



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

**Paper 3: Further information for dealers in precious metals and precious stones**

**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 dealers in precious metals and precious stones 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 dealers in precious metals and precious stones 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 dealers in precious metals and stones 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.

The buying and selling of precious metals (other than bullion) and stones is not currently regulated under Australia's AML/CTF regime, but is recognised internationally as a major avenue for money



laundering activity.<sup>1</sup> Regulating dealers in precious metals and stones for AML/CTF purposes will enable these businesses to play an important role in the detection and investigation of money laundering and terrorism financing offences. Regulation will allow risks to be identified and suspicious transactions and/or behaviours to be reported to authorities. This would provide earlier opportunities for law enforcement to detect and disrupt criminal activities, as well as stop criminals from enjoying the proceeds of their offending.

Precious metals and precious stones are particularly vulnerable to being used for money laundering and terrorism financing purposes because they can be:

- readily purchased and sold anonymously using large sums of cash or digital assets
- purchased at below market cost directly from the general public—who do not have to prove that they own the second-hand precious metals and stones presented for sale
- used as an alternative currency to make untraceable payments for illicit goods and services
- used as a reliable investment with stable return
- easily moved domestically and offshore as individual items may be small (but very high in value)
- difficult to trace or detect
- easily reshaped, altered or hidden in common objects to avoid detection, and
- under or over-valuated to disguise the movement of proceeds of crime.

In practice, precious stones such as diamonds are used as an alternative currency by criminals who use them to acquire other goods such as tobacco, guns and most commonly, drugs.<sup>2</sup> Second-hand jewellery shops and pawn shops have also been identified as being vulnerable to exploitation. These businesses may unwittingly allow stolen precious metals or stones, which were used in the purchase of illicit goods to re-enter the retail market. Service providers in this sector are not currently required under the Act to collect or verify information about the identity of their customer or the source of the customer's funds and no information is reported to AUSTRAC that can be used to follow the trail for illicit funds.

Risks can relate to a customer, the nature of a transaction, or the source of a customer's funds. The presence of multiple red flags would provide a stronger basis for suspicion that money laundering or terrorism financing is occurring. These risks could include:

- purchases of multiple items of jewellery that feature precious stones without regard for the value, size and colour, or

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<sup>1</sup> Financial Action Task Force, 'Methodology: for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CTF systems', FATF (Online report, updated June 2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/methodology/FATF%20Methodology%202022%20Feb%202013.pdf.coredownload.pdf>.

<sup>2</sup> Financial Action Task Force, 'Money laundering and terrorist financing through trade in diamonds', FATF (Online report, updated October 2013) <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/ML-TF-through-trade-in-diamonds.pdf.coredownload.inline.pdf>.



- attempts to maintain a high degree of secrecy or anonymity in relation to the transaction.

#### **Case study: Dealers in precious metals and stones**

In August 2020, three individuals were sentenced for charges relating to purchasing stolen goods through their Melbourne-based gold buying business. The accused were two brothers, and one employee of their gold buying business. The stolen goods were jewellery stolen during armed robberies of Melbourne based jewellers, committed by youth gang members. It was then sold to the gold buying business through a criminal intermediary.

Following Victoria Police interdiction, the syndicate expanded to Western Australia (WA) where they established a number of companies linked to a common business address. It is likely the relocation was an attempt to establish a presence in a new jurisdiction where they were not known to law enforcement. In January 2023, WA Police commenced Operation B to investigate the syndicate's suspected money laundering using several Perth-based businesses, including a registered Pawnbroker and Second-hand Dealer specialising in precious metals and stones.

During a search warrant executed at the precious metals and stones business, police seized items of jewellery which was purchased under a license issued pursuant to the Pawnbrokers and Second-hand Dealers Act 1994 (WA). A portion of this jewellery was confirmed as stolen property. Evidence seized identified jewellery purchased in WA was sent to Melbourne, Victoria and smelted into bullion. The requirement in WA to register for this license and report transactions simplified efforts to identify staff and customers of the business who had been involved in suspect transactions. These laws require businesses to undertake customer due diligence when purchasing second hand goods, including jewellery, and report transactions accordingly irrespective of the value of the goods.

## **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.

### **Proposed designated service**

Accepting or paying \$10,000 or more in physical currency or digital assets for the sale or purchase of precious metals or precious stones (including jewellery or accessories made up of, or having precious stones or precious metals attached) to a person in the course of carrying on a business.



The proposed model for reform only applies to dealers in precious metals and stones that accept or pay large sums of cash or digital assets. If a business never accepts physical or digital asset payments for transactions of \$10,000 or more, and only accepts other forms of funds transfer, for example, electronic funds transfer or payment by cheque or card, then the business would not have to implement AML/CTF requirements as it would not be regulated under the proposed model.

This proposed designated service reflects FATF Recommendations 22(c) and 23(b). It is intended to capture persons engaged in the business of buying and selling precious stones or precious metals, who accept payment of, or make payment by \$10,000 or more in physical currency or digital assets.

This proposed designated service would regulate businesses in following scenarios:

- selling or offering the sale of any precious stone or precious metal, including retail jewellers and watch dealers
- importing or possessing for sale, any precious stone or precious metal
- jewellery manufacturers who use precious metals and precious stones
- those who produce precious stones or precious metals at mining operations
- intermediate buyers and brokers
- precious stone cutters and polishers
- manufacturing any precious stone or precious metal
- precious metal refiners, and
- buyers and sellers in the secondary and scrap markets, including pawn-brokers and antique jewellery dealers.

The department proposes to focus on transactions that pose the highest risk. These include transactions that involve a cash or digital asset payment of \$10,000 or more. This is consistent with the existing obligation under the Act for reporting entities to report to AUSTRAC if there is a transfer of cash of \$10,000 or more.

Digital asset transactions would be regulated in addition to physical currency transactions to address the risk that regulation of physical currency payments alone would encourage criminals to use digital assets instead.

### **What would this look like?**

For example, a retail jewellery store may decide to implement an internal policy of not accepting payments of \$10,000 or more in cash or digital assets. This jewellery store would not be providing services which are regulated by the AML/CTF regime.

A customer approaches the store and requests to pay for a \$25,000 engagement ring with Bitcoin. The jewellery store would only be able to accept this form of payment if it had in place all requirements under the Act, including enrolling with AUSTRAC, an AML/CTF program and customer due diligence measures.



## Proposed definitions

The proposed designated service utilises some terms that are already defined in the Act, such as 'digital currency'. However, terminology and definitional changes are being considered as part of the current reform package. These changes would be reflected in the final form of the proposed designated service.

The department proposes that precious metal be defined in the Act to include the following, in either a manufactured or unmanufactured state:

- gold
- silver
- platinum
- iridium
- osmium
- palladium
- rhodium
- ruthenium
- an alloy with at least 2% in weight of any of the above substances, or
- anything that, under the regulations, is prescribed to be a precious metal for the purposes of the Act

The department proposes that precious stone be defined in the Act to mean a substance with gem quality, market recognised beauty, rarity and value to include the following, natural or otherwise:

- diamond
- corundum (including rubies and sapphires)
- beryl (including emeralds and aquamarines)
- chrysoberyl
- spinel
- topaz
- zircon
- tourmaline
- garnet
- crystalline and cryptocrystalline quartz
- olivine peridot
- tanzanite
- jadeite jade
- nephrite jade
- spodumene
- feldspar
- turquoise
- lapis lazuli
- pearl
- opal
- sapphire, or
- anything that, under the regulations, is prescribed to be a precious stone for the purposes of the Act.

The proposed definitions of precious metals and precious stones are intended to include any jewellery, watch, apparel, accessory, ornament or other finished product, made up of, containing or having attached to it, any precious stone or precious metal, or both.

### Consultation questions

- a. Do the department's proposed definitions of 'precious stones' and 'precious metals' capture the relevant materials dealt with by dealers in precious metals and precious stones?





### What would this look like?

For example, the proposed designated service would apply to a retailer that has accepted a cash payment of \$10,000 or more from a customer for the purchase of a watch embedded with diamonds.

Whilst the department is not proposing to alter the current AML/CTF obligations of bullion dealers, it is intended that the current definition of bullion in section 5 of the Act to be amended to ensure clarity between the proposed and existing designated services. The proposed new definition of bullion is:

**Bullion** means gold, silver, platinum or palladium authenticated to a specified fineness in the form of:

- bars, ingots, plates, wafers or other similar mass form, or
- coins

which trade at a price determined by reference to the market value of the constituent metal and the authenticated fineness of the item.

**Authentication of fineness** means commercially acceptable hallmark or stamping, or by means of the base form of an item such as in the case of coins.

AUSTRAC does not consider coins traded for their collectible, commemorative or rarity value to be bullion. However, if the price of a collector or proof coin is determined by reference to the value of its precious metal content, it may qualify as a bullion coin. The department does not propose to change this approach.

### Consultation questions

- b. Does amending the definition of 'bullion' in the Act help industry comply with AML/CTF obligations relating to bullion dealing?

## When would the changes take effect?

If the proposed reforms become law, dealers in precious metals and stones 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 dealers in precious metals and stones to help you understand and meet your AML/CTF obligations. The precious stones and metals sector 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 before you accept \$10,000 or more in cash or digital assets.

### 1. Enrol with AUSTRAC

If your business accepts or purchases \$10,000 or more worth of precious metals or precious stones using cash or digital assets, you would be a reporting entity and required to enrol with AUSTRAC. If you never provide a designated service, you would not need to enrol and would 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.

#### What would this look like?

For example, having heard about the new regime, Shine Like Diamonds Jewellery Manufacturer initially determines it will not accept cash or digital asset payments over \$10,000. However, several months after the regime commences, Shine Like Diamonds decides it will commence taking payments in this form.

Shine Like Diamonds goes onto the AUSTRAC website 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 risk that they face. When considering your business' risks, the four main elements to consider are:

- the types of customers 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 customers who only purchase jewellery for a special occasion, such as an engagement ring, your risk exposure is likely to be lower than if you regularly 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 dealers in precious metals and stones sector.

If your business is a member of a 'business group'<sup>3</sup> (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 with shared compliance management. In this case the individual franchisee would be a reporting entity member of the business group.

### **Consultation questions**

- c. To what extent would you be able to leverage existing systems and controls to meet the proposed obligations?

### **What would this look like?**

For example, Fred runs Love Is in The Air Jewellery Store, which accepts cash and digital asset payments of \$10,000 or more for jewellery. In preparation for the new regime, Fred goes on to the AUSTRAC website to look at guidance about how to develop an AML/CTF program for his business. This information tells him that he needs to consider the type of customers he serves, the services his business provides, and the risks for dealers in precious metals and stones. It also describes some of the risks that jewellery stores should consider.

Based on this information, Fred sets aside time at the next all-staff meeting to workshop the risks that Love Is in The Air faces. During this workshop, Fred and his employees are able to draw on AUSTRAC guidance, their experience and knowledge of the precious metals and stones sector, and Love Is In The Air's types of customers and services. As part of the discussion, the group identifies a number of factors that could increase the business' vulnerability to risks, including:

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<sup>3</sup> 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.



- **Customers:** Love Is in The Air regularly provides services to several customers who are high profile individuals from overseas.
- **Designated service:** Love Is in The Air often accepts large cash payments for high-end jewellery.
- **Delivery method:** Love Is in The Air normally provides services to customers face-to-face, but there is a small number of customers requesting to purchase jewellery online who pay with digital assets such as bitcoin.
- **Geographic risk:** Love Is in The Air has started purchasing jewellery from jewellery manufacturers located outside of Australia who are seeking to grow their trade presence in Australia.

Once Fred and his staff have identified and assessed the risks that impact Love Is In The Air and documented these in a risk assessment, they develop an AML/CTF program to manage and mitigate the risks. Some procedures that all employees will need to follow when facilitating relevant transactions include verifying customers' identities and monitoring for unusual purchases or sales. Fred allocates a senior employee to act as the company's 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 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 that they know the identity of their customer. This involves collecting information that identifies the customer and verifying a customer's 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 customer.

You need to understand the nature and purpose of your relationship with the customer before providing designated services to them. You would also be required to have steps in place to determine whether your customer 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 customer that would help you determine the extent of customer identity checks required and whether you are comfortable doing business with that customer.

#### What would this look like?

For example, Peter and Wendy are overseas dealers in precious stones who visit Australia to purchase a large quantity of opals directly from a mining operation, Ruby's Opal Mine. Peter and Wendy offer \$50,000 in cash for a large quantity of black opals. Ruby checks Peter and Wendy's original passports to make sure that they are who they say they are. However, because this is an unusually large cash payment, Ruby also conducts additional checks per procedures outlined in her AML/CTF program, including sighting Peter and Wendy's driver licences.



Ruby also asks Peter and Wendy about the origin of the funds and documents the answers. Ruby also checks the business register in Peter and Wendy's country of residence to confirm the existence and details about the identity of their precious stones business and that Peter and Wendy are the owners of the business.

Following their discussion and her additional checks, Ruby is satisfied that Peter and Wendy are full-time dealers in precious stones who have sourced their funds legitimately, and she agrees to their offer. In line with the customer risk rating scale in her AML/CTF program, Ruby determines that the risk of providing services to Peter and Wendy is medium and makes a record of this. Further, after the transaction is complete, Ruby lodges a Threshold Transaction Report (see 'Report certain transactions and suspicious activity' below) through her AUSTRAC Online business account to satisfy his AML/CTF requirements for accepting cash payments above the \$10,000 threshold.

#### **4. Conduct ongoing 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 customer's risk rating should be updated to better reflect their current risk level. This also involves monitoring transactions, understanding the reasons behind a customer's change in behaviour, and determining when you need to re-verify the customer's identity or verify additional information about the customer.

##### **What would this look like?**

For example, Sparkle 'n' Trade, a precious stones trading company, is contracted by a major diamond mine owned by a private company, Mine with Me, to purchase four large quantities of rough diamonds over a two-year period using digital assets. During the course of the contract, Sparkle 'n' Trade reads a media article that congratulates Mine with Me on their new ownership. This change in ownership alerts Sparkle 'n' Trade of the need to verify the identities of the new owners of Mine with Me.

Sparkle 'n' Trade does this by requesting the new owners of Mine with Me to provide certified copies of their passports and checking the Australian Securities and Investments Commission (ASIC) companies register for an extract of Mine With Me's business details, which could include current and historical information about the company. Based on this information, Sparkle 'n' Trade is comfortable that the new owners do not present any new risks to the business relationship and no further steps are required before the transaction can go ahead.

#### **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 physical



currency (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 that there may be criminal activity.

#### **What would this look like?**

For example, Bella wants to sell a three-piece jewellery set, which includes an 18ct gold necklace with a diamond pendant, a pair of diamond earrings, and a gold bracelet. Bella visits Taylor&Co Jewellers to see whether they would be interested in purchasing the jewellery set, and mentions that she is only willing to accept cash payment for the items. Before purchasing the jewellery, Malcolm, a jeweller at Taylor&Co Jewellers, verifies Bella's identity in line with the company's AML/CTF program. This process includes checking Bella's identity using an original passport.

Although Bella's identification documents appear to be legitimate, Malcolm realises that Bella looks different to the images shown on the documents provided. Bella is also hesitant to answer Malcolm's follow-up questions, and asks why he wants to know these details. After explaining that this is a requirement of Taylor&Co Jewellers, Bella reluctantly says that the jewellery was given to her as a gift.

Malcolm is concerned that the jewellery may have been stolen as he is unable to confirm that Bella is who she says she is, and assesses that Bella's behaviour is unusual when compared to the usual behaviour of customers trying to sell jewellery. As he is unable to be satisfied on reasonable grounds that he knows the identity of the customer, he declines to go ahead with the transaction. Based on this suspicion, Malcolm fills out a SMR through Taylor&Co's Jewellers AUSTRAC Online business account to express his concerns. This includes identity information collected about Bella during customer due diligence procedures, a description of the unusual behaviour that Malcolm observed, and a description of the process used to verify Bella's identity.

## **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 Peter and Wendy's identities, Ruby at Ruby's Opal Mine records this information in the company's customer relationship management system. The record shows that Ruby checked their identities using their passports and gathered information including Peter and Wendy's full names, dates of birth and residential address, as well as additional information about their business and source of funds.

#### **Consultation questions**



- 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 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 is a dealer in precious metals and stones 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, 12 months prior to Taylor&Co Jewellers becoming a reporting entity, Phil had purchased a necklace with a platinum and diamond pendant from the jewellery store for \$20,000 in cash. Six months after the store became a reporting entity, Phil returned to purchase a gold link bracelet for \$11,000 in Ethereum. Given the two purchases were unrelated and not part of an enduring relationship, the store was not in a business relationship with Phil at the time that Taylor&Co Jewellers became a reporting entity. Consequentially, Phil did not qualify as a pre-commencement customer and would be subject to all obligations as if he was a new customer.

### 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**

- 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 dealers in precious metals and stones, 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 those in the dealers in precious metals and stones sector, 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. Do the department's proposed definitions of 'precious stones' and 'precious metals' capture the relevant materials dealt with by dealers in precious metals and precious stones?
- b. Does amending the definition of 'bullion' in the Act help industry comply with AML/CTF obligations relating to bullion dealing?
- c. To what extent would you be able to leverage existing systems and controls to meet the proposed obligations?
- 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)?