



**Australian Government**  

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**AUSTRAC**

Senate Legal & Constitutional  
Affairs Legislation Committee  
Inquiry into Anti-Money  
Laundering and Counter-  
Terrorism Financing  
Amendment Bill 2024

**AUSTRAC submission**

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## Introduction

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The Australian Transaction Reports and Analysis Centre (AUSTRAC) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (AML/CTF Amendment Bill).

AUSTRAC supports work to create a hostile environment for criminals who abuse the financial system for money laundering, terrorism financing and other serious crime. This work is achieved through investigation and prosecution of offenders, confiscation of criminal assets, regulatory reform, capacity building throughout the Asia-Pacific region, and industry outreach and education.

Regulatory, law enforcement and national security agencies acknowledge that the persistent threat of money laundering requires a united response. Despite a sustained effort across Australia's public and private sectors, money laundering remains an intractable issue, given its interdependency with all profit-generating crimes.

### Why we need reform

Australia has regulated the financial sector, bullion dealers and the gambling sector for AML/CTF purposes for almost 2 decades, and longer in some cases. This has produced significant benefits for the Australian community:

- businesses in these sectors have worked to understand the risks that their services will be exploited by criminals, and have taken steps to manage and mitigate those risks
- AUSTRAC has received significant reporting from these sectors, which has enabled law enforcement, national security, revenue protection and regulatory agencies to detect, deter and disrupt money laundering, terrorism financing, tax evasion and other serious crimes.

However, AML/CTF regulation of these sectors only provides partial protection for the community from the harms of financial crime. Certain professional services provided by lawyers, accountants, and trust and company service providers, are globally recognised as vulnerable to exploitation by criminals who try to circumvent AML/CTF regulation by misusing company, trust and other legal structures, to obscure the origin and ownership of proceeds of crime. These 'gatekeeper' professions provide specialised services that support legitimate economic activity, but also have the potential to undermine broader AML/CTF measures.

High-value goods and property, like real estate and precious metals and stones (beyond bullion), are attractive to criminals as means to store and transfer proceeds of crime outside the regulated financial sector.

These vulnerabilities are globally recognised, as evidenced in the Financial Action Task Force (FATF) Standards and near-universal AML/CTF regulation of these sectors around the world. AUSTRAC's recent national risk assessments (discussed in Part 2 below) show that Australia is in no way uniquely insulated from such risks. The *Money laundering in Australia national risk assessment* identifies the high money laundering risks and vulnerabilities of services provided, and products

dealt with, by legal practitioners, accountants, trust and company service providers, the real estate sector, and dealers in precious metals and stones.

Without effective AML/CTF regulation, businesses have no direct obligation to understand their financial crime risk exposure, let alone to manage and mitigate those risks to protect themselves and the broader community. If businesses do not look for indicators of financial crime, they will not see them. Businesses can only look effectively if they take meaningful steps to understand their exposure to criminal exploitation.

The lack of regulation also means that businesses in these sectors are not required to report to AUSTRAC when they form a suspicion related to financial crime. This deprives AUSTRAC, law enforcement and other agencies of a vital source of financial intelligence to protect Australia from the harms of financial crime.

The AML/CTF Amendment Bill is an opportunity to close these gaps and minimise the regulatory burden for currently-regulated businesses. This is by focusing more directly on achieving the goal of detecting, deterring and disrupting financial crime, and making it easier for businesses to meet obligations that are better aligned with the increasingly digital, instant nature of our global financial system.

The proposed reforms aim to:

- expand the regime to address vulnerabilities in sectors providing certain high-risk services
- modernise digital currency and payments technology-related regulation
- simplify, clarify and modernise the AML/CTF regime for the regulated population.

## Part 1: Financial intelligence and regulation

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### AUSTRAC's dual role

AUSTRAC's regulatory and financial intelligence functions are interconnected and complementary. This dual role helps AUSTRAC build resilience in the financial system by enhancing AML/CTF capacity in the private sector through regulation, and enables the collection and use of financial intelligence to detect and disrupt money laundering, terrorism financing and other serious crime.

As Australia's AML/CTF regulator, AUSTRAC supervises more than 17,500 regulated 'reporting entities' required to have processes and controls in place to protect their systems from criminal misuse. Reporting entities include: banks and credit unions; non-bank lenders and stockbrokers; gambling and bullion service providers; and remittance service and digital currency exchange providers.

Reporting entities are required to report to AUSTRAC, as Australia's financial intelligence unit (FIU), certain financial transactions and suspicious activity. This assists AUSTRAC to understand the financial crime landscape. AUSTRAC monitors the quality of these reports and educates industry on associated money laundering and terrorism financing (ML/TF) risks, to ensure the consistent reporting of high-quality information.

AUSTRAC analyses the data we receive through these reports, to identify potential threats and develop actionable intelligence to support the work of law enforcement, intelligence, national security, human services and revenue agencies, and international counterparts.

AUSTRAC's financial intelligence analysts use this information to identify transactions linked to criminal activity including money laundering, terrorism financing, organised crime, child exploitation and tax evasion. AUSTRAC also assesses ML/TF risk across regulated sectors and shares this information with government and industry partners, including through publishing national and sectoral risk assessments.

AUSTRAC proactively shares intelligence with government partners to help them detect and disrupt criminal activity. Partners also have access to AUSTRAC's data holdings and can search information directly to support their national security and law enforcement activities.

The AML/CTF Amendment Bill would see an expansion of AUSTRAC's regulated population from 17,500 to more than 100,000 entities. This would increase the volume of financial intelligence available to AUSTRAC and in turn, help prevent the harms that result from misuse of Australian businesses by criminals.

## The current AML/CTF regime

Reporting entities regulated by AUSTRAC are the first line of defence in protecting the Australian economy. The current legislative framework sets out preventative measures for reporting entities to:

- instil a risk-based approach, placing the onus on reporting entities to identify, mitigate and manage their ML/TF risk
- meet ‘know your customer’ requirements by carrying out customer due diligence, ongoing customer due diligence and enhanced due diligence as required
- monitor transactions
- report certain transactions and suspicious matters to AUSTRAC.

The AML/CTF regime establishes a mechanism for businesses to identify, assess, manage and mitigate ML/TF risks in a way that is scalable to the individual business.

Industry reporting to AUSTRAC also forms a core part of the financial intelligence AUSTRAC produces. The AML/CTF regime requires that businesses submit to AUSTRAC:

- suspicious matter reports (SMRs)
- threshold transaction reports (TTRs – physical currency transactions valued at AUD10,000 or more)
- international funds transfer instruction (IFTI) reports (instructions to move funds or value into and out of Australia)
- cross-border movements of monetary instruments (cash and bearer negotiable instruments), by individual travellers and businesses, valued at AUD10,000 or more.

In 2023-24 reporting entities submitted 381,758 SMRs to AUSTRAC, which are available to law enforcement partners within 24 hours of receipt. AUSTRAC also disseminates potentially high-risk SMRs to law enforcement and government agencies upon identification of priority financial crime threats.

Financial intelligence is a vital tool in combating transnational, serious and organised crime, particularly in the face of new and emerging threats. It is a critical piece of the national security architecture, helping to preserve the integrity of Australia’s financial system. However, AUSTRAC’s existing collection powers under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) are no longer fit-for-purpose, given the increasing complexity of reporting entities’ business models and emerging financial crime risks. This restricts AUSTRAC’s ability to obtain relevant information. Reforms in the AML/CTF Amendment Bill will help remedy this deficiency.

Under the AML/CTF Act, a section 49 notice can only be issued in circumstances where a reporting entity has communicated information to AUSTRAC under section 41 (SMR), section 43 (TTR) or section 45 (IFTI). These legislative limits give rise to scenarios that prevent AUSTRAC from lawfully obtaining information under the section 49 notice powers, such as where the subject of AUSTRAC enquiries has not been reported to AUSTRAC by a reporting entity under section 41, 43 or 45.

The purpose for which information can lawfully be requested under section 49 must be relevant to the matter communicated in the SMR, TTR or IFTI. This limits AUSTRAC's ability to seek information in support of broader efforts to identify trends, patterns, threats or vulnerabilities associated with money laundering, terrorism financing, proliferation financing and other serious crimes. The AML/CTF Amendment Bill would introduce a new notice power to address this challenge.

The section 49 notice power compels the recipient to respond, as there are penalty provisions associated with non-response. New provisions in the AML/CTF Amendment Bill will recognise the increasing use of public-private cooperation in combating financial crime, by enabling AUSTRAC to issue a notice that does not carry penalties. This new provision is in line with global trends towards fostering collaborative efforts with the private sector to collect and analyse information using public-private partnerships to combat financial crimes.

## Part 2: Money laundering and terrorism financing risks

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Financial intelligence paints a clear picture of the financial crime threat environment in Australia.

Australia, by virtue of its strong economic prosperity, political stability and effective rule of law, is an attractive destination for criminals to launder the proceeds of crime. Australia remains a highly lucrative market for illicit goods and is targeted by transnational criminal networks. Individual wealth remains a target for fraud and cybercrime.

The combination of those threats means proceeds of crime will be laundered through Australia's financial system to reach offshore criminal networks. At the same time, domestic criminals seek to exploit any vulnerability in the Australian economy, to obscure and benefit from proceeds of crime.

Law enforcement agencies agree that targeting the criminal business model, through robust supervision and enforcement, has a significant disruptive impact, reduces harm to the community, and minimises the loss of government revenue.

The measures proposed in the AML/CTF Amendment Bill will assist industry and AUSTRAC to better identify and mitigate the significant risks (outlined below), by expanding the regime to regulate high-risk services in new sectors and improve the level of financial intelligence collection.

### Money laundering and financial crime

Money laundering is a key enabler of serious and organised crime. It allows criminals to enjoy the profits of crimes such as drug trafficking, tax evasion, theft and fraud. Every day, criminals around the world generate billions of dollars in profits from transnational, serious and organised crime.

Money laundering is the process used to place, layer and integrate these funds into the legitimate financial system and obscure their origins. The activities of these crime groups are not only a direct threat to the community, but also have indirect security, economic and social impacts on Australians.

Shifts in the threat environment are challenging traditional law enforcement approaches. Advances in technology, the digitisation and increased speed of financial services, and pervasive social media have led to increases in cyber attacks and the spread of disinformation from state and non-state actors. Blockchain technology and virtual assets (such as cryptocurrencies) enable the pseudo-anonymous movement of value. Easy access to encryption tools and the dark web also allow criminal organisations to obscure their activities.

It is crucial to address critical vulnerabilities across the financial system and raise awareness of criminal methodologies. More work needs to be done in collaboration with industry to lift compliance and strengthen the financial system. Many of the professional services that are often misused to facilitate criminal activity have remained vulnerable to criminal exploitation.



The reforms in the AML/CTF Amendment Bill help to address these vulnerabilities. For example, organised crime groups are increasingly using stablecoins to move money internationally. More volatile virtual assets can be quickly exchanged for stablecoins, making them useful for layering. If the original illicit funds are held as volatile virtual assets, criminals swap these for stablecoins at exchanges. The apparently legitimate stablecoins are then sent onwards for exchange to fiat, to be cashed out and laundered through the banking system.

In another methodology, Australian entities are drawing on virtual assets to purchase real estate, both onshore and offshore, by converting it to fiat currency and transferring it to law firms, conveyancers and real estate agents. This carries the potential for criminal actors to exploit virtual asset channels to launder proceeds of crime into assets.

## National risk assessments

AUSTRAC recently published our 2024 national risk assessments (NRAs) [Money laundering in Australia national risk assessment](#) and [Terrorism financing in Australia national risk assessment](#).

The money laundering NRA found that Australia continues to be exploited by money launderers and remains an attractive destination to store and integrate criminal proceeds.

The terrorism financing NRA found that Australia's terrorism financing environment is small scale and low value, and Australia is primarily an exporter of small-scale terrorism funds flowing to offshore terrorist organisations and their affiliates. However, terrorist financiers continue to prefer readily available and proven methods to move funds, such as banking, remittance and exchange of cash.

The NRAs also identify the high money laundering risks and vulnerabilities of services provided, and products dealt with, by legal practitioners, accountants, trust and company service providers, the real estate sector, and dealers in precious metals and stones (known as 'tranche 2' entities). The services provided by these entities are not currently regulated by Australia's AML/CTF regime.

### Money laundering in Australia NRA

The key theme to emerge from the money laundering NRA is *persistence* in:

- exploitation of channels that have historically been used to launder funds (for example, banks, remitters and casinos)
- exploitation of high-value assets like luxury watches, vehicles and real estate
- involvement of professional service providers to help establish complex business structures and associated banking arrangements, to help individuals launder funds and conceal wealth.

Another theme to emerge from this assessment is the criminal exploitation of legitimate financial channels, assets and services.

Core features of Australia's domestic economy, such as cash, bank accounts, payments technology, business structures and trusts, are also used by money launderers to place, layer and integrate criminal proceeds. Underpinning many money laundering activities in Australia is opacity, anonymity and a lack of transactional visibility. A continued mainstay of money laundering is the use of cash,

trusts, identity crime, mule accounts, and third-party transactions that obscure identity, beneficial ownership or financial flows.

Identity verification – a key pillar of AML/CTF controls – is likely to become an increasingly contested space with the emergence of artificial intelligence and deepfakes. This is a key emerging challenge facing Australia and the broader AML/CTF community. The proposed reforms will reinforce the need not only to verify that an identity is valid, but also to link that verified identity to the person actually receiving the service.

### ***Key money laundering NRA findings***

Lawful domestic financial channels remain fundamentally important pathways for money launderers to place, layer and integrate funds domestically and internationally.

Crimes generating the highest value of illicit proceeds that require laundering are assessed to be drug offences (including cultivation, manufacture and trafficking), tax and revenue crimes, and defrauding government-funded programs.

Criminals continue to use established channels such as cash, luxury goods, real estate, domestic banks, casinos and remitters, to launder funds in Australia. Criminal use of digital currency, digital currency exchange providers, unregistered remitters and bullion dealers is increasing.

Opaque legal structures can be created in Australia and used by criminals to help conceal their identity and illicit activity. These structures can limit or obscure visibility of the ultimate beneficial owners of corporate entities, assets and financial infrastructure. They create a significant money laundering vulnerability for Australian authorities and industry.

The use of professional service providers – either witting or unwitting – to establish, advise on or operate corporate and financial infrastructure, also reduces visibility of the ultimate beneficial owner and creates money laundering vulnerabilities for Australian authorities and industry.

The lack of AML/CTF obligations for tranche 2 entities means professional service providers are not subject to due diligence, transaction reporting and supervision requirements in the AML/CTF Act.

Some key NRA findings regarding professional service providers include the following.

- Lawyers pose a high and stable money laundering vulnerability. Law enforcement agencies are consistently identifying criminals seeking and exploiting the advice and services of lawyers to legitimise their activity and obfuscate proceeds of crime. Key vulnerabilities associated with lawyers include the criminal use of law firm trust accounts, facilitation of real estate transactions, and the creation and administration of legal structures.
- Accountants also pose a high and stable money laundering vulnerability. Criminal groups misuse accountants' services for money laundering activities. These include mainstream bookkeeping to legitimise illicit funds, and managing complex banking and corporate arrangements to conceal beneficial ownership (including schemes involving multiple facilitators and jurisdictions). Structuring of funds movements, using complex corporate structures to send and receive funds through accountants' client-trust accounts, remains a high money laundering risk.

- Real estate itself is a widely-exploited asset type for money laundering in Australia. The real estate sector is assessed as posing a very high and stable money laundering vulnerability. Real estate agents pose a medium and stable money laundering vulnerability. The purchase of real estate is a key money laundering methodology, exposing real estate agents to significant amounts of criminal proceeds in holding deposits.
  - Real estate agents play a different role to lawyers, accountants and conveyancers, who are able to facilitate purchases and obfuscate sources of funds and beneficial ownership. Real estate agents have a different relationship with buyers and sellers from other parties involved in a property transaction, and can provide unique insights to regulators and law enforcement. They are experts in the local property market, so are uniquely placed to identify suspicious circumstances, such as manipulation of a property's valuation or appraisal, and properties being bought and sold in quick succession.
- The misuse of legal structures is frequently and persistently observed in Australian money laundering investigations. Company and trust structures are versatile and can be tailored to complement criminal operations, obscure financial flows and protect criminal assets. Companies and trusts were both assessed as posing a high and stable money laundering vulnerability. Trust and company service providers pose a medium and stable money laundering vulnerability. They assist in the creation, operation and management of corporate and trust structures, and present a gateway for criminals to exploit these legal structures. Complex legal and financial structures obfuscate beneficial ownership, conceal wealth and can move significant volumes of funds domestically and offshore, making them attractive to criminals for laundering funds.
- Luxury goods – including precious stones, jewellery and watches – pose a very high and stable money laundering vulnerability. These luxury goods are attractive for money laundering for a range of reasons, including: they require minimal to no knowledge, skills or expertise to acquire, store and maintain; they are easily moved into and out of both licit and illicit markets; they often retain very high value (and sometimes appreciate in value); and they are easily transportable.

Use of virtual assets as a value transfer mechanism poses a high and increasing money laundering vulnerability. Virtual assets allow criminal groups to move funds across borders quickly, cheaply and pseudo-anonymously. Money laundering methods favoured by criminals in the virtual asset market include: fast transfers between fiat currencies and stablecoins; mixers and tumblers; offshore and unregulated peer-to-peer traders; money mules; remitters; and cash-to-virtual asset contracts.

Virtual asset service providers (VASPs) pose a medium and increasing money laundering vulnerability. Criminals exploit VASPs for money laundering as an extension of, and in addition to, traditional layering methodologies. VASPs offer speed, global reach and pseudo-anonymity, and can facilitate funds flows to and from foreign jurisdictions with low visibility.

The near-instant and irreversibility of transactions present a persistent challenge in detecting and disrupting illicit transactions before funds leave wallets. Virtual asset ATMs and the VASP-remittance corridor are emerging trends that present a heightened money laundering vulnerability. The

proposed reforms will close a significant regulatory gap by directly regulating, for the first time, the remittance of virtual assets for AML/CTF purposes and other virtual asset related services.

## Terrorism financing in Australia NRA

### *Key terrorism financing NRA findings*

The terrorism financing NRA found that the use of virtual assets to move and store funds for terrorism financing purposes as high risk.

The use of virtual assets by violent extremists across the ideological and religious spectrums is increasingly identified in Australia. This uptake coincides with international experience and reporting that threat actors are demonstrating an increased comfort in virtual asset use, despite recent largescale disruptions. For some ideologically motivated violent extremism actors in Australia, notably nationalist and racist violent extremists, virtual assets are a key channel for moving and storing funds.

The use of privacy coins and stablecoins have been observed and will likely remain popular, particularly during periods of market volatility. Other virtual asset services that are likely misused for terrorism financing include:

- transfer of virtual assets through peer-to-peer traders, in international or decentralised virtual asset exchanges, to obscure the source and destination of funds
- use of virtual asset ATMs to on-ramp funds
- use of mixer services to further the distance from the original source and wallet holder.

Based on the information currently available, the terrorism financing NRA did not identify specific links between professional service providers and terrorism financing activities in Australia.

## Part 3: Industry engagement and support

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### Support to the current regulated population

AUSTRAC works with reporting entities to ensure they are vigilant and capable of preventing, detecting and responding to threats of criminal abuse and exploitation. We promote compliance by providing education and guidance, and developing and sharing information about ML/TF risks.

Reporting entities can use the guidance, education and risk insights provided by AUSTRAC to: prevent their business facilitating criminals; enhance market access; protect their reputation; and increase customer confidence. Regulation also provides several legal protections for sharing information, or actions taken to mitigate risk in line with the AML/CTF Act.

### Support to new reporting entities

Under the AML/CTF reform proposal, newly regulated entities would need to implement a range of obligations, including to enrol with AUSTRAC, develop an AML/CTF program, conduct customer due diligence, and report to AUSTRAC certain threshold transactions, international transfers and suspicious matters. AUSTRAC understands that industry will need time and support to effectively implement the obligations.

Beyond the quantity of reports, the effectiveness of any AML/CTF regime relies on the quality of industry reporting. AUSTRAC's existing approach to regulation is to collaborate and support reporting entities to meet their obligations in the first instance. AUSTRAC only takes enforcement action against a reporting entity where there has been serious and systematic breaches of the AML/CTF Act. In instances of minor or technical non-compliance, we work with reporting entities to enable them to respond and remediate issues.

A key pillar of Australia's AML/CTF regime is to enhance the awareness of Australian businesses of the vulnerabilities they face and uplift their capability to protect their business from criminal misuse.

### Education and outreach

AUSTRAC will partner with industry to ensure that all reporting entities are aware of and understand their obligations, while being afforded sufficient time and practical guidance to implement them.

AUSTRAC will work closely with industry sectors to co-design products suited to the particular challenges they face. Early engagement with industry will allow AUSTRAC to identify opportunities for collaboration, ensuring products are shaped by industry experience and best practice.

This collaborative approach will allow AUSTRAC, with industry representatives, to develop extensive guidance and education products targeted to industry needs, which will be provided to industry sectors through a range of channels. AUSTRAC will co-design guidance and education products on: the scope of AML/CTF obligations (including what has changed for existing reporting entities); AUSTRAC's supervisory approach; and expectations of compliance and consequences of non-compliance. Sector-specific products will be co-designed for new reporting entities, outlining their

ML/TF and proliferation financing risks and how the AML/CTF obligations will apply in their unique operating environments.

Early education and guidance will be provided to assist new regulated entities to understand designated services, AML/CTF obligations (including enrolment), key timeframes and how to develop and implement effective AML/CTF measures in their businesses. Products will focus on challenges faced by small businesses, providing practical guidance through a range of materials to help businesses tailor their AML/CTF program to their unique risks, nature, size and complexity.

One of AUSTRAC's primary goals is to ensure that new regulated small businesses can develop an effective AML/CTF program without incurring unreasonable costs. AUSTRAC is hiring dedicated staff to provide guidance on the ML/TF risks faced by new regulated sectors.

Using the funding provided by government, AUSTRAC is also developing practical guidance for new regulated small businesses to reduce the costs of compliance.

Products will be promoted through extensive communication activities, which will also raise awareness of the reforms and how the AML/CTF regime protects the Australian community from harm. AUSTRAC is currently working to determine the most suitable engagement channels to meet the needs of our stakeholders, including considering enhanced functionality of our website, media opportunities, and engaging stakeholders through industry association channels. Guidance will be accompanied by access to an enhanced Contact Centre to address questions raised by industry.

## Working with industry

AUSTRAC is creating a new team to initially provide industry groups and associations, in both existing and newly regulated industries, with a direct engagement avenue. This will simplify and improve support to industry associations to coordinate and drive effective implementation of the reforms. Industry forums will be held to provide information about the reforms and enable further mechanisms for consultation and co-design on a range of implementation matters.

## Working with industry to develop AML/CTF Rules

The 2016 *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006* found the AML/CTF legislative regime is too complex and reduces the ability of regulated entities to understand and comply with AML/CTF obligations. In particular, the scale, structure and density of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules) rendered the AML/CTF Rules hard to follow and largely inaccessible for small business.

Given the complexity of the current regime and prospective increase in the regulated population of small and medium enterprises, AUSTRAC is working to simplify the AML/CTF Rules, where appropriate. The revised AML/CTF Rules will be organised to reflect the structure of the AML/CTF Act, to make them easier to use for reporting entities. The objective is to simplify the regime and make sure the obligations within it are able to be better understood by the regulated population.

AML/CTF Rules are developed in consultation with industry, government agencies and other stakeholders. AUSTRAC will commence consultation with industry on the draft AML/CTF Rules before the end of 2024, to ensure they are fit-for-purpose and align with the evolving operating

environment for regulated businesses. AUSTRAC intends to undertake 2 rounds of public consultation, and engagement with specific sectors, before the AML/CTF Rules are promulgated.

AUSTRAC's engagement on the draft AML/CTF Rules will build upon the consultation process undertaken by the Attorney-General's Department on the proposed reforms, and allow industry to assist in developing obligations that are flexible, practical and calibrated towards a larger range of sectors and regulated entities.



## Part 4: Simplifying and clarifying the regime

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The current AML/CTF regime is complex. Regulated entities have noted that it is difficult to understand, leading to inadequate ML/TF prevention practices and lower-quality financial intelligence.

The negative effects of unnecessary complexity result in increased compliance costs, with a disproportionate amount of resources dedicated to interpreting legal requirements that could be better deployed to other risk management activities more likely to improve an entity's ML/TF risk management posture.

Innovation is difficult as the regime lacks the flexibility, in some cases, to accommodate rapidly-changing technology and business practices. This in turn leads to businesses being put at greater risk of exploitation because they are not able to effectively harden their operations against exploitation and new challenges.

To address these issues, the proposed reforms would:

- improve the effectiveness of the regime for businesses, partner agencies and AUSTRAC by making the obligations easier to understand and implement
- ease regulatory burden by simplifying and clarifying the regime so businesses can implement obligations more efficiently
- modernise the regime to reflect changing business practices and technologies.

The reforms will change key existing obligations that have been identified as cumbersome, difficult to implement or not in alignment with Australia's international obligations.

Key obligations that will change include:

- AML/CTF programs
- customer due diligence requirements
- the 'tipping off' offence
- repeal of the *Financial Transaction Reports Act 1988* (FTR Act).

### AML/CTF programs

Regulated entities are currently required to maintain an AML/CTF program. In some cases the regulatory obligations place greater emphasis on following procedures, rather than ensuring the assessed ML/TF risks are identified, assessed, managed and mitigated. Focusing more on outcomes will provide greater flexibility and further support businesses of all sizes to tailor their AML/CTF programs to their ML/TF risks, rather than using a one-size-fits-all approach.



## Customer due diligence

A key element of identifying and managing ML/TF risk is to be able to know your customer. Changes to customer due diligence obligations will require businesses to identify and verify the identity of their customer and improve their understanding of potential money laundering, terrorism financing and proliferation financing risks associated with each customer. A business will also be required to apply ongoing customer due diligence measures appropriate to each customer risk. The new obligations will be flexible enough to accommodate a range of business types in different sectors.

The reforms will also change customer due diligence exemptions:

- permitting eligible law enforcement agencies to issue ‘keep open notices’ directly to reporting entities, with appropriate AUSTRAC oversight, and permit entities not to perform certain customer due diligence measures when they receive a notice and reasonably believe that compliance with such AML/CTF obligations would, or could, alert the customer to the existence of a criminal investigation – this will be an efficiency gain for reporting entities, law enforcement and AUSTRAC
- lowering the threshold for gambling service providers, for when customer due diligence needs to be carried out, from \$10,000 to \$5,000 – this is to minimise regulatory differences between the Commonwealth, states and territories and align Australia’s AML/CTF regulation of gambling services with the FATF Standards.

## Tipping-off offence

AUSTRAC relies upon information sourced from industry to build an intelligence picture of Australia’s financial crime landscape and support investigations by partner agencies. It is imperative that the information provided by industry to AUSTRAC be kept confidential and that the subject of the information not be ‘tipped off’ that AUSTRAC received a report about their activities. The current offence provision is inflexible, difficult to apply and has led to unintended consequences.

The tipping-off offence will be updated to focus on preventing the disclosure of SMR information, or section 49 notice-related information, where it would or reasonably could prejudice an investigation. A section 49 notice can be used by an authorised agency to request further information relating to a transaction or SMR given to AUSTRAC.

This move to a ‘harm prevention’ model will be a significant shift away from the existing highly-prescriptive tipping-off offence that has in some cases impeded appropriate and desirable risk mitigation by reporting entities. This is in line with comparable jurisdictions and developments in the FATF Standards in recent years. The reform will also assist information sharing by a business, to assist with the detection and disruption of financial crime.

## Repeal of the *Financial Transaction Reports Act 1988*

The FTR Act would be repealed, with certain remaining obligations for solicitors to be captured under the reformed AML/CTF Act. The intention is that the AML/CTF Act and Rules should be the sole source of obligations for industry, to simplify compliance with the regime.

Remaining service providers subject to FTR Act regulation, such as motor vehicle dealers, sellers of traveller’s cheques, and offshore online remitters, would be deregulated so long as they do not provide another designated service under the AML/CTF Act, thus reducing costs for business.

## Part 5: AUSTRAC powers

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The increasing diversity of AUSTRAC's regulated population and growing sophistication of financial criminal activity, as illustrated in AUSTRAC's money laundering NRA, have made it difficult for AUSTRAC's existing suite of powers to respond effectively to changing operational requirements. The significant growth in the number of regulated entities will only intensify the need for reforms to these powers, to manage the high money laundering risks associated with certain services provided by newly regulated sectors.

Without access to appropriate information-gathering tools, AUSTRAC is hampered in obtaining intelligence that leads to the disruption of money laundering, child sexual exploitation, financing of terrorist activity, tax evasion and other serious crimes. AUSTRAC also needs to be equipped to gather evidence that can assist in the investigation and prosecution of regulatory offences that undermine Australia's AML/CTF defences and allow criminals to abuse Australia's financial system.

The need to enhance AUSTRAC's information-gathering powers to respond to these operational challenges was identified in the recommendations of the 2016 'Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations'.

The proposed enhancements would be consistent with the powers exercised by other financial regulators, and better align AUSTRAC's supervisory and enforcement powers with the *Regulatory Powers (Standard Provisions) Act 2014*. The changes would also ensure compliance with FATF standards for AML/CTF regulators and FIUs (for example, FATF Recommendations 27, 29 and 35).

The enhanced suite of powers would better enable AUSTRAC to effectively supervise, investigate and enforce the AML/CTF obligations of reporting entities. The proposed reforms would ensure AUSTRAC can effectively fulfil our dual role of AML/CTF regulator and FIU.

Although AUSTRAC has a range of existing information-gathering powers, there are limitations that prevent AUSTRAC from gathering information in circumstances where it is necessary or would be valuable to do so. For example, the increased use of outsourcing and other more complex arrangements common in modern business models mean that previous assumptions about reporting entities exclusively holding all information relevant to demonstrating their compliance no longer hold true. The proposed reforms are needed to clarify, and more appropriately reflect, the 3 reasons why AUSTRAC needs to compel the production of information – for monitoring, enforcement and intelligence-gathering purposes.

The proposed reforms include the following.

- A new examination power, to enable AUSTRAC to obtain relevant information needed to make enforcement decisions and obtain evidence to be used in AML/CTF court proceedings. This would also align AUSTRAC's powers with other financial regulators such as ASIC and APRA.
- A new 'notice to produce' power, to allow AUSTRAC to request information or documents for the purpose of monitoring, investigating and enforcing compliance with the AML/CTF Act, AML/CTF Rules or regulations, and to support the AUSTRAC CEO to carry out FIU functions.

- A new ‘authorisation to produce’ to facilitate information sharing and ensure private sector entities are not exposed to undue legal risk by virtue of working in partnership with AUSTRAC, including through Fintel Alliance, the public-private partnership that delivers innovative solutions to detect, disrupt and prevent serious crime.

Given the significant threat posed to the Australian community by ML/TF, the proposed amendments close operational gaps and fulfil the legitimate objectives of the AML/CTF Act. The proposed powers are proportionate and in keeping with the objectives of detecting, deterring, disrupting, investigating and prosecuting money laundering offences, and offences constituted by terrorism financing and other serious crimes. The powers will ensure that AUSTRAC is well positioned to operate effectively in a rapidly-evolving financial system.

The proposed legislation includes appropriate safeguards and thresholds – for example, by more clearly enunciating the purposes for which information may be sought – to ensure individual rights are balanced against the needs for enhanced access to information, for regulatory and intelligence purposes, as Australia’s financial landscape changes.