Cash Transaction Reports Bill 1987

Date Introduced: 13 May 1987
House: House of Representatives

Digest of Bill

Purpose

To oblige financial institutions and other bodies to report most transactions involving cash in excess of $10,000 and to establish the Cash Transactions Report Agency.

Background

The use of cash in illegal activities has many advantages for those involved compared to other forms of non-cash financing, principally relating to the tracing of the proceeds of the crime. In its ultimate form, the use of cash can remove the need to have any contact with financial institutions with all payments and receipts being in cash which is stored away. However, this method also contains a number of risks and costs. Principal amongst the risks is being caught with very substantial amounts of unaccountable cash. This would not only raise suspicions of involvement in crime but may also lead to the confiscation of the cash through various State legislation, such as exists in N.S.W., South Australia, Victoria, or under the Federal Proceeds of Crime Act 1987. Another risk would be the physical destruction, or theft, of the cash. The cost of keeping funds in cash which, if in financial institutions would be earning interest, could also be substantial with the large sums often involved. For these reasons, illegally gained funds are usually placed in financial institutions. However, the placing of large amounts of funds under a person’s name would be very likely to result in the same problems as being caught with large amounts of cash. For these reasons very complex arrangements involving companies, trusts and solicitors are often used to disguise the trail of the cash. When it is realised that tax evasion and drug trafficking can and does involve very large sums, a great deal of effort and expense can be put into the creation of such schemes.

The problems in tracing funds were highlighted in the Royal Commission of Inquiry into Drug Trafficking conducted by Mr Justice Stewart. While investigating the activities of the Clarke syndicate in Australia, the difficulties in tracing funds through a number of companies and overseas financial institutions was noted. The Royal Commission’s report noted the transfer of funds between companies and financial institutions, and concluded that ‘the purpose in transferring the funds appears always to have been the same: to make money available in a different State or country while concealing the illicit source of that money’. 1

The area of organised crime and its financing were also considered in the Costigan Royal Commission. This body established a large computerised information base for investigating the flow of funds in illegal organisations and the maintenance of
this base after the Royal Commission ceased work was considered of prime impor-
tance. In the Sir John Barry Memorial Lecture delivered by Mr Costigan on 13 Oc-
tober 1983, he stated, 'the most successful method of identifying and ultimately
convicting major organised criminals is to follow the money trail'. He then went on
to note the use of banks, solicitor's trust accounts, merchant banks, property invest-
ment, overseas institutions and other methods to disguise the source of funds and
noted the powers available to certain bodies such as the Commissioner of Taxation,
Reserve Bank and the Treasury to trace funds in their particular areas. He conclud-
ed 'My experience over the past three years has left me in no doubt that the problem
of organised crime cannot be tackled unless you vest in the one body, with all suita-
ble protections, the power to monitor all the activities I have described'.

With the winding up of the Costigan Royal Commission, the data base and other
elements were transferred to the National Crimes Commission and subsequently the
National Crime Authority.

Main Provisions

Clause 3 defines a number of terms used in the Bill. Amongst the more important are:

- cash dealer - a financial institution; a financial corporation; an insurer;
  securities dealers; future brokers; a trustee or manager of a cash
  management, property or unit trust; a person who deals with
  travellers cheques or money orders; bullion dealers; a business which
  deals with currency collections, prepares pay-rolls for others or
  delivers currency; an operator of a gambling house or casino; or a
  bookmaker (including a TAB);

- cash transaction - a transaction involving the physical transfer of
  currency;

- CTR information - information obtained under Part II of the Bill (i.e.
  cash transaction reports);

- currency - coin or paper money of Australia or a foreign country that
  is legal tender and circulates as a medium of exchange.

- financial institution - a bank, building society or credit union.

- significant cash transaction - a cash transaction that involves $10,000
  or more.

- reporting period - where the transaction involves foreign currency: the
day after the transaction or the period prescribed; for other transac-
tions: 15 days after the transaction.

A cash dealer must report to the Director of the Cash Transaction Reports Agency
(the Director) on a significant cash transaction to which it is a party before the end
of the reporting period (clause 7).

Clause 9 lists the types of significant cash transaction that will be eligible for ex-
emption. These include transactions between financial institutions; between a cash
dealer and a financial institution; between financial institutions and established cus-
tomers where (a) the account relates to certain retail, entertainment or hospitality
businesses, or a business providing vending machines, and the sum is reasonably
commensurate with the lawful activities of the business, or (b) the withdrawal is for
pay-roll purposes, the customer regularly withdraws currency of $10,000 or more
to pay staff and employees and the amount is reasonably commensurate with lawful
business activity; between a public authority where the amount is reasonably com-
mensurate with its authorised activities; or if the transaction is within a class declared
eligible for exemption by regulation. By clause 8 such transactions must be entered in the institution's exemption register, or be one of a class of transactions in the register against the name of the other party to the transaction.

Clause 10 sets out the prerequisites for making entries in the exemption register. These include a belief by the financial institution that the transaction is eligible and that transactions of a similar kind will be entered into on a regular basis, and a written statement by the other party of its belief that the transaction is eligible and that the information it has provided is true and correct in all material particulars. The Director may override the exemption by directing its deletion or directing that the exemption does not apply to transactions of a specified kind. A failure to comply with such a direction will be punishable by a maximum $25,000 fine.

The Director will be empowered to require the institution to give an authorised officer access to its exemption register at specified times during normal business hours (clause 12).

A person or body (other than a bank) which transfers currency into or out of Australia, or who receives currency transferred into Australia, will be required to report the transaction to the Director if the amount transferred is $5,000 or more. Failure to report will be an offence attracting a maximum fine for people of $20,000 or imprisonment for a maximum of 10 years, or both. The maximum fine for companies will be $100,000. Common carriers of passengers will not have to report currency in passenger possession. Similarly, common carriers of goods need not report unless notified by the person responsible that they are carrying the currency (clause 13).

Those entitled to CTR information will be taxation officers and, with the written authority of the Director, the National Crime Authority, the Australian Federal Police, a State Police Force and the Australian Customs Service (clause 15).

Clause 17 provides that, after the commencement of this clause, a person opening an account with a financial institution is to sign a statement containing enough detailed information to enable identification of the people in whose name the account is held, its operators and, where relevant, beneficiaries. If this is not done by the end of 45 days after the opening of the account, the financial institution will have committed an offence. In addition, the financial institution will commit an offence if, at the end of two years from the day on which this clause commences, an account has been operated without its holder providing a statement of identification details. The penalty for each offence will be a maximum fine of $100,000. It will not be an offence in either case if the financial institution made reasonable efforts to obtain the statement and notified the Director within a specified period that it had not been provided.

Clauses 19 to 22 will provide for offences by cash dealers of failing to provide information, providing false, misleading or incomplete information, and conducting transactions so as to avoid reporting requirements.

On application by the Director, the High Court or Federal Court may grant injunctions to enforce specified provisions of the Bill (clause 23).

Persons leaving or arriving in Australia will be obliged to declare details of any currency carried by them if requested to do so by a police or customs officer. These officers will be empowered to seize any currency which they believe, on reasonable grounds, may be evidence of an offence against clause 13 (clause 24).
Clauses 26, 27 and 31 will establish a Cash Transaction Reports Agency consisting of a Director appointed by the Minister and staff appointed or employed under the Public Service Act 1922.

The Director is to perform the functions and exercise the powers required or permitted under this Bill; deal with CTR information; monitor exemption registers; and advise and assist the Commissioner of Taxation on CTR information. In performing these functions, the Director is to consult with cash dealers or their representatives and take their comments into account (clause 29).

Decisions under this Bill will not be reviewable under the Administrative Decisions (Judicial Review) Act 1977 (clause 33).

The Governor-General will be able to make regulations consistent with this Bill (clause 34).

References

2. As reported in House of Representatives, Hansard, 10 November 1983, p. 2492.
3. Ibid., p. 2493.

For further information, if required, contact the Law and Government group.

7 August 1987

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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