

**Australia: Report on the Observance of Standards and Codes—
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for Australia was prepared by the Financial Action Task Force on Money Laundering (FATF), using the assessment methodology adopted by the FATF in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document are those of the FATF and do not necessarily reflect the views of the government of Australia or the Executive Board of the IMF.

To assist the IMF in evaluating the publication policy, reader comments are invited and may be sent by e-mail to publicationpolicy@imf.org.



**Financial Action Task Force
Groupe d'action financière**

AUSTRALIA

**Report on Observance of Standards and Codes
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism**

4 May 2006

REPORT ON OBSERVANCE OF STANDARDS AND CODES

FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

AUSTRALIA

1. BACKGROUND INFORMATION

1. This Report on the Observance of Standards and Codes for the *FATF 40 Recommendations for Anti-Money Laundering and 9 Special Recommendations Combating the Financing of Terrorism* was prepared by the Financial Action Task Force. The report provides a summary¹ of the AML/CFT measures in place in Australia as at March 2005 (the date of the on-site visit). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. The views expressed in this document have been agreed by the FATF and Australia, but do not necessarily reflect the views of the Boards of the IMF or World Bank. The Australian Government recognises the need for an effective AML/CFT regime and is currently updating its legislation to implement the revised FATF Recommendations.

2. Australia's legal regime to combat money laundering and terrorist financing is generally comprehensive. Australia has a comprehensive money laundering offence, however, further action needs to be taken to enhance the effective implementation of the offence. Terrorist financing offences are also broadly satisfactory; though the wording should be broadened to specifically cover the collection of funds for a terrorist organisation or provision/collection of funds for an individual terrorist. Australia's confiscation system is comprehensive and appears effective, and the system for freezing terrorist-related funds also appears to be in line with international standards. Australia has a comprehensive framework to provide international co-operation.

3. AUSTRAC is an effective FIU and has been an active member of the Egmont Group since 1995. Commonwealth, as well as State and Territory, authorities have adequate legal powers for gathering evidence and compelling production of documents, as well as a wide range of special investigative techniques at their disposal. However, these powers could be more effectively used, as investigators generally do not investigate money laundering as a separate charge, and the number of prosecutions for offence is low.

4. As regards the customer due diligence regime, most obligations date to the Financial Transactions Reports Act 1988 and therefore do not meet the current standards. The methods of verifying the customer identification are inadequate and should be tightened. Overall, the evaluation team did not find the implementation of the AML/CFT preventative and supervisory system to be effective in terms of the standards required by the revised FATF 40 Recommendations, and significant changes are needed. Casinos, bullion sellers and to some extent solicitors are covered by the FTR Act; however, other DNFBPs are not covered and, there is a lack of effective regulatory and monitoring systems to ensure compliance with AML/CFT requirements. Australia is in the process of introducing new legislation to rectify many of the current deficiencies.

5. While narcotics offences provide a substantial source of proceeds of crime, the majority of illegal proceeds are derived from fraud-related offences. One Australian Government estimate suggested that the amount of money laundering in Australia ranges between AUD 2—3 billion per year. Australia recognises and is responding to the continuing challenges posed by increasingly well resourced and well organised transnational crime networks.

6. Criminals use a range of techniques to launder money in Australia. Generally, money launderers seek to exploit the services offered by mainstream retail banking and larger financial service and gaming providers. Visible money laundering is predominantly carried out using the regulated financial sector,

¹ A copy of the full Mutual Evaluation Report can be found on the FATF website: www.fatf-gafi.org.

particularly through the use of false identities and false name bank accounts facilitated by forged documents to structure and transact funds. Money launderers often move funds offshore by using international funds transfers. Money launderers also move funds through smaller or informal service providers such as alternative remittance dealers. Australian authorities also identified other methods that served as money laundering vehicles: cash smuggling into and out of Australia, and the use of legitimate businesses to mix proceeds of crime with legitimately earned income/profits. Law enforcement has also recognised a growing trend in the use of professional launderers and other third parties to launder criminal proceeds.

7. A wide range of financial institutions exists in Australia. These include depository corporations (such as banks, building societies and credit co-operatives); financial markets; insurance corporations and pension funds (life insurance, general insurance, superannuation funds); other financial corporations, including financial intermediaries (such as financial unit trusts and investment companies); financial auxiliaries (such as securities brokers, insurance brokers and flotation corporations); foreign exchange instrument dealers, money remittance dealers and bureaux de change.

8. The full range of designated non-financial businesses and professions exist in Australia. Casinos (mainly supervised at the State/Territory level), dealers in precious metals and stones, and lawyers are subject to some AML/CFT requirements. Notaries, real estate agents, accountants, and trust and company service providers (called professional company incorporation providers) also operate in Australia.

9. Australia has a federal system of government that consists of the Federal government, six State governments and two Territory governments. The main criminal law powers rest with the States and Territories, while Commonwealth legislation is generally restricted to criminal activity against Commonwealth interests, Commonwealth officers or Commonwealth property. Money laundering and the financing of terrorism are dealt with at both the Federal and State level².

2. LEGAL SYSTEMS AND RELATED INSTITUTIONAL MEASURES

10. Australia has a comprehensive money laundering offence. Money laundering is criminalised under the revised Division 400 of the *Criminal Code Act 1995*, which came into effect in January 2003. Previous money laundering offences date back to 1987. Division 400 creates a range of penalties for offences depending on the level of knowledge (knowing and wilful, recklessness, negligence) and the value of the property involved. Predicate offences include all indictable offences—i.e., those with a minimum penalty of 12 months imprisonment.

11. Australia generally pursues money laundering via proceeds of crime action using the *Proceeds of Crime Act* (POCA); however, the key issue in terms of effective implementation of the money laundering offence is the low number of money laundering prosecutions at the Commonwealth level (ten dealt with summarily and three on indictment since 2003, with five convictions), indicating that the regime is not being effectively implemented. Money laundering is also criminalised at the State and Territory level, and these offences vary in comprehensiveness. The lack of statistics on State and Territory prosecutions and convictions for ML prevents an evaluation of their effectiveness.

12. The *Suppression of the Financing of Terrorism Act 2002* (SoFTA), which came into force in July 2002, amended a number of existing Acts to implement Australia's obligations under the UN Suppression of the Financing of Terrorism Convention and relevant UN Security Council Resolutions. As amended, the *Criminal Code Act 1995* now contains several offences related to the financing of terrorism: receiving funds from or making funds available to a terrorist organisation; providing or collecting funds to facilitate a terrorist act. While broadly satisfactory, this offence does not specifically cover the collection of funds for a terrorist organisation or provision/collection of funds for an individual terrorist. This should be rectified. There have not been any prosecutions for terrorist financing.

² References in this report to legislation are to Federal laws, unless otherwise stated.

13. Australia's provisional measures and measures for confiscation are comprehensive and appear effective. The *Proceeds of Crime Act 2002* (POCA) provides for both conviction- and civil-based forfeiture of proceeds. The conviction-based scheme covers instrumentalities used in, intended for use in, the commission of an offence and property of corresponding value. Competent authorities have a wide range of powers to identify and trace property. Amounts forfeited at the Commonwealth level may be somewhat low, but this could be attributable to the federal nature of the Australian system of government. For 2003-2004, at the Commonwealth level there were 70 confiscations with a total value of AUD 10 million. Australian authorities indicated that approximately 10—20% of these cases involved money laundering or offences against the *Financial Transactions Reports Act 1988* (FTR Act). None involved the financing of terrorism. Significant amounts have also been confiscated at the State level under State-based confiscation legislation.

14. United Nations Security Council Resolutions 1267, its successor resolutions, and 1373 are implemented through the revised *Charter of the United Nations Act 1945* (CoTUNA) and its Regulations of 2002. Assets of "proscribed persons" (which are designated by the UN 1267 Committee) or other persons or entities (which are designed by the UN 1267 Committee or listed by the Minister of Foreign Affairs) must be frozen without delay. This mechanism is enforced by creating an offence for dealing in any such freezable assets. This must occur without prior notification to the persons involved. The Regulations do not explicitly cover the funds of those who finance terrorism or terrorist organisations (outside of the context of specific terrorist acts). In any case, the final decision of whether to list a person, entity or asset is up to the Minister.

15. Australia's Department of Foreign Affairs and Trade (DFAT) maintains one consolidated list of individuals and entities to which the asset freezing sanctions apply, and this list is kept updated and available on DFAT's website. The list contains over 540 names, including all 443 names from the S/RES/1267 list plus approximately 89 other names designated under the regulations implementing S/RES/1373 and designated by the Minister. Overall, the system appears effective—there have been two freezings of funds from the consolidated list, including one freezing of funds that remains in place, of approximately \$2,000 of an entity named to the consolidated list by the Minister.

16. The Australian Transaction Reports Analysis Centre (AUSTRAC) is Australia's Financial Intelligence Unit (FIU) and has a dual role as both an FIU and AML/CFT regulator. AUSTRAC was established in 1989 as an independent authority within the Australian Government's Attorney-General's portfolio. AUSTRAC collects financial transaction reports information from a range of prescribed cash dealers, including the financial services and gaming sectors, as well as solicitors and members of the public.

17. Under the FTR Act, "cash dealers" (types of financial institutions covered by the Act, which include casinos, bookmakers and bullion sellers) submit a range of financial transaction reports to AUSTRAC, including reports on suspicious transactions (SUSTRs) and international funds transfers (IFTIs) (regardless of amount). They are also required to report significant cash transactions (SCTRs) and large incoming or outgoing currency movements (ICTRs) involving AUD 10,000 or more. Solicitors are also required to report significant cash transactions. This information is made available on-line to AUSTRAC's 28 partner agencies. In addition, AUSTRAC analyses this information and disseminates it in the form of financial intelligence to its partner agencies, comprising Federal, State and Territory law enforcement, social justice and revenue collection agencies, as well as AUSTRAC's international counterpart FIUs. AUSTRAC has issued numerous Guidelines and Information Circulars to assist cash dealers in implementing their reporting obligations. AUSTRAC has direct or indirect access to financial, administrative, and law enforcement information.

18. AUSTRAC is an effective FIU and has been an active member of the Egmont Group since 1995. AUSTRAC utilises sophisticated technologies to assist in analysing the numerous reports it receives—approximately 9 million IFTIs, 2 million SCTRs, 12,000 SUSTRs, and 25,000 ICTRs in 2004. The 154 AUSTRAC personnel are adequate for it to effectively perform its FIU functions.

19. Commonwealth, as well as State and Territory, authorities have adequate legal powers for gathering evidence and compelling production of documents, as well as a wide range of special investigative techniques at their disposal, including controlled deliveries, undercover police officers, electronic interception and other relevant forms of surveillance and search powers. At a national level, the Australia Federal Police (AFP) enforces most Commonwealth Criminal law and the office of the Commonwealth Director of Public Prosecutions (CDPP) prosecutes offences against Commonwealth law, including prosecution of Commonwealth money laundering offences and terrorism financing offences. The authorities in Australia have adequate powers, structures, staffing and resources to investigate and prosecute money laundering and terrorist financing. While the legal measures are comprehensive, they are not fully effective, as investigators generally do not investigate and refer money laundering as a separate charge, and number of prosecutions for the money laundering is low.

20. Australia has a comprehensive system for reporting cross-border movements of currency above AUD 10,000 to AUSTRAC. However, there is no corresponding system for declaration or disclosure of bearer negotiable instruments.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

21. Australia's legislative framework does not distinguish between financial institutions or specify AML/CFT obligations for financial institutions on the basis of risk. Nevertheless, the Australian Government indicated that it has developed its existing AML/CFT system in light of international and local law enforcement experience with a view to developing requirements that do not place undue burdens on businesses and customers.

22. Obligations under the FTR Act apply to "cash dealers." While this covers a broad range of financial institutions in Australia, the FTR Act does not yet cover the full range of financial institutions as defined in the FATF Recommendations, such as certain financial leasing companies and debit and credit card schemes. Securitisation firms, electronic payment system providers, and certain managed investment schemes are covered where they also hold a financial services licence covering the dealing in securities or derivatives. In addition, particular obligations, such as reporting and record-keeping might vary between types of cash dealers.

23. Overall, as regards the customer due diligence (CDD) regime, most obligations date to the FTR Act 1988 and therefore do not meet the current standards. The Australian Government understands the need for improvement and is currently drafting legislation to implement the requirements of the revised 40 Recommendations. Under the current legislation there is a complex and indirect obligation to identify and verify customer identity; it is limited to the context of "account" facilities with the "cash dealers", and therefore does not cover all situations where business relationships are established. Customer identification/ verification is not required at the account opening stage; rather accounts below the prescribed low value (AUD 1,000 per day or AUD 2,000 in a month) can operate indefinitely without customer identification until such time as the thresholds are triggered. While customers must be identified when reporting cash transactions over AUD 10,000, there is no reporting or identification requirements for other non-cash occasional transactions of USD/ EUR 15,000 or more. The methods of verifying the customer identification are also inadequate and should be tightened.

24. There is no general obligation under the FTR Act to identify and verify the details of the beneficial owner. Nor are there specific obligations regarding politically exposed persons (PEPs), correspondent banking or to have policies in place or take such measures as needed to prevent the misuse of technological developments in ML/FT, or specific and effective CDD procedures that apply to non-face to face customers.

25. FTR Act allows cash dealers to rely on identification conducted by a third party called an "acceptable referee." However, the current list of acceptable referees is overly broad and includes many entities that are unregulated (for AML/CFT or any other purpose). And while financial institutions

relying on third parties are ultimately responsible for compliance with the FTR Act, the other provisions of Recommendation 9 are not required.

26. Banking secrecy or confidentiality does not inhibit the implementation of the FATF Recommendations. AUSTRAC, the Australian Prudential Supervisory Authority (APRA), and the Australian Securities and Investment Commission (ASIC) have broad authority to access information from entities under their supervision.

27. Under sections 20, 23, 27C and 27D of the FTR Act, reporting entities have both direct and implied recordkeeping and record accessibility obligations. Certain cash dealers (“financial institutions” as defined under section 3 of the FTR Act) have broad record-keeping obligations to keep documents relating to the identity verification of customers, their operation of “accounts” and individual transaction activity of these accounts. However, financial institutions (which includes only authorised deposit taking institutions, co-operative housing societies, “financial corporations” as defined in the Australian Constitution, casinos, and totalisator agency boards) are one category of “cash dealers”. Therefore, for example, the FTR Act obligations would not include records of transactions from securities and insurance institutions, or foreign exchange dealers or money remitters, as they are either not financial institutions or do not hold “accounts” as defined under the Act. All information that is kept is readily accessible by the competent authorities.

28. Australia has a mandatory system for reporting all international funds transfer instructions to AUSTRAC. The reports contain the ordering customer’s name, location (i.e. full business or residential address) and customer’s account number. These reports are maintained in AUSTRAC’s database and are a useful source of intelligence information. Despite the comprehensive reporting system, the main elements of SR VII are not required. There is no requirement: to include the originator information as part of the funds transfer instruction itself, that similar obligations also apply to domestic transfers; for intermediary financial institutions to maintain all the required originator information with the accompanying wire transfer; or for beneficiary financial institutions to have risk-based procedures in place for dealing with incoming transfers that do not have adequate originator information.

29. There are no specific requirements for cash dealers to pay special attention to complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, or set out their findings in writing. As part of the obligation to report suspicious transactions, cash dealers (but not the full scope of financial institutions as required in the FATF Recommendations) would be required to recognise and report transactions suspected of being relevant to the investigation of an offence. However, this indirect obligation to monitor transactions does not cover the full monitoring obligation for all complex, unusual large transactions, or unusual patterns of transactions, or transactions with no visible economic purpose.

30. AUSTRAC Guidelines and Information Circulars assist cash dealers to identify high risk and NCCT countries and advise cash dealers on the need to scrutinise such transactions involving these countries in order to determine whether they should be reported as STRs according to the FTR Act. Nevertheless, the Guidelines and Information Circulars are not enforceable. Australia should adjust its legislation to clarify obligations under Recommendation 21 in its Guidelines and Information Circulars and make these measures legally enforceable.

31. Cash dealers are required to report all transactions suspected of being relevant to the investigation or prosecution of any breach of taxation law or any Commonwealth or Territory offence. A transaction is reportable if there is an attempted transaction and regardless of the amount being transacted. Measures providing “safe harbour” and criminalising tipping off are also comprehensive. AUSTRAC provides general feedback in the form of statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures; and some information on current techniques, methods and trends as typologies in some quarterly newsletters; however, AUSTRAC is encouraged to provide more sanitised examples of actual money laundering cases and/or information on the decision or result of an STR filed.

32. Overall, the regime for reporting suspicious transactions is effective and comprehensive except for the current limitation on the scope of “cash dealers” and the concern that the scope of the terrorist financing offence could slightly limit the reporting. In 2004, AUSTRAC received over 12,000 STRs from a wide range of cash dealers. The number of STRs filed over the past several years and the range of entities reporting is positive; numbers of reports have been steadily increasing for several types of cash dealers, notably banks, credit unions, casinos, and finance corporations.

33. AUSTRAC also receives reports regarding of significant cash transactions equal to or greater than AUD 10,000. As with all the reports that AUSTRAC collects, reports of large cash transactions are stored on the AUSTRAC database and can be accessed by authorised staff within its 28 Partner Agencies.

34. The requirement for cash dealers to have AML/CFT policies and internal controls is merely implicit within the FTR Act as part of the obligation on cash dealers to identify account signatories and to report potentially suspicious activity which may be linked to both money laundering and terrorist financing. Currently, a number of sectors have voluntarily introduced AML/CFT policies and internal controls commensurate with their size and exposure to AML/CFT risk. However, there are no specific requirements to oblige financial institutions to have in place institutionalised AML/CFT internal controls, policies and procedures and to AML/CFT risk and to communicate these procedures to their employees.

35. The FTR Act also applies outside Australia. Therefore, Australian authorities have indicated that foreign branches and subsidiaries of Australian banks are required to comply with the FTR Act’s provisions, to the extent that host country laws and regulations permit. However, there is not a requirement that, where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries must apply the higher standard, or to inform the home country supervisory if this is not possible because of local law.

36. Australia’s banking authorisation process effectively precludes the establishment and operation of “shell banks” within the jurisdiction. However, Australia should also prohibit financial institutions from entering into, or continuing, correspondent banking relationships with shell banks and require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

37. Australia has a functional approach to financial sector supervision. AUSTRAC is the AML/CFT regulator. AUSTRAC’s regulatory role includes an ongoing monitoring program to ensure cash dealer compliance with the requirements of the FTR Act. APRA is the prudential supervisor and regulator of the Australian financial services sector. ASIC, the financial market and conduct regulator, enforces and regulates company and financial services laws in order to protect consumers, investors, shareholders and creditors.

38. AUSTRAC’s powers include criminal sanctions for non-compliance and an injunctive power (although the latter is used in limited circumstances). The lack of administrative sanctions means in practice that formal sanctions are generally not applied. However, Australia notes that agreed remedial action with the cash dealer, while not a formal sanction, successfully encourages improvements. The regulatory sanctions available in the broader Australian financial supervisory and regulatory environment include criminal, civil and administrative mechanisms.

39. APRA and ASIC have wide-ranging powers to remedy breaches of their relevant legislation, which apply to entities as well as their directors and officers (e.g. senior management). Powers include the ability to compel specific remedial actions, disqualify persons for management or directorship functions, and revoke a license or authorisation to operate. Australia notes that these powers would apply for non-compliance with the FTR Act if the breach created risks or breaches relevant to APRA’s and ASIC’s legislation. However, it was unclear to the evaluation team how these would be applied in practice, as there are no express powers to remove management or revoke a license for a breach of AML/CFT requirements. No sanctions have yet been applied by APRA or ASIC for AML/CFT failings.

40. Entities must be authorised or licensed by APRA in order to carry out a banking, general insurance, life insurance or superannuation business in Australia. Some entities providing remittance services or bureaux de change services are also licensed under the Australian Financial Services License (AFSL) requirements; however, there is no general obligation to license or register all money/value transfer (MVT) services operators and bureaux de change. Australia needs to extend licensing or registration requirements to the remaining financial institutions not covered by current arrangements.

41. MVT services operators are subject to FTRA requirements, and AUSTRAC has made progress in identifying MVT services operators and bringing them into the reporting regime. AUSTRAC maintains a current list of the names and addresses of MVT service operators of the operators it has identified. However, MVT service operators are not required to maintain a current list of its agents.

42. Overall, the evaluation team did not find the implementation of the AML/CFT supervisory system to be effective in terms of the standards required by the revised 40 Recommendations. The supervisory system would also be enhanced if co-ordination on AML/CFT matters between all the relevant authorities were to be improved. There is a need to foster greater formal cooperation amongst relevant financial sector supervisors and regulators on AML/CFT issues and operational developments going forward.

43. AUSTRAC's on-site supervision activities do not cover the full range of compliance tools available to it under the FTR Act. AUSTRAC currently focuses on education visits and has conducted only two compliance inspections of banks in the last two years. However, educational visits include inspections of records to ascertain whether an entity is a cash dealer, and if so, whether they have reporting obligations and whether they are complying with them. Australia also notes that education visits can result in agreed remedial action with the cash dealer which, while not a formal sanction, successfully encourages improvements. Nevertheless, the Australian government needs to develop an on-going and comprehensive system of on-site AML/CFT compliance inspections across the full range of financial institutions. There should also be specific measures that enable the regulator to disqualify management or directors or revoke a license to operate for specific AML/CFT failings. There is also a need to introduce a comprehensive administrative penalty regime for AML/CFT failings.

44. AUSTRAC's current resources for AML/CFT compliance appear limited; to be an effective regulator under the revised FATF standards, substantial dedicated financial resources should be directed toward the Reporting and Compliance section to increase staff numbers and to train existing staff. Supervisory skills and training pertaining to the conduct of on-site inspections and enforcement-related activities should also be enhanced.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

45. Some DNFBPs have some CDD and record-keeping obligations under the FTR Act. Casinos and bullion sellers are "cash dealers" and therefore subject to the FTR Act's customer identification requirements and record-keeping requirements, although these requirements generally pertain to the opening of an account or conducting significant cash transaction (i.e., those over AUD 10,000; approximately USD 7,500). Solicitors must also identify customers when reporting significant cash transactions. While trustees and managers of unit trusts, as financial institutions, are covered as reporting entities under section 3(g) of the FTR Act, trust and company service providers (TCSPs) generally do not fall within this definition. Generally, the provisions lack effectiveness due to inherent problems in the process of identification and verification as discussed in Section 3 of the report. Under the present legal regime, most DNFBPs operating in Australia do not have mandatory CDD, record keeping and other obligations as required under in Recommendation 12.

46. Casinos and bullion sellers, as cash dealers, are required to report STRs to AUSTRAC. However, other DNFBPs do not have similar obligations, nor are they required to develop internal policies, procedures, internal controls, ongoing employee training and compliance programs in respect of AML/CFT. There are not adequate, enforceable measures for DNFBPs to pay special attention to

transaction involving certain countries, make their findings available in writing, or apply appropriate counter-measures.

47. Casinos have a generally comprehensive system for licensing and satisfactory regulation by the State and Territory authorities. Casinos, bullion sellers and to some extent solicitors are covered by the FTR Act and are thus monitored by AUSTRAC to a limited extent for the purposes of AML/CFT compliance. AUSTRAC has issued Guidelines that cover these cash dealers. However, other DNFBPs are not covered under the FTR Act and, thus, most lack effective regulatory and monitoring systems to ensure compliance with AML/CFT requirements. The criminal sanctions of the FTR Act would also apply; however, the lack of administrative sanctions coupled with an absence of criminal prosecutions of DNFBPs suggests that sanctions are generally not applied for breaches of AML/CFT requirements.

48. Australia has extended AML coverage to other businesses and professions, which have been identified as areas of greater money laundering vulnerability. Most notably, the FTR Act applies to bookmakers and Totalisator Betting Service Providers (as part of the broader gambling industry). Australia has also encouraged the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

49. Australia has a national system to record and make available useful information on the ownership and control of its corporations, which constitute the vast majority of legal persons in Australia, although there is no requirement to disclose beneficial ownership. Information on these companies is publicly available. Additional requirements for publicly listed companies ensure that relevant information on beneficial ownership and control of these entities is accessible. Law enforcement authorities and ASIC also have powers to obtain information on ownership and control, and beneficial ownership, where it exists. However, Australia should consider broadening its requirements on beneficial ownership so that information on ownership/control is more readily available in a more timely manner.

50. Tax information from certain trusts and law enforcement powers provide the means to access certain information on beneficial ownership and control of certain trusts. However, overall, these mechanisms to obtain and have access in a timely manner to beneficial ownership and control of legal arrangements, and in particular, the settlor, the trustee, and the beneficiaries of express trusts, are not sufficient.

51. Australia has reviewed its non-profit organisation sector and has taken some measures to ensure that these entities are not used to facilitate the financing of terrorism; however, the reviews have not resulted in the actual implementation of any additional measures. Australia should consider more thoroughly reviewing the adequacy of laws and regulations in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations. Australia should give further consideration to implementing specific measures from the Best Practices Paper to SR VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

52. Extensive mechanisms have been put in place within the Federal government and between the Federal and State Governments for co-ordination and co-operation. However, there is scope to improve co-operation/co-ordination between AUSTRAC, ASIC and APRA, and also to enhance co-operation at the policy level.

53. Australia appears to have fully implemented all the measures required in S/RES/1267 (and its successor resolutions) and S/RES/1373, and these measures appear effective. These measures appear to be effective. Australia has implemented the vast majority of the relevant sections of the Vienna, Palermo, and CFT Conventions.

54. Australia has a comprehensive system for providing mutual legal assistance and co-operating fully with other jurisdictions. The obligations for mutual assistance apply to terrorist financing and terrorist acts in the same way that they apply to other offences and situations. Australia’s mutual legal assistance mechanisms are set out in the *Mutual Assistance in Criminal Matters Act 1987*. The obligations for mutual assistance apply to terrorist financing and terrorist acts in the same way that they apply to other offences and situations. The legislation provides for the production, search and seizure of information, documents or evidence (including financial records) from financial institutions or other natural or legal persons, and the taking of evidence and statements from persons. Assistance is not prohibited or subject to unreasonable, disproportionate or unduly restrictive conditions.

55. The system enables Australia to provide legal assistance without having entered into a treaty with the other jurisdiction involved; however Australia has entered into 24 bi-lateral agreements to accommodate countries that require a treaty to be in place. Dual criminality is not required; however, it is a discretionary ground for refusing assistance. Australian authorities indicated that this would only apply to the use of coercive powers and would not apply to less intrusive and non-compulsory measures. Foreign orders can be enforced, including: forfeiture orders (which includes laundered property and proceeds), pecuniary penalty orders (which designate a value rather than a property), restraining orders, production orders, monitoring orders, and search warrants to identify and seize property.

56. The Attorney-General’s Department receives all incoming requests for mutual legal assistance requests and refers them to the necessary State or Territory authority, or to the CDPP for those involving the Commonwealth. Both agencies keep comprehensive statistics on requests received and answered, including the nature of the case and offences. In 2003-2004, the Attorney-General’s Department received 179 new requests for legal assistance; 10 involved money laundering and 8 involved terrorism. In the same time period, the CDPP received a total of 41 requests, including 3 for money laundering, and 4 for Proceeds of Crime Act offences. Both departments have adequately responded in a timely manner to the vast majority of requests.

57. Australia has a generally comprehensive system for extradition. The *Extradition Act 1988* does not include money laundering or terrorist financing as extradition offences *per se*. However, an “extradition offence” is defined as one for which the maximum penalty is a period of imprisonment for not less than 12 months. Therefore, this would cover all Commonwealth money laundering offences from Division 400 of the Criminal Code, apart from the most minor offences which concern recklessly or negligently dealing in the proceeds of crime of less than AUD1000. For extradition to Commonwealth countries except Canada and the United Kingdom, an offence with a penalty of not less than two years is required. This scheme currently applies to 64 countries and territories.

58. Dual criminality is a requirement for extradition from Australia. As the terrorist financing offence in Australia does not specifically cover collection of funds for terrorist organisations or the provision/collection of funds for individual terrorists, there is a concern that the dual criminality requirement for extradition could preclude extradition for these acts, and this should be rectified.

59. Regarding other forms of international co-operation, the capacity for and extent of information exchange at the FIU, law enforcement, prudential and corporate levels is significant and seems to be working well. AUSTRAC currently has exchange instruments with 37 counterpart FIUs. Presently, the AFP has 63 federal agents in 30 offices in 25 countries to exchange information as required. The AFP is presently negotiating in excess of 30 international agreements with partner law enforcement agencies. APRA and ASIC also exchange information with their overseas counterparts.

Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
2. Legal System and Related Institutional Measures	

Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • Improve implementation of the money laundering offence: provide incentive to its investigators and prosecutors to prosecute money laundering cases as separate and serious offences. • States and Territories should all adopt the national model) to allow them a broader ability to prosecute and convict for money laundering.
Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • Criminalise the collection or provision of funds for an individual terrorist, as well as the collection of funds for a terrorist organisation.
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • Other States and Territories that have not yet adopted similar civil forfeiture schemes should consider doing so. • Consider civil forfeiture for instrumentalities of crime.
Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • Amend regulations to cover where the obligations of SR.III exceed the requirements of the Resolutions—i.e., specifying that obligations apply to funds of terrorists and those who finance terrorism, outside of the context of specific terrorist acts • Outreach further to DNFBPs to ensure that those sectors are aware of their obligations and procedures for complying.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • AUSTRAC is encouraged to seek direct access to additional law enforcement data sources as this non-financial data will also enhance their intelligence analysis capability. • AUSTRAC is encouraged to expand their team of financial analysts. • AUSTRAC should continue to seek and encourage regular feedback from partner agencies on their performance and on the benefits and results achieved by partner agencies through use of the FTR information. • AUSTRAC in consultation with partner agencies should consider how to share information/results more effectively with reporting entities. • AUSTRAC and APRA should negotiate a formal information sharing arrangement similar to those memorandums of understanding with other government agencies under which each organization is required to use its best endeavours to provide information which is likely to assist the other agency in carrying out its particular regulatory function.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • The investigative and prosecutorial authorities need to focus more on investigating and prosecuting ML and not just predicate offences. Australian authorities are encouraged to continue to make this a priority. • There is also a need for Australian authorities to keep clearer statistics for investigations and prosecutions of the ML offence at the commonwealth level. • There is also a need for Australian authorities to ensure adequate statistics are maintained with respect to money laundering (investigations, prosecutions, convictions, property seized, etc.) at the State/territory level. • Consider establishing an AML working group with State, Territory and federal representatives from government to regularly discuss issues of common interest such as statistic gathering and develop approaches for dealing with emerging issues.
3. Preventive Measures: Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • In general, the regime could be made simpler and contain a more direct obligation to identify and verify customers. • Loans should not be excluded from CDD requirements. • The definition of "cash dealer" or otherwise obliged reporting entities should be extended to include the full range of financial institutions as defined in the FATF recommendations. • The scope of "account" should be extended to capture a wider range of products, services or business activity so that CDD applies for all cases of establishing business relations. • Australia should amend its legislation to remove the possibility of accounts operating below the threshold of AUD 1,000/ 2,000 without any verification requirements. • The Regulation 4(1)(i) of the FTR Act not requiring existing clients of over 36 months to be re-examined for identity and verification purposes should be repealed. • Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk. • While Australia has a system to identify customers (but not beneficial owners) of occasional cash transactions above AUD 10,000, verification requirements should be clearer. • Australian legislation should be amended to require identification of those occasional transactions that exceed the USD/EUR 15,000 which are not cash transactions.

	<ul style="list-style-type: none"> • Australia needs to require financial institutions to identify occasional customers as contemplated in SRVII for domestic transfers and in the cases where there is a suspicion of money laundering or terrorist financing. • The acceptable referee method should be substantially tightened or even removed except for exceptional cases where reliance on other identification methods is not possible. • The 100-point check should be strengthened by placing reliance on identification documents or methods of proven acceptability, which should exclude identification references, for example. • Create a general obligation to identify and verify the details of the beneficial owner, in respect of all customers; oblige financial institutions to determine whether the customer is acting on behalf of another person, and if so, take reasonable steps to verify the identity of that other person. • For customers that are legal persons, financial institutions should be required to take reasonable measures to understand the ownership and control structure and determine who are the natural persons that ultimately own or control the customer and gather information on the directors and the provisions regulating the power to bind the entity. • Tighten the use of third parties to complete verification of signatories as currently contained in Regulation 5. • Require financial institutions to: obtain information on the purpose and intended nature of the business relationship, obtain information on the purpose and intended nature of the business relationship, conduct on-going due diligence of the business relationship, and keep CDD data up-to-date. • In the cases where adequate CDD data is not obtained, financial institutions should be required to consider filing a suspicious transaction report. • Adopt requirements for financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationships, and transactions. • Adopt requirements for PEPs as contemplated in Recommendation 6. • Adopt measures for correspondent relationships as contemplated in Recommendation 7. • Require financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing. • The FTR Act should be amended to provide specific, clear and effective CDD procedures that apply to non-face to face customers.
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • Financial institutions should be required to: immediately obtain the identification data from referees; take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. • Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29), and has measures in place to comply with, the CDD requirements set out in R.5 and R.10.
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Broaden the scope of record-keeping requirements to include all financial institutions as defined in the FATF Recommendations. Clarify provisions to ensure that requirements apply to all account files and records of business correspondence. • Australia should adjust its legislation and implement measures of SR VII to require that: • financial institutions verify that the sender's information is accurate and meaningful and include the account number; • full originator information, in addition to being sent to AUSTRAC, also be included in the wire transfer instruction itself, and that similar obligations also apply to domestic transfers. • intermediary financial institutions maintain all the required originator information with the accompanying wire transfer. • beneficiary financial institutions have risk-based procedures in place for dealing with incoming transfers that do not have adequate originator information. • 'non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing'.
Monitoring of transactions and relationships (R.11 &	<ul style="list-style-type: none"> • Adopt legally enforceable regulations or guidelines establishing an explicit obligation for all financial institutions to perform the elements required by Recommendation 11.

21)	<ul style="list-style-type: none"> • Adjust legislation to clarify obligations under Recommendation 21 in its Guidelines and Information Circulars and making these measures legally enforceable.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> • Amend the FTR Act to apply to all financial institutions as defined in the FATF Recommendations. • Expand the definition of the FT offence (to include the provision/collection of funds for an individual terrorist and the collection of funds for a terrorist organisation) so as to ensure that transactions related to these activities is reportable. • AUSTRAC could provide more sanitised examples of actual money laundering cases and/or information on that decision or result of an STR filed.
Cross-border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> • Amend legislation to cover incoming and outgoing cross-border transportations of bearer negotiable instruments.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Impose obligations for all cash dealers to ensure that the proposed controls, policies and procedures cover, <i>inter alia</i>, CDD obligations, record detection, the detection of unusual and suspicious transactions, and the reporting obligations, designation of a AML/CFT compliance officer at the management level; an adequately resourced and independent audit function, ongoing employee training, and adequate screening procedures. • Require branches and subsidiaries to apply the higher AML/CFT standard, to the extent that the laws of the host country allows. • In the event where a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures, those financial institutions should be required to inform Australian authorities. • Require financial institutions to pay particular attention that the principle is observed wherewith to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.
Shell banks (R.18)	<ul style="list-style-type: none"> • Prohibit financial institutions from entering into, or continuing, correspondent banking relationships with shell banks and require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25).	<ul style="list-style-type: none"> • Foster greater formal co-operation amongst relevant financial sector supervisors and regulators on AML/CFT issues and operational developments going forward. • Develop an on-going and comprehensive system of on-site AML/CFT compliance inspections across the full range of financial institutions. • Institute an administrative penalty regime under which administrative penalties can be imposed on regulated entities and persons who are materially non-compliant in respect of their obligations under the FTR Act. • It should also be provided that a failure or wilful disregard of FTR Act obligations would constitute a ground for declaring a director, manager or employee of a cash dealer to be in breach of fit and proper norms, with the resultant consequences. • Inspections powers in the FTR Act should also be amended to expressly include such generally accepted standard inspection powers such as checking policies and procedures, sample testing, or the investigation of any other issue required by the FTR Act. • There should also be a provision clarifying that offences by a cash dealer in specific contravention of Australia's AML/CFT legislation can result in the cancellation of a licence or revocation of authorisation held by that person or body corporate cash dealer. • Remedy the current limitation on AUSTRAC's ability to share information with APRA. • For AUSTRAC to be an effective AML/CFT regulator under the current FATF standards, substantial dedicated financial resources must be directed toward the Reporting and Compliance section to increase staff numbers, to train existing staff and to embark on a targeted compliance drive amongst cash dealers through actual audit inspections in increased numbers. • There remains a distinct need for an enhancement of supervisory skills and training pertaining to the conduct of on-site inspections and enforcement-related activities. • Australia needs to develop a system to license and/or register all remittance dealers and bureaux de change. Australia also needs to extend licensing requirements to the remaining financial institutions not covered by current arrangements. • AUSTRAC should issue further guidance on the other AML/CFT preventative measures.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • Australia should require all MVT service operators to be licensed or registered, and AUSTRAC should maintain a comprehensive list of such service providers and their details; • Australia should therefore revise the FTR Act accordingly and subject MVT service operators

	<p>to comprehensive AML/CFT requirements (the full scope of Recommendations 4-11, 13-15, 21-23, and SR VII).</p> <ul style="list-style-type: none"> • Australia should also require MVT service operators to maintain a current list of their agents and make these available to AUSTRAC. • While AUSTRAC has invested considerable effort to locate and educate MVT operators so as to bring them into the reporting regime, AUSTRAC or another competent authority needs to go beyond education visits and fully supervise these entities, including full on-site inspections.
4. Preventive Measures: Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12) (Applying R.5, 6, 8-11, 17)	<ul style="list-style-type: none"> • Australia should bring in legislative changes to ensure that all DNFBPs have adequate CDD and record-keeping, and transaction monitoring obligations in the situations required by Recommendation 12. • Appropriate sanctions should be adopted for non-compliance, including a regime of administrative sanctions.
Suspicious transaction reporting (R.16) (Applying R. 13-15, 17, 21)	<ul style="list-style-type: none"> • The scope of FTR Act needs to be enhanced so as to bring all types of DNFBPs under the STR regime. A regime of administrative sanctions should also be considered for DNFBPs for non-compliance with reporting obligations. • DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. These procedures, policies and controls should cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function, establish ongoing employee training. • Australia should compel DNFBPs to pay special attention to transaction involving certain countries, make their findings available in writing, and apply appropriate counter-measures. Information Circulars issued for DNFBPs in this area would need to be transformed into legally enforceable circulars.
Regulation, supervision and monitoring (R.17, 24-25)	<ul style="list-style-type: none"> • Australia should introduce administrative sanctions for breaches of AML/CFT requirements by all DNFBPs, once they are made subject to the FTR Act or other AML/CFT requirements. • The scope and coverage of reporting entities should be enhanced to include DNFBPs enabling AUSTRAC or SROs to regulate and supervise such entities from AML/CFT perspective. • Competent authorities such as AUSTRAC or SROs should establish guidelines that would cover the full range of DNFBP and assist them to implement and comply with their respective AML/CFT requirements.
Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Australia should consider broadening its requirements on beneficial ownership so that information on ownership/control is more readily available in a more timely fashion. This could include, for example, restricting the use of nominee directors and shareholders, or obliging legal persons to record the information on beneficial ownership in its register.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Improve the processes in place to enable competent authorities to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee and the beneficiaries of express trusts. Australia should enact more comprehensive measures to require that this data be collected or otherwise ensure that it can be made available.
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • Australia should consider more thoroughly reviewing the adequacy of laws and regulations in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations. • Australia should give further consideration to implementing specific measures from the Best Practices Paper to SR VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.
6. National and International Co-operation	
National co-operation and coordination (R.31)	<ul style="list-style-type: none"> • Improve the level of co-operation and co-ordination between AUSTRAC, ASIC, and APRA, and also to enhance co-ordination at the policy level, possibly through the establishment of a formal national co-ordination mechanism.

The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Impose stricter customer identification (beneficial ownership) requirements for accounts and transactions in financial institutions as stipulated in Article 18 of the CFT Convention.
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> • Consider, on a timely basis, entering into further agreements for co-ordination of asset sharing, as this may be needed by other countries in order to share and receive proceeds from confiscated property. • Specifically criminalise the collection of funds for terrorist organisations and the provision/collection of funds involving individual terrorists, to ensure that the discretionary grounds of dual criminality is not used in the future to refuse legal assistance requests involving these crimes.
Extradition (R.32, 37 & 39, & SR.V)	<ul style="list-style-type: none"> • Specifically criminalise the collection of funds for terrorist organisations and the provision/collection of funds involving individual terrorists, to ensure that the dual criminality requirement in current law could not prevent the extradition of those who have engaged in these acts.
Other Forms of Co-operation (R.32 & 40, & SR.V)	<ul style="list-style-type: none"> • Australia is compliant with Recommendation 40. Although AUSTRAC does not need an agreement to share information, AUSTRAC should consider initiating exchange instruments to formalise exchange of AML/CTF regulatory information with foreign supervisors.

Authorities response to the evaluation

The Australian Government welcomes the evaluation by the Financial Action Task Force on Money Laundering (FATF) of Australia's anti-money laundering (AML) and counter-terrorism financing (CTF) measures. The Australian Government is committed to reforming its AML/CTF regime and will consider the recommendations of the evaluation with regard to what is appropriate for Australia's domestic context.

As part of its commitment the Australian Government released on 16 December 2005 a legislative package for public consultation consisting of an exposure AML/CTF Bill and draft AML/CTF Rules and Guidelines (<http://www.ag.gov.au/aml>).

Australia has also taken immediate steps to implement FATF's Special Recommendations by passing the *Anti-Terrorism Bill (No 2) 2005* on 9 December 2005 which included a range of reforms to the *Criminal Code Act 1995* and the *Financial Transaction Reports Act 1988* that will better implement Special Recommendations II, VI, VII and IX.

Australia is one of the first countries to be assessed against the revised standards which are widely acknowledged amongst FATF members as being tougher standards. In meeting our international commitments, Australia is mindful of the need to ensure that the reforms are workable and do not impose an unreasonable burden on business.

Australia has implemented a comprehensive, rigorous and effective financial system regulatory framework that is organised along functional lines. Under the framework, APRA is responsible for prudential regulation of ADI's, life and general insurance companies and superannuation entities while ASIC is responsible for consumer protection and market integrity regulation across the financial system. ASIC is also responsible for broader companies regulation.

Australia's overall financial sector regulatory framework is robust, well resourced and underpinned by a strong culture of enforcement and compliance.

The Australian financial sector is committed to the reform process and is working closely with the Australian Government to ensure sensible reforms that will maintain its reputation internationally as safe and robust.

The success of the Australian Government's approach to financial sector regulation is evident in Australia's vibrant and responsible financial sector, and in the contribution it has made to Australia's overall economic performance.

Australia has consistently been one of the best performing OECD economies over the last decade, with GDP growth consistently well above the OECD average. Fourteen consecutive years of growth have lifted Australia's GDP per capita from the 18th highest in the OECD in 1990, to 8th currently. Unemployment, at 5 per cent, is at a thirty year low.

Within the Australian functional regulatory framework, AUSTRAC is responsible for AML/CTF, and will ensure financial institutions, and others covered by the FATF revised recommendations, adequately comply with the AML/CTF requirements.

This approach has clear advantages given the extent to which AML/CTF requirements apply beyond the financial sector.

Nonetheless, with regard to financial institutions, AUSTRAC is, and will continue to be, supported by the complementary and broad ranging powers available to the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC).

The Australian Government acknowledges and will give careful consideration to the evaluation's suggestions regarding the scope to improve formal coordination between AUSTRAC, APRA and ASIC – there is always room for improvement in such areas and the extension of AUSTRAC's role in terms of the revised FATF recommendations will pose new coordination challenges. However, overall, the Australian Government considers current coordination arrangements to be effective.