

## AUSTRAC PRIVACY CONSULTATIVE COMMITTEE

### Report to Privacy, Consumer and Civil Liberties Groups from representatives August 2003

1. The AUSTRAC Privacy Consultative Committee (PCC) met on 20 September 2002 and the 20 March 2003. The new Australian Consumers Association representative, Jan Whitaker, participated in both meetings.
2. The Committee approved a number of mainly cosmetic changes to several of the AUSTRAC Guidelines and Information Circulars, (See [www.austrac.gov.au/text/guidelines](http://www.austrac.gov.au/text/guidelines) ) and the program for reviewing the remaining publications was confirmed.
3. We expressed concern about the risk of advice leading to discriminatory practices by cash dealers when identifying suspicious transactions for reporting, for example racial profiling. AUSTRAC undertook to consult with HREOC and other relevant parties about an appropriate warning in advice on suspect transaction reporting (such as Guideline 1 —paras 8 & 9) against unfair or unlawful discrimination.
4. AUSTRAC reported that to date there have been two cases where bank accounts were frozen in response to suspicions under the anti-terrorism guidance —both of these turned out to be innocent organizations with names that triggered suspicion —the Shining Path bookshop and the International Youthseek Foundation. In both cases accounts were unfrozen as soon as the error was detected. We are concerned that this could become a more frequent and more serious problem now that banks are being asked to report and in some cases block accounts on the basis of names alone (particularly Moslem names which may be very common) (see below). AUSTRAC and the AFP acknowledged this issue. The AFP has established a number of National Assessment Centres to assist cash dealers with the issue of partial matches. Many partial matches are being resolved by direct contact, avoiding the need for a formal report (eg: phone call to the AFP to confirm if the person with the reportable name is the person of interest).
5. AUSTRAC is now including a standard sentence in all publications reminding cash dealers that they may have obligations under the Privacy Act 1988. This is particularly relevant to the general obligation of financial institutions to make customers aware of disclosure to AUSTRAC in certain circumstances (notwithstanding the specific FTRA prohibition on informing a customer of a specific *suspect transaction* report).
6. AUSTRAC undertook to look into the possibility of gaining some insight into public awareness of the FTRA. The prospect of using other agencies' surveys

(eg ABA, ABS) has diminished and AUSTRAC itself is not able to give this priority. We also suggested that communication strategies be explored with other Consumer groups that have financial interests as their focus such as the Shareholders and Taxpayers Associations. We will also take this issue up in a submission to the forthcoming review of the FTRA (see 10 below).

7. The intergovernmental Proof of Identity committee (POI) has commissioned research by the Securities Industry Research Centre Asia Pacific into the extent and cost of identity fraud. The research findings should be available by June and the committee will be briefed. AUSTRAC has been trying to arrange a general briefing for the PCC from the POI committee and will also look into making agenda and/or minutes of that committee available. Discussions are taking place with institutions about verification of POI documents. Institutions have apparently expressed interest in being able to collect tax file numbers as POI (this is currently prohibited under taxation and privacy laws).
8. A web-based reporting system for cash dealers (EDDSWEB) has been introduced, and will be used for 99% of reports by the end of 2003. The committee was briefed on the security of the system, which has been independently audited and appears satisfactory within current technological capabilities for these types of services managed by Australian government agencies.
9. The question of the involvement of AUSTRAC in the many online scam solicitations was raised. Any complaints received in their office are forwarded to the Australian Federal Police.
10. Draft terms of reference and a discussion paper for the overdue general review of the FTRA have been drafted and should be issued soon for public consultation.
11. AUSTRAC is reviewing its MoUs with the AFP and ASIO in light of the recent changes in anti-terrorism legislation relating to the powers for the Heads of the AFP and ASIO to exchange information with overseas counterparts.
12. A proposed review of Suspect Transaction Reporting in general is on hold due to lack of resources.
13. We raised the issue of MoUs between AUSTRAC and overseas agencies (such as one with Singapore concluded in 2002), and whether these contained any restrictions or safeguards designed to ensure that as far as possible Australian standards of human rights and rule of law applied to the use of information provided.

14. AUSTRAC provided members with the relevant clauses in the MoUs. The protection they offer appears limited in that they only purport to limit use of financial intelligence related to money laundering as follows:
  - (i) may use such information only in respect of criminal matters described in the request and only for intelligence purposes (including developing leads and focussing investigative resources); and
  - (ii) must not use such information or documents as evidence in any formal proceedings.
15. Both of these are subject to the qualification "without prior consent of the [disclosing] party". However, there are no criteria set out for the exercise of discretion in granting consent—in fact the next clause anticipates requests for other uses—although AUSTRAC confirmed that none have been received to date. A further clause invokes the protection of secrecy laws in the receiving jurisdiction, but this does not address the issue of weaker overseas laws. There is no equivalent in the IPPs applying to AUSTRAC to the private sector cross border data transfer principle NPP9, so there seems to be in effect no requirement for AUSTRAC to require commitment to privacy safeguards equivalent to those in Australian law, when disclosing intelligence to an overseas authority (hence the Privacy Commissioner's recommendation in his submission on the anti-terrorism legislation).
16. AUSTRAC will consult with the Attorney-General's Department about possible sanctions, remedies and disclosure. Note that the Federal Privacy Commissioner drew attention to their submission to the Senate inquiry earlier in 2002 into the anti-terrorism Bills, in particular at paragraphs 38-41, where they made specific recommendations that exchanges of personal information should be limited where equivalent privacy protections were not afforded. (see <http://www.privacy.gov.au/publications/secleg.doc> ). A separate meeting will be held to progress this issue.
17. Various Information Circulars have been reviewed.
18. ICs 16-21 (some of which have now been superseded by IC 33) are simply notices on the status of various jurisdictions. They raise the important issue of what record-keeping and reporting is required short of a suspect transaction report. Some cosmetic changes were agreed.
19. ICs 22-24 list named individuals and organizations identified by the United Nations and the US as terrorists or their sponsors, or persons associated with the Milosevic regime in the former Yugoslavia (IC 23). The Reserve Bank has issued notices prohibiting transactions involving accounts in those names, and the AUSTRAC circulars require cash dealers to notify AUSTRAC of any attempts at such transactions.

20. Issues arising from ICs 22-24 include the potential for mistaken identity (see item 4 above), and over-reporting of similar names
21. We raised the underlying issue of the relative legitimacy of requests from the US government alone as opposed to those from the UN. Circulars 23 and 24 appear to be additions by the US alone whereas the original list in IC 22 appears to include both UN and nominated names, but does not clearly distinguish the source in all cases. Circular 31, giving general advice on detecting terrorist financing, does give links to separate lists. These criticisms are however of the Reserve Bank and DFAT media releases or instructions and are outside AUSTRAC control.
22. AUSTRAC is simply reflecting Reserve Bank or DFAT notices which in turn implement government directives under the Banking (Foreign Exchange) Regulations, and we accept that AUSTRAC cannot be expected to challenge or explain these notices. However, consumer representatives may wish to express concern through other channels about the basis of these listings. We would also welcome any information that others may have about any further problems listing under these Circulars may have caused legitimate individuals or organizations. One accountability measure that we could press for is public reporting of trends in reporting, and in particular the number of false positives amongst the SUSTRs. We will take this up in our submission to the FTRA Review (see item 10).
23. AUSTRAC is proposing to grant direct on-line access by Partner Agencies (law enforcement, Tax Office etc) to low value International Funds Transfer Instructions (IFTIs). These low value IFTIs, relating to amounts of less than AU \$1000, have been reported since 1993 but until now have been automatically archived by AUSTRAC, with specific requests for access being processed manually. AUSTRAC has decided that the volume of requests has built up to the point where for efficiency reasons they propose to include all IFTIs in the database to which Partner Agencies have direct access through AUSTRAC's secure private network. (Between February 2000 and December 2002, AUSTRAC processed requests for low value IFTIs on 284 occasions).
24. We argued that this represents significant function creep. It was always difficult to justify the reporting of all international transactions, however small, when the focus of the FTRA reporting regime was on major and organised crime. Criticism was defused to a large extent by the assurance that the low value reports were archived and only available in specific cases and with some bureaucratic cost as a barrier. Our concern is that once Partner Agencies (including the Australian Taxation Office) have direct access to all IFTIs, there will be an irresistible temptation for them to be used in connection with investigations into a wide range of lesser matters. (We do not believe that it would be publicly acceptable, for instance, for the ATO to routinely use IFTIs in connection with processing individuals' tax returns).

25. AUSTRAC's response is that the expanded focus of the FTR regime on terrorism means that low value IFTIs are now more likely to be of interest. They also argue that Partner Agencies will remain subject to the limits on use set out in the Memoranda of Understanding (MOUs) and that this should ensure that there is no significant function creep.
26. We have requested that AUSTRAC review the MOUs with a view to amending them to only enable access to be granted to appropriate partner agency users. AUSTRAC has agreed to consider this.

*13 August 2003*

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