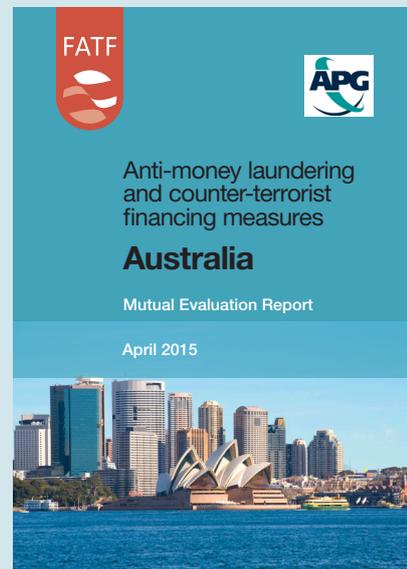




Anti-money laundering and counter-terrorist financing measures - Australia

6. Supervision

Effectiveness and technical compliance



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6. SUPERVISION

Key Findings

Licensing, registration and other controls implemented by Australia to a large extent adequately prevent criminals and their associates from entering the financial sector. However, there are some questions about the effectiveness of these measures for remitters.

AUSTRAC has an insufficient understanding of the ML/TF risks of the individual reporting entities within reporting entity groups, which raises questions on the adequacy of how it selects individual reporting entities for compliance assessments.

AUSTRAC is good at promoting compliance, but does not focus sufficiently on effective supervision and enforcement of individual reporting entities' compliance with AML/CTF obligations within the various sectors. AUSTRAC allocates its limited supervisory resources to the reporting groups and/or entities it considers higher risk.

The majority of deficiencies identified by AUSTRAC through its compliance activities are voluntarily remediated by reporting entities based on recommendations and requirements issued by AUSTRAC after an assessment. AUSTRAC does not take sufficient enforcement action to ensure compliance by industry.

AUSTRAC does not supervise subsidiaries of Australian reporting entities located abroad nor maintain relationships with supervisory authorities where those subsidiaries operate, besides New Zealand.

6.1 Background and Context

6.1. Financial institutions are required to be licensed or registered with the APRA and/or the Australian Securities and Investment Commission (ASIC). Casinos are licensed through State or Territory legislation and are supervised by the relevant State or Territory casino control authorities or gaming departments. Pubs and clubs are licensed at the State and Territory level. Remittance service providers, currency exchange businesses (*bureaux de change*), licenced gaming operators and bullion dealers are required to register (enrol) with AUSTRAC. Other DNFBPs, like lawyers, precious stones dealers, real estate agents, accountants and trust and company service providers are not subject to AML/CTF requirements and are therefore not regulated or supervised for AML/CTF purposes.

6.2. AUSTRAC is responsible for monitoring the AML/CTF compliance of financial institutions and those DNFBPs that provide a 'designated service' under the AML/CTF Act. All providers of a designated service must enrol with AUSTRAC, and be entered on the Reporting Entities Role. This requirement provides AUSTRAC with visibility over the scope of the regulated population and assists AUSTRAC in exercising its supervisory function. The Compliance Branch of AUSTRAC is responsible for supervision. There are approximately 40 employees directly contributing to supervision in the branch. AUSTRAC has 13 657 reporting entities under supervision. Staff are located in AUSTRAC's offices in Sydney, Melbourne and Brisbane. While the Brisbane office is about to be closed, the positions in this office have been maintained and moved to other offices.

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6.2 Technical Compliance (R.26-28, R.34, R.35)

6.3. See for the full narrative the technical compliance annex:

- Recommendation 26 (regulation and supervision of financial institutions) is rated partially compliant.
- Recommendation 27 (powers of supervisors) is rated partially compliant.
- Recommendation 28 (regulation and supervision of DNFBPs) is rated non-compliant.
- Recommendation 34 (guidance and feedback) is rated largely compliant.
- Recommendation 35 (sanctions) is rated partially compliant.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

Licensing, registration and enrolment

6.4. **Licensing, registration and other controls implemented by Australia to a large extent adequately prevent criminals and their associates from entering the financial sector. However, there are some questions about the effectiveness of these measures for remitters.** Australia has a system of self-certification for fitness and propriety by financial institutions. This process may not be in line with the standards. Regarding their respective regulated financial sectors, APRA and ASIC perform a certain level of supervision of the adequacy of the assessment by the financial institutions of the fitness and propriety of all 'responsible persons' or 'responsible managers'. Full background verifications are conducted on owners and controllers before issuing a licence. This assessment must be done prior to initial appointment and afterwards repeated on an annual basis. ASIC conducts probity checks with its overseas counterparts whereas the prudential regulator APRA does not have a direct role in such checks. APRA seeks comments and information on a basis of need where it is relevant rather than as a matter of course. Both APRA and ASIC are designated agencies under the AML/CTF Act and can directly access AUSTRAC's systems for information

relevant to their supervisory and enforcement responsibilities. APRA and ASIC also engage with AUSTRAC Compliance Branch on matters of mutual interest.

6.5. AUSTRAC's approval process for registering as a RNP, affiliate or agent, or independent remittance dealer, provides AUSTRAC with the capacity to remove entities that pose an unacceptable risk of ML or TF from the system. AUSTRAC does not systematically sample criminal records checks at the time of registration. Applicants provide AUSTRAC with information relevant to the suitability of 'key personnel' such as criminal history and beneficial owner arrangements. Typically, AUSTRAC only reviews whether the criminal history check has been performed when an entity is known to be of concern to partner agencies. AUSTRAC may also conduct sample testing of criminal history checks performed by the remitter during examination. In addition, from time to time, AUSTRAC compares the key personnel of remitters on its register against criminal targeting lists of its partner agencies. An increasing number of actions have been undertaken by AUSTRAC including giving an infringement notice to a large multi-national remittance provider for providing services to unregistered affiliates. Given that remitters are considered to present high ML/TF risks, this process could be enhanced through more systematic validation of criminal history and beneficial owner arrangements.

6.6. Licensing and due diligence checks on casino operators, key persons, and employees are governed and performed by State and Territory laws and regulators. The two major casinos are in New South Wales and Victoria. The Independent Liquor and Gaming Authority (ILGA), the casino regulator in New South Wales, conducts extensive due diligence to assess the suitability of the applicant and their associates to own and run a casino. These checks are also performed once every five years during the licence renewal process. The ILGA conducts police checks on many key personnel who work in casinos as required under the *Casino Control Act 1992*. In Victoria, similar periodic licence renewal due diligence is performed by the state casino regulator. The assessors understand that not all States and Territories have similarly strict laws for licensing, regular licence renewals and probity checks. This is a concern given the ML risk profile of casinos and the involvement of some in high profile ML cases.

Risk identification

6.7. AUSTRAC regulates entities at a group level as DBGs or REGs. Those reporting entities that are owned and controlled by a parent reporting entity within normal corporate group structures form a REG, e.g. one major bank has over 120 individual REs within its corporate structure. This includes every subsidiary in the group. As previously noted, the four largest banks in Australia are domestic and they dominate the financial sector; therefore they have been identified to be of high ML/TF risk and impact. In addition, given their heightened risk, remitters are also considered to be of greater materiality than other aspects of the financial sector. Under its risk-based approach¹ AUSTRAC identifies and maintains an understanding of the ML and TF risks of these REGs and the individual reporting entities stemming from the results of the NTA regarding ML/TF channels and risks, compliance assessment outcomes; engagement with peak industry associations and bodies; specific interest by and engagement with partner agencies; analysis of reported transactions; and strategic research and analysis of different crime types, including methods and vulnerabilities.

6.8. AUSTRAC focuses on those corporate groups in sectors identified in the NTA as having a higher exposure and vulnerability to ML/TF. As mentioned before, these sectors are: domestic banks, foreign and investment banks, cash in transit operators (armoured car and cash delivery services), remitters, currency exchange businesses (bureaux de change) and casinos. While the authorities recognize the need to update the NTA, these sectors continue to remain particularly vulnerable. More recently, AUSTRAC has used information from its internal intelligence function and from partner agencies to focus to a large extent on the remittance sector, identified as high risk based on recent high profile examples of criminal exploitation and infiltration of the sector.

6.9. Important factors in identifying ML/TF risk at the REG and reporting entity level are volume and value of transaction reports (SMRs and IFTIs) as an indicator of the volume of funds flowing through an entity, and the size of an entity as a proxy measure of the number and type of customers, products, distribution

1 Based on AUSTRAC's *Compliance & Enforcement Tactical Plan 2013-2014*.

channels and geographic reach. **However, it has not been made sufficiently clear that AUSTRAC, when risk profiling REGs or individual reporting entities, collects and uses sufficient information necessary to adequately determine the level of inherent risk of the REG and individual reporting entities, beyond the information from transaction reports.** International standards on the risk-based approach require, for example, an insight into the level of inherent risk of entities under supervision, including the nature and complexity of products and services, business model, financial and accounting information, delivering channels, customer profiles, geographic location, countries of operation, etc. The assessors were of the view that AUSTRAC’s approach was not sufficiently nuanced to account for variance and risk between the reporting entities within a single REG and within and between sectors.

6.10. After selecting a REG and/or reporting entity for review, when AUSTRAC is planning for (on-site) assessments, it does take into account the detailed characteristics of the REG and/or reporting entity under review. AUSTRAC also has regard to its considerable data holdings and any information held by the FIU to inform the scope of the assessment. At this stage AUSTRAC requests and receives documentation from the entity or group of entities for detailed consideration prior to the review. Where particular issues are identified through a review of these materials, the scope of the assessment may be changed or expanded. Where customer identification records are to be sampled as part of the assessment, AUSTRAC focusses on assessing higher risk customer types as part of the assessment.

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Table 6.1. Reporting entities in high-risk corporate groups

Alternative remittance dealers (including affiliates)	4 960
Betting agencies	4
Bookmakers	4
Cash in transit operators	6
Casinos	12
Credit unions & building societies	3
Custodians	93
Domestic banks	44
Financial services intermediaries	58
Foreign & investment banks	54
Foreign exchange providers	15
Insurance product issuers	19
Non-AML regulated entities	6
Non-bank lenders & financiers	229
Non-bank wealth creation groups	3
Provider of purchased payment facilities	1
Precious metal trader	1
Pubs & clubs	38
Stock brokers	106
Superannuation fund trustees	45
Trustees of managed investment schemes	123
Grand Total	5 837

6.11. In 2013/14, AUSTRAC identified 230 high risk REGs, representing 5 837 Res or 43% of the total population of 13 657 reporting entities in Australia – including all affiliates of registered remittance network

providers. There are high-risk REGs in low-risk sectors because of relative risk factors. An incident relating to ML/TF may result in a reporting entity or REG that is not currently in the high-risk category for supervisory engagement being elevated into the high-risk group where, for example, an entity is identified by law enforcement. While REs from low-risk sectors that are large in comparison to their specific industry peers targeted for engagement by AUSTRAC, smaller reporting entities from these sectors which pose a higher ML/TF risk due to other factors (like high-risk activities, geographical presence, concentration of high-risk clients, risks resulting from company culture and behaviour etc.) may see limited direct compliance engagement.

6.12. After determining ML/TF risk, AUSTRAC determines the level and type of engagement with a REG based on its compliance risk. This is based on the knowledge that most corporate groups have a centralised AML/CTF compliance function. Compliance risk is defined as the risk that an REG is non-compliant with its obligations under the AML/CTF Act. It is used to determine the level and type of engagement with an REG.

6.13. At the time of the on-site AUSTRAC advised the assessors that it had developed, but not implemented, **a comprehensive tool to identify and track compliance risk as the residual risk**². A compliance risk score sheet was being used that produces an indicator of compliance (which is the score) of the reporting entity or REG, based on a self-assessment by each reporting entity or REG's compliance officer. Previous direct compliance engagements, information from the enrolment / remitter registration processes, and behaviour monitoring relative to industry peers are taken into account in determining compliance risk at the REG level. In addition, AUSTRAC has developed data mining techniques that scan its reporting database to identify reporting entities that display outlier behaviours compared to their industry peers. For example, this can be in the form of material change in reporting patterns or unusual reporting patterns.

6.14. To a certain extent, further threats and vulnerabilities are also considered through campaign-based activities, which are based largely on reports filed with AUSTRAC. Occasionally, campaign-based work can involve follow up on information received from partner agencies and/or through the media. Examples provided include the remittance sector, which is a known high risk sector, and the gaming sector.

Mitigating risks through supervision or monitoring compliance

6.15. With a view to mitigating the risks, AUSTRAC and other Australian regulators adopt a graduated approach to supervision. In AUSTRAC's case this extends from low intensity (media articles, guidance, forums and presentations); through to moderate intensity (behavioural reviews, letter campaigns, desk reviews) and high intensity (onsite inspection, enforcement consideration, remedial direction, enforceable undertakings and civil penalties). This wide range of measures should allow AUSTRAC to implement tailored responses depending on the type of reporting entities and their inherent factors, such as their relative importance, their size, and the ML/TF risk they face, etc. In addition, AUSTRAC's supervisory approach has been modified over time to take into account the stage of development of the Australian AML/CTF regime. Immediately after the implementation of AML/CTF regulation in Australia, AUSTRAC was primarily focused on engaging large proportions of the reporting population to educate them on their obligations and nurturing a compliance attitude following the implementation of the AML/CTF Act. Over time, this has developed into a more detailed assessment of reporting entities' compliance with the substantive obligations of the AML/CTF Act. From July 2007 to June 2010 AUSTRAC undertook a combined total of 944 onsite inspections and desk reviews. As a result, over 3 362 requirements have been issued to reporting entities to remedy breaches of AML/CTF obligations and 2 149 recommendations to improve systems, processes and practices. From July 2010 to June 2014, AUSTRAC has since continued to escalate monitoring activities and, through campaigns aimed at different sectors, has issued a further 3 163 remediation requirements for breaches of obligations and 1 605 recommendations to seek best practices from 1 152 on-site inspections and desk reviews. **AUSTRAC succeeds to a fair extent in promoting compliance with the AML/CTF requirements among the sectors it has engaged.**

6.16. **The focus of supervision is targeting high risk entities for enhanced supervisory activity and to test the effectiveness of REGs / reporting entities' systems and controls in practice.** AUSTRAC focuses

2 As of the face-to-face meeting, the tool had been fully implemented.

its supervisory resources on the 230 high risk REGs and reporting entities within these groups are subject to periodic on-site reviews under AUSTRAC’s risk-based supervision approach. Transactions through high-risk REGs represent over 99% of the reported monetary value flowing in and out of Australia. A combined total of 317 reviews (59 on-site assessments or 258 desk reviews) to verify reporting entities’ AML/CTF effectiveness were conducted by AUSTRAC in 2012-13, of which fewer than 20% (in total 60; 32 on-site and 28 desk) were high-risk REGs / reporting entities. In 2013-14, the total number of reviews decreased to 165 reviews (62 on-site inspections and 103 desk-reviews) – but 99% were in high risk REGs/ reporting entities - following a shift in AUSTRAC’s compliance approach to better calibrate ML risks. Between 2010 and 2014, 118 on-site inspections were conducted in high-risk groups as well as 163 desk-reviews. These numbers include thematic assessments. AUSTRAC periodically reviews multiple REGs against a particular AML/CTF obligation, for example, KYC, ongoing CDD and enhanced CDD. AUSTRAC may commence a thematic assessment based on the results of any compliance activity with a view to identifying and remedying any systemic breach of the AML/CTF Act or Rules.

6.17. As shown in the table below (*Detailed Supervisory actions and outcomes for 2012 -14*), 34 assessments have been performed in 2012/2013 on the banking sector, aimed at 12 groups, consisting of 303 individual REs and a further 20 individual reporting entities outside of a DBG. AUSTRAC considers that it assessed compliance in all 303 reporting entities on the basis of 15 onsite audits and 19 desk reviews. AUSTRAC’s Standard Operating Procedures relating to the assessment of reporting entities’ AML/CTF program require supervisors to, in respect of each designated service, identify the risk reasonably faced by the reporting entity that provision of the service might (inadvertently or otherwise) involve or facilitate ML or TF (ML/TF risk) by reference to customer types, the type of designated service that is being provided, the methods by which the designated service is being delivered, and the foreign jurisdictions being dealt with. If the reporting entity forms part of a DBG, the supervisors should separately identify the ML/TF risk reasonably faced by each reporting entity in the group by reference to the designated services that each provides. Assessors question whether the way such assessment work is being done is sufficiently robust to assess compliance by the 303 individual reporting entities.

6.18. AUSTRAC is clearly able to assess the effectiveness of mitigation for those individual reporting entities of the group directly engaged during the assessment. However, assessors are not convinced that AUSTRAC holds sufficient information about the ML/TF risk profile of all reporting entities within REGs to be able to design each REG’s assessment work-plan such that the targeting and sampling used produces reliable results about compliance across the group. The assessors also consider that AUSTRAC’s recent focus on assessing compliance by remitters means that the number of banks targeted for the assessments is too low relative to that sector’s risk profile. **This makes it insufficiently clear for the assessment team to conclude that AUSTRAC’s supervisory response is adequately adapted to the ML/TF risks.** During the interviews with the private sector, representatives from the sector mentioned several times that they were under the impression that assessments undertaken since 2010 are still aimed primarily at assisting AUSTRAC in understanding the activities, entities, and REGs.

Table 6.2. AUSTRAC AML/CTF compliance assessments of entities in High-Risk Groups between 2010-11 and 2014-15

On-site inspections – High-risk Groups / High-risk entities	2010-11	2011-12	2012-13	2013-14	2014-15	Total
Hotels or clubs (gaming)		2	4	17		23
Domestic banks	5	5	6	6		22
Foreign and investment banks	2	1	6	9	1	19
Remittance service providers	3		6	4	1	14
Currency exchange dealers	1	3		5		9
Casinos		2	3	3		8

Table 6.2. AUSTRAC AML/CTF compliance assessments of entities in High-Risk Groups between 2010-11 and 2014-15 (continued)

On-site inspections - High-risk Groups / High-risk entities	2010-11	2011-12	2012-13	2013-14	2014-15	Total
Stockbrokers			2	4		6
Corporate bookmakers			1	4		5
Specialist credit providers		1	2	1		4
Bookmakers				2		2
Funds managers				2		2
Bullion dealers				1		1
Superannuation funds				1		1
Cash in transit operators				1		1
Precious metal traders			1			1
Insurers				1		1
Credit unions / building societies			1			1
Grand total	11	14	32	61	2	118
Desk reviews – High-risk Groups / High-risk entities	2010-11	2011-12	2012-13	2013-14	2014-15	Total
Foreign and investment banks		5	8	12		25
Specialist credit providers	1		3	16	1	21
Domestic banks		11	5	3	1	20
Funds managers		2	4	11		17
Financial planners		1		13		14
Stockbrokers		2	1	10		13
Hotels or clubs (gaming)			1	12		13
Superannuation funds		3	1	7		11
Credit unions / building societies	1	4		2		7
Currency exchange dealers			2	3		5
Remittance service providers			1	4		5
Custodians				5		5
Cash in transit operators		3	1			4
Small bookmakers				2		2
Insurers			1		1	2
Casinos					1	1
Bullion dealers				1		1
Precious metal traders				1		1
Grand total	2	31	28	102	4	163

Table 6.3. Detailed Supervisory actions and outcomes for 2012-14

Year	Industry sector	N° of Assessments	Breakdown of reporting entities assessed			
			N° of DBGs (entities within DBG)	N° of individual entities	Desk review	Onsite audit
2012-13	Banks	34	12 (303)	20	19	15
	Gambling	194	3 (17)	191	176	18
	Remitters	13	0	13	2	11
	NBFS	76	10 (42)	66	61	15
TOTALS		317	25 (632)	290	258	59
2013-14	Banks	32	14 (159)	17	17	15
	Gambling	41	8 (47)	48	15	26
	Remitters	8	1 (3)	2	4	4
	NBFS	87	19 (88)	55	70	17
TOTALS		168	42 (297)	122	106	62

NBFS: Non-bank financial services (securities, life insurance, etc.)

6.19. AUSTRAC uses the annual compliance reports (ACR) tool, which reporting entities are required to submit under the AML/CTF Act, as an important tool for providing information on potential compliance or implementation issues and thematic assessments. It is comprised of an online questionnaire with fixed choice responses across 22 key question areas. Following the results of this exercise, further thematic analysis may be conducted in relation to the entities to assess the need for further escalation. AUSTRAC identified several problems regarding the current ACR; the usefulness has decreased over time as the ACR was designed in a time when AUSTRAC was more focused on implementing AML/CTF programs rather than ML/TF risk and ongoing compliance. As a result, the ACR now provide limited visibility over the maturity and effectiveness of reporting entities' AML/CTF programs. AUSTRAC is in the process of reviewing the format of the reports.

6.20. The duration of the overall reporting entity's on-site assessment process (from pre on-site preparation to post on-site follow-up) lasts from several weeks to several months. The actual on-site components are short (in general 1-2 days at most for nearly all financial institutions, which follows a much longer off-site preparation). In line with the risk-based approach, medium and low risk reporting entities are not part of the aforementioned cycle, but can be involved in assessments through campaign based work (for example, the clubs and pubs in 2013-14 and through ACRs based on self-assessment disclosure) or can be targeted for an assessment based on other factors.

6.21. As noted under IO.10, there is no systematic monitoring of compliance with the international and autonomous sanctions regimes. During its reviews, AUSTRAC periodically uncovers issues of non-compliance, and primarily refer the matters to DFAT which has responsibility for the sanctions regimes.

Remedial actions and sanctions

6.22. AUSTRAC's enforcement strategy is based on its *Compliance & Enforcement Tactical Plan 2013-14* and focusses on 'fixing the problem' before sanctioning. **In most cases, deficiencies identified by AUSTRAC through its compliance activities are remediated by reporting entities according to the recommendations and requirements issued by AUSTRAC after an assessment.**

6.23. **When AUSTRAC determines that it is necessary to use its formal enforcement powers under the AML/CTF Act**, the sanctioning instrument used most often is the Enforceable Undertaking (EU). An EU is a written undertaking that is enforceable in a court and is used where there has been a contravention of the

AML/CTF Act, the regulations or the AML/CTF Rules. The EU is mutually agreed by the reporting entity and the AUSTRAC CEO. The AUSTRAC CEO may accept an undertaking that a person will comply with the AML/CTF requirements, take specified action, refrain from taking specified action, and/or take specified action towards not contravening, or being likely to contravene the requirements in the future. Copies of each EU are published on AUSTRAC's website.

6.24. **AUSTRAC issues around five enforcement actions each year which is assessed as low compared to the total number of reporting entities and not commensurate with the severity of findings and control deficiencies that it found in the reporting entities through its supervisory processes.** EUs have been used 14 times since 2008. Eleven cases were based on AUSTRAC's own compliance assessment, one on a voluntary breach reporting, one on referral from APRA, and one on referral from AUSTRAC's intelligence function. Sectors involved were the banking sector (two EUs), remitters (five EUs) and hotels with gaming activities (seven within one REG). AUSTRAC has only applied financial sanctions in one case, related to the failure of a remittance provider to register its affiliates. No financial sanctions have ever been applied for non-compliance with AML/CTF obligations relating to preventive measures. The number of enforcement actions and the subjects of these actions do not convincingly demonstrate that reporting entities are subject to effective and proportionate sanctions. Reporting entities met by the team confirmed the absence of a deterrent effect of measures taken by AUSTRAC. Remediation work for large entities is dissuasive to the concerned reporting entity (considering the volume and cost of remediation work, as remediation actions are reviewed by external third parties, such as consultancy firms). Remediation actions are not made public by AUSTRAC.

Table 6.4. Summary of AUSTRAC enforcement actions from 2008-09 - 2013-14

Enforcement action	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Infringement notices (section 184)	-	-	-	-	-	1
Enforceable undertakings (section 197)	1	3	7 (one RE Group)	1	1	1
Remedial direction (section 191)	-	1	1	1	-	-
Notices to appoint an authorised external auditor (section 162)	-	7 (one RE Group)	-	1	-	-
Total	1	11	8	3	1	2

6.25. Within the remittance sector, AUSTRAC has refused, cancelled, suspended or placed conditions on the registration of a number of remitters as a means of reducing the ML/TF risk posed by the sector. The AUSTRAC CEO has refused the registration of 7 applicants; imposed conditions on 17 registrations; suspended the registration of 2 persons; and cancelled the registration of 8 persons. In addition, as a result of AUSTRAC's enquiries, 9 persons have voluntarily removed themselves from the register and 5 persons have withdrawn their applications to be registered.

Demonstrating effect on compliance

6.26. **AUSTRAC was unable to convince assessors that its supervisory activities had a demonstrable effect on compliance by individual reporting entities that were not subject to onsite or offsite engagement.** While AUSTRAC's outreach activities promote an awareness of AML/CTF obligations, assessors were not satisfied that its approach to on- and off-site supervision and enforcement action had a demonstrable effect on compliance by reporting entities. This was particularly notable among REs that AUSTRAC had limited direct engagement with or had not inspected. Since the compliance risk tool (as a tracking mechanism) was not yet implemented at the time of the onsite, AUSTRAC has advised the team that it **does not have full insight into the effect of its supervisory activities on compliance by sectors, reporting entities or REGs.** At this stage, effectiveness can be shown based on the results of EUs; the cover ratio regarding reviews of high risk groups (approximately 40% per year); the outcome of ACRs (self-assessment disclosure) regarding individual REGs and/or individual reporting entities; and the volume of SMR reports and other types of reporting provided by the REGs to AUSTRAC. The ACRs through self-disclosure are however – as mentioned

before - past their expiry date and AUSTRAC is reviewing their use and content with the aim of gaining a better insight in risk identification and classification by reporting entities. The assessors were of the view that the majority of these metrics on the adequacy of reporting entities' controls and AML/CTF compliance are based on attestations from the reporting entities, with insufficient work done to independently verify these assertions.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

6.27. Promoting awareness of AML/CTF obligations is a key priority for AUSTRAC. This is reflected by the fact that one of the statutory functions of the AUSTRAC CEO is 'to advise and assist the reporting entities in relation to their obligations under this Act, the AML/CTF Rules and regulations'. **In its function as regulator and supervisor, AUSTRAC engages with the sector through consultation and explanation of the AML/CTF obligations through several mechanisms**, including through the development and dissemination of information and guidance materials (including e-learning), regular industry forums and consultation processes, and the AUSTRAC Help Desk. The main guidance issued is the AUSTRAC Compliance Guide. **Remittance businesses have been provided with broad information on AML/CTF obligations, including registration requirements. Their application in practice seems however to be challenging**, especially as it relates to smaller, unaffiliated remitters. This challenge is not unique to Australia.

6.28. **Materials and other information on ML/TF risks are limited and somewhat outdated.** The private sector indicated that there's a need for AUSTRAC to further develop its understanding of ML/TF risks regarding several sectors (including the banking sector) and regarding activities of individual reporting entities in order to better promote a clear understanding of ML/TF risks, not only of AML/CTF obligations. Reporting entities unanimously desire to obtain more feedback on reported SMRs to guide them in their further work in identifying relevant ML/TF risks in Australia, and stated that the feedback provided was too general and outdated to be useful.

6.29. At the time of the onsite, reporting entities had mixed views about the usefulness of AUSTRAC's guidance. While many found it helpful, they expressed reservations about its complexity and timeliness of its updates. AUSTRAC addressed these issues shortly after the onsite by redesigning its website and issuing the Compliance Guide which provides comprehensive guidance on reporting entities' AML/CTF obligations.

Overall conclusion on Immediate Outcome 3

6.30. AUSTRAC relies heavily on varying forms of reporting (i.e. SMRs and IFTIs) and unverified self-reporting of compliance to determine reporting entity risks; other risk factors should be considered and AUSTRAC supervisory practice should extend to more individual reporting entities. AUSTRAC's approach does not seem sufficiently nuanced to adequately account for the risks of individual reporting entities in a REG. More generally, AUSTRAC's graduated approach to supervision does not seem to be adequate to ensure compliance. No monetary penalties for violations of the AML/CTF preventive measure obligations have ever been pronounced. Rather, AUSTRAC had applied sanctions to a limited extent in the form of enforceable undertaking, which amounts to – among other things – a formal agreement that the reporting entities will comply with AML/CTF requirements. The assessors concluded that the use of sanctions for non-compliance has had minimal impact on ensuring compliance among reporting entities not directly affected by the sanction. The private sector shared similar views about the depth, breadth, and effectiveness of the supervisory regime. In addition, there is no appropriate supervision or regulation of most higher-risk DNFBPs because they are not subject to AML/CTF requirements. Overall, the authorities were unable to demonstrate improving AML/CTF compliance by REs or that they are successfully discouraging criminal abuse of the financial and DNFBP sectors.

6.31. **The overall rating is therefore a moderate level of effectiveness for Immediate Outcome 3.**

6

6.4 Recommendations on Supervision

6.32. The following recommendations are made to Australia on supervision (IO.3):

- Keep the inherent risk picture of domestic markets and sector(s) up to date.
- Incorporate more (inherent) risk factors besides data analysis from filed reports into identifying and assessing the risk of reporting entities.
- Focus more on the assessment of the effectiveness of the application of the controls at the individual reporting entity level, instead of on the assessment of the design of (parts of) the AML/CTF programmes on a group level.
- Australia should take comprehensive measures to ensure financial institutions are actively supervised for implementation of DFAT lists. As the AML/CTF regulator, this supervision may appropriately align with responsibilities of AUSTRAC, although additional compliance staff would be required. DFAT and AUSTRAC should work closely together in promoting compliance with sanctions regimes (both obligations and risks).
- AUSTRAC should consider opportunities to further utilise its formal enforcement powers to promote further compliance by reporting entities through judicious use of its enforcing authority. Australia should make the corresponding changes to its legal framework for AUSTRAC, where necessary, to enable this. In relation to remitters, the regulatory oversight of self-certification should be reinforced or enhanced.
- Enhance the utility and timeliness of feedback provided to reporting entities on the SMR reporting to enable them to better understand the real ML/TF risks of their activities;
- AUSTRAC's supervision should extend to subsidiaries of Australian reporting entities located abroad and establish supervisor relationships with the supervisory authorities in the countries where these entities operate.
- Extend the supervision of the DNFBPs for AML/CTF compliance beyond casinos and bullion dealers to include services offered by other DNFBPs – real estate agents, other precious metals and stones dealers, lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers.

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Recommendation 26 – Regulation and supervision of financial institutions

a6.1. In its 3rd assessment, Australia was rated partially compliant on Recommendation 23 because of the low number of AML/CTF inspections, lack of tools, and quality of the supervision. In subsequent follow-up reports, progress was made through the adoption respectively in 2006 and 2007 of the AML/CTF Act and AML/CTF Rules, lastly amended in 2014.

a6.2. **Criterion 26.1** – Pursuant to sections 212 and 229 of the AML/CTF Act, AUSTRAC is in charge of the “promotion of compliance this Act, regulations and AML/CTF Rules” and is empowered to “make rules prescribing matters required or permitted by the AML/CTF Act to be prescribed by AML/CTF Rules”. Pursuant to section 212(1)(f) of the Act, AUSTRAC has other functions as conferred on the CEO of AUSTRAC under this Act, including monitoring compliance with the AML/CTF Act, Rules and Regulations as mentioned under section 190 of the Act.

a6.3. **Criterion 26.2** –

a6.4. Core Principles financial institutions:

- Authorised Deposit-taking Institutions (ADIs) (i.e. banks, building societies, credit unions, certain participants in credit card schemes, and providers of certain purchased payment facilities) are required to be licensed to carry on banking business (section 8 of the *Banking Act 1959*). Section 9 provides for the licensing process. In particular, APRA is responsible for granting licenses, as necessary imposing further conditions, and revoking licenses
- Financial intermediaries (i.e. investment banks) that are not operating as an ADI are required to obtain an AFSL before conducting financial services business. AFSLs are issued by ASIC.
- Holders of an Australian Credit License (ACL) are licensed by ASIC. A national licensing scheme is applied for people who want to engage in credit activities in relation to consumers under the *National Consumer Credit Protection Act 2009* and must hold an ACL or be an authorised representative of a licensee.
- APRA registers superannuation funds of trustees regulated by APRA. Their trustees (other than trustees of self-managed superannuation funds which are regulated by the ATO) are licensed and registered by APRA; they may be required to hold an AFSL granted by ASIC depending on the nature of the operation carried out.
- Insurance: general insurers are required to be authorised under section 12 of the *Insurance Act 1973* (Insurance Act) and life insurers are required to be registered under section 21 of the *Life Insurance Act 1995* (Life Insurance Act). In both cases, the authorisation and registration are granted by APRA and are in the nature of a license, as APRA assesses the applications received and can impose additional conditions prior to authorisation or registration.

a6.5. Other financial institutions:

- Remittance sector: Part 6 of the AML/CTF Act sets out the framework for the enrolment (registration) of money remitters. As is the case for the Core Principles financial institutions, registration is not automatic. Additional conditions can be decided by the AUSTRAC CEO and a prior assessment as to whether the registration would involve a significant ML/TF or people smuggling risk is conducted, including the fact key personnel have been charged or convicted for offences and risks deriving from beneficial ownership arrangements.

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- Currency exchange houses, (bureaux de change) where physical currency is settled immediately, must enrol (register) with AUSTRAC.

a6.6. The establishment or the operation of shell banks is not expressly prohibited, but the licensing process seems to preclude it. Section 9 of the Banking Act requires institutions to be licensed by APRA in order to conduct a banking business. APRA's Guidelines on Authorisation of ADIs set out a number of criteria, including on the head office, management and supervision, that applicants must fulfil, that seems to make it clear that a shell bank will not be authorised as an ADI.

a6.7. **Criterion 26.3 –**

- Financial institutions regulated by APRA – Section 19 of the Banking Act prohibits 'disqualified persons' from acting for an ADI. Section 20 defines disqualified persons to include persons who have been convicted of an offence under the Banking Act, *Financial Sector (Collection of Data) Act 2001*, Corporations Act, or of an offence of any law, where the offence relates to dishonest conduct or to conduct relating to a company carrying out business in the financial sector. ML/TF offences are not expressly mentioned but Australia advised that they would fall within the scope of offences relating to dishonest conduct or to conduct relating to a company in the financial sector. The Banking Act does not include fitness and propriety as conditions for the licensing. ADIs must have a fit and proper policy and are primarily responsible for the quality of their senior management (i.e. directors, senior managers and auditors). However, a licence may be revoked for lack of fitness and propriety.
- The Insurance Act, Life Insurance Act and *Superannuation Industry (Supervision) Act 1993* contain similar provisions.
- The fit and proper requirement for ADIs, general insurers and life insurance companies is further detailed in the Prudential Standard CPS 520. In particular, it is specified that financial institutions must have a written policy on fit and proper requirements and are responsible for its implementation. Such a policy applies to directors, senior management and auditors; they are required to be skilled, experienced, competent, diligent and honest. The fit and proper policy applies to applicants to certain functions, but also on an annual basis for each responsible person position and in case of suspicion.
- The *Financial Sector (Shareholdings) Act 1998* imposes approval requirements where more than 15% of the voting shares in an ADI are to be held by an individual or a group. Shareholders are not subject to fit and proper obligations; however, the ADI Authorisation Guidelines issued by APRA state that 'all substantial shareholders are required to demonstrate to APRA that they are 'fit and proper' in the sense of being well-established and financially sound entities of standing and substance'.
- AFSL holders – except if licensed by the APRA, applicants to an AFSL are required to meet minimum obligations set out in the Corporations Act. ASIC must grant a licence if a business shows it can meet basic standards such as training, compliance, insurance and dispute resolution. There is no fit and proper obligation. A number of Licensing Regulatory Guides are available on the website of ASIC. One of them elaborates on the basic obligations, including the role and function of senior management, the obligation to provide services in an efficient, honest and fair way, employee screening and training. It should however be noted that regulatory guides are not law and do not constitute legal advice; they only provide guidance.
- There are no fit and proper requirements regarding ACL holders. ACL holders are required to lodge annual compliance certificates which may be verified by ASIC. However, there are no direct obligations regarding fitness and propriety.
- Remittance providers: Pursuant to section 75C of the AML/CTF Act, the ML/TF risks are to be considered by AUSTRAC while deciding to register a remittance provider. Chapter 57 of the AML/CTF Rules specify the other matters that are to be regarded for the registration process; they deal

with the offences for which the applicant has been charged or convicted, the legal and beneficial ownership and control of the applicant, etc.

- There are no fit and proper requirements regarding currency exchange businesses ('bureaux de change').

a6.8. **Criterion 26.4** – AUSTRAC supervises all reporting entities under the AML/CTF Act, including Core Principles financial institutions, money remitters and 'bureaux de change' (or currency exchange businesses). All providers of designated services are under a legal obligation to enrol with AUSTRAC for supervision. AUSTRAC focuses on AML/CTF supervision of reporting entities at a corporate group level.

a6.9. AUSTRAC supervises all reporting entities under the AML/CTF Act, including Core Principles financial institutions, money remitters and currency exchange businesses ('bureaux de change'). AUSTRAC focuses its efforts on the supervision on groups entities which provide services and products identified as having a higher exposure and vulnerability to ML/TF.

a6.10. **Criterion 26.5** – AUSTRAC applies to a certain extent a risk-based approach in its supervision of reporting entities at a corporate group level for efficiency reasons. Selection for assessment, frequency and intensity of on-site and off-site supervision of corporate groups (reporting entity groups - REGs) and individual reporting entities is determined on the basis of ML/TF risks identified in the NTA, exposure to ML/TF risk because of the size of the group, and the volume and value of transaction reports lodged with AUSTRAC, and specific interest by AUSTRAC's internal risk committee or partner agencies. Through previous direct compliance engagements with REGs and/or individual reporting entities, AUSTRAC has information regarding internal controls and procedures associated within the REG and/or those individual reporting entities. Inherent ML/TF risks are only taken into account to a certain extent; as far as reported transactions may indicate, while size of the REG can be just be one of several factors in determining risk among other factors (for example activities of entities within the REG, geographical risk, product risk, client risk, etc.). Only after selection of individual reporting entities for assessment does AUSTRAC seek to collect further information to get a more complete risk profile of that reporting entity, mainly based on its information lodged through reporting requirements. Regarding ML/TF risks present in Australia, reference is made to industries and channels mentioned in the NTA. However, the NTA gives guidance on the current inherent ML/TF risks in Australia (see Recommendation 1) to a limited extent.

a6.11. **Criterion 26.6** – AUSTRAC does not fully assess or re-assess the REG's risk profile, as insight in compliance risks are yet to be further developed. AUSTRAC advised that the ML/TF risk profiles of the high risk groups are reviewed through yearly cycles, and low risk groups in three yearly cycles. These reviews include regular follow up actions by AUSTRAC monitoring the remediation given by the group. To a limited extent reviews of risk profiles of groups and reporting entities outside these high risk groups are undertaken.

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a6.12. Licensing or registration requirements and fit and proper obligations are in place regarding the financial sector. AUSTRAC applies to a certain extent a risk-based approach in its supervision of reporting entities at a corporate group level. ML/TF risks are not adequately identified by AUSTRAC, as risks are primarily identified by activity in a sector determined to be high risk by the NTA and mainly through analysis of transaction reporting. Risk profiles of the high risk groups are reviewed through yearly cycles; those of low risk groups in three yearly cycles. These reviews include regular follow up actions by AUSTRAC monitoring the remediation given by the group, but the depth of follow-up varies. To a limited extent reviews of risk profiles of REGs and reporting entities outside these high risk groups are undertaken. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

a6.13. In its 3rd assessment, Australia was rated partially compliant on Recommendation 29 due in particular to the limited powers of AUSTRAC and low level of implementation. In subsequent follow-up reports, progress

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were made through the adoption respectively in 2006 and 2007 of the AML/CTF Act and AML/CTF Rules, lastly amended in 2014.

a6.14. **Criterion 27.1 –**

- *Supervision* - Sections 147, 148 and 150 of the AML/CTF Act list the powers of AUSTRAC's authorised officers, which include the power to enter premises and to search, examine, and inspect documents, etc. in order to monitor compliance with the AML/CTF Act and Rules. However, all of these powers are conditional upon either the consent of the reporting entity to enter the premises or a monitoring warrant. Moreover, the Act permits a reporting entity to revoke the access of AUSTRAC's authorised officers to its premises. Pursuant to section 161, AUSTRAC may require reporting entities to appoint an external auditor. The AUSTRAC CEO must specify what matters are to be covered by the audit and must be given a copy of the audit report.
- *Ensuring compliance* – Section 190 of the AML/CTF Act provides for the situations where violations to the AML/CTF obligations of financial institutions are identified. The following paragraph lists some of the measures ('remedial directions') that AUSTRAC can take in the case of a reporting entity breaching the AML/CTF obligations. Ensuring compliance with the AML/CTF Act is also one of the functions of AUSTRAC's CEO pursuant to section 212 of the Act. Section 212(2) also specifies that AUSTRAC's CEO must consider while performing his functions a number of factors, such as the integrity of the financial system; crime reduction; competition; economic efficiency; the FATF Recommendations and any relevant Convention or Resolution; etc.

a6.15. **Criterion 27.2** – Pursuant to sections 147 and 148 of the AML/CTF Act, AUSTRAC's officers have the authority to conduct inspections (i.e. to enter the premises of a financial institution and search and examine necessary documents). However, inspections can only take place with the consent of the occupier of the premises or if a magistrate has issued a warrant (section 159). Moreover section 152 allows the financial institution to refuse to consent to the entry in the premises of the financial institution.

a6.16. **Criterion 27.3** – Section 150 of the AML/CTF Act provides AUSTRAC's officers with the authority to ask questions and seek production of documents. As mentioned above, this power may be completed only with the consent of the occupier of the premises or if a magistrate issues a warrant. Section 167 of the AML/CTF Act authorises authorised officers to ask by a written notice to be provided with information, documents or copies of a document under the forms set in the notice. In both cases, omissions are sanctioned by imprisonment of 6 months and/or 30 penalty units.

a6.17. **Criterion 27.4** – There is a range of sanctions available for sanctioning violation of the AML/CTF obligations. Civil and criminal penalties can be imposed by a court. Remedial directions and enforceable undertakings are administrative actions that AUSTRAC can impose. See Recommendation 35. Sanctions do not include the power to withdraw, restrict or suspend the reporting entity's licence. AUSTRAC can, pursuant to section 75G of the AML/CTF Act, cancel a remitter's registration in case of significant risk of ML/TF, suspend or impose conditions on the registration. Regarding financial institutions licensed by APRA, AUSTRAC can refer breaches to APRA which maintains the power to withdraw the licence.

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a6.18. AUSTRAC has powers to supervise and ensure compliance with AML/CTF requirements to the extent that these are conditional upon the consent of the reporting entity. Entering the premises and the search, examination and inspection of reporting entities' documents can be limited by the reporting entity, although where required warrant powers exist. Moreover the Act permits a reporting entity to at any time revoke the access of AUSTRAC's authorised officers to its premises. A warrant is then necessary for AUSTRAC to execute its powers. Therefore, **Recommendation 27 is rated partially compliant.**

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Recommendation 28 – Regulation and supervision of DNFBPs

a6.19. In its 3rd assessment, Australia was rated partially compliant on Recommendation 24 as most DNFBPs lack effective AML/CTF regulation and supervision. In subsequent follow-up reports, progress was made through the adoption respectively in 2006 and 2007 of the AML/CTF Act and AML/CTF Rules, lastly amended in 2014.

a6.20. **Criterion 28.1** – Casinos, gambling and gaming houses are required to be licensed by State or Territory casino control authorities. Under each State or Territory legislation, the licensing authority considers the applicant’s suitability. However, the State and Territory licencing authorities do not have express AML/CTF responsibilities to qualify as competent authorities. In addition, not all legislation requires the licensing authority to consider the associates of the applicants (see for example the Gaming Control Act of the Northern Territory). Post-licensing, casinos are subject to the AML/CTF legislation and supervised by AUSTRAC.

a6.21. **Criteria 28.2 to 28.4** – With the exception of bullion dealers supervised by AUSTRAC, other DNFBPs are not subject to AML/CTF obligations, and therefore are not monitored by competent authorities or self-regulated bodies. The entry standards and fit and proper requirements differ across the various DNFBP sectors, and are absent in some instance (e.g. bullion dealers, TCSPs).

a6.22. **Criterion 28.5** – Only casinos and bullion dealers are supervised by AUSTRAC to which it applies the same approach as that applied to the supervision of other reporting entities. See Recommendation 26.

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a6.23. Only casinos, gaming outlets, and bullion dealers are supervised for AML/CTF compliance. Considering the fundamental deficiencies in the scope of AML/CTF coverage and supervision of DNFBPs as covered under IO.3, **Recommendation 28 is rated non-compliant.**

Recommendation 34 – Guidance and feedback

a6.24. Australia was rated PC with the previous Recommendation 25. The assessment identified that most of the guidance was heavily focussed on SUSTRs, but inadequate in regard to general detailed CDD guidance. Guidance also did not cover most DNFBPs. On feedback, the assessment indicated that while there was some general and specific feedback on STRs, AUSTRAC could provide more sanitised examples of actual ML cases and/or information on that decision or result of an SUSTR. The language of the Recommendation has not changed. However, since the last assessment Australia has adopted a new AML/CTF Act and issued new AML/CTF Rules, archived most of the guidance issued under the previous legislation, and issued some new guidance.

a6.25. **Criterion 34.1** – AUSTRAC issues a wide range of guidance covering most aspects of AML/CTF obligations of reporting entities from its website. Feedback is mainly general but does now include a range of sanitised cases. The guidance does not apply to most DNFBPs as they are not reporting entities.

- Almost all guidance is issued by AUSTRAC – mostly on its website, pursuant to a general obligation of the AUSTRAC CEO to “advise and assist reporting entities in relation to their obligations”. The material issued includes policies, guidance notes, information circulars, legal interpretations, newsletters, guides, information booklets and brochures, risk assessments, annual typology and case studies reports, and typology briefs. In addition, AUSTRAC provides guidance and feedback during consultations with industry as well as via an E-Learning application and a help desk for reporting entities. The issued material addresses a range of issues, with much of it focusing on sending signals to industry about how AUSTRAC will exercise its regulatory functions, particularly for non-compliance. The key document is AUSTRAC’s “Compliance Guide” (available at: www.austrac.gov.au/austrac-compliance-guide.html) which comprehensively explains the obligations of reporting entities.

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- A concern is that the regulatory framework gives reporting entities substantive discretion for applying the AML/CTF requirements and allows simplified measures for all medium and low risk situations, yet there is only limited guidance for identifying high risk customers or situations.
- Feedback provided to reporting entities is mainly general, published, since 2007, in AUSTRAC's annual typologies and case studies report (which contains sanitised examples of actual cases drawn from SMRs). AUSTRAC also highlights positive examples of suspicious reporting, as well as general areas of deficiency (e.g. late reporting, insufficient detail in certain fields) at industry meetings and forums. AUSTRAC does provide specific feedback on SMRs to some reporting entities as part of their compliance assessments and ongoing regulatory engagement. AUSTRAC also provides detailed feedback on regulated entities compliance with requirements as part of its supervisory role (see IO3).

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a6.26. AUSTRAC issues a wide range of guidance covering most aspects of AML/CTF obligations of reporting entities. The material issued includes a comprehensive "Compliance Guide". Feedback has improved since the introduction of the AML/CTF Act in 2006 and includes a range of sanitised cases. A concern is the limited guidance available for identifying high risk customers or situations. In addition, none of the guidance applies to most DNFBPs. **Recommendation 34 is rated largely compliant.**

Recommendation 35 – Sanctions

a6.27. In its 3rd assessment, Australia was rated partially compliant on Recommendation 17 due in particular to the limited powers of AUSTRAC and low level of implementation. In subsequent follow-up reports, progress was made through the adoption respectively in 2006 and 2007 of the AML/CTF Act and AML/CTF Rules, lastly amended in 2014.

a6.28. **Criterion 35.1** – Sanctions for Recommendation 6: Violations of terrorist and TF related targeted financial sanctions (i.e. UNSCRs 1267/1989, 1989 and 1373) are sanctioned by a maximum of 10 years' imprisonment and a fine the greater of either AUD 425 000 (approx. USD 391 000 / EUR 283 000) or three times the value of the transaction when committed by a natural person, and a fine the greater of either AUD 1.7 million (approx. USD 1.5 million / EUR 1.1 million) or three times the value of the transaction when committed by a legal person.

a6.29. Sanctions for Recommendation 8 to 23: The AML/CTF Act provides for a number of civil penalties and criminal offences when obligations are violated. Moreover, AUSTRAC has some powers to directly impose actions in case of violation of the AML/CTF obligations. In addition, it may apply to a court for a civil penalty order in case of violation of the obligation to apply customer's identification procedures (section 31), to verify the identity of the customer (section 35), to conduct on-going due diligence (section 36), to report suspicious matters (section 41), etc. Pursuant to section 175(4) of the AML/CTF Act the maximum civil penalty that can be imposed is 100 000 penalty units for a corporation and 20 000 penalty units for natural persons, or AUD 17 million and 3.4 million respectively (or approximately USD 15.5 million – EUR 11 million and USD 3 million – EUR 2.3 million). AUSTRAC can also apply to the court for an injunction restraining a person from doing something or requiring a person to do something (section 192). With respect to money remitters, AUSTRAC can, in addition to the measures above, suspend or cancel the registration (sections 75G and H of the AML/CTF Act).

a6.30. Criminal sanctions are also imposed by a court. They are available for a limited number of offences for failure to implement obligations related to R.8 to 23, and are listed in Part 12 of the AML/CTF Act: providing false or misleading information or documents; falsifying documents for use in an ACIP; providing or receiving a designated service using a false name or customer anonymity; structuring a transaction to avoid a reporting obligation; failing to register; failing to respond to questions; and failing to respond to notices. The first three offences are the most severe as they are punishable by 10 years imprisonment and/or 10 000 penalty units. In addition to these penalties and offences provided in the Act, AUSTRAC may give remedial directions (section 192). They are written directions through which AUSTRAC requires a reporting entity to take specified action

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towards ensuring that the reporting entity does not breach its AML/CTF obligations. Remedial directions are enforced by a court and are published on the website of AUSTRAC. Criminal sanctions are also available for tipping-off, punishable for two years or 120 penalty units or both.

a6.31. Australia also relies on the powers of the AUSTRAC CEO to give remedial directions (section 191) and to accept enforceable undertakings (section 197 *et seq.*). A remedial direction is a “written direction requiring the reporting entity to take specified action directed towards ensuring that the reporting entity does not contravene the civil penalty provision, or is unlikely to contravene the civil penalty provision, in the future”. An enforceable undertaking is a “written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the AML/CTF Rules, take specified action or refrain from taking specified action”. With respect to remitters, AUSTRAC can refuse, cancel or suspend a registration in case of significant risk of ML/TF. AUSTRAC does not have the power to withdraw, restrict or suspend the reporting entity’s license. For reporting entities licensed by APRA, AUSTRAC can refer breaches to APRA, which maintains the power to withdraw a license. However, APRA does not have the direct ability to put conditions on or revoke a license, or to remove managers and directors for breaches of the AML/CTF Act and Rules. APRA may only revoke a license for breaches of the Banking Act (section 9A), its regulations, or the *Financial Sector (Collection of Data) Act 2001*.

a6.32. There are a range of sanctions available for AML/CTF breaches; the maximum fines seem to be high enough to apply sanctions that are proportionate to the violation and dissuasive. See also criterion 27.4.

a6.33. **Criterion 35.2** – Sanctions for the violation of AML/CTF obligations apply to the offender, be it a natural or a body corporate. Part 2.5 of the CC provides for the criminal liability of bodies corporate. The offence must be “committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority” and the intentional element “must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence”. Section 231 of the AML/CTF Act explicitly states that Part 2.5 of the CC applies to the offences against the AML/CTF Act. Sections 232 and 233 relate to the civil liability of corporations and of persons other than corporations.

a6.34. It is not specified in the AML/CTF Act or in the Rules that, in addition to the sanctions applicable to the natural person who violates an AML/CTF obligation of the Act or of the Rules, directors and senior management of financial institutions or DNFBPs are also liable for the violation committed and therefore may be sanctioned (except in the cases where the violation is committed by a director or senior manager).

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a6.35. Given the scope issues on DNFBPs, the AML/CTF requirements in Recommendations 6, and 8 to 23 do not apply to DNFBPs. The range of sanctions for AML/CTF breaches is limited, particularly what can be directly applied by AUSTRAC, but the maximum fines are sufficiently high to be viewed as proportionate and dissuasive sanctions. Sanctions do not apply to all the DNFBPs that are regulated by competent authorities, and do not extend to directors and senior management if it is the reporting entity that breach the AML/CTF Act or the Rules. **Recommendation 35 is rated partially compliant.**

Table of Acronyms

ABN	Australian business number
ABR	Australian business register
ACA	Australian Central Authority
ACBPS	Australian Customs and Border Protection Service
ACC	Australia's Crime Commission
ACNC	Australian Charities and Not-for-Profits Commission
AFP	Australian Federal Police
AGD	Attorney General's Department
AIC	Australian Intelligence Community
AML	Anti-money laundering
APG	Asia/Pacific Group on Money Laundering
APRA	Australian Prudential Regulation Authority
ARSN	Australian registered scheme number
ASIC	Australian Securities and Investment Commission
ASIO	Australian Security Intelligence Organisation
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CACT	Criminal Asset Confiscation Taskforce
CDD	Customer due diligence
CDPP	Commonwealth Director of Public Prosecutions
CFT	Countering the financing of terrorism
CotUNA	Charter of the United Nations Act
CT	Combat terrorism
DAR	Dealing with assets regulation
DFAT	Department of Foreign Affairs and Trade
DNFBP	Designated non-financial businesses and professions
FIU	Financial intelligence unit
FTR	Financial transaction report
IDC	Interdepartmental Committee
IFTI	International fund transfer instructions
ILGA	Independent Liquor and Gaming Authority

TABLE OF ACRONYMS

IMP	Information management policy
IOSCO	International Organisation of Securities Commissions
KYC	Know your customer
MACMA	Mutual Assistance in Criminal Matters Act 1987
ML	Money laundering
MLA	Mutual legal assistance
MMOU	Multilateral memoranda of understanding
NOCRCP	National organised crime response plan
NPO	Non-profit organisations
NRA	National risk assessment
NTA	National threat assessment
OCTA	Organised crime threat assessment
OSAS	Online sanctions administration system
PEPs	Politically exposed persons
PSPF	Protective security policy framework
REG	Reporting entity group
REs	Reporting entities
RNP	Remittance network provider
SMR	Suspicious matter report
SUSTR	Suspect transactions
TF	Terrorist financing
TFIU	Terrorism financing investigations unit
TFS	Targeted financial sanctions
TTR	Threshold transaction report
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution