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**Australian Transaction Reports
and Analysis Centre**



Australian Government
Attorney-General's Department

Review of the AML/CTF Regime

Issues Paper

December 2013

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Glossary of Terms

ACC	Australian Crime Commission
AML/CTF	Anti-money laundering and counter-terrorism financing
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
APPs	Australian Privacy Principles
AUD	Australian dollar
AUSTRAC	Australian Transaction Reports and Analysis Centre
BNI	Bearer negotiable instrument
CDD	Customer Due Diligence
DNFBP	Designated non-financial businesses and professions
FATF	Financial Action Taskforce
FIU	Financial Intelligence Unit
FTR Act	<i>Financial Transaction Reports Act 1988</i>
IFTI	International funds transfer instructions
IPPs	Information Privacy Principles
ML	Money laundering
ML/TF	Money laundering and terrorism financing
SMR	Suspicious matter report
TF	Terrorism financing
TTR	Threshold transaction report
UN	United Nations

Part 1: Review of the AML/CTF regime

Purpose of the Issues Paper

The purpose of this paper is to seek stakeholder views on the operation of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), AML/CTF Regulations and AML/CTF Rules, in order to provide input to the statutory review of Australia's 'AML/CTF regime'. For the purpose of the Review, the AML/CTF regime refers to the AML/CTF Act, Regulations and Rules.

The paper outlines areas the review proposes to explore and includes a set of guiding questions to assist those interested in preparing a submission to the review.

The primary aim of the paper is to obtain feedback from stakeholders on the strengths and areas for improvement of the AML/CTF regime. The Review will seek to identify how the regime could be enhanced to achieve the goal of maintaining a regulatory framework which complies with international standards and combats money laundering and terrorism financing effectively and efficiently. The practical experience of regulated entities and industry sectors in operating under the AML/CTF regime is important for assessing effectiveness and efficiency. The view of government agencies of the value of the regime for combating serious and organised crime, money laundering and terrorism financing is also essential.

Terms of Reference and Guiding Principles have been issued to provide broad direction for the Review. These are included in the appendix. The issues paper should be read in conjunction with those documents.

Statutory review

The AML/CTF Act commenced operation on 12 December 2006 with a number of provisions coming into effect over the following two years to allow industry time to adjust to new requirements.

Section 251 of the AML/CTF Act requires a review of the operation of the regime – that is, the AML/CTF Act, AML/CTF Regulations and AML/CTF Rules – and must commence before the end of the period of seven years after the commencement of that provision. The review must commence by 13 December 2013. A report about the review must be prepared and tabled by the Minister in each House of Parliament within 15 sitting days of the report's completion.

While section 251 of the AML/CTF Act limits the review to the operation AML/CTF regime, stakeholders may also consider raising issues concerning the operation of the *Financial Transaction Reports Act 1988* (FTR Act), which operates in parallel to the AML/CTF Act.

Timeframe

On 4 December 2013, the Australian Government announced the Review of the AML/CTF regime and released terms of reference, guiding principles, and this Issues Paper as an invitation for written submissions. Interested stakeholders are invited to make a written submission to the Review, addressing the issues raised in this paper or other matters relevant to the operation of the AML/CTF regime. Written submissions should be submitted by **28 February 2014**.

The Review will overlap with an international evaluation of Australia's AML/CTF regime in 2014. The Financial Action Taskforce (FATF), an inter-governmental body that develops and promotes implementation of international AML/CTF standards, periodically reviews by way of 'mutual evaluation' the compliance of member countries with the standards. As discussed later in the paper, the expected 2014 mutual evaluation of Australia's AML/CTF regime will provide valuable information that the Review will need to consider. As a consequence, the Review will be finalised once the mutual evaluation has concluded and reported its findings to the FATF. This may not occur until early 2015.

Structure of the issues paper

The paper outlines the background in which Australia's AML/CTF regime was developed and the context in which it operates, as well as some of the main features of the regime. It sets out key areas of interest to the Review, each with a short discussion of issues for consideration and guiding questions to assist interested parties to prepare written submissions to the Review.

The key areas and guiding questions in the Issues Paper are intended as a guide for those who would like to contribute to the Review. They are not exhaustive. Submissions to the Review can include other topics for consideration, provided they relate to the AML/CTF regime and related legislation and Government policy.

Exclusions: CDD reforms and AUSTRAC supervisory levy

Two topics related to the AML/CTF regime are not covered in this paper.

Potential enhancements to the existing customer due diligence (CDD) measures are the subject of a public consultation process that the Australian Government launched in May 2013. Options for enhancing CDD measures are expected to be recommended from that process.

While the CDD consultation process was the appropriate avenue for making comment on the proposed enhancements to CDD, the Review will consider any additional issues which may arise, or residual issues remaining, from that process as well as broader CDD issues.

The AUSTRAC supervisory levy is the subject of a separate statutory review. That review is being conducted from July to December 2013 and will result in a formal report being tabled by the Minister for Justice in Parliament in 2014. The supervisory levy will not be considered under the Review of the AML/CTF regime.

More information on both these topics can be found at the AUSTRAC website at the following link: www.austrac.gov.au.

Making a submission

If you would like to make a submission, please send it to:

Issues Paper – AML/CTF Act Review
Legislative Review and Mutual Evaluation
Criminal Law and Law Enforcement Branch
Attorney-General's Department
4 National Circuit
BARTON ACT 2600

Submissions may also be submitted by email to amlreview@ag.gov.au or by facsimile to (02) 6141 2871.

The closing date for submissions is **28 February 2014**.

All submissions and the names of persons or organisations that make a submission will be treated as public and may be published on AGD'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.

The Review will be evidence-based to ensure it makes well-informed assessments on the operation of the AML/CTF framework and whether enhancements may be required. Where appropriate, all stakeholder submissions should include information which supports or demonstrates a particular point or issue addressed in the submission. Evidence in support of submissions may be in the form of collected data, business or operational examples, or other forms of information which illustrate and support any issues or concerns raised.

Engagement

The submissions will be considered by the Attorney-General's Department and AUSTRAC, who will work closely with other government agencies during the course of the Review and preparation of a report to the Minister for Justice.

Effective engagement with industry, peak bodies and other stakeholders is essential if the Review is to adequately examine issues concerning the operation of Australia's AML/CTF regime. This is also important for exploring possible options to enhance the regime.

Information on further stakeholder engagement will be issued after submissions have been received and considered.

Part 2: Australia's AML/CTF regime

Introduction

Money laundering and terrorism financing (ML/TF) threaten Australia's national security and the integrity of key parts of the economy. Money laundering, as an intrinsic enabler of serious and organised crime, including tax evasion, supports the criminal economy which is conservatively estimated to amount to \$10-15 billion a year.¹ Terrorism financing helps extremists and terror networks, based in Australia and with links overseas, to train, travel, prepare and execute violent attacks. ML/TF activity exploits not only the financial industry and other sectors of the economy but also community-based institutions, such as charities and non-profit organisations.

To combat these threats, Australia has established an AML/CTF regime based on FATF international standards.² The regime provides the legal framework designed to make the Australian financial system hostile to these money laundering, terrorism financing and other crime threats and to help protect Australia, its people and economy from criminal abuse. Benefits of the regime extend beyond crime reduction and national security to include hardening business against fraud, strengthening the economy's regulatory framework, enhancing Australia's international reputation as a destination for foreign business and investment, while also protecting the reputation of Australian business in highly competitive overseas markets.

A robust and effective AML/CTF regime in Australia also supports the global effort to combat ML/TF activity which is often transnational in scope and nature. Australia's domestic regulatory framework, international information exchange, and technical assistance on AML/CTF in other countries contribute to an international network of comparable and developing regimes.

Australia's AML/CTF regime needs to keep pace with international trends and developments. By their nature, money laundering and terrorism financing methods evolve to exploit opportunities and to try to avoid detection. Measures introduced under the regime since 2006 can be expected to have influenced ML/TF behaviour to find new ways to circumvent controls. Technological advances, market developments and the emergence of new products and services may have created new risks that fall outside the scope of the regime, as well as opportunities for more efficient and effective regulation.

¹ AUSTRAC, *Money laundering in Australia 2011*, at www.austrac.gov.au

² The FATF 40 Recommendations can be accessed at the following link: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>

What is money laundering and terrorism financing?

Money laundering (ML) is the name given to the process by which illegally obtained funds are given the appearance of having been legitimately obtained. This enables criminals to live off crime proceeds invested in the legitimate economy. ML is also a major enabler of almost all serious and organised crime activity – such as fraud, drugs and firearms trafficking, identity theft and tax evasion. In this way ML allows illicit funds to be reinvested in further crime, thereby fuelling the criminal economy. ML is a pervasive crime risk that, left unchecked, has serious economic and social consequences.

Terrorist activity requires financial support. Terrorism financing (TF) can occur through both legitimate and illegitimate means. Terrorist groups are often funded from legitimate sources such as charitable fundraising and business profits. Some terrorist groups may also resort to crime to fund their activities.

TF supports the activities of terrorist groups both in Australia and in foreign countries. It pays for not only training, planning, combat and attacks, but also establishing and maintaining cells or groups, living expenses, travel, promoting extreme ideologies and further fund raising. A key approach to combating crime and countering terrorism is to detect and follow the ML/TF money trails associated with each threat.

International context and FATF

Both ML and TF are often transnational in nature, reflecting the international spread of crime networks and the global face of terrorism. An international response to both of these threats is required. Australia is a founding member of the FATF,³ the inter-governmental body which develops and promotes the implementation of standards for combating ML/TF and other related threats to the integrity of the international financial system. The international standards are contained in the FATF's 40 Recommendations.

Australia's AML/CTF framework has been developed in response to the FATF recommendations. The recommendations have evolved over time, and significant changes were made in 2003 and most recently in February 2012. Areas that were strengthened under the 2012 revisions include:

- The risk-based approach to implementing AML/CFT measures was clarified and more fully elaborated within the recommendations
- The requirements to ensure timely access to adequate and accurate information on the beneficial ownership of legal persons and arrangements were strengthened and clarified
- Tax offences were made predicate offences for money laundering
- The powers and responsibilities of law enforcement and the financial intelligence unit (FIU) were elaborated and the scope for international cooperation strengthened

³The role and functions of the Financial Action Task Force (FATF) is summarised on its website, available at the following link: <http://www.fatf-gafi.org/pages/aboutus/>

- The definition of politically exposed persons (PEPs) was broadened to include domestic PEPs and PEPs from international organisations
- The scope for financial group (or consolidated) supervision was elaborated and enhanced
- The transparency of wire transfers was enhanced; and
- A new standard was added concerning the implementation of targeted financial sanctions related to the proliferation of weapons of mass destruction.

Australia already addresses some of these measures—such as making tax crimes predicate ML offences and having in place counter-proliferation (CP) arrangements—in its legislative and governance frameworks. Other measures, such as financial group supervision, will be considered under the Review.

FATF assesses compliance with the recommendations through a country evaluation and monitoring process called a ‘mutual evaluation’. The 2005 FATF mutual evaluation of Australia was a primary factor which shaped the development of the AML/CTF Act. In the second half of 2013, FATF commenced the 4th Round mutual evaluation of countries against the revised recommendations. Australia will be one of the first countries to be assessed against the revised standards during the forthcoming mutual evaluation in 2014. The findings of that evaluation will be relevant for the Review of the operation of the regime and will be taken into account in the final report and in any recommendations to Government.

In 2013, FATF published its revised methodology on how it will assess technical compliance with the FATF Recommendations and the effectiveness of member country AML/CFT systems. The methodology for mutual evaluations comprises two inter-linked components:

- Technical compliance assessment—addresses the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities; and
- Effectiveness assessment—assesses the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CTF system and analyses the extent to which a country’s legal and institutional framework is producing the expected results.

Australia’s legislative framework

The AML/CTF Act was introduced to strengthen Australia’s capacity to deter, detect and combat serious and organised crime, money laundering and terrorism financing. It was also developed to bring Australia’s AML/CTF regime into line with the FATF Recommendations at that time.

In addition, the policy goals of the AML/CTF regime are to implement a regulatory framework that:

- minimises the risk of ML/TF in the Australian economy
- supports domestic and international efforts to combat serious and organised crime and terrorism
- does not impose unnecessary burden on Australian business; and
- is consistent with international best practice in combatting ML/TF.

Introduction of the AML/CTF Act in 2006 significantly expanded the operation and regulatory coverage of Australia's regime. From fewer than 4,000 cash dealers under the *Financial Transaction Reports Act 1988 (Cth)* (FTR Act), the regime now has a regulated population of over 13,800 individuals and businesses (called 'reporting entities') in the financial, remittance, gambling and bullion sectors.⁴ AUSTRAC was given stronger compliance and enforcement powers to use in supervising the larger regulated population.

Following the introduction of the Act, transaction reporting requirements increased, as did the number of government agencies that could access and use this information. Transaction reporting from industry to AUSTRAC grew from 18 million reports in 2007-08 to over 84 million reports in 2012-13, a 466 per cent rise. The Act provides for the protection of sensitive personal and commercial information contained in this large amount of data. Access and secrecy measures under the Act aim to protect privacy, while at the same time permit use of AUSTRAC information to support the efforts of Australian and overseas authorities in combatting ML/TF and other serious crime.

AML/CTF Act

The AML/CTF Act establishes the general framework and principal obligations for regulated entities subject to the regime. Those obligations are to:

- enrol with AUSTRAC
- register with AUSTRAC if the entity provides remittance services
- implement and maintain an AML/CTF program to identify, assess and mitigate and manage the risk of ML/TF (known as Part A of an AML/CTF Program)
- identify their customers and undertake ongoing customer due diligence (known as Part B of an AML/CTF Program)
- lodge transaction reports and compliance reports with AUSTRAC; and
- comply with various AML/CTF related record-keeping obligations.

⁴ According to enrolments on the AUSTRAC Reporting Entity Roll at 30 September 2013

AML/CTF Rules

The AML/CTF Rules set out specific requirements that underpin the broader obligations provided for in the Act. Under section 229 of the AML/CTF Act, the AUSTRAC Chief Executive Officer (CEO) may, in writing, make AML/CTF Rules. AML/CTF Rules are binding legislative instruments. AUSTRAC develops the AML/CTF Rules in consultation with relevant government agencies, industry and other stakeholders.

AML/CTF Regulations

Under section 252 of the AML/CTF Act, the Governor-General may make AML/CTF Regulations on matters covered by the AML/CTF Act. The AML/CTF Regulations provide a tool to respond in a timely manner to technical or mechanical issues or to give effect to a specific provision in the Act. The regulations have been used sparingly to date, to amend items related to designated services and to give effect to countermeasures regarding Iran.

FTR Act

The FTR Act is part of the AML/CTF legislative framework and continues to operate alongside the AML/CTF Act. It requires 'cash dealers' (as defined under section 3 of the FTR Act) to report to AUSTRAC suspicious transactions and cash transactions of AUD10,000 or more (or the foreign currency equivalent). If a service offered by a 'cash dealer' under the FTR Act falls within the definition of a 'designated service' under the AML/CTF Act, the obligations under the FTR Act do not apply in relation to that service.

The role of AUSTRAC

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's AML/CTF regulator and financial intelligence unit (FIU). AUSTRAC was established in 1989 under the FTR Act and continues in existence under section 209 of the AML/CTF Act.

AUSTRAC's purpose is to protect the integrity of Australia's financial system and contribute to the administration of justice through expertise in countering ML/TF. In its regulatory role, AUSTRAC promotes compliance with the obligations of the AML/CTF Act by providing guidance and assistance to reporting entities. AUSTRAC also assesses reporting entities' compliance with AML/CTF obligations and undertakes enforcement action where non-compliance is identified. In performing its functions, AUSTRAC must ensure that the obligations imposed on reporting entities are commensurate with the level of ML/TF risks and that the regime supports economic efficiency, competitive neutrality and competition. AUSTRAC is also responsible for collecting and assessing transaction reports by cash dealers under the FTR Act.

In its FIU role, AUSTRAC analyses the financial information provided by regulated entities and disseminates intelligence products to its Australian law enforcement, national security, human services and revenue partner agencies in accordance with the secrecy and access requirements of the AML/CTF Act. This financial intelligence has become a crucial element in the detection and investigation of serious and organised crime, money laundering and

terrorism financing. In addition, AUSTRAC exchanges intelligence with international counterparts to support global efforts to combat transnational crime.

Part 3: Issues for consideration

Objects of the AML/CTF Act

In the context of a comprehensive review of the AML/CTF Act, it is important to consider whether the objects of the Act, as expressed in section 3, remain appropriate and relevant.

The Act is based on international best practice that strengthens Australia's capacity to combat ML/TF and other serious crime both at the domestic and international level.

The Act states its objects are to include fulfilling Australia's international obligations as they concern not only AML/CTF, but also United Nations (UN) conventions and resolutions against corruption, transnational crime and terrorism, among other things.

The current objects do not, however, include the significant and wide ranging benefits that a robust Australian AML/CTF regime has on Australia's economy and financial system, as well as our law enforcement and national security capabilities.

Therefore, it might also be appropriate for the objects of the Act to state some of the other important policy goals of Australia's AML/CTF regime by including the following aims:

- To detect and deter ML/TF and reduce the risk to the integrity of the financial system
- To provide officials with information necessary to investigate and prosecute ML/TF, thereby reducing crime
- To apply a risk-based approach that strikes an appropriate balance between AML/CTF measures and the efficient conduct of business
- To provide Australia's financial intelligence unit and AML/CTF regulator with powers to collect information, supervise reporting entities and enforce AML/CTF regulation; and
- To protect the privacy of individuals and their personal information

Guiding questions

- To what extent are the objects of the AML/CTF Act, as expressed in section 3, appropriate and relevant?
- Are there any other objects that should be reflected in the AML/CTF Act?

The risk-based approach and better regulation

In line with the Government's commitment to reduce the regulatory burden on industry, a major area of interest in this Review is the regulatory impact of the AML/CTF regime and possible options to achieve better regulatory outcomes. Any reform would, however, need to be balanced against the need to maintain the integrity of the regime and ensure Australia's risk and exposure to ML/TF is not increased.

The AML/CTF regime establishes a risk-based approach to regulation. The principles underlining the risk-based approach are, in summary:

- measures to prevent or mitigate ML/TF are proportionate with identified risks
- resources should be able to be allocated efficiently, where the greatest risks receive the highest attention while obligations might be reduced for proven lesser risks; and
- in operation, the approach needs to be dynamic, with a flexible framework that can adapt to match changes not only in risk but also business practice in order to combat ML/TF and harness efficiencies for industry compliance and supervision by government.

A risk-based approach is consistent with the better regulation objectives because the aim is to have in place a robust regulatory framework that allows businesses the flexibility to comply with their obligations in a way that addresses risk and contains compliance costs. This approach recognises that the reporting entity is in the best position to assess the risks it faces in relation to customers, products and services, and provides the flexibility for reporting entities to allocate appropriate resources to counter those risks.

The risk-based approach under the AML/CTF regime also recognises the large variety of businesses regulated under the regime. In Australia's AML/CTF environment, larger reporting entities that provide a significant range of services to a large number of diverse customers, and with large numbers of staff, are likely to face higher levels of ML/TF risk than smaller reporting entities. Larger reporting entities will likely need to apply more resources to comply with their obligations than smaller entities. Larger reporting entities – because of their range of products and services, number of customers and overall complexity – will also generally require more regulatory supervision and monitoring commensurate with the level of risk.

It is estimated that approximately 70 per cent of the 13,800 enrolled reporting entities are classified as small businesses, that is, with 20 or fewer employees. The primary types of small businesses that AUSTRAC regulates include alternative remittance dealers, on-course bookmakers, hotels (which operate electronic gaming machines), trustees of managed investment schemes and financial service intermediaries (for example, financial planners).

The regulation of small business poses a range of specific regulatory challenges in balancing the management of ML/TF risk with the impacts of regulation. The money transfer or remittance sector provides a good illustration of these challenges. This is a large and diverse

sector. It comprises about 5,200 reporting entities, ranging from large multi-national corporations through medium-sized network providers with affiliates across the country, to single business operators with access to limited resources. The sector is recognised by domestic authorities and internationally as both vulnerable to ML/TF misuse and also an important financial channel which supports broader global goals of financial inclusion.

Experience with the operation of the AML/CTF regime led to a growing recognition of the particular risks and compliance challenges involving reporting entities in this sector. In line with the risk-based principle of adapting measures to where higher risks exist, regulation of the remitter sector was tightened and enhanced in 2011 but importantly this was done in a way that aimed to reduce the burden on small business.

Risk-based and rules-based approaches

Difficulties can arise when attempting to strike the right balance between risk-based and rules-based (that is, prescriptive) approaches to AML/CTF regulation. At the time the AML/CTF legislation was introduced, some parts of industry saw the AML/CTF Rules as being more prescriptive than might be expected under a risk-based framework. However, during the subsequent period in which the AML/CTF regime has been operating a number of reporting entities have called for greater prescription and certainty about how they should meet their obligations.

The prescriptive approach provides many reporting entities, particularly smaller businesses with limited resources, with certainty and clarity concerning how they must meet their obligations under the AML/CTF framework. To address this issue, AUSTRAC has increased its efforts to publish guidance which meets the needs of different industry sectors. AUSTRAC has developed industry-specific guidance for a number of sectors, such as independent remitters and bookmakers.

The Review is interested in receiving views on where the risk-based approach could be enhanced under the AML/CTF regime and, conversely, where increased prescription would help reporting entities meet their obligations.

Guiding questions

- Is the scope of the AML/CTF regime and the obligations appropriately risk-based?
- Are the requirements for an AML/CTF program adequate to assist reporting entities to mitigate and manage ML/TF risks?
- Are there barriers to the implementation of the risk-based approach and if so, what are they?
- Does the AML/CTF regime promote both an effective and proportionate response and approach to combating ML/TF risks?
- Do stakeholders support the rule-based (prescriptive regulation) approach compared with the risk-based approach?

- Are there particular obligations under the AML/CTF regime which stakeholders would benefit from increased prescription?

Modifications and exemptions

The AML/CTF Act includes provisions which enable the AUSTRAC Chief Executive Officer (CEO) to provide regulatory relief to low risk reporting entities (including small business) while maintaining the integrity of the AML/CTF Act. The AML/CTF Act provides as follows:

- Under section 247 the AUSTRAC CEO may make Rules exempting a reporting entity from provisions under the AML/CTF Act
- Under section 248 of the AML/CTF Act, the AUSTRAC CEO may exempt a reporting entity from one or more provisions of the Act or modify the operation of provisions of the Act in relation to reporting entities.

An exemption or modification may be granted where it is demonstrated that the regulatory burden on a business is considered likely to be greater than is warranted by the potential or existing ML/TF risk. Since the Act's introduction in 2006, about 120 exemptions and modifications have been granted to reduce the compliance burden on reporting entities. Examples include AML/CTF Rules that exempt persons who operate fewer than 15 gaming machines from most obligations under the AML/CTF Act; and an exemption on reporting entities from carrying out customer identification procedures for purchases or sale of bullion when the retail value of the transaction is less than \$5,000.⁵

Guiding questions

- Are there areas where exemptions or modifications have been granted that could be incorporated into the AML/CTF Act or AML/CTF Rules?
- To what extent have exemptions or modifications that have been granted by the AUSTRAC CEO reduced the compliance burden? (Information that measures, quantifies or demonstrates the benefit in some form would be particularly useful in helping the Review assess the efficiency and effectiveness of this part of the AML/CTF framework.)

Minimising regulatory burden on reporting entities

The Review provides an opportunity to consider additional measures to minimise the regulatory burden on reporting entities. This may include opportunities for regulatory simplification, for example, the implementation and expansion of the reliance provisions in section 38 of the AML/CTF Act. These provisions enable reporting entities to rely on customer due diligence undertaken by third parties, such as other reporting entities

⁵ A tailored regulatory approach has also been extended to a range of small businesses, such as micro businesses that employ five people or fewer and smaller remitter affiliates of remittance network providers, that have been made exempt from paying the AUSTRAC supervision levy (which as noted in the introduction is the subject of a separate review).

(particularly financial institutions), where information is accessible, credible, relevant and up to date.

The Review may also consider options to provide regulatory exemptions for specific, well-defined situations involving low-level ML/TF risk. One approach would be to consider extending the simplified due diligence provisions in circumstances where a reporting entity is dealing with a customer that is assessed as low-risk. A further option may be to permit certain reporting entities to delay customer identification processes in low-risk situations until the transactions conducted by the customer reaches a certain threshold.

Guiding questions

- What other options may be considered to minimise or reduce regulatory burden on reporting entities in meeting their obligations under the AML/CTF Act? What are the potential benefits and limitations of the proposed measures?
- In what circumstances would the inclusion of greater flexibility in the current AML/CTF regime's provisions for reliance assist reporting entities to undertake CDD measures in a cost effective way?
- To what extent do reporting entities currently use simplified due diligence measures? What options may be considered to extend the use of simplified due diligence measures?

Regime scope

The Review provides an opportunity to identify and examine 'gaps' in the operation of the regime. By way of an example, consideration may be given to whether the current coverage of designated services and industry sectors is appropriate under the AML/CTF regime, particularly in the context of ML/TF risk.

Designated services

Under the AML/CTF Act reporting entities in the banking, gambling and bullion sectors have a range of obligations if they provide designated services listed in section 6 of the AML/CTF Act. An extensive range of services are prescribed as designated services, from account, card, lending, remittance and foreign exchange financial services, to gaming, gambling and bullion services.

The regime's operation since 2006 should provide a wealth of practical experience and information, from both industry and government, on the ML/TF risk associated with these designated services. Views and information on levels of ML/TF risk associated with designated services, and any changes since 2006, are important for the Review when it considers whether the regime's measures are commensurate with the level of risk.

Since the introduction of the AML/CTF Act, there have also been considerable changes in the use and application of new products and services, largely engendered through

improvements in technology. This has also resulted in a marked change in the way reporting entities interact and engage with their customers.

Changes in new payment methods, emerging business models and evolving ML/TF typologies are also important for considering the regime's scope, currency and adequacy. Market growth in internet-based and mobile services, along with the emergence of virtual currencies, raises questions about the need to include new designated services in the regime or whether it already provides the flexibility to capture these and other developments.

Industry sectors

The AML/CTF regulated population comes from four main industry sectors:

- banks and other lenders
- non-bank financial service providers
- gambling and bullion service providers; and
- money service providers.

Lawyers and accountants are also captured under the AML/CTF Act to the extent that they provide any of the designated services set out in the Act. Lawyers must also report significant cash transactions of AUD10,000 or more under the FTR Act. Cash dealers defined under the FTR Act also have residual obligations.

When the AML/CTF Act was introduced it was seen as the first tranche of reforms to Australia's AML/CTF regime. Extension of the Act to cover a second tranche of business sectors – lawyers, accountants, real estate agents, trust and company service providers and high value dealers – was intended to proceed later but has not occurred to date.

The Review provides an opportunity to examine whether these sectors (which FATF defines as designated non-financial businesses and professions (DNFBPs)) and the services they provide should be regulated under the regime. Extension of the regime to these sectors would bring Australia into line with international standards and help to address recognised ML/TF risks affecting these sectors. Many stakeholder submissions concerning the proposed CDD reforms commented on the important role that DNFBPs have in relation to the establishment and operation of corporate ownership structures. Understanding those ownership structures is an important element of reporting entities' CDD obligations.

Any expansion of the current regime would also entail a compliance cost to these DNFBP industry sectors and a regulatory cost for government agencies. There is scope to consider the type of regulatory model or approach that might be applied if DNFBP business were to be brought under the AML/CTF regime. One option would be to replicate the current regulatory framework. Alternatively, a number of different models for AML/CTF regulation exist overseas that could be considered in this context. Self-regulation may also be a

possible approach in certain circumstances, provided it could be justified based on a sector's level of ML/TF risk, compliance culture and other factors. Extension of the scope of the AML/CTF regime to include DNFBPs in accordance with the FATF Recommendations would also present an opportunity to improve regulatory efficiency, for example, by repealing the FTR Act.

The growth in off-shore service providers

Subsection 6(6) of the AML/CTF Act specifies that the provision of designated services only applies where the service is provided to a customer 'at or through a permanent establishment of the person in Australia'. This is called the 'geographical link' requirement.⁶

Since the passage of the AML/CTF Act there has been a marked growth in entities domiciled overseas which provide services to Australian customers. Most of these providers are not regulated under the AML/CTF Act because they do not satisfy the 'geographical link' requirement. Offshore-based online remitters and virtual currency exchanges are examples of such entities that fall outside of the Australian AML/CTF regime.

Offshore entities which provide designated services to Australian customers may be subject to similar AML/CTF regulation in their country of residence. This may help offset any perceived gap in Australia's regulatory coverage of these entities, although this would be dependent on the adequacy of the AML/CTF regime in the country where they are domiciled. Even so, there may still be issues, such as competitive neutrality, that arise if such offshore entities are considered to fall outside Australia's AML/CTF regime.

Guiding questions

- Does the AML/CTF regime provide a framework to respond to new and emerging services and risks, such as offshore service providers?
- If not, how could the framework be enhanced?
- Is the current range of designated services appropriate and is there scope for revision or enhancement?
- How should DNFBPs be regulated under the AML/CTF Regime?

Harnessing technology to improve regulatory effectiveness

Advances in technology and the digital economy may offer opportunities to strengthen the AML/CTF framework and ease the compliance burden on industry. For example, dynamic

⁶ There is one exception to the geographical link requirement. It does not apply to the provision of an item 32A designated service (remittance network provider). This means that remittance network providers are captured under the Australian AML/CTF regime, regardless of whether or not they have a permanent establishment in Australia.

growth in online service delivery, from government and private business, is driving work towards use of trusted digital identities in favour of traditional physical credentials.

This is of significance for the CDD requirements under the AML/CTF regime. Robust online identity verification would provide efficiencies for reporting entities in meeting their obligations and help regulatory measures to keep pace with growth in the online delivery of designated services. Any changes in how reporting entities meet CDD requirements would need to address concerns about identity theft/cybercrime and also take into account privacy considerations.

Guiding questions

- How might the development of online identity verification systems be harnessed to streamline and strengthen compliance with customer due diligence obligations under the AML/CTF Act?
- What are the advantages and disadvantages of online identity verification, and how might the disadvantages and risks of this approach be addressed?
- In what other ways can technology be used to support the objectives of the AML/CTF regime or reduce the compliance burden on business?

Industry monitoring and supervision

Central to the discussion of better regulation is the approach AUSTRAC takes to supervising and monitoring the regulated population. AUSTRAC sees its primary regulatory objective as being to improve, and where appropriate enforce, the adoption by reporting entities of policies, practices, systems and controls designed to:

- reduce the likelihood that the services of a reporting entity will be used for ML/TF purposes; and
- enable a reporting entity to identify, collect and correctly submit suspicious matter and other transaction reports to AUSTRAC

in accordance with the requirements of the AML/CTF Act and AML/CTF Rules.

The size and diversity of the regulated population poses challenges for industry monitoring and supervision. The regulated population of over 13,800 enrolled reporting entities ranges from large sophisticated and well-resourced global corporations, such as domestic and foreign banks, to sole proprietor and micro businesses with limited resources. An estimated 70 per cent of the regulated population is classified as small business (i.e. a business with 20 or fewer staff).

AUSTRAC applies a risk-based approach to the supervision of the entities it regulates. Supervisory activity is based on an assessment of a reporting entity's ML/TF risk profile,

together with the risk that the reporting entity may be non-compliant with its obligations under the AML/CTF regime.

AUSTRAC uses a range of compliance and enforcement techniques to assist reporting entities—separately or as groups—to manage compliance risk and to also assess the adequacy of their policies, practices, systems and controls in meeting the requirements of the AML/CTF Act. These techniques include:

- Low intensity or ‘engagement’ activities, to help reporting entities comply with their obligations. These include providing information and tools such as the AUSTRAC website, print publications, AUSTRAC Online and the AUSTRAC Help Desk
- Moderate intensity or ‘heightened’ activities such as behavioural assessments, desk reviews, themed reviews and transaction monitoring directed at specific behaviours or groups of reporting entities; and
- High intensity or ‘escalated’ activities such as on-site assessments. These activities are tailored to individual reporting entities to directly improve compliance outcomes.

In AUSTRAC’s view, this approach to a large, diverse population works well in using supervision resources in a manner to have the greatest effect on the compliance behaviours of the regulated population. This is complemented by the abovementioned requirement for reporting entities to submit annual compliance reports to AUSTRAC which are a self-assessment of a reporting entity’s compliance with its AML/CTF obligations. AML/CTF compliance reports collect information about the appropriateness of a reporting entity’s processes and policies to identify, mitigate and manage ML/TF risk and the effectiveness of its AML/CTF program.

Industry engagement

Strong engagement with industry, particularly through consultation, is widely viewed as key for a well-functioning regulatory regime and promoting compliance by the regulated population. FATF identifies close cooperation between government agencies and industry as an important principle of an effective risk-based approach. A hallmark of Australia’s AML/CTF regime was the extensive involvement of industry sectors in discussions with government agencies on the development of legislation leading up to the introduction of the AML/CTF Act.

AUSTRAC’s use of its rule-making and exemption powers have involved significant consultation with industry before rules or exemptions are finalised. AUSTRAC also holds a number of industry engagement forums with different parts of the regulated population. These provide avenues for an exchange of views about aspects of the regime’s operation, and include opportunities for law enforcement, revenue, national security and other government agencies to present information to industry. AUSTRAC also provides guidance, education and feedback to businesses to help them develop their own risk assessments and

controls to mitigate, identify and manage ML/TF risk, and to comply with reporting obligations under the AML/CTF regime.

Financial group supervision

The revised FATF standards have enhanced the scope for supervision of financial groups. This may allow for simplified regulation of a group of related reporting entities under the ownership and control of a central or parent entity. The AML/CTF Act allows for related reporting entities to apply to AUSTRAC to operate as a designated business group (DBG) to develop and adopt joint AML/CTF programs. This eases the compliance load on the reporting entities within a DBG. It also enables AUSTRAC to achieve significant supervision efficiencies.

There may be scope to further simplify regulation to deem related reporting entities within a group as having adopted a single AML/CTF program without the need to form a DBG. This approach could allow related reporting entities to meet their obligations without duplication of customer verification procedures and compliance programs. In addition to reducing the compliance burden, this could provide savings to the regulator through supervision of related reporting entities as a group, rather than individually.

(Note, a number of issues related to industry supervision under the AML/CTF regime are tied to the broader topic of better regulation discussed earlier and the powers provided to the regulator to enforce compliance which is discussed in the next section. Those two areas need to be taken into account in considering the questions below.)

Guiding questions

- Does the supervisory framework support an effective, risk-based AML/CTF regime and compliance with the AML/CTF framework?
- Is AUSTRAC's monitoring of compliance targeted, proportionate and risk-based?
- How effectively does AUSTRAC communicate with reporting entities and industry associations to ensure they have a sound understanding of their legal obligations under the AML/CTF regime?
- To what extent does the current DBG approach work to help reporting entities to engage with AUSTRAC and comply in an efficient way that reduces the compliance burden?
- Are changes required to promote better regulation at the corporate group level?
- Are there other approaches AUSTRAC can employ to assist reporting entities to improve compliance?

Enforcement

An essential mechanism in a robust regulatory framework is the provision and exercise of powers by which compliance with obligations can be enforced. Enforcement action is necessary to remedy breaches and uphold the integrity of the regime, deter lapses in compliance, and reassure compliant entities that less compliant businesses do not enjoy an unfair commercial advantage.

AUSTRAC has a range of enforcement powers:

- Issuing notices requiring the provision of information or documents to AUSTRAC
- Executing monitoring warrants to access reporting entities' premises
- Giving notices requiring a reporting entity to provide AUSTRAC with an ML/TF risk assessment
- Giving notices requiring the appointment of an external auditor to assess a reporting entity's risk management and compliance and to report back to the AUSTRAC CEO
- Accepting enforceable undertakings from reporting entities
- Issuing remedial directions which require a reporting entity to take specific action to ensure compliance
- Seeking injunctions to require a person to do something or refrain from doing something in relation to the breach of a civil penalty provision of the AML/CTF Act
- Issuing infringement notices requiring the payment of a pecuniary penalty
- Pursuing civil penalty orders through the Federal Court
- Refusing, suspending, cancelling or imposing conditions on a person's registration on the Remittance Sector Register; and
- Referring criminal matters to the Australian Federal Police or the Commonwealth Director of Public Prosecutions.

AUSTRAC's practice has been to employ a supervisory approach to promote reporting entity compliance before escalating to more formal enforcement action. AUSTRAC works with reporting entities to remedy identified weaknesses in AML/CTF controls and behaviour, but at times has been required to resort to firmer approaches.

AUSTRAC publishes its enforcement action in the interests of transparency and accountability. Published enforcement action sends a strong message to the general regulated population that breaches and non-compliance will be addressed. It demonstrates to customers and the community that the integrity of Australia's financial system and

business is being protected. It also signals to criminals that opportunities for exploiting business for ML/TF and related crime will be closed.

Guiding questions

- How effective and proportionate is the enforcement regime, particularly in promoting compliance?
- What additional or alternative powers would encourage compliance and /or facilitate enforcement? By way of example, is there scope to increase the use and application of infringement notices?
- How effectively does AUSTRAC use its enforcement powers?

Reporting obligations

Transaction reporting

Under Part 3 of the AML/CTF Act, reporting entities are required to submit to AUSTRAC a number of types of transaction reports, including:

Threshold transaction reports (TTRs)

Where a reporting entity which provides a designated service that involves transferring physical currency or e-currency of AUD10,000 or more (or foreign currency equivalent), the reporting entity must submit a TTR to AUSTRAC within ten business days.

International funds transfer instructions (IFTIs)

Where a reporting entity sends or receives an instruction to or from a foreign country to transfer money or property – either electronically or under a designated remittance arrangement (DRA) – the reporting entity must submit a report to AUSTRAC within ten business days. There is no threshold for IFTIs, although there is provision in the Act for a threshold to be stipulated in the regulations.

Suspicious matter reports (SMRs)

Where a reporting entity forms a suspicion at any time while dealing with a customer (from enquiry through to providing a designated service or later) on a matter that may be related to an offence, tax evasion, or proceeds of crime, the reporting entity must submit an SMR to AUSTRAC. A reporting entity must submit an SMR to AUSTRAC within:

- 24 hours after forming the relevant suspicion, if the suspicion relates to terrorism financing; or
- three business days after forming the suspicion in all other cases.

Cross-border movements

Under Part 4 of the AML/CTF Act all individuals and businesses must report to AUSTRAC the cross-border movement of physical currency of AUD10,000 or more (or foreign currency equivalent) into or out of Australia. This includes the carrying, mailing or shipping of physical currency. Carrying bearer negotiable instruments (BNIs) of any value across the border must also be reported, if requested by a Customs or police officer.

Thresholds

The scope of AML/CTF reporting and thresholds at which reporting must occur have been a source of considerable debate. Reporting requirements, including thresholds, vary from country to country. In view of the evolving nature of ML/TF and development of new technologies for emerging and existing products, it is appropriate for reporting thresholds to be examined as part of the Review.

Intelligence value of transactions reports

Transaction reporting under the AML/CTF Act – including suspicious matter reporting – is converted by AUSTRAC into financial intelligence and disseminated to domestic law enforcement, revenue collection, regulatory, national security and social justice agencies, and also to foreign FIUs and government agencies. This financial intelligence is critical in enabling investigators to ‘follow the money trail’ to target criminal syndicates and deprive them of their assets and to help detect and disrupt terrorist activity.

Financial intelligence is also vital for protecting the tax system and to reduce the concealment of funds in international tax havens. In the 2012-13 financial year, the Australian Taxation Office raised an additional \$572 million in taxation assessments as a result of using AUSTRAC information.

Feedback to reporting entities on the intelligence value and operational outcomes derived from transaction reporting is important for the operation of the AML/CTF regime. Feedback on positive outcomes helps to demonstrate the benefits of regulation relative to the regulatory burden. Providing current information and insights on criminal activity and developments in the ML/TF environment also assists reporting entities to understand ML/TF risks and adapt their AML/CTF programs as required.

AUSTRAC and its law enforcement, national security and revenue partner agencies provide feedback in a number of ways, primarily through consultative forums and the annual *AUSTRAC Typologies and Case Studies* report. Where possible, AUSTRAC provides direct feedback to entities where their information has contributed to a publicised outcome for its partner agencies.

One of AUSTRAC’s partner agencies, the Australian Crime Commission (ACC), has been provided with the power to share sensitive information where appropriate with private sector entities and classes of entities prescribed by regulation. This is intended to assist the

ACC's work with industry to detect and combat criminal threats, and to also assist industry to protect itself from criminal exploitation. Providing AUSTRAC with a comparable information-sharing power is an option that would enhance its ability to assist reporting entities to improve their understanding and detection of ML/TF risks.

Guiding questions

- To what extent are the existing transaction reporting obligations appropriate in achieving the objectives of the AML/CTF regime?
- How can the reporting regime be strengthened or enhanced?
- What are the issues, constraints and limitations of the transaction reporting obligations?
- Is there scope to vary or impose further thresholds and, if so, what is the evidence to support variation?
- Are the cross-border movement reporting obligations appropriate and how can they be strengthened or enhanced?
- Do reporting entities receive appropriate feedback from AUSTRAC and its partner agencies on the benefits, value and purpose of transaction reporting? How could feedback be improved?
- Does this feedback and other information assist reporting entities to detect high risks and assist in meeting their AML/CTF obligations?

Secrecy and access

Part 11 of the AML/CTF Act is concerned with access to and disclosure of 'AUSTRAC information'⁷. The term AUSTRAC information includes not only information received by the AUSTRAC CEO under the AML/CTF Act or any other Commonwealth, State or Territory law, but also AUSTRAC's compilation and analysis of any information received.

Government agencies

Broadly, Part 11 puts in place general prohibitions on the disclosure of AUSTRAC information, with defined exceptions. Rules for access to, and subsequent dealings with, such information are set out by category of person—AUSTRAC officers, the ATO, designated agencies under the Act, non-designated Commonwealth agencies, and other persons, for specified purposes. The general prohibition on disclosure recognises the highly sensitive nature of AUSTRAC information and the subsequent need for a high degree of protection. The exceptions in the Act attempt to balance this need with the needs of, *inter alia*, law enforcement and security agencies that rely on financial intelligence to achieve AML/CTF objectives and also to carry out their own agency's functions.

⁷ Defined in section 5 broadly to mean information collected under the AML/CTF Act, any law of the Commonwealth, State or Territory, from a Government body or an authorised officer under the Act.

The Act also permits the sharing of AUSTRAC information with the government of a foreign country in circumstances where the country has given required undertakings (as to confidentiality of the information and control of its use), and where it is appropriate in the circumstances to communicate that information. Similarly, the Act allows for the sharing of AUSTRAC information with foreign law enforcement and intelligence agencies.

AUSTRAC has formal agreements in place with its domestic partner agencies and foreign counterpart FIUs for the exchange of AUSTRAC information which include safeguards consistent with requirements of the AML/CTF Act and other relevant legislation.

Reporting entities

Part 11 also prohibits reporting entities from disclosing the fact that they have formed a suspicion or have reported information to AUSTRAC under the suspicious matter reporting requirements, or that they have given further information to a law enforcement agency in response to a request. ‘Tipping off’ is an offence which attracts a sentence of imprisonment for 2 years or 120 penalty units, or both, under section 123 of the Act. The tipping off provision implements one of the international AML/CTF standards expressed in the FATF Recommendations.

The tipping off provisions can, however, restrict reporting entities within a group from sharing suspicious matter reports among themselves or with parent entities, both within Australia and among groups operating internationally. The Review presents an opportunity to consider permitting the sharing of suspicious matter information under certain circumstances, for instance, to improve risk and fraud identification.

Guiding questions

- Do the current secrecy and access arrangements strike the right balance between protecting sensitive AUSTRAC information and allowing the use of AUSTRAC information to achieve AML/CTF and other government objectives?
- Has the tipping off offence worked as intended? If not, what improvements can be made?

Privacy and record keeping

With a focus on customer identification and verification, recording keeping and ongoing customer due diligence, the AML/CTF regime by its nature has implications for the privacy of individuals. Under the regime, personal information to identify and verify a customer is collected, used and stored by a reporting entity when providing a designated service. Information about customer transactions must also be collected, retained, and in some circumstances, reported (e.g. for the purpose of lodging a suspicious matter report with

AUSTRAC). A reporting entity must also retain records about the adoption of its AML/CTF Program and the Program itself.

The AML/CTF regime represents an attempt to find a balance between protecting the privacy of individuals, and the need for regulation around the provision of designated services in order to address the ML/TF risk faced.

Privacy protections

The AML/CTF regime includes various privacy protections to ensure the sensitive information gathered, reported, retained and shared is handled appropriately by both reporting entities and by government.

For example, in order to be authorised to receive AUSTRAC information under Part 11 of the AML/CTF Act, a State or Territory agency needs to undertake that it, and its officials, will comply with the Information Privacy Principles (IPPs) set out in section 14 of the *Privacy Act 1988 (Cth)* in respect of AUSTRAC information they obtain. AUSTRAC also puts in place memorandums of understanding with each designated agency which address how the designated agency can use AUSTRAC information and which officers are able to access AUSTRAC information. Restrictions on designated agencies' access to, and disclosure of, AUSTRAC information was discussed in the previous section of this paper.

Small businesses that are reporting entities for the purposes of AML/CTF Act are required to comply with the Privacy Act when handling personal information collected for the purposes of complying with obligations under the AML/CTF Act and the AML/CTF Rules. This includes small businesses that may be exempt from obligations under the Privacy Act in terms of other business activities they undertake.

The risk-based approach that reporting entities must apply to customer identification and verification may also complement measures to protect privacy. The amount of information collected and retained is limited by the risk posed by the relevant customer, with the result that customer identity information is not unnecessarily collected (a risk that existed under the 100 point ID check which was a blanket approach to customer identification).

Recent changes introduced under the *Privacy Amendment Act 2012 (Cth)* include a set of new, harmonised, privacy principles that will regulate the handling of personal information by both Australian government agencies and businesses. These new principles are called the Australian Privacy Principles (APPs). From 14 March 2014, the APPs will replace the existing IPPs that currently apply to Australian government agencies and the National Privacy Principles (NPPs) that currently apply to businesses. The implications of these changes for the AML/CTF regime will be considered as part of the Review.

Record keeping

Part 10 of the AML/CTF Act sets out record keeping obligations for reporting entities. Section 105 makes clear that Part 10 is not intended to override the credit reporting provisions in Part IIIA of the Privacy Act. This means that records retained in compliance with the AML/CTF Act for longer than the maximum period permitted under the Privacy Act should only be used by reporting entities for the purposes associated with fulfilling the record-keeping requirements of Part 10 of the AML/CTF Act and for no other purpose.

Part 10 of the AML/CTF Act specifies that records, copies of records, or extracts from records showing prescribed information, must be kept for a period of seven years. Having a defined retention period is considered to be privacy enhancing as it clarifies the expectation that reporting entities are not required to retain records indefinitely, thereby providing a protection that an individual's information is not subsequently misused or disclosed without authorisation.

Guiding questions

- Does the current AML/CTF framework provide adequate provisions for safeguarding personal information?
- Can technological solutions assist with the collection, verification and storing of personal information and what are the privacy implications?
- Are the record-keeping obligations sufficient and proportionate for AML/CTF purposes?

Note: The 2008 Australian Law Reform Commission's Report "For your Information: Australian Privacy Law and Practice" made recommendations specific to the AML/CTF regime.⁸ The issues set out in Recommendation 16-4 of that report will be considered as part of this Review. See <http://www.alrc.gov.au/publications/report-108>

International cooperation

Australia has in place a number of arrangements that give effect to the FATF standards for international cooperation on AML/CTF. The objects of the AML/CTF Act include addressing matters of international concern, to affect beneficially Australia's relations with foreign countries and international organisations. The AML/CTF Act also provides for the international exchange of information, not only between AUSTRAC and counterpart foreign FIUs but also between law enforcement and national security agencies. To support international information exchange, AUSTRAC has formal agreements with 65 international counterparts. Measures for extradition and mutual legal assistance, including freezing, confiscation and forfeiture of criminal assets, also support international cooperation on AML/CTF matters. Australia also participates actively in FATF, the Asia-Pacific Group on

⁸ p. 36 ALRC Report 108 published 12/08/2008

Money Laundering (a FATF-style regional body of which Australia is a permanent co-chair) and the Egmont Group of Financial Intelligence Units.

Recognising the importance of timely exchange of information, the revised FATF standards expand the scope for informal international cooperation between counterpart government agencies and also the exchange of information indirectly between non-counterpart authorities. The revised standards also promote the exchange of information between financial supervisors.

The extent to which Australia has arrangements and measures in place to meet these requirements is an area for the Review to consider. Given the relative newness of the revised standards, the opportunity may exist for Australia to lead the way in shaping and enhancing measures that promote international cooperation in line with the revised standards.

Guiding questions

- Do Australia's arrangements under the AML/CTF regime provide an adequate framework to enhance international cooperation?
 - Are there areas where the framework could be enhanced or expanded to strengthen international cooperation on AML/CTF?
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APPENDIX: Terms of reference and Guiding Principles

Terms of Reference

1. Background

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the AML/CTF Act) forms part of a legislative package which implemented reforms to strengthen Australia's AML/CTF regulatory regime and bring it into line with international standards set by the Financial Action Task Force (FATF). A central aim of the regime has been to strike a balance between efficient conduct of business and effective regulation to combat money laundering and terrorism financing. The AML/CTF Act was implemented in a staggered manner from 2006 with all provisions of the Act fully operational from 12 December 2008. The Act contains the requirement that it be fully reviewed after seven years, with the review to commence by 13 December 2013.

2. Purpose

To review the operation of the AML/CTF Act, the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008* (Cth), and the *Anti-Money Laundering and Counter-Terrorism Financing Rules* (collectively the 'AML/CTF regime') in accordance with section 251 of the AML/CTF Act.

3. Objectives

In accordance with the Review's 'Guiding Principles' (**below**), the review will examine:

- the operation of the AML/CTF regime⁹
- the extent to which the policy objectives of the AML/CTF regime remain appropriate; and
- whether the provisions of the AML/CTF regime remain appropriate for the achievement of those objectives.

The Review will culminate in a report to Government which may include recommendations for reform of the AML/CTF regime.

⁹ Including whether there is a need for the ongoing operation of the *Financial Transactions Report Act 1988* (Cth).

4. Methodology

The Review will commence with the publication of Terms of Reference, the release of an issues paper and an invitation for written submissions.

Later stages of the Review are expected to involve face to face consultation.

The Review will also consider the outcome of Australia's fourth round 2014 Mutual Evaluation undertaken by the FATF.

The Review will be conducted in accordance with the Review's Guiding Principles.

5. Consultation

The key role played by industry in combating money laundering and the financing of terrorism activity has long been recognised by government. Industry input on the operation and effectiveness of Australia's AML/CTF regime is crucial to a thorough review of the regime.

In addition to industry, important stakeholders include law enforcement, national security, regulatory and anti-corruption agencies, privacy and civil liberty organisations, and other relevant Commonwealth, State and Territory departments and agencies.

6. Reporting

The Review Team will present a report to the Government in accordance with section 251 of the AML/CTF Act. Section 251 requires the Minister to table the report in both Houses of Parliament within 15 sitting days of the report's completion.

Guiding Principles

The Review will be guided by the following principles as they relate to anti-money laundering and counter-terrorism financing:

- Create a financial **environment hostile** to money laundering, the financing of terrorism, serious and organised crime and tax evasion, through industry regulation and the collection, analysis and dissemination of financial intelligence.
- Ensure Australia fulfils its **international obligations** and addresses matters of **international concern** (including the FATF standards, the Egmont Group, Group of 20 Nations, United Nations Security Council Resolutions, the United Nations Convention against Corruption and the United Nations Convention on Transnational Organised Crime).
- Support the **better regulation agenda** to simplify the regulatory burden on reporting entities (in particular, small businesses), while maintaining an AML/CTF regime which represents the most **appropriate, efficient** and **effective** means of achieving government objectives.
- Foster and enhance **international cooperation and collaboration**.
- Work in **partnership** with industry, the states and territories to promote a national effort to maintaining the AML/CTF regime.
- Ensure the AML/CTF regime produces **information necessary** to assist the Australian Government and law enforcement agencies to combat money laundering, the financing of terrorism and serious and organised crime.
- Ensure **privacy considerations** are appropriately addressed.