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ARCPA submission to the Productivity Commission inquiry into Competition in the Financial System

Productivity Commission

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ARCPA submission to the Productivity Commission inquiry into Competition in the Financial System

1 Executive summary

This submission is prepared by the Australian Remittance and Currency Providers Association (**ARCPA**). The ARCPA represents the Remittance industry in Australia and was formed in October 2014. This submission concerns the wide-spread forced closure of bank accounts of registered Australian Remittance businesses by Australian banks.

The Australian banks' approach to the wholesale closure of banking facilities for remitters (referred to as "de-risking") is threatening the continued viability of the registered remittance industry in Australia and is impacting on the Australian community.

The closure of banking facilities has serious flow-on consequences for the business operations of remitters and their employees, on the ability of regulators and law enforcement agencies to deter and detect illicit remittance activity going forward, and on financial inclusion for businesses and individuals who suffer restrictions in their access to low-cost financial services, especially in unbanked and under-banked communities.[1]

The ARCPA recognises this as a major crisis and that immediate action is needed to address the problem and the concerns about the remittance industry. The ARCPA also recognises that a collaborative, multifaceted approach with engagement from the Australian Government, banks and the remittance industry playing a major role, will provide solutions that will allow for the industry's continued viability.

The vast majority of businesses effected by these bank account closures are small businesses and most have as a result of these actions been forced to close. This not only impacts on the Australian economy through small business closures and lost jobs but also severely impacts the Australian community and has damaging economic flow-on effects in our region. For example, Australians send significant amounts to friends and family in the Pacific Islands. Indeed many of these communities are reliant on inbound remittance for survival or income from migrant workers. Because in many cases remittance represents the only way these countries can physically receive money, with these bank account closures, many Pacific Island nations are now economically isolated.

Furthermore, de-risking by Australian banks is also preventing new remittance players with new innovative technology and more efficient approaches to remittance from entering the remittance sector by simply not being able to open a bank account.

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[1] World Bank, "Report on the Remittance Agenda of the G20", Prepared by the World Bank for the G20 Australian Presidency (November 2014) http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1400093105293/GPFI_Remittances_Report_Final072014.pdf

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This fly's in the face of the current political and economic narrative to promote and foster innovation in Australia.

The ARCPA calls upon Australian banks and Government to resolve the issue of indiscriminate bank account closures of remittance businesses. We conclude from our extensive engagement with all stakeholders including government and the banking sector that there is a clear market failure condition. The ARCPA believes this market failure has been conveniently used by some banks to neglect their social and corporate responsibility to provide banking services to the remittance sector. Instead of working with sector to work through toward a solution, many banks have elected simply to absolve themselves of any responsibility.

Banks offer a special, privileged position in our society as the creators of money in our economy and the operation of the financial system. Australian banks are licenced via Government to perform their roles and also underwritten by Government. Remittance businesses are also licenced by Government to provide remittance services. It is our submission that banks simply cannot via a single broad-brush approach de-risk their business by dumping an entire sector or class of customer because of a particular risk appetitive. Banks have a social, moral and regulatory obligation to support the remittance sector. If this is not possible, as a last resort, the Government should provide banking facilities to the remittance sector via the RBA.

Finally, the ARCPAs observes that along with the market failure issue above leading to the whole-sale de-banking of the remittance sector, after closing the bank accounts of remittance businesses, some banks have then directly launched their own competing remittance products – a potential abuse of market power.

2 The remittance industry

ARCPA is the industry association for registered remittance providers and was incorporated in October 2014. ARCPA was created to establish one, unified voice for industry, and to establish industry standards and best practice guidelines.

Providers arrange low-cost remittances and approximately 90% of providers remit to developing and under-privileged countries. The industry is made up of independent remittance providers (Independents) with their own brands, and remittance network providers (RNPs) who have branded Affiliates (commonly known as agents).

In 2013, there were over 5,500 registered entities. In 2013 the remittance industry conducted over 80 million transactions for over 2 million customers. In 2012-2013, the industry facilitated transactions for over AUD $30 billion into and out of Australia[2].

[2] Taskforce Eligo Factsheet, Australian Crime Commission.

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Funds are remitted from Australia to 157 countries[3] and there are over 6.5 million[4] migrants in Australia dependent on the remittance services.

Since 2014, the number of registered entities has decreased, largely due to the bank account closure issue. Regulators and reporting agencies will advise however that the overall number of remittance transactions has steadily increased since 2014. The ARCPA believe this increase is due to improvement in reporting standards and compliance and due to consolidation of the sector. The ARCPA knows many of its members and former members are no longer operating remittance businesses but are maintain their registration status in the hope that the bank account closure issue might be resolved and that may resume conducting their remittance business.

3 Industry risk profile

ARCPA recognises that the industry is perceived to be higher risk as compared to other AUSTRAC reporting entities. With the risk-based approach and obligations under the Australian AML/CTF regime, remitters are able to manage and mitigate their risks with appropriate controls in place.

Risks associated with the industry and its members include the corridors/countries involved in the transfers, the customer and delivery channels made available, the level of compliance with AML/CTF requirements, the extent of supervision of Affiliates and employees.

The risk-based framework requires banks to assess the risks associated with each remitter and whether or how that risk can be appropriately managed. ARCPA proposes to assist with this due diligence process through initiatives to be detailed in Section 4.

AUSTRAC has strong regulations in place for dealing with the risk posed by remitters, and has increased the intensity of its supervision and monitoring activities of the industry since the introduction of the remitter registration requirements in 2011. ARCPA supports the efforts of AUSTRAC and other enforcement of the industry, particularly in the area where remitters are operating without registration or where there are apparent attempts to avoid aspects of the laws. ARCPA supports AUSTRAC to provide continued education and guidance to the sector on compliance obligations.

3 Remittances Data, World Bank (October 2014).

4 UN Press Release (11 September 2014).

4 Remittance industry action to mitigate risk

ARCPA has implemented the ARCPA Certification Program based on the Compliance Best Practice guidelines developed in consultation with the Australian Government, industry and the banks.

ARCPA has also established the world's first AML/CTF Compliance Certification standard and certification program with input from all stakeholders including AUSTRAC.

ARCPA has also commenced a comprehensive education program for members including access to online education programs and an ongoing webinar series.

ACRPA is working with industry to promote compliance and operational best practice, integrity and transparency. ARCPA seeks to promote a culture of compliance and to establish a framework that allows this to permeate into each member's business. ARCPA seeks to disrupt and deter organised crime from using the remittance channel.

Information sharing, training and education are key pillars in ARCPA's mission to drive better knowledge and implementation of best practice.

So far ARCPA has achieved the following:

(a) Engaged all industry participants to better understand the needs of industry, and levels of compliance and business practice

(b) Conducted enhanced due diligence of the membership base in conjunction with feedback from relevant stakeholders (banks, regulators and law enforcement agencies)

(c) Developed the ARCPA Certification Program and Compliance Best Practice Guidelines and Membership Standards

(d) Provided a mechanism to disclose information to law enforcement and regulatory bodies who are illicitly conducting their business

(e) Conduct education and training for members across including AML/CTF, Politically Exposed Persons (PEP) and Sanctions and Watch List screening, Privacy, Fraud, and Identity Crime

(f) Implement the Compliance Best Practice – version 1 included in Schedule 2. The Compliance Best Practice includes:
   i. Enhanced Due Diligence Questionnaire
   ii. Enhanced Independent Review (EIR)

(g) Engagement with key stakeholders – regulatory and law enforcement for key initiatives and intelligence:
   i. Quarterly information sharing and updates between stakeholders and board of ARCPA
   ii. Quarterly events for members

(h) Implemented the world's first and only AML/CTF Compliance Certification standard and certification program with input from all stakeholders including AUSTRAC.

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(i) commenced a comprehensive education program for members including access to online education programs and an ongoing webinar series.

(j) Continues to regularly engage with industry, government and other stakeholders on behalf of the remittance sector

5 Account closures and consequences

Effect on remitters

The impact of account closure on remitters is devastating. Remitters are unable to receive funds from their customers and transmit these funds via the banking system to their offshore networks. Further, they are unable to use the domestic banking system to make normal payments (e.g. tax, rent and payroll), or to perform domestic transfers.

Remitters also reported having their personal accounts closed which creates personal hardship for these individuals – individual mortgages, superannuation, insurance, personal loans and credit card facilities have been closed as a result of ties to the business even when they are not related to the remittance activity.

Additionally, account closures adversely affect the community generally with over 5,500 small-medium sized businesses at risk of closing as a result of no banking relationships to facilitate their business, and over 10,000 jobs at risk.

Effect on the Australian and global community

The remittance industry provides financial inclusion for communities who may not otherwise use traditional financial and banking services. Preventing these people from accessing remittance services excludes them from access to the financial services sector.[5] Remittance also provides many developing countries with a large source of their GDP.[6] The closure of remittance providers causes this flow to be disrupted, potentially causing detriment to many communities at risk. Remittance services provide a low-cost avenue for transferring money that means that a wider proportion of the population is able to afford to transfer money. Additionally, remittance providers offer services including hand delivery of funds to rural areas in many countries that other providers do not.

Immediate effect on our Region

Some Pacific Island nations have been severely affected as regular remittance providers are not longer able to provide remittance to the region. Specifically Tonga

[5] DFAT, Financial Inclusion Experts Group, G20 Financial Inclusion Action Plan.

[6] The World Bank estimates that in 2011, USD351 billion of the USD483 billion sent internationally through remittance went to developing countries: http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21121930~menuPK:3145470~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html.

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is now almost financially isolated from the global financial system where as is reported widely, physical funds are being sent via boat in cash.

Australia is the leading economy in the nearby Island Pacific region and has a responsibility to support our neighbouring countries.

The reduction in aid to our region including reduced support by other donors means more and more countries will be reliant on remittance. Bank de-risking has a double-barrelled affect in these markets, in particular the Pacific.

Effect on transparency of the financial system, intelligence and criminal activity

Overseas regulators recognise that de-risking jeopardises the transparency of the financial sector resulting from transaction and suspicious matter reports being lost. As legitimate remittance businesses close, rogue remittance providers may elect to perform remittance functions illicitly without being registered with AUSTRAC.[7]

The impacts of remittance going underground causes increased costs for regulators and law enforcement agencies, as they no longer have the benefit of regular reporting by remitters. Registered remitters are one of the main sources of intelligence for AUSTRAC for remittance, providing the regulator with knowledge of any illicit behaviour within the industry.

The recently launched FinTel Alliance initiative announced by AUSTRAC on 3 March 2017 is a world-first private-public partnership to combat money laundering and terrorism financing. The ARCPA commends this and looks forward to working with AUSTRAC on this program. However, this program will be of limited value if there are no remitters left to contribute to the private intelligence component.

6 Why is de-risking occurring and what is required

Feedback from Government and remitters is that banks are responding to the following three broad concerns.

6.1 Compliance with Australian law

(a) Liability for risk assessment

We recognise that remittance to some jurisdictions poses higher ML/TF risks than others but propose that banks can mitigate this risk by requiring for those remitters to conduct enhanced customer due diligence and as part of the bank's own risk assessment, to conduct enhanced and ongoing due diligence on the remitter including requests for transaction records and history.

[7] AUSTRAC, Regulation Impact Statement, Cancellation and Suspension of a remittance dealer's registration (October 2011).

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In addition, the banks could place limits to transaction amounts and/or limits on the jurisdictions to which remitters are permitted to transfer.

The medium term solution to this is additional and more detailed guidance from AUSTRAC about what is required in relation to a risk assessment, and appropriate mitigation strategies for particular risk factors, including jurisdictions.

(b) Sanctions liability if the banks do not identify and screen the ultimate customers

Banks are understandably concerned about the risks associated with breaching sanctions laws given the significant penalties that have been imposed overseas, particularly in the United States. Therefore, DFAT should to issue guidance on whether banks are expected to screen ultimate customers under designated remittance arrangements so as to not be subject to liability for breaching sanctions legislation.

Additionally we request DFAT to assist in engagements with other Sanctions regulators to provide clarification on the extent of liability of overseas Sanction regimes and the accountability of screening under designated remittance arrangements for the remitters and banks.

(c) Concern that AML/CTF Rules requires identification of the ultimate customer.

New *Anti-money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (Cth) (AML/CTF Rules) require organisations to identify the beneficial owner[8] of a customer. Some statements have been made about concerns that this requires banks to have information of the underlying transactions (senders and beneficiaries information) and/or identify the remitter's ultimate customer. It is our understanding that neither of these positions reflect the intended operation of the *Anti-money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) and should be clarified. Certainly FinCEN has clarified recently that is not the case under the United States' Bank Secrecy Act.[9]

6.2 Pressure from correspondent banks, primarily in the US

We understand that there has been pressure from some US banks on some Australian banks to limit the services provided to remitters. However, FinCEN's Media Statement recognises the importance of US banks continuing their relationship with remittance organisations.

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[8] A beneficial owner is a person who owns more than 25% of a company.

[9] Financial Crimes Enforcement Network, United States Department of Treasury, "FinCEN Statement on Providing Banking Services to Money Services Businesses" (November 10, 2014):
*"[a bank] should understand the money services business's (**MSB's**) business model and general nature of the MSB's own customer base, but it does not need to know the MSB's individual customers to comply with the Bank Secrecy Act".*

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In the short term, we urge banks to limit the scope of their de-risking activities to those that are actually required by US Correspondent banks while the Australian Government and remitters reach out to FinCEN to highlight this issue.

6.3 Reputation risks

Much of the concern around reputational risks for the banks stems from the risk that the regulatory obligations of the remitter may not be properly administered and the association of the bank in a particular event. If it is made clearer what liability the banks have and that the remitter is directly held liable for their activities that concern AML/CTF and Sanctions obligations, the bank can seek some comfort that this reduces their reputational risk.

7 Action by other regulators

FinCEN, the Internal Revenue Service and state regulators in the United States as well the United Kingdom government have taken steps to assist banks in mitigating the risks posed by remittance organisations, and ensure their compliance with AML/CTF laws. Please see Schedule 1 for additional information.

8 Positive responses from Australian banks - Australian banks who are engaging with the Remittance sector

Three Australian banks Bendigo Bank, NAB and the ANZ have engaged with the ARCPA and the remittance sector. While these three banks have also implemented de-risking and closed the bank accounts of Australian remitters, they have also indicated a limited appetite to work with the remittance sector. Notably the ANZ is leading this and the ARCPA is continuing to engage with all three banks to improve compliance standards within the sector.

Ongoing dialogue with these three banks with the ARCPA is positive and we are optimistic that this positive engagement will continue.

9 Negative actions by Australian banks - Australian banks who have launched competing remittance products

WESTPAC was one of the last major Australian banks to participate in de-risking. Shortly after exiting the remittance sector in 2015, WESTPAC launched a remittance product of their own called LitePay.

For further information on the WESPAC LitePay product visit
https://www.westpac.com.au/travel-centre/access-money-overseas/litepay/

10 The de-banking experience – example bank account closure letter

From the businesses perspective, the experience of being de-banked is horrible. It is made more humiliating by the fact that for the majority of remittance businesses, the bank will not engage (even speak with) the remitter. In some cases, remitters are provided with a formal channel for complaint but then immediately rejected by the banks complains departments siting policy issues.

Where matters are referred to the Financial Services Ombudsman, the response is that the account closure matter lies within bank policy decision making and therefore lies outside the mandate of the Ombudsman.

The experience is akin to having a mortgage foreclosed for no reason with no explanation and the family being left destitute to live on the street.

Included under Schedule 4 is an actual account closure letter from an ARCPA member from an unnamed bank.

The ARCPA has access to over 200 similar letters from members.

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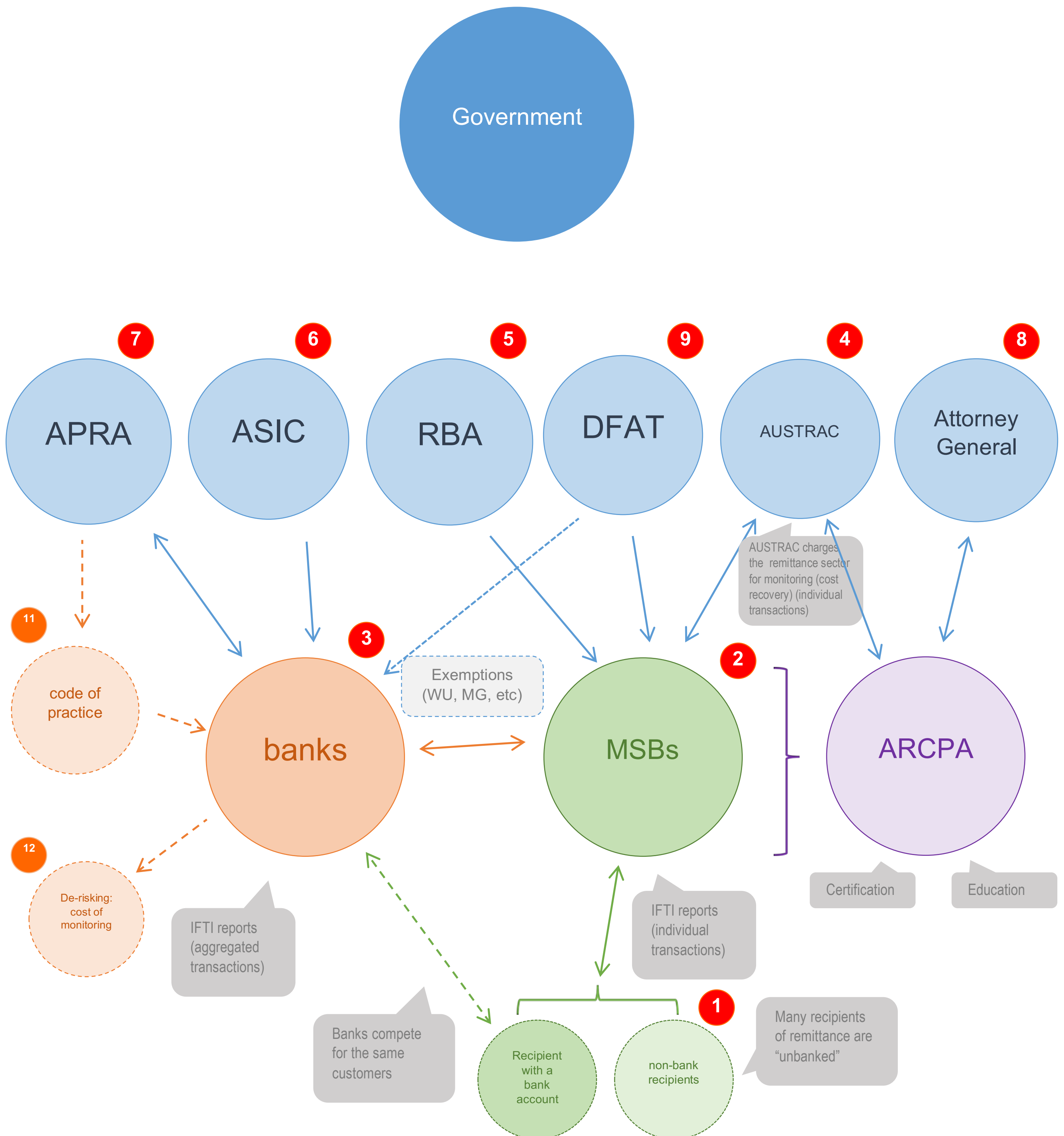
AUSTRALIAN REMITTANCE AND CURRENCY PROVIDERS ASSOCIATION

11 Australian Remittance Ecosystem and Regulatory Framework



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Australian regulatory ecosystem – explanation

Referring to the diagram on the previous page, the regulatory ecosystem and oversight framework is described in simplified form below:

Details:

1. **Recipients** of overseas money transfers are grouped into those with a bank account and those without a bank account (unbanked). Unbanked recipients cannot receive money via the global banking system and rely completely on the remittance sector to receive all funds.
2. **MSBs (Money Service Businesses – Remitters)** are regulated by AUSTRAC, submit IFTI reports and contribute to the cost of transaction monitoring to AUSTRAC via an annual cost recover levy. Remitters specialise in sending money efficiently and cost effectively to overseas recipients via a variety of methods: bank accounts, cash pick-up, or mobile money. All remitters require an Australian bank account to process funds from Australian customers. A remitter cannot operate without a bank account.
3. **Banks** have a special status in society to provide banking services to business and the community (social license/obligation). Banks also allow funds transfers to overseas recipients but are generally more expensive and less efficient than remitters. In this sense they also compete directly with remitters for customers.
4. **AUSTRAC** is the primary regulator for the remittance sector in Australia. It manages the remittance register and manages all transaction reporting including transaction reporting from the banking and remittance sectors. It recovers the cost of transaction monitoring by imposing an annual levy on both sectors.
5. The **RBA** provides regulatory oversight of the financial sector. It manages the Australian payments system and also provides banking services to government agencies.
6. **ASIC** is the corporate regulator. While it has some oversight of some financial services, it does not have direct regulatory oversight of the remittance sector.
7. **APRA** has primary oversight over the banking and payments sector. It has no direct role or oversight of the remittance sector.
8. **Attorney General** has primary oversight over legislation including remittance. It works closely with AUSTRAC on governance of the remittance sector.
9. **DFAT** determines sanctions policy and publishes sanctions lists which are used by MSBs and banks for screening. DFAT also has some policy influence w.r.t. to remittance. For example DFAT is working to ensure remittance can still function to the Pacific as widespread bank-de-risking has financially isolated parts of the Pacific dependant on remittance.
10. **Government** has overall responsibility for all legislation and regulation. While Government can determine the regulatory framework, it cannot force banks to service the remittance sector.

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11. separately: **Code of Practice**: Banks are bound by their Code of Practice which relates to their special social status and obligation.
12. separately: **de-risking**: Banks claim providing services to remittance businesses requires them to undergo a higher level of monitoring due to the perceived higher level of risk. This in turn means a higher cost. The precise level of additional monitoring and cost is not disclosed.

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12 Market Failure – how the regulatory framework is failing the industry

Refering to the ecosystem diagram in the previous section it is clear the remittance ecosystem in Australia is extremely complex. Remittance businesses are regulated primarily by AUSTRAC but are also governed indirectly by multiple agencies. This complicates accountability and responsibility when the banking sector de-risks.

The core issue is the Australian Government via its agency AUSTRAC monitors and charges the remittance sector while at the same time via the prudential regulator APRA, licenses banks to operate and provide banking services which includes the remittance sector.

Banks are de-risking their businesses by refusing to bank the remittance sector citing legislative ambiguity, cost of compliance and overall risk appetite.

Remitters cannot operate without a bank account.

The argument that banks can service the remittance sector directly (potentially anti-competitive behaviour) is false. Banks simply cannot service non-bank recipients in many countries as many recipients do not have a bank account. Banks do not offer the alternative remittance channels that emerging markets require.

With each regulator and stakeholder aware of only their own “silo” of responsibility, the ARCPA understands why this situation has emerged. However, when viewed as an overall ecosystem, the actions if individual agencies and stakeholders has an indirect and devastating consequence to other stakeholders within the ecosystem – specifically in this case remitters.

Australian banks cannot simply unilaterally wash their hands of their responsibility to bank the remittance sector citing risk appetite. The remittance sector has no alternative banking options. Banks also cannot conveniently cite legislative ambiguity for de-risking which, as has been confirmed by AUSTRAC, that legislation does not prevent a bank from banking a remitter.

The ARCPA acknowledges that some smaller banks may not be adequately resourced to manage customers in higher risk sectors due to additional compliance overheads. However de-risking behaviour is not restricted to smaller banks.

We do not believe it is a conscious action of Government to close the remittance sector but ask Government to intervene and resolve the de-risking issue on behalf of the 2.5 million Australians who send over $50 billion dollars in remittance to friends and family overseas ever year.

13 Government agencies unable to resolve re-risking

Refer to the ecosystem diagram in Schedule 5. The remittance ecosystem in Australia is extremely complex. Remittance businesses are regulated primarily by

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AUSTRAC but are also governed indirectly by multiple agencies. This complicates accountability and responsibility when the banking sector de-risks.

Remitters are licenced by Government (via AUSTRAC) to carry out remittance business.

The experience of being de-banked is horrible. It is made more humiliating by the fact that for the majority of remittance businesses, the bank will simply not engage (even speak with) the remitter. In some cases, remitters are provided with a formal channel for complaint but then immediately rejected by the banks complains departments siting policy issues.

Where matters are referred to the Financial Services Ombudsman, the response is that the account closure matter lies within bank policy decision making and therefore lies outside the mandate of the Ombudsman.

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14 Need for action by Australian Government

Urgent action

As outlined in the Executive Summary, ARCPA seeks the urgent support of the Government in:

- Facilitating ongoing dialogue between ARCPA and all the Australian banks
- Continued recognition of the importance of the continued support by banks and denouncing wholesale de-risking (see Schedule 1) and encouraging case-by-case due diligence be conducted; and
- Providing guidance to banks on how they comply with their own obligations with respect to the remitter, and how banks can manage remitters as customers with respect to their Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) and Sanctions obligations (see Schedule 1).

Medium-term actions

In the medium term, we ask that the Australian Government take a leadership role in facilitating active engagement between the remittance and banking industries, and working with the relevant stakeholders to address the banking industry's legitimate concerns about risk.

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We request assistance from Government and authorities to take a concerted and balanced approach in order to ensure that the AML/CTF regime does not hinder the banking industry's long-term prosperity and market diversity.

Some of the specific steps required will be similar to the actions taken by overseas regulators and bodies as discussed in Section 7. Specifically, we suggest that:

(a) Attorney-General to promote an engagement plan between Government agencies, the banking sector and remittance providers, supported by AUSTRAC and involving DFAT and other stakeholders, which can identify real versus perceived risks, how to tackle real risks when they arise, and determine a course of action where banks are again comfortable in their risk assessment and procedures in dealing with remittance providers.

(a) AUSTRAC and DFAT offer in-depth guidance to both banks and remittance providers on their responsibilities under AML/CTF and sanctions laws;

(b) AUSTRAC and the Attorney-General liaise with FinCEN to illustrate regulatory compliance by the financial services sector in Australia;

(c) AUSTRAC and DFAT to provide guidance and where needed, legislative change for the protection of banks where reasonable steps have been taken under the AML/CTF Act to prevent money-laundering and terrorism financing; and

(d) Attorney-General and DFAT support education and public awareness initiatives to ensure a greater community understanding of financial inclusion and other benefits of the remittance sector.

For further information please contact ARCPA info@arcpa.org.au

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Schedule 1

Action by Regulators and FATF

The United States Department of Treasury's Financial Crimes Enforcement Network (**FinCEN**) and our regulatory partners first addressed this issue in 2005 when they learned that money services businesses (**MSBs**) were having difficulty maintaining bank account relationships. In response, FinCEN and the Federal Banking Agencies issued joint guidance to assist banking organisations assess and minimise risks posed by providing banking services to MSBs.[10]

In August 2014, FinCEN stated that, to be truly effective, every financial institution needs to consider its own products and practices, assess its own risks, and develop a program that works best for the particular financial institution to mitigate its unique risks. It was noted that they have been hearing about instances of "de-risking," where MSBs are losing access to banking services because of perceived risks with this category of customer and concerns about regulatory scrutiny. "Some financial institutions also state that the costs associated with maintaining these accounts outweigh the benefits. But just because a particular customer may be considered high risk does not mean that it is "unbankable" and it certainly does not make an entire category of customer unbankable." FinCEN further notes that banks and other financial institutions have the ability to manage high risk customer relationships. "It is not the intention of the AML regulations to shut legitimate business out of the financial system." In addition, FinCEN notes that the goal is to provide banking services to legitimate businesses by understanding the applicable risks and managing them appropriately.

On 10 November 2014, FinCEN issued a media statement of which an extract is provided below:

"Currently, there is concern that banks are indiscriminately terminating the accounts of all MSBs, or refusing to open accounts for any MSBs, thereby eliminating them as a category of customers. Such a wholesale approach runs counter to the expectation that financial institutions can and should assess the risks of customers on a case-by-case basis. Similarly, a blanket direction by U.S. banks to their foreign correspondents not to process fund transfers of any foreign MSBs, simply because they are MSBs, also runs counter to the risk-based approach."

FinCEN, the Internal Revenue Service and state regulators in the United States have taken steps to assist banks in mitigating the risks posed by remittance organisations, and ensure their compliance with AML/CTF laws. Such assistance has been offered through, among other things:[11]

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[10] Guidance and Advisory Issued on Banking Services for Money Services Businesses Operating in the United States
http://www.fincen.gov/news_room/nr/pdf/20050426.pdf

[11] FinCEN Media Statement.

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(a) Public statements regarding the benefits of remittance and the dangers of removing it from the banking system by de-risking;

(b) issuing guidance to remittance organisations to explain their Bank Secrecy Act regulatory obligations and to notify them of the type of information that they may be expected to produce to a bank in the course of opening or maintaining an account;

(c) issuing an examination manual for remittance organisation examiners to strengthen the examination process and make it more consistent across the US;

(d) providing updated information in connection with the examination of banks for, among other things, providing services to remittance organisations ;[12] and

(e) supporting state efforts to coordinate increased supervision and examination practices. FinCEN acknowledges that states have expanded their use of the Nationwide Multistate Licensing System and Registry for collecting and storing information on remittance organisations.

The United Kingdom Government also recognises the importance of remittance services. Following the threatened closure of bank accounts held by remittance organisations in the United Kingdom offering remittance services to Somalia, the United Kingdom Government established the UK Action Group on Cross Border Remittances (**Action Group**) for three purposes: to improve guidance on regulatory compliance in the remitter sector, to improve understanding of risk, and to develop a "safer corridor" for UK – Somali remittances.[13] The Action Group (which consists of representatives of the banking and money remittance industries, consumer groups and government agencies) has assisted the continuation of the industry through developing guidance for financial institutions, holding workshops for banks and remitters to better understand potential risks and developing a series of coordinated interventions to address perceived risk.[14] The UK's Economic Secretary reported on the significant progress the Action Group had made, and the importance of the ongoing operation of the remittance industry.[15]

On 28 May 2014, the Board of Joint Money Laundering Steering Group in the UK approved a guidance paper in respect of MSB, specifically, MSB as customer of banks.[16]

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[12] *Federal Financial Institution Examination Council, Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual, available at* https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf.

[13] See the Terms of Reference for the Working Group here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283846/TOR_-_Somalia.pdf.

[14] Written Ministerial Statement, Update on Government action to help secure the future of the UK remittance market (22 July 2014), http://www.parliament.uk/documents/commons-vote-office/July-2014/22%20July%202014/7.CHANCELLOR-UK-remittance-market.pdf.

[15] Ibid.

[16] Guidance in Respect of Money Services Business, JMLSG (28 May 2014).

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Since the issuing of joint guidance to assist banking organisations assess and minimise risks posed by providing banking services to MSBs[17] in 2005, FinCEN reiterated in August 2014 at a conference in Washington and again in November 2014, FinCEN released a media statement setting out its firm support for the risk-based approach and clarifying that banks are neither prohibited nor discouraged from providing services to remitters, irrespective of any individual remitter's business model.[18]
The Financial Action Task Force (**FATF**) has also made it clear in October 2014 that de-risking should never be an excuse for a bank to avoid implementing a risk-based approach. It warned that the wholesale cutting loose of entire classes of customers without taking into account, seriously and comprehensively, their level of risk or risk mitigation measures is not consistent with FATF standards[19]. De-risking poses a significant threat to the identification of money laundering and terrorist financing (**ML/TF**) because of the risk that some remittance activities will, in effect, be driven "underground" (therefore not complying with the required AML/CTF obligations) if banks refuse to bank registered remitters. Consequentially, it can be more difficult for law enforcement agencies, regulators as well as banks to prevent ML/TF where remittance activity is undertaken "underground" in the Australian environment – the World Bank has provided ARCPA with anecdotal evidence that has started to become a problem in New Zealand.

On 25 November 2014, Australian Transaction Reports and Analysis Centre (**AUSTRAC**) issued a statement noting "a number of Australian banks have taken decisions to cease providing banking services to alternative remitters. These decisions have been taken in response to concerns about the perceived reputational, money laundering and terrorism financing risks associated with the sector."

Consistent with FATF framework, AUSTRAC stated that "banks are required to develop risk-based systems and controls tailored to the nature, size and complexity of their business and proportionate to the level of money laundering and terrorism financing risk. Individual banks must determine how to meet these obligations. This approach recognises that banks are best placed to assess and manage the risk posed by their own customers and the products and services they offer."

"In AUSTRAC's view, alternative remitters represent varying degrees of risk to banks. With appropriate AML/CTF systems and controls in place, banks should be able to manage high risk customers, including alternative remitters.

AUSTRAC encourages banks to continue to assess the particular risks relating to their customers in line with the risk-based approach. Further, AUSTRAC encourages

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[17] Refer to Schedule 1 for additional information.

[18] Financial Crimes Enforcement Network, United States Department of Treasury, "FinCEN Statement on Providing Banking Services to Money Services Businesses" (10 November 2014) ("**FinCEN Media Statement**").

[19] FATF's statement to clarify the risk-based approach in the light of the de-risking phenomenon: "FATF clarifies risk-based approach: case-by-case, not wholesale de-risking" (23 October 2014).

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banks to engage with alternative remitters on measures that the sector could take both immediately and in the longer term to meet banks' internal risk standards."[20]

[20] AUSTRAC Statement - Banking services to alternative remittance service providers and the risk-based approach under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (25 November 2014)

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Schedule 2

ARCPA Compliance Best Practice

Refer to the document on the ARCPA website:

http://www.arcpa.org.au/uploads/6/0/2/5/60250931/arcpa_compliance_best_practice_v1.pdf

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Schedule 3

ARCPA Certification

ARCPA Certification is implemented via and Enhanced Independent Review of the Remitters AML/CTF Program.

Refer to the document on the ARCPA website:

http://www.arcpa.org.au/uploads/6/0/2/5/60250931/arcpa_enhanced_independent_review_v1.pdf

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ARCPA
AUSTRALIAN REMITTANCE AND CURRENCY PROVIDERS ASSOCIATION

Schedule 4

Sample bank account closure letter

REGISTERED MAIL
Our Ref: AMR175

29 September 2014

Dear Sir/Madam,

Your account is being closed

has considered your circumstances in accordance with our policies for providing financial services to customers. We have determined that we will no longer be able to provide you with financial services.

How will this affect you

This letter is providing you with notice that the following account will be closed on **29 October 2014:**

Account Name	Product Type	Account Number
	Business One High	
	Business One Low	
	Business One Low	
	Business Cash Reserve	

What to do next

You may personally close the account before **29 October 2014**. If the account is not closed by then, we will close them and post you a cheque for any credit balance of your account.
This letter also serves as notice that services/facilities offered in connection with the accounts, including Corporate Online and Online FX will cease on closure of the accounts.

General

If you have direct debits and/or credits established on your account, we encourage you to make alternative arrangements for these payments and/or deposits at your earliest convenience. Any services/facilities offered in connection with the above accounts including Corporate Online and Foreign Exchange, will cease on closure of the accounts

Following the closure of the accounts, access to other services including will not be available to you.

If you have any questions, please contact Customer Relations on or via email to

Yours sincerely