



Australian Government
Attorney-General's Department

Modernising Australia's anti-money laundering and counter-terrorism financing regime

Consultation paper on reforms to simplify and modernise the regime and address risks in certain professions

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Overview

On 20 April 2023 the Attorney-General, the Hon Mark Dreyfus KC MP, announced that the Attorney-General's Department (the Department) would commence consultation on proposed reforms to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

The Government is committed to protecting the integrity of the Australian financial system and improving Australia's AML/CTF regime to ensure it is fit-for-purpose, responds to the evolving threat environment, and meets international standards set by the Financial Action Task Force, the global financial crime watchdog and standard-setter.

The Australian Institute of Criminology estimates that serious and organised crime cost the Australian community up to AUD60.1 billion in 2020-21, with illicit financing at the centre of most crime types.¹ It directly impacts the safety and wellbeing of Australian communities, and exploits and distorts legitimate markets and economic activity. The AML/CTF regime is a central part of Australia's efforts to prevent criminals from enjoying the profits of their illegal activity and stopping funds from falling into the hands of terrorist organisations.

No legitimate business wants to wittingly, or unwittingly, assist the laundering of money that aids the commissioning of serious crimes including terrorism, child abuse and the illicit drug trade. The purpose of the AML/CTF regime is to assist businesses to identify these risks in the course of providing their services. In doing so, the AML/CTF regime sets out a range of measures to protect regulated entities that are at the front line in preventing serious financial crimes. These obligations build resilience against misuse by criminals within regulated sectors and require the reporting of certain transactions to Government for use as financial intelligence to combat money laundering, terrorism financing and other serious financial crime. These reports are vital to understanding and stopping the flow of illicit funds.

Part 1 of this Consultation Paper proposes reforms that will **simplify and modernise the operation of the regime**. The need to streamline obligations has long been called for by industry and was recommended by the 2016 *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the 2016 Statutory Review). The 2016 Statutory Review found that the regime is overly complex and impedes the ability of regulated entities to understand and comply with their AML/CTF obligations. In particular, the scale, structure and density of the Rules was considered to be a significant issue, rendering them hard to follow and largely inaccessible, particularly for small business. The feedback from industry indicated that there is a pressing need to simplify the Act and Rules, and streamline AML/CTF obligations.

Part 2 of this Consultation Paper proposes extending the AML/CTF regime to certain high-risk professions, including lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones (also known as **tranche-two entities**). Out of more than 200 jurisdictions, Australia is now one of only five, alongside China, Haiti, Madagascar and the United States, that do not regulate tranche-two entities.²

¹ Russell Smith and Amelia Hickman, 'Estimating the costs of serious and organised crime in Australia, 2020-2021', *Australian Institute of Criminology* (Report, 4 April 2022) <https://www.aic.gov.au/publications/sr/sr38>.

² Financial Action Task Force, 'Consolidate table of assessment ratings', *Consolidated assessment ratings* (Web Page, 3 April 2023) <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html>.

Consultation with industry

The AML/CTF regime represents a significant partnership between Government and industry.

The Government is committed to consulting with industry in the consideration of the reforms proposed in this paper. Consultation will occur throughout 2023. This paper will be the first step in the development of reforms to the regime. A second consultation paper, informed by industry submissions on this paper, will be released later this year. The Department will also conduct roundtable discussions with key stakeholders. Engagement with industry will be undertaken on sectoral-specific issues as required.



Making a submission

The Department invites submissions on the proposals discussed in this consultation paper. While questions are included in the paper to guide consultations these are not intended to limit responses.

Submissions and feedback can be submitted on the Department's [Consultation hub](#). The closing date for submissions is 16 June 2023.

All submissions and the names of persons or organisations that make a submission will be treated as public, and may be published on the Department's Consultation hub, unless you request that your submission be kept confidential, or if we consider (for any reason) that it should not be made public. Any submission provided on a confidential basis remains subject to the *Freedom of Information Act 1982*.

The Department retains discretion about publishing and sharing submissions. Submissions provided without a confidentiality request may be published on the Department's Consultation hub. We may also redact parts of published submissions if appropriate.

The Department is bound by the Australian Privacy Principles (APPs) in the *Privacy Act 1988*. The APPs regulate how we collect, use, store and disclose personal information, and how you may seek access to, or correction of, the personal information that we hold about you. Refer to our [privacy policy](#) for more information.

Part 1: Simplifying and modernising the regime

In line with the 2016 Statutory Review, the Department proposes to reform the Act to more clearly set out the globally recognised core AML/CTF measures and reinforce the risk-based approach to regulation. This will support regulated entities to prevent and detect financial crime by shifting the approach away from ‘tick a box’ compliance towards effective measures to identify, mitigate and manage money-laundering and terrorism financing risks.

Clarifying the obligations in the Act will reduce the burden on businesses of interpreting complex provisions. Similarly, changes to the Rules will help regulated entities to understand the outcomes they are expected to achieve. The Rules will be supported by guidance materials targeted at assisting regulated entities to implement effective AML/CTF measures within their businesses.

The 2016 Statutory Review identified two key obligations for priority reform:

- the requirement to adopt and maintain an AML/CTF program to identify, mitigate and manage money laundering and terrorism financing risks, and
- the requirements around customer due diligence.

In addition to these matters, the Department proposes reforms to modernise aspects of the regime to ensure provisions are fit for purpose, consistent with international standards and reduce the operational burden for industry and AUSTRAC. This includes:

- lowering the reporting thresholds for the gambling sector
- amending the tipping-off offence
- extending the regulation of digital currency exchanges
- modernising the travel rule
- providing a statutory exemption for assisting an investigation of a serious offence
- amending revised obligations during COVID-19 pandemic, and
- repealing the *Financial Transaction Report Act 1988*.

The proposals contained in Part 1 are a starting point for reforms that simplify and modernise the regime. The Department is also considering matters including streamlining international funds transfer instruction reporting requirements and the definition of bearer negotiable instruments. The Department welcomes industry advice on other improvements to the regime. Industry feedback on these proposals will assist the development of a further consultation paper for release later this year.

AML/CTF programs

Current obligations

Section 81 of the Act requires regulated entities to develop and maintain a written AML/CTF program for their business before providing a designated service to a customer. An AML/CTF program is a document that sets out the risk a business may face and how that risk can be managed, and its approach to meeting customer due diligence obligations. There are three types of AML/CTF programs:

- a standard program that applies to one particular regulated entity
- a joint program that applies to regulated entities within a designated business group, and
- a 'special program' that applies to a particular regulated entity that only provides services in its capacity as a holder of an Australian Financial Services Licence, such as financial planners.³

The Act provides that AML/CTF programs should comprise two parts (Part A and Part B), other than special programs which are only required to include Part B.

Part A

Part A of an AML/CTF program must have the primary purpose of identifying, mitigating and managing money laundering and terrorism financing risks. The Rules set out how Part A should be adopted and the content that must be covered, such as:

- board and senior management approval and ongoing oversight of Part A of the AML/CTF program
- appointing an AML/CTF compliance officer at the management level
- an employee due diligence program to identify and screen any employees who may put a regulated entity's business or organisation at risk of money laundering and terrorism financing
- an AML/CTF risk awareness training program for employees
- ongoing customer due diligence and enhanced customer due diligence systems to ensure information collected about a customer or beneficial owner is reviewed and kept up to date, and to determine whether extra information should be collected and verified, and/or
- transaction monitoring systems and controls for the purpose of identifying suspicious matters that must be reported to AUSTRAC.⁴

Part A must be regularly and independently reviewed to assess its compliance with the Rules, and internal entity compliance with the program. The nature and frequency of program reviews depends on the size, nature and complexity of the organisation and its money laundering and terrorism financing risks.

Part B

Part B of an AML/CTF program covers the regulated entity's customer due diligence procedures and must include:

- information collected and verified to make sure that customers, and their agents, are who they claim to be
- information collected and verified about beneficial owners

³ Designated services covered by item 54 of table 1 in section 6 of the Act.

⁴ *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007* (Cth), Part 8.1.

- how a regulated entity determines if its customer or the beneficial owner is a ‘politically exposed person’,⁵ and
- how a regulated entity decides when it should collect additional information about a customer.

Challenges with the current obligations

The current requirements are confusing and difficult to follow, with obligations dispersed throughout the Act and the Rules. In addition, the following explicit issues have been identified in the design of the current regime:

- the distinction between Part A and Part B of AML/CTF programs is complex
- obligations related to simplified due diligence were assessed in Australia’s 2015 FATF Mutual Evaluation as being non-compliant, and
- the lack of an express statement in the Act or Rules setting out the requirement for regulated entities to conduct a money laundering and terrorism financing assessment, despite many of the requirements for risk-based systems and controls implicitly requiring it.

Proposed model

Streamlining Part A and Part B into a single program

Part A and Part B requirements could be streamlined into a single requirement to develop, implement and maintain an AML/CTF program that is effective in identifying, mitigating and managing a regulated business’ money laundering and terrorism financing risk. Existing exemptions for those businesses that are only required to have a ‘special AML/CTF program’ would be maintained.

Assessing risk

The Act could be amended so that regulated entities can better understand what steps are needed to mitigate risks by improving their understanding of the nature and extent of the risks they face. The explicit requirement to assess risk is absent from the current regime, with the obligation to assess risk implied from a number of provisions.

The Act could establish a clear overarching requirement that a regulated entity must take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks it faces prior to the implementation of an AML/CTF program, including that:

- in determining risk level, a regulated entity must have regard to the nature, size and complexity of its business
- a regulated entity must document its risk assessment methodology, and
- a regulated entity must review and update its risk assessment when there is a change to its circumstances which affects its risk exposure.

The Rules could provide specific detail on each risk assessment requirement, including:

- event triggers for reviewing a risk assessment
- implementation of AUSTRAC guidance or feedback relevant to assessing money laundering and terrorism financing risks, and
- any required elaboration on event triggers, or appropriate periods for review of a regulated entity’s risk assessment.

⁵ Politically exposed persons (PEPs) are individuals who hold a prominent public position or role in a government body or international organisation, either in Australia or overseas, immediate family members and close associates of these individuals are also considered PEPs.

Mitigating risk

The Act provides that the primary purpose of Part A of an AML/CTF program must be to identify, mitigate and manage money laundering and terrorism financing risks. Once a regulated entity has completed a risk assessment it must implement proportionate risk mitigation measures. The Rules specify some expected mitigation measures, but this detail is provided in separate chapters of the Rules.

The simplified model could make mitigation easier for regulated entities by clearly articulating an overarching risk mitigation obligation in the Act that regulated entities will develop and implement enterprise-wide controls to address any risks. These controls could then form part of their AML/CTF program.

Internal controls

Currently, there are no specific internal control risk mitigation measures included in AML/CTF program obligations under the Act that clearly distinguish them from broader risk mitigation measures. The Rules specify a number of internal control obligations, but these obligations should be articulated clearly in the Act as internal controls are necessary to support risk mitigation measures and ensure a culture of compliance.

The proposed reforms will aim to distinguish internal controls from broader risk mitigation measures.

The Act could articulate a requirement for regulated entities to develop, implement and maintain systems and controls proportionate to the nature, scale and complexity of its business to manage and mitigate risks identified in their risk assessment or by AUSTRAC. The Act could articulate a high-level obligation to develop, implement and maintain appropriate systems and controls to ensure that employees and agents of regulated entities comply with AML/CTF obligations.

The Rules could set out a basic set of minimum risk mitigation measures expected to be documented in AML/CTF Programs, including:

- enterprise-wide risk management practices
- customer due diligence (initial, ongoing, enhanced and simplified)
- triggers and time frames for review of AML/CTF programs
- identification and reporting of suspicious matters, and
- a general requirement to consider any other proportionate measures to respond to risks identified by the reporting entity.

The Rules could specify the minimum categories of internal controls that must be included in an AML/CTF program. The reforms could require AML/CTF compliance officers to be appointed at the senior management level, standards of fitness and propriety, and expectations around adequate resourcing and independence.

Group wide risk management for designated business groups

A designated business group is a group of two or more regulated entities who join together to share the administration of some or all of their AML/CTF obligations, including the creation of joint AML/CTF programs.

However, the current framework does not align with how existing regulated entities are structured in practice. Businesses that are part of large corporate groups made up of a range of complex entities such as partnerships, trusts, franchise arrangements, and other centralised AML/CTF 'service hub' models will often include both regulated entities and non-regulated entities. These non-regulated entities may perform AML/CTF compliance functions on behalf of regulated entities within the group.

Currently, only members of the same designated business group can have a joint AML/CTF program. This limits the ability of designated business groups to manage risks, as related entities that are not themselves regulated entities cannot be party to the joint AML/CTF program even if they are performing compliance functions.

The Department proposes that related entities within a business group that perform functions to support regulated entities to comply with AML/CTF obligations should be captured under a designated business group, whether or not they are themselves regulated entities. This will become particularly important with proposed extension of the AML/CTF regime to tranche-two entities.

The new framework should be sufficiently flexible so that different entities within business groups can adopt different risk structures and controls within the group risk management framework. It should also allow financial institutions to include foreign branches, subsidiaries or support entities in their joint AML/CTF program.

Proliferation financing risk

The FATF Standards have recently been amended to require countries to identify, assess, understand and mitigate the risk of financing the proliferation of weapons of mass destruction. Proliferation financing risks refer to the potential breach, non-implementation or evasion of targeted financial sanctions obligations related to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. Australia does not currently explicitly require regulated entities to consider and mitigate these risks, although such risks are indirectly included in certain requirements in the regime.

The Department is considering potential reforms to clarify the requirement for regulated entities to manage their proliferation financing risks as part of their AML/CTF programs, noting that the level of exposure to such risk will vary significantly between sectors. The regime will need to be sufficiently flexible to recognise that some businesses do not have significant proliferation financing exposure.

Foreign branches and subsidiaries

The Act and Rules currently include a range of complex obligations that apply to foreign branches and subsidiaries, presenting challenges for Australian companies operating overseas. Challenges can include:

- limited reporting and record keeping obligations for designated services provided through overseas payment establishments
- limited internal controls for foreign branches and subsidiaries, and
- minimal additional systems and controls for a regulated entity that is operating in a foreign jurisdiction and is regulated by AML/CTF laws that are comparable to Australia.

These could be replaced with simplified and consolidated obligations in line with global best practice standards. The Act could be amended to include specific requirements, including that Australian businesses operating overseas should apply measures consistent with their AML/CTF programs in their overseas operations, to the extent permitted by local law. Australian parent companies could be required to report to AUSTRAC where local laws prevent the application of measures consistent with Australian requirements.

Consultation questions

1. How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?
2. What are your views on the proposal for an explicit obligation to assess and document money laundering and terrorism financing risks, and update this assessment on a regular basis?
3. For currently regulated entities, to what extent do you expect that a simplified AML/CTF program obligation would affect your AML/CTF compliance costs?
4. What kind of entities would you propose to include in a designated business group if membership were no longer limited to regulated entities, and what volume of AML/CTF information would you seek to share?
5. How will a flexible approach that allows an AML/CTF program to incorporate all related entities within a designated business group affect your AML/CTF compliance and risk mitigation measures?

6. What are your views on the proposal to expressly set out the requirement for entities to identify, mitigate and manage their proliferation financing risks?
7. What guidance would you like to see from AUSTRAC in relation to AML/CTF programs?

Customer due diligence

Customer due diligence measures are at the foundation of regulated entities' obligations to identify, mitigate and manage associated money laundering and terrorism financing risks and provide valuable financial transactions and suspicious matter reports to AUSTRAC that assist in detecting and disrupting serious crime. The overarching objective of these obligations is for a regulated entity to be reasonably satisfied that the customer is who they claim to be.

Current obligations

Customer due diligence obligations are detailed across the Act and Rules. The current approach requires regulated entities to carry out documented procedures, known as the 'applicable customer identification procedures', to identify and verify customers before they commence providing a designated service. Regulated entities must also keep customer identification information up-to-date and conduct ongoing and enhanced checks if necessary.

Core obligations are:

- **Understanding customer risk:** Requires regulated entities to assess and understand risks presented by each customer.
- **Knowing your customer:** Requires regulated entities to have and carry out applicable customer identification procedures to enable the regulated entity to be satisfied it knows the identity of the customer.
- **Ongoing customer due diligence:** Requires regulated entities to monitor customers for the purpose of identifying, mitigating and managing money laundering and terrorism financing risk, and requires entities to have a transaction monitoring program.
- **Enhanced customer due diligence:** Regulated entities must apply additional measures to higher risk customers.
- **Simplified due diligence and safe harbour provisions:** Low risk entities may be permitted to apply simplified customer due diligence checks for low risk entities. The current safe harbour and simplified due diligence provisions are both prescriptive and found to be FATF non-compliant in Australia's 2015 Mutual Evaluation.

Proposed model

The Department proposes realigning obligations in the Act, the Rules and Guidance materials on each of the core customer due diligence obligations as listed above. The Act should set out the core obligation, with the Rules specifying how that obligation is to be met. The Guidance materials provided by AUSTRAC should give practical, implementable advice on how obligations are to be met.

Understanding customer risk

The Act could provide an overarching obligation to assess and understand the risk for each new and ongoing business relationship with a customer based on an assessment of key risk factors, including customer type, geographic risk, the type of service and the method of delivery. The Rules could provide specific risk factors to be considered as part of customer risk rating. AUSTRAC could provide guidance on how to assess risks associated with different types of business relationships and non-prescriptive examples of customers with different risk profiles.

Know your customer

The Act could require that a regulated entity commencing the provision of a designated service must be reasonably satisfied that it knows:

- the identity of the customer
- the nature and purpose of the business relationship
- where applicable – the identity of the beneficial owner and control structure of a customer who is not an individual
- the identity of any person acting on behalf of the customer and their authority to act, and
- whether the customer or their beneficial owner is a politically exposed person.

The Rules could set high level standards for risk-based customer due diligence policies, procedures and controls, and continue to specify special circumstances where identification and verification can be done after providing a designated service.

Ongoing customer due diligence

The Act could require a regulated entity to apply ongoing customer due diligence measures, proportionate to the risk that enable an entity to:

- ensure that transactions conducted are consistent with the entity's understanding of a customer's business and risk profile, by identifying unusual transactions and behaviours
- update and, where appropriate, re-verify customer information, including whether they are a politically exposed person, and
- update the regulated entity's risk assessment of the business relationship.

The Rules could require a regulated entity to have:

- risk-based systems and controls to update and review customer due diligence information
- a tailored monitoring program for transactions, and
- continue the requirement to re-verify customer information where the regulated entity has doubts about its adequacy or veracity.

Enhanced customer due diligence

The Act could require a regulated entity to apply enhanced customer due diligence measures where:

- it has assessed that the risk associated with the business relationship is high
- there is a suspicion of money laundering, terrorism financing, or identity fraud and the reporting entity proposes to continue the business relationship
- the customer or its beneficial owner is a foreign politically exposed person, or
- the customer or its beneficial owner is from a high-risk jurisdiction for which the FATF has called for enhanced due diligence to be applied.

The Rules could set out specific circumstances that AUSTRAC assesses should trigger extended customer due diligence.

Simplified due diligence

The existing safe harbour and simplified due diligence provisions were found not to meet international best practice in Australia's 2015 FATF Mutual Evaluation, being insufficiently risk-based. As such these provisions will need to be redesigned to ensure future compliance.

The Act could permit regulated entities to apply simplified due diligence measures where the entity has reasonably assessed that the risk associated with the business relationship is low, and none of the triggers for extended customer due diligence apply. This would mean replacing the safe harbour provisions currently contained in the Rules.

The Rules could require regulated entities to consider specified factors before applying simplified due diligence and prohibit simplified due diligence in specific circumstances where AUSTRAC has assessed it to be inappropriate.

Consultation questions

8. What are your views on the proposed simplification of the customer due diligence obligations as outlined?
9. Do you have suggestions on other amendments to customer due diligence obligations?

Lowering the reporting threshold for gambling sector

Current model

Ongoing AUSTRAC investigations and state-based inquiries have highlighted the significant risk of money laundering in the casino sector. The regime exempts regulated entities from performing customer due diligence procedures when providing some gambling services which involve less than AUD10,000. The AUD10,000 limit for casinos is inconsistent with Australia's international obligations under the FATF Standards, which require customer due diligence checks where the transaction is equal to or above USD/EUR3000 (approximately AUD4,500 at current exchange rates). The ability to gamble anonymously, or transact in very large amounts of cash in an environment that normalises large and/or cash transactions, presents opportunities for criminal exploitation of the sector and significant money laundering and terrorism financing risks.

These proposed reforms will not impact other regulated entities or tranche-two entities.

Proposed model

Reforms could reduce these risks by lowering the customer due diligence exemption threshold for gambling services to AUD4,000, which would improve compliance with the FATF standards. While this is lower than the FATF threshold, the proposed AUD4,000 threshold would account for exchange rate fluctuations over time.

Consultation questions

10. What are your suggestions to minimise regulatory impact in lowering the customer due diligence exemption threshold for gambling service providers from AUD10,000 to AUD4,000?

Amending the tipping-off offence

Current obligations

The tipping-off offence is designed to deter regulated entities from disclosing information that may reveal the existence of a suspicious matter report (SMR) which could compromise a law enforcement investigation. The offence also provides assurances to a regulated entity that the fact they have submitted an SMR or SMR-related information about a customer will remain confidential. The tipping-off offence also prohibits disclosure of information provided in response to a notice issued under section 49 of the Act from AUSTRAC or its partner agencies.

The current regime contains a patchwork of exceptions to the tipping-off offence. These exceptions aim to balance a regulated entity's need to disclose information to effectively manage risks, against the potential for SMR information to be inappropriately or needlessly disclosed. However, the exceptions have not kept pace with the increasingly complex business structures of regulated entities, the shift to a globalised risk management approach and changes in supporting compliance. For example, it is increasingly common for regulated entities to centralise their financial crime operations in offshore subsidiaries or via third parties (domestic or overseas). Under the current framework the sharing of SMR information under these arrangements is usually prohibited.

Some of the challenges reported by industry were addressed through reforms introduced in 2020 by the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020*. However, AUSTRAC continues to receive an increasing number of applications from regulated entities seeking exemptions or modifications to support common business activities.

Proposed model

The Department proposes reforms that could modernise the tipping-off offence to better support industry to comply with its AML/CTF obligations, while balancing the competing interests that the tipping-off offence was designed to protect. This could reduce the need for multiple exemption applications to be processed to accommodate varying business structures. These proposed reforms will also apply to newly regulated tranche-two entities.

The United Kingdom and Canada have adopted outcomes-focused tipping-off regimes, which target and prohibit conduct or intention to compromise a law enforcement investigation. This model could provide greater flexibility in meeting the challenges of new business models and risk management approaches to financial crime. These targeted approaches may also create opportunities for private-to-private information sharing, which is restricted under the current tipping-off framework.

Consultation questions

11. Are there aspects of the tipping-off offence that prevent you from exchanging information, which would assist in managing your risks?
12. What features would you like to retain or change about the current tipping-off offence?
13. What safeguards are needed to protect against the disclosure of SMR-related information? Has the current tipping-off offence achieved the right balance between protecting against the risk of leaked SMR information and disclosures which help manage shared risks?

Regulation of digital currency exchanges

Current obligations

Crypto-assets such as digital currencies have become established as part of the global financial landscape. The AML/CTF regime must be reformed to respond to the risks in this established sector.

The Act currently regulates digital currency exchange providers when they engage in the exchange of digital currency (cryptocurrency) for fiat currency (AUD for example) or vice versa. The regulation of digital currency exchange providers reflects the central role that exchanges play in the digital currency ecosystem, and the role they have as the 'on' and 'off' ramps between digital currencies and fiat currencies.

In October 2018, the FATF amended its standards to require countries to impose AML/CTF obligations on four additional services provided by digital currency exchange providers. These services have been identified as posing a high risk because criminal networks are increasingly using them to manage the proceeds of their offending.

Proposed model

Consistent with these new FATF standards, the proposed reforms could expand the regulation of the types of services to cover the following services:

- exchanges between one or more other forms of digital currency
- transfers of digital currency on behalf of a customer
- safekeeping or administration of digital currency, and
- provision of financial services related to an issuer's offer and/or sale of a digital currency (e.g. Initial Coin Offerings where start-up companies sell investors a new digital token or cryptocurrency to raise money for projects).

The proposed model could also improve the definitions of some of these services to better and more clearly integrate digital currency activity in payment-related obligations. These proposed reforms will not impact other regulated entities or tranche-two entities.

These reforms would be aligned with any future reforms in the crypto asset services sector being undertaken by Treasury to minimise duplication where possible.

Consultation questions

14. What are the benefits and challenges of expanding the AML/CTF obligations to a broader range of digital currency-related services?
15. How can definitions under the Act be amended to integrate digital currency activity in payment-related obligations, such as activities associated with credit, debit and stored value cards and general transfers?

Modernising the travel rule obligations

Current obligations

The travel rule is a requirement to include information about the payer and the payee with a transfer of value as it is transmitted from one business to another through a payment chain. It increases the end-to-end transparency of transactions, which supports regulated entities to identify, mitigate and manage the associated financial crime risk. It also ensures that such information can be provided in a timely way to law enforcement authorities to support an investigation.

Under the current regime, only financial institutions such as banks are required to include payer information for electronic transfers of fiat currency, and they are not required to include payee information. The current regime also does not require payer information to be verified, although this will frequently be the case where the payer is a customer of an Australian financial institution.⁶

Proposed model

The proposed reforms could update the travel rule for financial institutions in line with the FATF Standards by requiring payer information to be verified, and require the inclusion of payee information.⁷ Reforms could implement the travel rule for remitters and digital currency exchange providers, requiring payer and payee information for transfers on behalf of customers to other businesses.

⁶ Funds transfer reporting is referred to in the Act as electronic funds transfer instruction obligations (Part 5 of the Act).

⁷ Financial Action Task Force Recommendation 16.

Implementation of the travel rule for the remittance and digital currency exchange providers sectors would also reduce the chances that Australian businesses will be assessed as higher risk by overseas counterparts as jurisdictions increasingly implement the travel rule around the world. These proposed reforms will not impact other regulated entities, including tranche-two entities.

Consultation questions

16. What are the benefits and challenges for financial institutions in applying the existing travel rule obligations?
17. Would the proposed model assist in addressing these challenges?

Exemption for assisting an investigation of a serious offence

Current obligations

The current Rules allow the AUSTRAC CEO to exempt regulated entities from particular sections of the Act where providing a designated service to a customer would assist in the investigation of a serious offence.

The case-by-case application process initiated by investigative agencies and processed by AUSTRAC is administratively burdensome and inefficient. The scope of the exemption is also too broad and may be inconsistent with international standards and best practice.

Proposed model

The proposed reforms could embed the law enforcement exemptions framework in the Act and streamline the process to increase efficiency. The new framework would support regulated entities to cooperate with criminal investigations that involve their customers, while continuing to comply with their AML/CTF obligations. It is proposed the eligibility criteria would remain largely the same. This approach would more effectively reflect the regime's objectives and also better align the regime with international standards and best practice. These reforms will also apply to newly regulated tranche-two entities.

Under the proposed reforms, eligible agencies would not be required to apply to AUSTRAC for an exemption. Instead eligible agencies would provide a written 'keep open' notice using a form specified in the Rules directly to regulated entities and copied to AUSTRAC. Receipt of a notice from an eligible agency would provide a sufficient basis for the regulated entity to rely on the legislative exemption.

To ensure that the legislative exemption is appropriately constrained, it could apply to carrying out an action or procedure under Part 2 of the Act (and relevant related provisions), if the reporting entity holds a reasonable belief that carrying out the customer due diligence measures would alert the customer to the existence of a criminal investigation. On the basis of that assessment, safe harbour from liability would apply where an isolated or occasional breach of the identification and verification requirements is identified.

AUSTRAC could maintain oversight of these exemptions by requiring eligible agencies to provide copies of the 'keep open' notices, and require periodic reporting by eligible agencies and regulated entities about the number of notices issued or relied upon under the new provisions. AUSTRAC would also monitor trends in requests by agencies, and provide guidance or update the Rules where necessary.

Consultation questions

18. Are there any additional issues that would not be addressed by the proposed approach for exemptions for assisting an investigation of a serious offence?

Revised obligations during COVID-19 pandemic

Current obligations

AUSTRAC introduced Rules in 2020 (the COVID-19 Rules) to support flexible customer verification measures during the pandemic. These amendments supported regulated entities to conduct customer due diligence remotely, including relying on an uncertified copy of documents in accordance with their risk-based systems and controls. With pandemic restrictions having eased, the ability to use the COVID-19 Rules is lapsing.

The COVID-19 Rules were designed as a targeted measure to provide temporary relief in extraordinary conditions, but the longer-term use of unauthenticated copies of identification documents poses significant money laundering and terrorism financing risks.

Proposed model

With many businesses choosing to continue to provide online and remote service delivery, reforms could provide longer-term options for flexibility in how regulated entities meet their customer due diligence obligations that do not pose the same level of risk. These proposed reforms will also apply to newly regulated tranche-two entities.

Consultation questions

19. With the ability to use COVID-19 Rules lapsing, what innovations adopted by regulated entities to deliver services online and remotely during the pandemic could be maintained or enhanced in ways that effectively mitigate money laundering and terrorism financing risks?

Repeal of the *Financial Transaction Report Act 1988*

The *Financial Transaction Report Act 1988* (FTR Act) was Australia's primary AML/CTF legislation until the passage of the Act in 2006. While certain parts of the FTR Act were repealed or became inoperative in 2006, it continues to operate alongside the Act, imposing reporting obligations on 'cash dealers' and solicitors. In some instances, the obligations duplicate requirements in the Act.

The 2016 Statutory Review recommended the repeal of the FTR Act and associated regulations, and the transfer of the remaining obligations to the Act. This recognises that the existence of two pieces of legislation generates unnecessary overlap and regulatory inefficiencies for industry and Government.

Consultation questions

20. If your business is regulated under both the Act and FTR Act, what would be the benefit of consolidating obligations under a single act?
21. Would the repeal of the FTR Act and the transfer of the remaining relevant obligations to the Act impact your business? If yes, what would be the scope of that impact?
22. If you are a solicitor, does your business accept any cash payments? Does your business set any limits on cash payments?

Part 2: Tranche-two entities

The case for reform

The United Nations Office on Drugs and Crime estimates that between two and five per cent of global gross domestic product (GDP) is laundered globally. This equates to between USD800 billion-USD2 trillion per year.⁸ In Australia money laundering poses a serious, significant and growing threat to our national security. Money laundering typologies are constantly evolving and respond to changes in the domestic and international environment. Australia's AML/CTF regime needs to be just as agile to ensure that it keeps pace.

Professional service providers support a wide range of legitimate economic activity including by facilitating access to financial services and products. Criminals may seek to exploit this expertise using the advice to conceal and launder ill-gotten funds. The AML/CTF regime seeks to assist businesses to identify potential criminality and protect their businesses. It also gives them a framework in which to respond. This helps businesses to avoid reputational and legal costs, and builds confidence that they are not unwittingly facilitating organised crime. In addition, the AML/CTF regime is critical in developing actionable financial intelligence that assists law enforcement and security agencies protect the community from serious crimes including terrorism, child abuse, illicit drug trade, fraud and cybercrime.

Money laundering risks in tranche-two entities

Lawyers, accountants, trust and company service providers, real estate agents, and dealers in precious metals and stones (known as **tranche-two entities**) are particularly vulnerable to misuse and exploitation by transnational, serious and organised crime groups and terrorists due to the nature of the services that they provide.

Lawyers, accountants, conveyancers and trust/company services

Legal practitioners, accountants, conveyancers and trust and company service providers provide services that can be exploited to disguise ownership, including the individual who ultimately owns or controls the asset (known as beneficial ownership), conceal the origins and purposes of financial transactions, facilitate tax evasion and, ultimately, launder the proceeds of crime.

Operating through or behind a professional adviser can provide a veneer of legitimacy to criminal activity. These practitioners can be used to create complex structures that create distance between criminals and their illicit wealth, and facilitate obscuring property ownership, providing ideal opportunities for laundering large volumes of illicit funds. The reforms proposed in this paper complement the Government's commitment to implement a beneficial ownership register for companies and other legal entities being led by Treasury.⁹

⁸ United Nations Office on Drugs and Crime, *Overview – Money Laundering* (Web Page) <https://www.unodc.org/unodc/en/money-laundering/overview.html>.

⁹ Treasury, 'Multinational tax integrity: Public Beneficial Ownership Register Consultation Paper', *Consultations* (7 November 2022) <https://treasury.gov.au/consultation/c2022-322265>.

Real estate sector

High-value goods, including real estate, have been identified as a significant money laundering channel in Australia. Criminals buy real estate as a way of laundering or concealing illicit funds as it allows for the movement of a large amount of funds in a single transaction. Asset confiscation cases show the breadth of criminal investment and the scale of criminal wealth that can be laundered and invested this way.¹⁰

In the past two years, 57.5 per cent of the AFP's Criminal Assets Confiscation Taskforce total restraint value has been attributed to commercial and residential real estate. Criminals are increasingly trying to circumvent asset restraint and forfeiture by attempting to conceal the true ownership of property, including hiding assets behind complex corporate and trust structures or paying another party to pose as the purchaser of land and the legal title holder.¹¹ Criminals can purchase a property using large sums of cash, live in the property, renovate the property (using illicit cash) to improve its value and sell the property at a later date for a capital gain. Laundering illicit funds through the real estate sector not only allows criminals to conceal and enjoy the profits from their crimes, but also poses a risk that property prices may be artificially inflated creating hardship for genuine property buyers seeking affordable housing.

Cross-border purchases of property carry elevated risks, particularly where the buyer is based in a high-risk jurisdiction and the purpose of the transaction is questionable. For example, the property is left empty or the purchase price is higher than the property value.

Dealers in precious metals and precious stones

Precious metals and stones are effective channels to legitimise criminal proceeds serving multiple purposes, including storing value, transferring value, and lifestyle consumption. Currently, only bullion dealers are covered by the regime. Many of the characteristics of precious metals and stones that make them attractive to legitimate buyers also make them vulnerable to being misused for money laundering and terrorism financing purposes. Precious metals and stones are highly valuable, their trade is often conducted in cash and they can be held anonymously, making ownership untraceable. Individual items may be small and easily transportable, offering criminals the opportunity to transfer value within or between countries in a manner which minimises the chance of detection. Jewellery transactions are particularly vulnerable to under- or over-valuation, which can disguise the amount of criminal proceeds being laundered. This method is effective because market prices for jewellery can be hard to establish.

Australia is not compliant with global standards

The Financial Action Task Force (FATF) is the global financial crime watchdog and standard-setter. As a founding member of FATF, Australia recognises the important role that the FATF plays in ensuring that the global response to money laundering and terrorism financing is robust and remains appropriately adapted to risks. The FATF's Standards are accepted and implemented globally and comprise:

- 40 recommendations that promote the effective implementation of legal, regulatory and operational measures, and
- 11 Immediate Outcomes that establish indicators of an effective regime.

¹⁰ Australian Transaction Reports and Analysis Centre, 'Submission to Inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime', *Submissions* (Report, 2021) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AUSTRA_C/Submissions.

¹¹ Australian Federal Police, 'Submission to the Senate Legal and Constitutional Affairs References Committee: Inquiry into the Adequacy and Efficacy of Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Regime', *Submissions* (Report, 2021) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AUSTRA_C/Submissions.

There are a number of FATF Standards specific to tranche-two entities:

- Recommendation 28 requires countries to regulate and supervise tranche-two entities for AML/CTF purposes
- Recommendations 22 and 23 specify the application of other FATF Recommendations to tranche-two entities such as customer due diligence, record-keeping, reporting suspicious transactions and internal control requirements
- Immediate Outcome 3 relates to the effectiveness of supervision measures for financial institutions and tranche-two entities, and
- Immediate Outcome 4 relates to the measures that financial institutions and tranche-two entities take in response to their understanding of money laundering and terrorism financing risks.

The FATF monitors compliance with its Standards through a rigorous peer review process known as a Mutual Evaluation. Countries undergo Mutual Evaluations to assess both the technical compliance of their legislative and regulatory frameworks, and the effectiveness of their regimes. A poor Mutual Evaluation can result in being publicly listed and subject to increased monitoring (commonly known as 'grey listing').

The FATF adopted Australia's Fourth Round Mutual Evaluation in 2015, and Australia was found non-compliant or only partially compliant with 16 Recommendations, including those recommendations relating to tranche-two entities.

Australia risks significant economic consequences of non-compliance

Australia will undergo its next Mutual Evaluation between 2025 and 2027 and is at risk of receiving low ratings and potential grey listing if we do not undertake significant reform. Grey listing could result in significant economic costs for Australia, such as increased costs of doing business as other countries apply enhanced measures, reduction in credit rating and foreign direct investment, reduction in incoming capital flows, and the potential loss of international banking connections as the country is perceived to be high risk.

Collectively, these impacts can result in significant decreases to a country's GDP. International Monetary Fund research found that total capital inflows decline on average by 7.6 per cent of GDP when a country is grey listed.¹² Although the impacts on Australia may differ as this research focused on emerging and developing countries, the impacts on Australia's economy would likely be substantial.

Australia is increasingly attractive for money laundering

Australia is an increasingly attractive destination for laundering illicit funds due to the failure to reform the AML/CTF regime to respond to the changing threat environment and evolving international standards. This has resulted in significant regulatory gaps and vulnerabilities. If left unaddressed, Australia's financial system would remain vulnerable to criminal exploitation through the use of professional services, weakening the overall integrity of Australia's AML/CTF regime. As the rest of the international community strengthens their regulation of these sectors, Australia would continue to fall further behind. Australia would be perceived as a weak link in the international response to financial crime, damaging Australia's reputation and attractiveness as a business destination and increasing the cost for Australian businesses operating globally.

¹² Mizuho Kida and Simon Paetzold, 'The Impact of Gray-Listing on Capital Flows: An Analysis Using Machine Learning', *IMF Working Papers* (Web Page, 27 May 2021) <https://www.imf.org/en/Publications/WP/Issues/2021/05/27/The-Impact-of-Gray-Listing-on-Capital-Flows-An-Analysis-Using-Machine-Learning-50289>.

Case studies on high risk sectors

Australian law enforcement agencies have conducted numerous investigations into suspected criminal activities of persons employed by tranche-two entities who use their technical proficiency to avoid regulatory and law enforcement scrutiny, and subvert rights to safeguard their clients' interests. The case studies below illustrate how these professions can wittingly and unwittingly be used to launder money.

Case study 1—Lawyers, accountants and real estate agents facilitate money laundering organisation to move proceeds of crime globally¹³

In 2023 nine alleged members of a significant money laundering organisation were charged with offences including money laundering and conspiracy to deal in the proceeds of crime. The investigation into the organisation's activities revealed reliance on legal, accounting and migration professionals in enabling it to move hundreds of millions of dollars globally without detection. Members of the organisation also made significant purchases of Australian residential and commercial real estate.

An accountant was among the nine individuals arrested, and is suspected of providing the organisation with advice on avenues to circumvent attention from AUSTRAC and the Australian Taxation Office, including recommending fraudulent invoicing. A migration lawyer was also amongst the arrested individuals, suspected of providing advice relating to avoidance of detection by law enforcement, including inciting the destruction of evidence.

Case study 2—Lawyers, accountants and real estate agents facilitate criminal activity and conceal proceeds of crime¹⁴

Prior to overt activity in June 2021 the AFP and US Federal Bureau of Investigations (FBI) monitored messages sent over the ANØM communication platform in Operation IRONSIDE (AFP) and Operation TROJAN SHIELD (FBI). Although the AFP is unable at this time to publicly elaborate on individual cases involving professional facilitators in Operation IRONSIDE, the AFP has publicly acknowledged that in Operation IRONSIDE lawyers, accountants, and other professional facilitators were actively involved in organised crime. Methodologies involving professional facilitators included:

- concealing the origins and purposes of financial transactions or illicit wealth
- facilitating criminal activity and accumulation of illicit wealth
- facilitating tax evasion, and
- disguising beneficial ownership or interest in assets.

Case study 3—Deposit of money into solicitor's trust fund

In 2011 the AFP commenced a criminal investigation into an organised crime syndicate involved in the importation of border-controlled drugs and money laundering. In a related proceeds of crime investigation, one of the suspects used international funds transfers to facilitate the movement of monies from overseas into Australia to enable the purchase of property. The AFP identified that the suspect had purchased four separate parcels of land in a subdivision in south-east Melbourne, Victoria, totalling almost AUD1.8 million.

¹³ Australian Federal Police, 'Property and cash restrained as alleged money laundering group charged', *News & Media* (Media Release, 2 February 2023) <https://www.afp.gov.au/news-media/media-releases/property-and-cash-restrained-alleged-money-laundering-group-charged#:~:text=The%20AFP%20has%20charged%20nine,funds%20derived%20from%20criminal%20activities>.

¹⁴ Australian Federal Police, 'AFP-led Operation Ironside smashes organised crime', *News & Media* (Media Release, 21 December 2021) <https://www.afp.gov.au/news-media/media-releases/afp-led-operation-ironside-smashes-organised-crime>.

The suspect also paid a deposit on three apartments and a boat berth in a development area, totalling AUD340,000.

Enquiries with AUSTRAC identified a series of international funds transfers into the bank account of a specialist property law practice in Melbourne. These transfers were identified because the overseas remitter had previously been identified remitting monies direct to bank accounts in the name of the suspect or family members of the suspect. The international funds transfers to the trust account totalled over AUD1,700,000 and included the oblique reference of “pay for goods”.

Both the solicitor and accountant at the specialist property law practice asked the suspect what their occupation was, to which the suspect explained that they were an overseas property developer and that the source of the international funds transfers was the sale of property overseas. Neither the solicitor nor the accountant conducted any due diligence to confirm this claim. The suspect also caused a further AUD90,000 to be deposited into the trust account in amounts of under AUD10,000. The solicitor later admitted to the AFP that while they thought the source of the international funds transfers a “bit strange”, they did not ask their client (the suspect) about the source of the money, nor did they ask why the AUD90,000 was paid into the account in a manner consistent with structuring. While the proceeds of crime investigation was successfully finalised, regulation of the tranche-two entities involved would have enabled earlier detection of this suspicious activity.

Case study 4—Use of solicitor’s trusts accounts to conceal cash deposits

In 2013 a multi-agency investigation was conducted into the activities of an organised crime syndicate involved in trafficking illicit drugs within Tasmania. Enquiries with the Land Information System Tasmania in relation to one of the suspects identified that he was the owner of a property which he had purchased for over AUD150,000 a few years earlier. There was no mortgage attached to the property.

Enquiries with AUSTRAC identified that at the time of the suspect’s purchase, the vendor’s solicitor had deposited the sum of over AUD1 million into his practice’s trust account. Over AUD180,000 of that deposit was in cash. This threshold transaction information had been lodged with AUSTRAC by the bank where the solicitor held his trust account. AUSTRAC record searches in the name of the suspect were not able to identify any cash withdrawals from any bank accounts that could explain the accumulation of, or aggregation of, the relevant cash by the financial circumstances of the suspect.

Case study 5—Lawyer and accountant commit large-scale tax fraud and money laundering

Between 2006 and 2012 a former tax partner at a top tier accounting firm and a prominent Sydney lawyer turned property developer (the two main offenders) orchestrated a large-scale tax fraud and the laundering of proceeds of crime realised from that offending. Another accountant (among others) was involved in aspects of the scheme.

The two main offenders created a web of false identities and siphoned money from accounts in Australia through the United Kingdom, Hong Kong and the United Arab Emirates via fake domestic and international companies. They brought the funds back into Australia (often disguised as loans) to fund their lavish lifestyles, which included the purchase of luxury cars, boats, jewellery and property. After multiple trials, the orchestrators of the scheme received significant terms of imprisonment.

The Criminal Assets Confiscation Taskforce traced over AUD9 million of proceeds of crime which were moved from bank accounts in Australia into overseas accounts, then deposited back into Australia into the trust account of a law firm (unconnected with the lawyer who was one of the main offenders). These deposits occurred over approximately 10 months. The funds were used to purchase real estate, including a shopping centre. The law firm completed the conveyancing transactions for the purchase of property.

What professional services are proposed to be covered?

Legal, accounting, conveyancing and trust/company services

The Department proposes to reform the regime to cover legal, accounting, conveyancing and trust/company services. This may include lawyers, accountants, conveyancers, and trust and company service providers when they prepare or carry out transactions for clients, relating to the following:

- buying and selling of real estate
- managing of client money, securities or other assets
- management of bank, savings or securities accounts
- organisation of contributions for the creation, operation or management of companies
- creation, operation or management of legal persons or legal arrangements (e.g. trusts), and
- buying and selling of business entities.

It may also include trust and company service providers when they prepare for or carry out transactions for clients, relating to the following:

- acting as a formation agent of legal persons
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement, and
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

Excluded services

The Department proposes that as a general rule, services provided for non-commercial purposes will not be covered. For example, where an accountant manages their family's accounts and property without payment.

Further, the Department also proposes to exclude representing a client in litigation. AML/CTF obligations will not arise in relations to litigation unless during the course of such representation the legal professional also engages in one or more of the services listed above.

Legal professional privilege

Legal professional privilege is essential to the foundational principles of access to justice and rule of law. It protects the disclosure of confidential communications between a lawyer and their client, where that communication is for the primary purpose of seeking legal advice or advice for litigation. This privilege protects an individual's ability to access the justice system by encouraging complete disclosure to the individual's lawyer without the fear that any disclosure of those communications may prejudice them in the future. The privilege is a fundamental and important long-standing principle and exists at both common law and in statute in the *Evidence Act 1995*, and in state and territory legislation. The privilege belongs to the client of a legal practitioner regardless of whether the client is an individual, body corporate or body politic.

There are important statutory and common law exceptions to legal professional privilege. The privilege does not apply where expressly abrogated by legislation or where waived by the client. The privilege will also not apply where the communication was part of a criminal or unlawful proceeding, or was made in furtherance of the commission of a crime or fraud. This extends to crimes such as money laundering.

Legal professional privilege is currently protected by section 242 of the Act. During the Senate Legal and Constitutional Affairs References Committee (the Committee) *Inquiry into the adequacy and efficacy of Australia's AML/CTF regime*, the legal sector raised concerns with extending the AML/CTF regime to cover the legal sector. Concerns included that it would create an irreconcilable tension between lawyers' ethical duties and AML/CTF obligations that would fundamentally change the nature of the lawyer/client relationship. The Committee recommended that the Government seeks advice as to whether section 242 of the AML/CTF Act should be amended to ensure the proper operation of legal professional privilege. The Government has accepted this recommendation and is committed to developing a model with the sector that clearly protects legal professional privilege.

A balance between the advancement of the regime's objectives while preserving lawyer's ethical obligations can be achieved through close consultation with the legal profession and learning from international experience. AML/CTF regimes in comparable jurisdictions have regulated lawyers while managing the specific characteristics of the legal profession. For example, while New Zealand's AML/CTF regime applies to legal services, it does not require any person (lawyer or otherwise) to disclose any information that the person believes, on reasonable grounds, is a privileged communication. Where a person refuses to disclose information because it is a privileged communication, a District Court judge may make an order determining whether or not the claim of privilege is valid. A similar model has been adopted in the United Kingdom.

Consultation questions

23. What services by lawyers, accountants, conveyancers and trust and company service providers should be regulated under the Act so that they can manage their AML/CTF risks? Are there international examples that have worked well for these sectors?
24. What guidance could be provided to assist those providing proposed legal, accounting, conveyancing and trust/company services in managing these AML/CTF obligations?
25. Are there any existing practices within the accounting, legal, conveyancing and trust/company sectors that would duplicate the six key AML/CTF obligations? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?¹⁵

Legal Professional Privilege

26. How can the Government ensure legal professional privilege is maintained while also ensuring the known money laundering and terrorism financing risks are appropriately addressed?
27. Do you have a view about the approaches taken to preserve legal professional privilege in comparable common law countries, including the United Kingdom and New Zealand?
28. Are any of the six key AML/CTF obligations likely to particularly impact the relationship between a lawyer and their client?

Real estate sector

The Department proposes the regime would be improved by covering real estate agents and property developers involved in transactions to buy or sell real estate, including any legal or equitable interest in real property, including freehold title, strata title or leasehold tenure.

A number of criteria may be relevant to whether a person is carrying on a business of selling real estate, including the number, type and value of properties sold over a given time period. Further input from industry on this issue will be useful to ensure that the final approach reflects industry practice.

The Department is also considering including property management and leasing services in light of the money laundering and terrorism financing risks identified by Australian law enforcement agencies.

¹⁵ Detail on the six key AML/CTF obligations is covered on page 25.

Consultation questions

29. How should the Act regulate real estate agents so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?
30. Do you have any suggestions on how real estate should be defined for AML/CTF purposes?
31. In your view, are there any existing obligations for real estate agents that could interfere with their ability to comply with the six key AML/CTF obligations?
32. Are there any existing practices that would duplicate AML/CTF requirements? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?

Dealers in precious metals and precious stones

The Department proposes the regime would be improved by covering dealers in precious metals and stones when they engage in any cash transaction with a customer equal to or above AUD10,000, including in the capacity of an agent or auctioneer.

The FATF's guidance for dealers in precious metals and precious stones interprets the sector widely to encompass a wide range of persons engaged in the business of buying and selling precious stones and metals, including:

- those who produce precious stones or precious metals at mining operations
- intermediate buyers and brokers
- precious stone cutters and polishers and precious metal refiners
- jewellery manufacturers who use precious metals and precious stones
- retail sellers to the public, and
- buyers and sellers in the secondary and scrap markets.¹⁶

The proposed nominated threshold for the regulation of dealers in precious metals and precious stones is a cash transaction equal to or above AUD10,000. The proposed threshold is consistent with the existing obligation to submit a threshold transaction report to AUSTRAC if providing a designated service to a customer that involves the transfer of cash of AUD10,000 or more.

Bullion dealers are already covered by the AML/CTF regime and will remain subject to the Act.

Excluded services

The proposed regulation would only apply to cash transactions of AUD10,000 or more. It would not include other forms of funds transfer, for example, electronic funds transfer or payment by cheque as these payments are processed through the regulated financial system.

Businesses that do not receive cash of AUD10,000 or more as payment will not be subject to regulation under the Act. This approach will minimise the regulatory burden on business by ensuring that AML/CTF obligations are triggered only by large cash transactions which carry an increased risk of being used for money laundering and terrorism financing purposes.

Businesses may decide to not accept cash payments over the threshold and remain outside the scope of the Act.

¹⁶ Financial Action Task Force, 'RBA Guidance for dealers in precious metal and stones', *Publications* (Web Page, June 2008) <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfguidanceontherisk-basedapproachfordealersinpreciousmetalsandstones.html>.

Consultation questions

33. How should 'precious stones' be defined?
34. How should the Act regulate dealers in precious metals and precious stones so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?
35. In your view, are there any services that would justify exemption from the obligations in the Act? If yes, on what grounds?
36. In your view, are there any additional high-value dealers that should be included in the AML/CTF regime?

What will this mean for new entities covered by the Act?

The AML/CTF regime establishes 'Six Key Regulatory Obligations' regulated entities must comply with to protect businesses from misuse by criminals:

- **Customer due diligence:** Regulated entities must verify a customer's identity before providing a designated service and understand the customer's risk profile.
- **Ongoing customer due diligence:** Regulated entities must conduct ongoing customer due diligence throughout the course of the business relationship, including transaction monitoring and enhanced customer due diligence.
- **Reporting:** Regulated entities must report to AUSTRAC all 'suspicious matters', cash transactions of AUD10,000 or more, all instructions for the transfer of value sent into or out of Australia and annual compliance reports. All persons must report cross border movements of monetary instruments above the threshold of AUD10,000 or the foreign equivalent.
- **Developing and maintaining an AML/CTF Program:** Regulated entities must identify the risks they face in providing designated services to customers, and develop and maintain an AML/CTF program containing systems and controls to mitigate and manage those risks.
- **Record keeping:** Regulated entities must make and retain certain records that can assist with the investigation of financial crime or that are relevant to their compliance with the AML/CTF regime for seven years, and ensure they are available to law enforcement, if required.
- **Enrolment and registration with AUSTRAC:** Regulated entities must enrol with AUSTRAC if they provide a designated service. In addition, remittance service providers and digital currency exchange providers must also register with AUSTRAC to permit additional checks to ensure that criminals and their associates are kept out of these sectors.

Further information about the existing AML/CTF regime is included at **Annex A**.

The Government recognises that the existing Act and Rules require significant reform. The need to streamline obligations has long been called for by industry and was recommended by the 2016 Statutory Review. These reforms are discussed in **Part 1: Simplifying and modernising the regime**, and the Department invites industry, including tranche-two entities, to make submissions on these reform proposals.

Annex A: The existing regulatory regime

Australia's AML/CTF regime establishes a regulatory framework for combatting money laundering, terrorism financing and other serious financial crimes. The AML/CTF regime comprises:

- the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (the Act)
- the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (the Rules)
- the *Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulations 2018*, and
- the *Financial Transaction Reports Act 1988* (the FTR Act).

The Act regulates businesses that provide services that are vulnerable to misuse for money laundering and terrorism financing purposes. These 'designated services' are listed in section 6 of the Act and currently include services provided by:

- financial institutions (including banks, credit unions, and other authorised deposit-taking institutions)
- money remitters
- digital currency exchanges
- gambling service providers (including casinos and totalisator agency boards), and
- bullion dealers.

Businesses that provide designated services are also known as regulated entities. The AML/CTF regime establishes 'Six Key Regulatory Obligations' regulated entities must comply with to protect businesses from misuse by criminals:

- Customer due diligence
- Ongoing customer due diligence
- Reporting
- Developing and maintaining an AML/CTF Program
- Record keeping
- Enrolment and registration with AUSTRAC

The AML/CTF regime adopts a risk-based approach. Businesses are in the best position to understand their risks and know their customers. Risk-based regulation allows regulated entities to apply resources proportionately to mitigate the money laundering and terrorism financing risks.

The FTR Act is the predecessor to the Act, which still applies some customer due diligence and reporting obligations to entities known as cash dealers, and solicitors that are not currently covered under the Act.

AUSTRAC's role

AUSTRAC is responsible for preventing, detecting and responding to criminal abuse of the financial system to protect the community from serious and organised crime. As Australia's AML/CTF regulator and financial intelligence unit, AUSTRAC supervises and receives reporting from more than 17,000 businesses, and produces actionable financial intelligence to support the work of law enforcement, intelligence, national security and revenue protection agencies.

AUSTRAC and regulated entities

AUSTRAC has important powers to supervise and enforce compliance with AML/CTF obligations, including the ability to issue notices to regulated entities to produce documents and information, require the appointment of an external auditor to examine AML/CTF compliance, obtain enforceable undertakings, issue infringement notices and, for more serious or systemic non-compliance, seek substantial civil penalties from the Federal Court.

AUSTRAC supports businesses regulated under the AML/CTF regime. For example, AUSTRAC publishes an extensive range of guidance materials, including e-learning courses and guidance notes.¹⁷ This guidance provides a plain language explanation for businesses of how to meet their regulatory obligations, highlights good practices, identifies known and emerging financial crime risks and helps businesses understand the outcomes they should seek to achieve through the implementation of AML/CTF measures. AUSTRAC also conducts face-to-face information seminars and runs a help desk facility for businesses. AUSTRAC will continue to deliver this support for the enhanced AML/CTF legislative regime.

AUSTRAC's financial intelligence function

AUSTRAC is also Australia's financial intelligence unit. AUSTRAC's unique intelligence has assisted law enforcement partners in combatting threats to the Australian and international community. For example, the AFP-led Operation Ironside charged more than two hundred offenders after developing a world-leading capability to oversee encrypted communications used exclusively by organised crime. AUSTRAC provided financial intelligence to the operation, which led to the discovery and identification of Ironside targets, linked businesses and properties worth over AUD110 million.

AUSTRAC has further undertaken several high-profile enforcement investigations and actions. These actions have illustrated the seriousness of the risks posed by criminal exploitation of Australians and Australian businesses, and have exposed the failure to reasonably monitor customers for transactions related to possible child exploitation and drug dealing by serious organised crime groups. These actions have further demonstrated the importance of regulated entities serving as the first line of defence against criminal abuse of the Australian financial system.

The AUSTRAC levy

Some regulated entities are required to pay an annual contribution levy to cover AUSTRAC's operating costs (known as leviable entities). The formula used to calculate the industry contribution levy payable by a leviable entity for each financial year is set by the relevant Minister and detailed in a Ministerial Determination. The industry contribution levy is governed by the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* and the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011*. AUSTRAC is considering various options to ensure that any future funding model is applied appropriately to existing and newly regulated entities under the enhanced regime. Regulated entities will be consulted in relation to any proposed funding options.

¹⁷Australian Transaction Reports and Analysis Centre, *All guidance resources* (Web Page, 2023) <https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/guidance-resources/all-resources>.

Annex B: Consultation question summary

Questions for all entities

1. [How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?](#)
2. [What are your views on the proposal for an explicit obligation to assess and document money laundering and terrorism financing risks, and update this assessment on a regular basis?](#)
3. [For currently regulated entities, to what extent do you expect that a simplified AML/CTF program obligation would affect your AML/CTF compliance costs?](#)
4. [What kind of entities would you propose to include in a designated business group if membership were no longer limited to regulated entities, and what volume of AML/CTF information would you seek to share?](#)
5. [How will a flexible approach that allows an AML/CTF program to incorporate all related entities within a designated business group affect your AML/CTF compliance and risk mitigation measures?](#)
6. [What are your views on the proposal to expressly set out the requirement for entities to identify, mitigate and manage their proliferation financing risks?](#)
7. [What guidance would you like to see from AUSTRAC in relation to AML/CTF programs?](#)
8. [What are your views on the proposed simplification of the customer due diligence obligations as outlined?](#)
9. [Do you have suggestions on other amendments to customer due diligence obligations?](#)

Sector specific questions

Gambling services providers

10. [What are your suggestions to minimise regulatory impact in lowering the customer due diligence exemption threshold for gambling service providers from AUD10,000 to AUD4,000?](#)

Amending the tipping-off offence

11. [Are there aspects of the tipping-off offence that prevent you from exchanging information, which would assist in managing your risks?](#)
12. [What features would you like to retain or change about the current tipping-off offence?](#)
13. [What safeguards are needed to protect against the disclosure of SMR-related information? Has the current tipping-off offence achieved the right balance between protecting against the risk of leaked SMR information and disclosures which help manage shared risks?](#)

Digital currency sector

14. [What are the benefits and challenges of expanding the AML/CTF obligations to a broader range of digital currency-related services?](#)
15. [How can definitions under the Act be amended to integrate digital currency activity in payment-related obligations, such as activities associated with credit, debit and stored value cards and general transfers?](#)

Financial institutions, remittance & digital currency sector

16. [What are the benefits and challenges for financial institutions in applying the existing travel rule obligations?](#)
17. [Would the proposed model assist in addressing these challenges?](#)

Exemption for assisting an investigation of a serious offence

18. [Are there any additional issues that would not be addressed by the proposed approach for exemptions for assisting an investigation of a serious offence?](#)

Revised obligations during COVID-19

19. [With the ability to use COVID-19 Rules lapsing, what innovations adopted by regulated entities to deliver services online and remotely during the pandemic could be maintained or enhanced in ways that effectively mitigate money laundering and terrorism financing risks?](#)

Repeal of the FTR Act

20. [If your business is regulated under both the Act and FTR Act, what would be the benefit of consolidating obligations under a single act?](#)
21. [Would the repeal of the FTR Act and the transfer of the remaining relevant obligations to the Act impact your business? If yes, what would be the scope of that impact?](#)
22. [If you are a solicitor, does your business accept any cash payments? Does your business set any limits on cash payments?](#)

Legal, accounting, conveyancing & trust /company services

23. [What services by lawyers, accountants, conveyancers and trust and company service providers should be regulated under the Act so that they can manage their AML/CTF risks? Are there international examples that have worked well for these sectors?](#)
24. [What guidance could be provided to assist those providing proposed legal, accounting, conveyancing and trust/company services in managing these AML/CTF obligations?](#)
25. [Are there any existing practices within the accounting, legal, conveyancing and trust/company sectors that would duplicate the six key AML/CTF obligations? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?](#)

Legal Professional Privilege

26. [How can the Government ensure legal professional privilege is maintained while also ensuring the known money laundering and terrorism financing risks are appropriately addressed?](#)
27. [Do you have a view about the approaches taken to preserve legal professional privilege in comparable common law countries, including the United Kingdom and New Zealand?](#)
28. [Are any of the six key AML/CTF obligations Six Key Regulatory Obligations likely to particularly impact the relationship between a lawyer and their client?](#)

Real estate sector

29. [How should the Act regulate real estate agents so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?](#)
30. [Do you have any suggestions on how real estate should be defined for AML/CTF purposes?](#)
31. [In your view, are there any existing obligations for real estate agents that could interfere with their ability to comply with the six key AML/CTF obligations?](#)
32. [Are there any existing practices that would duplicate AML/CTF requirements? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?](#)

Dealers in precious metals and precious stones

33. [How should 'precious stones' be defined?](#)
34. [How should the Act regulate dealers in precious metals and precious stones so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?](#)
35. [In your view, are there any services that would justify exemption from the obligations in the Act? If yes, on what grounds?](#)
36. [In your view, are there any additional high-value dealers that should be included in the AML/CTF regime?](#)