

# **S**olicitors and the Financial Transactions Reports Amendment Bill 1996

Solicitors will soon be required to report cash transactions of \$10,000 or more to the Australian Cash Transaction Reports and Analysis Centre (AUSTRAC) under proposed amendments to the *Financial Transaction Reports Act 1988* (FTR Act). AUSTRAC is a Federal Agency established in 1989 to ensure that banks and other cash dealers (as defined in the legislation) abide by the identification and reporting requirements of the FTR Act. Information in the reports provided by cash dealers is analysed and disseminated by AUSTRAC to Australian law enforcement agencies and the Australian Taxation Office.

The Financial Transactions Reports Amendment Bill 1996 was accepted by the House of Representatives on 25 February 1997 and has been referred to the Senate. The objective of the proposed amendments to the FTR Act is largely to give effect to several of the recommendations of the 1993 Report by the Senate Standing Committee on Legal and Constitutional Affairs on the effectiveness of the FTR Act.

There is evidence, within Australia and overseas, to suggest that as governments regulate the more traditional areas of the financial sector, money launderers commence using alternative points of entry through which their funds can enter the financial system. Due to the increasing complexity of many aspects of business and finance today, professionals such as solicitors can sometimes unwittingly be used by criminals wishing to hide the source of illicit funds. This was a subject of some consideration by the Senate Committee.

The government has determined to amend the FTR Act to require solicitors to report to AUSTRAC all transactions with their clients of A\$10,000 or more in cash. Solicitors would also be required to include in the report particulars of the client's identity as known to them. This would be the only reporting requirement for solicitors under the amended

FTR Act.

It is believed that the reporting of cash transactions will not be particularly onerous on the legal profession. Solicitors who never transact in cash of A\$10,000 or more will have no reporting obligations. The government's initiative is seen as an important money laundering prevention measure aimed

***Seminars informing the profession on the impact of the amendments to the FTR Act will be held in Alice Springs on Thursday April 10 at 2.30pm in the pre-hearing room at the Law Courts Building and in Darwin on Friday April 11 at 11.00 Court 1 of the Commonwealth Law Courts. These will be presented by AUSTRAC staff.***

primarily at reducing the options currently available to those seeking to launder the proceeds of crime. The inclusion of solicitors within the FTR reporting regime will assist Australia in its continued fight against major crime and major tax evasion.

There will be several other amendments to the FTR Act. Some of these which may be of interest to solicitors include:

- Section 16 of the FTR Act is to be amended to make suspect transaction reports inadmissible in evidence in a legal proceeding. Any evidence regarding the making of such a report will also be inadmissible.
- The term transaction will be defined within the amended Act to make it clear that for the purpose of suspect transaction reporting, a transaction includes preliminary negotiations or proposals to conduct a transaction. The amendment makes it clear that there is still an obligation to complete a suspect transaction report for suspicious transactions that are ter-

minated prior to completion.

- The amendment will require persons who carry on a business of selling bullion to identify their customers when conducting a bullion transaction. This will mean that bullion sellers will be required to become identifying cash dealers and carry out the prescribed signatory verification procedures for customers involved in a bullion transaction.
- The threshold for the reporting of transfers of currency into or out of Australia is to be increased from A\$5,000 to A\$10,000 (or its foreign equivalent). This will bring the reporting threshold into line with that applicable to cash transactions reporting.

It will be an offence to operate or to authorise the operation of an account with a cash dealer if the account had previously been opened in false name.

Under the existing subsection 24 (2) it is not an offence for a person to operate that account using a name that is not a false name.

To assist solicitors in meeting their reporting obligations, information guidelines and Significant Cash Transaction Report forms will soon be available from the Law Society of the NT and AUSTRAC. AUSTRAC will also be liaising with other federal and state peak legal groups prior to the amendments coming into effect. Any questions regarding the proposed reporting obligations on solicitors can be directed to AUSTRAC's Help Desk on (02) 9950 0827.



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