

Account Closures of Money Transfer Operators by Australian Banks– Instability and Injustice in the Pacific

Introduction

The remittance industry provides international money transfer services for migrant workers and individuals looking to send relatively small amounts of money overseas. Money transfer operators (‘MTOs’) facilitate these international payments and offer services to a segment of the market that is often unserved by banks. An alarming trend is developing in Australia of banks closing the accounts of MTOs. A potential explanation for this trend is the increased cost of regulation and perceived risk to the banks from facilitating these transactions.¹ These account closures create real problems for the remittance industry, Australia and the Asia Pacific region.

The Importance of Money Transfer Operators to the Pacific

Australian banks traditionally offer two methods of transferring funds internationally. Banks can send funds through the SWIFT network, or through a bank draft. These methods require both the receiving and sending party to hold a bank account, and the fixed fees for sending a small amount of money are often discouragingly high. High fees and difficult access to banks mean international transfers are beyond the reach of many Pacific Islanders. MTOs solve many of these difficulties by facilitating small transfers more cheaply, swiftly, and without the need for a bank account.

¹ World Bank, *Migrants from developing countries to send home \$414 billion in earnings in 2013*, (2 October, 2013) <<http://www.worldbank.org/en/news/feature/2013/10/02/Migrants-from-developing-countries-to-send-home-414-billion-in-earnings-in-2013>>.

Poverty in the PICs is a significant and growing problem.² Over the years, extensive migration has occurred from the PICs to Australia, New Zealand and the United States. Migrant workers from the PICs now contribute significantly to their communities back home. Community members working abroad who remit money home promote economic development and provide informal, family-based social protection.³ Remittances play a particularly important role in stabilising the region.⁴

The stability and prosperity of the Asia Pacific region has long been a key concern of Australia's foreign policy.⁵ Australia's security could be undermined by neighboring states falling into a state of anarchy, or under the control of potentially hostile governments.⁶ The PICs comprise a large part of the 'arc of instability' to Australia's north and northeast, where governments are often disturbed by civil unrest.⁷ Economic difficulties, unemployment and inequitable income distribution in the PICs have provided fertile ground for resentment within these societies.⁸ Australia has encouraged PIC migrant workers through schemes such as the Seasonal Worker Program.⁹ This program has enabled workers to remit their earnings home, which has supported Australia's goal of promoting regional stability. The recent trend of Australian banks closing MTO accounts undermines this foreign policy goal.

² Oxfam New Zealand, *Poverty in the Pacific* (2014) <<http://www.oxfam.org.nz/what-we-do/where-we-work/poverty-in-the-pacific>>.

³ Richard Brown, Gareth Leeves and Prabha Prayaga, 'An analysis of recent survey data on the remittances of Pacific island migrants in Australia' (Discussion Paper No 457, School of Economics, University of Queensland, 2012).

⁴ T. K. Jayaraman, Chee-Keong Choong and Ronald Kumar, 'Role of remittances in small Pacific Island economies: an empirical study of Fiji' (2011) 3 *International Journal of Economics and Business Research*, 5.

⁵ AusAID, *Australian Aid: Promoting Growth and Stability A White Paper on the Australian Government's Overseas Aid Program*, 2006, <<http://aid.dfat.gov.au/publications/whitepaper/s4.htm>>.

⁶ Hugh White and Elsin Wainwright, 'Strengthening our Neighbour: Australia and the future of Papua New Guinea', 2004 *The Australian Strategic Policy Institute Limited*, <https://www.aspi.org.au/publications/strengthening-our-neighbour-australia-and-the-future-of-papua-new-guinea/ASPI_PNG.pdf>.

⁷ Ross Duncan and Satish Chand, 'The Economics of the 'Arc of Instability' (2002) 16(1) *Asian-Pacific Economic Literature*, 1-9.

⁸ P. Collier, 'Greed and grievance in civil war' (2000) World Bank, Washington, DC, <<http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-2355>>, quoted in *ibid*.

⁹ Special Program visa (subclass 416) for the Seasonal Worker Program, <<http://www.immi.gov.au/Visas/Pages/416-SWP.aspx>>.

MTO Account Closures in Australia

Australian banks have not publicly announced an intention to abandon the remittance sector. However, there is ample anecdotal evidence that banks are closing the accounts of MTOs across both Australia and the PICs.¹⁰ These account closures have been reported on and criticised by industry professionals,¹¹ regulators,¹² academics,¹³ and industry experts.¹⁴

Despite this widespread criticism, detailed information about the account closures is not publicly available, making it difficult for individual MTOs to address the issue. The majority of MTOs in Australia are small, independent organisations that lack the voice and negotiation power to engage productively with the major banks. Finding an appropriate solution that achieves Australia's foreign policy objective of regional stability will require a coordinated approach from MTOs, the banking industry and government agencies. This submission argues that Australian government support is necessary, and that an industry body would greatly assist by delivering necessary information¹⁵ such as the extent of the account closures.

¹⁰ Jimima Garrett, 'Banks stop cheap money transfers to the Pacific' (11 December 2013) *Australia Network News*, <<http://www.abc.net.au/news/2013-12-11/an-banks-close-off-cheap-money-transfer-options-to-the-pacific/5151066>>.

¹¹ "Most banks are using this perception and taking unprecedented steps to de-bank the whole sector resulting in registered MTOs having their bank accounts closed." Dianne Nguyen (Director of Hai Ha Money Transfer, in response to public consultation), Review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). <<http://www.ag.gov.au/Consultations/Documents/StatutoryReviewAnti-MoneyLaunderingAndCounter-TerrorismFinancingActCth200/hai-hai-money-transfer-28march2014.pdf>>.

¹² Fiji Financial Intelligence Unit, 'Money Remittance Service Providers Well Regulated in Fiji' (Media Release 14/2014), <<http://www.fijifiu.gov.fj/docs/Press%20Release%20No%2014%20-%20Money%20Remittance%20Service%20Providers%20Well%20Regulated%20In%20Fiji.pdf>>.

¹³ Vijay Naidu, 'Australian banks dishonest about stopping remittances to the Pacific – Naidu', Radio New Zealand International (December 2013) <<http://www.radionz.co.nz/international/pacific-news/231323/australian-banks-dishonest-about-stopping-remittances-to-pacific-naidu>>.

¹⁴ Jemima Garrett, 'Banks close off cheap money transfer options to the Pacific', Radio New Zealand International (December 2013) <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/banks-close-off-cheap-money-transfer-options-to-the-pacific/1233194>>.

¹⁵ '...there is a need for more frequent and better coordinated data collection, both across national institutions and among different divisions within the same national institution, as well as between countries', Jaqueline Irving, Sanket Mohapatra, Dilip Ratha, 'Migrant Remittance Flows: Findings from a Global Survey of Central Banks' (Working Paper No. 194, World Bank, 2010).

The Current Regulatory Framework and Enforcement by the Regulators Internationally

The international nature of AML/CTF is reflected in international instruments such as the *UN Convention Against Transnational Organized Crime* and the international standards established by the Financial Action Task Force ('FATF'). Australia has implemented the FATF recommendations to bring domestic legislation in line with international standards through the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* ('*AML/CTF Act*').¹⁶ The *AML/CTF Act* imposes a number of obligations on reporting entities when they provide designated services.¹⁷ A risk-based approach ('RBA') has been taken to bring the *AML/CTF Act* in line with the FATF recommendations.¹⁸ Reporting entities determine how to meet their obligations based on their assessment of the AML/CTF risk.¹⁹

The RBA allows reporting entities to exercise their own business and professional judgment in determining an appropriate strategy. This involves a fine balance between facilitating financial transactions and reducing risk. On the one hand, it can be difficult to do business if the reporting entity imposes overly stringent AML/CTF controls to reduce risk. On the other hand, financial institutions can face heavy fines and reputational damage if they underestimate the level of risk and money is laundered. The potential consequences of incorrectly assessing risk were highlighted by global bank HSBC in 2012.

The HSBC group had a practice of assigning a risk rating to its customers based on the country risk rating where the customer was located.²⁰ One consequence of this was that potentially high

¹⁶ Financial Action Task Force, Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: Australia (2005) *FATF/OECD* <<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Australia%20full.pdf>>. See also Kevin Davis, *Remittances: Their Role, Trends and Australian Opportunities* (4 November 2012) <<http://www.australiancentre.com.au/News/remittances-their-role-trends-and-australian-opportunities>>.

¹⁷ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* s 6 (Definition of 'Designated Service').

¹⁸ Financial Action Task Force, 'International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation', (2013) <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf>.

¹⁹ AUSTRAC, '*Anti-Money Laundering and Counterterrorism Financing Act 2006*', <http://www.austrac.gov.au/aml_ctf.html>.

²⁰ 9/13/2010 OCC Supervisory Letter HSBC-2010-22, "Bank Secrecy Act/Anti-Money Laundering ('BSA/AML') Examination – Program Violation (12 U.S.C. 1818(s); 12 C.F.R. 21.21)", 18.

risk clients in low risk countries escaped enhanced due diligence and account monitoring.²¹ The inadequacies in HSBC's risk approach resulted in a US\$1.9 billion settlement with the US regulatory authorities and severe reputational damage.²² Other banks that have settled allegations of infringing US AML/CTF regulation in recent years include ABN Amro Bank, Credit Suisse, Barclays, Lloyds and Standard Chartered Bank.²³ In 2012, total settlements in the US related to AML/CTF compliance breaches exceeded US\$4 billion.²⁴

MTOs are a relatively low-margin business for banks. Currently, regulation is forcing banks to choose between closing MTO accounts and servicing accounts that contain potential compliance risk. Given their risk and low profitability, apart from the heavy impacts on Pacific societies, it is unsurprising that banks seem to be classifying MTO accounts as high risk and closing them.

HSBC was one of the first banks in the UK to formally withdraw from the sector by terminating banking services to clients that offer services such as money/currency exchange, money transfers and cheque cashing.²⁵ Similarly, Lloyds Banking Group announced it was not heavily involved in the remittance sector due to risks from the nature of its activities²⁶ and RBS made the decision to close thousands of foreign currency customer accounts for the same reason.²⁷

These changes left Barclays as the principal provider of such accounts and when it moved to close them, the impact was going to be so considerable, litigation ensued.

²¹ Carl Levin and Tom Coburn, 'U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History', Permanent Subcommittee on Investigations, 43.

²² *U.S. v. HSBC Bank USA NA*, 12-cr-00763, U.S. District Court, Eastern District of New York (Brooklyn) <<http://www.mainjustice.com/wp-admin/documents-databases/127-1-HSBC-7.01-Order.pdf>>.

²³ Isabella Steger, 'Tallying Up US Regulators' Money Laundering Fines', *Wall Street Journal, Deal Journal*, (15 August 2012) <<http://blogs.wsj.com/deals/2012/08/15/tallying-up-u-s-regulators-money-laundering-fines/>>.

²⁴ Thomas Fox, 'The HSBC AML Settlement, 'Lessons Learned for the AML Compliance Practitioner' *World Compliance*, (2012), <http://www.worldcompliance.com/Libraries/WhitePapers/The_HSBC_AML_Settlement.sflb.ashx>.

²⁵ Mark Klienman, 'Laundering Fears Prompt RBS Account Closures' Sky News (UK) 12 February 2014 <<http://news.sky.com/story/1210627/laundering-fears-prompt-rbs-account-closures>>..

²⁶ Ibid.

²⁷ Ibid.

Dahabshiil Transfer Services Ltd v Barclays Bank Plc [2013]

In *Dahabshiil Transfer Services Ltd v Barclays Bank Plc* ('Dahabshiil'), the Court considered the competition law issues relating to the closure of an MTO account. Shortly after the raft of regulator fines in 2012, the bank announced it planned to close the accounts of more than 88 percent of its MTO clients, including Dahabshiil.²⁸ Dahabshiil is the largest MTO serving Somalia, and is regulated by the Financial Conduct Authority as a payment institution under the *Payment Services Regulations 2009* (UK). As with the PICs, Somalia's economy relies heavily on remittances.²⁹ In the absence of a formal banking system in Somalia, MTOs provide the safest, cheapest and most reliable method of sending money to the country.³⁰ The closure of Dahabshiil's bank accounts would thus have had drastic implications for Somalia's economy.³¹

Dahabshiil sought an interim injunction to restrain Barclays from terminating their banking services. The Court determined that there was a serious question to be tried and an interim order was made that Barclays should continue to provide services until the trial was concluded.³² Before the case reached trial a settlement was reached where Barclays agreed to keep its banking service available until alternative arrangements were made and so in a practical sense the problem was resolved.³³

The judgment pointed out that a failure to comply with regulatory obligations would be expensive and generate bad publicity for the bank. On the other hand, it was recognised that Dahabshiil had a long and established history in the remittances industry, and that a strong AML

²⁸ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [25].

²⁹ Dahabshiil, *Dahabshiil wins injunction against Barclays* (2014)

<<http://www.dahabshiil.co.uk/news/2013/11/dahabshiil-wins-injunction-against-barclays.html>>.

³⁰ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [27].

³¹ Dahabshiil, *Dahabshiil wins injunction against Barclays* (2014)

<<http://www.dahabshiil.co.uk/news/2013/11/dahabshiil-wins-injunction-against-barclays.html>>.

³² *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [77].

³³ Max Colchester, 'Barclays Settles Dispute With Money Transfer Dahabshiil', *The Wall Street Journal* (New York), 16 April 2014. See also Somaliland Sun, 'Somaliland: Barclays Bank Retains Dahabshil Account', HAN & Geeska Afrika Online (Somalia) 17 April 2014 <<http://somalilandsun.com/index.php/economic/5550-somaliland-barclays-bank-retains-dahabshil-account->>>.

compliance system was in place.³⁴ Despite the many compelling reasons to keep the Dahabshiil account open, the legal question was whether Barclays was abusing its dominant market position in breach of UK competition laws by closing Dahabshiil's account.³⁵

In the UK, a high market share is generally considered as strong evidence of a dominant position.³⁶ As to whether the conduct constituted abuse, the Court held there was authority that a refusal to deal with existing customers is, in appropriate circumstances, at least arguably capable of amounting to a contravention.³⁷ The Court was satisfied that there was a triable issue in relation to abuse of dominance that would need to be examined at trial, and that the evidence favoured the grant of interim relief.³⁸

Although the case never reached trial, the decision demonstrates that under UK competition law, the facts were sufficient to show that there was a serious issue to be tried. This case also highlighted the need to continue the flow of remittances through secure and legitimate channels. Shortly after the decision, the UK government established an Action Group on Cross-Border Remittances to address this issue.³⁹ This group is tracking payments from the UK to Somalia in partnership with MTOs to assist the British government to create a safe remittance corridor for payments into Somalia.⁴⁰

³⁴ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [17].

³⁵ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [2].

³⁶ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [60]-[62] quoting Vivien Rose and David Bailey, *European Law of Competition* (Oxford University Press, 2013).

³⁷ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [47] quoting *Jobserve Limited v Network Multimedia Television Limited* [2001] EWCA Civ 2021.

³⁸ *Dahabshiil Transfer Services Ltd v Barclays Bank plc and Harada Ltd and another v Barclays Bank plc* [2013] EWHC 3379 (Ch) [76].

³⁹ Action Group on Cross Border Remittances, (2014) <<http://www.iamtn.org/international-money-transfers-news/312-guidance>>.

⁴⁰ *Ibid.*

Position under Australian law

The central issue in *Dahabshiil* was whether a refusal to supply banking services could amount to abuse of a dominant market position. Under Australian law it would arguably be difficult for an MTO to achieve similar success, even on an interim basis.

The Australian equivalent of the UK Chapter II prohibition, Section 46 of the *Competition and Consumer Act 2010 (Cth)* ('CCA'), has proven difficult to enforce and has a high threshold required to prove its first two elements.⁴¹ The Chairman of the ACCC, Rod Sims, recently acknowledged that the 'section 46 misuse of market power prohibition is of limited utility in prohibiting anti-competitive conduct by firms with substantial market power'.⁴² A review of competition policy in Australia is currently under way and section 46 is one area that has received attention.⁴³ But the law as it now stands is highly unlikely to offer any relief for MTOs losing their bank accounts.

Working Together to Achieve Common Goals

The recent closures of MTO accounts suggest that regulation is creating a banking system that is becoming unwilling to bear the costs and compliance risk of the remittance sector. It is in the best interest of regulators, the remittance industry, Australian banks and both the Australian and PICs governments to consider solutions.

Refining the application of the FATF recommendations

Regulators and the FATF are aware of the conflicting challenge of aligning financial inclusion with meeting financial integrity objectives, and have offered recommendations in an attempt to address this. In 2013, the FATF produced a guidance paper on AML and CTF measures and financial inclusion.⁴⁴ The guidance paper attempts to ensure that AML/CTF controls do not

⁴¹ James Laman and Marina Nehme, 'Section 46 of the Competition and Consumer Act: The need for change', (2014) 22 *Australian Journal of Competition and Consumer Law* 112.

⁴² ACCC, *Reinvigorating Australia's competition policy - ACCC submission to Harper Review*, (25 June 2014) <<http://www.accc.gov.au/media-release/reinvigorating-australias-competition-policy-accc-submission-to-harper-review>>.

⁴³ Competition Policy Review (2014) <<http://competitionpolicyreview.gov.au/issues-paper/>>.

⁴⁴ FATF, 'Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion' (FATF Guidance).

encourage financial exclusion due to a risk based assessment.⁴⁵ The paper encourages partnerships between different service providers and suggests delivering financial products that promote financial inclusion. It also highlights the importance of promoting the exchange of experiences at an international level, to identify best practices.⁴⁶

Financial Inclusive Products

In recent years, the greatest challenge has been reducing the cost of remittances. In 2007, the Reserve Bank of New Zealand established the cross-government New Zealand–Pacific Remittance Project to address this. The project found one solution to achieve low-cost remittances was to use electronic cards, and the traditional ATM/EFTPOS networks to remit funds across borders and withdraw funds. One barrier identified was the New Zealand AML and CTF regulation. The New Zealand government passed the *Financial Transactions Reporting (Interpretations) Regulation* in 2008 to provide exceptions for this method of remittances. This amendment is outlined under section 10 of the *AML/CTF Act (NZ)*.⁴⁷ Westpac and VISA took advantage of this regulatory change in 2008 and together created a compliant remittance card. This product issued a New Zealand remitter with a special remittance card account, while a second card was issued remotely to the PIC resident, allowing money to be withdrawn in the PICs through the ATM and EFTPOS networks. Westpac claims that the initiative has saved customers ‘well beyond half a million dollars’ in fees and charges.⁴⁸

This remittance card product is a great example of collaboration between the banking sector and the government to promote financial inclusion. In 2012, ANZ drew on the experiences of Westpac in New Zealand and launched a similar card in Australia with the capability to send money to Fiji, Papua New Guinea, Samoa or Tonga.⁴⁹ The card has an initial fee of \$24.95,⁵⁰

⁴⁵ Louise Malady, Ross Buckley and Douglas Arner, ‘*Developing and Implementing AML/CFT Measures using a Risk-Based Approach for New Payments Products and Services*’ (June 2014) Centre for International Finance and Regulation.

⁴⁶ FATF, ‘Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion’ (FATF Guidance).

⁴⁷ Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations (NZ) 2011/ SR 2011/223.

⁴⁸ Radio Australia, ‘ANZ launches Pacific remittance card, Radio Australia (March 2012), <<http://www.radioaustralia.net.au/international/2012-03-06/420952>>.

⁴⁹ Pacific Islands Forum Secretariat, Session 4 Paper, Regional Remittance Issues (July 2011)

<http://www.forumsec.org/resources/uploads/attachments/documents/2011FEMM_FEMS.06.pdf> and Send Money

after which ongoing transaction fees become very competitive when compared with MTOs.⁵¹ For individuals needing ongoing regular transfers, the ANZ card could become an attractive long-term alternative to using an MTO. However, the card still requires fund recipients to visit a bank branch with identification, which creates a problem for those without access to a branch in island nations.

Despite such challenges, financial product innovation is a positive step towards financial inclusion. The partial success of the Westpac and ANZ remittance cards demonstrate the benefits of involving the regulator early in the process of designing products and services.⁵²

Banking Regulation

Regulation might also be used to encourage banks to participate in socially responsible behaviour. In Australia, banks are profit-seeking institutions constrained only by law and regulatory compliance. There are no Australian laws or regulations that require banks to consider foreign policy issues or Corporate Social Responsibility ('CSR').

Australian banks have the privilege to be able to receive consumer deposits as authorised deposit-taking institution ('ADI') licence holders and play a central role in the Australian financial system. The Australian government recognised the importance of a stable financial system as a public good when they issued a government guarantee during the global financial crisis of 2008. For these reasons, there is a strong argument that Australia should introduce mandated CSR for banks.⁵³

Pacific, (April 2014) <<http://www.sendmoneypacific.org/compare-cost-send-money-pacific-fiji-kiribati-papua-new-guinea-samoa-solomon-islands-tonga-tuvalu-vanuatu/operator/details/11/bank-of-china-australia.html>>.

⁵⁰ ANZ, Pacific Transfer Card, (July 2014) <<https://your.prepaidcardsupport.net/anzportal/pacific.do>>.

⁵¹ Ibid, and Send Money Pacific, (April 2014) <<http://www.sendmoneypacific.org/compare-cost-send-money-pacific-fiji-kiribati-papua-new-guinea-samoa-solomon-islands-tonga-tuvalu-vanuatu/list/3/australia-to-papua-new-guinea-200.html>>.

⁵² Radio Australia, 'ANZ launches Pacific remittance card, Radio Australia (March 2012), <<http://www.radioaustralia.net.au/international/2012-03-06/420952>>.

⁵³ Therese Wilson, 'Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and meeting the credit needs of low income Australians' (2012) 35(2) *University of New South Wales Law Journal*, 501-521.

Overseas, the Reserve Bank of India has made notable progress in relation to entrenching CSR among its banks. In January 2010, the Reserve Bank of India requested all banks to submit a financial inclusion plan that included providing branches to unbanked villages, simplified accounts, and other products designed for financially excluded segments. Banks applying for a banking licence are required to open at least 25 per cent of their branches in unbanked areas.⁵⁴ Since these measures were introduced, there has been clear progress in financial inclusion in India. The Reserve Bank of India has also planned to provide bank accounts linked to the Unique Identification Authority of India, an agency that operates a database of Indian residents containing biometric and other data. In the future, transactions will operate through fingerprint identification, and will cater for unbanked, illiterate and rural people. Importantly, the link to the Identification Authority would satisfy the FATF recommendations in relation to customer identification requirements.⁵⁵ If this program is successful, there will be enormous implications for financial inclusion in India, and the financial lives of hundreds of millions of people.⁵⁶

There is similar potential for regulators to drive change in Australia. The authority to receive consumer deposits as an authorised ADI is a privilege, and there is a strong argument that this should come with formal responsibilities to promote financial inclusion in Australia and our region.⁵⁷

Conclusion

This submission has sought to analyse the impact of regulation on financial inclusion. The perceived compliance risk from AML/CTF regulation has led to banks becoming reluctant to service MTOs, threatening the provision of a valuable service to a vulnerable population. This trend of account closures is working against Australia's foreign policy goals and the promotion

⁵⁴ Dr. (Smt) Deepali Pant Joshi, Speech on Financial Inclusion delivered by, Executive Director, Reserve Bank of India (Speech delivered at the Vth Dun and Bradstreet Conclave on Financial Inclusion, Kolkata, 28 October 2013) <http://www.rbi.org.in/scripts/BS_SpeechesView.aspx?Id=853>.

⁵⁵ Unique Identification Authority of India, *Frequently Asked Questions* (2014) <<http://uidai.gov.in/faq.html?catid=33>>.

⁵⁶ Tilman Ehrbeck, 'Could India's Unique ID be a Financial Inclusion Game-Changer?' (5 February 2014) Consultative Group to Assist the Poor (CGAP) <<http://www.cgap.org/blog/could-india%E2%80%99s-unique-id-be-financial-inclusion-game-changer>>.

⁵⁷ Wilson, 'Consumer Credit Regulation and Rights-Based Social Justice: Addressing Financial Exclusion and meeting the credit needs of low income Australians', above n 53.

of financial inclusion. Timely attention from the MTO industry, banks, government and regulatory bodies is required and we have made several suggestions:

MTOs

An industry body that represents the collective needs of the MTO industry would greatly benefit MTOs and should be established. This body would allow data collection that would provide a better understanding of the trends and issues.

Government Action

A body focused on solving the issue of remittances to the Pacific region should also be established. This would be similar to the Action Group on Cross-Border Remittances established by the UK government. Australian competition law is currently unlikely to offer even the interim injunction that was available to Dahabshiil in the UK, meaning the need for prompt government attention is even greater here.

Regulation

The privilege of being an ADI should come with responsibilities. While the challenges it faces differ from those of Australia and the PICs, India provides an excellent example of how regulation can be used to encourage banks to work towards pursuing the national interest.

A Collaborative Approach

Financial products should be created in collaboration with regulators, banks and input from MTOs, to develop solutions that meet the needs of the customers, while complying with financial regulation and Australia's competition laws. Although the remittance card product has faced some challenges, continued collaboration and product innovation is likely to feature in any resolution of the remittance problem in Australia.

Stringent AML/CTF legislation has made achieving the goal of financial inclusion more difficult. However, improving the regulation of financial activities and promoting financial inclusion should not be seen as competing goals. Instead, all stakeholders need to work together

to ensure the financial system is accessible to all sections of society, whilst restricting access to terrorist financing and money laundering.

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