



Australian Government
Attorney-General's Department

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Consultation paper

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

Money laundering and terrorism financing are serious financial crimes that pose a threat to Australia's economic and financial stability and national security.

Money laundering 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 reinvest the profits in future criminal activity or in legitimate business.

Terrorist financing 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 money laundering and terrorism financing (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 by the Australian Transaction Reports and Analysis Centre (AUSTRAC) for compliance with these obligations. 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 enhances the ability of law enforcement agencies to detect, disrupt and prevent crime.

Transnational and Australian-based crime groups are increasingly making use of accountants and other 'gatekeepers' to the financial system to establish networks of businesses, proprietary companies, partnerships and trusts to facilitate money laundering and support criminal activity.¹ The majority of these 'gatekeepers' may be unaware that their services are being exploited by criminals or 'wilfully blind' to the misuse because they are not using robust measures to fully understand the identity of their client and the source of the client's funds.

More and more countries are regulating accountants for AML/CTF purposes to mitigate these risks and comply with the international standards for combating ML/TF and other serious crimes.² These international standards are set by the Financial Action Task Force (FATF) and require professionals such as accountants to be subject to AML/CTF regulation when they are involved in certain transactions for a client that pose high ML/TF risks.³

¹ Australian Crime Commission, *Organised Crime in Australia 2009*, 2009, p.9, <https://www.crimecommission.gov.au/publications/intelligence-products/organised-crime-australia/organised-crime-australia-2009>, (accessed 29 July 2015).

² 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.

³ FATF Recommendation 22, criterion 22.1(b)

This consultation paper initiates discussion about a model for regulating accountants in Australia, implementing a key recommendation from the *Report of the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and the Associated Rules and Regulations* that relate to accountants.⁴

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 criticises Australia's non-regulation of accountants (and a number of other sectors) under the AML/CTF regime and makes a number of recommendations to strengthen the regime and enhance compliance with the international standards.⁵ 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 within the accountancy sector but noted that regulating the sector under the AML/CTF regime would have a significant regulatory impact. In view of this impact, the report recommends 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.*⁶

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

1.2 How can you have your say?

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.

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

⁴ 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), Canberra. Available online at:

www.ag.gov.au/consultations/pages/StatReviewAntiMoneyLaunderingCounterTerrorismFinActCth2006.aspx

⁵ 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>.

Submissions may also be submitted electronically to 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 and clarify the issues raised in the responses 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 also be consulted about the conduct of the cost-benefit analysis.

2. Why regulate accountants under the AML/CTF regime?

2.1 What are the benefits of regulating accountants under the AML/CTF regime?

The regulation of accountants under the AML/CTF regime would deliver a number of benefits. These include spreading the regulatory burden associated with combating ML/TF, closing a regulatory and intelligence gap, enhancing national security, and enhancing the reputation of the Australian financial system.

Financial institutions in Australia currently bear the compliance burden of maintaining robust AML/CTF programs for customers who access the Australian financial system. While these AML/CTF programs increase the risk of detection for criminals seeking to use and exploit the financial system to launder illicit proceeds, they also increase the attractiveness of using the services of professionals (such as accountants), who operate outside of the AML/CTF framework, to facilitate and disguise financial operations.⁷ This, in turn, increases the ML/TF risks faced by financial institutions when they engage in transactions facilitated by these professionals, requiring them to implement enhanced measures to mitigate these risks.⁸ If professionals such as accountants were regulated under the AML/CTF regime, the ML/TF risks faced by financial institutions who process transactions conducted by accountants on behalf of a third person would be reduced, dispersing the compliance burden across a larger number of businesses.

The AML/CTF regulation of accountants would also further enhance the profession's awareness of ML/TF risks and harden the sector against criminal exploitation. Accountants are vulnerable to risk and misuse for ML/TF purposes because many are likely to be unaware that their services are being exploited by criminals to establish opaque business structures and conduct transactions that disguise and launder proceeds of crime. AML/CTF obligations would prompt accountants to fully consider and better understand the identity of their client, the source of funds used by a client for a transaction and the nature of the intended business relationship with the client.

An obligation to conduct CDD would assist accounting professionals to identify 'red flags' that may be early indicators of criminality or potential misconduct.⁹ Red flags can relate to the client, the source of the client's funds and the choice of accountant. These indicators should not automatically be considered as a basis for a suspicion of ML/TF, as a client may be able to provide a reasonable explanation for the circumstances surrounding the way in which a transaction is being conducted. However, where there are a number of indicators, it is more likely that an accountant should have a suspicion that ML or TF (and the underlying predicate crimes) is occurring. For example, the legal structure of the client company has been altered numerous times, the activities of the company are unclear, and the company is seeking or engaging in transactions that involve sending funds to a country with weak AML/CTF regulation. If an accountant is aware of ML/TF risks but does not conduct sufficient CDD, the accountant will not be able to meaningfully identify these indicators or conduct an appropriate assessment of the extent to which the client exposes the business or practice to ML/TF risks.

⁷ FATF, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, 2013, p. 7.

⁸ Australian Bankers' Association, *Submission, Statutory Review of the AML/CTF Regime*, 2014, p. 9.

⁹ 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.

Conversely, where accountants are subject to AML/CTF obligations, they can report suspicions about specific customers or transactions earlier in the transaction chain than occurs currently, thereby activating the protections of the Act and providing ‘early warnings’ that enhance the ability of law enforcement and national security agencies to detect and disrupt criminal activities.

The AML/CTF regulation of accountants would also more broadly:

- strengthen the reputation of the sector as a trusted intermediary, and build a collaborative partnership with AUSTRAC and law enforcement agencies to combat and disrupt ML/TF
- fill intelligence gaps and improve the ability for Australia’s intelligence community to discover, understand, and disrupt money laundering, terrorist financing, and the serious offences that predicate these activities
- reduce the harm and adverse impacts of ML and TF on the Australian economy and society
- enhance national security
- enhance Australia’s international reputation as a destination for foreign business/investment, and
- more closely align Australia’s AML/CTF regime with the FATF’s international standards for combating ML/TF.

2.2 What are the ML/TF vulnerabilities?

The World Economic Forum has identified the use of professional gatekeepers to the financial system as one of two key enablers of money laundering, alongside the related activity of concealing beneficial ownership through complex corporate and trust structures for the purpose of illicit financial transactions.¹⁰ Internationally, the most significant money laundering cases involve ‘schemes of notable sophistication’.¹¹ These schemes can include networks of businesses, proprietary companies, partnerships and trusts to disguise the source and ownership of money. All of these types of corporate structures are likely to be set up with the assistance of skilled professionals, including accountants.¹²

In Australia, there is increasing evidence that Australian and overseas-based organised crime groups are misusing and exploiting the services provided by professional gatekeepers such as accountants (and lawyers) to undertake transactions to:

- conceal the proceeds of crime
- obscure ultimate ownership and control of assets through complex layers and legal entity structures
- evade tax and exploit known tax shelters
- evade regulatory controls, including Australia’s AML/CTF regime
- provide a veneer of legitimacy to criminal activity
- create distance between criminal entities and their illicit income or wealth by using complex business and corporate structures
- avoid detection and confiscation of assets, and
- hinder law enforcement investigations.¹³

¹⁰ World Economic Forum, Global Agenda Council on Organized Crime, *Organized Crime Enablers*, July 2012.

¹¹ Financial Action Task Force, *Laundering the Proceeds of Corruption*, July 2011, p.19, available online at www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf

¹² *Ibid.*

¹³ AUSTRAC, *Strategic Analysis Brief: Money laundering through legal practitioners*, 2015, p. 5.

2.3 What are the international standards for regulating accountants?

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

The FATF's international standards are formulated as 'Recommendations' and were most recently revised in 2012.¹⁴ The Recommendations apply to financial institutions, remitters and a range of businesses and professions (lawyers, accountants, trust and company service providers, real estate agents and dealers in precious stones and precious metals).

The Recommendations require AML/CTF obligations to apply to accountants when they prepare for or carry out the following transactions or activities for their client(s):

- buying and selling real estate
- managing client money, securities or other assets
- management of bank, savings or securities accounts
- organisation of contributions for the creation, operation or management of companies, and
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.¹⁵

The FATF's AML/CTF obligations for accountants 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)¹⁶
- 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.

DISCUSSION QUESTIONS

1. What accountancy services pose a ML/TF risk?
2. Do any of the professional services provided by accountants and identified by the FATF as requiring regulation pose a low ML/TF risk in the Australian context?
3. What are the benefits of requiring accountants to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?
4. To what extent are the FATF's customer due diligence obligations already reflected in existing regulation (including self-regulation) for Australian accountants?

¹⁴ Financial Action Task Force, *International Standards on combating money laundering and the financing of terrorism and proliferation, The FATF Recommendations*, February 2012, available online at www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

¹⁵ See FATF Recommendations 22 and 23.

¹⁶ 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.

3. What existing laws regulate accountants?

The accountancy sector is partly regulated under Australia's AML/CTF regime.

Under the *Financial Transaction Reports Act 1988* (FTR Act), accounting professionals are regulated if they meet the definition of 'cash dealer' in section 3 of that Act. The FTR Act's definition of 'cash dealer' includes a bookmaker, a financial services licensee or an insurance intermediary.

Accountants may also have obligations under the AML/CTF Act if they provide one of the 'designated services' listed under section 6 of the AML/CTF Act. Exemptions apply meaning that accountants are only subject to certain AML/CTF obligations – and regulatory oversight by AUSTRAC - as follows:

- significant cash transaction and suspect transaction reporting – only if the accountant is a cash dealer under the FTR Act, and
- suspicious matter and threshold transaction reporting – only when the accountant provides a designated service under the AML/CTF Act.¹⁷

Accountants are subject to other professional regulation. This includes regulation by the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), the Tax Practitioners Board and the Accounting Professional and Ethical Standards Board (APESB). They also require an Australian Financial Services Licence if they provide advice relating to superannuation and other financial services, and must be registered with the Tax Practitioners Board if they provide tax agent services.

The accounting professional bodies have a self-regulatory role, including on-going professional development. The three major industry bodies in Australia are the Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants. Practitioners must comply with a range of professional standards, and penalties for non-compliance can include prosecution. These three bodies have also established the APESB. As it is not mandatory to be a member of one of these peak bodies, some practicing accountants may not be a member of a professional body.

All insolvency professionals are required to be registered by Australian Financial Security Authority (AFSA), a Commonwealth government agency responsible for the administration and regulation of the personal insolvency system in Australia. Receivers, administrators and liquidators of companies are required to be registered with ASIC.

The Australian Restructuring Insolvency and Turnaround Association (ARITA) is the peak industry body which supports insolvency practitioners. ARITA has issued a *Code of Professional Practice for Insolvency Practitioners*, which provides principles-based professional standards and guidance for its members. To the extent that membership is voluntary, the coverage of the Code of Professional Practice is not a universal obligation for insolvency professionals.

The Australian Auditing and Accounting Public Policy Committee (APPC) was established in 2009 as a key policy vehicle for the Australian accounting profession. In its submission to the Government's statutory review of the AML/CTF regime, the APPC's *Anti-Money Laundering Tranche 2 Working Group* expressed its in-principle support of the extension of the existing AML/CTF regime to DNFBPs, as envisaged under the FATF recommendations, subject to genuine and thorough consultation with stakeholders.

¹⁷ This exemption was provided pending a decision from the government as to whether the management of property or money by professionals such as accountants would be regulated under the AML/CTF framework.

DISCUSSION QUESTION

5. To what extent do existing mechanisms that allow for regulatory oversight of accountants mitigate any ML/TF risks that may be posed by the services accountants provide?
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4. What are the obligations under the AML/CTF Act?

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 Instrument 2007 No.1* (AML/CTF Rules).¹⁸

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 ongoing CDD 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 clients so they can:

- determine the ML/TF risk posed by each client
- 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 clients
- collecting identification information in relation to clients
- collecting, where necessary, identification information about who owns and controls clients
- verifying information where necessary, and
- performing ongoing CDD 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.

Exemptions from complying with AML/CTF obligations can be provided under the AML/CTF Act and the AML/CTF Rules.¹⁹ 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 demonstrated low ML/TF risk.

¹⁸ 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.

¹⁹ 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.

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.²⁰ 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, 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, among other things, that the AML/CTF regime supports economic efficiency and competitive neutrality.

4.3 What approaches are adopted in other countries?

In recent years, there has been an increase in the number of international jurisdictions extending AML/CTF regulation to accountants in line with the requirements of the international standards, particularly within the member states of the European Union (EU) and across Asia.

The United Kingdom has regulated auditors, insolvency practitioners, external accountants and tax advisers for AML/CTF purposes for a number of years. Obligations are imposed under the *Money Laundering Regulations 2007* (the UK Regulation) and include CDD, ongoing monitoring, record-keeping, and reporting obligations, including suspicious activity reporting (SAR) obligations. However, the UK Regulation goes beyond the FATF standards and requires anyone providing an accountancy service to comply with AML/CTF obligations for all business activities, not just those listed in the FATF standards.

Guidance for the accountancy sector on AML/CTF obligations in the UK is issued by the Consultative Committee of Accountancy Bodies and approved by the UK Treasury.²¹ The Guidance covers accountants that provide audit, accountancy, tax, insolvency or related services regardless of membership

²⁰ 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.

²¹ The Guidance is available online at: www.icaew.com/en/membership/regulations-standards-and-guidance/practice-management/anti-money-laundering-guidance

of a recognised professional body. The Guidance specifies that accountancy services for the purposes of the UK Regulation cover 'any services provided under a contract for services which pertain to the recording, review, analysis, calculation or reporting of financial information'.²² Services provided in the course of employment or business (i.e. provided by an 'in-house' accountant) are not regulated under the UK Regulation.

Accountants are overseen by a number of different supervisors for AML/CTF purposes, including professional body supervisors. However the UK has identified that this can cause some inconsistency in supervision. This is being considered further as part of the UK's Action plan for anti-money laundering and counter-terrorist financing and may result in supervisory reform.²³

Canada imposes some AML/CTF obligations on accountants, but these are limited and do not fully meet the FATF standards.²⁴ In particular, there are no AML/CTF obligations attached to activities related to the organisation of contributions for the creation, operation and management of companies, legal persons and arrangements.²⁵ Overall, the AML/CTF regulation of accountants in Canada targets the movement of funds, with the regime primarily focusing on businesses that engage in, or give instructions for, transactions on behalf of clients.

Accountants in Canada also have a low level of awareness of AML/CTF obligations and, as at November 2015, no suspicious matter reports had been filed by accountants with FINTRAC, Canada's financial intelligence unit.²⁶

In the United States, accountants are subject to minimal AML/CTF obligations.

The New Zealand Government has recently committed to passing legislation to regulate accountants (and real estate agents, legal professionals, trust and company service providers, gambling service providers, conveyancers and high-value goods dealers) more generally under their AML/CTF regime in 2017. A consultation paper was released to industry in August 2016 inviting public comment.²⁷

DISCUSSION QUESTION

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

²² *Ibid*, at 9.

²³ Available online at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering__web_.pdf

²⁴ Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures, Canada, Mutual Evaluation report (2016)*, available online at: www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf.

²⁵ *Ibid*, at 160.

²⁶ *Ibid*, at 7.

²⁷ The paper is available online at: www.consultations.justice.govt.nz/comms/tackling-money-laundering-and-terrorist-financing/user_uploads/aml-phase-2-draft-consultation-document-v5.pdf.

5. What accountancy services should be regulated?

The term 'accountant' encompasses professionals that provide a range of accountancy services, including:

- an external accountant (a firm or sole practitioner who by way of business provides accountancy services to other persons)
- auditors
- tax advisors
- insolvency professionals registered by the AFSA, and
- receivers, administrators and liquidators of companies registered with ASIC.

The FATF requires accountants to be regulated for AML/CTF purposes when they prepare for or carry out transactions or activities for their client(s) that have been identified by the FATF as posing high ML/TF risks. As noted above, these transactions and activities are:

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

Accountants generally 'prepare for' transactions on behalf of clients where they are involved in providing advice, performing due diligence and/or providing referrals to clients. Accountants will primarily only 'carry out transactions' on behalf of clients if the proceeds of the transaction are made available through the accountant's trust account.

The focus of the FATF Recommendations is on independent accountancy practitioners and excludes the activities of 'internal' (i.e in-house) practitioners that provide services to an employer rather than a client.²⁸ 'Internal' would generally encompass accountants that:

- are employed solely by other types of businesses for which they provide advice
- do not operate independent accounts or trust accounts for their employer, and
- do not provide services directly to third parties, including clients and business associates of their employer.

The FATF Recommendations do not require regulation of activities undertaken by accountants that relate to recording historic transactions for the preparation of financial reports, compliance services provided to clients involving the reporting of historic financial information and the provision of assurance services in relation to financial reports. However, some of these activities, for example auditing activity, may place accountants in a position to identify suspicious matters.

²⁸ Financial Action Task Force, *RBA Guidance for Legal Professionals* (2008), available online at: <http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Legal%20professions.pdf>

DISCUSSION QUESTIONS

7. What accountancy services should be regulated under the AML/CTF regime?
 8. Do any of the accountancy services identified by the FATF for AML/CTF regulation pose a low ML/TF risk in the Australia context?
 9. Should auditing, compliance services and assurance services be regulated under the AML/CTF regime?
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6. How would AML/CTF obligations affect accountants?

6.1 Client confidentiality

The concept of client confidentiality applies to a range of professionals and all information obtained in the course of the professional's interaction with clients and potential clients. In most countries, confidentiality can be waived by the client or overridden by express provisions in law.

While client confidentiality is an important part of the relationship that many professionals have with their clients, confidentiality cannot be used as a shield for money laundering or terrorist financing activity.

However, the AML/CTF regime should provide an appropriate balance between the confidentiality requirements of legitimate clients, and the needs of law enforcement.

6.2 Legal professional privilege

Legal professional privilege protects the disclosure of certain communications generally between a legal practitioner and a client when these communications are for the dominant purpose of seeking or providing legal advice (advice privilege), or for use in existing or anticipated legal proceedings (litigation privilege).²⁹ The privilege belongs to the client, enabling the client to provide full and frank disclosure to his or her legal practitioner in the knowledge that this information will not be used against them. This full and frank disclosure is important because it enables lawyers to provide competent and independent legal advice. In the context of accountants legal professional privilege could be claimed, by the client or their legal practitioner, over the advice provided by the accountant and communications related to that advice. A legal professional privilege claim can be made if the dominant purpose of the accountant's advice or related communications is for the accountant's client to obtain legal advice or to use in the course of actual or anticipated litigation.

In Australia, legal professional privilege is governed by the common law and statute (under the Evidence Acts of the Commonwealth, states and territories).³⁰ The statutory privilege under each of the Evidence Acts is generally known as 'client legal privilege' and overrides the common law to the extent of any inconsistency. While the statutory privileges are substantially the same across these pieces of legislation, there are some minor variations.

There is recent case law that demonstrates that common law legal professional privilege may extend to communications with third parties (regardless of whether the third party is an agent of the legal practitioner or the client) if the communication is made for the dominant purpose of seeking legal advice where there is actual or anticipated litigation.³¹ This is an extension of legal professional privilege that recognises that clients may seek expert advice from a third party to assist them to formulate a request for legal advice and ensure that the legal practitioner is apprised of all relevant information to enable accurate advice to be given. 'Expert' third parties can include accountants if the advice has been sought from the accountant to assist the client to prepare a request for legal advice.³²

²⁹ *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49 at 64–65 [35]; *Daniels Corporations International Pty Ltd v Australian Competition & Consumer Commission* (2002) 213 CLR 543 at 552 [9].

³⁰ Evidence Act 1995 (Cth), *Evidence Act 1995* (NSW), *Evidence Act 2001* (Tas), *Evidence (National Uniform Legislation) Act 2011*, and (NT) Evidence Act 2008 (Vic).

³¹ *Pratt Holdings Pty v Commissioner of Taxation* [2004] FCAFC 122.

³² Note that the accountant would not normally claim the legal professional privilege, it would be the client or the lawyer who would claim this.

The FATF does not require professionals who are subject to obligations of professional secrecy or legal professional privilege to report suspicious matters if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege under the laws of that country.³³

6.3 Regulatory impact

The regulation of accountants under the AML/CTF regime would have a significant regulatory impact on the sector, as these professionals 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 in order to meet compliance and reporting obligations.

The accountancy sector in Australia is estimated to comprise 32,920 businesses.³⁴ The four largest accountancy firms were projected to account for less than 40 per cent of industry revenue in 2015-2016.³⁵ More than half of the industry participants are sole proprietors, and about 45 per cent of businesses employ fewer than 20 staff, indicating the sector has a high proportion of 'small businesses'.³⁶

The degree of the regulatory and compliance impact on individual small businesses would vary depending on the degree of their ML/TF risks and the measures they implement to manage and mitigate these risks.

Accountancy firms with a parent firm domiciled in a foreign country that imposes AML/CTF regulation on the accountancy sector may already have AML/CTF measures embedded into their Australian operations.

6.4 Regulatory mitigation

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

Focus regulation on services that pose a high ML/TF risk

The focus of the FATF standards is on independent accountants and excludes the activities of 'internal' (i.e. in-house) accountants that provide services to an employer rather than a client.³⁷ 'Internal' would generally encompass accountants that:

- are employed solely by other types of businesses for which they provide advice and services, and
- do not provide services directly to third parties, including clients and business associates of their employer.

The FATF standards allow countries to permit regulated businesses to apply simplified CDD measures where demonstrated lower risks have been identified. This concession is reflected in Australia's regime, as the AML/CTF Rules provide for two simplified verification procedures:

- streamlined 'safe harbour' procedures for verifying medium or low ML/TF risk customers who are individuals,³⁸ and
- simplified verification procedures for certain low ML/TF risk companies and trusts.³⁹

³³ FATF, *RBA Guidance for Accountants* (2008), available online at: www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20accountants.pdf.

³⁴ IBISWorld, *Industry Report M6932: Accounting Services in Australia*, 2015, p. 4

³⁵ IBISWorld, *Industry Report M6932: Accounting Services in Australia*, 2015, p.6 refers to PwC, Ernst & Young, KPMG, and Deloitte

³⁶ IBISWorld, *Industry Report M6932: Accounting Services in Australia*, 2015, p.19

³⁷ Financial Action Task Force, *RBA Guidance for Legal Professionals* (2008), available online at: www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Legal%20professions.pdf

³⁸ Paragraphs 4.2.10 to 4.2.13 of the AML/CTF Rules.

³⁹ Parts 4.3 and 4.4 of the AML/CTF Rules.

These two procedures together constitute 'simplified CDD' and could provide regulatory relief for some accountants under an AML/CTF regulatory model.

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 demonstrated low ML/TF risk.⁴⁰

The risk-based approach

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

In practice, the risk-based approach requires a professional to consider the ML/TF risk of each client, taking into account relevant risk factors including the type of client, the jurisdictions they deal with, the services they provide and the method through which they provide them, as well as the nature, size and complexity of the client's business. Clients deemed a higher ML/TF risk would need to provide additional information to that normally required. Likewise, compliance reporting may well be more strategically targeted based on the assessment of risk particular to a service such as advice on corporate structure arrangements. A small business that provides a low risk service involving low monetary values to members of a local community will incur lower compliance costs. On the other hand, a large business that provides a high risk service involving substantial sums of cash to foreign nationals or that is involved in establishing large or complex corporate structures would be expected to incur significantly greater compliance costs. However, these larger businesses will also benefit from economies of scale and organisational efficiencies.

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 accountants, the same transitional arrangements could be considered.

DISCUSSION QUESTIONS

10. How would AML/CTF obligations impact on the client confidentiality obligations of accountants?
11. What other aspects of the accountancy sector would be impacted by AML/CTF obligations?

⁴⁰ See Chapter 4 for a discussion of exemption processes under the current AML/CTF regime.

7. Model for regulation

Any AML/CTF obligations proposed for accountants should be efficient and tailored to the profession and the service it provides.

The existing regulatory model under the AML/CTF regime is the starting point for consultation on a proposed regulatory model for accountants. The consultation process will explore whether and how the obligations under this regime could be applied to accountants, having regard to the FATF standards.

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

7.1 Enrolment 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>COMMENT:</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"> - business structure - number of employees - annual earnings, and - the designated services they provide. <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 Contribution⁴¹ (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 an entity provides a service listed under section 6 of the AML/CTF Act, the entity becomes a regulated business ('reporting entity') for the purposes of the AML/CTF Act and is subject to applicable AML/CTF obligations.</p> <p>The FATF noted that the functions performed by accountants that are the most useful to potential money launderers are: giving financial and tax advice; creation of corporate vehicles or other complex legal arrangements; buying or selling of property; performing financial transactions on behalf of the client; and gaining introductions to financial institutions.⁴² This does not include activities of businesses' in-house accountants.</p>	<ul style="list-style-type: none"> • Should accountants be required to enrol with AUSTRAC? <ul style="list-style-type: none"> - Or are existing obligations that require accountants to be enrolled/licensed under other regulatory regimes sufficient? - If these existing obligations are sufficient, how would any AML/CTF regulator for these sectors identify the regulated population? • What accountancy services should be regulated under the AML/CTF Act? <ul style="list-style-type: none"> - Should accountants that provide tax advice, auditing and book-keeping be regulated? • What factors should be taken into account in determining whether an entity is providing a designated service? • Are there services provided by accountants that should be exempted from AML/CTF obligations? <ul style="list-style-type: none"> - If yes, on what grounds?

⁴¹ Information on Industry Contribution is available at: www.austrac.gov.au/austrac-industry-contribution-information

⁴² FATF, *RBA Guidance for Accountants*, 2008, p.4

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"> • an individual customer is who they claim to be, and • for a non-individual customer (e.g. a business), the customer exists and their beneficial ownership and/or control details are known. <p>The CDD measures include:</p> <ul style="list-style-type: none"> • 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 transaction⁴³ • ongoing CDD and transaction monitoring, and • obtaining information on the purpose and intended nature of the business relationship. <p>Once a regulated business has established who is a beneficial owner or owners of a client, the business must collect at least the following information in relation to each individual beneficial owner:</p> <ul style="list-style-type: none"> • full name, and • date of birth or full residential address. <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.</p> <p>Where a business is unable to verify the identity of the client (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"> • streamlined 'safe harbour' procedures for verifying medium or low ML/TF risk customers who are individuals, and 	<ul style="list-style-type: none"> • What CDD obligations should accountants have? • What CDD obligations do accountants currently have that duplicate CDD obligations under the AML/CTF regime? • Should simplified CDD measures be available for some services provided by accountants? • When should the obligation for accountants to conduct CDD on clients commence? <ul style="list-style-type: none"> – Should it be at the point at which the client first seeks advice, or only once there is a retainer in place? • What opportunities are there for accountants to rely on CDD performed by other businesses involved in the same transaction?

⁴³ There are 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.

EXISTING OBLIGATIONS	DISCUSSION QUESTIONS
<ul style="list-style-type: none"> simplified verification procedures for certain low ML/TF risk companies and trusts. <p>COMMENT: The AML/CTF regime requires 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 client identity is a central component of these systems and controls, allowing a business to determine whether the interaction with that client 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 client’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.⁴⁴ Reforms are being developed to expand these opportunities, potentially allowing regulated businesses to rely on CDD undertaken by other businesses in a wider range of circumstances. These reforms will be useful where regulated businesses have a shared customer, or where a customer uses services provided by different entities within a corporate group.</p>	

7.3 Ongoing customer due diligence

EXISTING OBLIGATIONS	DISCUSSION QUESTIONS
<ul style="list-style-type: none"> Regulated businesses have obligations to conduct ongoing customer due diligence (OCDD), including: <ol style="list-style-type: none"> An enhanced due diligence program. This includes 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. A transaction monitoring program. This program assists a business to identify suspicious transactions, complex or unusually large transactions, and unusual patterns of transactions that may be suspicious. <p>COMMENT: Conducting ongoing due diligence 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. Ongoing due diligence means that clients engaging in ML/TF may be detected after the business relationship with the client has commenced.</p> <p>Where a business is unable to verify client 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"> What ongoing due diligence obligations should apply to accountants? Are there existing ongoing due diligence obligations or industry standard practices for accountants that duplicate CDD obligations under the AML/CTF regime?

⁴⁴ Section 38 of the AML/CTF Act and Chapter 7 of the AML/CTF Rules.

7.4 Reporting obligations

OBLIGATIONS	DISCUSSION QUESTIONS
<p>There are three primary reporting obligations for businesses regulated under the AML/CTF regime:</p> <ul style="list-style-type: none"> • suspicious matter reporting • international funds transfer instruction reporting, and • threshold transaction reporting. <p>COMMENT:</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 client 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 – an ‘all crimes’ approach</i></p> <p>If at any time while dealing with a customer a regulated business forms a suspicion that 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 SMRs 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 transfers</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.</p>	<ul style="list-style-type: none"> • Should all reporting obligations apply to accountants? • Are there any legal or regulatory issues that affect the submission of transaction and suspicious matter reports to AUSTRAC for accountants or insolvency practitioners? • How often do accountants undertake cash transactions valued at \$10,000 or more on behalf of their clients’? • To what extent do accountants conduct IFTIs? • Should accountants be able to voluntarily report to AUSTRAC suspicious matters that relate to services they provide that are not subject to AML/CTF regulation?

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"> • an ML/TF risk assessment • approval and ongoing oversight by boards (where appropriate) and senior management • appointment of an AML/CTF compliance officer • regular independent review • 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 feedback from the AML/CTF regulator • systems and controls to ensure the entity complies with its AML/CTF reporting obligations • CDD procedures (see above), and • OCDD procedures (see above). <p>COMMENT: 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 and tailor AML/CTF programs that reflect their commercial environment, knowledge of their clients 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"> • Should accountants have an obligation to establish, implement and maintain an AML/CTF program to identify, mitigate and manage ML/TF risks? <ul style="list-style-type: none"> ○ If yes, what should the components of the AML/CTF program be? • Do accountancy firms that operate internationally already have AML/CTF programs in place that comply with the FATF standards? • What are the implications of a risk-based approach for accountants? • How could professional bodies and/or the AML/CTF regulation assist accountants in developing AML/CTF systems and procedures suited to their professional practices?

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"> records relating to the provision of a regulated service to a customer records of the CDD procedure the regulated business undertakes for customers to whom they provided, or proposed to provide, a regulated service records of electronic funds transfer instructions, and AML/CTF programs. <p>COMMENT: In tracking down money trails, it is essential that law enforcement agencies can recreate patterns of suspicious activity and reconstruct individual transactions. This ability is very much dependent upon the record-keeping management practices of regulated businesses.</p>	<ul style="list-style-type: none"> What records should accountants be required to keep? To what extent do AML/CTF record-keeping obligations mirror existing record-keeping obligations for accountants (for example, under taxation or corporations law)?

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 accountants 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 customer due diligence 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 client transactions. The risk-based approach minimises the regulatory burden on both firms and clients while maintaining effective controls. It is an approach adopted by Australia and supported by the FATF.</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"> Should AUSTRAC monitor and supervise accountants for compliance with AML/CTF obligations? If not, how would the sector be regulated? Are there professional bodies that could regulate or co-regulate accountants? What regulatory approach should be adopted for accountants What advice and assistance should the AML/CTF regulator provide to support accountants to implement AML/CTF obligations?

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, the customer exists and their beneficial ownership details are known.⁴⁵

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 activity 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 transaction⁴⁶
- 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

⁴⁵ 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.

⁴⁶ There are 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.

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.

Ongoing customer due diligence 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, ECDD may be appropriate 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 instructions (IFTIs) reports, and
- suspicious matter reports (SMRs).

Where a business 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 the foreign currency equivalent), the business 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 SMR 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.
-