

NOTES FROM MEETING WITH AUSTRAC HELD ON 27 APRIL 2015

POST IMPLEMENTATION REVIEW OF CHAPTERS 58 AND 59 OF THE AML/CTF ACT

	QUESTION	ANSWER
1	<i>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?</i>	<ul style="list-style-type: none"> • Chapters 58 and 59 are limited in meeting these government objectives as these chapters only cover registered remittance companies and are not identifying unregistered remittance companies. • Cancellation forces remitters and intelligence to go underground, resulting in less reporting. This would compound the risks that are already present and make it harder to achieve the objectives of combating money laundering, financing of terrorism and people smuggling. Whilst cancellation is a necessary requirement to have, options to ensure adequate resources for educating the sector of its obligations and attempting to remediate any issues that can be remediated prior to suspension and cancellation should first be explored. • A focus on the remittance sector will perpetuate the perception that remitters are high-risk, which will in turn encourage banks to de-risk (close accounts). There does not seem to be a proportionate focus on other reporting entities that provide designated services.
2	<i>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.</i>	<ul style="list-style-type: none"> • There is transparency and clarity on what is expected of remittance businesses to maintain registration. • There is consistency in applying Chapters 58 and 59 for all remittance businesses.
3	<i>What impact have Chapters 58 and 59 had on the regulatory/compliance costs of businesses (including small businesses),</i>	ARCPA is seeking further information on this.

	<p><i>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).</i></p>	
<p>4</p>	<p><i>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.</i></p>	<ul style="list-style-type: none"> • Whenever there is a suspension or cancellation of an individual remitter’s registration, the integrity of the whole remittance sector is undermined, resulting in business loss for the entire sector. <ul style="list-style-type: none"> ○ As remittance serves an important segment of the community, any business loss will affect the everyday people involved in remittance: the workers and especially the everyday beneficiaries who are often dependant on the remittance of money for their livelihood. ○ We are gathering information to support this. ○ With the negative perception of banks on remittance being high risk, it leads to banks de-risking and closing bank accounts. This further leads to customer’s perception when choosing non-remittance options to send money overseas which can be more cumbersome, expensive with less flexible receiving options.
<p>5</p>	<p><i>What changes, if any, do you think should be made to Chapters 58 and 59?</i></p>	<ul style="list-style-type: none"> • Before suspending/cancelling a remitter’s registration, it is important that AUSTRAC determines the underlying reasons for the remitter’s contravention. There may be a variety of pressing concerns that the remitter is facing that can be remediated without AUSTRAC resorting to suspension or cancellation. The AUSTRAC CEO should still have the power to suspend/cancel registration but should also have due consideration to whether the contravention can be remediated, and the attempts by the remitter to show they are working towards this remediation, plus individual circumstances faced by the remitter (e.g. the livelihood of the people working in the company). • Additionally, AUSTRAC should allow time for the remitter to remediate the contravention. • Section 75Q of the AML/CTF Act requires that the AUSTRAC CEO must provide a person with the opportunity to make a submission before any decision is taken to cancel their registration.

		<ul style="list-style-type: none"> ○ We would ask if this process is reasonable and whether it needs to be reviewed. • If a key person is charged or in an ongoing trial, there should be provisions to allow a new key person/key persons to run the business. <ul style="list-style-type: none"> ○ This would give workers a chance to continue their livelihood ○ During this time, AUSTRAC can impose conditions on the business ○ AUSTRAC should consider other forms of remedial action and enforcement. • The CEO should have the power to cancel a registration when the risk is very high. <ul style="list-style-type: none"> ○ An independent body could advise the CEO when making these decisions • Failing to keep minor registration details up to date should not be considered significant or material. • There should be a proportionate response to the individual circumstances of the remitter, rather than a catch-all ruling. • A separate committee could be formed to review the circumstances.
<p style="text-align: center;">6</p>	<p><i>Generally, how well do you think Chapters 58 and 59 are operating?</i></p>	<ul style="list-style-type: none"> • We are still seeking input from remitters that had this registration suspended and cancelled. ARCPA will provide an update further to this submission. • The impacts of the operation of Chapters 58 and 59 as identified in Q1 detract from government objectives. The impacts identified were: <ul style="list-style-type: none"> ○ excluding unregistered remitters, ○ forcing remitters underground thereby increasing risk of misuse of remittance services; ○ perpetuating the perception that remittance businesses are high-risk <p>According to the explanatory memorandum of the 'Combating the Financing of People Smuggling and Other Measures Bill 2011', the objective of Government intervention in the remittance sector is to:</p>

		<p><i>“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.</i></p> <p><i>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.”</i></p> <p>The impacts identified will not fulfil those objectives.</p> <p>In particular, the impact of forcing remitters underground will not help reduce the incidence and risk of misuse of remittance funds and serious crime related to remittance transactions nor improve the level of deterrence. Rather, it could increase the incidences and risk.</p> <p>Focusing on the remittance sector, thereby perpetuating the perception that remitters are high risk and encouraging banks to close accounts, does not fulfil the objective of protecting the commercial significance of the remittance sector. Rather, it undermines the remittance sector within Australia’s financial system.</p>
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Additional comments/questions:

- What is the purpose of suspension?
 - Please clarify whether the purpose of suspension:
 - i. Is to give the remitter an opportunity to remedy the problem before lifting the suspension; or
 - ii. Is simply a period before cancellation.