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**Submission: Combating the Financing of People Smuggling
and Other Measures Bill 2011:**

Liberty Victoria is one of Australia's leading human rights and civil liberties organizations and is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on Liberty's activities can be found at www.libertyvictoria.org.au

In 2010 Liberty Victoria made a submission to the Criminal Justice Division of the Attorney-General's Department regarding the exposure draft: Combating the Financing of People Smuggling and Other Measures Bill 2010. Liberty Victoria has observed that no amendments have been made to the 2010 exposure draft prior to it being referred to the Senate Legal and Constitutional Committee for inquiry and report in 2011.

As such, Liberty Victoria wishes to reiterate its original position, and looks forward to further refinement of this Bill. The original submission made by Liberty Victoria to the exposure draft follows.

Criminal Justice Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

**Submission: Combating the Financing of People Smuggling
and Other Measures Bill 2010:
Exposure Draft**

Prior to the exposure draft of the current Bill, Liberty was provided with a copy of the Privacy Impact Assessment (PIA) Consultation Document dated July 2009 which considered the impact of using credit reporting entities for e-verification purposes. Liberty provided written comments along with several other civil liberties and consumer rights organizations. The following comments canvass both the remittance and e-verification aspects of the Bill.

The first issue raised by the Bill is its uninformative title. The proposed legislative reforms are concerned with the broader issue of improper use of remittances and identity e-verification, relevant to all offences covered by the AML-CTF Act (which itself has a misleading title, given the breadth of offences now covered and the uses to which AUSTRAC information is put). People smuggling is an illegal activity that may or may not involve improper use of Australia's financial system. The current title is misleading and should be amended to more properly reflect the intent and content of the Bill (extension of Australia's financial regulation).

Remittance Providers

The proposed amendments broadly reflect the need to regulate remittance providers who have been identified as a source of improper and illegal transfer of funds in and out of Australia, and the objective of relieving the compliance burden and cost of the regime on the remittance sector without undermining its objectives. Generally the proposed provisions appear well drafted, with the following provisos.

Under the Bill, the AUSTRAC CEO will be given broad powers to deregister (per cl.75G(1)) or choose not to register a remittance provider (per cl.75C(4)) where satisfied that they pose a significant risk of money laundering, financing terrorism or people smuggling. While these are necessary powers, 'significant risk' should be defined.

As is increasingly common in such legislation, a failure by the regulator to advise those being regulated of a decision does not invalidate the decision. In contrast, the failure of a remittance provider to comply with a notice requirement may give rise to civil and criminal penalties. Principles of good government dictate parity of regulation and further, that penalties should only be imposed where there has been an intentional or at least negligent contravention of the legislation.

Identity e-verification

Liberty is pleased to note that particular issues raised in response to the PIA have been addressed in the draft legislation. Specifically, reporting entities must obtain an individual's express consent before disclosing his or her personal information to a credit reporting agency. Following the PIA, concern was expressed that where an individual was not given any alternatives, 'consent' became a meaningless term. Clause 35A(2)(c) now requires that the reporting entity must provide an individual with an alternative means of verifying their identity. Moreover, personal information obtained through identity e-verification must be stored separately (for 7 years) with Credit Reporting Agencies (CRAs) prohibited from including verification information in credit information files (Clauses 35D, E & F) and only used for that purpose or as otherwise authorized by law, with unauthorized access, use or disclosure made an offence (Clause 35H, J & K). These controls are welcome, but concern remains that there will be further legislated function creep (as the use of CRA held personal information for identity e-verification is).

Liberty is pleased to note clause 35L which states that a breach of the requirements of the Division constitute an interference with privacy under section 13 and 13A of the *Privacy Act 1988*, although the value of that safeguard will be undermined by continued weak enforcement of that Act. Unfortunately as there is no requirement under the *Privacy Act 1988* (or other legislation) to notify individuals of a privacy breach, in most instances, it is envisaged that consumers will remain unaware of any improper uses of their personal information. In lieu of a significant breach notification requirement under the *Privacy Act 1988*, clauses 35L should require an offending reporting entity or credit reporting agency to notify the individual or individuals affected in the case of a significant or serious breach.

Financial Impact

Finally Liberty notes that the financial impact has been assessed as none and the potential net benefit as \$17-18 million dollars (as stated in the EM). As stated in the EM, this fails to assess the cost of implementing the support systems required or the ongoing cost involved in operating the e-verification system. Moreover, presumably the supervision of remittance providers will incur additional cost to either remittance providers and/or AUSTRAC. Thus the potential net benefit is likely to be less than stated in the EM and the financial impact greater than zero.

Liberty appreciates the opportunity to comment on the draft Bill and looks forward to its further refinement. Should you wish to discuss any aspect of the matters raised please contact our office (03) 9670 6422.

Georgia King-Siem

Vice-President

Liberty Victoria