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Public Legal Interpretation No. 8 of 2008 – Cross-border movements

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Currency

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC at 10 December 2008.

You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.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) and the *Financial Transaction Reports Act 1988* (FTR Act) as they relate to:
 - the obligation to report cross-border movements of physical currency within the meaning of Part 4, Division 2 of the AML/CTF Act
 - the obligation to report cross-border movements of bearer negotiable instruments within the meaning of Part 4, Division 3 of the AML/CTF Act
 - questioning and search powers in relation to cross-border movements of physical currency and bearer negotiable instruments under Part 15, Division 8 of the AML/CTF Act.

Introduction

- 2 Part 4 of the AML/CTF Act requires persons to report cross-border movements of physical currency and bearer negotiable instruments. Part 4 of the AML/CTF Act came into force on 13 December 2006 and supersedes section 15 of the FTR Act.

Outline of interpretation

- 3 This Public Legal Interpretation deals with:

Section one:

- cessation of obligation to report under section 15 of the FTR Act

Section two:

- reports of cross-border movements of physical currency under Part 4, Division 2 of the AML/CTF Act
- reports of cross-border movements of bearer negotiable instruments under Part 4, Division 3 of the AML/CTF Act

Section three:

- questioning and search powers in relation to cross-border movements under Part 15, Division 8 of the AML/CTF Act.

Interpretation

Section one – cessation of obligation to report under section 15 of the FTR Act

- 4 Section 15 of the FTR Act required a person to report transfers, into or out of Australia, of Australian or foreign currency of amounts of not less than \$10,000.
- 5 Subsection 15(1) of the FTR Act provides that a person who transfers Australian or foreign currency of amounts of not less than \$10,000 into or out of Australia must report such transfers to AUSTRAC.
- 6 However, subsection 15(1B) states that subsection 15(1) does not apply 'if the transfer occurred after the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*'.

- 7 Subsection 15(5) applies to persons who receive Australian or foreign currency of amounts of not less than \$10,000 transferred from outside Australia.
- 8 However, subsection 15(5B) states that subsection 15(5) does not apply if the currency 'was transferred after the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*'.
- 9 Part 4 of the AML/CTF Act came into force on 13 December 2006. Since that date subsections 15(1B) and 15(5B) have the effect that transfers of currency into or out of Australia, or receipt of currency transferred into Australia, are not required to be reported under subsections 15(1) and 15(5).
- 10 Section 15 of the FTR Act remains in force and continues to apply in certain circumstances; for example, ongoing prosecution of offences committed under subsections 15(1) and 15(5).

Section two – obligations to report under Part 4 of the AML/ CTF Act

Reports of cross-border movements of physical currency under the AML/CTF Act

- 11 Section 53 of the AML/CTF Act requires a person to report any movement of physical currency of amounts not less than \$10,000, into or out of Australia.
- 12 Section 55 of the AML/CTF Act requires a person to report any receipt of physical currency of amounts not less than \$10,000 from outside Australia, where the movement of that physical currency has not previously been reported.
- 13 Section 199 of the AML/CTF Act sets out questioning and search powers in relation to physical currency. This will be discussed further in section three.

Definition of physical currency

- 14 'Physical currency' is defined in section 5 of the AML/CTF Act as:

physical currency means the coin and printed money (whether 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.

- 15 AUSTRAC considers that the AML/CTF Act definition is consistent with the ordinary meaning of physical currency or cash. AUSTRAC notes that 'physical currency' refers to cash of any country. Physical currency excludes e-currency and currency recorded in a bank account. If the equivalent amount of currency of another country is not less than \$10,000 Australian, and the currency is moved into or out of Australia, a report must be made as set out in sections 53 and 55 of the AML/CTF Act. Section 18 of the AML/CTF Act sets out how a currency value of foreign currency is to be converted to Australian dollars.

Moving physical currency into and out of Australia

- 16 Movement of physical currency into and out of Australia is to be reported under section 53 of the AML/ CTF Act.
- 17 Section 57 of the AML/CTF Act defines what is meant by 'movement' of physical currency out of Australia by reference to two situations: taking or sending physical currency out of Australia,¹ or as described in subsection 57(3) of the AML/CTF Act. Subsection 57(3) is

¹ Subsection 57(2) of the AML/CTF Act.

discussed at paragraph 28 below and refers to movement of physical currency by a person going towards an aircraft or ship through an embarkation area.

- 18 Under section 58 of the AML/CTF Act a person is considered to move physical currency into Australia if the person brings or sends physical currency into Australia.

Sending physical currency into or out of Australia

- 19 Section 57 states that moving physical currency out of Australia occurs if the person sends or takes the physical currency out of Australia. Section 58 states that a person moves physical currency into Australia if the person 'brings or sends the physical currency into Australia'.

- 20 The term 'send' is defined in section 5 of the AML/CTF Act as:

send, in relation to physical currency, includes send through the post.

- 21 The High Court of Australia considered the meaning of the term 'send' in *Pinkstone v R*.²

The *New Oxford Dictionary of English* relevantly defines to "send" as to "arrange for the delivery of, especially by post". The *New Shorter Oxford English Dictionary* speaks of ordering or causing a thing to be conveyed, transported or transmitted by an intermediary to a person or place for a particular purpose. The *Macquarie Dictionary* speaks in similar terms. The definitions focus upon acts initiating, and contributing to, the process of transmission of an object to a particular destination, with a view to the ultimate receipt of the object by a particular person at that destination. None of the definitions suggest that actual receipt of the object by its intended recipient, at the end of the process of transmission, is a necessary element of the expression.

That circumstance accords with common experience. The mere fact that a parcel, upon reaching its intended destination, may not thereafter reach its intended recipient does not mean that the parcel was not sent to another or that it has no sender. In *The Petrofina*, the House of Lords, in discussing the finding of an arbitrator that the accepted method of payment under a charterparty involved the "sending" of a cheque by post, reached a similar conclusion. The ordinary meaning of "to send" may thus be distinguished from the expression "to deliver to another"; the latter expression connotes a completed transaction, ending in receipt of the object in question.

- 22 AUSTRAC concludes that sending physical currency refers to consigning or arranging for sending. It does not require that the physical currency is received by the intended recipient for movements into or out of Australia.

- 23 Paragraph 54(1)(c) applies to timing of reports of movements of physical currency that is taken out of Australia by consignment 'through the post to a place outside Australia' or 'to another person for carriage to a place outside Australia by that person or by a third person'. The act of consignment to the post, or to another person for carriage, not receipt of the parcel, is the relevant time at which a report of sending physical currency must be made.

- 24 The *Macquarie Dictionary Online 2008*³ defines 'consign' relevantly as:

1. (sometimes followed by *to*) to hand over or deliver formally; commit.
2. (sometimes followed by *to*) to transfer to another's custody or charge; entrust.
- ...
4. a. to transmit, as by public carrier, especially for sale or custody. b. to address for such transmission.

² (2004) 206 ALR 84.

³ Macquarie Dictionary Publishers Pty Limited 2008.

- 25 AUSTRAC concludes that under paragraph 54(1)(c) currency is moved out of Australia by a person who consigns it, whether or not that person personally takes the money out of Australia. That is, the act of consignment for movement out of Australia (not physical removal of the currency from Australia) is the reportable fact. AUSTRAC further concludes from the definition of 'send' in section 5 of the AML/CTF Act that sending physical currency out of Australia includes consigning currency through the post.
- 26 Further, the view of 'send' as not requiring delivery is consistent with the description in subsection 57(3) that does not require a person who takes physical currency out of Australia to leave Australian territory.
- 27 Section 55 sets out reporting requirements for money received by a person that is moved to the person from outside Australia. This includes money that is sent to the person or that is brought to the person from outside Australia.

Taking physical currency out of Australia

- 28 Subsection 57(3) states that a person has moved physical currency out of Australia if:
- the person arranges to leave Australia on an aircraft or ship and goes towards an embarkation area to leave Australia on a ship or aircraft and:
- (a) takes physical currency into the embarkation area; or
- (b) has physical currency with them or in their baggage
- and the person has not given a report about the physical currency when at the place in the embarkation area at which customs officers examine passports.
- 29 Section 5 of the AML/CTF Act provides that embarkation area means a section 234AA place within the meaning of the *Customs Act 1901*.
- 30 Unlike 'send', the expression 'take' is not defined in the AML/CTF Act indicating that the ordinary English meaning applies. The ordinary English meaning can be ascertained from a dictionary such as the *Macquarie Dictionary Online 2008*⁴ which relevantly provides:

take

4. to get into one's hold, possession, control, etc., by one's own action but without force or artifice.

...

15. to carry or convey...

16. to convey or transport ...

- 31 A person would be considered to 'take' physical currency where the physical currency is in the person's possession, such as on their person, or under the person's control, such as in their baggage.
- 32 Thus movement of physical currency by a person includes, but is not limited to, where the person takes it on their person or the currency is under the person's control, for example in baggage. This includes movement of a physical currency by a person who is consigned to carry physical currency on behalf of another person.
- 33 AUSTRAC concludes that moving physical currency out of Australia does not require that a person leave Australian territory. Moving physical currency occurs when a person arranges

⁴ Macquarie Dictionary Publishers Pty Limited 2008.

to leave Australia and goes through passport control to a ship or aircraft, if the person has physical currency on their person or with them or in their bags.

Bringing physical currency into Australia

- 34 Section 58 of the AML/CTF Act states that a person moves physical currency into Australia if the person 'brings' or 'sends' the physical currency into Australia. Subsection 54(2) defines the time at which a report of inwards movement of currency must be made.
- 35 'Bring' 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*⁵ which relevantly provides:

bring

verb (t) 1. to cause to come with oneself; take along to the place or person sought; conduct or convey.

- 36 AUSTRAC concludes that bringing physical currency into Australia includes, but is not limited to, bringing physical currency into Australia on the person or under the control of a person in baggage or with a person. This is confirmed by paragraph 54(1)(a) of the AML/CTF Act which refers to timing of a report of a movement of physical currency 'with the person'.
- 37 This is consistent with the view at paragraph 31 above, of 'taking' physical currency out of Australia.

Receiving physical currency

- 38 Section 55 states that a person who receives not less than \$10,000 of physical currency 'moved to the person from outside Australia' must report the movement if it has not already been reported under section 53. This requirement applies to persons who receive money before it is taken to a place at which customs officers examine bags, if the money is brought into Australia by another person who has not reported it. For example, if a supplier to ships is paid with currency brought into Australian waters but not taken to customs, the supplier has received the currency which is moved from outside Australia. If the relevant threshold is reached, the supplier must report the receipt of currency.

When the reports are to be made

- 39 Section 54 of the AML/CTF Act fixes the timing of reports of movements of physical currency, including bringing currency into Australia, taking currency out of Australia, or by consignment of the physical currency through the post or by a third party.
- 40 Subsection 54(2) of the AML/CTF Act applies to timing of reports about a person bringing physical currency into Australia.
- 41 Subsection 54(2) of the AML/CTF Act applies to two situations. Paragraph 54(2)(a) states that a person who moves physical currency into Australia on an aircraft or ship, who goes to the place at which customs officers examine passports, must make a report as soon as arriving at that place, if the amount of physical currency is at or above the amount of \$10,000.⁶
- 42 Paragraph 54(2)(b) of the AML/CTF Act states that in any other case a person is required to make a report at the first opportunity after arrival in Australia (for example, where a person arrives on an aircraft or ship but does not go directly upon disembarking to the place where customs officers examine passports; or, where a person disembarks from an aircraft or ship

⁵ Macquarie Dictionary Publishers Pty Limited 2008.

⁶ Paragraphs 53(1)(a) and 53(3)(a) of the AML/CTF Act set the amount of currency above which a report must be made.

or arrives in Australia by any other means at a location which is not manned by a customs officer).

- 43 Subsection 54(3) of the AML/CTF Act applies to timing of reports about taking physical currency out of Australia with a person.
- 44 Subsection 54(3) of the AML/CTF Act also applies to two situations. Paragraph 54(3)(a) states that a person who moves physical currency out of Australia on an aircraft or ship who goes to the place at which customs officers examine passports must make a report as soon as arriving at that place, if the amount of cash is not less than \$10,000 in value.
- 45 Paragraph 54(3)(b) of the AML/CTF Act states that in any other case a person must report as soon as they reach the customs officer who is to examine the person's passport, or where there is no such examination, at the last opportunity before leaving Australia (for example, where a person leaves on an aircraft or ship but does not go directly before embarking to the place where customs officers examine passports; or, where a person leaves on an aircraft or ship or departs from Australia by any other means from a location which is not manned by a customs officer).
- 46 Paragraph 54(1)(c) of the AML/CTF Act applies to timing of reports about movements of physical currency by consignment through the post or to another person for carriage to a place outside Australia.
- 47 Paragraph 54(1)(c) of the AML/CTF Act states that a person who consigns physical currency to be taken out of Australia must report 'at any time before the time when the physical currency is irrevocably committed... to the Australian Postal Corporation or to the other person'.
- 48 Paragraph 54(1)(d) of the AML/CTF Act states that 'in any other case' where physical currency at a value of not less than \$10,000 is to be moved, the person moving the currency must report it 'at any time before the movement of the physical currency takes place'. Paragraphs 16-37 above give a view of the meaning of 'movement' of physical currency into or out of Australia.
- 49 Paragraph 38 above states that a person receiving physical currency where a report in respect of the movement has not been previously made in accordance with section 53,⁷ is required to make a report. The person must make the report within 5 business days of receiving the currency under paragraph 55(1)(d) of the AML/CTF Act.

Exceptions to reporting requirements - commercial passenger carrier and commercial goods carrier and ADIs

- 50 Subsection 53(5) provides that a commercial passenger carrier is not required to make a report about the movement of physical currency at a value of not less than \$10,000 into or out of Australia if the physical currency is in the possession of any of its passengers.
- 51 Section 5 of the AML/CTF Act defines a commercial passenger carrier to mean a person, who in the normal course of business, carries passengers for reward.
- 52 Subsection 53(6) provides that a commercial goods carrier is not required to make a report about movement of physical currency at a value of not less than \$10,000 into or out of Australia if it is carrying physical currency on behalf of another person and that person has not disclosed to the commercial goods carrier that the goods it is carrying on behalf of the other person includes physical currency.
- 53 Section 5 of the AML/CTF Act defines a commercial goods carrier to mean a person, who in the normal course of business, carries goods or mail for reward.

⁷ Paragraph 55(1)(c) of the AML/CTF Act.

- 54 A commercial passenger carrier and a commercial goods carrier that carry physical currency at a value of not less than \$10,000 into or out of Australia in their own capacity, or in the case of a commercial goods carrier, it has been disclosed to it that it is carrying physical currency at a value of not less than \$10,000 on behalf of another person, are to make a report in relation to the movement of physical currency before the movement of the physical currency takes place (paragraph 54(1)(d)).

ADIs not exempt from making a report of currency transfer via commercial goods carriers

- 55 An authorised deposit-taking institution (ADI) is not exempt from making a report in respect of currency transferred on behalf of the ADI by a commercial goods carrier. This is different from the exemption that applied to ADIs under subsections 15(4) and (5) of the FTR Act. ADIs are required to report all movements of physical currency not less than \$10,000 into or out of Australia under section 53 of the AML/CTF Act.

Reports of cross-border movements of bearer negotiable instruments under the AML/CTF Act

- 56 Subsection 59(1) of the AML/CTF Act provides that a person may be required to provide a report about the movement of a bearer negotiable instrument if the person produces to a customs or police officer one or more bearer negotiable instruments,⁸ or if a customs or police officer conducts an examination or search as authorised by section 200 of the AML/CTF Act and finds one or more bearer negotiable instruments.⁹
- 57 Subsections 200(1)¹⁰ and 200(2)¹¹ of the AML/CTF Act provide that a person may be required by a police or customs officer to declare whether they have a bearer negotiable instrument, the amount payable and to produce the bearer negotiable instrument when entering or leaving Australia.
- 58 Subsections 200(4), (5), (6), (7), (8) and (9) of the AML/CTF Act provide that if a police or customs officer has asked a person to make a declaration under subsections 200(1) or (2) and has reasonable grounds to suspect that the person has made a declaration that is false or misleading or the person refuses or fails to make a declaration or produce a bearer negotiable instrument, a police or customs officer may examine an article the person has with him or her, or search the person, to determine if the person has a bearer negotiable instrument or if the person has made a false declaration.¹² The different circumstances to which each subsection applies are discussed further in section three of this Public Legal Interpretation.

Definition of bearer negotiable instrument

- 59 Section 17 of the AML/CTF Act defines bearer negotiable instruments as follows:

- (1) For the purposes of this Act, a **bearer negotiable instrument** is:
- (a) a bill of exchange; or
 - (b) a cheque; or
 - (c) a promissory note; or
 - (d) a bearer bond; or
 - (e) a traveller's cheque; or

⁸ Paragraph 59(1)(a) of the AML/CTF Act.

⁹ Paragraph 59(1)(b) of the AML/CTF Act.

¹⁰ This subsection applies to persons leaving Australia.

¹¹ This subsection applies to persons arriving in Australia.

¹² Subsections 200(4) – 200(11) of the AML/CTF Act.

- (f) a money order, postal order or similar order; or
- (g) a negotiable instrument not covered by any of the above paragraphs.

Incomplete documents

- (2) For the purposes of determining whether a document is covered by paragraph (1)(f) or (g), it is immaterial that the document is incomplete because the document does not specify:
 - (a) an amount to be paid; or
 - (b) a payee.

60 The definition in subsection 17(2) expressly includes incomplete documents of the type described in paragraphs (1)(f) and (1)(g), where the document is incomplete because an amount to be paid or a payee is not specified. There is no requirement that the instrument be payable to the bearer according to its terms for documents described in paragraphs 17(1)(f) and (1)(g), that is money or postal orders, or other types of negotiable instruments.

61 The term 'negotiable instrument' is not defined in the AML/CTF Act. The *Replacement Explanatory Memorandum to the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*¹³ (Replacement Explanatory Memorandum) states:

bearer negotiable instrument - the term is defined in clause 17 (see explanatory memorandum on clause 17). It is defined in clause 17 in the singular and paragraph 23(b) of the *Acts Interpretation Act 1901* provides that the singular includes the plural.¹⁴

Clause 17 Bearer negotiable instruments

A *bearer negotiable instrument* is a bill of exchange, cheque, promissory note, bearer bond, traveller's cheque, money order, postal order or similar order, or any other a negotiable instrument.¹⁵

62 'Negotiable instrument' is relevantly defined in the *Osborn's Concise Law Dictionary*¹⁶ as:

negotiable instrument:

1. An instrument the transfer of which to a transferee who takes in good faith and for value passes a good title, free from any defects or equities affecting the title of the transferor. The most important kinds of negotiable instruments are bills of exchange, cheques and promissory notes. Negotiability may be conferred by custom or statute, and restricted or destroyed by the holder of the instrument.

63 The key elements of a bearer negotiable instrument are therefore:

- 1. it is an instrument - that is, a formal legal document in writing, usually signed;
- 2. it is negotiable - that is, transferable by delivery, with or without endorsement, according to the circumstances, the title passing to the transferee;¹⁷ and
- 3. it transfers the title to property, rather than the property itself.

¹³ Circulated by the Minister for Justice and Customs.

¹⁴ Replacement Explanatory Memorandum at page 26.

¹⁵ Replacement Explanatory Memorandum at page 71.

¹⁶ 7th ed. Sweet & Maxwell 1983.

¹⁷ Meaning of 'negotiable' in Macquarie Online Dictionary, Macquarie Dictionary Publishers Pty Limited 2008.

- 64 AUSTRAC concludes that the definition in paragraph 17(1)(g) also includes other types of negotiable instruments that conform with the key elements of bearer negotiable instruments.

When a report must be provided

- 65 A person is required to provide a report of the movement of a bearer negotiable instrument only where a customs or police officer requests they make a report under subsection 59(1) of the AML/CTF Act. This is an important distinction from the obligations of a person to always make a report on movements of physical currency that is not less than \$10,000.
- 66 A person is further only obliged to make a report when they take or bring a bearer negotiable instrument with them or on their person into or out of Australia. There are no reporting obligations when a person sends a bearer negotiable instrument out of Australia.
- 67 A police or customs officer may require a person to provide a report of the movement of a bearer negotiable instrument regardless of the value of the bearer negotiable instrument. A person is required to provide a report as soon as possible under subsection 59(1).
- 68 Section 60 of the AML/CTF Act requires a customs or police officer to forward to AUSTRAC a report provided under section 59 within 5 business days after the day of receipt of the report.

Requirements of cross-border movement reporting

- 69 Section 62 of the AML/CTF Act provides that all passengers entering Australia must be given a copy of a notice about the reporting obligations under Part 4 of the AML/CTF Act regarding cross-border movements.
- 70 While 'give' is not defined in the AML/CTF Act, the term has received judicial consideration. The High Court considered a requirement for a delegate to give certain documents to the Refugee Review Tribunal in *Muin v Refugee Review Tribunal; Lie v Refugee Review Tribunal*. The High Court held:

What constitutes sufficient compliance with such a requirement depends upon the nature of the documents in question, the form in which they were available to the delegate, and the purpose for which they are to be made available to the Tribunal. The purpose of the requirement is to enable the person reviewing the decision to know, and have access to, the material upon which the delegate relied, so as to be able to conduct the review. If the material is in the nature of general reference material, stored for convenience in a library, or on an electronic database, then provided the library, or the database, is accessible to the Tribunal, I see no reason to interpret the requirement literally so as to require physical delivery of paper by the Secretary to the Registrar of the Tribunal.¹⁸

- 71 AUSTRAC is of the view that a person must be given written notice under section 62, of their reporting obligations under Part 4 of the AML/CTF Act before they reach the customs area.
- 72 Section 61 of the AML/CTF Act permits notices about reporting obligations under Part 4 to be affixed in the airport and on ships and places specified in the AML/CTF Rules. Paragraph 61(1)(b) states that the form and content of the notices are as specified in the AML/CTF Rules.

Failure to report a cross-border movement of physical currency or bearer negotiable instruments

- 73 Failure to report the movement of physical currency is an offence under sections 53 and 55 of the AML/CTF Act. Penalties upon conviction include imprisonment and/or a fine imposed by the court.

¹⁸ (2002) 68 ALD 257 per Gleeson CJ at paragraph 18.

- 74 Failure to comply with the request of a police or customs officer by refusing or failing to provide a report about bearer negotiable instruments is an offence under subsection 59(3) of the AML/CTF Act. Penalties upon conviction include imprisonment and/or a fine imposed by the court.
- 75 Subsections 53(4), 55(4) and 59(5) provide that the obligations to report in subsections 53(3), 55(3) and 59(4) are civil penalty provisions. This means that the AUSTRAC CEO may take enforcement action if a person does not comply.
- 76 Such action includes that the AUSTRAC CEO may apply for a civil penalty order in the Federal Court under Part 15, Division 2 of the AML/CTF Act.
- 77 Under section 184 an infringement notice can also be issued where the police or customs officer has reasonable grounds to believe that a person has contravened subsection 53(3) or 59(4). An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.¹⁹ If a police or customs officer issues an infringement notice, the officer must, within 5 business days of issuing the notice, forward a copy to the AUSTRAC CEO.²⁰

Section three – questioning and search powers in relation to cross-border movements of physical currency and bearer negotiable instruments

Questioning and search powers in relation to physical currency

- 78 Section 199 of the AML/CTF Act sets out the questioning and search powers of police officers, customs officers, and persons who assist such officers, in relation to physical currency.
- 79 Subsection 199(1) of the AML/CTF Act provides that a person leaving Australia must, if required to do so by a police or customs officer:
- declare whether or not the person has with him or her any Australian or foreign currency
 - declare the total amount of any Australian or foreign currency that the person has with him or her
 - declare whether or not, to the best of the person's knowledge, a report under section 53 has been made in respect of the currency that the person has with him or her
 - produce to the officer any currency that the person has with him or her.²¹
- 80 Subsection 199(2) of the AML/CTF Act imposes similar obligations on a person arriving in Australia to declare currency and reporting of currency if required to do so by a police or customs officer, and to produce currency if required to do so to a police or customs officer.
- 81 Subsections 199(3) and 199(4) of the AML/CTF Act provide that a police or customs officer may, with such assistance as is reasonably necessary, examine an article which a person has with them or search a person to determine whether a person has physical currency which must be reported under section 53.
- 82 Subsection 199(3) of the AML/CTF Act applies where a person is about to leave or has arrived in Australia, or is about to board or leave, or has boarded or left any ship or aircraft.
- 83 Subsection 199(4) of the AML/CTF Act applies in similar circumstances and in addition, the officer must have reasonable grounds to suspect there is on the person or in the person's clothing, physical currency in respect of which a report under section 53 is required.

¹⁹ Subsection 184(2) of the AML/CTF Act.

²⁰ Subsection 184(3) of the AML/CTF Act.

²¹ Paragraphs 199(1)(c) - (f) of the AML/CTF Act.

Subsection 199(6) provides that a person may only be searched by an officer of the same sex.

- 84 Subsection 199(5) of the AML/CTF Act provides that a police or customs officer may seize physical currency if the officer has reasonable grounds to suspect that physical currency found in the course of an examination or search may afford evidence as to the commission of an offence under section 53.
- 85 'Reasonable grounds to suspect' indicates that the test is both subjective and objective. The police or customs officer is to subjectively determine when there is a real suspicion of the relevant matters on the basis of objective evidence that supports the truth of their suspicion.
- 86 Subsection 199(7) of the AML/CTF Act states that a police or customs officer, and any person assisting a police or customs officer, may board a ship or aircraft for the purpose of exercising powers under subsections 199(1), 199(2), 199(3) or 199(4).
- 87 Subsection 199(8) of the AML/CTF Act provides that a police or customs officer may, with such assistance as is reasonable and necessary, board a ship or aircraft and examine or search a ship or aircraft, to ascertain if there is any physical currency on board which must be reported under section 53.
- 88 Subsection 199(9) provides authority for a police or customs officer, with such assistance as is reasonable and necessary, to enter any eligible place, and examine the place and any goods found in it, to find out if there is any physical currency about which a report under section 53 is required.
- 89 'Eligible place' is defined in section 5 of the AML/CTF Act as meaning a place for the examination of goods on landing appointed under section 17 of the *Customs Act 1901*, or a warehouse in respect of which a warehouse licence under the Customs Act is in force, or a port, airport, wharf or boarding station appointed under section 15 of the Customs Act.
- 90 AUSTRAC concludes that within the limits and for the purpose described in subsection 199(9) of the AML/CTF Act, a police or customs officer has authority to enter 'eligible places.'
- 91 Subsection 199(10) of the AML/CTF Act provides that a police or customs officer may seize physical currency if the officer has reasonable grounds to suspect that the physical currency found in the course of an examination or search under subsections 199(8) or 199(9) may afford evidence of the commission of an offence against section 53.
- 92 Failure to comply with an obligation to declare or produce under subsections 199(1) or 199(2) is an offence under subsection 199(11) of the AML/CTF Act. Penalties upon conviction include imprisonment and/or a fine imposed by the court.

Questioning and search powers in relation to bearer negotiable instruments

- 93 Section 200 of the AML/CTF Act sets out the questioning and search powers of police officers, customs officers, and persons who assist such officers, in relation to bearer negotiable instruments.
- 94 Subsections 200(1)²² and 200(2)²³ of the AML/CTF Act provide that a person may be required by a police or customs officer to declare whether they have a bearer negotiable instrument, the amount payable and to produce the bearer negotiable instrument when entering or leaving Australia. Subsection 200(3) of the AML/CTF Act states that an officer may make a copy of a bearer negotiable instrument so produced.

²² This subsection applies to persons leaving Australia.

²³ This subsection applies to persons arriving in Australia.

- 95 Subsections 200(4), (5) and (6) provide that a police or customs officer may conduct an examination of an article (such as baggage) to determine if the person has a bearer negotiable instrument or if they have made a false declaration.
- 96 Subsection 200(4) applies if an officer has reasonable grounds to suspect that a person has made a false or misleading declaration under subsections 200(1) or 200(2) of the AML/CTF Act. Subsection 200(5) applies if a person has refused a request to make a declaration under subsections 200(1) or 200(2) of the AML/CTF Act. Subsection 200(6) applies if the person has refused or failed to produce a bearer negotiable instrument on request. If the conditions in paragraphs 200(4)(a)-(f), 200(5)(a)-(f), or 200(6)(a)-(f) are satisfied, the officer may examine an article that the person has with him or her, for the purpose of finding any bearer negotiable instruments that the person has with him or her.
- 97 Subsections 200(7), (8) and (9) provide that a police or customs officer may search a person to determine if the person has a bearer negotiable instrument or if they have made a false declaration. Subsection 200(10) provides that a person may only be searched by an officer of the same sex.
- 98 Subsection 200(7) of the AML/CTF Act applies if an officer has reasonable grounds to suspect that a declaration made under subsections 200(1) or 200(2) of the AML/CTF Act is false or misleading. If an officer also has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, a bearer negotiable instrument, the officer may search the person for the purpose of finding whether the person has a bearer negotiable instrument in respect of which a false declaration has been made. The officer may only search a person who is about to leave Australia or about to board or leave a ship or aircraft, or has arrived in Australia or has boarded or left a ship or aircraft.
- 99 Subsection 200(8) provides authority on similar grounds to search a person who has refused or failed to make a declaration under subsections 200(1) or 200(2) of the AML/CTF Act. Subsection 200(9) of the AML/CTF Act provides authority on similar grounds to search a person who has refused or failed to produce a bearer negotiable instrument on request.
- 100 Under subsection 200(11) a police or customs officer may board an aircraft or ship or go into any eligible place for the purposes of exercising their powers under subsections (1), (2), (4), (5), (6), (7), (8) or (9) of section 200 of the AML/CTF Act.
- 101 AUSTRAC concludes that within the limits and for the purpose described in subsection 200(11) of the AML/CTF Act, a police or customs officer has authority to enter 'eligible places'.
- 102 Subsection 200(12) of the AML/CTF Act provides that a police or customs officer may seize the bearer negotiable instrument found during the course of an examination of an article (such as baggage) or search of a person under subsections (4), (5), (6), (7), (8) or (9) if the person has made a false or misleading declaration,²⁴ or has refused or failed to make a declaration,²⁵ or has refused or failed to produce a bearer negotiable instrument.²⁶
- 103 Subsection 200(13) provides that an officer may seize a bearer negotiable instrument that is produced to the officer if the person has made a false or misleading declaration about the instrument.
- 104 Failure to comply with an obligation to declare or produce any bearer negotiable instruments under subsections 200(1) or 200(2) is an offence under subsection 200(14) of the AML/CTF Act. Penalties upon conviction include imprisonment and/or a fine imposed by the court.

²⁴ Subparagraph 200(12)(b)(i) of the AML/CTF Act.

²⁵ Subparagraph 200(12)(b)(ii) of the AML/CTF Act.

²⁶ Subparagraph 200(12)(b)(iii) of the AML/CTF Act.

Related information

Legislative instruments

The Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) specify the contents of reports in relation to:

- movements of bearer negotiable instruments
- movements of physical currency into or out of Australia
- receipts of physical currency from outside Australia

These AML/CTF Rules²⁷ can be found at:

<http://www.frli.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200839656?OpenDocument>

AUSTRAC released draft AML/CTF Rules specifying that under section 61 (power to affix notices about reporting obligations) of the AML/CTF Act, a notice may be affixed at any port, airport, wharf or boarding station appointed under section 15 of the *Customs Act 1901*, which authorises Customs officers to assert Customs control. The draft Rules state that the notice may be free-standing, digital or electronic (such as a television screen or monitor) or in any other form and must contain the text specified in the draft Rules. These notices refer to the reporting obligations of travellers to declare cash of \$10,000 or more, or if asked by a Customs officer, to declare travellers cheques, cheques, money orders or any other bearer negotiable instrument of any amount. A public consultation period was open from 22 September 2008 to 3 October 2008. See http://www.austrac.gov.au/aml_ctf_rules.html

AUSTRAC publications

The *AUSTRAC Regulatory Guide* contains information regarding meeting obligations under the AML/CTF Act and AML/CTF Rules. It is available on the AUSTRAC website at: http://www.austrac.gov.au/regulatory_guide.html

Information regarding the reporting obligations for cross-border movements of physical currency (carrying, mailing or shipping) and cross-border movements of bearer negotiable instruments (carrying) is available on the 'Information for travellers' page on the AUSTRAC website at: http://www.austrac.gov.au/infor_for_travellers.html. AUSTRAC has also produced a brochure and flyer regarding bearer negotiable instruments which are available on that web page as well.

²⁷ Legislative Instrument F2008L04629.

Legislation attachment

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* is available in consolidated form at:

www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200627290?OpenDocument

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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