



AUSTRALIAN TRANSACTION REPORTS AND
ANALYSIS CENTRE

SUBMISSION TO THE

PRODUCTIVITY COMMISSION'S INQUIRY
INTO AUSTRALIA'S GAMBLING INDUSTRIES

1. Background

1.1. The Australian Transaction Reports and Analysis Centre (AUSTRAC) was established under section 35 of the Financial Transaction Reports Act 1988 (FTR Act).¹ It was set up as part of the Commonwealth's response to money laundering, organised crime and serious tax evasion.

1.2. Part of AUSTRAC's role is to collect financial transaction reports information from the financial sector and some sections of the gambling industry and then to analyse and disseminate this information to law enforcement and revenue agencies. This information provides revenue and law enforcement agencies with a money trail, a crucial tool in identifying the financial dealings of money launderers and tax evaders. Collection of this information (together with the FTR Act's requirement for these groups to identify their customers) also serves to foster a financial environment hostile to crime and serious tax evasion.

1.3. This submission examines the role the FTR Act and other regulatory mechanisms play in minimising the opportunities for Australia's gambling industry to be used to facilitate money laundering and serious tax evasion. In the same way, it examines some of the implications of new gambling technologies.

2. Regulating Australia's Gambling Industry

2.1. Australia's gambling industry has expanded considerably in recent years and is now recognised as a diverse and sophisticated industry sector in its own right. Gambling products now include:

- wagering and bookmaking on racing;
- lotteries;
- charitable gaming;

¹ Formerly known as the Cash Transactions Report Act 1988.

- casinos;
- club and hotel poker machines (except Western Australia)
- bingo; and
- sports bookmaking.

2.2. As has been highlighted in the Productivity Commission's Issues Paper *Australia's Gambling Industries* (the Issues Paper), governments around Australia have been keen to both promote legitimate business opportunities and to minimise the potential for criminal activity and tax evasion in the gambling industry.

2.3. The priority Australia has given to these objectives is evident at the Commonwealth level, through the inclusion of some gambling entities under the reporting provisions of the FTR Act, and at the State level, in the gambling legislation which has been enacted in each of the States and Territories. These pieces of legislation address many different aspects of the gambling industry, and in combination, provide the regulatory framework within which the gambling industry currently operates.

3. The FTR Act

3.1. The FTR Act is part of a package of legislation which makes up Australia's anti-money laundering and anti-tax evasion strategy.²

3.2. For its part, the FTR Act focuses on industry groups that, by the nature of their business, deal in large amounts of cash (a characteristic that can make an industry particularly attractive to money launderers and those who wish to avoid Australia's taxation laws). Included in this category are banks, building societies, credit unions, insurance companies, securities dealers, futures brokers and bureaux de change. This category also includes casinos, totaliser agency boards and bookmakers.

² Others include the Mutual Assistance in Criminal Matters Act 1987, the Proceeds of Crime Act 1987 and the Telecommunications (Interception) Amendment Act 1987.

- 3.3. Under the provisions of the FTR Act, these entities are classed as cash dealers, and as such, are required to report:
- significant cash transactions - transactions of \$10,000 or more;
 - suspicious transactions - transactions with customers where there are reasonable grounds to suspect that the information about the transaction may assist investigation of breaches of Commonwealth and State and Territory³ laws; and
 - international funds transfer instructions – those instructions an organisation makes and receives to transfer value into and out of Australia on behalf of its customers.
- 3.4. Cash dealers are also required to verify the identity of signatories to any accounts which may be opened and operated with them. Withdrawals cannot be made from accounts where the signatory has not been adequately identified.
- 3.5. As part of its role in detecting and deterring money laundering and serious tax evasion AUSTRAC has established a Compliance Audit Program, to review cash dealer compliance with the reporting requirements of the FTR Act.⁴

³ The requirements for the reporting of suspicious transactions to AUSTRAC in respect of suspected breaches of State and Territory laws are contained in complementary legislation enacted in each of the States and the Northern Territory.

⁴ This program covers all aspects of compliance and can be applied to all types of cash dealers. It consists of three components: Desk Audits, Compliance Audits and Joint Studies.

Desk Audits are undertaken on the basis of statistical analysis of data reported by cash dealers. AUSTRAC has developed a software program which analyses data volumes and highlights inconsistencies and significant variations in reporting levels. Data quality is monitored with particular emphasis on aspects of the data which may impact on the use of the information by the Australian Taxation Office and law enforcement agencies. Cash dealers are contacted by AUSTRAC officers and are required to undertake remedial action.

Compliance Audits are initiated as a result of analysis of the quality and volumes of reports provided by cash dealers, requests by the Australian Taxation Office and law enforcement agencies and by review of publicly available information. These audits comprise an assessment of systems and procedures and cover the reporting requirements of the FTR Act and other sundry requirements of the Act such as the identification of signatories and record retention.

Joint Studies involve a thorough examination of each of the cash dealers business areas which may be affected by the FTR Act reporting requirements. Within each business area AUSTRAC examines internal procedures and mechanisms in place to establish compliance with the requirements of the FTR Act.

3.6. Reports received from cash dealers are combined into a pool of financial transaction report information (FTR information) which is placed on the AUSTRAC database and made available to AUSTRAC's partner agencies as listed in Section 27 of the FTR Act.⁵ These are the:

- Australian Customs Service
- Australian Bureau of Criminal Investigation
- Australian Federal Police
- Australian Securities and Investments Commission
- Australian Taxation Office
- Criminal Justice Commission of Queensland
- Independent Commission Against Corruption (NSW)
- National Crime Authority
- NSW Crime Commission
- Police Integrity Commission (NSW)
- State and Territory Police Forces of Australia (7)
- State and Territory revenue authorities (8)

3.7. In disseminating FTR information, AUSTRAC provides authorised users in partner agencies with an on-line enquiry service. AUSTRAC can also provide authorised users with access to other analytical tools on the basis of a demonstrated need.

3.8. As well as providing access to FTR information to assist partner agencies in their investigations, AUSTRAC also undertakes analysis using automated screening and profiling tools. This is referred to relevant agencies for investigation.

⁵ Access to FTR information is granted at the discretion of the Director, AUSTRAC, and in accordance with the rules and conditions as set out in each of the Memoranda of Understanding between the Director and the heads of each of the agencies.

4. Detecting and Deterring Crime and Serious Tax Evasion

- 4.1. In the ten years since the FTR Act was first introduced, FTR information has become an effective tool in the detection, investigation and prosecution of money launderers, criminal entities and serious tax evaders. FTR information is now commonly used to identify patterns and trends in illicit activities and to uncover and link offenders to the proceeds of their crimes.⁶
- 4.2. Furthermore, the nature of AUSTRAC's role has given the organisation an understanding of the activities of organised crime groups and ways in which they might utilise Australia's gambling industry to further their interests.
- 4.3. The 1993 Report by the Senate Standing Committee on Legal and Constitutional Affairs recorded that:
- AUSTRAC states there is ample evidence to indicate that organised crime is a significant and escalating threat to Australia.⁷ Casinos pose a particular risk in this area because of the international nature of their operations and of the banking system through which they function.⁸
- 4.4. It was these concerns that originally motivated the inclusion of casinos as cash dealers under the FTR Act in 1988. The provisions of the FTR Act require that should a cash dealer (including a casino) suspect it is being used to facilitate money laundering or tax evasion, the cash dealer must provide a suspect transaction report to AUSTRAC. Casinos have lodged a substantial number of suspect transaction reports and these have proved useful.
- 4.5. There is also evidence to indicate that criminals sometimes use their illicit funds, in a "recreational"

⁶ Further information on the use of FTR information by Australia's law enforcement and revenue agencies can be found in AUSTRAC's 1997-1998 Annual Report.

⁷ See paper by Bill Coad and David Richardson, "Reducing Market Opportunities for Organised Crime", delivered for Australian Academy of Forensic Science, Sydney, 20 May 1993, pp 9-11 and G. Pinner, "The Money Trail – Looking Ahead and Reflecting Upon the Past", AUSTRAC Papers 1992, p.1.14.

⁸ Report by the Senate Standing Committee on Legal and Constitutional Affairs (1993), *Checking the Cash: A Report on the Effectiveness of the Financial Transaction Reports Act 1988*, Commonwealth of Australia.

sense, during the course of gambling sprees at casinos. This would not generally be seen as a vulnerability at casinos in terms of the potential for money laundering, however it may constitute a money laundering offence in terms of the Proceeds of Crime Act or corresponding State or Territory legislation.

- 4.6. Australia's gambling industry is vulnerable to money launderers and tax evaders. However, it can also be concluded that compliance with the FTR Act and relevant State and Territory legislation can provide an effective means of detecting and deterring such activity.
- 4.7. The effectiveness of Australia's regulatory framework, and in particular, the reporting requirements of the FTR Act, has been endorsed by the Australian Casino Association.⁹ AUSTRAC liaises regularly with the members of the Association.

5. State Legislation

- 5.1. As has been highlighted in the Issues Paper, the nature and extent of Australia's gambling operations varies across the States and Territories. Furthermore, different forms of gambling have been legalised at different times and for different reasons. As a result, each jurisdiction's gambling industry structure and its legislation is unique.¹⁰
- 5.2. Nevertheless, certain regulatory objectives are common to all, in that they seek to control:
- the type of site at which the product is offered;
 - availability to minors;
 - general availability;
 - the actual products offered through rules of the game and player;

⁹ Australian Casinos Association 'Regulation ensures industry is above reproach', www.aca.asn.au/regulate.html

¹⁰ Ford, D. and Farrell, B., 'State Views', paper presented at Gambling, Technology and Society: Regulatory Challenges for the 21st Century conference, Sydney 7-8 May 1998, Australian Institute of Criminology in conjunction with the Australian Institute for Gambling Research.

- the proximity of ATMs and Eftpos terminals in relation to gaming products.

- 5.3. State and Territory gambling regulators have implemented various strategies to ensure that regulations are upheld. These strategies include maintaining detailed records of betting transactions, 24 hour on-site surveillance and ensuring that winnings cheques are only paid to legitimate 'winners'.
- 5.4. As well as upholding State and Territory laws, these strategies, particularly surveillance and identification procedures, also complement the anti-money laundering and anti-tax evasion objectives of the FTR Act.
- 5.5. AUSTRAC maintains good working relations with State and Territory gambling regulators.

6. Implications of New Technology

- 6.1. The Issues Paper raises a number of questions in relation to the emergence of new gambling technology. Areas of particular concern are the integrity of Internet transactions, the possible loss of taxation revenue and the capacity of establishments in non-Australian jurisdictions to offer gambling products which do not meet Australian standards to Australians.
- 6.2. There is no doubt that the emergence of new gambling technology presents a number of challenges to gambling regulators and to government's law enforcement and revenue agencies. Indeed, government is already facing many of these challenges in the wider context as electronic commerce transactions become increasingly commonplace.
- 6.3. Traditional regulatory and enforcement strategies are 'location based'. In this environment regulators can inspect gambling premises, identify the location where a transaction took place, identify who the parties to the transaction were, and identify which jurisdiction will enforce laws where a crime has been committed. In contrast, 'technology based', or Internet gambling offers global interaction with predominantly unlicensed and anonymous operators.
- 6.4. The avenues for regulation of Internet transactions between a player and the service operator are more limited than for traditional gambling services. Without

the protection of an effective regulatory regime, Australians accessing Internet gambling sites:

- could be dealing with criminals or the criminally influenced;
- could be playing games that are rigged; and
- could never be paid if they win.¹¹

6.5. Further, Internet gambling and the resulting access to offshore gambling sites also has the potential to undermine State and Territory revenues. Estimates from the Office of Strategic Crime Assessments indicate that by the year 2015 the NSW government alone could be losing up to \$16 million per annum in taxation revenue through consumers utilising offshore gambling sites.¹²

6.6. From AUSTRAC's perspective, the key issue is that Internet gambling may (if attached to electronic payment systems) provide a facility to transfer funds electronically to and from gambling sites. This may provide a means to bypass the reporting requirements of the FTR Act thus creating new avenues for money laundering and tax evasion.

6.7. On-line casinos and other gambling operators operating outside Australia may not be cash dealers under the FTR Act or, even where they are, they may be practically outside the reach of Australian regulation.

6.8. It has been noted by government and the gambling industry that the FTR Act provides a potential means for the Commonwealth to regulate Internet gambling, by placing the same reporting and identification obligations on Australian Internet gambling sites as it does on Australian casinos.¹³ However, practical enforcement issues are still to be resolved.

¹¹ Office of Strategic Crime Assessments, 1998, Internet Gambling, Trend Alert 1/98, Attorney General's Department, Canberra.

¹² Office of Strategic Crime Assessments, 1998, Internet Gambling, Trend Alert 1/98, Attorney General's Department, Canberra.

¹³ Office of Strategic Crime Assessments, 1998, Internet Gambling, Trend Alert 1/98, Attorney General's Department, Canberra. Australian Institute of Criminology, Internet Gambling, Trends & Issues in Crime and Criminal Justice papers, No 88, Australian Institute of Criminology, Canberra.

6.9. AUSTRAC has held discussions with some potential participants in the Internet gambling industry. One of those organisations has advised that it intends to utilise identification procedures, using the FTR Act's 100 point signatory identification system, to identify patrons in the redemption of funds and/or winnings by electronic or other means, such as direct deposit to an account and bank cheques. It is also developing automated systems to identify possible suspicious activities. AUSTRAC has been invited to inspect and audit the system.

6.10. Such actions indicate that some sectors of Australia's gambling industry see that they have much to gain from maintaining an effective regulatory environment as a means of differentiating themselves from non-compliant sectors and from their unregulated counterparts offshore.

7. Conclusion

7.1. Like many other activities which carry inherent risks with them, gambling is nevertheless a legal activity. However, in recognition of those risks, it is expected that gambling is conducted in a safe and fair environment, ensuring amongst other things that Australia's gambling industry is not used as a conduit for money laundering and tax evasion.

7.2. This risk management approach to gambling has provided the motivation for the enactment of relevant parts of State and Territory gambling legislation and the inclusion of some gambling entities under the reporting provisions of the FTR Act. This submission has briefly examined some aspects of this approach and the ways in which it aims to protect the gambling industry from being so used.

7.3. It is apparent from this examination that both government and the gambling industry stand to benefit from an effective and proactive regulatory framework.

7.4. There is no doubt that regulators will face new challenges to the effectiveness of this approach with the emergence of new gambling technology. Both government and gambling operators recognise for the Australian gambling industry to remain competitive in the 21st century, then its regulatory framework must also remain effective and enforceable. Achievement of this goal will depend to a large extent on the ability of

government and industry to recognise their shared interests in maintaining a strong regulatory framework and to work together to find solutions.