



Australian Government

**Australian Transaction Reports
and Analysis Centre**



Australian Government

Attorney-General's Department

Criminal Justice Division

**Specific proposals for an enhanced AML/CTF registration
scheme for the remittance sector**

Minister's Foreword

The introduction of a more robust regulatory regime for the remittance sector is necessary to reduce the risk of criminals using money transfers to fund people smuggling ventures and other serious crime.

On 9 April 2010, I announced the Government's intention to strengthen regulation of remitters as part of a broader strategy to crack down on people smuggling. Further to this, on 23 April 2010 I released a discussion paper on the enhanced regulation of remittance dealers, and invited the remittance sector to comment on the proposed measures. Members of the remittance sector expressed broad support for the proposed reforms and indicated an interest in engaging in the policy development process.

The discussion paper provided a broad overview of what an enhanced registration scheme for remittance dealers may look like. Essentially, it proposed a scheme to give the CEO of the Australian Transactions Reports and Analysis Centre (AUSTRAC) the power to refuse, suspend, cancel or impose conditions on registration. It also noted the possibility of introducing registration requirements for providers of remittance networks.

To give the Government a sound understanding of how the reforms might affect businesses providing remittance network services and remittance services, I am releasing details of the strengthened regulatory scheme that is under consideration. The Government intends the proposals in this paper to inform and facilitate consultations by AUSTRAC and the Attorney-General's Department during July and August 2010 as part of the process of assessing the regulatory impact of the proposed reforms on industry. The Government is concerned that in strengthening the regime, we do not create unintended difficulties for small business, and that the outcome is fair and equitable for remitters.

The Government recognises the valuable service to the community provided by the remittance sector, and the efforts taken by that sector to mitigate the money laundering and terrorism financing risk faced by businesses that provide money transfer services. In particular, I note the existing support provided by remittance network providers to members of their networks to assist them to comply with their anti-money laundering and counter-terrorism financing (AML/CTF) obligations. Accordingly, I encourage members of the remittance sector to engage in consultations and share with AUSTRAC and the Attorney-General's Department the likely impact of the proposals in view of existing business practices and procedures.

In keeping with the current AML/CTF framework, it is proposed that any amendments reforming the way the remittance sector is currently regulated be principles based with the operational detail to be set out in the AML/CTF Rules. I welcome the continued engagement of the remittance sector in this process so that together we can achieve a balance between the efficient conduct of business and the need to detect, deter and disrupt the financing of people smuggling and other serious crimes.

Brendan O'Connor

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Glossary

AML/CTF	Anti-money laundering and counter terrorism financing
AML/CTF Act	<i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i>
AML/CTF Program	A program defined by section 83 of the AML/CTF Act
AML/CTF Rules	<i>Anti-Money Laundering and Counter Terrorism Financing Rule Instrument 2007 (No 1)</i>
AUSTRAC	Australian Transaction Reports and Analysis Centre
AUSTRAC CEO	Chief Executive Officer of AUSTRAC
Independent remittance dealer	A person that provides remittance services to customers using his or her own systems and processes, independent of a remittance network
ML/TF	Money laundering and terrorism financing
Remittance affiliate	A person that provides remittance services to customers as part of a remittance network facilitated by a remittance network provider
Remittance network provider	A person that facilitates networks of remittance affiliates, providing the systems and services that enable his or her affiliates to provide remittance services
Remittance service	A service prescribed by items 31 and 32 of table 1 of section 6 of the AML/CTF Act
Remitter	An independent remittance dealer, remittance affiliate or remittance network provider

Current AML/CTF regulation of remitters

Providers of remittance services have anti-money laundering and counter terrorism financing obligations under the AML/CTF Act. This includes the requirement to register with AUSTRAC, identify their customers, keep records, establish an AML/CTF Program, and report suspicious matters, transactions above a certain threshold and international funds transfer instructions.

Providing remittance services without registering with AUSTRAC is an offence that carries a penalty of 2 years imprisonment or fine of \$55,000 or both. Currently, inclusion on the register is automatic on application and an applicant is not required to satisfy any entry criteria.

Key elements for enhanced regulation of remitters

The Government is considering three key elements to enhance the regulation of remitters:

1. Introducing the concept of a remittance network provider into the AML/CTF Act;
2. Enhancing the registration requirements for remitters; and
3. Extending the infringement notice scheme to cover certain breaches of registration requirements by remitters.

1. Remittance Network Providers

Remittance network providers establish the systems and support used by their agents to transfer customer funds internationally.

Under the proposed regulatory reforms, a new designated service would be introduced into section 6 of the AML/CTF Act for remittance network providers. The service would involve facilitating a network of remittance affiliates who undertake remittance services using systems, processes and other support provided by the network provider.

The effect of this proposal would be that remittance network providers will become subject to all existing AML/CTF Act obligations.

1.1 Relationship between remittance network providers and affiliates

As a reporting entity under the AML/CTF Act, the remittance network provider will be required to establish an AML/CTF Program that will put in place processes and procedures for:

- assessing the ML/TF risk in providing the network service;
- identification and verification of their remittance affiliates¹;

¹ The customers of remittance network providers are their remittance affiliates.

- ongoing due diligence of their remittance affiliates; and
- due diligence of the remittance network provider's employees.

In effect, remittance network providers that apply for registration of a remittance affiliate will ascertain whether a prospective remittance affiliate is suitable for registration as part of the provider's network (see below **Lodging an application**).

Consistent with the AML/CTF Act's risk-based approach to regulation, the Act would not prescribe how remittance network providers must comply with these obligations. This will enable remittance network providers to put in place systems that suit their existing business models, practices and contractual obligations, business size and level of ML/TF risk.

Remittance network providers already provide AML/CTF support to their affiliates in the ordinary course of business, including the development of AML/CTF compliance frameworks and transaction monitoring systems. It is proposed that these existing relationships be formalised by requiring providers of remittance networks to prepare AML/CTF Programs for use by their affiliates and to fulfil some of the AML/CTF Act reporting obligations on behalf of their affiliates, for example, compliance reports, international funds transfer instructions and threshold transaction reports. Remittance affiliates would continue to report suspicious matters directly to AUSTRAC, although these reports could also be made by remittance network providers on behalf of their affiliates. Providers of remittance networks would also have suspicious matter reporting obligations in their own right.

2. Registration

2.1 Lodging an application

As outlined in the discussion paper, the lodging of an application will no longer guarantee registration. Persons seeking to provide remittance services or remittance network services will be required to make an application for inclusion on the register to the AUSTRAC CEO. To assist the AUSTRAC CEO to determine an applicant's suitability for registration, the application form would seek information on matters such as an applicant's criminal history (accompanied by a National Police Certificate for all key personnel) bankruptcy, as well as confirmation of beneficial ownership arrangements. The AML/CTF Rules may require applicants to provide additional information.

Reflecting the current structure of the remittance sector, three registration categories are proposed: remittance network providers, remittance affiliates and independent remittance dealers. Under such a scheme, remittance network providers would be responsible for lodging their own applications for registration, as well as the applications of their remittance affiliates. Independent remittance dealers would apply directly to the AUSTRAC CEO for registration.

2.2 Registration decision

The AUSTRAC CEO, or his or her delegate, will have the power to grant, refuse, suspend, cancel or impose conditions on registration.

It is proposed that in circumstances where the AUSTRAC CEO is satisfied that a significant money laundering, terrorism financing or people smuggling risk exists, he or she will be obliged to refuse or cancel a person's registration. Factors relevant to this assessment would include criminal history, non-compliance with AML/CTF Act obligations, matters of bankruptcy, and beneficial ownership.

The types of conditions the AUSTRAC CEO could attach to registration could be general or specific. For example, a requirement to notify AUSTRAC of material changes in circumstances that may affect a person's registration, or the volume or destination of funds remitted. It is proposed that the Act would allow the AML/CTF Rules to specify conditions to which the registration of a person may be subject.

Suspension arrangements would be set out broadly in the AML/CTF Act with the AML/CTF Rules specifying matters such as the grounds for suspension and the length of suspensions.

2.3 Notice of registration decisions

The AUSTRAC CEO will be required to give written notice of a proposed registration decision and give the person 28 days in which to make a submission in response. In cases of urgency – such as where the AUSTRAC CEO is aware that a serious criminal offence is imminent – it is proposed that the requirement to give notice be able to be waived.

Under the AML/CTF legislative framework, decisions by the AUSTRAC CEO to refuse, suspend, cancel or impose conditions on registration will be reviewable (see below **Rights of review**).

2.4 Period of registration

It is proposed that registration be valid for 3 years, unless the AUSTRAC CEO cancels a person's registration, or the registered person surrenders their registration. This would ensure AUSTRAC could review the registration of participants in the remittance sector on a regular basis to ensure each person's ongoing suitability for involvement in the sector. This is in view of the need for closer supervision and monitoring of the remittance sector given the high ML/TF risk.

To balance AML/CTF needs against regulatory burden, it is proposed that there be a rule making power that would give the AUSTRAC CEO the ability to design and implement a registration renewal process which would strike a balance between ongoing due diligence on participants in the remittance sector and the efficient conduct of business.

2.5 Rights of review

As outlined above, the proposed changes will require the AUSTRAC CEO (or his or her delegate) to assess the suitability of remittance dealers and remittance network providers for

inclusion on the register and empower him or her to cancel, suspend or impose conditions on registration. Given these decisions may impact on a person's business or livelihood, the new registration scheme will provide for both internal and external review mechanisms.

A person affected by a decision may seek internal review of the decision. The legislation would require the AUSTRAC CEO to ensure independent review by an AUSTRAC officer who is senior to the original decision maker and who was not involved in the original decision. The reviewer will be able to affirm, vary or revoke the decision.

A person may also seek external review by the Administrative Appeals Tribunal of an internal review decision, or a decision made by the AUSTRAC CEO personally. In addition, a person may seek judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.

As outlined above, under the proposed registration scheme there are links between the registration of a remittance network provider and that of their affiliates. For example, only a remittance network provider will be able to apply to the AUSTRAC CEO to register a person as their remittance affiliate. It is proposed that where a registration decision affects a particular person, that person will have a right of review. This means that if the registration of a remittance affiliate is refused, cancelled or if conditions are imposed on the registration, then it would be open to both the network provider and the remittance affiliate to seek review of the decision.

2.6 Transition to the new regime

There will need to be a transition period for implementation of the new registration regime to ensure that those already operating in the remittance sector have sufficient time to comply with the new registration requirements.

It is proposed that remittance dealers who AUSTRAC has already registered under the existing registration scheme will have 12 months to re-apply (or have a remittance network provider apply on their behalf) for registration.

Remittance network providers will have 3 months from commencement of the proposed reforms to apply for registration and 12 months to register their affiliates.

Providing a remittance network provider makes an application within the 3 month period, they can continue providing remittance services without breaching the registration requirement.

It is proposed that the Minister could extend these transition timeframes by legislative instrument, to enable a degree of flexibility in the implementation of these reforms if required.

3. Enforcement options

It is proposed that the new registration regime set out offences and civil penalties in relation to the provision of remittance network services and remittance services by persons who are not registered, as well as for breaching a condition of registration.

As with the current registration offence, the maximum penalty for each of the new offences would be 2 years imprisonment or 500 penalty units² or both.

The civil penalties will also mirror those set out in the AML/CTF Act. This means that a person may be subject to a pecuniary penalty instead of a criminal offence. The maximum penalty the Court can impose under the AML/CTF Act for a breach of a civil penalty provision is 100,000 penalty units for a corporation and 20,000 penalty units for a natural person.

In order to enable the AUSTRAC CEO to more effectively regulate the remittance sector, and to take proportionate action, it is proposed the current infringement notice scheme be extended to cover certain breaches. Under the proposed reforms, the AUSTRAC CEO could issue infringement notices for breaches of certain requirements, namely inclusion on the AUSTRAC register, compliance with registration conditions and notification by registered persons of material changes in circumstances.

Default penalties for infringement notices would be set at 60 penalty units for a corporation and 12 penalty units for a natural person. The AML/CTF Rules would be able to set higher penalties for specified contraventions capped at 120 and 24 penalty units respectively. These higher penalty amounts would enable AUSTRAC to consider certain factors such as whether AUSTRAC alleges a number of contraventions of the infringement notice provision have occurred, or where the person has previously received an infringement notice for an alleged contravention of the provision.

4. Consultation process

Consultation is an important aspect of any regulatory reform proposed by the Government. To assist in assessing the impact of the proposed enhanced AML/CTF registration scheme for remitters, the Attorney-General's Department and AUSTRAC will begin consultations with the remittance sector the week of 19 July 2010.

Members of the sector will be invited to take part in a survey to help inform the Government of the cost/benefit analysis of the reforms and discussions with a cross-section of remittance network providers will also be undertaken.

² The value of a penalty unit is prescribed by section 4AA of the *Crimes Act 1914*. One penalty unit currently equals \$110.