



AFP
AUSTRALIAN FEDERAL POLICE

***Post Implementation Review of
Chapters 58 and 59 of the
AML/CTF Rules***

**Submission by the
Australian Federal Police**

March 2014

Introduction

The Australian Federal Police (AFP) welcomes the opportunity to provide this submission to the Post Implementation Review of Chapters 58 and 59 of the *Anti-money Laundering and Counter-terrorism financing Rules* (AML/CTF Rules). The AFP strongly supports initiatives to enhance the operation of the anti-money laundering (AML) and counter terrorism financing (CTF) regime to ensure that Australia has a robust and effective framework to address money laundering (ML) and terrorist financing (TF) risks. The AFP welcomes legislation and related rules which reduce exploitation of the remittance sector and action to be taken where remitters fail to comply with their AML/CTF obligations.

The AFP also acknowledges the conscientious efforts of remitters in meeting their reporting obligations and in working cooperatively with AUSTRAC, the AFP and other Government agencies. The AFP recognises the important role played by remitters in helping defeat ML and TF, and envisages a strong and ongoing public/private partnership in the future as AML and CTF operations continue to evolve and diversify. The AFP supports a system which reduces the possibility for exploitation of the remittance sector.

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?

The AFP considers that chapters 58 and 59 adequately meet the government's objectives of combating ML, TF and people smuggling in the remittance sector.

Regulation of remitters is important to manage both money laundering ML and TF risks. However their regulation is particularly important in addressing TF due to the significant potential for exploitation of remitters for TF purposes for the following reasons. Generally, following through on remitter anomalies relating to TF is challenging as transactions may move into or pass through high risk jurisdictions offshore where there is poor, little or no police-to-police assistance and limited, if any, assistance available to trace financial flows through relevant foreign Financial Intelligence Units. In addition, unlike ML, TF does not normally return to its origin, nor are TF funds necessarily derived from illegitimate sources, making the following of a TF money trail challenging (eg enquiries cannot be made as there is generally no 'unexplained wealth'). The ability provided by Chapters 58 and 59 to take action against a remitter domestically

based on a documented failure to comply with AML/CTF obligations, thus becomes an important means to disrupt and prevent suspected TF activity.

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.

A major benefit is ensuring clarity and transparency in regulation of remitters, ensuring both accessibility for remitters and effective regulation by Government. It is also confirmation that ML and TF is unacceptable behaviour in Australia.

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).

The AFP is not in a position to provide comment on the monetary costs and/or benefits of chapters 58 and 59. However, the AFP recognises that it is likely that individuals seeking to exploit the system to launder money or finance terrorism may change providers if their remitter changed practice as a result of chapter 58 and 59, and this could have flow on costs to the remitter.

Notwithstanding, the AFP supports the benefits to the community which flow from regulation of remitters, including maintaining a means to legitimately send funds offshore using remitters (especially to countries with weak or absent banking infrastructure) who do not support ML or TF. The AFP also notes the range of measures available to help remitters meet their obligations, such as enforceable undertakings and training, none of which would result in significant costs to the remitter.

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.

The AFP is not in a position to provide comment on the effects of chapters 58 and 59 on competition within the remittance sector. There remains a vast

number and variety of remitters within the sector available to transfer money to countries with weak or lacking banking infrastructure.

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

Extension of responsibility

It could be beneficial to consider whether the AML CTF rules may be updated to ensure remittance agencies facilitating the movement of funds to an area designated under the subdivision 119.2 of the Criminal Code should result in the cancellation of the remittance agency's registration.

Definition of 'terrorism'

In keeping with the recently expanded definition of "terrorism offence" in section 3 of the Crimes Act 1914, the Review may consider introducing a comparable expansion to the definition of "terrorism" in Chapter 58 and 59 of the Rules. Specifically listing these offences may assist in bringing them to the fore when the risk of remittance funds being used in the funding and support of terrorism is under consideration.

Focus

It is possible to consider the role that the framework for regulation of remitters could play in ensuring banks are more comfortable accepting remitters as clients. This could include a shift in focus to place a stronger onus on remitters to report and apply due diligence obligations to customers, and enforcement to consider intelligence at an earlier stage in relation to at risk/suspicious remitters. This could also include a lower tolerance of remitters submitting low quality/inaccurate reports, which would include a minimum standard to which industry must comply.

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

As highlighted above, the AFP considers that chapters 58 and 59 adequately meet the Government's objectives of combating ML and TF in the remittance sector. The AFP supports ongoing review of the regulation of remitters to ensure the system remains sufficiently robust to prevent, disrupt and deter use of remitters to move funds for illegal purposes.