



# Public Legal Interpretation No. 03

## *Public Legal Interpretation No. 3 - registration of providers of remittance services under Part 6 of the AML/CTF Act and their obligation to report IFTIs*

### **Disclaimer**

The purpose of this Public Legal Interpretation is to provide an interpretation of issues arising out of the legislation administered by the Australian Transaction Reports and Analysis Centre (AUSTRAC). This Public Legal Interpretation is not exhaustive in its coverage of rights or obligations under law.

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The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication.

### **Currency**

This Public Legal Interpretation replaces PLI 3 of 15 May 2009, which has been withdrawn.

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC as at 17 June 2015.

You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.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 (PLI) is to set out AUSTRAC's views on the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) as they relate to:
  - providers of designated remittance services under items 31, 32 and 32A of table 1 in section 6 of the AML/CTF Act
  - the obligation to register under Part 6 of the AML/CTF Act – Remittance Sector Register as an independent remittance dealer, remittance network provider or an affiliate of a remittance network provider
  - the requirement to report international funds transfer instructions (IFTIs) as defined in items 3 and 4 of section 46 of the AML/CTF Act.
2. This PLI does not cover IFTIs relating to an electronic funds transfer instruction within items 1 and 2 of section 46 of the AML/CTF Act. This type of IFTI is dealt with in *Public Legal Interpretation No. 11 – electronic funds transfer instructions and international funds transfer instructions* (PLI 11).

## Introduction

3. The AML/CTF Act is designed to combat money laundering and the financing of terrorism. To achieve these objectives, the AML/CTF Act places certain obligations on 'reporting entities' (defined in section 5 of the Act) and other persons. Reporting entities include providers of designated remittance services (remitters).
4. On 1 November 2011, AML/CTF Act amendments came into effect that changed the obligations of remitters. These changes included registration obligations of remitters set out in Part 6 of the AML/CTF Act. Chapters 54 to 61 of the [\*Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 \(No. 1\)\*](#) (AML/CTF Rules) were also introduced on 1 November 2011 to deal with these obligations.

## Outline of interpretation

5. This PLI covers the following topics:
  - Section one: persons who provide designated services under items 31, 32 and 32A of table 1 in section 6 of the AML/CTF Act
  - Section two: registration of providers of a designated remittance service on the Remittance Sector Register
  - Section three: reporting of international funds transfer instructions under a designated remittance arrangement

## Interpretation

*Section one: persons who provide designated services under items 31, 32 and 32A of table 1 in section 6 of the AML/CTF Act*

### Remitters

6. Remitters include those businesses which are commonly known as remittance dealers, money remitters, alternative remitters, and providers of money transfer services within community groups and known by names specific to each culture, including: hawala, hundi, chuyen tien, yok song geum, or pera padala.
7. Casinos and some forms of online gambling are regarded as remitters. Casinos have been exempted from the obligation to register on the Remittance Sector Register in relation to designated services provided under their casino licence.<sup>1</sup> Casinos are not exempted from the obligation to submit IFTI reports.

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<sup>1</sup> Chapter 69 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

## Providers of designated services under items 31 or 32

8. Items 31 and 32 describe providers of designated services as:
  - a person, who in the capacity of a non-financier carrying on a business of giving effect to remittance arrangements, accepts money or property to be transferred under a designated remittance arrangement (item 31); or
  - a person, who in the capacity of a non-financier carrying on a business of giving effect to remittance arrangements, makes available money or property as a result of a transfer under a designated remittance arrangement (item 32).
9. 'Designated remittance arrangement' is defined in subsection 10(1) of the AML/CTF Act. A designated remittance arrangement occurs when at least one of the following is a non-financier:
  - the person who accepts an instruction from the transferor entity for the transfer of money or property under the remittance arrangement
  - the person who makes money or property available, or arranges for it to be made available, to an ultimate transferee entity as a result of a transfer under the remittance arrangement.
10. Accordingly, where an arrangement is made for the transfer of money or property, the arrangement is a designated remittance arrangement and not a banking transaction if one of the persons who bring the transfer into effect is a non-financier.
11. The term 'non-financier' is defined in section 5 of the AML/CTF Act as a person who is not:
  - a) an authorised deposit-taking institution (ADI)
  - b) a bank
  - c) a building society
  - d) a credit union, or
  - e) a person specified in the AML/CTF Rules.
12. Specifying a person in the AML/CTF Rules therefore means that a person is removed from the category of non-financier.
13. Chapters 23 and 51 of the AML/CTF Rules specify persons who are not non-financiers for paragraph (e) of the 'non-financiers' definition in section 5 of the AML/CTF Act. Chapter 23 specifies that a person carrying on an accounting practice or a law practice is not a non-financier for the purposes of the AML/CTF Act. Paragraph 3 of Chapter 23 defines 'accounting practice' and 'law practice'. Consequently, lawyers and accountants are exempt from these obligations because they are not a non-financier.
14. Chapter 51, paragraph 2 specifies two entities within paragraph (e) of the non-financier definition; therefore these entities are not 'non-financiers'. The same persons are also specified in paragraph (e) of the definition of 'financial institution' in section 5 of the AML/CTF Act, meaning that they are a financial institution for the

purposes of the AML/CTF Act. Two entities are also specified in paragraph 3 of Chapter 51. The effect of Chapter 51 is to transfer the named entities from the category of non-financier to financial institution, if the conditions specified in Rule 51.2.4 are satisfied. As these entities are specified as a financial institution, they have obligations to submit reports of electronic international funds transfer instructions (IFTI-Es).

15. Section 5 of the AML/CTF Act defines a number of terms, discussed below, which clarify the meaning of 'designated remittance arrangement'.
16. 'Money' is defined in section 5 of the AML/CTF Act as including:
  - a) physical currency; and
  - b) money held in an account, whether denominated in Australian currency or any other currency; and
  - c) money held on deposit, whether denominated in Australian currency or any other currency; and
  - d) e currency, however amounts of the e currency are expressed.
17. Section 5 provides that 'make available', when used in relation to money, includes reducing the balance of a loan account.
18. 'Property' is defined as meaning 'any legal or equitable estate or interest in real or personal property, including a contingent or prospective one, but does not include money' (section 5 of the AML/CTF Act).
19. 'Transfer' is defined to include 'any act or thing ... that may reasonably be regarded as the economic equivalent of a transfer' (section 5 of the AML/CTF Act).
20. To assist with the meaning of 'transfer', recourse may be had to the Macquarie Dictionary Online 2009 (Macquarie Dictionary Publishers Pty Ltd 2009) which provides the following definition:

**transfer**

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

**15. Law**

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

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

**transfer**

1. The passing of a person or thing from one place to another.
2. The passing of a legal right from one person to another so as to vest that right in the other. Such a transfer may require the existence of a legal document of transfer, identifying the transferor, the transferee,

the subject matter to be transferred, any interests in the subject matter held by third parties, and the consideration for the transfer. Sometimes to be valid, a transfer must be registered as required by statute.

22. Subsection 10(3) of the AML/CTF Act defines 'transferor entity' (the item 31 customer) and 'ultimate transferee entity' (the item 32 customer) in relation to remittance arrangements. The 'transferor entity' is 'the person from whom money or property is accepted so as to enable its transfer under the arrangement'. The 'ultimate transferee entity' is 'the person to whom money or property is ultimately transferred under the arrangement'.
23. A 'transfer' under a designated remittance arrangement, within the meaning of item 31 and item 32, therefore refers to the passing of legal and equitable estates and interests in money or property, from an item 31 customer (transferor entity) or foreign based equivalent, to an item 32 customer (ultimate transferee entity) or foreign-based equivalent.

### **Providers of designated service under item 32A**

24. Item 32A describes providers of designated services as persons operating a network of persons by providing a platform or operating system (however described), where:
  - a) the persons in the network provide a designated service under item 31 or 32 by means of the platform or operating system; and
  - b) the operator is a non-financier.
25. Item 32A defines the customer of the designated service as the person who receives designated services as part of the network. That is, the network provider provides the network service to the customers in its network, known as its affiliates.
26. The Explanatory Memorandum to the Combating the Financing of People Smuggling and Other Measures Bill 2011, which amended the AML/CTF Act, provides that introducing regulation of remittance network providers was required to more effectively regulate the remittance sector by capturing organisations which establish the systems and support used by their agents to transfer funds internationally.
27. The creation of the designated service of providing a remittance network was intended to have the effect of shifting many of the existing regulatory burdens away from the remittance affiliates, which are overwhelmingly small businesses, to the larger network providers.<sup>2</sup>
28. A number of provisions were introduced to implement this.
29. Subsection 84(5A) of the AML/CTF Act requires a network provider to make available a standard AML/CTF program for the use of its affiliates. The affiliate may choose to adopt this AML/CTF program or another program that complies with the requirements of the AML/CTF Act.

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<sup>2</sup> Explanatory Memorandum, Combating the Financing of People Smuggling and Other Measures Bill 2011 at page 27.

30. Chapters 54 and 61 of the AML/CTF Rules require network providers to report threshold transactions and IFTIs on behalf of their affiliates. Network providers may report suspicious matters on behalf of their affiliates if the two parties have agreed for this to occur. Chapter 54 applies to entities registered on the Remittance Sector Register. Chapter 61 applies to persons who provide items 31, 32 and 32A designated services in the interim period during which entities registered on the Register of Providers of Designated Remittance Services are required to transfer their registration to the Remittance Sector Register if they wish to continue to provide designated remittance services.
31. Item 32A is a designated service for which a geographical link is not required. Subsection 6(6) of the AML/CTF Act provides that an item in a table in section 6, other than item 32A of table 1, does not apply to the provision of a service to a customer unless there is a geographical link between the provision of the service with Australia.
32. [AUSTRAC guidance note 12/03 - Guidance on what constitutes a remittance network provider \(RNP\)](#) provides further information about remittance network providers.

### *Section two: registration of providers of a designated remittance service on the Remittance Sector Register*

33. Part 3A of the AML/CTF Act requires reporting entities to enrol on the Reporting Entities Roll. Providers of remittance services under items 31, 32 or 32A are also required to be entered on the Remittance Sector Register.
34. Obligations regarding registration on the Remittance Sector Register are set out in Part 6 of the AML/CTF Act. Section 75 requires the AUSTRAC CEO to maintain the Remittance Sector Register. Providers of registrable remittance network services and providers of registrable designated remittance services must not provide these remittance services unless they are registered on the Remittance Sector Register. Provision of a service without being registered is a criminal offence and is also a civil penalty provision. An infringement notice may also be given for such a contravention. A person may apply to be registered as a remittance network provider under paragraph 75B(1)(a); an independent remittance dealer under paragraph 75B(1)(b); and subject to meeting certain requirements under subsection 75B(5), a remittance affiliate of a registered remittance network provider under paragraph 75B(1)(c).
35. Part 2 of the *Combating the Financing of People Smuggling and Other Measures Act 2011* (CFPSOM Act) provides that the Old Register (the Register of Providers of Designated Remittance Services) is to continue to exist and the AUSTRAC CEO is required to maintain the Old Register until all applications to be registered on the Remittance Sector Register have been finally determined. While most of the applications to transfer from the Old Register to the Remittance Sector Register have been finally determined, a number are still being considered by the AUSTRAC CEO. As a result, remitters are able to conduct business as a result of their

registration on the Old Register until all applications have been 'finally determined'.<sup>3</sup> After this has occurred, remitters will only be able to conduct business if they are registered on the Remittance Sector Register.

## Registration by the AUSTRAC CEO

36. As described above, under section 75B of the AML/CTF Act, a person may apply to AUSTRAC for registration as:
  - a remittance network provider (an organisation that operates a network of remittance affiliates by providing the systems and services that enables its affiliates to provide remittance services)
  - a remittance affiliate of a registered remittance network provider (a business that provides remittance services to customers as part of a remittance network facilitated by a remittance network provider)
  - an independent remittance dealer (a business that provides remittance services to customers using their own systems and processes, independent of a remittance network).
37. Subsection 75(6) of the AML/CTF Act provides that an application is to be decided within 90 days from the day the application is made, or 90 days from the day information is provided in response to a subsection 75N(1) request. Further discussion regarding a section 75N request is set out at paragraphs 62-63.
38. If an application for registration is not made within this time, the AUSTRAC CEO is taken to have decided not to register the person, and a deemed refusal occurs. A deemed decision not to register a person is reviewable.
39. If the AUSTRAC CEO determines that the application cannot be dealt with properly within the 90-day period, either because of complexity or other special circumstances, the AUSTRAC CEO may extend the period by no more than 30 days, and must notify the applicant in writing of the determination before the end of the 90-day time period.
40. A decision not to register a person and a deemed decision not to register a person are reviewable.
41. It is an offence for a person who has been refused registration to provide designated remittance services. The penalty for this offence is imprisonment for up to two years, a fine of \$85,000, or both.

## Application for registration

42. Chapter 56 of the Rules specifies the information to be included in an application for registration.

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<sup>3</sup> 'Finally determined' is defined at item 57 of Schedule 1 of the CFPsOM Act to mean when a decision has been made to register or not to register the person under the new law and all reviews and appeal rights that apply in relation to the decision have been exhausted.



43. Subsection 75A(1) of the AML/CTF Act lists the information that the AUSTRAC CEO must enter on the Remittance Sector Register if the CEO decides to register a person. Subsection 75A(2) makes it clear that a person may be entered on the Remittance Sector Register in different capacities. For example:
- an affiliate may be part of a network (and thus be a remittance affiliate of a remittance network provider) and may also operate independently outside the network (and thus be an independent remittance dealer); or
  - a network provider may be an affiliate of another network (and thus be a remittance affiliate of a remittance network provider) and may also operate independently (and thus be an independent remittance dealer).
44. Registered remittance network providers that apply for registration on behalf of an affiliate are expected to have assessed the affiliate in accordance with the AML/CTF Act and Rules before submitting the affiliate's application for registration. The network providers must:
- declare that they have assessed the affiliate in accordance with the network provider's obligations under the AML/CTF Act and Rules
  - obtain and retain information relevant to the affiliate's application for registration – for example:
    - copies of National Police Certificates (or foreign equivalent) for each of the key personnel of the remittance affiliate
    - copies of a National Police History Check for each of the key personnel
    - a copy of the most recent due diligence assessment of the remittance affiliate undertaken by the registered remittance network provider.
45. AUSTRAC is of the view that documentation relating to the information referred to in paragraph 44 may be retained electronically.
46. AML/CTF Rules under subsection 75(4) of the AML/CTF Act have been made in Chapter 55, concerning what may be published from the Remittance Sector Register. Chapter 55 of the AML/CTF Rules states that the AUSTRAC CEO may publish any or all details entered on the [Remittance Sector Register](#) on AUSTRAC's website.
47. Further information is set out in *the AUSTRAC business profile form explanatory guide*, which is available on the [Enrolment and registration page](#) of the AUSTRAC website.

## Assessment of risk

48. Subsection 75C(2) of the AML/CTF Act states that the AUSTRAC CEO must register a person if satisfied that it is appropriate to do so having regard to the money laundering, terrorism financing or people smuggling risk involved and any additional matters specified in the AML/CTF Rules. The Explanatory Memorandum relevant to this provision states:

Subsection 75C(2) states that the AUSTRAC CEO must register a person if satisfied that it is appropriate to do so having regard to money laundering, terrorism financing or people smuggling risk involved and to any additional matters specified in the AML/CTF Rules. Subsection 75C(3) provided a non-exhaustive list of the matters that may be specified in the AML/CTF Rules. The remittance sector is particularly vulnerable to misuse for money laundering and terrorism financing, and for funding other serious and transnational crime such as people smuggling. It is appropriate that the AUSTRAC CEO is provided with specific information about an applicant relevant to determining their suitability as a remittance network provider, an independent remittance dealer, or a remittance affiliate.

The inability of the AUSTRAC CEO to refuse the registration of a remittance dealer is a serious weakness in the existing Act. This amendment is central to the policy objective of reducing the risk of money transfers by remittance dealers being used to fund people smuggling ventures and other serious crime because it will help to ensure that unsuitable persons are not permitted to operate remittance businesses.<sup>4</sup>

49. Subsection 75C(3) provides that the matters that may be specified in the AML/CTF Rules, namely Chapter 57, may relate to the following:
- whether the applicant or any of its key personnel:
    - has been charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, terrorism, people smuggling, fraud, a serious offence, an offence under the AML/CTF Act, or an offence under the Financial Transaction Reports Act 1988 (FTR Act);
    - has been subject to a civil penalty order made under the AML/CTF Act; or
    - has been the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the other person or any of its key personnel (including by the other person or any of its key personnel consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the other person's competence, diligence, judgement, honesty or integrity;<sup>5</sup>
  - whether the applicant has provided declarations that:
    - each of the applicant's key personnel have been subject to and satisfied the employee due diligence program of the applicant

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<sup>4</sup> Explanatory Memorandum, *Combating the Financing of People Smuggling and Other Measures Bill 2011*

<sup>5</sup> The information set out in Schedules 1, 2 or 3 (as applicable) of Chapter 56 as per paragraph 57.3(1) of the AML/CTF Rules.

- where the applicant is a registered network provider registering an affiliate, that the applicant has assessed the affiliate in accordance with the affiliate's obligations under the AML/CTF Act and AML/CTF Rules<sup>6</sup>
- offences of which the applicant for registration, a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant, or any other person (applicant/affiliate), has been charged or convicted under the law of the Commonwealth, a State or Territory or a foreign country;
- the applicant/affiliate's compliance or non-compliance with the AML/CTF Act or any other law;
- the legal and beneficial ownership and control of the applicant/affiliate;
- the kinds of designated services to be provided by the applicant/affiliate;
- the consent of a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant.

### Registration may be subject to conditions

50. Section 75E of the AML/CTF Act provides that the AUSTRAC CEO may impose conditions on the registration of a person as a remittance network provider, remittance affiliate, or independent remittance dealer.
51. The AUSTRAC CEO may consider imposing conditions on a registration where risk has been identified, and it is considered the risk can be reduced by imposing conditions on the registration pursuant to section 75E.
52. The AUSTRAC CEO may impose a condition at the time of registration to address issues identified during the pre-registration due diligence process, or at a later time to address issues that may arise or come to AUSTRAC's attention during the period in which an entity is registered.
53. Examples of the types of conditions that may be imposed include:
  - the holder of the Registration cannot, under any circumstances, remit any money or currency or goods or benefits, or arrange for the remittance of any funds or currencies or goods or benefits to any person who is a resident in a designated country or countries (for example, a country which has sanctions imposed against it)
  - an identified person must not be involved, whether directly or indirectly, in a remitter's provision of registrable designated remittance services (for example, when this identified person – an employee or key personnel – has been convicted of an offence of money laundering or dealing in proceeds of crime)

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<sup>6</sup> The declarations required under paragraphs 56.2, 56.3, 56.4 or 56.4 (as applicable) of Chapter 56 as per paragraph 57.3(2) of the AML/CTF Rules

- the remitter must report all outstanding IFTIs in a particular time frame and manner specified by AUSTRAC, including submitting written statements confirming that it is meeting this requirement (where there has been failure to report IFTIs)
- the remitter must provide AUSTRAC with a copy of its AML/CTF program that meets all the requirements of the AML/CTF Act and AML/CTF Rules by a specified date (where there have been deficiencies in the remitter's AML/CTF program).

## When registration ceases

54. Section 75F of the AML/CTF Act specifies when registration of a remitter ceases:
- paragraph 75F(1)(a) deals with cessation when a registration has been cancelled by the AUSTRAC CEO under section 75G
  - paragraph 75F(1)(b) applies where a person has requested the removal of an entry from the register under section 75K
  - paragraph 75F(1)(c) provides that registration will cease after three years unless it has already ceased for another reason – this allows registration of participants in the remittance sector to be reviewed on a regular basis to ensure each person's ongoing suitability for involvement in the sector
  - paragraphs 75F(1)(d) and (e) concern when a person dies and a body corporate ceases to exist.

## Renewal of registration

55. Section 75J of the AML/CTF Act enables arrangements for renewal of registration to be set out in the AML/CTF Rules. This enables the implementation of a renewal system which, in appropriate circumstances, does not require an applicant to undertake a full application process. Subsection 75J(3) provides that the Rules can allow for businesses to continue providing remittance services to customers while applications for renewal are being considered by AUSTRAC.
56. Paragraph 75J(2)(f) provides that the AML/CTF Rules may provide for the review of decisions relating to applications for renewal; however, this will not be a 'reviewable decision' within the definition of section 5 of the AML/CTF Act and will not be reviewable by the Administrative Appeals Tribunal. The decision may still be subject to judicial review (most likely in the Federal Court of Australia). 'Reviewable decisions' are discussed further at paragraphs 68-73 below.

## Cancellation of registration

57. Subsection 75G(1) of the AML/CTF Act allows registration to be cancelled if the AUSTRAC CEO is satisfied that not doing so would involve a significant money laundering, terrorism financing or people smuggling risk<sup>7</sup>; whether the remitter has

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<sup>7</sup> Paragraph 75G(1)(a) of the AML/CTF Act

breached a condition of their registration<sup>8</sup>; and other such matters specified in the AML/CTF Rules<sup>9</sup>. Chapter 58 of the AML/CTF Rules set out matters to be considered by the AUSTRAC CEO when deciding to cancel a registration, including whether the information provided in the application for registration was true and correct at the time that the application was made<sup>10</sup>.

58. It is an offence for a person whose registration has been cancelled to provide designated remittance services. The penalty for the offence may include imprisonment and/or proceedings for contravention of a civil penalty provision. Such proceedings include a fine (that is, issuing an infringement notice) or a court order requiring payment of pecuniary penalty<sup>11</sup>. Remittance network providers must not provide services to unregistered affiliates.
59. A decision by the AUSTRAC CEO to cancel a remitter's registration is a reviewable decision under section 5 of the AML/CTF Act. A reviewable decision is discussed below at paragraphs 68-73.

### **Suspension of registration**

60. Section 75H of the AML/CTF Act provides that the AML/CTF Rules may make provision for suspension of registration. Chapter 59 of the AML/CTF Rules sets out matters to be considered by the AUSTRAC CEO when deciding to suspend a registration, including that the AUSTRAC CEO reasonably believes the information provided in the application was not true and correct at the time the application was made.
61. The grounds for suspension of registration are contained in paragraph 3 of Chapter 59 of the AML/CTF Rules. The AUSTRAC CEO's powers to suspend a registration may be used if a decision whether to cancel a registration is pending.

### **Request further information**

62. Section 75N of the AML/CTF Act provides that the AUSTRAC CEO may, in writing, request further information from any person for the purposes of making a decision under Part 6 of the AML/CTF Act. The AUSTRAC CEO is not required to make the decision under Part 6 until this requested information is provided.
63. As discussed in paragraph 37 above, the 90-day time period for considering an application for registration begins again after information requested under section 75N is provided.

### **Steps to be taken before making certain reviewable decisions**

64. Section 75Q of the AML/CTF Act requires the AUSTRAC CEO to send a written notice to a person before making a reviewable decision under section 75C (refusal

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<sup>8</sup> Paragraph 75G(1)(b) of the AML/CTF Act

<sup>9</sup> Paragraph 75G(1)(c) of the AML/CTF Act

<sup>10</sup> Chapter 58, Schedule 1, item 3, of the AML/CTF Rules.

<sup>11</sup> See subsections 74(2) – 74(10) of the AML/CTF Act.

to register a person on the Remittance Sector Register), section 75E (registration subject to conditions) and section 75G (cancellation of registration).

65. The written notice must contain: the terms of the proposed decision; if the proposed term is to cancel a registration, the date on which the cancellation is proposed to take effect; the reasons for the proposed decision; and a statement that the person may, within 28 days of the giving of the notice, make a submission in relation to the proposed decision.
66. If the person does not provide submissions within 28 days of receiving the section 75Q notice, AUSTRAC may proceed to make a decision based on the information it holds.
67. The AUSTRAC CEO is not required to give a section 75Q notice if he is satisfied that it is inappropriate to do so because of the urgency of the circumstances.

## Reviewable decisions

68. Part 17A of the AML/CTF Act, which sets out the meaning of 'reviewable decisions', came into force on 29 June 2013 and replaced the previous definition of 'reviewable decision' in section 5.
69. Section 233B of the AML/CTF Act relevantly provides that the following decisions are a 'reviewable decision':
  - a decision under subsection 75B(6) or section 75C to refuse to register a person as a remittance network provider, an independent remittance dealer, or a remittance affiliate of a registered remittance network provider
  - a decision under section 75E to impose conditions on a registration
  - a decision under section 75G to cancel a person's registration.
70. Section 233B applies to all such decisions made after 29 June 2013. Only decisions to refuse an application for registration, a deemed refusal under subsection 75B(6), a decision to impose conditions on registration, and a decision to cancel a person's registration would be considered a 'reviewable decision' prior to 29 June 2013, as these were defined to be a 'reviewable decision' in the previous definition of 'reviewable decision' in section 5. A person whose application for registration has been refused must cease to provide remittance services, regardless of whether the person chooses to exercise review rights in relation to the refusal decision.<sup>12</sup>
71. Section 233C of the AML/CTF Act provides that the AUSTRAC CEO must give the person written notice regarding the reviewable decision.
72. Where a reviewable decision has been made by a delegate of the AUSTRAC CEO, the person affected by the reviewable decision can make an application to the AUSTRAC CEO under section 233D of the AML/CTF Act for the decision to be reconsidered under section 233E. The internal reviewer does not consider whether the primary decision maker made the correct decision. AUSTRAC's view is that the

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<sup>12</sup> This would not apply to the remaining few remitters registered on the Register of Providers of Designated Remittance Services, until such time as their applications for registration on the Remittance Sector Register are 'finally determined' (see paragraph 35 above).

internal reviewer, in reconsidering, makes a fresh decision on the merits of the case, based on the best evidence available at the time of the reconsideration. AUSTRAC's view is that the procedures required under section 75Q do not apply to reconsideration decisions.

73. A person may make an application under subsection 233F of the AML/CTF Act to the Administrative Appeals Tribunal for review of a decision made by the AUSTRAC CEO or a reviewable decision made by the AUSTRAC CEO personally.

### **Ongoing obligation of registered persons to advise of any material changes in circumstances**

74. Subsection 75M(1) of the AML/CTF Act and Chapter 60 of the AML/CTF Rules require a registered person to advise the AUSTRAC CEO of any change in circumstances that could materially affect their registration. A registered remittance affiliate of a registered remittance network provider must advise the provider of any change in circumstances that could materially affect the person's registration, and any matters specified in Chapter 60 of the AML/CTF Rules under subsection 75M(2) of the AML/CTF Act.
75. A registered remittance network provider would then be required to advise the AUSTRAC CEO of any changes notified to it under subsection 75M(3) of the AML/CTF Act.
76. Subsection 75M(4) of the AML/CTF Act specifies that the AUSTRAC CEO or remittance network provider should be notified within 14 days, and the remittance network provider should notify the AUSTRAC CEO of any notice the provider has received within seven days.

### *Section three: Remitters' obligations to report IFTIs*

77. Section 45 of the AML/CTF Act requires that a person who sends or receives an IFTI, transmitted into or out of Australia, must report certain information about the transaction to AUSTRAC. The obligation is to report any IFTI regardless of the amount of the transfer.
78. The AML/CTF Act distinguishes between IFTIs that are electronic funds transfer instructions (EFTIs) and IFTIs provided under designated remittance arrangements. IFTI-Es, that is, EFTIs that are also international funds transfer instructions, are set out in items 1 and 2 of section 46 of the AML/CTF Act and are discussed in PLI 11.
79. The IFTIs provided under items 3 and 4 of section 46 are those provided under designated remittance arrangements. This means that only persons who receive or send instructions and who are not an ADI, a bank, a building society, a credit union or a person specified in the AML/CTF Rules are caught by items 3 and 4.

### **Items 3 and 4**

80. Item 3 of section 46 of the AML/CTF Act provides for an IFTI that is accepted in Australia for sending out of Australia under a designated remittance arrangement.

Item 3 corresponds to the 'designated service' provided under item 31 of the table in subsection 6(2) of the Act in that it is an 'instruction given by a transferor entity for the transfer of money or property under a designated remittance arrangement'. The transferor entity, who gives the instruction, is the same as the item 31 customer.

81. The sender of the instruction out of Australia must accept the instruction at or through a permanent establishment of a non-financier in Australia, and accepts it on the basis that the money or property 'is to be, or is, made available to the ultimate transferee entity at or through a permanent establishment of a person in a foreign country'.
82. Item 4 of section 46 of the AML/CTF Act provides for the reverse situation and corresponds to the 'designated service' provided under item 32 of the table in subsection 6(2), by being an instruction given by a transferor entity outside Australia, for the transfer of money or property under a designated remittance arrangement in Australia. The ultimate transferee entity referred to is the same as the item 32 customer.
83. 'Permanent establishment' is defined at section 21 as a place at or through which the person carries on any activities or businesses, and includes a place where the person is carrying on activities or business through an agent.
84. Chapter 17 of the AML/CTF Rules sets out the information that must be contained in the report. As discussed above, it is intended that this information assists in the detection and prosecution of crime.

## Related Information

### *Legislative instruments*

The Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules) provide the following relevant Rules:

- Rules at Chapter 17 in relation to 'Reportable details for international funds transfer instructions (items 3 and 4 in section 46)'
- Rules at Chapter 23 in relation to persons specified as 'non-financiers'
- Rules at Chapter 51 in relation to ordering and beneficiary institutions, financial institutions and non-financiers
- Rules at Chapter 56 in relation to information to be included in an application for registration as a remittance network provider, a remittance affiliate of the registered remittance network provider or an independent remittance dealer
- Rules at Chapter 57 in relation to matters to be considered by the AUSTRAC CEO in considering applications for registration
- Rules at Chapter 61 in relation to reporting obligations of remittance affiliates.



## [View the AML/CTF Rules](#)

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

## *AUSTRAC publications*

Public Legal Interpretation No. 11 – electronic funds transfer instructions and international funds transfer instructions (PLI 11) provides AUSTRAC’s views as they relate to EFTIs referred to in items 29 and 30 of table 1 in section 6 of the AML/CTF Act and in Part 5 of that Act, and IFTIs that fall within items 1 and 2 in section 46 of the AML/CTF Act.

AUSTRAC has released the following guidance:

- [Guidance on what constitutes a remittance network provider \(RNP\) \(12/03\)](#)  
(<http://www.austrac.gov.au/businesses/obligations-and-compliance/guidance-notes>)
- *AUSTRAC business profile form explanatory guide* provides information to assist businesses to complete enrolment and registration requirements. Available on [Enrolment and registration page](#) of the AUSTRAC website.  
(<http://www.austrac.gov.au/businesses/enrolment-and-remitter-registration/enrolment-and-registration>)
- The *AML/CTF compliance guide for independent remittance dealers* provides information to help independent remittance dealers meet the requirements of the AML/CTF Act. This guide is available on the [Industry specific guides page](#) of the AUSTRAC website. (<http://www.austrac.gov.au/businesses/obligations-and-compliance/industry-specific-guides>)

## *Legislation*

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

[View the consolidated Anti-Money Laundering and Counter-Terrorism Financing Act 2006.](#)

(<http://www.comlaw.gov.au/Details/C2015C00064>).

The following sections of the Act are relevant:

- [Part 1 - Introduction, Section 6: Designated services: Table 1 – Financial Services, Items 31, 32, 32A](#)
- [Part 1 – Introduction, Section 10, Designated remittance arrangements etc.](#)
- [Part 3 – Reporting Obligations, Division 4: International Funds Transfer Instructions, Section 46 International funds transfer instruction: Items 3 and 4 of the table](#)
- [Part 6 – The Remittance Sector Register: Sections 74 - 75Q](#)
- [Part 17A – Review of Decisions: Sections 233A – 233G](#)

## 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 Contact Centre via:

- email to [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

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