Financial Action Task Force

Groupe d'action financière

SUMMARY OF THE THIRD MUTUAL EVALUATION REPORT ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

AUSTRALIA

14 October 2005

SUMMARY

1. Background Information

1. This report provides a summary 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. It also sets out Australia's levels of compliance with the FATF 40 + 9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). 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. 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.

3. 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, 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.

4. 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.

5. 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.

6. 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 level[1].

[1] References in this report to legislation are to Federal laws, unless otherwise stated.

2. Legal Systems and Related Institutional Measures

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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

18. 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.

19. 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.

20. 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 were 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. AUSTRAC also receives reports regarding of significant cash transactions equal to or greater then 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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

42. 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.

43. 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.

44. 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.

45. 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 conducing financial transactions that are less vulnerable to money laundering.

5. Legal Persons and Arrangements & Non-Profit Organisations

46. 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.

47. 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.

48. 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

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating[2]
Legal systems		
1. ML offence	LC	• The lack of money laundering prosecutions indicates that the regime is not being effectively implemented.
2. ML offence – mental element and corporate liability	LC	• The regime for sanctions appears to be comprehensive, dissuasive and proportional but is not being effectively applied. In the cases where it has been applied, sentences appears to be low.
3. Confiscation and provisional measures	C	
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	NC	• CDD requirements are limited in scope to the obligations on *cash dealers,* which does not cover the full range of financial institutions. • There is a complex and only indirect obligation to identify and verify customer identity upon account opening. • Certain loans are excluded from customer identification requirements. • CDD obligations when establishing business relations are limited to the context of opening or operating "*account*" facilities with the *cash dealers*, and do not cover all situations of establishing business relationships. • No customer identification/verification is required at the account opening stage; rather accounts below the prescribed low value (AUD 1,000/2,000) can operate indefinitely without customer identification until such time as the thresholds are triggered. The application of the low threshold provisions appears to both an unnecessary regulatory burden as well as creating potential loopholes for criminals and terrorists. • It is not clear what prescribed verification procedures are when identifying customers conducting cash transactions of AUD 10,000 or more. • There are no identification requirements for other (non-cash) occasional transactions of USD/ EUR 15,000 or more. • For IFTIs the FTR Act requires identification but no verification of the customer. Furthermore, there are no requirements for the identification and verification of customers making use of domestic wire transfers within Australia. • There is no requirement that existing clients' information be re-examined on the basis of materiality and risk or to conduct due diligence on such existing relationships at appropriate times.

[2] These factors are only required to be set out when the rating is less than Compliant.

		• There is no specific obligation requiring CDD when there is a suspicion of money laundering or terrorist financing. • The methods of verifying the customer identification are inadequate. The acceptable referee method is not an adequate method to verify the identity of a customer; the 100-point check system of verification involves a number of documents of questionable reliability, such as the inclusion of identification references. • The FTR Act does not have comprehensive requirements to identify and verify beneficial owners. There is no obligation for 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 corporate entities, there are no requirements to identify the directors or provisions regulating the power to bind the entity. Moreover, Regulation 5 allows a wide range of incorporated bodies to do their own identification and verification on signatories once the nominated person has been checked by the cash dealer. • There are no obligations that financial institutions be required to obtain information on the purpose and intended nature of the business relationship. • There are no obligations to conduct ongoing due diligence on the business relationship or conduct due diligence on such existing relationships at appropriate times. • There are inadequate obligations for financial institutions to keep document, data, and information collected under the CDD process current or up-to-date. • There are no obligations for cash dealers to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. • While there is an obligation to block the account in the cases of lack of identification (and above the AUD 1,000/2,000 thresholds), there is no obligation to consider filing a suspicious transaction report in these circumstances, although in practice financial institutions will often do so.
6. Politically exposed persons	NC	• There are no legislative or other enforceable obligations regarding the identification and verification of PEPs.
7. Correspondent banking	NC	• There are no legislative or other enforceable obligations for financial institutions that pertain to correspondent banking or relationships.
8. New technologies & non face-to-face business	NC	• There are no requirements for financial institutions 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.
9. Third parties and introducers	NC	• 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. • The current list of acceptable referees is overly broad and includes many entities that are unregulated (for AML/CFT or any other purpose). • Financial institutions relying on third parties are not 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; and 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.
10. Record keeping	PC	• Transaction records must be kept for at least 7 years after the day the account is closed or the transaction takes place. However, this is limited to "financial institutions"—a smaller category of cash dealers—and in the context of accounts as defined in the FTR Act. The FTR Act requirements therefore do not include records of transactions from securities or insurance entities, foreign exchange dealers, or money remitters. • The provisions for record keeping do not specifically require that all account files and business correspondence be retained; these provisions could be clarified.

11.	Unusual transactions	PC	• There are no specific obligations for financial institutions to monitor all complex, unusual large transactions, transactions with no visible economic purposes, to further examine these situations and to set out these findings in writing; the monitoring obligation is only implied and indirect, and it does not cover the full range of monitoring situations as stipulated in Recommendation 11. • AUSTRAC Guideline #1 provides some information to assist in this regard. However, Guidelines are not legally enforceable and do not cover the full scope of financial institutions.
12.	DNFBP – R.5, 6, 8-11	NC	• Under the present legal regime, most DNFBPs operating in Australia do not have mandatory CDD, record keeping and other obligations as required under the FATF Recommendations 5, 6, 8, 9, and 10. • There are no specific requirements for most of the DNFBPs to pay special attention to the complex & unusual transactions (applying R.11).
13.	Suspicious transaction reporting	LC	• The provisions are generally adequate, but there is a limitation of "cash dealer" definition which does not apply to all financial institutions. • There is a requirement to report transactions suspected of being related to a terrorist financing offence; however the evaluation team's concern regarding the scope of the terrorist financing offence (as discussed in section 2.2) led the team also to be concerned that this could limit the reporting obligation.
14.	Protection & no tipping-off	C	
15.	Internal controls, compliance & audit	NC	• Legislative amendments are required to oblige financial institutions to have in place institutionalised AML/CFT internal controls, policies. Such obligations should include requirements for financial institutions to: have a designated AML/CFT compliance officer at the management level; have an adequately resourced and independent audit function, establish ongoing employee training, put in place adequate screening procedures.
16.	DNFBP – R.13-15 & 21	NC	• Most DNFBPs are not legally required to report suspicious transactions to AUSTRAC. • DNFBPs are not required to develop internal policies, procedures, internal controls, ongoing employee training and compliance in respect of AML/CFT. • There are sanctions in relation to non-reporting of STRs, to the extent that Casinos and bullion dealers are required to report STRs. However, the FTR Act contains criminal sanctions only, and the lack of administrative sanctions shows that in practice sanctions are rarely applied. • 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.
17.	Sanctions	PC	• The only sanctions for AUSTRAC are criminal sanctions and an injunction power under section 32 of the FTR Act, although the latter has been used in limited circumstances. The lack of intermediate sanctions, such as 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. • APRA and ASIC have powers to apply sanctions, including revoking an entity's licence, in circumstances where there is a breach of the relevant legislation. Powers extend to directors and senior managers; ASIC can also ban and disqualify persons, including banning from acting as a director or from managing a corporation; however, it was unclear how these could be applied in practice, as there are no express powers to remove management or revoke a license in breach of AML/CFT requirements. No sanctions have yet been applied by APRA or ASIC for AML/CFT failings. • AUSTRAC does not have corresponding powers to revoke the licence of cash dealers or to disqualify persons from being a manager, director, or employee due to serious non-compliance with FTR Act.
18.	Shell banks	PC	• There is no prohibition on financial institutions from entering into, or

		continuing, correspondent banking relationships with shell banks. • Nor are financial institutions required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	
20. Other NFBP & secure transaction techniques	C	
21. Special attention for higher risk countries	PC	• While AUSTRAC has the authority under section 38(1)(e) of the FTR Act to indicate other countries as higher risk, AUSTRAC has made limited use of this provision. • There is no specific requirement for financial institutions to pay special attention to transactions involving countries that do not adequately apply the FATF Recommendations, in accordance with Recommendation 21. AUSTRAC Guidelines and Information Circulars provide additional information and advise cash dealers on the need to scrutinise such transactions to so as to determine whether they should be reported. However, these measures are not legally enforceable.
22. Foreign branches & subsidiaries	NC	• Although under Section 6 of the FTR Act extends application of the FTR Act outside Australia, Australian banks themselves indicated that they would first apply the local laws, and that in several cases local laws prohibited full implementation of the Australian standards due to local secrecy provisions. • There is no requirement that this principle be observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. • There is no legal obligation or guidance requirement under the FTR Act directing in fulfilment of requirement that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit. • There is no requirement that financial institutions inform their home country supervisor when 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.
23. Regulation, supervision and monitoring	PC	• 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 between all the relevant authorities were to be improved. AUSTRAC is currently limited in the information it can share with the APRA. • AUSTRAC's on-site supervision activities do not cover the full range of tools available to it under the FTR Act. The statistics confirm that the focus of AUSTRAC's on-going supervision is currently limited to educational visits. • It is of concern that the number of formal compliance inspection audits has been very low across the range of supervised entities: the only compliance inspection audit conducted in 2004 was for a remittance dealer. AUSTRAC has conducted only two compliance inspection audits of banks in the last four years; banks and money remittance dealers are the only financial institutions to receive any compliance inspection audits in the last two years. • More generally, it appears to be a policy decision to conduct education visits rather than compliance inspection audits. The main focus of identifying these entities and bringing them into the reporting regime appears to reflect AUSTRAC's limited role as AML/CFT regulator. However, education visits can result in agreed remedial action by the cash dealer. • There is not a general requirement that all remittance dealers (whether formal or informal), bureaux de change, lease financing companies, finance companies and issuers of travellers cheques, be licensed or registered.
24. DNFBP - regulation, supervision and monitoring	PC	• Casinos are largely compliant except for concerns regarding the scope of AML/CFT requirements and the effectiveness of the supervisory regime.

		• Casinos, bullion sellers and to some extent solicitors are covered by the FTR Act and are monitored by AUSTRAC to a limited extent for the purposes of AML/CFT compliance. However, most of the DNFBPs are not covered under the FTR Act and lack effective regulatory and supervisory systems for monitoring to ensure compliance with AML/CFT requirements. • Criminal sanctions that exist in the FTR Act do not extend to most DNFBPs. Secondly, there are no administrative sanctions for breach of AML/CFT requirements. 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.
25. Guidelines & Feedback	PC	<u>Guidelines: Financial institutions</u> • In terms of reporting guidelines and basic STR guidelines, measures are adequate. However, issues not expressly covered in the FTR Act are not covered in other guidelines—i.e., internal controls, CDD. Most of the presently issued guidance is heavily focused on suspect transaction reporting, but inadequate in regard to general detailed CDD guidance, with particular reference to the identification and verification of clients, internal controls and record keeping. <u>Guidelines: DNFBP</u> • AUSTRAC's Guidelines do not cover most DNFBPs. <u>Feedback</u> • Although AUSTRAC provides some general and specific feedback on STRs, AUSTRAC could provide more sanitised examples of actual money laundering cases and/or information on that decision or result of an STR. • During assessment discussions the private sector generally indicated that it did not receive adequate feedback on STRs filed.
Institutional and other measures		
26. The FIU	C	
27. Law enforcement authorities	LC	• Legal measures appear comprehensive but are not fully effective—investigators generally do not investigate and refer ML as a separate charge at either the Commonwealth or the State level.
28. Powers of competent authorities	C	
29. Supervisors	PC	• Due to the absence of the requirements for AML/CFT programs and internal rules, the generally accepted standard inspection powers and procedures, such as checking the institutions policies and procedures are not required by the FTR Act. • AUSTRAC has powers to conduct compliance inspections to assess AML compliance with the reporting and identification obligations of the FTR Act. However, formal compliance inspections are rarely conducted. Australia notes, however, that 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. • APRA and ASIC have extensive monitoring, investigation and enforcement powers that are supported by a wide range of civil, criminal and administrative sanctions; however, they are not specifically aimed at AML/CFT. • AUSTRAC's powers of enforcement and AML/CFT sanctions exist but are limited to criminal sanctions and hence rarely applied; there is a need to institute a regime of administrative penalties.
30. Resources, integrity and training	LC	• Notwithstanding the existence of technological aids and AUSTRAC systems, the number of supervisory and compliance staff appears limited given the varied extent and numbers of the existing reporting entities under the FTR Act. • Additional resources are required by AUSTRAC to enable it to effectively fulfil

		its role as AML/CFT regulator under the revised FATF standards. As Australia considers expanding the scope and detail of AML/CFT requirements, the need for additional resources will be critical. • There remains a need for an enhancement of supervisory skills and training pertaining to the conduct of on-site inspections and enforcement related activities.
31. National co-operation	LC	• There is scope to improve co-operation/co-ordination between AUSTRAC, ASIC, and APRA, and also to enhance co-operation at the policy level. In particular, section 27 of the FTR Act should be amended to include APRA and thereby allow AUSTRAC to provide FTR report information to APRA.
32. Statistics	LC	• It is not clear that the reviews initiated by the Australian government have resulted in any specific actions. • There is a lack of State/territory statistics on prosecutions and convictions for ML. • There are not clear statistics on ML/FT investigations (for offences under Division 400) at the Commonwealth level. • There are not adequate statistics on ML/FT investigations at the State/territory level.
33. Legal persons – beneficial owners	LC	• Current mechanisms could be improved so as to provide adequate access in a more timely manner to adequate and accurate information on beneficial ownership and control for the majority of Australia's legal persons.
34. Legal arrangements – beneficial owners	PC	• Competent authorities have some powers to obtain access to information on the beneficial ownership and control of certain legal arrangements. However, overall, the mechanisms in place are insufficient.
International Co-operation		
35. Conventions	LC	• Australia has not fully implemented the CFT Convention because of insufficient measures to identify beneficial owners of accounts and transactions as required by Article 18.
36. Mutual legal assistance (MLA)	C	
37. Dual criminality	C	
38. MLA on confiscation and freezing	C	
39. Extradition	C	
40. Other forms of co-operation	C	
Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	LC	• Australia has implemented the vast majority of the relevant provisions of the three Conventions; however, Australia has not fully implemented the CFT Convention because of insufficient measures to identify beneficial owners of accounts and transactions as required by Article 18.
SR.II Criminalise terrorist financing	LC	• The range of offences is generally broad but do not specifically cover certain requirements of SR II: the collection of funds for a terrorist organisation; the collection or provision of funds for an individual terrorist.
SR.III Freeze and confiscate terrorist assets	LC	• Measures are generally comprehensive and appear to be effective; however, Australian law does not explicitly cover funds of terrorists and those who finance terrorism or terrorist organisations outside of specific terrorist acts.
SR.IV Suspicious transaction reporting	LC	• The provisions are generally adequate, but there is a limitation of "cash dealer" definition which does not apply to all financial institutions; • As the reporting obligation relates to the suspected terrorist financing offences, the evaluation team's concern regarding the scope of the terrorist financing offence (as discussed in section 2.2) led the team also to be concerned that this could limit the reporting obligation.
SR.V International co-operation	LC	• 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.
SR VI AML requirements for money/value transfer services	PC	• There is not a general requirement that all MVT service operators be licensed or registered. Australia is considering a more workable and simpler licensing / registration system is being designed to prevent these dealers from going underground. AUSTRAC maintains a list and details of those operators that it has identified. • MVT services operators are "cash dealers" under the FTR Act. They are thus subject to the same limitations of the scope of the FTR Act. • While education visits to remittance dealers have been helpful for identifying and bringing MVT service operators into the reporting regime, AUSTRAC has not adequately used its on-site inspection powers to ensure compliance. • MVT service operators are not required to maintain a current list of its agents which must be made available to AUSTRAC or another competent authority.
SR VII Wire transfer rules	NC	• There is no obligation to verify that the sender's information is accurate and meaningful or to require that the account number be included. • There are no requirements for domestic transfers to record originator information. • Nor is there a requirement to include the originator information with the transfer instruction, either for international transfers or domestic wire. There is no obligation under FTR Act ensuring that occasional transfers are not batched when sent. • There is no obligation that each intermediary financial institution in the payment chain should be required to maintain all the required originator information with the accompanying wire transfer. • There are no obligations under the FTR Act requiring risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • As the measures to include the full originator information with wire transfer instructions generally do not apply, there is no corresponding monitoring for compliance with these provisions.
SR.VIII Non-profit organisations	PC	• Australia has reviewed its NPO laws and sector; however, the reviews did not result in the implementation of any specific measures. • It is not clear that Australia has adequately implemented measures across the NPO sector to ensure that terrorist organisations cannot pose as legitimate non-profit organisations, or that funds or other assets collected or transferred by non-profit organisations are not diverted to support the activities of terrorists and terrorist organisations.
SR. IX Cash couriers	PC	• 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/disclosure of bearer negotiable instruments and therefore: o No sanctions for false declaration/disclosure relating to bearer negotiable instruments; o No ability to stop or restrain bearer negotiable instruments in relation to a false declaration or disclosure.