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Public Legal Interpretation No. 3 of 2008 – Registration as a provider of registrable designated remittance services

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Currency

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC at 15 May 2009. This version of this Public Legal Interpretation replaces the version published on 23 May 2008. The original published Public Legal Interpretation has been technically amended to reflect the coming into effect of the *Financial Transaction Reports Amendment (Transitional Arrangements) Act 2008* on 25 November 2008.

You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.

Table of contents

Objective	3
Introduction.....	3
Interpretation	4
Related information	17
Legislation attachment	18
Further information	31

Objective

- 1 The purpose of this Public Legal Interpretation is to set out AUSTRAC's views on the provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) as they relate to:
 - who is a provider of a 'registrable designated remittance service'
 - the obligation to register as a provider of 'registrable designated remittance services'.

Introduction

- 2 The AML/CTF Act is designed to combat money laundering and the financing of terrorism. To achieve these objectives, the AML/CTF Act places certain obligations on 'reporting entities' (defined in section 5 of the Act). Reporting entities include providers of 'registrable designated remittance services' (defined in section 5).
- 3 Section 17B of the *Financial Transaction Reports Act 1988* (FTR Act) and section 45 of the AML/CTF Act¹ require that a person who sends or receives an 'international funds transfer instruction' must report certain information about the transaction to AUSTRAC.
- 4 The requirement to register as a provider of registrable designated remittance services came into force on 13 December 2006 (Part 6 of the AML/CTF Act).

Registration of providers of registrable designated remittance services

- 5 Types of registrable designated remittance service providers obliged to register include those commonly known as remittance dealers, money remitters, money transmitters, alternative remitters, providers of money transfers and various services usually provided within community groups and known by names specific to each ethnic culture.²
- 6 When registering, providers of registrable designated remittance services are required to provide to AUSTRAC registrable details in relation to their identity as service providers and must comply with reporting obligations imposed on 'reporting entities' under the AML/CTF Act.
- 7 Registration therefore reduces the identified money laundering and terrorism financing vulnerabilities: all providers of registrable designated remittance services must register. In so doing, previously unseen customers and services are also identified.

Outline of interpretation

- 8 The regulatory obligations of the AML/CTF Act are imposed on providers of 'designated services' as reporting entities and on reporters of international funds transfer instructions.
- 9 This Public Legal Interpretation therefore contains:

Section one:

- the persons who provide the 'designated services' under item 31 and item 32 of table 1 in section 6 of the AML/CTF Act
- the persons who receive or send international funds transfer instructions under section 46, items 3 and 4 of the AML/CTF Act, noting that section 46 does not commence to operate until 12 December 2008
- cash dealers who are alternative remittance providers under the FTR Act and who continue to have reporting obligations with respect to international funds transfer instructions under section 17B of the FTR Act.

¹ Section 45 comes into force on 12 December 2008.

² AUSTRAC guidance note, July 2007, paragraph 3.1, page 3. Further information concerning alternative remittance systems is available on the AUSTRAC website.

Section two:

- persons who are required to register as providers of 'registrable designated remittance services' under Part 6 of the AML/CTF Act.

Section three:

- the powers of the AUSTRAC CEO with respect to the Register of Providers of Designated Remittance Services.

Interpretation

Section one – designated service under designated remittance arrangement (items 31 and 32)

What are the 'designated services' under item 31 and item 32 of table 1 in section 6, in relation to 'designated remittance arrangements'?

Who are the providers of such services?

10 To understand the 'designated services' in items 31 and 32, it is necessary to first understand 'designated remittance arrangements'. The item 31 and item 32 services are defined with reference to 'designated remittance arrangements'.

11 'Designated remittance arrangement' is defined in subsection 10(1) of the AML/CTF Act. A designated remittance arrangement is a remittance arrangement where the person who accepts and makes available the money or property is not one of the listed types of entities. The excluded entities are:

- an ADI (authorised deposit-taking institution)³
- a bank
- a building society
- a credit union
- a person specified in the AML/CTF Rules.

12 Therefore, a designated remittance arrangement includes only those providers who are persons outside the established banking system. That is, both the person who accepts the money or property for transfer (paragraph 10(1)(a)) and the person who makes the money or property available (paragraph 10(1)(b)), must not be one of the entities referred to at paragraph 11.

13 Item 31 and item 32 describe providers of designated remittance services as:

- a person who 'accepts money or property to be transferred under a designated remittance arrangement' (item 31)
- a person who makes available money or property 'as a result of a transfer under a designated remittance arrangement' (item 32).

14 'Money' is defined in section 5 of the AML/CTF Act as including:

- (a) physical currency; and
- (b) money held in an account, whether denominated in Australian currency or any other currency; and

³ ADI (authorised deposit-taking institution) is defined in section 5 of the AML/CTF Act to mean:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

- (c) money held on deposit, whether denominated in Australian currency or any other currency; and
 - (d) e-currency, however amounts of the e-currency are expressed.
- 15 'Property' is defined as meaning 'any legal or equitable estate or interest in real or personal property, including a contingent or prospective one, but does not include money' (section 5 of the AML/CTF Act).
- 16 Registration requirements fall on providers of 'registrable designated remittance services' (see section two of this PLI). Section 5 of the AML/CTF Act defines 'registrable designated remittance service'. It is a 'designated service' that is covered by item 31 or item 32 of table 1 in section 6, is provided at or through a permanent establishment of the person in Australia and is not of a kind specified in the AML/CTF Rules.

Geographical link

- 17 'Designated services' provided under the items in section 6 of the AML/CTF Act must have the relevant 'geographical link' to Australia specified in subsection 6(6).
- 18 An item in a table in section 6 does not apply unless the service is provided:
- at or through a permanent establishment of the provider in Australia; or
 - the service is provided through a permanent establishment of the person in a foreign country; and
 - the person is a resident of Australia; or
 - the service is provided through a permanent establishment of the person in a foreign country; and
 - the person is a subsidiary of a company that is a resident of Australia.

International funds transfer instruction under the AML/CTF Act

- 19 Section 46 of the AML/CTF Act defines 'international funds transfer instruction' (IFTI) relevantly under items 3 and 4, with respect to transfer of money or property under a designated remittance arrangement. Section 46 does not commence operation until 12 December 2008.

Item 3 of section 46

- 20 Item 3 of section 46 denotes an 'international funds transfer instruction' that is accepted within Australia (item 3(a)), for sending outside Australia (item 3(b)).
- 21 Item 3 of section 46 is therefore in relation to 'sending' an instruction within the meaning of subparagraph 45(1)(a)(i).
- 22 Further, item 3 of section 46 corresponds to the 'designated service' provided under item 31 of table 1 in section 6, in that it is an 'instruction given by a transferor entity for the transfer of money or property under a designated remittance arrangement'.
- 23 The transferor entity, who gives the instruction, is the same as the item 31 customer.
- 24 The sender of the instruction out of Australia must accept the instruction at or through a permanent establishment of the person in Australia and accepts it on the basis that the money or property 'is to be, or is, made available to the ultimate transferee entity at or through a permanent establishment of a person in a foreign country'.

Item 4 of section 46

- 25 Item 4 of section 46 denotes an 'international funds transfer instruction' that is accepted outside Australia (item 4(a)), for making available money or property within Australia (item 4(b)).

- 26 Item 4 of section 46 is therefore in relation to receiving an instruction as 'recipient' within the meaning of subparagraph 45(1)(a)(ii).
- 27 Further, item 4 of section 46 corresponds to the 'designated service' provided under item 32 of table 1 in section 6, in that it is an instruction given by a transferor entity outside Australia, for the transfer of money or property under a designated remittance arrangement, within Australia.
- 28 The recipient of the instruction within Australia receives it on the basis that the money or property is to be, or is, made available to the ultimate transferee 'at or through a permanent establishment of a person in Australia'.
- 29 The ultimate transferee entity referred to is the same as the item 32 customer.
- 30 The AML/CTF Act distinguishes between IFTIs which are electronic funds transfer instructions (EFTIs) and IFTIs provided under designated remittance arrangements. EFTIs which are also international funds transfer instructions are set out in items 1 and 2 of section 46.
- 31 The IFTIs provided under items 3 and 4 of section 46, are those provided under designated remittance arrangements. This means that only persons who receive or send instructions and who are not institutions described in subsection 10(1), are therefore caught by section 46 (items 3 and 4).
- 32 Draft AML/CTF Rules in relation to reporting requirements relevant to designated remittance arrangements have been circulated for public comment. It is intended that the draft AML/CTF Rules will address the unintended application of Part 6 within the domestic sphere. The draft AML/CTF Rules will exclude persons who provide services under items 31 and 32, where the persons provide the services in the course of carrying on a law practice or an accounting practice.
- 33 Draft AML/CTF Rules are proposed to be made under sections 8 and 9 of the AML/CTF Act to require that reporting entities must provide details of the transferor entity and ultimate transferee entity with respect to services provided under items 31 and 32 of table 1 in section 6.
- 34 AUSTRAC has made AML/CTF Rules that commence on 12 December 2008 which set out reportable details with respect to IFTIs under items 3 and 4 of section 46. These are the AML/CTF Rules at Chapter 17 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)*.
- 35 The combined intended effect of all the draft AML/CTF Rules and Chapter 17 is that reporting obligations with respect to services provided under items 31 and 32 will only apply to international transactions (or to domestic transactions that are done as part of a transaction that is international in its final effect). That is, where money or property is made available within one country, having been accepted within another country and where one of the countries is Australia.

FTR Act reporting obligations on 'cash dealers'

- 36 The FTR Act imposes reporting obligations on 'cash dealers'. Cash dealer is defined in section 3 of the FTR Act to include remittance providers:
- (k) a person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business of:
 - ...
 - (ib) remitting or transferring currency or prescribed commercial instruments, or making electronic funds transfers, into or out of Australia on behalf of other persons or arranging for such remittance or transfer;
 - ...
 - (l) a person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business in Australia of:

- (i) on behalf of other persons, arranging for funds to be made available outside Australia to those persons or others; or
- (ii) on behalf of persons outside Australia, making funds available, or arranging for funds to be made available, in Australia to those persons or others;

....

- 37 Providers of registrable designated remittance services who are 'cash dealers' under subparagraph (k)(ib) or paragraph (l) of the cash dealer definition in the FTR Act, are required to register under the AML/CTF Act before providing the service(s).
- 38 Such cash dealers currently have reporting obligations under the FTR Act, including the obligation to report IFTIs. An IFTI is defined in section 3 of the FTR Act to be an instruction for a transfer of funds that is transmitted into or out of Australia electronically (including via the internet) or by telegraph.
- 39 Section 17B of the FTR Act requires a cash dealer 'in Australia' to provide AUSTRAC with an IFTI report if it is the:
- sender of an IFTI transmitted out of Australia; or
 - recipient of an IFTI transmitted into Australia
- in circumstances **where the cash dealer is acting on behalf of, or at the request of, another person who is not an ADI or the cash dealer is not an ADI (subsection 17B(1)).**
- 40 This means that an IFTI report under the FTR Act can be required:
- (a) where a cash dealer, which is an ADI, is acting on behalf of a non-ADI; or
 - (b) the cash dealer is not an ADI.
- 41 This may be contrasted with section 10 of the AML/CTF Act which specifies that persons who provide the 'designated services' described in items 31 and 32 of table 1 in section 6, must not be:
- an ADI; or
 - a bank; or
 - a building society; or
 - a credit union; or
 - a person specified in the AML/CTF Rules.
- 42 In circumstances where an ADI, or one of the other entities referred to at paragraph 41, makes available money or property to an ultimate transferee entity then this falls outside the definition of designated remittance arrangement.
- 43 If an ADI or one of the other entities at paragraph 41 accepts money or property from a transferor entity then this is outside the definition of designated remittance arrangement.
- 44 The FTR Act remains in force and will not be fully repealed at this stage in relation to cash dealers. However, the reporting obligations under the FTR Act will cease to apply to cash dealers that are reporting entities under the AML/CTF Act, when the reporting requirements commence under the AML/CTF Act on 12 March 2010.
- 45 Regulation 11AA of the *Financial Transaction Reports Regulations 1990* provides the required reportable details of IFTI reports under the FTR Act. The AML/CTF Rules, at Chapter 17, provide Rules in relation to 'Reportable details for international funds transfer instructions (items 3 and 4 in section 46)'. Those Rules come into force on 12 December 2008.

Who are the providers of ‘designated services’ under item 31 and item 32 of table 1 in section 6 of the AML/CTF Act?

46 In order to determine who are the providers of ‘designated services’ under item 31 and item 32 of table 1 in section 6, the following questions must be asked:

- Who is the service provider?
- What is a ‘designated service’ provided under a designated remittance arrangement?

47 These issues will now be considered in turn.

Item 31 provider – ‘accepts’ money or property

48 The item 31 provider ‘accepts money or property’, on the basis that it is ‘to be transferred’. From the above analysis of international funds transfer instructions as regulated in section 45 and section 46 of the AML/CTF Act, it is apparent that an item 31 provider who ‘accepts’ money or property within Australia, will ‘send’ an international funds transfer instruction to make the ‘money or property’ available outside Australia.

49 It is necessary to understand what is meant by ‘accept’. This term is not defined in the AML/CTF Act. The ordinary English meaning can be ascertained from a dictionary such as the *Macquarie Dictionary Online 2008* (Macquarie Dictionary Publishers Pty Limited 2008) which relevantly provides:

accept

verb (t) 1. to take or receive (something offered); receive with approval or favour: *her proposal was accepted.*

2. to admit and agree to; accede or assent to: *to accept a treaty; to accept an excuse.*

3. to take with formal acknowledgement of responsibility or consequences: *to accept office.*

50 AUSTRAC is of the opinion that ‘accepting money or property’ covers the following scenarios. These scenarios are provided as examples only and are not intended to exhaustively describe accepting money or property for transfer under designated remittance arrangements:

- **Bilateral transfer arrangements.** This includes certain remitter systems under which the transferor (in other words the item 31 customer) deposits the amount of money to be transferred into an account of a third party, as directed by the provider. The third party account holder who receives the deposit, is not part of the item 31 service.

The item 31 customer makes the deposit, as directed by the provider, to a third party account holder at an institution within Australia. The item 31 customer instructs the item 31 provider to transfer funds to an ultimate recipient overseas. To effect the transfer of the relevant sum, the item 31 provider then sends an instruction overseas (item 3(a), section 46) to transfer an equivalent amount of money to the ultimate transferee of the money or property in a foreign country.

The party to whom the instruction is sent, based in the foreign country, (item 3(b), section 46) then makes the money available to the ultimate transferee entity.

In this scenario, the item 31 provider ‘accepts’ an equitable estate or interest in the money provided by the transferor. Thus, the item 31 provider ‘accepts’ the ‘property’, being an equitable estate in the ‘money’. When the item 31 customer pays the money as directed to the third party recipient, the item 31 provider gains an equitable estate in the money for transfer purposes. The item 31 provider also accepts instructions from the customer concerning transfer of the sum under remittance arrangements. The equitable estate consists of an obligation to ensure that an equivalent amount is transferred to the ultimate transferee in a foreign country. Therefore the item 31 service provider ‘accepts’ the ‘property’, to be transferred. Figure 1 provides an illustration of bilateral transfer arrangements:

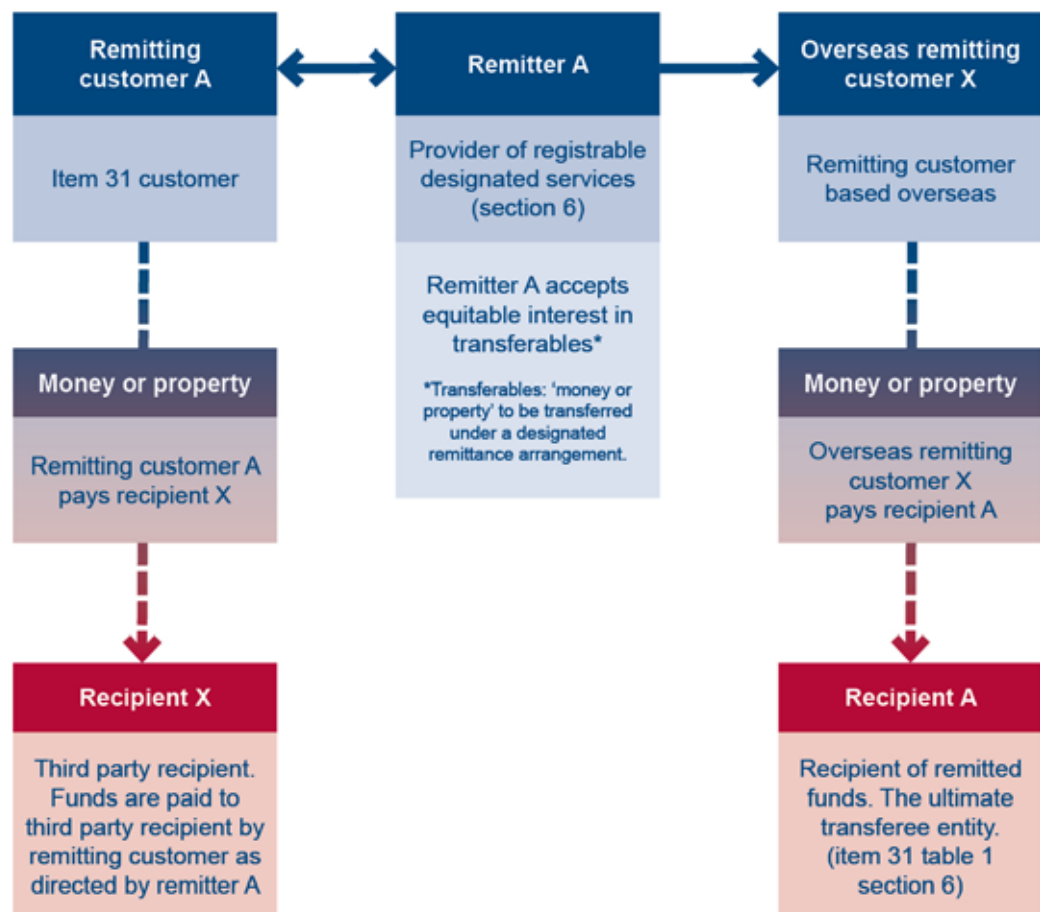


Figure 1: Bilateral transfer arrangements

- **Offsetting a debt.** In this circumstance, a similar ‘acceptance’ of an equitable estate in the money (thus ‘acceptance’ of ‘property’) occurs. The item 31 customer instructs the item 31 service provider to remit a sum of money. Similarly to the example above, the item 31 provider directs the item 31 customer to pay the money to a third party; a creditor of the provider. Similarly to the above example, in accepting the instructions to remit, the provider also accepts an obligation to ensure that an equivalent sum is transferred to the ultimate transferee in a foreign country. Therefore the item 31 provider ‘accepts’ the ‘property’ (being an equitable estate in the money) to be transferred.

Figure 2 provides an illustration of offset debt arrangements.

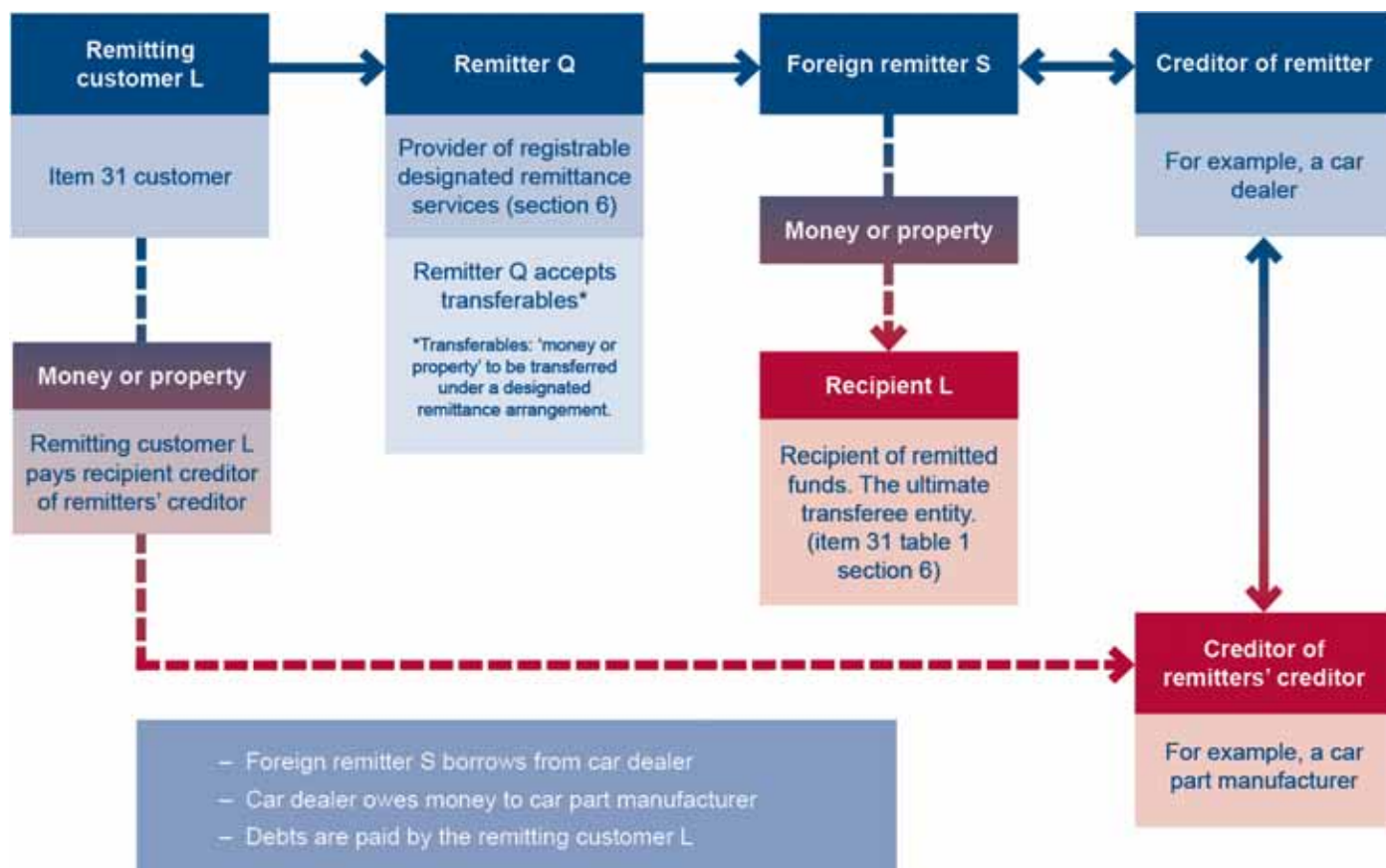


Figure 2: Offset debt arrangements

- **An agent ‘accepting’ money or property** on behalf of a principal who provides the service. An agent may ‘accept’ money or property to be transferred, from an item 31 customer.

The principal may be the entity that accepts the customer’s instruction (conveyed through the agent) to send money to an ultimate transferee entity in a foreign country. Thus the principal ‘sends’ the instruction to transfer funds internationally, within the meaning of item 3(a), section 46 and subparagraph 45(1)(a)(i) of the AML/CTF Act.

The agent may therefore be a provider of a service under item 31 of table 1 in section 6, in that the agent is the person who ‘accepts’ from the customer money or property to be transferred.

The principal may be the provider of the service under item 32 of table 1 in section 6, in that the principal is the person who ‘makes available’ the money or property to the ultimate transferee entity.

51 The item 31 provider accepts ‘money or property’ on the basis that it is to be transferred.

- 52 In the scenarios outlined, AUSTRAC considers that 'property' can refer to an equitable estate or interest in money. AUSTRAC bases this view on statutory construction principles, that when construing a word in a statute, use of a different word is intended to convey a different meaning. This principle of statutory interpretation has been succinctly stated by Pearce and Geddes (eds), *Statutory Interpretation in Australia*, Sixth Edition, LexisNexis Australia 2006, at paragraph [4.6]:

... it is held that where a legislature could have used the same word but chose to use a different word, the intention was to change the meaning.... in *Scott v Commercial Hotel Merbein Pty Ltd* [1930] VLR 75... Irvine CJ succinctly summarised the courts' approach (at 30): 'though it is not to be conclusive, the employment of different language in the same Act may show that the Legislature had in view different objects'.... An example of the operation of the approach is provided by *Bell v Day* (1986) 2 QLJ 180. The court there held that the use of the expression to 'license' an activity in certain by-law making powers indicated that other powers to 'regulate' activities must be taken not to enable the establishment of licensing schemes. The change in terminology would otherwise be meaningless.

- 53 AUSTRAC's view is that merely by 'accepting the money ... to be transferred' the item 31 provider may not obtain ownership of the money or property. The money or property is accepted, 'to be transferred', to a person outside Australia.
- 54 The meaning of 'transfer under a designated remittance arrangement' is discussed under 'Designated services provided under designated remittance arrangements' from paragraph 59.

Item 32 provider – 'makes available' money or property

- 55 The item 32 provider 'makes available money or property' to the item 32 customer. From the above analysis of the international funds transfer instructions as set down in section 45 and section 46, it is apparent that an item 32 provider who 'makes available' money or property within Australia, will 'receive' an international funds transfer instruction from a provider outside Australia.
- 56 'Make available' is defined in section 5 to mean 'when used in relation to money, includes reducing the balance of a loan account'.
- 57 AUSTRAC is of the view that a remittance arrangement applies to 'property' consisting of an equitable estate or interest in money or property, to be transferred.
- 58 The item 32 provider may not directly transfer the money or property. The item 32 provider 'makes available' the money or property, under a designated remittance arrangement, to a person.

Designated services provided under designated remittance arrangements

- 59 It is necessary to analyse what is meant by 'transfer' of 'money or property' under a 'designated remittance arrangement'.
- 60 'Money or property' may be money as defined, or property consisting of an equitable interest in money.
- 61 'Designated remittance arrangement' refers to transfer arrangements which are made outside the established banking system.
- 62 'Transfer', includes 'any act or thing ... that may reasonably be regarded as the economic equivalent of a transfer' (section 5, AML/CTF Act).
- 63 To amplify this definition, the *Macquarie Dictionary Online 2008* (Macquarie Dictionary Publishers Pty Ltd 2008) provides the following definition of 'transfer':

transfer

- verb* (t) 1. to convey or remove from one place, person, etc., to another.
2. Law to make over or convey: *to transfer a title to land*

15. Law

- a. the making over of a right in property to another.
- b. the document effecting such a transaction..

64 The *Encyclopaedic Australian Legal Dictionary* (LexisNexis 2008) further relevantly defines 'transfer' as:

Transfer

1. *The passing of a person or thing from one place to another.*

2. *The passing of a legal right from one person to another so as to vest that right in the other. Such a **transfer** may require the existence of a legal document of **transfer**, identifying the transferor, the transferee, the subject matter to be transferred, any interests in the subject matter held by third parties, and the consideration for the **transfer**. Sometimes to be valid, a **transfer** must be registered as required by statute.*

65 Subsection 10(3) of the AML/CTF Act defines 'transferor entity' (the item 31 customer) and 'ultimate transferee entity' (the item 32 customer) in relation to remittance arrangements. The 'transferor entity' is 'the person from whom money or property is accepted so as to enable its transfer under the arrangement'. The 'ultimate transferee entity' is 'the person to whom money or property is ultimately transferred under the arrangement'.

66 AUSTRAC concludes that a 'transfer' under a designated remittance arrangement, within the meaning of item 31 and item 32, therefore refers to passing of full legal and equitable estates and interests in money or property, from the item 31 customer (transferor entity) to the item 32 customer (ultimate transferee entity).

67 In the remittance arrangement of effecting full transfer, providers may not obtain full legal and equitable estate in the money or property, but only such rights as are required for transfer purposes. Thus, the item 31 provider may obtain transfer rights only, with respect to the money or property. The transfer rights thus obtained, amount to 'property', being an equitable interest or estate, in the money to be transferred.

68 AUSTRAC therefore concludes:

- Transfer rights are or may be created in effecting the transfer of full legal and equitable estate under the designated remittance arrangements.
- Transfer rights may consist of an equitable interest or estate in personal property; that is, an interest or rights over money.
- Service providers obtain the equitable estate, thus service providers 'accept' 'property' to be transferred.
- The concept of 'to be transferred' denotes that the entire remittance arrangement is to transfer full legal and equitable ownership of the relevant money or property, to the ultimate transferee entity.

69 AUSTRAC concludes that item 31 and item 32 'designated services' may apply to a range of relationship arrangements between provider and customer. This Public Legal Interpretation is not exhaustive with respect to arrangements between provider and customer. In general terms, arrangements between provider and customer may include:

- provider acts as agent/in the name of the customer; and
- provider holds money or property in trust for the customer.

70 Similarly item 31 and item 32 cover a range of arrangements between providers of the services. Formal and informal arrangements exist at provider level. These include:

- franchisee/licensee arrangements
- informal arrangements based on traditional remittance systems.

- 71 With respect to agency relationships between providers, AUSTRAC holds the view that the 'designated services' defined in item 31 and item 32 are intended to capture situations in which an agent and a principal each provide a 'designated service' to a customer.
- 72 For example, an agent who accepts money from a customer (thus acting as item 31 provider) may transfer the money or property to the agent's principal. The principal may then make the money available, in that the principal sends the instruction so that the money or property is transferred to the ultimate transferee, outside Australia (section 46, item 3). In this scenario, the principal who receives the money or property from the agent (the item 31 provider), acts as the item 32 provider by sending the relevant instruction.
- 73 Further in this scenario, both agent and principal fall outside the ambit of the institutions referred to in subsection 10(1). Therefore, the arrangements made to effect the transfer of the money or property, are arrangements made 'under a designated remittance arrangement'.
- 74 AUSTRAC is aware of other agency relationships between providers, which would not give rise to 'designated services' under item 31 or item 32. For example, a remittance provider who accepts money or property may act as an agent for the acceptance of a deposit to an account offered by a financial institution. The remittance provider is therefore not caught under item 31, as 'designated remittance arrangements' are only those where providers of the remittance arrangement are outside the financial institutions referred to in subsection 10(1).
- 75 AUSTRAC's view is therefore that where the agent and principal both act as provider of 'designated services' defined in either item 31 or item 32, with respect to a particular transfer, both are service providers under those items. This may occur as in the example given above, where the agent acts as item 31 provider in 'accepting' the money or property, and the principal acts as item 32 provider in 'making available' the money or property.
- 76 Where agent and principal directly provide the item 31 or item 32 services, it follows that obligations of reporting entities, and obligations to register, (see section two of this PLI), fall on both agent and principal.
- 77 The relevant issues at all times are:
- what is the 'designated service' being provided?
 - is more than one service involved in effecting a transfer?
 - what are the relationships, if any, between separate providers?
 - what providers provide services under item 31 or item 32 to effect the transfer?
- 78 The application of item 31 or item 32 to given fact situations will therefore be determined on the facts and circumstances of each case.
- 79 Relevant considerations will include:
- analysis of the role of each provider
 - who is 'accepting' money or property
 - who is 'making available' money or property
 - who sends or receives the relevant instruction under section 46 (items 3 and 4)
 - are the providers excluded from designated remittance arrangements (subsection 10(1) and subsection 10(2))?
 - who 'transfers' the money or property
 - at what point is money or property 'made available' as a result of a transfer?
- 80 Analysis of these factors and careful attention to the words of item 31 and item 32, will be involved in identifying service providers involved in designated remittance arrangements.

- 81 AUSTRAC's view is that the AML/CTF Act at item 31 and item 32 of table 1 in section 6, refers to any 'arrangement', whether between agent or principal or otherwise, under which it is intended to effect transfer of the money or property:
- 'whether unilateral or otherwise'
 - 'whether or not enforceable'
 - any agreement, understanding, promise, or undertaking, whether express or implied
 - any scheme, plan, proposal, action or course of action or conduct.⁴
- 82 Such 'arrangements' include those between providers of designated remittance services and those between customer and provider of the services. Arrangements may be expressed as legally binding formal agreements. At the other extreme, the AML/CTF Act also captures arrangements which are not expressed or formalised and which rely largely on trust between customers and between providers.
- 83 AUSTRAC's view is that the AML/CTF Act conceives the item 31 and item 32 services as a single chain. That is, an item 31 service will conclude with an international funds transfer instruction consistently with section 46, item 3.
- 84 The item 31 service can be performed, without any corresponding receipt of money or property in a foreign jurisdiction. However, it is contemplated that a corresponding service similar to that described in item 32, will occur in a foreign jurisdiction, with respect to the money or property 'accepted' under item 31.
- 85 Similarly, an item 32 service is preceded by, or completed simultaneously with, a corresponding 'acceptance' of the money or property in a foreign jurisdiction. Thus a similar service to that described in item 31, takes place in the foreign jurisdiction. The item 32 service in Australia will commence on receipt of an international funds transfer instruction (section 46, item 4).

Who are reporting entities under designated remittance arrangements?

- 86 A person who provides item 31 or item 32 services as outlined above, is a provider of a 'designated service'⁵. A person who provides a 'designated service' is a 'reporting entity' within the meaning of section 5 of the AML/CTF Act.
- 87 AML/CTF Act obligations on reporting entities include:
- customer identification requirements (Part 2 of the AML/CTF Act)
 - adoption and maintenance of an anti-money laundering and counter-terrorism financing program (Part 7 of the AML/CTF Act)
 - lodgement of AML/CTF compliance reports with respect to reporting periods (Part 3 of the AML/CTF Act)
 - additional reporting obligations with respect to suspicious matters, threshold transactions, international funds transfer instructions and electronic funds transfer instructions (Part 3 of the AML/CTF Act)
 - the ongoing 'customer due diligence' obligations (and related compliance reporting obligations) outlined in Part 2, Division 6 of the AML/CTF Act which will come into force on 12 December 2008 (section 2 of the AML/CTF Act).

⁴ Definition of 'arrangement', section 5, AML/CTF Act

⁵ Section 5 definition of 'designated service' and section 6, 'designated service'.

Section two – registration of item 31 and item 32 providers as ‘providers of registrable designated remittance services’

Who must register?

- 88 Part 6 of the AML/CTF Act imposes additional obligations on certain providers of ‘designated services’ under item 31 and item 32. The providers of ‘registrable designated remittance services’⁶:
- provide ‘designated services’ under designated remittance arrangements within the meaning of item 31 or item 32
 - *also* provide the service at or through a permanent establishment in Australia.
- 89 An entity who provides a ‘designated service’ under item 31 or item 32 under a ‘designated remittance arrangement’ (therefore excluding the entities referred to in paragraphs 10(1)(a) and (1)(b)) at or through a permanent establishment in Australia, is providing a ‘registrable designated remittance service’.
- 90 ‘Permanent establishment’ is defined in section 21 of the AML/CTF Act. A permanent establishment is a place where any activities or business, including those of the person carried on through an agent, are carried on by the person.

Registration

- 91 An entity who provides a registrable designated remittance service must register its details with AUSTRAC. Section 74 of the AML/CTF Act states that a person must not provide a ‘registrable designated remittance service’, unless the person’s name and registrable details, have been placed on the Register of Providers of Designated Remittance Services (Register).
- 92 AUSTRAC accepts that the application of Part 6 may have unintended application within the domestic provider sphere. It is intended that AML/CTF Rules will address this situation.
- 93 Section 5 of the AML/CTF Act provides that the ‘registrable details’ are to be specified in AML/CTF Rules. The *Anti-Money Laundering and Counter-Terrorism Financing Rules* made on 13 December 2006⁷ at Schedule 4, prescribe the registrable details.

⁶ Definition of ‘registrable designated remittance service’, section 5 of the AML/CTF Act.

⁷ Federal Register of Legislative Instruments F2006L04232

Section three – powers of the AUSTRAC CEO with respect to the Register

- 94 Part 6 of the AML/CTF Act outlines the powers of the AUSTRAC Chief Executive Officer (AUSTRAC CEO) with respect to the Register. Powers of the AUSTRAC CEO include:
- maintenance of the Register (section 75)
 - registration of a person who makes an application in writing (section 76)
 - updating of a person's name entered on the Register, on written application of the person (section 77)
 - removal of a person's name and registrable details, on written application by the person (section 78)
 - providing information to a reporting entity regarding whether the name of a specified person is entered on the Register (section 79)
 - providing signed evidentiary certificates that a defendant's name and/or registrable details were not entered on the Register (section 79A).
- 95 Section 75 provides that the Register may be maintained by electronic means. The Register is not a legislative instrument under the *Legislative Instruments Act 2003*.
- 96 Section 79 provides reporting entities with certain access rights to the Register. The AUSTRAC CEO must comply with a reporting entity's written request to tell the reporting entity whether the name of a specified person is on the Register, as soon as practicable after the request is made.
- 97 Sections 76 to 79 are phrased in terms of the duty of the AUSTRAC CEO to maintain the Register by registering, updating and removing entries on the Register after written application by a person. Each of the provisions is triggered by a written application from a person in relation to the relevant entry on the Register.
- 98 However, the AUSTRAC CEO may make AML/CTF Rules in respect to the correction of entries and other general matters regarding the administration or operation of the Register, in order to maintain the currency of the Register.

Related information

Legislative instruments

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides at section 5 that the 'registrable details' are to be specified in the AML/CTF Rules. *Anti-Money Laundering and Counter-Terrorism Financing Rules* made on 13 December 2006⁸ (AML/CTF Rules 2006), at Schedule 4, provide for registrable details to be included on the Register of Providers of Designated Remittance Services. The AML/CTF Rules 2006 are found at:

www.frli.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/FAFB001EFFC88CAFCA2572490025BDA9?OpenDocument

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules), at Chapter 17, provide Rules in relation to 'Reportable details for international funds transfer instructions (items 3 and 4 in section 46)'. Those Rules come into force on 12 December 2008. The AML/CTF Rules are available at:

<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200730563?OpenDocument>

AUSTRAC has proposed draft Anti-Money Laundering and Counter-Terrorism Financing Rules for designated remittance arrangements in relation to paragraph 10(1)(c) of the AML/CTF Act. These draft AML/CTF Rules have been circulated for public consultation and are available on the AUSTRAC website at: http://www.austrac.gov.au/aml_ctf_rules.html

AUSTRAC publications

The AUSTRAC guidance note *Register of Providers of Designated Remittance Services*⁹ provides information and assistance to those reporting entities required to register with AUSTRAC as providers of registrable designated remittance services. This guidance note can be accessed via AUSTRAC's website at www.austrac.gov.au/guidance_notes.html

The *AUSTRAC Regulatory Guide* contains guidance on obligations under the AML/CTF Act and the FTR Act and is available on the AUSTRAC website at:

http://www.austrac.gov.au/regulatory_guide.html

AUSTRAC Information Circular No.2 – International Funds Transfer Instructions provides details on IFTI reporting requirements under the FTR Act. It is available at:

http://www.austrac.gov.au/information_circular.html

⁸ Federal Register of Legislative Instruments F2006L04232

⁹ July 2007, original issue (v1)

Legislation attachment

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Relevant provisions of the AML/CTF Act include those here extracted.

3 Objects

5 Definitions

6 Designated services

10 Designated remittance arrangements etc.

21 Permanent establishment

45 Reports of international funds transfer instructions

46 International funds transfer instruction

Part 6 – Register of Providers of Designated Remittance Services

Section 3 of the AML/CTF Act provides:

3 Objects

(1) The objects of this Act include:

(a) to fulfil Australia's international obligations, including:

- (i) Australia's international obligations to combat money laundering; and
- (ii) Australia's international obligations to combat financing of terrorism; and

(b) to address matters of international concern, including:

- (i) the need to combat money laundering; and
- (ii) the need to combat financing of terrorism; and

(c) by addressing those matters of international concern, to affect beneficially Australia's relations with:

- (i) foreign countries; and
- (ii) international organisations.

Note 1: The objects of this Act are achieved by (among other things) requiring information to be given to the AUSTRAC CEO and by allowing certain other agencies to access information collected by the AUSTRAC CEO.

Note 2: The objects mentioned in paragraphs (1)(a),(b) and (c) relate to the external affairs power. Schedule 1 (alternative constitutional basis) contains provisions designed to attract other legislative powers (including the taxation power).

(2) Relevant international obligations include obligations under the following:

- (a) the United Nations Convention Against Corruption, done at New York on 31 October 2003 [2006] ATS 2;

- (b) the United Nations Convention Against Transnational Organized Crime, done at New York on 15 November 2000 [2004] ATS 12;
 - (c) the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, done at Strasbourg on 8 November 1990 [1997] ATS 21;
 - (d) United Nations Security Council Resolution 1267 S/RES/1267 (1999);
 - (e) United Nations Security Council Resolution 1373 S/RES/1373 (2001);
 - (f) United Nations Security Council Resolution 1617 S/RES/1617 (2005).
- (3) The following reflect international concern:
- (a) the FATF Recommendations;
 - (b) the United Nations Convention Against Corruption, done at New York on 31 October 2003 [2006] ATS 2;
 - (c) the United Nations Convention Against Transnational Organized Crime, done at New York on 15 November 2000 [2004] ATS 12;
 - (d) the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, done at Strasbourg on 8 November 1990 [1997] ATS 21;
 - (e) the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999 [2002] ATS 23;
 - (f) United Nations General Assembly Resolution 51/210 A/RES/51/210 (1996);
 - (g) United Nations Security Council Resolution 1267 S/RES/1267 (1999);
 - (h) United Nations Security Council Resolution 1269 S/RES/1269 (1999);
 - (i) United Nations Security Council Resolution 1373 S/RES/1373 (2001);
 - (j) United Nations Security Council Resolution 1456 S/RES/1456 (2003);
 - (k) United Nations Security Council Resolution 1617 S/RES/1617 (2005).

Note 1: **FATF Recommendations** is defined in section 5.

Note 2: In 2006, the text of international agreements in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

Note 3: In 2006, the text of United Nations Security Council resolutions and United Nations General Assembly resolutions was accessible through the United Nations Internet site (www.un.org).

Section 5 of the AML/CTF Act relevantly provides:

5 Definitions

arrangement includes:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

designated remittance arrangement has the meaning given by section 10.

designated service has the meaning given by section 6.

international funds transfer instruction has the meaning given by section 46.

make available, when used in relation to money, includes reducing the balance of a loan account.

money includes:

- (a) physical currency; and
- (b) money held in an account, whether denominated in Australian currency or any other currency; and
- (c) money held on deposit, whether denominated in Australian or any other currency; and
- (d) e-currency, however amounts of the e-currency are expressed.

permanent establishment has the meaning given by section 21.

property means any legal or equitable estate or interest in real or personal property, including a contingent or prospective one, but does not include money.

Register of Providers of Designated Remittance Services means the register maintained under subsection 75(1).

registrable designated remittance service means a designated service that:

- (a) is covered by item 31 or 32 of table 1 in section 6; and
- (b) is provided by a person at or through a permanent establishment of the person in Australia; and
- (c) is not of a kind specified in the AML/CTF Rules.

registrable details, in relation to a person, means such information relating to the person as is specified in the AML/CTF Rules.

Note: A person's business name and business address are examples of information that could be specified in the AML/CTF Rules.

remittance arrangement has the meaning given by section 10.

reporting entity means a person who provides a designated service.

transfer includes any act or thing, or any series or combination of acts or things, that may reasonably be regarded as the economic equivalent of a transfer (for example, debiting an amount from a person's account and crediting an equivalent amount to another person's account).

transferor entity, in relation to a remittance arrangement, has the meaning given by paragraph 10(3)(a).

ultimate transferee entity, in relation to a remittance arrangement, has the meaning given by paragraph 10(3)(b).

Section 6 defines 'designated services' in tables 1 – 4. Table 1 denotes financial services and relevantly provides at item 31 and item 32:

6 Designated services

Item	Provision of a designated service	Customer of the designated service
31	accepting money or property from a transferor entity to be transferred under a designated remittance arrangement	the transferor entity
32	making money or property available to an ultimate transferee entity as a result of a transfer under a designated remittance arrangement	the ultimate transferee entity

Section 10 provides:

10 Designated remittance arrangements etc.

(1) A reference in this Act to a **designated remittance arrangement** is a reference to a remittance arrangement, where:

(a) the person who accepts money or property from a transferor entity to be transferred under the remittance arrangement is not:

- (i) an ADI; or
- (ii) a bank; or
- (iii) a building society; or
- (iv) a credit union; or
- (v) a person specified in the AML/CTF Rules; and

(b) the person who makes money or property available to an ultimate transferee entity as a result of a transfer under the remittance arrangement is not:

- (i) an ADI; or
- (ii) a bank; or
- (iii) a building society; or
- (iv) a credit union; or
- (v) a person specified in the AML/CTF Rules; and

(c) the remittance arrangement satisfies such other conditions (if any) as are specified in the AML/CTF Rules.

Remittance arrangement

(2) A reference in this Act to a **remittance arrangement** is a reference to an arrangement that is for the transfer of money or property, and includes a reference to an arrangement that, under the regulations, is taken to be a remittance arrangement for the purposes of this Act.

Note: **Transfer** has an extended meaning—see section 5.

Transferor entity and ultimate transferee entity

- (3) For the purposes of the application of this Act to a remittance arrangement:
- (a) the **transferor entity** is the person from whom money or property is accepted so as to enable its transfer under the arrangement; and
 - (b) the **ultimate transferee entity** is the person to whom money or property is ultimately transferred under the arrangement.

Note: **Transfer** has an extended meaning—see section 5.

Section 21 provides:

21 Permanent establishment

- (1) For the purposes of this Act, a **permanent establishment** of a person is a place at or through which the person carries on any activities or business, and includes a place where the person is carrying on activities or business through an agent.

Mobile services etc.

- (2) For the purposes of this Act, if:
- (a) a person; or
 - (b) an agent of a person acting on behalf of the person;

provides a service while:

- (c) operating on a mobile basis; or
- (d) travelling;

in a particular country, the person is taken to provide the service at or through a **permanent establishment** of the person in that country.

Electronic communications

- (3) The regulations may provide that, if:
- (a) a person provides a specified service wholly or partly by means of one or more electronic communications; and
 - (b) the conditions set out in the regulations are taken to be satisfied in relation to a particular country;
- then:
- (c) the service is taken, for the purposes of this Act, to be provided at or through a permanent establishment of the person in that country; and
 - (d) the service is taken, for the purposes of this Act, not to be provided at or through a permanent establishment of the person in another country.

Section 45 provides:

45 Reports of international funds transfer instructions

Scope

- (1) This section applies to a person if:
 - (a) the person is:
 - (i) the sender of an international funds transfer instruction transmitted out of Australia; or
 - (ii) the recipient of an international funds transfer instruction transmitted into Australia; and
 - (b) if the regulations provide that this paragraph is applicable—the total amount or value that is to be, or is, transferred is not less than the amount specified in the regulations; and
 - (c) such other conditions (if any) as are set out in the AML/CTF Rules are satisfied.

Note: **International funds transfer instruction** is defined by section 46.

Report

- (2) The person must, within 10 business days after the day on which the instruction was sent or received by the person, give the AUSTRAC CEO a report about the instruction.
- (3) A report under subsection (2) must:
 - (a) be in the approved form; and
 - (b) contain such information relating to the matter as is specified in the AML/CTF Rules.

Note: For additional rules about reports, see section 244.

Civil penalty

- (4) Subsection (2) is a civil penalty provision.

Funds transfer chain etc.

- (5) For the purposes of this section, it is immaterial whether the person sent or received the international funds transfer instruction in the capacity of interposed institution in a funds transfer chain.

Note: For **funds transfer chain**, see subsection 64(2).

Exemptions

- (6) This section does not apply to an international funds transfer instruction that is of a kind specified in the AML/CTF Rules.
- (7) This section does not apply to an international funds transfer instruction that is sent or received in circumstances specified in the AML/CTF Rules.

Section 46 provides:

46 International funds transfer instruction

For the purposes of this Act, the following table defines *international funds transfer instruction*:

International funds transfer instruction		
Item	Type of instruction	The instruction is an <i>international funds transfer instruction</i> if ...
1	electronic funds transfer instruction	(a) the instruction is accepted at or through a permanent establishment of the ordering institution in Australia; and (b) the transferred money is to be, or is, made available to the payee at or through a permanent establishment of the beneficiary institution in a foreign country
2	electronic funds transfer instruction	(a) the instruction is accepted at or through a permanent establishment of the ordering institution in a foreign country; and (b) the transferred money is to be, or is, made available to the payee at or through a permanent establishment of the beneficiary institution in Australia
3	instruction given by a transferor entity for the transfer of money or property under a designated remittance arrangement	(a) the instruction is accepted at or through a permanent establishment of a person in Australia; and (b) the money or property is to be, or is, made available to the ultimate transferee entity at or through a permanent establishment of a person in a foreign country
4	instruction given by a transferor entity for the transfer of money or property under a designated remittance arrangement	(a) the instruction is accepted at or through a permanent establishment of a person in a foreign country; and (b) the money or property is to be, or is, made available to the ultimate transferee entity at or through a permanent establishment of a person in

International funds transfer instruction

Item	Type of instruction	The instruction is an <i>international funds transfer instruction</i> if ...
		Australia

Part 6 – Register of Providers of Designated Remittance Services

Section 74 provides:

74 Unregistered persons must not provide registrable designated remittance services

(1) A person must not provide a registrable designated remittance service if:

- (a) the person's name; and
- (b) the person's registrable details;

are not entered on the Register of Providers of Designated Remittance Services.

Offences

(2) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 2 years or 500 penalty units, or both.

(3) Strict liability applies to paragraphs (2)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement; and
- (d) the AUSTRAC CEO previously:

- (i) gave the person a direction under subsection 191(2) in relation to subsection (1) of this section; or
- (ii) accepted an undertaking given by the person under section 197 in relation to subsection (1) of this section; and

(e) that was the only occasion on which the AUSTRAC CEO previously gave such a direction to, or accepted such an undertaking from, the person.

Penalty: Imprisonment for 4 years or 1,000 penalty units, or both.

(5) Strict liability applies to paragraphs (4)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

- (6) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement; and
 - (d) the AUSTRAC CEO previously:
 - (i) gave the person a direction under subsection 191(2) in relation to subsection (1) of this section; or
 - (ii) accepted an undertaking given by the person under section 197 in relation to subsection (1) of this section; and
 - (e) that was not the only occasion on which the AUSTRAC CEO previously gave such a direction to, or accepted such an undertaking from, the person.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- (7) Strict liability applies to paragraphs (6)(b) and (c).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

- (8) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1); and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement; and
- (d) either:
 - (i) the person had previously been convicted of an offence against subsection (2), (4) or (6), and that conviction has not been set aside or quashed; or
 - (ii) an order had previously been made against the person under section 19B of the *Crimes Act 1914* in respect of an offence against subsection (2), (4) or (6), and that order has not been set aside.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- (9) Strict liability applies to paragraphs (8)(b) and (c).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

Civil penalty

- (10) Subsection (1) is a civil penalty provision.

Defences

- (11) If, in:

- (a) criminal proceedings for an offence against subsection (2), (4), (6) or (8); or
- (b) section 175 proceedings for a contravention of subsection (1);

it is proved that the defendant's name was not entered on the Register of Providers of Designated Remittance Services, it is a defence if the defendant proves that:

- (c) the defendant had, at a time before the offence or contravention, made an application to the AUSTRAC CEO under section 76 for:

(i) the defendant's name; and

(ii) the defendant's registrable details;

to be entered on the Register of Providers of Designated Remittance Services;
and

(d) the defendant had not subsequently requested the AUSTRAC CEO under section 78 to remove:

(i) the defendant's name; and

(ii) the defendant's registrable details;

from the Register of Providers of Designated Remittance Services.

Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subsection (11)—see section 13.4 of the *Criminal Code*.

(12) If, in:

(a) criminal proceedings for an offence against subsection (2), (4), (6) or (8); or

(b) section 175 proceedings for a contravention of subsection (1);

it is proved that the defendant's registrable details were not entered on the Register of Providers of Designated Remittance Services, it is a defence if the defendant proves that the defendant had, at a time before the contravention, informed the AUSTRAC CEO, in writing, of the registrable details.

Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subsection (12)—see section 13.4 of the *Criminal Code*.

Section 75 provides:

75 Register of Providers of Designated Remittance Services

(1) The AUSTRAC CEO must maintain a register for the purposes of this Part, to be known as the Register of Providers of Designated Remittance Services.

(2) The AUSTRAC CEO may maintain the register by electronic means.

(3) The register is not a legislative instrument.

(4) The AML/CTF Rules may make provision for and in relation to either or both of the following:

(a) the correction of entries in the Register of Providers of Designated Remittance Services;

(b) any other matter relating to the administration or operation of the Register of Providers of Designated Remittance Services.

Section 76 provides:

76 Registration

(1) If:

(a) a person makes a written application to the AUSTRAC CEO for:

(i) the person's name; and

(ii) the person's registrable details;

to be entered on the Register of Providers of Designated Remittance Services;
and

(b) the person's name is not already entered on that register;

the AUSTRAC CEO must enter:

(c) the person's name; and

(d) the person's registrable details;

on that register.

(2) An application must be in the approved form.

Financial Transaction Reports Act 1988

Relevant provisions of the FTR Act include those here extracted.

Section 3 relevantly provides:

ADI (authorised deposit-taking institution) means:

(a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

cash dealer means:

(a) a financial institution;

(b) a body corporate that is, or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51(xx) of the Constitution;

(c) an insurer or an insurance intermediary;

(d) a financial services licensee (as defined by section 761A of the *Corporations Act 2001*) whose licence covers either or both of the following:

(i) dealing in securities (as defined by subsection 92(1) of the *Corporations Act 2001*);

(ii) dealing in derivatives (as defined by section 761A of the *Corporations Act 2001*);

(f) a Registrar or Deputy Registrar of a Registry established under section 14 of the *Commonwealth Inscribed Stock Act 1911*;

(g) a trustee or manager of a unit trust;

(h) a person who carries on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;

(j) a person who is a bullion seller.

(k) a person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business of:

(i) collecting currency, and holding currency collected, on behalf of other persons; or

- (ia) exchanging one currency for another, or converting currency into prescribed commercial instruments, on behalf of other persons; or
- (ib) remitting or transferring currency or prescribed commercial instruments, or making electronic funds transfers, into or out of Australia on behalf of other persons or arranging for such remittance or transfer; or
- (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; or
- (iii) delivering currency (including payrolls);
- (l) a person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business in Australia of:
 - (i) on behalf of other persons, arranging for funds to be made available outside Australia to those persons or others; or
 - (ii) on behalf of persons outside Australia, making funds available, or arranging for funds to be made available, in Australia to those persons or others;
- (m) a person who carries on a business of operating a gambling house or casino; and
- (n) a bookmaker, including a totalisator agency board and any other person who operates a totalisator betting service.

currency means the coin and paper money of Australia or of a foreign country that:

- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue.

financial institution means:

- (a) an ADI; or
- (b) a co-operative housing society;

...

international funds transfer instruction means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind.

Section 17B provides:

17B Reports of international funds transfer instructions

- (1) If:
 - (a) before the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, a cash dealer in Australia is:
 - (i) the sender of an international funds transfer instruction transmitted out of Australia; or
 - (ii) the recipient of an international funds transfer instruction transmitted into Australia; and
 - (b) at least one of the following applies:

(i) the cash dealer is acting on behalf of, or at the request of, another person who is not an ADI;

(ii) the cash dealer is not an ADI;

the dealer must, before the reporting time, prepare a report of the instruction.

- (2) The report must be in the approved form and include the prescribed details.
- (3) Subject to subsection (4), the report must be sent to the AUSTRAC CEO in the approved way and form before the reporting time.
- (4) The AUSTRAC CEO may, by notice in the *Gazette*, declare that subsection (3) does not apply in relation to a cash dealer in relation to a report or a class of report.
- (5) If, because of the operation of subsection (4), subsection (3) does not apply in relation to a report, the cash dealer must retain the report for 7 years.
- (6) For the purposes of this section, if a cash dealer transmits an instruction on behalf of, or at the request of, another person, the cash dealer is taken to be the sender of the instruction.
- (7) For the purposes of this section, if a person, not being a cash dealer, transmits an instruction on behalf of, or at the request of, a cash dealer, the cash dealer is taken to be the sender of the instruction.
- (8) In this section:

reporting time, in relation to an instruction, means:

- (a) if the instruction is transmitted into Australia—14 days after the day that the transmission is received or such later time as is specified in the regulations;
- (b) if the instruction is transmitted out of Australia—14 days after the day that the instruction is transmitted or such later time as is specified in the regulations.

Section 17C provides:

17C ADI acting on behalf of another ADI

For the purposes of this Division, if:

- (a) an ADI (the **first ADI**) is acting on behalf of, or at the request of, another ADI (the **second ADI**); and
- (b) the second ADI is (whether or not as a result of one or more previous applications of this section) acting on behalf of, or at the request of, a person who is not an ADI;

the first ADI is taken to be acting on behalf of that person.

Section 11A provides:

11AA Prescribed details in relation to an international funds transfer instruction

- (1) For the purposes of subsection 17B (2) of the Act, the prescribed details for a report of an instruction that is transmitted out of Australia are:
 - (a) the sender's name; and
 - (b) the recipient's name; and
 - (c) the date on which transmission of the instruction commenced; and

- (d) the currency and the amount of funds referred to in the instruction; and
- (e) the name or identity of the branch or department of the financial organisation to which the ordering customer gave the request to transmit the instruction; and
- (f) for a financial organisation transfer instruction:
 - (i) the identity and account number (if any) of the beneficiary organisation; and
 - (ii) if the ordering organisation is not the sender — the identity of the ordering organisation; and
- (g) for a customer transfer instruction — the ordering customer's name and location; and
- (h) for a customer transfer instruction — such of the following as appear in the instruction:

of the Commonwealth, a State or Territory, is to be taken, for the purposes of these Regulations, to be employed by the Commonwealth, a State or Territory as the case may be.

- (3) Without limiting subregulation (1), a member of the Defence Force is to be taken, for the purposes of these Regulations, to be employed by the Commonwealth.
- (4) Without limiting subregulation (1), a person is to be taken, for the purposes of these Regulations, to be employed by a public authority if:
 - (a) the person constitutes, or is a member of, the authority; or
 - (b) where the authority is a body corporate — the person is a director of the body corporate.

Section 11AB provides:

11AB Prescribed international funds transfer instructions

For the definition of *international funds transfer instruction* in subsection 3 (1) of the Act, an instruction is of a prescribed kind if:

- (a) it is transmitted out of Australia by a corporate treasurer for the purpose of providing financial management services to a related body corporate; or
- (b) it is transmitted into Australia to a corporate treasurer for the purpose of assisting the corporate treasurer to provide financial management services to a related body corporate.

Further information

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Help Desk via:

- email to help_desk@austrac.gov.au
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

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