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ARCPA
AUSTRALIAN REMITTANCE AND CURRENCY PROVIDERS ASSOCIATION

26 August 2021

ARCPA submission to the Inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

Committee Secretary
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Inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

On behalf of ARCPA, I submit our response to the inquiry's terms of reference.

About ARCPA

The Australian Remittance and Currency Providers Association Ltd (ARCPA) is an industry body that was created to represent the interests and functions as a voice of over 5,500 remittance providers, registered with AUSTRAC. Our members, from different walks of life have been catering to a culturally, linguistically and geographically diverse base of consumers whose requirements are niche, require a particular skill set and specific knowledge to satisfy their customers' money transfer requirements. The presence of these remittance providers has provided for much-required competition in the sector.

ARCPA was registered in October 2014 as an Australian company limited by guarantee. ARCPA is not a recipient of any government funding and run only on subscriber-membership fees. Office bearers are volunteers and contribute their skills and experience for the common good of the member community and the community at large, namely their customers.

Anti-money laundering and counter-terrorism financing (AML/CTF) Act 2006

ARCPA recognizes and takes utmost pride in its contribution towards the positive outcomes from the AML/CTF Act 2006, that it and its members have contributed to in the fight and deterrence of financial crime. We consider the positive impact to lives, public and private properties that could have been lost if not for the contribution of the sector.

Accordingly, this legislation, the regulator, the financial intelligence unit, the international counterparts, AUSTRAC's data-driven crime prevention agencies and AUSTRAC's public private partnership initiative, and the FINTEL Alliance have all played a vital and preventive roll in the terrorism and financial crime prevention efforts.

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As a democratic Country, Australia by large recognized as a country which displays and maintains fairness and justice for its citizens. The AML/CTF Act when introduced in 2006 was an important piece of legislation due its vital role of protecting the safety of the Australian community, social integrity, market fairness and reducing Australia's exposure from international predicate offenders.

The AML/CTF Act took out a lot of space to accommodate itself out of the scopes of existing legislations like, The Competition and Consumer Act 2010, Privacy Act 1988, The Fair Work Act 2009 and certain jurisdictional powers from Financial Services Ombudsman and even courts to intervene when financial service providers have to make certain decisions based on their data-based assumptions.

Like every important newly introduced legislation before it, this legislation should have been subject to an early and regular regulatory review, as early as 2008, to measure its effectiveness and identify and consider any "unintended consequences" and to plan for a path forward to correct those, as well as plan for additional updates and improvements. There should have been a programmatic approach to this review.

ARCPA is glad that the legislative committee of Australian Parliament House has provided this opportunity – it is better late than never. We urge the committee not to waste this opportunity and knowing the different dimensions, balance the "fairness and justice" and reduce the impact of the "unintended consequences".

ARCPA, instead of using its collective bargain power to lobby for all its members, have distinguished its members based on their regulatory compliance capabilities, brought the legal and regulatory understanding to those who did not have any knowledge about their compliance obligations, provided training on new and emerging threats, and assisted to those who were compliant yet struggling to keep up with the dynamic nature of the changing risks and compliance obligations.

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Finally, through the world-first and best in class Certification Program, ARCPA provided assurance that those certified members demonstrated practices that went over and above their legislative and regulatory expectations with the principal aim of providing a much-required trust level to financial institutions that were busy de-banking without reason. Over the various iterations, ARCPA had revised its member Certification Program to include and address emerging risks including compliance and risk assessments of jurisdictional risk, cash handling processes etc.

The Issue of De-Banking

1. In today's Australia, neither individuals nor any organisations (partnerships, companies, trust/trustees, associations nor government bodies) can survive without a bank account.
2. A Bank Account is required for an entity to survive – to pay tax, employees, expenses including essential commodities, utilities; and to receive revenue. These are more eminent in more and more financial institutions shifting from physical presence to Mobile Applications.
3. A right to have and hold a bank account is not enshrined in the constitution of Australia. Countries like United Kingdom and India, have a bill of rights and therefore have assured their citizens with right to have a bank account.
4. Under the AML/CTF Act, financial institutions are urged to take to risk-based approach. This means each organisation must assess their own risks of their organisation breaching the legislative and regulatory framework. This gives each organisation the complete discretion to deploy their mitigation resources to risks that are tolerable and produce the profit, or completely exit those which they think not tolerable and not profitable.
5. Naturally as commercial organisations, they have the right to exit any commercial relationship with "reasonable notice. This means there is a natural path for financial institutions to quit any cliental relationship that they deem risky.
6. Provision of remittance services was one of those perceived risks that meant that many financial organisations just exited them based on assumptions of risk. The

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AUSTRAC Remittance Register was the source data for the blanket de-risking for organisations, without regard to considering the qualities and regulatory compliance of the organisation.

7. The Reserve Bank of Australia is the bankers' bank and the government's bank but does not provide banking services to individuals or private sector organisations.
8. Australians are in a position to depend on any of the Authorised Deposit-Taking Institutions (ADIs) for their much essential banking service because they are operating in a free market, with only profit to drive their decisions on who they bank with, without any corporate-social responsibility enforced on them.
9. It is very common that an innocent business or individual customer account can be restricted from being active if any of their transaction patterns look typical to a typology they are monitoring for. An entity could also be prevented from opening an account if their name or other details resemble an internationally sanctioned entity or if they come across an adverse media in any media internationally, whether it is proven or not. The technical term used in the industry is a "false positive" or a "positive match", with banks increasingly deploying "Artificial Intelligence" and "Machine Learning" tools to detect matches and for transaction monitoring.
10. Australian ADIs can refuse to open an account for an entity or withdraw an operating account without having to provide any reason. This approach is based more on internal policies and procedures and the risk-based approach of the financial institution, and the suspicion does not necessarily have to be proved as a criminal behaviour.
11. ARCPA estimates that since 2010, over 12,150 business bank accounts and 6,000 individual bank accounts have been closed, leaving Australian businesses to lose over 1 billion dollars in direct investment. ARCPA estimates 9,800 full-time and 6,000 part-time jobs and an equal amount of self-employment opportunities have been lost.
12. ARCPA believes that the risk-based approach practiced by banks, and the two super-power tools in 1) the risk-based approach and 2) the tipping-off provision,

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have allowed them to avoid competition in the market by severing the lifeline of any business that provides services competing with theirs. 5,500 registered remittance and currency providers are those who were deemed as competing business with the Banks. The Australian Competition and Consumer Commission, AUSTRAC, the Ministry of Home Affairs and in many instances, have ruled they were commercial decisions and therefore they could not intervene in this matter.

13. Financial Institutions are spending billions of dollars in building infrastructure that would detect, deter and disrupt terrorism and financial crime. They should have appropriate control measures, policies, procedures and mitigation tools to ensure that they are not used to channel or facilitate money laundering, terrorism financing and any other predicate offences. Likewise, these ADIs should be sufficiently equipped to make sure that they are dealing with safe people and channel safe transactions. In the event the ADIs come across any exceptions more than their tolerance levels will allow, those circumstances should be reported to the regulators by means of efficient and timely Suspicious Matter Reports (SMRs) for the regulator and associated government agencies to deal with and prosecute the wrong doers.
14. Whilst, applying all the pressure on the one remittance sector who was trying to provide a competitive, community-based service, there has been a huge hole for the past 15 years on the Non-Bank Financial Service Providers who have been exempted under this legislator framework in full, because there were lobbying power and potentially a fear of being dealt with in the same – blanket de-risking. The Australian Government has been named and shamed many times for this act of leaving a big door of misuse open, during FATF mutual evaluations. It's likely that Australia is one of the few countries that has not brought those gatekeeper professions under the purview of AML/CTF Act within the OECD countries.

Way forward

Unintended consequences, as it is rightly termed by the bureaucrats and politicians alike, brought most of the banks to exit business and personal account relationship with

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thousands of individuals, reporting entities, some of whom, ARCPA may have been black-market operators. This situation continues for over a decade now.

The IMF, ARCPA and other organisations have petitioned, held round table conferences, departmental meetings and issue joint press conferences. These efforts intended to bring an equilibrium by asking the banks to consider the true risk instead of just the perceived risk. Perceived risk is a set of uncertainties that one has in his mind while considering merits and demerits of a factor. It is kind of a psychological and functional risk that one feels while taking a decision. This does not have to be essentially a risk as an outcome.

Different lobby groups have approached politicians and have caused a little noise from time to time, but nothing effective has happened so far. One similar is the Bragg committee probe into the major bank de-banking' of fintech start-ups: https://www.afr.com/companies/financial-services/bragg-committee-to-probe-major-bank-debanking-of-fintech-start-ups-20210519-p57t4a.

The unintended consequence here is that Australia's fintech community will be thwarted in bring new advances in services that would compete with the ADIs.

Legislation of the calibre of the AML/CTF Act, when introduced, should be reviewed within a reasonable timeframe for their ongoing effectiveness, and regular monitoring of any unintended consequences. Australia has not revisited the AML/CTF Act for unintended consequences. This year we are lucky that there is a submission required by the Australian Parliamentary Committee with a view to overhaul the legislative and regulatory framework.

Adding fuel to the existing de-banking, the Assistant Treasurer had introduced a Currency (Restrictions on the Use of Cash) Bill in 2019 which would have made handling of legal, fiat currency over the value of 10,000 AUD, illegal.

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Australia does not have a Bill of Right, Australian Citizens so far do not have a legal right to have a bank account, in a climate where the whole world is driving towards economic inclusion, in a time when everything is becoming digital. ADIs are playing below the thresholds of the risk tolerance levels, many have already closed their branches to become online ADIs. Imagine if a bank perceives an Individual or a business entity a risky one for quiet often unsubstantiated, one would be easily left without a bank account and it is practically impossible for anyone to live in Australia in today's way of life.
A business analyst working in an ADI can decide whether the pattern or the profile of an entity is within the risk tolerance levels, meaning a person can lose their bank account based on one person's judgement and perceptions.

ADIs currently have the mechanism to flag a profile or a transaction for risk and if not satisfied may submit a Suspicious Matter Report (SMR) to the regulator, AUSTRAC. It should be unacceptable and illegal for a legal entity in Australia to be thrown out of a banking system on perceived risks – the UK has administered a program whereby ADIs must provide a clear and written basis for any exiting and there is an arbitration process.

This is even worse if this happens to an individual in a modern economy where he/she requires a bank account to receive wages, social security payments and pay tax, telephone bill and even to shop in convenience stores. This has been what has happened to individuals related to remittance businesses exited by an ADI – the ADI exits the individual linked to the business also.

There is a huge danger that there would be tens of thousands of Australians who could be innocent but bear some sort of perceived risk by means of profiling and driven out of their right to hold assets, save for their future and live a normal day to day life. Day by day, Artificial Intelligence profiles people and organisations, and flags them for risk. In absence of cultural understanding, innocent people could be easily perceived to be risky.

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ARCPA has received thousands of complaints of from companies, individuals, former managers and directors, that their family members' bank accounts have been de-banked by ADIs, in this submission, ARCPA had only attempted to summarise and provide an overview of the issue, which has only begun. If not addressed at this review can take a toll on Australian fairness, justice and fundamental rights of its subjects.

Typology of People Smuggling and Identity Theft:

People smuggling, and modern slavery is another financial crime which also runs into the risk of the predators using the identities of the subjects to conduct financial transactions of criminal nature. Polaris – https://polarisproject.org/myths-facts-and-statistics/ - estimates that over 25,000 identities have been used for criminal transactions in a double layered victimisation scheme. Identity theft or theft of identification documents, used for criminal transactions are also not unusual.

Remedy for Identity theft victims:

This report issued by the Australian Information Commission – https://www.aic.gov.au/sites/default/files/2020-08/sr27_identity_crime_and_misuse_in_Australia_results_2019_survey.pdf – reveals that there is a three-fold increase in reported identity thefts in Australia. Each involving an average of 4,000 AUD. In 2020, the reported cases increased to 950 from 305 the previous year. After all financial and psychological trauma a past victim under these circumstances have no avenues to reinstate their names and identities from criminal stain among the financial services institutions.

Another such example is, transferring small amounts in a dozen transactions in a week to Philippines by a woman will be flagged immediately as a risky pattern which is absent of any cultural understanding to deem this as suspicious pattern in contrast to other cultural backgrounds. For people from countries like the Philippines, it is common for many family members, relative of husbands, relatives of the wife and distant relative depend on small support from their overseas Philippines family members. There is also a danger of such

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pattern being represented by other predicate offences – this is a delicate issue and only law enforcement agencies and the justice system could determine these cases finally, leaving the final decision to live like a normal Australian or a deprived one should not be left to an employee working for an ADI.

In another example, an employee of a phone repair and sales retailer had been responsible for banking, the bank suspected that the withdrawals of the retailer had been more frequent daily, therefore they suspected something was wrong and they closed the bank account of the retailer and blacklisted both the owner and the employee at the closure. In reality, the phone shop was buying second-hand phones to service and resell, that's why their withdrawal was more. Later, the employee moved to another employment and attempted to open his own account to receive his salaries, the bank refused to open his account without disclosing a reason. There are many stories that law makers to know more about. Some ADIs don't even allow people to be third party signatories of social organisations where they volunteer to be an office bearer.

Since 2010 many banks have created blacklist of individuals and corporations based on their perceived risk findings. Entities who had conducted legitimate money service businesses have been de-banked, individuals who have owned, directed and certain employees who handled cash on behalf of these entities have been de-banked, which means they are out of or have limited or restricted access to the Australian Banking System. As a result, they can't receive wages, unemployment benefits, social security payments, borrow, have a credit card, buy a house on mortgage, pay their bills and taxes in their name, and either they must depend on friends and relatives for these services or continue to stay out of the system. This would encourage forming of new underground systems that would sneak out of regulatory monitoring. Enforcing the terms of this legislation into the economy would only create new dens of criminal channels even deeper.

In conclusion, ARCPA directors or any industry participants that have been affected by this issue could be summoned for providing further details on this issue.

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Many thanks for your attention.

Very sincerely yours,

For and on behalf of Australian Remittance and Currency Providers Association Ltd

MUNIR MOHAMMED
Chairman of the board

RAMANATHAN KARUPPIAH
Director – Member Certification