

Australian Bitcoin and Cryptocurrency Exchange Bill - 2017

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Bill

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Schedule 1—Amendments

Schedule 1 — Amendments

Part 1 — Objects of Act

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Before paragraph 3(1)(a)

Insert:

(aa) to provide for measures to detect, deter and disrupt money laundering, the financing of terrorism, and other serious financial crimes; and

(ab) to provide relevant Australian government bodies and their international counterparts with the information they need to investigate and prosecute money laundering offences, offences constituted by the financing of terrorism, and other serious crimes; and

(ac) to support cooperation and collaboration among reporting entities, AUSTRAC and other government agencies, particularly law enforcement agencies, to detect, deter and disrupt money laundering, the financing of terrorism, and other serious crimes; and

(ad) to promote public confidence in the Australian financial system through the enactment and implementation of controls and powers to detect, deter and disrupt money laundering, the financing of terrorism, and other serious crimes; and

Part 2 — Digital currencies

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

2 Section 4

After:

â€¢ Providers of registrable designated remittance services or registrable remittance network services must be registered with the AUSTRAC CEO.

insert:

â€¢ Providers of registrable digital currency exchange services must be registered with the AUSTRAC CEO.

3 Section 5

Insert:

digital currency means:

(a) a digital representation of value that:

(i) functions as a medium of exchange, a store of economic value, or a unit of account;
and

(ii) is not issued by or under the authority of a government body; and

(iii) is interchangeable with money (including through the crediting of an account) and may be used as consideration for the supply of goods or services; and

(iv) is generally available to members of the public without any restriction on its use as consideration; or

(b) a means of exchange or digital process or crediting declared to be digital currency by the AML/CTF Rules;

but does not include any right or thing that, under the AML/CTF Rules, is taken not to be digital currency for the purposes of this Act.

Digital Currency Exchange Register has the meaning given by section 76B.

4 Section 5 (definition of e-currency)

Repeal the definition.

5 Section 5 (paragraph (c) of the definition of money)

Omit “other currency; and”, substitute “other currency.”.

6 Section 5 (paragraph (d) of the definition of money)

Repeal the paragraph.

7 Section 5 (definition of precious metal)

Repeal the definition.

8 Section 5 (definition of property)

After “money”, insert “or digital currency”.

9 Section 5

Insert:

registered digital currency exchange provider means a person registered under section 76E as a digital currency exchange provider.

registrable digital currency exchange service means a designated service that:

(a) is covered by item 50A of table 1 in section 6; and

(b) is not of a kind specified in the AML/CTF Rules.

10 Section 5 (definition of registration)

Repeal the definition, substitute:

registration means:

(a) in, or in relation to, Part 6—registration as any of the following:

(i) a remittance network provider;

(ii) an independent remittance dealer;

(iii) a remittance affiliate of a registered remittance network provider; or

(b) in, or in relation to, Part 6A—registration as a digital currency exchange provider.

11 Section 5 (paragraph (b) of the definition of threshold transaction)

Repeal the paragraph.

12 Section 5 (after paragraph (c) of the definition of threshold transaction)

Insert:

(ca) if:

(i) the regulations provide that this definition applies to a specified transaction involving digital currency; and

(ii) the regulations provide that a specified amount is the transaction threshold for the specified transaction;

the specified transaction, where the total amount transferred is not less than the transaction threshold for the transaction; or

13 Section 5 (definition of threshold transaction)

Omit “Paragraphs (a) and (b) do”, substitute “Paragraph (a) does”.

14 Section 5 (note 2 at the end of the definition of threshold transaction)

Omit “e-currency”, substitute “digital currency”.

15 Subsection 6(2) (after table item 50)

Insert:

50A

exchanging digital currency for money (whether Australian or not) or exchanging money (whether Australian or not) for digital currency, where the exchange is provided in the course of carrying on a digital currency exchange business

the person whose digital currency or money is exchanged

16 Subsection 6(4) (table item 7)

After “money” (wherever occurring), insert “or digital currency”.

17 Subsection 6(4) (table item 8)

After “money”, insert “or digital currency”.

18 Section 19 (heading)

Repeal the heading, substitute:

19 Translation of digital currency to Australian currency

19 Section 19

Omit “e-currency” (wherever occurring), substitute “digital currency”.

20 After Part 6

Insert:

Part 6A — The Digital Currency Exchange Register

Division 1 — Simplified outline

76 Simplified outline

The following is a simplified outline of this Part:

â€¢ This Part provides for a system of registration for providers of digital currency exchange services.

â€¢ Division 2 sets out offences and civil penalties in relation to the provision of registrable digital currency exchange services by persons who are not registered.

â€¢ Division 3 requires the AUSTRAC CEO to maintain the Digital Currency Exchange Register and sets out the process of applying for registration.

Division 2 — Restrictions on providing digital currency exchange services

76A Unregistered persons must not provide certain digital currency exchange services

Registrable digital currency exchange services

(1) A person (the first person) must not provide a registrable digital currency exchange service to another person if the first person is not a registered digital currency exchange provider.

Breach of conditions

(2) A person must not breach a condition to which the registration of the person as a digital currency exchange provider is subject.

Offences

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1) or (2); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 2 years or 500 penalty units, or both.

(4) Strict liability applies to paragraphs (3)(b) and (c).

Note: For strict liability , see section 6.1 of the Criminal Code .

(5) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1) or (2); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement; and

(d) the AUSTRAC CEO previously:

(i) gave the person a direction under subsection 191(2) in relation to subsection (1) or (2) of this section; or

(ii) accepted an undertaking given by the person under section 197 in relation to subsection (1) or (2) of this section; and

(e) that was the only occasion on which the AUSTRAC CEO previously gave such a direction to, or accepted such an undertaking from, the person.

Penalty: Imprisonment for 4 years or 1,000 penalty units, or both.

(6) Strict liability applies to paragraphs (5)(b) and (c).

Note: For strict liability , see section 6.1 of the Criminal Code .

(7) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1) or (2); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement; and

(d) the AUSTRAC CEO previously:

(i) gave the person a direction under subsection 191(2) in relation to subsection (1) or (2) of this section; or

(ii) accepted an undertaking given by the person under section 197 in relation to subsection (1) or (2) of this section; and

(e) that was not the only occasion on which the AUSTRAC CEO previously gave such a direction to, or accepted such an undertaking from, the person.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

(8) Strict liability applies to paragraphs (7)(b) and (c).

Note: For strict liability, see section 6.1 of the Criminal Code.

(9) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1) or (2); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement; and

(d) either:

(i) the person had previously been convicted of an offence against subsection (3), (5) or (7), and that conviction has not been set aside or quashed; or

(ii) an order had previously been made against the person under section 19B of the Crimes Act 1914 in respect of an offence against subsection (3), (5) or (7), and that order has not been set aside.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

(10) Strict liability applies to paragraphs (9)(b) and (c).

Note: For strict liability, see section 6.1 of the Criminal Code .

Civil penalty

(11) Subsections (1) and (2) are civil penalty provisions.

Division 3 — Registration of persons

76B Digital Currency Exchange Register

(1) The AUSTRAC CEO must maintain a register for the purposes of this Part, to be known as the Digital Currency Exchange Register.

(2) The AUSTRAC CEO may maintain the Digital Currency Exchange Register by electronic means.

(3) The Digital Currency Exchange Register is not a legislative instrument.

(4) The AML/CTF Rules may make provision for and in relation to the following:

(a) the correction of entries in the Digital Currency Exchange Register;

(b) the publication of the Digital Currency Exchange Register in whole or part, or of specified information entered on the Digital Currency Exchange Register;

(c) any other matter relating to the administration or operation of the Digital Currency Exchange Register.

76C Information to be entered on the Digital Currency Exchange Register

If the AUSTRAC CEO decides to register a person under subsection 76E(2), the AUSTRAC CEO must enter the following details on the Digital Currency Exchange Register:

(a) the name of the person;

(b) any conditions to which the registration of the person is subject;

(c) the date on which the registration takes effect;

(d) the registrable details in relation to the person.

76D Applications for registration

(1) A person may apply in writing to the AUSTRAC CEO for registration as a digital currency exchange provider.

(2) An application under subsection (1) must:

(a) be in the approved form; and

(b) contain the information required by the AML/CTF Rules.

(3) Without limiting the information that the AML/CTF Rules may require under paragraph (2)(b), the AML/CTF Rules may require information relating to the matters mentioned in paragraph 76E(2)(a) or in Rules made under paragraph 76E(2)(b) (these provisions deal with matters to which the AUSTRAC CEO must have regard in deciding whether to register a person).

Deemed refusal in certain circumstances

(4) If the AUSTRAC CEO has not made a decision on the application within the relevant period, the AUSTRAC CEO is taken to have decided not to register the person at the end of the relevant period. The relevant period is the period of 90 days beginning on the latest of the following days:

(a) the day the application is made;

(b) if the AUSTRAC CEO requests information under subsection 76Q(1) in relation to the application—the last day such information is provided;

(c) if the person makes a submission under section 76S in relation to the application—the day the person makes the submission.

Note: A deemed decision not to register the person is reviewable (see Part 17A).

(5) However, if the AUSTRAC CEO determines in writing that:

(a) the application cannot be dealt with properly within the 90 day period, either because of its complexity or because of other special circumstances; and

(b) that period is extended by a specified period of not more than 30 days;

the relevant period is that period as so extended. The AUSTRAC CEO must notify the applicant in writing of the determination before the end of the 90 day period.

76E Registration by AUSTRAC CEO

When section applies

(1) This section applies if an application has been made under section 76D for registration of a person.

When AUSTRAC CEO must register a person

(2) The AUSTRAC CEO must decide to register the person in accordance with the application if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:

(a) whether registering the person would involve a significant money laundering, financing of terrorism or other serious crime risk; and

(b) such other matters (if any) as are specified in the AML/CTF Rules under this paragraph.

Note: A decision not to register the person is reviewable (see Part 17A).

Matters that may be specified in the AML/CTF Rules

(3) Without limiting the matters that the AML/CTF Rules may specify under paragraph (2)(b), the matters may relate to the following:

(a) offences of which the applicant for registration, or any other person, has been charged or convicted under the law of the Commonwealth, a State or Territory or a foreign country;

(b) the compliance or non-compliance of the applicant, or any other person, with this Act or any other law;

(c) the legal and beneficial ownership and control of the applicant, or any other person.

Notice of decision to register

(4) The AUSTRAC CEO must, as soon as practicable after deciding to register an applicant, give a written notice to the applicant.

Contents of notice of decision to register

(5) A notice under subsection (4) must specify:

(a) the conditions (if any) to which the registration is subject (see section 76G); and

(b) the date on which the registration takes effect.

76F Spent convictions scheme

The AML/CTF Rules made under paragraph 76D(2)(b) or 76E(2)(b) must not affect the operation of Part VIIC of the Crimes Act 1914 (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

76G Registration may be subject to conditions

(1) The AUSTRAC CEO may, in writing, impose conditions to which the registration of a person under this Part is subject.

Note: A decision to impose a condition is reviewable (see Part 17A).

(2) Without limiting the conditions that the AUSTRAC CEO may impose under subsection (1), the conditions may relate to the following:

(a) the value of digital currency or money exchanged;

(b) the volume of digital currency exchanged (whether by reference to a particular period, a particular kind of digital currency, or otherwise);

(c) the kinds of digital currencies exchanged;

(d) requiring notification of the exchange of particular kinds of digital currency, changes in circumstances, or other specified events.

Note: Section 76P imposes a general obligation in relation to notification of changes in circumstances.

76H When registration of a person ceases

(1) The registration of a person ceases at the earliest of the following times:

(a) when the cancellation of the registration of the person under section 76J takes effect;

(b) when the entry relating to the registration of the person is removed from the Digital Currency Exchange Register under subsection 76M(2);

(c) subject to subsection (2)—3 years after the day on which the registration took effect;

(d) in the case of an individual—when the individual dies;

(e) in the case of a body corporate—when the body corporate ceases to exist.

(2) Paragraph (1)(c) is subject to the AML/CTF Rules made under section 76L (which deals with renewal of registration).

76J Cancellation of registration

(1) The AUSTRAC CEO may cancel the registration of a person if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:

(a) whether the continued registration of the person involves, or may involve, a significant money laundering, financing of terrorism or other serious crime risk; or

(b) one or more breaches by the person of a condition of registration; or

(c) such other matters (if any) as are specified in the AML/CTF Rules under this paragraph.

(2) The AUSTRAC CEO may also cancel the registration of a person if the AUSTRAC CEO has reasonable grounds to believe that the registered person no longer carries on a business that involves providing a digital currency exchange service.

Note: A decision to cancel a registration is reviewable (see Part 17A).

(3) The cancellation of the registration of a person takes effect on the day specified in the notice given to the person under subsection 233C(1).

(4) The AUSTRAC CEO may publish, in the manner specified in the AML/CTF Rules, a list of the names of persons whose registration has been cancelled and the date the cancellation takes effect.

76K Suspension of registration

(1) The AML/CTF Rules may make provision for and in relation to the suspension of registrations by the AUSTRAC CEO under this Part.

(2) The AML/CTF Rules may provide for matters including, but not limited to, the following:

(a) the grounds for suspension of registration;

(b) the effect of suspension on registration;

(c) the period for which suspensions have effect;

(d) making entries in and removing entries from the Digital Currency Exchange Register in relation to suspension;

(e) notices of suspension;

(f) review of decisions relating to suspension.

76L Renewal of registration

(1) The AML/CTF Rules may make provision for and in relation to the renewal of registrations by the AUSTRAC CEO under this Part.

(2) The AML/CTF Rules may provide for matters including, but not limited to, the following:

(a) the making of applications for renewal;

- (b) the period within which applications for renewal may be made;
- (c) the criteria for determining applications for renewal;
- (d) entries in the Digital Currency Exchange Register in relation to renewal;
- (e) the giving of notices relating to decisions on applications for renewal;
- (f) review of decisions relating to applications for renewal;
- (g) the period for which renewed registrations have effect.

(3) In particular, the AML/CTF Rules may provide that:

(a) if the registration of a person would otherwise cease at the end of the period of 3 years commencing on the day on which the registration took effect; and

(b) before the end of that period, an application for renewal of the registration was made to the AUSTRAC CEO within the period, and in the manner provided for, in the AML/CTF Rules;

the registration of the person continues in effect after the end of that period in accordance with the Rules.

76M Removal of entries from the Digital Currency Exchange Register

Removal on request

(1) A person who is a registered digital currency exchange provider may request the AUSTRAC CEO, in writing, to remove the entry relating to the registration of the person from the Digital Currency Exchange Register.

(2) If a person makes a request under subsection (1), the AUSTRAC CEO must remove the entry from the Digital Currency Exchange Register.

Removal on cessation of registration

(3) If the registration of a person ceases under another provision of this Part, the AUSTRAC CEO must remove the entry relating to the registration from the Digital Currency Exchange Register.

Notice of removal

(4) The AUSTRAC CEO must, as soon as reasonably practicable, notify a person, in writing, if the AUSTRAC CEO has acted under subsection (3) in relation to the person (unless the person has died or, in the case of a body corporate, ceased to exist).

76N AML/CTF Rules—general provision

If a provision of this Part provides for the AML/CTF Rules to make provision in relation to a matter relating to the registration or proposed registration of a person, the AML/CTF Rules may make different provision in relation to a matter depending on different circumstances.

76P Registered persons to advise of material changes in circumstance etc.

(1) A person who is registered under this Part must advise the AUSTRAC CEO of the following:

(a) any change in circumstances that could materially affect the person's registration;

(b) any matters specified in the AML/CTF Rules for the purposes of this paragraph.

(2) A person who is required by this section to advise the AUSTRAC CEO of a change in circumstances or a matter must do so:

(a) in accordance with the approved form; and

(b) within 14 days of the change in circumstances or the matter arising (however described).

Civil penalty

(3) Subsection (1) is a civil penalty provision.

76Q AUSTRAC CEO may request further information

(1) The AUSTRAC CEO may, in writing, request further information from any person for the purposes of making a decision under this Part.

(2) The AUSTRAC CEO is not required to make a decision under this Part until any information requested under subsection (1) in relation to the decision has been provided.

76R Immunity from suit

An action, suit or proceeding (whether criminal or civil) does not lie against:

(a) the Commonwealth; or

(b) the AUSTRAC CEO; or

(c) a member of the staff of AUSTRAC;

in relation to the publication of the Digital Currency Exchange Register or a list of a kind mentioned in subsection 76J(4).

76S Steps to be taken by AUSTRAC CEO before making certain reviewable decisions

(1) Before making a reviewable decision under section 76E, 76G or 76J in relation to a person, the AUSTRAC CEO must give a written notice to the person containing:

(a) the terms of the proposed decision; and

(b) if the proposed decision is to cancel a registration—the date on which the cancellation is proposed to take effect; and

(c) the reasons for the proposed decision; and

(d) a statement that the person may, within 28 days of the giving of the notice, make a submission under this section in relation to the proposed decision.

(2) The AUSTRAC CEO is not required to give a notice under this section if the AUSTRAC CEO is satisfied that it is inappropriate to do so because of the urgency of the circumstances.

Division 4 — Basis of registration

76T Basis of registration

Registration under this Part is on the basis that:

- (a) the registration may cease as mentioned in section 76H; and
- (b) the registration may be suspended as mentioned in section 76K; and
- (c) the registration may be made subject to conditions as mentioned in section 76G; and
- (d) the registration may cease, be suspended or be made subject to conditions by or under later legislation; and
- (e) no compensation is payable if the registration ceases, is suspended or made subject to conditions as mentioned in any of the above paragraphs.

21 Paragraph 142(1)(b)

After “money”, insert “, digital currency”.

22 Subsection 142(2)

After “money”, insert “, digital currency”.

23 Paragraph 142(3)(a)

After “money”, insert “, digital currency”.

24 At the end of subsection 184(1A)

Add:

; (e) subsections 76A(1) and (2) (which deal with providing certain digital currency exchange services without being registered);

(f) subsection 76P(1) (which deals with notifying the AUSTRAC CEO of certain matters).

25 Section 186A (heading)

Repeal the heading, substitute:

186A Amount of penalty—breaches of certain provisions of Part 6, Part 6A or Part 3A

26 Subsection 186A(1)

After “(a Part 6 infringement notice provision)”, insert “, subsection 76A(1) or (2) or 76P(1) (a Part 6A infringement notice provision)”.

27 Subsection 186A(2)

After “Part 6 infringement notice provision”, insert “, a Part 6A infringement notice provision”.

28 Paragraph 186A(3)(a)

After “Part 6 infringement notice provision”, insert “, a Part 6A infringement notice provision”.

29 Paragraph 186A(4)(a)

After “Part 6 infringement notice provision”, insert “, a Part 6A infringement notice provision”.

30 Paragraph 186A(4)(b)

After “Part 6 infringement notice provisions”, insert “, Part 6A infringement notice provisions”.

31 Paragraph 186A(4)(b)

After “Part 6 infringement notice provision”, insert “, a Part 6A infringement notice provision”.

32 Subparagraph 189(b)(i)

Omit “or 74(2), (4), (6) or (8)”, substitute “, 74(2), (4), (6) or (8) or 76A(3), (5), (7) or (9)”.

33 Subparagraph 189(c)(i)

Omit “or 74(2), (4), (6) or (8)”, substitute “, 74(2), (4), (6) or (8) or 76A(3), (5), (7) or (9)”.

34 Section 233B (after table item 3)

Insert:

3A

A decision under subsection 76D(4) or section 76E to refuse to register a person as a digital currency exchange provider.

3B

A decision under section 76G to impose conditions to which a person's registration is subject.

3C

A decision under section 76J to cancel a person's registration.

35 Section 233B (at the end of the table)

Add:

A decision that is declared by the AML/CTF Rules under paragraph 75H(2)(g), 75J(2)(f), 76K(2)(f) or 76L(2)(f) to be a reviewable decision for the purposes of this section.

36 Paragraph 233C(1)(b)

After “section 75G”, insert “or 76J”.

37 Subsection 233C(2)

Omit “subsection 75B(6) (about deemed refusal)”, substitute “subsection 75B(6) or 76D(4) (about deemed refusals)”.

Part 3 — Remittance activities

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

38 Paragraph 75C(2)(a)

Omit “or people smuggling”, substitute “, people smuggling or other serious crime”.

39 Subsection 75E(1)

Omit “under subsection 75C(2)”, substitute “under this Part”.

40 Paragraph 75G(1)(a)

Omit “or people smuggling”, substitute “, people smuggling or other serious crime”.

41 After subsection 75G(1)

Insert:

(1A) The AUSTRAC CEO may also cancel the registration of a person if the AUSTRAC CEO has reasonable grounds to believe that the registered person no longer carries on a business that gives rise to the requirement to be registered under this Part.

Part 4 — Regulatory relief to industry

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

42 Section 5

Insert:

corporate group has the meaning given by subsection 123(12).

43 Section 5 (at the end of the definition of financial institution)

Add:

The AML/CTF Rules made under paragraph (e) may specify different persons to be financial institutions for the purposes of different provisions of this Act.

44 Subsection 6(2) (table items 51 and 53)

Repeal the items.

45 Subsection 6(3) (table items 1 and 2)

After “carrying on a”, insert “bullion-dealing”.

46 Subsection 6(4) (table items 1, 2, 3, 4, 6, 9, 11, 12 and 13)

After “carrying on a”, insert “gambling”.

47 Subsections 97(1) and (2)

After “with another financial institution”, insert “that will involve a vostro account”.

48 Subsections 98(1) and (2)

After “with another financial institution”, insert “that involves a vostro account”.

49 Subsection 99(1)

After “with another person”, insert “that will involve a vostroaccount”.

50 Subsection 99(2)

After “with another person”, insert “that involves a vostro account”.

51 Paragraph 123(7)(a)

After “designated business group”, insert “or a corporate group”.

52 Paragraph 123(7)(b)

Repeal the paragraph.

53 Paragraph 123(7)(d)

After “designated business group”, insert “or the corporate group (as the case may be)”.

54 Paragraph 123(7AA)(a)

After “designated business group”, insert “or the corporate group (as the case may be)”.

55 At the end of section 123

Add:

Definition

(12) In this Act:

corporate group means a group of 2 or more bodies corporate that are related to each other under section 50 of the Corporations Act 2001 .

Financial Transaction Reports Act 1988

56 Subsection 3(1) (paragraph (c) of the definition of cash dealer)

Repeal the paragraph, substitute:

(c) a motor vehicle dealer who acts as an insurer or insurance intermediary;

57 Subsection 3(1) (subparagraphs (k)(i) and (iii) of the definition of cash dealer)

Repeal the subparagraphs.

Part 5 — Investigation and enforcement

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

58 Section 5

Insert:

designated infringement notice provision has the meaning given by subsection 184(4).

59 Before paragraph 184(1A)(aaa)

Insert:

(aaaa) a designated infringement notice provision (see subsection (4));

60 After subsection 184(1A)

Insert:

(1B) Despite subsection (1), an infringement notice relating to the alleged contravention of a designated infringement notice provision may only be given to a person by the AUSTRAC CEO.

(1C) The AUSTRAC CEO must not issue an infringement notice relating to a contravention of subsection 32(1), 41(2), 43(2), 45(2) or 49(2) unless the AUSTRAC CEO considers that issuing such a notice is appropriate in the particular case after taking into account:

(a) the nature and extent of the contravention; and

(b) the seriousness of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) any other matter the AUSTRAC CEO considers to be relevant.

61 At the end of section 184

Add:

(4) In this Act:

designated infringement notice provision means any of the following provisions:

(a) subsection 32(1) (which deals with customer identification procedures to be carried out by reporting entities);

(b) subsection 41(2) (which deals with reporting certain suspicious matters);

(c) subsection 43(2) (which deals with reporting a threshold transaction);

(d) subsection 45(2) (which deals with reporting an international funds transfer instruction);

(e) subsection 47(2) (which deals with reporting on compliance with the Act and other instruments);

(f) subsection 49(2) (which deals with providing further information on request);

(g) subsection 116(2), (3) or (4) (which deal with making and retaining certain records).

62 After section 186A

Insert:

186B Amount of penalty—breaches of designated infringement notice provisions

(1) The penalty to be specified in an infringement notice for an alleged contravention of a designated infringement notice provision by a body corporate must be a pecuniary penalty equal to 60 penalty units.

(2) The penalty to be specified in an infringement notice for an alleged contravention of a designated infringement notice provision by a person other than a body corporate must be a pecuniary penalty equal to 12 penalty units.

63 Subsection 191(2)

Repeal the subsection, substitute:

(2) The AUSTRAC CEO may give the reporting entity a written direction requiring the reporting entity to do one or both of the following:

(a) 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;

(b) in the case of a contravention of subsection 43(2), 45(2) or 47(2)—to take specified action to remedy the contravention by giving the relevant report to the AUSTRAC CEO within a period specified in the direction.

64 Application of amendment

Paragraph 191(2)(b) of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 as in force after the commencement of this item applies in relation to a contravention that occurs on or after that commencement.

65 Subsection 191(3)

Omit “subsection (2)”, substitute “paragraph (2)(a)”.

66 After subsection 191(3)

Insert:

(3A) The AUSTRAC CEO:

(a) must not act under paragraph (2)(b) if it appears to the AUSTRAC CEO that the contravention occurred more than 24 months before the day on which a direction would be issued; and

(b) must not act under paragraph (2)(b) unless the AUSTRAC CEO has:

(i) assessed the risks that have arisen in view of the contravention; and

(ii) determined that giving a direction under that paragraph is an appropriate and proportionate response in the circumstances.

67 After subsection 199(2)

Insert:

Person leaving or arriving in Australia—seizing physical currency

(2A) A police officer or a customs officer may seize physical currency produced to the officer under paragraph (1)(f) or (2)(d) if:

(a) the police officer or customs officer has reasonable grounds to suspect that the physical currency may afford evidence as to the commission of an offence against section 53; or

(b) the police officer or customs officer has reasonable grounds to suspect that the physical currency may be of interest under subsection (14).

68 Subsection 199(3)

Repeal the subsection, substitute:

Powers of examination and search

(3) A police officer or a customs officer may, with such assistance as is reasonable and necessary, examine an article which a person has with him or her if:

(a) the person:

(i) is about to leave Australia or has arrived in Australia; or

(ii) is about to board or leave, or has boarded or left, any ship or aircraft; and

(b) either:

(i) the officer is seeking to find out whether the person has with him or her any physical currency in respect of which a report under section 53 is required; or

(ii) the officer has reasonable grounds to suspect that the person has with him or her any physical currency that may be of interest under subsection (14).

69 Subsection 199(4)

Omit “for the purpose of finding out whether the person has with him or her any physical currency in respect of which a report under section 53 is required,”.

70 Paragraph 199(4)(d)

Repeal the paragraph, substitute:

(d) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person:

(i) physical currency in respect of which a report under section 53 is required; or

(ii) physical currency that may be of interest under subsection (14).

71 Subsection 199(5)

Repeal the subsection, substitute:

(5) A police officer or a customs officer may seize physical currency found in the course of an examination or search under subsection (3) or (4) if:

(a) the police officer or customs officer has reasonable grounds to suspect that the physical currency may afford evidence as to the commission of an offence against section 53; or

(b) the police officer or customs officer has reasonable grounds to suspect that the physical currency may be of interest under subsection (14).

72 Subsections 199(8), (9) and (10)

Repeal the subsections, substitute:

(8) A police officer or a customs officer may, with such assistance as is reasonable and necessary:

(a) board a ship or aircraft; or

(b) examine or search the ship or aircraft, and any goods found on the ship or aircraft;

for the purpose of finding out whether there is at or in the place, or in the goods:

(c) any physical currency in respect of which a report under section 53 is required; or

(d) any physical currency that may be of interest under subsection (14).

Entry to eligible places

(9) A police officer or a customs officer may, with such assistance as is reasonable and necessary:

- (a) go onto or enter any eligible place; and
- (b) examine the place, and any goods found at or in it;

for the purpose of finding out whether there is at or in the place, or in the goods:

- (c) any physical currency in respect of which a report under section 53 is required; or
- (d) any physical currency that may be of interest under subsection (14).

Seizure

(10) A police officer or a customs officer may seize physical currency found in the course of an examination or search under subsection (8) or (9) if:

- (a) the police officer or customs officer has reasonable grounds to suspect that the physical currency may afford evidence as to the commission of an offence against section 53; or
- (b) the police officer or customs officer has reasonable grounds to suspect that the physical currency may be of interest under subsection (14).

Add:

Civil penalty

(12) If a person is subject to a requirement under subsection (1) or (2), the person must not engage in conduct that breaches the requirement.

(13) Subsection (12) is a civil penalty provision.

Currency of interest

(14) For the purposes of this section, physical currency may be of interest if the physical currency:

(a) may be relevant to the investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory; or

(b) may be of assistance in the enforcement of the Proceeds of Crime Act 2002 or regulations under that Act; or

(c) may be of assistance in the enforcement of a law of a State or Territory that corresponds to the Proceeds of Crime Act 2002 or regulations under that Act.

74 After subsection 200(13)

Insert:

(13A) A police officer or customs officer may seize a bearer negotiable instrument if:

(a) the bearer negotiable instrument:

(i) is produced to a police officer or a customs officer under subsection (1) or (2); or

(ii) is found by a police officer or a customs officer in the course of an examination under subsection (4), (5), (6), (7), (8) or (9); and

(b) the police officer or customs officer has reasonable grounds to believe that the bearer negotiable instrument:

(i) may be relevant to the investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory; or

(ii) may be of assistance in the enforcement of the Proceeds of Crime Act 2002 or regulations under that Act; or

(iii) may be of assistance in the enforcement of a law of a State or Territory that corresponds to the Proceeds of Crime Act 2002 or regulations under that Act.

75 At the end of section 200

Add:

Civil penalty

(15) If a person is subject to a requirement under subsection (1) or (2), the person must not engage in conduct that breaches the requirement.

(16) Subsection (15) is a civil penalty provision.

Part 6 — Revision of definitions

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

76 Section 5 (paragraph (a) of the definition of eligible place)

Repeal the paragraph.

77 Section 5 (at the end of the definition of investigating officer)

Add:

; or (f) an Australian Commission for Law Enforcement Integrity officer.

78 Section 5 (definition of signatory)

Repeal the definition, substitute:

signatory , in relation to an account with an account provider, means the account holder or a person authorised by the account holder to manage or exercise effective control of the account, whether alone or jointly with one or more other persons.

79 Section 5 (definition of stored value card)

Repeal the definition, substitute:

stored value card means a thing (whether real or virtual):

- (a) that stores monetary value in a form other than physical currency; or
- (b) that gives access to monetary value stored in a form other than physical currency; or
- (c) that is declared to be a stored value card by the AML/CTF Rules;

but does not include:

(d) a debit card or a credit card (whether real or virtual) linked to an account provided by a financial institution; or

(e) unless declared under paragraph (c):

(i) a thing that is intended to give access to monetary value in a debit card or credit card account provided by a financial institution; or

(ii) a gaming chip or token; or

(iii) a thing that stores, or gives access to, digital currency; or

(f) a thing that, under the AML/CTF Rules, is taken not to be a stored value card.

Part 7 — Other regulatory matters

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

80 Paragraph 212(1)(a)

After “eligible collected information”, insert “or AUSTRAC information”.

81 After paragraph 212(1)(a)

Insert:

(aa) to provide access to, and to share, AUSTRAC information to support domestic and international efforts to combat money laundering and terrorism financing and other serious crimes; and

82 After paragraph 212(1)(d)

Insert:

(da) to facilitate gaining access on a timely basis to the financial, administrative and law enforcement information that the AUSTRAC CEO requires to properly undertake the AUSTRAC CEO’s financial intelligence functions; and

83 After paragraph 212(1)(f)

Insert:

; and (g) to do anything that is incidental or conducive to the performance of a function referred to in a preceding paragraph.

84 After subsection 212(3)

Insert:

(3A) In considering an exemption or modification under or in relation to the operation of this Act that could reasonably be expected to have an impact on the risk associated with money laundering or the financing of terrorism as that risk applies to a designated service, the AUSTRAC CEO must be satisfied that the risk associated with the proposed exemption or modification is low.

85 Subsection 212(5)

After “(3)”, insert “, (3A)”.

