



Australian Government

Australian Transaction Reports
and Analysis Centre

AUSTRAC ENFORCEMENT STRATEGY 2011–12



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The information contained herein is current as at the date of this document.

October 2011

Australian Transaction Reports and Analysis Centre (AUSTRAC)
PO Box 5516
West Chatswood NSW 1515

EXECUTIVE SUMMARY

AUSTRAC's purpose is to protect the integrity of Australia's financial system and contribute to the administration of justice through our expertise in countering money laundering and the financing of terrorism.

As a financial intelligence unit (FIU), AUSTRAC collects, retains, analyses and disseminates financial intelligence to revenue, law enforcement, national security, social justice, regulatory and other partner agencies in Australia and overseas. This supports national priorities to protect national security, apprehend criminals, protect the integrity of Australia's financial markets and maximise revenue collection.

As Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator, we educate, monitor and work to improve the effectiveness of reporting entities' compliance with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the *Financial Transaction Reports Act 1988* (FTR Act).

Specifically, AUSTRAC's regulatory activities have two key goals:

- to improve the integrity of transaction reports received by AUSTRAC in order to assist its work as Australia's FIU and, through improved data integrity, better assist AUSTRAC's partner agencies to detect money laundering and terrorism financing (ML/TF) activity, investigate financial crimes and secure prosecutions; and
- to strengthen reporting entities' AML/CTF programs to help protect against the use of their services by criminals for ML/TF purposes.

In some circumstances, in order to achieve these two goals, AUSTRAC will seek to enforce compliance with the AML/CTF Act and FTR Act through more formal mechanisms.

AUSTRAC's Enforcement team uses evidence based decision making to determine appropriate cases for enforcement activity. We work with AUSTRAC's FIU and regulatory activities to support this decision making.

Decisive, measured and proportionate enforcement action benefits both regulated industry participants and the wider community by contributing to the integrity of, and promoting public confidence in, a competitive, sound and fair financial system and the administration of justice.

Enforcement activities are designed to:

- achieve remedial and future compliance at both the individual level and more broadly at the industry level, through selective, targeted action
- act as a deterrent to non-compliance
- disrupt ML/TF activity taking place through remittance businesses
- level the playing field for industry participants which comply with their legal obligations.

Over the course of 2010–11 AUSTRAC exercised its enforcement powers under the AML/CTF Act against a number of reporting entities. Most notably, the AUSTRAC Chief Executive Officer (CEO) accepted seven enforceable undertakings from members of the same designated business group, gave one remedial direction, and removed the name and registrable details of two people from the Register of Providers of Designated Remittance Services (the Register). Details of these actions are set out at Attachment A.

¹ The provisions providing for the suspension or cancellation of a registration were inserted into the AML/CTF Act by the *Combating the Financing of People Smuggling and Other Measures Act 2011* and are due to commence on 1 November 2011.

PRIORITIES FOR 2011–2012

In 2011–12 the major priorities for AUSTRAC's Enforcement team will be to:

- work with Supervision teams to identify suitable candidates for enforcement activity
- manage a selection of entities to achieve compliance using persuasive means and AUSTRAC's formal enforcement powers
- work with Supervision and AUSTRAC's partner agencies to identify providers of designated remittance services whose behaviour would give the AUSTRAC CEO grounds to consider the removal of their name and registrable details from the Register or, alternatively, to consider suspending or cancelling their registration on the Register
- where appropriate, give consideration to seeking restraining injunctions, performance injunctions, the pursuit of civil penalty orders or the referral of instances of non-compliance with provisions which carry criminal sanctions to the Commonwealth Director of Public Prosecutions (CDPP)
- ensure that appropriate enforcement processes are in place to support the cost recovery program, the compulsory enrolment regime and enhanced remitter registration arrangements.

Measuring effectiveness

The primary key performance indicator for the Enforcement team will be the number of successful enforcement and compliance outcomes arising from referrals to the Enforcement team from:

- AUSTRAC's frontline Supervision teams
- partner agencies via the Supervision Referrals Unit
- AUSTRAC's Intelligence teams.

We will measure the effectiveness of enforcement action by our ability to identify and rectify systemic non-compliance across a sector and non-compliance of specific reporting entities.



Our performance will be reported externally on an annual basis through the *AUSTRAC annual report 2011–12* and *AUSTRAC enforcement strategy 2012–13*.

INTERACTION BETWEEN AUSTRAC'S SUPERVISION AND ENFORCEMENT ACTIVITIES

The AML/CTF Act embodies five key areas that are internationally recognised as best practice in deterring and detecting ML/TF. Broadly speaking, reporting entities are required to:

- 1. Conduct ML/TF risk assessments.** Businesses must understand and manage the ML/TF risks they are exposed to when they provide different products and services, use different distribution channels, deal with different customers and operate in different jurisdictions.
- 2. Implement systems and governance to manage their ML/TF risks.** Businesses must establish appropriate oversight of ML/TF risk by senior management, ensure there is an employee due diligence program and that staff are trained to detect ML/TF behaviour and regularly review the effectiveness of their systems and compliance with their obligations.
- 3. Know their customers.** Businesses must verify the identity of their customers, monitor their customers' behaviour and keep appropriate records of these actions. Financial institutions must also appropriately identify any other financial institutions with which they do business.
- 4. Make themselves known to AUSTRAC.** Currently most reporting entities must advise AUSTRAC that they have obligations under the AML/CTF Act, either through submission of a compliance report (CR) under section 47 or, if they are a remittance service provider, by registering under Part 6 of the AML/CTF Act. As a practical measure, most reporting entities make themselves known through

enrolling on AUSTRAC Online. Recent amendments to the AML/CTF Act require all reporting entities to enrol with AUSTRAC and keep their details up to date.

5. Report to AUSTRAC. Businesses must provide reports to AUSTRAC on cash transactions, at or above a \$10,000 threshold (TTR), instructions for international funds transactions (IFTI) and suspicious matters (SMR).

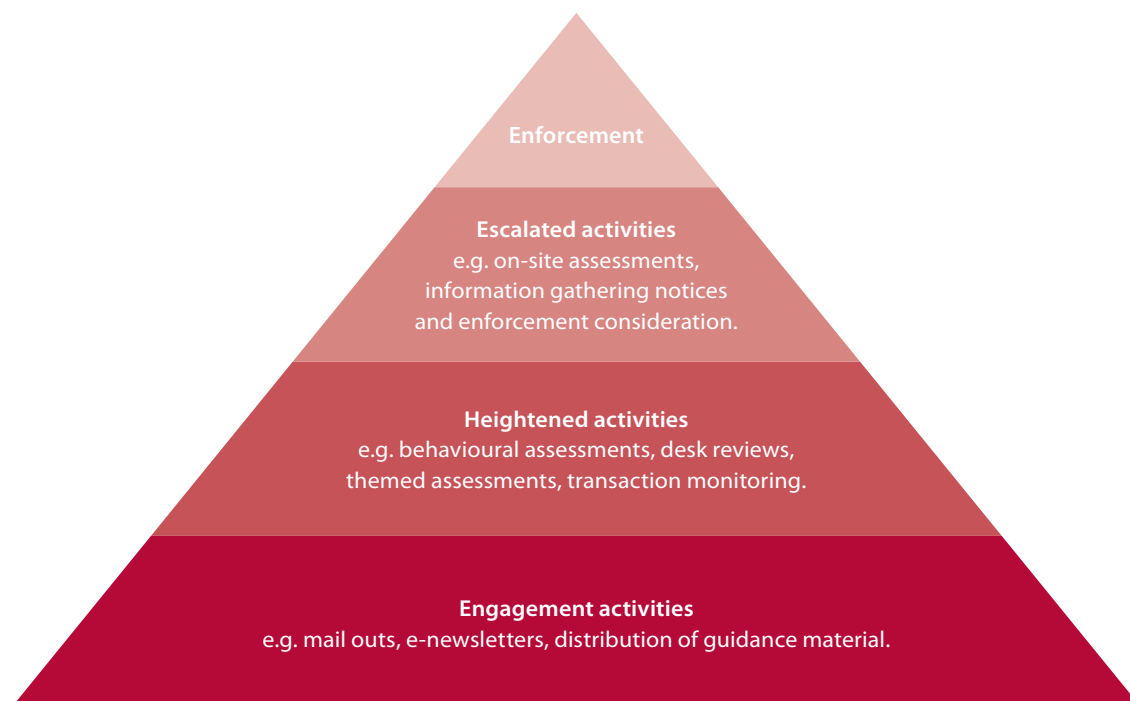
Most must also report regularly on their own compliance with their obligations under the AML/CTF Act through a compliance report.²

Compliance with these key obligations should result in high quality transaction reporting to AUSTRAC and ultimately an Australian community hostile to money laundering and the financing of terrorism.

AUSTRAC applies evidence based selection processes to identify reporting entities for supervisory activity. This in turn will impact on which reporting entities may be the focus of future enforcement action.

AUSTRAC categorises its supervisory activities into three levels of intensity:

- **Low intensity or 'engagement' activities** such as mail outs, e-newsletters and the development and distribution of guidance materials.
- **Moderate intensity or 'heightened' activities** such as behavioural assessments, desk reviews, themed reviews and transaction monitoring, which we direct at specific behaviours of reporting entities.
- **High intensity or 'escalated' activities** such as on-site assessments and enforcement. We tailor these activities to individual reporting entities. They are designed to have a direct impact on improving compliance outcomes. Where these activities do not result in improved compliance, they are likely to result in enforcement action.



² Holders of an Australian financial services licence who only make arrangements for a person to receive a designated service (such as financial planners) are not required to submit a compliance report.

HOW MATTERS ARE REFERRED TO ENFORCEMENT

While AUSTRAC prefers to engage and work cooperatively with reporting entities, where these activities do not result in improved compliance, matters are referred to AUSTRAC's Enforcement team for consideration of enforcement action.

Most instances of non-compliance are detected and referred to the Enforcement team through AUSTRAC's supervision activities. It is expected that this will continue to be the case in the medium term.

It is expected that AUSTRAC's Supervision Referrals Unit, which works together with AUSTRAC's partner agencies, will also refer matters to the Enforcement team for consideration of enforcement action.³

AUSTRAC's FIU may also provide AUSTRAC's Enforcement team with intelligence advice to enable it to identify particular areas or activities it should focus enforcement actions towards. Additionally, the FIU may identify reporting entities of interest, whose behaviour are indicative of high ML/TF risk activity.

Partner agencies, other regulators and members of the public may also directly bring matters to the AUSTRAC Enforcement team's attention.

AUSTRAC will liaise with other regulators and law enforcement agencies and the CDPP, where appropriate, to facilitate the progress of enforcement matters, and to ensure that a whole-of-government approach is adopted.

From time to time a reporting entity may identify that their business is in breach, or in the future may be in breach, of the AML/CTF Act. Where this is disclosed, and it is considered appropriate, AUSTRAC may provide a 'no-action letter' to the reporting entity.⁴

There may be some circumstances where we determine that a no-action letter is not appropriate and the extent

and impact of the breach requires AUSTRAC to take enforcement action.

In these situations the reporting entity's disclosure and any demonstrated willingness and effort to rectify the breach(es) will be a factor in AUSTRAC's supervision and enforcement approach.

How AUSTRAC selects cases for enforcement action

Not every case referred to the Enforcement team will be subject to enforcement action. AUSTRAC must work within its available resources to ensure that our enforcement activities are targeted appropriately.

Relevant factors to be considered include:

- the nature of the non-compliance
- the ML/TF risk associated with the reporting entity
- willingness and effort to comply
- the likely result of the enforcement action
- the likely deterrent effect of the enforcement action.

These factors are explained in more detail below. The weighing of any particular factor in making a determination to proceed to enforcement action in a specific situation will depend on the individual circumstances of the case.

Nature of non-compliance

The nature of a reporting entity's non-compliance refers to the extent and impact of the breach on the reporting entity's AML/CTF compliance obligations and on the objectives of the AML/CTF regime and the broader community.

The AUSTRAC CEO is more likely to take enforcement action where a reporting entity's breach is systemic and impacts on the overall AML/CTF compliance systems of the reporting entity or on the objectives of the AML/CTF regime. For example, where a reporting entity's non-compliance is serious and has the potential to have a negative impact on the integrity of the financial system.

³ The Supervision Referrals Unit enhances partner agency outcomes, particularly investigations involving high risk industry cohorts, primarily within the alternative remittance sector. The Referrals team sits within AUSTRAC's Supervision branch.

⁴ The *AUSTRAC Guidance Note 08/01 – No-action letters* outlines matters that AUSTRAC considers in determining whether it is appropriate to issue a no-action letter.



Where a statutory breach is inadvertent and/or of a minor nature with little potential to compromise the effectiveness and scope of the AML/CTF regime, the likelihood of the AUSTRAC CEO choosing to pursue enforcement action is decreased.

ML/TF risk

One of the factors that the AUSTRAC CEO will consider when determining whether to initiate enforcement action is the impact of the reporting entity's non-compliance on its ML/TF risk exposure and, consequently, on the overall integrity of the financial system and the administration of justice.

AUSTRAC's FIU may provide the Enforcement team with intelligence advice to assist it to identify reporting entities whose behaviour is representative of high ML/TF risk activity.

Where a contravention is more likely to result in a high level of ML/TF risk exposure, and therefore leave the reporting entity more vulnerable to money laundering and terrorism financing, the AUSTRAC CEO is more likely to respond to the contravention with enforcement action.

Willingness and effort to comply

The AUSTRAC CEO will consider a reporting entity's compliance history, its willingness to comply with its AML/CTF obligations, and the level of effort the reporting entity has made to comply with these obligations.

Enforcement action is more likely to be initiated where a reporting entity has a poor compliance history and has shown little willingness or effort to understand and comply with its AML/CTF obligations compared to where a reporting entity has a very good compliance history and has made a significant effort to understand and comply with its AML/CTF obligations.

In addition, AUSTRAC will take into account the amount of compliance material and other resources the reporting entity has access to, and the sophistication of the reporting entity in considering its ability to respond to compliance issues as they arise.

Result of the enforcement action

In determining whether, and what, enforcement action should be initiated the AUSTRAC CEO will consider what the most appropriate regulatory outcome will be in the circumstances.

Regulatory outcomes can include further examination of the compliance of the reporting entity, rectification of the non-compliance or penalising the reporting entity for its non-compliance.

The AUSTRAC CEO may take enforcement action against a reporting entity to achieve a general improvement in a reporting entity's compliance with its AML/CTF obligations, to ensure the reporting entity rectifies identified deficiencies (including the back capture of outstanding transaction reports) or to send a message to the community that certain behaviour will not be tolerated.

At times the 'threat' of enforcement action will be the catalyst for a reporting entity to take steps to remedy its non-compliance.

Deterrent effect

The AUSTRAC CEO will also consider the message a particular type of enforcement action is likely to send to other reporting entities in the same sector. Strong, effective enforcement action against a reporting entity, especially if it is accompanied by publicity, can have a powerful effect on other entities, either in deterring them from non-complying behaviour or encouraging them to ensure they continue to meet their obligations under the legislation.

AUSTRAC'S ENFORCEMENT TOOLKIT

AUSTRAC has a range of enforcement tools at its disposal including persuasive remediation and formal powers.

While AUSTRAC's Supervision teams often work with reporting entities to remedy identified weaknesses, sometimes this remediation does not take place without significant persuasion by AUSTRAC.

AUSTRAC persuasive remediation refers to circumstances where a reporting entity works to achieve rectification of its non-compliance and this remediation is underpinned by a formal remediation plan agreed to by AUSTRAC.

Where persuasive remediation does not achieve the desired outcomes or where AUSTRAC believes there are reasons why persuasive remediation is not an appropriate course, the use of AUSTRAC's formal enforcement powers may be appropriate.

The range of AUSTRAC's formal enforcement powers are outlined below.

AUSTRAC's formal enforcement powers

AUSTRAC has a range of powers available to it under the AML/CTF Act and Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules:

- issuing notices requiring the provision of information or documents
- executing monitoring warrants to access reporting entities' premises and exercising the monitoring powers set out in section 147 of the AML/CTF Act
- requiring a reporting entity to provide AUSTRAC with an ML/TF risk assessment
- requiring the appointment of an external auditor to assess a reporting entity's risk management and compliance and to report back to the AUSTRAC CEO
- accepting enforceable undertakings from reporting entities



- issuing remedial directions which require a reporting entity to take specified action to ensure compliance
- seeking injunctions to require a person to do something or refrain from doing something in relation to the breach of a civil penalty provision of the AML/CTF Act
- infringement notices requiring the payment of a penalty
- pursuing civil penalty orders through the Federal Court
- removing a person's name and registrable details from the Register
- suspending a person's registration on the Register
- cancelling a person's registration on the Register
- referring criminal matters to the Australian Federal Police or the CDDP.

The appropriate tool may vary depending on the industry sector, the outcomes which can be achieved and the expected impact on the subject reporting entity and the relevant industry sector.

ENFORCEMENT PLAN

The Enforcement team's overall purpose is to take measured enforcement action which contributes to the effectiveness of the AML/CTF regime, encourages heightened industry engagement with all elements of the AML/CTF framework, and demonstrates the effectiveness of the AML/CTF regime.

In 2011–12, AUSTRAC's Enforcement team will achieve this by collaborating with the frontline Supervision teams and partner agencies to identify appropriate candidates for enforcement action across all industry sectors.

As a result, AUSTRAC's enforcement priorities align with the activities and priorities outlined in the *AUSTRAC supervision strategy 2011–12*, and are consistent with the *AUSTRAC intelligence strategy 2010–12*.

Non-compliance with AML/CTF program and 'know your customer' obligations

A particular focus for frontline Supervision in 2011–12 is to assess reporting entities' AML/CTF programs and compliance with 'know your customer' (KYC) obligations.

AUSTRAC's Enforcement team will necessarily focus its activities on reporting entities that are identified during the course of Supervision's activities to be non-compliant with these obligations.

Non-compliance with transaction reporting obligations

In 2011–12, Supervision's activities will also involve assessing the quality of transaction reports for certain industry sectors.

AUSTRAC's Enforcement team will focus its activities on reporting entities that are identified to be deficient in meeting their transaction reporting obligations.

Remittance sector

AUSTRAC and law enforcement agencies have concerns about lower levels of compliance with AML/CTF Act requirements within the remittance sector and the vulnerability of reporting entities within that sector to abuse from money laundering and other criminal conduct. This is a particular concern with smaller entities in this sector.

In order to address these issues, the AUSTRAC CEO made AML/CTF Rules which allow him to remove a person's name and registrable details from the Register if the AUSTRAC CEO is of the opinion that the consequences of keeping a person's name and registrable details on this register constitute an unacceptable ML or TF risk.

AUSTRAC will also address concerns with the remittance sector by implementing recent legislative changes brought about by the *Combating the Financing of People Smuggling and Other Measures Act 2011* which introduces an enhanced registration process for providers of remittance networks. This legislation provides the AUSTRAC CEO with the power to suspend or cancel a person's registration.

In 2011–12, AUSTRAC's Enforcement team will continue to focus on investigating and taking enforcement action against reporting entities in the remittance sector which have a high ML/TF risk exposure. The Enforcement team will work with frontline Supervision and partner agencies to mitigate the ML/TF risks identified within the remittance sector using all the enforcement tools available including removing a person's name and registrable details from the Register or, alternatively, suspending or cancelling a person's registration on the Register.

Injunctions and civil penalty orders

Where appropriate, AUSTRAC will consider applying to the Federal Court for restraining injunctions, performance injunctions or civil penalty orders in response to reporting entities' non-compliance.

In determining whether these enforcement actions are appropriate, AUSTRAC will consider the five factors outlined above under the heading 'How AUSTRAC selects cases for enforcement action'. In particular, consideration will be given to the extent and impact of the reporting entity's breaches and the reporting entity's willingness and effort to remediate its non-compliance.

ATTACHMENT A

Major enforcement outcomes from 2010–2011

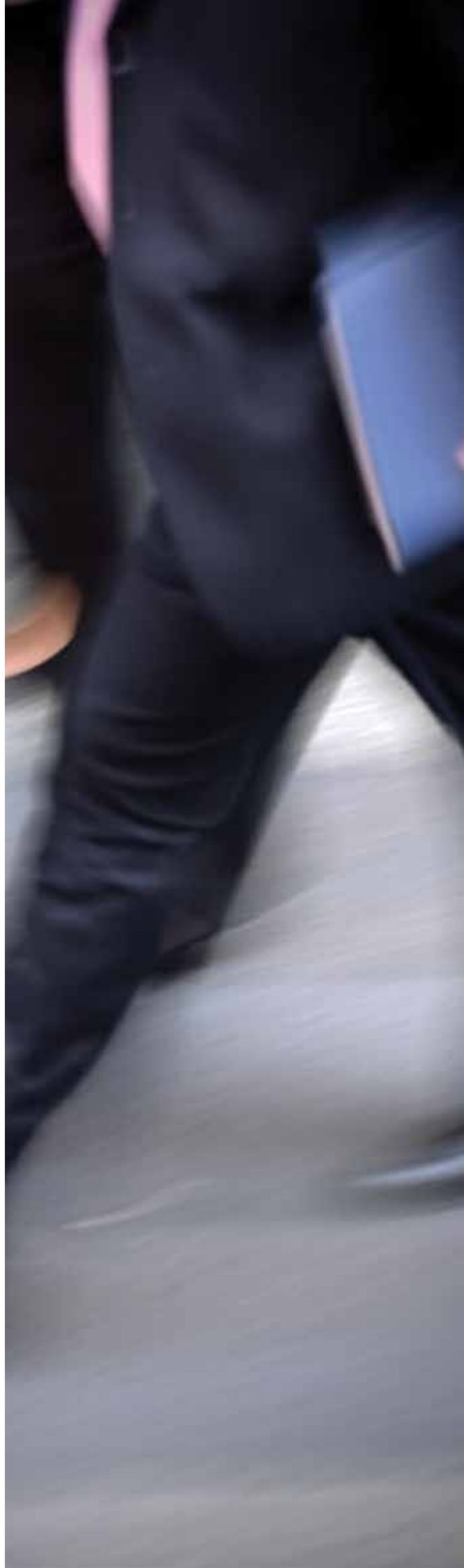
Thi Kim Hong Tran

On 14 October 2010, the AUSTRAC Chief Executive Officer (CEO) removed Thi Kim Hong Tran's name and registrable details from the Providers of Registrable Designated Services Register (the Register).

Pursuant to Chapter 44 of the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules, the AUSTRAC CEO may remove a person's name and registrable details from the Register if he is of the opinion that the consequences of keeping that person's name and registrable details on the Register constitute an unacceptable money laundering or terrorism financing (ML/TF) risk.

The AUSTRAC CEO removed Ms Tran's name and registrable details as he had formed the opinion that the consequences of keeping Ms Tran's name and registrable details on the Register constituted an unacceptable ML/TF risk. The AUSTRAC CEO formed his opinion on the basis that Ms Tran had been convicted and sentenced in respect to money laundering and structuring offences, and that in these circumstances, may use her remittance business for money laundering activities.

Under the AML/CTF Act, it would be an offence for Ms Tran to provide registrable designated remittance services if her name and registrable details are not on the Register.





Thomas Hotels designated business group

In June 2010, AUSTRAC gave the seven reporting entities in the Thomas Hotels designated business group (DBG) written notices pursuant to subsection 162(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), requiring each reporting entity to appoint an external auditor to assess its compliance with the AML/CTF Act and AML/CTF Rules and to provide AUSTRAC with a copy of the external auditor's report setting out its findings.

The external auditor's report identified a number of breaches of the AML/CTF Act and AML/CTF Rules by the reporting entities in the Thomas Hotels DBG.

On 9 December 2010, the AUSTRAC CEO accepted enforceable undertakings from the seven reporting entities in the Thomas Hotels DBG as a means of ensuring that these entities rectified the deficiencies identified in the external auditor's report, in a timely manner.

Within the terms of the enforceable undertakings, the reporting entities in the Thomas Hotels DBG agreed to:

- update its ML/TF risk assessment
- adopt a joint Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) program which includes updated policies and procedures on the following:
 - employee AML/CTF training
 - employee due diligence
 - independent reviews
 - addressing feedback from AUSTRAC
 - collecting and verifying 'know your customer' information
 - enhanced customer due diligence program
 - transaction monitoring program
- appoint an independent reviewer to assess and report on the implementation of the above requirements.

Cyril Ihemeje

On 12 January 2011, the AUSTRAC CEO removed Cyril Ihemeje's name and registrable details from the Register.

The AUSTRAC CEO decided to remove Mr Ihemeje's name and registrable details as he had formed the opinion that the consequences of keeping Mr Ihemeje's name and registrable details on the Register constituted an unacceptable ML/TF risk. The AUSTRAC CEO formed his opinion on the basis that Mr Ihemeje had been convicted and sentenced in the District Court of New South Wales in respect to two offences of money laundering, and that in these circumstances, he may use his remittance business for money laundering activities.

Under the AML/CTF Act, it would be an offence for Mr Ihemeje to provide registrable designated remittance services while his name and registrable details are not on the register.

Allsafe International Pty Ltd

On 9 February 2011, the AUSTRAC CEO gave Allsafe International Pty Ltd (Allsafe) a remedial direction in respect of its failure to adopt and maintain an AML/CTF program and for its failure to report all of its international funds transfer instructions (IFTs) within the prescribed timeframe.

The written direction required Allsafe to:

- appoint an AML/CTF expert/consultant, within 28 days, to assist Allsafe to:
 - develop and implement an AML/CTF program that complies with the AML/CTF Act
 - develop and implement policies and procedures to ensure the organisation complies with its obligation to report IFTIs
- submit to AUSTRAC, within 56 days, the following:
 - Allsafe's AML/CTF program
 - evidence that a compliant AML/CTF program has been adopted and approved by Allsafe's board and senior management
 - Allsafe's policies and procedures for reporting IFTIs.

GLOSSARY

AML/CTF Anti-money laundering and counter-terrorism financing

AML/CTF Act *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

AML/CTF Rules Legislative instruments made under section 229 of the AML/CTF Act

AUSTRAC Australian Transaction Reports and Analysis Centre

CEO AUSTRAC Chief Executive Officer

DBG Designated business group: a designated business group comprises two or more businesses or persons who join together to share certain obligations under the AML/CTF Act

FIU Financial intelligence unit

FTR Act *Financial Transaction Reports Act 1988*

ML/TF Money laundering/terrorism financing

Partner agencies The law enforcement, national security, revenue, regulatory and social justice agencies to which AUSTRAC provides information

Supervision AUSTRAC's Supervision Branches

