

Response to AUSTRAC's stakeholder consultation - Chapters 58 and 59 of the AML/CTF Rules.

Q1. 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?

In the absence of relevant comparative data (which were not provided and which we cannot otherwise access), it is simply not possible to make an accurate assessment of the extent to which Chapters 58 and 59 are meeting the government's objectives as stated in the question.

However, we do note that the CFPSOM Act was implemented to:

- address vulnerabilities posed by the remittance sector;
- reduce the risk of criminal influence and exploitation in the remittance sector;
- provide further avenues to address non-compliance with AML/CTF requirements; and
- improve the resilience and effectiveness of the remittance sector as a whole.

Given the recent acute difficulties that the remittance sector has been through and continues to go through, then Chapters 58 and 59 cannot be said to have been successful (and certainly not insofar as third party providers/market perception are concerned).

Indeed, it appears as though membership of the Remittance Sector Register has merely provided, most recently, Westpac with a pre-populated list for customers whose facilities would be selected for termination.

And, given that the ultimate impact of these recent difficulties (highlighted by a lack of appetite on the part of Australia's banking sector to work with the remittance sector) appears as though it will be the wholesale removal of providers from the market, the outcome will be anti-competitive and bad for customers.

Chapters 58 and 59 have not *improved the resilience and effectiveness of the remittance sector as a whole*:

- The recent difficulties faced by the sector have plainly illustrated its acute vulnerability and inability to respond in the face of a shift in market risk appetite (regardless of whether that shift might be considered justified or justifiable), notwithstanding the good compliance standing of many remitters.
- For example, our businesses clean compliance record has, effectively, amounted to nothing in the eyes of the many, many service providers we have approached.
- The limited instances in which Chapters 58 and 59 have been used in respect of poor operators has clearly not had any wider impact as regards the reputation or perception of the sector.
- While it is not AUSTRAC's responsibility to act as manager of the sector's reputation, the effective management-out of poor operators is an important element of the sector's overall public and commercial image (and therefore its resilience and effectiveness).

While Chapters 58 and 59 may have provided *further avenues to address non-compliance with AML/CTF requirements*, Chapter 58 appears to date to have been of little practical effect:

- The thresholds for cancellation of registration at the Schedule to Chapter 58 require, at least, charges to have been laid or a civil penalty order to have been made. These are very high thresholds.
- For the typically smaller (in terms of operational resource) remitters whose activities, potentially unfairly (but nevertheless more often than not), give the sector a bad name, the prospect of prosecution is generally slight due to not only potential evidentiary difficulties (e.g. a remitter who is not compliant is unlikely to be concerned about record keeping), but also due to the cost threshold/burden of doing so.
- Further, the lower threshold (being a failure to comply with a condition of registration), not only (i) appears to require a condition(s) to have been imposed on the remitter by AUSTRAC (about which we have no data and which we do not believe is publicised beyond an entry on the RSR¹), but are also (ii) essentially subject to self-regulation and audit. We would be pleased to be informed to the contrary, however at present we consider that there appears to be either little or no appetite and/or little or no funding within AUSTRAC to carry out an effective (and proactive) review program to impose conditions and, thereafter, target and address instances of non-compliance through cancellation.
- The enforcement burden/threshold is disproportionate to the ease with which a remitter can commence business and, for a remitter with the wrong intentions, facilitate ML/TF activities.
- As such, our view is that the enforcement burden/threshold should be both (i) lowered, and (ii) coupled with an effective program to manage-out poor performers.

Q2. 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.

We are unable to comment on this point at length as we are not qualified to do so.

As regards our own views, however, we would note that having Rules which specify matters for the AUSTRAC CEO to consider:

- Provides a publicly referable list of matters to be considered by the AUSTRAC CEO in respect of suspensions/cancellations;
- Allows remitters who have been challenged inappropriately to make out their case for a challenge to cease; and
- Provides a minimum benchmark against which to assess suspensions/cancellations (which can of course be positive and negative but which, on balance, we think is a positive **if supported by an effective program to manage-out poor performers**)

¹ For the purposes of this response, we are working on the assumption that a condition of the type referred to at Section 75E of the AML/CTF Act is a specific condition imposed on the registration of *a particular remitter* by the AUSTRAC CEO rather than an obligation imposed on remitters generally by the AML/CTF Act or Rules

Q3. 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).

Chapters 58 and 59 have had no impact on our regulatory/compliance costs.

We cannot comment on the positions of others.

Q4. 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.

To date, the number of suspensions and cancellations pursuant to Chapters 58 and 59 is minute as a percentage of sector participants. These suspensions/exits have had no discernible or identifiable impact on our own competitive environment.

Q5. What changes, if any, do you think should be made to Chapters 58 and 59?

We think that a new item should be added to the Schedule in Chapter 58, which reads "Whether the person has contravened a provision of either the AML/CTF Act or these Rules."

We think that Chapter 59.3(4) 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:".

We think that Chapter 59.3(4)(b) should be amended from "a provision of the AML/CTF Act" to "either a provision of the AML/CTF Act or these Rules".

Q6. Generally, how well do you think Chapters 58 and 59 are operating?

We do not have any information as to the extent to which remitters being prosecuted under either Chapters 58 or 59 are successfully resisting prosecution and, therefore, we cannot form a relevant view on how well those chapters are operating insofar as effectively implementing remitter suspensions and/pr cancellations is concerned.

We have seen various media articles about suspensions and cancellations of remitters' registrations and, as such, the publicity provisions of Chapters 58 and 59 appear to be operating satisfactorily.

A lowering of the enforcement burden/threshold of Chapter 58 as noted at question 5, above, **coupled with a proactive approach to the identification, investigation, and pursuit of contraventions/suspected contraventions** would significantly help achieve the government's stated objectives.

A lowering of the enforcement burden/threshold of Chapter 59 as noted at question 5, above, **coupled with a proactive approach to the identification, investigation, and pursuit of contraventions/suspected contraventions** would significantly help achieve the government's stated objectives.