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Public Legal Interpretation series

Public Legal Interpretation No. 1 of 2008 – Establishment of the AUSTRAC Public Legal Interpretations

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Currency

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC at 8 April 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You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.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 establish the AUSTRAC Public Legal Interpretations, describe what they will be and the legal authority for their publication.

Introduction

- 2 AUSTRAC appreciates that both the *Financial Transaction Reports Act 1988* (FTR Act) and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) are complex pieces of legislation that may give rise to difficult questions regarding the interpretation of the various provisions of the legislation.
- 3 AUSTRAC, as the regulator, is entitled to and should have a view about what the various provisions of the legislation mean. AUSTRAC would not be able to effectively administer the FTR Act and the AML/CTF Act if it did not have a view of the meaning of various provisions of the legislation.
- 4 AUSTRAC, in an attempt to assist cash dealers and reporting entities (REs), has decided to address some of the difficult questions arising from the administration of the FTR Act and the AML/CTF Act and to publish its view on the meaning of those provisions. Those views will be published in the Public Legal Interpretations.
- 5 The Public Legal Interpretations will not replace other AUSTRAC publications such as the guidance notes, the *AUSTRAC Regulatory Guide*, the information circulars or the frequently asked questions. These publications have a valuable and ongoing role in assisting cash dealers and REs understand their obligations under the FTR Act and the AML/CTF Act.
- 6 The Public Legal Interpretations will publish AUSTRAC's legal interpretation on provisions and aspects of the FTR Act and the AML/CTF Act. As stated in the disclaimer, the content of the Public Legal Interpretation is not legal advice. AUSTRAC is aware that its published interpretation would not preclude a court, when faced with the task of interpreting a provision, from reaching an entirely different interpretation of the provision.
- 7 Over time as the law develops and aspects of the FTR Act and the AML/CTF Act are considered by the courts, the content of the Public Legal Interpretations will be reviewed, Public Legal Interpretations may be withdrawn and new ones issued. AUSTRAC does not see the Public Legal Interpretations as static documents. AUSTRAC intends that the Public Legal Interpretations will continually be reviewed and revised.
- 8 Accordingly, whilst the Public Legal Interpretations will provide an initial point of reference for cash dealers and REs, and their advisers, it is important to remember that the Public Legal Interpretations are not legal advice and cannot be relied upon as such. Cash dealers and REs should always seek their own independent advice on the application of the various provisions of the legislation before making decisions that might be affected by the various provisions of the FTR Act or the AML/CTF Act.
- 9 The Public Legal Interpretations are intended to address general issues of interpretation of the legislation. It is not intended that specific sets of circumstances relating to individual cash dealers or REs will be analysed, although, where appropriate the Public Legal Interpretations will set out examples to illustrate certain points.
- 10 Users of these Public Legal Interpretations should bear this in mind when using the Public Legal Interpretations and when particular circumstances need to be interpreted having regard to the legislation they should seek their own professional advice.
- 11 In developing the Public Legal Interpretations AUSTRAC will have regard to the views of stakeholders and may consult over the content of a particular Public Legal Interpretation before it is published. Initially it is not intended that there be consultation with stakeholders until a mechanism is put in place to facilitate that consultation process. Consultation will not be with all groups affected by the legislation but will be targeted to those groups most affected by

the content of the particular Public Legal Interpretation. For example, with regard to the preparation of a Public Legal Interpretation regarding registration under Part 6 of the AML/CTF Act it would not be necessary to consult with those parts of industry that do not provide registrable designated remittance services. AUSTRAC considers that any consultation process would be aimed at identifying the issues surrounding the interpretation of particular provisions.

Legislation and other references

- 12 Section 38 of the *Financial Transaction Reports Act 1988*.
- 13 Section 212 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Interpretation

- 14 Paragraph 38(1)(e) of the FTR Act, 'Functions of the AUSTRAC CEO', provides that a function of the AUSTRAC CEO is to 'issue guidelines to cash dealers about their obligations under this Act and the regulations.' This function of the AUSTRAC CEO to issue guidelines to cash dealers includes publishing guidelines on the AUSTRAC website to give guidance on AUSTRAC's interpretation of the FTR Act. The fact that the guidelines would be publicly available is not prohibited by the FTR Act and would also provide guidance to potential cash dealers, that is, persons considering providing services regulated by the FTR Act. This would also fall within the function as being incidental to informing persons about their obligations under the FTR Act.
- 15 Paragraphs 212(1)(c), (d) and (e) of the AML/CTF Act, 'Functions of the AUSTRAC CEO' set out some of the functions of the AUSTRAC CEO. Those paragraphs are:
 - (c) to advise and assist reporting entities in relation to their obligations under this Act, the regulations and the AML/CTF Rules; and
 - (d) to advise and assist the representatives of reporting entities in relation to compliance by reporting entities with this Act, the regulations and the AML/CTF Rules; and
 - (e) to promote compliance with this Act, the regulations and the AML/CTF Rules;
- 16 The purpose of the Public Legal Interpretations is to provide AUSTRAC's interpretation of the AML/CTF Act. To publish a series of Public Legal Interpretations setting out AUSTRAC's interpretation of the AML/CTF Act falls within the function of advising and assisting reporting entities and their representatives in relation to their obligations and compliance with the AML/CTF Act, the regulations and the Rules, and promoting compliance with the AML/CTF Act, the regulations and the Rules.
- 17 Similarly, publishing the Public Legal Interpretations will assist compliance with the AML/CTF Act, the regulations and the Rules in that the Public Legal Interpretations will inform people who are considering providing designated services about AUSTRAC's interpretation of the AML/CTF Act, and will assist those persons as REs to comply with the AML/CTF Act, the regulations and the Rules.