

# Financial Transaction Reports Amendment Regulations 2003 (No. 1) 2003 No. 32

## EXPLANATORY STATEMENT

### Statutory Rules 2003 No. 32

Issued by the authority of the Minister for Justice and Customs

*Financial Transaction Reports Act 1988*

Financial Transaction Reports Amendment Regulations 2003 (No. 1)

Section 43 of the *Financial Transaction Reports Act 1988* (the Act) provides that the Governor-General may make regulations not inconsistent with the Act.

Regulation 11D of the Financial Transaction Reports Regulations 1990 (FTR Regulations) relates to Part VIA of the Act. Section 40H(1) of the Act makes it an offence for financial institutions not to retain, for the minimum retention period, the original or a copy of a customer generated financial transaction document. Subsection 40H(2)(a) provides that the retention obligation only relates to single transactions exceeding \$200. Subsection 40H(2)(b) provides that an amount higher than \$200 may be specified by regulation. Regulation 11D prescribes that the amount for single transactions to which retention obligations relate be \$1000 for subsection 40H(2)(b) of the Act.

Section 40J(1) of the Act similarly provides that it is an offence for financial institutions not to retain, for the minimum retention period, the original or a copy of a non-customer generated financial transaction document. Subsection 40J(2)(a) provides that the retention obligation only relates to single transactions exceeding \$200. Subsection 40J(2)(b) provides that an amount higher than \$200 may be specified by regulation.

The purpose of the Regulation is to increase to \$1000 the amount currently prescribed in subsection 40J(2) of the Act as the minimum transaction amount which would require financial institutions to retain certain transaction related documents. The Regulation would also amend an outstanding typographical error.

Item 2 of Schedule 1 of the Regulation would amend the present Reg. 11D of the FTR Regulations by effectively adding a reference to subsection 40J(2). The effect of the amendment would be that the amount for a single transaction to which retention obligations relate under subsection 40H(2) and subsection 40J(2) would be prescribed as \$1000. The increase to \$1000 is consistent with the present Reg 11D of the FTR Regulations but extends it to subsection 40J(2) of the Act for consistency. The amendment is also consistent with Recommendation 4 in the August 2002 Report of the Taskforce on the Financial Transaction Reports Act and Regulations. The Taskforce was established under the Commonwealth Legislation Review Program. The purpose of the Program is to review legislation which restricts competition or imposes costs or confers benefits on business.

The Regulation would be taken to have commenced on 1 January 2003. The commencement provision of the Regulation is retrospective and is anticipated to commence on the same day as the existing Reg 11D of the FTR Regulations. The Regulation was not included in Reg. 11D of the FTR Regulations due to an oversight. 1 January 2003 coincides with the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002* (the Consequentials Act) which commenced on 1 January 2003. The Consequentials Act transferred sections 40H and 40J from the *Proceeds of Crime Act 1987* to the Act commencing on 1 January 2003. Consequently, the FTR Regulations were required to commence on the same day.

The Regulation benefits those institutions and/or individuals who would be required to retain documents under subsection 40J(1) of the FTR Act because the higher threshold would require fewer documents to be retained. Consequently, the retrospective nature of the regulation would confer a benefit on those institutions and/or individuals who are required to comply with subsection 40J(1) of the FTR Act. In addition, no liability would be incurred by those institutions and /or individuals affected by the Regulation if the Regulation was made retrospective. The Regulation would therefore satisfy section 48(2) of the *Acts Interpretation Act 1901*, and may be validly made with retrospective effect.

Authority: section 43 of the *Financial Transaction Reports Act 1988*