

**Submission to Senate Legal and Constitutional
Affairs Legislation Committee**

Regarding The;

**Anti-Money Laundering and Counter-Terrorism
Financing Amendment Bill 2017 No. , 2017**

Graeme Shea

28/08/2017

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Introductory Letter.

Graeme Shea
28st August 2017

To whom it may concern,

I am making this submission as a private citizen, actively engaged in the computer industry. I am a member of the Australian Computer Society, holding their Certified Professional status.

I have a professional interest in cryptocurrencies and actively engaged in “Cryptocurrency Mining”. This is the process where transactions of various cryptocurrencies are validated and then entered into that cryptocurrency’s permanent record (the block chain)

I am generally very supportive of this bill and believe it will bring significant benefits to the status and stability of the industry. It will also close a significant loophole in current anti ML/TF legislation.

This support is not without some concerns. Cryptocurrency is still a new and fast moving business with many small and “hobby” participants. The enthusiasm and agility of these operators has led to the development of the industry to where it is today. The current anti ML/TF legislation is tailored to traditional financial service business and does not take into account the circumstances of these operators.

I hope the explanations below are presented in a concise yet understandable form.

If I can be of any further help to the committee please feel free to contact me.

Kindest Regards

Graeme Shea

Concern 1, the scope of the proposed legislation.

Subsection 6 (s) table item 50A is proposed to be inserted and contain

50A	<i>exchanging digital currency for money (whether Australian or not) or exchanging money (whether Australian or not) for digital currency, where the exchange is provided in the course of carrying on a digital currency exchange business</i>	<i>the person whose digital currency or money is exchanged</i>
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My concern is this will capture very small scale operators, hobbyists and short lived “ad hoc” businesses where the transaction value and risk is low but agility and innovation is high. Since the barriers to entry are low I expect there are a much larger number than the “approximately 16 entities” indicated in the explanatory notes accompanying the bill.

This is also indicated by the “almost eBay like” platform called Local Bitcoins (<https://localbitcoins.com>). A significant number of these participants are very small scale, with some operating as “meet and greet” traders. The proposed legislative requirements could prevent the operation of the smallest businesses; those that pose the least ML/TF risk.

More Desirable Outcome.

That bill follow the Australian Taxation Office determinations of what is deemed to be a business. A very significant related component is the process they follow should a business move from being deemed a hobby to requiring GST registration. In these cases the business may continue to operate until the application process completes its course.

Concern 2, Application Period.

Section 76D is proposed to be amended as below.

76D Applications for registration

...

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

...

It further goes on to say:

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

- (a) the application cannot be dealt with properly within the 90 day period, either because of its complexity or because of other special circumstances; and*
 - (b) that period is extended by a specified period of not more than 30 days;*
- the relevant period is that period as so extended. The AUSTRAC CEO must notify the applicant in writing of the determination before the end of the 90 day period.*

In a “traditional” financial supply business this would be reasonable however cryptocurrency is a very fast moving business. 90 days seems excessively long. This could prevent an Australian business from gaining “first mover” advantage in a new endeavour.

Catching a market opportunity that quickly arises could force that operator to either forgo the opportunity or inadvertently operate outside of the requirements.

More Desirable Outcome.

If after a period of 30 days no significant concerns have been discovered, the bill should permit provisional registration to be issued. Existing operators that find they need registration to exploit a market opportunity should be also able to trade while they gain provisional registration

Concern 3, Extra Unnecessary Trauma if the registration holder unexpectedly dies.

Section 6H is proposed to be amended as below

6H When registration of a person ceases

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

.....

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

.....

In the case of a sole operator passing away unexpectedly the family is likely to be further traumatised by being unable to complete an orderly transition of the business. This could be a transition to the deceased person’s heirs, the sale of the business or it’s winding up. The current lengthy registration application period would likely mean the disorderly end of the businesses.

More Desirable Outcome.

Permitting “a window of time” for the heirs to continue to operate the business while the registration process runs its course would go a long way to avoiding unnecessary hardship.

Concern 4, Unnecessary Cancellation of Registration.

Section 6J is proposed to be amended as below

6J Cancellation of registration

....

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

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

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

If a business is not currently engaged in currency exchange services then the registration may be cancelled. This may prevent Australian businesses from exploiting new market opportunities as they arise.

More Desirable Outcome.

It should be a business decision made by the registrant as to whether or not to continue registration provided all other regulatory requirements are met.

Concern5, Blanket Rejection of Option 2, Light touch regulation.

Page 10 of the explanatory notes gives an option (Option 2) for “Light Touch Regulation and states:

Light touch AML/CTF regulation could involve imposing the following obligations:

- *enrol with AUSTRAC*
- *customer due diligence*
- *suspicious matter reporting, and*
- *record-keeping.*

On page 12 the authors state:’

In view of the ML/TF risks associated with digital currency exchange providers, light touch regulation of the sector is inconsistent with international best practice.

In the scope of this bill I do not believe this is an appropriate summation for the following reasons:

Option 2 (**Light touch regulation under the AML/CTF regime**) and Option 3 (**Full regulation under the AML/CTF regime**) need not be mutually exclusive. Option 2 could apply for smaller operators, those without the resources that would be required to operate under Option 3.

If option 3 is applied to small and very small operators, many may be forced to abandon their “business”. It is these small, agile businesses and individuals that can be in the best position to take advantage of rapidly changing market opportunities.

Australian banks are already compliant with “best practice” so Option 3 would result in the duplication of the processes for transfers into and out of Australian bank accounts. This would be wasteful and provide little extra protection. As each party involved in a transaction has different insights into the transactions they are processing mandatory reporting would still be required by all parties.

The risk of unauthorised transfers out of bank accounts could be reduced by means other than Option 3. One example currently employed is limiting the maximum rate that money may be transferred out of a bank account for a period of time and number of transactions.

The requirement to “enrol with AUSTRAC” would still bring regulatory insight into the operation of the businesses and create an enforceable compliance and reporting regime without the overheads of option 3.

Under Option 2, “small scale, meet and greet” cash transactions such as those facilitated by “Localbitcoins.com” record keeping and photographic proof of ID could still be made a legal requirement.

More Desirable Outcome.

A light touch option be available to operators, and provision to avoid duplicating the processes already carried out by anti ML/TF compliant institutions