Australian Government
Attorney-General's Department

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Submission to the Senate Legal and Constitutional Affairs Legislation Committee

Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions]

Attorney-General's Department Submission

Contents

Introduction

The Attorney-General's Department (the department) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) on the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the Bill). This submission provides further detail to assist the Committee's consideration and should be read alongside the Bill and its explanatory materials.

Overview of the Bill

The Bill would amend the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) to improve Australia's ability to deter, detect and disrupt money laundering and terrorism financing. The reforms in the Bill would also align Australia with international standards set by the Financial Action Task Force (FATF), the global financial crime stand setter and watchdog.

The three key objectives of the Bill are to:

- expand the AML/CTF regime to certain high-risk services provided by lawyers, accountants, trust and company service providers, real estate professionals, and dealers in precious metals and stones—also known as 'tranche two' entities
- improve the effectiveness of the AML/CTF regime by making it simpler and clearer for businesses to comply with their obligations, and
- modernise the regime to reflect changing business structures, technologies and illicit financing methodologies.

Overview of Australia's AML/CTF regime

The AML/CTF Act and the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument (No. 1) 2007 (the Rules) form the basis for Australia's AML/CTF regime. The AML/CTF Act takes a risk-based approach to regulation and sets out general principles and obligations for reporting entities to apply to their businesses. Details of how these obligations are to be carried out are set out in the Rules.

AUSTRAC also publishes a range of guidance materials to assist reporting entities to meet these AML/CTF obligations. In addition to this regulatory guidance, AUSTRAC develops sector-specific intelligence guidance, including risk assessments, typology reports and financial crime guides, which provide reporting entities with information on indicators of criminal activities.

The AML/CTF Act, AML/CTF Rules and guidance (collectively the AML/CTF regime) serve two purposes:

1) "Target hardening" – supporting businesses to understand their risks and take appropriate action, thereby reducing opportunities for money laundering and terrorism financing to occur, and
2) Financial intelligence – providing law enforcement and national security agencies with the financial intelligence they require to detect, investigate and prosecute criminal activity, as well as restrain and confiscate the proceeds, instruments and benefits of crime.

Rationale for reform

Money laundering is a significant and growing threat to Australians

Each year billions of dollars of illicit funds are generated from illegal activities such as drug trafficking, tax evasion, people smuggling, cybercrime, arms trafficking and other illegal and corrupt practices. Money is re-invested back into these crimes, ultimately impacting the most vulnerable in our community. Transnational, serious and organised crime was estimated to cost the Australian community $60.1 billion in 2020-21.[1] International research has found Australia to be a prominent destination for money laundering, indicatively estimating the amount of money laundered in Australia to be up to 2.3 per cent of GDP, or nearly $60 billion.[2] The true total cost of crime is likely much greater, given the covert nature of criminal activities.

Criminals launder their profits to enjoy the proceeds of their crimes and to invest in further criminal activity. Between 1 July 2022 and 30 June 2024, the Criminal Assets Confiscation Taskforce (CACT) restrained criminal assets in excess of $500 million (gross). This provides an estimate of the scale of the problem in Australia—as all criminal profits need to be laundered and legitimised.

Further, illicit funds are used by authoritarian regimes to fuel corruption, and undermine the rule of law across the world. Money laundering diminishes tax revenue and diverts government resources that could otherwise be used to assist all Australians through greater investments in services such as education and health. It also distorts financial markets, resulting in law-abiding Australians having to compete in the housing market against criminals with proceeds of crime, or run their businesses against loss making, criminally owned enterprises. Recent research shows that organised crime groups involved in money laundering were responsible for 2.5 times as much crime-related harm as groups not involved in money laundering.[3]

In July 2024, AUSTRAC released its first comprehensive National Risk Assessment (NRA) on money laundering. The NRA found that Australia is an attractive destination to store and integrate criminal proceeds, and continues to be exploited by money launderers.[4] The NRA identified persistent exploitation of:

- channels historically used to launder funds, including banks, remitters and casinos
- high-value assets such as luxury watches and real estate, and
- professional service providers' involvement in assisting to establish complex business structures and associated banking arrangements that assist criminals to launder and conceal proceeds of crime.

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[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] Joras Ferwerda, Alexander van Saase, Brigitte Unger and Michael Getzner, 'Estimating money laundering flows with a gravity model-based simulation' (2020) 10(18552) *Scientific Reports,* 6. Note, AUD figures have been calculated from USD figures in the report (USD 25 billion and USD 38 billion, respectively), using Australia's nominal GDP as at 31 Dec 2023 <https://www.nature.com/articles/s41598-020-75653-x>.
[3] Australian Institute of Criminology, Money Laundering and the harm from organised crime: Results from a data linkage study, 2024 <Money laundering and the harm from organised crime: Results from a data linkage study (austrac.gov.au)>
[4] Australian Transaction Reports and Analysis Centre, Money Laundering in Australia National Risk Assessment (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.

Regulatory gaps are allowing criminal exploitation

Money laundering typologies are constantly evolving and respond to changes in the domestic and international environment. Australia's AML/CTF regime needs to evolve and adapt to ensure it keeps pace with new and emerging threats.

The regime does not currently regulate high-risk services or products provided by tranche two entities such as lawyers, accountants, trust and company service providers, real estate professionals and dealers in precious metals and stones. Such services are globally recognised as being high-risk for money laundering.

The Australian Criminal Intelligence Commission (ACIC) has identified the skillsets and expertise of tranche two entities as particularly appealing for transnational, serious organised crime groups seeking to create an appearance of legitimacy in their effort to undermine systems.[5] The ACIC noted that one quarter of individuals who are facilitating the activities of 10 of the 16 current and/or former Australian Priority Organisation Targets (high-risk criminal targets) were lawyers, financial advisors, accountants or real estate agents.[6]

Bringing tranche two entities into the AML/CTF regime and comprehensively regulating virtual assets will assist regulators and law enforcement to piece together information from reports and financial intelligence to uncover serious criminal activity and structures, as well as the proceeds, instruments and benefits of crime. Improved financial intelligence as a result of regulation of tranche two businesses would better protect Australian businesses, communities and the economy from criminal exploitation. Regulation will also provide these businesses with necessary tools to identify and report suspicious behaviour, which will harden them against criminal exploitation.

The regulation of tranche two entities is further required to meet FATF Recommendations 22 and 23, which requires countries to regulate tranche two entities, known as designated non-financial business and professions internationally, because the role they play as financial system facilitators and gatekeepers makes them appealing targets for criminal abuse. FATF Recommendation 28 also outlines that these businesses should have effective systems for monitoring and ensuring compliance with AML/CTF requirements commensurate to their risks.[7]

Professional service providers

Professional service providers (PSPs) such as legal practitioners, conveyancers, accountants, and trust and company service providers, are 'gatekeepers' to the legitimate economy and are vulnerable to exploitation by serious and organised crime. Internationally, law enforcement has observed PSPs being exploited by criminals

[5] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, 42 (Matt Rippon, Deputy CEO, Intelligence Operations, Australian Criminal Intelligence Commission) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F25287%2F0006;query=Id%3A%22committees%2Fcommsen%2F25287%2F0000%22>.

[6] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, answers to questions on notice received 10 December 2021, 2 (Matt Rippon, Deputy CEO, Intelligence Operations, Australian Criminal Intelligence Commission) https://www.aph.gov.au/DocumentStore.ashx?id=cc591978-f2f1-43e6-afef-37d6358f26f8 .

[7] Financial Action Task Force, 'International Standards on Combating Money-Laundering and the Financing of Terrorism and Proliferation' *The FATF Recommendations* (Report, 2004) 19-21 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

to launder money from offences including fraud, tax crimes, trafficking in narcotic drugs, corruption and bribery, and possession of unexplained wealth.

Criminals are known to seek out PSP specialist skills and advice to assist in their money laundering schemes. This includes exploiting Australian businesses to conceal proceeds of crime, obscure ultimate ownership through complex layers and legal entity structures, evade regulatory controls and tax, avoid law enforcement detection and confiscation of assets, and hinder law enforcement investigations. AUSTRAC's NRA on money laundering identified these PSPs (notably lawyers and accountants) as posing a high and stable risk of facilitating money laundering.

Law enforcement has often observed PSPs being unwitting facilitators, or reckless as to the risk of money laundering or concealing illicit wealth. For example, under Joint Operation FUJI (AFP) and Echo-Steelers (Victoria Police), the services of various lawyers, real estate agents and accountants are suspected to have been used by the syndicate to facilitate the creation of company and trust structures, to purchase and sell real estate, and to obtain advice on matters relating to the acquisition of property.[8] These cases highlight the significant vulnerability present in Australia for which PSPs, such as lawyers and accountants, can be used to create legal structures and arrangements to conceal criminals' identities and illicit wealth.

The NRA has also identified some PSPs being used to establish onshore and offshore business structures and associated banking arrangements to obscure transactions, assets and beneficial ownership.[9] This is of particular interest to tax and revenue crime, which was assessed as posing a high and increasing money laundering threat, and has an estimated cost between $1.86 billion and $6.37 billion per year. [10]

Real estate professionals

The use of real estate is an established, well-known method of money laundering internationally and in Australia. Australian law enforcement has identified real estate as an attractive asset type to hide or invest illicit wealth and offers criminals the opportunity to launder a large volume of illicit funds into an asset, where the value of that asset appreciates over time. During 2022-23 and 2023-24, 68 per cent of the total gross restraint attributable to AFP-led CACT investigations was comprised of commercial and residential real property, amounting to more than $354 million.[11] Due to the complex and inherently covert nature of money

[8] Australian Federal Police, $47m assets seized as part of organised crime syndicate investigation (Media article, 9 June 2023) <https://www.afp.gov.au/news-centre/media-release/47m-assets-seized-part-organised-crime-syndicate-investigation>.
[9] Australian Transaction Reports and Analysis Centre, Money Laundering in Australia National Risk Assessment (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.
[10] Ibid
[11] AFP 2023, AFP submission to Attorney-General's Department - Consultation paper on Modernising Australia's anti-money laundering and counter-terrorism financing regime <https://consultations.ag.gov.au/crime/aml-ctf/consultation/download_public_attachment?sqId=question-2022-01-06-6908678210-publishablefilesubquestion-1&uuId=968181792>.

laundering, the scale of laundering the proceeds of crime through the purchase of real estate is likely to be much greater than is currently known.

Criminals exploit legitimate markets, such as property, to reinvest and hide proceeds of crime. For example, under AFP Operation VEYDA, a high profile transnational organised crime group was found to have facilitated money laundering through second tier loans and real estate investments.

AUSTRAC's NRA assessed the domestic real estate sector as posing very high and stable money laundering vulnerability. This is due to Australia's property market stability and value appreciation, profit-generation, negative gearing benefits, and housing and rental income functions of the sector.[12]

Real estate professionals have a unique relationship with buyers and sellers, compared to other parties involved in a property transaction. Real estate professionals are experts in the local property market, and are uniquely placed to identify suspicious matters, and provide vital information to AUSTRAC and law enforcement. This may include circumstances where real estate transactions involve manipulation of a property's valuation or appraisal, properties being bought and sold in quick succession, clients selling real estate for less than the market value, buying and/or paying well above or below the market value, or a sudden or unexplained change in ownership.

Dealers in precious metals and stones

Precious metals and precious stones are particularly vulnerable to being used for money laundering. Precious metals and precious stones are able to be readily purchased and sold anonymously using large sums of cash or virtual assets, purchased at below market cost directly from the general public, used as an alternative currency to make untraceable payments for illicit goods and services, and used as reliable investment with stable return.

Precious metals and precious stones can also be easily moved domestically and offshore due to their size and high-value, are difficult to trace and detect, have the ability to be reshaped, altered or hidden in common objects, and can be under or over-valuated to disguise the movement of proceeds of crime. These factors make precious metals and precious stones highly attractive to criminals wanting to launder illicit wealth.

AUSTRAC's NRA identified luxury goods, such as precious stones, jewellery and watches, as posing a very high and stable money laundering vulnerability.[13] For example, under a Northern Territory Joint Organised Crime Task Force Operation CURLY, an investigation into a large number of suspicious electronic money transfers from Darwin to Indonesia, saw law enforcement locating and seizing more than 60 kilograms of cannabis, a number of vehicles, almost $50,000 in cash, and a collection of sapphires, opals and other precious stones.[14]

[12] Australian Transaction Reports and Analysis Centre, Money Laundering in Australia National Risk Assessment (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.
[13] Ibid.
[14] The Australian Federal Police, 'Alleged NT multi-million dollar drug and money laundering syndicate smashed' (Media release 21 March 2020) Alleged NT multi-million dollar drug and money laundering syndicate smashed | Australian Federal Police (afp.gov.au)

Virtual asset services

Virtual asset services are a key vector for illicit financing, and AML/CTF regulation has not kept pace with the increasing uptake and evolving exploitation of these services, or with international standards. The increasing threat of virtual assets was identified in AUSTRAC's NRA, which assessed the use of digital currencies to transfer value as posing a high and increasing threat of money laundering. Virtual assets, such as digital currencies, allow criminal groups to move funds across borders quickly, cheaply and pseudo-anonymously.

For example, under a Western Australian Police investigation, a criminal syndicate was found to have utilised a registered digital currency exchange to provide the syndicate with digital currency in exchange for cash, which was identified as being proceeds of crime. Intelligence gathered during the operation identified much of the digital currency was stored in wallets that could be accessed off shore.

The FATF has also identified the use of virtual assets as posing a high illicit financing risk. In October 2018, FATF Recommendation 15 was amended to require countries to apply AML/CTF regulation to the virtual asset-related services (referred to as 'limbs' of the definition of 'Virtual Asset Service Provider') identified as being high risk of facilitating illicit financing activity:

- exchanges between virtual assets and fiat currencies (first limb)
- exchanges between one or more other forms of virtual assets (second limb)
- transfers of virtual assets on behalf of a customer (third limb)
- safekeeping or administration of virtual assets (fourth limb), and
- participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset (fifth limb).

AML/CTF regulation of digital currencies is currently limited to exchanges between virtual currency to fiat currency (and vice versa) transactions (i.e. the first limb). This means that where criminal groups transfer value between virtual currencies without a cash-out mechanism on either side of the transaction, there is no obligation for businesses to implement measures to identify, assess, mitigate and manage the financial crime risk. Due to this lack of reporting obligations, AUSTRAC and law enforcement's visibility of the transfer is inhibited.

Bringing the additional services in the FATF's definition of 'Virtual Asset Service Provider' (specifically, the second to fifth limbs) within the scope of AML/CTF regulation will close a significant regulatory gap, and ensure the AML/CTF Act remains up-to-date and robust against potential exploitation by criminals in this rapidly growing sector.

The existing regulatory framework is complex

The regime is widely considered to be unduly complex and poorly understood, leading to poor AML/CTF prevention practices and lower quality financial intelligence. The existing regime spans over 700 pages of legislation, plus published AUSTRAC guidance. The existing regime sets out detailed and prescriptive procedural requirements rather than setting a clear outcome of the regime to mitigate the risk of serious financial crimes. Operational experience and stakeholder consultation have highlighted systemic problems that are largely attributed to this complexity.

Key requirements relating to AML/CTF programs and Customer Due Diligence (CDD) are dispersed throughout the AML/CTF Act and the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (the Rules), making them difficult to follow and creating implementation challenges. A key objective underpinning the reforms is ensuring a reporting entity's obligations are clear, easy to understand and reflect contemporary business practices.

The *2016 Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* (the Statutory Review) noted the complexity of the current AML/CTF requirements generates uncertainty and ambiguity for reporting entities.

In particular, the Statutory Review notes that some elements of the AML/CTF regime focused too much on detailed procedural requirements that make compliance a tick-box exercise, rather than providing a framework for businesses to protect themselves by mitigating money laundering and terrorism financing risks. As a result, the current regime does not easily allow entities to adapt and scale their mitigation efforts and resources to the level of risk they face or the nature of their business.

The Bill would amend many core AML/CTF obligations to help reduce the compliance burden for businesses, help reporting entities understand their outcomes and obligations, and provide flexibility in how they achieve their obligations. The key changes are to:

- AML/CTF program requirements – These will be streamlined into high-level obligations that a reporting entity must meet. The reforms will seek to reduce the regulatory burden on industry by broadening the scope of group AML/CTF compliance to allow franchised entities, partnerships and other business structures to combine and fulfil their AML/CTF obligations at a group level. They will also allow for improved AML/CTF governance within reporting entities by focusing Board responsibilities on strategic oversight for financial crime risk.
- Customer due diligence – The reforms will allow greater flexibility as to how businesses meet their risk-based regulatory obligations, and move away from prescriptive identification and verification requirements that are focused on procedure.

The Bill would also repeal the *Financial Transaction Reports Act 1988* (FTR Act) to establish a single source of obligations for industry (including the transition of solicitors) under the AML/CTF Act. The Statutory Review noted the significant duplication and regulatory inefficiencies between the FTR Act and the AML/CTF Act. Repealing the FTR Act would also ensure a more efficient use of AUSTRAC resources.

An added benefit of simplifying and clarifying obligations is that it allows reporting entities to focus efforts on providing valuable and higher quality information to AUSTRAC, rather than trying to interpret complex regulation. This in turn allows AUSTRAC to use that information to identify financial transactions linked to crimes, and improves law enforcement and national security investigations and outcomes.

Australia is not meeting its international obligations

The FATF is an intergovernmental body established in 1989 to protect the global economy from the threats of money laundering, terrorism financing and proliferation financing. Thirty-nine governments, including Australia and all G20 countries, are members of the FATF. In addition, the FATF Global Network comprises the FATF and nine FATF-style Regional Bodies, bringing together more than 200 governments and 20 observer international organisations. Australia is a member and permanent co-chair of the Asia-Pacific Group on Money Laundering, the FATF-style body for the Asia-Pacific region.

The FATF sets global standards for combatting financial crime, and promotes compliance and effective implementation of the standards through peer assessment mechanisms—known as mutual evaluations—and public listing of jurisdictions found to have weak AML/CTF systems.

As a founding member of the FATF, Australia is committed to upholding its standards. Australia also plays an important global leadership role—including in the Asia-Pacific Group on Money Laundering—to support countries in our region to strengthen their AML/CTF systems.

The reforms aim to bring Australia into line with global best practice and improve compliance with the FATF standards in key areas where it is currently rated 'non-compliant' (regulation of tranche two entities) or 'partially compliant' (regulation of virtual asset services and value transfer transparency).

In addition, the reforms will also improve Australia's compliance with FATF standards by:

- clarifying risk assessment requirements
- aligning with the FATF principles for foreign branches and subsidiaries
- clarifying the availability of simplified CDD where the money laundering or terrorism financing risk of the customer is low
- better aligning the requirements for politically exposed persons in the AML/CTF Act and AML/CTF Rules with international standards
- updating the CDD exemption for gambling services to align with FATF's threshold, and
- enhancing the transparency of value transfers involving virtual assets.

Potential grey listing

The reforms aim to reduce the risk of Australia being 'grey listed' for its long-standing and heavily criticised inaction on tranche two regulation. Australia's most recent mutual evaluation was adopted by the FATF in 2015, at which point Australia was found non-compliant or only partially compliant with 16 FATF recommendations. While there have been some improvements to Australia's AML/CTF regime since that time, the FATF membership continues to call out Australia's non-compliance.

The requirement to regulate tranche two entities has been part of the FATF standards since 2003. The FATF has repeatedly criticised Australia for failing to regulate tranche two entities in any way. Australia is now one of only five countries out of over 200 jurisdictions that is completely non-compliant, with some of the remaining countries initiating reform processes.

As recently as July 2024, Australia's failure to regulate tranche two entities was highlighted by the FATF[15], with Australia ranked last for compliance among FATF members. The FATF called on Australia to 'urgently ensure that gatekeepers are adequately covered in line with the FATF's longstanding Recommendations in this area'.

[15] https://www.fatf-gafi.org/en/publications/Fatfgeneral/Gatekeeper-TC-Corruption.html

This risk is heightened in the next round of mutual evaluations, as the process for follow-up reporting and by which countries can be directly referred to the grey list is changing. If Australia has not implemented FATF-compliant regulation of tranche two entities by the next mutual evaluation, the deficiency will be highlighted as a key recommended action that Australia must address.

Australia is at high risk of 'grey listing' without these reforms. A lack of tranche two regulation, combined with the results against other FATF standards, may tip Australia into consideration for 'grey listing'. Members may directly nominate Australia based on the following:

- inaction for over 10 years from Australia's 2015 Mutual Evaluation Report that identified tranche two regulation as a major deficiency
- the gap in regulation being perceived as a risk to the global financial system, and
- an absence of political will due to Australia first committing to implement tranche two regulation in 2003, in line with the FATF Methodology.

Australia's next mutual evaluation will be in 2026, and substantial effort is required to avoid the negative consequences of a poor result. Impacts on Australia could include:

- economic impacts and decreased GDP based on reduced incoming capital flows, increased business costs and potential loss of correspondent banking relationships, due to other countries considering Australia a risk for financial crime and imposing enhanced due diligence requirements when doing business with Australia
- increased threat of criminals seeking to exploit perceived weaknesses in Australia's system and engage in illicit financial activity—leading to an increased burden on law enforcement
- reduced influence and credibility as a regional AML/CTF leader assisting countries in Australia's neighbourhood to combat money laundering or terrorism financing threats, including through Australia's central role at the Asia-Pacific Group on Money Laundering, and
- damage to Australia's international standing, reputation and influence by becoming one of only a very small number of advanced economies to have ever been grey-listed by the FATF.

By addressing Australia's deficiencies in tranche two regulation and improving FATF compliance, the Bill will send a strong message that Australia's AML/CTF system is integrated and protected to bolster trust in Australian reporting entities and to make it easier for them to conduct business. If the Bill is not passed, the AML/CTF regime will become less and less effective, and fall further behind as international standards continue to develop and strengthen to align with new and emerging risks.

Responding to other reviews of the regime

The Bill also implements recommendations made in the Statutory Review and recommendations from the Senate Legal and Constitutional Affairs References Committee's 2022 *Inquiry into the adequacy and efficacy of Australia's AML/CTF regime* (the 2022 Senate Inquiry).

On 20 April 2023, the Government accepted all recommendations of the 2022 Senate Inquiry. The key recommendation was for the Commonwealth Government to accelerate consultation with stakeholders on the timely implementation of tranche two reforms in line with FATF recommendations.

Development and consultation on the Bill

At its core, the AML/CTF regime is a partnership between the Australian Government and industry. Businesses play a vital role in effectively detecting and preventing misuse of their sectors and products by criminals seeking to launder money and fund terrorism.

The department engaged in two extensive rounds of consultation with affected sectors between April 2023 and June 2024. The department received over 270 submissions and conducted over 100 stakeholder meetings, including industry roundtables, presentation at industry events, and extensive bilateral meetings.

The department also engaged closely with government stakeholders, including law enforcement, national security agencies, Commonwealth agencies and state and territory regulators.

The department carefully considered all feedback and insights received from the entire consultation process to inform the development of the Bill, and made tangible amendments to the measures following stakeholder feedback, particularly on the design and coverage of designated services. The department worked closely with stakeholders to minimise the regulatory impact of the measures in the Bill, while addressing money laundering, terrorism financing and proliferation financing risks.

For example, the real estate sector raised strong opposition to the regulation of leasing and auctioneer services during the first round of consultation in 2023. The department carefully considered all stakeholder feedback, the money laundering and terrorism financing risk of the proposed designated services, international FATF requirements, and the regulatory impact that would be imposed on the sector.

The designated service presented in the final Bill focuses on higher-risk money laundering methodologies through the buying, selling and transferring of real estate, and does not regulate services related to residential tenancy agreements, property management and leasing of commercial real estate (see item 2 of Schedule 3 of the Bill). The Bill also does not regulate auctioneer services, unless the auctioning services are being provided by the seller's agent alongside brokering the sale of the real estate.

The department has also worked closely with the accounting and legal sectors to ensure designated services are fit-for-purpose and include appropriate carve outs to reflect money laundering and terrorism financing risk. For example, following advice from peak accounting bodies and acknowledgement of lower identified risk, the terms 'correspondence' and 'administrative' addresses have been removed from the proposed designated service at item 9 of the new table 6 of the Act (see item 10 of Schedule 3 of the Bill).

Consistent with the designated services model, and in line with stakeholder feedback, the Bill provides exclusions for those PSP services that are considered lower risk for money laundering and terrorism financing.

Extensive consultation has also been conducted specifically with the legal sector on appropriate protections for information subject to legal professional privilege. Specific industry concerns have been addressed in relation to suspicious matter reporting, as well providing greater flexibility on processes for making, reviewing or disputing assertions about legal professional privilege.

The department has also taken on board a range of feedback from existing reporting entities, including improvements to customer due diligence risk rating requirements, politically exposed person screening, terminology used for business groups and the head of a reporting group, private-to-private information sharing, and transitional and commencement timeframes for international value transfer service obligations.

Impact on Industry

The Bill seeks to minimise regulatory impact on both existing and new reporting entities while delivering an effective AML/CTF regime. The reformed AML/CTF regime is designed to be flexible and responsive to the nature, size and complexity of a reporting entity and the risks they can reasonably expect to face. The Bill aims to do this by outlining the principle or outcome to be achieved by regulated business, without using overly prescriptive or one-size-fits-all procedures.

The impact of AML/CTF regulation will vary significantly depending on the industry and size of the business. New and existing reporting entities will be able to leverage existing practices and new and emerging technologies, which will make it simpler and more cost effective to meet their obligations. The Bill also recognises that AML/CTF policies, procedures, systems and controls would vary according to the nature, size and complexity of the business. This means the cost of prevention activities and compliance can be scaled to the size of the business. A small business or sole trader will not be expected to have the same systems and specialists as a major bank.

The department also recognises that some tranche two sectors are already subject to regulatory oversight or other professional obligations. Tranche two sectors will be able to leverage and utilise these existing processes, where appropriate, to meet AML/CTF obligations. For example, many legal practitioners have existing systems in place to comply with the Australian Registrars' National Electronic Conveyancing Council (ARNECC) framework to verify their clients' identities. Legal practitioners who become reporting entities under the AML/CTF regime may determine that the ARNECC Verification of Identity Standards are sufficient to meet some AML/CTF customer identification requirements for certain customer types. This would prevent regulatory duplication and overlap, and contribute to a minimisation of regulatory burden.

Impact Analysis

In line with Australian Government requirements, the department completed an impact analysis that outlines the impacts and net benefits of the reforms. The department engaged Nous Group to analyse the impacts of the proposed policy options, including delivering stakeholder surveys on the anticipated changes in regulatory costs.

The impact analysis estimated the quantifiable benefits of the reforms to be up to $13.1 billion over 10 years, against an estimated additional regulatory burden to businesses of $13.9 billion over 10 years.

Due to the complex and inherently covert nature of money laundering, accurately quantifying its scale and economic and societal impacts is challenging in both Australian and global contexts. Illicit finance and money laundering remain serious threats precisely because they are hidden. Further, the complexity involved in forecasting any law enforcement and regulatory activity arising from the reforms means that a conservative approach was taken to quantifying the estimated benefits to ensure robustness.

The full range of benefits is likely to be substantially greater than those that have been able to be directly quantified in the impact analysis. There is a broad range of criminal activity and second order effects of crime and national security threats enabled by illicit financing. Additional benefits that could not be robustly quantified include the deterrence of criminal activity by making money laundering more difficult, enhancing law enforcement ability to combat criminal exploitation arising from expanded regulation of virtual asset services, reduced inflation of prices for goods and services targeted for money laundering, and increased consumer trust and reputational benefits for businesses seen as hardened against criminal exploitation. These are additional to the benefits estimated in the analysis for combatting crime and preventing crime harm of up to $2.4 billion over 10 years, and avoiding up to $10.7 billion in reduced foreign investment that could flow from Australia being grey listed by the FATF and seen as a high risk by other countries.

Similarly, the quantifiable costs of the reforms were difficult to ascertain. The estimated regulatory impact was derived from surveys of businesses, which asked participants to estimate changes in their compliance costs. The analysis was sensitive to the understanding and assumptions of the affected stakeholders at that time, including tranche two businesses that do not yet have experience with the AML/CTF regime. Further, the impact analysis did not factor in the design of the AML/CTF Rules and guidance, which will provide businesses with operational detail on how obligations should be implemented at a practical level. The AML/CTF Rules and guidance will be developed with industry, with the aim of minimising regulatory impact while providing an effective AML/CTF regime. This presents an opportunity to lower the cost of regulation estimated in the impact analysis. For example, through working closely with industry to understand existing practice, a higher proportion of existing business process may be able to be used for AML/CTF compliance. Further, well developed guidance and education from AUSTRAC will reduce the time and effort for small business to understand and comply with their obligations. It may also reduce or eliminate the need for costly external advice.

AUSTRAC will work and consult closely with industry on these processes to ensure AML/CTF Rules are flexible and fit-for-purpose and the associated guidance clarifies businesses' obligations

The impact analysis received an 'exemplary' rating from the Office of Impact Analysis (OIA). The impact analysis is summarised in the Explanatory Memorandum to the Bill, and is available on OIA's website.

Deferred commencement

Careful consideration has been given to commencement dates and timings. The Bill contains a sufficient lead time and staggered commencement dates, to provide adequate time for reporting entities (including newly regulated entities) to understand and transition to their obligations.

For example, tranche two entities and new virtual asset services would not commence under the AML/CTF regime until 31 March 2026. The department heard very clearly from stakeholders that they wanted a considerable period of time to work through implementation, before commencement of obligations.

Schedule 3 of the Bill, which deals with tranche two entities, contains transitional provisions for these newly regulated entities. These transitional provisions allow tranche two entities that provide new designated services under Schedule 3 to enrol as reporting entities with AUSTRAC from 31 March 2026, but other regulatory obligations under the AML/CTF Act would not apply until 1 July 2026.

The commencement dates must also take into account the timing of Australia's FATF mutual evaluation, which commences in 2026. If passage of the Bill is delayed, reporting entities (particularly tranche two entities) will not have enough time to appropriately prepare for their new regulatory obligations. The measures in the Bill must be in place prior to the mutual evaluation in 2026 to meet technical compliance with the FATF standards. Delaying the Bill will place undue pressure on reporting entities to prepare for and meet their obligations.

As noted above, failure to address the regulatory gaps in Australia's AML/CTF regime will increase the risk of a poor FATF mutual evaluation and a consequent 'grey-listing'. If Australia is grey-listed, Australia would be required to implement the substantive elements of the Bill within limited timeframes, while simultaneously experiencing the economic and reputational grey listing consequences. Australia would have little to no scope to argue against the measures, as the only way to end enhanced FATF measures or grey-listing is to demonstrate that the country has made progress and addressed the key non-compliances.

Next steps

AML/CTF Rules

The Bill would amend the AML/CTF Act to contain high-level obligations for businesses, with further detail set out in the AML/CTF Rules. The development of the AML/CTF Rules will seek to achieve the objectives of the regime and minimise the regulatory impact on industry.

AUSTRAC will commence engagement and consultation with industry on a draft of the AML/CTF Rules before the end of 2024.

AUSTRAC guidance and education

AUSTRAC will provide sectors with tailored guidance and education on the new regime. Guidance will be accompanied by dedicated and diverse engagement channels, including a scaled-up call centre, to address any questions raised by industry. AUSTRAC will work with industry to develop this guidance to ensure it is fit-for-purpose and tailored for industries.

FATF 2026-27 Mutual Evaluation

Australia's next FATF mutual evaluation is scheduled for 2026. The FATF will assess the implementation and effectiveness of Australia's AML/CTF measures to combat money laundering, terrorism financing and financing of the proliferation of weapons of mass destruction.

The department will engage with Australian government and industry stakeholders on preparations for the FATF mutual evaluation through a range of existing forums at senior and working levels, as well as establishing specific governance structures to provide oversight and strategic guidance on the preparations.