

QUESTIONS ON NOTICE
ATTORNEY-GENERAL'S DEPARTMENT

(Further questions from Senator Ludwig)

Items 1, 2

Q 1 What is the amended definition of Items 1 and 2 intended to achieve?

Q 2 What was the impetus for these changes?

AGD Response

The Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (AML/CTF Bill) is the subject of ongoing industry consultation, during which an inconsistency was noted between obligations in Division 3A of Part II of the FTR Act and the proposed requirements of Part 5 of the AML/CTF Bill which are intended to ultimately replace them.

The particular inconsistency related to the different definitions of 'account' in the *Financial Transaction Reports Act 1988* (FTR Act) and the AML/CTF Bill. Therefore, the main purpose of the proposed amendment to insert a definition of the term 'account' into Division 3A is to make it consistent with the term 'account' in the AML/CTF Bill.

This new definition of 'account' only applies to Division 3A of Part II of the FTR Act. The term 'account' when used in all other Parts of the FTR Act except Part VIA has the meaning set out in subsection 3(1). When used in Part VIA 'account' has the meaning given by section 40C of the FTR Act.

Industry have indicated that the proposed amendment to the definition of 'account' in Division 3A of Part II of the FTR Act will assist industry by requiring only one systems change at an institutional level rather than multiple changes.

Items 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16

Q 3 Is it the case that, prior to the amendments, the section only applied to cash dealers who were not ADIs and ADIs were specifically excluded per (b)(ii)?

- ***If so, why has the section been amended to cover only ADIs?***
- ***Does this represent a reversal of the application of the section?***

AGD Response

The current subsection 17FA(1) provides that where a cash dealer in Australia sends an International Funds Transfer Instruction (IFTI) out of Australia and the cash dealer is acting on behalf of, or at the request of, another person who is not an ADI and/or the cash dealer is not an ADI, the IFTI must also include customer information

relating to the IFTI. The intention of the provision is to apply to situations where, for example, a bank sends an IFTI for a customer, a cash dealer other than a bank, but is not intended to apply to situations where a bank sends an IFTI on its own behalf.

The proposed amendment to section 17FA will limit the obligation to include customer information to ADIs sending IFTIs and is designed to better implement international funds transfer standards without imposing undue burden on small business.

Financial Action Task Force (FATF) Special Recommendation VII (SRVII) sets out obligations to include customer information in funds transfers when they are sent from, transferred through or received by financial institutions.

SRVII assumes that when funds are transferred, they will be (i) processed using a messaging system such as that provided by the Society for Worldwide Interbank Financial Telecommunications (SWIFT) and (ii) processed through more than one institution.

Financial institutions use messaging systems when they conduct international business or have direct relationships with foreign institutions and need to settle transactions. In the Australian financial services sector, it is primarily the larger ADIs who conduct the volume of international business to warrant the subscription costs to access SWIFT-styled systems. In effect a small number of banks act as conduits for the processing of funds transfer traffic into the international banking system on behalf of second tier banks and other financial institutions.

A number of money remittance businesses have advised that extending the obligations under Division 3A to non-ADIs would subject them to compliance requirements incompatible with their business processes. In practice, these businesses affect funds transfers via internal instructions between their Australian headquarters and their overseas offices without sending funds or instructions through the international banking system.

These businesses are providing customer information to AUSTRAC under the IFTI regime but meeting the Division 3A obligations is technically not possible as these obligations would require the business to 'pass on' the originator information to itself or through payment systems which do not have the technical capacity to include all the required customer information.

For the reasons above, the proposed amendments in the FTR Amendment Bill 2006 serve as a short term solution to address the issues raised by the non-bank money remittance businesses until the AML/CTF Bill comes into force.

Q 4 Why is it the case that an ADI which is acting on behalf of another person who is not an ADI covered by 17FA but an ADI which is acting on behalf of another ADI is not? Is this intentional?

AGD Response:

This provision is not intended to apply to situations where a bank sends an IFTI on behalf of another ADI as the other ADI will have its own obligations which meet the requirements of SR VII.

Q 5 What was the impetus for the changes to this section.

Q 6 Is it intended that these changes are only a temporary alteration to allow extra time for business to update their business processes, or are these changes permanent.

AGD Response:

AGD refers to its response to Question 3 above and emphasises that the purpose of the amendment to restrict Division 3A of Part II of the FTR Act to ADIs is to provide a short term solution to the issues raised by non-bank remittance businesses until the AML/CTF Bill comes into force.

Q 7 The EM states, in relation to Items 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16:

‘Presently, since non-bank money remitters report IFTIs to the Australian Transaction Reports and Analysis Centre (AUSTRAC), this means that ordering customer information is currently available to law enforcement authorities. The amendment to restrict Division 3A of Part II of the FTR Act to ADIs will not change this.’

- o Are you able to indicate whether or not the information that is reported to AUSTRAC by non-bank money remitters is congruent with the customer information required to be supplied under Division 3A?*
- o If not, what information is required to be reported to AUSTRAC that is not covered by Division 3A and/or what information is required to be supplied under Division 3A that is not required to be reported to AUSTRAC?*

(f) AGD Response:

Regulation 11AA prescribes the details to be included in an IFTI report. A broader range of details must be reported to AUSTRAC as compared to what must be included in an instruction. Certain details are required by Division 3A to be included in an instruction that are not currently reportable in all circumstances eg the full business or residential address of the customer and the identification code where it does not appear in the instruction. AUSTRAC is currently discussing possible amendments to Regulation 11AA with AGD to resolve any inconsistencies.

Item 10

Q 8 Are you able to indicate why the alteration of the definition of this item was required?

AGD Response:

During the AML/CTF consultation process, the financial sector indicated that, in practice, financial institutions will transmit multiple numbers of IFTIs in batch form even if some or all are on behalf of account holders. In these circumstances, the financial sector has advised that the only workable approach is for financial institutions to use one identification code to cover all IFTIs. In this regard, the proposed amendment as contained in the FTR Amendment Bill is intended to require an ADI to include an account number in or with the IFTI only when the instruction relates to transferring money directly from a single account held by the customer with the ADI. In all other cases it will be open to an ADI to use an identification code should be permitted instead of an account number.

Q 9 Has there been any exploration of how these ID numbers will be used in practice by AUSTRAC? Were AUSTRAC consulted on their implementation?

Identification codes assigned to instructions are currently reportable details in respect of IFTIs – see regulation 11AA(1)(j) where they appear in the instructions. AUSTRAC has advised that it is currently looking at how the new provisions concerning identification codes can be implemented under the new regime. AUSTRAC was consulted during the development of the amendments.