



Australian Government

**Australian Transaction Reports
and Analysis Centre**

**AUSTRAC Guideline No. 6
(Formerly CTRA Guideline No. 6)**

Financial Transaction Reports Act 1988

Significant Cash Transaction Reporting

Solicitors

Preamble

The *Financial Transaction Reports Act 1988* (FTR) has as its objects the detection of tax evasion and other criminal activity, including money laundering from drug trafficking and organised crime. To achieve these aims the *Financial Transaction Reports Act 1988* places an obligation on solicitors to report **significant cash transactions**. This guideline is issued by the Australian Transaction Reports and Analysis Centre (AUSTRAC) to assist solicitors in reporting such transactions. A report of a significant cash transaction must be made on AUSTRAC Form 15A, Solicitor Significant Cash Transaction Report (SCTR), where a significant cash transaction is entered into *by or on behalf of* a solicitor.

What is a Significant Cash Transaction?

1. A significant cash transaction is a transaction involving the transfer in Australia of currency (i.e. coin and paper money of Australia or of a foreign country) of the equivalent of \$10,000 or more.
2. A significant cash transaction will occur in any circumstances involving the physical transfer of currency of \$10,000 or more. This would include the banking of amounts of currency which when aggregated are of \$10,000 or more.
3. If a cheque or banker's draft is involved in the same transaction as the transfer of currency the details of the cheque or banker's draft must also be reported. The Significant Cash Transaction Report form for solicitors contains provisions for the reporting of such details.

Who should report?

4. Section 15A of the *Financial Transaction Reports Act 1988* places the onus to report upon the solicitor, a solicitor corporation or a partnership of solicitors. This obligation for solicitors, solicitor corporations or partnerships of solicitors to submit SCTRs applies unless the solicitor is a reporting entity, the relevant transaction took place after the commencement of Division 1 of Part 3 of the AML/CTF Act on 12 December 2008, and involves the provision of a 'designated service', as defined in that Act.

5. A *solicitor* is defined within section 3 of the *Financial Transaction Reports Act 1988* to mean:

'... a person who practices as a solicitor, whether by himself or herself, as a member of a solicitor corporation or as a member of a partnership of solicitors, and whether or not the person also practices as a barrister.'

6. Section 15A of the *Financial Transaction Reports Act 1988* provides for the reporting of significant cash transactions by solicitors. This section states:

(1) If a significant cash transaction is entered into by or on behalf of a solicitor, a solicitor corporation, or a partnership of solicitors, in the course of practising as a solicitor or solicitors, the solicitor, corporation or partnership must, before the end of the reporting period:

- (a) prepare a report of the transaction; and
- (b) communicate the information in the report to the AUSTRAC Chief Executive Officer (CEO).

(2) The report must:

- (a) be prepared in the approved form; and
- (b) contain the reportable details of the transaction; and
- (c) be signed, or otherwise authenticated in an approved way, by the solicitor, a member of the corporation or a member of the partnership, as the case may be.

(3) The communication must be made to the AUSTRAC CEO:

- (a) by giving the AUSTRAC CEO a copy of the report; or
- (b) in any other manner and form approved in relation to the solicitor, the solicitor corporation or the partnership or in relation to solicitors generally.

(4) In this section:

reportable details, in relation to a transaction, means the details of the transaction that are referred to in Schedule 3A.

What must be reported?

7. The reportable details are contained in Schedule 3A to the *Financial Transaction Reports Act 1988*. The reportable details required by items 3 and 4 of the table are those details as known to the person making the report. Schedule 3A provides the following:

| Item | Element of the transaction | Reportable details |
|------|----------------------------------|--|
| 1 | The significant cash transaction | 1.1 The nature of the transaction. 1.2 The date of the transaction. 1.3 The total amount of currency involved in the transaction. 1.4 The total monetary amount of the transaction. 1.5 The foreign currency (if any) involved in the transaction. |

| Item | Element of the transaction | Reportable details |
|------|---|--|
| 2 | The solicitor, corporation or partnership | <p>2.1 The name of the solicitor, corporation or partnership.</p> <p>2.2 The address of the office of the solicitor, corporation or partnership or, if there is more than one such office, the principal office.</p> <p>2.3 The address of the place at which the transaction was conducted.</p> |
| 3 | Each other person who is a party to the transaction | <p>3.1 The name or names of the person. 3.2 The business or residential address of the person.</p> <p>3.3 The occupation, business or principal activity of the person.</p> <p>3.4 The date of birth of the person.</p> |
| 4 | Any person (the principal) on whose behalf another party to the transaction conducted the transaction | <p>4.1 The principal's name.</p> <p>4.2 An address for the principal.</p> <p>4.3 The principal's occupation (or, if appropriate, the principal's business or principal activity).</p> |
| 5 | Any cheque or banker's draft involved in the transaction | <p>5.1 The name of the drawer of the cheque or banker's draft.</p> <p>5.2 The name of the payee, the favouree or the beneficiary of the cheque or banker's draft (if any).</p> <p>5.3 The name and branch of the financial institution or foreign financial institution on which the cheque or banker's draft was drawn, and the country in which the branch is located.</p> |

When to report

8. The *Financial Transaction Reports Act 1988* requires reporting of significant cash transactions before the end of the reporting period, that is:

- (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;

9. While staff of the office may receive or otherwise handle the currency on behalf of the solicitor, the responsibility to ensure there is prompt and accurate reporting rests with the solicitor concerned.

10. There needs to be sufficient knowledge, training and internal controls and checks within the office of each solicitor to meet that responsibility.

Where to report

11. Solicitors must complete the Solicitor Significant Cash Transaction Form 15A and forward a copy of the report to:

The Australian Transaction Reports and Analysis Centre (AUSTRAC) CEO
PO Box 5516
West Chatswood NSW 1515
or Fax (02) 9950 0071

Supplies of paper reporting forms can be ordered through the AUSTRAC Help Desk:

Ph: 02 9950 0827 or 1300 021 037 (a local call within Australia)
Fax: 02 9950 0071
Email: help_desk@austrac.gov.au

AUSTRAC's Inspection Powers

12. Section 27E of the *Financial Transaction Reports Act 1988* provides a power to the AUSTRAC CEO to give a solicitor, solicitor corporation or partnership of solicitors a written notice requiring the person to whom the notice is addressed to give the authorised officer named in the notice access to the business premises described in the notice on the day and for the hours specified. The access is given for the purposes of an inspection. The inspection powers are contained in section 27D of the *Financial Transaction Reports Act 1988*. This section states:

(1) This section applies if an authorised officer is given access to business premises of a solicitor, a solicitor corporation or a partnership of solicitors in compliance with a notice under section 27E.

(2) For the purpose of monitoring compliance by the solicitor, corporation or partnership with section 15A, the officer may inspect:

- (a) any records kept at, or accessible from, the premises that relate to the obligations of the solicitor, corporation or partnership under that section; and
- (b) any system used by the solicitor, corporation or partnership at the premises for keeping those records; and
- (c) any reports retained at, or accessible from, the premises under that section; and
- (d) any system used by the solicitor, corporation or partnership in connection with:
 - (i) preparing reports under that section; or
 - (ii) sending such reports to the AUSTRAC CEO; or
 - (iii) retaining such reports

(3) An authorised officer who is empowered under this section to inspect records of a solicitor, a solicitor corporation or a partnership of solicitors may also receive or make copies of, or take extracts from, those records or reports.

Offences

13. Under subsection 28(3) of the *Financial Transaction Reports Act 1988* it is an offence for a solicitor, a solicitor corporation or a partnership of solicitors to refuse or fail to:

- report a significant cash transaction; or
- comply with a notice under subsection 27E(3).

14. Under subsection 29(2A) it is an offence, when communicating information under section 15A, that is, a SCTR by a solicitor, a solicitor corporation or a partnership of solicitors, to:

- intentionally make a statement which the person knows is false or misleading; or
- intentionally omit anything without which the person knows the report will be misleading with respect to a material particular.

Who will use the information reported?

15. Information reported by solicitors may be utilised by agencies including the Australian Taxation Office, the Australian Customs and Border Protection Service, the Australian Crime Commission, the Australian Federal Police, State Police and certain other agencies as authorised under Division 4 of Part 11 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Further information or assistance

16. AUSTRAC's Help Desk is able to assist solicitors and their staff with any queries they may have in respect of significant cash transaction reporting.

AUSTRAC Help Desk

Telephone: 1300 021 037

Facsimile: 02 9950 0071

Website: www.austrac.gov.au

Email: help_desk@austrac.gov.au