



Cash Transaction Reports Act 1988

No. 64 of 1988

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Cash Transaction Reports Act 1988

No. 64 of 1988

An Act to provide for the reporting of certain transactions and transfers, to establish a Cash Transaction Reports Agency and to impose certain obligations in relation to accounts, and for related purposes

[Assented to 15 June 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

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

Commencement

2. (1) Section 1 and this section shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day or days fixed by Proclamation.

Interpretation

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

“acceptable referee” means a person declared by the Minister, by notice in writing published in the *Gazette*, to be an acceptable referee for the purposes of this definition;

“account” means any facility or arrangement by which a cash dealer does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person;

and includes a facility or arrangement for a safety deposit box;

“acting member of the NCA” has the same meaning as “acting member” has in the NCA Act;

“AFP member” means a member or special member of the Australian Federal Police;

“Agency” means the Cash Transaction Reports Agency;

“approved” means approved by the Director, in writing, for the purposes of the provision in which the term occurs;

“approved cash carrier” means a cash dealer declared by the Director to be an approved cash carrier under section 8;

“Australia”, when used in a geographical sense, includes the external Territories;

“authorised officer” means a member of the staff of the Agency specified by the Director, in writing, as an authorised officer for the purposes of this Act;

“bank” means:

- (a) the Reserve Bank of Australia;
- (b) a bank within the meaning of the *Banking Act 1959*; or
- (c) a person who carries on State banking within the meaning of paragraph 51 (xiii) of the Constitution;

“building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under a law relating to such societies that is in force in a State or Territory;

“cash dealer” means:

- (a) a financial institution;
- (b) a body corporate that is, or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;
- (c) an insurer or an insurance intermediary;
- (d) a securities dealer;
- (e) a futures broker;

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- (f) a Registrar or Deputy Registrar of a Registry established under section 14 of the *Commonwealth Inscribed Stock Act 1911*;
- (g) a trustee or manager of a unit trust;
- (h) a person who carries on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;
- (j) a person who carries on a business of dealing in bullion;
- (k) a person (other than a financial institution) who carries on a business of:
 - (i) collecting currency, and holding currency collected, on behalf of other persons;
 - (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; and
 - (iii) delivering currency (including payrolls);
- (m) a person who carries on a business of operating a gambling house or casino; and
- (n) a bookmaker (including a totalisator agency board);

“cash transaction” means a transaction involving the physical transfer of currency from one person to another;

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

- (a) the *Australian Citizenship Act 1948*;
- (b) the *Nationality Act 1920*; or
- (c) the *Naturalisation Act 1903*;

or under regulations made under any of those Acts;

“commercial goods carrier” means a person who, in the normal course of a lawful business, carries goods or mail for reward;

“commercial passenger carrier” means a person who, in the normal course of a lawful business, carries passengers for reward;

“Commissioner” means the Commissioner of Taxation;

“credit union” means a society or other body of persons that is registered or incorporated as a credit union or credit society under a law in force in a State or Territory relating to credit unions or credit societies;

“CTR information” means information obtained by the Director under Part II and includes information included in a notice under subsection 18 (5) or (7) or 22 (1) or a copy of a record given under subsection 24 (5);

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“currency” means the coin and paper money of Australia or of a foreign country that:

- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

“customs officer” means the Comptroller-General of Customs or an officer of customs within the meaning of the *Customs Act 1901*;

“Director” means the Director of the Cash Transaction Reports Agency;

“established customer”, in relation to a financial institution as at a particular time, means a person who has been a customer of the financial institution for not less than 12 months immediately preceding that time;

“financial institution” means:

- (a) a bank;
- (b) a building society; or
- (c) a credit union;

“foreign currency” means the currency of a foreign country;

“futures broker” means a person who is a futures broker for the purposes of the *Futures Industry Act 1986* or for the purposes of a law of a State or Territory that corresponds to that Act;

“given name” means a name other than a surname;

“identification document” means a primary identification document or a secondary identification document;

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

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

- (a) business as a registered health benefits organisation, a registered medical benefits organisation or a registered hospital benefits organisation carried on by an organisation that is a registered organisation within the meaning of Part VI of the *National Health Act 1953*;
- (b) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to the person’s liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody; or

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- (c) the business of insuring property of a religious organisation where the person carrying on the business does not carry on any other insurance business;

“insurance intermediary” means a person who:

- (a) for reward; and
- (b) as an agent for one or more insurers or as an agent of intending insureds;

arranges contracts of insurance in Australia or elsewhere, and includes an insurance broker;

“insured” means a person (other than the insurer) who is entitled to a benefit under a contract of life insurance;

“insurer” means a person who carries on an insurance business but does not include a person to whom paragraph 5 (2) (ga) of the *Insurance Act 1973* applies;

“Inter-Governmental Committee” means the Inter-Governmental Committee referred to in section 8 of the NCA Act;

“member of the NCA” has the same meaning as “member” has in the NCA Act;

“member of the staff of the NCA” has the same meaning as “member of the staff of the Authority” has in the NCA Act;

“NCA” means the National Crime Authority;

“NCA Act” means the *National Crime Authority Act 1984*;

“non-reportable cash transaction” means a cash transaction:

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

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

“police officer” means:

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

“primary identification document”, in relation to a person in a particular name, means:

- (a) a certified copy of, or of an extract of, a birth certificate in relation to the person’s birth and showing that name as the person’s name;
- (b) a certified copy of a citizenship certificate issued in respect of the person and showing that name as the person’s name; or
- (c) a passport held by the person and showing that name as the person’s name;

“produce” includes permit access to;

“public authority” means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by or under a law of the Commonwealth or of a State or Territory;

“reporting period”, in relation to a significant cash transaction, means:

- (a) if the transaction involves foreign currency—the period ending at the end of the day after the day on which the transaction takes place or such longer period as is prescribed by the regulations;
- (b) if the transaction does not involve foreign currency—the period ending at the end of 15 days after the day on which the transaction takes place;

“required details”, in relation to an identification document, means:

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

“retail business” means a business:

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

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

“securities dealer” means a person who is a dealer for the purposes of the *Securities Industry Act 1980* or for the purposes of a law of a State or Territory that corresponds to that Act;

“send”, in relation to currency, includes send through the post;

“signatory”, in relation to an account with a cash dealer, means the person, or one of the persons, on whose instructions (whether required to be in writing or not and whether required to be signed

or not) the cash dealer conducts transactions in relation to the account;

“significant cash transaction” means a cash transaction involving the transfer of currency of not less than \$10,000 in value;

“State” includes the Northern Territory;

“surname” includes a family name;

“taxation law” has the same meaning as in the *Taxation Administration Act 1953*;

“taxation officer” means:

- (a) a Second Commissioner of Taxation;
- (b) a Deputy Commissioner of Taxation; and
- (c) an officer or employee of the Australian Public Service performing duties in the Australian Taxation Office;

“Territory” does not include the Northern Territory;

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

“unit trust” means a trust to which a unit trust scheme relates and includes:

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

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

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

(2) A reference in this Act to a document being signed by a party to a transaction includes a reference to the document being signed on the party's behalf.

(3) A reference in this Act to transferring currency out of Australia is a reference to taking or sending currency out of Australia.

(4) A reference in this Act to transferring currency into Australia is a reference to bringing or sending currency into Australia.

(5) For the purposes of this Act, where a person's name consists of one or more given names and a surname, the following names shall be taken not to be different from one another:

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- (a) a name consisting of that given name or those given names and that surname;
- (b) a name consisting of any one or more of those given names and that surname;
- (c) a name consisting of a nickname of the person and that surname;
- (d) a name consisting of a nickname of the person, that given name or those given names and that surname;
- (e) a name consisting of a nickname of the person, one or more of those given names and that surname.

(6) A reference in subsection (5) to a given name of a person includes a reference to a diminutive form or Anglicised form of a given name of the person.

Objects of Act

4. (1) The principal object of this Act is to facilitate the administration and enforcement of taxation laws.

(2) A further object of this Act is to facilitate the administration and enforcement of laws of the Commonwealth and of the Territories (other than taxation laws).

(3) Without prejudice to the effect of this Act by virtue of subsections (1) and (2), a further object of this Act is to make information collected for the purposes referred to in subsection (1) or (2) available to State authorities to facilitate the administration and enforcement of the laws of the States.

Act to bind Crown

5. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

Act to apply both within and outside Australia

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

PART II—TRANSACTION REPORTS

Division 1—Cash transaction reports

Reports of significant cash transactions

7. (1) Where a cash dealer is a party to a significant cash transaction, the dealer shall, before the end of the reporting period:

- (a) prepare a report of the transaction; and

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(b) communicate the information contained in the report to the Director;
unless:

- (c) the transaction is, at the time when it occurs, an exempt transaction;
or
- (d) the transaction is, at the time when it occurs, eligible for exemption and becomes, before the end of the reporting period, an exempt transaction; or
- (e) the cash dealer is an approved cash carrier.

(2) The report shall be prepared in the approved form, contain the reportable details of the transaction and be signed by the cash dealer.

(3) The communication shall be made to the Director:

- (a) by giving the Director a copy of the report; or
- (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.

(4) In this section:

“reportable details”, in relation to a transaction, means the details of the transaction that are referred to in Schedule 1.

Approved cash carriers

8. (1) The Director may, by notice published in the *Gazette*, declare a cash dealer, being a person referred to in paragraph (k) of the definition of “cash dealer” in subsection 3 (1), to be an approved cash carrier if the Director is satisfied that:

- (a) the cash dealer maintains records containing reportable details of significant cash transactions to which the cash dealer is a party; and
- (b) the declaration of the cash dealer as an approved cash carrier would not be inconsistent with the objects of this Act.

(2) In this section:

“reportable details” has the same meaning as in section 7.

Exempt cash transactions

9. (1) Subject to subsection (2), a significant cash transaction between a financial institution and another person is an exempt transaction, so far as the institution is concerned, if:

- (a) the transaction has been entered in the institution’s exemption register; or
- (b) the transaction falls within a class of transactions entered in the institution’s exemption register against the name of that person.

(2) Where the Director gives a financial institution a direction under subsection 11 (3), a significant cash transaction between the financial institution and another person is not an exempt transaction, so far as the

institution is concerned, if exemption of the transaction would be inconsistent with the direction.

(3) Where:

(a) a significant cash transaction between a financial institution and another person is an exempt transaction so far as the financial institution is concerned; and

(b) the other person is a cash dealer;

the transaction is also an exempt transaction so far as the cash dealer is concerned.

(4) A significant cash transaction is also an exempt transaction if the transaction is between a futures broker and a clearing house that is associated with a futures exchange of which the broker is a member.

Transactions eligible for exemption

10. (1) A significant cash transaction is eligible for exemption if:

(a) the transaction is between a financial institution and another financial institution; or

(b) the transaction is between a cash dealer (not being a financial institution) and a financial institution.

(2) A significant cash transaction is also eligible for exemption if:

(a) the transaction is between a financial institution and another person (in this subsection called the "customer");

(b) the customer is, at the time when the transaction takes place, an established customer of the institution;

(c) the transaction consists of a deposit into, or a withdrawal from, an account maintained by the customer with the institution;

(d) the customer carries on:

(i) a retail business (other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft);

(ii) a business declared by the Minister, by notice in writing published in the *Gazette*, to be an entertainment business or a hospitality business for the purposes of this Act; or

(iii) a business of providing vending machines;

(e) the account is maintained for the purposes of that business; and

(f) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.

(3) A significant cash transaction is also eligible for exemption if:

(a) the transaction is between a financial institution and another person (in this subsection called the "customer");

(b) the customer is, at the time when the transaction takes place, an established customer of the institution;

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- (c) the transaction consists of a withdrawal from an account maintained by the customer with the institution;
- (d) the withdrawal is made for pay-roll purposes;
- (e) the customer regularly withdraws, from that account, currency of a value not less than \$10,000 to pay the customer's staff and employees; and
- (f) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.

(4) A significant cash transaction to which a financial institution is a party is also eligible for exemption if:

- (a) the other party to the transaction is a public authority; and
- (b) the amount of currency involved in the transaction does not exceed an amount that is reasonably commensurate with the authorised activities of the authority.

(5) A significant cash transaction is also eligible for exemption if it is declared by the Minister, by notice in writing published in the *Gazette*, to be eligible for exemption for the purposes of this Act.

(6) Where:

- (a) a person (in this subsection called the "customer") has closed an account with a financial institution (in this subsection called the "transferor institution") and transferred the money that stood to the credit of that account to an account held by the person with another financial institution (in this subsection called the "transferee institution"); and
- (b) a significant cash transaction is conducted through the account held with the transferee institution at a time when the customer is not an established customer of the transferee institution;

the transaction is eligible for exemption if:

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

Financial institution may enter transactions in exemption register

11. (1) Where:

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

the institution may enter the transaction in its exemption register.

(2) Where:

- (a) a financial institution is a party to a significant cash transaction;
- (b) the institution believes that the transaction is eligible for exemption in accordance with section 10;
- (c) the institution believes that:
 - (i) the other party to the transaction is likely to enter, on a regular basis, into transactions of a similar kind with the institution; and
 - (ii) all cash transactions of that kind are eligible for exemption in accordance with section 10; and
- (d) if the other party to the transaction is not a financial institution—the other party signs a written statement to the effect that:
 - (i) the party believes that the transaction and proposed transactions of that kind are eligible for exemption in accordance with section 10; and
 - (ii) the information provided by the party to the institution in relation to the transaction and in relation to proposed transactions of that kind is, to the best of his or her knowledge and belief, true and correct in all material particulars;

the institution may enter the class of transactions consisting of transactions of that kind, against the name of the other party, in its exemption register.

(3) Where a financial institution has entered a class of transactions in its exemption register against the name of a person, the Director may, by written notice to the institution, direct the institution:

- (a) to delete the entry from the exemption register; or
- (b) to amend the entry so that it ceases to apply to transactions of a kind specified in the notice.

(4) Where the Director gives a financial institution a direction under subsection (3), the institution:

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- (a) shall forthwith comply with the direction;
- (b) if the direction is given under paragraph (3) (a)—shall not enter in its exemption register, against the name of the person concerned, the same or substantially the same class of transactions, or transactions falling within the same or substantially the same class of transactions, while the direction remains in force; and
- (c) if the direction is given under paragraph (3) (b)—shall not enter in its exemption register, against the name of the person concerned, transactions of the kind, or a class of transactions of the kind, specified in the notice.

(5) A financial institution that contravenes subsection (4) is guilty of an offence against this subsection punishable, upon conviction, by a fine not exceeding \$5,000.

(6) Subject to subsection (4), a financial institution may, at any time, delete an entry from, or amend an entry in, its exemption register.

Financial institution to maintain exemption register

12. (1) A financial institution shall maintain a register in which the institution enters transactions, and classes of transactions, for the purposes of section 11.

(2) The register shall be maintained in the approved manner and form.

(3) The register shall include the prescribed details in relation to each transaction, or class of transactions, that is entered in the register.

(4) Where:

- (a) a transaction, or class of transactions, is entered in a financial institution's exemption register;
- (b) the entry contains the prescribed details in relation to the transaction or class of transactions; and
- (c) the entry is not in the approved manner and form;

the fact that the entry is not in the approved manner and form shall be disregarded in determining whether or not the transaction, or any transaction falling within that class, is an exempt transaction.

(5) In this section:

“prescribed details”, in relation to a transaction or class of transactions, means the details of the transaction or class of transactions that are referred to in Schedule 2.

Director to have access to exemption registers

13. (1) The Director may, by written notice to a financial institution, require the institution to give an authorised officer specified in the notice access to its exemption register on the day and during the hours specified in the notice.

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(2) Where the Director gives a financial institution notice under subsection (1), the institution shall comply with the notice.

(3) The hours specified in a notice under subsection (1) shall be during the normal business hours of the financial institution to which the notice is given.

(4) Where an authorised officer may inspect an exemption register, the officer may also make a copy of, or take extracts from, the register.

(5) The Director may, by written notice to a financial institution, require the institution to give the Director, or an authorised officer specified in the notice, a copy of:

- (a) its exemption register; or
- (b) entries in its exemption register falling within the class of entries specified in the notice;

together with any other information relating to the register, or to the entries, that is specified in the notice.

(6) Where the Director gives a financial institution notice under subsection (5), the institution shall comply with the notice within 30 days after receiving the notice.

Director to have access to certain records

14. (1) The Director may, by written notice to an approved cash carrier, require the approved cash carrier to give an authorised officer specified in the notice access to such of those records as are specified in the notice (being records relating to significant cash transactions to which the approved cash carrier is a party) on the day and during the hours specified in the notice.

(2) Where the Director gives an approved cash carrier notice under subsection (1), the approved cash carrier shall comply with the notice.

(3) The hours specified in a notice under subsection (1) shall be during the normal business hours of the approved cash carrier to which the notice is given.

(4) Where an authorised officer may inspect records of an approved cash carrier, the officer may also make copies of, or take extracts from, those records.

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

15. (1) Where:

- (a) a person:
 - (i) transfers foreign currency out of Australia; or
 - (ii) transfers Australian currency or foreign currency into Australia; and
- (b) the amount of currency involved in the transfer is not less than \$5,000 in value;

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the person, subject to subsections (2), (3) and (4), commits an offence against this subsection unless a report in respect of the transfer has been given in accordance with this section before the transfer takes place.

(2) A commercial passenger carrier need not make a report in respect of currency in the possession of the carrier's passengers.

(3) A commercial goods carrier need not make a report in respect of currency carried on behalf of another person unless the other person has disclosed to the carrier that the goods include currency.

(4) A bank need not make a report in respect of currency transferred, on behalf of the bank, by a commercial goods carrier.

(5) Where:

(a) a person (other than a bank) receives Australian currency or foreign currency transferred to the person from outside Australia; and

(b) the amount of currency received is not less than \$5,000 in value;

the person commits an offence against this subsection unless:

(c) a report in respect of the transfer of the currency into Australia had been made in accordance with subsection (1) before the transfer; or

(d) a report in respect of the receipt of currency is given in accordance with this section before the end of the period of 30 days commencing on the day of the receipt of the currency.

(6) A person who commits an offence against subsection (1) or (5) is punishable, upon conviction, by:

(a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or

(b) if the offender is a body corporate—a fine not exceeding \$25,000.

(7) A report under this section shall:

(a) be in the approved form;

(b) contain the reportable details in relation to the matter being reported;

(c) be signed by the person giving the report; and

(d) be given to:

(i) the Director;

(ii) a customs officer; or

(iii) a police officer.

(8) Where a report under this section is given to a customs officer or police officer, the officer shall, as soon as practicable after receipt of the report, forward the report to the Director.

(9) In this section:

“reportable details”, in relation to a matter being reported, means the details of the matter that are referred to in Schedule 3.

Division 2—Reports of suspect transactions

Reports of suspect transactions

16. (1) Where:

- (a) a cash dealer is a party to a transaction; and
- (b) the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction:
 - (i) may be relevant to investigation of an evasion, or attempted evasion, of a taxation law;
 - (ii) may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a Territory; or
 - (iii) may be of assistance in the enforcement of the *Proceeds of Crimes Act 1987* or the regulations made under that Act;

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

- (c) prepare a report of the transaction; and
- (d) communicate the information contained in the report to the Director.

(2) The report shall:

- (a) be prepared in the approved form;
- (b) contain the reportable details of the transaction;
- (c) contain a statement of the grounds on which the cash dealer holds the suspicion referred to in subsection (1); and
- (d) be signed by the cash dealer.

(3) The communication shall be made to the Director:

- (a) by giving the Director a copy of the report; or
- (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.

(4) Where a cash dealer communicates information to the Director under subsection (1), the cash dealer shall, if requested to do so by:

- (a) the Director;
- (b) a relevant authority; or
- (c) an investigating officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information contained in the report;

give such further information as is specified in the request to the extent to which the cash dealer has that information.

(5) An action, suit or proceeding does not lie against:

- (a) a cash dealer; or
- (b) an officer, employee or agent of the cash dealer acting in the course of that person's employment or agency;

in relation to any action taken by the cash dealer or person pursuant to this section.

(6) In this section:

“investigating officer” means a taxation officer, an AFP member or a member, or member of staff, of the NCA;

“relevant authority” means:

- (a) the Commissioner of the Australian Federal Police;
- (b) the Chairperson of the NCA; or
- (c) the Commissioner of Taxation;

“reportable details”, in relation to a transaction, means the details of the transaction that are referred to in Schedule 4.

Protection for cash dealer etc. where information communicated under section 16

17. Where a cash dealer, or a person who is an officer, employee or agent of a cash dealer, communicates or gives information under section 16, the cash dealer or person shall be taken, for the purposes of sections 81 and 82 of the *Proceeds of Crimes Act 1987*, not to have been in possession of that information at any time.

PART III—ACCOUNTS

Information to be provided when bank account etc. opened

18. (1) This section applies where:

(a) on a day (in this subsection called the “transaction day”) after the commencement of this section, a person:

- (i) opens an account (other than a facility or arrangement for a safety deposit box) with a cash dealer; or
 - (ii) becomes a signatory of such an account with a cash dealer;
- and either of the following subparagraphs applies:

- (iii) on a day (in this section called the “infringement day”), being the transaction day or a later day, the credit balance of the account exceeds \$1,000;
- (iv) on a day (in this section also called the “infringement day”), being at least 30 days after the transaction day, the aggregate of the amounts credited to the account within the last 30 days exceeds \$2,000; or

(b) on a day after the commencement of this section (in this section also called the “infringement day”) a person:

- (i) opens an account with a cash dealer, being a facility or arrangement for a safety deposit box; or
- (ii) becomes a signatory of such an account with a cash dealer.

(2) If the person (in this section called the “unverified signatory”) has not, on or before the infringement day, given the cash dealer a statement in

accordance with section 20 (in this section called a “verification statement”) the account becomes blocked by force of this section until the unverified signatory gives the cash dealer a verification statement or the Director gives a notice under subsection 19 (2).

(3) At the end of the infringement day, the cash dealer commits an offence against this subsection unless it has made reasonable efforts, on or before that day, to obtain a verification statement from the unverified signatory.

(4) If the unverified signatory makes a withdrawal from the account at any time when the account is blocked, the signatory and the cash dealer each commits an offence against this subsection.

(5) At the end of the day after the infringement day, the cash dealer commits an offence against this subsection unless it has given the Director written notice stating:

- (a) the reasons why the account became blocked; and
- (b) the name and address of the unverified signatory and sufficient details of the account for the account to be identified.

(6) An offence against subsection (3) or (4) is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

(7) Where:

- (a) the cash dealer gives the Director notice under subsection (5); and
- (b) after the notice is given or sent by the cash dealer, the unverified signatory gives the cash dealer a verification statement;

the cash dealer shall, within 14 days after the day on which the statement was given, give the Director written notice that the statement has been given.

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

(9) A cash dealer who contravenes subsection (5), (7) or (8) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

(10) The regulations may prescribe:

- (a) an amount instead of an amount specified in subparagraph (1) (a) (iii) or (iv);
- (b) a period instead of the period of 30 days last referred to in subparagraph (1) (a) (iv); or

- (c) a period instead of the day first referred to in subsection (5).

Unblocking or forfeiture of account

19. (1) The Director shall, as soon as practicable after receiving a notice under subsection 18 (8), give notice in writing to the signatory or signatories to the account at the address or addresses given to the cash dealer in relation to the account, stating the effect of this section.

(2) If, within 3 months after the notice, or the last of the notices, is given under subsection (1), the Director is satisfied that:

- (a) there are reasonable grounds to believe that section 18 did not apply to the account;
 - (b) the unverified signatory has given a verification statement; or
 - (c) the unverified signatory has ceased to be a signatory of the account;
- the Director shall give written notice of that fact to the cash dealer and the signatory or signatories to the account.

(3) If, at the end of the period referred to in subsection (2), the Director is not satisfied that paragraph (2) (a), (b) or (c) applies, the Director shall:

- (a) give written notice of that fact to the cash dealer and the signatory or signatories to the account, setting out the effect of subsections (4) and (5); and
- (b) give a copy of the notice to the Minister.

(4) If the Director gives a notice under subsection (3), all rights and interests in relation to the account held by the unverified signatory are forfeited to the Commonwealth, and the Minister, the Director or an officer of the Agency authorised by the Director may, on behalf of the Commonwealth, do whatever is necessary to realise those rights and interests (including closing the account).

(5) If:

- (a) the Director's decision under subsection (3) is set aside by a court; or
- (b) a person satisfies the court that:
 - (i) immediately before the time when subsection (4) had effect in relation to the account, the person had a beneficial interest in a right or interest in relation to the account held by the unverified signatory; and

(ii) an amount standing to the credit of the account immediately before that time had not been derived from unlawful activities; the court may make such orders as it thinks fit in relation to that amount, including directions to the Commonwealth to make restitution of so much of that amount as has been recovered by the Commonwealth under subsection (4).

(6) An expression used in this section has the same meaning as in section 18.

Form of statement

20. (1) A statement in relation to an account with a cash dealer shall:

- (a) specify the account in sufficient detail for the account to be identified;
- (b) specify whether the account is in:
 - (i) the name of a natural person;
 - (ii) the name of a body corporate;
 - (iii) a business name; or
 - (iv) the name of an unincorporated association;
- (c) specify whether the account is held in trust or not; and
- (d) be signed by the person making the statement.

(2) Subject to subsection (4), a statement in relation to an account shall also:

- (a) set out the full name and residential address of the signatory or each signatory to the account; and
- (b) be accompanied by an identification reference for the signatory or each signatory to the account in accordance with section 21 and:
 - (i) if the account is in the name of a body corporate (other than as trustee)—a copy of the certificate of incorporation (if any) of the body corporate;
 - (ii) if the account is in a business name—a copy of the certificate of registration (if any) of the business name or, if registration has been applied for but not yet obtained, a copy of the application; or
 - (iii) if the account is in the name of an unincorporated association—a copy of the instrument or instruments under which the signatories to the account are authorised to sign.

(3) Subject to subsection (4), a statement in relation to a person who becomes a signatory to an account shall also:

- (a) set out the full name and residential address of that person; and
- (b) be accompanied by an identification reference for that person in accordance with section 21.

(4) A statement in relation to an account with a cash dealer need not be accompanied by an identification reference for a signatory to the account if:

- (a) the cash dealer holds an identification reference for the signatory in respect of another account with the cash dealer; and
- (b) the statement specifies that other account in sufficient detail for that other account to be identified.

(5) Where:

- (a) a statement under this section in relation to an account must set out the full name of a signatory to the account; and

(b) the signatory is commonly known by a name or names different from the name used by the signatory in relation to the account; the statement shall also set out the other name or names.

(6) Subject to the regulations, a statement in relation to an account that is held in trust shall also set out the name of each beneficiary under the trust.

Identification references

21. (1) An identification reference for a signatory to an account is a statutory declaration by an acceptable referee setting out the name to be used by the signatory in relation to the account and stating that:

- (a) the referee has known the signatory for the period specified in the declaration;
- (b) during the whole of that period, or for so much of that period as is specified in the declaration, the signatory has been commonly known by that name; and
- (c) the referee has examined:
 - (i) a specified primary identification document for the signatory in that name;
 - (ii) a specified secondary identification document for the signatory in that name and a specified primary identification document for the signatory in a former name of the person; or
 - (iii) only a specified secondary identification document for the signatory in that name.

(2) An identification reference for a person by an acceptable referee shall also set out:

- (a) the name, address and occupation of the referee and the basis on which the referee claims to be an acceptable referee;
- (b) if the reference states that the referee examined a primary identification document for the person in a name different from the name to be used by the person in relation to the account—the explanation that the person gave the referee for the difference in names;
- (c) if the reference states that the referee examined only a secondary identification document for the person—the explanation that the person gave the referee for the failure to produce a primary identification document; and
- (d) the required details of the identification document or documents examined by the referee.

(3) An identification reference for a person by an acceptable referee shall be signed by the person in the presence of the referee and shall contain a declaration by the referee to the effect that the statement was so signed.

(4) For the purposes of this Act, a failure by a person to produce a primary identification document shall not be taken to be sufficiently explained

merely by the assertion that a primary identification document is not presently available to the person if the person could obtain a primary identification document within a reasonable time if the person took reasonable steps to obtain it.

(5) Nothing in subsection (4) shall be taken to require a person to apply for the issue of a citizenship certificate or a passport.

Notice to Director if no primary identification document examined

22. (1) Where:

- (a) a statement in relation to an account is given to a cash dealer; and
- (b) an identification reference for the signatory or a signatory to the account states that the referee examined only a secondary identification document for the signatory;

the cash dealer shall give the Director written notice:

- (c) setting out sufficient details of the account for the account to be identified;
- (d) setting out the name used by the signatory in relation to the account; and
- (e) stating that the identification reference for the signatory was not supported by a primary identification document.

(2) A cash dealer who contravenes subsection (1) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

Cash dealer to keep documents

23. (1) Where a statement made in accordance with section 20 is given to a cash dealer in relation to an account, the cash dealer shall retain the statement (including any documents that accompanied the statement) for the period of 7 years after the day on which the account is closed.

(2) Where a cash dealer makes a record under subsection 24 (5) of a disclosure by a person, the cash dealer shall:

- (a) if the cash dealer holds an identification reference for the person at the time when the record is made—retain the record, together with the identification reference, for the period for which the identification reference must be retained;
- (b) if the cash dealer does not hold an identification reference for the person at the time when the record is made but is given an identification reference for the person within the period of 7 years commencing on the day on which the record is made—retain the record, together with the identification reference, for the period for which the identification reference must be retained; or

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(c) if the cash dealer does not hold an identification reference for the person at any time during the period of 7 years commencing on the day on which the record is made—retain the record until the end of that period.

(3) A cash dealer who contravenes subsection (1) or (2) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$10,000.

(4) Where:

(a) a statement in relation to an account with a cash dealer is accompanied by an identification reference for the signatory or a signatory to the account; and

(b) that account is identified, under subsection 20 (4), in a statement in relation to another account with the cash dealer;

subsection (1) applies as if the reference to the day on which the account is closed were a reference to the day on which the last of those accounts is closed.

(5) A cash dealer required to retain documents under subsection (1) or (2) shall retain and store them in a way that makes retrieval of the documents reasonably practical.

(6) Subsections (1) and (2) do not limit any other obligation of a cash dealer to retain documents.

(7) Where a cash dealer is required by law to release a document to which subsection (1) or (2) applies before the end of the period referred to in that subsection, the cash dealer shall retain a complete copy of the document until the period has ended or the document is returned, whichever occurs first.

(8) The cash dealer shall maintain a register of documents released under subsection (7).

(9) A cash dealer who contravenes subsection (7) or (8) is guilty of an offence against this section punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$10,000.

Opening bank account etc. in false name

24. (1) A person shall not open an account with a cash dealer in a false name.

(2) A person shall not operate an account with a cash dealer in a false name.

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(3) Where a person is commonly known by 2 or more different names, the person shall not use one of those names in opening an account with a cash dealer unless the person has previously disclosed the other name or names to the cash dealer.

(4) Where a person is commonly known by 2 or more different names, the person shall not use one of those names in operating an account with a cash dealer unless the person has previously disclosed the other name or names to the cash dealer.

(5) Where a person using a particular name in dealings with a cash dealer discloses to the dealer a different name or different names by which the person is commonly known, the dealer shall make a record of the disclosure and shall, upon request in writing from the Director, give the Director a copy of that record.

(6) A person who contravenes subsection (1), (2), (3), (4) or (5) is guilty of an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

(7) For the purposes of this section:

- (a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and
- (b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the cash dealer concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known.

PART IV—SECRECY AND ACCESS

Secrecy

25. (1) This section applies to:

- (a) the Director;
- (b) a member of the staff of the Agency;
- (c) a customs officer; and
- (d) a police officer.

(2) A person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act, or for the purposes of the performance or exercise of the functions or power of the Director or otherwise in connection with the performance of the person's duties under this Act, and either while the person is or after the person ceases to be a person to whom this section applies:

- (a) make a record of any information; or

(b) divulge or communicate to any person any information; being information obtained by the person in the course of performing duties under this Act.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) A person to whom this section applies shall not be required:

(a) to produce in a court any document that has come into the custody or control of the person in the course of, or by reason of, the performance of duties under this Act; or

(b) to divulge or communicate to any court any matter or thing that has come to the notice of the person in the performance of duties under this Act;

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

Special provisions in relation to reports of suspect transactions

26. (1) Notwithstanding anything in any other section of this Act or in any other law (other than a law passed after the commencement of this section that expressly excludes the operation of this subsection), where information is communicated to an investigating officer under subsection 16 (4), the officer may communicate the information to:

- (a) where the officer is a taxation officer—the Commissioner of Taxation;
- (b) where the officer is an AFP member—the Commissioner of the Australian Federal Police; or
- (c) where the officer is a member, or a member of staff, of the NCA—the Chairperson of the NCA.

(2) Notwithstanding anything in any other section of this Act or in any other law (other than a law passed after the commencement of this section that expressly excludes the operation of this subsection), where information is communicated to a relevant authority under subsection 16 (4) or under subsection (1) of this section, the authority may communicate the information to any other relevant authority.

(3) In this section:

“investigating officer” has the same meaning as in section 16;

“relevant authority” has the same meaning as in section 16.

Access to CTR information

27. (1) Notwithstanding anything in section 25:

(a) the Commissioner of Taxation and any taxation officer is entitled to access to CTR information;

(b) the Director may, in writing, authorise a law enforcement agency to have access to CTR information for the purposes of performing its functions; and

- (c) the Director may, in writing, authorise the Australian Customs Service to have access to CTR information for the purposes of performing its functions.

(2) An authorisation under paragraph (1) (b) or (c) shall specify the CTR information, or the class of CTR information, to which the law enforcement agency or the Australian Customs Service is to have access.

(3) Where a law enforcement agency or the Australian Customs Service is authorised under paragraph (1) (b) or (c) to have access to CTR information, any law enforcement officer performing duties in or for the law enforcement agency or any customs officer, as the case requires, is entitled to access to that CTR information in accordance with the authorisation.

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

(5) Subject to subsections (7), (9) and (10), where the NCA obtains CTR information:

- (a) the NCA may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Inter-Governmental Committee in a report by the NCA under subsection 59 (4) of the NCA Act;
- (b) the NCA may divulge the information in the course of a hearing before the NCA;
- (c) the NCA may communicate the information to a law enforcement officer for the purposes of, or in connection with, the performance of the officer's duties;
- (d) subject to paragraphs (a), (b) and (c), the NCA shall not divulge or communicate the information; and
- (e) a person (not being a law enforcement officer) to whom information has been communicated in accordance with paragraph (b) shall not make a record of the information, or divulge or communicate the information, in any circumstances.

(6) Subject to subsection (7), (9) and (10), where a person who is a law enforcement officer or customs officer obtains CTR information:

- (a) the person shall not, while he or she is a law enforcement officer or customs officer, divulge or communicate the information except to:
 - (i) the NCA for the purposes of, or in connection with, the performance of its functions; or
 - (ii) a law enforcement officer or customs officer for the purposes of, or in connection with, the performance of the officer's duties; and

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(b) the person shall not, when he or she is no longer a law enforcement officer or customs officer, make a record of the information, or divulge or communicate the information, in any circumstances.

(7) Nothing in subsection (5) or (6) prevents:

(a) the communication of CTR information to a person for the purposes of, or in connection with, legal proceedings or proposed or possible legal proceedings; or

(b) the communication of CTR information in the course of proceedings before a court.

(8) A person to whom CTR information has been communicated in accordance with paragraph (7) (a) shall not make a record of the information, or divulge or communicate the information, except as permitted by this section.

(9) Nothing in subsection (5) or (6) prevents the communication of CTR information in respect of the affairs of a person by the NCA, a law enforcement officer or a customs officer to:

(a) if the person is not a company—the person;

(b) if the person is a company:

(i) any person who is, or has been, a director or officer of the company; or

(ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished on behalf of the company; or

(c) the person who furnished the CTR information.

(10) Where subsection (9) permits the communication of CTR information to a person, nothing in subsection (5) or (6) prevents the communication of the CTR information to a barrister or solicitor appearing before the NCA for the purpose of representing the person.

(11) Where CTR information is communicated to a person in accordance with subsection (9) or (10), being information that was not furnished by the person and does not relate to the affairs of the person, the person shall not make a record of the information, or divulge or communicate the information, in any circumstances.

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

(a) to produce in a court any document containing CTR information;

(b) to divulge or communicate to any court any CTR information;

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

(13) A person who makes a record of, or divulges or communicates, information in contravention of a provision of this section commits an offence against this section punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

(14) A reference in this section to a law enforcement agency is a reference to:

- (a) the NCA; and
- (b) the Australian Federal Police.

(15) A reference in this section to a law enforcement officer is a reference to:

- (a) a member or acting member of the NCA;
- (b) a member of the staff of the NCA;
- (c) a barrister or solicitor appointed by the Attorney-General to assist the NCA;
- (d) a person assisting a barrister or solicitor so appointed;
- (e) the Commissioner of the Australian Federal Police;
- (f) a member or special member of the Australian Federal Police; and
- (g) an officer, employee or other person under the control of the Commissioner of the Australian Federal Police.

(16) Without prejudice to its effect by virtue of subsection (14), this section has effect as if a reference in this section to a law enforcement agency included a reference to the Police Force of a State.

(17) Without prejudice to its effect by virtue of subsection (15), this section has effect as if a reference in this section to a law enforcement officer included a reference to:

- (a) the commanding officer of the Police Force of a State;
- (b) a member of a Police Force of a State; and
- (c) an officer, employee or other person under the control of the commanding officer of the Police Force of a State.

PART V—ENFORCEMENT

Failure to provide information

28. (1) A cash dealer commits an offence against this section if the cash dealer refuses or fails to communicate information to the Director when and as required under Part II or III.

(2) A financial institution commits an offence against this section if the institution:

- (a) fails to maintain an exemption register as required under Division 1 of Part II; or
- (b) refuses or fails to comply with a notice under subsection 13 (1) or (5).

(3) A person who commits an offence against this section is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or

- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

False or misleading information

29. (1) A cash dealer shall not, in communicating information to the Director as required under Part II or III, knowingly:

- (a) make a statement that is false or misleading in a material particular;
or
- (b) omit from a statement any matter or thing without which the statement is misleading in a material particular.

(2) A financial institution shall not, in maintaining the institution's exemption register as required under Division 1 of Part II, knowingly:

- (a) make a statement that is false or misleading in a material particular;
or
- (b) omit from a statement any matter or thing without which the statement is misleading in a material particular.

(3) A person shall not knowingly:

- (a) make a report for the purposes of section 15, a statement for the purposes of section 18 or a declaration for the purposes of section 33, that is false or misleading in a material particular; or
- (b) omit from such a report, statement or declaration any matter or thing without which the report, statement or declaration is misleading in a material particular.

(4) A person shall not make a statement, either orally or in writing, or present a document that is, to the person's knowledge, false or misleading in a material particular and is capable of:

- (a) being used for the purposes of inducing a financial institution to enter a transaction or a class of transactions in the institution's exemption register;
- (b) causing a cash dealer to make a report of a cash transaction that is false or misleading in a material particular; or
- (c) causing a carrier not to make a report under section 15.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence against this subsection punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

Incomplete information

30. (1) A cash dealer commits an offence against this section if the dealer, in communicating information to the Director in relation to a transaction as required under Part II, knowingly does so in such a way that the information is incomplete in relation to the transaction.

(2) A financial institution commits an offence against this section if the institution, in maintaining the institution's exemption register as required under Division 1 of Part II, knowingly does so in such a way that the register is incomplete.

(3) A person who commits an offence against this section is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

Offence to conduct transactions so as to avoid reporting requirements

31. (1) A person commits an offence against this section if:

- (a) the person is a party to 2 or more non-reportable cash transactions; and
- (b) having regard to:

- (i) the manner and form in which the transactions were conducted, including, without limiting the generality of this, all or any of the following:

- (A) the value of the currency involved in each transaction;
- (B) the aggregated value of the transactions;
- (C) the period of time over which the transactions took place;
- (D) the interval of time between any of the transactions;
- (E) the locations at which the transactions took place; and

- (ii) any explanation made by the person as to the manner or form in which the transactions were conducted;

it would be reasonable to conclude that the person conducted the transactions in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that the currency involved in the transactions was transferred in a manner and form that:

- (iii) would not give rise to a significant cash transaction; or
- (iv) would give rise to exempt cash transactions.

(2) A person commits an offence against this section if:

- (a) the person conducts 2 or more non-reportable transfers of currency; and

(b) having regard to:

- (i) the manner and form in which the transfers were conducted, including, without limiting the generality of this, all or any of the following:

- (A) the value of the currency involved in each transfer;
- (B) the aggregated value of the currency involved in the transfers;
- (C) the period of time over which the transfers occurred;

- (D) the interval of time between any of the transfers;
- (E) the locations at which the transfers were initiated or conducted; and

- (ii) any explanation made by the person as to the manner or form in which the transfers were conducted;

it would be reasonable to conclude that the person conducted the transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the currency involved in the transfers would be made under section 15.

(3) A person who commits an offence against this section is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

Injunction

32. (1) Where, on the application of the Director, a prescribed court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

- (a) a contravention of Part II or III or this Part;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision;

the court may grant an injunction in such terms as the court determines to be appropriate.

(2) Where, in the opinion of a prescribed court, it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

(3) The court may rescind or vary an injunction granted under subsection (1) or (2).

(4) The power of a prescribed court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

(5) The power of a prescribed court to grant an injunction requiring a person to do an act or thing may be exercised:

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing.

(6) In this section:

“prescribed court” means the High Court of Australia or the Federal Court of Australia.

Questioning and search powers

33. (1) Any person who is about to leave Australia shall, if requested to do so by an officer:

- (a) declare whether or not the person has with him or her any foreign currency;
- (b) declare the amount of any foreign currency that the person has with him or her;
- (c) declare whether or not, to the best of the person’s knowledge and belief, a report under section 15 has been given in respect of any foreign currency that the person has with him or her; and
- (d) produce to the officer any foreign currency that the person has with him or her.

(2) Any person who arrives in Australia shall, if requested to do so by an officer:

- (a) declare whether or not the person has with him or her any Australian currency or foreign currency;
- (b) declare the amount of any Australian currency or foreign currency that the person has with him or her;
- (c) declare whether or not, to the best of the person’s knowledge and belief, a report under section 15 has been given in respect of any Australian currency or foreign currency that the person has with him or her; and
- (d) produce to the officer any Australian or foreign currency that the person has with him or her.

(3) A police officer, or a customs officer included in a class of officers in respect of which a declaration under section 196 of the *Customs Act 1901* is in force, may, with such assistance as is reasonable and necessary:

- (a) examine and search any article which a person who is about to leave Australia or who arrives in Australia has with him or her; and
- (b) if the officer has reasonable grounds to believe that there is, on a person or in the clothing that is being worn by a person who is about to leave Australia or who arrives in Australia, currency in

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respect of which a report under section 15 is required—search the person;

for the purpose of ascertaining whether the person has with him or her any currency in respect of which a report under section 15 is required.

(4) Where an officer has reasonable grounds to believe that currency found in the course of an examination or search under subsection (3) may afford evidence as to the commission of an offence against section 15, the officer may seize the currency.

(5) A person shall not be searched under subsection (3) except by a person of the same sex.

(6) An officer, and any person assisting an officer, may board any ship or aircraft for the purpose of exercising the powers conferred by subsection (1), (2), (3) or (4).

(7) An officer may, with such assistance as is reasonable and necessary, board any ship or aircraft and examine or search the ship or aircraft and any goods found on the ship or aircraft for the purpose of ascertaining whether there is on board the ship or aircraft any currency in respect of which a report under section 15 is required.

(8) Where an officer has reasonable grounds to believe that currency found in the course of an examination or search under subsection (7) may afford evidence as to the commission of an offence against section 15, the officer may seize the currency.

(9) A person who contravenes subsection (1) or (2) commits an offence against this subsection punishable, upon conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(10) In this section:

“offence against section 15” includes:

- (a) an offence against section 6, 7 or 7A of the *Crimes Act 1914* in relation to an offence against section 15; and
- (b) an offence against subsection 86 (1) of the *Crimes Act 1914* by virtue of paragraph (a) of that subsection, being an offence in relation to an offence against section 15;

“officer” means:

- (a) a police officer; or
- (b) a customs officer.

Conduct by directors, servants or agents

34. (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in

within the scope of his or her actual or apparent authority, had that state of mind.

- (2) Any conduct engaged in on behalf of a body corporate:
 - (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate:

- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the reasons for the intention, opinion, belief or purpose.

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

PART VI—ADMINISTRATION

Establishment of Agency

35. (1) There is established by this Act an agency by the name of the Cash Transaction Reports Agency.

(2) The Agency consists of the Director and the staff referred to in section 40.

Director

36. The Minister may, in writing, appoint a person to be the Director of the Agency.

Acting Director

37. (1) The Minister may, in writing, appoint a person to act as Director of the Agency:

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Director is absent from Australia or is, for any reason, unable to perform the duties of the office of Director.

(2) An appointment to act as Director of the Agency may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed under subsection (1) to act during a vacancy in the office of Director shall not continue so to act for more than 12 months.

(4) Where a person is acting as Director otherwise than by reason of a vacancy in the office of Director and the office becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.

(5) While a person is acting as Director, that person may exercise all the powers, and shall perform all the duties, of the Director.

(6) Anything done by or in relation to a person purporting to act under subsection (5) is not invalid on the grounds that:

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Functions of Director

38. (1) The functions of the Director are:

- (a) to perform the functions and exercise the powers that the Director is required or permitted to perform or exercise under this Act;
- (b) to collect, retain, compile, analyse and disseminate CTR information;
- (c) to monitor entries made in financial institutions' exemption registers; and
- (d) to provide advice and assistance to the Commissioner in relation to CTR information.

(2) In performing the Director's functions, the Director shall:

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- (a) consult with cash dealers, or the representatives of cash dealers, in relation to the performance of the Director's functions; and
 - (b) take into account any comments made in the course of consultations referred to in paragraph (a).
- (3) In performing the Director's functions, the Director shall have regard to the desirability of:
- (a) avoiding duplication in the analysis of information by the Director and the Commissioner;
 - (b) attaining compatibility and integration of CTR information and other information held by the Commissioner;
 - (c) maximising the utilisation of CTR information for taxation purposes; and
 - (d) consulting with the Commissioner in relation to the performance of the Director's functions.
- (4) In performing the Director's functions, the Director shall:
- (a) take into account any comments made by the Commissioner in the course of consultations referred to in subsection (3); and
 - (b) carry out, as far as is practicable, analysis of CTR information at the request of the Commissioner.

Delegation

39. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Director, delegate to a member of the staff of the Agency all or any of the Director's powers under this Act or the regulations, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Director.

(3) A delegation under this section does not prevent the exercise of a power by the Director.

Staff

40. The staff of the Agency shall be persons appointed or employed under the *Public Service Act 1922*.

PART VII—MISCELLANEOUS

Act not to limit Commissioner's powers

41. Nothing in this Act limits any power that the Commissioner has, under any other law, to obtain information.

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

42. The *Administrative Decisions (Judicial Review) Act 1977* does not apply to decisions under this Act, other than a decision by the Director under subsection 19 (2) or (3).

Regulations

43. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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SCHEDULE 1

Subsection 7 (4)

REPORTABLE DETAILS FOR PURPOSES OF SECTION 7

For the purposes of section 7, the following are the reportable details of a significant cash transaction to which a cash dealer is a party:

1. The name, address and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction with the cash dealer and the method used by the cash dealer to verify the identity of that person
2. The name, address and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the transaction was conducted by any of those persons and the method used by the cash dealer to verify the identity of that person
3. The type, and identifying number, of any account with the cash dealer involved in the transaction
4. The nature of the transaction
5. The amount involved in the transaction and, if the transaction involved foreign currency, the foreign currency involved
6. If the transaction involves a cheque—the name of the drawer of the cheque, the name of the bank on which the cheque was drawn, the name of the payee (if any), the amount and date of the cheque, the number (if any) of the cheque and details of any indorsements appearing on the cheque
7. If the transaction involves a payment order—the name of the drawer of the order, the name of the financial institution on which the order was drawn, the name of the payee (if any), the amount and date of the order, the number (if any) of the order and details of any indorsements appearing on the order
8. The name and address of the cash dealer
9. The date of the transaction

SCHEDULE 2

Subsection 12 (5)

PRESCRIBED DETAILS FOR PURPOSES OF SECTION 12

For the purposes of section 12, the following are the prescribed details of a transaction, or class of transactions, conducted by a person with a financial institution:

1. The name, address, occupation (or, where appropriate, business or principal activity) and account number or numbers of the person
2. A statement whether the exemption covers deposits, withdrawals or both
3. The monetary amount of the transaction or the range of amounts of the transactions
4. The date of the transaction or the period during which the class of transactions is to be exempt
5. The name of, and the office held by, the person making the decision to grant or amend the exemption

SCHEDULE 3

Subsection 15 (9)

**REPORTABLE DETAILS FOR PURPOSES OF
SECTION 15**

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

1. The amount of currency
 2. Whether the currency is Australian currency or foreign currency and, if foreign currency, which foreign currency
 3. If the person making the report is to carry the currency into or out of Australia:
 - (a) the name and address of the person and the passport number and country of issue of the passport or passports held by the person;
 - (b) if the person is not an Australian resident—that person's address while in Australia;
 - (c) the name of the city in Australia from which the person is to depart or at which the person will arrive;
 - (d) the name of the foreign country and the city in that country from which the currency is being imported or to which the currency is being exported;
 - (e) if the person is to carry the currency on behalf of another person:
 - (i) the name, address and occupation (or, where appropriate, business or principal activity) of that person; and
 - (ii) the name and address of the person to whom the currency is to be delivered;
 - (f) the day on which the person is to enter or leave Australia
 4. If the person making the report is mailing or shipping the currency or receiving currency mailed or shipped:
 - (a) the name, address and occupation (or, where appropriate, business or principal activity) of the person;
 - (b) the place of despatch and the place of receipt;
 - (c) the name, address and occupation (or, where appropriate, business or principal activity) of the recipient or sender; and
 - (d) if the person is mailing, shipping or receiving the currency on behalf of another person:
 - (i) the name, address and occupation (or, where appropriate, business or principal activity) of the other person; and
 - (ii) the name and address of the person to whom the currency is to be delivered;
 - (e) if the person is mailing or shipping the currency—the day on which the mailing or shipping takes place and the day on which the currency is to enter or leave Australia;
 - (f) if the person is receiving currency mailed or shipped—the day on which the person receives the currency and, if the person knows, the day on which the currency entered Australia
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SCHEDULE 4

Subsection 16 (6)

REPORTABLE DETAILS FOR PURPOSES OF SECTION 16

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

1. The name, address and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction (if known to the person making the report)

2. The name, address and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the person is or those persons are conducting the transaction (if known to the person making the report)

3. The type and identifying number of any account with the cash dealer involved in the transaction and the name of the person in whose name the account is operated and the names of the signatories to the account

4. The nature of the transaction

5. The amount involved in the transaction

6. The type of currency involved in the transaction

7. The date of the transaction

8. The name of the officer, employee or agent of the cash dealer conducting the transaction (if known to the person making the report)

9. The name of the person who prepared the report

*[Minister's second reading speech made in—
Senate on 25 November 1987
House of Representatives on 3 June 1988]*