mentioned in paragraph (a); and
  - (c) to give the Director, in respect of such periods as are determined by the Director, written reports on the applicant's compliance with this Act; and
  - (d) to do such other things (if any) as are specified in the form.
- (3) An application, and the undertaking accompanying it, must be signed by the applicant personally or, if the applicant is a body corporate, by its principal executive officer.

- (a) a significant cash transaction between a financial institution and another person is an exempt transaction so far as the financial institution is concerned; and
  - (b) the other person is a cash dealer;
- the transaction is also an exempt transaction so far as the cash dealer is concerned.
- (4) A significant cash transaction is also an exempt transaction if it is between:
- (a) a financial services licensee (as defined by section 761A of the *Corporations Act 2001*) whose licence covers dealing in derivatives (as defined by that section); and
  - (b) a clearing and settlement facility (as defined by that section) that is associated with a financial market (as defined by that section) of which the financial services licensee is a member.

#### **10 Transactions eligible for exemption**

- (1) A significant cash transaction is eligible for exemption if:
- (a) the transaction is between a financial institution and another financial institution; or
  - (b) the transaction is between a cash dealer (not being a financial institution) and a financial institution.
- (2) A significant cash transaction is also eligible for exemption if:
- (a) the transaction is between a financial institution and another person (in this subsection called the *customer*);
  - (b) the customer is, at the time when the transaction takes place, an established customer of the institution;
  - (c) the transaction consists of a deposit into, or a withdrawal from, an account maintained by the customer with the institution;
  - (d) the customer carries on:
    - (i) a retail business (other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft);
    - (ii) a business declared by the Minister, by notice in writing published in the *Gazette*, to be an entertainment

that stood to the credit of that account to an account held by the person with another financial institution (in this subsection called the *transferee institution*); and

- (b) a significant cash transaction is conducted through the account held with the transferee institution at a time when the customer is not an established customer of the transferee institution;

the transaction is eligible for exemption if:

- (c) the transaction would, if the customer were an established customer of the transferee institution at that time, be eligible for exemption under another subsection of this section;
- (d) transactions falling within a particular class and conducted through the account held with the transferor institution were exempt transactions immediately before that account was closed; and
- (e) either:
  - (i) the transaction is a transaction that would, had it been conducted through the account held with the transferor institution, have fallen within that class; or
  - (ii) the customer has been a customer of the transferee institution for not less than 3 months immediately preceding that time.

#### **11 Financial institution may enter transactions in exemption register**

(1) Where:

- (a) a financial institution is a party to a significant cash transaction;
- (b) the institution believes that the transaction is eligible for exemption in accordance with section 10; and
- (c) if the other party to the transaction is not a financial institution—the other party signs a written statement to the effect that:
  - (i) the party believes that the transaction is eligible for exemption in accordance with section 10; and
  - (ii) the information provided by the party to the institution in relation to the transaction is, to the best of his or her

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- (4) Where the Director gives a financial institution a direction under subsection (3), the institution:
  - (a) shall forthwith comply with the direction;
  - (b) if the direction is given under paragraph (3)(a)—shall not enter in its exemption register, against the name of the person concerned, the same or substantially the same class of transactions, or transactions falling within the same or substantially the same class of transactions, while the direction remains in force; and
  - (c) if the direction is given under paragraph (3)(b)—shall not enter in its exemption register, against the name of the person concerned, transactions of the kind, or a class of transactions of the kind, specified in the notice.
- (5) A financial institution that contravenes subsection (4) is guilty of an offence against this subsection punishable, upon conviction, by a fine not exceeding \$5,000.
- (6) Subject to subsection (4), a financial institution may, at any time, delete an entry from, or amend an entry in, its exemption register.

**12 Financial institution to maintain exemption register**

- (1) A financial institution shall maintain a register in which the institution enters transactions, and classes of transactions, for the purposes of section 11.
- (2) The register shall be maintained in the approved manner and form.
- (3) The register shall include the prescribed details in relation to each transaction, or class of transactions, that is entered in the register.
- (4) Where:
  - (a) a transaction, or class of transactions, is entered in a financial institution's exemption register;
  - (b) the entry contains the prescribed details in relation to the transaction or class of transactions; and
  - (c) the entry is not in the approved manner and form;

## Division 1A—Reports about transfers of currency

### 15 Reports in relation to transfer of currency into or out of Australia

- (1) Where:
- (a) a person:
    - (i) transfers Australian currency or foreign currency out of Australia; or
    - (ii) transfers Australian currency or foreign currency into Australia; and
  - (b) the amount of currency involved in the transfer is not less than \$10,000 in value; and
  - (c) a report in respect of the transfer has not been given in accordance with this section;
- the person, subject to subsections (2), (3) and (4), commits an offence against this subsection.

(1A) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) A commercial passenger carrier need not make a report in respect of currency in the possession of the carrier's passengers.
- (3) A commercial goods carrier need not make a report in respect of currency carried on behalf of another person unless the other person has disclosed to the carrier that the goods include currency.
- (4) An ADI need not make a report in respect of currency transferred, on behalf of the ADI, by a commercial goods carrier.
- (5) Where:
  - (a) a person (other than an ADI) receives Australian currency or foreign currency transferred to the person from outside Australia; and
  - (b) the amount of currency received is not less than \$10,000 in value; and



(b) in any other case—at any time before the transfer takes place.

(7AA) For the purposes of subsection (7A), if currency is taken out of Australia by a person by consignment of the currency:

- (a) through the post to a place outside Australia; or
- (b) to another person for carriage to a place outside Australia by that other person or by a third person;

the time when the currency is taken out of Australia is the time when it is irrevocably committed by the first-mentioned person to the Australian Postal Corporation or to the other person, as the case may be.

(7B) For the purposes of paragraph (7A)(a), the time at which currency is brought into Australia by a person is:

- (a) if the person:
  - (i) transfers the currency into Australia when a passenger on an aircraft or ship; and
  - (ii) after disembarking, goes through an area set apart for customs officers to examine the passports and personal baggage of, and perform other duties in respect of, disembarking passengers and for such passengers to collect personal baggage;

as soon as the person reaches the place in that area at which customs officers examine personal baggage or, if the person does not go to that place, when the person leaves that area; or

- (b) in any other case—the first opportunity after arrival in Australia that the person has to give the report under this section.

(7C) For the purposes of paragraph (7A)(a), the time at which currency is taken out of Australia by a person is:

- (a) if the person:
  - (i) transfers the currency out of Australia when a passenger on an aircraft or ship; and
  - (ii) before embarking, goes through an area set apart for customs officers to examine the passports of, and perform other duties in respect of, embarking passengers;

## **Division 1B—Cash transaction reports by solicitors**

### **15A Reports of significant cash transactions**

- (1) If a significant cash transaction is entered into by or on behalf of a solicitor, a solicitor corporation, or a partnership of solicitors, in the course of practising as a solicitor or solicitors, the solicitor, corporation or partnership must, before the end of the reporting period:
  - (a) prepare a report of the transaction; and
  - (b) communicate the information in the report to the Director.
- (2) The report must:
  - (a) be prepared in the approved form; and
  - (b) contain the reportable details of the transaction; and
  - (c) be signed, or otherwise authenticated in an approved way, by the solicitor, a member of the corporation or a member of the partnership, as the case may be.
- (3) The communication must be made to the Director:
  - (a) by giving the Director a copy of the report; or
  - (b) in any other manner and form approved in relation to the solicitor, the solicitor corporation or the partnership or in relation to solicitors generally.
- (4) In this section:

*reportable details*, in relation to a transaction, means the details of the transaction that are referred to in Schedule 3A.

the cash dealer, whether or not required to report the transaction under Division 1 or 3, must, as soon as practicable after forming the suspicion:

- (c) prepare a report of the transaction; and
  - (d) communicate the information contained in the report to the Director.
- (2) A report under subsection (1) or (1A) shall:
- (a) be prepared in the approved form;
  - (b) contain the reportable details of the transaction;
  - (c) contain a statement of the grounds on which the cash dealer holds the suspicion referred to in the subsection under which the report is prepared; and
  - (d) be signed by the cash dealer.
- (3) A communication under subsection (1) or (1A) shall be made to the Director:
- (a) by giving the Director a copy of the report; or
  - (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.
- (4) Where a cash dealer communicates information to the Director under subsection (1) or (1A), the cash dealer shall, if requested to do so by:
- (a) the Director;
  - (b) a relevant authority; or
  - (c) an investigating officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information contained in the report;
- give such further information as is specified in the request to the extent to which the cash dealer has that information.
- (5) An action, suit or proceeding does not lie against:
- (a) a cash dealer; or
  - (b) an officer, employee or agent of the cash dealer acting in the course of that person's employment or agency;
- in relation to any action by the cash dealer or person taken:

- (5D) In any legal proceeding other than a prosecution for an offence against subsection 29(1) or 30(1):
- (a) none of the following is admissible in evidence:
    - (i) a report prepared (whether before or after the commencement of this subsection) under subsection (1) or (1A);
    - (ii) a copy of such a report;
    - (iii) a document purporting to set out information contained in such a report;
    - (iv) a document given (whether before or after the commencement of this subsection) under subsection (4); and
  - (b) evidence is not admissible as to:
    - (i) whether or not a report was prepared (whether before or after the commencement of this subsection) under subsection (1) or (1A); or
    - (ii) whether or not a copy of a report prepared under that subsection (whether before or after the commencement of this subsection), or a document purporting to set out information contained in such a report, was given to, or received by, the Director (whether before or after the commencement of this subsection); or
    - (iii) whether or not particular information was contained in a report prepared under that subsection (whether before or after the commencement of this subsection); or
    - (iv) whether or not particular information was given under subsection (4) (whether before or after the commencement of this subsection).

(5E) In subsection (5D):

**information** includes the formation or existence of a suspicion referred to in subsection (1) or (1A).

(6) In this section:

**financing of terrorism offence** means an offence under:

- (a) section 103.1 of the *Criminal Code*; or

### **Division 3—Reports of international funds transfer instructions**

#### **17B Reports of international funds transfer instructions**

- (1) If:
  - (a) a cash dealer in Australia is:
    - (i) the sender of an international funds transfer instruction transmitted out of Australia; or
    - (ii) the recipient of an international funds transfer instruction transmitted into Australia; and
  - (b) at least one of the following applies:
    - (i) the cash dealer is acting on behalf of, or at the request of, another person who is not an ADI;
    - (ii) the cash dealer is not an ADI;

the dealer must, before the reporting time, prepare a report of the instruction.
- (2) The report must be in the approved form and include the prescribed details.
- (3) Subject to subsection (4), the report must be sent to the Director in the approved way and form before the reporting time.
- (4) The Director may, by notice in the *Gazette*, declare that subsection (3) does not apply in relation to a cash dealer in relation to a report or a class of report.
- (5) If, because of the operation of subsection (4), subsection (3) does not apply in relation to a report, the cash dealer must retain the report for 7 years.
- (6) For the purposes of this section, if a cash dealer transmits an instruction on behalf of, or at the request of, another person, the cash dealer is taken to be the sender of the instruction.
- (7) For the purposes of this section, if a person, not being a cash dealer, transmits an instruction on behalf of, or at the request of, a

- (b) an officer, employee or agent of a cash dealer acting in the course of that person's employment or agency;
- in relation to any action taken by the cash dealer or person:
- (c) under section 17B; or
  - (d) in the mistaken belief that such action was required under that section.

**17F Certain foreign judgments not to be recognised or enforced in Australia**

- (1) If:
- (a) a foreign court has given a judgment against a person; and
  - (b) the judgment was in connection with action taken by the person under section 17B;
- the judgment must not be recognised or enforced in Australia.

- (2) In this section:

*foreign court* means any court or authority of a foreign country or a part of a foreign country.

*judgment* includes a decree, an order and an injunction.

**Part III—Accounts****18 Opening etc. of account with a cash dealer**

- (1) This section applies where:
- (a) on a day (in this subsection called the *transaction day*) after the commencement of this section, a person:
    - (i) opens an account (other than a facility or arrangement for a safety deposit box or for any other form of safe deposit) with a cash dealer; or
    - (ii) becomes a signatory of such an account with a cash dealer;and either of the following subparagraphs applies:
    - (iii) on a day (in this section called the *infringement day*), being the transaction day or a later day, the credit balance of the account exceeds \$1,000;
    - (iv) on a day (in this section also called the *infringement day*), being at least 30 days after the transaction day, the aggregate of the amounts credited to the account within the last 30 days exceeds \$2,000; or
  - (b) on a day after the commencement of this section (in this section also called the *infringement day*) a person:
    - (i) opens an account with a cash dealer, being a facility or arrangement for a safety deposit box or for any other form of safe deposit; or
    - (ii) becomes a signatory of such an account with a cash dealer.
- (2) If, at the end of the infringement day, the cash dealer does not have the account information about the account, the account is blocked with respect to each signatory until the cash dealer has the information or the Director gives a notice under subsection 19(2).

Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

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- (c) made under section 89, 195 or 196 of the *Retirement Savings Accounts Act 1997*; or
- (ca) made in accordance with section 17 or 18 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
- (d) that are used to make payments of insurance premiums in accordance with the terms and conditions of the account.

- (6) An offence against subsection (3), (4) or (4A) is punishable, upon conviction, by imprisonment for not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

- (8) Where an account other than an RSA has been blocked for 12 months after the infringement day, the cash dealer shall, within 14 days after the end of that period, give the Director written notice of that fact, setting out the balance of an account and such other particulars as are prescribed.

(8A) If:

- (a) an account other than an RSA has been blocked for 12 months after the infringement day; and
- (b) as a result of the cash dealer's obtaining account information or signatory information after the commencement of this subsection, the account ceases to be blocked with respect to a signatory with respect to whom it had been blocked;

the cash dealer must, within 14 days after the day on which the dealer obtained the information, give the Director written notice that the account has become unblocked to that extent and for that reason.

- (9) A cash dealer who contravenes subsection (8) or (8A) is guilty of an offence against this subsection punishable, upon conviction, by a fine of not more than 10 penalty units.



- (a) give written notice of that fact to the cash dealer and the signatory or signatories to the account, setting out the effect of subsections (4) and (5); and
  - (b) give a copy of the notice to the Minister.
- (4) If the Director gives a notice under subsection (3), all rights and interests in relation to the account held by the unverified signatory are forfeited to the Commonwealth, and the Minister, the Director or an officer of AUSTRAC authorised by the Director may, on behalf of the Commonwealth, do whatever is necessary to realise those rights and interests (including closing the account).
- (5) If:
- (a) the Director's decision under subsection (3) is set aside by a court; or
  - (b) a person satisfies the court that:
    - (i) immediately before the time when subsection (4) had effect in relation to the account, the person had a beneficial interest in a right or interest in relation to the account held by the unverified signatory; and
    - (ii) an amount standing to the credit of the account immediately before that time had not been derived from unlawful activities;
- the court may make such orders as it thinks fit in relation to that amount, including directions to the Commonwealth to make restitution of so much of that amount as has been recovered by the Commonwealth under subsection (4).
- (6) An expression used in this section has the same meaning as in section 18.

## **20 Cash dealers to hold information**

- (1) A cash dealer must maintain, in relation to each account, in a way that can be audited:
- (a) any account information obtained by the cash dealer; and
  - (b) any signatory information obtained by the cash dealer in relation to each signatory to the account;
- (whether or not subsection 18(1) has applied to the account).

- (i) a specified primary identification document for the signatory in that name;
  - (ii) a specified secondary identification document for the signatory in that name and a specified primary identification document for the signatory in a former name of the person; or
  - (iii) only a specified secondary identification document for the signatory in that name.
- (2) An identification reference for a person by an acceptable referee shall also set out:
- (a) the name, address and occupation of the referee and the basis on which the referee claims to be an acceptable referee;
  - (b) if the reference states that the referee examined a primary identification document for the person in a name different from the name to be used by the person in relation to the account—the explanation that the person gave the referee for the difference in names;
  - (c) if the reference states that the referee examined only a secondary identification document for the person—the explanation that the person gave the referee for the failure to produce a primary identification document; and
  - (d) the required details of the identification document or documents examined by the referee.
- (3) An identification reference for a person by an acceptable referee shall be signed by the person in the presence of the referee and shall contain a statement by the referee to the effect that the reference was so signed.
- (3A) An acceptable referee, or any other person, must not:
- (a) intentionally make a statement in an identification reference, reckless as to the fact that the statement is false or misleading in a material particular; or
  - (b) intentionally omit from an identification reference any matter or thing, reckless as to the fact that without the matter or thing the reference is misleading in a material particular.

Penalty: Imprisonment for 4 years.

- (3) A person must not:
- (a) intentionally make a statement in a change of name statement, reckless as to the fact that it is false or misleading in a material particular; or
  - (b) intentionally omit from a change of name statement any matter or thing, reckless as to the fact that without the matter or thing the change of name statement is misleading in a material particular.

Penalty: Imprisonment for 4 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

- (4) For the purposes of this section:

*change of name statement*, in relation to a signatory, means a statement that:

- (a) sets out the name or names by which the signatory has been commonly known; and
- (b) states which paragraph of subsection (1) applies to the signatory; and
- (c) sets out the reasons why this section applies to the signatory; and
- (d) sets out the new name; and
- (e) states that the new name is one by which the signatory will be commonly known.

## **22 Notice to Director if no primary identification document examined**

- (1) If an identification reference for a signatory to an account is given to a cash dealer and the reference states that the referee examined only a secondary identification document for the signatory, the cash dealer must give the Director written notice:

## Section 23A

- (7) Where a cash dealer is required by law to release a document to which subsection (1) applies before the end of the period referred to in that subsection, the cash dealer shall retain a complete copy of the document until the period has ended or the document is returned, whichever occurs first.
- (8) The cash dealer shall maintain a register of documents released under subsection (7).

Penalty: Imprisonment for 1 year.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

### 23A Active ADI accounts transferred to another ADI—obligations of ADIs in relation to records of information

*When section applies*

- (1) This section applies to a record of information if:
- (a) the record is in the possession of an ADI (the *transferor ADI*) in fulfilment of an obligation imposed on the transferor ADI by subsection 23(1) or (7); and
  - (b) the record relates wholly or partly to an account (the *transferred account*) that has been, or is proposed to be, transferred to another ADI (the *transferee ADI*) under:
    - (i) a law of the Commonwealth or of a State or Territory; or
    - (ii) an arrangement between the transferor ADI and the transferee ADI.

by the transferee ADI in the course of obtaining account information or signatory information about the transferred account.

*Certain records to be treated as identification records in the hands of the transferee ADI*

- (6) If the transferee ADI is given a document under subsection (2) of this section, section 20A applies to the transferee ADI in relation to the document as follows:
- (a) if the document (or its original) was covered by paragraph 20A(1)(a)—as if the document were an identification reference for the signatory to the transferred account;
  - (b) if the document (or its original) was covered by subparagraph 20A(1)(b)(i)—as if:
    - (i) the transferee ADI had carried out the prescribed verification procedure (within the meaning of that subparagraph) to identify the signatory to the transferred account; and
    - (ii) the document were a record of that procedure;
  - (c) if the document (or its original) was covered by subparagraph 20A(1)(b)(ii)—as if:
    - (i) the transferee ADI had carried out a verification procedure to identify the signatory to the transferred account; and
    - (ii) the procedure had been approved by the Director for the transferee ADI; and
    - (iii) the document were a record of that procedure.

*Definition*

- (7) In this section:

**record** includes a copy of a record.

*Obligations of transferee ADI—section 23*

- (4) If the transferee ADI is given a document under subsection (2) of this section, section 23 applies to the transferee ADI in relation to the document as if the document were a record made or obtained by the transferee ADI in the course of obtaining account information or signatory information about the closed account.

*Certain records to be treated as identification records in the hands of the transferee ADI*

- (5) If the transferee ADI is given a document under subsection (2) of this section, section 20A applies to the transferee ADI in relation to the document as follows:
- (a) if the document (or its original) was covered by paragraph 20A(1)(a)—as if the document were an identification reference for the signatory to the closed account;
  - (b) if the document (or its original) was covered by subparagraph 20A(1)(b)(i)—as if:
    - (i) the transferee ADI had carried out the prescribed verification procedure (within the meaning of that subparagraph) to identify the signatory to the closed account; and
    - (ii) the document were a record of that procedure;
  - (c) if the document (or its original) was covered by subparagraph 20A(1)(b)(ii)—as if:
    - (i) the transferee ADI had carried out a verification procedure to identify the signatory to the closed account; and
    - (ii) the procedure had been approved by the Director for the transferee ADI; and
    - (iii) the document were a record of that procedure.

*Definition*

- (6) In this section:  
**record** includes a copy of a record.

- (7) For the purposes of this section:
- (a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and
  - (b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the cash dealer concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and
  - (c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this paragraph.
- (8) This section does not apply in relation to a person and an account that is an RSA within the meaning of the *Retirement Savings Accounts Act 1997* if:
- (a) the person (the *employer*) is an employer, within the meaning of that Act, of another person (the *employee*); and
  - (b) the employer made the application for the account on behalf of the employee.

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Section 24D

- (2) For the purposes of subsection (1), a bullion seller has an identification record for a party to a bullion transaction if, and only if, the seller is an identifying cash dealer and:
- (a) has carried out, and has a record of, the prescribed verification procedure to identify the party; or
  - (b) has carried out, and has a record of, a verification procedure to identify the party, being a procedure approved by the Director for the seller;
- whether or not the procedure was carried out in connection with the transaction.

**24D Bullion seller to keep documents**

- (1) If a bullion seller makes or obtains a record of any information in the course of obtaining information identifying a party to a bullion transaction, the seller must retain the record or a copy of it for seven years after the day on which the transaction occurs.
- (2) If any information is part of information identifying a party to 2 or more bullion transactions entered into by the bullion seller, subsection (1) applies as if the reference to the day on which the transaction occurs were a reference to the day on which the last of those transactions occurs.
- (3) A bullion seller who is required to retain documents under subsection (1) must retain and store them in a way that makes retrieval of the documents reasonably practicable.
- (4) Subsection (1) does not limit any other obligation of a bullion seller to retain documents.
- (5) If a bullion seller is required by law to release a document to which subsection (1) applies before the end of the period referred to in that subsection, the seller must retain a complete copy of the document until the period has ended or the document is returned, whichever occurs first.
- (6) The bullion seller must keep a register of documents released under subsection (5).

Penalty: Imprisonment for 1 year.



## Part IV—Secrecy and access

### 25 Secrecy

- (1) This section applies to:
- (a) the Director;
  - (b) a member of the staff of AUSTRAC;
  - (ba) a person engaged under section 40A;
  - (c) a customs officer; and
  - (d) a police officer.
- (2) A person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act, or for the purposes of the performance or exercise of the functions or power of the Director or otherwise in connection with the performance of the person's duties under this Act, and either while the person is or after the person ceases to be a person to whom this section applies:
- (a) make a record of any information; or
  - (b) divulge or communicate to any person any information;
- being information obtained by the person in the course of performing duties under this Act.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

- (3) A person to whom this section applies shall not be required:
- (a) to produce in a court any document that has come into the custody or control of the person in the course of, or by reason of, the performance of duties under this Act; or

**27 Access to FTR information** [see Note 2]

- (1) Notwithstanding anything in section 25:
- (a) the Commissioner of Taxation and any taxation officer is entitled to access to FTR information; and
  - (b) the Director may, in writing, authorise a law enforcement agency to have access to FTR information for the purposes of performing its functions; and
  - (c) the Director may, in writing, authorise the Australian Customs Service to have access to FTR information for the purposes of performing its functions; and
  - (caa) the Director may, in writing, authorise the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* to have access to FTR information for the purposes of the administration of the social security law (within the meaning of the *Social Security Act 1991*); and
  - (cab) the Director may, in writing, authorise the Child Support Agency to have access to FTR information for the purposes of the administration of:
    - (i) the *Child Support (Assessment) Act 1989*; or
    - (ii) the *Child Support (Registration and Collection) Act 1988*; or
    - (iii) regulations under either or both of those Acts; and
  - (ca) the Director may, in writing, authorise a revenue authority of a State or Territory to have access to FTR information for the purpose of performing its functions if the authority undertakes that it will comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* in respect of FTR information obtained under the authorisation; and
  - (d) the Director may, in writing, authorise the Commissioner of the Australian Federal Police to have access to FTR information for the purposes of communicating the information to a foreign law enforcement agency under subsection (11B).

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or for the law enforcement agency, any customs officer, any Centrelink officer, any CSA officer, or any approved senior officer of the revenue authority, as the case requires, is entitled to access to that FTR information in accordance with the authorisation.

*Application of section 3C of the Taxation Administration Act 1953 where a taxation officer accesses FTR information*

- (4) Section 3C of the *Taxation Administration Act 1953* applies in relation to information acquired by a taxation officer under or for the purposes of this Act as if a reference in that section to the *Taxation Administration Act 1953* included a reference to this Act.

*Dealings with information once accessed*

- (5) Subject to subsections (7), (9) and (10), where the Chief Executive Officer of the ACC, an examiner or a member of the staff of the ACC obtains FTR information:
- (aaa) the Chief Executive Officer of the ACC may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Board of the ACC; and
  - (a) the Chair of the Board of the ACC may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Inter-Governmental Committee in a report by the Chair under subsection 59(4) of the *Australian Crime Commission Act 2002*; and
  - (aa) the Chair of the Board of the ACC may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Parliamentary Joint Committee on the Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*; and
  - (ab) the Chief Executive Officer of the ACC may communicate the information to an examiner who is conducting an examination under Division 2 of Part II of the *Australian Crime Commission Act 2002*; and

record of the information, or divulge or communicate the information, in any circumstances.

- (7) Nothing in subsection (5) or (6) prevents:
  - (a) the communication of FTR information to a person for the purposes of, or in connection with, legal proceedings or proposed or possible legal proceedings; or
  - (b) the communication of FTR information in the course of proceedings before a court.
  
- (8) A person to whom FTR information has been communicated in accordance with paragraph (7)(a) shall not make a record of the information, or divulge or communicate the information, except as permitted by this section.
  
- (9) Nothing in subsection (5) or (6) prevents the Chief Executive Officer of the ACC, the Chair of the Board of the ACC, an examiner, a member of the staff of the ACC, a law enforcement officer, a customs officer, a Centrelink officer, a CSA officer or an officer of a revenue authority from:
  - (a) communicating FTR information to the person who provided the information; or
  - (b) communicating FTR information (other than information obtained under section 16 or under section 243D of the *Australian Securities and Investments Commission Act 2001*) in respect of the affairs of a person to:
    - (i) the person; or
    - (ii) if the person is a company—any person who is or has been a director or officer of the company or is or has been directly involved in, or responsible for, the preparation of information provided on behalf of the company.
  
- (10) Where subsection (9) permits the communication of FTR information to a person, nothing in subsection (5) or (6) prevents the communication of the FTR information to a barrister or solicitor appearing before an examiner for the purpose of representing the person.

communicate the FTR information to the foreign law enforcement agency on behalf of the Commissioner.

(11D) If:

- (a) the Commissioner of the Australian Federal Police is authorised by the Director to access FTR information under paragraph (1)(d) (for the purposes of communicating it to a foreign law enforcement agency); and
- (b) the Director could not have authorised the Commissioner to access the information under paragraph (1)(b) (for the purposes of performing the functions of the Australian Federal Police);

then, despite subparagraphs (6)(a)(i) and (ii):

- (c) the Commissioner must not record, communicate or divulge the information except for the purposes of communicating it to the foreign law enforcement agency, and in accordance with subsections (11B) and (11C); and
- (d) a person authorised by the Commissioner under subsection (11C) to communicate the information to the foreign law enforcement agency on the Commissioner's behalf must not record, communicate or divulge the information except for the purposes of communicating it to the foreign law enforcement agency.

*Use of accessed information in court proceedings*

(12) A person who obtains FTR information shall not be required:

- (a) to produce in a court any document containing FTR information;
- (b) to divulge or communicate to any court any FTR information;

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

*Dealings in contravention of this section*

(13) A person who makes a record of, or divulges or communicates, information in contravention of a provision of this section commits

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- (e) the Royal Commission into the New South Wales Police Service; and
  - (ea) a Royal Commission whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; and
  - (f) the Police Integrity Commission; and
  - (h) the Crime and Misconduct Commission of Queensland; and
  - (i) the Anti-Corruption Commission of Western Australia; and
  - (j) the Royal Commission (appointed by the Governor of Western Australia on 12 December 2001) into whether since 1 January 1985 there has been corrupt conduct or criminal conduct by any Western Australian police officer; and
  - (k) the Corruption and Crime Commission of Western Australia.
- (17) Without prejudice to its effect by virtue of subsection (15), this section has effect as if a reference in this section to a law enforcement officer included a reference to:
- (a) the commanding officer of the Police Force of a State;
  - (b) a member of a Police Force of a State;
  - (c) an officer, employee or other person under the control of the commanding officer of the Police Force of a State;
  - (d) the Chairperson or acting Chairperson of the New South Wales Crime Commission;
  - (e) a member or acting member of that Commission;
  - (f) a member of the staff of that Commission;
  - (g) the Commissioner for the Independent Commission Against Corruption of New South Wales;
  - (h) the Assistant Commissioner for that Commission;
  - (i) a member of staff of that Commission;
  - (j) Counsel appointed to assist that Commission;
  - (n) the person constituting the Royal Commission into the New South Wales Police Service; and
  - (o) a member of the staff of that Royal Commission; and
  - (p) the Commissioner of the Police Integrity Commission; and
  - (q) an Assistant Commissioner of the Police Integrity Commission; and

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- (20) A reference in this section to a *foreign law enforcement agency* is a reference to an agency that has responsibility for law enforcement in a foreign country.

**27AA Access by ASIO to FTR information**

- (1) Despite anything in section 25, the Director may, in writing, authorise ASIO (see subsection (8)) to have access to FTR information for the purpose of performing its functions.

*Director's authorisation must state FTR information, or class of FTR information, to which access authorised*

- (2) An authorisation under subsection (1) must state the FTR information, or the class of FTR information, to which ASIO is to have access.

*Who, within ASIO, may access information once access by ASIO is authorised*

- (3) If ASIO is authorised under subsection (1) to have access to FTR information, any ASIO officer (see subsection (8)) authorised by the Director-General of Security (see subsection (8)) is entitled to access to that FTR information in accordance with the authorisation.

*Dealings with information once accessed*

- (4) If a person who is an ASIO officer obtains FTR information under this section:
- (a) the person must not, while he or she is an ASIO officer, divulge or communicate the information except to:
    - (i) a police officer (see subsection (8)) for the purposes of, or in connection with, the performance of that officer's duties; or
    - (ii) an IGIS officer (see subsection (8)) for the purposes of, or in connection with, the performance of that officer's duties in relation to ASIO or employees of ASIO; or

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*Circumstances in which the Director-General of Security may communicate FTR information to a foreign intelligence agency*

- (5A) The Director-General of Security may communicate FTR information to a foreign intelligence agency if:
- (a) the Director-General is satisfied that the foreign intelligence agency has given appropriate undertakings for:
    - (i) protecting the confidentiality of the information; and
    - (ii) controlling the use that will be made of it; and
    - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and
  - (b) it is appropriate, in all the circumstances of the case, to do so.
- (5B) The Director-General of Security may, in writing, authorise an ASIO officer to communicate the information to the foreign intelligence agency on the Director-General's behalf.

*Use of accessed information in court proceeding*

- (6) A person who is or has been an ASIO officer or IGIS officer and who obtained FTR information under this section must not be required:
- (a) to produce in a court any document containing FTR information; or
  - (b) to divulge or communicate to any court any FTR information.

*Dealings in contravention of this section*

- (7) If a person who is or has been an ASIO officer or an IGIS officer makes a record of, or divulges or communicates, information in contravention of this section, the person is guilty of an offence against this section punishable, upon conviction, by imprisonment for not more than 2 years.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting



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*responsible Minister* means the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979*.

- (9) Without prejudice to its effect apart from this subsection, this section also has effect as if a reference to a *police officer* included a reference to:
- (a) the commanding officer of the Police Force of a State; and
  - (b) a member of a Police Force of a State; and
  - (c) an officer, employee or other person under the control of the commanding officer of the Police Force of a State.

**27C Powers of inspection of premises of a cash dealer**

- (1) This section applies if an authorised officer is given access to business premises of a cash dealer in compliance with a notice under section 27E.
- (2) For the purpose of monitoring a cash dealer's compliance with sections 7, 16 and 17B, the officer may inspect:
  - (a) any records kept at, or accessible from, the premises that relate to the dealer's obligations under those sections; and
  - (b) any system used by the dealer at the premises for keeping those records; and
  - (c) any reports retained at, or accessible from, the premises under those sections; and
  - (d) any system used by the dealer in connection with:
    - (i) preparing reports under those sections; or
    - (ii) sending such reports to the Director; or
    - (iii) retaining such reports.
- (2A) For the purpose of monitoring the compliance of a cash dealer who is an approved cash carrier with the record-keeping obligations referred to in section 8, the officer may inspect:
  - (a) records containing reportable details (within the meaning of that section) of significant cash transactions to which the cash dealer is a party that are kept at, or accessible from, the premises; and
  - (b) any system used by the dealer at those premises for keeping such records.
- (3) For the purpose of monitoring a cash dealer's compliance with section 20 and any undertaking given under section 8A, the officer may inspect:
  - (a) records of account information and signatory information kept at, or accessible from, the premises; and
  - (b) any system used by the dealer at those premises for keeping such records.

partnership of solicitors may also receive or make copies of, or take extracts from, those records or reports.

**27E Notice to give access to business premises**

- (1) The Director may, by written notice to a cash dealer, a solicitor, a solicitor corporation or a partnership of solicitors, require the dealer, solicitor, corporation or partnership to give the authorised officer named in the notice access on the day and during the hours stated in the notice to the business premises described in the notice of the dealer, solicitor, corporation or partnership.
- (2) The hours stated in the notice must occur during business hours in the place where the business premises are situated.
- (3) A cash dealer, a solicitor, a solicitor corporation or a partnership of solicitors to whom or to which a notice is given under subsection (1) must comply with the notice.
- (4) If an authorised officer is given access to business premises in compliance with a notice under this section, the officer is entitled to be accompanied by a person engaged under section 40A for the purpose of receiving advice from the person in connection with the exercise of the officer's powers under this Part.

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fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

### **29 False or misleading information**

- (1) A cash dealer shall not, in communicating information to the Director as required under Part II or III:
  - (a) intentionally make a statement that the cash dealer knows is false or misleading in a material particular; or
  - (b) intentionally omit from a statement any matter or thing without which the cash dealer knows the statement is misleading in a material particular.
  
- (2) A financial institution shall not, in maintaining the institution's exemption register as required under Division 1 of Part II:
  - (a) intentionally make a statement that the financial institution knows is false or misleading in a material particular; or
  - (b) intentionally omit from a statement any matter or thing without which the financial institution knows the statement is misleading in a material particular.
  
- (2A) A person must not, in communicating information to the Director as required under section 15A:
  - (a) intentionally make a statement that the person knows is false or misleading in a material particular; or
  - (b) intentionally omit from a statement anything without which the person knows the statement is misleading in a material particular.
  
- (3) A person must not:
  - (a) intentionally make a report for the purposes of section 15, a statement for the purposes of section 18 or a declaration for the purposes of section 33, that the person knows is false or misleading in a material particular; or
  - (b) intentionally omit from such a report, statement or declaration any matter or thing without which the person knows the report, statement or declaration is misleading in a material particular.

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- (3) A person commits an offence against this section if the person, in communicating information to the Director in relation to a transaction as required under section 15A, knows that the information is incomplete in relation to the transaction.
- (4) A person who commits an offence against this section is punishable, upon conviction, by a fine of not more than 10 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence. The amount of a penalty unit is stated in section 4AA of that Act.

### **31 Offence to conduct transactions so as to avoid reporting requirements**

- (1) A person commits an offence against this section if:
  - (a) the person is a party to 2 or more non-reportable cash transactions; and
  - (b) having regard to:
    - (i) the manner and form in which the transactions were conducted, including, without limiting the generality of this, all or any of the following:
      - (A) the value of the currency involved in each transaction;
      - (B) the aggregated value of the transactions;
      - (C) the period of time over which the transactions took place;
      - (D) the interval of time between any of the transactions;
      - (E) the locations at which the transactions took place; and
    - (ii) any explanation made by the person as to the manner or form in which the transactions were conducted; it would be reasonable to conclude that the person conducted the transactions in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that

is stated in section 4AA of that Act. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

### 32 Injunction

- (1) Where, on the application of the Director, a prescribed court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
  - (a) a contravention of Part II or III or this Part;
  - (b) attempting to contravene such a provision;
  - (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
  - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
  - (f) conspiring with others to contravene such a provision;the court may grant an injunction in such terms as the court determines to be appropriate.
- (2) Where, in the opinion of a prescribed court, it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).
- (3) The court may rescind or vary an injunction granted under subsection (1) or (2).
- (4) The power of a prescribed court to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.

- (d) produce to the officer any Australian or foreign currency that the person has with him or her.
- (3) An officer may, with such assistance as is reasonable and necessary, examine an article which a person has with him or her if the person:
- (a) is about to leave Australia or has arrived in Australia; or
  - (b) is about to board or leave, or has boarded or left, any ship or aircraft;
- for the purpose of finding out whether the person has with him or her any currency in respect of which a report under section 15 is required.
- (3A) A police officer or a customs officer (being an officer in respect of whom a declaration under section 219ZA of the *Customs Act 1901* is in force) may, with such assistance as is reasonable and necessary, search a person if:
- (a) the person is about to leave Australia, or has arrived in Australia, or the person is about to board or leave, or has boarded or left, any ship or aircraft; and
  - (b) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, currency in respect of which a report under section 15 is required;
- for the purpose of finding out whether the person has with him or her any such currency.
- (4) Where an officer has reasonable grounds to believe that currency found in the course of an examination or search under subsection (3) or (3A) may afford evidence as to the commission of an offence against section 15, the officer may seize the currency.
- (5) A person shall not be searched under subsection (3A) except by a person of the same sex.
- (6) An officer, and any person assisting an officer, may board any ship or aircraft for the purpose of exercising the powers conferred by subsection (1), (2), (3), (3A) or (4).
- (7) An officer may, with such assistance as is reasonable and necessary, board any ship or aircraft and examine or search the
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- (c) a port, airport, wharf or boarding station appointed under section 15 of that Act.

**33A Arrest without warrant**

- (1) Where an officer has reasonable grounds to believe that a person is guilty of an offence against section 15, the officer may arrest the person without warrant.
- (2) Where an officer has reasonable grounds to believe that a person has assaulted any officer in the execution of that officer's duties, the first-mentioned officer may arrest the person without warrant.
- (3) A person must not resist, obstruct or prevent the arrest of any person under this section.

Penalty: 10 penalty units.

Note: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*.

- (4) Where a person is arrested under this section, sections 212 and 213 of the *Customs Act 1901* apply as though the person had been arrested under section 210 of that Act.
- (5) In this section:

*offence against section 15* and *officer* have the same respective meanings as in section 33.

**34 Conduct by directors, servants or agents**

- (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:



Section 34

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- (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

**37 Acting Director**

- (1) The Minister may, in writing, appoint a person to act as Director of AUSTRAC:
  - (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Director is absent from Australia or is, for any reason, unable to perform the duties of the office of Director.
- (2) An appointment to act as Director of AUSTRAC may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) A person appointed under subsection (1) to act during a vacancy in the office of Director shall not continue so to act for more than 12 months.
- (4) Where a person is acting as Director otherwise than by reason of a vacancy in the office of Director and the office becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.
- (5) While a person is acting as Director, that person may exercise all the powers, and shall perform all the duties, of the Director.
- (6) Anything done by or in relation to a person purporting to act under subsection (5) is not invalid on the grounds that:
  - (a) the occasion for the person's appointment had not arisen;
  - (b) there is a defect or irregularity in connection with the person's appointment;
  - (c) the person's appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

- (a) take into account any comments made by the Commissioner in the course of consultations referred to in subsection (3); and
- (b) carry out, as far as is practicable, analysis of FTR information at the request of the Commissioner.

### 39 Delegation

The Director may, by signed writing, delegate to a member of the staff of AUSTRAC all or any of the Director's powers under this Act or the regulations.

### 40 Staff

- (1) The staff of AUSTRAC shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
  - (b) the Director is the Head of that Statutory Agency.

### 40A Consultants

- (1) The Director may engage, under written agreements, persons having suitable qualifications and experience to perform services as consultants to AUSTRAC.
- (2) The terms and conditions of engagement of persons mentioned in subsection (1) are such as the Director determines from time to time.

### 40B Annual Report

The Director must, as soon as practicable after 30 June in each year, prepare, and give the Minister, a report of AUSTRAC's operations during the year that ended on that day.

- (ii) the operation by a person of an account with the institution;
  - (iii) the opening or use by a person of a safety deposit box held by the institution;
  - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
  - (v) the transmission of funds between Australia and a foreign country or between foreign countries on behalf of a person;
  - (vi) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); and
- (b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person).

**40E Meaning of *minimum retention period***

The *minimum retention period*, in relation to a financial transaction document of a financial institution, is:

- (a) if the document relates to the opening of an account with the institution—the period of 7 years after the day on which the account is closed; or
- (b) if the document relates to the opening by a person of a safety deposit box held by the institution—the period of 7 years after the day on which the safety deposit box ceases to be used by the person; or
- (c) in any other case—the period of 7 years after the day on which the transaction takes place.

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Penalty: 100 penalty units.

- (3) An offence against this section is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: This section does not apply to documents relating to certain transferred accounts (see sections 40L and 40P).

#### **40H Customer-generated financial transaction documents relating to operation of accounts**

- (1) A financial institution is guilty of an offence if:

- (a) it does not retain, for the minimum retention period, either the original or a copy of a customer-generated financial transaction document; and
- (b) the document relates to the operation of an account held with the institution; and
- (c) the document is not a cheque or payment order.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply to a document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount not exceeding:

- (a) \$200; or
- (b) such higher amount as is specified in the regulations for the purposes of this subsection.

Note 1: A defendant bears an evidential burden in relation to the defence in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Subsection (1) also does not apply to documents relating to certain transferred accounts (see sections 40L and 40P).

- (3) An offence against this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **40J Retaining other financial transaction documents**

- (1) A financial institution is guilty of an offence if:

- (a) it does not retain, for the minimum retention period, either the original or a copy of a financial transaction document that

### **Division 3—Obligations relating to active ADI accounts transferred to another ADI**

#### **40K Transferor ADI must give documents to transferee ADI**

An ADI (the *transferor ADI*) is guilty of an offence if:

- (a) a document is in its possession in fulfilment of an obligation imposed on it by section 40F, subsection 40G(1) or section 40H or 40J; and
- (b) the document relates to an active account that has been, or is proposed to be, transferred to another ADI (the *transferee ADI*) under:
  - (i) a law of the Commonwealth or of a State or Territory; or
  - (ii) an arrangement between the transferor ADI and the transferee ADI; and
- (c) the transferor ADI intentionally fails to give the relevant document to the transferee ADI within the 120-day period beginning 30 days before the transfer of the account.

Penalty: 10 penalty units.

#### **40L Compliant transferor ADIs released from retention obligations**

Sections 40F to 40J do not apply to the transferor ADI, in relation to the document, if it gave the original and all copies of the document to the transferee ADI within the 120-day period beginning 30 days before the transfer of the account.

Note: A defendant bears an evidential burden in relation to the defence in this section (see subsection 13.3(3) of the *Criminal Code*).

#### **40M Retention obligations of transferee ADIs**

If the transferee ADI is given the original and all copies of the document within the 120-day period beginning 30 days before the transfer of the account, this Part applies to the transferee ADI in relation to the document as follows:

## **Division 4—Obligations relating to closed ADI accounts transferred to another ADI**

### **40N Transferor ADI may give documents to transferee ADI**

An ADI (the *transferor ADI*) may give the original and copies of a document (the *second document*) relating to an account to another ADI (the *transferee ADI*) if:

- (a) the transferor ADI has given another document (the *first document*) relating to the same account to the transferee ADI in accordance with section 40K; and

Note: Paragraph 40K(1)(c) requires the document to have been given during a 120-day period.

- (b) the *second document* is in the transferor ADI's possession in fulfilment of an obligation imposed on it by section 40F, subsection 40G(1) or section 40H or 40J; and
- (c) the *second document* relates to a closed account; and
- (d) the transferor ADI and the transferee ADI agree in writing that the *second document* should be given by the transferor ADI to the transferee ADI within the 120-day period relating to the giving of the first document.

### **40P Compliant transferor ADIs released from retention obligations**

Sections 40F to 40J do not apply to the transferor ADI, in relation to the *second document*, if it gave the original or a copy of that document to the transferee ADI within the 120-day period relating to the giving of the first document.

Note: A defendant bears an evidential burden in relation to the defence in this section (see subsection 13.3(3) of the *Criminal Code*).

### **40Q Retention obligations of transferee ADIs**

If the transferee ADI is given the original or a copy of the *second document* within the 120-day period relating to the giving of the first document, this Part applies to the transferee ADI in relation to the *second document* as follows:

**Division 5—Miscellaneous**

**40R Retrieving documents must be reasonably practicable**

- (1) A financial institution is guilty of an offence if:
- (a) it is required to retain documents under this Part; and
  - (b) does not retain and store them in a way that makes their retrieval reasonably practicable.

Penalty: 100 penalty units.

- (2) An offence against this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**40S This Part does not limit any other retention obligations**

This Part does not limit any other obligation of a financial institution to retain documents.



## **Schedule 1—Reportable details for purposes of section 7**

Subsection 7(4)

### **Part A**

The reportable details of a significant cash transaction, to which a cash dealer is a party, that:

- (a) must be included in a report made to the Director under paragraph 7(3)(a); or
- (b) may be included in a report if the Director has approved, under paragraph 7(3)(b), reporting by the dealer electronically;

are:

1. In relation to the cash dealer:
  - (a) the name, identifying number and business of the cash dealer; and
  - (b) the name and address of the branch of the cash dealer at which the transaction was conducted.
2. The nature of the transaction.
3. The date of the transaction.
4. For each person conducting the transaction with the cash dealer:
  - (a) the name of the person; and
  - (b) the business or residential address of the person; and
  - (c) the occupation, business or principal activity of the person; and
  - (d) the date of birth of the person; and
  - (e) the signature of the person; and
  - (f) the method used by the cash dealer to verify the identity of the person; and

11. The total monetary amount of the transaction.
12. The foreign currency involved in the transaction (if any).

- (c) the occupation, business or principal activity of the person;  
and
  - (d) whether the person is a customer of the cash dealer who carries on a business and, if so, the industry code for that business that is published by the Australian Bureau of Statistics in the publication entitled:
    - (i) "Australian Standard Industrial Classification", as in force on 1 July 1990; or
    - (ii) "Australian and New Zealand Standard Industrial Classification", as in force on 31 March 1997.
6. The type and identifying number of any account with a cash dealer that is affected by the transaction.
7. The total amount of currency involved in the transaction.

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## **Schedule 3—Reportable details for purposes of section 15**

### Subsection 15(9)

For the purposes of section 15, the following are the reportable details of a transfer or receipt of currency:

1. The amount of currency
2. Whether the currency is Australian currency or foreign currency and, if foreign currency, which foreign currency
3. If the person making the report is to carry the currency into or out of Australia:
  - (a) the name, address, date of birth and occupation (or, where appropriate, the business or principal activity) of the person;
  - (aa) the international travel document number and country of issue of the international travel document or international travel documents held by the person;
  - (b) if the person is not an Australian resident—that person's address while in Australia;
  - (c) the name of the city in Australia from which the person is to depart or at which the person will arrive;
  - (d) the name of the foreign country and the city in that country from which the currency is being imported or to which the currency is being exported;
  - (e) if the person is to carry the currency on behalf of another person:
    - (i) the name, address and occupation (or, where appropriate, business or principal activity) of that person; and
    - (ii) the name and address, and occupation, business or principal activity of the person to whom the currency is to be delivered;

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## **Schedule 3A—Reportable details for the purposes of section 15A**

### **1 Reportable details**

- (1) The reportable details of a significant cash transaction that a solicitor, a solicitor corporation or a partnership must include in a report prepared under subsection 15A(1) are set out in the following table.
- (2) The reportable details required by items 3 and 4 of the table are those details as known to the person making the report.

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<b>Reportable details of significant cash transactions</b>		
<b>Item</b>	<b>Element of the transaction</b>	<b>Reportable details</b>
1	The significant cash transaction	1.1 The nature of the transaction. 1.2 The date of the transaction. 1.3 The total amount of currency involved in the transaction. 1.4 The total monetary amount of the transaction. 1.5 The foreign currency (if any) involved in the transaction.
2	The solicitor, corporation or partnership	2.1 The name of the solicitor, corporation or partnership. 2.2 The address of the office of the solicitor, corporation or partnership or, if there is more than one such office, the principal office. 2.3 The address of the place at which the transaction was conducted.

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## **Schedule 4—Reportable details for purposes of section 16**

### Subsection 16(6)

For the purposes of section 16, the following are the reportable details of a transaction to which a cash dealer is a party:

1. The name, address and business of the cash dealer
2. The nature of the transaction
3. The date of the transaction
4. The place where the transaction was conducted by the cash dealer
5. The names of, or other means of identifying, the persons conducting the transaction on behalf of the cash dealer
6. The identity of any other cash dealer known by the person preparing the report to be involved in the transaction
7. Details, so far as known to the person preparing the report, of the identity of:
  - (a) each person conducting the transaction other than the persons referred to in item 5; and
  - (b) any person on whose behalf the transaction was so conducted;including:
  - (c) the name; and
  - (d) the business or residential address; and
  - (e) the postal address (if different from the address referred to in paragraph (d));
  - (f) the occupation or, where appropriate, the business or principal activity; and
  - (g) the date of birth of each person to whom paragraph (a) applies

**Table of Acts****Notes to the *Financial Transaction Reports Act 1988*****Note 1**

The *Financial Transaction Reports Act 1988* as shown in this compilation comprises Act No. 64, 1988 amended as indicated in the Tables below.

The *Financial Transaction Reports Act 1988* was amended by the Financial Transaction Reports Regulations as amended. The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 17 April 1997 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Cash Transaction Reports Act 1988</i>	64, 1988	15 June 1988	Ss. 1 and 2: Royal Assent Ss. 3-6, 24, Parts IV, V, VI and VII (ss. 25-43): 1 July 1988 (see <i>Gazette</i> 1988, No. S192) Ss. 7-15: 1 July 1990 (see <i>Gazette</i> 1989, No. S359) Ss. 16 and 17: 1 Jan 1990 (see <i>Gazette</i> 1989, No. S359) Remainder: 1 Feb 1991 (see <i>Gazette</i> 1990, No. S288)	

## Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes Legislation Amendment Act (No. 2) 1991</i>	123, 1991	23 Aug 1991	Ss. 5–34 and 38–50: 20 Sept 1991 Ss. 35–37: 6 Dec 1991 (see <i>Gazette</i> 1991, No. S330) S. 51: 23 Feb 1992 (see s. 2 (5)) Remainder: Royal Assent	—
<i>Cash Transaction Reports Amendment Act 1991</i>	188, 1991	6 Dec 1991	Ss. 1–3 and 7: Royal Assent Remainder: 6 Dec 1992 (see <i>Gazette</i> 1992, No. GN25)	Ss. 14 and 15
<i>Crimes Legislation Amendment Act 1992</i>	164, 1992	11 Dec 1992	Part 1 (ss. 1, 2) and Parts 3–11 (ss. 18–53): 8 Jan 1993 Remainder: 1 Feb 1993 (see <i>Gazette</i> 1993, No. GN1)	S. 17
<b>as amended by</b>				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (items 11, 12): 11 Dec 1992 (b)	—
<i>Banking (State Bank of South Australia and Other Matters) Act 1994</i>	69, 1994	9 June 1994	Ss. 63–65: Royal Assent (c)	S. 63
<i>Law and Justice Legislation Amendment Act 1994</i>	84, 1994	23 June 1994	Part 7 (ss. 45–47): 1 July 1994 (see <i>Gazette</i> 1994, No. S242) (d)	S. 45
<i>Royal Commission into the New South Wales Police Service (Access to Information) Act 1994</i>	170, 1994	16 Dec 1994	16 Dec 1994	—
<i>Crimes and Other Legislation Amendment Act 1994</i>	182, 1994	19 Dec 1994	S. 31: 16 Jan 1995 (e)	—
<i>Mutual Assistance in Criminal Matters Legislation Amendment Act 1996</i>	40, 1996	9 Oct 1996	Ss. 1–3: Royal Assent Remainder: 1 Mar 1997 (see <i>Gazette</i> 1997, No. S50)	—
<i>Financial Transaction Reports Amendment Act 1997</i>	33, 1997	17 Apr 1997	15 May 1997	Sch. 1 (item 76) [see Table A]
<i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i>	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Security Intelligence Organisation Legislation Amendment Act 1999</i>	161, 1999	10 Dec 1999	Schedule 4: Royal Assent (n)	—
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 29: (o)	S. 4(1), (2) [see Table A]
<i>Corporations (Repeals, Consequential and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 195–198): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (p)	Ss. 4–14
<i>General Insurance Reform Act 2001</i>	119, 2001	19 Sept 2001	Schedule 3 (item 12): 1 July 2002	—
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 232–236): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (r)	—
<i>National Crime Authority Legislation Amendment Act 2001</i>	135, 2001	1 Oct 2001	Schedules 1–7, 9–12: 12 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Schedule 8: 13 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Remainder: Royal Assent	—
<i>Measures to Combat Serious and Organised Crime Act 2001</i>	136, 2001	1 Oct 2001	Schedule 6: 29 Oct 2001 (s)	—
<i>Royal Commissions and Other Legislation Amendment Act 2001</i>	166, 2001	1 Oct 2001	1 Oct 2001	—
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (item 19): Royal Assent	—
<i>Suppression of the Financing of Terrorism Act 2002</i>	66, 2002	5 July 2002	Schedule 2: Royal Assent [see Note 2]	Sch. 2 (items 9B, 21) [see Table A]
<i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i>	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44)	—

**Act Notes**

- (a) The *Cash Transaction Reports Act 1988* was amended by sections 20–23 only of the *Crimes Legislation Amendment Act 1991*, subsections 2(1) and (2) of which provide as follows:
  - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Section 23, paragraph 30(b), subsection 61(2) and sections 62, 63, 67 and 73 commence on a day to be fixed by Proclamation, being the day on which Schedule 1(3) to the *State Drug Crime Commission (Amendment) Act 1990* of New South Wales commences.
- (b) The *Crimes Legislation Amendment Act 1992* was amended by Schedule 3 (items 11 and 12) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
  - (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (c) The *Financial Transaction Reports Act 1988* was amended by sections 63–65 only of the *Banking (State Bank of South Australia and Other Matters) Act 1994*, subsection 2(1) of which provides as follows:
  - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Financial Transaction Reports Act 1988* was amended by Part 7 (sections 45–47) only of the *Law and Justice Legislation Amendment Act 1994*, subsection 2(6) of which provides as follows:
  - (6) Part 7 commences on a day to be fixed by Proclamation.
- (e) The *Financial Transaction Reports Act 1988* was amended by section 31 only of the *Crimes and Other Legislation Amendment Act 1994*, subsection 2(4) of which provides as follows:
  - (4) The amendments made by this Act to the *Australian Federal Police Act 1979*, the *Crimes (Aviation) Act 1991* (other than the amendment made to Schedule 5 to that Act), the *Crimes (Hostages) Act 1989*, the *Crimes (Internationally Protected Persons) Act 1976*, the *Crimes (Overseas) Act 1964*, the *Crimes (Superannuation Benefits) Act 1989*, the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*, the *Customs Act 1901*, the *Director of Public Prosecutions Act 1983*, the *Extradition Act 1988*, the *Financial Transaction Reports Act 1988* and to sections 23 and 59 of the *Proceeds of Crime Act 1987* commence on the 28th day after the day on which this Act receives the Royal Assent.
- (ea) Subsection 2(1) (item 11) of the *Crimes Legislation Enhancement Act 2003* provides as follows:
  - (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
11. Schedule 2, item 17	Immediately after the <i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i> received the Royal Assent	28 May 1997

- (f) The *Financial Transaction Reports Act 1988* was amended by Schedule 4 only of the *Telecommunications (Interception) and Listening Device Amendment Act 1997*, subsection 2(1) of which provides as follows:
  - (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

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**Act Notes**

- (o) The *Financial Transaction Reports Act 1988* was amended by Schedule 29 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
    - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (p) The *Financial Transaction Reports Act 1988* was amended by Schedule 3 (items 195–198) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (q) The *Financial Transaction Reports Act 1988* was amended by Schedule 3 (item 12) only of the *General Insurance Reform Act 2001*, subsection 2(2) of which provides as follows:
- (2) Schedules 1 and 3 to this Act commence, or are taken to have commenced, on 1 July 2002.
- (r) The *Financial Transaction Reports Act 1988* was amended by Schedule 1 (items 232–236) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:  
**FSR commencement** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
  - (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
- (s) The *Financial Transaction Reports Act 1988* was amended by Schedule 6 only of the *Measures to Combat Serious and Organised Crime Act 2001*, subsection 2(5) of which provides as follows:
- (5) The remainder of this Act commences on the 28th day after the day on which it receives the Royal Assent.

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 188, 1991
<b>Part I</b>	
S. 1 .....	am. No. 188, 1991
S. 3 .....	am. Nos. 4 and 110, 1990; No. 188, 1991; No. 164, 1992; No. 170, 1994; Nos. 33, 62 and 160, 1997; No. 48, 1998; Nos. 44 and 146, 1999; Nos. 55, 119, 123, 136 and 166, 2001; Nos. 86, 125 and 141, 2002; No. 122, 2003
S. 5.....	am. No. 33, 1997
S. 6A .....	ad. No. 24, 2001
<b>Part II</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part II.....	rs. No. 33, 1997
Heading to s. 7 .....	am. No. 33, 1997
S. 7 .....	am. No. 164, 1992
S. 8A .....	ad. No. 4, 1990 am. No. 164, 1992; No. 33, 1997
S. 9.....	am. No. 123, 2001
S. 14.....	rep. No. 33, 1997
S. 14A .....	ad. No. 4, 1990 am. No. 164, 1992 rep. No. 33, 1997
<b>Division 1A</b>	
Heading to Div. 1A of Part II.....	ad. No. 33, 1997
S. 15 .....	am. No. 4, 1990; No. 188, 1991; No. 182, 1994; No. 33, 1997; No. 48, 1998; No. 136, 2001
<b>Division 1B</b>	
Div. 1B of Part II.....	ad. No. 33, 1997
S. 15A.....	ad. No. 33, 1997
<b>Division 2</b>	
S. 16 .....	am. Nos. 28, 123 and 188, 1991; No. 33, 1997; Nos. 24 and 135, 2001; Nos. 66 and 125, 2002
S. 17 .....	am. No. 141, 2002
S. 17A .....	ad. No. 123, 1991 rep. No. 33, 1997
<b>Division 3</b>	
Div. 3 of Part II .....	ad. No. 188, 1991
S. 17B.....	ad. No. 188, 1991 am. No. 48, 1998
S. 17C .....	ad. No. 188, 1991 rs. No. 48, 1998
Ss. 17D-17F.....	ad. No. 188, 1991

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 27 .....	am. No. 4, 1990; Nos. 28, 123 and 188, 1991; No. 170, 1994; No. 40, 1996; Nos. 33 and 160, 1997; No. 54, 1998; Nos. 55, 135, 136 and 166, 2001; Nos. 63, 66 and 125, 2002; Nos. 113 and 122, 2003
Subheads. to s. 27AA(2)-(4).....	ad. No. 66, 2002
Subheads. to s. 27AA(6)-(8).....	ad. No. 66, 2002
S. 27AA .....	ad. No. 161, 1999 am. No. 66, 2002
Note 2 to s. 27AA(7) .....	rs. No. 66, 2002
<b>Part IVA</b>	
Part IVA.....	ad. No. 33, 1997
S. 27A.....	ad. No. 33, 1997
S. 27B.....	ad. No. 33, 1997 am. No. 24, 2001
S. 27C .....	ad. No. 33, 1997 am. No. 136, 2001
Ss. 27D, 27E .....	ad. No. 33, 1997
<b>Part V</b>	
S. 28 .....	am. No. 4, 1990; Nos. 123 and 188, 1991; No. 182, 1994; No. 33, 1997
S. 29 .....	am. No. 4, 1990; No. 164, 1992; No. 33, 1997; No. 24, 2001
S. 30.....	am. No. 33, 1997; No. 24, 2001
S. 31.....	am. No. 33, 1997
S. 33 .....	am. No. 4, 1990; No. 123, 1991; No. 33, 1997; No. 24, 2001
S. 33A .....	ad. No. 4, 1990 am. No. 33, 1997
S. 34.....	am. No. 33, 1997
<b>Part VI</b>	
S. 35 .....	am. No. 188, 1991
S. 36 .....	am. Nos. 122 and 188, 1991
S. 36A.....	ad. No. 122, 1991
S. 36B .....	ad. No. 122, 1991 am. No. 146, 1999
S. 37 .....	am. No. 188, 1991
S. 38 .....	am. Nos. 123 and 188, 1991; No. 164, 1992
S. 39 .....	am. No. 188, 1991 rs. No. 33, 1997
S. 40 .....	am. No. 188, 1991; No. 84, 1994; No. 146, 1999
S. 40A .....	ad. No. 4, 1990 am. No. 188, 1991
S. 40B .....	ad. No. 123, 1991 am. No. 188, 1991
<b>Part VIA</b>	
Part VIA.....	ad. No. 86, 2002

**Note 2**

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**Note 2**

Subsection 27(17)(t) and (u)—Schedule 2 (item 14E) of the *Suppression of the Financing of Terrorism Act 2002* (No. 66, 2002) provides as follows:

**Schedule 2**

**14E Paragraphs 27(17)(t) and (u) (the paragraphs (t) and (u) inserted by item 7 of Schedule 6 to the *Measures to Combat Serious and Organised Crime Act 2001*)**

Repeal the paragraphs.

The proposed amendment was misdescribed and is not incorporated in this compilation.

**Table A**

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- the *Financial Intermediaries Act 1996* of Queensland to the application of provisions of any of the Acts referred to in paragraph (a); or
- (c) the amendments and repeals made by the Schedules to this Act.
- (2) Without limiting subitem (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
- (a) by applying (with or without modifications) to the matter:
- (i) provisions of a law of the Commonwealth, or of a State or Territory; or
- (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
- (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
- (b) by otherwise specifying rules for dealing with the matter;
- (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (3) Without limiting subitems (1) and (2), the regulations may provide for the continued effect, for the purposes of a provision of a law of the Commonwealth, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a law of a State or Territory. In the case of an instrument or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.
- (4) Without limiting subitem (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;

**Table A**

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- (g) the *Friendly Societies (Western Australia) Act 1999*; and
- (h) any other law of a State or Territory prescribed by the regulations for the purposes of this definition.

**23 Power to make regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed.

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*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

**4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Suppression of the Financing of Terrorism Act 2002* (No. 66, 2002)

**Schedule 2**

**9B Saving of authorisations and undertakings**

For the purposes of subsection 27(1B) of the *Financial Transaction Reports Act 1988* as amended by this Schedule, neither of the following is affected by the amendments of that Act by this Schedule:

- (a) an authorisation conferred on the Anti-Corruption Commission of Western Australia by the Director;
- (b) an undertaking by that Commission to the Director.

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# Financial Transaction Reports Regulations 1990

Statutory Rules 1990 No. 36 as amended

made under the

*Financial Transaction Reports Act 1988*

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This compilation was prepared on 13 March 2003  
taking into account amendments up to SR 2003 No. 32

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra

**1 Name of Regulations** [see Note 1]

These Regulations are the *Financial Transaction Reports Regulations 1990*.

**2 Interpretation**

(1) In these Regulations, unless the contrary intention appears:

*Aboriginal person* means a person who is a member of the Aboriginal race of Australia.

*beneficiary customer*, in relation to an instruction, means the person or organisation (including a financial organisation) designated by the ordering customer or ordering organisation as the ultimate recipient of the funds.

*beneficiary organisation*, in relation to an instruction, means the financial organisation designated by the ordering organisation as the ultimate recipient of the funds.

*census population*, in relation to an urban centre, means the population of that urban centre specified in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Bureau of Statistics in the documents entitled 'Persons and Dwellings in Local Government Areas and Urban Centres'.

*child* means a person who has not attained the age of 18.

*customer transfer instruction* means an instruction to transfer funds from an ordering customer to a beneficiary customer, in relation to which at least 1 of those customers is not a financial organisation.

*disbursing organisation* means:

- (a) in relation to a customer transfer instruction — the financial organisation at which a beneficiary customer is to be paid; and
- (b) in relation to a financial organisation transfer instruction — the financial organisation, other than the recipient, that is instructed to pay or credit the beneficiary organisation.

*financial body* means:

- (a) a financial institution; or

**isolated area** means a place situated at a distance of not less than 20 kilometres from the centre point of the nearest urban centre with a census population of not less than 2,500.

**known customer**, in relation to a financial body as at a particular time, means a natural person who has been a signatory of an account with the financial body for not less than 12 months immediately preceding that time.

**law** means a law of the Commonwealth, a State or a Territory.

**local government body** means:

- (a) a municipal, city, town, district or shire council; or
- (b) a local governing body established by or under a law of a State, the Australian Capital Territory or the Northern Territory the sole or principal function of which is to provide a particular service, such as the supply of electricity or water.

**location**, in relation to an ordering customer or a beneficiary customer, means:

- (a) the customer's full business or residential address; or
- (b) if the full address cannot be obtained and provided after reasonable efforts — any of the following:
  - (i) the town or suburb at which the business is conducted or the residence is located;
  - (ii) the postcode of that town or suburb;
  - (iii) the telephone number of the customer's business or residence.

**ordering customer** means a person or organisation (including a financial organisation) on whose behalf an instruction is sent.

**ordering organisation**, in relation to an instruction, means the financial organisation:

- (a) that the ordering customer originally asked to send the instruction; or
- (b) that initiated the sending of the instruction on its own behalf.

**principal executive officer** has the same meaning that it has in subsection 8A (8) of the Act.

**public authority** includes a rating authority.

**public employee** has the meaning given in regulation 11.

- (3) If the rules of a superannuation fund contain a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, the provision does not prevent the fund from being treated as an indefinitely continuing fund for the purposes of the definition of *superannuation fund* in subregulation (1).

**2A Application — bullion transaction**

These Regulations apply to a bullion transaction that involves a significant cash transaction.

**3 The verification procedure**

- (1) For the purposes of subparagraph 20A (1) (b) (i) of the Act, the verification procedure consists of:
- (a) the checks mentioned in regulation 4; and
  - (b) in relation to a signatory mentioned in regulation 5, 6, 7, 8, 9 or 10A — the alternative check mentioned in that regulation.
- (1A) For paragraph 24C (2) (a) of the Act, the verification procedure for an identification record for a party to a bullion transaction consists of:
- (a) in the case of a company defined in regulation 5A — the procedure set out in that regulation; and
  - (b) in all other cases:
    - (i) the checks mentioned in regulation 4 and the alternative check mentioned in regulation 9; or
    - (ii) obtaining an identification reference.
- (1B) For subparagraph (1A) (b) (ii), an identification reference is obtained by the means set out in section 21 of the Act as if a reference to:
- (a) a signatory to an account were a reference to a party to a bullion transaction; and
  - (b) the signatory were a reference to the party; and
  - (c) the account were a reference to the bullion transaction.

and the credit card may also be taken into account giving a total of 75 points.

**4 Verification generally**

- (1) The checks that may be made in relation to any signatory or party to a bullion transaction are as follows:
  - (a) the identifying cash dealer verifies the name and address of the signatory or party to a bullion transaction from one or more of the following sources (each verification being worth 35 points):
    - (i) the employer of the signatory or party to a bullion transaction, or a person who was an employer of the signatory or party to a bullion transaction within the last 2 years, from records held by the employer or previous employer; or
    - (ii) a rating authority, from its records relating to land ownership or occupation; or
    - (iii) a document held by the cash dealer conferring an interest by way of security over property of the signatory or party to a bullion transaction; or
    - (iv) a financial body, other than the cash dealer, from its records relating to a mortgage or other instrument of security granted by the signatory or party to a bullion transaction to that body; or
    - (v) subject to the *Privacy Act 1988* — the Credit Reference Association of Australia from its records; or
    - (vi) records held under a law relating to land titles; and
  - (b) the identifying cash dealer verifies the name and address of the signatory or party to a bullion transaction from one or more of the following sources (each verification being worth 25 points):
    - (i) the electoral roll compiled by the Australian Electoral Office and available for public scrutiny; or
    - (ii) a nominee of the signatory or party to a bullion transaction who is an acceptable referee or who would, if he or she had known the signatory or party

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- (f) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from a secondary identification document relating to the signatory or party to a bullion transaction produced to the identifying cash dealer and the document:
  - (i) contains a photograph or the signature of the signatory or party to a bullion transaction; and
  - (ii) is:
    - (A) an identification card issued to a public employee; or
    - (B) a licence or permit issued under a law; or
    - (C) an identification card issued to a person by the Commonwealth, a State or Territory as evidence of the person's entitlement to a financial benefit; or
    - (D) an identification card issued to a student at a tertiary education institution;(verification by this means is worth 40 points); and
- (g) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from any other secondary identification document relating to the signatory or party to a bullion transaction produced to the identifying cash dealer (verification by this means is worth 25 points); and
- (h) the identifying cash dealer, being a financial body, verifies that the signatory or party to a bullion transaction is a known customer (verification by this means is worth 40 points); and
- (i) if the identifying cash dealer is a financial body — it verifies that the signatory or party to the bullion transaction has been a signatory of an account with the body for at least 36 months immediately before the verification (verification by this means is worth 100 points); and
- (j) the identifying cash dealer verifies the name of the signatory or party to a bullion transaction from a reference produced to the identifying cash dealer being:
  - (i) a written reference from a financial body relating to the signatory or party to a bullion transaction:

soon as practicable, seek to identify the person (whether or not the person is, or is to be, a signatory to a relevant account) by means of:

- (aa) a verification procedure referred to in subparagraph 20A (1) (b) (ii) of the Act; or
  - (a) an identification reference for the person in accordance with section 21 of the Act; or
  - (b) the checks mentioned in regulation 4.
- (4) If a public authority or incorporated body revokes a nomination or a verifying officer ceases to be employed by a public authority or incorporated body, it must notify the identifying cash dealer of that fact as soon as practicable.
- (5) A signatory of an account of a public authority or incorporated body is also taken to be identified if a certificate of identity by the verifying officer, or a verifying officer, for that account is lodged with an identifying cash dealer and the certificate:
- (a) says that the officer is satisfied that the signatory is authorised by the authority or body to be a signatory to that account; and
  - (b) bears the signatures of the officer and the signatory.
- (5A) A certificate of identity by a verifying officer may relate to more than one signatory of the account for which it is lodged.
- (6) Verification of the identity of a signatory under subregulation (5) is worth 100 points.

**5A Verification: company party to a bullion transaction**

- (1) This regulation applies if a bullion seller enters into a bullion transaction with a company.
- (2) Subject to subregulation (3), the bullion seller must obtain from the company:
  - (a) for a company having a certificate of registration under the Corporations Law — a copy of that certificate:
    - (i) issued by the Australian Securities Commission; or
    - (ii) certified by a person under paragraph 8 (b) of the *Statutory Declarations Act 1959*; and

- (ii) endorsed it as a true copy; or
  - (c) the company holds an account with the bullion seller and the bullion seller has retained account information relating to the company.
- (4) If the bullion seller has obtained all relevant information from the company under subregulation (2), the company's identity is taken to have been verified.
- (5) Verification of the identity of the company under subregulation (4) is worth 100 points.
- (6) In this regulation:
- company* means a body registered or taken to be registered under Part 2.2 of the Corporations Law, or a body registered under Part 4.1 of the Corporations Law.

**6 Verification: children**

- (1) A child who is a signatory of an account is also taken to be identified if there is produced to the identifying cash dealer:
- (a) a primary identification document relating to the child; or
  - (b) a statement issued on behalf of an educational institution attended by the child:
    - (i) being a statement:
      - (A) written on the letterhead of the institution or educational system to which the institution belongs; or
      - (B) incorporated in a list of names written on the letterhead of a financial institution and bearing the stamp or seal of the educational institution; or
      - (C) contained in a student card issued by the institution that also bears the seal or stamp of the institution; and
    - (ii) specifying the name of the child; and
    - (iii) confirming that the child attends the institution; and
    - (iv) signed by the principal, deputy principal, head teacher, deputy head teacher, enrolment officer, deputy enrolment officer, secretary, deputy

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resident overseas employed by it to be the foreign verifying officer or a foreign verifying officer of the financial body.

- (3) If an identifying cash dealer is notified that a person has been nominated as a foreign verifying officer and the nominated person is not a verified signatory, the cash dealer must, as soon as practicable, seek to identify the person by means of:
  - (aa) a verification procedure referred to in subparagraph 20A (1) (b) (ii) of the Act; or
  - (a) an identification reference for the person in accordance with section 21 of the Act; or
  - (b) the checks mentioned in regulation 4.
- (4) If a financial body revokes a nomination or a foreign verifying officer ceases to be employed by a financial body, it must notify the identifying cash dealer of that fact as soon as practicable.
- (5) A person resident outside Australia who is a signatory of an account is also taken to be identified if a certificate of identity by the foreign verifying officer, or a foreign verifying officer, for that account is lodged with an identifying cash dealer and the certificate:
  - (a) sets out the name and residential address of the signatory; and
  - (b) says that the officer is satisfied:
    - (i) that the name is the name by which the signatory is known; and
    - (ii) that the signatory is a signatory of an account with the financial body.
  - (c) bears the signatures of the officer and the signatory.
- (6) Verification of the identity of a signatory under subregulation (5) is worth 100 points.
- (7) A person resident outside Australia who is a signatory of an account is taken to be identified if:
  - (a) the person produces to an employee of a bank who is authorised by the bank to open accounts with the bank:

- (g) a director of an Aboriginal or Torres Strait Islander corporation within the meaning of the *Aboriginal and Torres Strait Islander Commission Act 1989*.
- (2) The name of an Aboriginal person or Torres Strait Islander ordinarily resident in an isolated area who is a signatory of an account or party to the bullion transaction may also be verified by a community leader of the community to which the signatory or party to the bullion transaction belongs.
- (3) Each verification of the name of a signatory or party to the bullion transaction under subregulation (2) is worth 50 points.

**10 Particulars to be recorded**

- (1) The particulars relating to a document referred to in subparagraph 4 (1) (a) (iii) or (iv), paragraph 4 (1) (e), (f) or (g) or subregulation 6 (2) or 7 (2) are:
  - (a) the nature of the document; and
  - (b) the name of the person to whom it relates; and
  - (c) if the document contains information relating to the age or place of residence of the signatory or party to the bullion transaction — details of that information; and
  - (d) the date, place of issue and any expiry date of the document; and
  - (e) any number allocated to the document by the authority which issued it.
- (2) Where an identification check is based on information provided by a person, the person making the check must record whichever of the following is relevant:
  - (a) the name of the person providing the information; and
  - (b) the designation, title or rank of that person; and
  - (c) the name and address of any body or organisation with whom the person is associated where that association is relevant to the kind of information provided by the person; and
  - (d) a note of the information provided by the person.

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- (iii) gives the document to the cash dealer no later than 3 months after the day on which the document is issued; and
- (b) the cash dealer:
  - (i) has entered into an agreement with the Commonwealth for the purposes of subsection 12D (1) of that Act; and
  - (ii) accepts the person's application.
- (2) For the purposes of subparagraph 20A (1) (b) (i) of the Act, the verification procedure for the person is the verification by the identifying cash dealer of the person's identity from the document referred to in subparagraph (1) (a) (ii).
- (3) The verification of the person's identity is worth 100 points.

## 11 Public employee

- (1) In these Regulations, *public employee* means a person employed by the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or the Territory of Norfolk Island or by a public authority, whether the person is so employed under a law, or under a contract of service or apprenticeship.
- (2) Without limiting subregulation (1):
  - (a) a member of the Parliament; or
  - (b) a justice or judge of a court; or
  - (c) a person (other than a person mentioned in subregulation (4)) who is the holder of an office established by a law; of the Commonwealth, a State or Territory, is to be taken, for the purposes of these Regulations, to be employed by the Commonwealth, a State or Territory as the case may be.
- (3) Without limiting subregulation (1), a member of the Defence Force is to be taken, for the purposes of these Regulations, to be employed by the Commonwealth.
- (4) Without limiting subregulation (1), a person is to be taken, for the purposes of these Regulations, to be employed by a public authority if:

- (ii) the date on which the funds referred to in the instruction become available for the recipient to disburse;
  - (iii) the identity of the ordering organisation;
  - (iv) the account of the sender or another financial organisation through which the sender will reimburse the recipient;
  - (v) the branch of the recipient or another financial organisation at which the funds will be made available to the recipient;
  - (vi) the identity of the disbursing organisation;
  - (vii) information given in the instruction by the ordering customer to the beneficiary customer about the reason for payment;
  - (viii) information or directions provided by the sender, in the instruction, to a financial organisation, or a branch or department of a financial organisation;
  - (ix) the name or identity of the branch or department of a financial organisation; and
- (k) if the dealer provides a copy of an instruction as the dealer's report — such other details as appear in the instruction as transmitted.
- (2) For the purposes of subsection 17B (2) of the Act, the prescribed details for a report of an instruction that is transmitted into Australia are:
- (a) the sender's name; and
  - (b) the recipient's name; and
  - (c) the date on which the recipient receives the instruction; and
  - (d) the currency and the amount of funds referred to in the instruction; and
  - (e) for a financial organisation transfer instruction:
    - (i) the identity and account number (if any) of the beneficiary organisation; and
    - (ii) if the ordering organisation is not the sender — the identity of the ordering organisation; and

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**11A Account information in relation to trust accounts**

- (1) For the purposes of subparagraph (c) (v) of the definition of *account information* in subsection 3 (1) of the Act, the following information in relation to an account held in trust is prescribed:
  - (a) the name and address of the trustee; and
  - (b) the name of each beneficiary under the trust; and
  - (c) if the terms of the trust identify the beneficiaries by reference only to membership of a class — details of the class.
- (2) A cash dealer who provides account information on an account held in trust is not required to provide the information set out in subregulation (1) if the account is:
  - (a) held by, or operated in connection with, a superannuation fund; or
  - (b) held by:
    - (i) the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or the Territory of Norfolk Island; or
    - (ii) a public authority; or
    - (iii) a local government body.

**11B Period for the purposes of section 18 of the Act**

- (3) For the purposes of subsection 18 (8) of the Act, the following particulars are prescribed:
  - (a) the date on which the account became blocked;
  - (b) the account holder's name and address;
  - (c) if it is known to the cash dealer — the account holder's occupation, business or principal activity;
  - (d) the type and identification number of the account;
  - (e) the unverified signatory's name;
  - (f) if it is known to the cash dealer — the unverified signatory's address;
  - (g) the name of each other signatory (if any);

- (c) a legal practitioner (however described) of a federal, State or Territory court;
- (d) a marriage counsellor within the meaning of the *Family Law Act 1975*;
- (e) a person registered as a medical practitioner under a law of a State or Territory providing for that registration;
- (f) a person who holds the position of nursing sister and is registered as a nurse under a law of a State or Territory providing for that registration;
- (g) a community leader within the meaning of subregulation 9 (1);
- (h) a marriage celebrant who is an authorised celebrant within the meaning of the *Marriage Act 1961*;
- (i) an employee of:
  - (i) a women's refuge; or
  - (ii) a crisis and counselling service;who counsels or otherwise assists victims of domestic violence, sexual assault or sexual abuse, as part of his or her duties.

**11D Retention of documents — minimum amount of transaction for document retention provisions to apply**

For subsections 40H (2) and 40J (2) of the Act, the amount is \$1 000.

**12 Schedule 1 to the Act**

Schedule 1 to the Act is amended by omitting all the words after 'SCHEDULE 1' and substituting the following:

**Reportable details for purposes of section 7**

**Part A**

The reportable details of a significant cash transaction, to which a cash dealer is a party, that:

- (a) must be included in a report made to the Director under paragraph 7 (3) (a); or
- (b) may be included in a report if the Director has approved, under paragraph 7 (3) (b), reporting by the dealer electronically;

- (a) the name of the payee, the favouree or the beneficiary of the security (if any); and
  - (b) the name and branch of the financial institution or foreign financial institution involved in the purchase or sale, and the country in which the branch is located.
9. The type and identifying number of any account with a cash dealer that is affected by the transaction.
  10. The total amount of currency involved in the transaction.
  11. The total monetary amount of the transaction.
  12. The foreign currency involved in the transaction (if any).

**Part B**

If:

- (a) the Director has approved, under paragraph 7 (3) (b), reporting by a cash dealer electronically; and
- (b) the cash dealer chooses to report the details referred to in this Part instead of the details referred to in Part A;

the reportable details of a significant cash transaction, to which the dealer is a party, that are to be included in the report, are:

1. In relation to the cash dealer:
  - (a) the name, identifying number and business of the cash dealer; and
  - (b) the name and address of the branch of the cash dealer at which the transaction was conducted.
2. The nature of the transaction.
3. The date of the transaction.
4. For each person conducting the transaction with the cash dealer:
  - (a) the name of the person; and
  - (b) the date of birth of the person; and
  - (c) the method used by the cash dealer to verify the identity of the person; and
  - (d) whether the person is a customer of the cash dealer who carries on a business and, if so, the industry code for that business that is published by the Australian Bureau of Statistics in the publication entitled:
    - (i) 'Australian Standard Industrial Classification', as in force on 1 July 1990; or
    - (ii) 'Australian and New Zealand Standard Industrial Classification', as in force on 31 March 1997.
5. For any person on whose behalf the transaction was conducted:
  - (a) the name of the person; and

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- (aa) the international travel document number and country of issue of the international travel document or international travel documents held by the person; and
- (b) by omitting from subparagraph 3 (e) (ii) 'the name and address' and substituting 'the name and address, and occupation, business or principal activity';
- (c) by omitting paragraph 3 (f) and substituting the following paragraph:
  - (f) the day on which the person is to enter or leave Australia and the number of the flight or the name of the vessel on which the person is entering or leaving;'
- (d) by inserting after paragraph 4 (a) the following paragraph:
  - (aa) the method by which the person received the currency or by which the person is to send the currency out of Australia; and';
- (e) by inserting in paragraph 4 (c) ' , date of birth' after 'address';
- (f) by omitting from subparagraph 4 (d) (ii) 'the name and address' and substituting 'the name and address, and occupation, business or principal activity';
- (g) by adding after item 4 the following item:
  - '5. If a person is to carry the currency out of Australia — the name and address of that person.'

**15 Schedule 4 to the Act**

Schedule 4 to the Act is amended by omitting items 1 to 9 inclusive and substituting the following items:

1. The name, address and business of the cash dealer
2. *The nature of the transaction*
3. The date of the transaction
4. The place where the transaction was conducted by the cash dealer
5. The names of, or other means of identifying, the persons conducting the transaction on behalf of the cash dealer
6. The identity of any other cash dealer known by the person preparing the report to be involved in the transaction
7. Details, so far as known to the person preparing the report, of the identity of:
  - (a) each person conducting the transaction other than the persons to in item 5; and

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## Table of Statutory Rules

## Notes to the *Financial Transaction Reports Regulations 1990*

### Note 1

The *Financial Transaction Reports Regulations 1990* (in force under the *Financial Transaction Reports Act 1988*) as shown in this compilation comprise Statutory Rules 1990 No. 36 amended as indicated in the Tables below.

### Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1990 No. 36	27 Feb 1990	27 Feb 1990	
1990 No. 162	29 June 1990	1 July 1990	—
1990 No. 340	31 Oct 1990	31 Jan 1991	—
1990 No. 341	31 Oct 1990	1 Feb 1991 (see r. 3 and <i>Gazette</i> 1990, No. S288)	—
1991 No. 7	31 Jan 1991	Rr. 3.3, 3.4 and 4: 2 Feb 1991 Remainder: 1 Feb 1991	—
1991 No. 89	6 May 1991	6 May 1991	—
1991 No. 166	28 June 1991	28 June 1991	—
1992 No. 90	14 Apr 1992	4 May 1992	—
1992 No. 320	16 Oct 1992	Rr. 3–5: 6 Dec 1992 (see r. 1 and <i>Gazette</i> 1992, No. GN25) Remainder: 16 Oct 1992	—
1992 No. 423	24 Dec 1992	Rr. 1, 2 and 11: 1 Jan 1993 Remainder: 1 Feb 1993	—
1997 No. 63	26 Mar 1997	1 Apr 1997	—
1997 No. 303	5 Nov 1997	5 Nov 1997	—
2000 No. 288	1 Nov 2000	1 Nov 2000	—
2001 No. 64	12 Apr 2001	12 Apr 2001	—
2002 No. 257	6 Nov 2002	1 Jan 2003	—
2003 No. 32	13 Mar 2003	1 Jan 2003	—

**Table of Amendments**

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
R. 12 .....	ad. 1990 No. 162
Formerly r. 2A .....	1990 No. 340
	am. 1997 No. 63
R. 13 .....	ad. 1990 No. 162
Formerly r. 2B .....	1990 No. 340
R. 14 .....	ad. 1990 No. 162
Formerly r. 2C .....	1990 No. 340
	am. 1992 No. 423
R. 15 .....	1990 No. 340
Formerly r. 3 .....	am. 1992 No. 423; 2001 No. 64

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**Australian Government**

**AUSTRAC**

## AUSTRAC Information Circular No. 2

*Financial Transaction Reports Act 1988*

### International Funds Transfer Instructions

International Funds Transfer Instructions (IFTIs) to and from Australia are reportable to the Australian Transaction Reports and Analysis Centre (AUSTRAC) pursuant to 1991 amendments to the *Financial Transaction Reports Act 1988* (FTR Act).

Details of these transfers are an important component of the reporting requirements of the FTR Act, which form part of Australia's contribution towards a financial environment hostile to money laundering, major crime and tax evasion.

The IFTI reporting provisions are set out in section 3 and sections 17B to 17F of the FTR Act. The prescribed details in relation to IFTIs are contained in Regulation 11AA of the *Financial Transaction Reports Regulations 1990* (FTR Regulations). The reporting of IFTIs commenced in December 1992.

This Information Circular should be read in conjunction with the FTR Act and the relevant Regulations. There is also a guide for paper IFTI reporters on pages 6-8 of this circular.

#### **What is an IFTI?**

IFTIs are defined in section 3 of the FTR Act as follows:

*international funds transfer instruction* means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind.

Section 17B(1) of the FTR Act states:

If:

(a) a cash dealer in Australia is:

- (i) the sender of an international funds transfer instruction transmitted out of Australia; or

2. Telex transactions transmitted or received by the cash dealer which cannot be reported to AUSTRAC in an electronic format.

Where:

After excluding reports covered by all other declarations of the Director in respect of that cash dealer, the cash dealer would still be required to report 10,000 or more IFTI telex transactions per year and those telexes are not capable of being reported in an electronic format but will be capable of being reported electronically to AUSTRAC within 5 years of the first exemption date.

3. Other classes of reports for which the cash dealer seeks exemption.

The Director has considered for declaration in the Government Gazette, classes of reports in addition to those referred to in 1 and 2 above.

The cash dealer is required to retain those exempted reports for a period of seven (7) years.

Subsection 17C of the FTR Act makes it clear that when an ADI (the first ADI) is acting on behalf of another ADI (the second ADI), a report will be required if the second ADI is acting on behalf of a person who is not an ADI. This relates to subsection 17B(1)(b)(i) which is intended to exclude true ADI-to-ADI settlements that do not involve customers.

Subsections 17D, E, and F of the FTR Act restate the existing private international law principles on extra-territorial enforcement of laws. They are included to make it clear to cash dealers that they are protected from suits in Australia arising out of action they are required to take in Australia by these provisions which may be contrary to the law of a foreign country.

### **Who is Required to Report IFTIs**

The reporting of IFTI transmissions is required by cash dealers located in Australia:

- who are senders of IFTIs transmitted out of Australia; or
- who are receivers of IFTIs transmitted into Australia.

It is only the cash dealer at the initial point of receipt of the IFTI in Australia, or the last point of transmission from Australia, who is required to report the IFTI to AUSTRAC.

### **Users of Proprietary Systems**

A number of banks and other organisations market systems which are used by their clients to directly transmit or receive IFTIs. The FTR Act requires that the sender of the IFTI transmission out of Australia or the recipient of the IFTI transmission into Australia is required to provide a report of the IFTI to AUSTRAC.

With users of proprietary systems, it is generally the user who will be required to report the IFTI to AUSTRAC, as they are the sender or recipient of the IFTI. It is possible with some proprietary systems for the supplier of the system to intercept and report the IFTIs on behalf of the user, which will generally be as a result of an agreement between the supplier and the user.

- accounts used as a temporary depository for funds regularly transferred offshore;
- loans and securities dealings that appear to be a device to disguise the transfer of funds; and/or
- requests for specific types of funds transfer, such as where a cash dealer receives a specific request for a mode or method of transmission which is unusual in the circumstances and appears designed to circumvent the IFTI reporting requirements.

Persons involved in tax evasion, money laundering, terrorist financing or other illegal activities may also use alternative means to transfer funds off-shore or to receive funds in Australia from off-shore. Cash dealers are asked to alert their staff to this possibility.

### Prescribed Details for Reports of IFTIs

Regulation 11AA(1) provides the prescribed details for IFTIs that are transmitted out of Australia ('outgoing IFTIs'). Regulation 11AA(2) provides the prescribed details for IFTIs that are transmitted into Australia ('incoming IFTIs').

The Regulations prescribe two types of fields: mandatory fields and other fields which may appear in the instruction. Mandatory fields must be reported to AUSTRAC. All other information that is included within an IFTI must also be reported to AUSTRAC. The mandatory fields are as follows:

OUTGOING IFTIs	INCOMING IFTIs
The sender's name	The sender's name
The recipient's name	The recipient's name
The date on which transmission of the instruction commenced	The date on which the recipient receives the instruction
The currency and the amount of funds referred to in the instruction	The currency and the amount of funds referred to in the instruction
The name or identity of the branch or department of the financial organisation to which the ordering customer gave the request to transmit the instruction	For a financial organisation transfer instruction: the identity and account number (if any) of the beneficiary organisation; and if the ordering organisation is not the sender - the identity of the ordering organisation
For a financial organisation transfer instruction: the identity and account number (if any) of the beneficiary organisation; and if the ordering organisation is not the sender - the identity of the ordering organisation	

3. Date of transmission/receipt

This is the date that the outgoing transfer was sent, or the date of receipt for incoming transfers. This field must be completed.

4. Direction of transmission

Enter the direction of the transaction here, i.e. 'Into Australia' for a received instruction, or 'Out of Australia' for a sent instruction.

5. Transaction reference number

This is a unique reference number assigned by the remitting cash dealer to identify the instruction.

6. Sending institution's details

This is the institution or person sending the payment instruction. Complete the name, city and country fields if the cash dealer does not have a Bank Identifier Code (BIC).

7. Receiving institution's details

This is the institution or person to whom the payment instruction is sent. Either a Bank Identifier Code (BIC) or the name, city and country should be provided.

8. Date funds available

This is the date the payment may be effected. This field should be completed. For example, a cash dealer receives an instruction to pay money to a person on 1 January 2004. The instruction indicates that the person should be paid on that date. The date entered on the paper IFTI report should be in the format 01/01/2004.

9. Currency code and amount of transaction

The currency code is the International Standards Organisation (ISO) code, e.g. AUD for Australian dollars, USD for United States dollars. This field should be completed.

The amount of transaction is the amount in Australian dollars.

*Part B - Involved Party and Institution Details*

10. Ordering customer/organisation

This group of fields concerns the individual or company who ordered the IFTI. For outgoing IFTIs the customer's full business or residential address is required (and cannot be a post office box). For incoming IFTIs the cash dealer is required complete as much information as is received on the instruction.

11. Sender's correspondent

This is the institution acting as the 'Reimbursement Bank' (if any) on the sender's side of the transaction. This field should not be the same as the sending institution. A Bank Identifier Code (BIC) or name, city and country should be provided.

### **Further Information or Assistance**

AUSTRAC officers are able to assist cash dealers and their staff in relation to the FTR Act and the obligations it imposes upon cash dealers, solicitors and the general public. Enquiries can be directed to the AUSTRAC Help Desk via:

- e-mail to [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)
- telephone (02) 9950 0827 or 1800 021 037.

Please be aware that AUSTRAC is not in a position to provide legal advice. The contents of this document do not constitute legal advice or opinions and should not be regarded as such.

Cash dealers should also keep in mind that they may have obligations under the *Privacy Act 1988*. To determine whether you are covered by this Act and what your obligations might be, please go to <http://www.privacy.gov.au> or call 1300 363 992 for further information.

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