



Australian Government

**Australian Transaction Reports
and Analysis Centre**



Australian Government

Attorney-General's Department

Criminal Justice Division

Discussion Paper

Enhanced regulation of alternative remittance dealers

Minister's Foreword

On 9 April 2010, the Government announced it would introduce a more comprehensive regulatory regime for remittance dealers to reduce the risk of money transfers being used to fund people smuggling ventures and other serious crime.

Remittance dealers facilitate the transfer of funds within and between countries, often outside the formal financial and banking system. They provide a valuable service to the Australian community. People use remittance services because they see them as cheaper, faster and more reliable than other options and because they often provide the only option for sending money to many locations around the world.

However, the remittance sector is recognised by the international anti-money laundering and counter-terrorism financing (AML/CTF) community, and domestically by law enforcement and national security authorities, as being vulnerable to money laundering and terrorism financing. Australian law enforcement authorities are aware that some international cash transfer services provided by remittance dealers are used by individuals in Australia to pay the organisers of people smuggling ventures.

I recently announced amendments to the *Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2007* allowing the AUSTRAC CEO to de-register remittance dealers who pose a significant money laundering or terrorism financing risk. The amendments will help reduce the likelihood of the money transfer system being exploited to fund serious crimes.

Broader legislative reforms are needed to give the AUSTRAC CEO the power to refuse to register a remittance dealer and to oblige persons applying for registration to provide material in support of their application for inclusion on the AUSTRAC register.

The Government wants to work with the sector to develop a fair and workable registration regime that ensures community access to a cheap and effective remittance sector whilst minimising misuse of the services to further people smuggling ventures and other criminal activities.

I encourage you to make submissions to the Government on the proposals set out in the discussion paper.

Brendan O'Connor
MINISTER FOR HOME AFFAIRS

Regulation of remittance dealers

Current Situation

Under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), remittance dealers are required to register with the Australian Transaction Reports and Analysis Centre (AUSTRAC) before providing funds transfer services. Providing these services without registering is an offence that carries a penalty of imprisonment for two years, a \$55,000 fine, or both.

However, the current registration scheme has a number of shortcomings, which affect AUSTRAC's ability to effectively regulate and supervise the sector, including:

- Anyone can register - there is no suitability criteria that must be met
- Any business can be a remitter - there are no conditions on the way a remitter operates
- There is no clear authority to refuse to register a remitter
- Registered remitters are not obliged to update their information or identify their business associates, and
- There are limited sanctions available.

To address these issues, the Government will amend the AML/CTF Act to introduce a more comprehensive regulatory regime for remittance dealers.

These measures will enable AUSTRAC to more effectively identify persons providing remittance services, help protect against criminal infiltration of the sector including by those seeking to facilitate the funding of people smuggling and other serious crimes, and undertake appropriate enforcement action.

While the Government believes that a more comprehensive registration scheme is necessary to reduce the potential for misuse of the alternative remittance sector, it wishes to proceed in a way that will minimise the regulatory burden for remitters. Feedback from the sector on how best to achieve this is being sought through this consultation.

Registration

Presently, inclusion on the AUSTRAC Register of Providers of Designated Remittance Services is automatic on application. Government proposes that the AUSTRAC CEO will now assess the suitability of persons seeking to provide remittance services before agreeing to registration.

The key features of the proposed enhanced registration regime include:

- Applicants will be obliged to disclose matters relating to beneficial ownership and control
- Applicants will be obliged to disclose matters relevant to character, (including criminal convictions, insolvencies, or a history of regulatory non-compliance)
- Applicants will be required to re-apply for registration every 3 years or a period determined by the AUSTRAC CEO

- The AUSTRAC CEO will be able to impose conditions on registration, and
- Persons on the register will be required to report any changes in their own, or associates', circumstances that may affect registration within a prescribed timeframe.

It will be an offence not to comply with these requirements.

AUSTRAC will be able to issue infringement notices (financial penalties) for low-level offences. This is in addition to existing enforcement sanctions provided for by the AML/CTF Act including criminal offences and civil remedies that include financial penalties, and other non-monetary enforcement measures such as remedial directions and enforceable undertakings.

Refusal, Suspension and Cancellation of Registration

The AUSTRAC CEO will be able to refuse, suspend or cancel the registration of remitters in appropriate circumstances, including if the person poses a significant money laundering, terrorism financing or people smuggling risk or has a history of non-compliance with their regulatory obligations.

A person who has had their registration application refused, or whose registration has been suspended or cancelled, will be able to:

- Make a written submission in response to the AUSTRAC CEO within 28 days (which the AUSTRAC CEO must have regard to)
- Seek merits review of the decision from the Administrative Appeals Tribunal, and
- Seek judicial review of the decision in accordance with the *Administrative Decisions (Judicial Review) Act 1977*.

Other Measures

The following related measures are also proposed:

- The AUSTRAC CEO will be able to publish a list of registered remitters and a list of remitters whose registration has been refused, suspended or cancelled
- Reporting entities will be prohibited from knowingly providing a designated service to an unregistered remitter
- Reporting entities will be required to provide a suspicious matter report to AUSTRAC where they suspect they are dealing with an unregistered remitter, and
- Improved powers to enable the AUSTRAC CEO to obtain information from third parties and share information with third parties.

Providers of Remittance Networks

The proposed measures will immediately strengthen the current registration scheme that is part of AUSTRAC's overall supervision of the remittance sector. The Government is of the view that further strengthening and improved efficiencies may be possible through extending the coverage of the AML/CTF Act to place certain responsibilities on entities that provide the network infrastructure that is used by the majority of remitters within Australia.

AUSTRAC estimates that there are approximately 6,500 providers of designated remittance services in Australia. Of these, approximately 6,300 operate through established remittance networks. Entities that provide the network infrastructure are categorised as Providers of Remittance Networks (PRNs).

Under the AML/CTF Act, the legal person who owns the outlet in Australia that is providing the designated service is the reporting entity subject to AML/CTF Act obligations, including registration requirements. The provider or owner/principal of the remittance network is not a reporting entity unless it accepts or pays out physical currency or property directly.

However, in many cases it is the PRN that develops the requisite controls, compliance frameworks and transaction monitoring systems.

In these circumstances, the Government considers that PRNs are well placed to ensure that network members do not pose a significant money laundering, terrorism financing or people smuggling risk.

The Government is contemplating the introduction of specific registration requirements for PRNs. These registration requirements could include obligations to perform due diligence on the suitability of persons to be a member of their network. The AUSTRAC CEO could consider this due diligence in determining whether to register the individual members of the network as remitters.

The Government will have further targeted consultations with PRNs about these issues.

Implementation

Subject to the outcome of consultations, the Government proposes to introduce amending legislation as soon as possible.

These new measures will take time to implement. Registered remittance service providers, who are currently subject to regulation under the AML/CTF Act, will be required to lodge new registration applications within a prescribed time but will be able to continue operating while those applications are processed.

In its role as the AML/CTF regulator AUSTRAC will assist entities to understand the new obligations through educational and guidance material, and its established supervisory and media communication processes.

Submissions

The government seeks the views of the private sector on the proposals set out in this paper. In particular, the Government seeks input on the following questions:

1. How are the proposed reforms likely to impact on your business? Are any of the proposed reforms of particular concern? If so, what would alleviate those concerns?
2. What would be an appropriate timeframe for currently registered remitters to re-apply to be registered under the new scheme?
3. What responsibilities should a PRN have to ensure that the members of a network are appropriate persons to provide a designated remittance service?

AUSTRAC and the Attorney-General's Department will liaise with the remittance sector to consult directly on these issues.

If you would like to make a submission, please forward it to:

Discussion Paper – Enhanced regulation of Alternative Remittance Dealers
Border Management and Crime Prevention Branch
Criminal Justice Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Submissions may also be submitted electronically to aml.reform@ag.gov.au or by facsimile to (02) 6141 2873.

The closing date for submissions is **7 May 2010**.

All submissions and the names of persons or organisations that make a submission will be treated as public, and may be published on the Department's website, unless the author clearly indicates to the contrary. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.