1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CASH TRANSACTION REPORTS BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen M.P. Deputy Prime Minister and Attorney-General)

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OUTLINE

The Cash Transaction Reports Bill 1987 has 4 main purposes:

(1) To require the reporting of certain domestic currency transactions in excess of $10,000 to the Cash Transaction Reports Agency;

(2) To require the reporting of certain currency transfers to and from Australia in excess of $5,000 to the Cash Transaction Reports Agency;

(3) to establish a Cash Transaction Reports Agency to collect, retain, compile analyse and disseminate information relating to cash transaction reports and to perform other functions under the legislation in consultation with the Commissioner of Taxation; and

(4) to impose obligations on financial institutions in relation to the verification of identity of persons seeking to open accounts with financial institutions, and of signatories to existing accounts.

Financial Impact Statement

While it has not been possible to estimate the cost of establishing and staffing the Cash Transaction Reports Agency, it is envisaged that the costs would be more than offset by the substantial revenue generated through minimization of tax evasion and the effective tracing of assets for the purposes of confiscation proceedings under the Proceeds of Crime legislation.

Notes on Clauses

Clauses 1 and 2

The first 2 clauses of the Bill provide for the short title and the commencement of the legislation. Only clauses 1 and 2 will come into operation on Royal Assent. The other provisions will come into affect on a day or days fixed by proclamation. This is to provide time to establish the Cash Transaction Reports Agency, to prescribe forms and to enable financial institutions to implement practices and procedures to comply with the new reporting requirements.

Clause 3 Interpretation

Sub-clause (1) is definitional. Sub-clause (2) ensures that servants or agents of a party to a cash transaction are able to legally sign documents on behalf of the principal to the transaction. Sub-clauses (3) and (4) are definitional.

Clause 4 Objects of Act

The principal object is to facilitate the administration and enforcement of taxation laws. Subsidiary objects are to facilitate the administration and enforcement of other laws of the Commonwealth, and of the Territories, and to make information collected for the purposes of the Act available to State law enforcement authorities to facilitate the administration and enforcement of State laws.

Clause 5 Act to Bind Crown

This clause provides that the Crown in right of the Commonwealth, in each of the States, the Northern Territory and Norfolk Island is bound by the legislation but is not liable to prosecution for an offence created under the legislation.

Clause 6 Act to Apply both Within and Outside Australia

This clause provides that the legislation applies within Australia, outside Australia and extends to the External Territories.

Clause 7 Reports of Significant Cash Transactions

Sub-clause (1) requires a cash dealer who is a party to a transaction which involves the physical transfer of currency of the value of $10,000 or more to prepare a report of the transaction and to communicate the contents of that report to the Director of the Cash Transaction Reports Agency unless the Transaction is exempt at the time it occurs, or becomes exempt before the end of the reporting period.

Sub-clause (2) requires that a cash transaction report be in an approved form, contain prescribed details and be signed by both the cash dealer and the other party to the transaction. Under sub-clause (3) a cash dealer is required to communicate information contained in a CTR report to the Director of the Cash Transaction Reports Agency in an approved manner and form.

Clause 8 Exempt cash transactions

Sub-clause (1) provides that a significant cash transaction between a financial institution and another person is an exempt transaction so far as the institution is concerned if the transaction has been entered in the institution's exemption register, or the transaction is of a kind that has been entered in the institution's exemption register against the name of that person.

Sub-clause (2) provides that a significant cash transaction between a futures broker and a clearing house associated with a futures exchange of which the broker is a member, is also an exempt transaction.

Clause 9 Transactions eligible for exemption

This clause details the types of transactions which are eligible for exemption. Under sub-clause (1) a cash transaction in excess of $10,000 is eligible for exemption if the transaction is conducted between financial institutions, or between a cash dealer and a financial institution. Transactions between cash dealers who are not financial institutions are not eligible for exemption.

Sub-clause (2) provides that transactions conducted between a financial institution and a customer of 12 months standing, who carries on a retail business, or various other specified businesses having a high cash flow, consisting of a deposit into, or withdrawal from, an existing account maintained for the purposes of that business, and the amount of currency involved in the transaction does not exceed an amount reasonably commensurate with the lawful business activities of the customer, are eligible for exemption. For exemption to actually take place the customer must also provide a written and signed statement, under paragraph 10(1)(c), to the effect that he or she believes that the transaction is eligible for exemption and that it is of an amount within his or her normal business activities.

Sub-clause (3) provides that a significant cash transaction conducted between a financial institution and an established customer which consists of a withdrawal for payroll purposes from an existing account will be eligible for exemption if the customer regularly withdraws currency from that account to a value of not less than $10,000, to pay the customer's staff and employees, and the amount does not exceed an amount that is reasonably commensurate with the customer's normal business activity. For exemption to actually take place the customer must also, pursuant to paragraph 10(2)(d), certify that the transaction is a withdrawal for payroll purposes and is commensurate with the customer's lawful business activities.

Sub-clause (4) provides that transactions between a financial institution and a public authority which do not involve an amount in excess of that reasonably commensurate with the authorised activities of the public authority, are eligible for exemption. Sub-clause (5) permits the category of the transactions eligible for exemption to be extended by regulation.

Sub-clause (6) provides that where a person closes his or her account with one financial institution and opens an account with another institution with the funds which had been held to the credit of the previous account, then certain significant cash transactions may be eligible for exemption, notwithstanding that the person is not an established customer of the second financial institution. In such circumstances a significant cash transaction will be eligible for exemption if the transaction would have been eligible for exemption if the person had been an established customer and exemption had been granted in respect of the person's previous account for transactions of a certain kind and, either, the transaction is of the kind for which an exemption had been previously granted, or the person had been a customer of the second financial institution for 3 months. The effect of this provision is to enable existing exemptions to be transferred between institutions and to enable existing exemptions to be varied after a 3 month period in respect of transactions which would have been eligible for exemption had the customer held the account with that institution for 12 months.

Clause 10 Exempt Cash Transactions

Sub-clause (1) permits a financial institution to enter a transaction in its exemption register if the institution is a party to an significant cash transaction which it believes to be eligible for exemption under section 9 and in respect of which it has received from the other party (if it is not a financial institution) a written and signed statement that the party believes the transaction to be one which is eligible for

exemption under section 9 and that the information provided to the institution in support of the claim for exemption is true and correct in all material particulars. The requirement for the customer to sign a statement claiming the exemption is seen as essential if criminal liability is to attach to persons seeking to avoid the reporting requirements of the legislation. There is, of course, no intention of placing any onus on the financial institution to make enquires into the business activities of a customer prior to granting an exemption.

Sub-clause (2) permits a financial institution to exempt classes of transactions conducted by a customer, whose transactions are eligible for exemption, by single entry in the exemption register. Class exemption is available to any customer who regularly engages in, or who is likely to engage in, transactions of a similar kind (apart from this aspect the above comments in respect of sub-clause (1) also apply here). Prescribed details that must be recorded in the exemption register include whether the exemption relates to deposits or withdrawals or both, the purpose for which the transaction may be conducted and the monetary limit applicable to exempt transactions.

Sub-clause (3) permits the Director of the Cash Transaction Reports Agency to override any exemption granted by a financial institution. The sub-clause empowers the Director to give a financial institution written direction to delete the entire entry from its exemption register or to modify the entry to reduce its scope (eg to cover only deposits and not withdrawals or transactions which are conducted for a particular purpose only or to lower the monetary limit of exempt transactions).

Sub-clause (4) requires the financial institution to comply with a direction given by the Director under sub-clause (3)

and prevents the financial institution from recording the same exemption, or an exemption which is similar in effect, on the exemption register while the direction is in force.

Sub-clause (5) provides that contravention of sub-clause (4) is an offence punishable, upon conviction, by a fine not exceeding $25,000.

Sub-clause (6) enables financial institutions to amend or delete an entry in their exemption registers at any time, unless a direction has been given by the Director under sub-clause (3).

Clause 11 Financial Institution to Maintain Exemption Register

This clause requires a financial institution to maintain a register of all exemptions granted under clause 10. The register is to be maintained in the manner and form approved by the Director and must include prescribed detail in relation to each transaction, or class of transactions, that is entered in the register.

Sub-clause (4) provides that the mere fact that the register entry is not in the approved manner and form is not, of itself, sufficient to render the exemption inoperative. If the entry in the exemption register were, in fact, to be an ineffective entry, the financial institution would be required to communicate details of any significant cash transaction conducted to the Cash Transaction Reports Agency pursuant to sub-clause 7(1). An entry in an exemption register may still be invalid by reason of the omission of some prescribed detail.

Clause 12 Director to have access to exemption registers

This clause permits the Director to issue a written notice requiring a financial institution to give an authorised officer access to the dealer's exemption register during specified

hours within the normal business hours of the institution. The financial institution is required to allow the authorised officer to inspect the exemption register and to make copies or take extracts from the register.

Sub-clause (5) permits the Director to require a financial institution, by written notice, to provide the Director, or an authorised officer, with a copy of its exemption register, or a specified part of the exemption register, together with any other information relating to the register, or the part of the register specified in the Director's notice. Sub-clause (6) provides that the financial institution has 30 days in which to comply with such a notice.

Clause 13 Reports in relation to transfer of currency to or out of Australia

Sub-clause (1) provides that, subject to sub-clauses (2), (3) and (4), a person who transfers foreign currency out of Australia, or transfers Australian or foreign currency into Australia, and the amount of currency involved is not less than $5,000 in value, and the person does not provide a report in respect of the transfer, then the person commits an offence.

Sub-clause (2) provides that common carriers of passengers need not report in respect of currency in the possession of passengers. Sub-clause (3) provides that common carriers of goods need not report in respect of currency carried on behalf of another person unless the person has disclosed to the carrier that the goods include currency. Sub-clause (4) provides that a bank need not make a report in respect of currency transferred, on behalf of the bank, through the post or by common carrier.

Sub-clause (5) provides that where a person, other than a bank, receives Australian or foreign currency to a value of not less than $5,000 from outside Australia, then the person commits an

offence unless a report has been provided in accordance with sub-clause (1) or is provided in accordance with this sub-clause.

Sub-clause (6) provides that the penalty for contravening sub-clause (1) or sub-clause (5) is a fine of not more than $20,000 or imprisonment for not more than 10 years, or both, in the case of a natural person and a fine of not more than $100,000 in the case of a body corporate.

Sub-clause (7) provides for the formal requirements of reports under the clause. It also provides that reports shall be given to the Director of the Cash Transaction Reports Agency, or a customs or police officer.

Sub-clause (8) provides that where a report is given to a customs or police officer, that officer is obliged to forward the report to the Director as soon as practicable after receipt.

Clause 14 Secrecy

This clause precludes the Director, any member, or former member, of staff of the Agency, or a customs or police officer from keeping a record, divulging or communicating any information obtained by the person in the course of performing his duties under this Act, except for the purposes of this Act, the performance or exercise of powers or functions of the Agency or otherwise in connection with the person's duties under the Act. Sub-clause (2) provides that contravention of the provision is an offence punishable by a fine of not more than $5,000 or imprisonment for not more than 2 years or both.

Sub-clause (3) provides that persons subject to this clause cannot be required to produce in a court any document that has come into their custody and control pursuant to the

performance of their duties under the Act. The exception to this is where production is necessary to give effect to the provisions of the Act.

Clause 15 Access to CTR Information

Irrespective of clause 14, sub-clause (1) of clause 15 entitles the Commissioner of Taxation, and any taxation officer, to access to CTR information and gives the Director a discretion to authorise access to such information by law enforcement agencies or the Australian Customs Service (ACS).

Sub-clause (2) permits the Director to make authorisations to law enforcement agencies, or ACS in respect of specific CTR information, or classes of such information, and where such authorisation has been given sub-clause (3) permits any law enforcement or customs officer to access that information.

Sub-clause (4) provides that section 3C of the Taxation Administration Act, which deals with non-disclosure of information by taxation officers, applies to information acquired by a taxation officer under this Act.

Sub-clause (5) sets out the circumstances in which the National Crime Authority may lawfully communicate or divulge CTR information.

Sub-clause (6) permits a law enforcement or customs officer who has access to CTR information to communicate that information to the National Crime Authority or to another law enforcement or customs officer but does not permit any other disclosure or communication of the information unless it is authorised under sub-clauses (7), (9) or (10).

Sub-clause (7) permits communication of CTR information to persons for, or in connection with, legal proceedings or in the course of proceedings before a court. The purpose of this

clause is to ensure that law enforcement agencies and ACS are able to communicate CTR information to legal practitioners, including the DPP, for the purpose of legal proceedings.

Sub-clause (8) imposes a secrecy obligation on anyone receiving information pursuant to paragraph 7(a).

Sub-clause (9) specifically empowers a law enforcement or customs officer, or the National Crime Authority, to communicate CTR information to the person to whose affairs the information or report relates. Where the information relates to a company, a law enforcement or customs officer, or the National Crime Authority, is empowered to communicate CTR information to 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 furnished to the Director on behalf of the company. Information may also be communicated to the person who furnished the CTR information to the Director.

Sub-clause (10) permits information communicated pursuant to sub-clause (9) to be communicated to a barrister or solicitor appearing before the National Crime Authority for the purpose of representing the person to whom the information has been communicated.

Sub-clause (11) provides that where information is communicated to a person under sub-clauses (9) or (10) and that person was not the person who provided the Director with the information, and the information does not relate to the affairs of that person, then that person is prohibited from recording, divulging or communicating that information.

Sub-clause (12) states that a person cannot be required to produce in a court any document containing CTR information or to divulge or communicate CTR information to a court, except where it is necessary for giving effect to the Act.

Sub-clause (13) creates an offence of making a record of, or divulging or communicating information in contravention of this clause punishable by a fine of not more than $5,000 or imprisonment for not more than 12 months or both.

Sub-clause (14) defines a law enforcement agency to be the National Crime Authority or the Australian Federal Police and sub-clause (15) details the persons who are law enforcement officers for the purposes of this clause.

Sub-clause (16) includes a police force of a State as a law enforcement agency for the purposes of sub-clause (14) thereby extending access to CTR information to State police forces. Sub-clause (17) details the State officers who are law enforcement officers for the purposes of access to CTR information.

Sub-clauses (16) and (17) have not been amalgamated with sub-clauses (14) and (15) to clearly indicate the intention of the Parliament that the provision of the information to Commonwealth law enforcement agencies is an object of the legislation in itself and is not dependant on the availability of CTR information to State law enforcement agencies.

Clause 16 Interpretation

This clause is definitional.

Clause 17 Information to be Provided when Bank Account etc Opened

Sub-clause (1) creates an offence where a financial institution permits a person to open an account with the institution unless the person provides a statement in accordance with the clause, or the financial institution has made reasonable efforts, during the period, to obtain the statement from the person and gave the Director written notice that the person did not provide the statement.

Sub-clause (2) creates an offence where a financial institution permits a person to operate an account with the institution and the person has not provided a statement in accordance with the clause within two years of the provision coming into force, unless the financial institution has made reasonable efforts, during that period, to obtain the statement from the person and gave the Director written notice that the person has not given the statement.

Sub-clause (3) provides that in situations where sub-clause (2) does not apply because the account has not been operated on within the period of 2 years but is then operated on after the period, the account is to be treated as if that operation of the account were the opening of an account.

Sub-clause (4) provides that a contravention of sub-clauses (1) or (2) is an offence punishable by a fine not exceeding $100,000.

Sub-clause (5) provides that where a person provides a statement to the financial institution after the institution has given notice to the Director in accordance with sub-clauses (1) or (2) then the institution must give the Director written notice that the statement has been given within 14 days of receipt.

Sub-clause (6) provides that a contravention of sub-clause (5) is an offence punishable by a fine not exceeding $1,000.

Sub-clause (7) requires that the statement be in the approved form, specify whether the account is in the name of a body corporate, a business or an individual and, in the case of an individual, whether the account is to be opened in the person's name as a trustee. The statement must also be signed by the person making the statement and witnessed. The statement is intended to identify the account and the account holder.

Sub-clause (8) requires that where the account is in the name of a person (other than as trustee) the statement contain the person's identification details.

Sub-clause (9) requires that where the account is in the names of 2 or more persons (other than as trustee) the statement contain the identification details of each signatory.

Sub-clause (10) requires that where the account is in the name of a body corporate (other than as trustee) the statement contains a copy of the certificate of incorporation (if any) of the body corporate and the identification details of each signatory to the account.

Sub-clause (11) requires that where the account is in a business name, the statement contains a copy of the certificate of registration of the business name (if any) and the identification details of each signatory to the account.

Sub-clause (12) requires that where the account is in the name of an unincorporated association, the statement contains a copy of the instrument or instruments under which the signatories to the account are authorised to sign and the identification details of each signatory to the account.

Sub-clause (13) requires that where the account is to be opened as trustee, the statement contains each trustee's full name, each beneficiaries full name and the identification details of each signatory to the account.

Sub-clause (14) requires that statements in respect of the accounts of bodies corporate, partnerships or trustees also contain the respective tax file numbers (if any).

<u>Clause 18 Information to be provided when signatories to account varied</u>

Sub-clause (1) provides that where statements have been provided by the signatories to an account with a financial

institution and subsequently the signatories are varied and statements containing the details of the variation, including the date on which the variation took place, have not been given to the financial institution within 45 days of the variation, the financial institution commits an offence, unless it made reasonable efforts, during that period, to obtain the statement and gave the Director written notice, within 14 days of the variation, that the statement has not been provided.

Sub-clause (2) provides that the penalty for an offence against sub-clause (1) is a fine not exceeding $100,000.

Sub-clause (3) provides that where a financial institution has given the Director notice under sub-clause (1) and subsequently was given a statement in accordance with sub-clause (1) the financial institution is required to give the Director written notice that the statement has been provided within 14 days of receipt.

Sub-clause (4) provides that the penalty for an offence against sub-clause (3) is a fine not exceeding $1,000.

Clause 19 Failure to Provide Information

Sub-clause (1) creates an offence where a cash dealer refuses or fails to communicate information to the Director or to maintain a exemption register when and as required under the legislation. Sub-clause (2) also creates an offence if a financial institution fails to comply with a notice requiring it to give an authorised officer access to the exemption register or to produce a copy of the exemption register, or part of that register, pursuant to sub-clauses 12(1) or 12(4). Sub-clause (3) provides a penalty of $1,000 for a natural person or $5,000 for a body corporate who is guilty of an offence against sub-clause (1) or (2).

Clause 20 False or Misleading Information

Sub-clause (1) creates an offence where a cash dealer makes a statement which is known to be false or misleading in a material particular, or omits from a statement a matter which has the effect of making the statement misleading, when the dealer is communicating information to the Director, or is maintaining an exemption register as required by the Bill.

Sub-clause (2) creates an offence for any person to make a statement or report that is known to be false or misleading in a material particular, or omits from a statement or report anything without which the statement or report is misleading in a material particular.

Sub-clause (3) provides that the penalty for the offences created in sub-clauses (1) and (2) is a fine not exceeding $5,000 or imprisonment for not more than 2 years, or both, in the case of a natural person and a fine not exceeding $25,000 in the case of a body corporate.

Sub-clause (4) creates an offence of making a statement, or presenting a document, that is false or misleading in a material particular and is capable of being used to induce a financial institution to enter a transaction, or a class of transactions, in the institution's exemption register or causing a common carrier not to make a report pursuant to clause 13.

Sub-clause (5) provides that the penalty for the above - offence is a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, in the case of an individual or a fine not exceeding $50,000 for a body corporate.

Clause 21 Incomplete Information

This clause creates an offence where a cash dealer knowingly communicates information, or maintains an exemption register,

in such a way that the information or register is incomplete in relation to a transaction. The penalty for the offence is a fine of not more than $500 for a natural person or a fine of not more than $2,500 for a body corporate.

Clause 22 Offence to Conduct Transactions so as to Avoid Reporting Requirements

The purpose of this offence is to prohibit people from structuring a number of transactions below either the $10,000 reporting threshold, or to keep transactions within the ambit of an existing exemptions, in an effort to avoid the transactions being reported to the CTR agency. Sub-clause (2) creates a similar offence of structuring international transfers to avoid the reporting requirements of clause 13.

Paragraphs 22(1)(b) and (2)(b) gives a number of indicators which may give rise to the inference that transactions have been conducted for the purpose of ensuring that currency transactions are not reported. The indicators, which relate to the manner and form of the transactions, are the value of the currency involved, the total value of the transactions, the proximity in time of the transactions and the locations at which they occurred. For example, if a person who did not normally conduct large cash transactions was to conduct two transactions involving currency of $9,000 each within a short space of time either at the same branch, or at branches located nearby, and the person was able to offer no reasonable explanation for such conduct the inference could be drawn that the transactions were conducted separately in an effort to keep the transaction value below the threshold for reporting of cash transactions. Of course, where a person was able to provide a reasonable explanation (sub-paragraphs 22 (1)(b)(ii) or 22 (2)(b)(ii)) for having conducted transactions in such a manner no offence would be committed. Such an offence has recently been created in the United States because of the growing concern about the avoidance of the reporting requirements by the structuring of transactions.

The penalty for the offence created is a fine not exceeding $10,000 or imprisonment for not more than 5 years, or both, for a natural person, or a fine of not more than $50,000 for a body corporate.

Clause 23 Injunction

Because the legislation binds the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island but does not permit the Crown to be prosecuted for an offence, the legislation permits the Director to apply to the Federal Court, or the High Court, for an injunction to enforce provisions of the Act.

Sub-clause (1) empowers a court to grant an injunction upon the application of the Director where the court is satisfied that the person has engaged, or proposes to engage, in conduct which constituted would constitute a breach, or an attempted breach, of Part II of the Act. Inchoate offences are also covered.

Sub-clause (2) permits the court to make an interim injunction and sub-clause (3) permits a court to vary or rescind an injunction or an interim injunction.

Sub-clauses (4) and (5) permit a court to grant an injunction whether or not it appears to the court that the person intends to continue to engage in, or has previously engaged in, conduct which constitutes an infringement of the Act referred to in sub-clause (1).

Clause 24 Questioning and search powers

Sub-clause (1) requires a person about to leave Australia, on request by a police or customs officer, to declare the amount, if any, of foreign currency that he or she has with them, produce the currency and declare whether a notice has been

given under clause 13 in repect of that currency. Sub-clause (2) makes similar provisions with respect to persons arriving in Australia, but relates to Australian as well as foreign currency.

Sub-clause (3) gives a police officer and certain customs officers a power to search, without warrant, any person about to leave or arriving in Australia, and any articles in that person's possession, for the purposes of ascertaining whether the person has any currency that clause 13 requires to be reported.

Sub-clause (4) empowers an officer to seize as evidence currency in respect of which the officer believes on reasonable grounds that an offence against clause 13 has been committed. Sub-clause (5) provides that a person searched under sub-clause (3) may only be searched by a person of the same sex and sub-clause (6) empowers a police or customs officer, or any person assisting the officer, to board any ship or aircraft for the purposes of exercising powers under sub-clauses (1), (2), (3) and (4).

Sub-clause (7) empowers a police or customs officer to board any ship or aircraft and examine or search the ship or aircraft and any goods found thereon for the purposes of determining whether there is any currency that clause 13 requires to be reported.

Sub-clause (8) empowers an officer to seize as evidence any currency found as a result of a search carried out under sub-clause (7) if the officer believes on reasonable grounds that an offence against clause 13 has been committed.

Sub-clause (9) provides that a contravention of sub-clauses (1) or (2) is an offence punishable by a fine not exceeding $2,000 or imprisonment for not more than 12 months, or both. Sub-clause (10) is definitional.

Clause 25 Conduct by directors, servants or agents

This clause contains the standard provisions facilitating the prosecution of corporations. Sub-clause (1) provides that, in order to establish the state of mind of a body corporate in respect of conduct it engaged in, it is sufficient to establish the state of mind of a director, servant or agent of a body corporate who engaged in the conduct in the performance of his actual or apparent duties.

Sub-clause (2) provides that a body corporate shall be deemed to have engaged in conduct where a director, servant or agent of the body corporate engaged in the conduct, or any other person engaged in the conduct at the direction of, or with the consent of a director, servant or agent who had actual or apparent authority to give such directions or consent.

Sub-clauses (3) and (4) make similar provision in relation to establishing the state of mind of persons, other than bodies corporate, where the conduct was engaged in by their servants or agents.

Sub-clause (5) inclusively defines the expression 'state of mind of the person' and sub-clause (6) provides an inclusive definition of a 'director of a body corporate'.

Clause 26 Establishment of Agency

This clause establishes an Agency called the Cash Transaction Reports Agency which is to consist of the Director and staff, who are to be persons employed or appointed under the Public Service Act 1922.

Clause 27 Director

This clause permits the Minister to appoint a person to be the Director of the Cash Transaction Reports Agency.

Clause 28 Acting Director

This clause provides for the appointment by the Minister of an acting Director. The Minister may, pursuant to sub-clause (1), appoint a person to act as Director during the vacancy of the office, or during any or all periods when the Director is absent from Australia or unable to perform his or her duties.

Sub-clause (2) enables the appointment to have effect in specified circumstances only and sub-clauses (3) and (4) permit a person who is acting as Director while the Director is absent, or unable to perform his or her duties, to continue to act if the position becomes vacant during that time until such time as a Director is appointed, or a period of 12 months has elapsed since the vacancy arose (whichever period occurs first). Pursuant to sub-clause (5), an acting Director may exercise all the powers and is to perform all the duties of the Director.

Sub-clause (6) preserves actions done in good faith by a person purporting to act as acting Director where such actions are potentially invalid for technical reasons.

Clause 29 Functions of Director

Sub-clause (1) provides that the functions of the Director are to perform functions and exercise powers under the Act, to collect, retain, compile, analyse and disseminate CTR information, to monitor the financial institutions' exemption registers and to provide advice and assistance to the Commissioner of Taxation in relation to CTR information.

Sub-clause (2) is designed to ensure that the CTR agency carries out functions in a manner beneficial to the Commissioner of Taxation.

Clause 30 Delegation

This clause enables the Director of the CTR Agency to delegate all or any of the Director's powers, except his or her power of delegation, to a member of staff of the CTR Agency.

Clause 31 Staff

This clause provides that CTR Agency staff are to be persons appointed or employed under the Public Service Act 1922.

Clause 32 Act not to derogate from Commissioner's powers

The clause provides that nothing in the Bill limits any powers that the Commissioner of Taxation has, under any other law, to obtain information.

Clause 33 Administrative Decisions (Judicial Review) Act 1977 not to apply to decisions under this Act

The clause provides that the Administrative Decisions (Judicial Review) Act 1977 does not apply to decisions made under the Bill.

Clause 34 Regulations

This clause empowers the Governor-General to make regulations which are not inconsistent with the Act covering all matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed to give effect to the Act.

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