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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMBATING THE FINANCING OF PEOPLE SMUGGLING AND OTHER MEASURES BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home Affairs and Justice,
the Honourable Brendan O'Connor MP)

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GENERAL OUTLINE

This Bill amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), the *Financial Transaction Reports Act 1988* (FTR Act) and the *Privacy Act 1988* (Privacy Act).

The primary purpose of this Bill is to reduce the risk of money transfers by remittance dealers being used to fund people smuggling ventures and other serious crimes by introducing a more comprehensive regulatory regime for the remittance sector.

It will also introduce measures to enhance within the Australian Intelligence Community information sharing of financial intelligence prepared by the Australian Transaction Reports and Analysis Centre (AUSTRAC).

Measures in the Bill will also allow businesses regulated under the AML/CTF Act to more effectively and efficiently verify the identity of their customers by enabling reporting entities under the AML/CTF Act to use personal information held on an individual's credit information file for the purposes of electronic verification of customer identity.

In addition, the Bill amends the FTR Act to enable the AUSTRAC Chief Executive Officer to exempt cash dealers from obligations under the FTR Act in the same way in which the AUSTRAC CEO can do so under the AML/CTF Act.

Schedule 1 amends the AML/CTF Act to strengthen the Commonwealth legislative framework on the regulation of remittance dealers and the providers of remittance networks.

Remittance dealers facilitate the transfer of funds within and between countries, often outside the formal financial and banking system. Often remittance services are provided by remittance dealers operating within large remittance networks which provide the systems and support needed to transfer customer funds to and from Australia. Remittance dealers provide a valuable service to the Australian community. People use remittance services because they see them as cheaper, faster and more reliable than other options and because they often provide the only means for sending money to many locations around the world.

The remittance sector is recognised by the international anti-money laundering and counter-terrorism financing (AML/CTF) community, and domestically by law enforcement and national security authorities, as being vulnerable to money laundering and terrorism financing (ML/TF). Australian law enforcement authorities are aware that some international cash transfer services provided by remittance dealers are used by individuals in Australia to pay the organisers of people smuggling ventures and to fund, or launder the proceeds from, other serious criminal activities.

Part 6 of the AML/CTF Act requires remittance dealers to register with the AUSTRAC before providing remittance services. Providing these services without

being registered is an offence that carries a penalty of imprisonment for two years, a $55,000 fine, or both. Remittance dealers are the only reporting entities that must register with AUSTRAC. This requirement is in place because of the unique ML/TF risk faced by the sector and to give effect to FATF's Special Recommendation VI on Terrorist Financing which requires regulation of money transfer services either through a formal registration or license scheme.

The current registration scheme has a number of limitations that affect AUSTRAC's ability to effectively regulate and supervise the sector, including:

- Registration is automatic upon application without any assessment of the applicant's suitability.
- There is no clear authority to refuse to register a remittance dealer, or to suspend, cancel or impose conditions on registration.
- There are limited sanctions available to AUSTRAC to ensure that remittance dealers comply with their obligations under the AML/CTF Act.

The Bill will address these issues by introducing an enhanced regulatory regime for remittance dealers and the providers of remittance networks. It will significantly improve AUSTRAC's ability to effectively regulate the remittance sector.

In summary, the amendments in Schedule 1 will:

- introduce a new designated service into the Act which will extend AML/CTF regulation to businesses that operate as providers of remittance networks
- require providers of remittance networks and their affiliates, and independent remittance dealers to be registered with AUSTRAC and to reapply for registration every 3 years
- introduce a registration scheme which requires a person seeking registration to provide the AUSTRAC CEO with information relevant to their suitability for registration, and to allow the AUSTRAC CEO to obtain information from other persons for the purposes of determining whether the person is suitable to be registered
- empower the AUSTRAC CEO to refuse, suspend, cancel, or impose conditions on the registration of a provider of a remittance network, remittance affiliate or independent remittance dealer
- introduce internal and external review mechanisms for registration decisions made by the AUSTRAC CEO
- introduce enforcement measures, including offences, civil penalty provisions, and an infringement notice scheme to enhance AUSTRAC's ability to effectively regulate the remittance sector
- require providers of remittance networks to undertake some AML/CTF Act obligations on behalf of their affiliates, and
- provide for a transition period for implementation of the new registration regime to ensure that those operating in the remittance sector have time to comply with the registration requirements introduced by this Bill.

In keeping with the current framework of the AML/CTF Act, the amendments set out in this Schedule are principles based with the operational details to be set out in the Rules.

Schedule 2 amends the AML/CTF Act to expand the list of agencies with which AUSTRAC can share financial intelligence. While the Australian Security Intelligence Organisation and the Australian Secret Intelligence Service are listed as designated agencies under the AML/CTF Act, other key agencies in the Australian Intelligence Community (AIC) are not included. Similarly, the Department of Foreign Affairs and Trade – which has responsibility for administering Australia's sanctions regime – is not listed as a designated agency. These omissions act as a barrier to achieving a holistic national intelligence effort on national security and organised crime issues such as people smuggling and ML/TF.

The Bill will enable AUSTRAC to share financial intelligence information with the Department of Foreign Affairs and Trade, the Defence Imagery and Geospatial Organisation, Defence Intelligence Organisation, Defence Signals Directorate, and the Office of National Assessment.

Expanding the list of designated agencies that can access AUSTRAC information will improve information sharing between AUSTRAC, AIC agencies and DFAT, and enhance Commonwealth agencies' coordinated response to threats to Australia's national security.

Schedule 3 amends the AML/CTF Act and the Privacy Act to enable reporting entities to use credit reporting data to verify the identity of their customers.

Customer identification and verification of customer identity is one of the key requirements of the AML/CTF Act. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (the Rules) allows for document-based and electronic verification or a combination of the two. Where customer information is verified electronically, the verification must be based on 'reliable and independent electronic data'. The nature of the information which must be verified varies depending on whether the customer is a natural or legal person. Where the customer is a natural person the reporting entity must verify the customer's full name and either their date of birth or residential address.

Part 4.2 of the Rules also sets out a 'safe harbour' electronic verification process which may be used to verify the identity of customers who are natural persons when the reporting entity determines that the relationship with the customer is of medium or lower money laundering or terrorism financing risk. In these circumstances, Rule 4.2.13 specifies that the reporting entity should verify the following customer information:

- name and residential address using reliable and independent electronic data from at least two separate data sources; and either
- date of birth using reliable and independent electronic data from at least one data source; or

- that the customer has a transaction history for at least the past three years.

Reporting entities, particularly those which operate online business models, have expressed strong interest in using electronic identity verification to meet their obligations under the AML/CTF Act. In practice, however, viability of electronic verification of identity is affected by the limited options available for using electronic-based sources for confirming customer details, in particular a person's date of birth.

Credit reporting databases maintained by credit reporting agencies (CRAs) offer a reliable and independent source of information for the purposes of electronic verification of identity. The databases maintained by the larger CRAs include date of birth and other relevant information on most of the adult population of Australia. However, sections 18K and 18L of the Privacy Act place detailed limits on the disclosure of personal information held by credit reporting agencies and the use of that information by credit providers, and to date have precluded the use of personal information held on an individual's credit information file for the purposes of electronic verification of identity under the AML/CTF Act.

The Australian Law Reform Commission considered the question of the use of credit reporting information for electronic verification in its inquiry *For Your Information: Australian Privacy Law and Practice* (2008). The ALRC recommended that , provided appropriate privacy protections were implemented, 'the use and disclosure of credit reporting information for electronic identity verification purposes to satisfy obligations under the [AML/CTF Act] should be authorised expressly under the AML/CTF Act' (Recommendation 57-4). The Government agreed in principle to the recommendation and subsequently undertook a Privacy Impact Assessment (PIA) to investigate appropriate privacy protections. Affected private sector businesses and peak bodies, and privacy groups were consulted as part of the PIA process. The outcomes of the PIA informed the development of this Bill.

In summary the amendments in Schedule 3 will:

- permit a reporting entity to disclose personal information to a credit reporting agency for identity verification purposes with the express consent of the individual whose identity is being verified
- permit a credit reporting agency to conduct a matching process between personal information provided to it by a reporting entity and the personal information held on its own files and provide a report to the reporting entity on the outcome of the verification process
- require reporting entities to notify their customers of unsuccessful attempts to verify identity using credit reporting data
- require credit reporting agencies and reporting entities to retain information about verification requests for 7 years and to delete it at the end of that period
- require a credit reporting agency to keep information about verification requests separate from the individual's credit information file
- create offences to address unauthorised access to, and disclosure of, verification information.

It is important to note that the Australian Government has committed to reforms to privacy laws to implement the recommendations of the ALRC. To this end, the Government proposes to respond to the ALRC report in two stages. The first stage response was publicly released on 14 October 2009 and legislation is in the process of being drafted to implement this response. The second stage will be advanced once the first is complete.

Schedule 4 amends the FTR Act to enable the AUSTRAC CEO to exempt a person from one or more provisions of that Act.

The AML/CTF Act commenced operation in December 2006 and established a regulatory regime to detect and deter money laundering and terrorism financing. The AML/CTF Act builds on the obligations contained in the FTR Act and applies to a wider range of businesses. The AUSTRAC CEO has the ability to provide exemptions from obligations under the AML/CTF Act. This item will bring the FTR Act into line with the AML/CTF Act. This will allow the AUSTRAC CEO to provide regulatory relief in circumstances which would otherwise result in unnecessary or unduly onerous obligations being imposed.

FINANCIAL IMPACT STATEMENT

AUSTRAC will meet the ongoing costs of administering the measures within existing resources.

REGULATION IMPACT STATEMENT

The regulatory impact analysis conducted indicates a potential net benefit of between $17 million and $18 million per year. However, this range was based on the assumption that affiliates would only incur 10% of their current compliance costs and a partial estimate of the impact on remittance network providers which took into account staffing costs only and did not include costs such as the development of supporting systems.

The detail of the reforms will be contained in the Anti-Money Laundering and Counter-Terrorism Financing Rules which will be developed by AUSTRAC in consultation with industry to minimise the impact on business. The assessment of the regulatory impact of the reforms will be refined as the Rules are developed.

Executive summary

Background

This Regulatory Impact Statement (RIS) examines proposed reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The proposed reforms would strengthen Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime by enhancing the AML/CTF regulation of alternative remittance dealers. The introduction of a more robust regulatory regime for this sector aims to reduce the risk of money laundering, counter-terrorism financing and other serious crimes, such as people smuggling.

The alternative remittance sector in Australia provides individuals and businesses with the ability to transfer funds overseas often outside the formal banking sector. The system operates through agents who enter into agreements to receive money from individuals or businesses in one country and pay funds to individuals or businesses overseas. The remittance sector can transfer funds relatively quickly, securely and cost effectively and is particularly valuable in countries where established banking networks do not exist.

Businesses in the alternative remittance sector vary greatly in size and sophistication, ranging from community-based independent remittance dealers that are sole operator businesses to large multinational entities that have highly sophisticated operations. AUSTRAC estimates that there are around 6,500 individual providers of remittance services in Australia, the majority of which form part of larger networks. Under the AML/CTF Act, reporting entities are required to report international funds transfer instructions and threshold transaction (transactions over $10,000 in physical currency) to AUSTRAC. AUSTRAC estimates for the 12-month period to 31 May 2010 the total value of all reports submitted by registered providers of remittance services was $7.2 billion. International funds transfer instruction (IFTI) reports accounted for approximately $6.3 billion. The reporting value for threshold transaction reports (TTRs) is estimated to be approximately $856 million.

Problem with existing approach

Australian law enforcement authorities are aware alternative remittance dealers are being used to facilitate serious and transnational crime, including people smuggling ventures.

The alternative remittance sector is recognised in Australia and internationally as a high-risk sector for money laundering and terrorism financing (ML/TF). This is largely due to the nature of the service, which can involve large-volume transactions, international funds transfers (including to high-risk countries), and a low level of compliance with regulation which makes it difficult for authorities to 'follow the money trail'. Money remittance services are particularly vulnerable to misuse for:

- Laundering money gained through illegal activities into seemingly legitimate funds
- Financing terrorism activities, which has been defined as 'the financial support, in any form, of terrorism or of those who encourage, plan or engage in terrorism'[1]
- Financing serious and transnational crime, including people smuggling activities.

In Australia, alternative remittance dealers are regulated under the AML/CTF Act and must comply with a range of resulting obligations, including customer identification and verification, transaction reporting and establishing an AML/CTF program. These measures have addressed some of the ML/TF risk posed by the sector.

[1] World Bank and International Monetary Fund, 2003, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism.*

However, problems remain with the existing legislative and regulatory regime which does not sufficiently address the significant risk posed by the sector. The level of compliance with AML/CTF obligations in the alternative remittance sector is low which increases the level of ML/TF risk because measures are not in place to mitigate this risk. For example, a lack of customer due diligence increases the attractiveness of the business for criminals and a lack of reporting means that AUSTRAC does not receive the financial intelligence which is used by law enforcement to investigate and detect criminal activity.

The recognised problems of the current approach are as follows:

- The registration scheme allows no discretion to determine suitability. This means that criminals are able to legally operate an alternative remittance dealer by applying for registration to the AUSTRAC CEO who must accept the registration
- Regulatory and enforcement options are inflexible, and often do not allow for a proportionate response and have no clearly outlined review mechanisms. The lack of effective enforcement tools have led to lower compliance levels in the sector by increasing the difficulty for AUSTRAC to take enforcement action against non-compliance businesses
- Regulation does not reflect current business practices between providers of remittance networks (PRNs) and affiliate remittance dealers, increasing compliance burden on dealers and decreasing regulatory efficiency for Government, and
- The current system does not adequately take into account the relationship between PRNs and affiliates and limits the effective flow of information with potential legal consequences.

Purpose of the proposal

The purpose of this proposal is to address the problems of the existing regulatory regime identified above. It will enhance the AML/CTF regulation of alternative remittance dealers to ensure that dealers implement measures to mitigate the risk of ML/TF.

The proposed reforms will ensure that AUSTRAC has the necessary information about providers of remittance services to effectively regulate the remittance sector and reduce the AML/CTF risk posed by the remittance sector.

The regulatory options

The proposal to enhance the AML/CTF regulation is comprised of the following components:

- provide the AUSTRAC CEO with the ability to refuse, suspend or cancel the registration of remittance dealers
- introduce regulation of remittance network providers to help AUSTRAC more effectively regulate the remittance sector by capturing organisations that establish the systems and support used by their agents to transfer customer funds internationally, and

- extend the infringement notice scheme to cover certain breaches of registration requirements by remitters to provide AUSTRAC with greater enforcement powers.

Within this proposal, this RIS proposes two regulatory options to address the problems with the existing approach:

- Option 1: Enhanced registration for the remittance sector, including providing the AUSTRAC CEO with the ability to refuse, suspend or cancel the registration of remittance dealers, and extending the infringement notice scheme to cover certain breaches of registration requirements by remitters to provide AUSTRAC with greater enforcement powers.
- Option 2: Enhanced registration for the remittance sector, including that detailed at Option 1 and introducing regulation of remittance network providers to more effectively regulate the remittance sector by capturing organisations that establish the systems and support used by their agents to transfer customer funds internationally.

Estimated Impacts

The proposed reforms will provide a benefit to the Australian community. For the wider community, the benefits of the proposed reforms stem from the reduced risk of remittance services being used to facilitate illegal activity and the associated reduction in the community wide impacts of criminal activity. These impacts can be both direct, if community members are the victims of crime and indirect as community resources are directed to law enforcement activities, criminal justice services or services to support the victims of crime.

While it was not possible to quantitatively estimate the benefits for this regulatory proposal, the available evidence points to a real value to individuals and the community in being able to reduce the risk of money laundering and terrorism financing.

The proposed reforms will also have a regulatory impact on the remittance sector, including on small business. Compliance costs identified in this RIS were estimated using information gathered via a web-based survey of affiliates and independent remittance businesses and consultations with selected PRNs.

It must be noted that establishing an accurate measure of the likely costs of the proposed AML/CTF regime is a difficult task for several reasons, including:

- The risk based approach embedded in the legislation allows for high degree of variation in the approach businesses use to implement the regulatory regime. As a result, it is difficult for firms to precisely estimate the costs they will face, there is significant variation across firms, and there is the potential for wide variation around industry average costs.
- The difficulty separating estimated costs for the proposed reforms from 'business as usual' costs, that is, there are some types of costs that businesses would incur even without the current regulatory requirements, for example collecting and verifying customer identification.
- At this stage of the regulatory development process, it is not possible to establish a detailed understanding of the changes to business systems and

processes.[2] Further detail will be included in future subordinate regulation (Rules).

- The combination of industry structure and the nature of the proposed regulatory means that secondary data sources do not provide a suitable basis to estimate costs.

Option 1

The proposal in Option 1 would to some degree assist in mitigating the ML/TF risk posed by the alternative remittance sector. This is due to the AUSTRAC CEO's ability to not allow a person from providing a remittance service if that person poses a money laundering or terrorism financing risk. However, as a number of regulatory problems would remain, the extent to which Option 1 reduces ML/TF risk remains uncertain.

In this option, alternative remittance dealers would incur costs are associated with the enhanced registration scheme requiring businesses to provide more information to AUSTRAC and more frequently. The net impact of Option 1 is $1.5 million in the first year when all affiliates and independent remittance businesses are registered under the enhanced arrangements. The NPV of the cost of this Option over 10 years is $4 million. This assumes all businesses are registered in year 1, 4, 7 and 10. This RIS determines that the result of considering qualitative and quantitative information leads to the conclusion that Option 1 is expected to deliver a net benefit.

Option 2

The benefits outlined in Option 1 are also present in Option 2. The additional benefits of this option are that extending AML/CTF obligations to PRNs formalises the support already offered by many PRNs to their affiliates. This will have the effect of boosting compliance by the sector and putting in place better controls to mitigate the ML/TF risk. As a result, this option is viewed as being highly likely to substantially reduce the risk of the misuse of remittance services to facilitate illegal activity.

In relation to affiliates of PRNs, a significant saving was identified as the compliance burden for a number of regulatory activities would be shifted from over 600 affiliates, many of which are small business, to the larger PRNs. Given the shift in responsibility, PRNs would incur additional costs associated with registration of affiliates, development of an AML/CTF Program and reporting requirements. To a large extent, this reflects existing practices in the industry. PRNs affected by the reforms will be required to undertake additional regulatory activity to ensure that their affiliates are complying with AML/CTF regulation.

Independent remittance providers would incur some costs associated with the enhanced registration scheme.

It is estimated that Option 2 would deliver a net benefit of between $169 million and $183 million in NPV terms over 10 years. However, this is a partial estimate and does not take into account significant costs that will be incurred by PRNs, such as the

[2] A similar view was expressed in a consultation process in New Zealand to estimate the impacts of their proposed changes to AML/CTF legislation. See Deloitte (2008) New Zealand Ministry of Justice 'Assessment of business compliance costs of the indicative antimony laundering regulatory requirements' available at http://www.justice.govt.nz/policy-and-consultation/crime/documents/fatf/AML-Costing-Final-Report.pdf/view?searchterm=AML%20CTF.

development of supporting systems, which could not be quantified despite consultation with industry. Thus, this represents an over-estimate of the net benefit. The extent of this over-estimate depends on the costs borne by PRNs for IT system changes, other process changes and staff training (these costs are not estimated in this RIS).

Conclusion

Table E.1 presents a summary of the partial compliance cost estimates estimated for this RIS.

Table E.1: Comparison of options - partial quantified costs/benefits

Option	NPV of quantified net benefit/ (cost) over 10 years	
Option 1	$4,046,000	
Option 2	Range: $ 168,930,000 to $ 183, 300,000	This figure is based on partial cost estimates, thus the final net benefit will be lower than this figure. The figure does not include the expected additional costs for PRN's new or enhanced IT systems, the development of other systems and processes and in some cases for staff training This estimate is based on an assumption that affiliates continue to incur only 10 per cent of their existing compliance costs.

Note: Numbers above 100,000 have been rounded.

On the basis of the analysis of benefits and costs, Option 2 is the preferred option. As illustrated in Table E.2, relative to Option 1, Option 2 offers:

- A larger benefit to individuals, industry and the community through putting better controls in place to mitigate the risk of money laundering and the financing of terrorism and other criminal activity. In addition, depending on the final approach to implementing the arrangement, it may be the case that overall the remittance sector will experience reduced compliance costs.
- Significantly reduced compliance costs for around 6000 affiliates — mostly small businesses. There is also the potential for compliance cost reductions to flow through into lower costs for consumers, although this is dependent on a range of other factors.
- Formalises and extends existing relationships between PRNs and affiliates to improve compliance and make enforcement of regulatory requirements more straightforward for Government.

Table E.2: Comparison of options - qualitative assessment of impacts

Option	Qualitative benefits		
	Reduced risk of ML/TF	Small business & competition	Ease of enforcement
Option 1	✓✓	✗	✓
Option 2	✓✓✓	✓✓	✓✓✓

Where: ✓ = a positive impact ; and ✗ = a negative impact.

1 INTRODUCTION

1.1 This Regulatory Impact Statement

This Regulatory Impact Statement (RIS) examines proposed reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) to strengthen Australia's AML/CTF system through enhancements to the AML/CTF registration scheme.

1.2 Remittance sector

The remittance sector facilitates the transfer of funds within and between countries, often outside the formal financial and banking system. The remittance sector provides a valuable service to the Australian community. It provides a cheap, fast, reliable (and sometimes the only) means of sending money to locations around the world.

The remittance sector in Australia provides individuals and businesses with the ability to transfer funds overseas. Fund transfers have typically taken place using conventional banks and other financial institutions. However, individuals and businesses also have the option of using providers of remittance services as an alternative channel for moving funds.

The system operates through businesses that enter into agreements to receive money from individuals or businesses in one country and pay funds to individuals or businesses overseas. The remittance sector can transfer funds relatively quickly, securely and cost effectively and is particularly valuable in countries were established banking networks do not exist.

AUSTRAC estimates that there are around 6,400 providers of remittance services in Australia. There are four main types of businesses in the remittance sector. In this report we are describing them as:

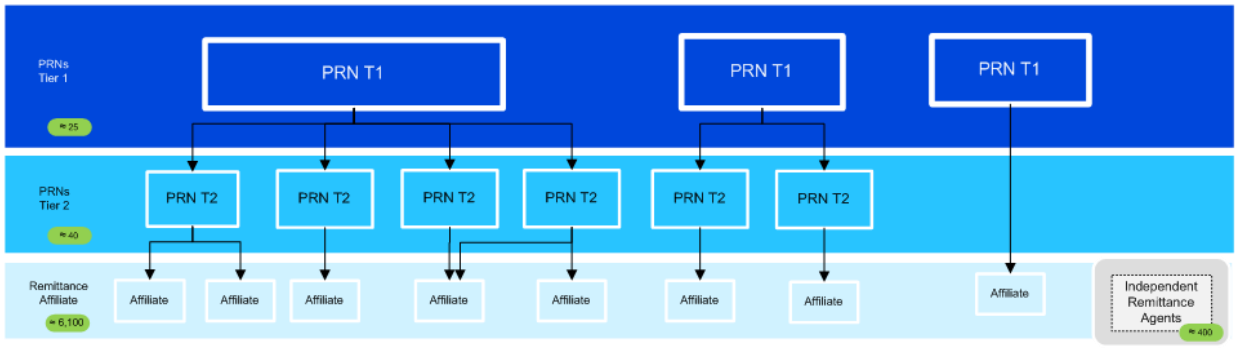
- Providers of remittance networks Tier 1 (PRN T1): PRN T1s (sometimes called 'principal network providers') operate the infrastructure needed to transfer funds transfers from Australia to other countries and are involved in monitoring activities on behalf of network providers and remittance affiliates. The primary purpose of the PRN T1s business is likely to be the provision of remittance or related financial services. There are approximately 25 PRN T1s in Australia's remittance sector.
- Providers of remittance networks Tier 2 (PRN T2): PRNs T2 (sometimes called 'super agents') have a contractual relationship with both the PRN T1s and remittance affiliates. Some PRN T2s have remittance and other financial services as their primary activity. However, for others, remittance services are part of, but not the primary purpose of their broader business activities.
- Remittance affiliates: Remittance affiliate businesses provide fund transfer services to individuals and businesses. Remittance affiliates are most often in a business relationship with at least one and sometimes more than one PRN T2, and a PRN T1. This relationship extends to sharing the 'brand' of the PRN T1 and/or

the PRN T2. There are approximately 6100 remittance affiliates in Australia's remittance sector.

- Independent remittance businesses: Independent remittance agents provide remittance services using their own systems and processes. There are approximately 400 in Australia's remittance sector.

Figure 1-1 illustrates the sector structure and the size of each group. We note that the terminology used in this diagram is not commonly shared across the remittance sector. However, it has been adopted consistently throughout this report.

Figure 1-1: Business structure of the remittance sector



1.3 Volume and value of transactions in the remittance sector

Providers of remittance services are required to submit transaction reports to AUSTRAC. The number of transaction reports submitted annually offers an indication of the volume of transactions in the remittance sector undertaken by registered providers of remittance services. Table 1-1 describes the transaction reporting requirements for providers of remittance services.

Table 1-1: Transaction reports submitted to AUSTRAC

Transaction report	Description
International funds transfer instructions reports (IFTI)	Submitted when there is an instruction to transfer money or property into or out of Australia, either electronically or through a designated remittance arrangement
Threshold transactions reports (TTRs)	Submitted when an exchange of physical currency is AUD10,000 or more
Suspicious matter reports (SMRs)	Submitted when a provider of remittance services forms a suspicion that a fund transfers may be related to an offence such as tax evasion, or the proceeds of crime

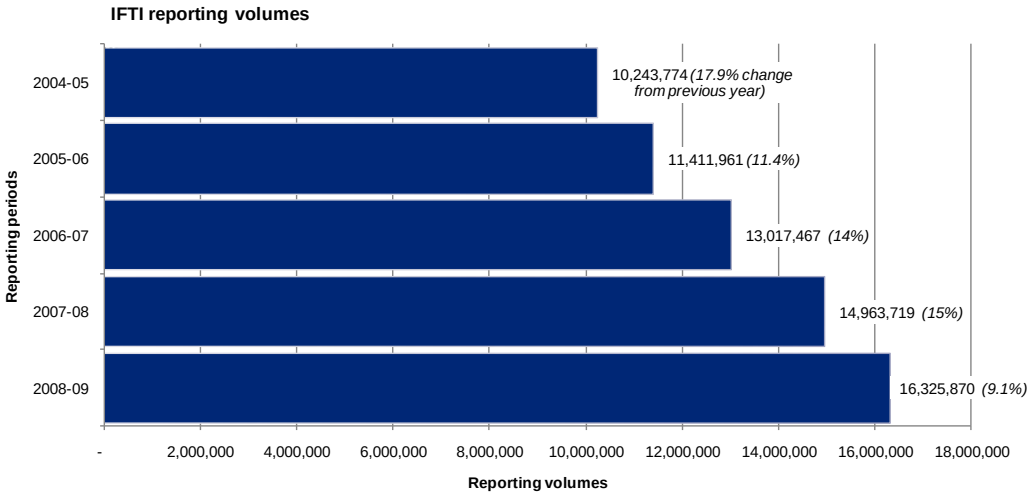
Source: AUSTRAC Annual Report 2008-09

AUSTRAC estimates for the 12-month period to 31 May 2010 the total value of all reports submitted by registered providers of remittance services was $7.2 billion.

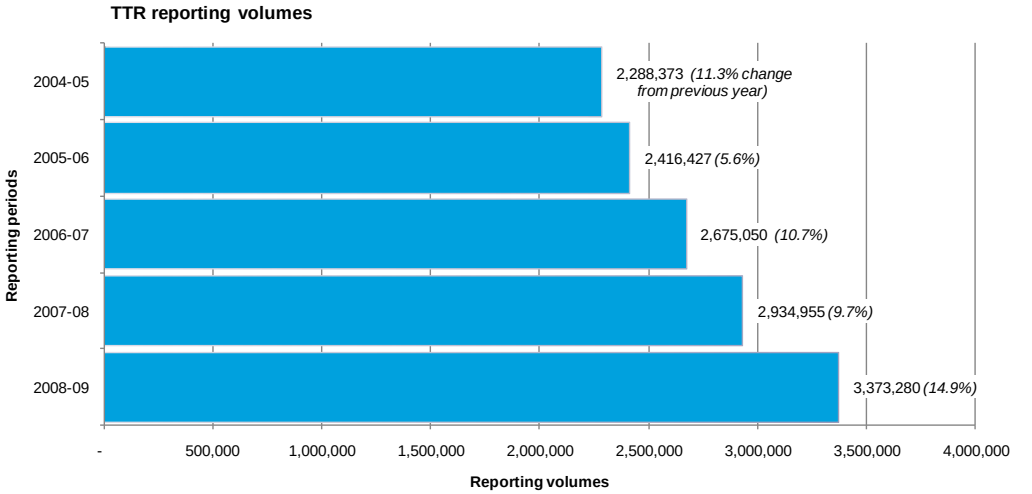
IFTI reports accounted for approximately $6.3 billion. The reporting value for TTRs is estimated to be approximately $856 million.

For all businesses providing remittance services, in 2008-09, AUSTRAC received approximately 20 million reports[3] from registered providers of remittance services, an average of more than 76,000 reports received per business day.[4] T his represents a 10.15 per cent increase on the number of reports received in 2007-08. Figure 1-2 illustrates the proportion of reports submitted to AUSTRAC by the registered remittance sector and the percentage change in reporting volumes.

Figure 1-2: Reports submitted by the registered remittance sector to AUSTRAC, 2008-09

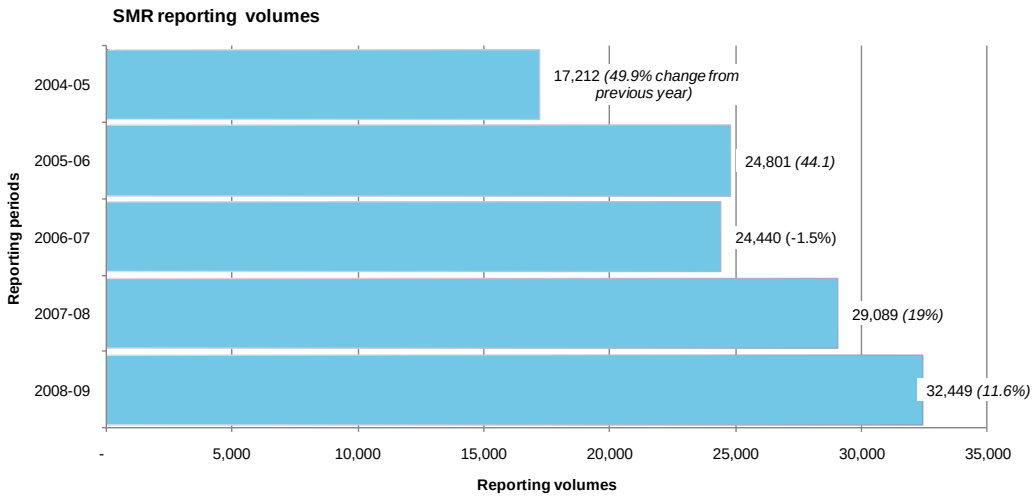


NB: The numbers of reports for 2004–05 to 2007–08 include only IFTI reports submitted under the FTR Act. The figure for 2008–09 includes IFTI reports submitted under both the FTR Act and the AML/CTF Act. The requirement for IFTIs to be submitted under the AML/CTF Act came into effect on 12 December 2008.



NB: The numbers of reports for 2004–05 to 2007–08 include only significant cash transactions reports (SCTRs) that were submitted under the FTR Act. The figure for 2008–09 includes both SCTRs and threshold transaction reports (TTRs). TTRs were introduced on 12 December 2008 under the AML/CTF Act and will progressively replace SCTRs from 2008–09 for those entities with reporting obligations under the AML/CTF Act.

[3] IFTIs, TTRs, SMRs
[4] AUSTRAC, 2009, *AUSTRAC Annual report 2008-09*



NB: The numbers of reports for 2004–05 to 2007–08 include only suspect transaction reports (SUSTRs) that were submitted under the FTR Act. The figure for 2008–09 includes both SUSTRs and suspicious matter reports (SMRs). SMRs were introduced on 12 December 2008 under the AML/CTF Act and will progressively replace SUSTRs from 2008–09 for those entities with reporting obligations under the AML/CTF Act.

Source: AUSTRAC Annual report 2008-09

Figure 1-1 illustrates that for all transaction reports, reporting volumes have increased over the five year period. Information provided by AUSTRAC for this RIS indicates that between 2008-09 and 2009-10 reporting for the remittance sector has continued to increase. Specifically, over the two years, the volume of IFTIs has increased by 27 per cent, the volume of TTRs increased by 41 per cent and the volume of SMRs increased by 68 per cent.

1.4 Development of the current regulatory proposal

The AML/CTF Act commenced in 2006. The Act requires that providers of designated remittance services are registered by the AUSTRAC. To date, AUSTRAC estimates that more than 94 per cent of remittance services are registered. However, experience with the registration scheme has identified a number of shortcomings.

To address the shortcomings, the Government announced its intention to amend the AML/CTF Act to introduce a more comprehensive regulatory regime for the remittance sector. The introduction of a more robust regulatory regime for the sector aims to reduce the risk of anti-money laundering, counter-terrorism financing and other serious crimes.

On 23 April 2010, the Government released a discussion paper regarding an enhanced registration scheme for providers of remittance services and invited the remittance sector to comment on the proposed measures. The discussion paper provided a broad overview of what this enhanced registration scheme could look like. Essentially, it proposed a scheme to give the AUSTRAC CEO the power to refuse, suspend, cancel or impose conditions on registering providers of remittance services. The discussion paper also noted the possibility of introducing registration requirements for providers of remittance networks.

On 16 July 2010, the Government followed up the discussion paper with specific proposals for an enhanced AML/CTF registration scheme. The Government continued its engagement with the remittance sector by facilitating consultations on the expected impacts of these specific proposals in July and August 2010. The purpose of consultations was to give the Government a sound understanding of how the reforms might affect businesses providing remittance services and help to ensure an effective outcome is reached. The information gathered through these consultations is used in this RIS.

1.5 Structure of the RIS

The remaining Chapters of this RIS are structured as follows:

- Chapter 2 The nature and extent of the problem
- Chapter 3 The objective of government action
- Chapter 4 Options
- Chapter 5 Impact assessment
- Chapter 6 Preferred option
- Chapter 7 Consultation
- Chapter 8 Other matters

2 NATURE AND EXTENT OF THE PROBLEM

2.1 The nature of money laundering and terrorism financing

The remittance sector is recognised by the international anti-money laundering and counter-terrorism financing (AML/CTF) community, and domestically by law enforcement and national security authorities, as being especially vulnerable to money laundering and terrorism financing.

Australian law enforcement authorities are aware, and international AML/CTF standards recognise, that international cash transfer services provided by ARDs are being used to pay the organisers of serious and transnational crime, including people smuggling ventures.

Thus, the nature of the problem to be addressed by the proposed changes to the AML/CTF Act is that money remittance services are vulnerable to use by criminals for the purposes of:

- laundering money gained through illegal activities into seemingly legitimate funds and
- financing terrorism activities, which has been defined as 'the financial support, in any form, of terrorism or of those who encourage, plan or engage in terrorism'[5] and
- financing serious and transnational crime, including people smuggling activities.

The International Monetary Fund reports the social and economic consequences of money laundering include:

[5] World Bank and International Monetary Fund, 2003, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism.*

- Undermining financial systems: money laundering expands the black economy, undermines the financial system and raises questions of credibility and transparency
- Expanding crime: money laundering encourages crime because it enables criminals to effectively use and deploy their illegal funds
- 'Criminalising' society: criminals can increase profits by reinvesting the illegal funds in businesses
- Reducing revenue and control: money laundering diminishes government tax revenue and weakens government control over the economy.[6]

Terrorism financing involves two broad areas:

- Funding of terrorist attacks – funding the cost of conducting an actual terrorist attack, including the cost of explosive materials, firearms, communications equipment, vehicles, travel and accommodation.
- Logistical funding - funding required to support groups or individuals who may plan a terrorist attack, or direct, recruit for and provide training to terrorist groups. The funding may also be used to maintain terrorist infrastructure such as training camps.

The consequences of terrorism are widespread and significant. Since 2001, more than 100 Australians have been killed in terrorist attacks overseas, including a combined total of 98 Australian victims of the September 11 2001 attacks in the United States and the Bali bombings of 12 October 2002. It is believed that Australians are now targeted by terrorists. [7]

In the past, few Australians had been killed in terrorist attacks and none were targeted as Australians. For example:

- Two Australians were killed by the Irish Republican Army in the Netherlands in 1990, with the terrorists believing the victims to be British
- Three Australians were killed in the bombing of the Hilton Hotel in Sydney in 1978, with the terrorists targeting Indian officials attending a meeting there.[8]

Alternative remittance dealers are recognised in Australia and internationally as a high risk of being misused for money laundering and terrorism financing. It is known that alternative remittance dealers in Australia have been used to facilitate money laundering for serious and organised crime, including people smuggling ventures.

Box 2.1 provides two examples of recent incidents where money laundering activities were identified within the remittance sector. While these incidents were successfully thwarted, they highlight the types of illegal activity that can and are occurring within the sector.

[6] AUSTRAC materials, available at http://www.austrac.gov.au/elearning/pdf/intro_amlctf_money_laundering.pdf, accessed 9 August 2010.
[7] Department of Foreign Affairs and Trade, 2004, *Transnational Terrorism: The Threat to Australia*, available at http://www.dfat.gov.au/publications/terrorism/chapter1.html, accessed 12 August 2010.
[8] Department of Foreign Affairs and Trade, 2004, *Transnational Terrorism: The Threat to Australia*, available at http://www.dfat.gov.au/publications/terrorism/chapter1.html, accessed 12 August 2010.

Box 2.1: Case study –money laundering within the remittance sector

Case study 1

A Sydney-based family and their associates were suspected of engaging in criminal activities.

The case involved a number of international funds transfers in and out of Australia, with the majority of funds being transferred into Australia.

The investigation focused on a particular remittance dealer who was suspected of having remitted funds overseas on behalf of organised crime groups.

As the law enforcement investigation progressed, it identified a second money laundering syndicate operating predominantly through a casino.

Law enforcement officers conducted a series of raids across Sydney and Melbourne, and ten men were arrested for alleged involvement in trafficking AUD250,000 worth of cocaine, ice and cannabis from NSW to Victoria.

Case study 2

A law enforcement investigation revealed that a number of organised crime syndicates were using a network of money remittance dealers in Sydney and Melbourne to launder the proceeds of drug importation and distribution operations.

The money remitters operated out of several shops, which were used by suspects from major crime syndicates based in Victoria and New South Wales and who transferred money to syndicates overseas. T he money remitters used various methods to prevent authorities from detecting their money laundering activities, including:

- Failing to report transactions to AUSTRAC
- Concealing the identity of their clients and the overseas recipients
- Using other remitters to reduce the size of the international transfers and conceal the frequency of the international transfers
- Paying airline pilots to physically carry large amounts of cash overseas.

Employees of major banks were also investigated for their failure to report large-volume deposits and transfers made through the remittance dealers' bank accounts.

Investigators charged the proprietors of the money remittance providers and associated businesses with laundering in excess of AUD93 million. One of the airline pilots pleaded guilty to money laundering under the *Criminal Code Act 1995* and was sentenced to four-and-a-half years' imprisonment.

Source: Australian Transaction Reports and Analysis Centre, *AUSTRAC typologies and case studies reports 2009 and 2010*.

2.2 The extent of the money laundering and terrorism financing

Money laundering and terrorism financing are illegal activities that are often not easily detected. This means that it is not possible to readily quantify the extent of money laundering or terrorism financing occurring via Australia's money remittance sector. However, it is possible to point to evidence demonstrating a significant problem and potentially a growing problem through the outcomes of some enforcement activities, the level of activity deemed as 'suspicious' within the money remittance sector.

Globally, the International Monetary Fund estimated that money laundering could amount to up to US$1.5 trillion globally.[9]

In terms of Australia, the Australian Institute of Criminology (AIC) has reported that money laundering from all crime types in and through Australia amounted to $4.5 billion in 2004.[10] The AIC identifies the role of the money remittance sector in money laundering as 'lending themselves to use by criminal or terrorist elements in a variety of ways', including:

- Due to the number of transactions and intermediaries and the fact that remittance businesses are illegal in some countries, each transaction does not always have a single coherent set of documentation which identifies the receiver of the remittance
- Remittance businesses have not always been obliged to identify their customers and may receive instructions over the phone, so they may not always know for whom they are acting
- The use of intermediaries and the possible consolidation of remittances into one sum means that money is coming in from many sources and no one person or organisation may have responsibility for knowing the identity of all these sources
- There is the possibility that some providers could be a front for criminal organisations, or that both providers and users may unwittingly be involved in illegality.[11]

The AIC also note that their estimated cost does not include factors such as tax evasion and that therefore the economic cost of money laundering to the community is likely to be higher than $4.5 billion per annum. While it is not possible to isolate the extent of money remittance sector role within this level of activity, the case studies presented in Box illustrate the links between the money remittance sector and money laundering.

The costs of terrorism financing are more difficult to measure than money laundering.

Of the estimated US$1,000 trillion that is transferred annually within international financial markets, only several hundred million dollars is estimated to be involved in the general financing of terrorism annually, although much smaller sums are required for the actual implementation of terrorist attacks.

In Australia, the Department of Foreign Affairs and Trade maintains a consolidated list which, in January 2010, named 3533 individuals and groups to which the terrorist asset freezing regime applied.[12] At February 2006, Australia had only frozen assets belonging to one group, the International Sikh Youth Federation, totalling $2197.[13]

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[9] World Bank and International Monetary Fund, 2003, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism.*

[10] Stamp, J. & Walker, J, 2007, 'Money Laundering in Australia, 2004' Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, No.342, August 2007.

[11] Australian Institute of Criminology, 2010, *Risks of money laundering and the financing of terrorism arising from alternative remittance systems*, Transactional crime brief no. 7, April, available at http://www.aic.gov.au/publications/current%20series/tcb/1-20/tcb007.aspx, accessed 12 August 2010.

[12] Department of Foreign Affairs and Trade, 2010. *Consolidated list*, available at http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html, accessed 12 August 2010.

[13] Attorney-General's Department, 2006. Security legislation review submission,

Terrorist attacks are relatively inexpensive to implement. The September 11, 2001 terrorists spent between US$400,000 and US$500,000 to plan and conduct their attack,[14] while the 7 July 2005 London bombings cost approximately £8000 including overseas trips, bomb-making equipment, rent, car hire and UK travel.[15]

In comparison, the costs of terrorist attacks are immense. The benefits provided by government, insurance companies and charities to those killed in the attacks at the World Trade Centre, the Pentagon and the Pennsylvania crash site and to businesses and individuals in New York City affected by the attack on the World Trade Centre was estimated to be approximately US$38.1 billion. This figure only includes the quantifiable compensation for losses from the September 11 terrorist attacks, and not the wider effects such as the costs of introducing increased security, intelligence and defence measures in the US and globally.[16] Similarly, by the second anniversary of the London bombings, the Criminal Injuries Compensation Authority had offered approximately £4.7 million in compensation awards to the bereaved and injured.[17]

The remittance sector itself provides reports to AUSTRAC that could be considered an indication that the extent of the problem of suspected illegal activities in the sector has been constant over recent years. As noted in Chapter 1, providers of remittance services have a legal obligation to report to AUSTRAC if they form a suspicion that a funds transfer may be related to an offence, tax evasion or the proceeds of crime.

The proportion of Suspicious Matter Reports (required under the AML/CTF Act) and Suspect Transaction Reports (required under the FTR Act) is small relative to say the volume of IFTIs, at around 0.2 per cent of transactions. This relationship has remained reasonably consistent over the period 2004-05 to 2008-09, and has grown along with the growth in the volume of IFTIs. This consistency is also notable given that the AML/CTF Act, including registration requirements for designated remittance service providers was introduced in this time period.

2.3 Current legislated approach to registration for provision of money transfer services

Providers of remittance services have anti-money laundering and counter-terrorism financing obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). This includes the requirement to register with

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[14] National Commission on Terrorist Attacks Upon the United States, 2004, *Final report of the National Commission on Terrorist Attacks upon the United States*, chapter 5.4., available at http://govinfo.library.unt.edu/911/report/911Report_Ch5.htm, accessed 12 August 2010.
[15] House of Commons, 2006, *Report of the Official Account of the Bombings in London on 7th July 2005*, HC 1087, 11 May, paragraph 63, available at http://www.official-documents.gov.uk/document/hc0506/hc10/1087/1087.pdf, accessed 12 August 2010.
[16] Dixon and Stern, 2004, *Compensation for losses from the 9/11 Attacks*, RAND Institute for Civil Justice, available at http://www.rand.org/pubs/monographs/2004/RAND_MG264.pdf, accessed 12 August 2010.
[17] Stone, 2007, *The response to victims of major incidents: A review of the Criminal Injuries Compensation Authority's response to the applicants after the 7 July 2005 London bombings, and recommendations for future major incident planning*, November, available at http://www.cica.gov.uk/Documents/Archived%20files/Report%20-%20CICA%20response%20to%20London%20bombings.pdf, accessed 12 August 2010.

AUSTRAC before providing funds transfer services. The registration of remittance affiliates and independent remittance businesses is currently addressed in Part 6 of the AML/CTF Act. The key aspects of Part 6 are as follows:

- The AUSTRAC CEO must maintain a register of providers of designated remittance services (section 75)
- A person commits an offence if they provide a remittance service without being registered (section 74).

The registration process is set out in Section 76 of the AML/CTF Act:

"76 Registration

(1) If:

(a) a person makes a written application to the AUSTRAC CEO for:

(i) the person's name; and

(ii) the person's registrable details;

be entered on the Register of Providers of Designated Remittance Services; and

(b) the person's name is not already entered on that register;

the AUSTRAC CEO must enter:

(c) the person's name; and

(d) the person's registrable details;

on that register.

(2) An application must be in the approved form."

Under section 76 all that is required for a remittance affiliate or independent remittance business to become registered is a written application to the AUSTRAC CEO in the approved form. When an application is received the AUSTRAC CEO must enter the person's details on the register.

Part 6 does not provide the AUSTRAC CEO with the power to remove a person from the register when the same concerns described above exist. The AUSTRAC CEO recently implemented an interim solution to this issue by making a Rule which, inter alia, allows the AUSTRAC CEO to remove a person's name and registrable details from the Register, if the AUSTRAC CEO considers that having the person's name and registrable details on the Register would constitute an unacceptable money laundering or terrorism financing risk. However, it is desirable to ensure that this mechanism is clearly set out in the legislation and that review mechanisms are provided for decisions to refuse to register or cancel registration.

Providing remittance services without registering is an offence that carries a penalty of imprisonment for two years, a $55,000 fine, or both. Providers must also identify their customers, keep records, establish an AML/CTF Program, and report suspicious matters, transactions above a certain threshold and international funds transfer instructions.

2.4 Problems with the current approach

The intention of the proposed reforms is to ensure that AUSTRAC has the necessary information about providers of remittance services to effectively regulate the remittance sector and reduce the AML/CTF risk posed by the remittance sector.

The current regulation scheme for the remittance sector presents a number of problems, namely:

- The registration scheme allows no discretion to determine suitability, thereby increasing the risk that remittance services will be abused to facilitate illicit activity including serious organised crimes such as people smuggling
- Regulatory and enforcement options are inflexible, and often do not allow for a proportionate response and have no clearly outlined review mechanisms
- Regulation does not reflect current business practices between providers of remittance networks (PRNs) and affiliate remittance dealers, increasing compliance burden on dealers and decreasing regulatory efficiency for Government
- The current system does not adequately take into account the relationship between PRNs and affiliates and limits the effective flow of information with potential legal consequences.

2.4.1 Lack of discretion determining suitability for registration

As noted in section 2.3, under section 76 all that is required for an ARD to become registered is a written application to the AUSTRAC CEO in the approved form. When an application is received the AUSTRAC CEO must enter the person's details on the register. The CEO's powers have recently been extended to removing a person's name and registrable details from the register if the CEO is of the opinion that the consequences of keeping them on the register would constitute an unacceptable money laundering or terrorism financing risk.[18] However, the CEO still has limited power to exercise discretion as to whether a person should be entered on the register even in circumstances where the CEO believes that the person should not be providing alternative remittance services, for example because they present a significant money laundering, terrorism financing or people smuggling risk.

In allowing anyone to register to provide designated money remittance service, the current approach presumes that anyone is suitable to provide these services. The AML/CTF Act is predicated on a risk based approach. Extending this approach to registration suggests that it is not the case that all members of the community are suitable to manage the delivery of money remittance services. That is, some people will be a higher risk of using money remittance services for money laundering or terrorism financing than others. For example, people who have a criminal history of money laundering or known terrorism links may not be suitable to provide these services.

2.4.2 Lack of flexibility in response

The current legislation also does not provide the AUSTRAC CEO with the power to remove a person from the register if they have concerns that a person on the register should not be providing alternative remittance services. Nor is there a power to suspend or restrict registration. The AUSTRAC CEO recently implemented an interim solution to this issue by making a Rule which, inter alia, allows the

[18] Chapter 44 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument* 2007 (No. 1). Amended by the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument* 2010 (No. 1).

AUSTRAC CEO to remove a person's name and registrable details from the Register, if the AUSTRAC CEO considers that having the person's name and registrable details on the Register would constitute an unacceptable money laundering or terrorism financing risk. However, it is desirable to ensure that this mechanism is clearly set out in the legislation and that review mechanisms are provided for decisions to refuse to register or cancel registration.

2.4.3 Higher compliance and enforcement burden

In terms of enforcement, it is difficult for AUSTRAC to effectively regulate the sector because it must focus individually on a large community of more than 6000 remittance services, rather than seeking aggregated information from PRNs.

In addition, as regulatory obligations are currently imposed on the provider of a remittance service, small businesses are required to shoulder the responsibility of complying with AUSTRAC's regulatory requirements. In practice, some PRNs have developed workarounds to support the compliance of their agents through developing common programs and other infrastructure. However, in some cases some arrangements may be in breach of the law, for instance where a PRN provides assistance and advice to remitters about suspicious matter reporting, the remitter may be in breach of the tipping off provisions of the AML/CTF Act.

Another issue is that the current regulatory arrangements prevent AUSTRAC from disclosing breaches of the AML/CTF Act and other regulatory issues with the PRN of a particular remittance agent.

2.4.4 Failure to reflect industry structure and practice

More broadly the current drafting of the Act is problematic because it focuses regulatory obligations on the providers of remittance services (affiliates and independent businesses), while largely ignoring the providers of remittance networks. As outlined in Chapter 1, the PRNs play a key role in the industry. PRNs have a reputational interest in ensuring that members of their network are not being utilised for nefarious purposes. Principle and network providers also provided examples where their own internal processes for vetting new affiliates were more stringent than the current AUSTRAC registration process. For example, most principle or network providers who took part in this consultation indicated that they required police checks of applicants or owners. In some cases bankruptcy checks were also required.

In consultations with the sector, a number of parties commented that there was a varied understanding of AML/CTF obligations by affiliates. The characteristics of many affiliates' businesses meant that they were not well positioned to understand or fully implement the current registration requirements. These characteristics include:

- Many affiliates are small businesses within which money remittance services are a relatively small component of the overall business.
- Many affiliates are owned and operated by people who have English as a second language. AUSTRAC produces information in a variety of languages.

Industry itself has recognised this as an issue and has developed approaches to support their affiliates meet their legislated obligations. Some examples include principle and network providers:

- effectively registering new affiliates
- providing guidance on AML/CTF Programs, including tools and templates
- providing on-going online and telephone training on risk and compliance issues
- co-ordinating or completing compliance reports for affiliates
- monitoring of transactions and reporting IFTIs, TTRs and SMRs to AUSTRAC.

It should be noted that not all principle and network providers undertook all of these activities. However, it does reflect that the current regulatory obligations fall short of what is for some current business practice.

Finally, in one regard the affiliates are not able to identify a potential serious risk – when an individual customer engages in money remittance activity across different locations. However, principle and network providers are better equipped it appeared to monitor and report this behaviour.

2.5 The case for a regulatory response

There are two arguments for government initiating a regulatory response to the regulatory problems outlined in section 2.4. The first is due to the externalities associated with the activities of money laundering, counter terrorism financing and people smuggling. The second is because it is in the public interest to more effectively manage the risk associated with the remittance sector and the effective management requires government regulation.

2.5.1 Remittance sector externalities

Negative externalities in the remittance sector arise where customers and/or providers of remittance services do not incur all the costs of their actions. In the case of money transfers being used to fund serious crime, the costs of crime borne by the responsible party or parties is the financial penalties and/or imprisonment from a prosecution. The costs do not reflect the impact on the community resulting from serious crime. The externalities in this instance are:

- Costs incurred as a consequence of crime, such as increased access to illicit drugs and the associated harm, harm that can occur as a result of people smuggling activity, increased incidence of gambling, increased property loss and damage, time off work and costs for police and health services, reduced feelings of safety within the community that can inhibit social interaction and community engagement
- Costs in response to crime, such as criminal justice system costs of investigating and prosecuting offenders, dealing with offenders (e.g. prison), and criminal injuries compensation

Providers of designated remittance services do not have a market incentive to manage risks that do not affect them, which means that they do not address the public risk presented by criminal and terrorist activity.

2.5.2 Unacceptable risk

There is also a clear case for government intervention where there is an unacceptable hazard or risk and where government intervention may be in the public interest.

Section 2.4 highlighted a number of limitations with the current regulatory scheme which affect AUSTRAC's ability to effectively regulate and supervise the remittance sector. The *Best Practice Regulation Handbook* provides guidance that government intervention is warranted if a risk to members of the community is unacceptable when weighed against the costs of correcting for it.

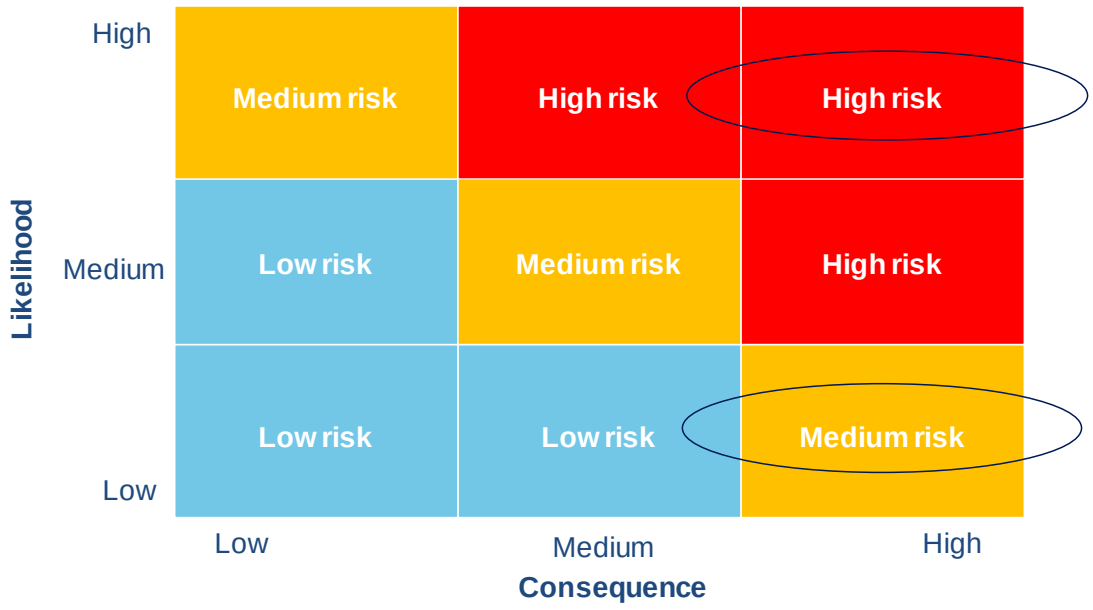
The consequence of a serious crime within the remittance sector could be very significant and potentially widespread. For example, criminal activity associated with the remittance sector has ranged from drug trafficking and fraud, to the funding of terrorist attacks.

In the case of the remittance sector, the likelihood of a serious crime occurring as a result of a single remittance transaction is low. However, in practice it is known that some transactions are higher risk than others. These include large value transactions, international funds transfers and funds transfers to some countries, particular patterns of transfers.

Using the risk assessment framework in Figure 2.1, at least some transactions are high risk – with both a high likelihood of being associated with criminal activity with potentially high detrimental consequences. The majority of transactions would be considered medium risk with low likelihood of being associated with criminal activity but still potentially high detrimental consequences.

The remittance sector itself is regarded by international AML/CTF bodies and by AUSTRAC and Australian law enforcement agencies as carrying a high money laundering and terrorism financing risk. In Australia, alternative remittance dealers have been used to facilitate money laundering and terrorism financing for serious and organised crime, including people smuggling ventures.

Figure 2.1: Risk assessment of remittance transactions



Note: the level of risk associated with the likelihood and consequence of an incident from the misuse of funds in the remittance sector represents a judgement and there is necessarily a degree of uncertainty surrounding this assessment.

The above evaluation of the likelihood and consequence of the risks associated with remittance transactions has been applied to the risk matrix illustrated in Figure 2.1 above. Using the risk matrix, the overall risk associated with these transactions has been determined to be medium.

The impact of the potential consequences of misuse of remittance funds (serious crime, terrorism) is a sufficiently unacceptable risk to society as to warrant government intervention in the public interest because any means of reducing this risk is considered to be very desirable.

2.6 Case for government action

The case for intervention by Government is supported by the existence of externalities associated with criminal activity. These negative externalities cannot be addressed through a market mechanism. A stronger regulatory regime offers the opportunity to reduce the negative externalities by first deterring the extent criminal activity through increased threat of being detected and second by enforcement agencies identifying and responding to criminal activity.

The case for Government intervention is also supported by the need for action to reduce the risk of the services provided by the remittance sector from being misused for the purposes of money laundering, terrorism financing, people smuggling or other serious crimes.

In particular the proposal is consistent with ongoing Government efforts to combat people smuggling by targeting funding sources for smuggling ventures. For example, the recent *Anti-People Smuggling and Other Measures Act 2010* makes it an offence to provide material support or resources towards a people smuggling venture. The new offence will apply in circumstances where money is provided to the person being smuggled to deter those people from using people smugglers.

The challenge is to ensure that the proposed enhanced registration scheme imposes costs that are less than the benefits associated with reducing the negative externalities and risk that is associated with use of the remittance sector to support criminal activities. The following chapters of this RIS provide an analysis of the relative costs and benefits of the proposed enhanced registration scheme for the remittance sector.

3 THE OBJECTIVE OF GOVERNMENT ACTION

The objective of Government intervention is to reduce the incidence and risk of misuse of remittance funds and serious crime related to remittance transactions. In doing this the intended outcome is to protect the commercial significance of the remittance sector as part of the critical infrastructure of Australia's financial system.

Any Government intervention is intended to improve the application of resources (both business and Government), and improve the level of deterrence and disruption to the misuse and abuse of the sector.

4 OPTIONS

4.1 Base case: Status Quo

The Base Case would maintain the current regulatory arrangements, as described in Chapter 2.

4.2 Option 1: Enhanced registration for providers of designated remittance services

Option 1 would introduce an enhanced registration scheme for remittance affiliates and independent remittance businesses (providers of designated remittance services). The key measures proposed under Option 1 include:

- Enhancing the registration process to require applicants to submit a written application addressing ML/TF risk covering matters such as an applicant's criminal history, bankruptcy and beneficial ownership arrangements, and to apply for registration renewal every 3 years.
- Giving the AUSTRAC CEO the power to refuse, cancel, suspend or impose conditions on registration
- Extending the infringement notice scheme to enable the AUSTRAC CEO to impose financial penalties for breaches of key registration requirements, namely the requirement to be registered before providing a designated remittance service, to comply with registration conditions and to advise AUSTRAC of material changes in circumstances that affect registration.

The AUSTRAC CEO would be able to refuse a person's application for registration if he or she is satisfied that allowing the person to provide a designated remittance service would involve a significant money laundering, terrorism financing or people smuggling risk, or that it is appropriate to take such action having regard to matters specified in the AML/CTF Rules. The AML/CTF Rules will be developed in close consultation with the remittance sector.

As outlined above, the proposed changes will require the AUSTRAC CEO to assess the suitability of providers of designated remittance services for inclusion on the register. The more detailed application information that is gathered will inform the AUSTRAC CEOs decision as to whether an applicant is a suitable person to be providing remittance services. It will also enable the AUSTRAC CEO to assess whether the ML/TF risk could be addressed by imposing either a general condition on registration (such as a requirement to notify AUSTRAC of material changes in circumstances) or a specific condition (such as the volume of funds able to be remitted).

The enhanced registration process will mean that some current operators will no longer be able to provide remittance services. This reflects the intention of the reforms, which is to ensure that people who pose a money laundering, terrorism financing or people smuggling risk are not able to facilitate illicit activity through the transfer of funds through the remittance sector.

The AUSTRAC CEO will be required to give written notice of a proposed registration decision and give the person 28 days in which to make a submission in response. A

person affected by a decision may seek internal review of the decision which would be carried out by an AUSTRAC officer who is senior to the original decision maker and who was not involved in the original decision. The reviewer will be able to affirm, vary or revoke the decision. A person may also seek merits review by the Administrative Appeals Tribunal of an internal review decision, or a decision made by the AUSTRAC CEO personally. In addition, a person may seek judicial review under the *Administrative Decisions (Judicial Review) Act 1977*. A decision to cancel, suspend or impose conditions on registration will also be reviewable.

4.3 Option 2: Enhanced regulation of the remittance sector—network providers and providers of designated remittance services

Option 2 is to enhance regulation of the remittance sector by:

- Enhancing the registration process to require applicants to submit a written application addressing ML/TF risk covering matters such as an applicant's criminal history, bankruptcy and beneficial ownership arrangements, and to apply for registration renewal every 3 years (consistent with Option 2)
- Giving the AUSTRAC CEO the power to refuse, cancel, suspend or impose conditions on registration (consistent with Option 2).
- Extending the infringement notice scheme to enable the AUSTRAC CEO to impose financial penalties for breaches of key registration requirements (consistent with Option 2)
- Introducing the concept of a remittance network provider into the AML/CTF Act, making PRNs subject to existing AML/CTF obligations relating to customer due diligence, reporting, maintaining and developing AML/CTF programs and record keeping
- Introducing a tiered registration scheme where PRNs would be responsible for their registration as well as their remittance affiliates, and independent remittance businesses would apply directly to AUSTRAC for registration
- Introducing a rule making power that would enable the AML/CTF Rules to make provision for the reporting obligations imposed on remittance affiliates under the AML/CTF Act to be imposed instead, or in addition, on the relevant PRN.

Option 2 would shift many of the existing regulatory burdens away from approximately 6,100 remittance affiliates on to PRNs. PRNs already provide AML/CTF support to their affiliates in the ordinary course of business, including the development of AML/CTF compliance frameworks and transaction monitoring systems. These form a large proportion of AML/CTF compliance costs for providers of designated remittance services, which are overwhelmingly small businesses. Option 2 would formalise existing relationships by requiring providers of remittance networks to prepare AML/CTF Programs for use by their affiliates and to fulfil some of the AML/CTF Act reporting obligations on behalf of their affiliates, for example, compliance reports, international funds transfer instructions and threshold transaction reports. The costs of complying with AML/CTF obligations are proportionately larger for remittance affiliates than for PRNs, which have the benefit of specialising in the provision of remittance network services and can benefit significantly from economies of scale in compliance costs.

The majority of remittance affiliates are unsophisticated small businesses (for example news agents and convenience stores) that offer customers access to

remittance networks (such as Western Union) as part of a wider range of services. These businesses face significant challenges ain understanding and complying with AML/CTF obligations. For example, it will take time for a family run newsagent to develop the requisite knowledge of AML/CTF regulation. In contrast PRNs are largely multi-national companies who have sophisticated systems and processes for compliance with AML/CTF regimes all over the world. Shifting obligations to PRNs will relieve the compliance burden on around 6,100 affiliates which will reduce compliance costs across the sector.

Under Option 2, PRNs would have responsibility for registering their remittance affiliates. Eligibility for assessing registration and overall effects on existing remittance businesses would be the same as outlined in Option 1, and rights of review would also apply. It is proposed that where a registration decision affects a particular person, that person will have a right of review. This means that if the registration of a remittance affiliate is refused, cancelled or if conditions are imposed on the registration, then it would be open to both the network provider and the remittance affiliate to seek review of the decision.

5 IMPACT ASSESSMENT

5.1 Nature of the expected impact

The groups affected by the regulatory proposals are the businesses in remittance sector, the customers of the remittance sector and the community more broadly. The discussion below identifies the significant impacts of the regulatory proposals on these groups.

5.1.1 The remittance sector

As described in Chapter 2, there are four types of businesses in the remittance sector:

- Providers of remittance networks Tier 1 (PRN T1)
- Providers of remittance networks Tier 2 (PRN T2)
- Remittance affiliates
- Independent remittance businesses.

5.1.1.1 Expected benefits

A key benefit for the sector is that a strengthened AML/CTF regime that is able to be more effectively enforced. This will result in a more consistent approach to supervision across the sector. One consequence of this will be that businesses who are currently directing more effort at managing risks will not be at a commercial disadvantage compared to those who put less effort to managing risk. In addition, a strengthened AML/CTF regime should assist in maintaining the strong reputation of Australia's remittance sector which is essential for on-going use by both customers in Australia and overseas.

In terms of compliance costs, there may be benefits for some parts of the industry in Option 2. A potential benefit in some circumstances for the remittance sector is an overall reduction in compliance costs, with remittance affiliates having their burden

significantly reduced. This is highly significant for the many small businesses in the sector that depend are operating high-volume, low-margin business. However, this benefit arises because the PRNs burden increases.

5.1.1.2 Expected costs

The regulatory options are associated with different types of compliance costs. Currently, registered remittance affiliates and independent remittance businesses incur a range of costs in complying with the AML/CTF Act. It should be noted that not all remittance affiliates incur all costs – PRNs often support their affiliates by providing access to tools and templates for different aspects of the regulatory requirements. So independent remittance businesses are likely to incur costs for all the activities listed below, while the extent of costs incurred by affiliates will depend on the activities of their PRNs:

Registration

- Registration—including time spent on completing the registration application initially and then time spent updating registration details such as when contact details change

AML/CTF Program

- AML/CTF Program –including time spent developing maintaining and reviewing an AML/CTF Program, including staff costs as well as the development, maintenance and review of systems and infrastructure to support the program
- Risk Assessment —including time taken and systems developed to undertake risk assessment reviews for new types of customers, new products, new channels and jurisdictions
- Employee training —including staff costs to develop and deliver training, staff costs to attend training and the cost of any material developed and presented at the training
- Employee due diligence —including staff costs if you choose to apply for and administer police checks and out-of-pocket costs such as police check application fees
- Independent review — including costs incurred for the regular independent review include costs to engage a suitably qualified and independent person to review the AML/CTF program and its implementation
- Monitoring — including costs incurred for the staff costs and systems required to monitor customers and their transactions

Reporting

- Compliance reporting — including costs incurred for the staff costs for completing and submitting an AML/CTF compliance report to AUSTRAC

Monitoring

- Transaction reporting – including costs incurred for the staff costs and systems required to monitor and report on transactions, including the reporting of IFTIs, TTRs and SMRs.

Customer due diligence activities are an important activity in the sector. The costs associated with these activities are included in the AML/CTF Program elements of

risk assessment and monitoring as well as the monitoring element of transaction reporting.

Consultation with PRNs identified how the proposed new regulatory requirements could require that they undertake new activities and incur associated compliance costs. In consultation, PRNs reported that while they do undertake some of these activities now (ie they are business as usual) if they had a legislated obligation they would need to develop more comprehensive and rigorous approaches to these activities.

The nature of the new costs that may be incurred by PRNs are summarised in Table 5-1 below.

Table 5-1: Nature of the new activities and costs for PRNs

Proposed new regulatory requirement	New activities	Associated costs
Registration • Register as a PRN • Register affiliates	• Maintain information on registration as PRN and registration of affiliates • Update systems to capture and hold registration information • Develop a new methodology to register new affiliates and renew registration • Develop a new process to register new affiliates and renew registration • Develop communication materials for affiliates • Develop support tools for affiliates • Develop IT systems, including sourcing some data from central systems • Develop approach to monitoring registration • Develop approach to manage enforcement of requirements • Expand workforce to manage the 3 year registration renewal process.	• Additional staff • New and enhanced IT systems • Development of systems and processes • Staff training
AML/CTF Program • Maintain AML/CTF Programs for themselves and affiliates	• Revise and update existing AML/CTF program documents/ templates and training • Enhance existing audit framework to undertake risk assessments • Develop and extend monitoring program to ensure programs are implemented and maintained	• Additional staff • New and enhanced IT systems • Development of systems and processes • Staff training

Proposed new regulatory requirement	New activities	Associated costs
	• Enhance IT systems • Up-skill current workforce • Develop framework to monitor that all staff have completed employee training • Develop a framework and approach for compliance reporting. • Potentially engage external parties to undertake independent reviews on a sample of affiliates	
Reporting • Manage reporting for affiliates	• Investment in new systems and additional personnel.	• Additional staff • New and enhanced IT systems • Development of systems and processes • Staff training
Monitoring • Manage monitoring for network		• Additional staff • New and enhanced IT systems • Development of systems and processes • Staff training

The table below identifies where the businesses in the remittance sector would be expected to experience additional costs under the options being considered.

Table 5-2: Additional costs for remittance sector by option

Remittance sector businesses	Option 1	Option 2a	Option 2b	Option 2c
PRNs T1	No	Yes	Yes	No
PRNs T2	No	Yes	No	Yes
Affiliates	Yes	No	No	No
Independent Remittance Businesses	Yes	Yes	Yes	Yes

5.1.2 Customers of remittance services

For customers of remittance services there are two areas of expected impact.

The first is that a strengthened AML/CTF regime should underpin their confidence and on-going use of the sector. This is an important sector for many Australian's who use it to transfer significant amounts of money — $7.3 billion in the 12 months to June 2010.

The second issue concerns potential cost impacts on services. If it is the case that overall industry compliance costs are reduced, at a minimum, customers should see no increase in the costs of using these services while experiencing the benefits. In a best-case scenario, an overall reduction in compliance costs across the industry may actually reduce the administrative charges associated with use of the services.

It has not been possible to quantify the benefits of the regulatory proposal to the customers of remittance services in this RIS.

5.1.3 The community

As discussed in Chapter 3, the wider community is expected to be a beneficiary of the proposed regulatory changes. These benefits stem from the reduced risk of remittance services being used to facilitate illegal activity and the associated reduction in the community wide impacts of criminal activity. These impacts can be both direct, if community members are the victims of crime and indirect as community resources are directed to law enforcement activities, criminal justice services or services to support the victims of crime.

It has not been possible to quantify the benefits of the regulatory proposal to the community in this RIS. However, Box 5.1 illustrates the benefits for individuals such as avoiding injuries and death can be quantified and are of significant value.

Box 5.1: Willingness to pay estimate for avoided injury and death

In the wake of the September 11, 2001 attack and an increase in the development of a regulatory policy response to terrorism and security and community preparedness measures, a study was undertaken to determine the willingness to pay metrics to prevent injury and death.
The willingness to pay estimates for avoided injury was calculated based on a study that reviewed 40 other studies. These ranged from approximately US$20,000 – 70,000.
The willingness to pay estimate for avoided death was calculated using the value of a statistical life. It used estimates of US$3 million to US$6 million which reflected assumptions used by the U.S. Department of Transportation and U.S. Environmental Protection Agency.

Source: Latourrette T, and Willis, H, (2007), *Using Probabilistic Terrorism Risk Modelling For Regulatory Benefit-Cost Analysis*, Working Paper, Centre for Terrorism Risk Management Policy, available at http://cbp.customs.gov/linkhandler/cgov/travel/vacation/ready_set_go/whti_bg/ref_mat/econ_analysis.ctt/econ_analysis.pdf, accessed 9 August 2010.

5.2 Approach to analysis

5.2.1 Estimating the benefits

The proposed regulatory changes are expected to reduce the risk of people using Australia's money remittance services for illegal activities including money laundering and financing terrorism. This change offers benefits for customers of remittance services and the wider community.

The qualitative assessment of these benefits identifies the following impacts:

- For customers of remittance services a strengthened AML/CTF regime should underpin their confidence and on-going use of the sector. This is an important sector for many Australian's who use it to transfer significant amounts of money — $7.3 billion in the 12 months to June 2010. Subject to final the compliance costs there is also the potential for any reductions in compliance costs to flow through to a lower-cost service.
- For the wider community, the benefits of the proposed reforms stem from the reduced risk of remittance services being used to facilitate illegal activity and the associated reduction in the community wide impacts of criminal activity. These impacts can be both direct, if community members are the victims of crime, and indirect as community resources are directed to law enforcement activities, criminal justice services or services to support the victims of crime.

While it was not possible to quantitatively estimate the benefits for this regulatory proposal, the available evidence points to a real value to individuals and the community in being able to reduce the risk of money laundering and terrorism financing. For example, in relation to financing terrorism, it is reported that terrorist attacks are relatively inexpensive to implement. For example, the September 11 2001 terrorists spent US$400 000 and US$500 000 to plan and conduct their attack.[19] In comparison, the costs of terrorist attacks can be immense. The payments provided by government, insurance companies and charities to those killed in the attacks at the World Trade Centre, the Pentagon and the Pennsylvania crash site and to businesses and individuals in New York City affected by the attack on the World Trade Centre was estimated to be approximately US$38.1 billion. This figure only includes the quantifiable compensation for losses from the September 11 terrorist attacks, and not the wider effects such as the costs of introducing increased security, intelligence and defence measures in the US and globally.[20]

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19 National Commission on Terrorist Attacks Upon the United States, 2004, *Final report of the National Commission on Terrorist Attacks upon the United States*, chapter 5.4., available at http://govinfo.library.unt.edu/911/report/911Report_Ch5.htm, accessed 12 August 2010.

20 Dixon and Stern, 2004, *Compensation for losses from the 9/11 Attacks*, RAND Institute for Civil Justice, available at http://www.rand.org/pubs/monographs/2004/RAND_MG264.pdf, accessed 12 August 2010.

5.2.2 Estimating the costs

Types of costs associated with the regulatory proposal were identified based on the understanding of the AML/CTF legislative requirements faced by businesses and discussions with the sector. The core components of the analysis of costs reflect the four key elements of the proposed reforms, namely:

- Registration
- AML/CTF Programs
- Reporting
- Monitoring.

Compliance costs presented in this RIS are estimated using information gathered via a web-based survey of affiliates and independent remittance businesses and consultations with selected PRNs.

The web-based survey of affiliates and independent remittance collected information used to estimate current compliance costs associated with Registration, AML/CTF Program, Reporting, and Monitoring. It also collected information used to estimate compliance costs expected with the regulatory proposal under Option 1. Cost estimates for affiliates and independent remittance businesses were generated by gathering information about time spent in regulatory activities and out-of-pocket costs for those activities.

Consultation meetings were held with five PRNs to gather the cost information on the expected impacts of the regulatory option 2 for businesses in that sector (details of consultation are in Chapter 7). In consultation, PRNs reported additional costs due to the need to formalise existing activities if they become regulatory requirements as well additional categories of costs to implement the regulatory options being considered.

The goal of the information collection was to generate the basis for estimating costs that might be incurred if the AML/CTF regulatory regime is strengthened as per the current regulatory proposal. Reflecting the current stage of regulatory development, the consultation relied on asking broad questions. The responses provided during consultation and in the survey should be considered in that context. With more detail on the specific elements of the regulatory proposal, industry participants would be in a position to provide more specific responses about impacts.

- During consultations the PRNs provided information that was used to estimate indicative cost of additional staff requirements for the regulatory options. However, it was not possible to estimate the impacts of all expected costs. Specifically, it was not possible to generate cost estimates for new and enhanced IT systems, development (including redesign) of systems and processes and some staff training.

Table 5-3 illustrates the types of compliance costs the PRNs identified. (In New Zealand, businesses identified similar cost categories for expected changes to compliance costs due to changes in AML/CTF legislation.[21]) The Table identifies the

[21] Deloitte (2008) New Zealand Ministry of Justice 'Assessment of business compliance costs of the indicative antimony laundering regulatory requirements' available at http://www.justice.govt.nz/policy-and-consultation/crime/documents/fatf/AML-Costing-Final-Report.pdf/view?searchterm=AML%20CTF.

costs that are quantified in this RIS. It highlights that the PRN's compliance cost estimates presented in the RIS are partial cost estimates only.

Table 5.3 PRN's compliance costs that are quantified in this RIS

Types of new costs expected for PRNs	Quantified in this RIS			
	Registration	AML/CTF Program	Reporting	Monitoring
Additional staff	✓	✓	✓	✓
New and enhanced IT systems	×	×	×	×
Development of systems and processes	×	×	×	×
Staff training	×	✓	×	×

Considering the costs that not quantified in this RIS, secondary sources were considered as a potential source of information for new and enhanced IT system costs and the development of new systems and processes. These items could potentially involve significant costs for business. (In New Zealand, system costs were expected to account for up to half the total estimated compliance costs.[22]) However, for the reasons set out below, secondary sources have not been used to estimate costs for this RIS.

First, the nature of IT system and other process changes depends significantly on the nature of the change required. At this stage of the regulatory development process, it is not possible to establish a detailed understanding of the IT requirements needed under a new approach or therefore of the associated costs.

Second, the size of the cost impact depends on the existing IT infrastructure and processes. For example, some IT platforms can accommodate change more easily (and cost effectively) than others. A further complexity for costing IT system and other process changes within this sector is that some PRNs are likely to operate on global IT platforms while others will not. Indeed the PRNs range from highly sophisticated global and national entities with an extensive geographic presence through to small businesses with a local focus and limited support infrastructure. The industry structure and nature of the proposed regulatory change precluded identifying another Australian industry that could provide a suitable basis for cost comparisons.

Third, more broadly, the combination of industry structure and the particular characteristics of this regulatory proposal meant that no comparable international scenario was seen as a suitable basis for comparison.

With respect to the training costs that are not quantified, the detail available in the current regulatory proposal did not allow a clear understanding of the extent of these costs.

22 Ibid.

The process of introducing the regulatory changes considered in this RIS includes specifying further detail in the subordinate regulation (Rules). Thus, for Option 2, the RIS sets out a number of approaches that could be incorporated into future Rules and the associated estimate of costs. Through the process of developing the Rules, it should be possible to consult further with the sector and understand the size of the costs not quantified in this RIS. In consultations, the PRNs indicated that they had a strong interest in being involved in future consultation.

It must be noted that establishing an accurate measure of the likely costs of the proposed AML/CTF regime is a difficult task for several reasons, including:

- The risk based approach embedded in the legislation allows for high degree of variation in the approach businesses use to implement the regulatory regime. The consequences of this legislative feature include:
  - it is difficult for firms to precisely estimate the costs they will face
  - there could be significant variation current and future costs across firms
  - there is the potential for wide variation around industry average costs
- The difficulty separating estimated costs for the proposed reforms from 'business as usual' costs, that is, there are some types of costs that businesses would incur even without the current regulatory requirements, for example collecting and verifying customer identification.
- At this stage of the regulatory development process, it is not possible to establish a detailed understanding of the changes to business systems and processes.[23] Further detail will be included in future subordinate regulation (Rules).
- The combination of industry structure and the nature of the proposed regulatory means that secondary data sources do not provide a suitable basis to estimate costs where there are gaps in primary data.

5.3 Assumptions for the analysis

The key assumptions underpinning this analysis are:

- Cost data gathered through consultations and the survey is indicative for the sector;
- Business-as-usual costs are excluded — some activities that are proposed under the enhanced regulatory arrangements are already being undertaken by some businesses. These costs are considered business as usual and are not relevant in estimating the regulatory burden.
- All businesses will comply with future regulatory requirements — as noted previously, there is a degree of non-compliance by remittance affiliates and independent remittance businesses with the current regulatory arrangements. This is borne out somewhat by the survey results (described below). The analysis assumes that under the enhanced proposal all businesses comply with the regulatory requirements.

Each option includes quantification of at least cost compliance costs. The specific assumptions used to generate these estimates are described in each option.

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[23] A similar view was expressed in a consultation process in New Zealand to estimate the impacts of their proposed changes to AML/CTF legislation. See Deloitte (2008) New Zealand Ministry of Justice 'Assessment of business compliance costs of the indicative antimony laundering regulatory requirements' available at http://www.justice.govt.nz/policy-and-consultation/crime/documents/fatf/AML-Costing-Final-Report.pdf/view?searchterm=AML%20CTF.

5.4 Base Case – retaining the status quo

The Base Case is simply the status quo. It is used as the basis against which to compare the alternative options. This section describes the Base Case. As described in Chapter 2, there are four types of businesses in the remittance sector:

- Providers of remittance networks Tier 1 (PRN T1)
- Providers of remittance networks Tier 2 (PRN T2)
- Remittance affiliates
- Independent remittance businesses.

The sections below describe in broad terms how each part of the sector operates. It is important to note that PRN T1's and PRN T2's are not currently reporting entities under the AML/CTF Act and do not have legislative obligations to provide AML/CTF support and assistance to their remittance affiliates (although this is commonly part of the business relationship).

5.4.1 PRN T1

PRN T1s operate the infrastructure needed to transfer funds transfers from Australia to other countries and are involved in monitoring activities on behalf of network providers and remittance affiliates. The primary purpose of the PRN T1s business is likely to be the provision of remittance or related financial services. There are approximately 25 PRN T1s in Australia's remittance sector.

PRN T1s are typically global organisations. The larger PRNs have well-developed internal capabilities, including resources and IT. They operate with their global counterparts in developing and implementing approaches to managing their operations, including legislative compliance and risk issues.

As illustrated in Figure 1-1, PRN T1s usually have arrangements in place with PRN T2s (sometimes called super agents). Sometimes there is an exclusive relationship between one PRN T1 and one PRN T2. However this varies and it is more common for PRN T1s to have arrangements in place with a number of PRN T2s.

PRN T1s vary in the number of affiliates that are use their networks. The largest PRN T1 manages thousands of remittance affiliates, while the smaller PRN T1s manage just a few affiliates.

In many cases, the relationship between the PRN T1 and the PRN T2 means that there is a very limited relationship between the PRN T1 and their remittance affiliates. This relationship usually extends to the monitoring of transactions only. There is no direct contractual relationship. In consultations for this RIS it seemed that the smaller PRN T1s had a detailed understanding of individual affiliates within their network.

5.4.2 PRN T2

PRNs T2 have a contractual relationship with both the PRN T1s and remittance affiliates. Some PRN T2s have remittance and other financial services as their primary activity. However, for others, remittance services are part of, but not the primary purpose of their broader business activities.

There are approximately 40 PRN T2s in Australia's remittance sector. Some PRN T2s have hundreds, and in one case thousands, of affiliates while some PRN T2s have just a few affiliates.

The PRN T2s often 'recruit' affiliates to be part of a network and therefore part of their business. As such, they tend to engage in screening activities of prospective affiliates prior to allowing them to join their network. They also tend to have regular contact with their affiliates.

The PRN T2s may also provide support to their affiliates to assist the affiliates fulfil their obligations under the AML/CTF Act. For example, they may provide templates and tools to help meet AML/CTF Act requirements, provide updates on emerging issues, monitor transitions for high risk activities, undertake coordinating functions across their affiliates to meet regulatory requirements. However, the extent to which theses activities are undertaken varies across the PRN T2s.

5.4.3 Remittance affiliate businesses

Remittance affiliate businesses provide fund transfer services to individuals and businesses. Remittance affiliates are most often in a business relationship with at least one and sometimes more than one PRN T2, and a PRN T1. This relationship extends to sharing the 'brand' of the PRN T1 and/or the PRN T2. There are approximately 6100 remittance affiliates in Australia's remittance sector.

Some remittance affiliates offer remittance services as the main activity of their businesses. However, the majority offer remittance services as part of a much wider range of services. For example, remittance services that are provided at post offices, newsagents, general stores. Remittance services are often provided by small businesses.

Remittance affiliates receive different types of support to meet their AML/ CTF obligations from their PRN T2s.

Providing remittance services has a varied degree of importance for remittance affiliates and independent remittance agents. For some businesses, providing a remittance service is the main business activity while for other businesses it is a minor part of their operations. In some cases, providing remittance services is part of a contractual obligation, where money remittance is a component of a bundle of services that must be available.

5.4.4 Independent remittance businesses

It is not essential for providers of remittance services to belong to a remittance network or have a business relationship with a PRN T1 or PRN T2. Independent remittance agents provide remittance services using their own systems and processes. There are approximately 400 in Australia's remittance sector. It is believed that many independent remittance affiliates are essentially specialised providers for individual cultural or ethnic groups within the Australian community and small businesses.

5.4.5 Observations about the Base Case

The remittance sector is recognised both in Australia and internationally as being more vulnerable than other sectors to the risk of money laundering and terrorism financing. In addition, AUSTRAC typologies and law enforcement experience have identified remittance services as one of the methods employed to finance people smuggling activities. To address this risk, and to comply with the Financial Actions Task Forces' Special Recommendation IV, the AML/CTF Act has a registration scheme in place so that AUSTRAC has a record of who is operating in the remittance sector. As explained elsewhere in this RIS, the registration scheme allows no discretion to determine suitability of those operating in the sector. This increases the risk that remittance services will be abused to facilitate illicit activity including serious organised crime such as people smuggling.

In general, the overall level of compliance with AML/CTF obligations by the remittance sector is low.

As at 30 June 2010, approximately 94 per cent of the estimated remittance population had registered with AUSTRAC. While the number of registered remittance dealers has increased significantly in recent years due to a dedicated registration campaign run by AUSTRAC, the sector is characterised by a lack of compliance with AML/CTF Act obligations. Observations from AUSTRAC's supervisory activity are that many businesses do not have a written or appropriate AML/CTF program, do not have adequate customer identification procedures in place and do not conduct suitable risk assessments.

In consultation, PRNs commented that across the sector there was significant variation in the level of understanding of AML/CTF obligations. While some affiliates are well versed in their obligations, others operate with a limited understanding. The survey provides an indication that compliance may be an issue in some areas. For each element of the AML/CTF Program, respondents were given the option to identify if they had not undertaken a particular regulatory activity yet. Within this group some businesses may be relatively new and therefore not yet required to undertake a regulatory activity. However, some businesses would be non-compliant. These results should also be considered as a best-case scenario as there is likely to be 'self-selection bias' as those who choose to respond to a survey may also be more likely to comply with regulatory requirements.

Table 5-4: Survey respondents reporting that they had not undertaken a regulatory requirement yet

AML/CTF program requirement	Proportion who had not undertaken a regulatory requirement yet
Reviewing and maintaining	5%
Risk assessment	7%
Monitoring	3%
Employee training (risk awareness)	14%
Employee due diligence	30%
Independent review	14%
Compliance report	5%

Source: Survey of remittance affiliates and independent remittance businesses July / August 2010

5.5 Option 1: Enhanced registration for providers of designated remittance services

5.5.1 Description of benefits

Implementing an enhanced registration scheme for providers of designated remittance services would reduce the risk of services provided by remittance dealers of being misused for money laundering and the financing of terrorism, people smuggling and other criminal activity in the following ways.

Firstly, the more detailed application process for registration and the ability of the AUSTRAC CEO to refuse, cancel or suspend a person's registration provides the AUSTRAC CEO with the ability to control who is able to provide remittance services and to prevent unsuitable persons from obtaining or retaining registration. By requiring applicants to provide information about their criminal history, bankruptcy and beneficial ownership, the AUSTRAC CEO can ensure that persons who pose significant money laundering, terrorism financing or people smuggling risk are not permitted to provide remittance services.

Secondly, the ability to impose conditions on a person's registration will allow AUSTRAC to set parameters on how a registered remittance dealer can operate. For example, restrictions may be placed on the volume of funds remitted by a provider of a designated remittance service or the destination of funds. This enables the AUSTRAC CEO to modify the AML/CTF Act's risk-based approach to regulation, which ordinarily leaves it completely up to reporting entities to assess the AML/CTF risk faced by their business and to put in place appropriate systems and controls to address that risk. Given that the large majority of remittance dealers are small operators with highly variable levels understanding of AML/CTF obligations who are operating in a sector that is known to be vulnerable to money laundering and terrorist financing, the ability to impose conditions on registration will assist remittance providers to identify, mitigate and manage the risk of their services facilitating money laundering or terrorism financing.

Finally, the introduction of an infringement notice scheme to cover breaches of certain registration obligations will give AUSTRAC additional enforcement options which will enable it to take enforcement action that is proportionate to the breach. The main enforcement options in the existing AML/CTF Act are civil penalties, criminal offences and enforceable undertakings. These are often costly and time consuming for both AUSTRAC and reporting entities, and in effect act as a barrier to enforcement. The ability to issue infringement notices for failures to comply with registration requirements—particularly conditions imposed on registration—will have a positive effect on AML/CTF compliance by reporting entities as the possibility of being issued with a pecuniary penalty for non-compliance gives providers of remittance services greater incentive to comply with their registration obligations.

5.5.2 Estimate of costs

The costs for Option 1 include the additional costs of moving to an enhanced registration system that includes providing more information to AUSTRAC and registration renewal every three years. Under the regulatory proposal, these additional costs would be borne by remittance affiliates and independent remittance businesses.

The survey of affiliates and independent remittance businesses asked respondents to estimate how much time it would take them to review information, record it and submit it to AUSTRAC associated with:

- confirming that key personnel who provide remittance services have National Police Certificates
- providing information about whether key personnel who provide remittance services have taken advantage of the laws of bankruptcy
- providing information about the structure of the business including beneficial ownership and control arrangements.

These questions are reasonably broad in nature and the responses suggest that a significant amount of time may be required to meet them. It is possible that with more detailed information, survey respondents would provide different answers, and possibly estimate less time.

The approach used is to estimate the costs to complete the registration renewal activities is based on information from the survey. Respondents estimated how long it would take them to complete the new activities. For affiliates the estimate was 5.5 hours. For independent remittance businesses the average estimate of time they would require was 7.5 hours.

These average time estimates were multiplied by an average wage rate plus 20 per cent on-costs to estimate the cost of time spent that would be spent undertaking the new regulatory activities. The wage rate used for the affiliates and independent remittance businesses is the average weekly earnings for a full-time adult ordinary time earnings in the retail trade.[24] That cost is $36 per hour.

[24]Australian Bureau of Statistics (ABS) 2010, Average Weekly Earnings, Australia Feb 2010, cat. 6302.0.

The average cost per activity (*estimated average time required X wage rate*) was multiplied by the frequency of activities per year to estimate the total cost per business per year. In this case, it was assumed that the renewal would occur once every three years.

Out-of-pocket costs were assumed to include the cost of National Police Certificates at $32.50 for two key personnel. The actual number of personnel who would require a National Police Certificate would be established in future subordinate legislation.

Option 1 also assumes that the same proportion of affiliates and independent remittance businesses that currently complete their own registration would continue to do so. That is, 89 per cent of affiliates and 85 per cent of independent remittance businesses.

As the registration renewal is expected every three years, the NPV is estimated assuming the renewal occurs in year 1 (when all independent remittance businesses and affiliates obtain registration under the new system then again at 4, year 7 and year 10). The estimate of compliance costs assumes that the initial registration process in year 1 and the subsequent registration processes require the same information.

Table 5-5 shows the expected absolute total compliance costs of the new registration approach would be an additional $264 per registration renewal per affiliate and $335 per registration renewal per independent remittance businesses.

Table 5-5: Option 1 absolute compliance total costs for affiliates and independent businesses

Regulatory requirement	Affiliates			Independent remittance businesses		
	Cost per entity in year 1	Sector costs in year 1	NPV over 10 years	Cost per entity in year 1	Sector costs in year 1r	NPV over 10 years
	($)	($)	($)	($)	($)	($)
Registration renewal	$264	$1,360,000	$3,850,000	$335	$120,000	$340,000

Source: Analysis of data from the survey of remittance affiliates and independent remittance businesses July / August 2010.

Note: a. Numbers above 100,000 have been rounded.

Note: b Assumes registration/registration renewal takes place in years 1, 4, 7 and 10.

Table 5-6 shows that this is a total cost of $1.48 million in the first year which is equivalent to a NPV cost of $4.19 million over 10 years.

Table 5-6: Option 1 total compliance total costs for affiliates and independent businesses

Regulatory requirement	Total industry costs	
	Cost in year 1 ($)	NPV over 10 years ($)
Registration renewal	$1,480,000	$4,190,000

Source: Analysis of data from the survey of remittance affiliates and independent remittance businesses July / August 2010.

Note: a. Numbers above 100,000 have been rounded.

Note: b Assumes registration/registration renewal takes place in years 1, 4, 7 and 10.

There are no additional costs to PRNs T1 or T2 in option 2.

5.5.3 Summary of impacts

Option 1 delivers some benefits while also increasing compliance costs for affiliates and independent remittance businesses.

The key benefit of Option 1 is that an enhanced registration scheme for providers of designated remittance services would reduce the risk of the services they provide being misused for money laundering, the financing of terrorism, people smuggling and other criminal activity. This would occur as the AUSTRAC CEO would be able to:

- Control who is able to provide remittance services and to prevent unsuitable persons from obtaining or retaining registration
- If necessary, set parameters on how a registered remittance dealer can operate
- Enact expanded enforcement options that provide stronger incentives for providers of remittance services to comply with their registration obligations.

However, many of the enforcement challenges that are present within the current arrangements would continue in Option 1. Thus, the extent to which Option 1 would reduce the relevant risks is uncertain.

Table 5-7 show the net cost of introducing the enhanced registration scheme for affiliates and independent remittance businesses. This is the cost associated with introducing Option 1 less the costs already being incurred, as estimated in the Base Case. The table shows that the net cost impact per entity in year 1 is $260 for affiliates and $331 per independent remittance business. The NPV of the net cost of compliance for Option 1 is $3.7 million for affiliates and $330 000 for independent remittance businesses.

Table 5-7: Net total compliance total costs for affiliates and independent businesses

Regulatory requirement	Affiliates			Independent remittance businesses		
	Cost per entity in year 1 ($)	Sector costs in year 1 ($)	NPV over 10 years ($)	Cost per entity in year 1 ($)	Sector costs in year 1r ($)	NPV over 10 years ($)
Base Case Registration	$ 4	$19,025	$130,000	$4	$1,375	$9,655
Option 1 Registration	$264	$1,360,000	$3,850,000	$335	$120,000	$340,000
Net Compliance Cost Option 1	$260	$1,340,000	$3,720,000	$331	$120,000	$330,000

Source: Analysis of data from the survey of remittance affiliates and independent remittance businesses July / August 2010.
Note: a. Numbers above 100,000 have been rounded.

Table 5.7 shows the net cost of introducing the enhanced registration scheme for the sector. This is the cost associated with introducing Option 1 less the costs already being incurred, as estimated in the Base Case. The net costs of the enhanced registration scheme in year 1 is $1.5 million, with the NPV of the cost over 10 years is $4 million.

Table 5.8 Net Compliance costs for both affiliates and independent businesses

Nature of proposed regulatory change	Total industry costs	
	Cost over 1 year	NPV over 10 years
Units	($)	($)
Base Case: Registration	$20,400	$140,000
Option 1: Registration Renewal	$1,480,000	$4,190,000
Net Compliance Cost Option 1	$1,460,000	$4,050,000

Source: Analysis of data from the survey of remittance affiliates and independent remittance businesses July / August 2010.
Note: a. Numbers above 100,000 have been rounded.

The net impact of Option 1 is $1.5 million in the first year when all affiliates and independent remittance businesses are registered under the enhanced arrangements. The NPV of the cost of this Option over 10 years is $4 million. This assumes all businesses are registered in year 1, 4, 7 and 10.

In summary the analysis of Option 1 presents a qualitative assessment of benefits and quantitative assessment of costs. The benefit is a reduced risk of misuse of remittance services for money laundering, the financing of terrorism and other criminal activity through stronger controls over providers of remittance services. However, the challenges of enforcement that are present within the current arrangements would continue in Option 1. Thus, the extent to which the option would reduce the risks

would be limited. Nevertheless, this is an important benefit and is assessed as outweighing the modest increase in compliance costs for affiliates and independent remittance businesses. The result of considering qualitative and quantitative information leads to the conclusion that Option 1 is expected to deliver a net benefit.

5.6 Option 2: Enhanced regulation of the remittance sector—network providers and providers of designated remittance services

5.6.1 Description of benefits

This option extends the enhanced registration outlined in Option 1 to introduce the concept of a PRN into the AML/CTF Act. The benefits of the enhanced registration scheme apply equally to this proposal. In addition, extending AML/CTF obligations to PRNs enables the support already offered by PRNs to their affiliates to be formalised, which will have an overall effect of boosting compliance by the sector. As such, there will be better controls in place to mitigate the risk of money laundering, the financing of terrorism and people smuggling.

The remittance sector is recognised by the international AML/CTF community and domestically by law enforcement authorities as being vulnerable to money laundering and terrorism financing. The high AML/CTF risk inherent in the provision of remittance services is compounded by the fact that there is non-compliance with AML/CTF obligations within the sector. The majority of operators that provide remittance services are small businesses who are less likely to have the AML/CTF knowledge and organisational capacity necessary to implement their AML/CTF obligations. Observations from AUSTRAC's supervisory activity are that many businesses do not have a written or appropriate AML/CTF program, do not have adequate customer identification procedures in place and do not conduct suitable risk assessments. The proposal to introduce legal obligations for PRNs requiring them to undertake certain obligations on behalf of their affiliates—such as the creation of an AML/CTF program for use by their affiliates and the reporting of threshold transactions and international funds transfer instructions—will have the effect of increasing AML/CTF compliance within the sector. Affiliates will be able to focus on mitigating and managing the AML/CTF risk associated with the provision of remittance services, rather than conducting AML/CTF research themselves and working out where the AML/CTF risk lies for their business. AUSTRAC's supervisory strategy for the remittance sector notes that the likelihood of individual businesses being targeted for ML/TF is moderated when sufficient programs and controls are in place. As such, transferring some of the AML/CTF obligations that currently fall on affiliates to their PRN will have a positive effect on the risk faced by the sector.

The purpose of registration is to ensure that AUSTRAC has sufficient knowledge about who is operating in the sector so that it can better carry out its regulatory functions and provide assistance to reporting entities. By having PRNs register their affiliates with AUSTRAC, it is expected that the AUSTRAC register will be more representative of the sector. PRNs carry out detailed due diligence on their affiliates as part of establishing contractual obligations. Utilising the knowledge held by PRNs will ensure that the information on the AUSTRAC register is more robust and accurate. As an understanding of the remittance sector is key to AUSTRAC's

supervision, involvement by PRNs in the registration process for affiliates will reduce the AML/CTF risk in the sector.

The remittance sector is both large and notoriously fragmented. The current AML/CTF regulatory framework does not reflect current business practice between many PRNs and their affiliates. This has increased the compliance burden on remittance dealers and decreased regulatory efficiency for AUSTRAC which has to engage with thousands of remittance dealers despite the fact that PRNs are already providing significant AML/CTF support to their affiliates. Regulating PRNs and requiring them to carry out certain AML/CTF responsibilities on behalf of their affiliates will increase the standard and level of compliance with AML/CTF obligations.

Under Option 2, affiliates would have significantly reduced compliance costs. The compliance burden will not be completely removed, as affiliates will continue to engage with their PRNs. This is expected to particularly be the case where regulatory requirements involve information about employees. For the purpose of the RIS it is assumed that affiliates will continue to incur 10 per cent of the compliance costs they incur in the Base Case (the approach used to estimate the Base Case costs is described in Appendix A and the results are in Appendix B).

It is assumed that compliance costs will largely follow the responsibilities. The assumption of 10 per cent is based on the fact that regulatory arrangements will be designed to that PRNs will be able to undertake almost all of the AML/CTF regulatory functions currently undertaken by affiliates. However, some compliance costs will remain. For example, in consultation PRNs indicated they would have difficulty taking full responsibility for employee due diligence. On the basis of the survey results, employee due diligence represents around 13 per cent of the current cost of compliance for affiliates and 10 per cent for independent remittance businesses. Even in areas where affiliates continue to incur compliance costs, there may be some scope for efficiencies as PRNs provide stronger guidance and support (for example, through templates) about what is required. These were the factors that led to the use of an assumption of 10 per cent. The RIS also presents costings using the 15 per cent assumption. This reduction in compliance costs is a benefit for affiliates. Independent remittance businesses will not experience a reduction in compliance costs as their regulatory burden will not change.

Table 5-9 sets out the quantified benefits for affiliates. When compliance costs under the enhanced regulatory arrangement are 10 per cent of the Base Case compliance costs, savings per affiliate are around $6,700 per year, around $28 million across the sector per year. Over 10 years, the NPV of compliance cost savings (benefits) is around $198 million.

Table 5-9: Option 2 estimated compliance cost savings for affiliates (benefits)

Regulatory requirement	Savings when compliance costs are 10% of Base Case		
	Benefit per entity per year	Sector benefit in year 1	Reduced cost of NPV over 10 years
	($)	($)	($)
Registration	$3	$17,122	$120,000
AML/CTF Program	$5,759	$24,960,000	$175,320,000
Reporting	$47	$210,000	$1,490,000
Monitoring	$884	$2,950,000	$20,710,000
Total	**$6,694**	**$28,140,000**	**$197,640,000**

Source: Analysis of data from the survey of remittance affiliates and independent remittance businesses July / August 2010.
Note: Numbers above 100,000 have been rounded.

The estimate that affiliates will continue to incur 10 per cent is an important assumption. Estimates are also presented if compliance costs are higher, at 15 per cent of the current costs. If this is the case, then the benefits are less. These results are presented in Table 5-10.

Table 5-10: Option 2 estimated cost savings for affiliates (benefits)

Regulatory requirement	Savings when compliance costs are 15% of Base Case		
	Benefit per entity per year	Sector benefit in year 1	Reduced cost of NPV over 10 years
	($)	($)	($)
Registration	$3	$16,171	$110,000
AML/CTF Program	$5,439	$23,580,000	$165,580,000
Reporting	$44	$200,000	$1,400,000
Monitoring	$835	$2,780,000	$19,560,000
Total	**$6,322**	**$26,580,000**	**$186,660,000**

Source: Analysis of data from the survey of remittance affiliates and independent remittance businesses July / August 2010.
Note: Numbers above 100,000 have been rounded.

Independent remittance business compliance costs would remain unchanged from the Base Case.

5.6.2 Estimate of costs

Option 2 involves introducing a registration scheme where PRNs would be responsible for their registration as well as their remittance affiliates, and independent remittance businesses would apply directly to AUSTRAC for registration. As mentioned above, the costs of this proposal depend on how a PRN is defined and then how the responsibilities sit amongst PRNs.

There are a number of possible implementation approaches for this option. The definition of PRN that is included in future subordinate legislation will determine the actual implementation approach. The approach used will determine the regulatory responsibilities of the PRNs T1 and T2. Thus, each implementation approach is expected to result in a different incidence of costs for the PRN T1s and T2s and also result in different total compliance costs.

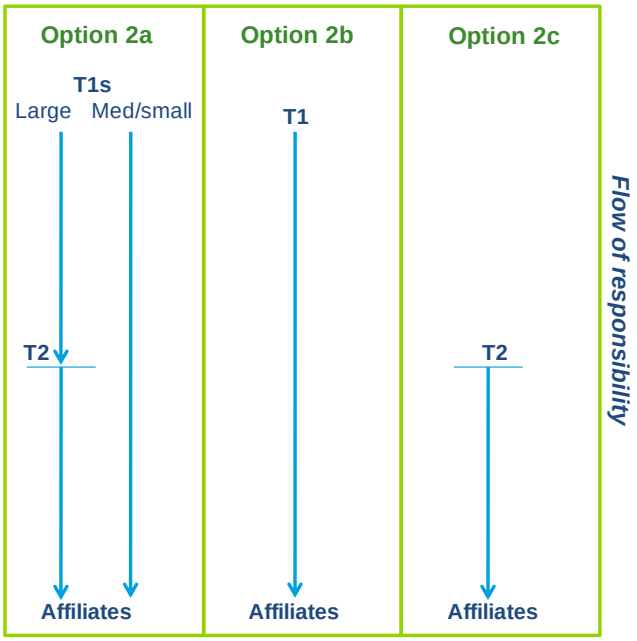
To accommodate the potential implementation approaches, the approach used is to estimate a range of compliance costs. This is done by estimating the implementation costs of the three possible implementation approaches to generate the top and bottom of the compliance cost range for Option 2. It is worth noting that the intention of this approach is not to compare costs between the three implementation approaches.

To estimate the range of costs associated with Option 2 the first stage was to describe the three most likely implementation approaches. They are:

- **Option 2a**: reflects the sorts of arrangements that currently exist in the industry. Under this sub option, it is assumed that there is no duplication of responsibility across the PRNs T1 and T2. It assumes that it will be possible to define PRNs so that:
    - Where PRNs T1 and PRNs T2 work together this will continue with regulatory responsibilities divided. For example, often the PRN T2s have direct relationships with affiliates and this could be extended to make them responsible for their affiliates registration and AML/CTF programs, while PRN T1s could be responsible for monitoring and reporting. This style of arrangement seems to be operating now for larger PRN T1s.
    - Where PRN T1s currently have a direct relationship with their affiliates they would continue to do so, without their PRN T2s taking on any additional responsibilities. This style of arrangement seems to be operating now for medium and smaller PRN T1s.
- **Option 2b**: assumes PRNs T1 are entirely responsible for their affiliates registration and compliance with AML/CTF requirements. Under this sub option, PRNs T2 have no regulatory responsibilities for their affiliates and there is no duplication of responsibility across the PRNs T1 and T2 and no additional compliance costs for PRNs T2.
- **Option 2c**: assumes PRNs T2 are entirely responsible for their affiliates registration and compliance with AML/CTF requirements. Under this option PRNs T1 have no regulatory responsibility for their affiliates and no additional compliance costs.

The three sub options are illustrated below in Figure 5.1.

Figure 5.1: Possible implementation approaches under Option 2



To model the range of potential costs of Option 2 involved using the data available on additional staff costs to estimate the cost impacts for PRNs T1 and PRNs T2. There are differences in cost by business size. PRNs T1 costs were estimated in three groups:

- Large PRNs were those with more than 800 affiliates; there is 1 large PRN T1
- Medium PRNs were those with between 40 and 800 affiliates; there are 4 medium PRNs T1
- Small PRNs were those with fewer than 40 affiliates; there are 20 small PRNs T1.

For each T1 size category, there was at least one PRN that had participated in the consultations and that provided cost data to use in the model. The cost data collected in consultations was used to calculate an average cost of compliance for Option 2 for large PRN T1s, medium PRN T1s and small PRN T1s.

These averages were then multiplied by the total number of PRNs T1 in that size category.

Total PRN T1 compliance cost = ***average cost of large PRN T1 X total number of large PRN T1s***
+ ***average cost of medium PRN T1 X total number of medium PRN T1s***
+ ***average cost of small PRN T1 X total number of small PRN T1s***

Cost data was also obtained from one PRN T2 through consultations. This was a large PRN T2. The sector includes businesses that range from small, through medium and large.

It is difficult to determine the representativeness of the data from the large PRN T2 for the entire sector. On the one hand, as a large business changes to systems and processes typically involve considerable upfront costs. Consultation with PRN 1s for this RIS suggested that systems and processes used by small business could be very readily changed with little or no upfront cost. To the extent that this is the case for PRN T2s the cost estimates in the RIS may over-estimate PRN T2 sector costs. However, equally plausible is the prospect that the PRN T2 costs of a large business could under-estimate compliance costs. This scenario could arise because the method used assumes that it is possible for each PRN T2 to employ small increments of additional staff time to meet the changing regulatory requirements. If this is not possible and additional labour is required in step changes (for example, a minimum of, say, an extra day per week) then the current estimates may under estimate PRN T2 costs.

Total PRN T2 compliance cost = average cost per PRN T2 affiliate X total number of affiliates

Table 5-11 shows how the estimated total PRN T1 and T2 compliance costs were used to calculate the estimated costs for each sub-option.

Table 5-11: Calculation of estimated compliance costs for each sub-option

Sub-option	Approach to estimating compliance costs
Option 2a	(½ X Total Large PRN T1 compliance costs) + (½ X Total PRN T2 compliance costs) + Total Medium PRN T1 compliance costs + Total Small PRN T1 compliance costs
Option 2b	Total PRN T1 compliance cost
Option 2c	Total PRN T2 compliance cost

PRNs are familiar with the existing regulatory requirements and so were able to provide indicative estimates about the additional staff required to undertake the regulatory activities if responsibility was shifted from their affiliates to their organisation. The staff estimates were in addition to existing staff currently involved in regulatory compliance efforts. The wage rate used to estimate the cost of the additional staff was $79,061.[25]

Cost information was collected on a confidential basis. To avoid the possibility of individual business' information being identified, PRN cost information in the RIS is presented in aggregate.

[25] This figure is based on private sector full-time adult total earnings (seasonally adjusted). Twenty per cent was also added to cover on-costs. Australian Bureau of Statistics *Average Weekly Earnings, Australia*, February 2010, cat. 6302.0

In providing cost information, PRNs distinguished between one-off staff costs and on-going costs. One-off costs reflected the PRN's view that if they were made legally responsible for regulatory activities they would need to invest effort to revise and possibly update existing documentation, processes or procedures around AML/CTF Program activities to ensure suitability. The analysis suggested that cost impacts of the proposals under Option 2 are expected mainly for activities relating to the AML/CTF Program, and within this regulatory area, the following activities are estimated to be the most costly:

- Reviewing, maintaining and monitoring AML/CTF programs
- Independent review of AML/CTF programs
- Employee training.

PRNs reported that they would be unlikely to undertake regulatory functions that required direct contact with their affiliate's employees. T his is due to privacy issues and that the PRN has no legal relationship with an affiliate's employees.

Registration renewal and compliance reporting were also estimated to have regulatory compliance costs, while monitoring was not seen to have any additional costs for PRNs compared to status quo.

PRNs were not able to provide cost estimates of the associated changes to IT systems, communication/information strategies, or changes to other systems or processes. Thus, the quantified cost estimates refer to additional staffing costs to comply with a new regulatory arrangement, not all costs.

Table 5-12 shows the results of estimating the compliance costs for the three implementation approaches for Option 2. It identifies that the range of the NPV of compliance costs NPV over 10 years for all PRNs is $14 million to $28 million. This is a wide range and reflects the broad nature of the proposal. Table 5-12 also indicates that the incidence of costs across PRN T1s and T2s varies significantly between the options.

Table 5-12: Option 2 estimated NPV of compliance costs over 10 years

Sub-option	Discounted cost over 10 years (T1s)($)	Discounted cost over 10 years (T2s)($)	Discounted cost over 10 years (T1s & T2s) ($)
Option 2a	$9,920,000	$14,190,000	**$24,110,000**
Option 2b	$14,000,000	0	**$14,000,000**
Option 2c	0	$28,380,000	**$28,380,000**

Note: Numbers above 100,000 have been rounded.

Under Option 2, it is assumed that affiliates and independent remittance businesses would continue to incur 10 per cent and 100 respectively of their current compliance costs. However, as these costs are already being incurred they are not additional costs due to the regulatory proposal.

The net compliance costs estimated in Option 1 are treated as follows:

- For affiliates, it is assumed that any new compliance costs due to the operation of the enhanced registration scheme are accommodated within the scope of PRN activities and the continuing 10 per cent of current compliance costs allowed for in Option 2. The consequence is that no costs for affiliates estimated in Option 1 are included in Option2.
- Independent remittance businesses will incur new compliance costs associated with the enhanced registration scheme. The consequence is that the net cost to independent remittance businesses estimated in Option 1 is included in Option 2.

Table 5.12 presents the range of the estimated partial compliance costs for Option 2. These costs include the estimated additional staff costs for PRN T1s and T2s. The analysis shows the quantified compliance cost for Option 2 ranges from a low of $14 million (NPV over 10 years) to a high of $29 million (NPV over 10 years).

Table 5-13: Option 2 Estimated partial PRN compliance cost range and independent remittance businesses net cost of enhanced registration

Sector	NPV of compliance costs over 10 years	
	Lower bound estimate ($)	Upper bound estimate ($)
PRNs T1 & T2	$14,000,000	$28,380,000
Independent remittance businesses (Option 1 net compliance cost)	$330,000	$330,000
Est. Partial compliance cost	**$14,330,000**	**$28,710,000**

Note: a The PRN compliance cost estimates included in this table are partial estimates only. They do not include the expected additional costs for new or enhanced IT systems, the development of other systems and processes and in some cases for staff training.

Note: b Numbers above 100,000 have been rounded.

5.6.3 Summary of impacts

Option 2 presents a significant opportunity to address the acknowledged weaknesses with the existing regulatory approach. The benefits outlined in Option 1 are also present in Option 2. The additional benefits of this option are that extending AML/CTF obligations to PRNs formalises the support already offered by many PRNs to their affiliates. This will have the effect of boosting compliance by the sector and putting in place better controls to mitigate the risk of money laundering, the financing of terrorism and other criminal activity. As a result, this option is viewed as being highly likely to substantially reduce the risk of the misuse of remittance services to facilitate illegal activity.

This benefit arises as regulatory responsibilities are largely transferred from more than 6000 affiliates, many of which are small businesses, to the larger PRNs. The PRNs are considered to be well positioned to encourage a high degree of regulatory compliance, adopting a risk-based approach tailored to their own network of affiliates.

For the purpose of this RIS it is assumed that affiliates will continue to incur only 10 per cent of their current compliance costs and no new compliance costs due to the

operation of the enhanced registration scheme. As presented in Table 5-13, achieving this outcome would represent a significant benefit for affiliates. This benefit is estimated to be approximately $28 million in year 1, with an NPV of $198 million over 10 years.

For Option 2 as PRNs assume new regulatory responsibilities they also incur new compliance costs. As discussed above, some PRN compliance costs were able to be quantified. However, these estimates do not include all costs that PRNs would incur under this regulatory proposal. Thus, the compliance costs presented are only a partial estimate of the costs of Option 2. Further, the PRN compliance cost estimates that are available are based on a range of estimates and high level assumptions.

Table 5-14 shows a partial quantification of the net impact of Option 2. The table shows a net benefit of between $169 million and $183 million in NPV terms over 10 years. Based on the information available in this analysis, the shifting of the regulatory burden from affiliates to PRNs could offers cost efficiencies within the industry, although this will depend on the size of the PRN's compliance costs that could not be identified and the extent to which the regulatory burden is removed from affiliates.

Table 5-14: Option 2 estimated net benefit range (partial PRN compliance costs)

Sector	NPV of compliance costs over 10 years	
	Lower bound PRN cost estimate ($)	Upper bound PRN cost estimate ($)
Estimated compliance cost range for PRNs (partial costs) and Independent Remittance Businesses	$14,330,000	$28,710,000
Estimated benefit - reduction in compliance costs for affiliates	$197,640,000	$197,640,000
Net benefit	**$183,300,000**	**$168,930,000**

Note: a The PRN compliance cost estimates included in this table are partial estimates only. They do not include the expected additional costs for new or enhanced IT systems, the development of other systems and processes and in some cases for staff training.

Note: b This estimate is based on an assumption that affiliates continue to incur 10 per cent of their existing compliance costs under Option 2. Note: Numbers above 100,000 have been rounded.

Table 5-15 shows how the estimate of net impact of Option 2 changes if affiliates incur 15 per cent of their Base Case costs under this proposal. This results show the smaller net benefit range of $158 million to $172 million.

Table 5-15: Option 2 estimated net benefit range (partial PRN compliance costs)

Sector	NPV of compliance costs over 10 years	
	Lower bound PRN cost estimate ($)	Upper bound PRN cost estimate ($)
Estimated compliance cost range for PRNs (partial costs) and Independent Remittance Businesses	$14,330,000	$28,710,000
Estimated benefit - reduction in compliance costs for affiliates	$186,660,000	$186,660,000
Net benefit	**$172,330,000**	**$157,950,000**

Note: a The PRN compliance cost estimates included in this table are partial estimates only. They do not include the expected additional costs for new or enhanced IT systems, the development of other systems and processes and in some cases for staff training.

Note: b This estimate is based on an assumption that affiliates continue to incur 15 per cent of their existing compliance costs under Option 2.

Even if affiliates continue to incur 50 per cent of their current compliance costs, the net benefit estimated on the basis of the available partial PRN compliance costs would be in the range of $81 million to $95 million.

In summary, given the types of costs that could not be quantified, the estimated net benefit of between $169 million and $183 million in NPV terms over 10 years is clearly an over-estimate of the expected final net benefit. The extent of the over-estimate depends on:

- The costs borne by PRNs for IT system changes, other process changes and staff training (these costs are not estimated in this RIS) and
- The extent to which the affiliates' regulatory burden is reduced under the new arrangements (a 90 per cent reduction is assumed).

In this situation, an important question to ask is if estimates of all compliance costs were available, or if affiliates compliance costs did not decrease by 90 per cent would Option 2 deliver a net benefit or a net cost?

The conclusion is that Option 2 offers benefits in the form of reduced risk of misuse of remittance services for money laundering, the financing of terrorism and other criminal activity leading to benefits for individuals, the industry and the community, alongside the reduced compliance costs for affiliates. It also potentially offers quantitative benefits.

In combination, the qualitative assessment identifies significant benefits and the quantitative assessment of costs could also deliver a net benefit in the form of reduced compliance costs for the industry (although this is uncertain at this time). The assessed benefits are expected to outweigh the increased compliance costs for PRNs. The result of considering qualitative and quantitative information leads to the conclusion that Option 2 is expected to deliver a net benefit.

6 PREFERRED OPTION

6.1 Comparison of options

On the basis of the analysis of benefits and costs, Option 2 is the preferred option. This option proposes the introduction of enhanced regulation of the remittance sector by introducing the concept of a remittance network provider into the AML/CTF Act and operating an enhanced registration scheme.

As illustrated in Table 6-1 relative to Option 1, Option 2 offers:

- A larger benefit to individuals, industry and the community through putting better controls in place to mitigate the risk of money laundering and the financing of terrorism and other criminal activity. In addition, depending on the final approach to implementing the arrangement, it may be the case that overall the remittance sector will experience reduced compliance costs.
- Significantly reduced compliance costs for around 6000 affiliates — mostly small businesses. There is also the potential for compliance cost reductions to flow through into lower costs for consumers, although this is dependent on a range of other factors.
- Formalises and extends existing relationships between PRNs and affiliates to improve compliance and make enforcement of regulatory requirements more straightforward for Government.

Table 6-1: Comparison of options - qualitative assessment of impacts

Option	Qualitative benefits		
	Reduced risk of ML/TF	Small business & competition	Ease of enforcement
Option 1	✓✓	✖	✓
Option 2	✓✓✓	✓✓	✓✓✓

Where: ✓ = a positive impact; and ✖ = a negative impact.

Table 6-2 presents a summary of the partial compliance cost estimates estimated for this RIS.

Table 6-2: Comparison of options - partial quantified costs/benefits

Option	NPV of quantified net benefit/ (cost) over 10 years	
Option 1	$4,046,000	
Option 2	Range: $ 168,930,000 to $ 183, 300,000	This figure is based on partial cost estimates, thus the final net benefit will be lower than this figure. The figure does not include the expected additional costs for PRN's new or enhanced IT systems, the development of other systems and processes and in some cases for staff training This estimate is based on an assumption that affiliates continue to incur only 10 per cent of their existing compliance costs.

Note: Numbers above 100,000 have been rounded.

In summary, Option 2 offers more substantial benefits than Option 1 in the form of reduced risk of money laundering and the financing of terrorism leading to benefits for individuals, the industry and the community. In addition Option 2 offers significant reduced compliance costs for affiliates, compared to a modest increase in compliance costs under Option1. However, under Option 2 PRNs would face increased compliance costs, both one-off and on-going. PRNs would not experience increases in compliance costs under Option 1.

The result of considering qualitative and quantitative information leads to the conclusion that Option 2 is expected to deliver a net benefit that is greater than the net benefit expected from Option 1.

7 CONSULTATION

7.1 Consultation

To develop an understanding of the role of network providers within the remittance sector and the potential impact of the proposed reforms on network providers, consultations with five PRNs were held. These discussions were held face-to-face and over the telephone.

7.1.1 Targeted interviews with network providers

7.1.1.1 Purpose of consultations

The purpose of the consultations was to understand the nature and extent of the cost impacts on PRNs of the proposed reforms.

The Government considers that PRNs are well placed to ensure that network members do not pose a significant money laundering or terrorism financing risk. Accordingly, the Government is contemplating the introduction of specific registration requirements for PRNs, including:

- Lodging their own applications for registration and applications of their affiliates
- Establishing an AML/CTF Program that will put in place processes and procedures for:
  - Assessing the ML/TF risk in providing the network service
  - Identification and verification of their affiliates
  - Ongoing due diligence of their affiliates
  - Due diligence of the PRN's employees.
- Preparing AML/CTF Programs for use by their affiliates
- Fulfilling some of the AML/CTF Act reporting obligations on behalf of their affiliates, for example, compliance reports, international funds transfer instructions and threshold transaction reports.

The Government believes PRNs already provide AML/CTF support to their affiliates in the ordinary course of business, including the development of AML/CTF compliance frameworks and transaction monitoring systems and has proposed that these existing relationships be formalised.

The consultation process also sought to confirm with PRNs about the support they currently provide to their affiliates and on their role within the remittance sector.

7.1.1.2 Consultation approach

The timeframe for the consultation process was relatively short and the Department provided contact details for 5 of the 65 PRNs in Australia, comprising a cross section of the sector, involving varying sizes (including contacts from both tiers of providers) and level of AML/CTF activity. Invitations were sent to the 5 PRNs, and 90-minute discussions were scheduled between 4 and 10 August. Some follow-up discussions also took place. The discussions with PRNs were held using a combination of face-to-face meetings and telephone discussions.

To ensure that these discussions were as productive as possible and remain focused on the relevant issues a guide to the discussion was distributed prior to the meetings (see Appendix C).

7.1.1.3 Structure of consultation discussion

The structure of the discussion involved the following:

- Asking the PRN to describe their current activities and processes for obtaining membership of their network, due diligence, AML/CTF strategies employed and the degree of support provided to remittance affiliates to assist them to comply with their AML/CTF Act obligations
- Asking the PRN to describe the new processes or activities needed in their business to meet the proposed regulatory changes, noting that these activities may vary through a transition to the new arrangements
- Discussing the estimated costs per annum associated with any new processes or activities, including discussion about time taken to complete activities, costs such as additional personnel, IT enhancements, other capital outlays
- Inviting the PRN to raise any other issues they considered to be relevant.

After the discussions, further contact was made when necessary to seek to clarify the discussion points.

The PRNs were informed that any information they provided in the course of the discussion would not be provided to either the Attorney-General's Department or AUSTRAC unless the PRN gave their consent to this occurring. The information provided has been used in an aggregated form to analyse the regulatory impacts arising from the proposed enhancements.

7.1.2 Consultation observations

In general, the PRNs consulted could see the merit of the purpose of the proposed reforms. Some PRNs noted that many smaller affiliates are not well placed to deal with the current AML/CTF obligations and that PRNs are better equipped to deal with the obligations on behalf of the affiliates.

PRNs were able to provide broad quantitative cost estimates in accordance with the broad detail provided for the proposed options by the Attorney-General's Department in the discussion papers. They would be able to provide more detailed cost estimates when further detail on the proposed options is made publicly available by the Attorney-General's Department.

One key outcome of the consultations is that different-sized PRNs currently have different levels of interaction with their affiliates and provide different levels of AML/CTF support to their affiliates in the ordinary course of business. Accordingly, the PRNs will have different levels of ability to accommodate the proposed reforms.

Currently, all PRNs already provide AML/CTF support to their affiliates in the form of transaction monitoring systems and so the proposed requirements on monitoring seem as though they will have minimal impact on the current operations. However, the other functions of PRNs vary considerably across the sector and the impacts of the proposed obligations on the sector's PRNs will similarly vary from small to significant impacts, depending on the individual PRN.

Although no single PRN involved in the consultations undertook all of these activities, some PRNs, particularly PRNs with a smaller network of affiliates already provide considerable AML/CTF support to their affiliates in the ordinary course of business, including facilitating registration, providing AML/CTF compliance frameworks, and providing other tools and guidance. There is also apparent acceptance from smaller PRNs with regards to taking on additional AML/CTF responsibility subject to guidance from AUSTRAC.

Other PRNs, particularly those with larger networks of affiliates currently provide some AML/CTF support to their affiliates in the form of tools and templates; however they still require the affiliates to take responsibility for the majority of the AML/CTF obligations. The proposed additional AML/CTF obligations will have a much greater impact on the larger PRNs for two reasons. Firstly, these PRNs may not currently provide the level of AML/CTF support to their affiliates as the smaller PRNs do and so would have to develop and implement the required systems and processes to comply with the proposed additional obligations and responsibilities. Secondly, the larger PRNs approach to AML/CTF obligations is risk-based and so the proposed AML/CTF obligations may have significant impacts on the businesses of larger PRNs.

Many discussions concluded that even with the proposed new AML/CTF obligations on PRNs, there would not be a wholesale shift of responsibility from affiliates to PRNs, and that affiliates would still be relied upon to provide information to PRNs, such as for registration and re-registration applications. Accordingly, the administrative burden would not be lifted entirely from affiliates. Given the level of regulation already imposed on the remittance sector, concern was raised during consultation discussions that the proposed reforms will add to, and not reduce, the sector's current overall regulatory burden.

New types of costs could also be introduced with the enhanced registration scheme, particularly delay costs if a registration decision made by the AUSTRAC CEO is

subject to appeal. The PRNs expressed a high level of interest in understanding how any adverse decisions about registration would be communicated and implemented.

Furthermore, discussions indicated that enforceability would remain an issue as there is concern that many affiliates remain unaware of the full extent of their current AML/CTF obligations or the risks involved in remittance services.

Finally, PRNs expressed interest in the timing of the proposed reform process, particularly concerning transition arrangements, and are very keen to be kept fully informed by the Attorney-General's Department of the reform process moving forward and to be involved in developing the proposed rules.

7.2 Survey

To develop an understanding of the impact the possible reforms will have on remittance affiliates, a survey was prepared. The survey was distributed by AUSTRAC to register remittance affiliates. This section outlines the approach used to undertake the survey.

7.2.1 Purpose of survey

The purpose of the survey was to understand the impacts on remittance affiliates as a result of the proposed enhancements to the AML/CTF registration scheme. Additionally, survey respondents were asked general questions on the type, size and employment numbers of their business as the business nature of remittance affiliates is varied.

7.2.2 Remittance affiliates surveyed

A web-based survey was conducted using an online delivery platform. AUSTRAC distributed the survey by email to approximately 4,500 remittance affiliates and independent remittance affiliates for whom they have contact details. Of these emails, 740 were returned with a non-delivery notification. Survey participants were issued user IDs in order to maintain anonymity.

The survey was 'live' from 26 July 2010 and was open for 14 days, closing on 9 August 2010. During this time, AUSTRAC sent one reminder email to remittance affiliates on. The survey received 348 completed responses. Figure 7.1 and 7.2 describe the key characteristics of the survey respondents.

Figure 7.1 Type of business

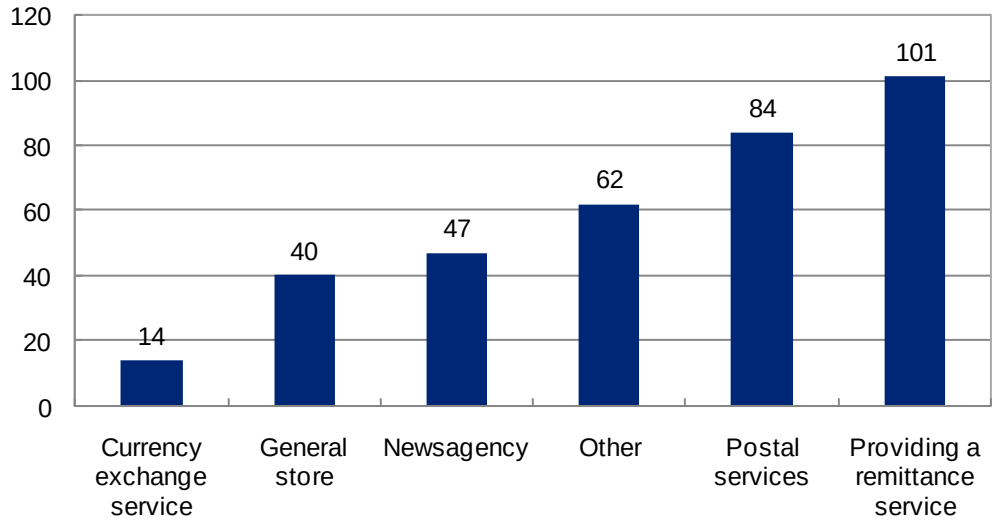
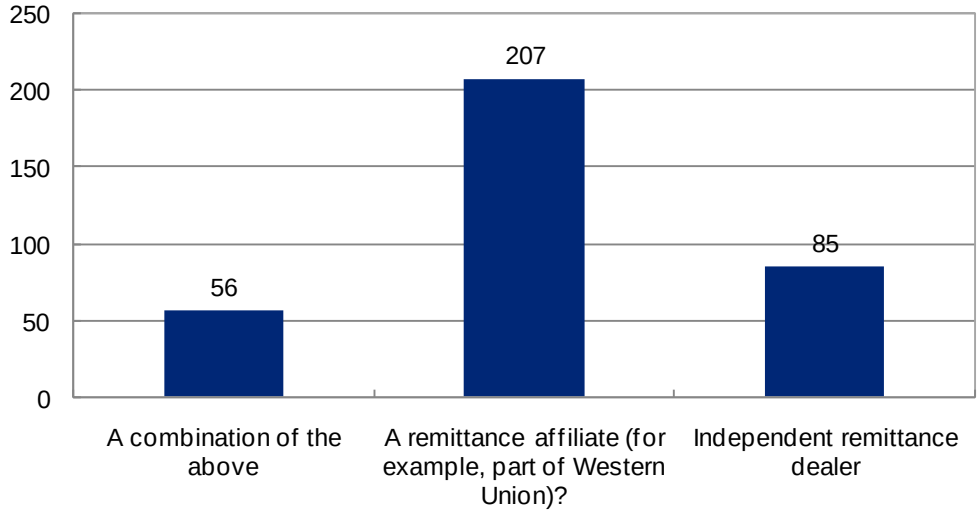


Figure 7.2 Nature of the remittance service



The Department was available to answer queries regarding the proposed reforms and content described in the survey. Additionally, remittance affiliates completing the survey could receive 24/7 technical support.

7.2.3 Structure of survey

The survey comprised 46 questions. Survey respondents may not have had to answer all 46 questions as the survey design directed remittance affiliates to skip questions that were not relevant to their business.

The initial four questions focused on the business nature of the remittance affiliate. Questions in this section sought information on the primary activity of the business, the type of business structure (for example, belonging to a network or independent provider) and the number of employees.

The remainder of the survey collected information from survey respondents regarding their current regulatory requirements for:

- Registering with AUSTRAC
- Providing an AML/CTF Program
- Completing and submitting AUSTRAC reporting requirements.

Across these three areas, survey respondents were asked to:

- Identify who is responsible for the regulatory requirement
- Quantify the time spent meeting the regulatory requirement
- Quantify the cost of meeting the regulatory requirement.

Survey respondents answered these questions by selecting answers from defined brackets (for example, 1 minute – 30 minutes, 31 minutes – 1 hour, 1 hour – 4 hours, 4 hours – 8 hours, 8 hours – 12 hours). The final four questions asked survey respondents about meeting the proposed enhanced regulatory requirements. Survey respondents were asked to estimate the impacts of providing further information about their business and employs on either a new AUSTRAC registration form or as part of an expanded online registration process.

8 OTHER ISSUES

8.1 Competition assessment

8.1.1 Definition of the market

The remittance sector is defined as including four main types of businesses:

- Providers of remittance networks Tier 1 (PRN T1)
- Providers of remittance networks Tier 2 (PRN T2)
- Remittance affiliates
- Independent remittance businesses.

Within this sector, providers of remittance networks compete with each other and independent remittance businesses compete with remittance affiliates.

8.1.2 Restrictions on competition

A legislative measure is likely to restrict competition if the answer to any of the following questions is 'yes'.

Question	Assessment
Would the regulatory proposal restrict or reduce the number and range of businesses in the sector, i.e. would it change the ability of businesses to provide a good or service; change the requirement for a licence, permit or authorisation process as a condition of operation; affect the ability of some types of firms to participate in public procurement; significantly alter costs of entry to, or exit from, an industry; or change geographic barriers for businesses?	Yes
Would the regulatory proposal restrict or reduce the ability of businesses to compete, i.e. would it control or substantially influence the price at which a good or service is sold; alter the ability of businesses to advertise or market their products; set significantly different standards for product/service quality; or significantly alter the competitiveness of some industry sectors?	Possibly
Would the regulatory proposal alter the incentives for business to compete, i.e. would it create a self-regulatory or co-regulatory regime; impact on the mobility of customers between businesses; require/encourage the publishing of data on company outputs/price, sales/cost; or exempt an activity from general competition law?	No

The proposed enhanced registration scheme under options 2 and 3 may:

- Significantly alter costs of entry to the sector
- Restrict or reduce the ability of businesses to compete.

However, the proposed scheme under options 2 and 3 will also deliver benefits to the community that outweigh its costs and it has been determined that there are no alternative means of achieving the same objective without restricting competition.

8.1.2.1 Altered costs of entry to the sector

Affiliate and independent remittance businesses

The proposal to enhance the registration process to require applicants to submit a written application addressing matters such as an applicant's criminal history, bankruptcy and beneficial ownership arrangements changes the regulatory requirements to begin operating in the sector. New entrants will be subject to higher entry requirements, and through the process of registration renewal, existing operators will also be subject to these increased requirements over time.

The proposal also gives the AUSTRAC CEO the power to refuse, cancel, suspend or impose conditions on registration. This introduces a power to prevent certain people from entering the sector and can also be used to restrict the operations of some people in the sector.

This proposed change may reduce the rate at which new businesses enter the sector and could also see some businesses leave the sector if they are unable to meet the requirements.

However, the proposal for an enhanced registration scheme is intended to reduce the risk of remittance services being used to facilitate illegal activity. In particular, the proposal is to prevent individuals operating in the sector if they are assessed as being a high risk of potential involvement in providing remittance services that are used to facilitate illegal activity. The benefits of a reduction in the risk of illegal activity, while difficult to quantify directly in relation to this proposal, are of significant value to the community more generally when considerations such as avoiding injury and death are taken into account, as discussed in Chapter 5.

Negative licensing has been considered as an alternative means of reducing the risk of remittance services being used to facilitate illegal activity. In some sectors, negative licensing is used as a mechanism to prevent certain individuals from operating in an industry. In the case of the remittance sector, Chapter 2 identified the potential for high risk with individual transactions and individual people. A negative licensing scheme would not achieve the regulatory objective and could be a considerable weakness in managing the inherent risk of the sector. For this reason, the assessment is that the objective cannot be met without restricting competition, and that there is not an alternative way of achieving the objective.

Providers of remittance networks

Option 2 introduces the definition of a PRN and makes PRNs legally responsible for the regulatory compliance of their affiliates for some AML/CTF Act obligations. For PRNs this proposal will increase the compliance costs for existing participants and any new entrants.

As identified in the analysis, in some respects this approach formalises what is business as usual in the industry, in other respects it significantly extends current activities and increases compliance costs. This change will also increase the costs to enter the market for any new PRNs.

The final definition of a PRN may have other implications for the relationships and relativities between PRN T1s and PRN T2s.

Increasing PRN responsibility for the regulatory compliance of affiliates which would occur under Option 2 would increase the costs of becoming a PRN and thus would increase the barriers to entry into the remittance sector for potential PRNs.

On the other hand, the combined effect of the changes proposed in Option 2 on PRNs and affiliates has the potential to reduce overall compliance costs experienced across the industry, because the savings enjoyed by affiliates exceed the compliance costs faced by the PRNs. It is possible that a reduction in overall compliance costs will result in lower costs for customers of remittance affiliates. Equally, the approach increases the compliance costs for PRNs and this may be passed onto affiliates and their customers.

Again, like for the affiliates and independent remittance businesses, the purpose of the proposal to shift responsibility from affiliates to PRNs is to reduce the risk of remittance services being used to facilitate illegal activity. The benefit from the reduction in this risk outweighs the costs associated with the increased responsibilities

for PRNs. There are no alternative means of achieving the same objective without restricting competition.

8.1.2.2 Restrictions on competition

As demonstrated in option 2, the enhanced registration scheme is expected to increase the compliance costs for affiliates and independent remittance businesses by an estimated $125 to $146 per entity. This is a small increase relative to the existing level of compliance costs. However, in consultations for the RIS, PRNs reported that the affiliates are predominantly small businesses offering a product that is high volume, low margin and are reportedly highly sensitive to additional AML/CTF regulatory requirements and costs.

For affiliates and independent remittance businesses, Option 2 has the potential to significantly reduce the direct compliance costs incurred by affiliates, while independent remittance businesses compliance costs will remain unchanged.

The regulatory proposal is likely to have different impacts on affiliates and independent remittance businesses. Theoretically, this situation has the potential to adversely impact on competition in a market.

One factor that will influence the extent to which this scenario impacts on competition is the size of the expected decrease in affiliates direct compliance costs. At this time, that impact is unclear. It may be that PRNs recover some of their increased compliance costs from their affiliates. A smaller decrease in compliance costs will reduce any competitive advantage that affiliates may gain over independent remittance businesses.

More importantly, it is understood that many independent remittance businesses provide services for specific ethnic communities. While the independent remittance businesses are offering the same product as an affiliate, by working to meet the needs of specific ethnic communities they have a differentiated service offering. In effect, there may be distinct markets operating for remittance services, with limited substitution between them. To the extent that there are different markets, the impact of a decrease in compliance costs for affiliates will not necessarily leave independent remittance businesses at a competitive disadvantage.

The assessment is that there are unlikely to be any significant impacts on competition between affiliates and independent remittance businesses as a result of the regulatory proposal. Even if there are significant competition impacts, the benefit from the reduction in the risk of remittance services facilitating illegal activity outweighs the costs associated with any reduced competition between affiliates and independent remittance businesses. There is also no alternative means of achieving the same objective without restricting competition.

8.1.3 Competition assessment

Given the outcomes of the competition assessment, it has been determined that the proposed enhanced registration scheme under options 2 and 3 does not contain a restriction on competition.

8.2 Implementation strategy

AUSTRAC is Australia's AML/CTF regulator and specialist financial intelligence unit. In its regulatory role, AUSTRAC oversees compliance with the AML/CTF Act. The enhanced AML/CTF regulation of the remittance sector will be an extension of AUSTRAC's existing oversight of the remittance sector.

Under the current registration regime set out in the AML/CTF Act inclusion on the register is automatic on application and the applicant is not required to satisfy any entry criteria. Implementation of option 2 will require the AUSTRAC CEO to assess the suitability of independent remittance dealers and PRNs and their affiliates for inclusion on the register. Because the lodging of an application is no longer determinative of registration there will be significant changes to the way AUSTRAC currently operates which will have associated resourcing implications. The cost to Government of option 2 is estimated to be $14.9 million over four years. This estimate covers:

- increased staffing to process and review applications and manage correspondence and enquiries;
- information technology hardware and software
- advertising and outreach to the remittance sector
- enforcement costs

The government intends to release an exposure draft Bill and accompanying explanatory memorandum to facilitate consultation on the proposed reforms. The AML/CTF Rules, which will contain the operational detail, will be developed in consultation with the remittance sector.

The new registration process under option 2 will require persons currently registered with AUSTRAC and those seeking to operate in the remittance sector to complete an application form that would seek information on matters such as an applicant's criminal history (accompanied by a National Police Certificate for all key personnel), bankruptcy, as well as confirmation of beneficial ownership arrangements. The AML/CTF Rules may require applicants to provide additional information. Independent remittance businesses will have to register themselves. PRNs will be responsible for registering themselves as well as their affiliates.

PRNs will also become subject to the usual AML/CTF Act obligations relating to customer due diligence, reporting, maintaining and developing an AML/CTF Program and record keeping. In addition PRNs will be responsible for preparing AML/CTF Programs for use by their affiliates and to fulfil some of the AML/CTF Act reporting obligations on behalf of their affiliates, for example, compliance reports, international funds transfer instructions and threshold transaction reports.

Transitional arrangements will be put in place to ensure that regulated entities have sufficient time to adjust to the changes and can continue to operate their business as usual as they prepare to comply with the new regulatory arrangements. AUSTRAC will also conduct an outreach campaign so that the remittance sector is aware of the new responsibilities and the mechanics of the enhanced registration process.

The AML/CTF Act has a range of enforcement powers that can be exercised by the AUSTRAC CEO in instances of non-compliance. These include issuing civil penalties, taking criminal action and accepting enforceable undertakings. The proposed extension of the existing infringement notice scheme over the registration regime will mean that AUSTRAC will be able to respond to breaches in a more efficient and proportionate way.

Section 251 of the AML/CTF Act requires that the Minister conduct a review of the AML/CTF Act before the end of 2013. The proposed reforms will be reviewed as part of that process.

8.3 Small Business impacts

The OBPR Best Practice Regulation Handbook directs that analysis of regulatory proposals specifically consider the impact on small businesses.

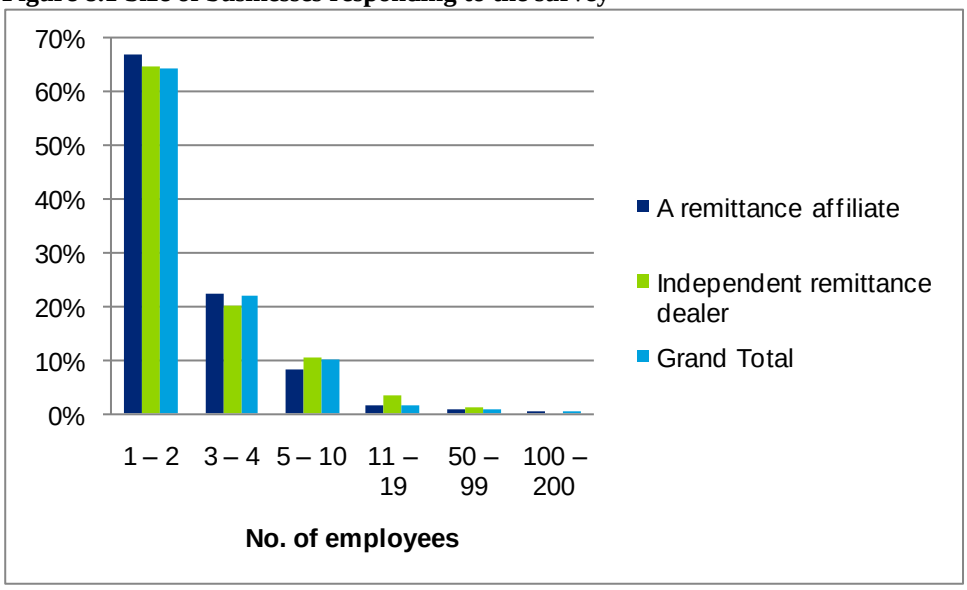
As noted above, the remittance sector is defined as including four main types of businesses:

- Providers of remittance networks Tier 1 (PRN T1)
- Providers of remittance networks Tier 2 (PRN T2)
- Remittance affiliates
- Independent remittance businesses.

Within these groups, many remittance affiliates and independent remittance businesses are known to be small businesses. That is a business with less than 20 employees. This is consistent with the characteristics of many post offices, newsagents and general stores where remittance services are frequently provided. The composition of PRNs includes both large and small businesses. However, even PRNs operating as small businesses in Australia are likely to be operating as part of a multi-national company.

Figure 8.1 shows that of the remittance affiliates and independent remittance dealers responding to the survey, almost all (98 per cent) had less than 20 employees. More than 60 per cent of businesses responding to the survey were very small, with up to two employees.

Figure 8.1 Size of businesses responding to the survey



8.3.1 Assessment of impacts

The proposals considered in this RIS will have varying impacts on small business.

The Base Case (maintaining the status quo) will not change the current regulatory impact on small business operating as remittance affiliates or independent remittance businesses.

Option 1 is expected to increase the compliance costs for remittance affiliates and independent remittance businesses, many of which are small businesses. This outcome is expected as the status quo remains unchanged and the regulatory scheme is extended to include an enhanced registration scheme.

Option 2 is expected to reduce the compliance costs faced by around 6100 remittance affiliates. As noted above, many of these businesses are understood to be small businesses. This outcome is the result of PRNs assuming a significant portion of regulatory responsibility currently managed by their affiliates. Independent remittance businesses will not experience this benefit and will be subject to increased regulatory costs associated with the enhanced registration scheme.

Under Option 2, the regulatory burden will increase for PRNs including those that are small businesses.

RIS Appendix A: Analysis of affiliate and independent remittance businesses

The approach to estimating the Base Case compliance costs for affiliates and independent remittance businesses is described in this Appendix.

Costs for affiliates and independent remittance businesses were calculated separately. This was done to reflect that affiliates with some support from their PRNs would be expected to have lower average costs than independent remittance businesses. The survey results did reflect this, with independent remittance businesses taking longer on average to complete regulatory activities and spending more on out-of-pocket costs to complete regulatory activities.

Only the survey responses from businesses reporting themselves as a 'remittance affiliate' or an 'independent remittance dealer' were included. There were 207 responses from remittance affiliates and 85 responses from independent remittance businesses, making a total of 292 responses included in the survey analysis. There were survey responses from 'a combination of the above' and these are excluded.

A number of respondents indicated that they were 'Postal services' and 'Independent remittance businesses'. As all Australia Post outlets are part of the Australia Post network, these were treated as 'remittance affiliates'. In some cases independent remittance businesses responded 'My principal or remittance network provider' undertook a regulatory activity. In these cases, it was assumed that the respondent was referring to their business owner as the 'principal', rather than a remittance network provider.

The survey data was tested at a high level against industry knowledge as a means of 'common sense' checking. In aggregate, the responses to all questions except one seemed reasonable (this is discussed below).

Using the survey results, for each regulatory requirement the average time spend undertaking each activity was calculated. With regards to the different requirements:

- registration took approximately 30 minutes
- each AML/CTF program element took from one hour to just over two hours for affiliates, and from just over two hours to four hours for independent remittance businesses
- the compliance report required around 1½ hours to complete by affiliates, and more than two hours by independent remittance businesses
- monitoring (reporting of IFTIs and TTRs) took around 11 minutes per report to AUSTRAC for both affiliates and independent remittance businesses. It is understood that some large businesses report their IFTIs to AUSTRAC on a daily basis, while other businesses report every two to three days. To generate an estimate of costs it was assumed that affiliates and independent remittance businesses report to AUSTRAC twice a week (or 104 times per year) for IFTIs, and once a week (52 times per year) for TTRs.

The average time per activity was multiplied by an average wage rate plus 20 per cent on-costs to estimate the cost of time spent in regulatory activities. The wage rate used for the affiliates and independent remittance businesses is the average weekly

earnings for a full-time adult ordinary time earnings in the retail trade.[26] That cost is $36 per hour.

The average cost per activity (average time X wage rate) was multiplied by the frequency of activities per year to estimate the total cost per business per year. With regards to the different frequency assumptions used:

- registration was assumed to have occurred already, however in consultation it was suggested that there is approximately 20 per cent turnover in businesses in the sector. When this occurs new owners would be required to amend registration/ register. Thus, the frequency for registration activities in the Base Case is 0.2 per annum.
- the AML/CTF Program regulatory requirements were assumed to occur once a year with the following exceptions. Employee due diligence occurs in line with the survey responses to the question how many employees (Current and prospective) do you spend time screening per year. This was four employees per year for affiliates and six employees per year for independent remittance businesses
- the compliance report was assumed to be completed occur once a year
- monitoring and reporting IFTIs was assumed to occur twice a week, while reporting TTRs was assumed to occur once a week.

The average out-of-pocket costs per year for the AML/CTF Program was calculated from the survey responses with an adjustment made to the response on the monitoring activity. As expected costs for affiliates were lower than the costs for independent remittance businesses. For the AML/CTF Program the total average annual out-of-pocket cost was around $4000 for affiliates and around $10,000 for independent remittance businesses.

With regards to monitoring, the responses to the question about what were the out-of-pocket costs to a business in a normal week of undertaking monitoring were very high. The survey responses suggest that affiliates and independent remittance businesses were spending over $400 per week and $800 per week respectively on these costs. Per annum, this would be out-of-pocket costs of over $20,000 for affiliates and $40,000 for independent remittance affiliates. Industry experience suggests that this figure does not reflect practice. Also, these out-of-pocket costs are not the same order of magnitude as the out-of-pocket costs for the other AML/CTF Program elements. Given these factors, it is assumed that this question was misread by respondents who reported what they spend over a year, rather than a week. We have therefore used the survey results as the estimate of out-of-pocket costs to businesses of monitoring over a year.

The cost per affiliate/ independent business per year is calculated as:

Cost per affiliate/independent business per year = (Average cost p.a. X Frequency p.a.) + out-of-pocket costs

The next step was to calculate the cost for the sector per year.

[26]Australian Bureau of Statistics (ABS) 2010, Average Weekly Earnings, Australia Feb 2010, cat. 6302.0.

To do this it was necessary to recognise the different approaches used to completing regulatory activities and the level of non-compliance. The survey results were used to calculate the proportion of affiliates and independent remittance businesses that undertook each regulatory activity within their own business. For example, more than 90 per cent of affiliates and independent remittance businesses deliver employee training themselves. While 60 per cent of affiliates and around 90 per cent of independent remittance businesses review and maintain their AML/CTF program themselves. When businesses are not undertaking an activity themselves they could have a PRN undertake the activity, employ an external consultant (and therefore incur out of pocket costs) or non compliant.

It was also necessary to assume the number of affiliates and independent remittance businesses in the sector. Advice from AUSTRAC indicates that there are around 6100 affiliates and 400 independent remittance businesses in the sector. These figures were used to estimate the cost for the sector in year one. The RIS assumes that the size of the sector remains constant over the next 10 years.

The cost per sector per year is calculated as:

Cost by sector per year = Cost per affiliate/independent business per year
X per cent of affiliates and independent remittance businesses that undertook each regulatory activity themselves
X number of affiliates / independent businesses

The final step was to calculate the Net Present Value (NPV) of the cost over 10 years.

This was done by determining the how frequently each regulatory activity occurred over 10 years. The calculations are based on each activity occurring each year except, registration which only occurs once. To calculate the NPV a discount rate of 7 per cent was used, in line with OBPR's recommendation.

NPV Cost by sector 10 years = Cost by sector per year
X Frequency of regulatory activity over 10 years Discounted by 7%

Appendix B presents the results of the Base Case analysis of costs for affiliates and independent remittance businesses.

RIS Appendix B: Summary Base Case compliance costs

Table B1: Affiliates – Base Case Compliance Costs

Source of column data	Survey data	Survey, industry practice	Survey data	Input: ABS	Calculation	Input: AUSTRAC	Survey data	Calculation	Industry practice / regulatory requirement	Calculation	Calculation
Nature of proposed regulatory change	**Average Time taken per activity (minutes)**	**Frequency of activities per year**	**Out of pocket costs per year ($)**	**Average salary per hour (inc on-costs)**	**Total cost per affiliate per year**	**Total affiliates**	**Proportion of affiliates who undertake the activity themselves**	**Total cost over 1 year**	**Frequency over 10 years**	**Total cost**	**NPV over 10 years**
Units	**(minutes)**	**(no.)**	**($)**	**($)**	**($)**	**(no.)**		**($)**	**(no.)**	**($)**	($)
Registration											
Registration	31	0.2	0	0.60	4	6100	85%	19,025	10	190,247	133,621
AML/CTF Program											
Risk assessment	83	1	572	0.60	622	6100	70%	2,638,480	10	26,384,802	18,531,581
Reviewing and maintaining	130	1	842	0.60	920	6100	60%	3,388,883	10	33,888,828	23,802,095
Employee training	115	1	836	0.60	905	6100	97%	5,344,770	10	53,447,704	37,539,431
Employee due diligence	108	4	760	0.60	1,034	6100	67%	4,206,222	10	42,062,225	29,542,747
Independent review	88	1	599	0.60	652	6100	45%	1,805,786	10	18,057,860	12,683,085
Monitoring	59	52	424	0.60	2,266	6100	75%	10,351,651	10	103,516,506	72,705,662
Reporting											
Compliance Report	86	1	0	0.60	52	6100	74%	234,933	10	2,349,325	1,650,068
Monitoring											
IFTIs	10	104	0	0.60	653	6100	48%	1,904,116	10	19,041,164	13,373,717
TTRs	11	52	0	0.60	330	6100	68%	1,371,587	10	13,715,873	9,633,455
Total cost					**$7,438**			**$31,265,453**		**$312,654,534**	**$219,595,462**

Table B2: Independent Remittance Businesses – Base Case Compliance Costs

Source of column data	Survey data	Survey, industry practice	Survey data	Input: ABS	Calculatio	Input: AUSTRAC	Survey data	Calculation	Industry practice / regulatory requirement	Calculation	Calculation
Nature of proposed regulatory change	**Average Time taken per activity**	**Average Frequency of activities per year**	**Out of pocket costs per year**	**Average salary per minute (inc on-costs)**	**Total cost per business per year**	**Businesses**	**Remitters who undertake the activity themselves**	**Total cost over 1 year**	**Frequency over 10 years**	**Total cost over 10 years**	**NPV over 10 years**
Units	(minutes)	(no.)	($)	($)	($)	(no.)	(%)	($)	(no.)	($)	($)
Registration											
Registration current process	32	0.2	0	0.60	4	400	89%	1,375	10	13,746	9,655
AML/CTF Program											
Risk assessment	167	1	1,131	0.60	1,231	400	89%	440,313	10	4,403,131	3,092,575
Reviewing and maintaining	239	1	2,244	0.60	2,387	400	88%	842,473	10	8,424,728	5,917,176
Employee training	186	1	1,577	0.60	1,689	400	91%	613,270	10	6,132,698	4,307,351
Employee due diligence	134	6	1,304	0.60	1,782	400	76%	545,024	10	5,450,242	3,828,022
Independent review	186	1	2,720	0.60	2,832	400	79%	892,767	10	8,927,672	6,270,423
Monitoring	186	52	827	0.60	6,633	400	93%	2,465,907	10	24,659,068	17,319,498
Reporting											
Compliance Report	127	1	0	0.60	76	400	89%	27,247	10	272,470	191,372
Monitoring											
IFTIs	11	104	0	0.60	700	400	81%	227,202	10	2,272,018	1,595,771
TTRs	11	52	0	0.60	358	400	80%	114,537	10	1,145,369	804,459
Total cost					**$17,687**			**$6,175,613**		**$61,756,129**	**$43,374,921**

Table A3: Providers of remittance networks – summary of consultation data

Regulatory area	Option	Discounted cost over 10 years (T1s & T2s)($)
Registration	Option 2a	2,640,000
	Option 2b	3,330,000
	Option 2c	290,000
AML/CTF Program	Option 2a	20,210,000
	Option 2b	9,320,000
	Option 2c	28,000,000
Reporting	Option 2a	1,260,000
	Option 2b	1,350,000
	Option 2c	90,000
Monitoring	Option 2a	0
	Option 2b	0
	Option 2c	0

RIS Appendix C – Survey of Remittance Providers and Affiliates

Survey of remittance service providers

Understanding the impacts on your business of specific proposals for an enhanced AML/CTF registration scheme for the remittance sector

July 2010

Why did you receive this survey?

You are receiving this survey because you are registered with the Australian Transaction Reports and Analysis Centre (AUSTRAC) as a provider of remittance services.

Proposed enhancements to the regulation of the remittance sector are being considered

Since April 2010, the remittance sector has been engaged in consultation about ways to more effectively manage the risk that remittance services could be used to facilitate money laundering, terrorism financing and other transnational and serious crime.

Information provided by the remittance services sector has helped shape a set of specific regulatory reforms for more detailed consideration. These reforms are set out in the paper 'Specific proposals for an enhanced AML/CTF registration scheme for the remittance sector' which is available at http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-money_laundering.

It is important to understand how the possible reforms will impact on the remittance services sector

Where regulatory reform is being considered, government departments and agencies must analyse the expected impacts of any proposed changes on businesses. They do this by preparing a Regulatory Impact Analysis.

In this case, the Attorney-General's Department is seeking information to inform a possible Regulatory Impact Analysis. That analysis must include information about how the specific regulatory reforms are expected to impact on the remittance sector.

The information collected in this survey and from remittance network service providers will be analysed and available to use in any future Regulatory Impact Analysis.

Information you provide in this survey will be used to understand the impacts of the possible regulatory reforms

This survey collects information from remittance services about meeting the current regulatory requirements for:

- AUSTRAC registration
- the AML/CTF Program and
- AUSTRAC reporting requirements.

The survey also collects information from remittance services about meeting the proposed enhanced regulatory requirements that are under consideration. Information will also be collected from network service providers.

Who will see my survey information?

Your answers to the survey will remain anonymous.

Your individual answers will not be provided to the Attorney-General's Department or AUSTRAC.

The information you provide will be included with responses from other remittance service providers and presented in an aggregate form.

What should I do?

Complete this online survey by 6 August 2010.

Answer the questions as accurately as you can.

If you require technical assistance with this survey, please contact

For queries regarding the proposed reforms, please contact amlreform@ag.gov.au.

Terms used in the survey

Independent remittance dealer - a person that provides remittance services to customers using his or her own systems and processes, independent of a remittance network

Remittance affiliate - a person that provides remittance service to customers as part of a remittance network facilitated by a remittance network provider

Remittance network provider - a person that facilitates networks of remittance affiliates, providing the systems and services that enable his or her affiliates to provide remittance services

THANK YOU FOR YOUR TIME

Section 1: Your business

In this section the questions will ask you about your business. This information will help us understand if costs are different for different type of businesses.

1) What is the primary activity of your business?
a) Providing a remittance service
b) Postal services
c) Newsagency
d) General store
e) Currency exchange service
f) Other [go to question 2]

2) Which of the following best describes the operation of your remittance service business?
a) A remittance affiliate (for example, part of Western Union)? [go to question 3]
b) Independent remittance dealer [go to question 4]
c) Remittance network provider [end survey]
d) A combination of the above [go to question 3]

3) How many remittance networks providers are you a part of?
a) One
b) Two
c) More than two [go to question 4]

4) How many people work in your business (including you)?
a) 1 – 2
b) 3 – 4
c) 5 – 10
d) 11 – 19
e) 20 – 49
f) 50 – 99
g) 100 – 200
h) 201 – 500 [go to question 5]

5) How many people working in your business (including you) provide remittance services?
a) 1 – 2
b) 3 – 4
c) 5 – 10
d) 11 – 19
e) 20 – 49
f) 50 – 99
g) 100 – 200
h) 201 – 500 [go to question 6]

Section 2: Your costs of having AUSTRAC registration

In this section the questions are about the costs to you and your business of having to register with AUSTRAC as a provider of a designated remittance service.

6) *Did you or someone in your business complete the online registration or fill in the form to register with AUSTRAC?*

[YES/NO]
[if yes, go to question 7]
[if no, go to question 8]

7) *How long did it take to complete the AUSTRAC registration form or online registration?*
This includes time spent by you or other people in your business to gather the information AND time to enter the information into the form.

a) 1 minute – 10 minutes
b) 11 minutes – 20 minutes
c) 21 minutes – 40 minutes
d) 41 minutes – 1 hour [go to question 8]

Section 3: Your costs related to having an AML/CTF Program

As a provider of remittance services you are required to have and maintain an AML/CTF Program. The questions in this section are about the costs to you and your business of having that AML/CTF Program.

Risk Assessment

You are required to undertake risk assessment reviews when you have new types of customers, new products, new channels and jurisdictions.

8) *When you need to review your risk assessment who does it?*

a) I do [go to question 9]
b) Someone else in my business [go to question 9]
c) My principal or remittance network provider [go to question 9]
d) An external consultant [go to question 9]
e) We have not undertaken one yet [go to question 12]

9) *When you or someone in your business reviews your risk assessment how much time does it take? (for example, this could include time spent with a remittance network provider/external consultant if applicable)*

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours [go to question 10]

10) How many times do you review your risk assessment in a normal year?

a) Less than once a year
b) Once a year
c) More than once [go to question 11]

11) When you need to review your risk assessment what are the out of pocket costs in a normal year? (for example, to pay an external consultant)

a) My principal pays all the costs
b) $0
c) $1 – $500
d) $501 – $1,000
e) $1,001 – $2,000
f) $2,001 –$5000 [go to question 12]

Reviewing and maintaining your AML/CTF Program and supporting policies and procedures

You or someone in your business may spend time reviewing and updating your AML/CTF Program. Or, if you are part of a network of remittance providers, it's possible that a Program may be provided for you.

12) When you need to review or update the AML/CTF Program who does it?

a) I do [go to question 13]
b) Someone else in my business [go to question 13]
c) My principal or remittance network provider [go to question 13]
d) An external consultant [go to question 13]
e) We have not undertaken one yet [go to question 15]

13) When you or someone in your business reviews or updates the AML/CTF Program how much time does it take? (for example, this could include time spent with a remittance network provider/external consultant if applicable)

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours [go to question 14]

14) When you need to review your AML/CTF Program what are the out of pocket costs in a normal year? (for example, to pay an external consultant)

a) My principal pays all the costs
b) $0
c) $1 – $500
d) $501 – $1,000
e) $1,001 – $2,000
f) $2,001 – $5,000
g) $5,001 – $10,000
h) $10,001 - $20,000 [go to question 15]

AML/CTF Risk Awareness Training

The AML/CTF Act requires all employees involved in providing a remittance service to have regular risk awareness training covering money laundering, terrorism financing and other transnational and serious crime.

15) When you or your employee undertakes risk awareness training who provides the training content?

a) I do [go to question 16]
b) Someone else in my business [go to question 16]
c) My principal or remittance network provider [go to question 16]
d) We engage an external provider [go to question 16]
e) We have not undertaken risk awareness training yet [go to question 20]

16) When you or your employee undertakes risk awareness training who delivers the training content?

a) I do [go to question 17]
b) Someone else in my business [go to question 17]
c) My principal or remittance network provider [go to question 19]
d) We engage an external provider [go to question 19]
e) We have not undertaken risk awareness training yet [go to question 20]

17) How much time does the risk awareness training take per employee in a normal year?

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours [go to question 19]

18) How many people in your business are involved in providing remittance services complete risk awareness training in a normal year?

a) Everyone
b) About three quarters of people involved in providing remittance services
c) About half the people involved in providing remittance services
d) About a quarter of people involved in providing remittance services [go to question 19]

19) For your business' risk awareness training what are the out of pocket costs in a normal year (for example, to pay a training course provider, to purchase training materials)?

a) My principal pays all the costs
b) $0
c) $1 – $500
d) $501 – $1,000
e) $1,001 – $2,000
f) $2,001 – $5,000
g) $5,001 – $10,000
h) $10,001 - $20,000 [go to question 20]

Undertaking employee due diligence

Your business must put in place systems and controls to decide if and how to screen any prospective and current employees who may be involved in providing remittance services.

20) What steps does your business undertake to screen any prospective and current employees who may be involved in providing remittance services?

a) Personal or professional reference checks [go to question 21]
b) National Police Certificates [go to question 21]
c) Other activities [go to question 21]
d) A combination of the above [go to question 21]
e) We have not undertaken screening of prospective or current employees yet [go to question 26]

21) Would you undertake the same screening / due diligence of prospective and current employees if you did not provide remittance services?

a) Yes, we would continue with the same screening activities
b) No, we would reduce our current screening activities [go to question 22]

22) When you or your employees undertake screening / due diligence of new or current employees who does it?

a) I do [go to question 23]
b) Someone else in my business [go to question 23]
c) My principal or remittance network provider[go to question 25]
d) An external consultant [go to question 25]
e) We have not undertaken employee or agent due diligence yet [go to question 26]

23) When you or someone in your business undertakes screening / due diligence of new or current employees how much time does it take per employee?

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours [go to question 24]

24) How many prospective and current employees do you spend time undertaking screening / due diligence of in a normal year?

a) 1 – 2
b) 3 – 4
c) 5 – 10
d) 11 – 19
e) 20 – 49
f) 50 – 99
g) 100 – 200 [go to question 25]

25) For your business' screening / due diligence activities of new and current employees what are the out of pocket costs in a normal year?

a) My principal pays all the costs
b) $0
c) $1 – $500
d) $501 – $1,000
e) $1,001 – $2,000
f) $2,001 – $5,000
g) $5,001 – $10,000
h) $10,001 - $20,000 [go to question 26]

Independent review

Under the AML/CTF Act all reporting entities need their Part A AML/CTF programs reviewed on a regular basis by a suitably qualified and independent person.

26) When you have an independent review of your Part A AML/CTF program who does it?

a) I do [go to question 27]
b) Someone else in my business [go to question 27]
c) My principal or remittance network provider [go to question 27]
d) An external consultant [go to question 27]
e) We have not undertaken an independent review yet [go to question 29]

27) When you or someone in your business undertakes the independent review how much time does it take? (for example, this could include time spent with a remittance network provide/external consultant if applicable)

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours [go to question 28]

28) For your business' independent review what are the out of pocket costs in a normal year?

a) My principal pays all the costs
b) $0
c) $1 – $500
d) $501 – $1,000
e) $1,001 – $2,000
f) $2,001 – $5,000
g) $5,001 – $10,000
h) $10,001 - $20,000 [go to question 29]

Monitoring

Under the AML/CTF Program, you are required to monitor customers and their transactions. This monitoring is to help you quickly identify and respond to any potential money laundering or terrorism financing risks.

29) Who does your regular monitoring of customers and their transactions?
a) I do [go to question 30]
b) Someone else in my business [go to question 30]
c) My principal or remittance network provider [go to question 31]
d) We have not undertaken monitoring yet [go to question 32]

30) When you or someone in your business does the monitoring how much time does it take each week?
a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours [go to question 31]

31) When you or someone in your business undertakes the monitoring what are the out of pocket costs in a normal week?
a) My principal pays all the costs
b) $0
c) $1 – $500
d) $501 – $1,000
e) $1,001 – $2,000
f) $2,001 – $5000 [go to question 32]

Section 4: Your costs for reporting to AUSTRAC

In this section the questions are about the costs to you and your business of reporting to AUSTRAC.

Threshold Transaction Reports (TTRs)

As a provider of remittance services, if a transaction involves AUD$ 10,000 or more of physical currency or e-currency then you must submit a threshold transaction report (TTR) to AUSTRAC.

32) When you need to report a threshold transaction to AUSTRAC who completes the report?
a) I do [go to question 33]
b) Someone else in my business [go to question 33]
c) My principal or remittance network provider [go to question 34]
d) We have not undertaken threshold transaction reporting yet [go to question 36]

33) Who submits the threshold transaction report to AUSTRAC?

a) I do
b) Someone else in my business
c) My principal or remittance network provider [go to question 34]

34) When you or someone in your business completes / submits one threshold transaction report how much time does it take per report?

a) 1 – 5 minutes
b) 6 – 10 minutes
c) 11 – 15 minutes
d) 16 – 20 minutes [go to question 35]

35) How many threshold transaction reports does your business submit in a normal month?

a) 0 – 5 reports
b) 6 – 10 reports
c) 11 – 50 reports
d) 51 – 100 reports
e) 101 – 500 reports [go to question 36]

International Funds Transfer Instruction (IFTIs)

As a provider of remittance services, you may be responsible for submitting International Funds Transfer Instruction (IFTIs) reports to AUSTRAC.

36) When you need to report an IFTI to AUSTRAC who completes the report?

a) I do [go to question 38]
b) Someone else in my business [go to question 38]
c) My principal or remittance network provider [go to question 39]
d) We have not undertaken international funds transfer reporting yet [go to question 40]

37) Who submits the IFTI report to AUSTRAC?

a) I do
b) Someone else in my business
c) My principal or remittance network provider
d) Other[go to question 39]

38) When you or someone in your business completes / submits one IFTI report to AUSTRAC how much time does it take?

a) 1 – 5 minutes
b) 6 – 10 minutes
c) 11 – 15 minutes
d) 16 – 20 minutes [go to question 39]

39) How many IFTI reports does your business submit to AUSTRAC in a normal week?

a) 1 – 10 reports
b) 11 – 50 reports
c) 101 – 500 reports
d) 501 – 1,000 reports
e) 1,001 – 5,000 reports
f) 5,001 – 10,000 reports
g) 10,001 – 50,000 reports [go to question 40]

Compliance Report

A business that provides remittance services is required to submit an AML/CTF compliance report to AUSTRAC

40) Who completes your business' Compliance Report to AUSTRAC?

a) I do [go to question 41]
b) Someone else in my business [go to question 41]
c) My principal or remittance network provider [go to question 42]
d) We have not submitted an Compliance Report yet [go to question 42]

41) How much time did it take to complete the 2009 Compliance Report to AUSTRAC?

This includes time spent by you or other people in your business to gather the information AND time to enter the information into the form

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours [go to question 42]

Other costs

42) Are there other costs to your business because of the AML/CTF registration, AML/CTF Program or Reporting? (for example employing sub-agents to carry out your AML/CTF obligations)

FREE TEXT RESPONSE

[go to question 43]

Section 5: Estimating additional time needed to complete enhanced registration

In the future, to obtain registration as a designated provider of remittance services you may be required to provide more information about yourself, your employees and your business to AUSTRAC.

This information may include:

- A signed declaration relating to any criminal history (National Police Certificate for all key personnel) or bankruptcy
- The structure of your business including beneficial ownership and control arrangements

You would record this information either on a new AUSTRAC registration form or as part of an expanded online registration process.

43) *Do you and the employees in your business who provide remittance services already have National Police Certificates (valid from the last 3 years)?*

a) Yes
b) Some do
c) No [go to question 44]

44) *Please estimate, how much time it would take to prepare advice for AUSTRAC to confirm that key personnel who provide remittance services have National Police Certificates.*
This includes time taken to discuss this with your employees, record it and submit it.

a) 1 minute – 30 minutes
b) 1 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours [go to question 45]

45) *Please estimate, how much time it would take to provide AUSTRAC with information about whether key personnel who provide remittance services have taken advantage of the laws of bankruptcy.*
This includes time taken to review information, record it and submit it.

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours [go to question 46]

46) *Please estimate, how much time it would take to provide AUSTRAC with information about the beneficial ownership arrangements and managerial control of your business (if it is a company). For example, a copy of relevant information from the most recent ASIC annual return, a copy of a certificate of incorporation or an organisation or corporate structure chart.*
This includes time taken to review information, record it and submit it.

a) 1 minute – 30 minutes
b) 31 minutes – 1 hour
c) 1 hour – 4 hours
d) 4 hours – 8 hours
e) 8 hours – 20 hours

RIS Appendix D – Discussion guide used in consultation with PRNs

Guide to consultation: impacts of proposals to enhance the registration scheme for the remittance sector

Background

The paper 'Specific proposals for an enhanced AML/CTF registration scheme for the remittance sector' describes a set of proposed measures to enhanced the regulation of remittance dealers.

This paper is available at http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-money_laundering.

As described in the paper, the proposals include defining providers of remittance networks (PRNs) and placing specific regulatory obligations on PRNs to develop processes and procedures for:

- assessing the money laundering / terrorism financing risk in providing designated services
- customer identification and verification (remittance affiliates)
- ongoing customer due diligence
- employee due diligence

The general approach is to allow PRNs to establish the most appropriate way to meet these obligations within their own business context.

However, there are a number of specific requirements associated with the proposed changes. These include requirements to:

- obtain registration as a PRN and to register all affiliates
- prepare and maintain an Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Program as a PRN (including employee due diligence) and provide an AML/CTF Program for registered remittance affiliates
- provide advice to AUSTRAC about material change in circumstances (changes of name, address, changes to beneficial ownership of a company and bankruptcy)
- fulfil certain reporting obligations on behalf of their remittance affiliates including compliance reports, international funds transfer instructions and threshold transaction reports.

Guide for discussion

You have been invited to take part in a discussion that will assist in assessing the likely impacts on of the proposed enhanced registration scheme for the remittance sector.

The purpose of the discussion is to gather information that can be used to inform the regulatory impact assessment and will be taken into account when further considering the current proposals.

To achieve this, we propose to structure the discussion by:

- Asking you to describe your activities and processes for obtaining membership of your network, due diligence, AML/CTF strategies employed and the degree of support provided to remittance affiliates to assist them to comply with their AML/CTF Act obligations
- Asking you to describe the new processes or activities needed in your business to meet the proposed regulatory changes, noting that these activities may vary through a transition to the new arrangements
- Discussing the estimated costs per annum associated with any new processes or activities, this could include discussion about time taken to complete activities, costs such as wages, IT enhancements, other capital outlays
- Inviting you to raise any other issues you consider to be relevant.

The table on the follow page provide a guide to the types of information we would like to discuss.

Any information you provide to in the course of the discussion will not be provided to either the Attorney-General's Department or AUSTRAC unless you give your consent to this happening. We will use the information you provide in an aggregated form to analyse the regulatory impacts arising from the proposed enhancements.

ACRONYMS

ADI	Authorised Deposit-taking Institution
AML/CTF Act	*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
AUSTRAC	Australian Transaction Reports and Analysis Centre

NOTES ON CLAUSES

Clause 1: Short Title

This clause provides that when the Bill is enacted, it is to be cited as the *Combating the Financing of People Smuggling and Other Measures Act 2011*.

Clause 2: Commencement

This clause sets out when the various parts of the Act are to commence.

Clause 3: Schedule(s)

This is a formal clause that enables the Schedules to amend Acts by including amendments under the title of the relevant Act.

Schedule 1 – Remittance Dealers

Part 1 – Amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Item 1

This item updates the simplified outline to Part 1 of the Act to reflect that providers of registrable remittance network services must be registered with the AUSTRAC CEO.

Item 2

This item introduces a definition of AAT reviewable decision.

Item 3

This item introduces a definition of infringement notice provision.

Item 4

This item repeals the definition of Register of Providers of Designated Remittance Services. This register is replaced by a new register under the new section 75 (see item 31).

Items 5 to 7

Together these items introduce definitions for the three main classes of industry participants:

- Registered remittance network provider – typically large organisations that operate networks of remittance affiliates by providing the systems and services that enable their affiliates to provide remittance services.
- Registered remittance affiliate – businesses that provide remittance services to customers as part of a remittance network facilitated by a remittance network provider.
- Registered independent remittance dealer – businesses that provide remittance services to customers using their own systems and processes, independent of a remittance network.

Each of the definitions is tied to the requirement for industry participants in each of these classes to be registered before providing a relevant service. The requirement for registration is addressed by item 24.

Item 8

This item introduces a definition of 'registrable remittance network service'. The definition includes the network services set out in the new item 32A of table 1 in section 6 of the AML/CTF Act (see item 12). The AML/CTF Rules will be able to exempt certain services from this definition.

Item 9

This item introduces a definition of 'registration'.

Item 10

This item introduces a definition of 'Remittance Sector Register' by cross reference to new section 75 (see item 31).

Item 11

This item introduces a definition of 'reviewable decision'. In summary the definition includes a decision to refuse an application for registration as a remittance network provider, a remittance affiliate or an independent remittance dealer; or a decision to cancel or impose conditions on a person's registration in one or more of those classes.

It also includes situations where an application is deemed to have been refused because it was not determined within the specified time period (see item 31, proposed subsection 75B).

Reviewable decisions are made in relation to a person. This means that where a decision is made in relation to a particular person that person can seek review of the decision. In the case where a decision is made to refuse an application to register a person as a remittance affiliate, paragraph (b) of the definition of reviewable decision has the effect that the person who was to be the remittance affiliate is taken to have had a reviewable decision made in relation to them. Subparagraph (e)(i) of the definition has the effect that the registered remittance network provider who made the application is also taken to have had a reviewable decision made in relation to them. This means that both would be able to have the decision reviewed.

Item 12

A person who provides a designated service to a customer becomes a reporting entity for the purposes of the AML/CTF Act. The tables set out in section 6 of the AML/CTF Act define designated services as itemised in the tables and also define who the customer is for each itemised service.

This item adds a new designated service to table 1 in section 6 of the AML/CTF Act. The new item 32A covers the services provided by remittance network providers in operating a network of remittance affiliates who undertake the services in items 31 and 32 of table 1 using the systems, processes and other support provided by the network provider. The customer is defined as the person who provides designated services as part of the network.

Item 32A(b) excludes a non-financier, which is defined in section 5 of the AML/CTF as a person who is not an authorised deposit-taking institution[27], bank, building society, credit union, or person specified in the AML/CTF Rules. This approach is consistent with the existing approach to the provision of remittance services in items 31 and 32 of the table from which those business types are also excluded.

Item 13

This item excludes the new designated service of operating a network of remittance affiliates (who provide services set out in items 31 and 32 of table 1, section 6) from the geographical link requirements that generally apply to reporting entities. This exemption is necessary because the global nature of remittances means that many remittance network providers are based in other countries. It ensures that providers of remittance networks that operate extensively in Australia are subject to AML/CTF regulation, despite the fact that they may not have a permanent establishment in Australia.

Item 14

Section 36 of the AML/CTF Act and the related AML/CTF Rules impose obligations on reporting entities to monitor customers and their transactions on an ongoing basis. This item will enable providers of remittance networks to monitor the customers of their remittance affiliates and discharge this obligation on behalf of their affiliates.

This change is consistent with item 20 which will enable the AML/CTF Rules to require providers of remittance networks to undertake some AML/CTF Act obligations on behalf of their affiliates. In the case of suspicious matter reports for example, it would be necessary for remittance network providers to monitor the transactions of their affiliates' customers for the purposes of submitting the reports.

Item 15

This item is consequential to the amendment set out in item 13. It will ensure that remittance network providers who provide a designated service at or through a permanent establishment in a foreign country are still subject to the suspicious matter and threshold transaction reporting requirements set out in Part 3 of the AML/CTF Act.

Items 16 – 18

Section 49 of the AML/CTF Act empowers the AUSTRAC CEO to request further information from a reporting entity when the reporting entity has communicated information to the AUSTRAC CEO about a suspicious matter (section 41), a threshold transaction (section 43), or an international funds transfer instruction (section 45). Request for further information must be by written notice.

[27] An Authorised Deposit-taking institution (ADI) is defined in section 5 of the AML/CTF Act and means a body corporate that is an ADI for the purposes of the Banking Act 1959; the Reserve Bank of Australia or a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

These items will amend subsection 49(1) and paragraphs 49(1)(h) and (i) to enable the AUSTRAC CEO to request further information from a reporting entity or any other person. This is consistent with the information gathering powers of a number of government agencies.[28] This will improve AUSTRAC's ability to assess the financial intelligence it receives in the reports submitted by reporting entities. For example, if a casino submitted a suspicious matter report to AUSTRAC on the presentation by a customer of a large bank cheque in exchange for chips, the Act as currently drafted limits AUSTRAC to seeking further information only from the casino as the reporting entity. The amendments in items 16 – 18 will mean that AUSTRAC can also seek further information from the bank that issued the cheque so that it is better able to evaluate the matter.

When the AUSTRAC CEO issues a written notice requesting further information, the recipient will be required to produce the information set out in the notice, or documents in the possession or control of the reporting entity or other person, within the period specified in the notice.

Item 19

Section 49(2) states that a reporting entity must comply with a notice under subsection 49(1). This item amends subsection 49(2) to extend the compliance obligation to any person who has been given a notice under subsection 49(1) and reflects the amendment made to subsection 49(1). Subsection 49(3) creates civil liability for failure to comply with the terms of the notice issued under subsection 49(1).

Item 20

This item states that the AML/CTF Rules may make provision for obligations to provide reports that are imposed on registered remittance affiliates to be imposed instead, or in addition, on the relevant registered remittance network provider. In most instances it will be the remittance network providers that have the majority of the reporting obligations. However, this provision will give AUSTRAC the ability to work with affected remittance networks to develop efficient and effective reporting arrangements.

Item 21

This item amends the heading of Part 6 of the AML/CTF Act to reflect the new measures. It also inserts the first of several new Division headings to enhance the clarity of Part 6.

Item 22

This item repeals the current simplified outline in section 73 and replaces it with a new outline summarising the new measures that are to be contained in Part 6.

[28] For example, the Australian Competition and Consumer Commission, the Australian Securities and Investment Commission and the Australian Taxation Office all have statutory powers to enable them to obtain information associated with the performance of their statutory functions.

Item 23

This item inserts a second new Division heading which reflects the new arrangements.

Item 24

Subsection 74(1) of the Act provides that a person must not provide a registrable designated remittance service if the relevant details are not entered on the Register of Providers of Designated Remittance Services.

This item repeals the existing subsection 74(1) and replaces it with new subsections which reflect the three classes of industry participants discussed in items 5-7 above. In summary the new subsections 74(1), 74(1A) and 74(1B) provide that a person must not provide a registrable remittance network service or a designated registrable remittance service unless they are registered as a remittance network provider, a remittance affiliate of a registered remittance network provider, or an independent remittance dealer. Paragraph 74(1)(b) further provides that a person must not provide a registrable remittance network service to a person other than someone who is one of their registered affiliates.
Subsection 74(1C) provides that a registered person must not breach a condition imposed on their registration. This reflects the new power for the AUSTRAC CEO to impose conditions on registration (see new section 75E).

Items 25 – 28

These items amend the existing offence provisions in the AML/CTF Act to take account of the registration obligations imposed on each of the three classes of industry participants.

Item 29

Section 175 of the AML/CTF Act provides that the Federal Court may order a person to pay a pecuniary penalty to the Commonwealth where it is satisfied that a person has contravened a civil penalty provision. This item updates the existing subsection 74(10) to designate new subsections 74(1), (1A), (1B) and (1C) as civil penalty provisions. This means that a person may be subject to a civil penalty instead of being charged with a criminal offence under section 74. These offences relate to the provision of services without being registered and breaching conditions of registration.

Under subsection 175(4) of the AML/CTF, the maximum civil penalty that can be imposed by the Court for breaches of these provisions is 100,000 penalty units (currently $11 million) for a body corporate and 20,000 penalty units ($2.2 million) for a person other than a body corporate.

Under the expanded infringement notice scheme set up under items 35-47 it will also be possible for infringement notices to be issued for breaches of subsections 74(1), (1A), (1B) and (1C).

Item 30

Under the current requirements of the AML/CTF Act, a person must not provide a registrable designated remittance service unless the person's name is entered on the AUSTRAC register. Doing so is an offence under subsection 74(2) of the AML/CTF Act.

Currently, under subsection 74(11) of the AML/CTF Act it is a defence if the defendant proves that he or she had made an application for registration prior to the offence. Under subsection 74(12) of the AML/CTF Act a defence lies if the person can prove that he or she had informed the AUSTRAC CEO in writing of their registrable details prior to the contravention.

The defences in subsections 74(11) and (12) will be repealed because they are based on the existing registration processes in which entry on the register is determinative of registration. The current registration processes will be discontinued in favour of the new registration system set out in the Bill in which the decision of the AUSTRAC CEO will be determinative of registration.

Item 31

This item repeals sections 75, 76, 77, 78, 79 and 79A which together establish the registration system for remittance dealers and introduces new sections 75, and 75A-75S, which together introduce an improved registration system which enhances AUSTRAC's ability to effectively regulate the remittance sector.

All of the powers and functions set out in the new Division 3 may be delegated by virtue of section 222 of the AML/CTF Act. This section gives the AUSTRAC CEO the power to delegate his or her functions or powers to AUSTRAC staff members. In exercising such powers and functions under the delegation, the delegate must comply with any directions of the AUSTRAC CEO.

Division 3 – Registration of persons

This new Division heading will improve the clarity of Part 6.

75 Remittance Sector Register

The new section 75 states that the AUSTRAC CEO must maintain a Remittance Sector Register which may be maintained by electronic means.

The Remittance Sector Register is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. Accordingly, subsection 75(3), which states that the register is not a legislative instrument, has been included to assist readers. This means that the Remittance Sector Register does not need to be tabled in Parliament and is not subject to disallowance by either House.

Subsection 75(4) provides for processes relating to the correction of entries in the Remittance Sector Register, the publication of the Remittance Sector Register or certain information contained in it, and other administrative or operational matters to

be set out in the AML/CTF Rules. This will enable AUSTRAC to publish information which ensures that the Remittance Register is easily accessible by interested members of the public.

75A Information to be entered on the Remittance Sector Register

Subsection 75A(1) 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 a person may be registered as both a remittance affiliate and an independent remittance dealer.

75B Applications for registration

Section 75B provides the basis for a new three tier registration scheme.

Paragraphs 75B(1)(a) and 75B(1)(b) provide that a person may apply directly to the AUSTRAC CEO for registration as a remittance network provider or an independent remittance dealer. Applications for registration as a remittance affiliate are governed by paragraph 75B(1)(c) and subsections 75B(2) and 75B(5). It is envisaged that the majority of affiliate applications will be lodged by registered remittance network providers on behalf of their affiliates. However, if a person is already, or is seeking to become, registered as an independent remittance dealer they will be allowed to make a direct application for registration as a remittance affiliate, providing that their registered remittance network provider gives their consent.

Under subsection 75B(3) applications for membership in all classes must be in the approved form and contain the information required by the AML/CTF Rules. Subsection 75B(4) specifies the information that the AML/CTF Rules may require.

Subsection 75B(6) provides for the deemed refusal of an application if the AUSTRAC CEO has not made a decision within 90 days of receiving the application, or if further information has been sought from the applicant to assist in the making of a decision, deemed refusal commences 90 days after the day that information was provided. Subsection 75B(7) allows the AUSTRAC CEO to extend the period by a further 30 days by giving notice in writing to the applicant. This provision ensures that an applicant has access to both the internal and AAT review procedures which are created by this item (see proposed Division 4) in the event that there is an excessive delay in processing their application.

Under this new registration system AUSTRAC will have responsibility for undertaking appropriate inquiries to ascertain whether a person who has applied for registration should be able to operate a remittance service. Remittance network providers that apply for registration of their remittance affiliates will have a key role in ascertaining whether a prospective remittance affiliate is suitable for registration as part of the provider's network. As reporting entities with AML/CTF Act obligations, remittance network providers will be required to have an AML/CTF program set up that will put in place processes and procedures for:

- assessing the ML/TF risk in providing designated services

- customer identification and verification (their customers are their remittance affiliates)
- ongoing customer due diligence, and
- employee due diligence.

Consistent with the AML/CTF Act's risk based approach to regulation, the Act does not prescribe how remittance network providers must comply with their obligations. Rather, they will be able to put in place systems that suit their existing business practices and contractual arrangements, business size and level of money laundering and terrorism financing risk. Remittance network providers already conduct extensive due diligence as part of their normal business practice before enabling a person to join their network. The reforms will effectively give legislative force to an existing business practice being undertaken by industry.

75C Registration by the AUSTRAC CEO

Subsection 75C(2) states that the AUSTRAC CEO must register a person if satisfied that it is appropriate to do so having regard 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.

A decision by the AUSTRAC CEO to refuse registration is a 'reviewable decision' and the AUSTRAC CEO must notify the person of the decision in accordance with subsection 75R(1). A person who is adversely affected by a decision on registration will be entitled to seek review of the decision in accordance with the review provisions in the new Division 4.

If the AUSTRAC CEO decides to register a person subsection 75C(4) requires that a notice be given to the person specifying the matters set out in subsection 75C(5). In the case of a decision to register a person as a remittance affiliate, subsection 75C(4) requires that the notice be given to both the remittance network provider that made the application and the relevant remittance affiliate.

75D Spent convictions scheme

Section 26 preserves the primacy of the spent convictions scheme. Any Rules made by the AUSTRAC CEO may make under paragraph 75B(3)(b) or 75C(2) cannot override the spent convictions scheme.

75E Registration may be subject to conditions

This provision enables the AUSTRAC CEO to impose conditions on the registration of a person as a remittance network provider, remittance affiliate, or independent remittance dealer. 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 during the course of registration.

Examples of the types of conditions that may be imposed include the following:

- The registration is not transferable.
- The holder of the Registration cannot, under any circumstances, remit any monies or currency or good(s) or benefit(s), or arrange for the remittance of any funds or currencies or good(s) or benefit(s) to any person who is a resident in a designated country or countries.

A decision by the AUSTRAC CEO to impose conditions on the registration of a person is a 'reviewable decision' under section 5 of the AML/CTF Act (see item 11). Review of the decision can be sought in accordance with the review provisions in the new Division 4.

75F When registration of a person ceases

This item specifies when registration as a remittance network provider, remittance affiliate, or independent remittance dealer 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) will apply in circumstances where a person has requested the removal of an entry from the register under section 75K.

The effect of paragraph 75F(1)(c) is that registration will cease after 3 years unless it has already ceased for another reason. This reflects the Government's view that the registration of industry participants in the remittance sector should be reviewed on a regular basis to ensure each person's ongoing suitability for involvement in the sector.

The Government recognises that there may be circumstances in which it would be unreasonable to require a person whose application ceases under section 75F(1)(c) to undertake a full application process. Accordingly subsection 75F(2) cross refers to section 75J which enables arrangements for renewal of registration to be set out in the AML/CTF Rules.

75G Cancellation of registration

The inability of the AUSTRAC CEO to cancel the registration of a remittance dealer is a serious weakness in the existing Act. Subsection 75G(1) 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. As with registration decisions, in the vast majority of cases where such an opinion is formed registration would be cancelled. However, it is important the AUSTRAC CEO retain this discretion as refusal could potentially jeopardise or impact on law enforcement inquiries or investigations. Under subsection 75G(2) the AUSTRAC CEO may exercise discretion, having regard to whether a person has breached a condition of their registration and other such matters specified in the AML/CTF Rules. Together these amendments give the AUSTRAC CEO greater control over who may participate in the remittance sector. These provisions are therefore 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.

Subsection 75G(3) states that cancellation of registration takes effect on the date specified in the notice of cancellation of registration and cross refers to paragraph 75R(1) which requires the AUSTRAC CEO to include the date of effect in a notice.

Subsection 75G(4) empowers the AUSTRAC CEO to publish a list of the names of persons whose registration has been cancelled and the date of cancellation. This will enhance the transparency of the remittance sector and enable consumers to access information about cancellation.

A decision by the AUSTRAC CEO to impose cancel a person's registration is a 'reviewable decision' under section 5 of the AML/CTF Act (see item 11). Review of the decision can be sought in accordance with the review provisions in the new Division 4.

75H Suspension of registration

Subsection 75H(1) provides that arrangements for the suspension of registrations may be set out in the AML/CTF Rules. Subsection 75H(2) provides a non-exhaustive list of the matters which may be included in the Rules. The ability to suspend registrations is an important regulatory tool for AUSTRAC and complements the power to cancel or impose conditions on registration.

The suspension powers will give the AUSTRAC CEO the ability to respond to a wide range of operational circumstances. For example, suspension of registration of an independent remittance dealer or a remittance affiliate may be appropriate in circumstances where the CEO has formed a suspicion that the registrant is complicit in transferring funds offshore for people smuggling ventures and more time for investigation is required. In this situation cancellation of registration may be too extreme if investigations are at an early stage, and the imposition of conditions would not achieve the desired goal of immediately stopping suspect remittances until the matter can be investigated further.

75J Renewal of registration

This section is related to paragraph 75F(1)(c) which provides that registration ceases after 3 years. The Government recognises that there may be circumstances in which it would be unreasonable to require a person whose application ceases under paragraph 75F(1)(c) to undertake a full application process. Accordingly section 75J enables arrangements for renewal of registration to be set out in the AML/CTF Rules.

The Rule making power set out in this section will give the AUSTRAC CEO the ability to design and implement a registration renewal process which strikes a balance between ongoing due diligence on participants in the remittance sector and the efficient conduct of business. Importantly, subsection 75J(3) will enable the implementation of a renewal system that will allow affected businesses to continue providing remittance services to customers while applications for renewal are being considered by AUSTRAC.

75K Removal of entries from the Remittance Sector Register

Section 75K addresses removal from the Remittance Sector Register in several circumstances.

Subsections 75K(1) and (2) deal with removal upon request.

Subsection 75K(3) addresses the circumstance where a person has ceased to be registered as a remittance network provider, and requires the AUSTRAC CEO to remove both the entry relating to the remittance network provider and each entry relating to the network provider's remittance affiliates. This process of automatic removal is consistent with the new tiered system of registration in which a remittance network provider applies for registration of its affiliates, undertakes appropriate due diligence procedures on prospective affiliates, and discharges some of the reporting obligations of their affiliates. In view of the relationship between these entities, it would not be appropriate for the registration of a remittance affiliate to be maintained independently if the registration of its remittance network provider ceases.

Subsection 75K(4) deals with removal of an independent remittance dealer or remittance affiliate upon cessation of registration.

Subsections 75K(5) and 75K(6) outline the notification obligations that the AUSTRAC CEO has if a person is removed from the remittance sector register. The requirement is necessary given that providing a remittance network service to someone other than a person who is a registered affiliate is an offence under proposed subsection 74(1). Similarly, it is an offence for a person who is part of a network to provide a remittance service if they are not a registered remittance affiliate of a remittance network provider (see item 24).

75L AML/CTF Rules – general provision

This item clarifies the Rule making powers in Part 6 by stating that Rules may set out different provisions for each of the three tiers of registered entities.

75M Registered persons to advise of material changes in circumstance

Section 75M requires a registered person to advise the AUSTRAC CEO of material changes in their circumstances within the specified timeframe and in the approved form (section 5 of the AML/CTF Act requires that it is in a form approved by the AUSTRAC CEO in writing).

The timeframe and process for notification that must be followed differs depending on what registration stream a person is in, and who lodged the application for registration with the AUSTRAC CEO.

Remittance network providers, independent remittance dealers and affiliates that applied for registration on their own behalf under paragraph 75B(1)(c) must notify the AUSTRAC CEO within 14 days of the change in circumstance.

The notification process is different for registered remittance affiliates whose remittance network provider applied for their registration. People in this category have 14 days in which to notify their network provider, who in turn must notify the AUSTRAC CEO within 7 days of receiving the advice from the affiliate

The type of information that the AUSTRAC CEO should be made aware of includes matters such as a changes of name or address, changes to the beneficial ownership of a company and bankruptcy. This obligation will support AUSTRAC's regulation of the remittance sector by ensuring that AUSTRAC is kept informed of information relevant to registration over the entire period of a person's registration. The provision of information about changed circumstances enables the AUSTRAC CEO to consider whether ongoing registration is appropriate and, if so, on what basis. This is consistent with the objective of strengthening the regulation of remittance dealers and the providers of remittance networks to ensure that their services are not misused to commit or fund serious crimes.

Section 175 of the AML/CTF Act provides that the Federal Court may order a person to pay a pecuniary penalty to the Commonwealth where it is satisfied that a person has contravened a civil penalty provision. Subsection 75M(3) provides that subsection 75M(1) is a civil penalty provision. A person who fails to report information to the AUSTRAC CEO may be liable to civil penalty action by the AUSTRAC CEO.

Under subsection 175(4) of the AML/CTF, the maximum civil penalty that can be imposed by the Court for breaches of these provisions is 100,000 penalty units (currently $11 million) for a body corporate and 20,000 penalty units ($2.2 million) for a person other than a body corporate.

Under the expanded infringement notice scheme set up under items 35-47 it will also be possible for an infringement notices to be issued to a person who fails to advise AUSTRAC of material changes in their circumstances.

75N AUSTRAC CEO may request further information

This section empowers the AUSTRAC CEO to request further information from any person for the purpose of making a decision under Part 6 of the AML/CTF Act and makes it clear that the CEO is not required to consider an application until the further information has been provided.

The intention of this provision is to enable the AUSTRAC CEO to require additional information from another person to verify the information submitted by the applicant. For example AUSTRAC may request the AFP to verify information submitted by the applicant about convictions. Similarly AUSTRAC may wish to seek information from ASIC to verify information provided by a corporate applicant about company ownership.

75P Immunity from suit

This item confers immunity from suit upon the Commonwealth, the AUSTRAC CEO and AUSTRAC staff who exercise functions in relation to the publication of the remittance sector register or list of persons whose registration has been cancelled.

Division 4 – Notice and review of decisions

This new Division heading will improve the clarity of Part 6.

75Q Steps to be taken by AUSTRAC CEO before making certain reviewable decisions
75R Internal review of reviewable decisions
75S AAT review of decisions

Together these new sections set out the system of review for 'reviewable decisions', which are defined in section 5 to include decisions to refuse, cancel, or impose conditions on registration, as well as situations where an application is deemed to have been refused because a decision was not made within the timeframes specified under proposed subsections 75B(6) and 75B(7) (see items 11 and 31). These are decisions which may have a significant impact on a person's business or livelihood and the Government has sought to ensure that the Bill contains a robust system of review which supports fair and equitable application of the new laws.

In summary the new system of review operates as follows:

- The AUSTRAC CEO must (except in cases of urgency) give written notice of a proposed decision and provide an opportunity for the person to make a submission in response (subsection 75Q(1)).
- After making a reviewable decision in relation to a person the AUSTRAC CEO must ensure that the person is given a written notice containing key information about the decision, including rights of review (subsection 75R(1)).
- A person in relation to whom a decision is made may seek internal review of the decision. The AUSTRAC CEO must ensure independent review by an AUSTRAC officer who is senior to the original decision maker and who was

not involved in making the original decision. The reviewer may affirm, vary or revoke the decision (subsections 75R(3), (4), (5) and (6)).

In the majority of cases, registration decisions will be delegated by the AUSTRAC CEO to an AUSTRAC staff member in accordance with a delegation under section 222 of the AML/CTF Act. It is envisaged that instances where the AUSTRAC CEO would make a decision personally would be limited to circumstances where there were particular sensitivities – such as law enforcement operational issues – that required a decision to be made by the most senior person in the organisation.

A person to whom a reviewable decision relates may apply to the AAT for review of a decision made by a person on review of the original decision, or a decision made by the AUSTRAC CEO personally (section 75S).

There may be some instances where it is necessary for a registration decision to have immediate effect— for example, if the AUSTRAC CEO is aware that a serious criminal offence is about to occur. In such cases the AUSTRAC CEO is not required to give notice before making a reviewable decision in relation to a person (subsection 75Q(2)).

Division 5 – Basis of Registration

75T Basis of registration

This provision summarises the grounds on which registration is based, and in particular makes it clear that registration is defeasible and therefore subject to future modification or extinguishment, by or under later legislation, without compensation.

Item 32

The purpose of new subsection 84(5A) is to make remittance network providers responsible for preparing and maintaining an AML/CTF program for their registered remittance affiliates. A network provider may develop a single program which can be adopted by all of its affiliates, or separate programs which are tailored to the requirements of one or more affiliates.

The AML/CTF programs developed by a network provider under this section are entirely separate from the AML/CTF program that a network provider must maintain itself as a reporting entity that provides the remittance network facilitation services described in the new designated service in item 32A (see item 12 above). A key difference between the network provider's own AML/CTF program and the program that it develops for adoption by one or more affiliates is that the former will focus on registered remittance affiliates as the customers of the network provider's service, while the latter will focus on the customers of affiliates to whom affiliates are providing the money transfer services listed in items 31 and 32 of table 1, section 6 of the Act.

Item 33

The tipping off offence in section 123 prohibits a person from communicating information about a suspicious matter to anyone other than an AUSTRAC staff member. The new subsection 123(7A) will provide an exception to the tipping off offence for disclosures made between registered remittance network providers and their registered remittance affiliates, and vice versa. It does not allow disclosure between remittance affiliates which remains a breach of section 123 of the AML/CTF Act.

This exception is necessary to ensure that remittance network providers have the ability to operate their network in an efficient manner, including by providing advice, support and information on suspicious matters to their affiliates.

Item 34

This item amends subparagraph 167(1)(a)(iii) so that it refers to the new Remittance Sector Register.

Items 35 – 47

Part 15, Division 3 of the AML/CTF Act establishes an infringement notice scheme which applies to the unreported cross-border movements of physical currency and bearer negotiable instruments. Together, items 35-47will extend the infringement notice scheme to cover breaches of new subsections 74(1), (1A), (1B), (1C) (which relate to the provision of services without being registered or in breach of a registration condition) and 75M(1) (failing to advise AUSTRAC of material changes in circumstances).

The main enforcement options in the existing Act are civil penalties, criminal offences and enforceable undertakings. In many cases, particularly where minor breaches are involved, civil penalty or criminal action against the reporting entity may not be a proportionate response to the alleged breach. Further, these processes can be costly and time consuming for all parties involved. AUSTRAC is able to accept enforceable undertakings from regulated entities and this enforcement option has already been used in a number of cases. However, enforceable undertakings may not be the most appropriate enforcement tool for discrete instances of non-compliance, such as failure to advise AUSTRAC of a change in circumstances under new section 75M.

Enabling AUSTRAC to issue infringement notices will mean that the regulator can respond to breaches in a more efficient and proportionate way. The ability to impose infringement notices for non-compliance with obligations is consistent with the powers and approach of other regulators of Commonwealth legislation.
Proposed section 186A provides for the amount of the penalty that is to be set out in an infringement notice for breaches of certain provisions in Part 6 of the AML/CTF Act. The penalty payable will depend on whether or not the contravention is by a body corporate or a person other than a body corporate, and whether it is of a kind specified in the AML/CTF Rules.

Under proposed paragraphs 186A(1)(a) and 186(2)(a) the AML/CTF Rules may set out one or more kinds contraventions of subsections 74(1), 74(1A), 74(1B), 74(1)(C) or 75M(1) and specify for each contravention the number of penalty units that will apply. Proposed subsection 186A(5) provides that the maximum penalty that may be specified in the Rules must not exceed 120 penalty units for body corporate and 24 penalty units for a person other than a body corporate.

It is intended that the Rules would specify the provisions to be subject to higher pecuniary penalty amounts where it is likely that the lower default amounts of 60/12 penalty units would be an insufficient deterrent to comply with the provision, or to take into account instances where there have been a number of alleged contraventions of a Part 6 infringement notice provision, or where a reporting entity has previously been given an infringement notice in relation to an alleged contravention of a Part 6 infringement notice provision.

Item 48

Subsection 190(1) of the AML/CTF Act provides that the AUSTRAC CEO is to monitor compliance by reporting entities with their obligations under the Act.

Subsection 190(2A) clarifies AUSTRAC's compliance monitoring obligations with respect to the remittance sector. AUSTRAC considers that the most effective regulatory approach in the remittance sector will be for it to work closely with remittance network providers to monitor the activities of their remittance affiliates. This section makes it clear that AUSTRAC is not required to individually monitor every reporting entity registered as a remittance affiliate.

Part 2 – Transitional provisions relating to reporting entities

Items 49-52

There are two main sets of transition arrangements in the Bill. Items 49-52 set out which of the new measures in the Bill will apply to providers of remittance networks once they become reporting entities for the purposes of the AML/CTF Act. This will occur on Royal Assent and will be before the new registration scheme takes effect. This Part also provides for the delayed application of some of the obligations contained in the AML/CTF Act. Items 53-57 provides for the transition between the current registration scheme and the new registration scheme.

The transitional provisions in items 48-51 apply the reforms relating to ongoing customer due diligence (refer to item 14), imposition of Part 3 reporting obligations on remittance network providers (refer to item 20) and the exception to the 'tipping off' offence (refer to item 33).

With the introduction of the designated service of operating a remittance network (see item 12), remittance network providers will become subject to all of the obligations in the AML/CTF Act including conducting customer due diligence, reporting obligations, developing and maintaining an AML/CTF Program and record keeping. Item 52 delays for 12 months from the date of Royal Assent certain AML/CTF Act obligations. This will give businesses preparation time to ensure that they are able to

comply with their new obligations, and is consistent with the approach taken when the AML/CTF Act was first introduced in 2006 (the Act provided for the staggered commencement of obligations over a two year period).

Part 3 – Transitional provisions relating to other matters

Items 53 - 57

The amendments in this Bill implement significant changes to the regulation of the remittance sector in Australia. The transitional provision set out in items 53 to 57 will ensure that remittance network providers, remittance affiliates and independent remittance dealers have sufficient time to adjust to the new registration requirements and can continue to operate their businesses as they prepare for compliance with the new arrangements.

In summary, the transition arrangements for moving from the old to the new registration scheme operate as follows:

- The Minister for Home Affairs and Justice will, by Proclamation, set a registration commencement day.

- A person providing a remittance network services immediately before the registration commencement day will be given 12 months to make an application for registration as a remittance network provider. Such persons will be able to continue operating their business without committing an offence under proposed section 74(1) until such time as their application is finally determined.

- The old register will continue in existence until it becomes obsolete by virtue of registration applications under the new law being finally determined. Until this occurs, a person who wants to provide a designated registrable remittance service may be added to the old register providing that the AUSTRAC CEO has given his consent, having regard to matters specified in the AML/CTF Rules. Keeping the old register operative recognises that during the registration transition period there may be a need to register a person on the old register because it would not be possible to register them on the new one. For example, there may be circumstances where a network provider is not yet registered but has a new affiliate join their network.

- People who are on the old register (whether as at, or after, the registration commencement day) must apply for registration under the new law within 6 months of the registration commencement day if they wish to be registered as an independent remittance dealer, and within 12 months if seeking registration as an affiliate. A person who does not make an application within these timeframes will be committing an offence under subsections 74(1A) or 74(1B). Once an application is made, a person can provide a remittance service without breaching these offence provisions until such time as the application has been finally determined.

- The AUSTRAC CEO will be able to cancel the registration of a person who is listed on the old register if satisfied that not to do so would involve significant money laundering, financing of terrorism or people smuggling risk.

- A decision by the AUSTRAC CEO to refuse to consent to a person being registered on the old register, and a cancellation decision are reviewable decisions.

The transitional provisions will cease to have any application once applications made during the transition period are finally determined, Accordingly, the transitional provisions will remain in the amending Act and will not be incorporated into the consolidated text of the AML/CTF Act.

Part 4 – Transitional regulations

Item 58

This item enables the Governor General to make regulations prescribing matters of a transitional nature relating to the amendments or repeals in the Bill.

Schedule 2– Designated agencies

Item 1

This item introduces a definition of 'Defence Department'. The term is included because a few of the new designated agencies prescribed by this Bill are part of the Defence Department (see items 6, 7, 8 and 9)

Item 2

This item defines the term 'defence intelligence agency' and comprises of terms defined by items 7, 8 and 9.

Item 3

This item defines the term 'Defence Minister'.

Item 4

This item defines the term 'Department of Foreign Affairs and Trade' (DFAT). This term is included because under this Bill DFAT is a new designated agency (see item 5).

Items 5 and 6

The definition of 'designated agency' in section 5 of the AML/CTF Act lists certain Federal, State and Territory agencies which have access to AUSTRAC information under Part 11 of the Act.

These items add the Department of Foreign Affairs and Trade, Defence Imagery and Geospatial Organisation (DIGO), Defence Intelligence Organisation (DIO), Defence Signals Directorate (DSD) and the Office of National Assessments (ONA) to the definition of designated agency.

More detailed definitions of these agencies are included at items 7, 8, 9 and 11.

Items 7, 8 and 9

These items define the acronyms DIGO, DIO and DSD. These terms are included because under the Bill these agencies become designated agencies for the purposes of the AML/CTF Act (see item 6).

Item 10

This item defines the term 'Foreign Affairs Minister' which forms part of the definition of Department of Foreign Affairs and Trade (see item 4).

Item 11

This item defines the acronym 'ONA'. This term is included because under the Bill the Office of National Assessments becomes a designated agency for the purposes of the AML/CTF Act (see item 6)

Items 12 and 13

Section 127 of the AML/CTF Act makes it an offence for an official of a designated agency to disclose AUSTRAC information (known as 'accessed information') unless one of the exceptions in subsection 127(3) applies. For instance, disclosure is permitted if it is for the purposes of, or in connection with, the performance of official duties, or specifically authorised under the AML/CTF Act.

This item amends subsections 127(3) to include as an exception to the disclosure offence, disclosure by the Directors of DIO and DSD and the Director-General of ONA to foreign intelligence agencies in accordance with proposed sections 133B and 133C (see item 16).

Item 14

Section 128 of the AML/CTF Act sets out the circumstances where AUSTRAC information can be passed on by an official of a designated agency.

This item inserts provisions to allow defence intelligence agency and ONA officials to disclose AUSTRAC information to certain persons, most notably to an Inspector-General of Intelligence and Security (IGIS) official, Ministers with responsibility for those agencies and the Minister responsible for administering *Telecommunications (Interception and Access) Act 1979.* In addition, because an official of DIGO or DSD may be required under the *Intelligence Services Act 2001* to disclose information to the Prime Minister, Minster for Foreign Affairs or the Attorney-General, proposed paragraph 128(13B)(d) makes specific reference to such disclosure for the purposes of exercising a power under section 9A of the *Intelligence Services Act 2001*.

Proposed subsections 128(13A) and 128(13B) are necessary because the IGIS, which reports annually on intelligence agencies' AUSTRAC access compliance, is extending its oversight to DIGO, DIO, DSD and ONA. In order to properly oversee these agencies, the IGIS may need to have access to AUSTRAC information. Enabling disclosure to be made to the Defence Minister (in the case of a defence intelligence agency) and the Prime Minister (in the case of ONA) will ensure that they are able to obtain all relevant information necessary to carry out their responsibilities in respect of those agencies.

Item 15

Section 128 of the AML/CTF Act sets out circumstances in which AUSTRAC information can be passed on by an official of a designated agency.

This item is a consequential amendment to item 6, which expands the members of the Australian intelligence community that have access to AUSTRAC information to

include DIGO, DIO, DSD and ONA. It amends subsection 128(19) which outlines the circumstances and to whom an IGIS official can disclose AUSTRAC information.

Item 16

Subdivision 5 of Part 11 of the AML/CTF Act governs the communication of AUSTRAC information to foreign countries, and is an exception to the disclosure offence in section 127 of the Act.

This item inserts provisions that will allow the Director of DIGO, DIO or DSD as well the Director-General of ONA to communicate AUSTRAC information to a foreign intelligence agency providing that the foreign agency has given appropriate undertakings surrounding confidentiality and use.

The proposed sections 133B and 133C replicate sections 133 and 133A of the AML/CTF Act which give such a power to ASIO and ASIS. The ability to communicate AUSTRAC information to a foreign intelligence agency is necessary to enable international coordination of financial intelligence.

Schedule 3 – Verification of Identity

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Items 1 – 5

These items insert new definitions into section 5 of the AML/CTF Act.

Item 6

This item inserts a new Division 5A into the AML/CTF Act which makes provision for the use and disclosure of personal information by reporting entities and credit reporting agencies for the purposes of verifying an individual's identity.

Subsection 35A(1) authorises a reporting entity to provide an individual's name and/or residential address and/or date of birth to a credit reporting agency and to request the reporting agency to provide report on whether the information matches that in the relevant credit information file held by the credit reporting agency. Importantly, subsection 35A(2) provides that a reporting entity must not make a verification request unless it has first given the individual information about the proposed process, obtained the individual's express consent and made available an alternative means of identity verification. Each of these requirements is important to ensure that consumers are able to make a real and informed choice before consenting to a reporting entity verifying their identity by reference to the personal information held on their credit information file. Further, the requirement for a reporting entity to provide an alternative means of verification will ensure that individuals who do not have a credit profile will not be prevented from obtaining designated services from reporting entities.

National Privacy Principle 2 in Schedule 3 of the *Privacy Act 1988* relates to the use and disclosure of personal information. Paragraph 2.1 states that an organisation must not use or disclose personal information about an individual for a secondary purpose other than the primary purpose of collection unless the disclosure meets one of several exceptions. Paragraph 2.1(g) provides an exception for a use or disclosure that is required or authorised by or under law. Subsection 35A(3) deems disclosure by a reporting entity of personal information in accordance with paragraph 35A(1)(a) to be authorised by law for the purposes of the Privacy Act.

In addition, the requirement for express consent set out in paragraph 35A(2)(b) will mean that the disclosure of information by a reporting entity also comes within paragraph 2.1(b) of Schedule 3 of the *Privacy Act 1988* which provides for an exception where the individual has consented to the use or disclosure.

Section 35B sets out what a credit reporting agency may do with the information that it receives from a reporting entity or its authorised agent, and the information that it may provide in response.

Subsection 35B(1) enables a credit reporting agency to prepare a report for a reporting entity or its authorised agent as to whether the personal information it was provided matches information it holds on a credit information file. It is important to note the

nature of the process undertaken by the credit reporting agency which is a simple matching process focused on the name, address and date of birth details provided by the reporting entity. A credit reporting agency that has received a verification request from a reporting entity is not permitted to consider other aspects of a person's credit file beyond the details that correspond with the information provided by the reporting entity.

Paragraph 35B(1)(b) permits a credit reporting agency to use both 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 providing the assessment for the reporting entity. It is necessary for the credit reporting agency to be able to have regard to information held on other individuals in order to undertake an effective matching process by ruling out similar but non-matching individuals.

The purpose of subsection 35B(2) is to limit the information that a credit reporting agency may provide to a reporting entity as part of an assessment in response to a verification request. A credit reporting agency may only provide an overall assessment of the extent of the match between the personal information. It is not permitted to provide a separate assessment of the match between the name, address and date of birth information provided by the reporting entity.

In practice this is likely to mean that a credit reporting agency will provide a requesting reporting entity with an assessment containing an aggregate score or ranking which reflects the extent of the match across all fields of personal information that were checked. For example where a credit reporting agency has identified a complete match for all personal information provided, the assessment may specify a 'complete match' or '100% match' depending on how the credit reporting agency has chosen to express its assessments. Similarly, where a match is incomplete due to a minor mismatch of information the assessment may specify a 'strong match' or '90%' match depending on how the credit reporting agency has chosen to express and calibrate its assessments. Further, where a match is incomplete due to a significant mismatch of information, the assessment may specify a 'no match' result or, for example, a '25%' match.

The requirement for credit reporting entities to provide aggregated results will limit the ability of criminals to use a 'trial and error' approach to obtain designated services using a false or stolen identity by analysing the results of identity verification requests.

Part IIIA of the Privacy Act deals with credit reporting. Subsection 18K(1) prohibits a credit reporting agency from disclosing personal information contained in a credit reporting file unless one of a number of exceptions applies. Subparagraph 18K(1)(m) provides for an exception when the disclosure is required or authorised by or under law. Under subsection 35B(3) of the Bill a disclosure of personal information by a credit reporting agency in the course of providing an assessment to a reporting entity is taken to be authorised by law for the purposes of the Privacy Act.

Section 35C will require a reporting entity to provide an individual with written notice of a failed attempt at identity verification using credit reporting data. Under

subparagraph 35C(2)(b) the information that must be provided includes the name of the credit reporting agency that provided the assessment. This will enable affected individuals to make enquiries as to the accuracy of personal information held by a credit reporting agency should they wish to do so.

Under subparagraph 35C(2)(c) if a reporting entity is unable to verify the identity of an individual using credit reporting data it must offer the individual an alternative means of verifying the individual's identity. This requirement will ensure that individuals who do not have a credit profile will not be precluded from obtaining designated services from reporting entities.

Ordinarily, by virtue of subsection 18K(5) of the *Privacy Act 1988*, a credit reporting agency is required to make a file note of any disclosure of personal information contained in an individual's credit information file. However, section 35D prohibits a credit reporting agency from including on an individual's credit information file personal information that relates to a verification request or assessment in relation to the individual. A credit reporting agency will not be permitted to use information related to identity verification requests for any purpose other than the verification of the identity of an individual requested by a reporting entity. The prohibition in section 35D will assist to ensure that information about identification requests is not used for an unauthorised purpose, including the assessment of credit worthiness.

Sections 35E and 35F address the retention and destruction of information about verification requests by credit reporting agencies and reporting entities respectively. Verification information must be deleted after 7 years. The retention and destruction requirements enhance the transparency of the identity verification process by ensuring that credit reporting agencies and reporting entities retain records that can be reviewed to ensure compliance with the Act, and that individuals who are the subject of verification requests may seek access to verification information under section 35G to understand how their information has been used. The seven year retention period is consistent with existing records retention requirements under the AML/CTF Act.

Subsection 35E(3) and 35F(4) provide that the information retention and deletion requirements for credit reporting agencies and reporting entities are civil penalty provisions. Accordingly the AUSTRAC CEO may apply for a civil penalty order under section 176 of the AML/CTF Act in the event of a breach.

Section 35G requires credit reporting agencies and reporting entities to take reasonable steps to ensure that individuals can obtain access to personal and other information about verification requests or assessments.

Sections 35H, 35J and 35K establish the offences of unauthorised access to verification information, obtaining access to verification information by false pretences, and unauthorised use or disclosure of verification information. Each of the offences carries a penalty of 300 penalty units which will act as a powerful disincentive to misuse of verification information. The offences and penalties also reflect the seriousness with which the Government views any breach of privacy through the misuse of verification information.

Section 35L provides that a breach of a requirement of Division 5A by a credit reporting agency or a reporting entity constitutes an interference with the privacy of the individual for the purposes of the Privacy Act. An individual affected by an alleged breach may complain to the Australian Information Commissioner in accordance with section 36 of the Privacy Act. This process will provide a further safeguard against the misuse of verification information.

Items 7 – 10

Items 7, 8 and 9 amend subsections 37(1), 37(2) and 37(3) respectively to clarify that a reporting entity may authorise an agent to undertake both customer identification and verification procedures.

Item 10 adds a new subsection 37(4) which seeks to reaffirm the Government's view that the principle of agency operates broadly across the Act.

Privacy Act 1988

Items 11 – 12

These items insert definitions for 'authorised agent of a reporting entity' and 'reporting entity'.

Item 13

This item amends subsection 6E(1A) to make it clear that a small business acting as an authorised agent of a reporting entity will be subject to the Privacy Act in the circumstances set out in that section.

Item 14

AML/CTF Act reporting entities are currently subject to the *Privacy Act 1988* in regard to how they collect and handle personal information in complying with their AML/CTF obligations. This includes reporting entities that are small businesses that may be exempt from obligations under the Privacy Act in relation to their other business activities.

This item amends subsection 6E(1A) to ensure that the Privacy Act will apply to a small business in a situation where its activities are related to the AML/CTF Act, its Rules or regulations, but are not in compliance with it. For example, the amended subsection 6E(1A) would apply to a small business that is collecting personal information in purported compliance with the AML/CTF Act even if the collection is not authorised by the AML/CTF Act. In that case the small business would be subject to the Privacy Act in respect of the activities undertaken in purported compliance with the AML/CTF Act. Without this amendment a business that is acting unlawfully may not be subject to obligations under the Privacy Act.

Items 15-18

Under proposed section 35L a breach of a requirement of the Division will be an interference with the privacy of the individual for the purposes of sections13 and 13A of the *Privacy Act 1988*.

These items insert notes under sections 13 and 13A of the Privacy Act to alert users of the legislation to these new provisions in the AML/CTF Act.

Items 19 – 20

Section 49 of the Privacy Act provides for cessation of an investigation by the Australian Information Commissioner into an interference with privacy when the Commissioner forms the opinion that a tax file number offence or a credit reporting offence may have been committed. These items add the commission of an AML/CTF verification offence as a further basis for the cessation of an investigation.

Schedule 4 – Amendment of the Financial Transaction Reports Act 1988

Item 1

Section 248 of the AML/CTF Act enables the AUSTRAC CEO to exempt, by way of a written instrument, a specified person from one of more provisions of that Act. There is no similar power under the FTR Act and in some circumstances, particularly where there are duplicate obligations on individual businesses or classes of business, it can result in an unnecessary regulatory and administrative burden.

This item provides that the AUSTRAC CEO may, by written instrument, exempt a specified person from one or more provisions of the FTR Act. An exemption may apply unconditionally or be subject to conditions. A copy of the exemption must be published on the AUSTRAC internet site.