Australian Government
Attorney-General's Department

Reforming Australia's anti-money laundering and counter-terrorism financing regime

Paper 1: Further information for real estate professionals

May 2024

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Introduction

Each year billions of dollars of illicit funds are generated from illegal activities such as drug trafficking, tax evasion, people smuggling, cybercrime, arms trafficking and other illegal and corrupt practices. Money laundering is not a victimless crime. It is a critical facilitator of most serious crimes and undermines the rule of law globally.

Serious and organised criminal groups are driven by illicit profit. It sits at the centre of why they conduct their illegal activities. Laundering this illicit wealth allows them to enjoy the proceeds of crime and to reinvest in further criminal activities. Illicit financing facilitates serious crimes across Australia and the world, diverting government resources which could be used for social, health or education services, increasing the burden on law enforcement, and ultimately impacting the most vulnerable in our community. Money laundering and illicit financing also erodes trust in Australia's stable financial system, our government institutions and the equitable application of the rule of law across Australian society.

Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime establishes a regulatory framework for combatting money laundering, terrorism financing and other serious financial crimes. At its core, the AML/CTF regime is a partnership between the Australian Government and industry. No legitimate business wants to unwittingly assist money laundering. Through the regulatory framework, businesses are asked to play a vital role in detecting and preventing the misuse of their sectors and products by criminals seeking to launder money and fund terrorism.

As the Attorney-General announced in April 2023, the Attorney-General's Department (the department) is consulting on reforms to the regime. The reforms aim to ensure it continues to effectively deter, detect and disrupt money laundering and terrorism financing, and meet international standards set by the Financial Action Task Force (FATF), the global financial crime watchdog.

A key element of the reforms is to expand Australia's AML/CTF regime to 'tranche two' entities – lawyers, accountants, trust and company service providers, real estate professionals, and dealers in precious stones and metals. Services provided by these sectors are recognised globally as high risk for money laundering exploitation, but are not currently captured under the AML/CTF regime. Criminal groups are constantly finding new ways to obfuscate the origins of their illicit funds, and also finding new ways to exploit weaknesses in global financial systems. The reforms would protect Australia's economy and systems against exploitation, ensuring Australia does not become a haven for criminals seeking to launder their proceeds or finance their illicit activities, and that funding for terrorists and terrorist organisations is cut off.

Ensuring Australia is compliant with the international standards set by the FATF is a fundamental objective of the proposed reforms. Australia's AML/CTF regime will next be comprehensively assessed by the FATF over 2026-27 where Australia will be assessed against strengthened standards. A poor assessment risks Australia being 'grey listed' by the FATF, which could have serious consequences for Australia, including tangible economic and gross domestic product (GDP) impacts, and increased threats, risks and burdens for law enforcement.

The reforms also present an opportunity to improve the effectiveness of the regime and ease regulatory burden by simplifying and clarifying the regime to make it easier for businesses to meet their obligations, and modernising the regime to reflect changing business structures and technologies across the economy.

Ultimately, the reforms aim to significantly improve Australia's ability to target illicit financing. They will reduce the ability of criminal actors and autocratic regimes to invest their illicit funds into further criminal activities, and disrupt serious crime in the Australian community and in our region.

The department held a first round of consultation in 2023. Stakeholders were generally supportive of expanding the AML/CTF regime to cover additional sectors providing certain high-risk services, industry and stakeholders requested further detail on how the reforms would impact them. This paper (in addition to other papers) provides further detail on the proposal to bring certain services provided by real estate professionals, property developers and other businesses within the regime.

The proposals outlined in this paper have not been settled. The paper is designed to seek your feedback on the practical impact on you or your business to inform Australian Government decisions on the proposed reforms to the regime.

Why do certain high-risk services provided by real estate professionals need to be regulated?

Australia's AML/CTF regulator and financial intelligence unit, the Australian Transaction Reports and Analysis Centre (AUSTRAC), regulates businesses that provide certain services. These are called designated services and are regulated under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (the Act) because they pose a high inherent risk for money laundering and terrorism financing. The proposed reforms canvassed in this consultation paper would add certain high-risk services provided by real estate professionals to the list of designated services within the Act.

A key aim of Australia's AML/CTF regime is to protect businesses from exploitation by criminals to launder money and fund terrorism. The methods used by criminals are constantly changing, and reform is needed to ensure Australia's AML/CTF regime keeps pace with emerging risks, changing business practices, and international standards. Australia's AML/CTF regime has not been significantly reformed for 17 years.

Criminals buy high-value goods, such as real estate, as a way of laundering or concealing illicit funds. The use of real estate is an established, well-known method of money laundering, internationally and in Australia. Australia is seen as an attractive destination for the investment of foreign proceeds of crime in real estate. Compared to other methods, money laundering through real estate, both residential and commercial, can be relatively simple and requires little planning or expertise. Large sums of illicit funds can be concealed and integrated into the legitimate economy through real estate. Criminals may also buy property using illicit funds with the intention of conducting criminal activity at the property; for example, cultivating cannabis or producing synthetic drugs. Funds generated from this criminal activity may then be used to buy additional properties.[1]

Real property makes up more than 65% of confiscated proceeds of crime in Australia.[2] The case studies provided in the department's first consultation paper illustrate the scope of this problem, particularly for residential and commercial property. Additional case studies in this paper showcase more recent examples of real estate professionals' witting and unwitting involvement in money laundering.

Real estate professionals are the front door to buying and selling property. Real estate professionals have a different relationship with purchasers and sellers to other parties involved in a property transaction and can provide unique insights. For example, real estate professionals are well-placed to know if the client:

- is located inexplicably far away from the property being purchased
- purchases property without viewing it
- shows little interest in price
- appears to be acting under the instruction of a controlling third party
- pays a large deposit in cash and the balance is financed by an unusual source, or
- alters a transaction after being asked for further information.

Real estate professionals are experts in the local property market, so are uniquely placed to identify suspicious circumstances, for example, if property transactions involve:

- manipulation of a property's valuation or appraisal
- properties being bought and sold in quick succession
- clients selling for less than the market value
- buyers paying well above or below the market value, or
- a sudden or unexplained change in ownership.

Through the first round of consultation, many stakeholders were generally supportive of the proposed reforms to expand the AML/CTF regime to cover additional sectors providing certain high-risk services. In response to stakeholder feedback, the paper provides further information on the

[1] AUSTRAC, 'Money laundering through real estate', Strategic Analysis Brief, [Strategic analysis brief: Money laundering through real estate 2015 | AUSTRAC]

[2] Australian Federal Police, 'Modernising Australia's anti-money laundering and counter-terrorism financing regime - submission by the Australian Federal Police', (Online, August 2023) https://consultations.ag.gov.au/crime/aml-ctf/consultation/published_select_respondent.

money laundering and terrorism financing vulnerabilities of the sector, and how real estate continues to be a favoured way for criminals to enjoy proceeds of their crimes. Additionally, the FATF and authorities in comparable jurisdictions globally have continually identified money laundering and terrorism financing risks in the sector, and has noted the sector needs to take appropriate measures to adequately mitigate these risks.[3]

Other professional service providers or PSPs (lawyers, accountants, trust and company service providers) are also proposed to be subject to new AML/CTF obligations when they prepare for or carry out transactions for their client relating to the buying and selling of real estate.

For additional information on these requirements, please see PSP designated service 7 available in Paper 2: Further information for professional service providers.

Case study: Unwitting involvement of real estate agents

Operation FUJI (AFP) and Operation Echo-Steelers (Victoria Police) was a combined law enforcement effort. Under these joint operations, assets in excess of $47 million (estimated at the time of restraint) have been restrained, including approximately $43.5 million in real estate (60 properties). A number of these restrained properties are suspected to be under the effective control of persons charged with drug trafficking offences, including the suspected syndicate head.

One of the numerous restraining orders related to $20 million that was suspected to be the proceeds of crime, which had been laundered through various bank accounts and used to purchase a number of real properties (purchased through various real estate agents) on behalf of the drug trafficking syndicate. The individuals alleged to be responsible have been charged with proceeds of crime/money laundering offences.

In addition to restraining real property, law enforcement also restrained rental income generated from a commercial property and other money located in various bank accounts. In acquiring the 60 real properties, various lawyers, real estate agents and accountants were regularly used by the syndicate to facilitate the creation of company and trust structures, to purchase and sell real property, and to obtain advice on matters relating to the acquisition of property. In addition, there are examples of financial planners and lawyers holding directorships in companies, and roles in trust arrangements, used to purchase restrained property, which is suspected to be under the effective control of the suspects. Real estate agents were also involved throughout, from the purchase to the disposal of the properties restrained by authorities. Law enforcement has not alleged that their involvement was deliberate facilitation. However, investigations into the acquisition and disposal of restrained properties are ongoing.

[3] Financial Action Task Force, 'Guidance for a risk-based approach: real estate sector', FATF (Online report, July 2022) https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-Real-Estate-Sector.pdf.coredownload.pdf.

Detailed proposal

The department proposes to include the services listed below as designated services under the Act. Designated services are services listed in section 6 of the Act because they have been identified as posing a risk for money laundering and terrorism financing. Consistent with the AML/CTF regime's existing model of regulation:

- businesses that provide 'designated services' in the course of carrying on a business would be regulated under the regime regardless of how they brand their business or identify themselves
- businesses that provide designated services are 'reporting entities' under the Act, and
- reporting entities have obligations under the Act aimed at managing and mitigating risk.

The proposed designated services relate to 'real property' transactions. The department proposes that **'real property'** be defined to include:

- any interest in or right over land
- a personal right to call for or be granted any interest in or right over land, or
- a licence to occupy land or any other contractual right exercisable over or in relation to land.

All proposed real estate designated services include all real estate transactions, including residential properties, commercial properties, industrial properties, vacant land and agricultural properties.

The proposed designated services reflect FATF Recommendation 22(b), which requires AML/CTF regulation of real estate professionals when they are involved in transactions concerning the buying and selling of real estate for a client.

To respond to industry feedback around the regulatory impact on the sector, the department does not propose to regulate services related to residential tenancies, property management, and leasing of commercial real estate. These services fall outside the scope of the FATF Recommendations relating to designated non-financial businesses and professions.

Consultation question

a. Does the proposed definition of real property and its intersection with the proposed designated services create any unintended outcomes with regard to real estate transactions?

Proposed designated service 1

Brokering the sale or transfer of real property on behalf of one or more sellers, in the course of carrying on a business. The customer is the seller of the real property.

It is intended to trigger AML/CTF obligations for businesses that:

- represent sellers (vendors) in a real property transaction

- facilitate auctions for sellers in a real property transaction, and
- act as an auctioneer for a real property transaction.

This proposed designated service captures the seller of the real property as the customer of the designated service. This means that AML/CTF obligations must be applied to the seller.

Proposed designated service 2

Brokering the purchase, or transfer of real property on behalf of one or more buyers, in the course of carrying on a business. The customer is the buyer of the real property.

It is intended to trigger AML/CTF obligations for businesses that:

- introduce a buyer to a real property that is purchased by the buyer, and
- are a buyer's agent, and the business identifies a real property for a client who then purchases the property.

This proposed designated service captures the buyer of the real property as the customer of the designated service. This means that AML/CTF obligations must be applied to the buyer.

In most scenarios, where a real estate agent is engaged by a seller to sell a property, and the real estate agent attracts a buyer through advertising and open homes, who then makes an offer to the seller, the real estate agent would be providing proposed designated service 1 to the seller and designated service 2 to the buyer. Likewise, a buyer's agent would provide both proposed designated service 2 to the buyer, and subsequently proposed designated service 1 to the seller. That means that the real estate agent would need to apply AML/CTF obligations to both parties to the transaction—to their own client before commencing to provide services, and to the other party to the sale when it becomes clear that the sale is likely to proceed.

To reduce duplication in Customer Due Diligence (CDD) obligations[4] where there are multiple real estate agents and other reporting entities involved in a real estate transaction, the department notes that the Act already provides a flexible CDD reliance framework in which one reporting entity may rely on CDD undertaken by another reporting entity in appropriate circumstances.

What would this look like?

For example, Hugh is looking to sell his residential property. He enters into an agency agreement with Dream Property Group, who list Hugh's property on the market and facilitate inspections with interested buyers. Dream Property Group, having represented Hugh as the seller, has delivered a service in connection with the sale and would be captured by this designated service. Therefore,

[4] CDD obligations require reporting entities to verify the identity of their customers, as well as understand the risks they may potentially be exposed to by providing designated services to their customers. Further detail is included on pages 12-13.

Dream Property Group would be required to apply CDD measures before providing their services to Hugh, amongst other relevant obligations in their AML/CTF program.

After an open home, Zhi and Dongyang make an offer on the property which Hugh is willing to accept. As Dream Property Group is now also assisting Zhi and Dongyang with the acceptance of their offer, the agency would be providing a designated service in connection with the purchase of a property and must also fulfil AML/CTF obligations in respect of both Zhi and Dongyang as the buyers.

Proposed designated service 3

Selling real property in the course of carrying on a real property selling business without the involvement of a real estate agent. The customer is the buyer of the real property.

It is intended to trigger AML/CTF obligations for businesses, such as property developers, when they sell real property directly to buyers. This proposed designated service is intended to capture different types of properties such as house and land packages, apartments off the plan, and blocks of vacant land in new subdivisions.

What would this look like?

For example, Sky High Developments has decided to purchase an office building in Adelaide and re-develop it into a residential tower with 50 apartments, which are to be sold before the project is completed. As the apartments near completion, Sky High Developments decides to list the properties themselves, using their in-house sales team to advertise the new apartments and show potential buyers around a display suite which is located off-site. Naomi requests to purchase one of the apartments. As Sky High Developments would be providing a designated service to Naomi when selling the apartment, it must fulfil the necessary AML/CTF obligations in relation to Naomi before proceeding with this sale, as well as the sale of all other apartments as part of the project.

When would the changes take effect?

If the proposed reforms become law, the real estate sector would be given time to make arrangements and prepare before being regulated under the AML/CTF regime. For example, when the Act was introduced in 2006, regulated businesses were given an extended period of time to allow them to meet their obligations.

To help businesses prepare, AUSTRAC would work closely with the real estate sector to help you understand and meet your AML/CTF obligations. The real estate sector emphasised the importance of sector-specific guidance from AUSTRAC to support any newly regulated entities to comply with their AML/CTF obligations. As outlined above, AUSTRAC would develop and provide comprehensive guidance material, e-learning courses, and information sessions with the sector designed to assist regulated entities to understand and implement their AML/CTF obligations, including identifying specific risks.

AUSTRAC also conducts information seminars for regulated sectors and operates a contact centre for businesses to assist with simple queries and accessibility to AUSTRAC systems. AUSTRAC would continue to deliver this support for the enhanced AML/CTF legislative regime as well as produce targeted and sector specific guidance to assist businesses providing certain high-risk services to understand and fulfil their obligations.

What would your business have to do?

If you provide one or more designated services, you would have to put in place measures to protect your business from exploitation by criminals, including early identification of criminality or potential criminal activity. You would have to fulfil the following six key obligations to protect your business from misuse by criminals.

1. Enrol with AUSTRAC

If your business provides real estate services to clients as per the proposed designated services above, you would be a reporting entity and required to enrol with AUSTRAC. If you never provide a designated service, you will not need to enrol and would not be subject to AML/CTF regulation. When you enrol with AUSTRAC, you are given an account with AUSTRAC Online. This allows you to submit transaction and compliance reports online, and view and update your enrolment details.

What would this look like?

For example, before the new requirements for the real estate sector come into effect, House and Home Real Estate Agency operating in Australia, looks at the AUSTRAC website to determine if they provide any relevant services. House and Home determines that they provide two of the designated services for real estate professionals and follows the steps in the interactive enrolment web portal to enrol with AUSTRAC. An AUSTRAC Online account is automatically created to enable it to comply with its AML/CTF reporting obligations.

2. Develop and maintain an AML/CTF program tailored to your business

The AML/CTF regime is based on a 'risk-based approach', where reporting entities design and implement measures that correspond with the level of money laundering and terrorism financing risk that they face. When considering your business' risks, the four main elements to consider are:

- the types of clients you have
- the type of services you provide
- how you provide those services, and
- the jurisdictions you deal with when providing services.

Depending on how the elements above apply to your business, you will have different risks. For example, if you normally deal with clients who are buying or selling ordinary suburban residential properties as owner-occupiers, your risk exposure may be lower than if you commonly deal with international high-net-worth individuals. As a consequence, the range, degree, frequency or intensity of risk mitigating policies, systems and controls you implement would need to be proportionate to the risks you face. To assist you in identifying and assessing risks specific to your business, AUSTRAC would provide guidance specific to the real estate sector.

If your business is a member of a 'business group'[5] (please refer to Paper 5: Broader reforms to simplify, clarify and modernise the regime for further information), the head of your business group would be required to develop, implement and maintain a group-wide AML/CTF program and ensure that all reporting entity members comply with their obligations. Individual members of the business group would remain responsible for fulfilling their own obligations within the group-wide AML/CTF program.
The head of your business group would be a parent company with subsidiary businesses, or for example, the lead franchisor in a franchise arrangement. In this case, the individual franchisee would be a reporting entity member of the business group.

Consultation question

b. To what extent do you think you would be able to leverage existing systems and controls to meet the proposed obligations?

What would this look like?

For example, Paul runs Home Sweet Home Real Estate Beachside, which helps clients buy and sell property in the Beachside area. In preparation for its new obligations, Paul goes onto the AUSTRAC website to look at guidance about how to develop an AML/CTF program. This information tells him that he needs to consider his clients, the services his business provides, and the money laundering and terrorism financing risks for the real estate sector.

Based on this information, Paul sets aside time with his employees to workshop the risks Home Sweet Home faces. The group considers AUSTRAC guidance, any information provided by real estate industry bodies, Paul and his staff's experience and knowledge of the real estate sector and Home Sweet Home's types of clients and services. As part of the discussion, the group identifies a number of factors that could increase the business' vulnerability to money laundering and terrorism financing, including:

- **Customers**: Home Sweet Home often represents international high-net-worth clients.
- **Designated service**: Home Sweet Home often provides services on behalf of clients to sell or purchase luxury residential property.

[5] A business group is the proposed concept that would replace the existing 'designated business group' concept in the AML/CTF regime. A business group would include all related entities in a corporate (or other) structure and require the head of the business group to manage group-wide risks. The business group would facilitate appropriate information sharing and allow for the sharing of compliance obligations between members.

- **Delivery method**: while traditionally Home Sweet Home has serviced their clients face-to-face, there is an increasing number of clients requesting virtual property inspections with the agency.
- **Geographic risk:** Home Sweet Home represents international clients who are wanting to buy property in Australia.

Once Paul has identified and assessed the risks that impact Home Sweet Home, and documented these in a risk assessment, he develops Home Sweet Home's AML/CTF program to manage and mitigate such risks and meet Home Sweet Home's AML/CTF obligations. Some procedures that employees will need to follow when providing real estate services include verifying customers' identities and monitoring for unusual behaviours.

As part of the internal controls, Paul appoints a senior, experienced agent with management duties as the AML/CTF Compliance Officer with clearly defined responsibilities for ensuring staff comply with the AML/CTF program. The AML/CTF program also clearly sets out requirements for all his staff to undertake regular training to ensure they are aware of and understand risks that the business may face and how to implement the AML/CTF program in their day-to-day work.

3. Conduct customer due diligence

A reporting entity must be reasonably satisfied that they know the identity of their customer. This involves collecting information that identifies the client and verifying their identity. This ensures you can be satisfied they are who they claim to be, and allows you to rate the risk associated with providing services to that client.

You need to understand the nature and purpose of your relationship with the client before helping them to buy or sell a property. You would also be required to have steps in place to determine whether your client is a politically exposed person or whether they appear on any Australian sanction lists (information on sanctions is available on the Department of Foreign Affairs and Trade website). Using this information, you would be able to assign a risk rating to the client that would help you determine the extent of customer identity checks required and whether you are comfortable doing business with that client.

Consultation questions

c. In what circumstances do you consider reliance among real estate professionals and other reporting entities for initial customer due diligence will be appropriate?

What would this look like?

For example, Stella is a buyer's agent at House and Home Real Estate. Sarah and Cam are looking to buy a townhouse near the hospital where they both work as nurses, so they engage Stella to find them the perfect house. At the same time as completing the agency agreement, Stella conducts customer identity and risk checks, and documents the results. This involves Stella checking the couple's passports to make sure that they are who they say they are, and asking them what they do for a living and what attracted them to the area. Based on Stella's experience working in the neighbourhood, she knows that this area is very popular with hospital employees. Based on the information she obtains, she rates the client relationship as low risk in accordance with her customer risk rating scale in the agency's AML/CTF program. This means Stella, in accordance with House and Home's AML/CTF program, does not need to do any further checks on the couple's identity or ask additional questions.

Once Stella finds a home that Sarah and Cam love, she approaches the seller's agent with an offer. Alex, the seller, considers the offer and indicates he is prepared to accept Sarah and Cam's price. At this point, Stella receives Alex's identity information from the seller's agent and considers it is appropriate to rely on the customer identity checks undertaken by this reporting entity, which Stella documents. Stella confirms that Alex is a recently retired midwife looking to move to the coast. Using this information, Stella concludes the client relationship with Alex is low risk.

4. Conduct ongoing customer due diligence

Reporting entities are also required to observe how customers are using their services over time, and monitor for any changes that may impact their risk profile or any behaviour which may be unusual or suspicious. This process, known as ongoing customer due diligence, requires you to identify when a client's risk rating should be updated to better reflect their current risk. This also involves monitoring transactions, understanding the reasons behind a client's change in behaviour, and determining when you need to re-verify the client's identity or verify additional information about the client.

What would this look like?

For example, Buying and Selling Real Estate is contracted by a major property developer, Big Apartments, to sell apartments off the plan in Melbourne. Following the completion of its next apartment complex, Big Apartments contact Buying and Selling Real Estate to see whether the existing contract can be amended to include selling the new apartments. Before accepting the amended offer, Buying and Selling Real Estate reads a news report that Big Apartments have been bought out by an established property developer group in Queensland.

This change in ownership alerts Buying and Selling Real Estate to the need to verify the identities of the new owners of Big Apartments. Buying and Selling Real Estate does this by checking the Australian Securities and Investment Commission (ASIC) companies register for an extract of the company's registration details, and requesting the new owners of Big Apartments to provide certified copies of their passports. Based on the information provided, Buying and Selling Real Estate is comfortable that the new owners do not create any new risks to the business relationship and agree to enter into the amended contract.

5. Report certain transactions and suspicious activity

Reporting entities are required to report certain transactions and activity to AUSTRAC, which you can do through your AUSTRAC Online account. Entities are required to submit a Threshold Transaction Report any time a transaction with a client involves $10,000 or more in cash. Entities must also submit a Suspicious Matter Report (SMR) if you suspect on reasonable grounds that a client is not who they claim to be, or there may be criminal activity.

What would this look like?

For example, Graham is looking to buy a cabin at the beach that is being listed by Home Sweet Home Real Estate Beachside. Graham makes an offer on the property of $900,000, and wants to purchase the property entirely with cash in neatly bundled $100 notes. This is unusual and is identified as a high-risk indicator in Home Sweet Home Real Estate Agency's AML/CTF program. Because of this, the agency asks further questions to determine where the funds have come from, which Graham avoids answering. Although the sale is being made in his name, Graham calls a man he refers to as his associate before making any decisions, and when asked, declines the offer to arrange an inspection for the associate. As this is suspicious behaviour, the real estate agent fills out a SMR form through their AUSTRAC Online account. This includes a description of the nature of the suspicious behaviour, identity information they have collected about Graham during customer identity checks, and a description of the process used by Home Sweet Home to verify Graham's identity.

If the transaction were to proceed, in addition to submitting the Suspicious Matter Report, Home Sweet Home would also be required to submit a Threshold Transaction Report as the transaction involves the transfer of $10,000 or more in cash.

6. Make and keep records

Reporting entities are required to make and securely stored records about the customer due diligence measures you undertake, the services you provide and how you are meeting your AML/CTF obligations. If your business is misused for criminal purposes, your records may help AUSTRAC or other authorities investigate. All reporting entities regulated under the AML/CTF regime are required to comply with the *Privacy Act 1988* (Cth). The department is also currently leading targeted engagement to implement the Government response to the Privacy Act Review, including in relation to the small business exemption.

What would this look like?

For example, after checking and verifying Sarah and Cam's identities, Stella at House and Home Real Estate Agency records this information in the agency's client relationship management system. The record shows that Stella checked their identities, notes the information she found and the low risk rating applied to the client relationship.

Consultation question

d. What additional information, guidance and materials would you require from AUSTRAC to help you comply with your new AML/CTF obligations?

Existing customers

If your business begins to be regulated under the Act due to these reforms, services that you are already providing to customers may become subject to regulation. There are some circumstances where you may continue to provide designated services to these customers without carrying out the full suite of customer due diligence obligations.

Pre-commencement customers are customers who have received a designated service from you before the legislation and the reforms come into effect. You would not be required to identify and verify pre-commencement customers for any new or existing designated services you provide them, unless an SMR obligation arises, or there is a change in their risk profile. However, these customers must still be subject to ongoing customer due diligence.

The department considers that new reporting entities (real estate professionals, lawyers, accountants, trust and company service providers and dealers in precious metals and stones) should be given regulatory relief in relation to pre-commencement customers in the same way that was provided to reporting entities at the commencement of the Act in 2006.

The department proposes that pre-commencement customers should include any customer that is in a business relationship with a reporting entity that provides real estate services at the time the reforms come into effect. The department proposes to define a business relationship as a relationship between a reporting entity and a customer involving the provision of a designated service that has, or is expected to have, an element of duration. This means that customers who have only received occasional transactions prior to the reforms coming into effect are not covered by the exception—if these customers return to receive a further designated service from a reporting entity once the reforms have commenced, all customer due diligence obligations would be applicable to them as if they were a new customer.

What would this look like?

For example, 10 years prior to Home Sweet Home Real Estate Beachside's services being regulated under the AML/CTF regime, Sarah and Cam had obtained real estate services from Home Sweet Home to assist with the sale of their first home. Six months after the agency became a reporting entity, Sarah and Cam returned to request real estate services from Home Sweet Home to assist with selling their investment property. The staff at Home Sweet Home assessed that the agency was not in a business relationship with Sarah and Cam at the time they became a reporting entity. Consequentially, Sarah and Cam did not qualify as pre-commencement customers and would be subject to all AML/CTF obligations as if they were new customers.

However, if Home Sweet Home had entered into a contract with Big Apartments to sell properties which they had developed prior to becoming a reporting entity, and that business relationship was still active and ongoing at the time that the agency became a reporting entity, Big Apartments would be considered a pre-commencement customer and *Home Sweet Home* would be able to continue providing real estate services to their client without performing customer identity and risk checks until one of the triggers occurs. Home Sweet Home would, however, be required to undertake ongoing customer due diligence in relation to the designated services is provides to Big Apartments from the date it becomes a reporting entity.

Transitioning existing customers into the regime

The department is proposing to transition pre-commencement customers for new and existing regulated entities into the AML/CTF regime over a specified period of time. This would ensure the risks associated with this currently unverified cohort of customers can be effectively identified and mitigated. In particular, the department proposes to:

- add a trigger for CDD for pre-commencement customers where there is a material change in the nature and purpose of the business relationship that results in medium or high risk, and
- extend the requirement for a customer risk rating to all pre-commencement customers to inform a risk-based transition into the regime. The Act would then require a reporting entity to collect and verify identity information about any pre-commencement customer who is rated as medium or high risk. Identity information that has previously been collected and verified by a reporting entity could be used for this purpose, where appropriate.

Once a pre-commencement customer has been subject to CDD they would become an ordinary customer for AML/CTF purposes.

The department seeks stakeholder feedback on what timeframes might be suitable for all pre-commencement customers to undergo a risk rating, and to transition medium and high-risk customers to regular customers under the AML/CTF regime.

Consultation questions

e. What timeframe would you require to complete a risk rating for all pre-commencement customers (customers who you are in a business relationship with when the reforms commence)?

Broader reforms to simplify, clarify and modernise the regime

In addition to reforms to extend the regime to professions providing certain high-risk services, such as real estate professionals, the department proposes to simplify and clarify whole-of-regime obligations for AML/CTF programs, CDD and information sharing. This would remove prescriptive requirements, reduce administrative burden, and reinforce the risk-based approach of the regime.

Simplification reforms to AML/CTF programs and CDD requirements would facilitate an outcomes-based approach so that reporting entities can effectively identify, assess and understand the risks and to verify the identity of customers. The broader package reforms would be in place before obligations for new entities, including those in the real estate sectors, commence so entities would only need to comply with one set of requirements.

Please refer to Paper 5: Broader reforms to simplify, clarify and modernise the regime for further information.

Consultation questions

a. Does the proposed definition of real property and its intersection with the proposed designated services create any unintended outcomes with regard to real estate transactions?
b. To what extent do you think you would be able to leverage existing systems and controls to meet the proposed obligations?
c. In what circumstances do you consider reliance among real estate professionals and other reporting entities for initial customer due diligence will be appropriate?
d. What additional information, guidance and materials would you require from AUSTRAC to help you comply with your new AML/CTF obligations?
e. What timeframe would you require to complete a risk rating for all pre-commencement customers (customers who you are in a business relationship with when the reforms commence)?