



Australian Government

Attorney-General's Department

November 2016

## Consultation paper

**High-value dealers: a model for regulation  
under Australia's anti-money laundering and  
counter-terrorism financing (AML/CTF) regime**

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# 1. Introduction

## 1.1 What is the purpose of the consultation paper?

The purpose of this consultation paper is to obtain feedback about options for regulating high-value dealers (HVDs) under Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

HVDs are businesses involved in the buying and selling of high-value goods. While there is no universally recognised definition of a high-value good, it is commonly considered to include jewellery, antiques and collectibles, fine art, yachts and luxury motor vehicles.

The buying and selling of high-value goods is recognised internationally as a major avenue for money laundering activity.<sup>1</sup> Some high-value goods can also be purchased and sold to finance terrorism.

Money laundering (ML) is the processing of criminal profits to disguise their illegal origins. Successful money laundering arrangements allow criminals to enjoy the benefits of the profits of their crimes without drawing attention to themselves, and to reinvest the profits in future criminal activity or in legitimate activities.

Terrorist financing (TF) involves the raising of funds to supply terrorists with the resources they need to carry out their activities. Terrorists and terrorist organisations require only relatively small amounts of money to undertake terrorist attacks on Australian soil or to support terrorist activities overseas.

To combat these serious threats, Australia has implemented an AML/CTF regime. This regulatory regime requires businesses to comply with a number of obligations when they provide specific services that pose ML/TF risks. These obligations are designed to mitigate these risks and include customer due diligence (CDD), reporting, record-keeping, and compliance programs.

Businesses currently regulated under the AML/CTF regime are supervised for compliance with these obligations by the Australian Transaction Reports and Analysis Centre AUSTRAC. AUSTRAC is Australia's AML/CTF regulator and financial intelligence unit (FIU). The information these businesses collect and report to AUSTRAC about the movement of funds and assets as part of their AML/CTF obligations forms the basis of valuable financial intelligence that bolsters the ability of law enforcement agencies to detect, disrupt and prevent crime.

High-value goods are vulnerable to misuse for ML/TF purposes because these goods can be readily purchased and sold anonymously, using large sums of cash. The money gained from this process can then be reinvested elsewhere, obscuring the origins of the illicit cash used for the original transaction from law enforcement.

More and more countries are regulating HVDs for AML/CTF purposes to mitigate these risks and comply with the international standards for combating ML/TF and other serious crimes. These international standards are set by the Financial Action Task Force (FATF)<sup>2</sup> and require certain businesses and professions to be subject to AML/CTF regulation when they are involved in certain transactions for a customer that poses ML/TF risks.<sup>3</sup>

This consultation paper initiates discussion about a model for regulating HVDs in Australia, implementing a key recommendation from the *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism*

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<sup>1</sup> AUSTRAC, *Money laundering in Australia 2011*, [www.austrac.gov.au/money\\_laundering\\_in\\_australia\\_2011.html](http://www.austrac.gov.au/money_laundering_in_australia_2011.html), p 25.

<sup>2</sup> The Financial Action Task Force is an inter-governmental policy-making body that promotes the effective implementation of measures for combating ML/TF and other related threats to the integrity of the international financial system.

<sup>3</sup> Financial Action Task Force, *International Standards on combating money laundering and the financing of terrorism and proliferation, The FATF Recommendations* (the FATF Recommendations), February 2012, [www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html](http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html) FATF, Recommendation 22.

*Financing Act 2006 and Associated Rules and Regulations* that relates to HVDs.<sup>4</sup> The statutory review provided an opportunity to explore options to shape a modern AML/CTF regime that positions Australia to address current and future challenges, as well as respond to the findings of the FATF's 2015 mutual evaluation of Australia's AML/CTF regime. As a member of the FATF, Australia periodically undergoes a mutual evaluation to assess compliance with the FATF Recommendations and the effectiveness of AML/CTF measures. The report of the 2015 mutual evaluation strongly criticised the non-regulation of HVDs (and a number of other sectors) under the AML/CTF regime and made a number of recommendations to strengthen the regime and enhance compliance with the international standards.<sup>5</sup> These recommendations have been taken into account as part of the statutory review.

The report on the statutory review was tabled in Parliament in April 2016. The report identified a need to strengthen capabilities to mitigate ML/TF risks posed by the buying and selling of high-value goods using large sums of cash. It also noted that regulating the sector under the AML/CTF regime would have a significant regulatory impact. In view of this impact, the report recommended consultation with industry to design an efficient regulatory model for the sector and for the costs and benefits of this model to be examined.

**Recommendation 4.6:** *The Attorney-General's Department and AUSTRAC, in consultation with industry, should:*

- a) *develop options for regulating lawyers, conveyancers, accountants, **high-value dealers**, real estate agents and trust and company service providers under the AML/CTF Act, and*
- b) *conduct a cost-benefit analysis of the regulatory options for regulating lawyers, accountants, high-value dealers, real estate agents and trust and company service providers under the AML/CTF Act.*<sup>6</sup>

This consultation paper represents the first step towards implementing the aspects of this recommendation that relate to HVDs.

As transactions involving these types of goods are common to everyday life, any model for regulation should be efficient and targeted to combating and disrupting the ML/TF risks. While criminals can potentially use any high-value good to launder illicit funds, some high-value goods are more vulnerable to being misused for ML/TF than others, such as jewellery, antiques and collectibles, fine art, jets, boats, yachts, motor vehicles and building, bathroom and kitchen supplies.<sup>7</sup> The model will focus on the buying and selling of these high-value goods.

Any proposed regulatory model will focus on transactions for goods and services conducted by HVDs that pose a high ML/TF risk. These are transactions (or linked transactions) for goods and services that involve a high-value cash payment. This means that HVDs that do not accept high-value cash payments would not be regulated under the model.

## 1.2 How can you have your say?

The release of this paper forms part of the Government's commitment to consult industry and government agencies about a regulatory model for HVDs under the AML/CTF regime.

Public submissions are invited on the issues raised in this consultation paper. While questions are included at the end of each chapter to guide discussion, these are not intended to limit or constrain stakeholders in their responses.

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<sup>4</sup> Attorney-General's Department, *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* (April 2016) (Report on the Statutory Review), [www.ag.gov.au/consultations/pages/StatReviewAntiMoneyLaunderingCounterTerrorismFinActCth2006.aspx](http://www.ag.gov.au/consultations/pages/StatReviewAntiMoneyLaunderingCounterTerrorismFinActCth2006.aspx), Recommendation 4.6.

<sup>5</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures, Australia: Mutual Evaluation Report, April 2015*: <http://www.fatf-gafi.org/documents/documents/mer-australia-2015.html>.

<sup>6</sup> Report on the Statutory Review (see footnote 4 above), Recommendation 4.6.

<sup>7</sup> A separate consultation paper deals with the AML/CTF regulation of real estate professionals.

Submissions can be sent to:

**Financial Crime Section**

Transnational Crime Branch

Criminal Justice Policy and Programmes Division

Attorney-General's Department

3-5 National Circuit

BARTON ACT 2600

Submissions may also be submitted electronically to [antimoneylaundering@ag.gov.au](mailto:antimoneylaundering@ag.gov.au) or by facsimile to (02) 6141 2873. The closing date for submissions is **31 January 2017**.

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 website, unless the author clearly indicates to the contrary. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

### **1.3 What are the next steps?**

Roundtable discussions will be arranged with industry representatives and other interested stakeholders after the closing date for submissions, to discuss the issues raised in the submissions responding to the consultation paper.

The feedback from the submissions and the roundtable discussions will be used to inform the design of a model for AML/CTF regulation of the sector. This model will be used to facilitate a cost-benefit analysis to allow the Government to assess the benefits of regulating these sectors relative to regulatory costs and make an informed decision about any future regulation.

Industry will be consulted about the conduct of the cost-benefit analysis.

## 2. Why regulate HVDs?

### 2.1 Who is a HVD?

A HVD is a person who carries on a business that provides for the buying and selling of high-value goods.

Not all high-value goods pose ML/TF risks. The types of high-value goods that do pose high ML/TF risks are goods that be purchased anonymously for cash, and generally hold or improve their value if resold at a later date.

In Australia, items considered to pose ML/TF risks when purchased using large sums of cash include jewellery, antiques and collectibles, fine art, boats, yachts, and luxury motor vehicles. Building, bathroom and kitchen supplies are also considered to be high-value goods that pose significant ML/TF risks because criminals often purchase real estate using illicit funds and renovate the property using crime-derived cash.

HVDs that conduct a business in Australia involving the buying and selling of these items, and accept large sums of cash for these items, are being considered for AML/CTF regulation.

### 2.2 What are the benefits of regulating HVDs?

The regulation of HVDs under the AML/CTF regime would deliver a number of benefits, including closing a regulatory and intelligence gap, enhancing national security and enhancing the reputation of the Australian financial system.

While transactions performed by HVDs that use electronic payment systems can be tracked by law enforcement, transactions that involve large sums of cash are virtually invisible.<sup>8</sup> No information is collected and verified about the identity of the customer and the source of the customer's funds, and no information is reported to AUSTRAC that can be used by law enforcement agencies to follow the money trail for illicit funds. This makes the use of HVDs attractive to criminals seeking to launder illicit funds through buying and selling high-value goods.

If HVDs had obligations to collect, verify and report information, they could play a significant role in the detection and investigation of ML/TF offences. This would, allow for suspicious transactions to be reported to authorities earlier in the transaction chain than occurs currently, thereby activating the protections of the Act and providing earlier opportunities for law enforcement to detect and disrupt criminal activities and deprive criminals of the proceeds of crime.

The AML/CTF regulation of HVDs would also enhance the sector's awareness of ML/TF risks and assist HVDs to identify 'red flags' that may be early indicators of criminality or potential misconduct.<sup>9</sup> Red flags can relate to the customer, the nature of the transaction and/or the source of the customer's funds. Where there are a number of indicators, it is more likely that a HVD should have a suspicion that ML or TF is occurring. For example, a customer may:

- purchase multiple items of jewellery that feature precious stones without regard for the value, size and colour or
- pay for the items in cash, and
- attempt to maintain a high degree of secrecy in relation to the transaction.

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<sup>8</sup> AUSTRAC, *Money laundering in Australia 2011*, [www.austrac.gov.au/money\\_laundering\\_in\\_australia\\_2011.html](http://www.austrac.gov.au/money_laundering_in_australia_2011.html), p 25.

<sup>9</sup> Red flags illustrate the types of abnormal or unusual circumstances that may give rise to a reasonable suspicion that a transaction may involve ML/TF or other criminal activity.

Indicators should not automatically be considered as a basis for a suspicion of ML/TF, as a customer may be able to provide a reasonable explanation for the circumstances surrounding the way in which a transaction is being conducted. Many persons desire anonymity, or at least the absence of paper records, when purchasing jewellery for purely personal reasons, totally unrelated to ML/TF. Payment by or delivery of purchases of precious stones or precious metals to third parties will also not always be suspicious. Where a HVD is aware of the ML/TF risks faced by their business and conducts robust CDD on customers, the HVD will be better positioned to identify these indicators and conduct a proper assessment of the extent to which the customer exposes them to ML/TF risks and the protections of the AML/CTF Act would be engaged.

## 2.3 What are the ML/TF vulnerabilities?

Recent high profile asset confiscation cases in Australia demonstrate the breadth of criminal investment in HVDs and the scale of criminal wealth that can be laundered and invested in those goods.<sup>10</sup> In 2014-15, the Australian Federal Police's (AFP) Criminal Assets Confiscation Taskforce restrained over AUD246 million worth of illicit assets that included a range of high-value goods.<sup>11</sup>

Real estate, motor vehicles and jewellery are the most commonly targeted high-value goods for money laundering, but other types of luxury goods or 'lifestyle assets', can also be used. The most significant ML/TF risks arise where these high-value goods are purchased using large sums of cash.

Luxury cars can be purchased by criminals using illicit cash or a combination of credit and illicit cash. Where credit is obtained for the purchase, the loan is often repaid early using illicit cash. The cars are then resold. Any losses made by the criminal on the loan or as a result of a decrease in the cars' resale value are borne as the cost of laundering.

Precious stones and precious metals are particularly vulnerable to being used for ML/TF purposes. The purchase of jewellery, can disguise the real amount of money laundered because a 'normal' market price can be hard to establish. This means the value of the jewellery can be misrepresented by either under or over-valuation to disguise the amount of criminal income laundered through its purchase. Transaction methods for jewellery can range from anonymous exchanges of stones or nuggets to government-regulated deals and international transactions conducted through the financial system. These goods can be readily purchased and transported, and later sold for cash, with their value increasing over time.

Jewellery also carries an added ML/TF risk because individual items may be small, very high in value, and easily transportable, offering criminals the opportunity to transfer value within or between countries in a manner which minimises the chance of detection.

In 2013, the FATF and the Egmont Group released a report outlining the results of research conducted on ML/TF through trade in diamonds.<sup>12</sup> The report highlighted that diamonds and the diamond trade are subject to considerable ML/TF vulnerabilities and risks, as diamonds can be traded globally and used as currency.

Transactions involving diamonds can also allow the identity of those involved to be concealed.<sup>13</sup> The report indicates that the diamond trade was found to be linked to offences committed by organised crime groups and ML offences.<sup>14</sup> The report also points to the involvement of terrorist organisations in the diamond trade.<sup>15</sup>

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<sup>10</sup> Australian Federal Police, *Annual report 2014-15*, [www.afp.gov.au/~media/afp/pdf/a/afp-annual-report-2014-2015.pdf](http://www.afp.gov.au/~media/afp/pdf/a/afp-annual-report-2014-2015.pdf).

<sup>11</sup> *Ibid.*

<sup>12</sup> FATF and the Egmont Group, *Money laundering and terrorist financing through trade in diamonds*, October 2013, [www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf). The Egmont Group is an international group of FIUs that meet regularly to promote the development of FIUs and to cooperate, especially in the areas of information exchange, training and the sharing of expertise.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

The TF risks associated with HVDs are generally assessed as lower than the ML risks, as TF usually involves smaller amounts of funds. However, certain high-value goods are recognised internationally as vulnerable for misuse by terrorists. For example, the FATF has found that the Islamic State in Iraq and the Levant (ISIL) traffics and sells illicitly-obtained cultural artefacts to raise funds to support its terrorist activities.<sup>16</sup>

## 2.4 What are the international AML/CTF standards for HVDs?

The AML/CTF regime provides the foundation of Australia's commitment to meet international standards for combating ML/TF (and the financing of proliferation of weapons of mass destruction) set by the FATF.

The FATF standards are formulated as 'Recommendations' and were most recently revised in 2012.<sup>17</sup> The Recommendations apply to financial institutions, remitters and a range of businesses and professions, including dealers in precious stones and metals (DPSMs).<sup>18</sup>

The FATF interprets the term DPSM 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.<sup>19</sup>

The FATF standards require DPSMs to comply with certain key AML/CTF obligations when they engage in any *cash* transactions with a customer above USD/€15,000.<sup>20</sup>

The FATF's AML/CTF obligations for DPSMs centre on:

- CDD (customer identification and verification, ongoing due diligence, transaction monitoring and enhanced due diligence)
- applying enhanced due diligence to 'politically exposed persons' (PEPs)<sup>21</sup>
- assessing and mitigating the ML/TF risks associated with new technologies
- specific measures for relying on customer due diligence performed by third parties
- suspicious matter reporting
- internal controls and special measures for mitigating risks for foreign branches and subsidiaries, and
- enhanced due diligence when dealing with higher risk countries.

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<sup>15</sup> *Ibid.*

<sup>16</sup> FATF, *Financing of the terrorist organisation Islamic State in Iraq and the Levant (ISIL)*, February 2015, [www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf).

<sup>17</sup> See footnote 3 above.

<sup>18</sup> The FATF has identified a number of designated non-financial businesses and professions (DNFBPs) which pose ML/TF risks when they engage in specific transactions. DNFBPs are lawyers, accountants, real estate agents, trust and company service providers and DPSMs. Separate issues papers have been prepared for lawyers, accountants, real estate professionals and trust and company service providers.

<sup>19</sup> Financial Action Task Force, *RBA Guidance for dealers in precious metal and stones*, June 2008, [www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf), p 2.

<sup>20</sup> The FATF Recommendations (see footnote 3 above), Recommendation 22(c).

<sup>21</sup> The FATF identifies three categories of PEPs: *Domestic PEPs* are individuals who hold a prominent public position or function in an Australian government body; *Foreign PEPs* are individuals who hold a prominent public position or function in a government body of a foreign country; and *International organisation PEPs* are individuals who hold a prominent public position or function in an international organisation.



The FATF standards do not require other HVDs to be incorporated into a country's AML/CTF regime (except for real estate agents<sup>22</sup>). However, the ML/TF risks inherent in the buying and selling of precious stones and metals using large sums of cash also apply more broadly to other high value goods. In 2011, AUSTRAC's *National Threat Assessment on Money Laundering* for Australia rated the buying and selling of high-value goods more generally as posing a high ML/TF threat.<sup>23</sup> These risks are also being recognised increasingly at the international level, with other countries moving to regulate other parts of the HVD sector.

In view of this threat, there will be benefits associated with regulating HVDs more generally under the AML/CTF regime.

#### DISCUSSION QUESTIONS

1. What are the ML/TF risks posed by high-value dealers conducting transactions involving large sums of cash?
2. What high-value goods pose a high ML/TF risk in Australia?
3. What high-value goods pose a low ML/TF risk in Australia?
4. Are there transactions conducted by high-value dealers involving small sums of cash that pose high ML/TF risks?

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<sup>22</sup> Proposals to regulate the real estate sector under the AML/CTF regime are being explored in a separate consultation paper.

<sup>23</sup> AUSTRAC, *Money Laundering in Australia*, 2011. [http://www.austrac.gov.au/sites/default/files/documents/money\\_laundering\\_in\\_australia\\_2011.pdf](http://www.austrac.gov.au/sites/default/files/documents/money_laundering_in_australia_2011.pdf).

### 3. What existing laws regulate HVDs?

#### *AML/CTF regulation of bullion dealers and motor vehicle dealers*

Some types of HVDs are already regulated under the AML/CTF regime in Australia.

For example, bullion dealers are required to comply with obligations under the AML/CTF Act where they engage in the buying and selling of bullion where the retail value of the bullion involved in the transaction is equal to or more than AUD5,000 (Australian or the foreign equivalent). These obligations include establishing, implementing and maintaining an AML/CTF program, conducting customer due diligence, conducting ongoing customer due diligence (OCDD), keeping records and reporting suspicious matters and threshold transactions to AUSTRAC.

The exemption for transactions under AUD5,000 does not apply if the bullion dealer considers, in accordance with the business' risk-based systems and controls, that:

- a) further 'know your customer' information should be collected about a customer for OCDD purposes, or
- b) 'know your customer' information should be updated or verified about a customer for OCDD purposes.<sup>24</sup>

Motor vehicle dealers that act as insurance intermediaries currently have transaction reporting obligations under the *Financial Transaction Reports Act 1988* (FTR Act) as 'cash dealers'. The FTR Act was largely replaced by the AML/CTF Act in 2006, but remains in force and places some residual AML/CTF obligations on businesses. However, the FTR Act does not apply the full range of AML/CTF obligations on motor vehicle dealers as set out under the AML/CTF Act, nor do the obligations under the FTR Act equate with the requirements for DPSMs outlined in the FATF standards.

#### *Other regulation of HVDs*

A range of other regulatory or professional licensing and/or registration requirements also apply to HVDs under state and territory legislation. Depending on the business, this may involve meeting suitability and/or eligibility entry criteria and a requirement to hold prescribed, minimum qualifications. For example, motor vehicle dealers and pawnbrokers have licensing requirements that impose a range of obligations, including a 'fit and proper person' assessment, professional conduct and record-keeping requirements. Motor vehicle dealer licensees in New South Wales, for example, also have a duty to report suspicions of stolen or unlawfully obtained goods.<sup>25</sup> The exact requirements, however, vary between each state and territory licensing regime.

Second-hand dealers (e.g. dealers in art, antiques and rare books, as well as pawnbrokers) also have registration requirements at the state or territory level. For example, second-hand dealers and pawnbrokers in Victoria are required to register with Consumer Affairs Victoria and comply with obligations under the *Second-Hand Dealers and Pawnbrokers Act 1989*. These obligations include identifying any person attempting to sell or pawn second-hand goods to them, recording transactions and retaining goods for seven days prior to disposing of them.

Other HVDs, such as jewellers and building suppliers, generally have very minimal regulation under state and territory laws, but most will have an obligation under federal legislation to keep certain business records for five years under taxation law and seven years under corporations law, where applicable.<sup>26</sup>

#### **DISCUSSION QUESTION**

5. To what extent do existing mechanisms that allow for regulatory oversight of HVDs mitigate any ML/TF risks posed by HVDs?

<sup>24</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*, chapter 33, paragraphs 33.2 and 33.3.

<sup>25</sup> *Motor Dealers and Repairers Act 2013* (NSW), section 101.

<sup>26</sup> *Income Tax Assessment Act 1936*, section 262A; *Corporations Act 2001*, section 286.

## 4. What are the obligations under the AML/CTF legislation?

### 4.1 Existing AML/ CTF obligations

In Australia, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides the legislative framework under which regulated businesses (known as ‘reporting entities’) are regulated for AML/CTF purposes. The detail of obligations is set out in the *Anti-Money Laundering and Counter-Terrorism Financing Rules* (AML/CTF Rules).<sup>27</sup>

Businesses are supervised for compliance with their AML/CTF obligations by AUSTRAC.

Businesses that provide a regulated service under the AML/CTF Act (a ‘designated service’) generally have obligations to:

- enrol with AUSTRAC
- register with AUSTRAC if the reporting entity provides a remittance service
- conduct CDD
- implement OCDD procedures
- implement and maintain an AML/CTF compliance program
- lodge transaction and suspicious matter reports, and
- comply with various AML/CTF related record-keeping obligations.

An explanation of these obligations is provided at **Annexure A**.

CDD is a central obligation, requiring regulated businesses to identify and verify each of their customers so they can:

- determine the ML/TF risk posed by each customer
- decide whether to proceed with a business relationship or transaction, and
- assess the level of future monitoring required.

CDD requirements under the AML/CTF regime include:

- considering the broader risks associated with customers
- collecting identification information in relation to customers
- collecting, where necessary, identification information about who owns and controls customers
- verifying information where necessary, and
- performing OCDD and monitoring - including scrutiny of transactions.

The AML/CTF regime does not adopt a ‘one-size-fits-all’ approach to AML/CTF regulation and there are a number of mechanisms that allow obligations to be tailored to the level of ML/TF risk faced by a business.

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<sup>27</sup> The AML/CTF Rules are contained in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*, available online at [www.legislation.gov.au/Series/F2007L01000](http://www.legislation.gov.au/Series/F2007L01000).

Exemptions from complying with AML/CTF obligations can be provided under the AML/CTF Act and the AML/CTF Rules.<sup>28</sup> Applications for exemptions are assessed on a case-by-case basis and granted where there is evidence that a service, or the circumstances surrounding the provision of a service, poses a low ML/TF risk.

AML/CTF obligations can also be modified in the AML/CTF Rules. For example, regulated businesses can use simplified CDD procedures on customers in certain circumstances.<sup>29</sup> The simplified CDD procedures can provide significant regulatory relief for some regulated businesses.

Regulated businesses also have the ability to use a risk-based approach to implementing compliance measures. The risk-based approach is a key pillar of Australia's AML/CTF regime and central to the effective implementation of the FATF standards. It allows regulated businesses to implement compliance measures that are proportionate to their assessed level of ML/TF risk. This approach recognises that the regulated business is in the best position to assess the ML/TF risks posed by its customers, delivery channels, products and services and allows these businesses to allocate resources for AML/CTF measures in an efficient and proportionate way.

## 4.2 What is AUSTRAC's role?

As Australia's FIU and AML/CTF regulator, the Australian Transaction Reports and Analysis Centre's (AUSTRAC's) objective is to detect, deter and disrupt the ML/TF risks and threats that affect Australia's financial system, and to contribute to the growth of Australia's economy.

AUSTRAC collects and analyses financial transaction reports submitted under the AML/CTF Act to develop and disseminate actionable financial intelligence to national and international law enforcement, national security, revenue and regulatory agencies, as well as international counterparts, for investigation.

AUSTRAC's financial intelligence is an integral element in the detection and investigation of serious and organised crime, ML/TF and tax evasion.

As part of its regulatory role, AUSTRAC works collaboratively with its regulated population to promote compliance with the obligations of the AML/CTF Act by providing, among other things, guidance and assistance to reporting entities. AUSTRAC also assesses reporting entities' compliance with AML/CTF obligations and undertakes enforcement action where it identifies serious non-compliance.

In performing its regulatory functions, AUSTRAC must ensure that the AML/CTF regime supports economic efficiency and competitive neutrality.

## 4.3 What approaches are adopted in other countries?

Different countries have adopted different approaches to imposing AML/CTF regulation on HVDs.

In the United Kingdom (UK), HVDs are subject to AML/CTF regulation. For the purposes of AML/CTF regulation, a HVD is:

- *any business* prepared to accept high-value payments, and
- a high value payment is a payment of at least €15,000 (or equivalent in any currency) in cash for goods, whether the transaction is executed in a single operation or in several operations which appear to be linked.<sup>30</sup>

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<sup>28</sup> For example, section 248 of the AML/CTF Act provide for exemptions and modifications of AML/CTF obligations by the AUSTRAC CEO. The AUSTRAC CEO may also grant exemptions from obligations under the FTR Act. Since 2006, the AUSTRAC CEO has granted approximately 120 exemptions to regulated businesses in accordance with AUSTRAC's Exemption policy.

<sup>29</sup> Paragraphs 4.2.10 to 4.2.13 of the AML/CTF Rules and Parts 4.3 and 4.4 of the AML/CTF Rules.

<sup>30</sup> *Money Laundering Regulations 2007*, regulation 3(12).

High-value payments can be for goods, or for a mix of goods and services. Any HVD that accepts a high-value payment must register as a HVD with the AML/CTF regulator and comply with AML/CTF obligations.

The UK Government notes in guidance that certain types of businesses are particularly likely to be HVDs under its AML/CTF regulations. These include:

- motor vehicle dealers
- jewellers
- antique and fine art dealers
- boat dealers
- builders, bathroom and kitchen suppliers, and
- auctioneers and brokers.<sup>31</sup>

Conversely, Canada has limited the AML/CTF regulation of HVDs to DPSMs. DPSMs are regulated under the Canadian AML/CTF regime when they engage in the buying and selling of precious metals, precious stones or jewellery in an amount of CAD10,000 or more in a single transaction, other than those relating to manufacturing jewellery, extracting precious stones or precious metals from a mine, or cutting or polishing precious stones.

Some countries mitigate the ML/TF risks associated with the buying and selling of high-value goods using large sums of cash by simply banning cash transactions over a certain threshold for all businesses. For example, Italy prohibits transactions in cash above the threshold of €1000.

Similar to Australia, New Zealand is currently exploring options for imposing AML/CTF regulation on HVDs.

#### DISCUSSION QUESTION

6. What lessons can be learned from the experience of regulating HVDs under AML/CTF regimes in other jurisdictions?

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<sup>31</sup> UK Government, *Anti-money laundering guidance for high value dealers*, <https://www.gov.uk/government/publications/anti-money-laundering-guidance-for-high-value-dealers>.

## 5. What services should be regulated?

This paper proposes that HVDs be regulated under the AML/CTF regime when:

- engaging in a transaction that relates to the buying and selling of jewellery, antiques and collectibles, fine art, jet skis, boats, yachts, luxury motor vehicles and building, bathroom and kitchen supplies, and
- the value of the transaction is equal to, or exceeds, a nominated threshold.

These items have been identified because they pose the highest risks for ML/TF within the Australian context.

The preferred nominated threshold for the regulation of HVDs is a cash transaction equal to or above AUD10,000 where the transaction is carried out in a single operation or in several operations that appear to be linked.<sup>32</sup>

The proposed AUD10,000 threshold is consistent with an existing obligation under the AML/CTF regime to report threshold cash transactions. Businesses have an obligation to submit a threshold transaction report (TTR) to AUSTRAC if they provide a regulated service to a customer that involves the transfer of physical currency (or e-currency) of AUD10,000 or more (or the foreign currency equivalent).<sup>33</sup> Similar requirements to submit suspicious cash transaction reports apply to entities which remain regulated under the FTR Act.

The requirement that the nominated threshold apply to linked transactions using cash is designed to mitigate the risk that customers may try to 'structure' or divide up their cash transactions to avoid regulatory attention. Industry-specific guidance would be developed to assist HVDs to identify separate transactions that should be considered 'linked'.

An HVD would also only be covered when the transaction occurred 'in the course of carrying on a business'. This caveat ensures that AML/CTF obligations only apply to business and not other individuals who may make high value cash payments (for example a person that holds a garage sale).

### DISCUSSION QUESTIONS

7. What goods should be included in the definition of high-value goods?
8. Should HVD be defined broadly to be any good over the threshold (like in the UK) or be defined more specifically to certain types of goods as suggested above?
9. Is a threshold of AUD10,000 to trigger AML/CTF obligations appropriate?
10. Should Australia set an upper limit on all cash payments that applies universally (i.e. prohibit any business from accepting a cash payment for goods and services above a prescribed threshold)?

<sup>32</sup> This is consistent with the Interpretative Notes to FATF Recommendations 22 and 23, which state that 'Financial transactions above a designated threshold include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.'

<sup>33</sup> The requirements for TTR reporting are set out in section 43 of the AML/CTF Act. Chapter 19 of the AML/CTF Rules set out the reportable details.

## 6. How would AML/CTF obligations impact on HVDs?

### 6.1 Regulatory impact

The regulation of HVDs that accept large sums of cash under the AML/CTF regime would potentially have a significant regulatory impact, as there are thousands of HVDs conducting business in Australia, many of which are small businesses, including small franchises or sole traders.

These businesses would need to bear the initial costs associated with establishing and implementing AML/CTF systems and controls, and the ongoing costs to maintain those systems and controls. The degree of impact on businesses would vary depending on the degree of their ML/TF risks and the measures they implement to avoid, manage and mitigate these risks. Ways to mitigate the regulatory impact are discussed below.

### 6.2 Regulatory mitigation

There are a number of measures that could be adopted to mitigate the regulatory impact of any AML/CTF regulation imposed on HVDs.

#### *Non-acceptance of cash*

The most straight-forward way for an HVD to avoid the AML/CTF regime's regulatory impact is to not accept large sums of cash as payment for high-value goods. The proposed model only applies to HVDs that do accept large sums of cash as payments. If an HVD doesn't accept cash payments for high value goods, and only accepts electronic payments, they will not have to implement AML/CTF requirements.

Where a HVD does accept large sums of cash for goods and services, the HVD should have systems and controls in place to mitigate any ML/TF risks.

While there would be some regulatory impact associated with the refusal to accept cash payments for high-value goods, this is likely to be minimal, particularly as Australia's financial and commercial transactions are becoming increasingly electronic and decreasingly cash-based.

#### *The risk-based approach and reduction of obligations for low ML/TF risk services*

The risk-based approach to regulation of the AML/CTF Act would assist some HVDs to minimise compliance costs. The risk-based approach recognises that it is impractical to apply an equal level of vigilance to every customer transaction. Instead, it encourages directing resources and effort towards customers and transactions with a higher potential for money laundering. This means that affected businesses must implement controls that are in proportion to the risk of ML/TF that they face.

In practice, a risk-based approach would require a HVD to consider the ML/TF risk of each customer, taking into account relevant risk factors including the type of customer, the jurisdictions the HVD deals with, the services the HVD provides and the method through which they provide them, as well as the nature, size and complexity of the customer's business. Customers deemed a higher ML/TF risk would need to provide additional information to that normally required. A small business that provides a low risk service involving low monetary values to members of a local community will incur minimal compliance costs.

There may be circumstances where a HVD accepts a large sum of cash as payment for goods and services and the transaction carries a lower risk. The AML/CTF regime does allow regulated businesses to apply simplified customer due diligence measures in such circumstances. This provides businesses with some regulatory relief.

AUSTRAC can also provide exemptions from obligations on a case-by-case basis and these are granted where there is evidence that a service, or the circumstances surrounding the provision of a service, poses a low ML/TF risk.<sup>34</sup>

### *Staggered implementation*

When the AML/CTF Act was introduced, the obligations imposed on regulated businesses were phased in over a period of up to three years, with the first set of obligations not commencing until at least 12 months after the Act received Royal Assent. This gave businesses time to understand their obligations, and to develop cost effective policies and procedures to meet them. As the AML/CTF regulator, AUSTRAC provided assistance to support industry in efforts to comply with obligations under the new legislation and continues to consult with industry on their education and training needs on an ongoing basis.

If the Government decides to introduce AML/CTF regulation for HVDs, the same transitional arrangements could be considered.

### **DISCUSSION QUESTION**

11. What impact would AML/CTF compliance costs have on HVDs?
12. What other aspects of the HVD sector would be impacted by AML/CTF obligations?
13. How important are cash transactions to HVDs?
14. If HVDs were regulated under Australia's AML/CTF regime as suggested in this paper, would the majority of HVDs refuse to accept cash for high-value goods to exempt themselves from regulation?

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<sup>34</sup> See Chapter 4 of this document for a discussion of exemption processes under the current AML/CTF regime.



## 7. Model for regulation

While the existing obligations under the AML/CTF regime are the starting point for consultation on a proposed regulatory model, any AML/CTF obligations proposed for HVDs should be efficient and tailored to the sector.

The key obligations under the existing regulatory model are set out in Table 1 below and discussion questions are posed as to how these obligations might be applied to services provided by HVDs.

### 7.1 Enrolment with AUSTRAC and scope of services

OBLIGATION	DISCUSSION QUESTIONS
<p>Under the current regime, it is mandatory for all businesses with obligations under the AML/CTF Act to be enrolled on AUSTRAC's Reporting Entities Roll. This obligation applies to all businesses that provide a 'designated service' under section 6 of the AML/CTF Act.</p> <p><b>COMMENT:</b></p> <p>The enrolment process, which is administrative in nature and does not attract any fees, provides AUSTRAC with information on every entity it regulates. This includes details about:</p> <ul style="list-style-type: none"> <li>- business structure</li> <li>- number of employees</li> <li>- annual earnings, and</li> <li>- the designated services they provide.</li> </ul> <p>This information is also used by AUSTRAC to understand and monitor the regulated population, and identify the entities subject to the annual AUSTRAC Industry Contribution<sup>35</sup> (based on earnings and transaction reporting criteria) and the amount that applies to each billable entity.</p> <p>The AML/CTF Act adopts an activity-based approach to regulation. Where a business provides a service listed under section 6 of the AML/CTF Act, the business becomes a regulated business ('reporting entity') for the purposes of the AML/CTF Act and is subject to applicable AML/CTF obligations.</p>	<ul style="list-style-type: none"> <li>• Should all HVDs be required to enrol with AUSTRAC, or just HVDs that conduct high-value transactions?</li> <li>• What factors should be taken into account in determining whether an entity is carrying on a business that involves the buying and selling of high-value goods?</li> </ul>

<sup>35</sup> Information on Industry Contribution is available at: [www.austrac.gov.au/austrac-industry-contribution-information](http://www.austrac.gov.au/austrac-industry-contribution-information).

## 7.2 Customer due diligence (CDD)

EXISTING OBLIGATIONS	DISCUSSION QUESTIONS
<p>A business that provides designated services regulated under the AML/CTF Act must conduct CDD measures that allow the business to be reasonably satisfied that:</p> <ul style="list-style-type: none"> <li>• an individual customer is who they claim to be, and</li> <li>• for a non-individual customer (e.g. a business), the customer exists and their beneficial ownership and/or control details are known.</li> </ul> <p>The CDD measures include:</p> <ul style="list-style-type: none"> <li>• collecting and verifying customer identification information - for example, identity documents, data or other information which can be verified using a reliable and independent source</li> <li>• identifying and verifying the beneficial owner(s) of a customer</li> <li>• identifying whether a customer is a politically exposed person (PEP) (or an associate of a PEP) and taking steps to establish the source of funds used during the business relationship or transaction<sup>36</sup></li> <li>• OCDD and transaction monitoring, and</li> <li>• obtaining information on the purpose and intended nature of the business relationship.</li> </ul> <p>Once a regulated business has established who is a beneficial owner or owners of a customer, the business must collect at least the following information in relation to each individual beneficial owner:</p> <ul style="list-style-type: none"> <li>• full name, and</li> <li>• date of birth or full residential address.</li> </ul> <p>The business must take <u>reasonable measures</u> to verify the information it collects about the beneficial owner. Reasonable measures means it must take certain steps to verify the information, and the steps taken must be appropriate given the level of ML/TF risk. Where a business is unable to verify the identity of the customer (including beneficial owners) and the purpose and intended nature of the business relationship, the business should generally not agree to act and terminate the business relationship.</p> <p>The AML/CTF regime permits businesses to apply simplified CDD verification procedures. These are:</p> <ul style="list-style-type: none"> <li>• streamlined 'safe harbour' procedures for verifying medium or low ML/TF risk customers who are individuals, and</li> <li>• simplified verification procedures for certain low ML/TF risk companies and trusts.</li> </ul>	<ul style="list-style-type: none"> <li>• What CDD obligations should apply to HVDs that conduct high-value cash transactions?</li> <li>• Do HVDs have any existing CDD obligations that would address the AML/CTF obligations?</li> <li>• Should simplified CDD measures be available for some high-value cash transactions provided by HVDs? <ul style="list-style-type: none"> <li>– If yes, in what circumstances?</li> </ul> </li> </ul>

<sup>36</sup> For a description of the categories of PEPs, see footnote 21 above.

EXISTING OBLIGATIONS	DISCUSSION QUESTIONS
<p><b>COMMENT:</b> The AML/CTF regime focuses on requiring businesses to implement systems and controls for the purpose of detecting suspicious activity and to take steps to prevent their services from being misused and exploited by criminals to launder illicit funds. The collection of information about customer identity is a central component of these systems and controls, allowing a business to determine whether the interaction with that customer is commensurate with the transactional activity on which they are seeking advice and to understand and assess the ML/TF risks posed by accepting the customer’s business.</p> <p>The AML/CTF regime currently allows regulated businesses to rely on CDD procedures carried out by a third party in limited circumstances.<sup>37</sup> Reforms are being developed to expand these opportunities.</p>	

### 7.3 Ongoing customer due diligence (OCDD)

EXISTING OBLIGATIONS	DISCUSSION QUESTIONS
<p>Regulated businesses have obligations to conduct OCDD, including:</p> <ol style="list-style-type: none"> <li>1. <b>An enhanced due diligence program.</b> This includes having systems and controls in place to determine whether the business should collect and/or verify additional information relating to a customer on an ongoing basis. These systems help a business to ensure that it holds up-to-date information about its customers.</li> <li>2. <b>A transaction monitoring program.</b> This program assists a business to identify suspicious transactions, complex or unusually large transactions, and unusual patterns of transactions that may be suspicious.</li> </ol> <p><b>COMMENT:</b> Conducting OCDD and scrutiny of transaction activity throughout the business relationship is important to ensure that the activity is consistent with the business’ knowledge of the customer and their business and risk profile, including where necessary the source of the customer’s funds. OCDD means that customers engaging in ML/TF may be detected after the business relationship with the customer has commenced.</p> <p>Where a business is unable to verify customer identity (including beneficial owners) and the purpose and intended nature of the business relationship, the business should generally not agree to act and terminate the business relationship.</p>	<ul style="list-style-type: none"> <li>• What OCDD obligations should apply to HVDs?</li> <li>• Are there existing OCDD obligations or industry standard practices that address ongoing due diligence obligations under the AML/CTF Act?</li> </ul>

<sup>37</sup> Section 38 of the AML/CTF Act; Chapter 7 of the AML/CTF Rules.

## 7.4 Reporting obligations

OBLIGATIONS	DISCUSSION QUESTIONS
<p>There are three primary reporting obligations under the AML/CTF regime:</p> <ul style="list-style-type: none"> <li>• suspicious matter reporting</li> <li>• international funds transfer instruction reporting, and</li> <li>• threshold transaction reporting.</li> </ul> <p><b>COMMENT:</b></p> <p><i>Threshold (cash) transaction reporting</i></p> <p>Australia imposes threshold transaction reporting (TTR) obligations on cash transactions because of the high ML/TF risks posed by transactions involving large amounts of cash. TTRs must be reported to AUSTRAC where a regulated business provides a designated service to a customer that involves the payment or transfer of physical currency or e-currency of AUD10,000 or more (or foreign currency equivalent).</p> <p><i>Suspicious matter reporting</i></p> <p>If at any time while dealing with a customer a regulated business forms a suspicion that a matter may relate to any serious offence under any law of the Commonwealth, including, tax evasion or proceeds of crime, the business must provide a suspicious matter report (SMR) to AUSTRAC. Relevant offences include money laundering, terrorism financing, or operating under a false identity.</p> <p>Regulated businesses are required to submit a SMR to AUSTRAC within three business days of forming the suspicion. If the suspicion relates to the financing of terrorism, the SMR must be submitted within 24 hours of forming the suspicion.</p> <p><i>Reporting international funds transfer instructions</i></p> <p>Any person who sends or receives a funds transfer instruction to or from a foreign country must complete an international funds transfer instruction (IFTI) report. The IFTI report must be submitted to AUSTRAC within 10 business days of sending or receiving the international funds transfer instruction. HVDs would not generally be conducting IFTIs.</p>	<ul style="list-style-type: none"> <li>• Should all reporting obligations apply to HVDs?</li> <li>• Should enrolled HVDs be able to voluntarily report suspicious matters to the AML/CTF regulator that relate to unregulated services (e.g. where the transaction is not a high-value cash transaction but nonetheless raises ML/TF suspicions)?</li> <li>• Should HVDs that do not accept high-value cash transactions and are not regulated under the AML/CTF regime be able to voluntarily report suspicious matters to the AML/CTF regulator?</li> </ul>

## 7.5 Internal controls - AML/CTF programs

OBLIGATIONS	DISCUSSION QUESTIONS
<p>Regulated businesses generally have an obligation to develop, implement and maintain an AML/CTF program to identify, mitigate and manage the ML/TF risk arising from the provision of a regulated service.</p> <p>An AML/CTF program should provide for:</p> <ul style="list-style-type: none"> <li>• an ML/TF risk assessment</li> <li>• approval and ongoing oversight by boards (where appropriate) and senior management</li> <li>• appointment of an AML/CTF compliance officer</li> <li>• regular independent review</li> <li>• an employee due diligence program</li> <li>• an AML/CTF risk awareness training program for employees</li> <li>• policies and procedures for the reporting entity to respond to and apply feedback from the AML/CTF regulator</li> <li>• systems and controls to ensure the entity complies with its AML/CTF reporting obligations</li> <li>• CDD procedures (see above), and</li> <li>• OCDD procedures (see above).</li> </ul> <p><b>COMMENT:</b> Systems and controls that assist a business to detect suspicious activity allow the business to take steps to prevent their services from being misused by criminals to launder illicit funds.</p> <p>Regulated businesses can develop AML/CTF programs that reflect their commercial environment, knowledge of their customers and knowledge of the ML/TF risks they face. Some of the measures included in an AML/CTF program may already constitute standard industry practice.</p> <p>Industry associations, professional bodies and the AML/CTF regulation would need to provide leadership and guidance on developing AML/CTF programs to comply with AML/CTF obligations.</p>	<ul style="list-style-type: none"> <li>• Should HVDs have an obligation to develop and maintain an AML/CTF program? <ul style="list-style-type: none"> <li>– If yes, what should the components of the AML/CTF program be?</li> </ul> </li> <li>• Do HVDs that operate internationally already have AML/CTF programs in place?</li> <li>• What are the implications of a risk-based approach for HVDs?</li> <li>• How could professional bodies and/or the AML/CTF regulator assist HVDs in developing AML/CTF systems and procedures suited to their business practices?</li> <li>• What internal controls would be appropriate for sole traders?</li> </ul>

## 7.6 Record-keeping

OBLIGATIONS	DISCUSSION QUESTIONS
<p>Regulated businesses must make and retain the following records for seven years:</p> <ul style="list-style-type: none"> <li>records relating to the provision of a regulated service to a customer</li> <li>records of the CDD procedure the regulated business undertakes for customers to whom they provided, or proposed to provide, a regulated service</li> <li>records of electronic funds transfer instructions, and</li> <li>AML/CTF programs.</li> </ul> <p><b>COMMENT:</b> In tracking down money trails, it is essential that law enforcement agencies be able to recreate patterns of suspicious activity and reconstruct individual transactions. This ability is very much dependent upon the record management practices of regulated businesses.</p>	<ul style="list-style-type: none"> <li>What records should HVDs that are regulated under the AML/CTF regime keep?</li> <li>To what extent can record-keeping obligations for AML/CTF purposes leverage off other record-keeping obligations or practices that HVDs may have (for example, under taxation or corporations law)?</li> </ul>

## 7.7 Monitoring and supervision

REGULATORY APPROACH	DISCUSSION QUESTIONS
<p>While AUSTRAC currently monitors and supervises enrolled businesses for compliance with their AML/CTF obligations, a number of regulatory approaches could be taken to monitor and supervise HVDs regulated under the AML/CTF regime. This includes a risk-based industry collaborative approach.</p> <p>Under this co-regulation approach, professional bodies would have primary responsibility for developing guidance to assist their membership to implement appropriate detection systems and for monitoring effectiveness. Rather than legislating CDD models for each sector, professional bodies would design appropriate procedures for their industry. The AML/CTF regulator would be responsible for setting principles and guidelines.</p> <p>Risk-based procedures are essential to this approach. The risk-based approach allows professionals to tailor their policies and procedures to the potential risk of ML/TF in particular customer transactions. The risk-based approach minimises the regulatory burden on both firms and customers while maintaining effective controls. It is an approach adopted by Australia and supported by the FATF. However, some regulated businesses, particularly smaller regulated businesses, find applying the risk-based approach a challenge and would prefer greater prescription of AML/CTF obligations.</p> <p>Alternatively, professional bodies or AUSTRAC could have sole responsibility for monitoring and supervising these sectors for AML/CTF purposes.</p>	<ul style="list-style-type: none"> <li>Who should monitor and supervise HVDs for compliance with AML/CTF obligations? <ul style="list-style-type: none"> <li>AUSTRAC or existing professional bodies, or both (i.e co-regulation)?</li> </ul> </li> <li>What regulatory approach should be adopted for HVDs? <ul style="list-style-type: none"> <li>Risk-based approach or prescriptive?</li> </ul> </li> <li>What advice and assistance should the AML/CTF regulator provide to support HVDs to implement AML/CTF obligations?</li> </ul>

## **ANNEXURE A: EXPLANATION OF OBLIGATIONS UNDER THE ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REGIME**

### **1. Enrol/register with AUSTRAC**

Any business that provides a service regulated under the AML/CTF Act must be enrolled on AUSTRAC's Reporting Entities Roll.

Businesses which intend to provide remittance services (remitters) must also apply to be registered with AUSTRAC.

More than 14,000 regulated businesses across the financial, remittance, gambling and bullion sectors are currently enrolled with, and regulated by, AUSTRAC for their compliance with their AML/CTF Act obligations.

### **2. Conduct customer due diligence**

A regulated business must conduct CDD measures that allow the business to be reasonably satisfied that:

- an individual customer is who they claim to be, and
- for a non-individual customer (for example, a company) the customer exists and their beneficial ownership details are known.<sup>38</sup>

By knowing its customers a regulated business should be better able to identify and mitigate ML/TF risks in the conduct of their financial transactions, particularly where the activities or transactions are unusual or uncharacteristic.

The CDD measures include:

- collecting and verifying customer identification information - for example, identity documents, data or other information which can be verified using a reliable and independent source
- identifying and verifying the beneficial owner(s) of a customer
- identifying whether a customer is a politically exposed person (PEP) (or an associate of a PEP) and taking steps to establish the source of funds used during the business relationship or transaction<sup>39</sup>
- ongoing customer due diligence and transaction monitoring, and
- obtaining information on the purpose and intended nature of the business relationship.

The CDD procedures developed by a regulated business must be included in a business's AML/CTF program (see below).

### **3. Implement ongoing customer due diligence procedures**

Regulated businesses must have in place appropriate systems and controls to determine whether additional customer information (including beneficial owner information) should be collected and/or verified on an ongoing basis to ensure that it holds up-to-date information about its customers. This process is known as 'ongoing customer due diligence' (OCDD). The decision to apply the OCDD process to a particular customer depends on the customer's level of assessed ML/TF risk.

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<sup>38</sup> A beneficial owner of a customer is defined as an individual (a natural person or persons) who ultimately owns or controls (directly or indirectly) the customer.

<sup>39</sup> For a description of the categories of PEPs, see footnote 21 above.

OCDD also includes:

- implementing a transaction monitoring program, and
- developing an 'enhanced customer due diligence' program (ECDD).

A transaction monitoring program is a program for monitoring transactions using a risk-based approach and allows a regulated business to:

- identify transactions that are considered to be suspicious, and
- identify complex, unusually large transactions and unusual patterns of transactions which have no apparent economic or visible lawful purpose.

ECDD is the process of undertaking additional CDD in certain circumstances deemed to be high risk. For example, where the customer is located in a country where there are weak AML/CTF controls. The ECDD program details the procedures the reporting entity must undertake in these high risk circumstances.

The OCDD procedures developed by a regulated business must be included in the business's AML/CTF program (see below).

#### **4. Implement and maintain an AML/CTF program**

Regulated businesses must develop and maintain a written AML/CTF program that sets out the operational framework for meeting compliance obligations under the AML/CTF Act.

The AML/CTF program must have two parts and should specify how the business identifies, mitigates and manages the risk of its products or services being misused to facilitate ML/TF.

Part A covers identifying, managing and reducing the ML/TF risk faced by a regulated business and includes:

- an ML/TF risk assessment of the business conducted by the entity
- approval and ongoing oversight by boards (where appropriate) and senior management
- appointment of an AML/CTF compliance officer
- regular independent review of Part A
- an employee due diligence program
- an AML/CTF risk awareness training program for employees
- policies and procedures for the reporting entity to respond to and apply AUSTRAC feedback
- systems and controls to ensure the entity complies with its AML/CTF reporting obligations, and
- ongoing customer due diligence (OCDD) procedures (see above).

Part B covers a regulated business' CDD procedures and includes:

- establishing a framework for identifying customers and beneficial owners of customers so the reporting entity can be reasonably satisfied a customer is who they claim to be, and
- collecting and verifying customer and beneficial owner information.

#### **5. Lodging transaction reports**

Regulated businesses have a number of ongoing reporting obligations. These obligations relate to:

- threshold transaction reports (TTRs)
- international funds transfer instruction (IFTI) reports, and
- suspicious matter reports (SMRs) with AUSTRAC.



A business that provides or commences to provide a regulated service to a customer that involves the payment or transfer of physical currency or e-currency of AUD10,000 or more (or foreign currency equivalent), must submit a TTR to AUSTRAC. The TTR must be submitted to AUSTRAC within 10 business days of the transaction taking place. If a business sends or receives a funds transfer instruction to or from a foreign country, the business must complete an IFTI report. The IFTI report must be submitted to AUSTRAC within 10 business days of sending or receiving the international funds transfer instruction.

If at any time while dealing with a customer the regulated business forms a suspicion on a matter that the regulated business suspects may relate to any serious offence, tax evasion or proceeds of crime, the business must provide a report to AUSTRAC. Offences include money laundering, terrorism financing, operating under a false identity or any other offence under Commonwealth, State or Territory law.

Regulated businesses must submit an SMR to AUSTRAC within three business days of forming the suspicion. If the suspicion relates to the financing of terrorism, the SMR must be submitted within 24 hours of forming the suspicion.

## **6. Record-keeping**

Regulated businesses have a range of record-keeping obligations under the AML/CTF Act. These obligations depend on the type of regulated service it provides but generally include records about:

- transactions
- electronic funds transfers
- customer identification procedures
- AML/CTF programs, and
- due diligence assessments of correspondent banking relationships.