



Australian Government

Australian Transaction Reports  
and Analysis Centre

Public Legal Interpretation series

## Public Legal Interpretation No. 7 of 2008 – Significant cash transaction and threshold transaction reports

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### Currency

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC at 7 November 2008.

You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.

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## Objective

- 1 The purpose of this Public Legal Interpretation is to set out AUSTRAC's views on the provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the *Financial Transaction Reports Act 1988* (FTR Act) as they relate to:
  - the obligation to report significant cash transactions within the meaning of section 7 of the FTR Act
  - the obligation to report threshold transactions within the meaning of section 43 of the AML/CTF Act.

## Introduction

- 2 Section 7 of the FTR Act provides that where a cash dealer is a party to a significant cash transaction the cash dealer must report it to the AUSTRAC Chief Executive Officer (CEO) as set out in section 7.
- 3 Section 43 of the AML/CTF Act provides that reporting entities must report threshold transactions to the AUSTRAC CEO as set out in section 43.

### *Outline of interpretation*

- 4 This Public Legal Interpretation deals with:
  - Section one:
    - reports of 'significant cash transactions' in section 7 of the FTR Act
  - Section two:
    - reports of 'threshold transactions' in section 43 of the AML/CTF Act.

## Interpretation

### **Section one – reports of significant cash transactions**

#### *Section 7 of the FTR Act*

- 5 Section 7 of the FTR Act sets out the obligation of a cash dealer to make reports to the AUSTRAC CEO of significant cash transactions.<sup>1</sup> Section 15A of the FTR Act sets out obligations of solicitors (including solicitor corporations and partnerships) to report significant cash transactions entered into by or on behalf of those entities. Schedule 3A of the FTR Act sets out reportable details of significant cash transactions by or on behalf of solicitors.
- 6 Section 7 applies 'where a cash dealer is a party to a significant cash transaction'. Section 7 is set out in the 'Legislation attachment'.
- 7 Section 3 of the FTR Act defines 'significant cash transaction' as follows:

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

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<sup>1</sup> Subsection 7(1) of the FTR Act.

8 Section 3 defines 'cash transaction':

**cash transaction** means a transaction involving the physical transfer of currency from one person to another.<sup>2</sup>

*Party to a transaction*

9 Section 7 is applicable to a cash dealer who is 'a party to a transaction'.

10 'Transaction' has been judicially considered in the following comments of a Canadian Court in *R v Canavan and Busby* [1970] 3 OR 353 at 356, ONT CA per Schroder JA:

"transaction" is a word of a quite comprehensive import, which, so far as I am aware, has never been a subject of any exact legal definition. The word has been interpreted as the justice of each case demanded rather than by any abstract definition. In its ordinary sense it is understood to mean the doing or performing of some matter of business between two or more persons. "Transaction" in its broadest sense expresses the concept of driving, doing or acting as denoted by the Latin word *trans agere* from which it is derived. A "transaction" may and frequently does include a series of occurrences extending over a length of time. Thus, the word "transaction" is normally used to denote some bilateral activity, even though it can also be used to denote an activity in which only a single person is engaged (See *Greenberg v Inland Revenue Commissioner* [1971] 3 All Er 136 at 149, HL, per Lord Reid).

11 AUSTRAC notes that 'transaction' is used in the singular in the FTR Act to refer to 'cash transaction' and 'significant cash transaction'. AUSTRAC interprets the singular usage of transaction in the FTR Act as referring to a single transaction. This is consistent with the finding by the courts<sup>3</sup> that the content of the legislation determines whether it is intended that a word is used in the singular or plural. The FTR Act defines the term significant cash transaction as referring to a particular amount of money, not less than \$10,000 (or foreign currency equivalent).

12 To be a party to a transaction, the party must have knowledge of the transaction. A cash dealer will not be a party to a transaction if the cash dealer is not aware of its occurrence. For example, cash dealers who form a network may have knowledge of the existence of reportable transactions within the network and so may be parties to the transaction.

13 Currency is defined in section 3 of the FTR Act:

**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.

14 The definition of currency is consistent with the ordinary English meaning denoting money, notes, and coin. It is also nearly identical to the definition of 'physical currency' in section 5 of the AML/CTF Act.

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<sup>2</sup> The section 3 extended definition of 'transaction' does not apply to section 7 as this definition only applies 'in Division 2 of Part II' of the FTR Act, in relation to suspect transactions.

<sup>3</sup> *Ho v King* (1994) 34 ALD 510.

### *Reporting period*

- 15 Reports must be made within a reporting period.<sup>4</sup> Section 3 of the FTR Act defines reporting period:

**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.

### *Exceptions to reporting requirements*

- 16 A cash dealer is not required to make a report of:

- exempt transactions;<sup>5</sup> or
- transactions that are eligible for exemption at the time they take place, that become exempt transactions within a reporting period;<sup>6</sup> or
- transactions if the cash dealer is an approved cash carrier;<sup>7</sup> or
- transactions if the cash dealer is a reporting entity, and the transaction occurred after the commencement of Division 3 of Part 3 of the AML/CTF Act, and the transaction is a designated service transaction.<sup>8</sup>

- 17 However, the Australian Government has determined to extend the FTR Act reporting provisions beyond the date of commencement of the AML/CTF Act on 12 December 2008. A bill is currently before Parliament that would allow entities that currently report to AUSTRAC under the FTR Act to continue to report in the same way during their transition to the new reporting format. This would apply to threshold transaction, international funds transfer instruction or suspicious matter reports made after 12 December 2008 until such time as entities are compliant with the AML/CTF reporting requirements but not later than 11 March 2010.

- 18 The Financial Transaction Reports Amendment (Transitional Arrangements) Bill 2008 is available on the Parliament of Australia website at:  
[http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r3068\\_first/toc\\_pdf/08177b01.pdf;fileType=application/pdf#search=%22billsCurBef%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r3068_first/toc_pdf/08177b01.pdf;fileType=application/pdf#search=%22billsCurBef%22).  
If the Bill is passed into law, cash dealers must continue to report under section 7 and solicitors under section 15A of the FTR Act, unless the transactions are designated service transactions and the cash dealer/solicitor complies as a reporting entity with section 43 of the AML/CTF Act. Cash dealers/solicitors who are reporting entities would be required to report under the AML/CTF Act by no later than 11 March 2010.

### *Exempt transactions*

- 19 Exempt transactions are defined in section 9 of the FTR Act. Transactions that are eligible for exemption are defined in section 10 of the FTR Act.

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<sup>4</sup> Subsection 7(1) of the FTR Act.

<sup>5</sup> Paragraph 7(1)(c) of the FTR Act.

<sup>6</sup> Paragraph 7(1)(d) of the FTR Act.

<sup>7</sup> Paragraph 7(1)(e) of the FTR Act.

<sup>8</sup> Paragraph 7(1)(f) of the FTR Act.

- 20 Subsection 9(1) of the FTR Act provides that a significant cash transaction between a financial institution and another person is an exempt transaction in respect to the institution if:
- it is entered in the financial institution's exemption register; or
  - the transaction falls within a class of transactions entered in the institution's exemption register against the name of the person.
- 21 'Financial institution' is defined in section 3 of the FTR Act as including an ADI (authorised deposit-taking institution) or a co-operative housing society, and for Part VIA includes a person carrying on business as a casino operator and a totalisator agency board.
- 22 Subsection 9(2) of the FTR Act states that a significant cash transaction is not exempt if exemption is inconsistent with a direction of the AUSTRAC CEO given under subsection 11(3).
- 23 Subsection 9(3) states that if a significant cash transaction between a financial institution and another person who is a cash dealer is exempt, the transaction is also exempt so far as the cash dealer is concerned. This extends the subsection 9(1) exemption to a cash dealer who is a party to the relevant transaction with the financial institution.
- 24 Subsection 9(4) states that a significant cash transaction is exempt if it is between a financial services licensee as defined in section 761A of the *Corporations Act 2001* whose licence covers dealings in derivatives, and a clearing and settlement facility associated with a financial market of which the licensee is a member.

*Entry in the exemption register*

- 25 Section 11 of the FTR Act states that entries may only be made in the exemption register as specified in that section.
- 26 Subsection 11(1) provides that an institution may enter a transaction in its register if:
- the institution is a party to the transaction
  - the institution believes the transaction is eligible for exemption under section 10
  - the other party, if not a financial institution, signs a statement that the party believes the transaction is eligible for exemption, and that the party has provided to the financial institution true and correct information concerning the transaction to the best of that party's knowledge or belief.
- 27 Subsection 11(2) provides that an institution may enter a class of transactions of a certain kind in its register against the name of the other party to a transaction if:
- the institution is a party to the transaction
  - the institution believes the transaction is eligible for exemption under section 10
  - the institution believes that the other party to the transaction is likely to enter into transactions of that kind on a regular basis, all of which are eligible for exemption
  - the other party, if not a financial institution, signs a statement that the party believes the transaction and proposed transactions are eligible for exemption, and that the party has provided to the financial institution, true and correct information concerning the transaction and proposed transactions, to the best of that party's knowledge or belief.

- 28 Unlike the test in section 16 of the FTR Act and section 41 of the AML/CTF Act, the relevant belief required for entry in the exemption register is a subjective belief. That is, the cash dealer must genuinely believe the relevant matters. It is not prescribed that the belief be based on reasonable grounds.
- 29 Subsection 11(2A) states that a financial institution must not enter designated service transactions or classes of designated service transactions, in an exemption register. Designated service transactions are discussed below at paragraphs 50-54.

*Eligible for exemption*

- 30 Section 10 of the FTR Act defines the parameters of significant cash transactions which are eligible for exemption and which may be entered in a financial institution's exemption register under section 11 of the FTR Act.
- 31 Subsection 10(1) states that a significant cash transaction is eligible for exemption if it is between two financial institutions, or between a financial institution and a cash dealer (that is not a financial institution).
- 32 Subsection 10(2) states that significant cash transactions between a financial institution and one of its customers are also eligible for exemption in the following circumstances:
- the customer is an established customer of the institution at the time that the transaction takes place;
  - the transaction is a deposit or withdrawal into the customer's account with the institution;
  - the customer carries on a retail business,<sup>9</sup> or a business declared by the Minister as an entertainment or hospitality business, or a business of providing vending machines;
  - the customer's account with the institution is maintained for the purposes of the relevant business; and
  - the amount of currency involved does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.
- 33 It is therefore the case that significant cash transactions of established customers of a financial institution, who undertake the specified types of business (retail, entertainment or hospitality, or providing vending machines), are eligible for exemption.
- 34 This means that the transaction, or a class of similar transactions, may be entered in the financial institution's exemption register.<sup>10</sup> Reports of transactions so entered need not be provided to AUSTRAC.<sup>11</sup> The AUSTRAC CEO may issue a written direction to the institution to delete the entry from the exemption register, or to amend it so that it no longer applies to a class of transactions.<sup>12</sup>
- 35 Subsection 10(3) of the FTR Act states that significant cash transactions between a financial institution and one of its customers are also eligible for exemption in the following circumstances:
- the customer is an established customer of the institution at the time that the transaction takes place;

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<sup>9</sup> Other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft: subparagraph 10(2)(d)(i).

<sup>10</sup> Subsections 11(1) and 11(2) of the FTR Act.

<sup>11</sup> Paragraphs 7(1)(c) and (d) of the FTR Act.

<sup>12</sup> Subsection 11(4) of the FTR Act.

- the transaction is a withdrawal from the customer's account with the institution;
  - the withdrawal is for payroll purposes;
  - the customer regularly withdraws currency from that account to a value not less than \$10,000 to pay the customer's staff and employees; and
  - the amount of currency involved does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.
- 36 Subsection 10(4) of the FTR Act states that a significant cash transaction to which a financial institution is a party is eligible for exemption if the other party is a public authority, and the amount of currency involved does not exceed an amount that is reasonably commensurate with the authorised activities of the authority.
- 37 Section 3 defines 'public authority' as an authority or body established or incorporated for a public purpose by or under a law of the Commonwealth or of a State or Territory.
- 38 Subsection 10(5) provides that the Minister may declare that a significant cash transaction is eligible for exemption by written notice published in the *Gazette*.
- 39 Subsection 10(6) provides that eligibility for exemption is preserved if a customer transfers to another financial institution, in certain circumstances.
- 40 For further information, refer to AUSTRAC Guideline No. 2B *Significant Cash Transactions - Exemptions and Exemption Registers*, referred to below at 'Related information'.

*Approved cash carrier*

- 41 Paragraph 7(1)(e) of the FTR Act states that a cash dealer is not required to make a report of significant cash transactions if the cash dealer is an approved cash carrier. Section 8 of the FTR Act states that the AUSTRAC CEO may declare that a cash dealer who falls within paragraph (k) of the definition of cash dealer is an approved cash carrier, if the AUSTRAC CEO is satisfied that:
- the cash dealer maintains records containing reportable details of significant cash transactions to which the cash dealer is a party; and
  - the declaration that the cash dealer is an approved cash carrier would not be inconsistent with the objects of the FTR Act.
- 42 Paragraph (k) of the section 3 definition of 'cash dealer' refers to a person (other than a financial institution or real estate agent acting in the ordinary course of real estate business) who carries on a business of:
- collecting and holding currency on behalf of other persons;
  - exchanging one currency for another, or converting currency into prescribed commercial instruments on behalf of other persons;
  - remitting or transferring currency or prescribed commercial instruments or making electronic funds transfers into or out of Australia or arranging such remittance or transfer;
  - preparing pay-rolls on behalf of other persons in whole or in part from currency collected; or
  - delivering currency (including payrolls).

- 43 The AUSTRAC CEO may, therefore, exempt certain cash dealers as approved cash carriers who collect, hold and deliver currency in the course of their business as approved cash carriers, if satisfied that the cash dealer maintains appropriate records and that the exemption is consistent with the objects of the FTR Act.
- 44 The objects of the FTR Act are set out in section 4 and include to facilitate the administration and enforcement of taxation laws, and the administration and enforcement of laws of the Commonwealth and of the Territories, and to make information available to State authorities to facilitate the administration and enforcement of laws of the States.
- 45 In the context of declaration of approved cash carriers it is therefore apparent that any arrangements which were regarded as facilitating evasion of tax or revenue laws, or facilitating offences against laws of the Commonwealth and other jurisdictions, would not be regarded as suitable.
- 46 The declaration of a cash dealer as an approved cash carrier is gazetted.

#### *Reportable details*

- 47 The reportable details in relation to significant cash transactions are found in Schedule 1 to the FTR Act: subsection 7(4). Part A of Schedule 1 provides the reportable details of a significant cash transaction, to which a cash dealer is a party, that *must* be included in a significant cash transaction report under paragraph 7(3)(a), or that *may* be included in a report under paragraph 7(3)(b) if the cash dealer is reporting electronically in a manner and form approved by the AUSTRAC CEO.
- 48 Part B of Schedule 1 provides the reportable details where the AUSTRAC CEO has approved a cash dealer to report electronically, under paragraph 7(3)(b), and the cash dealer chooses to report these details instead of the details referred to in Part A. Schedule 3A of the FTR Act sets out reportable details of significant cash transactions by or on behalf of solicitors under section 15A of the FTR Act.
- 49 The reportable details that must be recorded and maintained by an approved cash carrier are the same as the reportable details under section 7.<sup>13</sup>

#### *Designated service transaction*

- 50 Paragraph 7(1)(f) of the FTR Act states that a cash dealer is not required to report significant cash transactions if the cash dealer is a reporting entity, and the transaction occurred after the commencement of Division 3 of Part 3 of the AML/CTF Act, and the transaction is a designated service transaction.
- 51 'Designated service transaction' is defined in section 3 of the FTR Act as a transaction involved in the provision of a designated service by a reporting entity to a customer, within the meaning of the AML/CTF Act. A reporting entity is simply a person who provides a designated service. Designated services are described in the tables in section 6 of the AML/CTF Act. For example, under the FTR Act a significant cash transaction may occur in the provision of a designated service under item 50, table 1, section 6 of the AML/CTF Act which relates to exchanging currency in the course of carrying on a currency exchange business. This activity falls within the definition of cash dealer in the FTR Act under paragraph (k)(ia). In this situation, a significant cash transaction report would not be required under the FTR Act once Part 3, Division 3 of the AML/CTF Act had commenced. Instead reporting would be required under the AML/CTF Act subject to what is said below with respect to the Financial Transaction Reports Amendment (Transitional Arrangements) Bill.

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<sup>13</sup> Subsection 8(2) of the FTR Act.

- 52 Part 3, Division 3 of the AML/CTF Act, which includes section 43, commences on 12 December 2008.
- 53 From 12 December 2008, designated service transactions provided by cash dealers need not be reported under section 7 because of paragraph 7(1)(f). If the Financial Transaction Reports Amendment (Transitional Arrangements) Bill is passed into law, this date will change to 11 March 2010.
- 54 If the Financial Transaction Reports (Amendment) Transitional Arrangements) Bill is passed into law, reporting entities (that is, those cash dealers who provide designated services) that currently report to AUSTRAC under the FTR Act may continue to report in the same way during their transition to the new reporting format. This would apply to threshold transaction, international funds transfer instruction or suspicious matter reports made after 12 December 2008 until such time as these entities are compliant with the AML/CTF reporting requirements, but not later than 11 March 2010.

## **Section two – reports of threshold transactions**

### *Commencement of section 43*

- 55 Section 2 of the AML/CTF Act provides that Part 3, Divisions 1 to 4, commence on 12 December 2008. Part 3 Division 3 includes section 43 of the AML/CTF Act.
- 56 Section 43 is set out in the 'Legislation attachment'.
- 57 Section 5 of the AML/CTF Act defines 'threshold transaction' as follows:

#### ***threshold transaction*** means:

- (a) a transaction involving the transfer of physical currency, where the total amount of physical currency transferred is not less than \$10,000; or
- (b) a transaction involving the transfer of money in the form of e-currency, where the total amount of e-currency transferred is not less than \$10,000; or
- (c) if:
  - (i) the regulations provide that this definition applies to a specified transaction involving money; and
  - (ii) the regulations provide that a specified amount is the transaction threshold for the specified transaction;

the specified transaction, where the total amount transferred is not less than the transaction threshold for the transaction; or

- (d) if:
  - (i) the regulations provide that this definition applies to a specified transaction involving the transfer of property; and
  - (ii) the regulations provide that a specified amount is the transaction threshold for the specified transaction;

the specified transaction, where the total value transferred is not less than the transaction threshold for the transaction.

Paragraphs (a) and (b) do not limit paragraph (c).

Note 1: See also section 18 (translation of foreign currency to Australian currency).

Note 2: See also section 19 (translation of e-currency to Australian currency).

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- 58 A threshold transaction is one involving a 'transfer' of physical currency. 'Transfer' is defined in section 5 of the AML/CTF Act as 'any act or thing, or any series or combination of acts or things, that may reasonably be regarded as the economic equivalent of a transfer (for example, debiting an amount from a person's account and crediting an equivalent amount to another person's account)'.
- 59 AUSTRAC therefore considers that if a reporting entity moves physical currency (or any of the other matters which are defined as a threshold transaction including e-currency) resulting in the economic equivalent of transfer, the entity must report a threshold transaction.

*Provisions of section 43*

- 60 Section 43 provides that a reporting entity must provide a report to the AUSTRAC CEO if:
- the reporting entity commences to provide or provides a designated service to a customer;<sup>14</sup> and
  - the provision of the service involves a threshold transaction.
- 61 Subsection 43(2) provides that the reporting entity must make the report to the AUSTRAC CEO within 10 business days after the day on which the transaction takes place.
- 62 Subsection 43(3) states that a report must be in the approved form and must contain information relating to the transaction specified in the AML/CTF Rules. The reportable details for threshold transactions are specified in Chapter 19 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (AML/CTF Rules 2007), which commence on 12 December 2008. A new Chapter 19 will prescribe additional reportable details for threshold transactions, applying to agents and third-party depositors. The new Chapter 19 will replace the original Chapter 19 AML/CTF Rules and commences on 1 January 2011.
- 63 Section 44 outlines exemptions which apply to the reporting of threshold transactions. Subsection 44(1) states that Division 3, Part 3 of the AML/CTF Act does not apply to a designated service of a kind specified in the AML/CTF Rules.
- 64 Subsection 44(2) states that the AML/CTF Rules may provide that a specified provision of Division 3, Part 3 does not apply to a designated service of a kind specified in the AML/CTF Rules.
- 65 Subsection 44(3) states that Division 3, Part 3 does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.
- 66 Subsection 44(5) provides that Division 3, Part 3 does not apply to a designated service provided at or through a permanent establishment of a reporting entity in a foreign country.
- 67 Subsection 44(6) states that Division 3, Part 3 does not apply to a designated service covered by item 54 of table 1 in section 6. Item 54 of table 1 in section 6 covers a holder of an Australian financial services licence who arranges for a person to receive a designated service.
- 68 Subsection 43(3) states that a report of a threshold transaction must contain 'such information relating to the transaction' as is specified in the AML/CTF Rules. AUSTRAC's view is that non-cash components of a threshold transaction which contain 'information relating to the transaction' must be reported under Chapter 19 of the AML/CTF Rules 2007.

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<sup>14</sup> Paragraphs 43(1)(a) and (b).

*Differences in formulation of the test in section 43 than in section 7 of the FTR Act*

69 The following matters in section 43 are different from section 7 of the FTR Act:

- Section 43 pertains to commencing to provide, or providing a designated service where the provision of the service involves a threshold transaction. Only a reporting entity which provides or commences to provide the relevant designated service must report to the AUSTRAC CEO.

Section 7 refers to a 'significant cash transaction' and requires that a cash dealer be a party to the transaction the subject of the report.

- Section 43 requires that a reporting entity must report within 10 business days after the day on which the transaction takes place. Section 43 does not distinguish between transactions involving foreign or Australian currency. Section 7 specifies reports must be made within a reporting period. If the transaction involves foreign currency the reporting period ends at the end of the day after the day of the transaction. If the transaction does not involve foreign currency the reporting period is 15 days after the transaction takes place.
- The definition of 'threshold transaction' in section 5 of the AML/CTF Act is broader than 'significant cash transaction' in section 3 of the FTR Act. Paragraph (a) of the definition of 'threshold transaction' is in very similar terms to the definition of 'significant cash transaction'.

Paragraph (a) of the definition of 'threshold transaction' and the definition of a significant cash transaction refer to a transaction involving the transfer of currency (or 'physical currency' in the AML/CTF Act, which is defined in nearly identical terms as 'currency' in the FTR Act) of not less than \$10,000 in value.

The words in paragraph (a) of the AML/CTF Act definition refer to a transaction in which 'the total amount of physical currency transferred is not less than \$10,000'.

The Replacement Explanatory Memorandum<sup>15</sup> states that the definition of threshold transaction 'provides that a threshold transaction involves the transfer of not less than \$10,000 in physical currency'.

Only cash amounts are included in the threshold transaction (other than those which relate to e-currency). If a non-cash component is involved this is a separate transaction. AUSTRAC considers that the non-cash components may be captured in a report to AUSTRAC if the non-cash components consist of 'information relating to the transaction' within the meaning of paragraph 43(3)(b) of the AML/CTF Act.

AUSTRAC considers that in the context of the AML/CTF Act 'transaction' refers to one transaction. AUSTRAC's view is stated at paragraphs 10-12.

This is consistent with section 3 of the FTR Act which refers to 'a cash transaction involving the transfer of currency of not less than \$10,000 in value'. These words refer to one transaction.

Further, the AML/CTF Act definition contains paragraph (b) which refers to transfer of money in the form of e-currency, 'where the total amount of e-currency transferred is not less than \$10,000'.

E-currency is defined in section 5 of the AML/CTF Act as an internet-based, electronic means of exchange that is recognised as digital currency and that is backed directly or

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<sup>15</sup> The *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 Replacement Explanatory Memorandum* circulated by authority of the Minister for Justice and Customs.

indirectly by precious metal, bullion, or a thing prescribed in the AML/CTF Rules. E-currency also includes anything that under the regulations is to be taken as e-currency.

The AML/CTF Act also permits regulations to extend the definition of threshold transaction to apply to a specified transaction:

- of a specified amount involving transfer of money;<sup>16</sup> or
- of a specified amount involving transfer of property.<sup>17</sup>

To date no regulations have been made that extend the definition of threshold transaction.

- Section 49 of the AML/CTF Act permits the AUSTRAC CEO and the other officials listed in subsection 49(1) to require a reporting entity to produce further information in relation to a report made under section 43. There is no equivalent section in the FTR Act.
- The AML/CTF Act does not provide for exemption registers as set out in the FTR Act.

Section 44 of the AML/CTF Act provides for the making of AML/CTF Rules that specify designated services,<sup>18</sup> specified provisions applicable to specified designated services,<sup>19</sup> or designated services provided in specified circumstances,<sup>20</sup> in relation to which the requirement to report under section 43 does not apply. To date no AML/CTF Rules have been made which specify the matters referred to in section 44.

In addition, section 248 of the AML/CTF Act provides that the AUSTRAC CEO may make written instruments that exempt specified persons from one or more specified provisions of the Act, or that the Act is modified with regard to one or more specified provisions applying to a specified person. Exemptions and modifications made under section 248 are published<sup>21</sup> on the AUSTRAC website at [www.austrac.gov.au](http://www.austrac.gov.au).

- 70 Section 43 does not require that the reporting entity is a party to the transaction. However only a reporting entity is obliged to make a report.
- 71 The overall result is that apart from e-currency, section 43 requires the reporting of similar matters as are required to be reported under section 7.

#### *Civil penalty*

- 72 Subsection 43(4) provides that the obligation to report in subsection 43(2) is a civil penalty provision. This means that the AUSTRAC CEO may take enforcement action if a reporting entity does not comply. Such action includes that the AUSTRAC CEO may apply for a civil penalty order in the Federal Court under Part 15, Division 2 of the AML/CTF Act.

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<sup>16</sup> Paragraph (c) of the definition of threshold transaction.

<sup>17</sup> Paragraph (d) of the definition of threshold transaction.

<sup>18</sup> Subsection 44(1) of the AML/CTF Act.

<sup>19</sup> Subsection 44(2) of the AML/CTF Act.

<sup>20</sup> Subsection 44(3) of the AML/CTF Act.

<sup>21</sup> Subsection 248(5) refers to publication of exemptions and modifications.

## Related information

### Legislative instruments

Chapter 19 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*<sup>22</sup> (AML/CTF Rules 2007) contains the reportable details for threshold transactions, which commence operation on 12 December 2008, and the replacement Chapter 19 AML/CTF Rules which will commence on 1 January 2011. The AML/CTF Rules can be found at: [www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200730563?OpenDocument](http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200730563?OpenDocument).

### AUSTRAC publications

The *AUSTRAC Regulatory Guide* contains information regarding meeting obligations under the AML/CTF Act and AML/CTF Rules as well as the FTR Act. It is available on the AUSTRAC website at: [www.austrac.gov.au/regulatory\\_guide.html](http://www.austrac.gov.au/regulatory_guide.html).

The following AUSTRAC guidelines contain relevant information regarding the reporting of significant cash transactions under the FTR Act:

- AUSTRAC Guideline No. 2 *Significant Cash Transaction Reporting*
- AUSTRAC Guideline No. 2A *Significant Cash Transaction Reporting - TABS, On-Course Totalisators and Bookmakers*
- AUSTRAC Guideline No. 2B *Significant Cash Transactions - Exemptions and Exemption Registers*
- AUSTRAC Guideline No. 2C *Significant Cash Transaction Reporting - Cash Carriers*
- AUSTRAC Guideline No. 2D *Significant Cash Transaction Reporting for Bookmakers, TABs, Totes and Sports Betting Agencies*

These guidelines can be accessed via AUSTRAC's website at [www.austrac.gov.au/guidelines.html](http://www.austrac.gov.au/guidelines.html).

AUSTRAC Information Circular No. 10 *Reporting Significant Repatriations and Expatriations of 'Currency' by 'Financial Institutions'* is available on the AUSTRAC website at [www.austrac.gov.au/information\\_circular.html](http://www.austrac.gov.au/information_circular.html).

The AUSTRAC *Reporting policy* is available on the AUSTRAC website at [www.austrac.gov.au/report\\_policy.html](http://www.austrac.gov.au/report_policy.html).

The AUSTRAC approved electronic report file format specification for threshold transaction reports can be accessed via the 'resources' tab in a reporting entity's AUSTRAC Online account: <https://online.austrac.gov.au/>.

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<sup>22</sup> Legislative Instrument Compilation F2008C00235.

## Other

The Australian Government recently introduced a bill into Parliament to allow regulated entities who currently report to AUSTRAC under the FTR Act to continue to report in the same way during their transition to the new reporting format. See [www.austrac.gov.au/reporting\\_obligations.html](http://www.austrac.gov.au/reporting_obligations.html). This would apply to threshold transaction, international funds transfer instruction, or suspicious matter reports made after 12 December 2008, until such time as entities are compliant with the AML/CTF reporting requirements, but not later than 11 March 2010.

AUSTRAC has published its AML/CTF Act reporting implementation policy. The policy outlines the seven new reportable details forms and the four reporting methods AUSTRAC has designed to meet the size and technology requirements of reporting entities. See [www.austrac.gov.au/amlctfact\\_reporting\\_implementation.html](http://www.austrac.gov.au/amlctfact_reporting_implementation.html).

The policy is subject to the legislation being passed.

The Financial Transaction Reports Amendment (Transitional Arrangements) Bill 2008 is available on the Parliament of Australia website at: [http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r3068\\_first/toc\\_pdf/08177b01.pdf;fileType=application/pdf#search=%22billsCurBef%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r3068_first/toc_pdf/08177b01.pdf;fileType=application/pdf#search=%22billsCurBef%22).

## Legislation attachment

The AML/CTF Act is available in consolidated form at [www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200627290?OpenDocument](http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200627290?OpenDocument).

Section 7 of the FTR Act provides:

### 7 Reports of significant cash transactions by cash dealers

- (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
  - (b) communicate the information contained in the report to the AUSTRAC CEO;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; or
  - (f) all of the following conditions are satisfied:
    - (i) the cash dealer is a reporting entity;
    - (ii) the transaction occurred after the commencement of Division 3 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
    - (iii) the transaction is a designated service transaction.
- (2) The report shall be prepared in the approved form, contain the reportable details of the transaction and be signed by the cash dealer or otherwise authenticated by the cash dealer in a way approved by the AUSTRAC CEO.
- (3) The communication shall be made to the AUSTRAC CEO:
  - (a) by giving the AUSTRAC CEO a copy of the report; or
  - (b) in such other manner and form as is approved by the AUSTRAC CEO, 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.

Section 43 of the AML/CTF Act provides:

### 43 Reports of threshold transactions

#### *Scope*

- (1) This section applies to a reporting entity if:
- (a) the reporting entity commences to provide, or provides, a designated service to a customer; and
  - (b) the provision of the service involves a threshold transaction.

#### *Report*

- (2) The reporting entity must, within 10 business days after the day on which the transaction takes place, give the AUSTRAC CEO a report of the transaction.
- (3) A report under subsection (2) must:
- (a) be in the approved form; and
  - (b) contain such information relating to the transaction as is specified in the AML/CTF Rules.

Note 1: For additional rules about reports, see section 244.

Note 2: Section 49 deals with the provision of further information, and the production of documents, by the reporting entity.

#### *Civil penalty*

- (4) Subsection (2) is a civil penalty provision.

## Further information

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Help Desk via:

- email to [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

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