

**ENFORCEABLE UNDERTAKING TO THE CHIEF EXECUTIVE OFFICER
OF THE AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS
CENTRE
FOR THE PURPOSES OF
SECTION 197 OF THE
*ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING
ACT 2006***

BY

**CUSTOM HOUSE CURRENCY EXCHANGE
(AUSTRALIA) PTY. LIMITED**

ACN 086 278 659

Definitions

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

AML/CTF program means an anti-money laundering and counter-terrorism financing program and has the meaning given in section 83 of the AML/CTF Act.

AML/CTF Regulations means the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008*.

AML/CTF Rules means the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (as amended) made under section 229 of the AML/CTF Act.

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by section 209 of the AML/CTF Act.

AUSTRAC CEO means the Chief Executive Officer of AUSTRAC.

AUSTRAC's Concerns means the concerns referred to in paragraphs 5–6 of this enforceable undertaking.

Authorised External Auditor is an individual that has been authorised by the AUSTRAC CEO as an external auditor under subsection 164(1) of the AML/CTF Act.

Custom House means Custom House Currency Exchange (Australia) Pty. Limited ACN 086 278 659 of Level 12, 1 Margaret Street, Sydney NSW 2000.

Designated service has the meaning given by section 6 of the AML/CTF Act.

Enforceable undertaking means an undertaking accepted by the AUSTRAC CEO under subsection 197(1) of the AML/CTF Act.

ML/TF Risk has the meaning given in paragraph 1.2.1 of the AML/CTF Rules.

Remedial Action Plan has the meaning given to it by paragraph 18 of this enforceable undertaking.

review means taking a statistically representative sample of IFTIs and/or SMRs (as applicable) lodged by Custom House and reviewing same against Custom House policy and procedures and the requirements of the AML/CTF Act and AML/CTF Rules confirming the data produced as a result of the review and identifying any issues material to the matters described in paragraph 16.

Second Remedial Action Plan has the meaning given to it by subparagraph 25B (2) of this enforceable undertaking.

Introduction

1. Under section 3 of the AML/CTF Act, the objects of the AML/CTF Act include fulfilling Australia's international obligations designed to combat the laundering of money and the financing of terrorism. Under section 212 of the AML/CTF Act the AUSTRAC CEO's functions include, amongst other matters, promoting compliance with the AML/CTF Act, AML/CTF Rules and AML/CTF Regulations.

Person giving the enforceable undertaking

2. This enforceable undertaking is given to the AUSTRAC CEO by Custom House.

Background

3. Custom House provides designated services of the kind set out in table 1 in subsection 6(2) of the AML/CTF Act and is a reporting entity for the purposes of the AML/CTF Act.
4. The AML/CTF Act and the AML/CTF Rules impose obligations on reporting entities to, amongst other matters; implement risk-based systems and controls to identify, mitigate and manage the ML/TF risk that a reporting entity might reasonably face through its provision of designated services and to give certain reports to the AUSTRAC CEO.

AUSTRAC's Concerns

5. As a result of information voluntarily disclosed by Custom House to AUSTRAC between 11 March 2014 and 21 March 2014 (inclusive) AUSTRAC is concerned that Custom House needs to take specified actions:
 - (1) in order to comply with the AML/CTF Act and the AML/CTF Rules; and
 - (2) directed towards ensuring that Custom House does not contravene the AML/CTF Act or the AML/CTF Rules, or is unlikely to contravene the AML/CTF Act, or the AML/CTF Rules, in the future.
6. AUSTRAC's concerns include, but are not limited to, Custom House's compliance with its obligations in relation to:

- (1) maintaining, and complying with, an anti-money laundering and counter-terrorism financing program that meets all of the applicable obligations of the AML/CTF Act imposed by or under sections 81, 82 and 84 of the AML/CTF Act; and
- (2) carrying out the applicable customer identification procedure under Division 4 of Part 2 of the AML/CTF Act; and
- (3) ongoing customer due diligence under sections 36, 81 and 84 of the AML/CTF Act; and
- (4) reporting obligations under sections 41 and 45 of the AML/CTF Act; and
- (5) ensuring that functions carried out by third parties are subject to, and comply with, an applicable anti-money laundering and counter-terrorism financing program under 81, 82 and 84 of the AML/CTF Act; and
- (6) ensuring that the applicable anti-money laundering and counter-terrorism financing program is subject to regular independent review under sections 81, 82 and 84 of the AML/CTF Act and Part 8.6 of the AML/CTF Rules; and
- (7) record-keeping under Part 10 of the AML/CTF Act.

Acknowledgements by Custom House of AUSTRAC's concerns

7. Custom House acknowledges AUSTRAC's concerns, and voluntarily offers an enforceable undertaking in the terms of paragraphs 11–27 of this enforceable undertaking.
8. Custom House confirms that it has been offered the opportunity to seek its own legal advice in relation to its obligations under, and to the effect of, this enforceable undertaking.

Acceptance and Commencement of the enforceable undertaking

9. This enforceable undertaking comes into effect on the day when the AUSTRAC CEO accepts it by signing the undertaking which Custom House has executed.
10. Upon the commencement of this enforceable undertaking, Custom House undertakes to assume the obligations set out in paragraphs 11-27 of this enforceable undertaking.

Undertakings

11. Under section 197 of the AML/CTF Act, Custom House has offered, and the AUSTRAC CEO has agreed to accept, the undertakings as set out in paragraphs 11 - 27 of this enforceable undertaking inclusive.
12. Custom House undertakes that it will pay the costs of its compliance with this enforceable undertaking.
13. Until the date when this enforceable undertaking ends, Custom House agrees to provide AUSTRAC with documents and information within 14 days of the date on which AUSTRAC makes a written request, or within the timeframe as agreed by the AUSTRAC CEO (taking into consideration any public holidays). Custom House acknowledges that AUSTRAC may use these documents and information to assess Custom House's compliance with this enforceable undertaking.
14. For the avoidance of doubt, Custom House is not required to provide AUSTRAC with any document or information that is the subject of legal professional privilege.
15. Custom House will, by the dates set out below, or such later date as agreed to by the AUSTRAC CEO in writing, undertake the matters set out in the paragraphs below.

Review of IFTI and SMR Reporting

16. By 6 June 2014 – complete, or arrange to have completed, a review (**the IFTI and SMR Reporting Review**) of:
 - (1) Custom House's compliance with sections 41 and 45 of the AML/CTF Act between 12 December 2008 and the date the review commenced; and
 - (2) whether Custom House has appropriate systems and controls designed to ensure its compliance with the obligations under section 41 and 45 of the AML/CTF Act.
17. By 16 June 2014 – provide the AUSTRAC CEO with a written report (**the IFTI and SMR Reporting Review Report**) setting out the results of the review referred to in paragraph 16 above and deficiencies (if any) identified.

Remedial Action Plan

18. By 30 June 2014 – provide the AUSTRAC CEO with a plan (**the Remedial Action Plan**) that specifies what actions Custom House needs to take, or has taken, to rectify:
 - (1) the deficiencies (if any) in relation to Custom House's systems and controls in relation to IFTIs and/or SMRs, and compliance with sections 41 and 45 of the AML/CTF Act identified in the IFTI and SMR Reporting Review Report as far as reasonably practicable; and
 - (2) the deficiencies voluntarily disclosed by Custom House to AUSTRAC between 11 March 2014 and 21 March 2014 (inclusive) including, but not limited to:
 - (i) ensuring that designated service provision by Custom House from 12 December 2007 until the date of the Remedial Action Plan for which an applicable customer identification procedure was required to be applied, has been subject to the applicable customer identification procedure as far as reasonably practicable; and
 - (ii) ensuring that the provision of designated services to customers by Custom House from 12 December 2008 until the date of the Remedial Action Plan has been subject to transaction monitoring and, if required, the relevant customer has been subject to applicable enhanced customer due diligence as far as reasonably practicable; and
 - (iii) compliance with sections 36, 41, 45, 81, 82, 84 of the AML/CTF Act; and
 - (iv) compliance with Division 4 of Part 2, and Part 10 of the AML/CTF Act; and
 - (v) compliance with Part 8.6 of AML/CTF Rules; and;
19. Ensure that the Remedial Action Plan sets out reasonable timeframes for taking the required actions to rectify those deficiencies, or the timeframes in which the required actions were taken; and
20. If the AUSTRAC CEO requires any reasonable modifications to the Remedial Action Plan, including the timeframes specified - modify the Remedial Action Plan accordingly within 7 days of receiving any such requirement.

Remedial Action Plan – Implementation and Status Updates

21. By 15 September 2014 - provide the AUSTRAC CEO with a report on how much of the Remedial Action Plan is yet to be implemented as at the date of the report; and

22. By 15 December 2014 - provide the AUSTRAC CEO with a report on how much of the Remedial Action Plan is yet to be implemented as at the date of the report.

Authorised External Auditor

23. By 16 February 2015 - appoint an individual authorised by the AUSTRAC CEO, under subsection 164(1) of the AML/CTF Act, as an external auditor (**Authorised External Auditor**) to assess:
- (1) whether the Remedial Action Plan has been implemented; and
 - (2) whether Custom House is compliant with Division 4 of Part 2, sections 36, 41, 45, 81, 82, 84, and Part 10 of the AML/CTF Act.
24. Within two months from the date that Custom House appoints an Authorised External Auditor in accordance with paragraph 23 - arrange for the Authorised External Auditor to provide Custom House with:
- (1) a written report setting out the conclusion of the Authorised External Auditor's assessment of the matters set out in subparagraphs 23(1)–(2).
25. Within one week from the date the Authorised External Auditor provides Custom House with the written report, in accordance with paragraph 24 - Custom House must give the AUSTRAC CEO a complete copy of the written report referred to in subparagraph 24(1) of this enforceable undertaking by delivering it to the address specified in paragraph 28 of this enforceable undertaking.
- 25A (1) By 27 May 2016 re-appoint the Authorised External Auditor (previously appointed under paragraph 23); and
- (2) By reference to the Authorised External Auditor's report dated 16 April 2015 (previously provided under paragraph 24) (**Review Report**) and the matters required under subparagraphs 23(1) and 23(2) to be assessed in that Review Report:
 - (i) assess whether Custom House has implemented the elements of the Remedial Action Plan which the Review Report identified had not been fully implemented; and
 - (ii) assess whether Custom House is compliant with the areas of the AML/CTF Act with which the Review Report identified it did not fully comply.
- 25B Within three months from the date that Custom House re-appoints the Authorised External Auditor in accordance with paragraph 25A, arrange for the Authorised External Auditor to provide Custom House with:
- (1) a written report directly setting out the Authorised External Auditor's assessment of the matters set out in subparagraphs 25A(2)(i)–(ii). In stating conclusions about deficiencies the Authorised External Auditor must take into account that there is no distinction between:

- (i) substantial, partial or non-completion of the Remedial Action Plan, or
 - (ii) low, moderate or high priority non-compliance with requirements of the AML/CTF Act.
- (2) If any deficiencies are identified - recommendations on any steps to be taken to rectify those deficiencies and a timeframe within which to take those steps (the **Second Remedial Action Plan**).
- 25C: Within one week from the date the Authorised External Auditor provides Custom House with the written report and Second Remedial Action Plan(if applicable), Custom House must give the AUSTRAC CEO a complete copy of the written report referred to in subparagraph 25B(1) and the Second Remedial Action Plan referred to in subparagraph 25B(2) by delivering it to the address specified in paragraph 28 of this enforceable undertaking.
- 26. If the AUSTRAC CEO requires any reasonable modifications to the Second Remedial Action Plan, including the timeframes specified - modify the Second Remedial Action Plan accordingly.
- 27. Implement the Second Remedial Action Plan within the timeframes specified in that Plan, subject to any reasonable modifications required by the AUSTRAC CEO.

Provision of documents to AUSTRAC

28. Any documents or information required to be provided to the AUSTRAC CEO under this enforceable undertaking should be provided to the following address by either delivering the documents or information in person or by registered post:

AUSTRAC – Enforcement
Level 7, Tower A, Zenith Centre
821 Pacific Highway
Chatswood NSW 2067

29. Any and all documents or information required to be provided to AUSTRAC or the AUSTRAC CEO by Custom House under this enforceable undertaking:
- a. are provided for the purposes of (i) Custom House complying with this enforceable undertaking; (ii) AUSTRAC assessing compliance with this enforceable undertaking and the AML/CTF Act and AML/CTF Rules; and (iii) AUSTRAC CEO or a member of the staff of AUSTRAC, exercising and performing their statutory functions or duties; and
 - b. are provided without prejudice to any legal professional privilege or other privilege that exists (or that may exist) in other documents or information that are or may be related to any documents or information provided to AUSTRAC or the AUSTRAC CEO.

Acknowledgements – Operation of Enforceable Undertaking

30. Custom House acknowledges that:
- (1) the AUSTRAC CEO's acceptance of this enforceable undertaking does not affect the AUSTRAC CEO's power to take any action in relation to any contraventions of the AML/CTF Act, AML/CTF Rules and/or AML/CTF Regulations by Custom House; and
 - (2) this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in AUSTRAC's Concerns or arising from future conduct; and
 - (3) the AUSTRAC CEO may publish a copy of this enforceable undertaking on AUSTRAC's internet site in accordance with subsection 197(5) of the AML/CTF Act; and

- (4) AUSTRAC may issue a media release on the execution of this enforceable undertaking as varied referring to its terms and to AUSTRAC's Concerns. AUSTRAC will provide Custom House prior notice of any media release it plans to issue; and
- (5) AUSTRAC may from time to time publicly refer to this enforceable undertaking; and
- (6) the AUSTRAC CEO has accepted this enforceable undertaking as varied based on Custom House's disclosure to the AUSTRAC CEO of the material facts, matters and circumstances in relation to AUSTRAC's Concerns; and
- (7) if any part of this enforceable undertaking is held invalid that part shall be severed from this enforceable undertaking and the remainder of this enforceable undertaking will continue to be valid and enforceable.

End date

- 31. This enforceable undertaking ends on the date that the AUSTRAC CEO sends written confirmation to Custom House which states that he is satisfied that Custom House has complied with each of the undertakings set out in paragraphs 11–27 of this enforceable undertaking.

EXECUTED BY

Custom House Currency Exchange (Australia) Pty. Limited ACN 086 278 659 pursuant to subsection 197(1) of the AML/CTF Act

Signature



Print name

Brendan Clegg

Office held

Director

Signature



Print name

Simon Glendenning

Office held

Director

This 19th day of May 2016

ACTING

RACHEL CHALLIS

VARIATION CONSENTED TO BY THE NATIONAL MANAGER, COMPLIANCE, ANGELA
~~JAMIESON~~ PURSUANT TO SUBSECTION 197(3) OF THE AML/CTF ACT.


Angela Jamieson RACHEL CHALLIS

National Manager, Compliance
This 25 day of May, 2016

Admij

