



Combating the Financing of People Smuggling and Other Measures Act 2011

No. 60, 2011

***An Act to amend the *Anti-Money Laundering and
Counter-Terrorism Financing Act 2006*, and for
related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Remittance dealers		4
Part 1—Amendments		4
	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	4
Part 2—Transitional provisions relating to reporting entities		29
Part 3—Transitional provisions relating to other matters		32
Part 4—Transitional regulations		37
Schedule 2—Amendments relating to designated agencies		38
	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	38
Schedule 3—Verification of identity		44
	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	44
	<i>Privacy Act 1988</i>	51
Schedule 4—Amendment of the Financial Transaction Reports Act 1988		53



Combating the Financing of People Smuggling and Other Measures Act 2011

No. 60, 2011

An Act to amend the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and for related purposes

[Assented to 28 June 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Combating the Financing of People
Smuggling and Other Measures Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2011
2. Schedule 1, items 1 to 11	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, items 12 and 13	The day this Act receives the Royal Assent.	28 June 2011
4. Schedule 1, items 14 to 48	At the same time as the provisions covered by table item 2.	
5. Schedule 1, items 49 to 52	The day this Act receives the Royal Assent.	28 June 2011
6. Schedule 1, items 53 to 57	At the same time as the provisions covered by table item 2.	
7. Schedule 1, item 58	The day this Act receives the Royal Assent.	28 June 2011
8. Schedule 2	The day this Act receives the Royal Assent.	28 June 2011
9. Schedule 3	The day this Act receives the Royal Assent.	28 June 2011
10. Schedule 4	The day this Act receives the Royal Assent.	28 June 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

-
- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Remittance dealers

Part 1—Amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 4 (paragraph beginning “Providers of”)

Omit “designated remittance services”, substitute “registrable designated remittance services or registrable remittance network services”.

2 Section 5

Insert:

AAT reviewable decision means a reviewable decision:

- (a) made by the AUSTRAC CEO personally; or
- (b) made under subsection 75R(6).

3 Section 5

Insert:

infringement notice provision has the meaning given by subsection 184(1A).

4 Section 5 (definition of *Register of Providers of Designated Remittance Services*)

Repeal the definition.

5 Section 5

Insert:

registered independent remittance dealer means a person registered under section 75C as an independent remittance dealer.

6 Section 5

Insert:

registered remittance affiliate, of a registered remittance network provider, means a person registered under section 75C as a remittance affiliate of the registered remittance network provider.

7 Section 5

Insert:

registered remittance network provider means a person registered under section 75C as a remittance network provider.

8 Section 5

Insert:

registrable remittance network service means a designated service that:

- (a) is covered by item 32A of table 1 in section 6; and
- (b) is not of a kind specified in the AML/CTF Rules.

9 Section 5

Insert:

registration, of a person, means registration of the person as any of the following:

- (a) a remittance network provider;
- (b) an independent remittance dealer;
- (c) a remittance affiliate of a registered remittance network provider.

10 Section 5

Insert:

Remittance Sector Register has the meaning given by section 75.

11 Section 5

Insert:

reviewable decision, in relation to a person, means any of the following:

- (a) a decision to refuse an application made by the person for registration as:

- (i) a remittance network provider; or
- (ii) an independent remittance dealer; or
- (iii) a remittance affiliate of a registered remittance network provider;
- (b) a decision to refuse an application made by a registered remittance network provider for registration of the person as a remittance affiliate of the registered remittance network provider;
- (c) decision that is taken to be made because of the operation of subsection 75B(6) (which deals with deemed refusal);
- (d) a decision to cancel the registration of the person (see section 75G);
- (e) a decision to impose conditions on the registration of the person;
- (f) if the person is a registered remittance network provider—any of the following:
 - (i) a decision to refuse to register another person as a remittance affiliate of the registered remittance network provider;
 - (ii) a decision to cancel the registration of another person as a remittance affiliate of the registered remittance network provider (see section 75G);
 - (iii) a decision to impose conditions on the registration of another person as a remittance affiliate of the registered remittance network provider.

12 Subsection 6(2) (after table item 32 of table 1)

Insert:

- | | | |
|-----|--|--|
| 32A | operating a network of persons by providing a platform or operating system (however described), where: <ul style="list-style-type: none">(a) the persons in the network provide a designated service referred to in item 31 or 32 by means of the platform or operating system; and(b) the operator is a non-financier. | the person who provides designated services as part of the network |
|-----|--|--|

13 Subsection 6(6)

After “section”, insert “, other than item 32A of table 1,”.

14 At the end of section 36

Add:

Registered remittance affiliates

- (5) If an obligation is imposed by subsection (1) on a reporting entity in its capacity as a registered remittance affiliate of a registered remittance network provider, the obligation may be discharged by the registered remittance network provider.

15 At the end of subsections 42(5) and 44(5)

Add “, other than a service covered by item 32A of table 1 in section 6”.

16 Subsection 49(1)

Omit “reporting entity, require the reporting entity”, substitute “reporting entity or any other person, require the reporting entity or other person”.

17 Paragraph 49(1)(h)

After “reporting entity”, insert “or other person”.

18 At the end of paragraph 49(1)(i)

Add:

; and (iii) in the possession or control of the reporting entity or other person.

18A After subsection 49(1)

Insert:

- (1A) A person (the *issuer*) must not give a notice under subsection (1) to another person (the *recipient*) unless the issuer reasonably believes that the recipient has knowledge of the information, or possession or control of the document, that is specified in the notice.
- (1B) The period specified in the notice for giving the information or document must be at least 14 days after the notice is given unless:

- (a) the recipient is the reporting entity who communicated information to the AUSTRAC CEO under section 41, 43 or 45; or
- (b) both of the following apply:
 - (i) the issuer considers that specifying a shorter period is necessary;
 - (ii) the shorter period specified is reasonable in the circumstances.

19 Subsection 49(2)

Omit “reporting entity”, substitute “person”.

20 After section 49

Insert:

49A AML/CTF Rules may make provision in relation to reports by registered remittance affiliates

- (1) The AML/CTF Rules may make provision for and in relation to reports required by this Part to be given by a reporting entity that is a registered remittance affiliate of a registered remittance network provider.
- (2) Without limiting subsection (1), the AML/CTF Rules may provide:
 - (a) that an obligation imposed by this Part upon a registered remittance affiliate of a registered remittance network provider to provide a report is taken instead, or in addition, to be an obligation imposed upon the registered remittance network provider; and
 - (b) that an obligation imposed by this Part on a registered remittance affiliate of a registered remittance network provider may be discharged by the registered remittance network provider; and
 - (c) that a report required to be provided as mentioned in paragraph (a) must, or may, be given by the registered remittance network provider in the manner specified in the AML/CTF Rules.

21 Part 6 (heading)

Repeal the heading, substitute:

Part 6—The Remittance Sector Register

Division 1—Simplified outline

22 Section 73

Omit:

- A person must not provide a registrable designated remittance service unless the person's name is entered on the Register of Providers of Designated Remittance Services.

substitute:

- This Part provides for a tiered system of registration for providers of registrable remittance network services and providers of registrable designated remittance services.
- Division 2 sets out offences and civil penalties in relation to the provision of registrable remittance network services and registrable designated remittance services by persons who are not registered.
- Division 3 requires the AUSTRAC CEO to maintain the Remittance Sector Register and sets out the process of applying for registration.
- Division 4 provides for review of decisions.

23 Before section 74

Insert:

Division 2—Restrictions on providing certain remittance services

24 Subsection 74(1)

Repeal the subsection, substitute:

Registrable remittance network services

- (1) A person (the **first person**) must not provide a registrable remittance network service to another person if:
- (a) the first person is not a registered remittance network provider; or
 - (b) the first person is a registered remittance network provider, but the person to whom the service is provided is not a registered remittance affiliate of the first person.

Registrable designated remittance services—independents

- (1A) A person must not provide a registrable designated remittance service if:
- (a) the person provides the service other than as part of a remittance network operated by a registered remittance network provider; and
 - (b) the person is not a registered independent remittance dealer.

Registrable designated remittance services—affiliates

- (1B) A person must not provide a registrable designated remittance service if:
- (a) the person provides the service as part of a remittance network operated by a registered remittance network provider; and
 - (b) the person is not a registered remittance affiliate of the registered remittance network provider.

Breach of conditions

- (1C) A person must not breach a condition to which the registration of the person as any of the following is subject:
- (a) a remittance network provider;
 - (b) an independent remittance dealer;
 - (c) a remittance affiliate of a registered remittance network provider.

Note: The heading to section 74 is altered by omitting “**registrable designated**” and substituting “**certain**”.

25 Paragraph 74(2)(a)

After “subsection (1)”, insert “, (1A), (1B) or (1C)”.

26 Subsection 74(4)

After “subsection (1)” (wherever occurring), insert “, (1A), (1B) or (1C)”.

27 Subsection 74(6)

After “subsection (1)” (wherever occurring), insert “, (1A), (1B) or (1C)”.

28 Paragraph 74(8)(a)

After “subsection (1)”, insert “, (1A), (1B) or (1C)”.

29 Subsection 74(10)

Repeal the subsection, substitute:

Civil penalty

(10) Subsections (1), (1A), (1B) and (1C) are civil penalty provisions.

30 Subsections 74(11) and (12)

Repeal the subsections.

31 Sections 75, 76, 77, 78, 79 and 79A

Repeal the sections, substitute:

Division 3—Registration of persons

75 Remittance Sector Register

- (1) The AUSTRAC CEO must maintain a register for the purposes of this Part, to be known as the Remittance Sector Register.
- (2) The AUSTRAC CEO may maintain the Remittance Sector Register by electronic means.
- (3) The Remittance Sector Register is not a legislative instrument.
- (4) The AML/CTF Rules may make provision for and in relation to the following:
 - (a) the correction of entries in the Remittance Sector Register;

- (b) the publication of the Remittance Sector Register in whole or part, or of specified information entered on the Remittance Sector Register;
- (c) any other matter relating to the administration or operation of the Remittance Sector Register.

75A Information to be entered on the Remittance Sector Register

- (1) If the AUSTRAC CEO decides to register a person under subsection 75C(2), the AUSTRAC CEO must enter the following details on the Remittance Sector Register:
 - (a) the name of the person;
 - (b) whether the person is registered as:
 - (i) a remittance network provider; or
 - (ii) an independent remittance dealer; or
 - (iii) a remittance affiliate of a registered remittance network provider;
 - (c) if the person is registered as a remittance affiliate of a registered remittance network provider—the name of the registered remittance network provider;
 - (d) any conditions to which the registration of the person is subject;
 - (e) the date on which the registration takes effect;
 - (f) the registrable details in relation to the person.
- (2) To avoid doubt, nothing in this Part prevents separate entries being entered on the Remittance Sector Register in relation to the same person in different capacities.

75B Applications for registration

- (1) A person may apply in writing to the AUSTRAC CEO for registration as:
 - (a) a remittance network provider; or
 - (b) an independent remittance dealer; or
 - (c) subject to subsection (5)—a remittance affiliate of a registered remittance network provider.

- (2) A registered remittance network provider may apply in writing to the AUSTRAC CEO for another person to be registered as a remittance affiliate of the registered remittance network provider.
- (3) An application under subsection (1) or (2) must:
 - (a) be in the approved form; and
 - (b) contain the information required by the AML/CTF Rules.
- (4) Without limiting the information that the AML/CTF Rules may require under paragraph (3)(b), the AML/CTF Rules may require information relating to the matters mentioned in paragraph 75C(2)(a) or in Rules made under paragraph 75C(2)(b) (these provisions deal with matters to which the AUSTRAC CEO must have regard in deciding whether to register a person).
- (5) A person may apply for registration as a remittance affiliate of a registered remittance network provider as mentioned in paragraph (1)(c) only if:
 - (a) either:
 - (i) when the person makes the application, the person is a registered independent remittance dealer; or
 - (ii) the application is made in conjunction with an application by the person for registration as a registered independent remittance dealer; and
 - (b) the registered remittance network provider has consented to the making of the application.

Deemed refusal in certain circumstances

- (6) If the AUSTRAC CEO has not made a decision on the application within the relevant period, the AUSTRAC CEO is taken to have decided not to register the person at the end of the relevant period. The **relevant period** is the period of 90 days beginning:
 - (a) on the day the application is made; or
 - (b) if the AUSTRAC CEO requests information under subsection 75N(1) in relation to the application—on the day the information is provided.
 - (7) However, if the AUSTRAC CEO determines in writing that:
 - (a) the application cannot be dealt with properly within the 90 day period, either because of its complexity or because of other special circumstances; and
-

- (b) that period is extended by a specified period of not more than 30 days;

the relevant period is that period as so extended. The AUSTRAC CEO must notify the applicant in writing of the determination before the end of the 90 day period.

75C Registration by AUSTRAC CEO

When section applies

- (1) This section applies if an application has been made under section 75B for registration of a person.

When AUSTRAC CEO must register a person

- (2) The AUSTRAC CEO must decide to register the person in accordance with the application if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:
 - (a) whether registering the person would involve a significant money laundering, financing of terrorism or people smuggling risk; and
 - (b) such other matters (if any) as are specified in the AML/CTF Rules under this paragraph.

Matters that may be specified in the AML/CTF Rules

- (3) Without limiting the matters that the AML/CTF Rules may specify under paragraph (2)(b), the matters may relate to the following:
 - (a) 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, has been charged or convicted under the law of the Commonwealth, a State or Territory or a foreign country;
 - (b) the compliance or non-compliance of the applicant, a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant, or any other person, with this Act or any other law;
 - (c) the legal and beneficial ownership and control of the applicant, a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant, or any other person;

- (d) the kinds of designated services to be provided by the applicant or by a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant;
- (e) the consent of a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant.

Notice of decision to register

- (4) The AUSTRAC CEO must, as soon as practicable after deciding to register a person, give a written notice to:
 - (a) the applicant for registration; and
 - (b) if the application was made by a registered remittance network provider for another person to be registered as a remittance affiliate of the registered remittance network provider—the other person.

Contents of notice of decision to register

- (5) A notice under subsection (4) in relation to a decision to register a person must specify:
 - (a) whether the person is registered as:
 - (i) a remittance network provider; or
 - (ii) an independent remittance dealer; or
 - (iii) a remittance affiliate of a registered remittance network provider; and
 - (b) the conditions (if any) to which the registration is subject (see section 75E); and
 - (c) the date on which the registration takes effect.

Note: The AUSTRAC CEO is required to give notice under subsection 75R(1) or subsection 75S(1) if registration is refused or registration is granted subject to conditions.

75D Spent convictions scheme

The AML/CTF Rules made under paragraph 75B(3)(b) or 75C(2)(b) must not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

75E Registration may be subject to conditions

- (1) The AUSTRAC CEO may, in writing, impose conditions to which the registration of a person under subsection 75C(2) is subject.
- (2) Without limiting the conditions that the AUSTRAC CEO may impose under subsection (1), the conditions may relate to the following:
 - (a) the volume of funds remitted (whether by reference to a particular time, a particular amount or otherwise);
 - (b) the destination (however described) of funds remitted;
 - (c) requiring notification of particular changes in circumstances.

Note: Section 75M imposes a general obligation in relation to notification of changes in circumstances.

75F When registration of a person ceases

- (1) The registration of a person ceases at the earliest of the following times:
 - (a) when the cancellation of the registration of the person under section 75G takes effect;
 - (b) when the entry relating to the registration of the person is removed from the Remittance Sector Register under subsection 75K(2);
 - (c) subject to subsection (2)—3 years after the day on which the registration took effect;
 - (d) in the case of an individual—when the individual dies;
 - (e) in the case of a body corporate—when the body corporate ceases to exist.
- (2) Paragraph (1)(c) is subject to the AML/CTF Rules made under section 75J (which deals with renewal of registration).

75G Cancellation of registration

- (1) The AUSTRAC CEO may cancel the registration of a person if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:
 - (a) whether the continued registration of the person involves, or may involve, a significant money laundering, financing of terrorism or people smuggling risk; or

- (b) one or more breaches by the person of a condition of registration; or
 - (c) such other matters (if any) as are specified in the AML/CTF Rules under this paragraph.
- (2) The cancellation of the registration of a person takes effect on the day specified in the notice given to the person under subsection 75R(1).
 - (3) The AUSTRAC CEO may publish, in the manner specified in the AML/CTF Rules, a list of the names of persons whose registration has been cancelled and the date the cancellation takes effect.

75H Suspension of registration

- (1) The AML/CTF Rules may make provision for and in relation to the suspension of registrations by the AUSTRAC CEO under this Part.
- (2) The AML/CTF Rules may provide for matters including, but not limited to, the following:
 - (a) the grounds for suspension of registration;
 - (b) the effect of suspension on registration;
 - (c) the period for which suspensions have effect;
 - (d) the effect of suspension of a registered remittance network provider upon its registered remittance affiliates;
 - (e) making entries in and removing entries from the Remittance Sector Register in relation to suspension;
 - (f) notices of suspension;
 - (g) review of decisions relating to suspension.

75J Renewal of registration

- (1) The AML/CTF Rules may make provision for and in relation to the renewal of registrations by the AUSTRAC CEO under this Part.
- (2) The AML/CTF Rules may provide for matters including, but not limited to, the following:
 - (a) the making of applications for renewal;
 - (b) the period within which applications for renewal may be made;
 - (c) the criteria for determining applications for renewal;

- (d) entries in the Remittance Sector Register in relation to renewal;
 - (e) the giving of notices relating to decisions on applications for renewal;
 - (f) review of decisions relating to applications for renewal;
 - (g) the period for which renewed registrations have effect.
- (3) In particular, the AML/CTF Rules may provide that:
- (a) if the registration of a person would otherwise cease at the end of the period of 3 years commencing on the day on which the registration took effect; and
 - (b) before the end of that period, an application for renewal of the registration was made to the AUSTRAC CEO within the period, and in the manner provided for, in the AML/CTF Rules;
- the registration of the person continues in effect after the end of that period in accordance with the Rules.

75K Removal of entries from the Remittance Sector Register

Removal on request

- (1) A person who is one or more of the following:
- (a) a registered remittance network provider;
 - (b) a registered independent remittance dealer;
 - (c) a registered remittance affiliate of a registered remittance network provider;
- may request the AUSTRAC CEO, in writing, to remove the entry relating to one or more of the registrations of the person from the Remittance Sector Register.
- (2) If a person makes a request under subsection (1) in relation to one or more registrations, the AUSTRAC CEO must remove from the Remittance Sector Register the entry relating to each registration to which the request relates.

Removal on cessation of registration—remittance network providers

- (3) If a person ceases to be a registered remittance network provider, the AUSTRAC CEO must remove from the Remittance Sector Register:
- (a) the entry relating to the registered remittance network provider; and
 - (b) each entry relating to a registered remittance affiliate of the registered remittance network provider.

Removal on cessation of registration—independent remittance dealers and affiliates

- (4) If a person ceases to be a registered independent remittance dealer or a registered remittance affiliate of a registered remittance network provider, the AUSTRAC CEO must remove from the Remittance Sector Register each entry relating to the independent remittance dealer or the remittance affiliate, as the case requires.

Notice of removal—remittance network providers

- (5) The AUSTRAC CEO must, as soon as reasonably practicable, notify a remittance network provider, in writing, if:
- (a) the AUSTRAC CEO removes from the Remittance Sector Register an entry relating to a remittance affiliate of the provider; and
 - (b) the removal of the affiliate was not because of the removal of the provider as required by paragraph (3)(b).

Notice of removal—affiliates of remittance network providers

- (6) The AUSTRAC CEO must, as soon as reasonably practicable, notify each affiliate of a remittance network provider, in writing, if the AUSTRAC CEO removes from the Remittance Sector Register the entry relating to the provider.

75L AML/CTF Rules—general provision

If a provision of this Part provides for the AML/CTF Rules to make provision in relation to a matter relating to the registration or proposed registration of a person, the AML/CTF Rules may make

different provision in relation to a matter depending on whether the registration or proposed registration of the person is as:

- (a) a remittance network provider; or
- (b) an independent remittance dealer; or
- (c) a remittance affiliate of a registered remittance network provider.

75M Registered persons to advise of material changes in circumstance etc.

(1) A person who is registered under this Part as:

- (a) a remittance network provider; or
- (b) an independent remittance dealer; or
- (c) a remittance affiliate of a registered remittance network provider that applied for registration on its own behalf (see paragraph 75B(1)(c));

must advise the AUSTRAC CEO of the following:

- (d) any change in circumstances that could materially affect the person's registration;
- (e) any matters specified in the AML/CTF Rules for the purposes of this paragraph.

(2) A registered remittance affiliate of a registered remittance network provider must advise the provider of the following:

- (a) any change in circumstances that could materially affect the person's registration;
- (b) any matters specified in the AML/CTF Rules for the purposes of this paragraph;

unless the affiliate applied for registration on its own behalf (see paragraph 75B(1)(c)).

(3) A registered remittance network provider must advise the AUSTRAC CEO of any changes notified to it under subsection (2).

(4) A person who is required by this section to advise the AUSTRAC CEO or a registered remittance network provider of a change in circumstances or a matter must do so in accordance with the approved form, and:

- (a) in the case of a requirement under subsection (1) or (2)—within 14 days of the change in circumstances or the matter arising (however described); and
- (b) in the case of a requirement under subsection (3)—within 7 days of the registered remittance network provider concerned receiving the advice.

Civil penalty

- (5) Subsections (1), (2) and (3) are civil penalty provisions.

75N AUSTRAC CEO may request further information

- (1) The AUSTRAC CEO may, in writing, request further information from any person for the purposes of making a decision under this Part.
- (2) The AUSTRAC CEO is not required to make a decision under this Part until any information requested under subsection (1) in relation to the decision has been provided.

75P Immunity from suit

An action, suit or proceeding (whether criminal or civil) does not lie against:

- (a) the Commonwealth; or
- (b) the AUSTRAC CEO; or
- (c) a member of the staff of AUSTRAC;

in relation to the publication of the Remittance Sector Register or a list of a kind mentioned in subsection 75G(3).

Division 4—Notice and review of decisions

75Q Steps to be taken by AUSTRAC CEO before making certain reviewable decisions

- (1) Before making a reviewable decision in relation to a person, the AUSTRAC CEO must give a written notice to the person containing:
 - (a) the terms of the proposed decision; and

- (b) if the proposed decision is to cancel a registration—the date on which the cancellation is proposed to take effect; and
 - (c) the reasons for the proposed decision; and
 - (d) a statement that the person may, within 28 days of the giving of the notice, make a submission under this section in relation to the proposed decision.
- (2) The AUSTRAC CEO is not required to give a notice under this section if the AUSTRAC CEO is satisfied that it is inappropriate to do so because of the urgency of the circumstances.

75R Internal review of reviewable decisions

Notice to be given

- (1) The AUSTRAC CEO must, as soon as practicable after a reviewable decision is made in relation to a person (other than an AAT reviewable decision), give a written notice to the person containing:
- (a) the terms of the decision; and
 - (b) if the decision is to cancel the registration of a person—the date on which the cancellation takes effect; and
 - (c) the reasons for the decision; and
 - (d) a statement setting out particulars of the person’s right to have the decision reviewed under this section.
- (2) Subsection (1) does not require the AUSTRAC CEO to give a notice in relation to a decision that is taken to be made because of the operation of subsection 75B(6) (which deals with deemed refusal).

Applications for internal review

- (3) A person to whom a reviewable decision referred to in subsection (1) relates may apply to the AUSTRAC CEO for review of the decision.
- (4) An application for review must:
- (a) be in the approved form; and
 - (b) contain the information required by the AML/CTF Rules; and

- (c) be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such period (if any) as the AUSTRAC CEO, either before or after the end of the 30 day period, allows.

Internal review of decision

- (5) The AUSTRAC CEO must, on receiving an application under subsection (3) for review of a reviewable decision, cause the decision to be reviewed by a person to whom the AUSTRAC CEO's power under this section is delegated, being a person who:
 - (a) was not involved in making the decision; and
 - (b) occupies a position in AUSTRAC that is senior to that occupied by any person involved in making the decision.
- (6) A person who reviews a reviewable decision under this section may:
 - (a) make a decision affirming, varying or revoking the reviewable decision; and
 - (b) if the person revokes the decision—make such other decision as the person thinks appropriate.

Failure to comply does not affect validity

- (7) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

75S AAT review of decisions

Notice to be given

- (1) The AUSTRAC CEO must, as soon as practicable after an AAT reviewable decision is made in relation to a person, give a written notice to the person containing:
 - (a) the terms of the AAT reviewable decision; and
 - (b) if the AAT reviewable decision is to cancel the registration of a person—the date on which the cancellation takes effect; and
 - (c) the reasons for the AAT reviewable decision; and

- (d) a statement setting out particulars of the person's right to have the decision reviewed by the Administrative Appeals Tribunal.

Note: An *AAT reviewable decision* is a reviewable decision made by the AUSTRAC CEO personally or made on review under subsection 75R(6).

Applications for review

- (2) Applications may be made to the Administrative Appeals Tribunal for review of an AAT reviewable decision by a person to whom the AAT reviewable decision concerned relates.

Note: The *Administrative Appeals Tribunal Act 1975* provides for the manner of applying for review, etc.

Failure to comply does not affect validity

- (3) A failure to comply with the requirements of subsection (1) in relation to an AAT reviewable decision does not affect the validity of the decision.

Division 5—Basis of registration

75T Basis of registration

Registration under this Part is on the basis that:

- (a) the registration may cease as mentioned in section 75F; and
- (b) the registration may be suspended as mentioned in section 75H; and
- (c) the registration may be made subject to conditions as mentioned in section 75E; and
- (d) the registration may cease, be suspended or be made subject to conditions by or under later legislation; and
- (e) no compensation is payable if the registration ceases, is suspended or made subject to conditions as mentioned in any of the above paragraphs.

32 After subsection 84(5)

Insert:

Registered remittance affiliates of a registered remittance network provider

- (5A) A reporting entity that is a registered remittance network provider must make available a standard anti-money laundering and counter-terrorism financing program to its registered remittance affiliates for the purpose of adoption and maintenance under section 81 by those affiliates. To avoid doubt, this subsection does not prevent a remittance affiliate from adopting a program other than one made available under this section.

Civil penalty

- (5B) Subsection (5A) is a civil penalty provision.

33 After subsection 123(7)

Insert:

- (7A) Subsection (2) does not apply to the disclosure of information by a reporting entity if:
- (a) the reporting entity is a registered remittance affiliate of a registered remittance network provider and the disclosure is made to the registered remittance network provider; or
 - (b) the reporting entity is a registered remittance network provider and the disclosure is made to a registered remittance affiliate of the registered remittance network provider.

34 Subparagraph 167(1)(a)(iii)

Omit “Register of Providers of Designated Remittance Services”, substitute “Remittance Sector Register”.

35 Division 3 of Part 15 (heading)

Repeal the heading, substitute:

Division 3—Infringement notices for certain contraventions

36 Subsection 184(1)

Omit “subsection 53(3) or 59(4)”, substitute “an infringement notice provision”.

37 After subsection 184(1)

Insert:

- (1A) An *infringement notice provision* means any of the following provisions:
- (a) subsection 53(3) (which deals with reports about movements of physical currency);
 - (b) subsection 59(4) (which deals with reports about movements of bearer negotiable instruments);
 - (c) subsections 74(1), (1A), (1B) and (1C) (which deal with providing certain remittance services if unregistered or in breach of a condition of registration);
 - (d) subsection 75M(1) (which deals with notifying the AUSTRAC CEO of certain matters).

38 Section 185

Before “An”, insert “(1)”.

39 Paragraph 185(c)

Omit “subsection 53(3) or 59(4)”, substitute “the infringement notice provision”.

40 At the end of section 185

Add:

- (2) An infringement notice may specify more than one alleged contravention of one or more infringement notice provisions. If it does so, the infringement notice must set out the details referred to in paragraph (1)(c) in relation to each alleged contravention.

41 After section 186

Insert:

186A Amount of penalty—breaches of certain provisions of Part 6

Infringement notice—bodies corporate

- (1) The penalty to be specified in an infringement notice for an alleged contravention of subsection 74(1), (1A), (1B), or (1C) or 75M(1) (a

Part 6 infringement notice provision) by a body corporate must be a pecuniary penalty equal to:

- (a) if the alleged contravention is of a kind specified in the AML/CTF Rules under subsection (3)—the number of penalty units specified in the AML/CTF Rules in relation to that kind of contravention; or
- (b) otherwise—60 penalty units.

Infringement notice—persons other than bodies corporate

- (2) The penalty to be specified in an infringement notice for an alleged contravention of a Part 6 infringement notice provision by a person other than a body corporate must be a pecuniary penalty equal to:
 - (a) if the alleged contravention is of a kind specified in the AML/CTF Rules under subsection (3)—the number of penalty units specified in the AML/CTF Rules in relation to that kind of contravention; or
 - (b) otherwise—12 penalty units.

AML/CTF Rules may specify penalty units

- (3) For the purposes of paragraphs (1)(a) and (2)(a), the AML/CTF Rules may:
 - (a) set out one or more kinds of alleged contraventions of a Part 6 infringement notice provision; and
 - (b) for each kind of contravention set out in the AML/CTF Rules—specify a particular number of penalty units that applies.
- (4) Without limiting the kinds of contraventions that may be specified in the AML/CTF Rules made under paragraph (3)(a), the contraventions may be described by reference to the following:
 - (a) whether an alleged contravention is one of a number of alleged contraventions of a Part 6 infringement notice provision specified in a particular infringement notice;
 - (b) whether a person alleged to have contravened one or more Part 6 infringement notice provisions has previously been given an infringement notice in relation to an alleged contravention of a Part 6 infringement notice provision.

- (5) The number of penalty units specified in AML/CTF Rules made under paragraph (3)(b) in relation to a particular kind of contravention must not exceed:
- (a) in the case of an alleged contravention by a body corporate—120 penalty units; or
 - (b) in the case of an alleged contravention by a person other than a body corporate—24 penalty units.

Note: The heading to section 186 is altered by adding at the end “—breaches of subsection 53(3) or 59(4)”.

42 Paragraph 188(1)(a)

Omit “subsection 53(3) or 59(4)”, substitute “an infringement notice provision”.

43 Paragraph 189(a)

Omit “subsection 53(3) or 59(4)”, substitute “an infringement notice provision”.

44 Subparagraph 189(b)(i)

After “or 59(3)”, insert “or 74(2), (4), (6) or (8)”

45 Subparagraph 189(b)(ii)

Omit “subsection 53(3) or 59(4)”, substitute “an infringement notice provision”.

46 Subparagraph 189(c)(i)

After “or 59(3)”, insert “or 74(2), (4), (6) or (8)”.

47 Subparagraph 189(c)(ii)

Omit “subsection 53(3) or 59(4)”, substitute “an infringement notice provision”.

48 After subsection 190(2)

Insert:

- (2A) Subsection (1) does not require the AUSTRAC CEO to monitor, and report individually upon, each reporting entity that is registered under Part 6 of this Act, but the AUSTRAC CEO must monitor and report generally upon those reporting entities.

Part 2—Transitional provisions relating to reporting entities

49 Ongoing customer due diligence

If an obligation is imposed by subsection 36(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:

- (a) on or after the day on which this Act receives the Royal Assent; and
- (b) on a reporting entity:
 - (i) that provides a designated service covered by item 31 or 32 of table 1 in section 6 of that Act; and
 - (ii) that provides that service as part of a network of persons referred to in item 32A of that table operated by another reporting entity;

that obligation may be discharged by that other reporting entity.

50 AML/CTF Rules may make provision in relation to reports by certain reporting entities

- (1) The AML/CTF Rules may make provision for and in relation to reports required by Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* to be given, on or after the day on which this Act receives the Royal Assent, by a reporting entity (the *remittance affiliate*):
 - (a) that provides a designated service covered by item 31 or 32 of table 1 in section 6 of that Act; and
 - (b) that provides that service as part of a network of persons referred to in item 32A of that table operated by another reporting entity (the *remittance network provider*).
- (2) Without limiting subitem (1), the AML/CTF Rules may provide:
 - (a) that an obligation imposed by that Part upon the remittance affiliate to provide a report is taken instead, or in addition, to be an obligation imposed upon the remittance network provider; and

- (b) that an obligation imposed by this Part on the remittance affiliate may be discharged by the remittance network provider; and
- (c) that a report required to be provided as mentioned in paragraph (a) must, or may, be given by the remittance network provider in the manner specified in the AML/CTF Rules.

51 Tipping off

- (1) Subsection 123(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* does not apply to the disclosure of information by a reporting entity on or after the day on which this Act receives the Royal Assent if:
 - (a) the reporting entity is an entity:
 - (i) that provides a designated service covered by item 31 or 32 of table 1 in section 6 of that Act; and
 - (ii) that provides that service as part of a network of persons referred to in item 32A of that table operated by another reporting entity; and
 - (b) the disclosure is made to that other reporting entity.
- (2) Subsection 123(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* does not apply to the disclosure of information by a reporting entity on or after the day on which this Act receives the Royal Assent if:
 - (a) the reporting entity provides a designated service covered by item 32A of table 1 in section 6 of that Act; and
 - (b) the disclosure is made to a customer of that designated service.

52 Application of the reporting entity provisions of the new law to remittance network providers

- (1) The following provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* do not apply, until 12 months after the day on which this Act receives the Royal Assent, to a reporting entity in its capacity as an entity that provides a designated service covered by item 32A of table 1 in section 6 of that Act:
 - (a) Part 2 (which deals with identification procedures);
 - (b) Division 5 of Part 3 (which deals with compliance reports);
-

- (c) Part 7 (which deals with AML/CTF programs);
 - (d) Divisions 3 and 5 of Part 10 (which deal with record keeping).
- (2) Subject to this Part and Part 4, the remaining provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* apply, on and after the day on which this Act receives the Royal Assent, to such a reporting entity.

Part 3—Transitional provisions relating to other matters

53 Continuation of old law for certain purposes relating to the old Register

- (1) The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* is taken to continue in operation after the registration commencement day for the purposes of this item.
 - (2) After the registration commencement day:
 - (a) the old Register is taken to continue in existence; and
 - (b) subject to this item, the AUSTRAC CEO must maintain the old Register.
 - (3) Despite subitems (1) and (2):
 - (a) except with the consent of the AUSTRAC CEO, an application cannot be made for a person's name and registrable details to be entered on the old Register after the registration commencement day; and
 - (b) the AUSTRAC CEO may enter a person's name and registrable details on the old Register after the registration commencement day only if an application has been made with the consent of the AUSTRAC CEO.
 - (4) The AUSTRAC CEO must not give consent as mentioned in paragraph (3)(a) unless he or she is satisfied that it is appropriate to do so, having regard to the matters (if any) specified in the Rules.
 - (5) The AUSTRAC CEO may cancel a person's registration on the old Register if the AUSTRAC CEO is satisfied that not to do so would involve a significant money laundering, financing of terrorism or people smuggling risk.
 - (6) The AUSTRAC CEO must remove a person's name and registrable details from the old Register if:
 - (a) an application is made under the new law for registration of the person and the application is finally determined; or
 - (b) the person's registration is cancelled under subitem (5).
-

- (7) A decision to refuse consent under paragraph (3)(a) and a decision to cancel a person's registration under subitem (5) are taken to be reviewable decisions within the meaning of section 5 of the new law.

54 Cessation of Register

The AUSTRAC CEO ceases to be required to maintain the old Register, and the old Register ceases to have effect, when the AUSTRAC CEO has finally determined all applications made by, or in relation to, the following:

- (a) persons:
 - (i) whose names and registrable details were entered on the old Register as at, or after, the registration commencement day; and
 - (ii) who made an application, under the new law, for registration as an independent remittance dealer during the period of 6 months commencing on the registration commencement day;
- (b) persons:
 - (i) whose names and registrable details were on the old Register as at, or after, the registration commencement day; and
 - (ii) in relation to whom an application was made, under the new law, for registration as a remittance affiliate of a registered remittance network provider during the period of 12 months commencing on the registration commencement day.

Note: Under item 55, persons entered on the old Register have 6 months for an application to be made for registration as an independent remittance dealer, and 12 months for an application to be made for registration as a remittance affiliate of a registered remittance network provider.

55 Modifications of new law for certain purposes

Registrable remittance network services—persons who were providing such services immediately before commencement have 12 months to apply for registration

- (1) Subsection 74(1) of the new law does not apply to the provision of a registrable remittance network service by a person on or after the registration commencement day if:

- (a) immediately before the registration commencement day, the person was providing a service of that kind; and
- (b) either:
 - (i) the service was provided during the period of 12 months beginning on the registration commencement day; or
 - (ii) during the period of 12 months beginning on the registration commencement day, the person made an application under the new law for registration as a remittance network provider, and the application had not been finally determined at the service provision time.

Registrable designated remittance services—persons entered on old Register have 6 months to apply for registration as an independent remittance dealer

- (2) Subsection 74(1A) of the new law does not apply to the provision of a registrable designated remittance service by a person on or after the registration commencement day if:
 - (a) when the service was provided, the person's name and registrable details were entered on the old Register as continued in existence by item 53 of this Schedule; and
 - (b) either:
 - (i) the service was provided during the period of 6 months beginning on the registration commencement day; or
 - (ii) during the period of 6 months beginning on the registration commencement day, the person made an application under the new law for registration as an independent remittance dealer, and the application had not been finally determined when the service was provided.

Registrable designated remittance services provided by persons entered on old Register—persons entered on old Register have 12 months to apply for registration as a remittance affiliate

- (3) Subsection 74(1B) of the new law does not apply to the provision of a designated remittance service by a person on or after the registration commencement day if:

- (a) when the service was provided, the person's name and registrable details were entered on the old Register as continued in existence by item 53 of this Schedule; and
- (b) either:
 - (i) the service was provided during the period of 12 months beginning on the registration commencement day; or
 - (ii) during the period of 12 months beginning on the registration commencement day, an application for registration of the person as a remittance affiliate of a registered remittance network provider was made under the new law, and the application had not been finally determined when the service was provided.

56 Continuation of certain provisions of the old law

- (1) Section 79A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the registration commencement day, continues in operation, on and after the registration commencement day, in relation to proceedings in respect of a provision of that Act, as if it had not been repealed.
- (2) Section 167 of the of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* has effect, on and after the registration commencement day, as if the reference in that section to the Remittance Sector Register included a reference to the old Register.

57 Definitions

- (1) In this Part:
 - new law* means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* as in force after the registration commencement day.
 - old Register* means the Register of Providers of Designated Remittance Services within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the registration commencement day.
 - registration commencement day* means the day on which item 1 of this Schedule commences.
- (2) For the purposes of this Division, an application for registration of a person is *finally determined* when:

Schedule 1 Remittance dealers

Part 3 Transitional provisions relating to other matters

- (a) a decision has been made to register or not to register the person under the new law; and
- (b) all reviews and appeal rights that apply in relation to the decision have been exhausted.

Part 4—Transitional regulations

58 Transitional regulations

Regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

Schedule 2—Amendments relating to designated agencies

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Insert:

Defence Department means the Department administered by the Defence Minister.

2 Section 5

Insert:

defence intelligence agency means DIGO, DIO or DSD.

3 Section 5

Insert:

Defence Minister means the Minister responsible for administering the *Defence Act 1903*.

4 Section 5

Insert:

Department of Foreign Affairs and Trade means the Department administered by the Foreign Affairs Minister.

5 Section 5 (after paragraph (k) of the definition of *designated agency*)

Insert:

(ka) the Department of Foreign Affairs and Trade; or

6 Section 5 (after paragraph (ga) of the definition of *designated agency*)

Insert:

(gb) DIGO; or

(gc) DIO; or

(gd) DSD; or

(ge) ONA; or

7 Section 5

Insert:

DIGO means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation, and includes any part of the Defence Force that performs functions on behalf of that part of the Department.

8 Section 5

Insert:

DIO means that part of the Department of Defence known as the Defence Intelligence Organisation, and includes any part of the Defence Force that performs functions on behalf of that part of the Department.

9 Section 5

Insert:

DSD means that part of the Department of Defence known as the Defence Signals Directorate, and includes any part of the Defence Force that performs functions on behalf of that part of the Department.

10 Section 5

Insert:

Foreign Affairs Minister means the Minister responsible for administering the *Diplomatic Privileges and Immunities Act 1967*.

11 Section 5

Insert:

ONA means the Office of National Assessments established by the *Office of National Assessments Act 1977*.

12 Paragraph 127(3)(b)

Omit “or 133A”, insert “, 133A, 133B or 133C”.

13 Subsection 127(4)

Omit all the words from and including “under”, substitute:

under any of the following provisions:

- (a) subsection 125(4);
- (b) section 126;
- (c) subsection 128(1) or (2);
- (d) subsection 132(2), (4), (5) or (7);
- (e) subsection 133(2) or 133A(2);
- (f) section 133B or 133C.

14 After subsection 128(13A)

Insert:

Defence intelligence officials

(13B) The following provisions have effect:

- (a) an official of a defence intelligence agency may disclose AUSTRAC information to an IGIS official for the purposes of, or in connection with, the performance of the IGIS official’s duties in relation to the defence intelligence agency or employees of the defence intelligence agency;
- (b) an official of a defence intelligence agency may disclose AUSTRAC information to the Defence Minister if the disclosure is for the purposes of, or in connection with, the performance of the Defence Minister’s responsibilities in relation to the defence intelligence agency;
- (c) an official of a defence intelligence agency may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister’s functions under that Act;
- (d) an official of DIGO or DSD may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services Act 2001*, is empowered to issue an

authorisation to DIGO or DSD, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

ONA officials

(13C) The following provisions have effect:

- (a) an official of ONA may disclose AUSTRAC information to an IGIS official for the purposes of, or in connection with, the performance of the IGIS official's duties in relation to ONA or employees of ONA;
- (b) an official of ONA may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister's functions under that Act;
- (c) an official of ONA may disclose AUSTRAC information to the Prime Minister if the disclosure is for the purposes of, or in connection with, the performance of the Prime Minister's responsibilities in relation to ONA.

(13D) Subsections (13B) and (13C) do not limit the generality of any other provision of this section.

15 Paragraphs 128(19)(a), (b), (ba), (d), (e), (ea) and (g)

Repeal the paragraphs, substitute:

- (a) disclose AUSTRAC information to another IGIS official for the purposes of, or in connection with, the performance of that official's duties in relation to the following designated agencies, or employees of the following designated agencies:
 - (i) ASIO;
 - (ii) ASIS;
 - (iii) a defence intelligence agency;
 - (iv) ONA;
 - (v) any other Commonwealth agency (within the meaning of the *Inspector-General of Intelligence and Security Act 1986*); or
- (b) disclose AUSTRAC information by means of including the information in a draft report, or a report, under Division 4 of the *Inspector-General of Intelligence and Security Act 1986*; or

- (c) disclose AUSTRAC information under section 23 of the *Inspector-General of Intelligence and Security Act 1986*; or

16 At the end of Subdivision D of Division 4 of Part 11

Add:

133B When the Director of a defence intelligence agency may communicate AUSTRAC information to a foreign intelligence agency

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

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

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

- (1) The Director-General of ONA may communicate AUSTRAC information to a foreign intelligence agency if the Director-General is satisfied that:
- (a) the foreign intelligence agency has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and

- (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.
- (2) The Director-General of ONA may, in writing, authorise an official of ONA to access the AUSTRAC information and communicate it to the foreign intelligence agency on the Director-General's behalf.

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

Schedule 3—Verification of identity

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Insert:

assessment, in relation to an individual, means an assessment prepared or provided by a credit reporting agency under paragraph 35B(1)(a) in relation to the individual.

2 Section 5

Insert:

credit information file has the same meaning as in the *Privacy Act 1988*.

3 Section 5

Insert:

credit reporting agency has the same meaning as in the *Privacy Act 1988*.

4 Section 5

Insert:

personal information has the same meaning as in the *Privacy Act 1988*.

5 Section 5

Insert:

verification request, in relation to an individual, means a request made by a reporting entity under paragraph 35A(1)(b) for an assessment in relation to the individual.

6 After Division 5 of Part 2

Insert:

**Division 5A—Use and disclosure of personal information
for the purposes of verifying an individual’s
identity**

**35A Reporting entities may disclose certain personal information to
credit reporting agencies for identity verification
purposes**

- (1) A reporting entity may, to assist in verifying the identity of an individual for the purposes of this Act, the regulations or the AML/CTF Rules:
 - (a) disclose any or all of the following personal information to a credit reporting agency for the purposes of making a request referred to in paragraph (b):
 - (i) the individual’s name;
 - (ii) the individual’s residential address;
 - (iii) the individual’s date of birth; and
 - (b) request the credit reporting agency to provide an assessment of whether the personal information so disclosed matches (in whole or part) personal information contained in a credit information file in the possession or control of the credit reporting agency.

- (2) A reporting entity must not make a verification request in relation to an individual unless, before making the request:
 - (a) the individual was given information about:
 - (i) the reasons for making the request; and
 - (ii) the personal information about the individual that may be disclosed to the credit reporting agency; and
 - (iii) the fact that the reporting entity may request the credit reporting agency to provide an assessment of whether the personal information matches (in whole or part) personal information contained in a credit information file in the possession or control of the credit reporting agency; and
 - (iv) the fact that the credit reporting agency may prepare and provide to the reporting entity such an assessment; and
 - (v) the fact that the credit reporting agency may use the personal information about the individual, and the

- names, residential addresses and dates of birth contained in credit information files of other individuals, for the purpose of preparing such an assessment; and
 - (b) the individual expressly agreed to the making of the request and the disclosure of the personal information; and
 - (c) an alternative means of verifying the identity of the individual was made available to the individual.
- (3) A disclosure of personal information under paragraph (1)(a) is taken to be authorised by law for the purposes of paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*.

35B Credit reporting agencies may use and disclose certain personal information for identity verification purposes

- (1) A credit reporting agency that receives a verification request from a reporting entity in relation to an individual may:
- (a) prepare and provide to the reporting entity an assessment in accordance with this section of whether any or all of the following personal information matches (in whole or part) personal information contained in a credit information file in the possession or control of the credit reporting agency:
 - (i) the individual's name;
 - (ii) the individual's residential address;
 - (iii) the individual's date of birth; and
 - (b) use the personal information about the individual, and the names, residential addresses and dates of birth contained in credit information files of other individuals, for the purpose of preparing the assessment.
- (2) An assessment provided under subsection (1) to a reporting entity:
- (a) must be an overall assessment of the extent of the match between the personal information disclosed by the reporting entity and personal information contained in a credit information file in the possession or control of the credit reporting agency; and
 - (b) must not include separate assessments of the match between particular categories of that personal information.

-
- (3) To the extent that providing an assessment in relation to an individual involves a disclosure of personal information contained in an individual's credit information file to a person, body or agency other than the individual, the disclosure is taken to be authorised by law for the purposes of paragraph 18K(1)(m) of the *Privacy Act 1988*.

35C Reporting entities to notify inability to verify identity

- (1) This section applies if:
- (a) a reporting entity makes a verification request in relation to an individual; and
 - (b) an assessment is provided in relation to the individual; and
 - (c) the reporting entity is unable to verify the identity of the individual, having regard to the assessment.
- (2) The reporting entity must give a written notice to the individual:
- (a) stating that the reporting entity is unable to verify the identity of the individual having regard to the assessment; and
 - (b) specifying the name of the credit reporting agency that provided the assessment; and
 - (c) offering the individual an alternative means of verifying the identity of the individual.

35D Verification information not to be included on credit information file

- (1) A credit reporting agency must not include on an individual's credit information file personal information that relates to a verification request or an assessment in relation to the individual.
- (2) This section has effect despite subsection 18K(5) of the *Privacy Act 1988*.

35E Retention of verification information—credit reporting agencies

- (1) A credit reporting agency that receives a verification request in relation to an individual must retain the following information for 7 years after the request was received:
- (a) the name of the reporting entity that made the request;
 - (b) the date on which the request was made;

- (c) the personal information about the individual that was provided by the reporting entity to the credit reporting agency;
 - (d) the date on which the credit reporting agency provided an assessment (if any) in relation to the individual;
 - (e) such other information about the verification request as is specified in the AML/CTF Rules.
- (2) A credit reporting agency that retains information under subsection (1) must delete the information at the end of the 7 year period referred to in that subsection.

Civil penalty

- (3) Subsections (1) and (2) are civil penalty provisions.

35F Retention of verification information—reporting entities

- (1) A reporting entity that makes a verification request in relation to an individual must make a record of the following:
- (a) the name of the credit reporting agency to which the request was made;
 - (b) the personal information about the individual that was provided by the reporting entity to the credit reporting agency;
 - (c) the assessment (if any) provided by the credit reporting agency in relation to the individual;
 - (d) such other information about the verification request as is specified in the AML/CTF Rules.
- (2) The reporting entity must retain the record, or a copy of the record, until the end of the first 7 year period:
- (a) that began at a time after the verification request was made; and
 - (b) throughout the whole of which the reporting entity did not provide any designated services to the individual.
- (3) A reporting entity that retains a record, or a copy of a record, under subsection (2) must delete the record at the end of the 7 year period referred to in that subsection.

Civil penalty

- (4) Subsections (1), (2) and (3) are civil penalty provisions.

Designated business groups

- (5) If:
- (a) a reporting entity is part of a designated business group; and
 - (b) such other conditions as are specified in the AML/CTF Rules are satisfied;
- the obligation imposed on the reporting entity by subsection (2) or (3) may be discharged by any other member of the group.

35G Access to verification information

A credit reporting agency or a reporting entity in possession or control of personal information, or other information of a kind referred to in subsection 35E(1), that relates to a verification request or an assessment in relation to an individual must take reasonable steps to ensure that the individual can obtain access to the information.

35H Unauthorised access to verification information—offence

- (1) A person commits an offence if:
- (a) the person obtains access to information; and
 - (b) the information is personal information that relates to a verification request or an assessment in relation to an individual.

Penalty: 300 penalty units.

- (2) Subsection (1) does not apply if the access is obtained in accordance with, or as otherwise authorised by, this Act or any other law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

35J Obtaining access to verification information by false pretences—offence

A person commits an offence if:

- (a) the person obtains access to information; and
- (b) the information is personal information that relates to a verification request or an assessment in relation to an individual; and
- (c) the information is obtained by false pretence.

Penalty: 300 penalty units.

**35K Unauthorised use or disclosure of verification information—
offence**

- (1) A person commits an offence if:
 - (a) the person uses or discloses information; and
 - (b) the information is personal information that relates to a verification request or an assessment in relation to an individual.

Penalty: 300 penalty units.

- (2) Subsection (1) does not apply if the use or disclosure is in accordance with, or as otherwise authorised by, this Act or any other law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

35L Breach of requirement is an interference with privacy

A breach of a requirement of this Division in relation to an individual constitutes:

- (a) in the case of a breach by a credit reporting agency—an act or practice involving an interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*; or
- (b) in the case of a breach by a reporting entity—an act or practice involving an interference with the privacy of the individual for the purposes of section 13A of the *Privacy Act 1988*.

Note: These acts or practices may be the subject of complaints under section 36 of that Act.

7 Subsection 37(1)

After “procedure”, insert “or an identity verification procedure”.

8 Subsection 37(2)

After “procedures”, insert “or identity verification procedures”.

9 Subsection 37(3)

After “procedure”, insert “or an identity verification procedure”.

10 At the end of section 37

Add:

- (4) This section does not otherwise limit the operation of the principles of agency for the purposes of this Act.

Privacy Act 1988

11 Subsection 6(1)

Insert:

authorised agent of a reporting entity means a person authorised to act on behalf of the reporting entity as mentioned in section 37 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

12 Subsection 6(1)

Insert:

reporting entity has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

13 Subsection 6E(1A)

Omit “(within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*)”, substitute “or an authorised agent of a reporting entity”.

14 Subsection 6E(1A)

Omit “for the purpose of compliance with”, substitute “for the purposes of, or in connection with, activities relating to”.

15 Section 13 (note)

After “Note”, insert “1”.

16 At the end of section 13 (after the note)

Add:

Note 2: A breach of a requirement of Division 5A of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by a credit reporting agency is an interference with the privacy of an individual and is covered by this section (see section 35L of that Act).

17 Subsection 13A(1) (note)

After “Note”, insert “1”.

18 At the end of subsection 13A(1)(after the note)

Add:

Note 2: A breach of a requirement of Division 5A of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by a reporting entity is an interference with the privacy of an individual and is covered by this section (see section 35L of that Act).

19 Subsection 49(1)

Before “or a credit reporting offence”, insert “, an AML/CTF verification offence”.

20 Subsection 49(4)

Insert:

AML/CTF verification offence (short for anti-money laundering and counter-terrorism financing offence) means an offence against section 35H, 35J or 35K of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Schedule 4—Amendment of the Financial Transaction Reports Act 1988

1 After section 41

Insert:

41A Exemptions by the AUSTRAC CEO

- (1) The AUSTRAC CEO may, by written instrument, exempt a specified person from one or more specified provisions of this Act.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (2) An exemption may apply:
- (a) unconditionally; or
 - (b) subject to specified conditions.
- (3) A person to whom a condition specified in an exemption applies must comply with the condition.
- (4) A copy of an exemption must be made available on AUSTRAC's website.
- (5) An instrument under subsection (1) is not a legislative instrument.

*[Minister's second reading speech made in—
House of Representatives on 9 February 2011
Senate on 23 March 2011]*

(9/11)