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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Submission on the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017

Given the inherent features of digital currencies it is difficult to estimate the volume of transactions currently taking place in digital currencies, however, if estimates from open-source sites are to be believed the volume of transactions may be measured in the billions of USD every 24hours[1]. The ease of conducting transactions across borders, without the cost imposed by traditional banks, undoubtedly appeals to people wishing to conduct legitimate business. The current lack of oversight by authorities also undoubtedly appeals to those wishing to avoid coming to the notice of law enforcement.

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017 (the Bill) makes a number of changes to the AML/CTF Act, particularly with the intention of reducing the potential for money laundering and terrorist financing using digital currencies.

The potential rush and risk of digital currency usage is likely to become significant in the near future, as foreshadowed in recent publicity by one innovator should the banks participate as indicated.

The approach to this issue in the Bill is to attempt to detect money laundering and terrorist financing by requiring Digital Currency Exchange providers to report suspicious matters and international transactions. This is achieved by bringing Digital Currency Exchange providers under the purview of AUSTRAC by requiring them to register and hence report.

There are a number of potential issues with this approach.

The Bill currently does not adequately describe the services that would be covered by the registration process. According to the current wording a "***registrable digital currency exchange service*** means a designated service that: (a) is covered by item 50A of table 1", however table 1 is not included in the draft Bill leaving the actual range of activities covered somewhat of a mystery.

[1] https://cryptocoincharts.info/markets/info

While the Bill brings those Digital Currency Exchange providers with a physical presence in Australia under the purview of AUSTRAC it does not appear to address the potential for money laundering or terrorist financing by people located in Australia, using a Digital Currency Exchange provider wholly located in another jurisdiction.

TIA is of the opinion that money laundering using digital currencies is likely to include the use of domestic or foreign-issued debit/credit cards to access digital currency accounts/wallets through ATMs, EFTPOS or credit card transactions. It may also include the trade in assets located in Australia using, as consideration, payment conducted in digital currency that never enters Australia.

Currently transactions for goods and services and ATM withdrawals (under the cash threshold) made using debit or credit cards issued by domestic or foreign bank are not captured or reported to AUSTRAC. Nor are domestic electronic funds transfers – regardless of the amount involved.

It would appear that these information gaps will not be filled by requiring Digital Currency Exchange providers to register and report SMRs and international transfer transactions given that: many of the Digital Currency Exchanges available to Australians via the internet are unlikely to have a physical domestic presence and therefore (presumably) not likely to be able to be forced to register or report; electronic transfers of funds to a registered Digital Currency Exchange would not be reportable unless those funds then moved internationally; repatriation of funds from a digital currency account using a foreign debit or credit card would remain unreported – regardless of the amount spent.

It will still be possible following this amendment, as it is now with fiat currency accounts, to purchase high-value goods on a foreign-issued credit/debit card and not be reported to AUSTRAC. Furthermore, it would still be possible to purchase high-value goods and assets, including real estate, by transferring funds between the buyers and sellers accounts located offshore, whether they be Digital Currency or fiat currency.

Furthermore, the reliance on private enterprise as the primary means of detecting money laundering and terrorist financing has been shown repeatedly, from multiple examples around the world, to be insufficient without some form of active oversight and testing of AML/CTF systems. While not expressly forbidden, such testing is not currently part of AUSTRAC's remit and is not currently undertaken by it.

In our view the Bill should be amended in the following ways:

- Require the reporting of ATM and EFTPOS and debit/credit card transactions made in Australia using a foreign-issued debit/credit cards (regardless of whether it is linked to a digital or fiat currency account);
- Require such ATM/EFTPOS and credit card transactions made using Digital Currency accounts to report the name of the natural person/beneficial owner to AUSTRAC including the Digital Account/Wallet identifier in the report;
- In any event, require all users of a public key on a blockchain under the purview of an Exchange, to be linked to the identity of that user, so that such information is available to AUSTRAC (as noted in footnote 5 of the Assessment Regulation Impact Statement covering the Bill);

- Require lawyers, accountants, real estate agents and high-value goods dealers to register with AUSTRAC and report SMRs, threshold transactions as well as transactions that they are aware of that use digital and other currencies between accounts outside of Australia, whether digital or fiat;
- Expand AUSTRAC's remit to explicitly allow active, covert testing of AML/CTF systems including the opening of accounts and engaging in transactions to test threshold reporting, suspicious matter reporting and other forms of compliance with the AML/CTF Act and subsidiary legislation.

Part 5—Investigation and enforcement

TIA supports the inclusion of infringement notices for AUSTRAC to use as part of a graduated scale of sanctions available to AUSTRAC to enforce compliance with the AML/CTF Act. However, section 186B of the Bill recommends maximum penalty amounts for breaches of designated infringement notice provisions which appear to be manifestly inadequate. The penalty provisions in the Bill are as follows:

> *(1) The penalty to be specified in an infringement notice for an alleged contravention of a designated infringement notice provision by a body corporate must be a pecuniary penalty equal to 60 penalty units.*
>
> *(2) The penalty to be specified in an infringement notice for an alleged contravention of a designated infringement notice provision by a person other than a body corporate must be a pecuniary penalty equal to 12 penalty units.*

TIA considers 60 penalty units for a body corporate breach, to be unlikely to drive behavioural change and may force the CEO of AUSTRAC to resort to the issue of individual infringement notices for every instance of contravention. As the CBA matter has shown, this may potentially relate to several thousand transactions/contraventions at a time.

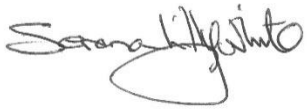
In order to provide a genuine deterrent, the calculation of penalty units should better reflect the quantum of the contravention and either be calculated in a manner that both reflects the potential profit made by the entity or the significance of the contravention.

For example, the infringement notice may apply a pecuniary penalty equal to twice the value of the funds handled through the contravention.

TIA acknowledges that entities targeted through this process by AUSTRAC for infringements may wish to appeal the penalty. This Bill should thus include a means of appeal, possibly through the Administrative Appeals Tribunal or some other appropriate mechanism.

We are grateful to have the opportunity to make submissions on the Bill. Please let us know if the Committee has any questions.

Yours faithfully



Serena Lillywhite
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The Bill is available at: https://www.legislation.gov.au/Details/C2017B00166