

1988

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)



OUTLINE

The Cash Transaction Reports Bill 1987 has 6 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 require cash dealers to report suspect transactions;
- (4) To establish a Cash Transaction Reports Agency to collect, retain, compile, analyse and disseminate information relating to cash transaction reports, suspect transactions, accounts with cash dealers and to perform other functions under the legislation in consultation with the Commissioner of Taxation;
- (5) To impose obligations on cash dealers in relation to the verification of identity of persons seeking to open accounts or seeking to become signatories to existing accounts and the blocking of withdrawals by unverified signatories to accounts which exceed certain credit balance or deposit limits; and
- (6) To create an offence of opening or operating a bank account or similar account, with a cash dealer, in a false name.

Financial Impact Statement

It is estimated that the cost of establishing and staffing the Cash Transaction Reports Agency, would be in the order of \$M2.5 (including \$M1 for computer equipment) with an annual cost in the order of \$M2. It is envisaged that these costs would be more than offset by the substantial revenue generated through minimisation of tax evasion (estimated tax revenue alone is \$M30) and the effective tracing of assets for the purposes of confiscation proceedings under the Proceeds of Crime Act 1987.

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 and to enable cash dealers 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), (4), (5) and (6) 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 legislation 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, of 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 ('CTR') and to communicate the contents of that CTR to the Director of the Cash Transaction Reports Agency ('the Director') unless the transaction is exempt at the time it occurs, becomes exempt before the end of the reporting period or the cash dealer is an approved cash carrier.

Sub-clause (2) requires that a CTR be in an approved form, contain reportable details and be signed by the cash dealer. Under sub-clause (3) a cash dealer is required to communicate information contained in a CTR to the Director in an approved manner and form. Sub-clause (4) is definitional.

Clause 8 Approved Cash Carriers

Sub-clause (1) provides that the Director may, by notice published in the Gazette, declare a cash dealer within paragraph (k) of the definition of cash dealers to be an approved cash carrier if the Director is satisfied that the cash dealer maintains records containing reportable details of significant cash transactions to which it is a party and the declaration of the cash dealer as an approved cash carrier would not be inconsistent with the objects of the Act. Sub-clause (2) is definitional.

Clause 9 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 falls within a class that has been entered in the institution's exemption register against the name of that person.

Sub-clause (2) provides that, where the Director has directed, pursuant to sub-clause 11(3), that an exemption be removed from a register, or amended, then a transaction is not exempt if its exemption would not be consistent with that direction. In other words, once a direction has been given the exemption can only continue to operate to the extent that it is not overridden by the direction. All future significant cash transactions which fall outside the exemption, as modified by the direction, must be reported.

Sub-clause (3) provides that where a cash dealer is a party to a transaction with a financial institution that is an exempt transaction (as provided in sub-clause (1)) then the transaction is also exempt as far as the cash dealer is concerned.

Sub-clause (4) 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 10 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 a significant cash transaction 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, is eligible for exemption. Before a transaction which is eligible for exemption can become exempt the customer must provide a signed written statement, under paragraph 11(1)(c) or 11(2)(d), 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 and the exemption must be entered in the institution's exemption register.

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 11(1)(c) or 11(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 class of transactions eligible for exemption to be extended by a written declaration by the Minister published in the Gazette.

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 certain transactions conducted through the person's previous account had been exempt immediately before the closure of that account and, either, the transaction is of the kind falling within the exemption which 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 transferred 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 11 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 a significant cash transaction which it believes to be eligible for exemption under clause 10 and in respect of which it has received from the other party (if it is not a financial institution) a signed written statement that the party believes the transaction to be one which is eligible for

exemption 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 a 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 and who complies with requirements similar to those specified in sub-clause (1). 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 at any given time to exempt transactions.

Sub-clause (3) permits the Director to override any exemption granted by a financial institution. The sub-clause empowers the Director to give a financial institution a 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). Once such a direction has been given the exemption can only operate as if the register had been modified in accordance with the direction (sub-clause 9(2)).

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 of not more than \$5,000.

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

Clause 12 Financial Institution to Maintain Exemption Register

This clause requires a financial institution to maintain a register of all exemptions granted under clause 11. The register is to be maintained in the manner and form approved by the Director and must include prescribed details 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. It is not intended that a mere technical flaw in an entry in the exemption register render the entry ineffective, thus requiring the financial institution to report details of any significant cash transaction conducted. An entry in an exemption register may still be invalid, for example, by reason of the omission of some prescribed detail. Sub-clause (5) is definitional.

Clause 13 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 of, 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 14 Director to have Access to Certain Records

This clause permits the Director to issue a written notice requiring an approved cash carrier to give an authorised officer access to its records relating to significant cash transactions during specified hours within the normal business hours of the approved cash carrier. The approved cash carrier is required to allow the authorised officer to inspect records relating to significant cash transactions and to make copies of, or take extracts from, the records.

Clause 15 Reports in Relation to Transfer of Currency in to or out of Australia

Sub-clause (1) provides that, subject to sub-clauses (2), (3) and (4), if a person 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 a commercial passenger carrier need not report in respect of currency in the possession of

passengers. Sub-clause (3) provides that a commercial goods carrier 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, by a commercial goods 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 \$5,000 or imprisonment for not more than 2 years, or both, in the case of a natural person and a fine of not more than \$25,000 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. Sub-clause (9) is definitional.

Clause 16 Reports of Suspect Transactions

This provision requires a cash dealer who has reasonable grounds to suspect that information concerning a transaction to which he or she is a party (regardless of the amount involved in a transaction or the nature of the transaction)

may be relevant to the investigation of a breach of taxation law or to the investigation of, or prosecution of a person for, an offence against some other law of the Commonwealth or of a Territory or may assist in the enforcement of the Proceeds of Crime Act 1987 or regulations thereunder, to report that transaction to the Director. This provision has been deliberately cast in terms of 'reasonable grounds to suspect' rather than the form 'reasonable grounds to believe' so that the lower threshold will alleviate the need for cash dealers to undertake extensive investigation before being able to pass information to the Director and also to enable maximum intelligence to be available to the Director and law enforcement agencies.

Under sub-clause (2) the report is required to be in the approved form and to contain reportable details as well as a statement of the grounds on which the cash dealer suspects the transaction of being relevant to law enforcement in the manner required by sub-clause (1).

Sub-clause (3) sets out the mode of communication of a report made under this section and sub-clause (4) requires a cash dealer to provide further information upon request by the Director, a relevant authority or an investigating officer who is conducting an investigation relevant to information contained in the report.

Sub-clause (5) protects the cash dealer or an officer, employee or agent of the cash dealer acting in the course of his or her employment, from any action, suit or proceeding in relation to action taken in accordance with this section. The purpose of this provision is to protect cash dealers from any actions for breach of confidence or defamation that might otherwise be brought against the cash dealer by a customer. Sub-clause (6) is definitional.

Clause 17 Protection for Cash Dealer where Information Communicated under Section 16

This clause has the effect of protecting a cash dealer, who provides information concerning a transaction to law enforcement agencies under clause 16, from prosecution for a money laundering offence against the Proceeds of Crime Act 1987 on the basis of the information that has been so communicated. Any information which has not been so communicated may, of course, be used in evidence in such prosecutions.

Clause 18 Information to be Provided when Bank Account etc. Opened

Sub-clauses (1) and (2) prevent a person who opens, or becomes a signatory to, an account with a cash dealer (not being a safety deposit box) after the commencement of the section from making withdrawals from that account once the credit balance of the account exceed \$1,000 or the aggregate of the amounts credited to the account in a 30 day period exceed \$2,000 if the signatory has not by that time produced a verification statement in accordance with clause 20 to the cash dealer. The unverified signatory is precluded from making withdrawals until he or she produces a verification statement or until the Director gives notice under sub-clause 19(2). A person who opens, or becomes a signatory to, an account consisting of a safety deposit box after the commencement the section must provide a verification statement at the time of opening, or becoming a signatory to, that account otherwise withdrawals are blocked.

Sub-clause (3) creates an offence where a cash dealer has failed to take reasonable steps to obtain a verification statement on, or before, the day on which an account to which sub-clause (1) applies exceeds the applicable balance or deposit limits, or on or before the day on which an account consisting of a safety deposit box is opened.

Sub-clause (4) creates an offence where an unverified signatory withdraws, or a cash dealer permits withdrawal of, funds from an account which is blocked.

Sub-clause (5) requires the cash dealer, by the end of the day after the day on which an account is blocked, to notify the Director in writing of the reasons why the account has been blocked and of the name and address of any unverified signatory together with sufficient details of the account to enable it to be identified.

Sub-clause (6) sets out penalties of \$5,000 or imprisonment for 2 years, or both, for a natural person or \$25,000 for a body corporate for a breach of sub-clause (3) or (4).

Sub-clause (7) requires a cash dealer who has given the Director notice of a blocked account and who subsequently receives a verification statement to notify the Director of that fact within 14 days.

Sub-clause (8) requires a cash dealer to notify the Director of the balance and other details of an account which has been blocked for 12 months.

Sub-clause (9) prescribes penalties for breaches of sub-clauses (5), (7) or (8) of \$1,000 for a natural person and \$5,000 for a body corporate.

Sub-clause (10) enables regulations to be made varying the deposit and balance limits specified in sub-paragraphs (1)(a)(iii) or (iv), substituting a period for the 30 day period referred in sub-paragraph (1)(a)(iv) and varying the time when notice must be given to the Director pursuant to sub-clause (5).

Clause 19 Unblocking or Forfeiture of Account

Sub-clause (1) requires the Director, upon receipt of a notice from a cash dealer under sub-clause 18(8), to give notice to the signatory or signatories to the account, at the address or addresses given to the cash dealer in relation to the account, of the fact that the unverified signatory's rights and interests are liable to forfeiture unless, within 3 months, the Director is satisfied that there are reasonable grounds to believe that clause 18 does not apply to the account (for example because the account was not opened after the commencement of the clause, the balance and deposit limit had not been exceeded or a verification statement had been provided to the cash dealer), or the unverified signatory produced a verification statement or ceased to be a signatory to the account.

Sub-clause (2) requires the Director to notify the cash dealer and the signatory or signatories to the account if the Director is satisfied within 3 months that the account may properly be operated because clause 18 does not apply to the account, or the unverified signatory has provided a verification statement or ceased to be a signatory.

Sub-clause (3) requires the Director to notify the cash dealer and the signatory or signatories that he has not been satisfied as required in sub-clause (2) and that the unverified signatory's rights and interests in relation to the account are forfeited to the Commonwealth. The Director is required to give a copy of the notice to the Minister.

Sub-clause (4) provides that where the Director has given a notice under sub-clause (3) all rights and interests in relation to the account held by the unverified signatory are forfeited to the Commonwealth. The Minister, the Director or an authorised officer of the Agency, may do whatever is necessary to realise those rights and interests including closing the account.

Sub-clause (5) provides that where the Director's decision is set aside by a court or a person satisfies a court that he or she, immediately before forfeiture, had a beneficial interest in a right or interest held by the unverified signatory, and that an amount standing to the credit of that account was not derived from unlawful activities the court may make such orders as it thinks fit in relation to such part of the funds standing to the credit of the account at that time as the court is satisfied was not derived from unlawful activity, including directions to the Commonwealth to return funds which it has recovered upon forfeiture.

Sub-clause (6) is definitional.

Clause 20 Form of Statement

Sub-clause (1) requires the statement to identify the account and specify whether the account is in the name of a body corporate, a business or an individual and whether the account is to be held in trust. The statement must also be signed by the person making the statement. The statement is intended to identify the account and the account holder.

Sub-clause (2) requires a statement provided in relation to an account to set out the full name and residential address of each signatory and to be accompanied by an identification reference for each signatory, unless the cash dealer is already in possession of an identification reference in relation to the signatory. If the account is in the name of a body corporate, other than as trustee, a certificate of incorporation must be provided. If the account is in a business name a copy of the certificate of registration of the business name, or a copy of the application for registration of the business name (where the business name has not yet been registered but registration has been sought) must be provided. If the account is in the name of an unincorporated association a copy of the instruments under which the

signatories to the account are authorised to sign is to be provided.

Sub-clause (3) requires a person who becomes a signatory to an existing account to include in a statement his, or her, full name and residential address and an identification reference, unless the cash dealer already holds an identification reference in relation to him or her.

Sub-clause (4) provides that a statement in relation to an account with a cash dealer does not need to be accompanied by an identification reference for a signatory to the account if the cash dealer holds an identification reference for the signatory in respect of another account and the statement specifies the other account in sufficient detail to enable it to be identified so that the relevant identification reference can be readily traced.

Sub-clause (5) requires a person who is required to disclose his or her full name on a statement under this section to disclose on that statement any other name which is, pursuant to sub-clause 3(5), regarded as a different name and by which the person is commonly known.

Sub-clause (6) requires, subject to the regulations, the name of each beneficiary under a trust to be disclosed in the statement in relation to an account.

Clause 21 Identification References

Sub-clause (1) defines an identification reference for a signatory to be a statutory declaration by an acceptable referee which sets out the name to be used by the signatory for the purposes of that account and specify the period for which the referee has known the signatory and the period during which the referee has known the signatory to be commonly known by the name in which the account is to be

opened. The reference must also state that the referee has examined one of the following; first, a specified primary identification document for the signatory in that name; or second, a specified primary identification document for the signatory in a former name and also a specified secondary identification document for the signatory in the name in which the account is to be opened; or third, a specified secondary identification document for the signatory in the name which is to be used for the purposes of the account.

Sub-clause (2) requires the identification reference to set out the name, address and occupation of the referee and the basis on which the referee claims to be an acceptable referee; the explanation given to the referee for any difference in name between that appearing on the primary identification document and the name to be used by the person in relation to the account; and, where the referee examined only a secondary identification document, the explanation given by the person for the failure to produce a primary identification document. The required details of the identification document or documents examined by the referee must also be given.

Sub-clause (3) requires the person to whom an identification reference relates to sign the reference in the referee's presence and requires the referee to state that it has been so signed.

Sub-clause (4) provides that a failure to produce a primary identification document is not sufficiently explained by a statement that such a document is not presently available if one could be obtained by taking reasonable steps. Such an explanation would render the reference ineffective as an identification reference. It is not envisaged that persons born in Australia would, other than in exceptional circumstances, be excused from providing a primary identification document. However, there will be cases where it is not possible for a person to obtain a primary

identification document, either because one does not exist or because the person would expose himself or herself to unreasonable risks by seeking to obtain such a document from a foreign country or reasonable efforts would be unlikely to result in locating the document or the provision of the document. Sub-clause (5) makes it clear that it is not intended that persons be required to apply for a passport or for citizenship for the sole purpose of producing that document to the referee but rather that where such a document has been issued the document be located and produced.

Clause 22 Notice to Director if No Primary Identification Document Examined

Sub-clause (1) requires a cash dealer to notify the Director of the details of any account in respect of which the identification reference states that the referee has only sighted a secondary identification document for the signatory. Where this is the case the cash dealer must notify the Director setting out sufficient details of the account to enable the account to be identified, the name used by the signatory in relation to the account and state that the identification reference for the signatory was not supported by a primary identification document.

Sub-clause (2) provides for penalties of a fine of not more than \$5,000 or imprisonment for not more than two years, or both, in the case of an individual or a fine of not more than \$25,000 for a body corporate for a breach of sub-clause (1).

Clause 23 Cash Dealer to Keep Documents

Sub-clause (1) requires a cash dealer to retain a statement made in accordance with clause 20 for a period of 7 years after the day on which the account is closed.

Sub-clause (2) requires a cash dealer to retain the record made pursuant to sub-clause 24(5). Where an identification reference is either held by the cash dealer at the time the record is made, or is subsequently provided to the cash dealer within 7 years, then the record must be held with the identification reference and retained for the period for which the identification reference must be retained. If the cash dealer does not hold an identification reference, and does not obtain one within 7 years from the date of the record, then the record must be retained for a period of 7 years.

Sub-clause (3) provides for penalties of a fine of not more than \$2,000 or imprisonment for not more than 12 months, or both, for a natural person or a fine of not more than \$10,000 for a body corporate for a breach of sub-clause (1) or (2).

Sub-clause (4) deals with the situation where an identification reference is used as an identification reference in relation to more than one account. The provision requires the identification reference to be retained until 7 years after the closure of the last account to which it relates.

Sub-clause (5) requires documents to be retained and stored in a way which makes retrieval reasonably practical. Under sub-clause (6) the obligations imposed by sub-clause (1) or (2) do not in any way limit any other obligation on a cash dealer to retain records.

Under sub-clause (7) a cash dealer who is required by law to release a document, the retention of which is required by sub-clause (1) or (2), must retain a complete copy of the document until the original is returned or until the retention period expires. In addition the cash dealer is required by sub-clause (8) to maintain a register of all documents so released. Sub-clause (9) makes a contravention of sub-clauses (6) or (7) punishable by a fine of not more than \$2,000 or

imprisonment for 12 months, or both, in the case of a natural person, or a fine of not more than \$10,000 in the case of a body corporate.

Clause 24 Opening Bank Account etc. in False Name

This clause makes it an offence to open or operate an account in a false name. It is also an offence if the name used, when opening or operating an account, is not the only name by which the person is commonly known and the person has not disclosed all other names by which he, or she, is commonly known to the cash dealer at the time of opening or operating that account whether or not the person holds accounts with cash dealers in those names. For the purposes of the provision nicknames are not treated as different names (sub-clause 3(5)).

Sub-clause (1) makes it an offence for a person to open an account with a cash dealer in a false name. Sub-clause (3) requires a person opening an account to disclose to the cash dealer any different name, or names, by which the person is commonly known.

Sub-clauses (2) and (4) provide similarly in relation to the operation of an account in a false name and the use of a name when operating an account without having disclosed all other names by which the person is known.

Sub-clause (5) requires a cash dealer to record any different name, or names, by which a person is commonly known which are disclosed to the cash dealer and to provide the Director with a copy of the record of those names upon request.

Sub-clause (6) provides that a breach of sub-clause (1) - (5) inclusive is an offence and the penalty, in the case of a natural person, is a fine not more than \$5,000 or imprisonment for 2 years, or both, and a fine of not more than \$25,000 in the case of the body corporate.

Sub-clause (7) provides that for the purposes of this clause a person opens an account in a false name if, in opening that account or becoming a signatory to an account, a person uses a name other than a name in which he or she is commonly known. The sub-clause also provides that a person operates an account in a false name if the person does anything in relation to an account (whether by conducting a transaction in relation to that account, or in communicating with a cash dealer in relation to that account, or doing anything else) and the person uses a name other than a name in which the person is commonly known.

Clause 25 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 or her duties under the legislation, except for the purposes of the legislation, the performance or exercise of powers or functions of the Director, or otherwise in connection with his or her duties under the legislation. Sub-clause (2) provides that a 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 divulge any information or to produce any document in a court that has come to their notice or into their custody and control pursuant to the performance of their duties under the legislation. The exception to this is where production or disclosure is necessary to give effect to the provisions of the legislation.

~~Clause 26 Special Provisions in Relation to Reports of Suspect Transactions~~

This clause overrides any secrecy requirements in relation to information relevant to suspect transactions acquired under

sub-clause 16(4). Such information may be shared among law enforcement agencies.

Sub-clause (1) empowers an investigating officer to communicate information to a relevant authority. A relevant authority may, under sub-clause (2), communicate information in relation to suspect transactions to another relevant authority. Sub-clause (3) is definitional.

Clause 27 Access to CTR Information

Notwithstanding clause 25, sub-clause (1) entitles the Commissioner of Taxation, and any taxation officer, to access 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 the ACS, in respect of specific CTR information, or classes of such information, and where such authorisation has been given sub-clause (3) entitles any law enforcement or customs officer to access to the information which is made available.

Sub-clause (4) provides that section 3C of the Taxation Administration Act 1953, which deals with non-disclosure of information by taxation officers, applies to information acquired by a taxation officer under the legislation.

Sub-clause (5) sets out the circumstances in which the National Crime Authority (NCA) 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 NCA 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 contemplated legal proceedings, or in the course of proceedings before a court. The purpose of this clause is to ensure that law enforcement agencies and the 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 NCA, 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 NCA, 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 NCA 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 legislation.

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 2 years, or both.

Sub-clause (14) defines a law enforcement agency to be the NCA 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 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 28 Failure to Provide Information

Sub-clause (1) creates an offence where a cash dealer refuses, or fails, to communicate information to the Director when and as required under the legislation. Sub-clause (2) also creates an offence if a financial institution fails to maintain a exemption register or 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(5). Sub-clause (3) provides a penalty of a fine of not more than \$5,000 or imprisonment for 2 years, or both, for a natural person or a fine of not more than \$25,000 for a body corporate found guilty of an offence against sub-clause (1) or (2).

Clause 29 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 cash dealer is communicating information to the Director.

Sub-clause (2) creates an offence where a financial institution 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 financial institution is maintaining its exemption register.

Sub-clause (3) creates an offence where any person makes a report, statement or declaration that is known to be false or misleading in a material particular, or omits from a declaration, statement or report anything without which the statement or report is misleading in a material particular.

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, to cause a cash dealer to make a false or misleading CTR or to cause a carrier not to make a report pursuant to clause 15.

Sub-clause (5) provides that the penalty for the above offences 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 30 Incomplete Information

Sub-clause (1) creates an offence where a cash dealer knowingly communicates information in such a way that the information is incomplete in relation to a transaction. This provision is intended to cover situations where the cash dealer is aware that, having regard to the objects of the legislation and to the circumstances of the transaction, information in addition to that which is specifically required to be reported ought properly to be disclosed.

Sub-clause (2) creates an offence where a financial institution knowingly maintains its exemption register in such a way that the register is incomplete in relation to a transaction. The intention underlying this offence is similar to that underlying sub-clause (1).

Sub-clause (3) provides that the penalty for an offence is a fine of not more than \$1,000 for a natural person or a fine of not more than \$5,000 for a body corporate.

Clause 31 Offence to Conduct Transactions so as to Avoid Reporting Requirements

The purpose of the offence created in sub-clause (1) is to prohibit people from structuring a number of transactions, either to keep the amounts involved below the \$10,000 reporting threshold or to keep transactions within the ambit of 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 15.

Paragraphs 31(1)(b) and (2)(b) give a number of indicators which may give rise to the inference that transactions have been conducted for the purpose of avoiding the reporting requirements. 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 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 is able to provide a reasonable explanation (sub-paragraphs 31(1)(b)(ii) or 31(2)(b)(ii)) for conducting 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.

Sub-clause (3) provides that the penalty for each offence 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 32 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 the provisions of the legislation.

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, or would constitute, a breach, or an attempted breach, of Part II, III or V of the legislation. Inchoate offences are also covered.

Sub-clause (2) permits the court to grant 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, referred to in sub-clause (1), which constitutes a contravention of the legislation.

Clause 33 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 the person has with him or her, to produce the currency and declare whether a report has been given under clause 15 in respect 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. (Outgoing Australian currency is dealt with under the Banking (Foreign Exchange) Regulations.)

Sub-clause (3) gives police and certain customs officers power to examine and search any article which persons about to leave, or about to enter, Australia have with them. Such officers are also empowered to search any person about to leave, or about to enter, Australia if the officer has reasonable grounds to believe that there is on the person, or in the clothing worn by the person, currency in respect of which a report under clause 15 is required, for the purposes

of ascertaining whether the person has with him or her any such currency.

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 15 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 15 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 15 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 34 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 35 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 36 Director

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

Clause 37 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 instrument of appointment to specify the circumstances in which it is to have effect 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 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 38 Functions of Director

Sub-clause (1) provides that the functions of the Director are to perform functions and exercise powers under the legislation, 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) imposes an obligation on the Director to consult with cash dealers, or their representatives, and to take any comments made in the course of those consultations into account.

Sub-clauses (3) and (4) are designed to ensure that the CTR agency carries out functions in a manner beneficial to the Commissioner of Taxation.

Clause 39 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 40 Staff

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

Clause 41 Act Not to Limit Commissioner's Powers

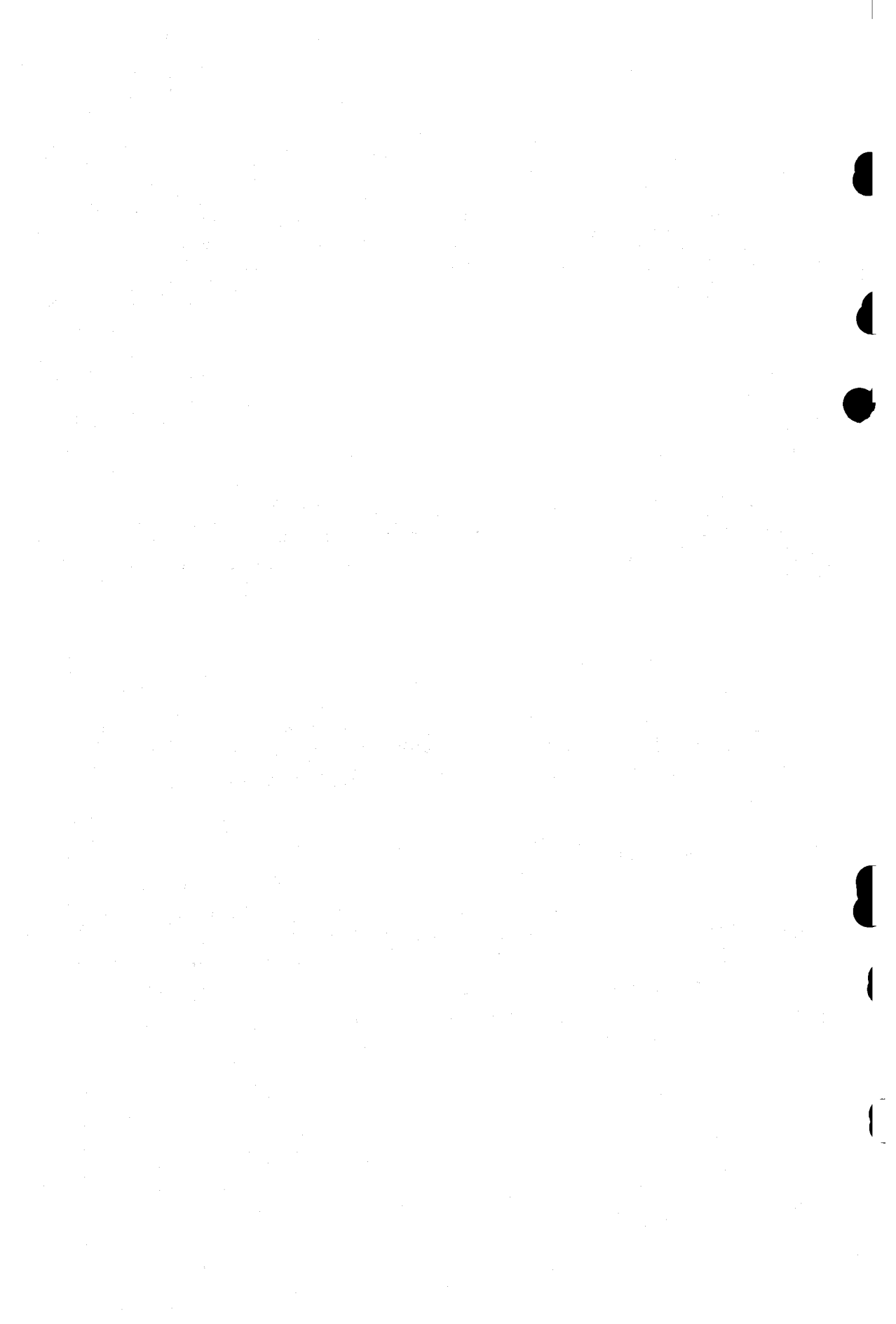
The clause declares, for the removal of any doubt, that nothing in the legislation limits any powers that the Commissioner of Taxation has, under any other law, to obtain information.

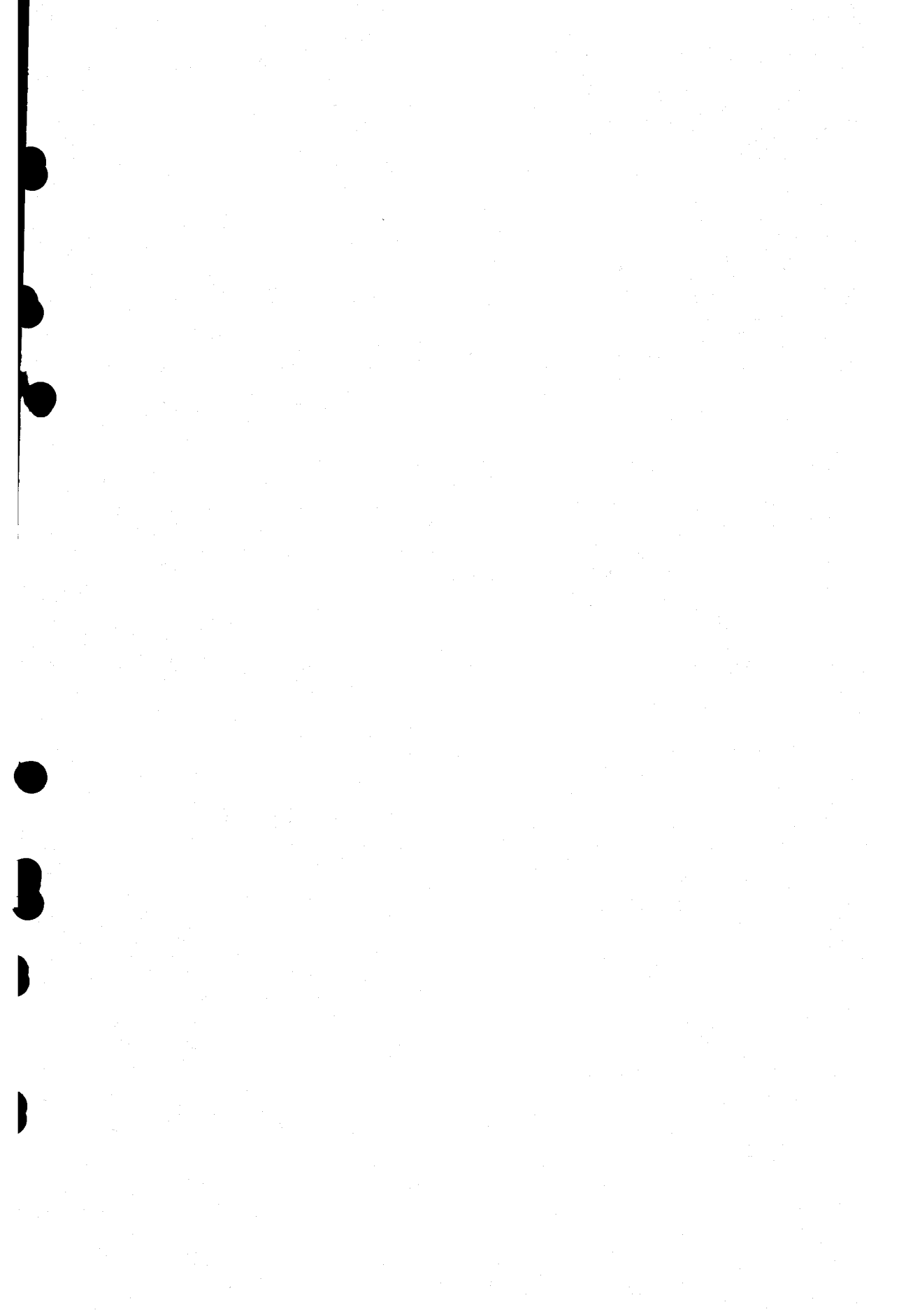
Clause 42 Administrative Decisions (Judicial Review) Act 1977
Not to Apply to Decisions Under this Act

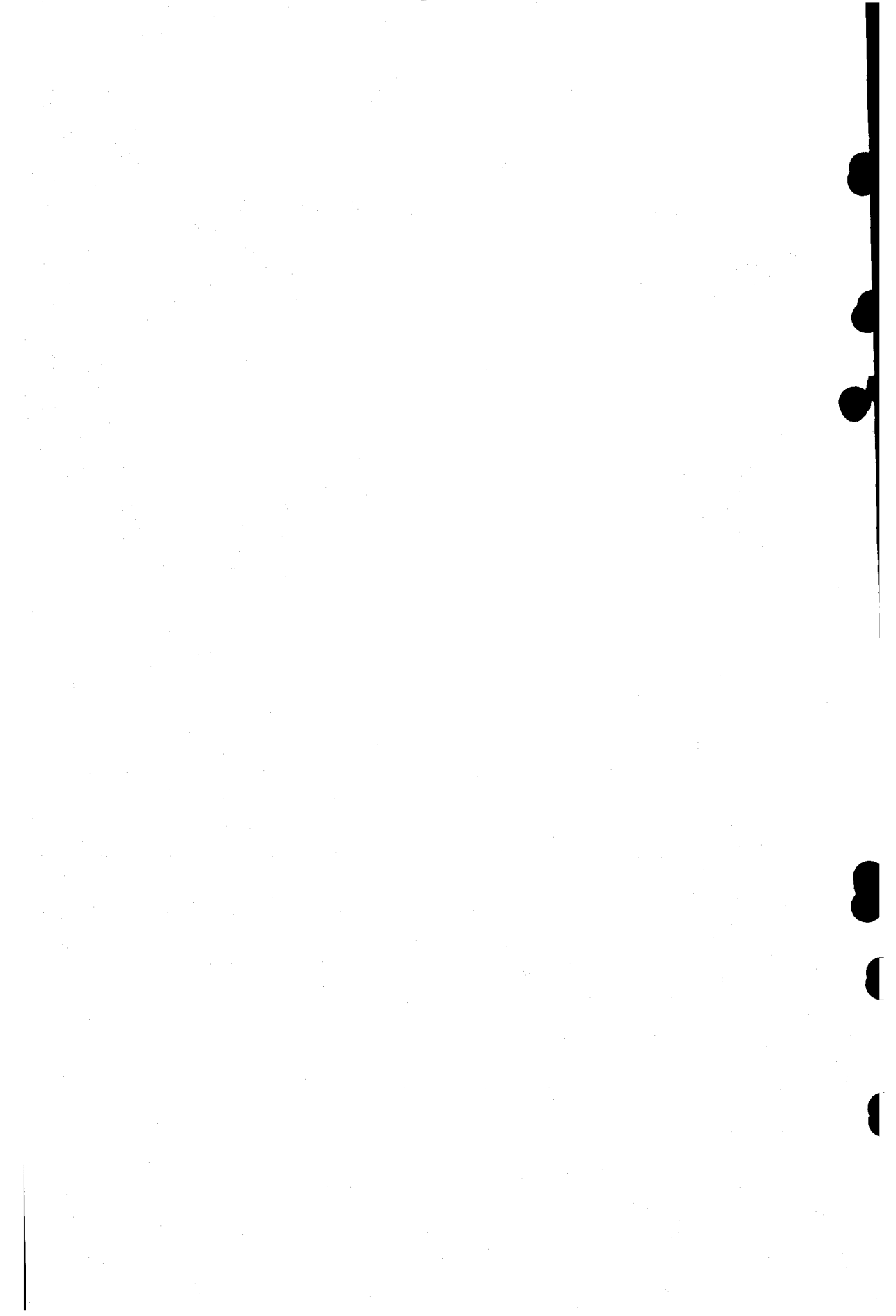
The clause provides that the Administrative Decisions (Judicial Review) Act 1977 does not apply to decisions made under the legislation other than a decision by the Director under sub-clauses 19(2) or (3).

Clause 43 Regulations

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







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