CLOSURE OF BANK ACCOUNTS OF REMITTANCE SERVICE PROVIDERS: GLOBAL CHALLENGES AND COMMUNITY PERSPECTIVES IN AUSTRALIA

LOUIS DE KOKER,* SUPRIYA SINGH,** AND JONATHAN CAPAL***

I INTRODUCTION

Since 2014, the policy focus on large-scale bank account closures of remittance service providers – generally called 'de-risking'[1] – intensified internationally as well as in Australia. While the dilemma of these providers is the result of a complex combination of factors, money laundering and terrorist financing risks feature prominently. Money laundering and terrorist financing laws shifted national security-related financial risk control (including the costs of the risk control measures) to banks, lessening the commercial viability of relationships with small, higher risk customers. Legal rules, furthermore, allow banks to choose who may access their services, including accessing the national payment system via banks, and to terminate their contractual relationships with a customer,[2] as long as they give proper notice.[3]

In view of growing evidence of large-scale account closures globally, international standard-setting bodies and national regulators issued statements calling on banks not to

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* Louis de Koker, Professor, La Trobe Law School, La Trobe University; Program Lead: Law and Policy, Data to Decisions Cooperative Research Centre.

** Supriya Singh, Professor, Sociology of Communications, RMIT University.

***Jonathan Capal, International Remittances Specialist, DMA Asia Pacific.
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1 De-risking can be defined as action taken to avoid risk or, alternatively, as action taken without assessing risk and considering other means to manage the risk. See FATF, 'FATF clarifies risk-based approach: case-by-case, not wholesale de-risking' (Statement, 23 October 2014) <http://www.fatf-gafi.org/publications/fatfgeneral/documents/rba-and-de-risking.html>: 'Generally speaking, de-risking refers to the phenomenon of financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk in line with the FATF's risk-based approach'. US officials, however, prefer to define de-risking only as termination or restrictions that are not preceded by an appropriate risk assessment. See Adam Szubin, US Treasury Under Secretary, 'Remarks' (Remarks at ABA Money Laundering Enforcement Conference, 14 November 2016) <https://www.treasury.gov/press-center/press-releases/Pages/jl0608.aspx>: 'The term "de-risking" has come to mean different things to different people, and is not consistently used by various stakeholders. We prefer to focus the term more precisely on what we view as problematic, which are reports of financial institutions indiscriminately terminating or restricting broad classes of customer relationships without a careful assessment of the risks and the tools available to manage and mitigate those risks'. The term is controversial. It views the impact of the closure from the perspective of the bank that may lessen its risk by closing accounts while actually increasing the risks for the sector or society. It also reflects that these account closures are exclusively risk-driven, which may not always be the case. Despite these criticisms, the term has become entrenched and is therefore used in this article.

2 *Dahabshiil Transfer Services Ltd. v Barclays Bank Plc* [2013] EWHC 3379 (Ch) [2]: 'There is no dispute that Barclays is contractually entitled to terminate its provision of banking services to each of the claimants. Like any other private business, Barclays is entitled to choose its customers. Although heavily regulated in the public interest, banks are under no public law duty to make their services available to particular categories of customer'.

3 *Hlongwane and Others v Absa Bank Ltd and Another* (75782/13) [2016] ZAGPPHC 938 (10 November 2016) [29].

engage in such account closures. No compelling evidence has yet emerged that these calls have stemmed the de-risking tide.

While an increasing number of publications focus on the nature and extent of these closures, and their impact on remittance service providers, this article considers the policy and legal challenges in view of perspectives of migrant communities who rely on independent community-based remittance providers. It reflects the voices of members of primarily Horn of Africa migrant communities in Melbourne collected during a pilot study of the community views of de-risking closures. It finds that the lack of community engagement by regulators and banks may foster increased social exclusion of members of affected migrant communities. The article argues for active engagement of the affected communities to understand the risks relating to these account closures and to find appropriate solutions, including legal solutions, to protect the significant individual, community, and public interests at stake. Such solutions include (i) recognising a right to a payment account, (ii) increased public-private partnerships between regulators and banks, including in relation to utilities, to enable them to manage integrity risks relating to remittance providers effectively and efficiently, and (iii) improved risk-based regulation and supervision of remittance service providers.

II REMITTANCES: GLOBAL ECONOMIC LIFELINES

The understanding of the role of remittances in development and especially the importance of these flows to developing countries is deepening. Formal remittances to developing countries were estimated to have reached US$442 billion in 2016.[4] Two-fifths (42%) of this global flow went to South Asia and East Asia and Pacific regions.[5] Remittances account for one of the most significant international flows of funds.[6] According to the World Bank these flows were nearly three times greater than official foreign aid in 2013 and greater than total foreign direct investment in developing economies, except for China.[7] They are also steadier than portfolio equity flows and private debt.[8] International remittances are a significant portion of the finances of many developing countries, supporting their balance of payments.[9]

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4 World Bank, 'Remittances to Developing Countries Expected to Grow at Weak Pace in 2016 and Beyond' (Press Release, 6 October 2016) <http://www.worldbank.org/en/news/press-release/2016/10/06/remittances-to-developing-countries-expected-to-grow-at-weak-pace-in-2016-and-beyond>.

5 Dilip Ratha, et al, 'Trends in Remittances, 2016: A New Normal of Slow Growth' on World Bank, *People Move* (10 June 2016) <http://blogs.worldbank.org/peoplemove/trends-remittances-2016-new-normal-slow-growth>.

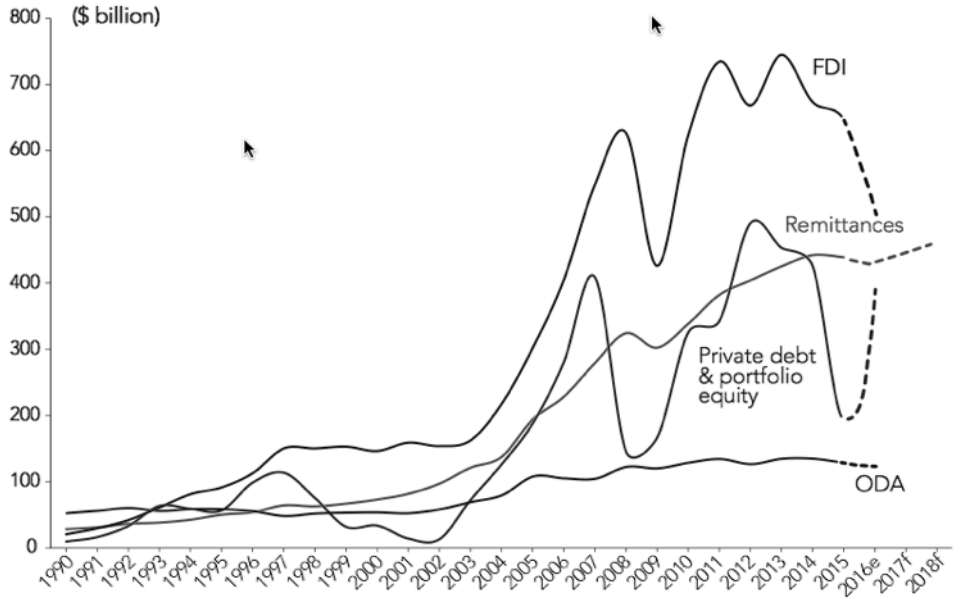
6 World Bank Group, *Migration and Remittances Factbook 2016* (3rd ed, 2016), iv <https://openknowledge.worldbank.org/handle/10986/23743>.

7 Migration and Remittances Team, Development Prospects Group, 'Migration and Remittances: Recent Developments and Outlook Special Topic: Forced Migration' (Migration and Development Brief No 23, World Bank, 6 October 2014) <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief23.pdf>.

8 Ibid.

9 Migration and Remittances Team, Development Prospects Group, 'Migration and Remittances: Recent Developments and Outlook' (Migration and Development Brief No 22, World Bank, 11 April 2014) <https://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief22.pdf>.

Figure 1: Remittances to Developing Countries Versus Other External Financing Flows[10]



(ODA – Official Development Aid; FDI – Foreign Direct Investment)
Source: World Bank Group

At a personal level, remittances provide a critical economic lifeline to the migrants' transnational families who remain in the home country. Among poor households, up to 80% of remittances received are allocated for basic needs like food and health care.[11] In low-income households, remittances increase the ability to withstand irregular income flows and unforeseen expenses.[12] Less vulnerable households invest a variable share of remittances in 'human (education, health) and social (marriage) capital, and physical (livestock, housing, equipment) and financial assets. A tiny share is invested in small

[10] World Bank Group, 'Migration and Remittances: Recent Developments and Outlook – Special Topic: Global Compact on Migration' (Migration and Development Brief No 27, World Bank, April 2017) 2 <http://pubdocs.worldbank.org/en/992371492706371662/MigrationandDevelopmentBrief27.pdf >.

[11] International Fund for Agricultural Development (IFAD) and Inter-American Development Bank (IDB), 'Sending Money Home: Worldwide Remittance Flows to Developing Countries' (Report, IFAD, October 2007) 7.

[12] International Fund for Agricultural Development, *The Use of Remittances and Financial Inclusion: A report prepared by the International Fund for Agricultural Development and the World Bank Group to the G20 Global Partnership for Financial Inclusion* (2015) 20 <https://www.ifad.org/documents/10180/5bda7499-b8c1-4d12-9d0a-4f8bbe9b530d>.

businesses or farming activities'.[13] In resilient households, a greater percentage of remittances goes towards increasing the human, social, and physical capital.[14]

In 2009, G8 Heads of State pledged to reduce the global average cost of transferring remittances from 10% of face value to 5% within five years.[15] Known as the '5x5' objective, it was subsequently ratified by the G20 in 2011, when a broader consensus was reached that achieving the 5% goal would have a significant positive impact on global socioeconomic development.[16] It has been estimated that the G20 initiative[17] (reaffirmed at the 2014 G20 Leaders' summit) of a reduction to 5% transaction costs would provide, at least, an extra US$16 billion[18] annually to economic migrants and their families in their home country.[19]

The United Nations Sustainable Development Goals ('SDGs') refocussed the need to reduce remittance costs. A specific target, SDG Target 10.c, calls for global average remittance costs to be reduced to below 3% by 2030 and for no remittance corridor to have an average cost above 5% by 2030.[20]

III THE REMITTANCE INDUSTRY IN AUSTRALIA

In general, a person providing a remittance service in Australia is a 'reporting entity' for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). That means that they are subject to a range of anti-money laundering ('AML') and counter-terrorism financing ('CTF') compliance obligations, which includes customer due diligence measures, such as verification, profiling, and monitoring of customers, and the duty to report certain transactions. Compliance with these obligations are reviewed and enforced by the Australian Transaction Reports and Analysis Centre ('AUSTRAC'), Australia's AML/CTF regulator, that operates in terms of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (*AML/CTF* Act*)*.

The regulatory regime for remittance service providers was enhanced when the current registration regime took effect on 1 November 2011.[21] These providers must

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13 Ibid.

14 Ibid.

15 World Bank, *Savings of $44 billion: Impacts of the global target of a reduction of remittances cost through effective interventions at the global, country and municipality levels* (4 April 2014) <http://www.worldbank.org/en/results/2014/04/04/savings-of-44-billion>.

16 Marco Nicoli, '5x5 = US$16 billion in the pockets of migrants sending money home' on World Bank, *Private Sector Development* (27 November 2012) <http://blogs.worldbank.org/psd/5x5-us16-billion-in-the-pockets-of-migrants-sending-money-home>.

17 The 2014 G20 Leaders' Communiqué at the Brisbane summit pledged a continued commitment to take strong practical measures to reduce the global average cost of transferring remittances to 5% and to enhance financial inclusion as a priority.

18 World Bank, *Payment Systems and Remittances*, The World Bank: Understanding Poverty <http://www.worldbank.org/en/topic/paymentsystemsremittances/overview>.

19 Ibid.

20 UN Department of Economic and Social Affairs, *Sustainable Development Goal 10: Reduce inequality within and among countries*, Sustainable Development Knowledge Platform <https://sustainabledevelopment.un.org/sdg10>.

21 Prior to the introduction of the current scheme, remittance providers had to be registered on the Register of Providers of Designated Remittance Services. That registration scheme was weaker as it did not clearly authorise the AUSTRAC CEO to impose conditions on a remittance service provider's registration or to suspend or cancel the registration of a remitter if the AUSTRAC CEO formed the view that the person should not be providing remittance services. The *Combating the*

apply for registration on AUSTRAC's Remittance Sector Register[22] and may register in one or more of the following capacities:[23]

- Remittance network provider (an organisation that operates a network of remittance affiliates by providing the systems and services that enables its affiliates to provide remittance services);
- Remittance affiliate of a remittance network provider (a business that provides remittance services to customers as part of a remittance network facilitated by a remittance network provider); and/or
- Independent remittance dealer (a business that provides remittance services to customers using its own systems and processes, independent of a remittance network).[24]

In this article, we refer to all three provider types as 'remittance service providers' or 'providers', except where indicated to the contrary. Many of the comments are, however, specifically relevant to community-based remitters. These are small, generally independent remittance providers who service a specific migrant community and are members of that community.

Providers must apply for registration and,[25] if granted, must apply for a renewal of registration every three years.[26] Based on the information provided and information that AUSTRAC may obtain from other persons to determine the applicant's suitability,[27] the AUSTRAC CEO may grant or refuse, suspend, cancel, or impose conditions on the registration.[28] The CEO may also sanction unregistered remitters with infringement notices.[29]

Financing of People Smuggling and Other Measures Act 2011 (Cth) amended Part 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) by introducing the current registration scheme. See AUSTRAC, 'Chapters 58 and 59 of the Anti-Money Laundering and Counter-Terrorism Financing Rules relating to the cancellation and suspension of remittance dealer registrations' (Draft post-implementation review: Stakeholder consultation paper, Australian Government, 2 February 2015) <http://www.austrac.gov.au/sites/default/files/draft-post-implementaton-review.pdf>; *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 75.

22 Unregistered providers may not offer remittance services. See *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 74.

23 See *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 75B.

24 See AUSTRAC, 'Guidance on what constitutes a remittance network provider (RNP)' (Guidance Note 12/03, Australian Government, January 2013) <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiq9tDDzIfTAhXFE5QKHYXsDKEQFggZMAA&url=http%3A%2F%2Fwww.austrac.gov.au%2Ffiles%2Fgn_1203_remittance_network_provider.doc&usg=AFQjCNE8qUb5oZAfYCLLVjsTE3m21H9czg&sig2=Lcjar4U7u_ck2cm5X4nErw&bvm=bv.151325232,d.dGo>.

25 See *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)* (Cth) ch 56.

26 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 75J; read with ibid.

27 AUSTRAC, Australian Government, *Chapter 5 - Remitter registration requirements* (3 April 2017) <http://www.austrac.gov.au/chapter-5-remitter-registration-requirements#information-to-provide>.

28 See *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 75E-H.

29 Ibid s 184.

AUSTRAC's Remittance Sector Register ('Register') was introduced in response to increased concerns regarding criminal abuse of remittance services for money laundering and terrorist financing purposes. AUSTRAC has taken enforcement action against a relatively small number of remitters, struck problematic providers from the Register, and refused registration for others.[30]

In principle, the Register enables the public to identify remittance service providers who meet the registration requirements. In practice, banks used the Register to identify clients who are registered providers, reviewed their accounts from a compliance and risk management cost benefit perspective, and closed a significant number of accounts. Between January 2014 and April 2015, for example, at least 719 accounts of remittance service businesses were closed by banks in Australia.[31]

In 2014, Westpac, the last major Australian bank to provide large-scale services to remittance service providers, advised dozens of them that their accounts were about to be closed. In November 2014, a class action was commenced against Westpac on behalf of 24 providers. It was settled on the basis that Westpac would keep accounts of the providers who filed a class action suit open until 31 March 2015 to give them time to find other banks that may provide them with banking services.[32]

In 2015-16, the number of registered providers declined significantly. In January 2015, the Register contained 6,235 remittance service provider entities: 94 remittance network providers, 5,486 remittance affiliates, and 655 independent remittance providers.[33] By January 2016, the numbers had declined to just under 5,700 registered in the three categories: 81 remitter network providers, 5,100 affiliates of remitter network providers, and 510 independent remittance dealers.[34] At 30 June 2016, 4,944 reporting entities were registered with AUSTRAC as providing remittance services.[35]

These closures had a measurable impact on the costs of remittances in some remittance corridors, seen, for example, in Pacific remittance corridors. Since 2009, the Australian and New Zealand Government-supported SendMoneyPacific ('SMP')

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30 In the period 2015-16, for example, AUSTRAC cancelled 10 remitter registrations, refused one remitter application for registration, refused one application to renew the registration of a remitter, imposed conditions on the registration of one remitter, suspended 11 remitter registrations, revoked the cancellation of one remitter registration, and reconsidered and affirmed three of these decisions. See AUSTRAC, *Annual report 2015-16* (2016) 61 <http://www.austrac.gov.au/sites/default/files/austrac-ar-15-16-FINAL-WEB-2.pdf>. In 2013 AUSTRAC issued its first infringement notice on a registered remittance network provider for providing network services to affiliates who were not registered remittance affiliates. See AUSTRAC, *Infringement Notice: Ria Financial Services Australia Pty Ltd* (19 November 2013) <http://www.austrac.gov.au/enforcement-action/infringement-notices-issued-austrac>. AUSTRAC accepted the first enforceable undertakings from remitters in 2009.

31 AUSTRAC, *Bank De-risking of Remitter Customers* (16 November 2015) 7 <http://www.austrac.gov.au/bank-de-risking-remittance-businesses>.

32 Anthony Klan, 'Transfer Firms Win Temporary Westpac Reprieve', *The Australian* (online), 23 December 2014 <https://perma.cc/V4AL-79CV>; Parliamentary Joint Committee on Law Enforcement, *Inquiry into Financial Related Crime* (2015) [4.58]-[4.59] <http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Financial_related_crime/Report/c04>.

33 AUSTRAC, above n 21; UN Department of Economic and Social Affairs, above n 20.

34 Attorney-General's Department, 'Report on the Statutory Review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and Associated Rules and Regulations' (Statutory Report, April 2016) 98 <https://www.ag.gov.au/consultations/pages/StatReviewAntiMoneyLaunderingCounterTerrorismFinActCth2006.aspx>.

35 See AUSTRAC, above n 30.

website[36] has been providing remittance cost information for Pacific island communities in Australia and New Zealand. Costs have fallen significantly from Australia to the Pacific during that period but de-risking account closures create cost pressures in key corridors. The pressure is illustrated by the Australia-Samoa and Australia-Tonga corridors, two of the most competitive, high volume remittance corridors in the Pacific.

KlickEx, consistently the lowest cost provider for the Pacific, was directly affected by de-risking in June 2016.[37] Due to the termination of KlickEx's primary customer deposit account in Australia, three of their products for the Australia-Samoa and Australia-Tonga corridors were removed from the SendMoneyPacific baseline sample. As a result, the reflected remittance costs soared for the Australia-Samoa corridor from 8.59% to 11.96% (between November 2015 and June 2016) and for the Australia-Tonga corridor from 6.49% to 12.16%, (between November 2015 and June 2016).[38] At the same time, the Australia-Fiji corridor, less affected by bank account closures, saw costs dropping to their lowest average (7.19%, down from 8.61% between November 2015 and June 2016).

The closure of accounts of Australian remittance service providers needs to be viewed in a broader, international context. This will be sketched below.

IV CLOSURE OF ACCOUNTS OF REMITTANCE SERVICE PROVIDERS

Closures of bank accounts of remittance service providers gained global attention in 2014. Public interest was sparked by concern about the closure by Barclays Bank of the account of Dahabshiil, an important international remittance service provider to Somalia. Barclays was the last large UK bank to provide services to Dahabshiil and the closure of its Barclays account threatened the continued flows of UK remittances to Somalia.[39] The Dahabshiil case is discussed in greater detail in Part VI below.

The account closures of remittance service providers were, however, not a new phenomenon and – by 2014 – one not confined to these providers only. In the aftermath of the 9/11 attacks, there were heightened concerns regarding money laundering and terrorist financing risks posed by remittance service providers. The Financial Action Task Force ('FATF'), the global AML/CTF standard-setting body, identified remittance service providers as potentially higher risk businesses from an AML/CTF perspective.[40]

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36 <http://www.sendmoneypacific.org>.

37 Michael Field, 'A money-laundering crackdown hurts Pacific communities', *Nikkei Asian Review* (online), 30 June 2016 <http://asia.nikkei.com/magazine/20160630-Bye-bye-Britain/Politics-Economy/A-money-laundering-crackdown-hurts-Pacific-communities>.

38 Data cited has been collected by Developing Markets Associates Pty Ltd (DMA Asia Pacific) for the SendMoneyPacific ('SMP') website <http:// www.sendmoneypacific.org>.

39 See *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch); British Bankers Association, 'De-risking - Global Impact and Unintended Consequences for Exclusion and Stability' (Discussion paper Number 1, Prepared for use by the October 2014 FATF Plenary and associated working groups, October 2014) <https://classic.regonline.com/custImages/340000/341739/G24%20AFI/G24_2015/De-risking_Report.pdf>.

40 FATF grouped them under 'money services businesses', a broad term including remittance houses, currency exchange houses, casas de cambio, bureaux de change, money transfer agents, bank note traders and other businesses offering money transfer facilities. See FATF, *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing – High Level Principles and Procedures* (FATF/OECD, June 2007) [3.6].

It adopted Special Recommendations on Terrorist Financing that required countries to register or license these providers[41] and to extend money laundering obligations to money remitters.[42]

In the US, banks responded to the concerns and new regulations by closing accounts of money services businesses, a group of cash handling financial service businesses that include remittance service providers. The closures became so problematic that federal regulatory agencies issued a joint statement on 30 March 2005, acknowledging the problem:[43]

> Money services businesses are losing access to banking services as a result of concerns about regulatory scrutiny, the risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts. Concerns may stem, in part, from a misperception of the requirements of the *Bank Secrecy Act*, and the erroneous view that money services businesses present a uniform and unacceptably high risk of money laundering or other illicit activity.

The statement acknowledged that the money services business industry provides valuable financial services, especially to individuals who may not have ready access to the formal banking sector. It called on banks to be more circumspect and promised improved guidance and regulation. While the supervisory actions stemmed the tide of closures, money services businesses still continued to lose accounts.[44]

In 2012, the FATF adopted revised AML/CTF standards that embedded a mandatory risk-based approach to anti-money laundering and counter-terrorism financing regulation as well as compliance.[45] This approach requires national regulators and financial institutions to identify and assess their money laundering and terrorism financing risks. Where customers, services or products are assessed as posing a higher risk, enhanced due diligence measures must be adopted. Where risks are lower, simplified measures may be allowed by countries and, if allowed, adopted by institutions.[46] This approach also incorporates an older FATF principle: Financial institutions should terminate customer relationships where they cannot perform due diligence appropriately and are therefore unable to mitigate the money laundering and terrorism financing risks posed by those relationships.[47]

The FATF approach remained essentially exclusionary: Banks should exclude those who are criminal and intend to use the financial system to launder money or finance terrorism, as well as those customers whose money laundering and terrorism financing risk cannot be mitigated appropriately. This exclusionary approach is strengthened by financial sanctions, imposed by the UN Security Council and by many countries that

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41 FATF, *FATF IX Special Recommendations* (2001) Rec VI.

42 FATF, *FATF IX Special Recommendations* (2001) Rec VII.

43 Financial Crimes Enforcement Network ('FINCEN'), US Department of the Treasury, 'Joint Statement on Providing Banking Services to Money Services Businesses' (30 March 2005) <https://www.fincen.gov/news_room/nr/html/20050330.html>.

44 Bester et al, *Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines* (The FIRST Initiative, World Bank, 2008) 161.

45 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation — The FATF Recommendations* (2012) Rec 1.

46 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation — The FATF Recommendations* (2012) Rec 10.

47 FATF, above n 1.

operate, often in conjunction with, AML/CTF measures.[48] FATF was advised in 2010 to reconsider this approach, especially in view of the greater global emphasis on financial inclusion:

> If AML/CFT is primarily exclusive, financial institutions will tend to exclude criminal clients as well as honest clients who are not able to prove their credentials. This will especially happen where the risk mitigation measures in relation to such clients are not justified by the fees that can be raised when they are retained as clients. Such exclusion will undermine financial inclusion initiatives and of course also the ability of the AML/CFT system to generate crime combating intelligence.[49]

FATF's adoption of its 2012 standards coincided with the imposition of far larger US penalties for AML/CTF-related contraventions than previously,[50] increased terrorism risks globally and strained economic circumstances, and stricter banking standards following the global financial crisis. At the same time, the US Department of Justice launched a controversial program, Operation Chokepoint, that encouraged banks to close accounts of legitimate businesses assessed as higher risk from a crime and consumer fraud perspective.[51] These businesses included money transfer networks but also extended to firearm and firework dealers and escort services.

The combination of these factors resulted in risk averse and cost-conscious conduct by banks.[52] Higher risk customers, especially where compliance costs rendered the relationships unprofitable or insufficiently profitable, became primary targets of account

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48 Centre for Global Development, *Unintended Consequences of Anti-money Laundering Policies for Poor Countries* (11 September 2015) 7-8 <https://www.cgdev.org/publication/unintended-consequences-anti-money-laundering-policies-poor-countries>.

49 Louis de Koker, 'Aligning anti-money laundering, combating of financing of terror and financial inclusion: questions to consider when FATF standards are clarified' (2011) 8 *Journal of Financial Crime* 361, 368.

50 Centre for Global Development, above n 48, 10.

51 William Isaac, 'Don't like an Industry? Send a Message to Its Bankers' *The Wall Street Journal* (online), 21 November 2014 <http://www.wsj.com/articles/william-isaac-dont-like-an-industry-send-a-message-to-its-bankers-1416613023>.

52 British Bankers Association, above n 39; Centre for Global Development, above n 48, 19; *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] NZHC 1031 [149].

closures.[53] Groups affected by such closures include politicians and their family members,[54] bitcoin companies,[55] foreign missions,[56] charities,[57] and diamond dealers.[58]

In 2014, FATF publicly joined the debate. It released a statement on 23 October 2014, expressing concern about 'de-risking'. It cautioned banks to implement a risk-based approach and not to engage in 'the wholesale cutting loose of entire classes of customer, without taking into account, seriously and comprehensively, their level of risk or risk mitigation measures for individual customers within a particular sector'.[59] A key FATF concern was that the termination of relationships can potentially force people and entities into less regulated or unregulated channels that are not supportive of AML/CTF measures. Despite involving itself in the matter, FATF denied that the conduct was solely linked to AML:

> De-risking can be the result of various drivers, such as concerns about profitability, prudential requirements, anxiety after the global financial crisis, and reputational risk. It is a misconception to characterise de-risking exclusively as an anti-money laundering issue.[60]

FATF was not convinced about the evidence of the drivers and the extent of the impact of de-risking at that stage, rejecting the available evidence as anecdotal. It therefore agreed to gather further evidence on the drivers and scale of de-risking to inform decisions regarding any steps to be taken.[61] During 2015 and 2016 a raft of

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53 Louis de Koker and Mark Turkington, 'Transnational organised crime and the anti-money laundering regime' in Pierre Hauck and Sven Peterke (eds), *International law and transnational organised crime* (2016) 241, 262.

54 Anna Mikhailova, 'Clampdown on accounts of "politically exposed" customers' *The Sunday Times* (online), 10 April 2016 <http://www.thetimes.co.uk/article/clampdown-on-accounts-of-politically-exposed-customers-bf8lv2bpv>.

55 Paul Smith, 'ACCC clears Australian banks of colluding to block bitcoin competition' *Australian Financial Review* (online), 5 February 2016 <http://www.afr.com/technology/accc-clears-australian-banks-of-colluding-to-block-bitcoin-competition-20160205-gmmxmc>.

56 Nick Renaud-Komiya, 'HSBC asks foreign diplomats to close accounts' *The Independent* (online) 4 August 2013 <http://www.independent.co.uk/news/uk/home-news/hsbc-asks-foreign-diplomats-to-close-accounts-8745289.html>.

57 Tom Keatinge, *Uncharitable behaviour* (Demos, 2014) 16 <https://www.demos.co.uk/files/DEMOSuncharitablebehaviourREPORT.pdf>; Charity Finance Group, *Briefing: Impact of banks' de-risking on Not for Profit Organisations* (March 2015) <http://www.cfg.org.uk/Policy/~/media/Files/Policy/Banking/Briefing%20%20Impact%20of%20banks%20derisking%20activities%20on%20charities%20%20March%202015.pdf>.

58 Antwerp World Diamond Centre, *Annual Report 2015*, 16 <https://www.awdc.be/sites/awdc2016/files/documents/AWDCAnnualReport2015_LowRes.pdf>.

59 FATF, above n 1.

60 Ibid. Interestingly the statement only mentioned AML and did not specifically mention CTF or FATF's proliferation financing brief, both of which are closely linked to international political and economic sanctions. Sanctions regimes add to compliance risk concerns of banks and are often implied when the phrase AML/CTF is used.

61 During 2015 FATF issued two further de-risking statements: FATF, 'Drivers for "de-risking" go beyond anti-money laundering/terrorist financing' (FATF news update, 26 June 2015) <http://www.fatf-gafi.org/documents/news/derisking-goes-beyond-amlcft.html>; 'FATF Takes Action to Tackle De-risking' (FATF News Update, 23 October 2015) <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-action-to-tackle-de-risking.html>.

reports were published.[62] Of particular importance was a World Bank report for the G20, based on surveys of G20 member countries and their banks on key drivers and the impact of de-risking actions relating to money transfer operators (called 'remittance service providers' in this article).[63] The report provided evidence of increased account closures of these providers since 2010.[64] Closures were more prominent in Australia, Canada, Germany, France, Italy, Mexico, the UK, and the USA than in other G20 countries that participated in the study. The main drivers of these closures were all, to some extent, associated with risks and costs linked, directly or indirectly, to global measures to combat money laundering and terrorism financing or to enforce related political sanctions against countries, groups, or individuals. According to banks, drivers included the fact that they assessed the risks of continuing to provide services to these providers and found that it outweighed their revenue-generating potential. Other motivating factors were concerns about reputational risk, should the banks continue to provide banking services to the providers, and the requirements of banks' correspondent banks to discontinue relationships with these providers in order to limit risks in interbank correspondent relationships.

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62 See, e.g., Migration and Remittances Team, Development Prospects Group, 'Migration and Remittances: Recent Developments and Outlook Special Topic: Financing for Development' (Migration and Development Brief No 24, World Bank, 13 April 2015) <https://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief24.pdf>; Union of Arab Banks ('UAB') and IMF, *The Impact of De-Risking on MENA Banks* (27 May 2015) <http://www.nmta.us/assets/docs/DOBS/the%20impact%20of%20de-risking%20on%20the%20mena%20region.pdf>; Global Standards Proportionality ('GSP') Working Group, 'Stemming the Tide of De-Risking through Innovative Technologies and Partnerships' (Discussion paper for the G-24/AFI Roundtable at the IMF and World Bank Annual Meeting, Alliance for Financial Inclusion, 7 October 2016) <http://www.afi-global.org/sites/default/files/publications/2016-08/Stemming%20the%20Tide%20of%20DeRisking-2016.pdf>; Centre for Global Development, above n 48; MONEYVAL Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, '"De-risking" within Moneyval States and Territories' (Report, Council of Europe, 4 April 2015) <https://www.coe.int/t/dghl/monitoring/moneyval/Publications/Report_De-risking.pdf>; Tracey Durner and Liat Shetret, 'Understanding bank de-risking and its effects on financial inclusion – An exploratory study' (Research Report, Global Centre on Cooperative Security, November 2015) <http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf>; Scott Paul et al, *Hanging by a thread: the ongoing threat to Somalia's remittance lifeline* (Oxfam, 2015) <http://policy-practice.oxfam.org.uk/publications/hanging-by-a-thread-the-ongoing-threat-tosomalias-remittance-lifeline-344616>; David Artingstall et al, *Drivers & Impacts of Derisking* (John Howell & Co Ltd, 2016) <https://www.fca.org.uk/your-fca/documents/research/drivers-impacts-of-derisking>; The Commonwealth, *Disconnecting from Global Finance De-risking: The Impact of AML/CFT Regulations in Commonwealth Developing Countries* (2016) <http://thecommonwealth.org/disconnecting-from-global-finance>; Aledjandro Lopez Mejia et al, 'The Withdrawal of Correspondent Banking Relationships: A Case for Policy Action' (Staff Discussion Note, IMF, 30 June 2016) <http://www.imf.org/external/pubs/cat/longres.aspx?sk=43680>.

63 Finance and Markets Global Practice of the World Bank Group, 'Report on the G20 Survey on De-risking Activities in the Remittance Market' (Working Paper No 101071, World Bank, 1 October 2015).

64 Ibid [4].

Concerns about the impact of de-risking on correspondent banking relationships – relationships where a bank provides banking services to another bank – began to escalate in 2014. The Financial Stability Board ('FSB') expressed particular concern that banks were not only closing accounts of high-risk customers but also terminating relationships with banks from higher risk countries, creating a real risk of some countries losing their access to the international financial system.[65] The FSB requested the World Bank and the CPMI investigate the termination of correspondent banking relationships. Their November 2015 report confirmed that there was cause for concern.[66] The report informed a four-point plan adopted by the FSB. It entails working jointly with the World Bank, CPMI, and FATF to deepen their understanding of the extent and impact of these terminations, to provide increased regulatory clarity, and support AML/CTF capacity building in low capacity countries affected by these terminations. It also aims to harness technology to improve the efficiency and effectiveness of customer due diligence measures of correspondent and respondent banks.[67] In 2017 the FSB commenced work with the FATF and the G20's Global Partnership for Financial Inclusion to consider whether there are unwarranted barriers preventing remittance service providers from accessing banking services that should be addressed by financial authorities.[68]

One of the early outcomes of this action plan was the publication by the FATF of guidance on the risk-based approach for money or value transfer services in February 2016,[69] and for correspondent banking in October 2016.[70] The guidance pointed out that not all remittance service providers pose the same level of risk, especially from a bank perspective:

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65 Mark Carney and Bertrand Badré, 'Keep finance safe but do not shut out the vulnerable', *Financial Times* (online), 3 June 2015 <https://www.ft.com/content/19ab0272-085a-11e5-85de-00144feabdc0>. For G24 concern, see Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development, *Communiqué* (8 October 2015) IMF, 11 <http://www.imf.org/external/np/cm/2015/100815.htm>: 'We are concerned about the unintended consequences of anti-money laundering and combating of financing terrorism standards on the de-risking behavior of banks and loss of correspondent banking relationships in many developing countries. We call on the IMF, the World Bank, and the Financial Stability Board to develop appropriate guidance on how to properly implement the risk-based approach rather than seeking to avoid money laundering and financing terrorism risks by wholesale termination of entire classes of customers through de-risking, which contributes to financial exclusion'.

66 Finance and Markets Global Practice of the World Bank Group, 'Withdrawal from Correspondent Banking; Where, Why, and What to Do About It' (Working Paper No 101098, World Bank, 1 November 2015).

67 FSB, *Report to the G20 on Actions Taken to Assess and Address the Decline in Correspondent Banking* (2015), 1-2 <http://www.fsb.org/wp-content/uploads/Correspondent-banking-report-to-G20-Summit.pdf>.

68 FSB, *FSB Action Plan to Assess and Address the Decline in Correspondent Banking - End-2016 Progress Report and Next Step* (19 December 2016) 6 <http://www.fsb.org/wp-content/uploads/FSB-action-plan-to-assess-and-address-the-decline-in-correspondent-banking.pdf>.

69 FATF, *Guidance for a risk-based approach: Money or value transfer services* (2016) <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf>.

70 FATF, *Guidance: Correspondent banking services* (2016) <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/correspondent-banking-services.html>. The Basel Committee on Banking Supervision also took steps to clarify its expectations regarding correspondent banking due diligence. See Basel Committee on Banking Supervision, 'Guidelines: Revised Annex on Correspondent Banking' (Consultative document, November 2016) <https://www.bis.org/bcbs/publ/d389.pdf>.

> When assessing the risks associated with […] providers, different risk factors (types of products and services offered, types of customers, distribution channels, and jurisdictions they are exposed to, experience of the provider, purpose of the account, anticipated account activity etc.) should be weighed; as MVTS providers will not present the same levels of ML/TF risk. While some will pose a higher risk, there are others that will not.[71]

Although the guidance provided helpful clarification regarding the FATF's expectations of more nuanced regulatory and compliance practices, no impact on curbing de-risking terminations was yet evident by early 2017.

In Australia, de-risking concerns were considered by the Parliamentary Joint Committee on Law Enforcement in 2015.[72] In the same year Australia's AML/CTF-remittance regime was also considered in the course of the FATF's mutual evaluation of Australia in 2015[73] and in a statutory review of the *AML/CTF Act*.[74] Proposals for regulatory reform are, however, closely linked to outcomes of a working group to consider remittance account closures. The work of this group and the proposals of the statutory review will be considered briefly.

V AUSTRALIAN GOVERNMENT RESPONSES

A *Attorney-General's Department's Working Group on Remittance Account Closures*

In December 2014, the Attorney-General's Department and representatives of the remittance industry established the Working Group on Remittance Account Closures to consider the scale, drivers, and possible policy responses to the issue. The working group, consisting of government agencies, two associations representing remittance service providers, and the Australian Banking Association, met monthly between December 2014 and May 2015, and held a final meeting on 16 September 2015.[75]

In response to a call by the Working Group, AUSTRAC produced a report, *Bank Derisking of Remitter Customers*.[76] The report, largely based on AUSTRAC's financial and remitter registration data (especially International Funds Transfer Instructions ('IFTIs')), found that more than 700 accounts of remittance businesses were closed between January 2014 and April 2015.[77] During that period the number of banks

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71 FATF, above n 69, [128].

72 The committee chose not to make any recommendations due to the ongoing work of the working group. See Parliamentary Joint Committee on Law Enforcement, above n 32, [4.68].

73 FATF, *Anti-money Laundering and Counter-terrorist Financing Measures: Australia*, Mutual Evaluation Report (2015) <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>.

74 Attorney-General's Department, above n 34.

75 Working Group on Remittance Account Closures, *Outcomes Statement* (September 2015) Attorney-General's Department, Australian Government Home page: <https://www.ag.gov.au/CrimeAndCorruption/AntiLaunderingCounterTerrorismFinancing/Pages/default.aspx>.

76 AUSTRAC, *Bank De-risking of Remitter Customers* (16 November 2015) <http://www.austrac.gov.au/bank-de-risking-remittance-businesses>.

77 Ibid 7. See the discussion in Part III above.

providing services to remittance service providers declined from 21 to 14.[78] Some decline in the number of independent remittance providers sending funds to Somalia and a number of Asian countries[79] was also identified.[80] The report found that the decline was 'probably partially attributable to de-risking'.[81]

Despite these findings AUSTRAC's data did not reflect a significant impact on total international funds flows through the remittance sector.[82] According to AUSTRAC there was 'no overall reduction in international funds transfer instructions (IFTIs) submitted to AUSTRAC by the remittance sector' and 'no significant change in overall remittance sector transfers in terms of both the volume of transactions and the dollar value of funds flows'.[83]

Given the notable number of account closures and the decline in banks offering services to remitters, the lack of impact as reflected in AUSTRAC data is not easy to explain. The report identified a number of possible reasons why these closures may not have resulted in a decrease of the total funds flows through the remittance sector, as reflected in AUSTRAC statistics. Such reasons include that remitters who had accounts closed found other banks who were willing to accept their business. They may have accounted for small IFTI volumes and values that did not impact on the overall figures, or it may have been that they were not submitting IFTIs to AUSTRAC prior to being exited. It was also possible that their customers moved their business to other remitters.[84]

The Working Group had very practical objectives, for example to identify AML/CTF and sanctions risks that exist in the remittance sector, and any measures that could be implemented domestically to mitigate these risks. This would include preparing a profile of the remittance sector having regard to its size, scope and structure, mapping the remittance process and identifying risks present at each step of specific transaction chains, and considering any practical measures that could bring the remittance industry within the acceptable risk tolerance of banks.[85]

The Working Group concluded that its work was moving closer to, but not fully realising, its initial objectives. It issued a final statement that included a set of agreed outcomes with a number of facts and actions on which they reached consensus. This included the recognition of the global importance of remittances, the need for criminal and sanctions risks associated with the alternative remittance sector to be mitigated, the

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78 Ibid 7.

79 Philippines, Vietnam, Indonesia, Sri Lanka, and Pakistan.

80 AUSTRAC, above n 76.

81 Ibid.

82 Ibid 4.

83 Ibid 4. The Key Findings indicate that 'At the end of August 2015, analysis of reporting to AUSTRAC finds there is no significant change in overall remittance sector transfers in terms of both the volume of transactions and the actual dollar value of funds flows'.

84 Ibid 13.

85 See 'Terms of Reference' in Working Group on Remittance Account Closures, above n 75.

complexity of the drivers of account closures,[86] and that remitter account closures may add to the risk of more money moving through less regulated or unregulated channels.[87]

It also agreed that the 'closure of remittance business accounts has had *minimal impact on the volume or value of funds flows through the sector* but, despite this, continue to present difficulties for remittance businesses' (emphasis added).[88] The italicised conclusion regarding 'minimal impact' is less nuanced than the findings of the AUSTRAC report that informed the work of the Working Group. As discussed above, AUSTRAC was more careful to explain that their findings were based on *overall* volumes and values as reflected by AUSTRAC's reports statistics. Overall volume and value also do not reflect the effect on specific smaller corridors where the impact may have been disproportionate, but not sufficiently evident when only overall volume and value flows are considered.[89]

The Working Group agreed that financial institutions should consider the risks associated with providing services to remittance service providers on a client-by-client basis and noted that 'financial institutions are best placed to assess and manage the risk posed by their customers and the products and services they offer'.[90] While this statement mirrors the approach advocated by FATF it relieves the pressure on the regulator and on government to intervene through appropriate guidance and supervision. This impression is strengthened by the agreement that 'the banking and alternative remittance sectors will continue to engage directly and consider risk mitigation measures and strategies to bring remitters within the risk tolerance of banks, and the risk environment as it changes'.[91] The statement also noted that the banking and remittance members of the Working Group commenced work on a process map for risk mitigation strategies and that the work will continue following the conclusion of the Working Group.

The Australian government meanwhile undertook to continue 'to work internationally on the issue, including through the Financial Action Task Force, the G20, and engaging with other countries with similar issues'.[92] It was agreed that AUSTRAC would continue to monitor remittance activity to ensure that significant changes in international funds flows are quickly identified and investigated. The government also undertook to consider the registration process for remittance providers in the course of the statutory review of the *AML/CTF Act* that was being conducted at that stage.[93]

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86 Mirroring the international statements and reports discussed in Part IV above, the Group agreed that de-risking is complex and driven by factors such as: the remittance sector being globally viewed as particularly vulnerable to criminal exploitation, including for money laundering, terrorist financing and the evasion of sanctions; compliance by remittance providers with anti-money laundering and counter-terrorism financing obligations; the risk appetite of international correspondent banking partners, and the increasing costs of providing services (presumably referencing the compliance costs of banks providing services to remitters). Working Group on Remittance Account Closures, above n 75.

87 Ibid.

88 Above n 75, agreed outcome 6.

89 See for example AUSTRAC, n 76, 13; where the report found evidence of decreased flows to three countries and increased flows to another nine.

90 Above n 75, agreed outcome 5.

91 Ibid agreed outcome 8.

92 Ibid agreed outcome 9.

93 Attorney-General's Department, above n 34.

The overall impression left by the final statement of the Working Group was that the Australian government left this highly complex matter to the powerful banking industry and less powerful remittance industry to resolve. AUSTRAC did, however, continue to engage the industry, leading for example to an industry compliance accreditation program for registered remittance service providers announced in 2017.[94]

The statutory review of the *AML/CTF* Act provided a further opportunity for the Australian government to address de-risking and improved regulation and supervision of the remittance industry.

B *Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)

The statutory review considered a range of aspects of the AML/CTF regime and identified proposals for law reform. The review report also touched on remittance service providers and de-risking.[95] It recognised the value of the sector but also noted de-risking concerns because of the risks present in the remittance sector. In that regard, it pointed to various law enforcement examples in Australia that involved proceeds of crime channelled through remittances. Though these examples referenced some low value transactions, many larger transactions were also involved.[96]

Although the FATF cautions that not all remitters pose the same level of risk, the report did not distinguish between different corridors and remittance service providers but viewed the whole sector as high risk:

> There is a longstanding view held by Australian law enforcement, and expressed in national risk assessments, that the remittance sector poses a high ML/TF risk. The informal nature of remittance businesses and their ability to send money to foreign regions and countries with limited or no financial infrastructure, and potentially weak AML/CTF controls, makes them vulnerable to misuse by terrorists, terrorist groups and other criminals.[97]

Industry supported the introduction of a tiered licensing system with categories of licenses based on the nature and scale of a remitter's business activities, with caps on amounts that can be transferred under each category of licence.[98] The industry favoured licensing to include a 'fit and proper person' test and regulatory competency requirements. The report however did not support such an approach, most probably because the government did not distinguish different risk levels in the sector. It also identified problems associated with a capping approach:

> Limiting the total value of funds a remitter can remit within a certain time period (for example, a month) is unlikely to mitigate these risks, as small operators that have reached their monthly limit could simply outsource transfers

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94 Australian Remittance and Currency Providers Association, *ARCPA Certification Program* <http://www.arcpa.org.au/certification.html>.

95 Attorney-General's Department, above n 34, 98-105.

96 For example, above n 34, 73: AUSTRAC analysis of financial transaction reports showed that over a five-year period suspect B sent 28 IFTIs out of Australia totalling more than AUD 42,000. The IFTIs were primarily sent to Indonesia. The IFTIs undertaken by suspect B were conducted via remitters for low-value transfers of between AUD 100 and 5,000. A small number of the IFTIs were sent with payment details describing them as 'gift' or 'personal'.

97 Ibid 100.

98 Ibid 101.

> to other remitters that have not reached their limit. Imposing a transaction threshold (that is, only allowing a remitter to process a transaction up to a prescribed maximum value), in addition to a volume limit, would help mitigate some of these risks. However, transfers to high-risk countries for terrorism financing tend to involve small amounts of funds below any prescribed threshold. In any case, either option would require close AUSTRAC supervision to ensure remitters are complying with such transaction threshold requirements.[99]

It is submitted that the concerns expressed can be addressed by appropriate risk mitigation measures, informed by the more sophisticated risk assessments advocated by the FATF.[100] As argued in this article, the design of such risk mitigation measures would benefit from consultation with remittance communities that are able to contribute to an improved understanding of remittance senders and receivers as well as corridors.[101]

The preferred approach expressed in the report was to enhance regulation under the existing registration process and to give the AUSTRAC CEO stronger powers to control the registration of remitters. To take a number of other technical reforms forward, the report recommended the establishment of a 'government-industry working group to develop options for strengthening regulatory oversight of remitters, including consideration of the existing enforcement power and penalty regimes, under the *AML/CTF Act*'.[102] No mention was made of involving remittance communities or remittance senders in the deliberations.

VI CUSTOMERS TURNING TO COURTS

Customers are generally powerless to prevent bank account closures. The law recognises the freedom of banks to choose with whom they wish to do business, and the law, often reinforced by the underlying contract with the customer, enables them to terminate that relationship when they choose to do so, provided that they give reasonable notice.[103]

During the past few years customers, ranging from rich and politically powerful to smaller remitters providers, tried in a number of countries to prevent the termination of

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99 Ibid 102.

100 See FATF, above n 69, [128] discussed below in Part VIII.

101 See below Part VIII.

102 Attorney-General's Department, above n 34, 104.

103 For an example, see this term from a Kiwibank contract quoted in *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] 3 NZLR 241 [83]: 'Except where our specific terms say otherwise, we can also close your account or cancel the provision of a product or service to you by giving at least 14 days' notice, without needing to give a reason'. In terms of *The Code of Banking Practice* (NZ) member banks of the New Zealand Bankers' Association undertake to normally give at least 14 days' notice when they decide to close an account or withdraw a product or service. See *The Code of Banking Practice* (NZ) (New Zealand Bankers Association) [3.1.9.] <https://www.nzba.org.nz/consumer-information/code-banking-practice/code-of-banking-practice/3-products-and-services>. Banks commit to giving 'reasonable notice' in terms of the Australian *Code of Banking Practice.* See *Code of Banking Practice* (Australian Bankers' Association, 2013) [33.b] < http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice/Code-of-Banking-Practice-2013---Online-Version>.

their accounts or to exercise rights to seek remedies, but with little success. In this article, we briefly consider four cases which highlight some of the key arguments that were advanced. The arguments were rejected by the courts and, in the one case of a temporary success, simply led to a negotiated exit from a specific relationship.

A *Bredenkamp v Standard Bank 2010 (4) SA 468 (SCA)* (South Africa)

Bredenkamp and entities related to him applied for an interdict restraining Standard Bank, a large South African bank, from terminating their accounts. When the application was refused, he appealed to the South African Supreme Court of Appeal.

Bredenkamp and a number of entities owned or controlled by him were listed as 'specially designated nationals' by the US Department of Treasury's Office of Foreign Asset Control (OFAC) as part of the imposition of US sanctions on Zimbabwe.[104] Bredenkamp was apparently listed by OFAC as he was said to be a close business associate of President Mugabe of Zimbabwe.[105] He was, furthermore, alleged to be involved in a range of high risk activities, including grey market arms trading.[106] Bredenkamp disputed these allegations.[107] The bank argued that whether or not the allegations were correct, a continuing relationship with Bredenkamp would give rise to legal, reputational, and business risk and therefore they decided to terminate the accounts.[108]

The bank's contract with the customer had an express term allowing it to close an account with reasonable notice.[109] It also relied on an implied term, namely that an indefinite contractual relationship may be terminated with reasonable notice by either party.[110] While it was initially argued on behalf of Bredenkamp that these terms were *contra bonos mores* ('against good morals'), their validity was later conceded.[111]

The arguments advanced on Bredenkamp's behalf were based on the South African Constitution and, in particular, the Bill of Rights.[112] It was argued, firstly, that the benchmark for the constitutional validity of a term of a contract is fairness, and, secondly, that even if a contract is fair and valid, its enforcement must also be fair in order to survive constitutional scrutiny. It was contended, for example, that the account termination was unfair as the mere fact that one bank closed the appellant's accounts would mean that no other bank would be prepared to do business with them.[113] Evidence provided indicated, however, that other banks would consider the termination as relevant but would focus primarily on the reasons for the closure, in this case, the US sanctions listing. That fact, rather than the closure of the accounts by Standard Bank, would inform their decision whether to open an account for the appellants.[114] Bredenkamp was also

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104 *Bredenkamp v Standard Bank* (599/09) [2010] ZASCA 75; 2010 (4) SA 468 (SCA); 2010 (9) BCLR 892 (SCA); [2010] 4 All SA 113 (SCA) (27 May 2010) <http://www.saflii.org/za/cases/ZASCA/2010/75.html> [12].

105 Ibid [14].

106 Ibid [15].

107 Ibid [14].

108 Ibid [17-18].

109 Ibid [5].

110 Ibid [5].

111 Ibid [52].

112 *Constitution of the Republic of South Africa, 1996* <http://www.gov.za/documents/constitution-republic-south-africa-1996>. This discussion is focussed on a few of the key arguments advanced on behalf of Bredenkamp and especially those relevant to this article.

113 Above n 104 [55].

114 Above n 104 [58].

unable to argue convincingly why it would be fair to impose an obligation on a bank to retain a client simply because other banks are not likely to accept that entity as a client.[115]

Importantly, the Supreme Court of Appeal, per Deputy President Harms, expressed reluctance to intervene in a business decision made by the bank:

> The appellants' response was that, objectively speaking, the Bank's fears about its reputation and business risks were unjustified. I do not believe it is for a court to assess whether or not a bona fide business decision, which is on the face of it reasonable and rational, was objectively 'wrong' where in the circumstances no public policy considerations are involved. Fairness has two sides. The appellants' approach the matter from their point of view only. That, in my view, is wrong. [116]

Bredenkamp's appeal was therefore dismissed.

B *Hlongwane and Others v Absa Bank Limited and Another (75782/13) [2016] ZAGPPHC 938 (10 November 2016)* (South Africa)

Hlongwane is another South African matter featuring a Politically Exposed Person – an FATF term for customers who pose a higher corruption risk because they are entrusted with higher public functions or are closely related to or associated with the holder of such an office.[117] In this case Absa Bank, after months of notice, closed the accounts of Hlongwane and related entities, especially after his activities became the subject of interest of a commission of inquiry into corruption relating to arms procurement.[118] Hlongwane approached the court for assistance to gain access to a comprehensive list of bank documents relating to the closure of the account[119] to inform decisions regarding legal remedies.[120]

The court held that it was apparent that the bank decided to close the accounts as there were commercial and reputational risks in maintaining the accounts. Judge Mnqibisa-Thusi held:

> The first respondent had no obligation to retain a client whose monitoring in terms of money laundering measures put in place would be more onerous when

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115 Above n 104 [60].

116 Above n 104 [65].

117 FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation —The FATF Recommendations (2012) Rec 12 read with its Interpretive Note and the definition of a Politically Exposed Person in the Glossary. For another high-profile case of PEP-related companies losing their access to banks that was continuing when this article was finalised, see 'South Africa: Gupta Banking Matter Resumes in Court', *AllAfrica* (online), 29 March 2017 <http://allafrica.com/stories/201703290591.html>.

118 *Hlongwane and Others v Absa Bank Limited and Another* (75782/13) [2016] ZAGPPHC 938 [16] <http://www.saflii.org/za/cases/ZAGPPHC/2016/938.html>. For the report, see Arms Procurement Commission, 'Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package Report' (Report, December 2015) <http://www.gov.za/documents/arms-procurement-commission-report-21-apr-2016-0000>.

119 *Hlongwane and Others v Absa Bank Limited and Another* (75782/13) [2016] ZAGPPHC 938 [1].

120 Ibid [17].

> compared with the benefit, in terms of fees, it would receive from the applicants. I am of the view that the first respondent's bona fides in deciding to close the applicants' accounts cannot be questioned.[121]

In view of the legal obstacles to share confidential information in relation to the commission of inquiry's investigation and the bank's own AML/CTF investigations, as well as the lack of a clear formulation of the rights that Hlongwane wished to exercise or protect once they had the information, their application was refused.[122]

C *Dahabshiil Transfer Services Ltd. v Barclays Bank Plc [2013] EWHC 3379 (Ch)* (United Kingdom)

In this UK matter, three remittance service providers who were informed by Barclays Bank that their accounts would be terminated, applied for interim injunctions to prevent the closures. As Barclays were so clearly contractually entitled to terminate accounts, the claimants argued that the threatened closure amounted to a breach of competition law as it amounted to the abuse of a dominant position in a market.[123] Evidence was led to the effect that Barclays banked 70% of the money remitters in the UK. The court held that a high market share of 70% or more, whether in number or value, would generally be considered as strong evidence of a dominant position.[124] The argument that Barclays held a dominant position in the broader UK money service business market was less strong, especially as Barclays had a modest number of money service businesses as customers. The court was, however, persuaded that there was an arguable case, especially if those customers turn out to constitute a significant part of the market in terms of value or in terms of other facts that may emerge in a multi-factorial evaluation of the market.[125]

The court granted the interim injunctions but the parties soon settled the matter, allowing Dahabshiil more time to find a replacement banker before the accounts were closed.[126]

Although the arguments on Dahabshiil's behalf were held to be arguable in the UK, Ooi and Buckley believe that, given a similar scenario in Australia, it would be more difficult for a remittance service provider to achieve similar success, even on an interim basis, especially as the Australian provisions regarding abuse of a dominant market position have proved difficult to enforce in practice.[127] Australian remittance service providers did indeed argue that the closure of their accounts by banks that also delivered remittance services were anti-competitive. In 2015, however, the Australian Competition and Consumer Commission ('ACCC') held that the banks acted

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121 Ibid [30].

122 Ibid [32-33].

123 *Dahabshiil Transfer Services Ltd. v Barclays Bank Plc* [2013] EWHC 3379 (Ch) [2]. Abuse of a dominant position is a contravention of the *Treaty on the Functioning of the European Union* [2012] OJ C 326/47, art 102 and of the *Competition Act 1998* (UK) c 41, s 18.

124 *Dahabshiil Transfer Services Ltd. v Barclays Bank Plc* [2013] EWHC 3379 (Ch) [60].

125 Ibid [72].

126 Martin Arnold, 'Barclays and remittance group reach deal on Somalia services' *Financial Times* (online), 17 April 2014 <https://www.ft.com/content/54aca3a4-c557-11e3-89a9-00144feabdc0>.

127 Ross P Buckley and Ken C Ooi, 'Pacific injustice and instability: Bank account closures of Australian money transfer operators' (2014) 25 *Journal of Banking and Finance Law and Practice* 243, 245.

individually and that the available facts did not point to cartel behaviour or an abuse of market power.[128]

D *E-Trans International Finance Ltd v Kiwibank Ltd [2016] 3 NZLR 241* (New Zealand)

In 2015, Kiwibank gave E-Trans International Finance Ltd (E-Trans), a remittance service provider, 14 days' notice of the termination of its account at Kiwibank.[129] It acted in terms of a clause in their contract that empowered it to close an account with that notice period, without needing to provide a reason.[130] E-Trans obtained an interim injunction to restrain Kiwibank from acting on its termination notice. Seeking a permanent injunction and related relief, it advanced four arguments in the High Court.

Firstly, E-Trans argued that the termination clause of the contract should be read with an implied term to act fairly and reasonably when exercising the power to terminate the contract. It was argued that this term arose from Kiwibank's adoption of the Code of Banking Practice, which provides it should act fairly and reasonably towards customers.[131] The court found no basis for the argument that the adoption of the Code gave rise to an implied term relevant to the termination of the E-Trans account.

Secondly, E-Trans alleged that Kiwibank's exercise of its contractual power had, or may have had, the effect of substantially lessening competition in the funds remittance and money changing market, thereby contravening s 27(2) of the *Commerce Act 1986* (NZ). After a thorough analysis of the law, the court rejected the argument on the basis that 'a termination provision is not one that, of itself, has the purpose, or is generally likely to have the effect, of substantially lessening competition in a market'.[132] The court was also not satisfied that the evidence suggested that if E-Trans were to exit the downstream market, there would likely be a substantial lessening of competition.[133]

Thirdly, E-Trans argued that Kiwibank has breached a statutory duty arising out of the provisions of the *Anti-Money Laundering Act 2009* (NZ) to provide banking services to E-Trans. E-Trans argued that Kiwibank owed private law duties under the *Anti-Money Laundering Act* to have appropriate customer due diligence resources and capacity to manage the relationship with E-Trans and to avoid blanket de-risking closure of accounts of remittance service providers.[134] After analysing the public law purposes of the *Anti-Money Laundering Act*, the court held that although de-risking decisions may impact negatively on a class of customers, nothing in the legislation suggested that an affected entity is owed a statutory duty and had a right to bring a private claim based on its breach in these circumstances.[135]

Fourthly, E-Trans alleged that Kiwibank had breached section 9 of the *Fair Trading Act 1986* (NZ) by giving,[136] what E-Trans contended, were false reasons for its decision to terminate the account of E-Trans. Even on the assumption that Kiwibank did

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128 Parliamentary Joint Committee on Law Enforcement, above n 32, [4.62]-[4.65].
129 *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] 3 NZLR 241 [2-3].
130 Ibid [83].
131 Ibid [97].
132 Ibid [123].
133 Ibid [140].
134 Ibid [155].
135 Ibid [161].
136 *Fair Trading Act 1986* (NZ) s 9: 'No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive'.

make false statements, the court held that this argument failed as there was no causal link between what was said by Kiwibank and any loss or damage that was suffered by E-Trans. The reasons given by Kiwibank for the account termination did not affect the legitimacy of its decision, provided Kiwibank did not breach the contract or infringe a statutory obligation.[137] E-Trans therefore failed in its attempt to obtain a permanent injunction and related relief.

The four cases from different jurisdictions illustrate a range of overlapping arguments that were advanced by remittance service providers in an attempt to retain their business relationships with a bank. The only point that was recognised as arguable was one of potential abuse of a dominant market position in the UK in the Dahabshiil case. It would however have been challenging to succeed with that argument and in the end, it was not pursued by Dahabshiil. The grounds for a similar argument in Australia also appear limited. As mentioned above, the ACCC held that the available de-risking evidence did not point to any anti-competitive behaviour by Australian banks closing accounts of remittance service providers.[138] The current law in Australia therefore provides customers facing account closure with little relief. Recognising a right to a payment account would strengthen the legal position of customers. This option is discussed further in Part VIII below.

VII A PILOT STUDY OF PERCEPTIONS OF REMITTANCE SENDERS AND PROVIDERS

The AGD's Working Group (discussed in Part V above) was focussed on the overall industry picture and the relationship between the remittance sector and the banking industry. What was not reflected in their work was the position of small, independent remittance service providers handling low value payments and the communities that depended on them. It is unlikely that this complex, global problem can be solved satisfactorily without community and whole of industry engagement in constructive solutions.

Community perspectives are essential for a citizen-centred approach to governance that enhances trust.[139] Views and data captured by the Australian Bureau of Statistics as part of its *Measures of Australia's Progress, 2013* indicate that Australians thought that 'having opportunities to influence how society is run is important to national progress as it ensures that decisions made that impact the community best reflect the communities' views'.[140] Australians also believed that community involvement in decision-making enhances individual wellbeing by empowering and enfranchising people, and leads to shared ownership of decisions. This, in turn, 'would improve cohesion and the wellbeing of the community'.[141]

Given that the account closures affect more vulnerable migrant communities in Australia, shared ownership and community cohesion and well-being would be natural objectives for the government when seeking de-risking solutions.

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137 *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] 3 NZLR 241 [163].

138 Parliamentary Joint Committee on Law Enforcement, above n 32, [4.62]-[4.65].

139 Jocelyne Bourgon, 'Responsive, responsible and respected government: towards a New Public Administration theory' (2007) 73(1) *International Review of Administrative Sciences* 7.

140 Australian Bureau of Statistics, *Measures of Australia's Progress, 2013: Participation: Access and Opportunity* (14 November 2013) <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/1370.0main+features442013>.

141 Ibid.

We designed a pilot qualitative study to ascertain the views of community-based remittance providers and their customers and to gain insight into their views and experiences of de-risking.[142] The pilot qualitative study[143] focussed on the perspectives of persons sending remittances to countries in the Horn of Africa and community-based remittance providers. For purposes of the study these providers were defined as small, generally independent, remittance providers who service a specific migrant community and are members of that community. The Horn of Africa was selected as the countries in the Horn were especially impacted by global de-risking.

We interviewed 40 persons from Somalia, South Sudan, Ethiopia and Eritrea in Melbourne from May to September 2015. All 40 persons had sent money home, but four were also community leaders and eight were community-based remittance providers. Interviewees were accessed in a variety of ways through the contacts of community leaders, NGOs, and a student from the Horn of Africa. While interviewing community-based remittance providers, we also met and interviewed some of their customers. In early September 2016, we interviewed one of the larger community remittance providers for an update.

The authors provided the interviewees with a plain language statement that explained the project and informed them of their rights to confidentiality and their right to withdraw consent before the data was used in publication. To overcome literacy barriers, the researchers explained the documentation, processes and the rights to the interviewees. The participants gave their written consent to their data being recorded and used for the study. The interviews were audio recorded and transcribed. All the interviews were open-ended and in English.[144]

The interviews with remittance providers were in their place of business and always conducted on a one-on-one basis. The interviewer spent 15 minutes to an hour, depending on availability, listening to the interviewee, but also observing customers transact. We met the community leaders in one of their NGO offices, followed by a group meal of Ethiopian food with freshly made *ingera* and lentils. The interviews with the community leaders lasted between one to two hours.

Customers were interviewed in remittance shops, cafes and in the playground of a housing complex where members from the relevant communities lived. Engaging with community members in their local context assisted in building trust. One-on-one interviews lasted between 20 minutes and two hours. The longer interviews placed remittances within the context of their families, detailed the morality of remittances, and spoke of communication across borders. The shorter interviews focussed on the sending of remittances and the impact of bank closures.

A qualitative study with users at the centre proved very helpful to ascertain attitudes of community members in relation to remittances. From the experience gained, the researchers would caution against using only surveys to determine such attitudes unless appropriate measures are employed to address literacy and language, as well as trust barriers. Community remittance providers were, for example, reluctant to participate in

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142 Ethics approval for this study was obtained from both RMIT and Deakin Universities.

143 For an initial article on this study, see Supriya Singh and Louis de Koker, 'Real lives, real risk: threats to small money remitters hit African families' *The Conversation* (online), 8 October 2015 <https://theconversation.com/real-lives-real-risk-threats-to-small-money-remitters-hit-african-families-48315>.

144 Transcripts — some full and others selected — as well as field notes were analysed using NVivo, a computer program for the analysis of qualitative data. Broad coding, matrices, and text searches aided analysis and made for a greater transparency between the fit of data and theory.

surveys like those the World Bank was conducting at the time of the study (discussed in Part IV above). We provided copies of the World Bank survey form to all the remittance service providers we met and urged them to complete it. They generally refused, however, fearing that participation may make them more vulnerable to bank account closures.

A *Voices from the community*

The pilot qualitative study revealed indications of a disconnect between the discourse between banks and regulators[145] on the one hand, and people's lived reality of sending money home to families on the other. While many interviewees reflected an understanding of the broader risks of terrorism and terrorist financing, the linkages with their own relatives, often victims of violence and crime themselves, were not clear to them. They could also not understand the terror financing threat posed by a sum of money that would often be barely enough to pay for necessities required by their relatives. Kubira [all participants' names are pseudonyms], a Somalian woman asked, 'Is sending $150 to your mother terrorism?'

For most participants, the sending of remittances was not optional or peripheral to their lives. Many participants said that they sent 20-40% of their monthly income. People send money even when they do not have a job. Concerns that their family members are unable to buy food or medicine, or that children could not go to school, hit at the moral core of family responsibility. This responsibility compels remittance senders to be resourceful. De-risking complicates the sending of funds to family, but many interviewees were adamant that the money will continue to flow, even if it does so informally.

Abbas, a community-based remittance provider and a leader of the Ethiopian community, sends money to family members himself. He said that before his mother died the previous year, the money he sent was 100% of her budget. Now, he sends money to his sisters. He normally sends money monthly but also when there is illness, if there is a celebration, or, as he stated, 'if the house is falling down'.

Faith, 29, from South Sudan has not seen her family for 15 years. She is separated, has four children, and is not in paid work. She sends money every fortnight to members of her family in South Sudan and in Uganda. She showed a photograph of her brother, which she got from Facebook. She sends money for his university fees amounting to $US 600 a semester. 'You budget,' she explained. 'You can't let them die. So, I send the money even if it is a small amount'. Her money pays for her siblings' school fees, housing, food, and medical expenses.

Helen from South Sudan said:

> Women send more often. They see the situation. They understand what is happening to the family. They have heart. [...] They also call their families more often. They know what is happening. Their family tells them things are hard there.

Dawood, 42, from South Sudan, said he had a mother who was getting old. His family is spread through South Sudan, North Sudan, Kenya, and Uganda. He has only recently arrived in Australia, and at present has no offer of a job. He said his family was

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[145] Reflected for example, in the news coverage of de-risking and in reports such as that of the Parliamentary Joint Committee on Law Enforcement, above n 32.

waiting for his support. He said: 'Even though I have no money, I have to send. I ask others in my community, here or in Queensland, to help. We have to'.

Rahad, from Somalia, also a small community-based remittance provider, said: 'I am worried not only for the business, but […] I don't know how my mother, my brothers and sisters will live. It is very painful. If they close down this business, they close down the life of the people'.

The news of the closure of accounts of community-based remittance providers has hit hard. It appears to be a matter of general discussion. Many interviewees know of some remittance service providers closing, as they were not able to continue without bank accounts. Others continued despite losing their accounts, but they accepted smaller and fewer transactions than before. People viewed account closures as the result of a government and industry decision that was taken without consulting them. Badra, 31, a graduate student and an artist, supports her family in Somalia and Kenya. She said she was 'just outraged' about the account closures and the subsequent closures of remittance businesses. She said:

> It was put in place without consultation. For me, it is another form of colonialism. People who have gradually built their lives after fleeing war and trauma, are now being cut down […] My connection to my country of birth, my parents' and grandparents' country of birth, has been cut off.

Ella, a 21-year old nurse from Somalia, said: 'People are supposed to have a voice'. The closure of the remittance shops '[…] will change people's lives […] In Somalia there is war. Some children have been orphaned. To them $100 means a lot'.

For some of the customers, there are no alternatives to using a specific community-based remittance provider. These providers often have personal links with agents who are able to deliver the money to the areas where the senders' relatives live. Large, global providers in the Horn of Africa often only have agents in large cities in the region. Ojala from Somalia said: '[A US-headquartered global remitter] doesn't live in a remote area. It can take two days for our people to walk to the city. Then they don't know English. And the fee is higher'. She worries she may have to send the money to Kenya or Uganda and ask people there to take it to Somalia. That process is viewed as far riskier, as the money may not reach the intended beneficiaries.

Using a large global remitter is also not an option for Ali. Six of his wife's family members in Sudan live eight hours away from Khartoum where the nearest agents of such providers are based. He said: 'People are worried. They talk about it in coffee shops. Housewives talk about it. Men and women are affected by it'.

B *Community-based remittance providers*

The small, independent, community-based remittance providers who participated in the study, reported being stressed. Like larger remittance service providers, they are registered with AUSTRAC,[146] have compliance programs and file international funds transfer instructions ('IFTI') reports with AUSTRAC.[147]

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[146] See the discussion of AUSTRAC's Remittance Sector Register in Part III above.

[147] See the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 45. The reporting obligation of remitters is detailed in the *Anti-Money Laundering and Counter-Terrorism*

Most of the community-based providers have a customer base of a few hundred customers drawn from their ethnic communities. They often know most of their customers and sometimes their families in Australia and in the Horn of Africa personally. According to the providers, customers are identified in accordance with the *AML/CTF Act* and send on average AUS$100-$200 per month. The people who receive their money have to provide formal identification.

Abbas, an Ethiopian community leader and a remittance service provider, said that since March 2015, when his account at a large Australian bank was closed, his business has shrunk to half its size. He complained, but was told he had no recourse as the contract regulating his account allowed the bank to close the account.

A bank account supports a small remittance business in a number of ways. It enables, for example, customers to deposit money to be transferred, saving them a visit to the remitter. It also enables the provider to transfer money to the recipient bank in the country of destination, to be used as a float to facilitate transfers and manage foreign exchange changes. The only reason his business had not yet closed when we spoke to him in May 2015, was that shortly before the account closure, he sent $100,000 to the bank in Ethiopia, which disburses the remittances his customers send. He started rationing the amounts he accepts from his clients, for he does not know how to get more money across to Ethiopia once that float is depleted.

Abbas said that most of his customers would not be able to send money using a US-headquartered global remittance provider or bank, even if they were willing to pay the higher fees charged by the larger providers. Eighty per cent of his customers are Ethiopian like him, and their families live in areas where there are no agents of large, global remitters. Community-based remittance providers, on the other hand, are embedded in the community and facilitate the remittance at both the sending and the receiving sides, even in remote rural areas in Ethiopia. Abbas has a network of trusted people in Ethiopia who help recipients, many of whom are elderly, to collect the money safely and securely.

Baaz from Somalia, a community-based remittance provider in Footscray, said his customers were concerned and afraid that his loss of access to a bank account would mean that they would lose a trusted remittance service provider. The small community-based remittance providers were also afraid. They were reluctant to join a new remittance industry association, because they were concerned that banks would act against them if they were viewed as speaking out against de-risking closures.

Dara, another community-based remittance service provider in Footscray, is from Somalia. He had been operating his business since 2000 and is AUSTRAC-registered and compliant. He had an account with a major bank but that was closed by the bank. He was then able to secure an account with a small bank, but feared that it was temporary. De-risking started with the large banks but now smaller banks are also closing remitter accounts. He feared a letter would arrive telling him that they were closing his account too. It was a very uncertain time. As a businessman, he had to think of the lease and his two employees. If the uncertainty continued, he may have to close down the business. He found it difficult to understand how his business could be compliant with the law and registered with AUSTRAC and still lose its account. He said: 'The Australian government gives us a licence. We report weekly to AUSTRAC. All our systems are certified. External auditors check our services. With the Australian government we are fine […] But the banks say "you are too risky for us"'.

Financing Act 2006 (Cth) s 75J; read with *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) ch 17.

Cemal from Somalia operates one of the largest and oldest Melbourne remittance businesses sending money to Africa. His operations in Victoria and interstate are large enough that he has a compliance officer on his staff. He had lost his account with three of the largest banks, but continues to have one bank account. He thought this was because he had had a 20-year relationship with this bank. The bank did an individual risk assessment of his business and agreed to continue the banking relationship as long as he maintains his compliance levels.

Cemal was an active participant in the representation of the industry's views to the banking industry and government. He said there had been no permanent solutions proposed to date. AUSTRAC did tell the banks not to close accounts without good reason for they did not want the industry to go underground. But AUSTRAC's message, according to Cemal, was that they had done all they could and would leave it to the banks and remitters to solve the problem.

C *Community leaders*

We interviewed leaders of the Eritrean, Ethiopian, Somalian and South Sudanese communities. All of them were remittance senders in their personal capacity and some of them, like Abbas and Deen, were also remittance service providers. They met us hoping to identify a sustainable solution to the sending of remittances to the Horn of Africa countries. They define this as including Djibouti, Eritrea, Ethiopia, and Somalia.

The broad regulatory context had not figured in their own explanations of why the bank accounts were closed. Abdullah from Eritrea said the community saw it as yet another example of discrimination and racism against the African community. He said it further excluded and marginalized them. Abbas and Baaz both believed that banks were trying to freeze small remitters out of the market to take control of the remittance market themselves.

The community leaders said that with the closure of independent community-based remittance providers, some customers may move to global remitters like Western Union or MoneyGram, where these are able to transfer funds to their family members. They echoed the views expressed by remittance senders and remittance service providers that such global remitters have a limited number of agents in the Horn of Africa, mostly centred in the key urban areas. According to the leaders, customers who prefer doing business the community way and especially those with family in regional and rural areas, go to community-based money transfer providers. It is also usual practice to entrust funds to Australian friends and family who travel to the Horn of Africa to personally hand the money to family there. This practice, they believed, would become more important as community-based remittance service providers closed down.

D *One year on*

One year on, we visited central Footscray again.[148] The premises of Dara, the provider who said he was closing his business after losing his account, were now

[148] For a remittance community survey reflecting similar community views, see Ethnic Communities' Council of Victoria, 'The Cultural Ecology of Trust – Melbourne's Ethnic-Based Money Transfer Operators Struggle for Recognition' (ECCV Social Cohesion Policy Brief No 5, November

occupied by a clothing store. We spoke again to Baaz from Somalia, a community-based remittance provider who has survived in Footscray, despite losing his last remittance account. He reported that many more remittance providers had lost their remaining bank accounts and pointed out a few of them as we walked through Footscray.

Baaz explained that he, as well as a number of other providers who lost their accounts, are now operating in cash. They are still AUSTRAC-registered and compliant, but use trade finance agreements to move money and value between Australia and the Horn of Africa. Cash couriers are also being used. Baaz said that cash in excess of $500,000 is being carried by couriers who are happy to declare it at the airport to customs officials. They do not want to hide the money from government but have no other fast means of transferring it to the Horn of Africa. His customers are finding it increasingly difficult to send money. In the past, they could use internet banking services to pay the money into his bank account. Now they needed to find time to travel to his shop to hand him the amounts in cash. This is especially problematic for his rural and regional customers. As a result, they are sending money less frequently.

E *Independent community-based remittance providers and their communities: Observations*

Most of the participants in our study belonged to refugee communities. Participants were given refugee status and settled in Melbourne in the past two decades. The owners of remittance businesses we spoke to did not initially provide financial services. Their own need to remit money to relatives in their countries of origin, refugee camps and other countries where they settled, brought the business opportunity to their attention. They were also people who were sufficiently trusted by community members to manage their money.

Over time, some of the businesses developed sufficiently to require the appointment of employees. The owners have come to be viewed as role models in communities where many members are unemployed and dependent on social welfare support. The de-risking threats to these businesses impact deeply on the owners who feel responsible for their customers, employees and communities, both in Melbourne and in the countries of origin. It also impacts on their status as icons of success of these communities in their new, adopted country.

The relationship between community-based remittance service providers and the majority of their customers appears to be close and personal. Often, they are from the same towns or regions in the country of origin and owners would often know some of the customers' family and background. Customers select providers based on that knowledge. Their trust in the provider's ability to execute the transaction and also to ensure successful delivery of the funds to the beneficiaries, guide their choice of provider.

In many cases the relationships have been long-standing and regular. Standard amounts are sent regularly to a small number of recipients. Some of the relationships are so firm that a customer in emergency situations could request the provider telephonically to remit money on credit, subject to the promise that the amount owed would be deposited into the provider's account as soon as the customer was able to do so.

The intimate knowledge of a customer and a customer's profile is valuable to identify suspicious transactions. It is, however, lost when de-risking forces the owner to

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2015)<http://eccv.org.au/library/file/document/2015_Social_Cohesion_Briefs/Final_ECCV_Social_Cohesion_Policy_Brief_5_Remittances.pdf>.

close the business. Customers will still send money to their relatives but through channels that do not have a similar understanding of their profile.

Most of the providers we spoke to were located in different shops in Footscray in Melbourne. At face value, it seemed as if they all delivered the same remittance services to the same countries. It turned out, however, that they served distinct regions in the countries of origin. Remitters serving the same countries, therefore, did not appear to be in fierce competition but cooperated and shared information.

Apart from the stark letters they received from their bankers informing them that their accounts would be closed, neither the bankers, nor the regulator or any government official communicated with them. The remitters and community members had to rely on newspaper articles and word-of-mouth for information. The concern expressed by government officials about the impact of de-risking on remittances was, therefore, not experienced as genuine concern about the remittance communities in Australia.

The pilot project showed that remittance senders, small community-based providers and community leaders were eager to share their views of the significance of remittances to them and their families in the home countries. If remittances are placed within this family context, and users' needs rather than policy were placed at the centre, regulators and financial institutions could gain valuable knowledge of remittance channels, remittance senders and receivers. This knowledge would assist regulators and financial institutions to manage the risks of these channels, while keeping open the flow of remittances.

VIII TOWARDS SOLUTIONS

Despite bank account closures of remittance service providers occurring for more than a decade, attempts to solve the problem are being hampered by a lack of understanding of the issues. Since 2014 the international community has been working to produce a better quantitative picture of de-risking closures. While the collection of quantitative data is important, policymakers will not have a complete picture of de-risking and its impact without appropriate qualitative data collected from bankers, remittance service providers and the communities that send and receive remittances. Communities, it is submitted, can provide regulators with a much richer picture of remittances and risk. They can shed light on the financial integrity exclusion risks that may accompany the closure of community-based remittance service providers, for example, the use of informal remittance channels. They may be able to contribute constructively to solutions that would enable these remitters to continue operating. More importantly, however, they are able to contribute their knowledge of the senders and the receivers to assist regulators and financial institutions to better understand and manage AML/CTF risks linked to various remittance corridors and providers. Communities have a key stake in ensuring that these remitters act appropriately and responsibly and are therefore very helpful sources of risk-relevant information for regulators and banks. This in turn may assist regulators to connect remittance policy better with the morality of money in family relationships.[149]

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[149] See Supriya Singh, *Money, Migration and Family: India to Australia* (Palgrave Macmillan, 2016); Supriya Singh, 'Money and family relationships: The biography of transnational money' in Nina Bandelj, Frederick F Wherry and Viviana A Zelizer (eds), *Money Talks: Explaining how Money Really Works* (Princeton University Press, 2017) 184-198.

Instead of engaging these communities and forming risk management partnerships with them, governments unfortunately largely ignore them while focussing on engaging the banks and remittance associations, often representative of larger remitters.[150] The lack of engagement of communities is deepening their social exclusion and ignoring the very real emotions that de-risking evokes in communities. The sidelining of affected communities may feed radicalism[151] and thereby undermine the broad anti-crime and anti-terrorism objectives that AML/CTF measures are meant to serve. These risks increase where users are forced to rely on informal, unregulated providers to send money to their relatives in their countries of origin.[152]

In addition to including communities in analysing the problems and generating sustainable solutions, there are steps that policymakers can consider to break the de-risking cycle. As a starting point, it is submitted that de-risking account refusals and terminations are closely linked to the policy of shifting increasingly expensive responsibilities to combat money laundering and terrorist financing to banks that, in turn, have the freedom to determine with whom they wish to do business.

In *E-Trans International Finance Ltd v Kiwibank Ltd*[153] the New Zealand High Court considered the public policy aims relating to (i) integrity in the financial markets, (ii) the important economic role of remittances for communities that relied on them, and (iii) the promotion of competition in the market.[154] Heath J remarked:

> The problem is that those laudable policy aims conflict. The co-existence of statutory provisions designed to promote each of those public policy goals seems to have brought about unintended consequences. [146] By requiring private and public business enterprises to act as reporting entities under the Anti-Money Laundering Act, the public policy goal of minimising the risk of money laundering and financing of terrorism is promoted, but at the cost of reputational risk to financial institutions, such as Kiwibank.[155]

In addition to the cost of reputational risk, there are the general costs of enhanced due diligence in relation to higher risk customers, the risk of loss of foreign correspondent relationships for continuing to service customers deemed an unacceptable risk by a foreign correspondent and the legal and career risks faced by bank officials who support the continuation of services, should it be revealed later that the customer laundered funds or financed terrorism. AML/CTF-related risks are complex to manage and compliance officers tend to adopt overly conservative compliance practices.[156]

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150 This is evident for example in the recommendation to set up a government-industry working group develop options for strengthening regulatory oversight of remitters in Attorney-General's Department, above n 34, 104.

151 Hussein Tahiri and Michele Grossman, 'Community and Radicalisation: An Examination of Perceptions, Ideas, Beliefs and Solutions throughout Australia' (Report, Counter-Terrorism Coordination Unit, Victoria Police, September 2013) 39 <https://www.vu.edu.au/sites/default/files/ccdw/pdfs/community-and-radicalisation.pdf>.

152 Parliamentary Joint Committee on Law Enforcement, above n 32, [4.75]-[4.76].

153 *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] 3 NZLR 241.

154 Ibid [142-4].

155 Ibid [145-6].

156 Louis de Koker and John Symington 'Conservative corporate compliance: reflections on a study of compliance responses by South African banks' (2014) *Law in Context* 228, 241.

Avoiding risks by refusing and terminating risky relationships when they are not commercially justified, is a reasonable option for a compliance officer.[157]

De-risking, it is submitted, shows that the levels of non-financial risk that public policy can shift to banks to meet public policy integrity goals have reasonable commercial limits. It also highlights an unintended consequence of shifting AML/CTF risk mitigation to banks: in practice their decisions to establish or terminate relationships now determine whether customers such as charities and small remittance service providers are able to operate effectively. Such decisions, with significant public policy implications, are often informed mainly by the banks' commercial interests.

It is submitted that a recalibration should be considered. On the one hand governments should consider how to bring down the costs and risks of engaging higher risk customers that perform important social functions. On the other hand, the right of banks to control access to the payment system should be reconsidered. This should be done within the framework of regulatory and supervisory reform in relation to remittance service providers.

A *Collaborative public-private management of public policy risks*

Banks cannot reasonably be expected to engage higher risk customers to serve the public interest of financial inclusion where compliance costs render the relationship unprofitable, or where other risks, such as business or reputational risks, outweigh the financial benefit of the relationship.

Developments in improved identification infrastructure,[158] financial technology (FinTech) that facilitates cheaper transactions, and utilities that will enable banks to lower compliance costs[159] will make it more commercially viable to serve some of the customers who cannot currently be served on a commercial basis. FinTech also facilitates the development of non-bank remittance channels that may assist current users

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[157] See also Thomas J. Curry, Comptroller of the Currency, Remarks (Remarks before the Association of Certified Anti-Money Laundering Specialists 15th Annual Anti-Money Laundering and Financial Crime Conference, 28 September 2016) <https://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-117.pdf>:
'[I]t it is not surprising that some banks have chosen to reduce their risks and shrink their exposure and international business portfolios. That choice is the result of what has been pejoratively labelled "de-risking". These withdrawals, particularly in regions subject to terrorism, drug trafficking, and other illicit activity, have been the subject of a good deal of publicity and, in some cases, have caused outcry both here and abroad. The process that has resulted in these decisions is better described as risk re-evaluation. It's the process in which institutions review the risks they face on a continual basis and ensure they have systems in place that can identify and adequately address those risks. The actual process of regularly re-evaluating risk is a critical and expected part of the BSA/AML regulatory regime'.

[158] World Bank 'Principles on identification for sustainable development: toward the digital age' (Report, World Bank Group, 2017) <http://documents.worldbank.org/curated/en/213581486378184357/Principles-on-identification-for-sustainable-development-toward-the-digital-age>.

[159] For KYC utilities aimed at storing CDD in a single repository and lowering costs for all participants, see Committee on Payments and Market Infrastructures, 'Correspondent Banking' (Consultative Report, Bank for International Settlements, October 2015) <http://www.bis.org/cpmi/publ/d147.htm>.

and providers.[160] Despite these developments, a large number of customers will remain who are too risky and expensive for banks to engage but whose inclusion in the financial system serves the public policy of preventing informal transactions. Such customers include forcibly displaced persons such as refugees.[161]

In these cases, governments either need to provide them with financial services — an unattractive option for many governments — or need to collaborate with banks to ensure that banks are able to mitigate the risks posed by such customers in a cost-effective manner. RegTech — technology supporting regulation — will in future enable enhanced data sharing and analysis[162] to improve supervision[163] but more will be required to enable effective and cost-efficient risk management practices.

National intelligence and law enforcement agencies have access to intelligence on terrorism and organised crime. Banks are currently required to manage the criminal risks of terrorism financing and money laundering without access to such information. Without appropriate information, the risks of getting it wrong become unacceptably high.

While secrecy barriers will remain, technology can enable national security and law enforcement agencies, regulators and banks to work collaboratively to mitigate risks and combat crime, also in ways that protect privacy and confidentiality. This could be done within a formal framework for managing these higher risk public interest customers. Such a framework should allow for banks and the AML/CTF authorities to share risk-related data, data analysis, and intelligence more extensively to support transaction monitoring and law enforcement intervention, when required. Regulators will need to provide banks with appropriate protection against legal and reputational risk in relation to these customers. Regulators will also need to collaborate internationally to intervene should a foreign bank threaten to terminate a correspondent relationship with a domestic bank that is party to such a public-private risk management partnership with domestic AML/CTF authorities, should the concerns relate to the management of the relevant AML/CFT risks

As far as remittance service providers are concerned, government should broaden the discussion to include the communities that rely on the services. Communities and governments share the concern that these services should be reliable, transparent and compliant. Government, banks and the larger providers have not been able to formulate viable solutions on their own. Effective solutions may be identified when they work

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[160] Like money remitters, financial technology companies are, however, viewed as higher risk customers and some of these companies had their accounts terminated too. Paul Smith, 'ACCC investigating banks' closure of bitcoin companies' accounts', *Australian Financial Review* (online), 19 October 2015 <http://www.afr.com/technology/accc-investigating-why-banks-are-closing-bitcoin-companies-accounts-20151018-gkc5iv>; Jenée Tibshraeny, 'KlickEx takes Kiwibank to court over it trying to close the money remitter's accounts; move comes as the release of a High Court judgement on a similar case involving Kiwibank looms', *Interest.Co.NZ* (online), 19 April 2016 <http://www.interest.co.nz/personal-finance/81118/klickex-takes-kiwibank-court-over-it-trying-close-money-remitters-accounts>.

[161] UNHCR, 'Serving Refugee Populations: The Next Financial Inclusion Frontier - Guidelines for Financial Service Providers' (Social Performance Task Force, November 2016) 6 <https://sptf.info/images/RefugeeWG-Serving-Refugee-Populations-Guidelines-FSPs-Lene-Hansen.pdf >.

[162] Casanovas et al, 'Regulation of Big Data: Perspectives on Strategy, Policy, Law and Privacy' (2017) *Health and Technology* 1.

[163] Douglas Arner, Janos Barberis, and Ross Buckley, 'FinTech, RegTech and the Reconceptualization of Financial Regulation' (2017) *Northwestern Journal of International Law & Business* (forthcoming).

jointly with small community-based remittance service providers and the affected communities. In addition, communities are able to support remittance channels by providing agencies and financial institutions with a deeper understanding of the channels, users and providers.

After many years of limited collaboration between AML/CTF regulators and financial institutions, indications are that governments are realising the benefits of working collaboratively with the financial sector to combat money laundering and terrorist financing. In May 2016, the UK formalised the Joint Money Laundering Intelligence Taskforce, enabling representatives of government agencies, the British Bankers Association, law enforcement and major banks to collaborate on AML/CTF.[164] In 2017, Australia announced the establishment of the Fintel Alliance, a public-private AML/CTF partnership between federal and state agencies and financial institutions, overseen and facilitated by AUSTRAC.[165] These developments, it is submitted, provide an excellent base to be broadened and directed at collaborative management of the risks of remittance service providers and other public interest customers, also by means of industry and public-private utilities. Appropriate public and corporate governance mechanisms would of course be required to ensure that these mechanisms operate in a manner that enhances public trust in accountable national security and law enforcement.

B *The right to access the payment services of a bank*

As discussed in Part VI above, attempts by customers to turn to the courts to prevent account closures did not meet with success in the UK, South Africa or New Zealand. Traditionally banks have the right to decide with whom they wish to do business.[166] An increasing number of countries are, however, recognising a right to a bank account.

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[164] National Crime Agencies *Joint Money Laundering Intelligence Taskforce (JMLIT)* <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/joint-money-laundering-intelligence-taskforce-jmlit>.

[165] Minister for Justice, Minister Assisting the Prime Minister for Counter-Terrorism, The Hon Michael Keenan MP, 'AUSTRAC launches world-first alliance to combat serious financial crime' (Press statement, 3 March 2017) <https://www.ministerjustice.gov.au/Mediareleases/Pages/2017/FirstQuarter/AUSTRAC-launches-world-first-alliance-to-combat-serious-financial-crime.aspx>.

[166] A number of banks in Australia offer basic fee-free accounts for individuals voluntarily, but there is no legal obligation to do so. See Australian Bankers' Association, 'Which Australian Banks Offer Basic Bank Accounts?', *Affordable Banking,* <http://www.affordablebanking.info/Which-Australian-banks-offer-a-basic-bank-accounts->. The independent review of the Australian Code of Banking Practice did not recommend that all banks in Australia should be compelled by the Code to offer a basic account but advised changes to ensure that an application for such an account, where offered, could only be refused on limited grounds. See Phil Khoury, *Independent Review: Code of Banking Practice* (2017) 170 <http://cobpreview.crkhoury.com.au/wp-content/uploads/sites/2/2017/02/Report-of-the-Independent-Review-of-the-Code-of-Banking-Practice-2017.pdf>. The Australian Bankers' Association accepted the recommendation and held that it should be premised on compliance with AML/CTF obligations in relation to account opening. See Australian Bankers' Association, *Code of Banking Practice: Response by Australian Bankers' Association to Review Final Recommendations*, (ABA, 2017) 27 < http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>. This would of course not address the AML/CTF de-risking dilemma for individuals and these accounts are not available to businesses.

The European Union adopted the *Payment Accounts Directive*[167] in 2014, which provides EU consumers with a right to open a payment account that allows them to perform essential operations, such as receiving their salaries and making payments. A right to a bank account has been recognised for some time in a number of countries, including EU members[168] and Canada.[169] The right is not absolute. In specific circumstances, banks may refuse to open an account or terminate an account, for example where there is a breach of money laundering and terrorism financing laws by the customer, or where the customer abuses the account, for instance, by committing fraud against the bank.[170] It does, however, require a contravention by the customer. Increased due diligence costs will not be a sufficient reason to close that account.[171]

The Directive also provides for a strictly limited number of grounds on which a basic payment account may be terminated,[172] for a customer to be provided with reasons for the termination,[173] and for any customer complaints regarding the termination to be handled by a designated alternative dispute resolution body.[174]

While the *Payments Accounts Directive* addressed the rights of individuals, the *Second European Payment Services Directive*[175] requires credit institutions such as banks to provide payment institutions, such as remittance service providers, with non-discriminatory and proportionate access to payment account services.[176] The access must be extensive enough to allow payment institutions to provide payment services in an unhindered and efficient manner. Where any payment institution is rejected, the credit institution must provide the competent authority with duly motivated reasons for its decision.[177] The Directive was adopted on 16 November 2015 and the EU members have until November 2017 to incorporate the provisions into their national laws and regulations.

An appropriately structured right to a basic payments account can address the plight of individual customers as well as remittance service providers. It effectively removes

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[167] *Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features* [2014] OJ L 257/214.

[168] See European Commission Internal Market and Services DG, 'Financial Inclusion: Ensuring Access to a Basic Bank Account' (Consultation Document, MARKT/H3/MI D, 6 February 2009). France and Belgium, for example, had legislation to ensure that every citizen or resident can have access to transaction banking services: 12; Italy, Germany, the UK and the Netherlands had voluntary charters and codes of practice to provide basic bank accounts: 9-10.

[169] In respect of Canada, see *Bank Act*, SC 1991, c 46, s 448.1(1): 'Subject to regulations made under subsection (3), a member bank shall, at any prescribed point of service in Canada or any branch in Canada at which it opens retail deposit accounts through a natural person, open a retail deposit account for an individual who meets the prescribed conditions at his or her request made there in person.' See also Access *to Basic Banking Services Regulations*, SOR/2003-184.

[170] *Directive 2014/92/*EU *of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features* [2014] OJ L 257/214, art 16.4.

[171] Ibid preamble [47].

[172] Ibid art 19.2-3.

[173] Ibid art 19.4.

[174] Ibid art 19.5, read with art 24.

[175] *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC* [2015] OJ L 337/35.

[176] Ibid art 36.

[177] Ibid.

the right of banks to make commercial decisions and exit relationships where the costs outweigh the benefits. It does not provide consumers with an unqualified right to banking services but enables them to take a refusal on review. Fair public policy requires solutions for banks that will then have no option but to mitigate the risks of consumers that they are not able to refuse. These solutions may be best linked to the collaborative public-private approach to crime risk management advocated in Part VIII above and fair compensation where banks are compelled to take on customers where returns on those relationships do not cover the related compliance costs.

C *Regulatory and supervisory reform in relation to remittance service providers*

A collaborative public-private approach to crime risk management and appropriate access to a basic payment account, both for individuals and remittance service providers, should be considered within the context of a more fundamental review of the regulation and supervision of remittances.

The Australian government, together with its global counterparts, acknowledged the development importance of remittances, the vulnerability of its users, concern about the high costs of remittance corridors, and the risks of criminal abuse. It is however this last aspect that informs the current AML/CTF focus of regulation of the remittance sector. This approach provides AUSTRAC with the registration obligations and AML/CTF powers in relation to remittances while the market conduct aspects of remittances, including consumer protection, are only addressed in general terms by the general consumer protection regulatory frameworks. Given the acknowledgement of the unique challenges posed by the remittance sector, this is not sufficient. A more balanced approach is required that coordinates the work of relevant regulators and combines these with elements of industry self-regulation, where feasible and appropriate. That approach should be risk-based and nuanced. Small, lower risk remittance service providers handling only a limited number of small transactions for a fixed set of known customers should not be subjected to the compliance requirements that are appropriate for providers handling larger transactions. In relation to lower and higher risk corridors the quality of risk assessments and of the design of risk mitigation measures can benefit greatly from community expertise and input, as argued above.

IX CONCLUSION

The termination of bank accounts of remittance service providers by banks is challenging regulators globally. Internationally regulators have, however, been reluctant to intervene. They have remained largely concerned observers, studying de-risking and calling on banks to manage the risks posed by the customers who are being excluded. The Australian government has taken steps to engage the industry and banks on de-risking, but communities have not yet featured in the engagement strategy. This article presents the voices of remittance community members and small community-based remitters. It also outlines the lack of real legal remedies that would allow customers to remit safely in view of account termination. Solutions, it is submitted, lie in engaging the community, improving regulation and supervision, and empowering customers with legal rights in relation to payment account opening and termination. A public-private partnership between AML/CTF authorities and banks may provide an appropriate risk mitigation framework that ensures a viable commercial model that meets public policy goals of financial inclusion and financial integrity.

While the solving of the de-risking challenge is important, community engagement is also required to address the sense of social exclusion and alienation that result from account terminations. Engagement will communicate that governments and policymakers value the affected communities and are looking for solutions that advance national security as well as the interests of the vulnerable communities affected by account closures. It also provides an opportunity to explain government actions and the complexities involved in these closures. The lack of engagement of communities deepened feelings of exclusion that may feed radicalism and thereby undermine the broad anti-crime and anti-terrorism objectives that AML/CTF measures are meant to serve.