

# BOOK REVIEWS

**THE MONEY TRAIL / BRENT FISSE, DAVID FRASER AND GRAEME GOSS**  
Sydney : Law Book Co., 1992 \$90.00

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The last decade has seen the growth in Australia of what the authors called "money trail laws", or legislation designed to track the flow of money derived from criminal activity and tax evasion, and to provide for the confiscation of the proceeds of illegal activities. At the Commonwealth level, the *Financial Transaction Reports Act 1988* ("the *FTR Act*") provides for the mandatory reporting to the government, in the guise of AUSTRAC, of cash transactions and funds transfers, and of "suspicious transactions"; the prohibition of opening an account with a cash dealer in a "false name"; and the prohibition of "smurfing", that is the splitting of cash transactions into amounts of less than is required to be reported. Secondly, the *Proceeds of Crime Act 1987* ("the *POC Act*") provides for the forfeiture to the Commonwealth of property used in or in connection with, or derived or realised from, the commission of an indictable offence or from the offences of money laundering created by that Act. As the editors point out, "[the] scope of the legislation is broad, so much so that it is easy for people in commercial or professional walks of life to become entangled, even when they have acted honestly."

This book is an informative and readable collection of nineteen essays and papers. The scope and broad nature of the issues raised is admirably outlined by the editors in the first chapter. For the practising lawyer, the most immediately useful chapters are the descriptive outlines of the terms and operation of the *POC Act* by Mr J. Thornton of the Commonwealth DPP's office and of the *FTR Act* by Mr G. Pinner, Deputy Director of AUSTRAC. Also useful are the paper by John O'Sullivan and Stephen Mitchell on some of the problem areas of the *FTR Act*, in particular the requirement under s.16 to report "suspect transactions"; and the concluding paper by

Professor Brent Fisse "*Minimising Exposure to Liability under the New Legislation*". The practising lawyer with an inquiring mind will not, however, stop there, but will find much of interest in each of the other papers, which range from a controversial contribution on the economics of organized crime by David Fraser, through disturbing studies of the darker side of confiscation legislation by Professor Fisse, Arie Freiberg and Richard Fox, to a number of interesting comparative contributions from the United States and the United Kingdom.

In such a wide-ranging anthology, the lack of anything in the nature of a cost/benefit analysis of the legislation is conspicuous. The cost of compliance with the requirements of the *FTR Act* falls primarily on the banks, and is necessarily passed on to bank customers by way of increased account charges and interest costs. According to the submission by the Australian Bankers' Association to the current Senate inquiry into the *FTR Act*, the establishment costs of compliance with its requirements by eighteen of the ABA's 29 member banks between 1 March 1987 and 31 December 1991 amounted to \$6.1 million, and their annual costs of compliance to almost \$19 million. Against that, the submission to that inquiry by the National Crime Authority identifies only one specific instance where AUSTRAC information is claimed to have been effective in combatting organized crime: Operation Quit, an investigation into suspected conspiracies to defraud the revenues of Victoria, New South Wales, Queensland and the Northern Territory by attempting to evade tobacco licence fees in each of those jurisdictions. The investigation led to eleven individuals being charged with more than 400 State offences "and some convictions have been recorded". The NCA submission goes on to say "In addition, illicit tobacco product valued at \$3 million has been seized, State revenue authorities have raised assessments of \$20 million and the ATO has raised assessments of over \$3 million". Nothing is said in the NCA's submission about how much the investigation actually yielded in money terms.

At the very least, therefore, there are reasonable grounds to suspect that the costs - in terms both of money and deprivation of civil rights and privacy - imposed by the *FTR Act* on the Australian community are not justified by benefits of anything like corresponding value to the community. Presumably, in an attempt to deflect one from the conclusion that the *FTR Act* should be repealed and AUSTRAC abolished, the NCA is seriously advocating before the Senate inquiry (as it maintained in its 1991 report "*Taken to the Cleaners: Money Laundering in Australia*") that the net should not be abolished but widened; and in particular that solicitors should be made "cash dealers" for the purposes of the *FTR Act*, and thus in effect spies to the State on their clients. As the NCA seems to see it, all citizens

must be conscripted in the fight against organized crime, regardless of the sacrifice of their rights and liberties. It is all too redolent of Germany in the months following January 1933.

It must be emphasized that it is not a book only for criminal law specialists: a lawyer in almost any other field, in particular company, banking, taxation and property law needs to be familiar with this recently-spun web of legislation of far-reaching effect. A great virtue of this book is that it both interesting and informative, ideal perhaps for a wet, week-end afternoon. Needless to say, it also has a place on the shelves of every law and criminology library.

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