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Public Legal Interpretation No. 5 of 2008 – Access to and disclosure of ‘AUSTRAC information’

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Currency

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You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.

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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:
 - what is 'AUSTRAC information'?
 - who may access 'AUSTRAC information' and section 49 information?
 - who may disseminate AUSTRAC information and section 49 information and to whom?

Introduction

- 2 The objects of the AML/CTF Act include fulfilling Australia's international obligations and addressing matters of concern in combating money laundering and the financing of terrorism.
- 3 Section 5 of the AML/CTF Act defines 'AUSTRAC information' which includes 'eligible collected information'. 'Eligible collected information' is defined to include 'FTR information (within the meaning of the *Financial Transaction Reports Act 1988*)' (FTR Act).
- 4 Part 11 of the AML/CTF Act contains secrecy and access provisions which set out the main limitations on access to and disclosure of AUSTRAC information, including limitations on producing such information to courts or tribunals.

Outline of interpretation

- 5 This Public Legal Interpretation contains:

Section one:

- discussion of 'AUSTRAC information', including 'eligible collected information' which includes 'FTR information'

Section two:

- prohibition against disclosure of AUSTRAC information

Section three:

- disclosure of AUSTRAC information by AUSTRAC officials
- access to and disclosure of AUSTRAC information by:
 - the ATO
 - designated agencies
 - non-designated Commonwealth agencies
 - other persons
- communication of AUSTRAC information to a foreign country
- limitations on producing and disclosing AUSTRAC information to courts and tribunals
- disclosure under the *Freedom of Information Act 1982*

Interpretation

Section one – AUSTRAC information

AUSTRAC information

6 Section 5 of the AML/CTF Act defines 'AUSTRAC information' as follows:

AUSTRAC information means:

- (a) eligible collected information; or
- (b) a compilation by the AUSTRAC CEO of eligible collected information; or
- (c) an analysis by the AUSTRAC CEO of eligible collected information.

7 The definition depends on two other definitions: 'eligible collected information' in section 5 of the AML/CTF Act and 'FTR information' in section 3 of the FTR Act.

8 Section 5 of the AML/CTF Act defines 'eligible collected information' as follows:

eligible collected information means:

- (a) information obtained by the AUSTRAC CEO under:
 - (i) this Act; or
 - (ii) any other law of the Commonwealth; or
 - (iii) a law of a State or Territory; or
- (b) information obtained by the AUSTRAC CEO from a government body; or
- (c) information obtained by an authorised officer under Part 13, 14 or 15;

and includes FTR information (within the meaning of the *Financial Transaction Reports Act 1988*).

9 AUSTRAC information is eligible collected information, which includes FTR information. Generally it can be said that AUSTRAC information is information collected by the AUSTRAC CEO under the AML/CTF Act and the FTR Act and any compilation or analysis of that information.

10 The AUSTRAC CEO has powers to collect information from reporting entities under the AML/CTF Act including:

- reports concerning suspicious matters (section 41)
- reports concerning threshold transactions (section 43)
- reports of international funds transfer instructions (section 45)
- written notices seeking further information on any of these reports (section 49)
- AML/CTF compliance reports (Part 3 Division 5)
- electronic funds transfer instructions (Part 5)
- other information (Parts 13, 14 and 15).

- 11 The AUSTRAC CEO also has powers to collect information from persons under the AML/CTF Act including:
- reports about cross-border movements of physical currency (sections 53 and 55)
 - reports about movements of bearer negotiable instruments into or out of Australia (section 59)
 - asking questions and seeking the production of documents (section 150).
- 12 In addition to information being collected using these formal information gathering powers under the AML/CTF Act, the AUSTRAC CEO also collects other information from reporting entities on a cooperative basis. The information collected will include, but will not necessarily be limited to, copies of: risk assessments, AML/CTF programs and other procedures and policies. These documents are usually collected in the context of preparing for a compliance assessment, or in processing requests such as an application for an exemption, modification or no-action letter.
- 13 All of this information is AUSTRAC information, being eligible collected information collected by the AUSTRAC CEO for the purposes of the administration of aspects of the AML/CTF Act.
- 14 Compliance assessments and reports generated by AUSTRAC using the information mentioned in paragraph 12 will also be AUSTRAC information as being a compilation and/or analysis by the AUSTRAC CEO of eligible collected information.
- 15 Paragraph (b) of the definition of eligible collected information sets out that any information obtained by the AUSTRAC CEO from a government body will, by virtue of the inclusion of eligible collected information in the definition of AUSTRAC information, be AUSTRAC information and subject to the prohibitions on disclosure and special rules on disclosure discussed below.
- 16 'Government body' is defined in section 5 of the AML/CTF Act as follows:

government body means:

- (a) the government of a country; or
- (b) an agency or authority of the government of a country; or
- (c) the government of part of a country; or
- (d) an agency or authority of the government of part of a country.

- 17 It should be noted that the term 'country' is defined very broadly in section 5 as meaning Australia or a foreign country.
- 18 Accordingly, it is AUSTRAC's view that AUSTRAC information will include all information obtained from a government, agency or an authority of a government of a country, or part of a country, and will include all information collected from the government, an agency or authority of a State or Territory of a country including Australia.

FTR information

- 19 Section 3 of the FTR Act defines 'FTR information' as follows:

FTR information means information obtained by the AUSTRAC CEO under Part II and includes information included in a notice under subsection 18(8A) or 22(1) or in a copy of a record given under subsection 24(5).

- 20 Part II of the FTR Act permits collection of information from cash dealers including:
- reports of significant cash transactions (section 7)
 - reports of transfers of currency into or out of Australia (section 15)
 - reports of suspect transactions (section 16)
 - reports of international funds transfer instructions (section 17B).
- 21 The obligation to report these matters will cease for cash dealers who are reporting entities, when the AML/CTF Act obligations referred to at paragraph 10 commence to operate. Provisions relating to suspicious matter reports, threshold transaction reports, international funds transfer instruction reports and the giving of notices seeking additional information under section 49, commence to operate on 12 December 2008. Provisions relating to electronic funds transfer instructions, asking of questions and producing documents, information-gathering powers in Part 14 and the cross-border movement and bearer negotiable instruments provisions, have already commenced to operate.
- 22 For any cash dealers who are not reporting entities, the obligations set out in paragraph 20 will continue in force.
- 23 Part IVA and Part 5 of the FTR Act, relating to powers of inspection and enforcement respectively, also provide for the collection of information which would be regarded as FTR information.
- 24 AUSTRAC is of the view that the definition of AUSTRAC information is very broad and will include all information collected under the AML/CTF Act, the FTR Act and other laws of the Commonwealth, the States and Territories and will include any compilation of that information or any analysis of that information.

Section two – Prohibition against disclosure of AUSTRAC information under Part 11 of the AML/CTF Act

Access to and disclosure of AUSTRAC information by entrusted public officials

- 25 Part 11 of the AML/CTF Act places restrictions on what the 'entrusted public officials' set out in section 121 may do with AUSTRAC information. Entrusted public officials include a person who is or was:
- (a) the AUSTRAC CEO; or
 - (b) a member of the staff of AUSTRAC; or
 - (c) a person engaged as a consultant under subsection 225(1); or
 - (d) a person whose services are made available to the AUSTRAC CEO under subsection 225(3); or
 - (e) the Director of AUSTRAC; or
 - (f) a person engaged as a consultant under repealed section 40A of the *Financial Transaction Reports Act 1988*.
- 26 Subsection 121(2) provides that an entrusted public official commits an offence if the official has obtained AUSTRAC information otherwise than under section 49 (further information) or Division 4 (which includes access to AUSTRAC information by designated agencies) and discloses the information to another person, unless one of the exceptions in subsection 121(3) applies.

27 Subsection 121(3) sets out the exceptions and is as follows:

(3) Each of the following is an exception to the prohibition in subsection (2):

- (a) the disclosure is for the purposes of this Act or the *Financial Transaction Reports Act 1988*;
- (b) the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;
- (c) the disclosure is otherwise in connection with the performance of the entrusted public official's duties under this Act or the *Financial Transaction Reports Act 1988*;
- (d) the disclosure is in connection with giving another person covered by paragraph (1)(a), (b), (c) or (d) access to information for the purposes of, or in connection with:
 - (i) the performance of the functions of the AUSTRAC CEO; or
 - (ii) the performance of the other person's duties under this Act or the *Financial Transaction Reports Act 1988*;
- (e) the disclosure is in connection with giving access to AUSTRAC information in accordance with Division 4.

28 The AUSTRAC CEO can report back to a reporting entity following a compliance assessment without contravening the secrecy and access provisions of Part 11. As set out earlier, AUSTRAC is of the view that compliance assessments are AUSTRAC information. AUSTRAC is also of the view that any compliance assessment and report back to the reporting entity concerned would be permitted by all or any of paragraphs 121(3)(a), (b) or (c) of the AML/CTF Act, in that the disclosure of the AUSTRAC information to the reporting entity is for the purposes of the AML/CTF Act and/or the performance of the functions of the AUSTRAC CEO and/or is in connection with the entrusted public official's duties under the AML/CTF Act.

29 Section 122 restricts access to information obtained under section 49 of the AML/CTF Act. Information obtained under section 49 is obtained under written notice concerning information provided under sections 41, 43 or 45. That is, further information regarding reports of suspicious matters (section 41), reports of threshold transactions (section 43) and reports of international funds transfer instructions (section 45).

30 Subsection 122(3) provides exceptions to the prohibition on disclosure. Some of these are similar to those in subsection 121(3) and are general in nature, for example for the purposes of the AML/CTF Act or the FTR Act, however paragraphs (d) through (j) provide for some specific exemptions to the non-disclosure rule.

Section three – Access to AUSTRAC information under Part 11 of the AML/CTF Act

31 The analysis and disclosure of AUSTRAC information is consistent with the functions of the AUSTRAC CEO set out in section 212 of the AML/CTF Act, in particular paragraphs 212 (1)(a) and (b) which are as follows:

- (a) to retain, compile, analyse and disseminate eligible collected information; and
- (b) to provide advice and assistance, in relation to AUSTRAC information, to the persons and agencies who are entitled or authorised to access AUSTRAC information under Part 11;

32 Much of the information collected by the AUSTRAC CEO contains personal information. Personal information in the hands of the AUSTRAC CEO is protected by the provisions of the *Privacy Act 1988* (Privacy Act). Disclosure of AUSTRAC information under the

respective provisions of the AML/CTF Act does not constitute a breach of the Privacy Act as the information is released in accordance with Information Privacy Principle (IPP) 11(1)(d). IPP 11(1)(d) provides an exception to the general prohibition on the disclosure of personal information where the disclosure is authorised by or under law. In the case of the disclosure of AUSTRAC information containing personal information, the disclosure is authorised by the various provisions in Part 11 of the AML/CTF Act.

Access to and disclosure of AUSTRAC information by the ATO

- 33 Part 11 Division 4 of the AML/CTF Act provides for access to AUSTRAC information by certain government agencies.
- 34 The Australian Taxation Office (ATO) is not a designated agency as defined in section 5 of the AML/CTF Act and has direct access to AUSTRAC information under section 125 of the AML/CTF Act. Section 125 permits the Commissioner of Taxation and any taxation officer to access AUSTRAC information 'for any purpose relating to the facilitation of the administration or enforcement of a taxation law'.
- 35 AUSTRAC information, once accessed by the Commissioner of Taxation or a taxation officer, is subject to the secrecy provisions set out in section 3C of the *Taxation Administration Act 1953* (TAA) and must be dealt with in accordance with those provisions (subsection 125(3) of the AML/CTF Act). However, section 3C of the TAA does not prevent the Commissioner of Taxation or a taxation officer disclosing AUSTRAC information to an official of a designated agency for the purposes of, or in connection with, the performance of the official's duties in relation to the designated agency, so long as the official holds an appropriate authorisation under subsection 126(1) of the AML/CTF Act (subsection 125(4) of the AML/CTF Act).
- 36 Any official of a designated agency may disclose AUSTRAC information to the Commissioner of Taxation or a taxation officer (subsection 125(2) of the AML/CTF Act).

Access to and disclosure of AUSTRAC information by designated agencies

- 37 Other government agencies are permitted to access AUSTRAC information under the provisions relating to 'designated agencies' provided for in sections 126, 127 and 128 of the AML/CTF Act.
- 38 Section 5 of the AML/CTF Act defines 'designated agency' as follows:

designated agency means:

- (a) the Australian Crime Commission; or
- (b) ASIO; or
- (c) the Australian Commission for Law Enforcement Integrity; or
- (d) the Australian Competition and Consumer Commission; or
- (e) the Australian Customs Service; or
- (f) the Australian Federal Police; or
- (g) the Australian Prudential Regulation Authority; or
- (ga) ASIS; or
- (h) the Australian Securities and Investments Commission; or
- (i) the Child Support Agency; or
- (j) the Commonwealth Services Delivery Agency (Centrelink); or

- (k) a Commonwealth Royal Commission whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; or
- (l) the Immigration Department; or
- (m) IGIS; or
- (n) the Treasury Department; or
- (o) an authority or agency of the Commonwealth, where the authority or agency is specified in the regulations; or
- (p) the police force or police service of a State or the Northern Territory; or
- (q) the New South Wales Crime Commission; or
- (r) the Independent Commission Against Corruption of New South Wales; or
- (s) the Police Integrity Commission of New South Wales; or
- (t) the Crime and Misconduct Commission of Queensland; or
- (u) the Corruption and Crime Commission of Western Australia; or
- (v) an authority or agency of a State or Territory, where the authority or agency has the responsibility of collecting or receiving taxation revenue of the State or Territory; or
- (w) a State/Territory Royal Commission:
 - (i) whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; and
 - (ii) that is specified in the regulations; or
 - (x) an authority or agency of a State or Territory, where the authority or agency is specified in the regulations.

- 39 No regulations have been made under paragraphs (o) or (x) of the definition of designated agency.
- 40 Under subsection 126(1) of the AML/CTF Act the AUSTRAC CEO may authorise specified officials, or a specified class of officials, of a specified designated agency to be given access to AUSTRAC information 'for the purposes of performing the agency's functions and exercising the agency's powers.' Such an authorisation must also state the AUSTRAC information, or class of AUSTRAC information, to which the officials of the designated agency are to have access.
- 41 Subsection 126(3) of the AML/CTF Act provides that the AUSTRAC CEO may only authorise access for specified State and Territory designated agencies (listed in paragraphs (p) to (x) of the definition) if the agency undertakes that it and its officials will comply with the IPPs set out in section 14 of the Privacy Act. Therefore, designated agencies listed in paragraphs (p) to (x) of the definition of designated agency in section 5 need to provide an undertaking to the AUSTRAC CEO that the agency and its officials will comply with the IPPs with respect to AUSTRAC information obtained under the authorisation or under subsection 128(2) of the AML/CTF Act.
- 42 The Treasury Department can only access AUSTRAC information in relation to performing regulatory duties under the *Foreign Acquisitions and Takeovers Act 1975* (subsection 126 (5)).

Dealings with AUSTRAC information once accessed

- 43 Section 127 of the AML/CTF Act restricts what an official (or former official) of a designated agency, called the entrusted agency official, may do with 'accessed information'.¹ An entrusted agency official may disclose such information if the disclosure is for the performance of the official's duties or is authorised by, or is in connection with, communicating AUSTRAC information under subsection 125(2) or sections 128, 132, 133 or 133A of the AML/CTF Act.

When AUSTRAC information can be passed on by an official of a designated agency

- 44 Section 128 sets out the various circumstances when an official of a designated agency can pass on AUSTRAC information to another person. The term 'official of a designated agency' is relevantly defined in section 22 of the AML/CTF Act to include the CEO of the agency, a member of the agency or staff of the agency, an officer or employee of the agency, a person who is an examiner of the Australian Crime Commission (ACC) and a legal practitioner (however described) appointed to assist a Royal Commission. The full text of section 22 of the AML/CTF Act is in the Legislation attachment.
- 45 Once AUSTRAC information has been accessed by an authorised official of a designated agency, subsection 128(1) provides that it may be disclosed to another official in the same agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the agency.
- 46 AUSTRAC information can also be passed onto another official at another designated agency for the purposes of performing the official's duties, if that official has been appropriately authorised to access the information under subsection 126(1) of the AML/CTF Act for the purpose of performing official duties (section 128(2)).
- 47 The decision on whether disclosure is for the purposes of, or in connection with, the performance of the official's duties is one to be made by the official of the respective designated agency proposing to make the disclosure, on the facts and circumstances of each case.
- 48 Subsection 125(2) of the AML/CTF Act provides that AUSTRAC information can be passed on by a designated agency to the ATO.

Disclosure for obtaining legal advice, or for court or tribunal proceedings

- 49 Subsection 128(3) of the AML/CTF Act provides that an official of a designated agency can disclose AUSTRAC information to a person for the purposes of, or in connection with, obtaining legal advice, court or tribunal proceedings (or proposed or possible proceedings). Paragraph 128(3)(b) also provides that an agency official can disclose AUSTRAC information in the course of court or tribunal proceedings.
- 50 However, it should be noted that under subsection 128(4), an agency official is not permitted to disclose information obtained under sections 41 (suspicious matter reports) or 49 (further information obtained in relation to a suspect matter report, threshold transaction report or international funds transfer instruction), in so far as the information relates to a communication under section 41, under the provisions of subsection 128(3).
- 51 Subsections 128(5) to (7) provide that a person to whom information has been provided under paragraph 128(3)(a) must not disclose that information to another person, unless the disclosure is in connection with court or tribunal proceedings, proposed or possible court or tribunal proceedings or the obtaining or giving of legal advice, and to do otherwise is an offence.

¹ Subsection 127(4) provides that 'accessed information' is AUSTRAC information obtained by the entrusted agency official under subsection 125(4), section 126 or subsections 128(1) or (2), or 132(2) or (4).

Disclosure for investigations

- 52 Subsection 128(8) permits an official of a designated agency to disclose AUSTRAC information, other than information obtained under section 41 or 49, in so far as the information relates to a communication under section 41, to a person in relation to an investigation or proposed or possible investigation. It is not specified that the official must have been involved in the investigation or that the investigation was under the law administered by the designated agency.
- 53 Subsections 128(10) and (11) provide that a person to whom information has been provided under subsection 128(8) must not disclose that information to another person, unless the disclosure is for the purposes of the investigation or proposed or possible investigation, court or tribunal proceedings, or proposed or possible court or tribunal proceedings connected with the investigation or proposed or possible investigation, and to do otherwise is an offence.
- 54 The decision whether to disclose under subsection 128(8) is one to be made by each designated agency considering release under the subsection. A designated agency considering disclosure will need to make its own assessment of whether the disclosure is in connection with an investigation or a proposed or possible investigation.

Specific disclosure provisions for specified agencies

- 55 As can be seen from the above commentary, officials of designated agencies have general powers of disclosure of AUSTRAC information. Officials of specified designated agencies have particular disclosure provisions which are agency specific and set out in section 128 of the AML/CTF Act. Set out below is commentary about those agency-specific disclosure provisions. In each of the specific disclosure provisions below, the disclosure by the specified agency can only occur in circumstances where the official of the specified agency is satisfied that the disclosure is for the purpose of, or in connection with, the performance of the official's duties in relation to employment with the specified agency.
- 56 Where these words are used in the respective provisions, the decision on whether disclosure is for the purposes of or in connection with the performance of the official's duties is one to be made by the official of the respective designated agency, having regard to the facts and circumstances of each case.

Australian Secret Intelligence Service (ASIS)

- 57 Subsection 128(12A) provides that an ASIS official may disclose AUSTRAC information to an official of the Inspector-General of Intelligence and Security where that disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to employment with ASIS. An ASIS official may also disclose AUSTRAC information to the ASIS Minister for the purposes of, or in connection with, the Minister's responsibilities.

Australian Security Intelligence Organisation (ASIO)

- 58 Subsection 128(13) provides that an ASIO official may disclose AUSTRAC information to an official of the Inspector-General of Intelligence and Security where that disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to employment with ASIO. An ASIO official may also disclose AUSTRAC information to the ASIO Minister for the purposes of, or in connection with, the Minister's responsibilities.
- 59 Subsection 128(13) also provides that ASIO officials can disclose AUSTRAC information to the Minister administering the *Telecommunications (Interception and Access) Act 1979* where the disclosure is for the purposes of, or in connection with, the performance of the Minister's functions under that Act.

Australian Crime Commission (ACC)

- 60 Paragraphs 128(14)(a) to (d) contain additional specific provisions outlining when AUSTRAC information can be communicated or disclosed by specified officials of the ACC to members of the Board of the ACC, an Inter-Governmental Committee in a report by the Chair under subsection 59(4) of the *Australian Crime Commission Act 2002* and to a Parliamentary Joint Committee on the Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*.
- 61 Paragraph 128(14)(e) provides that an examiner of the ACC may disclose AUSTRAC information in the course of an examination before the examiner.
- 62 Paragraph 128(14)(f) provides that a member of staff of the ACC may disclose AUSTRAC information for the purposes of, or in connection with, the performance of the staff member's duties in relation to the ACC.

Responsible ministers

- 63 Subsections 128(15) to (18) provide that designated Commonwealth agencies and designated State and Territory agencies can pass on AUSTRAC information to the relevant Minister for performance of Ministerial duties, in relation to that agency.

Inspector-General of Intelligence and Security (IGIS)

- 64 Under subsection 128(19), AUSTRAC information can be disclosed by an IGIS official to:
- another official of the IGIS where the disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to ASIS or ASIO employees
 - the Director-General of IGIS under section 21 or 23 of the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) in relation to an employee of ASIO or ASIS
 - the Director-General of IGIS under section 25A of the IGIS Act in relation to employees of ASIS or ASIO
 - in a report under subsection 21(1B) or section 22 or 25 of the IGIS Act
 - in a notice under section 12 of the IGIS Act.

Access by non-designated Commonwealth agencies to AUSTRAC information

- 65 Under section 129 of the AML/CTF Act the AUSTRAC CEO may, in writing, authorise access to AUSTRAC information to non-designated Commonwealth agencies, upon their written request, if the purposes of the access is for the:
- investigation of a possible breach of a law of the Commonwealth, or
 - proposed investigation into a possible breach of a law of the Commonwealth.
- 66 The authorisation must state the AUSTRAC information or the class of information. This information cannot be disclosed except for the purposes of the investigation. This information can then be disclosed to another official of that agency in relation to that investigation and in connection with a court or tribunal proceeding in relation to that investigation (section 131). Any third person receiving this AUSTRAC information cannot pass it on – unless it is for the purposes of the court or tribunal proceedings in relation to that investigation (subsections 131(4) and (5)).

Communication of AUSTRAC information to a foreign country

67 Section 132 sets out when AUSTRAC information can be disclosed to a foreign country by the AUSTRAC CEO, the Commissioner of the Australian Federal Police or the CEO of the ACC.

68 'Foreign country' is defined in section 5 of the AML/CTF Act as follows:

foreign country includes a region where:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

69 AUSTRAC considers that the definition of foreign country is quite broad. The Replacement Explanatory Memorandum to the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006* confirms this view of the definition of 'foreign country' and is as follows:

Foreign country- this definition extends the meaning of the term foreign country to include parts of countries, colonies, territories, protectorates, regions under protection, jurisdiction or control of a foreign country or a region whose international relations are the responsibility of a foreign country.

70 Subsection 132(1) of the AML/CTF Act deals specifically with communication by the AUSTRAC CEO of AUSTRAC information to foreign countries. The subsection provides that the AUSTRAC CEO may communicate AUSTRAC information to the government of a foreign country where the CEO is satisfied that the foreign country has given an appropriate undertaking to protect the confidentiality of the information, to control the use that would be made of the information and that it will be used only for the purpose for which it is communicated, and that it is appropriate in all the circumstances to communicate the information to the government of the foreign country.

71 Subsections 132(3) and (4) authorise the Commissioner of the Australian Federal Police (AFP), where the Commissioner is authorised to do so by the AUSTRAC CEO under subsection 132(2), and a member of the AFP authorised in writing by the Commissioner respectively, to communicate information to a foreign law enforcement agency, if the Commissioner is satisfied that the foreign law enforcement agency has given undertakings similar to those set out in paragraph 70 in relation to the confidentiality, control of use and use only for the purpose that the information has been communicated, to the foreign law enforcement agency.

72 There are similar provisions, to those applying in relation to the Commissioner of the AFP, set out in subsections 132(5), (6) and (7) that apply to the CEO of the ACC and a member of staff of the ACC.

73 Sections 133 and 133A of the AML/CTF Act set out specific provisions enabling the Director-General of Security and the Director-General of ASIS, or staff of the agencies authorised in writing by them, to communicate AUSTRAC information to foreign intelligence agencies. The information may only be communicated if the Director-General is satisfied that the foreign intelligence agency has given appropriate undertakings to protect the confidentiality of the information, control the use that will be made of the information and ensure that the information will only be used for the purpose for which it has been communicated to the foreign country.

Disclosure to courts or tribunals

74 Section 134 of the AML/CTF Act states that a person who obtains AUSTRAC information is not to be required:

(a) to produce in a court or tribunal a document containing AUSTRAC information;
or

(b) to disclose to any court or tribunal any AUSTRAC information

except where it is necessary to do so for the purposes of carrying into effect the purposes of this Act or the *Financial Transaction Reports Act 1988*.

75 Section 134 is a general provision applying to persons that have accessed or have been given AUSTRAC information, which provides that those persons cannot be required to produce or to disclose AUSTRAC information to a court or tribunal. The provision has the effect that a person who has AUSTRAC information cannot be required by subpoena to disclose or produce AUSTRAC information to a court. As this is a general provision it will not override the specific provision in subsection 121(4) which provides that an entrusted public official is not to be required to produce or disclose AUSTRAC information to a court or tribunal unless it is necessary to do so for the purposes of the AML/CTF Act or the FTR Act.

Disclosure under the Freedom of Information Act 1982

76 AUSTRAC information is subject to the provisions of the *Freedom of Information Act 1982* (FOI Act). Where an application is made under the provisions of the FOI Act for access to documents, that request will be processed in accordance with the provisions of the FOI Act. The principles of the FOI Act will be applied and documents will be released unless the documents are exempt by virtue of one of the exemption provisions contained in the FOI Act.

77 If a decision is made to release documents under the FOI Act, then the release of the documents is authorised by section 18 of the FOI Act, which provides that where a request has been made and any charges have been paid, access is to be given in accordance with the FOI Act; that is, access is to be given subject to the documents concerned being exempt documents under the FOI Act.

78 Where documents are released under the provisions of the FOI Act the prohibitions on disclosure of AUSTRAC information will not apply. The person disclosing the information will not be guilty of an offence due to the operation of section 92 of the FOI Act, which provides that where access has been given to a document under the FOI Act neither the person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving access.

Suspect transaction reports and suspicious matter reports and the FOI Act

79 Subsection 7(2) of the FOI Act states:

The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.

80 Schedule 2, Part II of the FOI Act includes the following:

Australian Transaction Reports and Analysis Centre, in relation to documents concerning information communicated to it under section 16 of the *Financial Transaction Reports Act 1988* or section 41 or 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

81 By operation of subsection 7(2) of the FOI Act, any AUSTRAC documents which contain information communicated under section 16 (suspect transaction reports) of the FTR Act or

section 41 (suspicious matter reports) or 49 (further information requested in relation to reports under sections 41, 43 or 45) of the AML/CTF Act, are therefore exempt from the operation of the FOI Act. This means that AUSTRAC is not required to produce such documents to an applicant.

Related information

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*² (AML/CTF Rules) can be found at:

www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/28B07AAAFCEB7889FCA25744B0007AA2B?OpenDocument

AUSTRAC publications

The *AUSTRAC Regulatory Guide* contains guidance on obligations under the AML/CTF Act and the FTR Act. Chapter 7 contains information regarding suspect transaction reporting obligations. It is available on the AUSTRAC website at: www.austrac.gov.au/regulatory_guide.html.

The *AUSTRAC Public Legal Interpretation No. 2 of 2008 – Item 54 of table 1 in section 6 of the AML/CTF Act* provides AUSTRAC's legal view of the meaning and scope of item 54 of table 1 in section 6 of the AML/CTF Act and contains guidance about the practical application of item 54 in relation to Australian financial services licence holders.

The *AUSTRAC Public Legal Interpretation No. 3 of 2008 – Registration as a provider of registrable designated remittance services* provides AUSTRAC's views on the provisions of the AML/CTF Act relating to providers of a 'registrable designated remittance service'.

The *AUSTRAC Public Legal Interpretation No. 4 of 2008 – What constitutes a reporting entity* provides AUSTRAC's views on the meaning of 'carrying on a business' and 'in the capacity of', and the designated services in tables 1, 2, and 3 of section 6 of the AML/CTF Act.

These public legal interpretations can be accessed via AUSTRAC's website at: www.austrac.gov.au/pli.html.

² Legislative Instrument Compilation F2008C00235

Legislation attachment

22 Officials of designated agencies etc.

- (1) For the purposes of this Act, an **official** of a designated agency or a non-designated Commonwealth agency is a person who is:
- (a) the chief executive officer (however described) of the agency; or
 - (b) a member or acting member of the agency; or
 - (c) a member of the staff of the agency; or
 - (d) an officer or employee of the agency; or
 - (e) an officer, employee or other individual under the control of the chief executive officer (however described) of the agency; or
 - (f) an individual who, under the regulations, is taken to be an official of the agency for the purposes of this Act;

and includes:

- (g) in the case of the Australian Crime Commission—a person who is an examiner of the Australian Crime Commission; and
- (h) in the case of a Commonwealth Royal Commission—a person who is:
 - (i) a legal practitioner (however described) appointed to assist the Commission; and
 - (ii) a person authorised under subsection (2); and
- (i) in the case of a State/Territory Royal Commission—a person who is:
 - (i) a legal practitioner (however described) appointed to assist the Commission; and
 - (ii) a person authorised under subsection (3).

Royal Commissions

- (2) Either:
- (a) the sole Commissioner of a Commonwealth Royal Commission; or
 - (b) a member of a Commonwealth Royal Commission;
- may, by writing, authorise a person assisting the Commission to be an **official** of the Commission for the purposes of this Act.
- (3) Either:
- (a) the sole Commissioner of a State/Territory Royal Commission; or
 - (b) a member of a State/Territory Royal Commission;
- may, by writing, authorise a person assisting the Commission to be an **official** of the Commission for the purposes of this Act.

Note: For revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Division 2—Secrecy

121 Secrecy—AUSTRAC information and AUSTRAC documents

- (1) This section restricts what a person (the **entrusted public official**) who is or was:
- (a) the AUSTRAC CEO; or
 - (b) a member of the staff of AUSTRAC; or
 - (c) a person engaged as a consultant under subsection 225(1); or
 - (d) a person whose services are made available to the AUSTRAC CEO under subsection 225(3); or
 - (e) the Director of AUSTRAC; or
 - (f) a person engaged as a consultant under repealed section 40A of the *Financial Transaction Reports Act 1988*;

may do with AUSTRAC information or documents containing AUSTRAC information.

- (2) The entrusted public official commits an offence if:
 - (a) the official has obtained AUSTRAC information (otherwise than under section 49 or Division 4); and
 - (b) the official discloses the information to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Each of the following is an exception to the prohibition in subsection (2):
 - (a) the disclosure is for the purposes of this Act or the *Financial Transaction Reports Act 1988*;
 - (b) the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;
 - (c) the disclosure is otherwise in connection with the performance of the entrusted public official's duties under this Act or the *Financial Transaction Reports Act 1988*;
 - (d) the disclosure is in connection with giving another person covered by paragraph (1)(a), (b), (c) or (d) access to information for the purposes of, or in connection with:
 - (i) the performance of the functions of the AUSTRAC CEO; or
 - (ii) the performance of the other person's duties under this Act or the *Financial Transaction Reports Act 1988*;
 - (e) the disclosure is in connection with giving access to AUSTRAC information in accordance with Division 4.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, the entrusted public official is not to be required:
 - (a) to produce to a court or tribunal a document containing AUSTRAC information; or
 - (b) to disclose AUSTRAC information to a court or tribunal.
- (5) To avoid doubt, paragraph (2)(a) applies to AUSTRAC information obtained under subsection (3).

122 Secrecy—information obtained under section 49

- (1) This section restricts what a person (the ***entrusted investigating official***) who is or was:
 - (a) the AUSTRAC CEO; or
 - (b) a member of the staff of AUSTRAC; or
 - (c) a person engaged as a consultant under subsection 225(1); or
 - (d) a person whose services are made available to the AUSTRAC CEO under subsection 225(3); or
 - (e) the Commissioner of the Australian Federal Police; or
 - (f) the Chief Executive Officer of the Australian Crime Commission; or
 - (g) the Commissioner of Taxation; or
 - (h) the Chief Executive Officer of Customs; or
 - (i) the Integrity Commissioner; or
 - (j) an investigating officer;may do with section 49 information.
- (2) The entrusted investigating official commits an offence if:
 - (a) the official has obtained section 49 information; and

(b) the official discloses the information to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Each of the following is an exception to the prohibition in subsection (2):
- (a) the disclosure is for the purposes of this Act or the *Financial Transaction Reports Act 1988*;
 - (b) the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;
 - (c) the disclosure is otherwise in connection with the performance of the entrusted investigating official's duties under this Act or the *Financial Transaction Reports Act 1988*;
 - (d) if the entrusted investigating official is covered by paragraph (1)(a), (b), (c) or (d)—the disclosure is in connection with giving another person covered by paragraph (1)(a), (b), (c) or (d) access to information for the purposes of, or in connection with:
 - (i) the performance of the functions of the AUSTRAC CEO; or
 - (ii) the performance of the other person's duties under this Act or the *Financial Transaction Reports Act 1988*;
 - (e) if the entrusted investigating official is the Commissioner of the Australian Federal Police—the disclosure is in connection with giving an AFP member access to information for the purposes of, or in connection with, the performance of the AFP member's duties;
 - (f) if the entrusted investigating official is the Chief Executive Officer of the Australian Crime Commission—the disclosure is in connection with giving:
 - (i) an examiner of the Australian Crime Commission; or
 - (ii) a member of the staff of the Australian Crime Commission;access to information for the purposes of, or in connection with, the performance of the examiner's duties or the member's duties, as the case may be;
 - (g) if the entrusted investigating official is the Commissioner of Taxation—the disclosure is in connection with giving a taxation officer access to information for the purposes of, or in connection with, the performance of the taxation officer's duties;
 - (h) if the entrusted investigating official is the Chief Executive Officer of Customs—the disclosure is in connection with giving a customs officer access to information for the purposes of, or in connection with, the performance of the customs officer's duties;
 - (i) if the entrusted investigating official is the Integrity Commissioner—the disclosure is in connection with giving an Australian Commission for Law Enforcement Integrity officer access to information for the purposes of, or in connection with, the performance of the Australian Commission for Law Enforcement Integrity officer's duties;
 - (j) the disclosure is in connection with giving another entrusted investigating official access to information for the purposes of, or in connection with, the performance of the other official's duties.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, the entrusted investigating official is not to be required:
- (a) to produce to a court or tribunal a document containing section 49 information; or
 - (b) to disclose section 49 information to a court or tribunal.
- (5) **Section 49 information** is information obtained by the entrusted investigating official:
- (a) under section 49; or

- (b) under subsection (3).

Division 3—Disclosure of information

123 Offence of tipping off

Prohibitions

- (1) If:
 - (a) a suspicious matter reporting obligation arises or has arisen for a reporting entity in relation to a person; and
 - (b) the reporting entity has communicated information to the AUSTRAC CEO under subsection 41(2);

the reporting entity must not disclose to someone other than the AUSTRAC CEO or a member of the staff of AUSTRAC that the information has been communicated to the AUSTRAC CEO.

Note 1: For **suspicious matter reporting obligation**, see section 41.

Note 2: This subsection deals with the disclosure of information. It does not deal with the carrying out of applicable customer identification procedures.

- (2) If:
 - (a) a suspicious matter reporting obligation arises or has arisen for a reporting entity in relation to a person; and
 - (b) either:
 - (i) the reporting entity has formed the applicable suspicion mentioned in subsection 41(1); or
 - (ii) the reporting entity has communicated information to the AUSTRAC CEO under subsection 41(2);

then:

- (c) if subparagraph (b)(i) applies—the reporting entity must not disclose to someone other than the AUSTRAC CEO or a member of the staff of AUSTRAC:
 - (i) that the reporting entity has formed the applicable suspicion mentioned in subsection 41(1); or
 - (ii) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed; and
- (d) if subparagraph (b)(ii) applies—the reporting entity must not disclose to a person other than the AUSTRAC CEO or a member of the staff of AUSTRAC any other information from which the person to whom the information is disclosed could reasonably be expected to infer that information had been communicated to the AUSTRAC CEO under subsection 41(2).

Note 1: For **suspicious matter reporting obligation**, see section 41.

Note 2: This subsection deals with the disclosure of information. It does not deal with the carrying out of applicable customer identification procedures.

- (3) If a reporting entity gives information, or produces a document, to a person under subsection 49(1), the reporting entity must not disclose to anyone else:
 - (a) that the information has been given or the document has been produced; or
 - (b) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the first-mentioned information had been given or the document had been produced.

Exceptions

- (4) Subsection (2) does not apply to the disclosure of information by a reporting entity if:
- (a) the reporting entity is:
 - (i) a legal practitioner (however described); or
 - (ii) a partnership or company that carries on a business of using legal practitioners (however described) to supply professional legal services; or
 - (iii) a qualified accountant; or
 - (iv) a partnership or company that carries on a business of using qualified accountants to supply professional accountancy services; or
 - (v) a person specified in the AML/CTF Rules; and
 - (b) the information relates to the affairs of a customer of the reporting entity; and
 - (c) the disclosure is made for the purposes of dissuading the customer from engaging in conduct that constitutes, or could constitute:
 - (i) evasion of a taxation law; or
 - (ii) evasion of a law of a State or Territory that deals with taxation; or
 - (iii) an offence against a law of the Commonwealth or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (2) does not apply to the disclosure of information by a reporting entity if the disclosure is to a legal practitioner (however described) for the purpose of obtaining legal advice.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (5A) A person to whom information has been disclosed under subsection (5) must not disclose the information to another person.

- (6) Subsection (2) does not apply to the disclosure of information about the operation of Part 4 of the *Charter of the United Nations Act 1945*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (2) does not apply to the disclosure of information by a reporting entity if:

- (a) the reporting entity belongs to a designated business group; and
- (b) the reporting entity has adopted a joint anti-money laundering and counter-terrorism financing program that:
 - (i) applies to the reporting entity; and
 - (ii) relates to the designated business group; and
- (c) the information relates to the affairs of a customer of the reporting entity; and
- (d) the disclosure is made to another reporting entity that belongs to the designated business group; and
- (e) the disclosure is made for the purpose of informing the other reporting entity about the risks involved in dealing with the customer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (2) does not apply to the disclosure of information by a reporting entity if:
- (a) the reporting entity is an ADI; and
 - (b) the disclosure is to an owner-managed branch of the ADI.

(8A) A person to whom information has been disclosed under subsection (8) must not disclose the information to another person.

- (9) Subsection (2) does not apply to the disclosure of information by a reporting entity if:
- (a) the disclosure is in compliance with a requirement under a law of the Commonwealth, a State or a Territory; or
 - (b) the disclosure is to an Australian government body that has responsibility for law enforcement.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, a reporting entity is not to be required to disclose to a court or tribunal information mentioned in subsection (1), (2) or (3).

Offence

- (11) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (2), (3), (5A) or (8A); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 2 years or 120 penalty units, or both.

124 Report and information not admissible

- (1) In any court or tribunal proceedings:
- (a) none of the following is admissible in evidence:
 - (i) a report given under, or prepared for the purposes of, subsection 41(2);
 - (ii) a copy of such a report;
 - (iii) a document purporting to set out information (including the formation or existence of a suspicion) contained in such a report;
 - (iv) a document given or produced under subsection 49(1); and
 - (b) evidence is not admissible as to:
 - (i) whether or not a report was prepared for the purposes of subsection 41(2); or
 - (ii) whether or not a report prepared for the purposes of subsection 41(2), or a document purporting to set out information (including the formation or existence of a suspicion) contained in such a report, was given to, or received by, the AUSTRAC CEO; or
 - (iii) whether or not particular information (including the formation or existence of a suspicion) was contained in a report prepared for the purposes of subsection 41(2); or
 - (iv) whether or not particular information (including the formation or existence of a suspicion) was given under subsection 49(1); or
 - (v) whether or not a particular document was produced under subsection 49(1).
- (2) Subsection (1) does not apply to the following proceedings:
- (a) criminal proceedings for an offence against section 123, 136 or 137;

- (b) section 175 proceedings for a contravention of subsection 41(2) or 49(2).

Division 4—Access to AUSTRAC information by agencies

Subdivision A—Access by the ATO to AUSTRAC information

125 Access by the ATO to AUSTRAC information

- (1) The Commissioner of Taxation and any taxation officer is entitled to access to AUSTRAC information for any purpose relating to the facilitation of the administration or enforcement of a taxation law.
- (2) An official of a designated agency may disclose AUSTRAC information to:
 - (a) the Commissioner of Taxation; or
 - (b) a taxation officer.

Application of section 3C of the Taxation Administration Act 1953

- (3) Section 3C of the *Taxation Administration Act 1953* applies in relation to AUSTRAC information obtained by the Commissioner of Taxation or a taxation officer under subsection (1) or (2) of this section as if a reference in the first-mentioned section to the *Taxation Administration Act 1953* included a reference to this Act or the *Financial Transaction Reports Act 1988*.

Note: Section 3C of the *Taxation Administration Act 1953* deals with secrecy of taxation information.

- (4) Section 3C of the *Taxation Administration Act 1953* does not apply to the disclosure by the Commissioner of Taxation or a taxation officer of AUSTRAC information to an official of a designated agency for the purposes of, or in connection with, the performance of the official's duties in relation to the designated agency, so long as the official holds an appropriate authorisation under subsection 126(1).

Subdivision B—Access by designated agencies to AUSTRAC information

126 Access by designated agencies to AUSTRAC information

- (1) The AUSTRAC CEO may, in writing, authorise specified officials, or a specified class of officials, of a specified designated agency to have access to AUSTRAC information for the purposes of performing the agency's functions and exercising the agency's powers.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An authorisation under subsection (1) is not a legislative instrument.

Limitations on AUSTRAC's power to authorise access by State or Territory agencies

- (3) Despite subsection (1), the AUSTRAC CEO may specify a designated agency mentioned in any of paragraphs (p) to (x) of the definition of **designated agency** in section 5 only if the designated agency undertakes that it and its officials will comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* in respect of AUSTRAC information obtained under:
 - (a) the authorisation; or
 - (b) subsection 128(2).

AUSTRAC information, or class of AUSTRAC information, to which access is authorised

- (4) An authorisation under subsection (1) must state the AUSTRAC information, or the class of AUSTRAC information, to which the officials of the designated agency are to have access.

Treasury Department

- (5) This Subdivision does not apply to a function or power of the Treasury Department unless the function or power relates to the *Foreign Acquisitions and Takeovers Act 1975* or regulations under that Act.
- (6) This Subdivision does not apply in relation to the duties of an official of the Treasury Department unless those duties relate to the *Foreign Acquisitions and Takeovers Act 1975* or regulations under that Act.

127 Dealings with AUSTRAC information once accessed

- (1) This section restricts what a person (the **entrusted agency official**) who is or was an official of a designated agency may do with accessed information.
- (2) The entrusted agency official commits an offence if:
 - (a) the official has obtained accessed information; and
 - (b) the official discloses the information to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Each of the following is an exception to the prohibition in subsection (2):
 - (a) the disclosure is for the purposes of, or in connection with, the performance of the official's duties;
 - (b) the disclosure is authorised by, or is in connection with communicating AUSTRAC information under, subsection 125(2) or section 128, 132, 133 or 133A.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) **Accessed information** is AUSTRAC information obtained by the entrusted agency official under subsection 125(4), section 126 or subsection 128(1) or (2) or 132(2) or (4).

128 When AUSTRAC information can be passed on by an official of a designated agency

Other officials of the same agency

- (1) An official of a designated agency may disclose AUSTRAC information to another official of the agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the agency.

Officials of another designated agency

- (2) An official of a designated agency may disclose AUSTRAC information to another official of another designated agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the other designated agency, so long as the other official holds an appropriate authorisation under subsection 126(1).

Note: For disclosure to the Commissioner of Taxation and taxation officers, see subsection 125(2).

Court or tribunal proceedings etc.

- (3) An official of a designated agency may:
- (a) disclose AUSTRAC information to a person for the purposes of, or in connection with:
 - (i) court or tribunal proceedings; or
 - (ii) proposed or possible court or tribunal proceedings; or
 - (iii) obtaining legal advice; or
 - (b) disclose AUSTRAC information in the course of court or tribunal proceedings.
- (4) Subsection (3) does not apply to AUSTRAC information that:
- (a) was obtained under section 41; or
 - (b) was obtained under section 49, in so far as that section relates to a communication under section 41.
- (5) A person to whom AUSTRAC information has been disclosed under paragraph (3)(a) must not disclose the information to another person.
- (6) Subsection (5) does not apply if:
- (a) the disclosure is for the purposes of, or in connection with:
 - (i) the court or tribunal proceedings; or
 - (ii) the proposed or possible court or tribunal proceedings; or
 - (iii) obtaining or giving the legal advice;as the case may be; or
 - (b) the disclosure is authorised by this Division.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (5); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Investigations

- (8) An official of a designated agency may disclose AUSTRAC information to a person for the purposes of, or in connection with, an investigation or a proposed or possible investigation.
- (9) Subsection (8) does not apply to AUSTRAC information that:
- (a) was obtained under section 41; or
 - (b) was obtained under section 49, in so far as that section relates to a communication under section 41.
- (10) A person to whom AUSTRAC information has been disclosed under subsection (8) must not disclose the information to another person.
- (11) Subsection (10) does not apply if the disclosure is for the purposes of, or in connection with:
- (a) the investigation or the proposed or possible investigation; or
 - (b) court or tribunal proceedings, or any proposed or possible court or tribunal proceedings, connected with the investigation or proposed or possible investigation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

- (12) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (10); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

ASIS officials

- (12A) The following provisions have effect:
- (a) an ASIS official may disclose AUSTRAC information to an IGIS official for the purposes of, or in connection with, the performance of the IGIS official's duties in relation to ASIS or employees of ASIS;
 - (b) an ASIS official may disclose AUSTRAC information to the ASIS Minister if the disclosure is for the purposes of, or in connection with, the performance of the ASIS Minister's responsibilities in relation to ASIS;
 - (c) an ASIS official may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services Act 2001*, is empowered to issue an authorisation in relation to ASIS, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

(12B) Subsection (12A) does not limit the generality of any other provision of this section.

ASIO officials

- (13) The following provisions have effect:
- (a) an ASIO official may disclose AUSTRAC information to an IGIS official for the purposes of, or in connection with, the performance of the IGIS official's duties in relation to ASIO or employees of ASIO;
 - (b) an ASIO official may disclose AUSTRAC information to the ASIO Minister if the disclosure is for the purposes of, or in connection with:
 - (i) the performance of the ASIO Minister's functions under the *Australian Security Intelligence Organisation Act 1979*; or
 - (ii) security (within the meaning of that Act);
 - (c) an ASIO official may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister's functions under that Act;
 - (d) an ASIO official may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services Act 2001*, is empowered to issue an authorisation in relation to ASIS, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

(13A) Subsection (13) does not limit the generality of any other provision of this section.

Australian Crime Commission officials

- (14) The following provisions have effect:
- (a) the Chief Executive Officer of the Australian Crime Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom AUSTRAC information relates, communicate the information to the Board of the Australian Crime Commission;
 - (b) the Chair of the Board of the Australian Crime Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom AUSTRAC information relates, communicate the information to the Inter-Governmental Committee in a report by the Chair under subsection 59(4) of the *Australian Crime Commission Act 2002*;

- (c) the Chair of the Board of the Australian Crime Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom AUSTRAC information relates, communicate the information to the Parliamentary Joint Committee on the Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*;
- (d) the Chief Executive Officer of the Australian Crime Commission may communicate AUSTRAC information to an examiner of the Australian Crime Commission who is conducting an examination under Division 2 of Part II of the *Australian Crime Commission Act 2002*;
- (e) an examiner of the Australian Crime Commission may disclose AUSTRAC information in the course of such an examination before the examiner;
- (f) a member of the staff of the Australian Crime Commission may disclose AUSTRAC information for the purposes of, or in connection with, the performance of the staff member's duties in relation to the Australian Crime Commission.

(14A) Subsection (14) does not limit the generality of any other provision of this section.

Disclosure to responsible Ministers

- (15) If a designated agency is established by law of the Commonwealth, an official of the agency may disclose AUSTRAC information to the Minister responsible for the administration of so much of that law as relates to the agency if the disclosure is for the purposes of, or in connection with, the performance of the Minister's responsibilities in relation to the agency.
- (16) If a designated agency is a Department of the Commonwealth, an official of the agency may disclose AUSTRAC information to the Minister responsible for the agency if the disclosure is for the purposes of, or in connection with, the performance of the Minister's responsibilities in relation to the agency.
- (17) If a designated agency is established by law of a State or Territory, an official of the agency may disclose AUSTRAC information to the State or Territory Minister responsible for the administration of so much of that law as relates to the agency if the disclosure is for the purposes of, or in connection with, the performance of the State or Territory Minister's responsibilities in relation to the agency.
- (18) If a designated agency is a Department of a State or Territory, an official of the agency may disclose AUSTRAC information to the State or Territory Minister responsible for the agency if the disclosure is for the purposes of, or in connection with, the performance of the State or Territory Minister's responsibilities in relation to the agency.

IGIS officials

- (19) An IGIS official may:
 - (a) disclose AUSTRAC information to another IGIS official for the purposes of, or in connection with, the performance of that official's duties in relation to ASIO, ASIS or employees of ASIO or ASIS; or
 - (b) disclose AUSTRAC information to the Director-General of Security in a draft report under section 21 of the *Inspector-General of Intelligence and Security Act 1986* in relation to ASIO or employees of ASIO; or
 - (ba) disclose AUSTRAC information to the Director-General of ASIS in a draft report under section 21 of the *Inspector-General of Intelligence and Security Act 1986* in relation to ASIS or employees of ASIS; or
 - (d) disclose AUSTRAC information under section 23 of the *Inspector-General of Intelligence and Security Act 1986* in relation to ASIO, ASIS or employees of ASIO or ASIS; or

- (e) disclose AUSTRAC information to the Director-General of Security in a report, in relation to ASIO or employees of ASIO, under section 25A of the *Inspector-General of Intelligence and Security Act 1986*; or
- (ea) disclose AUSTRAC information to the Director-General of ASIS in a report, in relation to ASIS or employees of ASIS, under section 25A of the *Inspector-General of Intelligence and Security Act 1986*; or
- (g) disclose AUSTRAC information in a report under subsection 21(1B) or section 22 or 25 of the *Inspector-General of Intelligence and Security Act 1986*; or
- (h) disclose AUSTRAC information in a notice under section 12 of the *Inspector-General of Intelligence and Security Act 1986*.

(20) Subsection (19) does not limit the generality of any other provision of this section.

Subdivision C—Access by non-designated Commonwealth agencies to AUSTRAC information

129 Access by non-designated Commonwealth agencies to AUSTRAC information

- (1) If an official of a non-designated Commonwealth agency makes an application to the AUSTRAC CEO for access to AUSTRAC information for the purposes of:
- (a) an investigation of a possible breach of a law of the Commonwealth; or
 - (b) a proposed investigation of a possible breach of a law of the Commonwealth;

the AUSTRAC CEO may, in writing, authorise the official to have access to AUSTRAC information for those purposes.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An authorisation under subsection (1) is not a legislative instrument.

AUSTRAC information, or class of AUSTRAC information, to which access is authorised

- (3) An authorisation under subsection (1) must state the AUSTRAC information, or the class of AUSTRAC information, to which the official of the non-designated Commonwealth agency is to have access.

130 Dealings with AUSTRAC information once accessed

- (1) This section restricts what a person (the ***entrusted Commonwealth agency official***) who is or was an official of a non-designated Commonwealth agency may do with accessed information.
- (2) The entrusted Commonwealth agency official commits an offence if:
- (a) the official has obtained accessed information; and
 - (b) the official discloses the information to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Each of the following is an exception to the prohibition in subsection (2):
- (a) the disclosure is for the purposes of, or in connection with, the performance of the official's duties in connection with the investigation or proposed investigation concerned;
 - (b) the disclosure is in connection with communicating AUSTRAC information under section 131.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) **Accessed information** is AUSTRAC information obtained by the entrusted Commonwealth agency official under subsection 129(1) or 131(2).

131 When AUSTRAC information can be passed on by an official of a non-designated Commonwealth agency

Scope

- (1) This section applies if AUSTRAC information is disclosed to an official of a non-designated Commonwealth agency for the purposes of an investigation or proposed investigation.

Disclosure to other officials of the same agency

- (2) The official may disclose the AUSTRAC information to another official of the agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the investigation or proposed investigation.

Disclosure for the purposes of court or tribunal proceedings

- (3) The official may disclose the AUSTRAC information to a person for the purposes of, or in connection with, court or tribunal proceedings, or proposed or possible court or tribunal proceedings, connected with the investigation or proposed investigation.
- (4) A person to whom AUSTRAC information has been disclosed under subsection (3) must not disclose the information to another person.
- (5) Subsection (4) does not apply if the disclosure is for the purposes of, or in connection with, the court or tribunal proceedings or the proposed or possible court or tribunal proceedings.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (4); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 2 years or 120 penalty units, or both.

Subdivision D—Communication of AUSTRAC information to foreign countries etc.

132 Communication of AUSTRAC information to a foreign country etc.

Foreign country

- (1) The AUSTRAC CEO may communicate AUSTRAC information to the government of a foreign country if the AUSTRAC CEO is satisfied that:
- (a) the government of the foreign country has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and
 - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the government of the foreign country; and
 - (b) it is appropriate, in all the circumstances of the case, to communicate the information to the government of the foreign country.

Foreign law enforcement agency—access by Commissioner of the Australian Federal Police to AUSTRAC information

- (2) The AUSTRAC CEO may, in writing, authorise the Commissioner of the Australian Federal Police to have access to AUSTRAC information for the purposes of communicating the information to a foreign law enforcement agency under subsection (3).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

When the Commissioner of the Australian Federal Police may communicate AUSTRAC information to a foreign law enforcement agency

- (3) The Commissioner of the Australian Federal Police may communicate AUSTRAC information to a foreign law enforcement agency if the Commissioner is satisfied that:
- (a) the foreign law enforcement agency has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and
 - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign law enforcement agency; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.

- (4) The Commissioner of the Australian Federal Police may, in writing, authorise a member of the Australian Federal Police to access the AUSTRAC information and communicate it to the foreign law enforcement agency on behalf of the Commissioner.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Foreign law enforcement agency—access by Chief Executive Officer of the Australian Crime Commission to AUSTRAC information

- (5) The AUSTRAC CEO may, in writing, authorise the Chief Executive Officer of the Australian Crime Commission to have access to AUSTRAC information for the purposes of communicating the information to a foreign law enforcement agency under subsection (6).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

When the Chief Executive Officer of the Australian Crime Commission may communicate AUSTRAC information to a foreign law enforcement agency

- (6) The Chief Executive Officer of the Australian Crime Commission may communicate AUSTRAC information to a foreign law enforcement agency if the Chief Executive Officer of the Australian Crime Commission is satisfied that:
- (a) the foreign law enforcement agency has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and
 - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign law enforcement agency; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.
- (7) The Chief Executive Officer of the Australian Crime Commission may, in writing, authorise a member of the staff of the Australian Crime Commission to access the

AUSTRAC information and communicate it to the foreign law enforcement agency on behalf of the Chief Executive Officer of the Australian Crime Commission.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

133 When the Director-General of Security may communicate AUSTRAC information to a foreign intelligence agency

- (1) The Director-General of Security may communicate AUSTRAC information to a foreign intelligence agency if the Director-General is satisfied that:
 - (a) the foreign intelligence agency has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and
 - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.
- (2) The Director-General of Security may, in writing, authorise an ASIO official to access the AUSTRAC information and communicate it to the foreign intelligence agency on the Director-General's behalf.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

133A When the Director-General of ASIS may communicate AUSTRAC information to a foreign intelligence agency

- (1) The Director-General of ASIS may communicate AUSTRAC information to a foreign intelligence agency if the Director-General is satisfied that:
 - (a) the foreign intelligence agency has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and
 - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.
- (2) The Director-General of ASIS may, in writing, authorise an ASIS official to access the AUSTRAC information and communicate it to the foreign intelligence agency on the Director-General's behalf.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Division 5—Use of AUSTRAC information in court or tribunal proceedings

134 Use of AUSTRAC information in court or tribunal proceedings

A person who obtains AUSTRAC information is not to be required:

- (a) to produce in a court or tribunal a document containing AUSTRAC information; or
 - (b) to disclose to any court or tribunal any AUSTRAC information;
- except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act or the *Financial Transaction Reports Act 1988*.

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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