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Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Ms Dennett,

**Submission to the Standing Committee of Legal and Constitutional Affairs
Inquiry into the Combating the Financing of People Smuggling
and Other Measures Bill 2011**

The Australian Institute of Criminology (AIC) is pleased to offer the following submission in relation to the Standing Committee of Legal and Constitutional Affairs' Inquiry into the Combating the Financing of People Smuggling and Other Measures Bill 2011.

This submission is directed at each of the four areas of proposed amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), the *Financial Transaction Reports Act 1988* (FTR Act) and the *Privacy Act 1988* (Privacy Act).

Regulation of remittance dealers

The AIC notes that the primary purpose of the Bill is to reduce the risk of money transfers by remittance dealers being used to fund people smuggling ventures and other serious crimes by introducing a more comprehensive regulatory regime for the remittance sector. The AIC has undertaken comprehensive research into the risks posed by remittance dealers relating to money laundering, counter terrorism financing and their involvement in serious crime. The research entailed a review of published material from Australia and overseas and consultations with stakeholders representing remittance dealers, users and regulators in Australia. The results of the research were published in the following papers which were released in April 2010.

- Rees, D. 'Money laundering and terrorism financing risks posed by alternative remittance in Australia', in *Research and Public Policy Series*, No. 106, Australian Institute of Criminology, Canberra.
- Rees, D. 'Alternative remittance systems in Australia: Perceptions of users and providers', in *Trends and Issues in Crime and Criminal Justice*, No. 393, Australian Institute of Criminology, Canberra.

- Rees D 2010. Risks of money laundering and the financing of terrorism arising from alternative remittance systems Transnational Crime Brief No 7, Australian Institute of Criminology.

The findings of primary relevance to the current inquiry are as follows. After an extensive review of the topic, it was found that there is little evidence of remittance dealers being involved in the transfer of the proceeds of crime from or to entities in Australia, with the overwhelming majority of dealers acting honestly. There is also little evidence of remittance dealers being implicated in the transfer of funds that could be involved in the financing of terrorism. Although some international cash transfer services provided by remittance dealers have been used by individuals in Australia to pay the organisers of people smuggling ventures and to fund, or launder the proceeds from, other serious criminal activities, the documented instances of this represent an exceedingly small proportion of the total number of transactions undertaken each year. The few instances that were identified of both laundering of the proceeds of crime and financing of terrorism arise principally from non-Australian locations and appear to be uncommon.

The research concluded that the introduction of a system in which the suitability of remittance dealers is assessed by the regulator may be unnecessary and ineffective in that those dealers who seek to act illegitimately may simply remain outside the regulated sector and continue to act improperly. It is apparent that this is the case at present where illegitimate dealers remain unregistered with AUSTRAC and are, accordingly, unable to be monitored. It may also be difficult for a regulator to identify dealers who act illegitimately using the kinds of checks that a regulator would be able to undertake at a reasonable cost. The production of evidence of good character and other references could simply be fabricated, allowing at-risk dealers to be registered and approved as suitable. The cost of complying with a system requiring the assessment of suitability for practice of all dealers would, arguably, be excessive in comparison with the likely benefits to be derived from such a system in terms of its general deterrent effects for those in the entire sector.

The AICs research suggested that the current system of registration accompanied by a publicly-available list of registered providers would be an acceptable approach if supported also by educational measures within the communities concerned. There are already effective informal controls within the members of the communities that make use of remittance dealers and strengthening these controls may be a better and less onerous approach than requiring all dealers to be assessed as to their suitability for practice prior to registration.

Sharing of financial intelligence

The AIC supports the proposed measures designed to enhance the sharing of financial intelligence prepared by the Australian Transaction Reports and Analysis Centre (AUSTRAC) within the Australian Intelligence Community. However, the AIC notes that Australia's national research and statistical data collection agencies, the AIC and the Australian Bureau of Statistics (ABS), have been omitted from the list of agencies that can have access to AUSTRAC's data. In the past, the AIC has undertaken extensive research into money laundering and financing of terrorism on behalf of the Australian Government and worked closely with AUSTRAC in designing an effective research agenda. Despite having a Memorandum of Understanding with AUSTRAC, the AIC was unable to make use of AUSTRAC's data owing to the fact that the AIC is not a nominated partner agency. This seriously detracted from the utility of the research which the AIC was able to undertake for Government.

Similarly, the ABS could have an important role to play in making use of AUSTRAC's data in order to inform its own data collection activities and to assist AUSTRAC in conducting rigorous analysis and interpretation of its data holdings. By including AIC and ABS in the

nominated partner agencies that have access to AUSTRACs data, considerable benefits could be derived for future policy development in this important field of financial crime and counter-terrorism.

Customer verification

The AIC supports the measures in the Bill that allow businesses regulated under the AML/CTF Act to more effectively and efficiently verify the identity of their customers by enabling reporting entities under the AML/CTF Act to use personal information held on an individual's credit information file for the purposes of electronic verification of customer identity.

Cash dealer exemptions

The AIC has no comment to make on the proposed amendments in the Bill that would enable the AUSTRAC Chief Executive Officer to exempt cash dealers from obligations under the FTR Act in the same way in which the AUSTRAC CEO can do so under the AML/CTF Act.

Thank you for providing the AIC with an opportunity to comment on the proposed legislation.

Yours sincerely,

Dr Adam Tomison, Director
Dr Russell G Smith, Principal Criminologist