



Australian Government

Australian Transaction Reports
and Analysis Centre

Post-implementation review:

*Chapter 58 and Chapter 59 of the Anti-Money
Laundering and Counter-Terrorism Financing
Rules relating to the cancellation and
suspension of remittance dealer registrations*

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Purpose

1. The Australian Transaction Reports and Analysis Centre (AUSTRAC) is undertaking a post-implementation review (PIR) to assess the impact of Chapter 58 and Chapter 59 of the Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules), which relate to the cancellation and suspension of remitter registrations.

Consideration of issues

What problem was the regulation meant to solve?

2. The remittance sector allows individuals and business to transfer funds and property to, and receive funds and property from, a person in another country relatively quickly, securely and cost effectively.
3. The sector is particularly valuable in countries that do not have established banking networks. However, the remittance sector is also recognised both in Australia and internationally as a high-risk sector for money-laundering and terrorism-financing (ML/TF). Remittances 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.
4. In Australia, remittance dealers are regulated under the AML/CTF Act as reporting entities and must comply with a range of obligations including customer identification and verification, transaction reporting and establishing an AML/CTF program.
5. The *Combating the Financing of People Smuggling and Other Measures Act 2011* (CFPSOM Act)¹ amended Part 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)² to introduce new registration requirements for the remittance sector which took effect from 1 November 2011.
6. Prior to the amendments to the AML/CTF Act introduced by the CFPSOM Act, remittance providers were required to be registered on the Register of Providers of Designated Remittance Services (PoDRS), as previously prescribed in Part 6 of the AML/CTF Act.
7. Under those superseded requirements, there was no clear authority for the AUSTRAC CEO to suspend, cancel or impose conditions on a remittance dealer's registration if the AUSTRAC CEO formed the view that the person on the register should not be providing remittance services. The AUSTRAC CEO could only remove a person's name and registrable details from the PoDRS when the CEO considered that having the person's name and registrable details on the register would constitute an unacceptable money-laundering or terrorism-financing risk.
8. In response to concerns from Australian law enforcement agencies, the CFPSOM Act amended the AML/CTF Act to:
 - address vulnerabilities posed by the remittance sector;
 - reduce the risk of criminal influence and exploitation in the remittance sector;

¹ Available on the [ComLaw website](#).

² Available on the [ComLaw website](#).

- provide further avenues to address non-compliance with AML/CTF requirements; and
 - improve the resilience and effectiveness of the remittance sector as a whole.
9. The amendments introduced new registration requirements which replaced the PoDRS with the Remittance Sector Register (RSR). In addition to the introduction of the RSR, the amendments to the AML/CTF Act provided the AUSTRAC CEO with explicit powers to assess the suitability of each registration applicant, impose conditions on registration and suspend or cancel a remittance dealer's registration. These measures were included in the legislative framework to address ML/TF risk in the sector.

Why was government action needed?

10. Australian law enforcement agencies were aware that remittance services were being used to facilitate serious and transnational crime, including people smuggling ventures. These threats were undermining the integrity of the remittance sector.
11. The objective of the government action was to introduce a more comprehensive regulatory regime for the remittance sector in order to reduce the incidence and risk of:
- remittance funds being used to fund terrorism or other serious crime; and
 - proceeds of crime being hidden through the use of remittance services.
12. Sections 75G and 75H were enacted to prevent 'high risk' remittance dealers from operating, or continuing to operate, as remittance dealers. The intended outcome of these provisions is to protect the commercial significance of the remittance sector in Australia's financial system and its role in global financial inclusion.
13. Providing the AUSTRAC CEO with mechanisms to cancel or suspend a remittance dealer's registration improves the resilience and effectiveness of the sector as a whole and reduces the opportunities for criminals to misuse 'weak links' in the sector to move, hide and disguise the profits of their crimes. These mechanisms provide the AUSTRAC CEO with the ability to prevent unsuitable persons from remaining registered.
14. Both sections 75G and 75H provide for AML/CTF Rules which would provide additional prescriptive detail in relation to the AUSTRAC CEO's cancellation and suspension of registration powers. These provisions enable the AUSTRAC CEO to respond promptly to new and emerging threats identified by law enforcement and other partner agencies by amending the AML/CTF Rules. The Chapters specify the circumstances under which a remittance dealer's registration may be suspended or cancelled.

What policy options were considered?

15. Two options were considered when determining to how best give effect to the powers in sections 75G and 75H:
- **Option 1:** make AML/CTF Rules in relation to the cancellation and suspension of registration of a remittance dealers; or
 - **Option 2:** not make any AML/CTF Rules.
16. Both of these options were outlined and discussed in the RIS.³

³ See pages 8–12 of the RIS, which is available on the [Department of Prime Minister and Cabinet's, Office of Best Practice Regulation website](#).

17. Option 1 was ultimately adopted as Option 2 was narrowed by the provisions of section 75G of the AML/CTF Act which provide that cancellation is appropriate if the continued registration of the person involves, or may involve, a significant money-laundering, financing of terrorism or people-smuggling risk or there have been one or more breaches of a condition of registration by the remitter.⁴
18. The decision to adopt Option 1 avoids this difficulty by allowing the AML/CTF Rules to comprehensively list matters which the AUSTRAC CEO may consider in regard to any decision to suspend or cancel the registration of a remittance provider. The listing of these matters provide clarity and transparency to the remittance sector of the expectations required of those registered on the Remittance Sector Register.

What were the impacts of Chapters 58 and 59?

19. The total number of registrations on the RSR, as at 12 June 2015⁵, is 6075. The majority of these registrations are for affiliate remitters that form part of larger networks. The breakdown of the different types of remittance registrations is as follows:
 - 85 remittance network providers
 - 5414 remittance affiliates
 - 576 independent remittance providers.
20. The AUSTRAC CEO has made four decisions to suspend registration since the section 75H provision commenced in 2011.⁶ These were dated 17 September 2014, 19 September 2014, 26 September 2014 and 17 October 2014. It is noted that three of these suspensions were in regard to the same entity.⁷
21. In summary, the grounds for suspension were:
 - AUSTRAC had commenced action to cancel the registration of the remitter which had been suspended
 - A person who was among the key personnel of the remitter was convicted in relation to money laundering⁸
 - Failure to advise AUSTRAC of a material change that could affect a person's registration, in this case, the conviction for money-laundering⁹
22. In total the AUSTRAC CEO has made nine decisions to cancel a remittance dealer's registration under section 75G since the provision commenced in 2011, as their operations represented a significant money-laundering, terrorism-financing or people-smuggling risk. These occurred on 14 April 2014, 14 July 2014, 8 October 2014, 10 November 2014, 20 November 2014, 17 December 2014, two on 3 February 2015 and one on 5 May 2015.
23. Details of both suspensions and cancellations are available on [AUSTRAC's website](#).
24. The quantitative impact on the remittance sector is low as the powers are only used if there have been substantial breaches of obligations under the AML/CTF Act or AML/CTF Rules. In such circumstances, it is appropriate that there should be a regulatory impact on the relevant remittance service providers, either temporarily in the case of a suspension, or permanently in the case of a cancellation.

⁴ Paragraph 75G(1)(a)(b).

⁵ The most recent figures available.

⁶ As at 27 May 2015.

⁷ The subsequent suspensions extended the initial suspension.

⁸ Chapter 59, subparagraph 59.3(1)(a).

⁹ Chapter 59, subparagraph 59.3(2).

25. It is difficult to qualitatively assess the impacts on the remittance sector as a result of Chapters 58 and 59. The small number of suspensions and cancellations appear to indicate that most remittance dealers conduct their affairs in accordance with their obligations under the AML/CTF Act and AML/CTF Rules, and therefore the chapters will have no impact upon them because of that compliance.
26. The existence of the suspension and cancellation powers may also have a deterrence impact on the remittance sector, which may lessen if the Chapters were not in place.

Which stakeholders have been consulted?

27. A draft PIR was published for public consultation on the AUSTRAC website from 2 February 2015 until 13 March 2015. In addition, AUSTRAC contacted by email every entity registered on the Remittance Sector Register (approximately 5500), to alert them to the publication of the draft PIR and inviting submissions regarding the issues which it covered. AUSTRAC also contacted industry associations directly,¹⁰ certain federal and law enforcement agencies¹¹ and the Office of the Australian Information Commissioner. An article in the AUSTRAC newsletter, *E-news*, was published in February 2015.
28. It is noted that the OBPR Guidance Note, *Post-Implementation Reviews* states that:

Your ministerial advisory council must be consulted during the preparation of a PIR. As peak members of the affected industry, they will be able to give you valuable suggestions and feedback on the performance of the regulation.¹²
29. AUSTRAC notes that there is no Ministerial Advisory Council (MAC) relevant to the remitter sector and no MAC-equivalent bodies with which AUSTRAC could consult on the PIR. As a result AUSTRAC has adopted a strategy of broad public consultation (including directly with the remittance sector), given the absence of a MAC or equivalent.
30. As detailed in paragraph 27 above, AUSTRAC considers that its consultation on the PIR has been extensive and fulfils the consultative requirements envisaged by the OBPR guidance.
31. The following questions were incorporated into the draft PIR for consultation purposes:

To enable AUSTRAC to assess the impacts of Chapters 58 and 59 of the AML/CTF Rules, AUSTRAC requests stakeholder views on the feedback questions below:

 1. To what extent do you consider that Chapters 58 and 59 are meeting the government's objectives of combating money laundering, financing of terrorism and people smuggling in the remittance sector?
 2. What are the benefits of having Rules which specify matters for the AUSTRAC CEO to consider before deciding to suspend and/or cancel a remitter's registration? These can include benefits to businesses (including small businesses), individuals and community organisations.
 3. What impact have Chapters 58 and 59 had on the regulatory/compliance costs of businesses (including small businesses), individuals, community organisations or the remittance sector overall? If possible, please quantify or estimate the regulatory/compliance costs you describe (in dollar amounts or additional hours).

¹⁰ Australian Remittance and Currency Providers Association, Australian Financial Markets Association, Australian Bankers' Association, and the Financial Services Council.

¹¹ The Australian Taxation Office, Australian Federal Police, Australian Crime Commission, and the Australian Customs and Border Protection Service.

¹² July 2014, page 9.

4. What effect(s), if any, have Chapters 58 and 59 had on competition within the remittance sector (including businesses entering or leaving the sector)? Please include actual or estimated figures in your response.
 5. What changes, if any, do you think should be made to Chapters 58 and 59?
 6. Generally, how well do you think Chapters 58 and 59 are operating?
32. A total of six submissions were received:
- Australian Crime Commission
 - Australian Federal Police
 - Australian Remittance and Currency Providers Association
 - Kings Currency Exchange Pty Ltd
 - Lanka Currency Converter Pty Ltd
 - Refugee Council of Australia
33. Stakeholder responses are grouped under the questions in the draft PIR as released for public consultation, together with the AUSTRAC consideration of the issues raised.

To what extent do you consider that Chapters 58 and 59 are meeting the government’s objectives of combating money laundering, financing of terrorism and people smuggling in the remittance sector?

34. Stakeholders were generally in agreement that the Chapters were valuable in addressing the government’s objectives.
35. However, concerns were raised about the ‘threshold’ which needs to be achieved before a suspension or cancellation decision can be made by the AUSTRAC CEO with a perception being that such decisions rely upon a charge being laid or civil penalty being made against a remittance provider. It was also suggested that AUSTRAC is not sufficiently resourced to effectively implement the Chapters by identifying behaviour that warrants a cancellation.
36. AUSTRAC notes that the Schedule to Chapter 58 lists a range of matters which may be considered by the AUSTRAC CEO, some of which relate to a person having been charged, prosecuted, convicted, or subject to a civil penalty order.¹³ They also include the provision of false information¹⁴ on registration or renewal of registration¹⁵, changes in registration details¹⁶, and any contravention of the AML/CTF Act and AML/CTF Rules¹⁷.
37. AUSTRAC has cancelled and suspended registrations of remittance service providers and continues to monitor the sector for activities which warrant consideration by the AUSTRAC CEO on whether further cancellations or suspensions should take place. The small number of cancellations and suspensions are considered indicative of the majority of remittance service providers being compliant with their obligations under the AML/CTF Act and AML/CTF Rules.

¹³ Paragraph 1.
¹⁴ Subparagraph 3(a).
¹⁵ Subparagraph 3(b).
¹⁶ Subparagraph 3(c)-(d).
¹⁷ Paragraph 4.

What are the benefits of having Rules which specify matters for the AUSTRAC CEO to consider before deciding to suspend and/or cancel a remitter's registration?

38. Stakeholders stated that the Chapters were important in providing clarity and consistency to the remittance sector about the matters which the AUSTRAC CEO may consider in deciding whether to suspend or cancel the registration of a remitter provider. The publication of these matters in the Chapters also provides information to remitters on what behaviour is considered unacceptable in the sector.

What impact have Chapters 58 and 59 had on the regulatory/compliance costs of businesses (including small businesses), individuals, community organisations or the remittance sector overall?

39. Industry stakeholders noted that there were no regulatory/compliance costs imposed upon business as a result of the Chapters.

What effect(s), if any, have Chapters 58 and 59 had on competition within the remittance sector (including businesses entering or leaving the sector)?

40. Some stakeholders noted that there has been no effect on competition within the sector and that the low number of suspensions and cancellations did not diminish the number of remitters still able to provide remittance services to the public.
41. Others considered that cancellations and suspensions result in business losses for the entire sector as this will affect the persons involved in the sector, such those who work in remittance businesses and the beneficiaries who are dependent on the remittance of money for their livelihood.

What changes, if any, do you think should be made to Chapters 58 and 59?

42. It was suggested that the Chapters should be broadened to allow a greater range of information which the AUSTRAC CEO could consider in making a suspension or cancellation decision.
43. AUSTRAC notes that the Chapter 58 currently allows the AUSTRAC CEO to consider matters outside those expressly stated in the Schedule to the chapter. This is achieved through the broad scope of paragraph 58.2: '*Without limiting the matters to which the AUSTRAC CEO may have regard...when deciding to cancel the registration...*' [emphasis added]¹⁸.
44. AUSTRAC therefore considers that it is not necessary to amend Chapter 58.
45. In contrast, Chapter 59 does not use this language, but instead states, 'In respect to matters relating to the grounds for suspension, any of the following are grounds for suspension of registration...'.¹⁹ Accordingly, AUSTRAC considers it appropriate that the wording of the chapter should be amended in order to align it with the language of paragraph 58.2 as noted above.
46. It was also suggested that the Chapters be extended to allow information relevant to subdivision 119.2 of the *Criminal Code Act 1995* to be considered by the AUSTRAC CEO and

¹⁸ Paragraph 58.2.

¹⁹ Paragraph 59.3.

that the existing definition of 'terrorism' in the Chapters be expanded to accommodate recent changes to the definition of 'terrorism offence' in section 3 of the *Crimes Act 1914*.

47. Subdivision 119 relates to foreign incursions and recruitment, with subdivision 119.2 making it an offence for a person to enter or remain in a 'declared area', which is defined as where 'a listed terrorist organisation is engaging in a hostile activity'. The offence includes an Australian citizen or resident entering or remaining in a declared area in a foreign country.
48. AUSTRAC notes the discussion above at paragraph 43 and considers that the existing language of Chapter 58 is sufficiently broad to capture that offence as a relevant matter for the consideration of the AUSTRAC CEO in deciding to cancel a registration.
49. AUSTRAC also considers that the proposed broadening of the language in Chapter 59 as discussed above in paragraph 45, will allow consideration of such a matter if the AUSTRAC CEO deemed it relevant in deciding whether to suspend a registration.
50. The current definition of 'terrorism' in both chapters²⁰ states:

'terrorism' means conduct that amounts to:

- (a) an offence against Division 101 or 102 of the Criminal Code;
- or
- (b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or
- (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a).

51. Division 101 relates to Terrorism, while Division 102 relates to Terrorist organisations.

52. The section 3 definition in the *Crimes Act 1914* states:

'terrorism offence' means:

- (a) an offence against Subdivision A of Division 72 of the *Criminal Code* ; or
- (aa) an offence against Subdivision B of Division 80 of the *Criminal Code* ; or
- (b) an offence against Part 5.3 or 5.5 of the *Criminal Code*; or
- (c) an offence against either of the following provisions of the *Charter of the United Nations Act 1945* :
 - i. Part 4 of that Act;
 - ii. Part 5 of that Act, to the extent that it relates to the *Charter of the United Nations (Sanctions--Al-Qaida) Regulations 2008*.

53. Subdivision A of Division 72 relates to international terrorist activities using explosive or lethal devices, subdivision B of Division 80 relates to treason, Part 5.3 relates to Knowledge, Part 5.5 relates to Negligence, while the provisions of the *Charter of the United Nations Act 1945*, relate to Security Council decisions relevant to terrorism or dealing with assets (Part 4) and offences relevant to United Nations sanctions (Part 5).

54. AUSTRAC notes that both Chapters also include a definition of 'serious offence':

'serious offence' means an offence which is:

- (a) an offence against a law of the Commonwealth, or a law of a State or Territory, punishable on indictment by imprisonment for life or 2 or more years, that may be dealt with as an indictable offence (even if it may, in some circumstances, be

²⁰ It is noted that the definition is also used in Chapter 56 (Information to be included in an application for registration) and Chapter 60 (Changes in registration details).

dealt with as a summary offence) regardless of whether the offence proceeds summarily or on indictment; or

- (b) an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence.

A 'serious offence' in relation to a person other than an individual means an offence which would have been a serious offence if the person had been an individual.²¹

- 55. AUSTRAC considers that the broad ambit of the 'serious offence' definition is sufficient to capture the *Crimes Act 1914* definition of 'terrorism offence' and any other serious offences which may be enacted. It is noted that all of the elements of the 'terrorism offence' definition, have penalties of two years or more and therefore fall within the definition of 'serious offence', except for Part 5.3 and Part 5.5 of the *Criminal Code Act 1995*, where penalties are not applicable as the provisions are explanatory, and Part 4 of the *Charter of the United Nations Act 1945* where the penalties are expressed in penalty units.
- 56. Accordingly, AUSTRAC does not consider it necessary to amend the current definition of 'terrorism' as that definition, together with the definition of 'serious offence', are sufficient to capture an appropriate range of criminal activity relevant to the Chapters. It is also noted that the broad ambit of Chapter 58 as discussed above at paragraph 43 and the proposed broadening of Chapter 59 as discussed above at paragraph 45, will allow the AUSTRAC CEO to consider relevant matters even if not expressly stated in the Chapters, including within the definitions.
- 57. Stakeholders also suggested that:
 - (a) a new item should be added to the Schedule of Chapter 58 requiring the AUSTRAC CEO to consider whether a person has contravened a provision of the AML/CTF Act or AML/CTF Rules.
- 58. AUSTRAC notes that Paragraph 4 of the Schedule already contains this provision.
 - (b) Subparagraph 59.3(4) of Chapter 59 should be amended from 'The person has contravened...' to 'The person has contravened, or the AUSTRAC CEO suspects on reasonable grounds that the person may have contravened...'
- 59. AUSTRAC considers that 'contravention' rather than 'suspected contravention' is the appropriate principle to apply in making decisions under the Chapters, given the impact on the business of a remittance service provider as a result of a suspension or cancellation.
 - (c) Subparagraph 59.3(4)(b) of Chapter 59 should be amended from 'a provision of the AML/CTF Act' to 'either a provision of the AML/CTF Act or these Rules'.
- 60. AUSTRAC notes that subparagraph 59.3(4)(b) currently states, 'a provision of the AML/CTF Act or a requirement in the AML/CTF Rules' and therefore does not consider that any amendment is warranted.
- 61. Submissions noted that AUSTRAC operating procedures should ascertain whether there are underlying reasons for a remitter's apparent contravention and that the remitter service provider should have the opportunity to remediate their actions before a cancellation decision is made.
- 62. It was stated that there should be a proportionate response to the contravention (including other forms of remedial action and enforcement, if appropriate), with cancellation only being undertaken when the ML/TF/PS risk is very high. It was suggested that an independent committee could be established to review the circumstances before a cancellation decision is made.

²¹ The definition of 'serious offence' is also included in Chapter 56 and Chapter 60.

63. AUSTRAC considers carefully the circumstances of the remittance service providers before any decision to suspend or cancel the registration is made. Where appropriate, AUSTRAC provides opportunities for the provider to rectify identified deficiencies in regard to their obligations under the AML/CTF Act and the AML/CTF Rules.
64. AUSTRAC also formally writes to providers with 'show cause' letters which set out the reasons as to why a decision to suspend or cancel a remitter's registration should not be made, thereby allowing the person to make a submission on the potential action.
65. If a decision to cancel a registration is made, this is a 'reviewable decision' for the purposes of Part 17A of the AML/CTF Act. Part 17A provides that specified decisions of delegates of the AUSTRAC CEO may be reviewed by the Administrative Appeals Tribunal (AAT). This will follow internal reconsideration of the decision by the AUSTRAC CEO or a delegate of the AUSTRAC CEO who was not involved in the making of the decision. The AAT may also review decisions made by the AUSTRAC CEO personally.
66. The AUSTRAC CEO must comply with the requirements in section 75Q of the AML/CTF Act (Steps to be taken by AUSTRAC CEO before making certain reviewable decisions) when making a cancellation of registration decision.
67. Accordingly, the AUSTRAC CEO must (except when it is inappropriate to do so because of the urgency of the circumstances) give written notice to the remittance dealer of the proposed decision to cancel the registration, the date it will take effect, the reasons for the proposed decision and provide an opportunity for the person to make a submission within 28 days of the giving of the notice.
68. A decision to suspend a remittance dealer's registration is not a reviewable decision for the purposes of Part 17A of the AML/CTF Act and therefore cannot be reviewed by the AAT. However, the chapter does contain provisions whereby a remitter which has been suspended may request a review by the AUSTRAC CEO of that decision.
69. AUSTRAC considers that the legal review protections mean that there is no requirement for a forum or committee to advise or oversight the decisions of the AUSTRAC CEO. AUSTRAC applies the powers of suspension and cancellation in a proportionate manner (with full consideration of relevant circumstances), and, as noted above at paragraphs 20 to 26, suspensions and cancellations have resulted from serious contraventions of obligations rather than minor matters which do not justify such action.

Generally, how well do you think Chapters 58 and 59 are operating?

70. Stakeholders considered that the Chapters are operating satisfactorily notwithstanding the issues raised in the submissions.
71. Concerns were also raised which were strictly not within the PIR terms of reference:
 - (a) the identification of practices by some remitters (including non-registration) which should be investigated by AUSTRAC.
72. AUSTRAC continues to monitor the sector for activities which warrant consideration by the AUSTRAC CEO on whether further cancellations or suspensions should take place.
 - (b) the regulation framework for remitters should be strengthened to ensure that customer identification is carried out and that reporting to AUSTRAC under the AML/CTF Act and AML/CTF Rules should be of accurate and of good quality.
73. AUSTRAC notes that the AML/CTF regime has been strengthened by the introduction in 2014 of new customer due diligence measures. In addition, the current Review of the AML/CTF Act, Regulations and AML/CTF Rules being undertaken by the Attorney-General's Department will consider amendments to enhance the AML/CTF regime

- (c) Submissions also raised the issue of ‘debanking’ and ‘derisking’ by banks whereby remitters are not provided with banking services due to the perceived high ML/TF risk of the remittance sector. The banks are concerned that they may be exposed to enforcement action by regulators as a result of dealing with such ‘high’ risk customers.
74. AUSTRAC considers Chapters 58 and 59 are relevant to reducing the risk of the sector, by allowing the AUSTRAC CEO to deregister remitters who are a money-laundering, terrorism-financing and people-smuggling risk. The issue of ‘debanking’ and ‘derisking’ is being examined by the Australian Government and consultation with stakeholders will be undertaken in order to resolve this issue.
- (d) the cancellation of registration has the unforeseen consequence of forcing remitters underground and this will not reduce the incidence and risk of misuse of remittance funds and serious crime related to remittance transactions or improve the level of deterrence, but in fact may increase incidences and risk.
75. AUSTRAC works with its law enforcement partners to monitor the sector, including unauthorised remittance service activities, and appropriate action is undertaken when these are identified. It is noted that it is an offence under the AML/CTF Act not to be registered on the Remittance Sector Register when providing remittance service activities, with a penalty of two years or 500 penalty units or both.²²

Have Chapters 58 and 59 delivered a net benefit?

Benefits to the community, businesses and individuals interacting with the remittance sector

76. AUSTRAC and the Australian Crime Commission have identified that the cost of money-laundering to the Australian community is significant and money-laundering is ranked as one of the three top critical crime risks for our nation.²³ Strategic intelligence on the nationally significant crime entities and networks in Australia also assesses money-laundering as an extreme strategic threat. In addition, money-laundering is intrinsic to serious tax fraud and a threat to revenue.
77. Chapters 58 and 59 reduce the incidence and risk of misuse of remittance services to hide the proceeds of serious crime or to fund terrorism or crime. This, in turn, protects the commercial significance of the remittance sector within Australia’s financial system and its role in global financial inclusion.
78. Suspending or removing high-risk remittance service providers improves the resilience and effectiveness of the sector and reduces opportunities for criminal to misuse ‘weak links’ in the sector to move, hide and disguise the profits from their crimes. Criminals, including people smugglers, have fewer ‘easy’ avenues through which to channel funds to pay for their activities.
79. Chapter 58 provides the AUSTRAC CEO with a greater ability to control who is able to provide remittance services and to prevent unsuitable persons from being registered. The AUSTRAC CEO can take into account adverse findings by law enforcement, courts and other regulators in making a decision to cancel a registration. The informed decisions by the AUSTRAC CEO, which take into account a wide range of factors, leads to increased confidence that Australia’s remittance sector will not include providers who pose significant ML/TF/PS or other criminal activity risk.

²² Section 74 (Unregistered persons must not provide certain remittance services).

²³ For more information, refer to page 5 of AUSTRAC’s [Money laundering in Australia 2011 report](#).

80. Both subsection 75G(3) and paragraph 58.3 of Chapter 58 allow the AUSTRAC CEO to publish a list of the names of persons whose registration has been cancelled and the date the cancellation took effect.²⁴ By providing this notification, the AUSTRAC CEO is able to inform the public (including financial institutions and other remittance providers) about remittance dealers who no longer meet the expected standards of a remittance dealer and have been prohibited from providing further remittance services.
81. The AUSTRAC CEO's power to suspend remitters under Chapter 59 benefits the community, business and individuals as the suspension prevents funds transfers being used to launder money obtained through criminal activity, finance terrorism, people-smuggling or other illegal activity.
82. Chapter 59 allows the AUSTRAC CEO to publish a notice of suspension or extracts from a notice on the AUSTRAC website. In addition, paragraph 59.8 specifies that the AUSTRAC CEO may remove a remittance dealer from the RSR for the period that their registration is suspended. These provisions enable the AUSTRAC CEO to keep individuals, businesses and the community informed about remittance dealers who may be under further investigation, have engaged in conduct which might potentially expose them to a cancellation of their registration, or have operations that are involved in money-laundering, terrorism-financing or people-smuggling.
83. Without Chapter 59, section 75H would have had no effect as only the AML/CTF Rules can make provisions for the suspension of registration. The exercise of the AUSTRAC CEO's powers may prevent the commissioning or continuation of illegal activity while the matter is being investigated, reviewed, or while legal proceedings are being conducted. The AUSTRAC CEO may also suspend the registration of a remitter when the AUSTRAC CEO has commenced action to cancel the registration of the person and that action has not yet been completed.
84. Without the power to suspend a remittance provider's registration, the AUSTRAC CEO would have no alternative, in situations where there appears to be significant ML/TF/PS risk, but to cancel the remitter's registration.
85. A suspension therefore provides discretion to the AUSTRAC CEO in circumstances where a cancellation of registration may not appear to be warranted. This in turn has less impact on the remitter provider if the suspension is lifted as they will be able to recommence their business activities once the issues leading to the suspension have been resolved.
86. The RSR is available on the [AUSTRAC website](#) and is searchable by the public. Accordingly the public can be confident that they are transacting with a business that is not suspended or cancelled, and this promotes community confidence in the integrity of the remittance sector.

Net benefit to remittance dealers

87. Sections 75G and 75H of the AML/CTF Act and Chapters 58 and 59 of the AML/CTF Rules ensure that the AUSTRAC CEO's power to suspend or cancel the registration of a remitter are used in a fair and transparent manner by:
 - providing clarity and certainty to remittance dealers by stating the matters that the AUSTRAC CEO may consider before deciding to suspend or cancel a remitter's registration; and
 - containing decision-making and review processes that are consistent with procedural fairness.

²⁴ It is noted that in comparison with the publication of suspension notices on the AUSTRAC website, section 75G of the AML/CTF Act limits publication of cancellations to the name of the person and the date the cancellation took effect.

88. AUSTRAC considers that the Chapters have provided a net benefit to the community, individuals and business (including remittance dealers) by ensuring, as far as is practicable, that high ML/TF/PS risk remitters are identified and appropriate action is taken to ensure that public confidence in the sector is maintained.

How were Chapters 58 and 59 implemented and evaluated?

Implementation

89. In developing the amending legislation, the Attorney-General's Department (AGD) undertook extensive consultation with the remittance sector, including the release of stakeholder consultation papers, a Draft Exposure Bill and meetings with remittance providers.
90. A comprehensive regulation impact statement (RIS) was completed in October 2011 and this also involved extensive engagement with the remittance sector. This RIS formed part of the Explanatory Memorandum to the Exposure Draft Combating the Financing of People Smuggling and Other Measures Bill 2011. The Explanatory Memorandum can found on the [Parliament of Australia website](#).
91. This RIS covered the matters that the AUSTRAC CEO may consider when deciding if it is appropriate to cancel the registration of a person under paragraph 75G(1)(c) of the AML/CTF Act, and also covered the grounds for suspension of registration of a remitter, notices of suspension and provisions relating to the review of suspension decisions.
92. The Explanatory Memorandum noted in regard to the cancellation power under section 75G:
- The inability of the AUSTRAC CEO to cancel the registration of a remittance dealer is a serious weakness in the existing Act... 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... 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.
93. The Explanatory Memorandum noted in regard to the suspension power under section 75H:
- 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.
94. Chapter 58 was made for the purposes of section 75G of the AML/CTF Act, which allows the AUSTRAC CEO to cancel a remittance dealer's registration.

95. Subsection 75G(1) provides that the AUSTRAC CEO may cancel a registration if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:
- whether the continued registration of the remittance dealer involves, or may involve, a significant money laundering, terrorism financing or people smuggling risk;
 - one or more breaches by the remittance dealer of a condition of its registration; or
 - such other matters (if any) as are specified in the AML/CTF Rules.
96. The Schedule to Chapter 58 lists the matters that the AUSTRAC CEO may take into account when considering whether to cancel the registration of a remittance dealer. These matters are in addition to those already specified in section 75G.
97. Both subsection 75G(3) and paragraph 58.3 of Chapter 58 allow the AUSTRAC CEO to publish a list of the names of remittance dealers whose registration has been cancelled and the date the cancellation took effect.
98. Chapter 59 was made for the purposes of section 75H of the AML/CTF Act, which allows for AML/CTF Rules to provide for, and be made in relation to, the suspension of registration of a remittance dealer. Subsection 75H(2) non-exhaustively lists the types of matters which can be provided for in the AML/CTF Rules.
99. Chapter 59 details the grounds on which the AUSTRAC CEO may suspend a person's registration. Without the existence of Chapter 59, the AUSTRAC CEO does not have the power to suspend a remittance dealer's registration under section 75H.
100. Chapter 59 also allows the AUSTRAC CEO to publish a list of the names of remittance dealers whose registration have been suspended and the date the suspension took effect.
101. Drafts of these chapters were published for public consultation on the AUSTRAC website from 27 April 2011 to 25 May 2011. In addition to this consultation, AUSTRAC directly communicated by email with 3882 remittance providers. Two submissions were received from major corporate providers of remittance services and were considered in finalising the chapters.²⁵
102. The AML/CTF Rules contained in Chapters 58 and 59 were made in *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No. 7)*,²⁶ prior to being consolidated into the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*,²⁷ which contains all AML/CTF Rules.

Evaluation and subsequent amendments

103. Minor amendments were made to both Chapters in 2013 through the updating of privacy notices by *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2013 (No. 1)*.²⁸ These amendments were not published for public consultation as they were minor in nature.
104. Further amendments were made to both Chapters in 2014 by *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 4)*²⁹:
- Chapter 58 was amended to specify the matters which the AUSTRAC CEO 'may', rather than 'must' consider when deciding whether or not to cancel a remittance

²⁵ The RIS discusses the comments received at page 15.

²⁶ Available on the ComLaw website.

²⁷ Available on the ComLaw website.

²⁸ Available on the ComLaw website.

²⁹ Available on the ComLaw website.

dealer's registration. The amended wording allows the AUSTRAC CEO to consider other matters which are not specified in the Schedule to Chapter 58.

- Items were added to the list of matters which the AUSTRAC CEO may consider when deciding whether or not to cancel or suspend a remittance dealer's registration.
 - Minor amendments were made to definitions in both Chapters to ensure that all chapters of the AML/CTF Rules applicable to remittance dealers are consistent.
105. These amendments were published on the AUSTRAC website from 5 June 2014 until 20 June 2014 with no submissions being received.
106. The Financial Action Task Force (FATF) 2015 mutual evaluation review of Australia, assessed Australia as being 'Largely compliant' with FATF Recommendation 14 which relates to money or value transfer services.³⁰ Although not specifically mentioned by FATF, Chapters 58 and 59 are within the ambit of this recommendation.
107. FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money-laundering, terrorist-financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.
108. The rating 'Largely compliant' means that 'There are only minor shortcomings' identified by FATF in respect to Recommendation 14. This rating is the second highest, with the highest rating ('Compliant') meaning that 'there are no shortcomings'.³¹

Conclusion

109. Chapters 58 and 59 were developed in consultation with industry and have been reviewed and amended on three occasions since 2011. The consultation undertaken as a result of the PIR indicates that the Chapters are seen by law enforcement agencies as being an important means to disrupt actual and potential criminal activity relating to money-laundering, terrorism-financing and people-smuggling in the remittance sector.
110. Submissions from industry indicate that the regulatory impact of the Chapters appears to be minimal except in circumstances where a remitter service provider's registration is cancelled or suspended, and in such cases it is appropriate that there be regulatory impact due to the activities which have precipitated the cancellation or suspension.
111. AUSTRAC supports the stakeholder recommendation that Chapter 59 be amended to clarify the range of matters which the AUSTRAC CEO may consider in deciding whether to suspend the registration of a remittance service provider.
112. In conclusion, AUSTRAC considers that Chapters 58 and 59 are appropriate, effective and efficient in addressing the original government objectives of:
- reducing the incidence and risk of misuse of remittance funds and serious crime related to remittance transactions;
 - preventing high-risk remittance dealers from operating, or continuing to operate, as remittance dealers; and
 - protecting the commercial significance of the remittance sector in Australia's financial system and its role in global financial inclusion.

³⁰ 'Registrable designated remittance services' under the AML/CTF Act.

³¹ *Anti-money laundering and counter-terrorist financing measures in Australia – 2015*. FATF and APG, page 160.