



Australian Government

Australian Transaction Reports
and Analysis Centre

AUSTRAC ENFORCEMENT STRATEGY 2010–11



Disclaimer: The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute, nor should it be treated as, legal advice or opinions. This document may contain statements of policy which reflect AUSTRAC's administration of the legislation in carrying out its statutory functions. The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication. AUSTRAC recommends that independent professional advice be sought.

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

September 2010

© Commonwealth of Australia

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

Telephone: 1300 021 037

Facsimile: 02 9950 0071

Website: www.austrac.gov.au

Email: help_desk@austrac.gov.au

EXECUTIVE SUMMARY

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

As Australia's financial intelligence unit (FIU), AUSTRAC collects, retains, analyses and disseminates financial intelligence to revenue, law enforcement, national security, social justice, regulatory and other partner agencies in Australia and overseas. We identify potential money laundering and terrorism financing (ML/TF) cases and provide financial intelligence that enables partner agencies to detect ML/TF activity, investigate financial crimes and secure prosecutions. This supports national priorities to maximise revenue collection, protect national security, apprehend criminals and protect the integrity of Australia's financial markets.

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

AUSTRAC's Enforcement team uses evidence-based decision making to determine appropriate cases for enforcement activity. We leverage AUSTRAC's FIU and AML/CTF activities to support this decision making.

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

Enforcement activities are designed to:

- achieve remedial compliance at both the individual reporting entity level and more broadly at the industry level, through selective, targeted action
- act as a deterrent to non-compliance
- level the playing field for industry participants that comply with their legal obligations.

Over the course of 2009-10 AUSTRAC exercised its enforcement powers under the AML/CTF Act against a number of reporting entities. Most notably, AUSTRAC accepted three enforceable undertakings (EUs), gave one remedial direction and gave notices to seven reporting entities within a corporate group to appoint an external auditor. Details of these actions are set out at Attachment A.

PRIORITIES FOR 2010–2011

In 2010–2011 the major priorities for AUSTRAC's enforcement team will be to:

- work with Supervision teams to identify suitable candidates for enforcement intervention
- manage a selection of entities through to compliance using persuasive means and AUSTRAC's formal enforcement powers
- work with Supervision to identify providers of registrable designated remittance services whose circumstances or demonstrated non-compliance would give the AUSTRAC CEO grounds to consider deregistration
- provide the AUSTRAC CEO with timely advice to inform his decisions.

Measuring effectiveness

The primary key performance indicator for the Enforcement team will be the number of successful enforcement outcomes arising from referrals to Enforcement from AUSTRAC's frontline Supervision teams.

We will seek to gauge the achievement of outcomes resulting from our enforcement activity through identifying instances where systemic non-compliance across a sector or non-compliance of specific reporting entities has been rectified.

Our success against the primary key performance indicator will be reported internally on a quarterly basis and externally on an annual basis through the *AUSTRAC Annual Report 2010–11 and the Enforcement strategy 2011–12*.

INTERACTION BETWEEN AUSTRAC'S SUPERVISION AND ENFORCEMENT ACTIVITIES

AUSTRAC's supervisory activities are aimed at improving reporting entities' compliance. These businesses have five key obligations under the AML/CTF Act.

- 1. Conduct ML/TF risk assessments.** Businesses must understand and manage the money laundering and terrorism financing (ML/TF) risks they are exposed to when they provide different products and services, use different distribution channels, deal with different customers and operate in different jurisdictions.
- 2. Implement systems and governance to manage their ML/TF risks.** Businesses must establish appropriate oversight of ML/TF risk by senior management, ensure there is an employee due diligence program and that staff are trained to detect ML/TF behaviour and regularly review the effectiveness of their systems and compliance with their obligations.
- 3. Know their customers.** Businesses must verify the identity of their customers, monitor their customers' behaviour and keep appropriate records of these actions. Financial institutions must also appropriately identify any other financial institutions with which they do business.
- 4. Make themselves known to AUSTRAC.** Most reporting entities¹ must advise AUSTRAC that they have obligations under the AML/CTF Act, either through submission of a compliance report (CR) under section 47 or, if they are a remittance service provider, by registering under Part 6 of the AML/CTF Act. As a practical measure, most reporting entities make themselves known through enrolling on AUSTRAC Online.
- 5. Report to AUSTRAC.** Businesses must provide reports to AUSTRAC on cash transactions above a \$10,000 threshold, international movements of funds

¹ Holders of an Australian financial services licence who only *make arrangements* for a person to receive a designated service (such as financial planners) are not required to submit a compliance report.

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

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

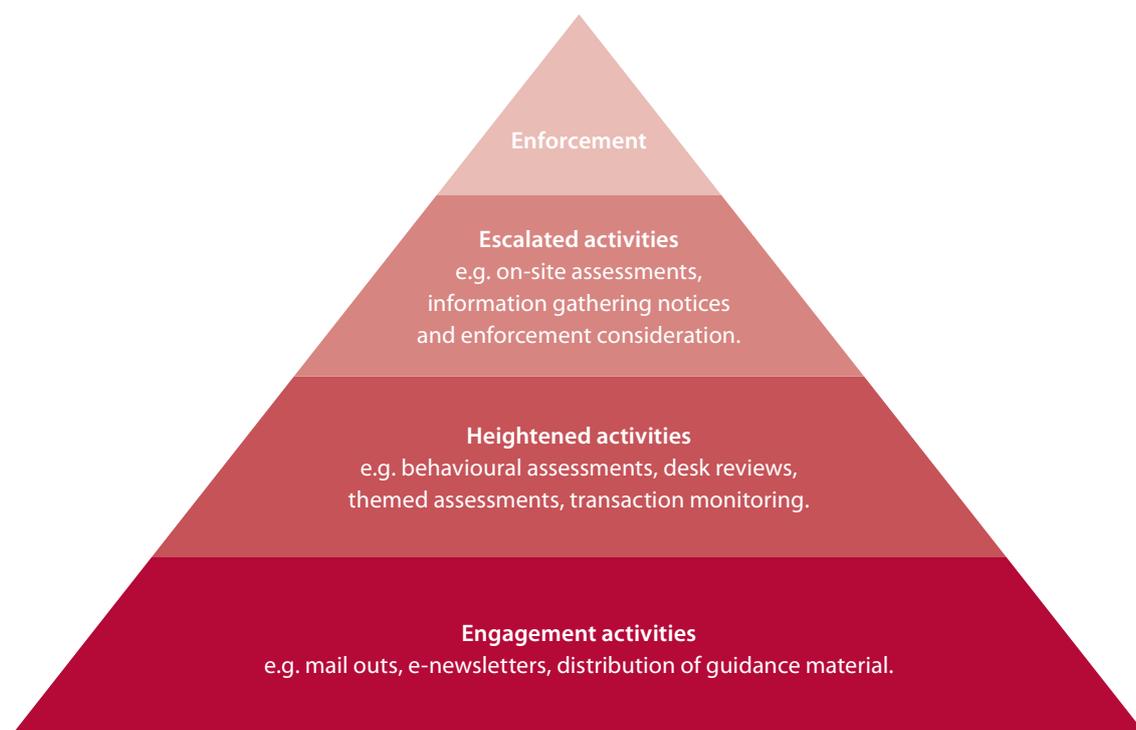
AUSTRAC applies evidence-based selection processes to identify reporting entities for supervisory activity. This in turn will impact on which reporting entities may be the focus of future enforcement action.

AUSTRAC categorises its supervisory activities into three levels of intensity:

- **Low intensity or 'engagement' activities.** This includes activities such as mail-outs, e-newsletters and the development and distribution of guidance materials. These activities are designed to influence

the behaviours of a broad group of reporting entities but are not specifically targeted toward any individual reporting entities.

- **Moderate intensity or 'heightened' activities** such as behavioural assessments, desk reviews, themed reviews and transaction monitoring. These activities are directed toward assessing the actual compliance behaviour of a particular group of reporting entities or individual reporting entities.
- **High intensity or 'escalated' activities** such as on-site assessments and enforcement consideration and action. These activities are specifically tailored to individual reporting entities and are designed to have a direct impact on improving compliance outcomes. Such activities may involve enforcement action but may also involve collaboration of a consultative nature between Enforcement and Supervision teams.



HOW MATTERS ARE REFERRED TO ENFORCEMENT

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

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

In particular it is expected that AUSTRAC's new Referrals team, which works together with AUSTRAC's partner agencies, will also refer matters to the Enforcement team for consideration of enforcement action.²

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

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

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

From time to time a reporting entity may identify that their business is in breach, or in the future may be in breach, of the AML/CTF Act. Where this is disclosed, and it is considered appropriate, AUSTRAC may provide a 'no-action letter' to the reporting entity.³

There may be some circumstances where AUSTRAC determines that a no-action letter is not appropriate and that the extent and impact of the breach requires AUSTRAC to take enforcement action. In these situations the reporting entity's disclosure and any demonstrated willingness and effort to rectify the breach(es) will be a factor in AUSTRAC's supervision and enforcement approach.

How AUSTRAC selects cases for enforcement action

Not every case referred to Enforcement will be subject to enforcement action. It is important that our enforcement activities are targeted appropriately, having regard to available AUSTRAC resources.

Relevant factors which can impact on the progress of cases include:

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

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

Nature of non-compliance

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

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

² The Referrals team was set up in April 2010 to deal with requests made through partner agencies to undertake assessments of nominated entities. The purpose of the team is to further enhance partner agency outcomes, particularly investigations involving high-risk industry cohorts. The Referrals team sits within AUSTRAC's Supervision Division.

³ The AUSTRAC Guidance Note 08/01 – No-action letters outlines matters that AUSTRAC considers in determining whether it is appropriate to issue a 'no-action letter'.



compliance is serious and has the potential to have a negative impact on the integrity of the financial system, the AUSTRAC CEO is more likely to take enforcement action.

However, where a statutory breach is inadvertent and of a minor nature with little potential to compromise the effectiveness and scope of the AML/CTF regime, the AUSTRAC CEO may choose not to pursue enforcement action.

ML/TF risk

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

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

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

Willingness and effort to comply

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

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

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

Likely result of the enforcement action

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

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

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

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

Deterrent effect

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

AUSTRAC'S ENFORCEMENT TOOLKIT

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

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

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

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

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

AUSTRAC's formal enforcement powers

AUSTRAC has a range of powers available to it under the AML/CTF Act:

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

- accepting enforceable undertakings (EUs) from reporting entities for certain matters
- issuing remedial directions which require a reporting entity to take specified action to ensure compliance
- seeking injunctions to require a person to do something or refrain from doing something in relation to the breach of a civil penalty provision of the AML/CTF Act
- pursuing civil penalty orders through the Federal Court
- referring criminal matters to the Australian Federal Police or the CDPP.

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

For more detail on each of the above powers, please refer to the *Enforcement Manual* available on the AUSTRAC website at www.austrac.gov.au.

ENFORCEMENT PLAN

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

In 2010–11 AUSTRAC's Enforcement team will achieve this by collaborating with the frontline Supervision teams to identify appropriate candidates for enforcement action across all industry sectors.

As a result, AUSTRAC's enforcement priorities dovetail with the activities and priorities outlined in the *AUSTRAC supervision strategy 2010–2011* and are consistent with the *AUSTRAC intelligence strategy 2010–2012*.

Non-compliance with transaction reporting obligations

A particular focus for frontline Supervision in 2010–2011 is to assess the reporting behaviour of reporting entities and identify those entities that are either failing to lodge transaction reports or whose reporting behaviour appears to be outside that expected for its industry cohort.

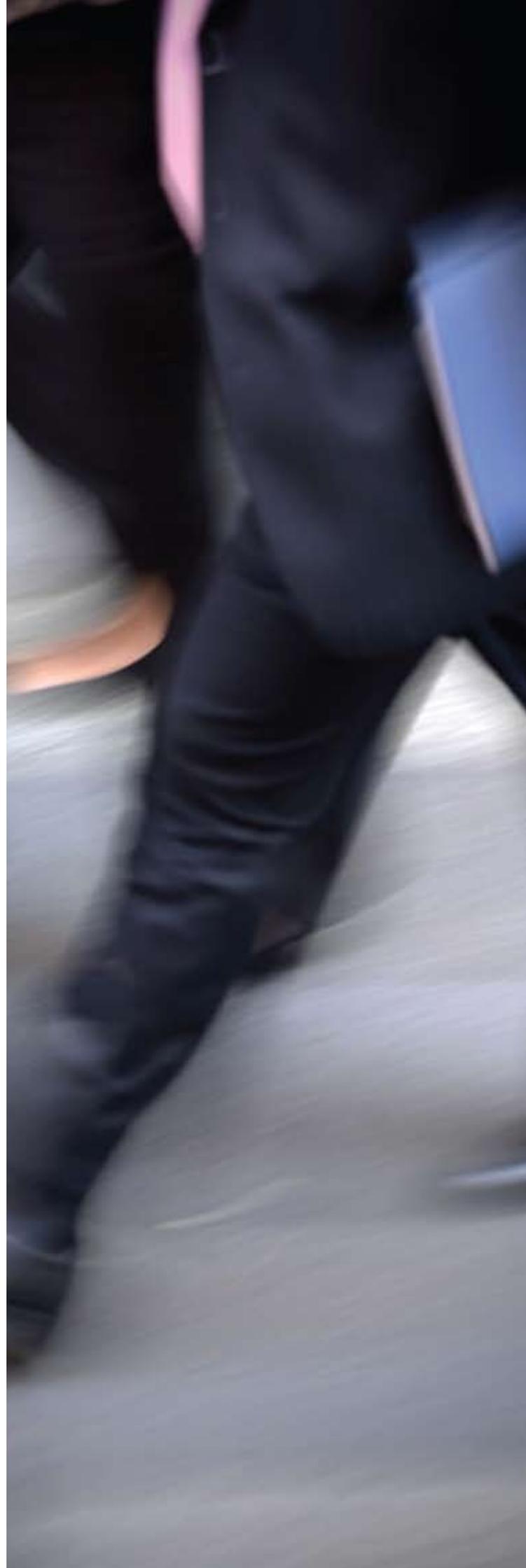
AUSTRAC's Enforcement team will focus its activities on reporting entities that are identified during the course of Supervision's activities to be non-compliant with their transaction reporting obligations.

Remittance sector

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

To address these issues, the AUSTRAC CEO recently made AML/CTF Rules which allow him to remove a person's name and registrable details from the Register of Providers of Designated Remittance Services, if the CEO is of the opinion that the person constitutes an unacceptable money laundering or terrorism financing risk.

In light of these Rules, in 2010–2011 AUSTRAC's Enforcement team will focus on investigating and taking enforcement action against reporting entities in the remittance sector that have a high ML/TF risk exposure. The Enforcement team will work with frontline Supervision and partner agencies to identify entities which may warrant removal from the register.



ATTACHMENT A

Major enforcement outcomes from 2009–2010

Barclays Bank PLC

In April 2009 AUSTRAC conducted an on-site assessment of the compliance of Barclays Bank PLC (Barclays) with Australia's AML/CTF laws. The on-site assessment disclosed a number of deficiencies and breaches, including reporting breaches, of the AML/CTF Act.

On 1 July 2009, AUSTRAC accepted an enforceable undertaking (EU) from Barclays.

The undertaking was accepted by AUSTRAC as Barclays' commitment to address its breaches of the AML/CTF Act.

Within the terms of the EU, Barclays agreed to:

- review transactions for a period of seven years and provide AUSTRAC with any outstanding reports required by law
- develop and implement proper systems and controls to ensure that Barclays complies in the future with its reporting and AML/CTF program obligations
- submit to AUSTRAC an independent expert report detailing Barclays' compliance with the AML/CTF Act.

Mojgan Zojaji trading as Little Persia

On 4 November 2009, AUSTRAC issued a remedial direction to Mojgan Zojaji, trading as Little Persia, a remittance service provider which failed to adopt and maintain an AML/CTF program.

A remedial direction requires the reporting entity to take specified action as set out in the direction to avoid any future breach of a civil penalty provision of the AML/CTF Act.

The direction stipulated that Little Persia had 28 days to submit to AUSTRAC a written AML/CTF program.

PayPal Australia Pty Ltd

AUSTRAC accepted an EU from PayPal Australia Pty Ltd (PayPal Australia) on 23 November 2009.

PayPal Australia offered the EU to AUSTRAC's CEO as a legally binding commitment to address its breaches of the AML/CTF Act.

An assessment of PayPal Australia revealed deficiencies in the systems PayPal Australia had in place to assess and manage its ML/TF risk.

Within the terms of the EU, PayPal Australia agreed to:

- strengthen its existing systems and controls to comply with risk assessment requirements
- submit to AUSTRAC an independent expert report detailing PayPal Australia's compliance with AML/CTF laws, and a plan to remedy identified deficiencies.

Eastern & Allied Pty Ltd trading as Hai Ha Money Transfer

On 8 December 2009, AUSTRAC accepted an EU from Eastern & Allied Pty Ltd (Eastern & Allied) trading as Hai Ha Money Transfer.

Eastern & Allied acknowledged it breached the AML/CTF Act and offered this undertaking as a commitment to address the breaches.

AUSTRAC was concerned that Eastern & Allied did not have an AML/CTF program with adequate risk-based controls and systems to identify, mitigate and manage the ML/TF risk the business may face when providing its remittance services. Of particular concern to AUSTRAC was Eastern & Allied's failure to implement adequate employee due diligence, a key component of an AML/CTF program.

Within the terms of the EU, Eastern and Allied agreed to:

- undertake a revised ML/TF risk assessment of its business
- review and modify its systems and controls to identify, mitigate and manage its ML/TF risk
- submit to AUSTRAC an independent expert report detailing Eastern and Allied's compliance with AML/CTF laws and a plan to remedy any deficiencies.

Thomas Hotels group

On 2 June 2010, AUSTRAC gave seven entities in the Thomas Hotels group written notices pursuant to subsection 162(2) of the AML/CTF Act, requiring each entity to appoint an external auditor.

The AUSTRAC CEO gave these notices because he suspected that these providers of gambling services had contravened, and were continuing to contravene, a number of important obligations under the AML/CTF Act. These obligations included the requirement to adopt and maintain an AML/CTF program, submit Compliance Reports (CRs) within the lodgement period and carry out customer identification procedures.

An assessment by AUSTRAC of Argos Investments Pty Ltd, a member of the Thomas Hotels group, revealed a number of deficiencies and breaches of the AML/CTF Act. The AUSTRAC CEO was satisfied that these deficiencies and breaches extended to the other reporting entities within the group.

The terms of the notice required each entity to:

- appoint an external auditor
- arrange for the external auditor to conduct an audit that assessed
 - the reporting entity's compliance with its AML/CTF obligations
 - the reporting entity's existing capacity to comply with its AML/CTF obligations
 - what the reporting entity needs to do to comply with its AML/CTF obligations
- give to the AUSTRAC CEO a copy of the audit report.

GLOSSARY

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

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

AUSTRAC Australian Transaction Reports and Analysis Centre

CEO The AUSTRAC Chief Executive Officer

CR Compliance report; an AML/CTF compliance report is received by AUSTRAC from an reporting entity and provides AUSTRAC with information about the reporting entity's compliance with the AML/CTF Act, the regulations and the Rules

EU Enforceable undertaking

FIU Financial intelligence unit

FTR Act *Financial Transaction Reports Act 1988*

ML/TF Money laundering/terrorism financing

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

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

Supervision AUSTRAC's Supervision Branches

