

2010 - 2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY BILL 2011**

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY (COLLECTION) BILL 2011**

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY (CONSEQUENTIAL
AMENDMENTS) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice,
the Hon Brendan O'Connor MP)

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY BILL 2011**

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY (COLLECTION) BILL 2011**

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY (CONSEQUENTIAL
AMENDMENTS) BILL 2011**

OUTLINE

In the 2010-11 Budget, the Government announced that the Australian Transaction Reports and Analysis Centre (AUSTRAC) would recover the costs of its supervisory activities from 1 July 2011.

AUSTRAC's purpose is to protect the integrity of the financial system and contribute to the administration of justice through its expertise in countering money laundering and the financing of terrorism. This purpose is achieved through the exercise of its two interdependent functions – as a regulator and as Australia's financial intelligence unit.

As a regulator, AUSTRAC works with its regulated population (reporting entities) to enhance the level of understanding of anti-money laundering and counter-terrorism financial (AML/CTF) obligations and supervise compliance with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)*.

Reporting entities provide services that are vulnerable to exploitation for money laundering and terrorism financing purposes, creating the need for regulation by AUSTRAC. It is appropriate that industry meet the costs of regulatory systems that ensure the integrity of their operating environment.

Under the arrangements set out in the 2010-11 Budget, AUSTRAC will recover the costs of its business as usual supervisory activities as well as additional amounts to support small business compliance, legal costs for substantial enforcement actions, and implementation and administration costs for cost recovery.

Cost recovery will be implemented by a legislative package comprising the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011, Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Bill 2011 and Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011.

Financial Impact Statement

These arrangements are expected to collect \$118.3 million over the period 2011-15.

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY BILL 2011

The Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011 (the 'Levy Bill') is part of the legislative package necessary to give effect to the 2010-11 Budget announcement that AUSTRAC would recover the costs of its supervisory activities from 1 July 2011.

The Levy Bill creates the liability to levy. Clause 8 which imposes the levy operates in conjunction with clause 7 of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Bill 2011 which makes the levy payable by a liable entity. A liable entity is a reporting entity as defined by section 5 of the AML/CTF Act that has provided a designated service within the previous financial year and is or must have been enrolled on the census day. Liable entity is defined by clause 7 of the Levy Bill.

The Minister for Justice will determine by legislative instrument the amount of levy payable by a liable entity in any given financial year. Clause 9 provides that the Minister may specify by legislative instrument the amount payable, and the method or methods to determine the liability of each liable entity or class of liable entities. The determination of the levy payable each year by legislative instrument ensures that the levy will continue to reflect the actual cost of regulating reporting entities.

The total liability imposed on liable entities as a whole cannot exceed the maximum statutory limit of \$33 million in the 2011-12 financial year. Clause 7 which defines the statutory limit is given effect by clause 9(2). The statutory limit will increase for subsequent financial years by effect of clause 10. Clause 10 provides that an indexation factor will be applied to the statutory limit to calculate the statutory limit for the successive year. The amount to be collected will not exceed the costs associated with AUSTRAC's regulatory activities. In determining the amount to be collected, AUSTRAC will be subject to the standard budgetary processes applied to other Australian government agencies.

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY (COLLECTION) BILL 2011

The Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Bill 2011 (the Collection Bill) provides for the collection of the levy imposed by the Levy Bill and related administrative matters, such as issuing notice of assessments and late payment penalties.

The levy imposed by clause 8 of the Levy Bill becomes payable by effect of clause 7 of the Collection Bill. Clause 7 provides that the levy is payable by a liable entity for a financial year ending after the commencement of the Levy Bill. The first financial year in which the levy is expected to be payable is the 2011-12 financial year.

Clause 8 provides for the AUSTRAC CEO to issue a notice of assessment and specify the business day on which the levy becomes payable, as long as it is at least 30 days

after the commencement of the financial year. Leviable entities will have a minimum period of at least 30 days before payment is due.

Overdue payments will be subject to a late payment penalty as set out by clause 9. The late payment penalty will accrue on a monthly basis, and is payable at the end of the month. The late payment penalty will operate as an incentive for leviable entities to pay their levy by the due date.

Clause 11 provides the AUSTRAC CEO with the power to waive part or whole of the levy or late payment penalty. The AUSTRAC CEO may exercise this waiver power on his or her own volition or on written application. A waiver decision by the AUSTRAC CEO is reviewable on its merits. Clause 14 provides that a leviable entity must first seek internal review of the decision before proceeding to the Administrative Appeals Tribunal by effect of clause 15.

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY (CONSEQUENTIAL AMENDMENTS) BILL 2011

The Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011 amends the AML/CTF Act to make it mandatory for reporting entities to enrol with AUSTRAC.

Mandatory enrolment is an essential requirement underlying the transparency, accuracy and accountability of the AUSTRAC cost recovery process. The Government and reporting entities need to know that the data used by AUSTRAC to calculate liability to pay the levy accurately reflects the number of reporting entities and their status as leviable entities. Efficient and effective collection of the levy requires AUSTRAC to identify and invoice leviable entities.

Clause 51B makes it mandatory for reporting entities to enrol with AUSTRAC within 28 days of providing or commencing to provide a designated service. Designated services are those services specified in Tables 1, 2 and 3 of section 6 of the AML/CTF Act. Reporting entities are required to update their enrolment details if those details change in accordance with clause 51F.

Reporting entities may request the AUSTRAC CEO to remove their details from the Reporting Entities Roll under clause 51G. The AUSTRAC CEO must remove their details if he is satisfied that it is appropriate to do so.

NOTES ON CLAUSES

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY BILL 2011

Clause 1- Short title

This clause is a formal provision specifying the Short Title of the Bill.

Clause 2 – Commencement

This clause indicates that sections 1 and 2 commence the day of Royal Assent, and sections 3 to 9 the later of 1 July 2011 and the day of Royal Assent.

Clause 3 – Act Binds the Crown in each of its capacities

This clause provides that the Bill binds the Crown in the right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Clause 4 – External Territories

This clause extends the Bill to each of the external Territories.

Clause 5 – Extra-territorial application

Clause 5 provides that the Bill has application to persons or things outside Australia. Section 21(b) of the *Acts Interpretation Act 1901* does not apply. The intention is to capture the acts of reporting entities that are incorporated in a foreign jurisdiction and do not have a permanent establishment in Australia. Australia has the same meaning as section 5 of the AML/CTF Act.

Clause 6 – Act does not impose a levy on property of the State

This clause provides that the Bill will not impose a tax on property of any kind belonging to a State. The term *property of any kind belonging to a State* will have the same meaning that the term has in section 114 of the Constitution.

Clause 7 – Definitions

census day – means the day on which a reporting entity's liability to pay the levy is determined. The census day for the 2011-12 financial year is the day specified by the AUSTRAC CEO by legislative instrument. The provision expressly limits the operation of section 12(2) of the *Legislative Instruments Act 2003* to accommodate the possibility that the Bill may not come into force until after 1 July 2011. The mandatory enrolment requirement under clause 51B of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011 may also not be in force until after 1 July 2011. Mandatory enrolment is necessary to accurately determine the amount of levy payable by leviable

entities. Once the Bills come into effect the CEO will be able to determine a day, the census day, on which all reporting entities will have enrolled and have liability determined for the 2011-12 year. The census day for subsequent financial years will be 1 July or a day determined by the AUSTRAC CEO by legislative instrument.

exempt entity – refers to a reporting entity that is exempt from having an Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Program under Part 7 of the AML/CTF Act on census day. This reflects that while these reporting entities may provide designated service, they have been excused from complying with most regulatory requirements of the AML/CTF Act, and so are not subject to any significant supervision by AUSTRAC. Accordingly it would not be appropriate to require them to fund AUSTRAC’s supervision activities.

indexation factor – the indexation factor means the factor calculated under clause 10 of the Bill. This factor will be applied to the statutory minimum and statutory limit amounts specified for the 2011-12 financial year to determine those amounts for successive financial years.

index number – means the All Groups Consumer Price Index (CPI) number published by the Australian Statistician for the March quarter. The All Groups CPI number is considered to be the most appropriate index of general price inflation for the purpose of calculating the indexation factor for determining the statutory minimum and statutory limits for the levy.

leviable entity – refers to the person liable to pay the levy in a financial year. A person is only a leviable entity if they satisfy both limbs of the definition. The first limb requires that a person is a reporting entity at any time in the previous financial year. A reporting entity is a person that provides a designated service as defined by section 5 of the AML/CTF Act.

The second limb requires that the person is enrolled or required to be enrolled on census day. The census day is 1 July of that financial year or a day specified by the AUSTRAC CEO by legislative instrument. The requirement to enrol is set out in clause 51B of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011. Both limbs operate as anti-avoidance mechanisms as a person will be liable if they provided a designated service in the past financial year and are required to enrol at the census date.

person – the term person is defined in section 5 of the AML/CTF Act to be an individual, a company, a trust, a partnership, a corporate sole or a body politic. The term body politic ensures that governments will be persons for cost recovery purposes.

statutory limit – refers to the maximum monetary amount in any given financial year recoverable by AUSTRAC from leviable entities. This amount is set at \$33 million for the 2011-12 financial year and will be adjusted for successive financial years according to the formula set out in clause 10. It guarantees that the total amount of levy recoverable by AUSTRAC will not exceed the statutory limit at the time of determination for each given financial year. The actual amount to be collected will be equal to the costs of AUSTRAC supervisory activities. This will be determined in

accordance with the standard budgetary processes applied to all Australian government agencies. The levy components for each financial year will be based on estimates of the reporting entity population profile determined prior to the financial year in which they will apply. The levy will be imposed on leviable entities based on the actual reporting entity population profile on the census day in the relevant financial year. It is possible therefore that due to changes in the leviable entity population, the amount collected will differ to AUSTRAC's supervisory activities for that financial year. The statutory limit is set with a sufficient margin to reduce the risk of breaching the limit. In circumstances where AUSTRAC over or under collects, the levy in future years will be adjusted.

statutory minimum –refers to the minimum threshold amount for which a person will be liable to pay the levy. A person will not be liable to pay the levy if the levy otherwise calculated for the person for the financial year 2011-2012 is less than \$100.00. The statutory minimum limit will be adjusted each financial year according to the formula for calculating the indexation factor in clause 10 of the Bill.

Clause 7(2) expressly applies the common law principles of liability in respect to partnerships, unincorporated associations and trusts. Liability to pay the levy rests with each partner, member of the management committee of an unincorporated association, and trustee. The liability to pay the levy may be discharged by a partner, member or trustee on behalf of other partners, members, and trustees.

Clause 8 – Imposition of AUSTRAC cost recovery levy

This clause provides for the imposition of the levy. The levy is payable in accordance with section 7 of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery (Collection) Bill 2011.

Clause 9 – Amount of levy

This clause provides that the Minister by legislative instrument must determine the amount payable by a leviable entity in a given financial year. The total amount payable by all leviable entities cannot exceed the statutory limit. The statutory limit for the 2011-12 financial year is \$33 million.

Clause 9(3) (a)-(c) specifies that the Minister's determination may include the method or methods for determining the levy payable by a leviable entity or class of leviable entities, including a nil amount. There is no requirement for the determination to specify the methodology for calculating the levy. The Minister may consult in accordance with Part 3 of the *Legislative Instruments Act 2003* prior to determining the levy payable by a leviable entity.

Sub-clause 9(3)(d) provides that in specifying the method for determining the levy that reference may be made to acts done or circumstances existing before the commencement of the determination or Act or both. The purpose of this clause is to enable any transaction reporting component of the levy imposed in a financial year to be calculated on the basis of reports lodged with AUSTRAC prior to that financial year. For example the levy for the financial year 2011-12 may be calculated on the number of transaction reports, among other factors, lodged in the calendar year

2010-2011. The intention is that reporting entities will know their liabilities in advance of the next financial year, as well as accommodating the business planning and budget cycle.

Clause 9(4) limits the operation of section 12(2) of the *Legislative Instruments Act 2003* by enabling the Minister to make a determination after the commencement of the 2011-12 financial year. The purpose of this provision is to ensure that leviable entities will be liable for the entire financial year irrespective of the date of the commencement of clause 8 of the Bill and subsequent determination.

Clause 9(5) ensures that a leviable entity will not be required to pay the levy when the levy amount for the financial year is less than the statutory minimum. The rationale for this provision is that it is not cost effective to administer such small amounts.

Clause 10 – Calculation of indexation factor

This clause sets out the formula for calculating the indexation factor for determining the minimum and maximum limits for the levy payable in a financial year. These limits are calculated using indexation factors related to movements in the All Group CPI.

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY (COLLECTION) BILL 2011

Clause 1 – Short title

Clause 1 is a formal provision specifying the Short Title of the Bill.

Clause 2 – Commencement

This clause indicates that section 1 and 2 commence the day the Act receives Royal Assent and that sections 3 to 16 commence the same day as section 3 of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011.

Clause 3 – Act Binds the Crown

This clause provides that the Bill binds the Crown in the right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Clause 4 – External Territories

This clause extends the Bill to each of the external Territories.

Clause 5 – Extraterritorial application

Clause 5 provides that the Bill has application to persons or things outside Australia. Section 21(b) of the *Acts Interpretation Act 1901* does not apply. The intention is to capture the acts of reporting entities that are incorporated in a foreign jurisdiction and do not have a permanent establishment in Australia. Australia has the same meaning as section 5 of the AML/CTF Act.

Clause 6 – Definitions

AUSTRAC – means the Australian Transaction Reports and Analysis Centre as defined by section 5 of the AML/CTF Act.

AUSTRAC CEO – is defined as the Chief Executive Officer of AUSTRAC who is appointed under Part 16, Division 3 of the AML/CTF Act.

business day – refers to days of business in the period Monday to Friday, except when it falls on a public or bank holiday. It is defined as provisions in the Bill require certain actions to take place within a certain number of business days from occurrence of a particular event. The specific reference to bank holiday acknowledges that a significant proportion of the reporting entity population does not operate on the day.

late payment penalty – refers to the penalty payable under clause 9. A penalty will be imposed for late payment of the levy and will be calculated according to the formula set out in clause 9(1).

leviable entity – refers to the person liable to pay the levy in a financial year. Leviable entity has the same meaning as in the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011. A person is only a leviable entity if they satisfy both limbs of the definition. The first limb requires that a person is a reporting entity at any time in the previous financial year. A reporting entity is a person that provides a designated service as defined by section 5 of the AML/CTF Act.

The second limb requires that the person is enrolled or required to be enrolled on census day. The census day is 1 July of that financial year or a day specified by the AUSTRAC CEO by legislative instrument. The requirement to enrol is set out in clause 51B of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011. Both limbs operate as anti-avoidance mechanisms as a person will be liable if they provided a designated service in the past financial year and are required to enrol at the census date.

levy - refers to the amount payable for any given financial year by a leviable entity under section 9 of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011.

levy month – refers to a calendar month. The levy month will be used for calculating the late payment penalty under clause 9.

person – the term person is defined in section 5 of the AML/CTF Act to be an individual, a company, a trust, a partnership, a corporate sole or a body politic. The term body politic ensures that governments will be persons for cost recovery purposes.

Clause 6(2) expressly applies the common law principles of liability in respect to partnerships, unincorporated associations and trusts. Liability to pay the levy rests with each partner, member of the management committee of an unincorporated association, and trustee. The liability to pay the levy may be discharged by a partner, member or trustee on behalf of other partners, members, and trustees.

Clause 7 – Liability to AUSTRAC cost recovery levy

This clause provides that a leviable entity is liable to pay the levy for a financial year ending after the commencement of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011. It is intended that cost recovery for AUSTRAC's supervisory activities would commence from the 2011-12 financial year.

Clause 8 – When levy due for payment

This clause provides that the AUSTRAC CEO may specify by notice the business day on which payment is required. The AUSTRAC CEO may not require payment of the levy within 30 days after the beginning of the financial year or the giving of notice. 30 days is considered a reasonable time period for providing notice of a requirement to pay.

Clause 8(2) – this provision enables a leviable entity to nominate another person to receive the notice specified under clause 8(1), and to discharge their obligation to pay the levy. The intention is to accommodate designated business group members and other administrative arrangements where the levy will be discharged on behalf of the members by the nominated person. In discharging that obligation the nominated person where acting on behalf of a number of leviable entities must indicate whose liability is being discharged.

Clause 8(3) – clarifies that this provision is simply an administrative arrangement and it does not affect the underlying liability of a leviable entity to pay the levy. If the debt is not paid, any recovery action would be commenced against the person and not the nominated person.

Clause 9 – Late payment penalty

This clause provides that a penalty will apply when the levy is not paid on time. The penalty is set out in clause 9(1). The late payment penalty will be calculated per levy month and payable at the end of the month under Clause 9(2). Clause 9(3) provides the AUSTRAC CEO with the discretion to change the late payment penalty date prior to the penalty becoming due. The purpose of the late payment penalty is to encourage compliance with the obligation to pay the levy and to discourage late payment.

Clause 10 – Payment of levy and late payment penalty

This clause provides that the levy and late payment penalty are payable to the AUSTRAC CEO on behalf of the Commonwealth. All monies paid to the AUSTRAC CEO in the form of the levy or late payment penalty are part of the Consolidated Revenue Fund (CRF) under section 81 of the Constitution.

Clause 11 – Waiver of levy and late payment penalty

This clause confers on the AUSTRAC CEO the discretionary power to waive debts in relation to the whole or part of the levy or late payment penalty payable by a person. The circumstances in which the AUSTRAC CEO may consider it appropriate to waive the debt include where recovery would be inequitable or cause ongoing hardship. AUSTRAC CEO may only waive the levy, in whole or part, as set out in the Ministerial determination issued under section 9 of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011. The waiver power does not extend to administrative error in relation to the issuing of invoices.

In exercising his or her power under clause 11 the AUSTRAC CEO must provide the person whose interests are affected by the decision notice in writing or otherwise of the making of the decision and the right of the person to have the decision reviewed by virtue of section 27A of the *Administrative Appeals Tribunal Act 1975*.

The AUSTRAC CEO may delegate this function to a member of the AUSTRAC staff by operation of sections 222 and 212 (1) (f) of the AML/CTF Act.

Clause 12 – Recovery of levy and late payment penalty

This clause provides that the levy and late payment penalty are debts due to the Commonwealth and can be recovered by the AUSTRAC CEO. This empowers the AUSTRAC CEO to take court proceedings to recover the levy as agent for the Commonwealth. The CEO may engage consultants to perform services for AUSTRAC in connection with the performance of any of the AUSTRAC CEO's functions by operation of subsection 225(1) of the AML/CTF Act. This allows the AUSTRAC CEO to engage another entity to collect the debt owing to the Commonwealth.

Clause 13 – Exempting laws ineffective

This clause provides that a person's liability to pay the levy is not affected by any laws made prior to the commencement of the section, and after its commencement unless expressly exempted by reference to the levy under this Act. The intention is to prevent the unintentional exclusion of persons from the levy under other regulatory schemes such as those administered by Australian Securities and Investment Commission and Australian Prudential Regulatory Authority.

Clause 14 – Internal review of certain decisions

This clause is intended to provide a person affected by a waiver decision of the AUSTRAC CEO with an easy and accessible form of review. Under sub-clause 14(3) the AUSTRAC CEO may review or delegate this function to another person, as long as the person to whom the decision is delegated was not involved in making the original decision and is senior to the original decision maker. In the event that the AUSTRAC CEO was the original decision maker, the AUSTRAC CEO must review his or her original decision.

Clause 14(2) introduces a statutory time period for seeking review of an original decision. A statutory time period for seeking review is specified to be 21 days. This is required to provide finality and enable the efficient recovery of costs in any given financial year. The AUSTRAC CEO has the discretion to extend the statutory time frame. The purpose of this discretionary power is to enable the AUSTRAC CEO to accommodate those circumstances where the statutory time frame may disadvantage a person, such as the delay of receipt of notice due to natural disaster.

Clause 14(4) imposes a statutory time period of 42 days in which the reviewer must reconsider, and affirm, revoke or vary the original decision. The purpose behind the statutory time period is to ensure that reviews are dealt with in a timely manner. After the expiry of the statutory time period, the AUSTRAC CEO's original decision is deemed to be affirmed and is subject to Administrative Appeals Tribunal review in accordance with sub-clause 14(5).

Clause 14(6) requires the reviewer to provide the person with a statement of reasons. The purpose of this requirement is to ensure that the review process is transparent and the person knows the basis on which the AUSTRAC CEO made the decision. This will assist the person to decide whether to pursue further reviews in the Administrative Appeals Tribunal or a court.

Clause 15 – Administrative Appeals Tribunal review of certain decisions

This clause provides that internal review of a waiver decision by the AUSTRAC CEO is a mandatory precursor to external merits review by the Administrative Appeals Tribunal (AAT). The purpose is to ensure an efficient and accessible system for merits review where a person must seek review by the AUSTRAC CEO of the original decision before accessing more formal and expensive avenues for external review by the AAT. This reduces the costs of merits review for the person and the AUSTRAC CEO.

Clause 16 – Regulations

This clause confers a regulation making power on the Governor-General. The regulation making power is intended to deal with administrative matters related to the collection of the levy.

**AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
SUPERVISORY COST RECOVERY LEVY (CONSEQUENTIAL
AMENDMENTS) BILL 2011**

Clause 1 – Short title

This clause is a formal provision specifying the Short Title of the Bill.

Clause 2 – Commencement

This clause specifies the dates on which various sections and schedules of the Act commence. A staggered commencement is required as some clauses are dependent on the enactment and commencement of various sections of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011, and the Combating the Financing of People Smuggling and Other Measures Bill 2011.

Clause 3 – Schedule(s)

This clause provides that each Act specified in the Schedule is amended or repealed as specified. The first and second schedules amend the AML/CTF Act.

Schedule 1 – Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

Item 1

Item 1 amends section 5 of the AML/CTF Act to include a definition of enrolment details. This enables the AUSTRAC CEO to specify in Rules made under the AML/CTF Act (AML/CTF Rules) the details that must be provided by a reporting entity on enrolment.

Item 2

Item 2 inserts Part 3A Reporting Entities Roll into the AML/CTF Act. Part 3A sets out the administrative procedures for enrolment and maintenance of the roll, as well as the penalties for failure to enrol or maintain the enrolment record.

Clause 51A provides a simplified outline for the operation of Part 3A.

Clause 51B makes it compulsory for a reporting entity to enrol if they provide a designated service within 28 days before or after the commencement of the section, or after commencing to provide a designated service. The section will commence on a single day to be fixed by Proclamation. However, if a day is not proclaimed earlier, then six months after the Bill receives Royal Assent. Compulsory enrolment enables AUSTRAC to identify its regulated population and to effectively and efficiently deliver its services and administer the levy. Failure to enrol attracts a civil penalty.

Clause 51C requires that the AUSTRAC CEO maintain the Reporting Entities Roll (the Roll). The Roll may be maintained as an electronic database. This will enable reporting entities, where feasible, to update their details electronically. Clause

51C (3) provides that the Roll is not a legislative instrument. The intention is that the Roll simply records the status of a person as a reporting entity and does not affect any entitlements or impose any liabilities as a consequence of enrolment. The Roll is simply an administrative process for recording and quantifying the regulated population for supervisory purposes.

Clause 51C(4) enables the AUSTRAC CEO to maintain the Roll by making AML/CTF Rules that enable the correction of entries on the Roll or in relation to any other matter relating to the administration and operation of the Roll.

Clause 51D requires the AUSTRAC CEO on receiving an application to enrol to enter the person's name and details on the Roll. The AUSTRAC CEO is not required to enrol a person if their name already appears on the Roll. The obligation rests on the reporting entity to self-identify to the AUSTRAC CEO.

Clause 51E requires that a person applying to the AUSTRAC CEO for enrolment as a reporting entity must do so in writing using the approved form and include the information required by the AML/CTF Rules. The intention is that the AUSTRAC CEO has the flexibility to determine the information required for effective enrolment. This information may vary depending on the circumstances, and may include information essential to the administration of the levy, for instance, the number of employees of a reporting entity.

Clause 51F provides that once enrolled it is compulsory for a reporting entity to update its enrolment details within 14 days of a change in their enrolment details. The AML/CTF Rules will specify the circumstances in which the enrolment details must be updated, such as change of address. The purpose of this clause is to ensure that the Roll contains accurate and current information as to the reporting entity. A person must update their details using the approved form. Approved forms are required to ensure consistency in the information provided by reporting entities. Failure to maintain enrolment details is a civil penalty.

Clause 51G provides that a person may apply in writing to the AUSTRAC CEO to remove their name and enrolment details from the Roll. The request must be in writing and contain the information required in the AML/CTF Rules. The intention behind this requirement is that the AUSTRAC CEO may specify the information that may be material in his or her decision to remove or not remove a person from the Roll. The AUSTRAC CEO has the discretion as to whether a person will be removed from the Roll having regard to a number of factors such as whether the person is likely to provide a designated service in the future or whether there are any outstanding reporting obligations.

Schedule 2 – Infringement Notice Provisions

Part 1 - Amendments contingent on the commencement of the Combating the Financing of People Smuggling and Other Measures Bill 2011

Items 1, 2, 3, 4, 5 and 6 amend the infringement notice scheme to include failure to enrol and maintain enrolment details under sections 51(B)(1) and 51F(1), or Part 3A of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

The main enforcement options in the existing Act are civil penalties, criminal offences and enforceable undertakings. In many cases, particularly where minor breaches are involved, civil penalty or criminal action against the reporting entity may not be a proportionate response to the alleged breach. Further, these processes can be costly and time consuming for all parties involved. AUSTRAC is able to accept enforceable undertakings from regulated entities and this enforcement option has already been used in a number of cases. However, enforceable undertakings may not be the most appropriate enforcement tool for discrete instances of non-compliance, such as failure to advise AUSTRAC of a change in circumstances under new section 51F.

Enabling AUSTRAC to issue infringement notices will mean that the regulator can respond to breaches in a more efficient and proportionate way. The ability to impose infringement notices for non-compliance with obligations is consistent with the powers and approach of other regulators of Commonwealth legislation.

Under section 186A(1)(a) and 186A(2)(a) the AML/CTF Rules may set out one or more kinds contraventions of sections 51B(1) and 51F(1) and specify for each contravention the number of penalty units that will apply.

Part 2 – Transitional Provisions

Item 7 introduces transitional provisions in the event that the Combating the Financing of People Smuggling and Other Measures Bill 2011 does not come into effect before this Bill. These provisions enable AUSTRAC to issue infringement notices for failure to enrol and maintain enrolment details under the new sections 51B(1) and 51F(1). In these transitional provisions the pecuniary penalty will be 60 penalty units for an alleged contravention by a body corporate and 12 penalty units for an alleged contravention by a person other than a body corporate. These provisions will continue to operate until such time as the Combating the Financing of People Smuggling and Other Measures Bill 2011 comes into effect.