



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

Paper 2: Further information for professional service providers

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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 high-risk services provided by professional service providers (PSPs) into 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.

Who are PSPs?

PSP is a collective term used by the department to describe legal practitioners, accountants, consultants, trust and company service providers, financial advisors and business brokers.

Australia's PSPs are diverse, with businesses that vary substantially in the breadth and nature of services they provide, the clients they serve and the size and level of sophistication of the business and its employees.

The department has chosen to refer to the group of professionals providing these services as PSPs in this consultation paper rather than separating them into specific professions to reflect the policy intention of competitive neutrality. This approach differs from the first stage of consultation and reflects feedback from stakeholders that many of these sectors provide the same or similar services.

Why do certain high-risk services provided by PSPs 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 within this consultation paper would add certain high-risk services provided by PSPs 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 criminals use are constantly changing, and reform is needed to ensure Australia's AML/CTF regime keep up with emerging risks, changing business practices, and international standards. Australia's AML/CTF regime has not been significantly reformed for 17 years.

The regulation of PSPs under the AML/CTF regime will raise awareness of risks across these sectors and provide PSPs with tools to prevent the misuse of their legitimate services by criminals. Regulation will also assist PSPs to identify early indicators of suspicious transactions and criminality, reducing their exposure to criminal activity and reputational damage, and to help Australia protect the integrity of the financial system and reputation of the Australian economy.

Criminals are known to seek out the involvement of PSPs to provide specialist skills/advice, technical proficiency or knowledge that assists in their money laundering schemes. Law enforcement has often observed PSPs being unwitting facilitators, or reckless as to the risk of money laundering or concealing illicit wealth. In these cases, specialised skills and proficiencies have been exploited for the benefit of criminal entities. This not only aids criminal enterprises, but increases the vulnerability of PSPs to infiltration by serious and organised crime, and risks eroding public trust in these sectors.

The services provided by PSPs are vulnerable to exploitation by criminal actors wanting to:

- conceal proceeds of crime
- place assets out of reach to avoid future liabilities
- obscure beneficial ownership through complex layers and legal entity structures
- evade regulatory controls
- provide a veneer of legitimacy to criminal activity
- obfuscate or disguise links between the proceeds of crime and the perpetrator through the formation of legal entities such as companies and trusts
- retain control over criminally derived assets
- avoid detection and confiscation of assets
- evade tax and exploit known tax shelters, and
- hinder law enforcement investigations.

There is also a perception amongst criminals that client confidentiality obligations owed by PSPs will delay, obstruct or prevent investigation or prosecution by authorities if they use the services of a PSP. Internationally, PSPs observe criminals trying to launder money from the following offences—being the illegal activity that is the foundational offence, or the first crime in the chain of crimes:



- fraud
- tax crimes
- trafficking in narcotic drugs
- corruption and bribery, and
- possession of unexplained levels of cash or private funding.

Case study: Unwitting involvement by solicitor

In a proceeds of crime investigation conducted by the AFP, it was found that one of the suspects used international funds transfers to facilitate the movement of monies from overseas into Australia to enable the purchase of property. The AFP identified that the suspect had purchased four separate parcels of land, totalling almost \$1.8 million. The suspect also paid a deposit on three apartments and a boat berth in a development area, totalling \$340,000.

Enquiries with AUSTRAC identified a series of international funds transfers into the bank account of a specialist property law practice. These transfers were identified because the overseas remitter had previously been identified remitting monies direct to bank accounts in the name of the suspect or family members of the suspect. The international funds transfers to the trust account totalled over \$1,700,000.

The suspect also caused a further \$90,000 to be deposited into the trust account in amounts of under \$10,000. The solicitor later admitted to the AFP that while they thought the source of the international funds transfers a “bit strange”, they did not ask their client about the source of the money, nor did they ask why the \$90,000 was paid into the account in a manner consistent with structuring.

Case study: Witting involvement of an accountant, lawyer and solicitor

In 2016, the AFP commenced an investigation into a large-scale, organised tax fraud and money laundering syndicate. 15 people have been convicted for their role in the syndicate. This includes an accountant and two lawyers who were prominent actors in this matter.

As part of the scheme, the accountant incorporated a company in their partner's name. The company was used for the sole purpose of diverting criminal profits from the tax fraud to those behind the fraud scheme, using a combination of company bank accounts and false invoicing.

Further, one of the lawyers convicted in this matter provided the mechanism for disguising more than \$23 million received into, and then transferred out of, their legal practice's trust account. These funds were the proceeds of crime derived from other persons blackmailing the tax fraud conspirators participating in the syndicate.



The money-laundering methods included using stolen identities to establish ledger accounts and create false documents. Once in the trust account, those funds were gradually introduced into the mainstream commercial and financial system, through loans to property developers, bank cheque transfers to another solicitor's trust account, and payments to bank accounts held in company names. The solicitor also received a 'cut' of the proceeds for laundering the proceeds through the trust account.

During sentencing, the court noted the solicitor was an indispensable participant in laundering the proceeds of crime, using their professional status and access to a trust account, which provided a level of cover for the criminal activity involved.

Under this investigation, a former accountant was also charged with negligently dealing with proceeds of crime. In 2020, the accountant received a sentence of 3 years and 3 months jail for their role in the syndicate.

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 known as 'reporting entities' under the Act, and
- reporting entities have obligations under the Act aimed at managing and mitigating risk.

The proposed services apply to all PSPs when they carry out specified activities for customers, but do not capture all activities carried out by these businesses. For example, conducting an audit of financial statements or representing a client in a legal proceeding are not proposed designated services. A business that exclusively provides these services would not provide a designed service that triggers AML/CTF obligations. Additionally, pure advisory work performed by PSPs where there is no underlying client transaction is not intended to be captured by the proposed services. For example, work undertaken by barristers, as well as general advice on matters such as directors' duties or employment law would not be captured.

Additionally, regulation under the Act does not apply to businesses' in-house services as the reporting entity and the customer of the designated service cannot be the same person. Individual lawyers or accountants who tend to their own private affairs would not be regulated, as again the customer of a designated service cannot be the same person as the provider of the designated



service. Services provided within business groups by centralised legal or finance functions would also not be captured by the AML/CTF regime.

The proposed designated services also reflect FATF Recommendations 22(d) and 22(e), which requires AML/CTF regulation of professional service providers when they prepare for or carry out transactions for their client concerning certain activities.

Proposed designated service 1

Preparing for or carrying out transactions on behalf of a person, to buy, sell or transfer real property, in the course of carrying on a business. The customer is the person.

It is intended to trigger AML/CTF obligations for businesses that do the following for a client:

- act for a customer to settle a real property transaction
- prepare or review contracts
- conduct due diligence, land title or zoning permit searches
- prepare for financial settlement, and
- prepare documents to be provided to a registry authority for transfer of real property.

What would this look like?

For example, this proposed designated service would capture a conveyancing practice that prepared the sales contract and transfer documents for a client to purchase a house. The conveyancer would need to apply AML/CTF obligations in respect to any client of this service.

Definitions

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.

The department also proposes to exclude the receipt of property from a deceased estate from the scope of this proposed designated service due to limited risk. As outlined in the consultation paper for real estate professionals, 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.

Proposed designated service 2

Preparing for or carrying out transactions on behalf of a person to buy, sell or transfer legal entities in the course of carrying on a business. The customer is the person.

It is intended to capture businesses that do the following for a client:



- acting on behalf of a customer for a purchase, sale or transfer of ownership of a legal entity
- preparing or reviewing of contracts for the purchase, sale or transfer of ownership of a legal entity
- conducting or advising on due diligence, valuation of assets and liabilities prior to transfer
- obtaining Foreign Investment Review Board approvals, and ASX and Australian Securities and Investments Commission (ASIC) waivers for clients
- conducting due diligence on accounts and finances for corporate financial transactions prior to a transaction
- preparing for financial settlement, and
- preparing documents to be provided to an authority (such as ASIC) for transfer of a legal entity.

Definitions

The department proposes that **'legal entity'** be defined to mean:

- any person other than an individual, including a company, a body corporate, an express trust, a partnership, a corporation sole, a foundation, an incorporated association, an unincorporated association, a friendly society, cooperative and other relevantly similar entities.

Proposed designated service 3

Receiving, holding and controlling or disbursing:

- money (other than sums paid as fees for professional services)
- accounts
- securities or securities accounts,
- digital assets (including private keys), or
- property

on behalf of another person, in the course of carrying on a business, but excluding:

- pre-payment for goods and services provided by the business
- property management activity, and
- prescribed disbursements.

The customer is the person.

It is intended to capture, with the exception of payments for professional fees, any instance where a business does the following on behalf of a client:

- receives or holds money, accounts, securities or security accounts, digital assets (including private keys), other assets or property, and



- controls the payment or disburses that money, accounts, securities or security accounts, digital assets (including private keys), other assets or property.

The determining factor of this proposed designated service is whether the reporting entity has control over the flow of client money, accounts, securities or security accounts, other assets or property.

The department is also progressing separate measures regarding proposed designated services related to digital assets and private keys. Where businesses provide custodial or transfer services related to digital assets and private keys on behalf of a customer, this will be regulated under these separate proposed designated services. More detail can be found at [Paper 4: Further information for digital currency exchange providers \(DCEPs\), remittance service providers and financial institutions](#). However, circumstances may arise where PSPs receive, hold and control or disburse digital assets and private keys on behalf of clients. For example, a client may request that their lawyer hold a cold wallet (e.g. a USB drive containing the details to a private key) in a locked safe. The department welcomes views from PSPs on whether the services provided by PSPs are in some way distinct from the separate proposed designated service related to custody of digital assets.

To respond to stakeholder feedback, the department proposes that fees for professional services, including as a retainer in advance, are excluded from this proposed designated service due to carrying a very low risk. We would also be grateful for stakeholder feedback on whether escrow services should be excluded from the scope of this proposed designated service.

While many businesses that engage in this activity may already be covered as financial institutions (and reporting entities) under the Act, it is likely that some additional businesses may become reporting entities as result of this proposed designated service. This may include insolvency and business restructuring practitioners. The department is seeking stakeholder views on how this service may be further refined to avoid regulating services not required to be regulated by FATF Recommendation 22(d) but without undermining competitive neutrality.

What would this look like?

For example, this proposed designated service would capture where a business:

- holds funds for a client in the accounting firm's trust account for purposes other than the payment of the accounting firm's fees,
- has authority over a client's bank account and makes payments from that account on behalf of a client, for example payroll or other business expenses, or
- handles and banks cash takings belonging to a client.

The business would need to apply AML/CTF obligations in respect to their client.



Definitions

The department proposes that **'property management activity'** (which is excluded from the scope of the proposed designated service) is defined to mean, in relation to any 'property' or 'real property' (whether residential premises, commercial premises, or other real property):

- collecting or offering to collect money payable for the use, maintenance, repair, improvement, or oversight of any property or real property
- holding or disbursing money received for the use, maintenance, repair, improvement, or oversight of any property or real property, or
- holding or disbursing money received for the advertising of, or negotiating the use of, any real property.

The department proposes **'prescribed disbursements'** (which are excluded from the scope of the proposed designated service) be defined to include payments to one of the following:

- a Commonwealth, state or territory agency
- a court or tribunal of the Commonwealth, state or territory
- a licensed insurer
- a barrister
- any other person who carries out business within Australia that relates solely to the services provided by the reporting entity if:
 - the payment is wholly ancillary to the provision of a service that is not a designated service, or
 - the total value of the transaction or series of related transactions is below \$1,000
- a payment prescribed in the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument (No. 1.) 2007 (Cth) (the Rules).

Consultation questions

- b. Should this proposed designated service be confined in a way to exclude services provided by sectors beyond PSPs?
- c. Is the current list of prescribed disbursements appropriate?
- d. Are there any additional payments that should be included in the list of prescribed disbursements due to proven or demonstrable low risk?
- e. How often do you provide services relating to digital assets, and how does this differ from services provided by dedicated digital asset service providers?

Proposed designated service 4

Preparing for, carrying out, or organising transactions for contributions for the creation, operation or management of legal entities, on behalf of a person in the course of carrying on a business. The customer is the person.

It is intended to cover scenarios where a business is engaged to perform work for a company or other business structure to assist with capital raising or debt financing transactions.



'Preparing for, carrying out, or organising transactions for contributions' is intended to describe the work a professional undertakes to assist clients with gaining capital contributions, including structuring, negotiating and documenting these transactions. This may include advising on compliance with the listing rules and continuous disclosure in relation to a transaction.

'Contributions for the creation, operation or management of legal entities' is intended to capture all capital and debt raising methods, including but not limited to:

- equity capital raising, for example
 - initial public offerings
 - share purchase plans
 - rights issues, or
 - block trades
- debt financing, including the following whether secured or unsecured
 - instalment loans
 - revolving loans
 - cash flow loans, and
 - bonds, bills or notes
- convertible securities including hybrid securities, convertible bonds etc.

Proposed designated service 5

Formation, creation, operation or management of a legal entity (excluding a testamentary trust), on behalf of a person, in the course of carrying on a business. The customer is the person.

This proposed designated service reflects FATF Recommendation 22(d). It is intended to capture work that businesses are engaged to do to form, create or restructure companies, partnerships, express trusts, or other legal entities, including where a business provides the following services to a client:

- drafting, reviewing and negotiating corporate agreements and business documents, including partnership agreements, shareholders agreements and insolvency agreements
- drafting, reviewing and negotiating documents to support clients' mergers and acquisitions
- obtaining Foreign Investment Review Board approvals, and Australian Securities Exchange and ASIC waivers for clients, and
- conducting due diligence on accounts and finances for corporate financial transactions prior to a transaction.

The department is proposing to exclude testamentary trusts created by way of a will from the scope of this proposed designated service due to the lower money laundering and terrorism financing risk of the service. This proposed designated service is not intended to capture where individuals directly create and register a company with ASIC.



What would this look like?

For example, Company X wants to open an Australian office. It engages Business Creations Pty Ltd for advice on the best model for its Australian operations. Based on that advice, Company X decides to incorporate a new Australian company. It then retains Business Creations Pty Ltd to incorporate the business in Australia, obtain appropriate Government approvals and waivers and lease local offices. As Business Creations Pty Ltd is providing services in line with proposed designated service 11, it would be regulated under the regime and subject to AML/CTF obligations.

Definitions

The department is proposing to define '**express trust**' for this and other proposed new designated services:

- express trust may be defined to mean a trust created by a decision of the settlor, usually in the form of a document such as a written deed of trust. This is contrasted with trusts which come into being through the operation of the law and do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (for example a constructive trust).

Proposed designated service 6

Acting as, or arranging for a third person to act as:

- a director or secretary of a company,
- a power of attorney for a legal entity,
- a partner of a partnership,
- a trustee of an express trust, or performing the equivalent function for another form of legal entity, but excluding as executor or administrator of a deceased estate, or
- a similar position in relation to other legal entities

on behalf of another person in the course of carrying on a business. The customer is the person.

It is intended to capture where a business is engaged by a client to:

- act as, or be appointed as nominee director or company secretary (or equivalent)
- arrange for a third person to act as or be appointed as nominee director or company secretary (or equivalent)
- act as, or arrange for a third person to act as the trustee of an express trust or other equivalent arrangement, excluding deceased estates, or
- act as, or arrange for a third person to act as a partner or nominee partner of a partnership.

This proposed designated service is not intended to capture where a nominee director is a representative of a parent company, a lender or an employee.



Administrators and managers of trusts, companies and limited partnerships are likely to engage in this proposed designated service. This proposed designated service is not intended to capture recruitment or head-hunting services.

What would this look like?

For example, this proposed designated service would cover a solicitor who has been appointed by their client to act on their behalf as the director of a company.

Definitions

The term '**director**' is currently defined under the Act. The department would consider aligning this definition with the *Corporations Act 2001* (Cth). The department would also consider defining the term '**company secretary**' under the Act, including aligning this with the *Corporations Act 2001*.

Proposed designated service 7

Acting as, or arranging for a third person to act as, a nominee shareholder, in the course of carrying on a business on behalf of a person. The customer is the person.

This proposed designated service reflects FATF Recommendation 22(e). It is intended to capture where a PSP is engaged by a client to act as, or arrange for another person to act as, a nominee shareholder.

A **nominee shareholder** exercises the associated voting rights according to the instructions of the nominator and receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.

The department would consider if it is necessary to define **nominee shareholder** in the Act to mean a person who is not the beneficial owner of a legal entity based on the shares it holds as nominee and who:

- exercises the associated voting rights according to the instructions of the nominator
- receives dividends on behalf of the nominator, or
- both.

Proposed designated service 8

Providing a registered office address, principal place of business address, correspondence address or administrative address for a:

- company
- partnership, or
- any other legal entity

on behalf of a person, in the course of carrying on a business.



This proposed designated service reflects FATF Recommendation 22(e). It is intended to capture when a business, in the course of carrying on a business, provides an 'address service' and that address satisfies the requirements for a registered office or principal place of business address. The proposed designated service is intended to cover providing an address that could be used to:

- create or register a legal entity, or
- provide to another reporting entity during CDD procedures in order to access a designated service.

The proposed designated service is not intended to include leasing of office accommodation where the lessee uses the premises for genuine business accommodation. The proposed designated service would not include Australia Post providing post office boxes or other similar services.

What would this look like?

For example, this proposed designated service would capture a law firm that offers its business address to be used as the official business address for its clients.

Definitions

The department would consider aligning the definitions of '**principal place of business**' and '**registered office**' in the Act with the *Corporations Act 2001*.

The department will consider if it is necessary to define or further refine the term '**address service**' in the Act.

When would the changes take effect?

If the proposed reforms become law, PSPs 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 PSPs to help you understand and meet your AML/CTF obligations. PSPs emphasised the importance of sector-specific guidance from AUSTRAC to support any newly regulated entities to comply with their AML/CTF obligations. AUSTRAC's comprehensive guidance material, e-learning courses, and information sessions for the sector, can 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 PSP designated 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 will not be subject to AML/CTF regulation. When you enrol with AUSTRAC, you are given an AUSTRAC Online account. This allows you to submit transaction and compliance reports online, and view and update your enrolment details. If you never provide a designated service, you would not need to enrol and would not be subject to AML/CTF regulation.

What will this look like?

Before new requirements for PSPs come into effect, Count On Me, an accounting firm operating in Australia, looks at the AUSTRAC website to determine if they provide any relevant services. Count on Me determines that they provide a range of designated services and follows the steps in the interactive enrolment web portal to enrol with AUSTRAC. An account is created in AUSTRAC Online 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 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 primarily deal with local sole trader clients, your risk exposure may be lower than if you 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 will provide guidance specific to PSPs.



If your business is a member of a 'business group'¹ (see [Paper 5: Broader reforms to simplify, clarify and modernise the regime](#)), 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 that involves shared compliance management functions. In this case the individual franchisee would be a reporting entity member of the business group.

What will this look like?

For example, Wayne runs Accrual World, a small firm that provides accounting and company/trust formation services to clients. In preparation for its new obligations, Wayne looks at the AUSTRAC website to read guidance about how to develop an AML/CTF program. Wayne also reads about specific money laundering and terrorism financing risks that small accounting firms should consider, as well broader risks relating to all reporting entities in the accounting sector.

Based on this information, Wayne sets aside time with staff to workshop the risks Accrual World faces. The group considers AUSTRAC guidance, any information provided by accounting industry bodies, and Accrual World's types of clients and services. As part of the discussion the group identifies a number of risks, including:

- **Customers:** Accrual World's services several clients who are Members of State Parliament.
- **Designated service:** Accrual World often forms trusts and trustee companies for clients that are used to hold business assets and adjust their tax liability.
- **Delivery method:** while traditionally Accrual World has serviced their clients face-to-face, there is an increasing number of clients requesting advice through online channels following the COVID-19 pandemic.
- **Geographic risk:** Accrual World has noticed an increase in overseas clients wanting advice on how to grow their business presence in Australia.

Once Wayne has identified and assessed the risks faced by Accrual World and documented these in a risk assessment, he develops policies, systems and controls which will mitigate and manage those risks, as well as internal controls designed to assist his business to meet its AML/CTF obligations. Some procedures that all employees will need to follow when providing relevant services may include verifying client's identities and monitoring for requests to establish unusually complex

¹ 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.



trust or company structures for which there are not clear legitimate economic purposes. Wayne appoints a senior accountant as AML/CTF Compliance Officer with clearly defined responsibilities for ensuring staff comply with the AML/CTF program and to oversee the effective operation of the program. The AML/CTF program also clearly sets out requirements for all his staff to undertake regular training to ensure that everyone is aware of and understands 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 as to the identity of its customer/client. This involves collecting information that identifies the client, verifying a client's identity to ensure that you are satisfied that they are who they claim to be, and rating the risk associated with providing services to each client.

In addition, when your client is a legal entity such as a company or trust, this may involve identifying and verifying those who ultimately own or control the entity. You need to understand the nature and purpose of your relationship with the client before providing designated services to them. 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 will help you determine the extent of client identity checks required and whether you are comfortable doing business with that client.

What will this look like?

For example, Veronica and Josh, a couple in their mid-thirties, are looking to purchase a dog grooming company in Seaside. After finding the perfect business, Koda & Friends, Veronica and Josh seek assistance from Emma, a lawyer at Legally Yours, to assist with the legal aspects of the business acquisition. Before starting work for Veronica and Josh, Emma follows the standard procedures for customer identity and risk checks in Legally Yours' AML/CTF program. Emma:

- requests a certified copy of Veronica's and Josh's driver licences in order to verify the couple's identity.
- confirms that Veronica and Josh's faces match the pictures on the identity documents.
- asks Veronica and Josh what they do for a living, and what attracted them to this business.

After recording and evaluating the information provided, Emma is satisfied that Veronica and Josh are who they claim to be, and do not raise any concerns about whether they are purchasing the dog grooming business for illegitimate purposes. In accordance with Legally Yours' AML/CTF program, Emma rates the client relationship as low risk and records the methods used to check the customers' identities and risk rating in her legal practice management system.



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 indicate 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 customer.

What will this look like?

For example, Convey Away, a conveyancing firm, is engaged by a large Australian company specialising in luxury property investment, All That Glitters, to provide conveyancing services. Before starting work, Convey Away verifies the customer's identity and risk-rates the provision of the service in accordance with its AML/CTF program for All That Glitters and is happy to proceed with providing services. After settlement, All That Glitters is satisfied with Convey Away's work and reaches out to request conveyancing services for three more property purchases. However, this time All That Glitters has advised that the purchases would be funded by a previously undisclosed associated offshore company. Convey Away notes that the company is located in a country which is a widely known tax haven.

Before accepting the new request for services, the conveyancer handling the file consults Convey Away's AML/CTF Compliance Officer about whether this new information justifies a change in the client's risk rating and a request of additional customer identification information. Convey Away decides in accordance with its AML/CTF program that it should conduct additional checks to determine the beneficial ownership of the associated offshore company and confirm whether the funds to purchase the three additional properties have been obtained from legitimate sources. While conducting their checks, Convey Away discovers media reporting that the beneficial owners of the associated company have recently been implicated in allegations related to tax evasion. In accordance with its AML/CTF program, Convey Away seeks to confirm the source of the funds proposed to be used to purchase the three properties with All That Glitters, but does not receive a satisfactory response. As a result, Convey Away declines the offer to continue their business relationship with All That Glitters and provide further services. Convey Away also considers it has reasonable grounds for suspicion that the information they hold may be relevant to the investigation of tax evasion and submits a suspicious matter report to AUSTRAC.

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. You are required to submit a Threshold Transaction Report any time a transaction as part of providing a designated service to a client involves \$10,000 or more in physical currency (cash). You 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 is criminal activity.

What will this look like?

Annie calls Live Laugh Law to ask the firm to prepare documents for the transfer of her business to her business partner Eloise. During this phone call, Annie leaves her name and contact details with the receptionist. Before entering into a client agreement, Emily, a lawyer at Live Laugh Law, reaches out and asks Annie to provide documents that can prove her identity, as well as contact details for Eloise. Annie provides Eloise's contact details but avoids providing any identification documents for herself, claiming that she has temporarily misplaced them.

As this seems unusual to Emily, she decides to perform an online search on the full name that Annie provided to the receptionist. The search found a media article showing an exact match with Annie's full name, identifying her as the daughter of a foreign politician associated with a long history of corruption allegations. When Emily calls Annie to ask whether she has any connection to the politician, Annie abruptly concludes the call and appears to block Emily's phone number. Concerned that Annie may have been attempting to transfer a business involved in serious crime, Emily makes a suspicious matter report via Live Laugh Law's AUSTRAC Online account. The suspicious matter report includes a description of the suspicious interaction and activity, the information collected about Annie, Eloise and the business during customer identification checks, a description of the process used to verify their identity and the details of the media article.

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 will this look like?

For example, after checking and verifying Veronica and Josh's identities, Emma at Legally Yours records the information collected and verified in the office's client relationship management system. The record shows that Emma checked Veronica and Josh's identities, contained copies of the documents obtained, and the risk rating that Emma allocated to Veronica and Josh, and the underlying reasons for the risk rating, in accordance with the Legally Yours AML/CTF program.

Consultation questions

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



Legal Professional Privilege

Why are changes needed?

Legal professional privilege is essential to the foundational principles of access to justice and rule of law. The privilege is a fundamental and important long-standing principle that exists at both common law and in statute in the *Evidence Act 1995* (Cth), and in state and territory legislation.

Legal professional privilege is currently protected by section 242 of the Act, which states that the Act does not affect the law relating to legal professional privilege. As certain high-risk services provided by lawyers and other PSPs will be brought into the regime for the first time, the AML/CTF regime will have a greater likelihood of interacting with legal professional privilege. Consequently, the department proposes to clarify the operation of legal professional privilege under the regime to provide greater certainty to reporting entities about the interaction between the privilege and certain AML/CTF obligations.

Detailed proposal

The department proposes that section 242 of the Act be repealed and that specific protections for information that is legally privileged be introduced. This approach is intended to strike an appropriate balance between protecting the core intention of legal professional privilege while ensuring that reporting entities who handle privileged information are able to fulfil their AML/CTF obligations.

Defining 'legal professional privilege'

There is currently no definition of 'legal professional privilege' in the Act. The department intends to define this term in order to provide guidance for reporting entities as to the kind of information that is intended to be protected under the safeguards discussed below, as well as providing operational support to those safeguards. The department received feedback from the first stage of consultation that including a definition of 'legal professional privilege' in the Act would be helpful for this purpose.

The department proposes that the definition of 'legal professional privilege' contained in the Act would include privilege under Division 1, Part 3.10 of the *Evidence Act 1995*. This approach would simultaneously allow the concept of LPP under the regime to develop alongside common law without being constrained by its treatment under the Act.

Proposed protection for information that is subject to legal professional privilege

The department proposes to insert a provision in the Act establishing that nothing in the Act affects the right of a person to refuse to answer a question, produce a document or give information on the grounds that the answer to the question, document or information is subject to legal professional privilege.



It is the department's intention that the reporting entity would need to provide evidence that suggests a reasonable possibility that the information or document is subject to legal professional privilege. The department proposes that a reporting entity withholding information or documents on these grounds of legal professional privilege would be required to provide particulars of the claim in a form approved by the AUSTRAC CEO. This will provide AUSTRAC with the opportunity to scrutinise claims of legal professional privilege in an efficient manner, and dissuade spurious claims.

The department notes that the majority of obligations under the AML/CTF regime would not necessitate the disclosure of information that is the subject of legal professional privilege. Reporting entities who deal with information that is the subject of legal professional privilege in the course of carrying on a business would be required to comply fully with all obligations that do not affect legal professional privilege such as:

- enrolment with AUSTRAC
- conducting CDD
- ongoing CDD
- implementing an AML/CTF program
- record keeping, and
- monitoring and investigation by AUSTRAC in relation to the reporting entity's compliance with the Act.

Reporting entities would still be required to acquit their reporting obligations to the extent possible without disclosing the relevant information that is the subject of legal professional privilege.

What will this look like?

For example, after lodging a SMR a legal practitioner receives a request from AUSTRAC to provide further information under section 49 of the Act. Some information requested by AUSTRAC is information the legal practitioner claims privilege over and does not disclose. The practitioner provides the other information requested by AUSTRAC and completes the prescribed particulars form detailing that their non-compliance with the full request is due to the additional information being subject to legal professional privilege.

A mechanism to resolve disputes between reporting entities and AUSTRAC over claims of privilege in relation to monitoring and investigation powers

Under the Act, AUSTRAC has monitoring powers to enter reporting entities' premises with consent, or when a magistrate has issued a warrant.

The department proposes to introduce a safeguard wherein all documentation obtained by an authorised officer pursuant to a warrant is sealed, and the reporting entity who provided the information given an opportunity to review this documentation in order to determine whether to make a claim of legal professional privilege. Where claims of privilege are made, the reporting entity



would be required to provide particulars of the claim to AUSTRAC via a form approved by the AUSTRAC CEO. Should AUSTRAC then choose to challenge a claim, it is the department's intention that AUSTRAC would liaise with the reporting entity to resolve the dispute. Should resolution not be achieved, AUSTRAC may then apply to the Federal Court for determination of the claim of privilege.

Where AUSTRAC chooses to challenge a claim of privilege made over information requested by AUSTRAC under other circumstances, the department considers that existing processes for alternative dispute resolution, declaration by court and enforcement action in relation to failure to comply with obligations are sufficient to resolve such claims. This approach is similar to other regulatory regimes, such as the *Competition and Consumer Act 2010* (Cth).

Timeline for reporting suspicions relating to money laundering and offences other than terrorism financing

The department acknowledges concerns raised by the legal sector that the 1 to 3-day timeframe for lodging SMRs as set out in section 41 of the Act is not adequate to allow a proper assessment of whether relevant information is privileged or not. Similar concerns were raised in New Zealand, with a statutory review of New Zealand's regime recommending the extension of the timeframe for legal practitioners to report a suspicious activity be extended from three to five days.²

In light of this feedback, the department is proposing to extend the timeframe for reporting a suspicion relating to money laundering and offences other than terrorism financing in cases where a reporting entity reasonably considers it needs to determine whether relevant information may be the subject of legal professional privilege. The department proposes that this timeframe be extended from three to five days. The requirement to provide particulars of any legal professional privilege claims would allow reporting entities to indicate why this extended timeframe was required. The department considers five days strikes the appropriate balance between compliance with FATF Recommendation 20 and maintaining the operational effectiveness and value of relevant information. Due to national security concerns associated with terrorism financing, the department is not proposing to extend the timeframe for any reporting entity to report such suspicions.

Ability to claim confidentiality against third parties will not be lost

Feedback received during the first consultation stage indicated a desire to include a protection for information that may be disclosed under the regime which subsequently is assessed to be legally privileged. As the department is not proposing to abrogate legal professional privilege, and there will be effective protections for information that is subject to legal professional privilege as outlined above, the department does not consider it is necessary or appropriate to include a subsequent disclosure protection in the regime.

² New Zealand Government Ministry of Justice, Report on the review of the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (Report, December 2022) 242.



However, the department proposes to ensure that the ability to claim confidentiality against third parties is not lost. In particular, when a reporting entity makes a report about a client, the department proposes that the client in question should retain their ability to claim confidentiality (and therefore legal professional privilege) over the relevant information against parties other than AUSTRAC or a Commonwealth, state or territory agency. The department also proposes to take this approach when a client's information is included in documents obtained by AUSTRAC through compliance with a reporting obligation or the exercise of a warrant. In short, the information in question is proposed to retain its confidential nature should a non-government party request its disclosure.

Duty of confidentiality

The duty of confidentiality is broader than the doctrine of legal professional privilege. A confidential communication is made in circumstances where the person receiving the information was under an express or implied obligation not to disclose it.³ There are exceptions to this duty—most significantly, a legal practitioner may disclose confidential information if they are compelled by law to do so.

Consistent with the current approach, the department does not propose protections to exempt reporting entities from providing information or documentation on the basis that such information is confidential. If a legal practitioner is compelled to disclose confidential information that is not a privileged communication to AUSTRAC under an information gathering power, they would not be acting in breach of their duty of confidentiality. This is in accordance with state and territory professional regulation of the legal sector.

Consultation questions

- g. Do you have feedback on any of the proposals relating to legal professional privilege?

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 to them, unless an SMR obligation arises, or there is a change in their risk profile. However, these customers must be subject to ongoing customer due diligence.

³ *Evidence Act 1995 (Cth)*, s 117.



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 is a PSP 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. Pre-commencement customers would be subject to customer identity checks when certain trigger events occur, as set out below.

What will this look like?

For example, 10 years prior to Convey Away's services being regulated under the AML/CTF regime, Veronica and Josh had obtained conveyancing services from the firm to assist with the purchase of their first home. Six months after the firm became a reporting entity, Veronica and Josh returned to request conveyancing services for the firm to assist with selling their first home and purchasing a new larger house that will accommodate their children. Convey Away was not in a business relationship with Veronica and Josh at the time that Convey Away became a reporting entity. Consequentially, Veronica and Josh did not qualify as pre-commencement customers and would be subject to all AML/CTF obligations as if they were new customers.

However, if Convey Away had entered into a contract with All That Glitters to provide conveyancing services prior to becoming a reporting entity, and that business relationship was still active and ongoing at the time that the firm became a reporting entity, All That Glitters would be considered a pre-commencement customer and Convey Away would be able to continue providing conveyancing services to their client without performing customer identity and risk checks until one of the triggers occurs.

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



- 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

- h. 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 PSPs, 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 of reforms would be in place before obligations for new entities, including PSPs, 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. Are there any terms contained in the proposed designated services for PSPs that require a statutory definition to clarify their ordinary meaning?
- b. Should proposed designated service 3 be confined in a way to exclude services provided by sectors beyond PSPs?
- c. Is the current list of prescribed disbursements in proposed designated service 3 appropriate?
- d. Are there any additional payments that should be included in the list of prescribed disbursements under proposed designated service 3 due to proven or demonstrable low risk?
- e. With reference to proposed designated service 3, how often do you provide services relating to digital assets, and how does this differ from the services provided by dedicated digital asset service providers?
- f. What additional information, guidance and materials would you require from AUSTRAC to help you comply with your new AML/CTF obligations?
- g. Do you have feedback on any of the proposals relating to legal professional privilege?
- h. 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)?