



Australian Government

AUSTRAC

Select Committee on the Perth Mint and Commonwealth regulatory compliance

AUSTRAC submission

July 2023

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Outline of submission

The Australian Transaction Reports and Analysis Centre (AUSTRAC) welcomes the opportunity to make a submission to the Select Committee on the Perth Mint and Commonwealth regulatory compliance.

AUSTRAC's submission addresses the inquiry's terms of reference to the extent that they relate to AUSTRAC's role, for the Committee's consideration. The submission is in two parts.

- Part 1 provides an overview of AUSTRAC's roles as an anti-money laundering and counter-terrorism financing (AML/CTF) regulator and financial intelligence unit (FIU) as they pertain to the areas of interest to the Committee. This includes:
 - obligations for the bullion sector under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)
 - risks faced by the bullion sector
 - AUSTRAC's intelligence efforts
 - AUSTRAC's approach to regulation.
- Part 2 outlines AUSTRAC's supervisory engagement with Gold Corporation (trading as the Perth Mint).

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Part 1: Overview

About AUSTRAC

AUSTRAC is Australia's FIU and AML/CTF regulator. As Australia's FIU, AUSTRAC provides financial transaction data and actionable financial intelligence to law enforcement, national security, human services and revenue agencies (AUSTRAC's partner agencies), as well as international counterparts. Partner agencies use this information to assist them to detect, prevent and disrupt money laundering and terrorism financing (ML/TF) and other serious crime.

As a regulator, AUSTRAC oversees the compliance of more than 17,000 Australian businesses with the AML/CTF Act and associated Rules. AUSTRAC's regulated population ('reporting entities') includes a broad range of businesses from across the financial services, gambling, bullion, remittance and digital currency exchange sectors. These businesses range from major banks and casinos, to single-operator businesses, but all must comply with applicable obligations in the AML/CTF Act and implement effective AML/CTF systems and controls to identify and mitigate ML/TF risk.

AUSTRAC regulation of the bullion sector

Australia's AML/CTF regime adopts a risk- and principles-based approach to regulation, recognising that regulated businesses are best placed to identify, mitigate and manage their ML/TF risk.

Businesses that provide a 'designated service' listed in section 6 of the AML/CTF Act are reporting entities and have certain regulatory obligations. The designated services relevant to the bullion sector are in table 2, subsection 6(3) of the AML/CTF Act. Those services relate to the buying and selling of bullion.

Like all reporting entities, entities providing bullion services must:

- enrol with AUSTRAC
- establish and maintain an AML/CTF program to identify, mitigate and manage the ML/TF risks the business faces
- conduct initial and ongoing customer due diligence
- report certain transactions to AUSTRAC, including suspicious matters and threshold transactions, and submit compliance reports
- keep records.

For purchases and sales of bullion valued at less than \$5,000, bullion dealers are not required to carry out applicable customer identification procedures (ACIP).

This \$5,000 threshold has regard to, and is well under, the threshold for customer due diligence set by the Financial Action Task Force (FATF—Recommendation 22), the global standard setter for AML/CTF measures. FATF requires dealers in precious metals to be regulated for AML/CTF purposes when they engage in any cash transaction with a customer equal to or above USD/EUR 15,000.

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Following implementation of the AML/CTF Act in 2006, a consultation process was undertaken in relation to making AML/CTF Rules. The threshold of \$5,000 in relation to bullion, considered risks known at the time about buying and selling of bullion, and also considered implications of changing commodity prices.

However, Chapter 33 of the AML/CTF Rules also stipulates that if, according to an entity's risk-based systems and controls, customer identity information is required for ongoing customer due diligence purposes, then ACIP must be carried out regardless of the transaction amount.

Risks faced by the bullion sector

AUSTRAC conducts an ongoing program of risk assessments to identify and assess the ML/TF risks for Australia. These risk assessments assist reporting entities and partner agencies to develop and prioritise policy and operational responses to combat ML/TF.

Unclassified versions of risk assessments are made publicly available on the AUSTRAC website to support reporting entities to comply with their obligations, better understand risks they may face, enhance the quality of suspicious matter reporting, and implement effective strategies and controls to mitigate and minimise those risks.

AUSTRAC generates other, classified, assessments of risk and threat that are shared with partner agencies and in some limited instances, with industry partners.

AUSTRAC risk assessment of Australia's bullion sector

AUSTRAC's ML/TF risk assessment of Australia's bullion sector was developed during 2021 and 2022, involving consultations and engagement with government partners and 15 bullion sector reporting entities, including Perth Mint.

AUSTRAC assessed the overall ML/TF risk associated with the bullion sector as **medium**. This rating is based on assessments of the criminal threat environment, inherent vulnerabilities in the sector and consequences associated with the criminal threat.

AUSTRAC assessed the threat of ML/TF facing Australia's bullion sector as **low**, with the primary threats facing the bullion sector being tax evasion, money laundering, fraud and scams.

Criminals may buy and sell bullion to launder money as it has a high intrinsic and stable value, can be converted and melted down into various forms, and enables anonymity when transferring value. This makes it easy to conceal and move across domestic or international borders, and convert back to legitimate funds.

Terrorism financing in the sector appears to be very limited, with very little identification of suspected terrorist actors linked to bullion within intelligence reporting.

AUSTRAC assessed the bullion sector faces a **medium level** of inherent ML/TF vulnerability.

Factors that expose the sector to ML/TF vulnerabilities include:

- high exposure to cash, with many bullion dealers operating cash-intensive business models, which present opportunities for money laundering
- the ability to store and move funds

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- bullion dealers who also operate as bullion refiners, increasing the foreign jurisdiction risk, and risk associated with refining scrap precious metal
- the delivery channels used by bullion dealers including face-to-face, online, phone and third-party arrangements.

AUSTRAC's intelligence efforts

Financial intelligence is a critical piece of the national security architecture, preserving the integrity of Australia's financial system. It has become increasingly vital in securing law enforcement outcomes in the face of new and emerging threats.

As Australia's FIU, AUSTRAC is the custodian of the financial data received from reporting entities. AUSTRAC collects information to develop tailored and targeted financial intelligence. AUSTRAC safeguards, analyses and provides this data to law enforcement and partner agencies, in raw form and as actionable intelligence.

The primary focus of AUSTRAC's intelligence work is to identify financial transactions that may involve money laundering, terrorism financing, tax evasion or other serious criminal activity. AUSTRAC produces intelligence reports to understand emerging and current threats, and provides tactical intelligence to directly support law enforcement investigations and intelligence activities.

AUSTRAC also assesses risks across sectors and identifies financial crime methods used by criminals, and shares this information with government and industry partners.

Commonwealth, state and territory engagement

AUSTRAC financial intelligence makes a significant contribution to the national intelligence picture and investigations by government partners. AUSTRAC is an active partner in 14 multiagency, multijurisdictional task forces. AUSTRAC intelligence analysts and data scientists collaborate with partners through task forces to generate cross-agency intelligence.

AUSTRAC also leads regional AML/CTF initiatives in the Pacific and South-East Asia regions, to encourage information sharing, operational collaboration, research, innovation and capacity building, to address ML/TF, serious financial crime and vulnerabilities.

More generally, AUSTRAC analysts support major intelligence and investigation activities of Commonwealth, state and territory law enforcement, criminal intelligence and national security agencies. AUSTRAC also undertakes monitoring and proactive support activities, in response to various reporting requirements and requests for assistance domestically and internationally.

In 2022-23 AUSTRAC had **5,171 external users** of our data in **39 partner agencies**, enabling more collaboration between AUSTRAC and partners on financial analysis and delivery of operational outcomes. Approved partner agencies have direct online access to our database, which contains more than 1.5 billion transaction reports. Partner access to AUSTRAC information is available 24/7 in near real-time, which assists enquiries and investigations, and AUSTRAC's system provides modern tools for extraction and analysis. In 2022-23, users accessed AUSTRAC's data via AUSTRAC's Analyst Work Bench **10,043,569** times.

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AUSTRAC's approach to regulation

AUSTRAC uses our knowledge of reporting entities, industry trends, partner engagements and ML/TF risks to direct our regulatory efforts towards entities at greater risk of exposure. Our regulatory work and engagement with reporting entities improves the volume and value of financial intelligence provided to us, and subsequently disseminated to our partner agencies.

AUSTRAC considers a range of internal and external factors to determine the best approach to ensuring compliance with the AML/CTF Act and AML/CTF Rules. These include an entity's transaction and suspicious matter reporting, compliance history, and information from partner and law enforcement agencies about an entity's customers and the broader threat environment in which the entity operates. For further information, refer to [AUSTRAC's approach to regulation](#).

Regulatory interactions with entities can vary, based on our assessment of their ML/TF risk exposure and how the sector is meeting obligations and managing their ML/TF risks.

AUSTRAC's regulatory activities generally focus on working with reporting entities to increase their resilience to ML/TF risk and improve the quality of their reporting under the AML/CTF Act. AUSTRAC aims to achieve this by improving entities' understanding and capability in the area of ML/TF risk management and supporting their voluntary compliance with the AML/CTF Act.

However, it is each reporting entity's responsibility to comply with the AML/CTF Act.

The consequences of poor AML/CTF systems and controls can be very serious, and AUSTRAC may take enforcement action against a reporting entity for serious and/or systemic breaches of the AML/CTF Act.

In instances where reporting entities fail to meet their obligations, well-targeted and proportionate enforcement action sends a strong general deterrence signal, to encourage all reporting entities to devote sufficient resources to enhancing the integrity of the financial system.

AUSTRAC's supervision activities

AUSTRAC routinely undertakes proactive and reactive supervision activities that involve understanding and assessing the compliance of reporting entities with their obligations under the AML/CTF Act and Rules. Supervision activities can involve compliance assessment reviews or thematic reviews of reporting entities, either desk-based or onsite.

Where AUSTRAC is concerned about possible non-compliance, we consider what further action is required. This includes making findings of possible non-compliance with provisions of the AML/CTF Act and Rules, and requiring an entity to remediate areas of non-compliance. AUSTRAC is currently formally monitoring various entities, to ensure they remediate the issues associated with findings of non-compliance stemming from our compliance assessment activities. Where the AUSTRAC CEO has reasonable grounds to suspect that a reporting entity has contravened, is contravening, or is proposing to contravene the provisions of the AML/CTF Act, the CEO may require the reporting entity to appoint an external auditor.

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Where deficiencies and possible non-compliance are significant and systemic, we may use other powers to achieve compliance. In such circumstances, supervision concerns are referred for further investigation by a dedicated Enforcement team.

AUSTRAC's regulatory capabilities have matured and our expectations of compliance from industry have increased since the commencement of the AML/CTF Act in 2006. Serious or systemic failure of reporting entities to comply with the AML/CTF Act and Rules risks serious enforcement action, as evident through record civil penalties and a range of enforceable undertakings. In addition, the regulatory landscape has changed over time, which has resulted in the need for reporting entities to also evolve their AML/CTF programs to ensure they remain compliant with changes to legislation and changes in the risks they face.

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Part 2: AUSTRAC's supervisory engagement with Gold Corporation (trading as Perth Mint)

Perth Mint

Gold Corporation, trading as Perth Mint, is a Western Australian Government-owned refiner providing gold, silver and platinum products and services to markets worldwide.

Gold Corporation offers the following designated services (section 6 of the AML/CTF Act):

- bullion services (items 1 and 2 of table 2—Bullion)
- remittance services (item 32 of table 1—Financial services)
- custodial or deposit services (item 46 of table 1—Financial services).

Gold Corporation provides a range of other operations, including refining and manufacturing, which are outside AUSTRAC's remit and Gold Corporation's AML/CTF obligations.

AUSTRAC's current compliance review of Gold Corporation was initiated by AUSTRAC in January 2021. Due to the COVID-19 pandemic lockdowns, a 'virtual' onsite assessment took place, to consider the entity's independent review and 'know your customer' procedures. The assessment involved several virtual meetings and a review of Gold Corporation's AML/CTF program, processes, procedures, training documents, emails and various meeting minutes. AUSTRAC also considered Gold Corporation's independent auditor's report from August 2020 that identified concerns with the ability of the entity to adequately meet its AML/CTF reporting obligations.

In December 2021, based on the information reviewed, it was determined that the compliance review of Gold Corporation would be continued, covering a wider range of provisions in the AML/CTF Act and AML/CTF Rules. In the expanded assessment, AUSTRAC had regard to public information outlining customers of Gold Corporation, and intelligence from our law enforcement partners.

On 16 June 2022 AUSTRAC met with Gold Corporation at its offices to discuss our findings, at which time AUSTRAC indicated we were considering appointing an external auditor. Gold Corporation was given the opportunity to respond to our concerns.

Gold Corporation responded to AUSTRAC on 14 July 2022 indicating its intention to voluntarily appoint an external auditor to initiate a remediation program. AUSTRAC considered Gold Corporation's submission; however, determined it was appropriate to issue a formal notice to appoint an external auditor.

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Appointment of the external auditor

On 30 August 2022 AUSTRAC ordered the appointment of an external auditor to Gold Corporation, to assess its compliance with its obligations under section 162 of the AML/CTF Act.

AUSTRAC considered the above action necessary, given sufficient concerns that Gold Corporation may have contravened, or may be contravening, provisions of the AML/CTF Act.

On 15 November 2022 following AUSTRAC's order, Gold Corporation appointed an external auditor, who must report to AUSTRAC within 180 days of being appointed and will examine Gold Corporation's compliance with:

- the requirement to have an AML/CTF program and comply with Part A of that program
- the requirement to have an ongoing customer due diligence program
- suspicious matter reporting obligations
- maintenance of enrolment details within required time frames.

The auditor's appointment is a commercial arrangement between the entity and the auditor, and forms part of AUSTRAC's ongoing compliance review. Given the independence and impartiality of the external auditor as part of the compliance review, and the potential for the report to help inform whether or not AUSTRAC should consider further action, AUSTRAC has maintained a practice to provide no information publicly about the identity of the auditor.

On 3 March 2023 the auditor requested a two-month extension to provide AUSTRAC with the final report, but this was denied. On 1 May 2023 the auditor contacted AUSTRAC to advise a complete report could not be submitted by 15 May 2023 (due date).

The auditor explained additional time was required, having regard to matters that arose during the conduct of the audit.

On 4 May 2023 AUSTRAC agreed to receive an initial report by the original due date, with a final report on 21 July 2023. On 16 May 2023 the initial external audit report was submitted to AUSTRAC.

The external auditor submitted the final audit report to AUSTRAC on 21 July 2023.

AUSTRAC will consider the report to determine the nature of further regulatory engagement.

Safeguarding AUSTRAC information and regulatory processes

As Australia's FIU, AUSTRAC provides the highest level of protection and security to information and intelligence received from domestic and foreign partners involved in the prevention, detection and disruption of money laundering, terrorism financing and other serious crime.

The AML/CTF Act also enshrines protections in relation to the access and use of AUSTRAC information.

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All information and reports received from reporting entities during the conduct of AUSTRAC's regulatory engagements fall within the definition of 'AUSTRAC information'. Reporting entities are frequently required to provide:

- details of the systems, processes and controls that are in operation within a reporting entity to identify, manage and mitigate risk
- sensitive commercial information and correspondence relating to the entity's current and future operations
- independent reports conducted by the reporting entity or authorised parties providing services to the reporting entity.

There are particular sensitivities in relation to this compliance information, given any unintended or deliberate public release would increase the exposure of the particular reporting entity, and the wider financial system, to criminal abuse. Retaining confidentiality of this information is paramount to AUSTRAC, to avoid providing additional information and insight to criminals to identify and exploit a reporting entity's systems and processes.

This is important in circumstances where taking effective action to uplift systems and processes may take a reporting entity an extended period to complete, or where no matter the effort, a particular product or channel may always pose a vulnerability.

Like most enforcement agencies, AUSTRAC must take care to protect the integrity of our investigative and enforcement processes. In AUSTRAC's view, this requires maintaining confidentiality over our investigations, whether they are at the supervisory or enforcement stage.

Firstly, this is because discussing the scope and details of ongoing investigations risks exposing vulnerabilities in an entity's compliance that could be exploited by criminals. Secondly, an impartial, independent investigation requires an open mind. Investigators gather and consider evidence obtained during an investigation and consider whether certain lines of inquiry remain valid and warranted. Through that iterative and deductive process, it is common for an investigator's understanding of the evidence to change. This is why it is commonly considered important for investigations—whether criminal or regulatory—to be conducted confidentially wherever possible, to ensure that lines of enquiry can be pursued with impartiality, objectivity and based on evidence.

Given that context, AUSTRAC providing commentary on the changing scope and direction of investigations risks:

- exposing the regulated entity's existing vulnerabilities to criminals
- providing a misleading impression of a regulated entity's state of compliance with the AML/CTF Act
- undermining AUSTRAC's impartiality and future capacity to effectively supervise, investigate and enforce compliance the AML/CTF Act.