



OFFICE OF THE CHIEF EXECUTIVE OFFICER

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28 July 2011

Mr Richard Grant
Acting Committee Secretary
Senate Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Grant

AUSTRAC Submission: Inquiry into the Business Names Registration Bill 2011 (BNR Bill)

I am advised that, as part of its current inquiry into the BNR Bill, the Senate Committees on Economics has received submissions which refer to the operation of the *Anti- Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and *Anti-Money Laundering and Counter-Terrorism Financing Rules Instruments 2007 (No.1)* (AML/CTF Rules).

To assist the Committees' deliberations, set out below is a brief description of certain elements of the AML/CTF Act and Rules, in particular, the customer identification and verification requirements under that legislation.

AUSTRAC

AUSTRAC's role is to protect the integrity of Australia's financial system and contribute to justice, national security and protection of revenue by countering money laundering and the financing of terrorism.

AUSTRAC performs these functions in accordance with its dual roles, first, as Australia's national Financial Intelligence Unit (FIU) and second, as the national regulator for money laundering and terrorism financing. As Australia's FIU, AUSTRAC is the national centre for the collection, analysis and dissemination of information to Australian Government and State and Territory Government law enforcement, intelligence and revenue agencies.

In its regulatory role, AUSTRAC oversees compliance with the requirements of the AML/CTF Act by a wide range of financial services providers, bullion sellers, designated remittance service providers and gambling industry providers.

AML/CTF Legislation

The AML/CTF Act adopts a risk-based approach to AML/CTF compliance. The legislative framework prescribes the principal obligations of reporting entities, but gives them the flexibility to develop procedures according to the different risks they identify using their own AML/CTF programs.

The AML/CTF Act embodies five key areas that are internationally recognised as best practice in deterring and detecting money laundering and terrorism financing (ML/TF). Broadly speaking, reporting entities are required to:

1. **Conduct ML/TF risk assessments.** Businesses must understand and manage the ML/TF risks they are exposed to when they provide different products and services, use different distribution channels, deal with different customers and operate in different jurisdictions.
2. **Implement systems and governance to manage their ML/TF risks.** Businesses must establish appropriate oversight of ML/TF risk by senior management, ensure there is an employee due diligence program and that staff are trained to detect ML/TF behaviour and regularly review the effectiveness of their systems and compliance with their obligations.
3. **Know their customers.** Businesses must verify the identity of their customers, monitor their customers' behaviour and keep appropriate records of these actions. Financial institutions must also appropriately identify any other financial institutions with which they do business.
4. **Make themselves known to AUSTRAC.** Most reporting entities¹ must advise AUSTRAC that they have obligations under the AML/CTF Act, either through submission of a compliance report (CR) under section 47 or, if they are a remittance service provider, by registering under Part 6 of the AML/CTF Act. Under recently enacted cost recovery arrangements, all reporting entities will be required to enrol with AUSTRAC in 2011/12.
5. **Report to AUSTRAC.** Businesses must provide reports to AUSTRAC on cash transactions above a \$10,000 threshold, instructions for international funds transactions and suspicious matters. Most must also report regularly on their own compliance with their obligations under the AML/CTF Act through a CR.

As part of a reporting entity's AML/CTF program, it must both identify and verify a customer before providing a designated service. This identification and verification process is referred to in the AML/CTF legislation framework as the "applicable customer identification procedure" (ACIP).

Chapter 4 of the AML/CTF Rules specifies requirements with which a reporting entity's applicable customer identification process must comply. These include separate minimum requirements in relation to the collection and verification of information relating to individuals, companies, trustees, partnerships, associations,

registered co-operatives and government bodies who are customers of a reporting entity.

Part 4.2 of the AML/CTF Rules relates to the ACIP for customers who are individuals. Paragraphs 4.2.3-4.2.4 prescribe the minimum KYC information which must be collected by a reporting entity in respect of a customer who is an individual, including individuals who are sole traders. Paragraph 4.2.6 prescribes the minimum KYC information which must then be verified. Similar requirements for customers which are companies are also included in Chapter 4 of the AML/CTF Rules. Part 4.3 also specifies requirements in relation to collection and verification of information in respect of the beneficial owners of certain companies.

The requirements specified in the AML/CTF Rules are minimum requirements. A reporting entity's AML/CTF program must include appropriate risk-based systems and controls (or procedures) which will determine whether to collect and or verify further information in relation the customers which are companies. However, in any event, verification of information (for all types of customers, not just companies) must be based as far as possible on:

- reliable and independent documentation;
- reliable and independent electronic data; or
- a combination of both of the above.

“Reliable and independent documentation” is defined in Part 1.2 of the AML/CTF Rules as including:

- an original *primary photographic identification document*;
- an original *primary non-photographic identification document*;
- an original *secondary identification document*;

all of which are separately defined in Part 1.2 of the AML/CTF Rules.

Although it is up to reporting entities to choose which sources they use to verify company information, it is understood that some reporting entities use various State and Territory business registers to verify the identification information submitted to them by customers.

AUSTRAC has been in contact with the Department of Innovation regarding this matter and is available to assist the Department with any matters arising out of the Committee's current inquiry into the BNR Bill.

I trust this information is of assistance to you.

Yours sincerely

John L Schmidt
CHIEF EXECUTIVE OFFICER