



Australian Government

AUSTRAC

Consultation on the new AML/CTF Rules

**Public consultation on the Second
Exposure Draft Rules**

May 2025

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1. Introduction

Australia is currently reforming its domestic Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime. In 2024, the [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#) was amended by the [Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024](#), to form the [Amended AML/CTF Act](#). The Amended AML/CTF Act extends the regime to regulate real estate professionals, dealers in precious stones, metals and products, and professional service providers and modernises virtual asset and payments technology-related regulation. For further information on the Amended AML/CTF Act, see AUSTRAC's summaries for [new regulated entities](#) and [current regulated entities](#).

To give effect to the Amended AML/CTF Act, AUSTRAC is creating a new AML/CTF Rules framework. This will involve a new rules instrument, and significant repeal and revision of the existing [Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007](#) (the AML/CTF Rules 2007).

AUSTRAC is working closely with industry in developing the new rules. The first round of [public consultation](#) on the [First Exposure Draft AML/CTF Rules](#) (ED1 Rules) took place between 11 December 2024 and 11 February 2025. Embodying the co-design approach, AUSTRAC considered all written submissions and feedback received during the first round of consultation and, in response, has developed the Second Exposure Draft AML/CTF Rules (ED2 Rules) together with feedback about the principal issues raised in the first round of consultation to assist with understanding AUSTRAC's reasoning (see below).

A second round of public consultation is now being undertaken on the ED2 Rules. Information about how to make a submission in response to ED2 Rules is available in the following sections. The ED2 Rules contains updates to the following areas covered in the ED1 Rules:

- AML/CTF programs, which contain regulated businesses' money laundering and terrorism financing risk assessments, and their policies, procedures, systems and controls to comply with AML/CTF obligations
- reporting groups, that is, new AML/CTF Rules relating to groupings of regulated businesses
- customer due diligence
- correspondent banking
- the travel rule, that is, the requirement for information about the payer and payee to be included with telegraphic transfers, remittances, transfers of virtual assets and other value transfers
- cross-border movement reports and compliance reporting
- keep open notices (formerly 'Chapter 75 notices')
- disclosure of AUSTRAC information to foreign counterparts.

In addition, the ED2 Rules contains new requirements on the following:

- reportable details for 'suspicious matter reports' required to be given to AUSTRAC by reporting entities under to section 41 of the Amended AML/CTF Act
- reportable details for 'threshold transaction reports' required to be given to AUSTRAC under section 43 of the Amended AML/CTF Act
- enrolment applications for all reporting entities

- registration application and administrative decision making processes for ‘remittance service providers’ and ‘virtual asset service providers’.

The new AML/CTF Rules framework

The AML/CTF Rules framework will comprise two separate instruments:

- the Anti-Money Laundering and Counter Terrorism Financing Rules 2025 (new AML/CTF Rules) containing rules of general application, a subset of which were contained in ED1 Rules, now updated in ED2 Rules to reflect the new AML/CTF Rules as they are proposed to commence in 31 March 2026,
- the AML/CTF (Class Exemptions and Other Matters) Rules 2007 (Class Exemption Rules), now released for public consultation for the first time.

For further information on the new AML/CTF Rules framework, please see the Consultation Paper on the new AML/CTF Rules which accompanied the First Exposure Draft Rules: [Consultation paper on the new AML/CTF Rules](#).

Consultation documents

As part of the consultation on ED2 Rules, AUSTRAC is releasing the following additional documents to assist interested stakeholders in understanding and explaining the new and revised draft AML/CTF Rules:

- an exposure draft Explanatory Statement to the ED2 Rules (Exposure Draft Explanatory Statement) containing a detailed explanation of on the proposed provisions
- a renumbering and amendment ready reckoner, indicating how numbering of sections has changed between ED1 Rules and ED2 Rules, and noting where sections have been amended from ED1 Rules (see Annexure B to this Consultation Paper), and
- a table of feedback, setting out common topics of feedback from the submissions made on ED1 Rules and AUSTRAC’s responses (the Feedback Table see Annexure C to this Consultation Paper).

The Explanatory Statement

The Exposure Draft Explanatory Statement should be read in conjunction with the ED2 Rules.

The Exposure Draft Explanatory Statement will assist stakeholders to understand the legislative background and intended operation of the new AML/CTF Rules. The Exposure Draft Explanatory Statement should be engaged for substantive detail on the new AML/CTF Rules, whilst the Consultation Paper provides contextual information.

The Exposure Draft Explanatory Statement provides information on the proposed purpose and operation of the ED2 Rules, including:

- a background to each provision,
- the purpose of each provision,
- the specific provisions which provide the legal authority for each of the new AML/CTF Rules,
- the likely impact and effect of each provision, and
- other useful interpretative content to assist in the practical application of each provision.



Feedback Table including AUSTRAC responses

AUSTRAC has reviewed and analysed the feedback provided from industry submissions in response to the ED1 Rules. Many queries and requests for explanation recurringly made throughout the submissions have been consolidated into column 2 of the Feedback Table.

Column 3 of the Feedback Table presents AUSTRAC's response to the corresponding industry feedback in column 2. Responses to queries may include:

- clarification on the policy intent or operational scope of the Rules,
- examples of how the section is intended to operate in practice,
- explanation of any amendments to the relevant sections which will address a query raised in the submissions.

Making a submission

AUSTRAC invites submissions on the proposals discussed in this consultation paper. Part 4 of this consultation paper contains a range of questions you may respond to in submissions.

You can provide submissions via [AUSTRAC's consultation page](#). The closing date for submissions is 11:59PM Friday 27 June 2025.

Your feedback will assist AUSTRAC to determine whether measures in the ED2 Rules require amendment, or whether additional rules are required.

2. New content in Second Exposure Draft Rules

Enrolment details

The Reporting Entities Roll, maintained by the AUSTRAC CEO, is the official record of reporting entities under the Amended AML/CTF Act. Businesses that provide designated services must apply to AUSTRAC for enrolment on the Reporting Entities Roll. Lead entities of reporting groups, which are deemed to provide designated services, are also required to enrol. Enrolment must occur no later than 28 days after a business first commences to provide a designated service.

The Reporting Entities Roll provides AUSTRAC with essential information to:

- identify businesses subject to AML/CTF obligations
- understand the nature, size and complexity of businesses subject to regulation
- communicate effectively with these entities, including developing appropriate guidance and education materials
- provide access to AUSTRAC online reporting systems, and
- identify what designated service each reporting entity provides.

In light of updates to the existing enrolment forms to accommodate the nature of Tranche 2 entities, AUSTRAC has taken the opportunity to refresh and update the enrolment details in the new AML/CTF Rules framework.

Part 2 of the ED2 Rules contain updated and modernised requirements for enrolment applications, and enrolment details which must be kept up to date. Some changes, such as the request to include how many employees a reporting entity has, or industry or professional associations the reporting entity is a member of will better equip AUSTRAC to provide targeted education and guidance content to support reporting entities to comply with their obligations.

A detailed explanation of each provision in Part 2 of the ED2 Rules is provided in the Exposure Draft Explanatory Statement. AUSTRAC is also developing new online forms to support enrolment.

Registration details

Remittance service providers (RSPs) and virtual asset service providers (VASPs) are required to apply to AUSTRAC for registration on the Remittance Sector Register or Virtual Asset Service Provider Register before providing registrable services to customers. This requirement is in addition to the requirement to apply for enrolment on the Reporting Entities Roll.

Registration differs from enrolment in that the applicant is scrutinised by AUSTRAC before a registration decision is made. AUSTRAC has been applying the current registration framework since November 2011 and has over time developed and piloted improved processes to strengthen the framework.

Part 3 of the ED2 Rules represent a more transparent and robust entry process to registration, bolstering Australia's regulatory framework for remittance and virtual asset service providers by broadening the range of information AUSTRAC collects and considers when assessing an application for registration.

As part of the registration process, AUSTRAC considers, whether registration would involve a significant risk of ML/TF or other serious crime. In Division 2 of Part 3 of the ED2 Rules, AUSTRAC's decision to register a person will be informed by an enhanced through the consideration of:

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- the applicant’s ML/TF risk exposure and management of ML/TF risks
 - the applicant’s AML/CTF program and capability to meet AML/CTF obligations
 - due diligence on key personnel’s criminal history, and any other court proceedings or findings by regulators
 - evidence of the knowledge, training and experience of key personnel to support compliance with the applicant’s AML/CTF obligations, and
 - any registration information and any registration or licensing details related to overseas operations and
 - additional detail on the applicant’s business operations.

The increased standard and level of information to be required in an application for registration is consistent with approaches taken in other jurisdictions, such as the United Kingdom, Singapore, and Hong Kong. For example, under the United Kingdom’s AML/CTF regulatory framework, crypto asset businesses and money service businesses (which include remittance providers) are required to register with the UK Financial Conduct Authority. The application process is comprehensive and requires detailed information about the business, its AML/CTF policies and other background information on the business. This robust application and scrutiny process is focused on preventing criminals or their associates from owning or being involved in crypto businesses and money service businesses and aligning its regulations with international standards.

Remittance services and virtual asset services are assessed by AUSTRAC in Australia’s [2024 Money Laundering National Risk Assessment](#) as high and medium-high vulnerability for money laundering, whereas both were assessed in the [2024 Terrorism Financing National Risk Assessment](#) as highly vulnerable to misuse for terrorism financing. This is in part because remittance and virtual asset service providers are subject to less oversight and regulation than other financial sub-sectors.

A strengthened registration process will enable AUSTRAC to more closely assess and appropriately mitigate the ML/TF risks associated with the remittance and virtual asset services, and more effectively use the regulatory tools available to uplift compliance in the sectors.

By increasing the scope of information to be collected in an application for registration, AUSTRAC expects to be able to:

- prevent registration by applicants who demonstrate limited understanding of their AML/CTF obligations or ML/TF risks; or who do not have adequate systems and controls in place to identify, mitigate and manage their ML/TF risks
- enable AUSTRAC to quickly and easily identify which applicants do not have the required capability or competency to be registered, within their existing resources
- identify large staff turnover within a registered reporting entity that may leave it without the capability to manage its ML/TF risks, and
- be given an opportunity to detect and prevent phoenixing by unsuccessful applicants or applicants connected with businesses whose registration has previously been cancelled.

An enhanced registration process should also contribute to reducing undue de-banking and de-risking of remitters and virtual asset service providers by other reporting entities by providing more confidence in the registration process, reducing ML/TF risk across Australia’s economy as a whole.

A detailed explanation of each provision in Part 3 of the ED2 Rules is provided in the Exposure Draft Explanatory Statement.

Registration transitional arrangements for new virtual asset designated services

The AML/CTF Amendment Act 2024 introduced four new virtual asset-related designated services. Some virtual asset service providers that only provide the new designated services will be required to be registered for the first time from 31 March 2026.

The Department of Home Affairs propose to develop transitional rules to allow these businesses to continue to operate while their registration application is considered by the AUSTRAC CEO. This is consistent with arrangements put in place in 2018 when virtual asset service providers were first required to apply for registration, and will prevent businesses from having to cease providing services from 31 March 2026 until a registration decision is made. We note it is not possible for these businesses to apply for registration before 31 March 2026.

AML/CTF policies relating to financial sanctions

Section 4-12 of the ED2 Rules introduces a new requirement for reporting entities to develop and maintain AML/CTF policies to ensure that they do not contravene targeted financial sanctions obligations, including asset freezing, in the provision of their designated services.

The rule is intended to close what was described in Australia's 2015 FATF Mutual Evaluation Report as a 'significant shortcoming' in supervising reporting entities. This rule complements the requirement in the Amended AML/CTF Act to establish whether a customer, any beneficial owner of a customer, any beneficiary or any agent is a person designated for targeted financial sanctions.

Reporting entity's AML/CTF policies relating to financial sanctions will enable them to respond appropriately if or when they have a customer who is designated for targeted financial sanctions or is associated with a designated person or entity. It will also assist reporting entities in determining what to do with any value, virtual assets or property already held on behalf of the customer or subject to transactions being assisted by the reporting entity, to avoid their designated services being abused for sanctions-related money laundering, terrorism financing or proliferation financing offences. This will assist reporting entities from inadvertently dealing with frozen assets, or returning frozen assets to a sanctioned person in the mistaken belief that this will reduce risk.

Customer due diligence

Substantial updates have been made to Part 5 of the ED2 Rules in response to feedback on the ED1 Rules. The Renumbering and amendment ready reckoner at Annexure B and Feedback Table at Annexure C provide more detail. Details on some of the most requested rules are outlined below.

Date and place of birth

Submissions overwhelmingly noted the difficulties involved with requiring collection and verification of place of birth for individuals, and this requirement has been deleted (see item 30 in the feedback and response table for more detail). Nevertheless, where date of birth is included in 'payer information' for the purposes of the 'travel rule' under Part 5 of the Amended AML/CTF Act, it must be verified in accordance with global standards.

Delayed verification

In section 5-6, AUSTRAC has significantly opened up delayed verification for all reporting entities for all designated services provided in Australia in relation to beneficiaries of trusts (and equivalent persons in legal arrangements under foreign laws), beneficial owners and other matters specified in the ED2 Rules in the following circumstances:

- delayed verification is essential to avoid interrupting the ordinary course of business (s 29(b) of the Amended AML/CTF Act)
- the reporting entity has AML/CTF policies to verify the required outstanding matters as soon as reasonably practicable after commencing to provide a designated service, but no later than 30 days (s 29(c) of the Amended AML/CTF Act and s 5-6(2) ED2 Rules)
- the additional ML/TF risk of delayed verification is low and the reporting entity implements AML/CTF policies to mitigate and manage those risks (s 29(d) and (e) of the Amended AML/CTF Act)
- the reporting entity identifies the ML/TF risk of the customer, based on KYC information about the customer that is reasonably available to the reporting entity before commencing to provide the designated service, and
- the reporting entity collects KYC information about the matters in s 28(2)(b), (d) and (g) of the Amended AML/CTF Act that are appropriate to the ML/TF risk of the customer.

No beneficial ownership due diligence required for certain low risk customers

AUSTRAC has introduced section 5-15 to provide relief to reporting entities onboarding particular low risk customers. This section allows reporting entities to not undertake beneficial ownership due diligence where:

- it establishes a customer is, or is controlled by:
 - a government body; or
 - an entity that is subject to oversight by a prudential, insurance, or investor protection regulator through registration or licensing requirements; or
 - a corporation or association of homeowners in a strata title or community title scheme; or
 - a listed public company that is subject to public disclosure requirements (however imposed) that ensure transparency regarding the identity of any beneficial owners; and
- the ML/TF risk of the customer is low and none of the triggers for enhanced customer due diligence under section 32 of the Amended AML/CTF Act applies.

Registration and licensing can be from any foreign country, or a government body of any foreign country so long as the ML/TF risk of the customer is low. Section 5-15 opens up simplified beneficial owner due diligence beyond what was permitted by the AML/CTF Rules 2007.

Identifying any person on whose behalf the customer is receiving the service

Submissions provided feedback that paragraph 28(2)(c) of the Amended AML/CTF Act could have very broad application beyond those receiving designated services as a beneficiary in a fiduciary relationship.

AUSTRAC has included section 5-14 in ED2 Rules to limit the requirement to establishing on reasonable grounds the beneficiaries, or a class of beneficiaries of a trust or equivalent foreign arrangement. This provides certainty that reporting entities do not need to make due diligence enquiries into their customer's customers.

Deemed compliance where a reporting entity is involved in mergers or acquisitions

AUSTRAC has developed section 5-18 which permits a reporting entity that buys whole or part of another reporting entity's business (including its customers), to have taken to comply with initial customer due diligence if copies of customer records are also transferred.

Suspicious matter reports and threshold transaction reports

Reporting entities must give AUSTRAC a suspicious matter report (SMR) if it suspects on reasonable grounds that a customer is not who they claim to be, or the provision of a designated service to a customer relates to any one of the following:

- terrorism financing
- money laundering
- an offence against a Commonwealth, State or Territory law
- proceeds of crime
- tax evasion.

A reporting entity must give AUSTRAC a threshold transaction report (TTR) if it provides a designated service that involves the transfer of physical currency (cash) of \$10,000 or more (or the foreign currency equivalent) as part of providing a designated service. A transfer can include receiving or paying cash.

SMR and TTRs given to AUSTRAC must be given in an 'approved form' and must contain the reportable details as set in the new AML/CTF Rules.

Division 1 and 2 of Part 8 of the ED2 Rules contain new reportable details, which will be implemented through new and improved SMR and TTR online forms.

These updates are driven by substantial shifts in the operational landscape, including:

- **Enhanced data quality and relevance:** AUSTRAC aims to receive more granular, specific, and ultimately more useful information by specifying reportable details that reflect contemporary technologies and service delivery models. This will allow for better analysis, trend identification, network identification and the generation of more actionable intelligence for law enforcement and partner agencies.
- **Acknowledgement of an evolving landscape:** AUSTRAC recognises that the methods and avenues for financial crime have evolved significantly since the reportable details were set in 2006. The rise of digital technologies, new financial products, and a broader range of regulated entities necessitate a more contemporary approach to identifying and reporting suspicious activities.
- **Adaptation for effectiveness:** Updating the reportable details indicates a proactive step to ensure that the information collected through SMRs and TTRs remains relevant and effective in detecting, deterring and disrupting money laundering, terrorism financing, and other



serious crimes in the current environment. Outdated reporting fields and categories are likely leading to missed data points related to newer forms of illicit finance.

- Addressing regulatory expansion: The inclusion new Tranche 2 designated services under Amended AML/CTF Act means that the types of suspicious activities that need to be reported have also broadened. The updated SMR and TTR reportable details have been developed to be product and service neutral, ensuring comprehensive coverage.
- Potential for improved compliance: Clearer and more relevant reportable details are hoped to lead to improved compliance from reporting entities. By providing updated guidance and risk products that align with current and emerging ML/TF risks, AUSTRAC can help businesses better understand what constitutes suspicious activity in today's context and how to report it effectively.
- A stronger financial crime framework: By ensuring that AUSTRAC receives high-quality, timely, and relevant information, it enhances the nation's ability to detect, deter, and disrupt financial crime and safeguards Australia's financial system.

The reportable details updates in Part 8 are part of AUSTRAC's commitment to staying ahead of evolving criminal methodologies and ensuring that the SMR and TTR reporting remains a vital tool in combating financial crime.

A detailed explanation of each provision in Division 1 and 2 of Part 8 of ED2 Rules is provided in the Exposure Draft Explanatory Statement.

Transitional arrangements for international value transfer reports

The Department of Home Affairs propose to develop transitional rules which will extend the operation of current international funds transfer instruction reports until such time after 2026 as the international value transfer requirements come into force. This will allow time for AUSTRAC and industry to undertake considered and consultative development of reportable details for new international value transfer service report under section 46 of the Amended AML/CTF Act, and reports of transfers of value involving unverified self-hosted virtual asset wallets under section 46A.

3. Class Exemption Rules

The *Anti-Money Laundering and Counter-Terrorism Financing Rules No. 1 2007* has been amended to be renamed the *Anti-Money Laundering and Counter-Terrorism Financing Rules (Class Exemptions and Other Matters) 2007*. The only chapters to be preserved are Chapters 21, 22, 31, 42, 43, 45, 47, 48, 49 and 67. These chapters continue existing exemptions relating to:

- Issuing or selling a security or derivative in specified circumstances (Chapter 21)
- Certain types of transactions that relate to the over-the-counter derivatives markets in respect of specified commodities or products (Chapter 22)
- Certain types of currency exchange transactions provided in the course of carrying on a business of providing short-term accommodation for travellers (Chapter 23)
- Commodity warehousing of grain (Chapter 42)
- Designated services 37, 38 and 39 of table 1 in section 6 of the AML/CTF Act when provided by a friendly society in relation to a specified type of closed approved benefit fund (Chapter 43)
- The provision of specified designated services when provided by a person in the capacity of a debt collector (Chapter 45)
- Designated services 42(a) and 43(a) of table 1 in section 6 of the AML/CTF Act where the provision of the designated services relates to a risk-only life policy of a member of a superannuation fund that meets specified conditions (Chapter 47)
- Specified designated services provided by a reporting entity in the course of carrying on a business of providing administrative services relevant to salary packaging for an employer client (Chapter 48). The references relating to remittance designated services have not been carried over as they are excluded in the ED2 Rules in the definition of transfer of value - excluded transfers in section 1-8.
- Designated service item 33 of table 1 in section 6 of the AML/CTF Act when provided under the terms and conditions of an International Uniform Give-Up Agreement and in the circumstances specified in the chapter (Chapter 49)
- Initial CDD when specified designated services are provided by a warrant issuer in relation to certain kinds of warrants in circumstances specified in the chapter (Chapter 67)

The chapters have been updated to remain consistent with new terms and concepts in the Amended AML/CTF Act, and the new AML/CTF Rules.

Chapters 28 and 66 regarding how customer due diligence obligations apply where there is a transfer of customers between authorised deposit institutions were initially planned to be preserved in the Class Exemption Rules, however AUSTRAC chose to extend the relief offered of those provisions to all reporting entities. The new versions of those provisions are now in sections 5-18 and 5-19 of the ED2 Rules.

4. Consultation questions

General

1. Are there any rules within ED2 Rules where you don't understand what outcome AUSTRAC is trying to achieve?
2. What aspects of the ED2 Rules would most benefit from increased explanation in the explanatory statement, or in AUSTRAC regulatory guidance?

Business groups

3. Are there circumstances where persons should not be considered to be within a business group for the purpose of subsection 6(6A) of the Amended AML/CTF Act, which excludes services to be provided within a business group from being designated services?

Reporting groups

4. Are there circumstances where a reporting group that is a business group would join with other reporting entities, or reporting groups that are formed by election? What business needs would this service? Please provide practical examples of such structures, if possible.

Customer due diligence

5. Are there additional types of customers to whom section 5-15 (regarding deemed compliance for beneficial ownership for certain customers) should be available?
6. Feedback on the ED1 Rules expressed some interest in opening up alternate identification and verification under section 5-17 of ED2 Rules) to non-individuals. If you are a current reporting entity, what are the circumstances that you currently apply alternate identification procedures to businesses and trusts, and what do you do to mitigate ML/TF risk in those circumstances?
7. Section 37B of the Amended AML/CTF Act requires CDD reliance arrangements to be subject to regular assessment by the relying reporting entity. AUSTRAC's intention is to continue the substance of the requirements in Chapter 7 of the AML/CTF Rules 2007, but is seeking feedback from current reporting entities on how due diligence on CDD reliance arrangements has operated since the framework was introduced in 2020.

Enrolment details

8. Does enrolment sufficiently cover all legal structures which are commonly used in your sector? Are there other legal structures should enrolment details of the AML/CTF Rules accommodate?
9. AUSTRAC is interested in understanding the number of website domains through which a reporting entity provides designated services to understand the impost of requiring this



information in enrolment applications and keeping this information up to date. Do any reporting entities provide designated services through platforms operated by third parties, which would require more granular detail to be provided (e.g. subdomains or URLs)?

Threshold transaction reports and suspicious matter reports

10. The updated reportable details for threshold transaction reports and suspicious matter reports aspire to strike a balance between obtaining actionable financial intelligence, and the impost involved in making the report to AUSTRAC. This is acknowledged by the reporting obligations only extending to providing information where it is known to the reporting entity. Notwithstanding, AUSTRAC welcomes reporting entities to provide feedback identifying particular details which may present a disproportionate effort to provide in a report.
11. Are there any reportable details where it is not clear what is required?

Travel Rule

12. AUSTRAC understands that tokenised card numbers are conveyed from the merchant acquirer to the card issuer when seeking authorisation for a payment. Does the card issuer subsequently pass on the tokenised card number to the merchant acquirer when confirming that the payment is authorised or is the card number itself passed on? Should the tokenised card number be specified under Division 2 of Part 7 of the new AML/CTF Rules in relation to card-based pull payments?
13. Are additional payment systems required to be recognised in the AML/CTF Rules, specifically regarding Part 7 transfers of value? If yes, please specify which systems and explain why they are required to be recognised, e.g. any technical limitations related to messaging formats, why these limitations exist, and whether the payment system may be used for international payments or are restricted to domestic payments.

5. Annexure A—Glossary

Term	Meaning
Amended AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 as amended by the Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024</i>
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 prior to the 2024 amendment</i>
AML/CTF Amendment Act 2024	<i>Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024</i>
AML/CTF Rules 2007	<i>Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)</i>
Class Exemption Rules	<i>AML/CTF (Class Exemptions and Other Matters) Rules 2007</i>
Designated service	A service that is listed in section 6 of the AML/CTF Act (because it has been identified as posing a risk for money laundering and terrorism financing) and which meets the geographical link. Entities that provide any of these services are reporting entities. Reporting entities have obligations under the AML/CTF Act.
ED1 Rules	First exposure draft Anti-Money Laundering and Counter Terrorism Financing Rules (published on 4 December 2024)
ED2 Rules	Second exposure draft Anti-Money Laundering and Counter Terrorism Financing Rules (published on 19 May 2025)
Explanatory Memorandum	The Explanatory Memorandum published in accompaniment to the <i>Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024</i> (unless otherwise specified)
Explanatory Statement	The Explanatory Statement to the Second Exposure Draft Rules (ED2 Rules)
FATF	Financial Action Task Force
FATF recommendations	Financial Action Task Force Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation
New AML/CTF Rules	<i>Anti-Money Laundering and Counter Terrorism Financing Rules 2025</i>
SWIFT	international money transfers that use the SWIFT network to send payment instructions between banks across borders
Reporting entity	An entity that provides any designated services listed under section 6 of the AML/CTF Act. All reporting entities must meet obligations under the AML/CTF Act.

6. Annexure B—Renumbering and amendment ready reckoner

Provision	ED1 section #	ED2 section #	Changes from ED1:
1-1 Name	1	1-1	Amended
1-2 Commencement	2	1-2	Unchanged
1-3 Authority	3	1-3	Unchanged
1-4 Definitions	5	1-4	Amended
1-5 Domestic politically exposed person	7	1-5	Amended
1-6 Enrolment details	-	1-6	New
1-7 Registrable details	-	1-7	New
1-8 Transfer of value—excluded transfers	-	1-8	New
1-9 Reporting group that is a business group	-	1-9	New
1-10 Reporting group formed by election	-	1-10	New
2-1 Purpose of this Division	-	2-1	New
2-2 Information about applicant’s designated services	-	2-2	New
2-3 Information relating to the applicant	-	2-3	New
2-4 Information about the person completing the application and declaration	-	2-4	New
2-5 Correction of entries in the Reporting Entities Roll	-	2-5	New
2-6 Removal of name and enrolment details on AUSTRAC CEO’s own initiative	-	2-6	New
2-7 Request to remove entry from Reporting Entities Roll—required information	-	2-7	New
2-8 Changes in enrolment details to be advised	-	2-8	New
3-1 Correction of entries	-	3-1	New
3-2 Publication of register information	-	3-2	New
3-3 Purpose of this Division	-	3-3	New
3-4 Application—general information	-	3-4	New
3-5 Information relating to ML/TF risks	-	3-5	New
3-6 Information relating to AML/CTF policies	-	3-6	New
3-7 Information relating to accounts with financial institutions	-	3-7	New
3-8 Information relating to other persons assisting	-	3-8	New
3-9 Information relating to key personnel and past unlawful activity etc.	-	3-9	New
3-10 Additional requirements for application by remittance network provider for registration of...	-	3-10	New
3-11 Additional requirements for application by independent remittance dealer for registration ...	-	3-11	New

3-12 Additional requirements for application for registration as an independent remittance deal...	-	3-12	New
3-13 Additional requirements for application for registration as a remittance affiliate of netw...	-	3-13	New
3-14 Additional requirements for application for registration as a virtual asset service provider	-	3-14	New
3-15 Registration decisions—matters to which AUSTRAC CEO must have regard	-	3-15	New
3-16 Purpose of this Division	-	3-16	New
3-17 Suspension of registration	-	3-17	New
3-18 Effect of suspension—renewal and advising of certain matters	-	3-18	New
3-19 Period of suspension	-	3-19	New
3-20 Notice of suspension decision	-	3-20	New
3-21 Notice of extension of suspension	-	3-21	New
3-22 Register entry in relation to suspension of registration	-	3-22	New
3-23 Cancellation of registration	-	3-23	New
3-24 Publication of cancellation information	-	3-24	New
3-25 Purpose of this Division	-	3-25	New
3-26 Application for renewal of registration	-	3-26	New
3-27 Period within which renewal applications may be made	-	3-27	New
3-28 Determining renewal application	-	3-28	New
3-29 Period for which renewed registrations have effect	-	3-29	New
3-30 Decision on renewal application is a reviewable decision	-	3-30	New
3-31 Continuation of registration pending decision on renewal application	-	3-31	New
3-32 Matters registered persons required to advise	-	3-32	New
3-33 Spent convictions	-	3-33	New
4-1 Review of ML/TF risk assessment	9	4-1	Unchanged
4-2 Prevention of tipping off	10	4-2	Unchanged
4-3 Provision of information to governing body	11	4-3	Unchanged
4-4 Reporting from AML/CTF compliance officer to governing body	12	4-4	Amended
4-5 Undertaking personnel due diligence	13	4-5	Amended
4-6 Providing personnel training	14	4-6	Unchanged
4-7 Independent evaluations	15	4-7	Amended
4-8 Reviewing and updating AML/CTF policies following independent evaluation	16	4-8	Unchanged
4-9 Fulfilling reporting obligations	17	4-9	Unchanged

4-10 Assessment of potential suspicious matters	18	4-10	Unchanged
4-11 Actions requiring approval or that senior manager be informed	19	4-11	Amended
4-15 Policies relating to financial sanctions	-	4-12	New
4-12 Policies relating to the obligations of ordering institutions relating to virtual asset tr...	20	4-13	Unchanged
4-13 Policies relating to the obligations of beneficiary institutions	21	4-14	Amended
4-14 Policies relating to the obligations of intermediary institutions	22	4-15	Amended
4-16 Policies relating to customer due diligence for real estate transactions	-	4-16	New
4-17 Record-keeping by lead entity of reporting group	-	4-17	New
4-18 AML/CTF compliance officer requirements—matters to have regard to in determining whether a...	23	4-18	Amended
4-19 Time period for AML/CTF program documentation	24	4-19	Amended
Establishing the identity of the customer—individuals	25	-	Deleted
5-1 Establishing the identity of the customer	26	5-1	Amended
5-2 Additional matters for initial customer due diligence	27	5-2	Amended
5-3 Establishing the identity of agents, beneficial owners, trustees etc.	28 & 29	5-3	Amended
5-4 Simplified customer due diligence requirements	34	5-4	Unchanged
5-5 Customers for whom enhanced customer due diligence is required	35	5-5	Amended
5-6 Delayed verification for certain identification requirements—service provided in Australia	-	5-6	New
5-7 Delayed initial due diligence—real estate transactions	-	5-7	New
5-8 Delayed initial due diligence—service provided in foreign country	33	5-8	Amended
5-9 Delayed initial due diligence for certain matters (politically exposed persons and sanctions)—service..	32	5-9	Unchanged
5-10 Delayed verification—opening an account and deposit	30	5-9	Unchanged
5-11 Delayed verification—certain financial markets transactions	31	5-11	Unchanged
5-12 Initial customer due diligence—previous carrying out of applicable customer identification...	36	5-12	Unchanged
5-13 Initial customer due diligence—previous compliance in a foreign country	37	5-13	Amended
5-14 Initial customer due diligence—establishing the identity of any person on whose behalf the ...	-	5-14	New
5-15 Initial customer due diligence—identity of beneficial owners of certain customers	-	5-15	New
5-16 Initial customer due diligence—real estate transactions	-	5-16	New

5-17 Initial customer due diligence—individual cannot provide satisfactory evidence	38	5-17	Amended
5-18 Initial customer due diligence—transferred customer	-	5-18	New
5-19 Ongoing customer due diligence—transferred pre-commencement customer	-	5-19	New
5-20 Ongoing customer due diligence—monitoring of transactions and behaviours	39	5-20	Amended
5-21 Matters for initial customer due diligence—politically exposed person	40	5-21	Amended
5-22 Delayed initial due diligence for certain matters (politically exposed persons)—service pr...	-	5-21	New
5-23 Ongoing customer due diligence—politically exposed person	41	5-23	Amended
5-24 Matters for initial customer due diligence—nested services relationship	42	5-24	Amended
5-25 Ongoing customer due diligence—nested services relationship	43	5-25	Amended
5-26 Requirements for agreement or arrangement on collection and verification of KYC information	44	5-26	Unchanged
5-27 Requirements for reliance on collection and verification of KYC information	45	5-27	Unchanged
5-28 Senior member of agency—superintendent	-	5-27	New
5-29 Form of keep open notice	46	5-29	Unchanged
5-30 Information and documents required to be contained in or to accompany keep open notice	47	5-30	Amended
5-31 Extension notices	48	5-31	Unchanged
5-32 Further extension application	49	5-31	Unchanged
6-1 Requirements for due diligence assessment	50	6-1	Amended
6-2 Matters to which a senior officer must have regard before giving approval	51	6-2	Unchanged
6-3 Requirements for ongoing due diligence assessments	52	6-3	Unchanged
6-4 Timing of ongoing due diligence assessments	53	6-4	Unchanged
7-1 Determination of who is an ordering institution	54	7-1	Amended
7-2 Determination of who is a beneficiary institution	55	7-2	Amended
7-3 Obligations of ordering institutions—collecting, verifying and passing on information	56	7-3	Amended
7-4 Obligations of beneficiary institutions—monitoring for receipt of information	57	7-4	Amended
7-5 Obligations of intermediary institutions—monitoring for receipt of information and passing ...	58	7-5	Amended
7-6 Transfer of value exemptions	59	7-6	Unchanged
7-7 When value is in a country	60	7-7	Unchanged
8-1 Purpose of this Division	-	8-1	New

8-2 Reports of suspicious matters—general information	-	8-2	New
8-3 Reports of suspicious matters—information about the person in relation to whom the suspicio...	-	8-3	New
8-4 Reports of suspicious matters—information about the matter	-	8-4	New
8-5 Purpose of this Division	-	8-5	New
8-6 Reports of threshold transactions—general information	-	8-6	New
8-7 Reports of threshold transactions—information about the customer and other persons	-	8-7	New
8-8 Reports of threshold transactions—information about the transaction	-	8-8	New
8-9 Reporting and lodgement periods for AML/CTF compliance reports	61	8-9	Unchanged
8-10 Reporting obligations of registered remittance affiliates	62	8-10	Unchanged
8-11 Purpose of this Division	63	8-11	Unchanged
8-12 Reports about moving monetary instruments into or out of Australia	64	8-12	Unchanged
8-13 Reports about receiving monetary instruments moved into Australia	65	8-13	Unchanged
8-14 Affixing of notices about cross-border movement reporting obligations	66	8-14	Unchanged
9-1 Disclosure of AUSTRAC information to foreign countries or agencies	67	9-1	Amended
10-1 False or misleading information	-	10-1	New
10-2 Conditions for discharge of obligations by members of a reporting group	-	10-2	New
11-3 Discharge of obligations by members of a reporting group that are not reporting entities	68	10-3	Amended
Schedule 1 Forms	-	-	Amended

7. Annexure C—Feedback and AUSTRAC responses

Part 1 – Preliminary

#	Feedback provided	AUSTRAC response
1.	<p>Automatic reporting groups</p> <p>Submissions sought clarity as to the intent of subsection 10A(1A) of the Amended AML/CTF Act, including:</p> <ul style="list-style-type: none"> • whether there is flexibility to exclude certain entities from a reporting group that is a business group according to the business model. • whether the reporting entities can choose between either the business group approach or the reporting group by election approach. • whether it was possible for a business group to elect to not form a reporting group. • whether a subsidiary can elect not to be part of a reporting group. 	<p>A reporting group that is a business group (i.e. an automatic reporting group determined by paragraph 10A(1)(a) and (3) of the Amended AML/CTF Act) is determined by control. This is a question of fact and law determined by the circumstances of the relationship between the relevant persons within that group.</p> <p>The Amended AML/CTF Act does not offer an ability for reporting entities to elect whether or not a reporting entity can be a member of a business group, as the reporting group concepts reflects FATF recommendations requiring ML/TF risk and compliance to be managed at the group level.</p> <p>Outside of circumstances where one entity has control over other entities, forming a reporting group is optional.</p>
2.	<p>Lead entity of reporting group that is a business group</p> <p>Submissions generally considered that the proposed approach that a lead entity of a reporting group that is a business group being determined to be the member which most directly controls the other members of the group was unduly restrictive, and requested greater flexibility.</p>	<p>Feedback on ED1 Rules has informed the development section 1-9 of ED2 Rules which sets out how reporting groups formed by election are made and dealt with.</p> <p>Broadly, the new test in subsection 1-9(1) of ED2 Rules provides that a lead entity is determined by agreement between the members, as long as that proposed person is not also under the control of another member and has one of the required links to Australia, and has the capacity to determine the outcome of decisions about the AML/CTF decision of the other members of the reporting group.</p> <p>Subsections 1-9(2) and (3) of ED2 Rules also contemplate circumstances where:</p>

		<ul style="list-style-type: none"> • a business group’s members cannot agree on a lead entity that meets the requirements under subsection 1-9(1) of ED2 Rules; or • more than one member meets those requirements. <p>We welcome further feedback in submissions regarding the applicability of the new rule in ED2 Rules.</p>
3.	<p>Non-operating holding companies as lead entities</p> <p>Submissions queried whether the lead entity of a reporting group be a non-operating holding company that have no employees and does not provide designated services.</p>	<p>The lead entity of a reporting group is determined by the application of sections 1-9 of ED2 Rules. A lead entity through the application of subsection 236B(2) of the Amended AML/CTF Act is taken to provide the same designated service in the same circumstances each time a member of the reporting group provides a designated service.</p> <p>A non-operating holding company can be the lead entity of a reporting group if it meets the criteria in section 1-9 of ED2 Rule.</p>
4.	<p>How to determine the lead entity of elective reporting group</p> <p>Submissions sought clarification of how to determine the lead entity of an elected reporting group pursuant to subsections 8(3) and (5) of ED1 Rules.</p> <p>Submissions noted a number of entity structure types that do not meet the criteria specified under subsection 8(2) of ED1 Rules (e.g. global banks with a branch as well as a subsidiary presence in Australia). Responders sought clarity as to the intent of the AML/CTF Rules in determining who would be the lead entity in such circumstances.</p>	<p>Section 8 of ED1 Rules contained a placeholder for the purpose of determining who is to be the lead entity of a reporting group formed by election. AUSTRAC required more input from stakeholders to further develop the elective reporting group framework.</p> <p>Feedback overwhelmingly called for flexibility in reporting groups formed by election, both in terms of who can be the lead entity and regarding other members which can join to gain the benefit of subsection 236B(5).</p> <p>Feedback on ED1 Rules has informed the development section 1-10 of ED2 Rules, which sets out how reporting groups formed by election are made and dealt with.</p> <p>Broadly, the new test in section 1-10 of ED2 Rules provides that a lead entity is determined by agreement between the members, as long as that proposed person is not also under the control of another member and has one of the required links to Australia.</p> <p>We welcome further feedback in submissions regarding the applicability of the new rule in ED2 Rules.</p>

5.	<p>Discharge of a member’s obligations</p> <p>Submissions noted that, while non-reporting entities can support reporting processes, it is crucial that ultimate accountability remains with the designated reporting entity to avoid liability concerns.</p> <p>Submissions also sought clarity regarding whether the discharge of obligations by a reporting group member pursuant to subsection 236B(5) of the Amended AML/CTF Act can be used to capture the scenario where the lead entity is a holding company (does not provide a designated service and has no employees) and certain obligations are discharged by a different reporting entity in the reporting group (e.g. appointment of the AML/CTF compliance officer, reporting to governing bodies).</p>	<p>Subsection 236B(5) of the Amended AML/CTF Act allows any obligation imposed on a reporting entity by the Amended AML/CTF Act, regulations or AML/CTF Rules to be discharged by another member of the same reporting group. Where a member discharges the obligations of a reporting entity that is another member of the same reporting group, the liability remains with that reporting entity to whom the obligation applies.</p> <p>Subsection 236B(5) of the Amended AML/CTF Act also operates to allow members of a reporting group to fulfil lead entity functions where they are extricable, for example, AML/CTF policies which apply to a reporting group (such as those under subsections 26F(5) and (6) of the Amended AML/CTF Act) may be developed and maintained by the member of the group that contains the group’s centralised AML/CTF function rather than the lead entity. Notwithstanding, the lead entity will retain liability for meeting the obligation so should take measures to ensure delegated obligations are met to the required standard. The lead entity’s AML/CTF program must also document member of the reporting group will discharge which of its AML/CTF obligations and ensure that it has access to records to demonstrate that the obligations have been discharged (subsection 26F(6) of the Amended AML/CTF Act).</p> <p>For completeness, we note that a lead entity’s obligations under the Amended AML/CTF Act is not limited to its own obligations as a reporting entity – subsections 236B(1)-(3) of the Amended AML/CTF Act expands the liability held by the lead entity to all the obligations of each reporting entity within the reporting group. The intention of these subsections is that the lead entity is accountable for members under its control, and should use that control to ensure compliance with AML/CTF obligations throughout the reporting group.</p> <p>AUSTRAC will provide guidance on practically delegating obligations within a reporting entity in due course.</p>
6.	<p>Interaction of reporting group framework with section 26T exemption</p> <p>Submissions requested clarification as to whether the item 54 exemption under section 26T of the Amended AML/CTF</p>	<p>Whether section 26T of the Amended AML/CTF Act applies to a reporting entity is determined by reference to the designated services that the reporting entity provides. It is not determined by reference to the designated services provided by all the members of the reporting group that the reporting entity is a member of.</p>

	<p>Act continues if other members in the reporting group cannot also utilise the section 26T exemption.</p>	<p>An exception to this would be the lead entity of the reporting group as, under subsections 236B(1)-(3) of the Amended AML/CTF Act, a lead entity is taken to have provided a designated service if an ordinary member of the same reporting group has done so. Accordingly, the provisions of section 26T of the Amended AML/CTF Act will continue to apply to a reporting entity if the reporting entity provides only designated services specified under item 54 of table 1 in section 6 of the Amended AML/CTF Act and is:</p> <ul style="list-style-type: none"> • a member of a reporting group but not the lead entity; or • a lead entity of a reporting group where all of its members provide only designated services specified under item 54 of table 1 in section 6 of the Amended AML/CTF Act. <p>If a reporting group contains a mix of reporting entities only providing the item 54 designated service, and other reporting entities providing other designated services, the lead entity's obligations with respect to the item 54-only reporting entities will be limited to those obligations applicable to the item 54-only reporting entities themselves. This is because subsection 236B(2) provides that a lead entity is taken to provide a designated service 'in the same circumstances as those in which the service is...provided' by the ordinary member.</p>
7.	<p>Enrolment of non-reporting entity members of groups</p> <p>Submissions sought confirmation as to whether a non-reporting entity that is included in a reporting group is required to enrol with AUSTRAC.</p>	<p>Only reporting entities providing designated services and lead entities are required to apply for enrolment on the Reporting Entities Roll. If a member of a reporting group itself does not provide designated services either by the operation of section 6 or section 236B of the Amended AML/CTF Act, it is not required to be on the Reporting Entities Roll.</p> <p>Where non-reporting entities are discharging reporting obligations on behalf of a reporting entity, access to AUSTRAC systems will be granted through a process which is separate to enrolment under the Act.</p>

Part 4 – Programs

#	Feedback provided	AUSTRAC response
8.	<p>Review of ML/TF risk assessment</p> <p>Responders noted in submissions their view that the term ‘adverse findings’ in relation to the ML/TF risk assessment’ in subsection 9(1) of ED1 Rules is very broad. Submissions observed that the rule should not broaden the scope of the obligation on a reporting entity to review its ML/TF risk assessment beyond the objective of the obligation as set out in the primary legislation.</p> <p>Submissions recommended that section 9 of ED1 Rules should be amended to note that the adverse findings that trigger an ML/TF risk assessment review should only relate to any failures to identify a material ML/TF/PF risk that the reporting entity faces.</p>	<p>We consider it unnecessary for section 9 of ED1 Rules to be amended as proposed. The requirement under section 9 of ED1 Rules (now section 4-1 of ED2 Rules) to review an ML/TF risk assessment is triggered by adverse findings in an independent evaluation report relating to that ML/TF risk assessment.</p> <p>Independent evaluations, in relation to ML/TF risk assessments under paragraph 15(2)(a) of the ED1 Rules (now paragraph 4-7(2)(a) of ED2 Rules), must evaluate the steps taken by the reporting entity when undertaking or reviewing its ML/TF risk assessment against the requirements of the Act, the regulations and the AML/CTF Rules (which could also be characterised as a evaluating the ML/TF risk assessment methodology). Where an independent evaluation finds a deficiency in the steps taken to create or update the ML/TF risk assessment, it is appropriate for the reporting entity to review and, if necessary, update the ML/TF risk assessment. Such a review may determine that that the risk assessment does not need to be updated and in this case the reasoning should be recorded. On the other hand, a deficient ML/TF risk assessment will leave a reporting unaware of the ML/TF risks it faces in providing its designated services, meaning it cannot appropriately manage and mitigate those risks.</p>
9.	<p>Interaction of ML/TF risk assessment review requirement with section 26T exemption</p> <p>Subsection 9(1) of ED1 Rules relates to adverse findings in an independent evaluation report of a reporting entity’s ML/TF risk assessment. Submissions noted that its position that an independent evaluation report is required under subsection 26F(4) of the Amended AML/CTF Act, noting that section 26T of the Amended AML/CTF Act exempts reporting entities that provide item 54 designated services only from subsection 26F(4) of the Amended AML/CTF Act and the obligation to have a governing body in section 26H</p>	<p>Subsection 26T(3) of the Amended AML/CTF Act specifies provisions which do not apply to reporting entities that only provide designated services covered by item 54 of table 1 in section 6 of the Amended AML/CTF Act. This includes being exempted from subsection 26F(4) of the Amended AML/CTF Act (see paragraph 26T(3)(a) of the Amended AML/CTF Act).</p> <p>Subsection 26F(4) of the Amended AML/CTF Act (and, in particular, paragraph (f)) ordinarily requires a reporting entity to develop and maintain AML/CTF policies that deal with the conduct of independent evaluations of the reporting entity’s AML/CTF program. However, as paragraph 26F(1)(b) and subsection 26F(4) of the Amended AML/CTF Act is explicitly prescribed in paragraph 26T(3)(a) of the Amended AML/CTF Act, reporting entities only providing item 54 designated services do not need to provide for independent evaluations in their AML/CTF programs.</p> <p>We acknowledge that section 26T of the Amended AML/CTF Act does not explicitly reference</p>

	<p>of the Amended AML/CTF Act.</p> <p>Submissions requested that reporting entities that only provide item 54 designated services be exempt from the requirements under section 9 of ED1 Rules as they are exempt from the obligations for independent evaluation reporting and from having a governing body. Responders took the view that, as currently drafted, this may cause some confusion, therefore increasing the risk of unintentional breaches.</p>	<p>section 26D of the Amended AML/CTF Act (and, in turn, section 9 of ED1 Rules [now section 4-1 of ED2 Rules] which is made pursuant to the rule-making powers in subparagraph 26D(1)(a)(iii) and paragraph 26D(2)(d) of the Amended AML/CTF Act). However, we note that the obligations in this rule are contingent on an independent evaluation report being done. As reporting entities only providing item 54 designated services do not need to conduct independent evaluations, the obligations in this rule would not apply to them.</p>
10.	<p>Personnel due diligence (all contractors and other persons engaged)</p> <p>Responders noted that they considered the requirement under section 13 of ED1 Rules to be unduly broad and not proportionate to the ML/TF risk. The class of persons who are otherwise engaged by the reporting entity is very broad. Submissions requested that the rule be amended so that an assessment of personnel is required only if the person is in a position to facilitate the commission of a ML/TF offence in connection with the provision of a designated service as required by Parts 8.3 and 9.3 of the AML/CTF Rules 2007.</p>	<p>Paragraph 26F(4)(d) of the Amended AML/CTF Act (not the AML/CTF Rules) specifies who personnel due diligence must be applied to, being persons who are, or will be, employed or otherwise engaged by the reporting entity and who perform, or will perform, functions relevant to the reporting entity's obligations under the Amended AML/CTF Act.</p> <p>Undertaking due diligence on relevant personnel who perform functions relevant to AML/CTF obligations is an appropriate control to manage the ML/TF risk a reporting entity faces in providing its designated services, AUSTRAC does not consider it appropriate nor necessary to depart from this requirement established in the Amended AML/CTF Act.</p> <p>AUSTRAC recommends that reporting entity evaluates and examines the roles and functions of all personnel employed or otherwise engaged by the reporting entity to determine the extent to which, and the persons to whom, the provisions on personnel due diligence and personnel training pertain to.</p>
11.	<p>Personnel due diligence (recognition of other regimes)</p> <p>Submissions recommended that AUSTRAC confirm that the existing safeguards to entry to the legal profession are sufficient to determine a solicitor's integrity under section 13(2)(b) of ED1 Rules. For example, for persons to hold a legal practising certificate, they must be a 'fit and proper'</p>	<p>As stated above, the type and extent of personnel due diligence measures should be appropriate for the AML/CTF obligations performed by the personnel and to the size of the business. In every case it will be for a reporting entity to consider what due diligence measures it will implement to fulfil personnel due diligence requirements. Like all AML/CTF policies, the extent of the control (in this case personnel due diligence) scales up proportionate to nature, size and complexity of the reporting entity's business.</p> <p>AUSTRAC is aware that personnel due diligence plays a role in many sectors and professions. Due</p>

	<p>person, have met their continuing professional development obligations, comply with the conditions of their practising certificate, and adhere to the Australian Solicitor Conduct Rules.</p> <p>Similar requests were made by the banking industry with reference to APRA standards, financial services industry with reference to the AFSL scheme, accounting with reference to the professional body membership requirements, and the real estate agency sector regarding the fit and proper test in legislation governing real estate agent licensing.</p>	<p>to the large number and variety of tests available, AUSTRAC does not consider it appropriate nor effective to attempt to capture all existing personnel tests in the Rules, though guidance will be provided in due course to assist reporting entities consider how they can recognise existing personnel due diligence checks into their AML/CTF policies and how to deal with any gaps.</p>
12.	<p>Personnel due diligence (scope of requirement)</p> <p>Responders sought clarity as to the scope of functions that are relevant to the reporting entity's obligations under the personnel due diligence. Submissions requested that section 13 of ED1 Rules be amended so that the prescriptive requirement for skills, knowledge and expertise to be assessed is deleted and replaced with a provision permitting reporting entities to make a risk-based determination on timing and content of personnel due diligence in accordance with their AML/CTF policies.</p>	<p>FATF recommendation 18 requires regulated entities to have adequate screening procedures to ensure high standards when hiring employees. The type and extent of these screening measures should be appropriate to ML/TF and the size of the business. That requirement is reflected in paragraph 26F(4)(d) of the Amended AML/CTF Act, and section 13 of the ED1 Rules.</p> <p>AUSTRAC considers a person's skills, knowledge and expertise relevant to the particular responsibilities of the person under the AML/CTF policies; and their integrity appropriate and relevant considerations where a reporting entity appoints a person to a role that has functions relevant to the reporting entity's obligations under the Amended AML/CTF Act.</p> <p>If a person were appointed to a role without adequate skills, knowledge of expertise, the reporting entity's ability to manage and mitigate risk will be impeded – for example, if a developer of an automated transaction monitoring program did not have sufficient programming skills, knowledge and expertise the reporting entity could not be confident that programs developed would appropriately detect the red flags it is required to under the entity's AML/CTF Program.</p> <p>If a person were appointed to a role relevant to performing AML/CTF functions without the reporting entity making any enquiries into the integrity of the person, it may not discover information which indicates the person is vulnerable to exploitation in their role by criminals, or vulnerable to other insider threats. Again, without this knowledge the reporting entity would not be able to effectively manage the ML/TF risk as it would not know whether to place additional</p>

		controls around the person’s role and responsibilities, or otherwise.
13.	<p>Personnel due diligence (outsourcing)</p> <p>Submissions requested that section 13 of ED1 Rules should make clear that reporting entities can continue to outsource or obligate third parties to complete these checks.</p>	<p>The Amended AML/CTF Act and Rules do not prohibit a reporting entity from outsourcing the fulfilment and discharge of its personnel due diligence obligations to a third party. It is for the reporting entity to consider whether such an arrangement is appropriate for its business. However, as the obligation remains with the reporting entity even if the performance of it has been outsourced, the reporting entity bears the responsibility of ensuring its personnel due diligence requirements are satisfied.</p>
14.	<p>Purpose of independent evaluation</p> <p>We seek to understand the requirement for individual, micro and small, low risk reporting entities to undertake an independent evaluation of their AML/CTF program. As there are no qualifications required of evaluators, they will not be accredited or regulated in any way, and as the evaluation report is not provided to AUSTRAC this obligation is simply a cost to the reporting entity.</p>	<p>The purpose of independent evaluations is to provide the reporting entity and its governing body, who are ultimately liable for compliance with the Amended AML/CTF Act, with information to equip it to meet its obligations under the Amended AML/CTF Act.</p> <p>Independent evaluation reports benefit the reporting entity by:</p> <ul style="list-style-type: none"> • evaluating whether the reporting entity’s ML/TF risk assessment was undertaken in a robust way, and whether AML/CTF policies respond appropriately to the risks identified • ensuring the effectiveness of AML/CTF policies by testing whether policies, procedures, systems and controls are in place and are effectively implemented, and • empowering the governing body to make informed decisions, manage ML/TF risks and resources effectively, and ensure that the organization is operating in compliance with the AML/CTF regime
15.	<p>Scope of independent evaluation</p> <p>The independent evaluation requirement relates to the reporting entity’s AML/CTF policies. The requirement of section 15 of ED1 Rules is to evaluate the design against the requirements of the Act, including testing and evaluating not just the portions of the AML/CTF policies that are required under the Amended AML/CTF Act, but all of a reporting entity’s AML/CTF Policies (see paragraph</p>	<p>‘AML/CTF policies’ are defined in section 5 of the Amended AML/CTF Act to mean ‘the policies, procedures, systems and controls of the reporting entity developed under section 26F’, and any updates required under the Amended AML/CTF Act.</p> <p>Subsection 26F(1) of the Amended AML/CTF Act requires that reporting entity must develop and maintain policies, procedures, systems and controls (AML/CTF policies) that:</p> <ul style="list-style-type: none"> • appropriately manage and mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services; and

	<p>15(2)(c) of ED1 Rules). An independent evaluator might feel that it was appropriate to test, evaluate and comment on areas not required by the Amended AML/CTF Act if those areas are included in an AML/CTF policy, such as where a reporting entity includes matters in their policies to satisfy a foreign regulator. Proposal for paragraph 15(2)(c) of ED1 Rules to be limited to only test and evaluate compliance with the AML/CTF policies as they pertain to requirements under the Amended AML/CTF Act.</p>	<ul style="list-style-type: none"> • ensure the reporting entity complies with the obligations imposed by the Amended AML/CTF Act, the regulations and the AML/CTF Rules on the reporting entity; and • appropriate to the nature, size and complexity of the reporting entity’s business; and • comply with any requirements specified in the AML/CTF Rules. <p>AUSTRAC’s expectation is that reporting entities will review and update their AML/CTF policies in response to an independent evaluation report to the extent that the report makes adverse findings in relation to the AML/CTF policies developed under section 26F (or risk assessment undertaken and/or updated under sections 26C and 26D) of the Amended AML/CTF Act.</p>
16.	<p>Independence of independent evaluation</p> <p>Clarification sought as to who can undertake the independent evaluation and the requirements, if any.</p>	<p>Paragraph 26F(4)(f) of the Amended AML/CTF Act specifies that a reporting entity’s AML/CTF policies must deal with the conduct of independent evaluations of the reporting entity’s program, including the frequency with such evaluations must be conducted, which must appropriate to the nature, size and complexity of the reporting entity’s business, and be at least every 3 years.</p> <p>The Amended AML/CTF Act does not define ‘independent’ or ‘independent evaluator’, and in the first instance the reference to independent should be interpreted with regard to the ordinary meaning of the term. The Macquarie Dictionary provides the following definitions of independent:</p> <ul style="list-style-type: none"> • not influenced by others in matters of opinion, conduct, etc.; thinking or acting for oneself: an independent person. • not subject to another’s authority or jurisdiction; autonomous; free: • not influenced by the thought or action of others: independent research. <p>AUSTRAC will provide further guidance on this topic in due course, however, and in all cases, the reporting entity must be satisfied and able to demonstrate that the person undertaking the evaluation is adequately independent from the area of the reporting entity that is responsible for its AML/CTF program.</p>
17.	<p>Small business exemption for independent evaluations</p> <p>The cost of undertaking an independent evaluation outweighs the potential benefits for low risk reporting</p>	<p>AUSTRAC does not consider that an exemption for all small businesses would be appropriate, noting that independent evaluations are an important measure in ensuring the effective design and implementation of AML/CTF Programs.</p> <p>The FATF has stated in its <i>Horizontal Review of Gatekeepers’ Technical Compliance Related to Corruption</i> (July 2024) that for small businesses, ‘This obligation can...be successfully implemented</p>

	<p>entities, sole traders, small businesses and small partnerships. Proposal for an exception from the obligation for a business that has adopted a starter program or are not subject to the industry contribution levy, or to provide a template for evaluators of low risk businesses to assist in capping the cost.</p>	<p>proportionately. Audit [<i>independent evaluation in the Australian regime</i>] remains a critical function of any compliance regime to ensure that the regime is tested. Numerous jurisdictions have successfully imposed this requirement, while taking steps to support gatekeepers in this endeavour by providing tools to assist small business.’</p> <p>The independent evaluation requirement is, like all AML/CTF policies, subject to the requirement that the policy is ‘appropriate to the nature, size and complexity of the reporting entity’s business’ which should facilitate this requirement being implemented proportionately in line with global standards.</p> <p>AUSTRAC will explore the interaction between the independent evaluation obligation and starter programs in greater detail once starter programs are further developed. It is important to note that starter programs will provide an appropriately designed AML/CTF program for small businesses, but it will remain the responsibility of small businesses to implement these programs.</p>
18.	<p>‘Senior manager’ definition and approvals</p> <p>The Amended AML/CTF Act and Rules contain multiple sections requiring a senior manager’s approval or notice on various aspects of AML responsibilities. Responders perceive only the ‘C-suite’ to meet the definition of senior manager under the Amended AML/CTF Act.</p> <p>Responders consider it not to be practical for a senior manager to approve all of these matters in larger organisations.</p> <p>The absence of flexibility and ability to delegate the senior manager role will make approval largely unworkable in a large reporting entity. This would create a significant regulatory and administrative burden. Additionally, this would significantly slow down approvals of certain customer cohorts, leading to a poor customer experience.</p>	<p>‘Senior manager’, defined in section 6 of the Amended AML/CTF Act, and requires senior manager action in 3 sections of the Amended AML/CTF Act:</p> <ul style="list-style-type: none"> • Paragraph 26F(4)(c) in relation to AML/CTF policies of a reporting entity designating senior managers of a reporting entity who are responsible for approving AML/CTF policies and the ML/TF risk assessment of the reporting entity. • Section 26P in relation to AML/CTF program approvals. • Section 26S in relation to a senior manager of a registered remittance affiliate approving ML/TF risk assessments and AML/CTF policies of a registered network provider. <p>Section 4-11 of ED2 Rules introduce circumstances which require senior manager action is required:</p> <ul style="list-style-type: none"> • approving business relationships with foreign PEPs or high ML/TF risk domestic or international organisation PEPs • approving the reporting entity providing designated services as part of a nested services relationship • approving entering a CDD reliance relationship • being informed of payouts of life insurance which insured a high ML/TF risk customer <p>These requirements for approval and to be informed are consistent with FATF recommendations</p>

		<p>1, 12 and 13.</p> <p>The definition of ‘senior manager’ and the senior manager approval requirements under section 5 and paragraph 26F(4)(c) of the Amended AML/CTF Act do not provide an ability for the senior manager to delegate. It is not appropriate for the AML/CTF Rules to undermine the intent of the Amended AML/CTF Act.</p> <p>We also note that subparagraph 26F(4)(c) of the Amended AML/CTF Act allows for a reporting entity’s AML/CTF policies to designate one or more senior managers as responsible for approving the AML/CTF policies and the ML/TF risk assessment of the reporting entity. Accordingly, the need to delegate is alleviated by the legislative flexibility which allows a reporting entity to have more than one senior manager responsible for different AML/CTF obligations or functionalities.</p> <p>The definition of ‘senior manager’ is not limited to individuals who make decisions that affect the whole of the RE’s business; the definition also captures individuals who ‘participates in making decisions’ that ‘affect... a substantial part’ of the business. We also consider that ‘participating in making’ a decision does not mean that the individual needs to be the final decision-maker. This must be determined by reference to the person’s role in the reporting entity overall. Page 29 of the explanatory memorandum to the Amended AML/CTF Act also explains that such decisions will generally relate to the operational management of the reporting entity’s business.</p> <p>Ultimately, we consider that the question of whether someone is a ‘senior manager’ depends on the circumstances, the size of the reporting entity, its corporate and management structure and role of the persons involved.</p>
19.	<p>Senior manager approval and notification exemption</p> <p>Some responders have requested an exemption from the senior manager approval and notification requirements under the Amended AML/CTF Act and Rules on the basis that it considers it to be a lower ML/TF risk sector.</p>	<p>All designated services under the Amended AML/CTF Act are included in the regime due to their vulnerability to being exploited for ML/TF. The Amended AML/CTF Act implements the FATF recommendations which are the global standard for controls required within a business to manage and mitigate ML/TF risk. Oversight by senior management is an important element of managing and mitigating ML/TF risk as it allows those with control of resources to determine if the reporting entity has allocated appropriate resources to manage the volume of higher risk customers and arrangements.</p> <p>Accordingly, we do not consider that any reporting entity should be exempt from senior manager</p>

		approval and notification requirements under the Amended AML/CTF Act and AML/CTF Rules.
20.	<p>AML/CTF policies relating to reporting obligations</p> <p>Section 17 of ED1 Rules requires reporting entities ensure information reported is "complete, accurate and free from unauthorised change". Some submissions sought to clarify how this requirement extends to the reporting of payer information required under section 56 of ED1 Rules. Specifically, does the payer information that is reported require to be 'complete and accurate', and if so, how would completeness and accuracy be expected to be determined by the reporting entity.</p>	<p>Section 17 of ED1 Rules (now section 4-9 of ED2 Rules) prescribes that information reported by the entity under sections 41, 43, 46 and 46A of the Amended AML/CTF Act must be complete, accurate and free from unauthorised change. It does not apply to 'travel rule' obligations under Part 5 of the Amended AML/CTF Act as these are not reporting obligations.</p> <p>The content and requirements for International Value Transfer Reports and Unverified Self-Hosted Virtual Asset Wallet Reports will be addressed in future AML/CTF Rules that will be subject to consultation at a later date. This will include consideration of any appropriate qualifications for reporting field, e.g. 'if known', 'as appears in the transfer message' etc.</p>
21.	<p>AML/CTF policies relating to reporting obligations - interpretation and application of 'accurate'</p> <p>Submissions sought clarification of the meaning of 'accurate' as used in section 17 of ED1 Rules, particularly:</p> <ul style="list-style-type: none"> the degree and granularity to which this should be applied. For example, it was queried whether it captured spelling errors and missing middle names. the expected outcome depending on the different degrees of inaccuracy. whether accuracy and completeness needs to be ensured or whether it was sufficient that it appears correct. 	<p>Sections 41 (SMR), 43 (TTR), 46 (IVTS) and 46A(unverified self-hosted wallet report) of the Amended AML/CTF Act require that reports must contain information as specified in the AML/CTF Rules.</p> <p>Sections 136 and 137 of the Amended AML/CTF Act create an offence of a person giving information or documents to the AUSTRAC CEO, a reporting entity, or a person acting on a reporting entity's behalf, in accordance with the Act, knowing that the information or document is false or misleading, or omits any matter or thing without which the information is misleading.</p> <p>Reporting entities that give reports to the AUSTRAC CEO which provide knowingly false or misleading information or omissions risk the criminal offences under sections 136 and 137. The degree of granularity which reaches this threshold will vary on the facts of each report.</p> <p>The intent of section 17 of ED1 Rules (now 4-9 of ED2 Rules) is to require reporting entities to develop policies, procedures, systems and controls so that information about a customer that is included in a report is complete, accurate and free from authorised change, so that it mitigates its risk of committing the offences under sections 136 and 137 of the Amended AML/CTF Act.</p> <p>Further, quality reporting that is complete, accurate and free from unauthorised change is essential to AUSTRAC obtaining actionable financial intelligence. Reports that omit required</p>

		information hamper AUSTRAC’s ability to undertake financial intelligence analysis and undermine AUSTRAC’s ability to detect, deter and disrupt serious financial crime
22.	<p>AML/CTF policies for ordering and beneficiary institutions</p> <p>Referring to the monitoring obligations in section 21 of ED1 Rules, is it the intention to aim for real-time monitoring, meaning the beneficiary institution cannot take a post-factor monitoring?</p> <p>Can financial institutions to develop a risk-based approach for determining when to make funds available to payees? Can a financial institution include scenarios in their AML Program where the value can and cannot be transferred to the payee's account, particularly for international payments when the payee details are not accurate?</p>	<p>The Amended AML/CTF Act requires that missing information or inaccurate information about the payee is identified through a monitoring mechanism pursuant to its AML/CTF policies. This includes an AML/CTF policy made in accordance with section 21 of ED1 Rules (now section 4-13 of ED2 Rules) that requires, amongst other things:</p> <ul style="list-style-type: none"> • manage and mitigate the ML/TF risks the beneficiary institution reasonably faces providing designated services as a beneficiary institution; and • be appropriate to the nature, size and complexity of the beneficiary institution’s business. <p>We consider that this section requires a beneficiary institution to consider the degree of incompleteness or inaccuracy in terms of ML/TF risk. We also note that the Amended AML/CTF Act expressly provides that a beneficiary institution may refuse to make the transferred value available, which provides appropriate protections for the beneficiary institution.</p> <p>However, beneficiary institutions for transfers of virtual assets must obtain complete and accurate travel rule information before making virtual assets available to the payee or a person acting on their behalf, unless the exception in subsection 66A(10) of the Amended AML/CTF Act applies (see below item 66 – sunrise issue), i.e. the beneficiary institution has established on reasonable grounds that an institution in the value transfer chain is incapable of passing on the information securely and the beneficiary institution appropriately identifies, assesses, mitigates and manages the ML/TF risk in this circumstance. This reflects FATF recommendation 15.</p>
23.	<p>Counterparty due diligence for virtual asset transfers</p> <p>Some submissions asked how a VASP can undertake counterparty due diligence to determine whether a third party virtual asset wallet is controlled by a regulated VASP, an unregulated VASP, an illegally operating VASP or is a self-hosted wallet.</p>	<p>Subsections 66A(2) and (5) of the Amended AML/CTF Act set out the primary obligations for reporting entities transferring virtual assets to undertake counterparty due diligence. The Amended AML/CTF Act is not prescriptive about how this is to be done, given differing levels of information available in different countries and the potential for new information sources to be developed in future. Instead, the requirement is for the ordering or beneficiary institution (as the case may be) to undertake due diligence to determine on reasonable grounds the status of the counterparty VASP or self-hosted wallet.</p>

		<p>Section 4-13 of ED2 Rules requires reporting entities involved in transferring virtual assets to develop AML/CTF policies that deal with how it will undertake counterparty due diligence. Such AML/CTF policies must appropriately manage and mitigate the ML/TF risks of providing designated services related to the transfer of virtual assets.</p> <p>Examples of how to undertake due diligence to determine, on reasonable grounds, the status of the third-party wallet will be provided in guidance. In the meantime, paragraphs 197 and 198 of the October 2021 Updated Guidance for a Risk-Based Approach Virtual Assets and Virtual Asset Service Providers published by the Financial Action Task Force set out the international consideration of this issue.</p>
24.	<p>AML/CTF Compliance Officers ('management level')</p> <p>Submissions noted the view that the Amended AML/CTF Act requires reporting entities to designate an individual as the AML/CTF compliance officer who should be at 'management level'. Submissions requested that AML/CTF Rules should include further information on how management level should be defined, as this can vary significantly between organisations.</p>	<p>This requirement to designate an AML/CTF compliance officer 'at the management level' has been in place since 2007. AUSTRAC will provide guidance on how 'management level' in relation to AML/CTF compliance officers in due course.</p> <p>The Explanatory Memorandum provides that:</p> <p><i>Management level may be interpreted differently for different forms and sizes of reporting entities. For example, for a large reporting entity the relevant manager may exercise day-to-day operational management relevant to AML/CTF compliance, as opposed to the strategic oversight exercised by members of the board or executive committee. For smaller reporting entities, the compliance officer may be the owner or director of a business, or a management-level employee who is responsible for managing broader risks or operations within the business.</i></p> <p>The AML/CTF Rules are a legislative instrument and can only contain rules where a relevant power has been granted in the Amended AML/CTF Act.</p>
25.	<p>AML/CTF Compliance Officers (fit and proper)</p> <p>Responders have noted the view that subsection 23(b) of ED1 Rules requires reporting entities to consider convictions of crimes that may be irrelevant to economic crime when assessing whether an individual is fit and</p>	<p>Section 23 of ED1 Rules (now section 4-18 of ED2 Rules) outlines relevant circumstances to be taken into account in determining whether a person is fit and proper to be an AML/CTF compliance officer, but does not outline the significance of each factor in meeting the fit and proper person requirements.</p> <p>The significance of each factor in section 4-18 of ED2 Rules will depend on all the circumstances,</p>

	<p>proper to be an AML/CTF Compliance Officer, such as drink driving or domestic violence (where these offences carry maximum imprisonment of 2 years in certain states). Responders have also noted that, in practice, reporting entities may choose not to appoint a person with such convictions as its AML/CTF compliance officer out of fear of breaching the fit and proper requirements. Responders expressed concerns as to adverse career impacts on such individuals and that the rule will allow potentially discriminatory hiring practices by reporting entities.</p>	<p>including the nature of the individual AML/CTF compliance officer's role.</p> <p>Serious offence as defined in the Act includes offences punishable by imprisonment of 2 or more years. AUSTRAC considers this an appropriate threshold for an individual's prior convictions to be a consideration of whether that individual is fit and proper for the purpose of fulfilling the role of AML/CTF compliance officer. One key element of consideration of whether a person is fit and proper is demonstrated lack of willingness to comply with legal obligations, regardless of the nature of the conduct.</p> <p>The Australian legal system deals with a person's rehabilitation and reintegration into society through Spent Convictions Regimes, which broadly limit the requirement to disclose less serious convictions, after a period of good behaviour, effectively making them disappear from criminal records for most purposes after a set time.</p>
26.	<p>AML/CTF Compliance Officer reporting to governing body</p> <p>Some responders understood section 12 of ED1 Rules to mean that a person fulfilling the role of AML/CTF compliance officer in a reporting entity is required, in an organisational and management structure, to report directly to the governing body.</p>	<p>The requirement in section 12 of ED1 Rules (now section 4-4 of ED2 Rules) is simply for the AML/CTF Compliance Officer to give reports (whether written, oral, video etc.) to the governing body regarding the matters in subsection (1) of that rule.</p> <p>Beyond the requirement that the AML/CTF Compliance Officer be at management level, there are no requirements on the chain of command that applies to reporting entities.</p> <p>Notwithstanding, AUSTRAC has updated 'reporting' in subsection 4-4(1) of ED2 Rules to 'reports' to provide greater clarity.</p>
27.	<p>AML/CTF Compliance Officer reporting to governing body (sole trader)</p> <p>Responders noted that the requirement for AML/CTF compliance officer reporting to the governing body is redundant in the context of a reporting entity that is a sole trader or single employee business.</p>	<p>AUSTRAC appreciate the feedback, and have inserted a new exception providing that subsection 4-4(1) and (2) do not apply to a reporting entity if that reporting entity is an individual or the AML/CTF Compliance Officer of that reporting entity is the same individual who is the governing body of the reporting entity.</p> <p>The policy intention behind section 12 of ED1 Rules (not section 4-4 of ED2 Rules), as well as subsection 26F(4) of the Amended AML/CTF Act more broadly, is to empower internal compliance management and support good governance. Where a reporting entity is an individual and therefore also the 'governing body' by default, the rationale for internal reporting becomes redundant where that individual has also elected to appoint themselves as the AML/CTF compliance officer. As noted in the Explanatory Memorandum to the <i>Anti-Money Laundering and</i></p>

Counter-Terrorism Financing Amendment Act 2024, where a reporting entity is a sole trader, the distinction between governing body and AML/CTF Compliance officer may be redundant.

Part 5 – Customer due diligence

#	Feedback provided	AUSTRAC response
28.	<p>Establishing matters under subsection 28(2) of the Amended AML/CTF Act on reasonable grounds</p> <p>Submissions have requested clarity regarding what it means to ‘establish on reasonable grounds’.</p> <p>Submissions note that the verification of identity standards required by ARNECC as part of the electronic conveyancing process requires the identification of each client to a ‘reasonable steps’ standard. The standard includes a ‘safe harbour’ interpretation which is an essential element for smaller and less well-resourced practices to achieve compliance and manage their risk.’</p>	<p>Part 2 of the Amended AML/CTF Act does not prescribe specific information that a reporting entity must consider when it is establishing the matters under subsection 28(2) of the Amended AML/CTF Act. Likewise, it also does not prohibit any specific information for consideration (except for the use of tax file numbers, which is prohibited by law. See item 32 below for details).</p> <p>To establish a matter on ‘reasonable grounds’ is an objective test and subsection 28(3) of the Amended AML/CTF Act sets out particular requirements that must be done to establish the relevant matters in subsection 28(2) of the Amended AML/CTF Act. The standard of ‘reasonable grounds’ is well established in the Australian legal system, and generally requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.</p> <p>The framework under subsection 28(3) of the Amended AML/CTF Act is grounded on the specific circumstances in which the designated service is being provided or proposed to be provided, particularly the customer’s ML/TF risk. For example, paragraph 28(3)(d) of the Amended AML/CTF Act requires verification of KYC information, i.e. which KYC information and to what extent a reporting entity verifies that KYC information is for it to determine based on appropriateness to the customer’s ML/TF risk. How the reporting entity determines appropriateness will refer back to the reasonable grounds test under subsection 28(2) of the Amended AML/CTF Act.</p> <p>We also note that the requirement for a reporting entity to have AML/CTF policies that deal with its obligations under Part 2 of the Amended AML/CTF Act (see paragraph 26F(3)(b) of the Amended AML/CTF Act) is scalable. For example, paragraph 28F(1)(c) of the Amended AML/CTF Act requires that AML/CTF policies must be appropriate to the nature, size and complexity of the reporting entity's business. In practice, this may mean that it is appropriate for smaller and less well-resourced reporting entities to have less complex AML/CTF policies than larger reporting entities.</p>

		<p>This approach under the Amended AML/CTF Act in relation to initial CDD is intended to provide guardrails to ensure that a reporting entity has flexibility to scale its requirements for its circumstances, as well as ensuring that how a reporting entity ultimately determines it will establish the matters under subsection 28(2) of the Amended AML/CTF Act will still meet the objects of the Amended AML/CTF Act and the relevant FATF recommendations.</p>
29.	<p>Conducting initial CDD on a customer more than once</p> <p>Submissions have noted that, for customers on-boarded after 31 March 2026, there is no provision in the reformed AML/CTF regime that is equivalent to paragraph 32(2)(b) of the AML/CTF Act. Responders have taken the view that this means that initial CDD is required every time a reporting entity commences to provide a new designated service, such as when an account is opened, as well as when any transaction is conducted on the account. Submissions proposed for a rule to be made where a reporting entity is taken to have complied with each of the matters mentioned in subsection 28(2) of the Amended AML/CTF Act in relation to a customer if:</p> <ul style="list-style-type: none"> • on and from 31 March 2026, the reporting entity has provided a designated services to the customer. • the reporting entity has previously established on reasonable grounds each of the matters in the previous Act and the current Rules in Chapter 4 in relation to the customer. 	<p>Section 36 of ED1 Rules (now section 5-11 of ED2 Rules) addresses the concern regarding the applicable customer identification processes conducted prior to 31 March 2026.</p> <p>For initial CDD conducted on or after 31 March 2026, the obligation is not to commence to provide a designated service if the reporting entity ‘has not established on reasonable grounds’ the relevant matters. This requirement is deliberately phrased in the past tense. AUSTRAC’s view is that once a matter has been established for a customer of a particular kind of designated service, there is no requirement to continue to establish the same matter for each provision of designated service to that customer – rather, ongoing CDD in section 30 of the Amended AML/CTF Act applies, particularly the significant change requirement under subparagraph 30(2)(b)(i) of the Amended AML/CTF Act.</p> <p>For example, a reporting entity has established a customer’s identity on reasonable grounds under section 28 of the Amended AML/CTF Act when it opens an account for that customer pursuant. If a customer wishes to make a transaction on that account (i.e. another designated service) on the next day, the customer’s identity likely remains established on reasonable grounds by the reporting entity unless significant changes have occurred in that time. Significant changes should be detected by a reporting entity in relation to existing customers as part of its ongoing CDD obligations under section 30 of the Amended AML/CTF Act.</p>

30.	<p>Place of birth</p> <p>Submissions observed that place of birth cannot be collected and verified readily via digital pathways, would effectively require a customer to produce either a passport or birth certificate, and may present difficulties for some customers to produce documents, noting that only 53% of the population hold an Australian passport, and the difficulties in obtaining and verifying birth certificates for individuals born overseas.</p>	<p>The intent of paragraph 25(2)(b) of ED1 Rules was to support reporting entities to make actionable reports to AUSTRAC, and the operationalisation of parts of the ‘travel rule’ requirement under FATF recommendation 16. AUSTRAC considers that there is value in verifying place of birth where possible as, together with date of birth, it provides a constant data point for a customer (unlike an address which can change relatively frequently). For example, we understand that verified place of birth information is useful when conducting sanctions checks, which is relevant to certain obligations under the AML/CTF regime, including under section 32 of ED1 Rules (now section 5-9 of ED2 Rules). Place of birth of customers also offers significant intelligence and data quality benefits to AUSTRAC as a financial intelligence unit, as it allows AUSTRAC to distinguish individuals more reliably.</p> <p>Notwithstanding, AUSTRAC heard the feedback on ED1 Rules and acknowledges the challenge and regulatory impost on reporting entities in verifying place of birth information. We have deleted section 26 of ED1 Rules in response to this feedback.</p> <p>Sections 8-3 and 8-7 of ED2 Rules on threshold transaction reports and suspicious matter reports have been drafted so that where the place of birth is known by the reporting entity it is required to include that information in the relevant report (e.g. where the reporting entity has accessed the customer’s passport or birth certificate through its CDD processes). AUSTRAC considers this an appropriate balance of obtaining actionable financial intelligence, and minimising undue burden on reporting entities.</p>
31.	<p>Trading names and registered names</p> <p>Submissions sought confirmation as to whether ‘registered name of the customer’ used in ED1 Rules was intended to mean ‘registered business name’. Submissions requested that the language in paragraph 26(2)(a) of ED1 Rules should be amended for alignment of terminology with what is collected by ASIC, observing that ASIC does not consider trading names to meet the requirements of a ‘registered business name’. Prior to 28 May 2012, the Australian Business Register collected names used by</p>	<p>AUSTRAC appreciates that responders brought this ASIC change to our attention.</p> <p>A trading name is simply an alias or secondary name that sole traders and partnerships used to brand themselves. In most cases, trading names are used in addition to a registered name. After 1 November 2025, the Australian Business Register (ABR) will no longer display trading names. AUSTRAC has updated section 26 of ED1 Rules (now section 5-1 of ED2 Rules) to reflect this.</p> <p>However, we note that where reporting entities have customers outside of Australia where unregistered business names are used, these too should be known by the reporting entity.</p>

	<p>entities to carry out their business activities and this was displayed as a trading name. Submissions proposed the amendment of paragraph 26(2)(a) of ED1 Rules to require collection and verification of only “the customer’s name” and “registered business name”. For example, ABC Pty Ltd (customer’s full name) operates a business XYZ Shoes (registered business name).</p>	
32.	<p>Exclusion of tax file numbers</p> <p>Submissions sought clarification as to whether a tax ID issued by a foreign government can meet the requirements under section 26 of ED1 Rules to establish the identity of a customer who is a business, noting that subparagraph 26(2)(b)(ii) of ED1 Rules does not exclude tax file numbers issued by the government of a foreign country (unlike the exclusion of ATO issued tax file numbers in subparagraph 26(2)(b)(i) of ED1 Rules).</p>	<p>Under sections 8WA and 8WB of the <i>Taxation Administration Act 1953</i>, it is an offence to require a person to provide, or to make a recording of, a tax file number other than as permitted by those provisions. Those provisions do not permit AUSTRAC to request the collection or recording of tax file numbers for the purposes of reporting entities meeting their obligations under Part 2 of the Act, so this was reflected in section 26 of ED1 Rules and has been reflected in the new definition of ‘unique identifier’ in section 1-4 of ED2 Rules.</p> <p>Equivalent use restrictions on tax IDs issued by a foreign country may or may not apply. Accordingly, the ED2 Rules do not expressly exclude tax file numbers issued by a government of a foreign country as information that can be validly collected for the purposes of the AML/CTF Rules, but note that relevant laws of the foreign jurisdiction may restrict collection. Reporting entities should inform themselves of the laws of the foreign countries where they operate and service customers, and ensure CDD policies reflect such requirements.</p>
33.	<p>Safe harbour for small reporting entities</p> <p>Some responders sought a ‘safe harbour’ for smaller reporting entities – ‘The verification of identity standards required by ARNECC as part of the electronic conveyancing process requires the identification of each client to a ‘reasonable steps’ standard. The standard includes a ‘safe harbour’ interpretation which is an essential element for smaller and less well-resourced practices to achieve compliance and manage their risk.’</p>	<p>Where an existing process meets the outcomes-focused requirements of section 28 of the Amended AML/CTF Act, they may be used (or if necessary, supplemented) to fulfil CDD obligations. ARNECC verification of identity must be supplemented if used for AML/CTF purposes, e.g. it does not require the collection or verification of information related to beneficial ownership of the customer (nor a range of other matters required under section 28 of the Amended AML/CTF Act.</p> <p>Additionally, the size of a reporting entity does not determine its ML/TF vulnerability.</p> <p>The new AML/CTF Rules do not include safe harbour for customer due diligence as AUSTRAC’s experience demonstrates that this becomes a standardised practice regardless of the ML/TF risk the customer presents.</p>

		<p>The response in item 28 of this table discusses what it means to establish a matter on reasonable grounds.</p> <p>AUSTRAC's approach to assisting less well-resourced reporting entities achieve compliance and manage risk is to provide starter programs and detailed guidance.</p>
34.	<p>Understanding the intent of 'how a customer is regulated'</p> <p>Submissions suggested that the drafting of subsection 27(4) of ED1 Rules may need to be revised to make clear that the obligation is to establish the governance structure of the entity (if that is the intention of the Rule), noting that the use of the words 'demonstrates how the customer is regulated' tends to imply collecting documentation on which government regulators oversee the customer.</p>	<p>Subsection 27(4) of ED1 Rules reflects FATF recommendation 10 which requires regulated entities to identify the customer and verify its identity through the following information (emphasis added):</p> <ul style="list-style-type: none"> (a) name, legal form and proof of existence; (b) the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement; and (c) the address of the registered office and, if different, a principal place of business. <p>AUSTRAC appreciates the feedback that the phrase 'how a customer is regulated' presented ambiguities and we have taken the suggested approach to reframe subsection 27(4) of ED1 Rules (now subsection 5-2(4) of ED2 Rules) around governance.</p>
35.	<p>Establishing matters regarding trusts</p> <p>Submissions noted that the threshold that triggers the requirement under section 27(5) of ED1 Rules is higher than the trigger under paragraph 4.4.2 in AML/CTF Rules 2007, i.e. 'where a person notifies the reporting entity that the person is a customer of the reporting entity in the person's capacity as the trustee of a trust'. Submissions observed that it is not always clear or obvious when a customer is a trustee and considered the new threshold to be too high and burdensome on reporting entities to know with certainty whether a customer is acting in their</p>	<p>FATF recommendation 10 requires in all cases for regulated entities to identify their customer, including understanding whether the customer is a natural person, legal person or legal arrangement.</p> <p>Section 28 of the Amended AML/CTF Act and subsection 27(5) of ED1 Rules (now subsection 5-2(6) of ED2 Rules) effect this requirement. In particular, paragraph 28(4)(b) of the Amended AML/CTF Act requires a reporting entity to take into account the kind of customer to whom the designated service is to be provided when identifying the ML/TF risk of the customer.</p> <p>Practically, a reporting entity must understand whether its customer is a trust to be able to identify, assess and effectively manage the ML/TF risk of the customer – this is the central reason CDD is required by the AML/CTF regime. Without knowing whether a customer is a trust, a reporting entity cannot know whether the beneficiaries of the designated service are high ML/TF</p>

	capacity as a trustee. It was requested that the current threshold should be maintained.	risk PEPs, or persons designated for targeted financial sanctions.
36.	<p>Settlors of a trust</p> <p>Paragraph 27(5)(b) of ED1 Rules requires a reporting entity to identify the settlor of a trust. Submissions noted the view that this information is not only difficult, but is often impossible to attain, given that the settlor of the trust may be long deceased or otherwise unavailable. Submissions also noted that the practice in Australia is that the settlor is at arms-length with the trust itself, has no beneficial interest in the trust, and settlors typically also have no ongoing relationship with the beneficiaries. Submissions recommended that, if AUSTRAC's intention is that the reporting entity is simply required to name the settlor and ensure that the information provided is consistent with the name that appears in the trust deed, the requirement should be made clearer in the AML/CTF Rules, as well as in AUSTRAC guidance.</p>	We appreciate this feedback and have updated paragraph 27(5)(b) of ED1 Rules (now paragraph 5-2(6)(b) of ED2 Rules) to make it clearer that only the name of the settlor is required.
37.	<p>PEP screening of agents</p> <p>Section 29 of ED1 Rules, requires an agent of the customer to be treated as a customer for the purposes of initial CDD. In reading section 40 of ED1 Rules, in conjunction with section 29, where an agent of the customer is a foreign PEP or a domestic PEP or an international organisation PEP and the ML/TF risk of the customer is high, in treating the agent as a customer, a reporting entity is required to</p>	<p>Section 28(2)(e) requires reporting entities to establish on reasonable grounds whether any person acting on behalf of the customer is a PEP or person designated for targeted financial sanctions.</p> <p>Paragraph 5-21(1)(a) of the ED2 Rules requires only that source of funds and source of wealth are required for foreign PEPs, or domestic or international organisation PEPs where the ML/TF risk is high. Furthermore, section 5-21 only requires establishing source of wealth and source of funds where the PEP is:</p> <ul style="list-style-type: none"> • the customer, • any beneficial owner of the customer, or

	<p>establish that agent’s source of funds and source of wealth before commencing to provide a designated service to the customer. FATF Recommendations only require a reporting entity to verify that an agent is authorised to act on behalf of the customer, and to identify and verify the identity of that person</p>	<ul style="list-style-type: none"> any person on whose behalf the customer is receiving the designated service (e.g. a beneficiary of a trust). <p>This does not require establishing source of wealth or source of funds where a PEP is acting on behalf of the customer.</p>
38.	<p>Agents and former verifying officer process</p> <p>Submissions requested clarification of the intent of the definition of an ‘agent’. It was noted that the Amended AML/CTF Act and ED1 Rules does not define this term and may be confused with the term ‘agents of customers’ under Chapter 4 of the AML/CTF Rules 2007 (i.e. verifying officers), and that the verifying officer framework was no longer included in ED1 Rules.</p> <p>It was also observed that the new requirement under section 29 of ED1 Rules to perform KYC/CDD on agents presents operational challenges, taking the view that the additional cost involved to implement new processes is not commensurate with the ML/TF risk. An agent under the Amended AML/CTF Act is considered to be an individual able to act on behalf of a customer, however, the actions are not considered to be effective management and control of the customer’s account.</p>	<p>FATF recommendation 10 requires regulated entities to verify that any person purporting to act on behalf of a customer is so authorised, and to identify and verify the identity of that person. Paragraph 28(2)(c) of the Amended AML/CTF Act and section 29 of ED1 Rules (now section 5-4 of ED2 Rules) reflect this requirement, and offer a more flexible and scalable approach than Chapter 4 in the AML/CTF Rules 2007.</p> <p>Reporting entities operationalising these requirements are enabled by the new rule to follow subsection 28(3) of the Amended AML/CTF Act relating to the collection and verification of KYC information.</p> <p>Notwithstanding, the AML/CTF regime does not prohibit a reporting entity from continuing to use the verifying officer framework to collect KYC information about agents of non-individual customers as long as it meets its obligations under the Act, including the appropriateness test under paragraph 28(3)(c) of the Act. Such an approach is unlikely to amount to ‘verification’ of KYC information given the data provided by the verifying officer is not independent of the customer.</p> <p>Finally, we note that the ‘effective management and control of a customer’s account’ test is contained within the definition of ‘signatory’ in section 5 of the Amended AML/CTF Act and does not have broader application beyond defining the customer of designated services in table 1 of section 6 under the Amended AML/CTF Act.</p>
39.	<p>Investment managers as customers rather than agents</p> <p>Submissions requested for the AML/CTF Rules to clarify the expectations for a reporting entity that engages with an investment manager who, in turn, has the authority to invest for underlying funds. In these circumstances, the</p>	<p>Unlike the Australian AML/CTF regime, the UK’s AML/CTF regime does not specify who the customer is in relation to the service being provided. In Australia, the customer for each type of designated service is expressly specified under the tables in section 6 of the Amended AML/CTF Act. The customer is determined by the circumstances of each case (particularly regarding who the designated service is being provided to). AUSTRAC does not have the power under the Act to specify under the Rules who a customer is if the circumstances dictate otherwise.</p>

reporting entity will take instructions from the investment manager in relation to the provision of products, such as debt/equity instruments and derivatives. The investment managers themselves are generally reporting entities. Proposal to reflect the approach undertaken by other jurisdictions to treat the investment manager as the customer – submissions pointed to a number of jurisdictions, particularly the UK and its JMLSG guidance regarding customer due diligence (including simplified and enhanced due diligence) for wholesale markets.

Under the Australian AML/CTF regime, reporting entities are required to consider the specific circumstances to determine the capacity in which the investment manager is receiving/obtaining a designated service. Depending on the circumstances, the investment manager may be construed as an agent, with the underlying fund being the customer. This creates practical difficulties as the ability of the reporting entity to request information to satisfy the KYC requirements in respect of the funds as customers will be practically difficult. It should be made clear that where the reporting entity is able to treat the investment manager as the customer, there is no additional requirement to collect and verify information in relation to the underlying fund, such as under section 29 of ED1 Rules.

As noted in the submissions, the framing of the roles of each person in the transaction will depend on the circumstances. However, based on the information provided, we do not see how there is an interpretation of the circumstances where subsections 28(1) and (2) of the Amended AML/CTF Act do not require a reporting entity to establish the identity of the investment manager and the underlying fund. For example, assuming that the designated services being provided by a reporting entity in these circumstances are the acquiring/disposing or issuing/selling of a security or derivative (items 33 [‘in the capacity of an agent’] and 35 of table 1 of section 6 of the Amended AML/CTF Act), and the designated service is being provided to:

- the underlying fund, the provision of which is facilitated by an investment manager authorised by that fund to act on its behalf:
 - the underlying fund is the customer, whose identity must be established pursuant to paragraph 28(2)(a) of the Amended AML/CTF Act. As the underlying fund is not an individual, the requirements under section 26 of ED1 Rules (now section 5-1 of ED2 Rules) must also be established.
 - the investment manager is the agent, whose identity must be established pursuant to paragraph 28(2)(c) of the Amended AML/CTF Act. The requirements under section 29 of ED1 Rules (now section 5-3 of ED2 Rules) must also be established.
- the investment manager who is a trustee of the underlying fund:
 - the investment manager is the customer, whose identity must be established pursuant to paragraph 28(2)(a) of the Amended AML/CTF Act. If the investment manager is not an individual, the requirements under section 26 of ED1 Rules (now section 5-1 of ED2 Rules) must also be established.
 - the underlying fund is a trust estate for the purposes of the Act, so the matters under subsection 27(5) of ED1 Rules (now subsection 5-2(6) of ED2 Rules) must be established.

We also note that simplified CDD under section 31 of the Amended AML/CTF Act operates similarly to the simplified CDD steps outlined in the JMLSG guidance regarding wholesale markets. A reporting entity is similarly open to applying simplified CDD if its circumstances meet the requirements under section 31 of the Amended AML/CTF Act.

40.	<p>Use of town agents for real estate settlement</p> <p>Responders sought an initial CDD exemption circumstances where a solicitor engages a town agent to assist in the delivery of a designated service. The exemption was sought on the basis that it is common convention that solicitors will act as an unpaid town agent at real estate settlements, or act for only modest remuneration. This convention plays a critical role in ensuring efficient settlements, particularly for clients in rural and remote regions where alternative arrangements are impractical.</p>	<p>We do not consider that an exemption for initial CDD in relation to town agents to be required.</p> <p>Based on the information provided, if a conveyancer or solicitor engages a town agent to attend settlement or undertake other on-ground activities, we interpret the client-engaged conveyancer/solicitor as having engaged the town agent as a contractor to deliver its designated services. In such circumstance, the town agent is not providing designated services in their own capacity and therefore would not need to undertake CDD on the buyer of the property or any other party in relation to being engaged as a town agent.</p> <p>Rather, it should be considered by the reporting entity as a person who is employed or otherwise engaged by it pursuant to paragraphs 26F(4)(d) and (e) of the Amended AML/CTF Act. For completeness, a reporting entity that intends to utilise the services of a town agent in circumstances as described should ensure that it is captured under its AML/CTF policies pursuant to paragraphs 26F(4)(d) and (e) of the Amended AML/CTF Act.</p>																			
41.	<p>Timing of real estate transactions</p> <p>Submissions proposed that real estate agents be permitted to delay the verification for initial customer due diligence as required under section 26 of ED1 Rules due to the practical challenges involved in the timing of real estate transactions where it is not practically feasible to identify and verify a customer in certain scenarios.</p> <p>For example, auction scenarios pose unique challenges as sales contracts are signed immediately after the fall of the hammer. Similarly, a prospective buyer may seek advice on a contract from a conveyancer only hours before an auction or placing an offer for a private treaty sale.</p> <p>Industry recommends that initial customer due diligence on the buyer should be performed after the contract has become unconditional, ensuring that all preliminary conditions are satisfied, but ensuring it is done within a</p>	<p>We have heard the feedback from responders regarding the impracticality of meeting initial CDD obligations under section 28 of the Act for real estate transactions where time is of the essence. Section 5-7 of ED2 Rules permits the delayed due diligence in real estate transactions in the following circumstances:</p> <table border="1" data-bbox="938 868 1991 1383"> <thead> <tr> <th><i>Reporting entity's role</i></th> <th><i>Designated service</i></th> <th><i>Customer of designated service</i></th> <th><i>Reporting entity has also previously provided that designated service to</i></th> </tr> </thead> <tbody> <tr> <td>Real estate agent representing the seller/transferor</td> <td>Item 1 of table 5</td> <td>Buyer/transferee</td> <td>Seller/transferor</td> </tr> <tr> <td>Buyer's agent representing the buyer/transferee</td> <td>Item 1 or table 5</td> <td>Seller/transferor</td> <td>Buyer/transferee</td> </tr> <tr> <td>Lawyer/conveyancer/accountant acting for the seller/transferor</td> <td>Item 1 of table 6</td> <td>Buyer/transferee</td> <td>N/A</td> </tr> </tbody> </table>				<i>Reporting entity's role</i>	<i>Designated service</i>	<i>Customer of designated service</i>	<i>Reporting entity has also previously provided that designated service to</i>	Real estate agent representing the seller/transferor	Item 1 of table 5	Buyer/transferee	Seller/transferor	Buyer's agent representing the buyer/transferee	Item 1 or table 5	Seller/transferor	Buyer/transferee	Lawyer/conveyancer/accountant acting for the seller/transferor	Item 1 of table 6	Buyer/transferee	N/A
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	<p>reasonable time frame before the settlement date to achieve the regulatory outcome.</p>	<p>For the avoidance of doubt, we note that the application of this rule in these circumstances is subject to the reporting entity satisfying the other requirements specified under section 29 of the Amended AML/CTF Act (e.g. that the additional ML/TF risk is low and that it has implemented AML/CTF policies to mitigate and manage the associated risks).</p> <p>We also note that this rule includes an additional requirement that settlement must be conditional on compliance with the requirements under subsection 28(1) of the Amended AML/CTF Act in relation to the customer. Practically, we understand that this will likely require some changes from industry regarding contracts and settlement procedures, but AUSTRAC considers this an appropriate balance of minimising both ML/TF risk and undue burden on reporting entities.</p> <p>More detail on this new rule can be found in the exposure draft explanatory statement.</p>
42.	<p>Other delayed verifications circumstances</p> <p>Submissions have responded to the consultation paper request for information on circumstances that require the urgent provision of a designated service with a number of examples across a variety of designated services.</p>	<p>In response, AUSTRAC has significantly opened up delayed verification. Section 5-6 of ED2 Rules permits the delayed verification of KYC information relating to the following matters under subsection 28(2) of the Amended AML/CTF Act:</p> <ul style="list-style-type: none"> • Paragraph (b) – the identity of any person on whose behalf the customer is receiving the designated service. • Paragraph (d) – if the customer is not an individual—the identity of any beneficiary owners of the customer. • Paragraph (g) – any other matter relating to the customer that is specified in the AML/CTF Rules. <p>This rule is designed to be available to all designated services provided in Australia and the delay relates only to verification. Verification must be completed as soon as reasonably possible within 30 days. Based on the information provided, we consider that this rule should resolve almost all circumstances identified in submissions, though further circumstances are welcome to be included in submissions.</p>

<p>43.</p>	<p>Determining the customer’s ML/TF risk when utilising a delayed verification rule</p> <p>Submissions sought clarity regarding how a reporting entity is to determine a customer’s ML/TF risk as required under paragraph 28(3)(b) of the Amended AML/CTF Act if it has utilised a delayed verification rule, given that such information will form an important input into determining the customer’s ML/TF risk.</p> <p>Responders proposed a rule that makes clear that a reporting entity relying on a delayed verification rule is not required to undertake the risk rating of the customer during the relevant period specified in subsection 29(c) of the Amended AML/CTF Act.</p>	<p>We do not consider that an exemption is not necessary in such circumstances as the obligation under paragraph 28(3)(b) of the Amended AML/CTF Act is ‘based on the KYC information about the customer that is <i>reasonably available</i> to the reporting entity before commencing to provide the designated service’ (emphasis added).</p> <p>For example, if a reporting entity has utilised PEP delayed initial due diligence under section 32 of the ED1 Rules (now section 5-9 of ED2 Rules), the PEP status of a customer would not be information that is reasonably available to the reporting entity prior to commencing the provision of the designated service. In such circumstance, the expectation is for the reporting entity to identify the customer’s ML/TF risk without that information. Once it has received confirmation of PEP status, the reporting entity would then review that ML/TF risk assessment as part of its ongoing CDD obligations under subparagraph 30(2)(b)(i) of the Amended AML/CTF Act.</p>
<p>44.</p>	<p>Utility of reliance provisions</p> <p>Submissions noted the view that the proposed reliance provisions in Division 7 of Part 5 of ED1 Rules do not currently provide a practical solution to reduce the overall burden on reporting entities, observing that reporting entities will be held liable for the proper collection and verification of KYC information, even if the information was incorrect because of another entity’s deficient process. Submissions noted that this makes the reliance provisions of no utility.</p>	<p>The reliance rules under sections 44 and 45 of ED1 Rules (now sections 5-26 and 5-27 of ED2 Rules) are made pursuant to sections 37A and 38 of the Amended AML/CTF Act, respectively. When read together, these reliance mechanisms allow reporting entities to be more efficient in how they meet their CDD obligations, while also ensuring that this is done so with protective controls in place to maintain the standard expected under our AML/CTF regime.</p> <p>This is particularly the case for written reliance agreements and arrangements pursuant to section 37B of the Amended AML/CTF Act and section 44 of ED1 Rules (now section 5-26 of ED2 Rules). As noted in the explanatory memorandum to the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019 (which first introduced sections 37A of the AML/CTF Act), the practical effect of reliance under section 37A of the Amended AML/CTF Act is to afford the relying reporting entity a safe harbour from liability where there exists isolated breaches of compliance given the due diligence done on the overall CDD arrangement. While liability does not extend to the relying reporting entity under a CDD arrangement that complies with the Amended AML/CTF Act and Rules, responsibility to remediate the breaches nonetheless remains with the relying reporting entity.</p> <p>Section 38 of the Amended AML/CTF Act provides for case-by-case reliance, without the assurance</p>

		<p>of a CDD arrangement that is subject to due diligence, and therefore it is appropriate that liability for failing to meet initial CDD obligations remain with the relying reporting entity.</p> <p>The intent is not for reliance mechanisms to be used by a reporting entity to transfer its obligations under the Amended AML/CTF Act. Rather, the ultimate aim is to reduce the costs associated with conducting CDD by providing reporting entities with greater flexibility to rely upon CDD procedures undertaken by a broader range of Australian and foreign entities.</p> <p>The design of the reliance framework is in acknowledgement of the regulatory costs incurred by reporting entities in meeting its CDD obligations under the Amended AML/CTF Act and Rules, while also ensuring that ML/TF/PF risks are still being mitigated and managed. As with all commercial contracts, the variability of circumstances between each entity involved in the reliance agreement or arrangement will require the parties to test the appropriateness of the agreement or arrangement. This may involve the relying reporting entity establishing reasonable grounds to believe that the reliance requirements are met (see paragraph 37A(1)(b) of the Amended AML/CTF Act) by undertaking due diligence and enquiries on the other entity's CDD policies. It is ultimately for the relying reporting entity to determine whether its circumstances will allow for it to utilise the reliance framework as provided under the Amended AML/CTF Act and Rules.</p>
45.	<p>CDD reliance for all real estate transactions</p> <p>Responders noted that reliance under the Amended AML/CTF Act and ED1 Rules is linear and is backward looking only, i.e. only reporting entities further down the transaction chain can rely on reporting entities earlier in the chain. Submissions observed that the reliance provisions under ED1 Rules currently limit reliance of collection and verification to circumstances where those KYC activities have already been performed.</p> <p>Responders from the real estate sector and e-conveyancing sector proposed allowance in the AML/CTF Rules to enable reliance and information sharing between reporting entities involved in the same real estate</p>	<p>In response to requests for reliance and information sharing models for real estate transactions, AUSTRAC has developed section 5-15 in ED2 Rules, which are designed to:</p> <ul style="list-style-type: none"> • reduce duplication of CDD processes for customers; • reduce compliance burden and cost for reporting entities involved; • open up CDD reliance so that a real estate agent may rely on some elements of initial undertaken by another reporting entity <i>after</i> the real estate agent commenced to provide a designated service; • enable reporting entities with less capacity to understand more complex matters (such as official legal documentation, and determining beneficial owners, trust beneficiaries and trustees) to rely on other reporting entities in the transaction regardless of the sequencing of customer interactions. <p>Section 5-15 in ED2 Rules will permit forward-looking reliance between reporting entities where:</p> <p>Each reporting entity in the arrangement establishes on reasonable grounds to the matters in</p>

transaction by way of an e-conveyancing platform. Responders asserted that it would be more efficient and streamlined if the solicitor or conveyancer were able to perform the more complex KYC checks (such as PEP screening, beneficial owner checks including ASIC checks etc.) to cover the entire transaction, because:

- solicitors and conveyancers are often better equipped, better resourced and better placed to perform the more complex and onerous types of customer checks;
- real estate agents may not have sufficient knowledge and training to properly carry out optimal checks; and
- it would avoid duplication of customer identification processes.

The proposed approach would still require real estate agents to perform simpler due diligence activities like identity verification of the 'customer', and included safeguards such as:

- the vendor and purchaser being required to authorise collection and sharing of their KYC information;
- agreement from reporting entities to be sought in end-user agreements or membership agreements; and
- measures to stop a transaction from completion if CDD has not yet been performed.

paragraphs 28(2)(a) and (f) of the Amended AML/CTF Act, i.e.:

- the identity of its customer/s (noting that, for each reporting entity in the arrangement and depending on the designated service that it is providing, the reporting entity may have more than one customer and the customer/s may be different for each reporting entity in the arrangement);
- the nature and purpose of the business relationship or occasional transaction with its customer/s (which will be different for each reporting entity involved in a real estate transaction).
- each reporting entity in the arrangement collects at the minimum KYC information about their customer in relation the matters in paragraphs 28(2)(b)-(e) and (g) of the Amended AML/CTF Act; and
- at least one reporting entity in the arrangement with a relying reporting entity will verify KYC information related to the matters in paragraphs 28(2)(b)-(e) and (g) of the Amended AML/CTF Act, as appropriate to the ML/TF risk of the customer.

Section 5-15 of ED2 Rules is technology neutral, so will facilitate competition and ensure reporting entities are not locked in to one platform provider in order to gain benefits.

Reporting entities are not obliged to participate in arrangements under section 5-15 of ED2 Rules.

46.	<p>Interaction of reliance provisions with section 26T exemption</p> <p>Submissions noted that reliance provisions can result in item 54 reporting entities undertaking additional obligations beyond their legal requirements of the Amended AML/CTF Act and ED1 Rules. This occurs where a financial product provider, who is also a reporting entity, incorporates the reliance agreement into its product distribution agreement it has with item 54 reporting entities. It was noted that the terms of the reliance agreement often require the item 54 reporting entity to undertake obligations for the financial product provider they are exempt from, such as ongoing CDD, or they are prevented from distributing or arranging that financial product/s for their clients.</p>	<p>The reliance provisions in the AML/CTF Rules relate only to initial CDD obligations under section 28 (and, if relevant, section 29) of the Amended AML/CTF Act. It is for a reporting entity to assess any arrangement or agreement it enters into (whether or not for the purposes of reliance under Division 7 of Part 5 of ED1 Rules/ED2 Rules) to consider the impact that the arrangement or agreement may have on its obligations and exemptions under the Amended AML/CTF Act and Rules, and determine whether it can meet its obligations under the AML/CTF regime.</p>
47.	<p>Application of alternate CDD Verification</p> <p>Submissions requested that a rule be made to expand the requirements in section 38 of ED1 Rules to non-individuals, noting the inability to provide relief to a customer's related party that is unable to provide, obtain or access information will impact customers' ability to authorise other persons to operate their account or for an RE to de-risking customers through financial exclusion practices (e.g. through practices such as de-banking).</p>	<p>The operation of section 38 of ED1 Rules (now section 5-16 of ED2 Rules) is only limited to individuals where they are the customer (see subsection (a) of that rule). The rule can be applied to non-individuals where the reporting entity is experiencing challenges in establishing on reasonable grounds that non-individual's identity in their capacity as a related non-customer under paragraphs 28(2)(b)-(d) of the Amended AML/CTF Act (e.g. the non-individual is the customer's agent).</p> <p>Separately, we note that the mechanisms under the amended Act and Rules scalable to adjust for the different the level of ML/TF risk and circumstances that arise across reporting entities, customer types and designated service types, amongst other things. Accordingly, a reporting entity experiencing challenges in establishing the matters under subsection 28(2) of the Amended AML/CTF Act in relation to a customer or related non-customer should not, in itself, result in automatic de-risking of customers through financial exclusion practices. FATF considers that managing and mitigating a customer's ML/TF risk by adopting financial exclusion practices rather than through appropriate measures and controls is not risk-based and is a curtailment of human</p>

		<p>rights. We recommend any reporting entity to consider how the mechanisms under the amended Act and Rules can apply to the relevant circumstances before utilising this rule and/or debanking a customer.</p> <p>For example, establishing the matters under subsection 28(2) of the Amended AML/CTF Act on reasonable grounds is subject to the operation of, amongst other things, paragraph 28(3)(d) of the Amended AML/CTF Act. The reporting entity may consider that it is appropriate to the customer's ML/TF risk to reduce the level of verification of KYC information on a non-individual related non-customer, particularly if it can offer that customer a low-risk product (such as those identified under the Banking Code of Practice</p>
48.	<p>Monitoring for money laundering predicate offences</p> <p>Submissions raised concerns that section 39 of ED1 Rules may necessitate significant updates to transaction monitoring systems and additional resource allocation, ultimately increasing compliance costs without a clear benefit in risk identification, mitigation, or management, and risk of over reporting. Submissions proposed that the Rule is limited only to ML/TF/PF.</p>	<p>The intent of this rule is to lower the impost on reporting entities in meeting its monitoring requirements under paragraph 30(2)(a) of the Amended AML/CTF Act by narrowing that requirement for relevance to the objects of the Amended AML/CTF Act. The offence types listed under subsection 39(b) of ED1 Rules (now subsection 5-20(b) of ED2 Rules) aligns with FATF's list of designated categories of offences (including money laundering predicate offences).</p> <p>Section 5-20 of ED2 Rules is made for the purposes of paragraph 30(3)(b) of the Amended AML/CTF Act and sets out the circumstances in which a reporting entity is taken to comply with the requirements under subsection 30(2) of the Amended AML/CTF Act. This rule specifically relates to a reporting entity's customer monitoring obligation under paragraph 30(2)(a) of the Amended AML/CTF Act with paragraph 41(1)(f)(iii) of the Amended AML/CTF Act regarding the provision of a designated service that may be relevant to the investigation or prosecution of a person for an offence against a law of the Commonwealth, State or Territory.</p> <p>The requirement under paragraph 41(1)(f)(iii) of the Amended AML/CTF Act is a broad obligation that covers the full scope of criminal offences in all jurisdictions in Australia, extending to offences that are unlikely to relate to ML, TF or PF (such as bigamy under section 94 of the <i>Marriage Act 1961</i>, or flying a kite to the annoyance of any person in a public place under section 4 of the <i>Summary Offences Act 1966 (Vic)</i>). Section 5-20 of ED2 Rules offers regulatory relief, and acknowledges the burden, practical challenges and limited utility in requiring reporting entities to</p>

		monitor for all types of offences.
49.	<p>Foreign and domestic PEPs and permanent establishments outside of Australia</p> <p>Clarification is sought as to the meaning of foreign and domestic PEP with respect to customers receiving a designated service at or through a permanent establishment outside Australia.</p> <p>Submissions requested domestic PEP and foreign PEP be defined by reference to the jurisdiction in which the reporting entity is providing the designated service.</p>	<p>AUSTRAC does not have the power under the Amended AML/CTF Act to make change as requested.</p> <p>However, AUSTRAC has addressed the underlying issue with the inclusion of subsections 4-11(2), 5-21(3) and 5-23(2) of ED2 Rules, which permits a reporting entity to apply domestic PEP requirements (instead of foreign PEP requirements) where the designated service is provided to a PEP of the same country that the designated service is provided within.</p> <p>For example, a United States based branch of a reporting entity providing a designated service to a Senator of the United States will only be required to establish the source of the PEP's funds and wealth, and seek senior manager approval if the ML/TF risk of the Senator is high.</p>
50.	<p>'Domestic PEP' definition (local government)</p> <p>Submissions noted that subsection 7(j) of ED1 Rules is particularly wide and could capture, for example, all persons who sit on boards of charities and many not-for-profit organisations, including the councils of the state and territory law societies, bar associations and the Law Council, as well as all of their families. That appears excessive. Submissions recommended that the rule be narrowed significantly, including (perhaps) to only capture public authorities. Submissions noted that, if AUSTRAC intends section 7 of ED1 Rules to capture someone, it should be defined tightly, so that it does not inadvertently include persons who are not of interest to AUSTRAC, such as those serving on not-for-profit and other community groups.</p> <p>Some submissions also argued that it is not justifiable that Mayors and members of local councils are considered</p>	<p>We acknowledge the potential breadth of the obligation if all local government is captured under the domestic PEP definition. However, we do not consider the wholesale removal of local government from the definition to be appropriate. The definition in section 5 of the Amended AML/CTF Act together with the rule under section 7 of ED1 Rules (now section 1-5 of ED2 Rules) seeks to bring the definition of domestic PEP in line with FATF requirements. The FATF guidance notes that 'prominent public function' is determined by the size of the organisation, the particular organisational framework, the powers and responsibilities associated with particular public functions and other factors considered as part of the national risk assessment. It also notes that prominent public functions may exist at the federal, state or provincial/municipal levels.</p> <p>We consider that mayors and members of local councils (i.e. councillors) are prominent public positions and are not 'middle ranking or more junior' roles. Development approvals and many grants are determined by local government councils, with the councillors and the mayor (or their delegates) as the key decision makers. AUSTRAC's 2024 national risk assessment identifies the purchase of Australian real estate as a methodology often used by PEPs to move suspicious funds into Australia, noting that PEPs of all kinds are attractive targets for bribery and corruption given their capacity to influence, amongst other things, development approvals and grants.</p> <p>Notwithstanding, given the challenges highlighted in submissions, we have amended the domestic PEP definition to narrow the scope to the head and members of State and Territory government</p>

	<p>domestic PEPs as it expands beyond the FATF definition of ‘individuals who are or have been entrusted domestically with prominent public positions’. It also notes that ‘the definition of PEPs is not intended to cover middle ranking or more junior individuals’.</p> <p>Submissions expressed concern that this definition is likely to expand the volume of PEP positions significantly with roles and this increased compliance burden is not commensurate to the risk, particularly as it is unclear whether PEP verification service providers (such as WorldCheck) capture this information.</p>	<p>bodies under oversight by an anti-corruption or integrity body.</p>
<p>51.</p>	<p>Interaction between senior manager approval for PEP customers, delayed verification of PEPs, and SOW/F checks</p> <p>Section 19 of ED1 Rules requires senior management approval to be obtained prior to the provision of a designated service in some circumstances, subject to the customer’s PEP status. When the exemption at section 32 of ED1 Rules is applied, senior management approval cannot be sought prior to the provision of a designated service as the customer’s status as a PEP is not known. Proposal for section 40 of ED1 Rules to be amended to require senior management approval as soon as practicable after the customer’s status as a PEP is known when section 32 of ED1 Rules applies.</p>	<p>AUSTRAC acknowledges the practical challenges in meeting the senior management approval and source of funds and wealth checks obligations under subparagraphs 19(1)(b) and (c) and section 40 of ED1 Rules (now subparagraphs 4-11(1)(b) and (c) and section 5-21 of ED2 Rules) when verification has been delayed in accordance with section 32 of ED1 Rules (now section 5-9 of ED2 Rules). Accordingly, additional wording has been added as follows:</p> <ul style="list-style-type: none"> • Section 19 of ED1 Rules (now section 4-11 of ED2 Rules) has been amended so that the requirement to seek senior manager approval prior to commencing to provide a designated service is triggered when the reporting entity establishes the PEP status on reasonable grounds in line with the requirement under subparagraph 28(2)(e)(i) of the Amended AML/CTF Act. The rule has also been amended to capture senior manager approval for continuing to provide designated services to a customer that meets the PEP thresholds. • Section 32(2) of ED1 Rules (now section 5-9 of ED2 Rules) has been amended so that the matters under section 40 of ED1 Rules (now section 5-21 of ED2 Rules) are also delayed. The rule also adds a requirement for the reporting entity to collect (but not verify) certain information regarding the PEP’s source of wealth and funds.

52.

Enhanced CDD – nested services relationships

Financial institutions suggested that Amended AML/CTF Act's definition of nested services relationship by using "the customer uses the designated service to provide services to its own customers... in another country" is too vague and is broader than the intent as clarified by the FATF Guidance Correspondent Banking Services, for which the scope is for correspondent institutions whose accounts are used to process and/or execute the transaction of customer of its respondent institutions. Financial institutions consider that 'uses the designated service to provide services' is too broad given the variety of designated services that are prescribed under s6 of the Act.

Financial institutions raised section 42 of ED1 Rules, as difficult to assess and substantiate, noting it is particularly onerous to determine the appropriateness of the customer's systems and controls.

Section 42 of ED1 Rules (now section 5-24 of ED2 Rules) duplicate the requirements for correspondent banking for a nested services context.

'Nested services relationship' is defined in section 5 of the Amended AML/CTF Act to mean a relationship that involves the provision of a designated service by a reporting entity that is a remitter, virtual asset service provider or financial institution to a customer that is a remitter, virtual asset service provider or financial institution where:

- the reporting entity provides the designated service at or through a permanent establishment in one country; and
- the customer uses the designated service to provide services to its own customers at or through a permanent establishment in another country; and
- the relationship is not a correspondent banking relationship.

Paragraph (c) of the definition is particularly relevant to the concerns of financial institutions, as it exempts correspondent banking relationships between two financial institutions. Responders should also understand the definition of correspondent banking relationship in section 5 of the Amended AML/CTF Act, and note that is broader than common industry usage of the term:

"correspondent banking relationship means a relationship that involves the provision by a financial institution (the first financial institution) of banking services to another financial institution, where:

- the first financial institution carries on an activity or business at or through a permanent establishment of the financial institution in a particular country; and
- the other financial institution carries on an activity or business at or through a permanent establishment of the other financial institution in another country; and
- the correspondent banking relationship relates, in whole or in part, to those permanent establishments; and
- the relationship is not of a kind specified in the AML/CTF Rules; and
- the banking services are not of a kind specified in the AML/CTF Rules."

AUSTRAC recommends that financial institutions use existing tools used to assess correspondent banks in the nested services relationship context as a practical way to meet the requirements under the Amended AML/CTF Act and Rules.

53.	<p>‘Business group’ in the context of nested services relationship due diligence and correspondent banking due diligence</p> <p>Financial institutions noted that subsection 42(f) and paragraph 50(3)(f) of ED1 Rules that require a reporting entity to consider whether the correspondent bank/virtual asset service provider and the members of its business group are subject of adverse, criminal and/or regulatory action.</p> <p>This creates a discrepancy with the correspondent banking requirement in subparagraph 3.1.3(6) of the AML/CTF Rules 2007, which limits the reporting entity’s obligation to considering whether 'the respondent and any related body corporate' are subject of adverse, criminal and/or regulatory action subparagraph described in the current Rules.</p> <p>The change in terms essentially introduces additional prescription by adding the requirement to identify all other members of the business group (as defined, many entities beyond the <i>Corporations Act 2001</i>) for the respondent and conducting public checks on them.</p> <p>Introducing this defined term within this context is considered to be a burdensome prescription.</p>	<p>AUSTRAC has narrowed the reference to business group in subsection 42(f) and paragraph 50(3)(f) of ED1 Rules (now subsection 5-24(f) and paragraph 6-1(3)(f) of ED2 Rules) to be confined to the respondent’s members of the business group that are financial institution, virtual asset services providers or remitters. This allows reporting entities entering correspondent banking relationships, or nested services relationships to confine due diligence to relevant members of the business group.</p>
54.	<p>Beneficial owners</p> <p>Responders requested a new section in the AML/CTF Rules that would allow for beneficial owners to not have to be identified, specifically to provide deemed compliance with paragraph 28(2)(d) of the Amended AML/CTF Act in</p>	<p>AUSTRAC has included new 5-15 section in ED2 Rules which provides deemed compliance for beneficial owners of certain types of customers. This deemed compliance applies where:</p> <ul style="list-style-type: none"> • the ML/TF risk of the customer is low; • section 32 of the Amended AML/CTF Act does not apply; and • the reporting entity establishes that the customer is indeed of a type prescribed by the

	<p>circumstances similar to current subparagraph 4.12.2(2) of the AML/CTF Rules 2007.</p>	<p>section.</p> <p>Section 5-15 of ED2 Rules also substitutes the requirement to identify beneficial owners with the requirement to identify the individual, or each member of the group of individuals, with primary responsibility for the governance and executive decisions of the customer as is required by FATF recommendation 10 where beneficial owners are not identified.</p>
55.	<p>Foreign customers</p> <p>Responders queried whether simplified CDD can be applied to customers based overseas (e.g. foreign companies) or whether its application is limited to customers based in Australia.</p>	<p>The principle underpinning simplified CDD is that it can be applied where a reporting entity identifies the customer's ML/TF risk is low and enhanced CDD does not apply to that customer. Whether a reporting entity can meet those ML/TF risk thresholds to apply simplified CDD (such as where the customer is a foreign company) will ultimately be for the reporting entity to determine.</p> <p>Consistent with the risk-based approach, the Amended AML/CTF Act and Rules do not prescribe a customer's ML/TF risk outside of where it is required under the FATF recommendations, such as in relation to PEPs and persons designated for targeted financial sanctions.</p> <p>This is the approach reflected in the initial CDD framework under section 28 of the Amended AML/CTF Act. As a reporting entity must determine the customer's ML/TF risk as part of its initial CDD processes (i.e. based on the KYC information about the customer that is reasonably available to the reporting entity before commencing to provide the designated service pursuant to paragraph 28(3)(d) of the Amended AML/CTF Act), the application of simplified CDD to its customers should be dealt with in a reporting entity's AML/CTF policies on CDD. For example, a reporting entity may develop processes that address circumstances where designated services are provided to certain kinds of customers and consider those circumstances to be low risk (subject to other matters in subsection 28(4) of the Amended AML/CTF Act).</p> <p>Section 5-15 of ED2 Rules regarding simplified beneficial ownership is purposefully jurisdiction neutral, meaning that so far as the requirements in that rule are met, the simplified beneficial ownership due diligence is available to a reporting entity.</p>
56.	<p>Nature of a customer's business</p> <p>Submissions noted that section 27 of ED1 Rules appears to introduce a new requirement for the reporting entity to</p>	<p>FATF recommendation 10 explicitly requires regulated entities to understand the nature of a customer's business, where the customer is operating a business. AUSTRAC's expectation is that reporting entities will make appropriate enquiries during on-boarding a customer to understand, at least at a high level, why they are obtaining the reporting entity's designated services, and that</p>

<p>determine whether the provision of a designated service relates to ‘the customer’s conduct of a business’ and if it does, then to collect ‘nature of business’. Responders queried whether this requirement intended to apply only where the reporting entity is ‘on-notice’ about the customer carrying on a business, or is the reporting entity expected to explicitly ask the customer whether the provision of the designated service will relate to their carrying-on of a business.</p>	<p>if the designated service relates to business conducted by the customer, the reporting entity needs to understand also at a high level, the nature of the customer’s business.</p> <p>The purpose is twofold: first, to prevent the unlawful use of legal structures, by gaining a sufficient understanding of the customer to be able to properly assess the potential money laundering and terrorist financing risks associated with the business relationship; and, second, to take appropriate steps to mitigate the risks.</p> <p>Where a reporting entity detects transactions behaviour that is inconsistent with its understanding of the kind of customer (such as bank account activity on a personal transaction more akin to a business trading account, or precious product purchases by an individual which represent wholesale purchasing), the AML/CTF regime is designed so that paragraphs 30(2)(a) and (5)(d) and subparagraph 30(2)(c)(i) of the Amended AML/CTF Act are triggered. This would require the reporting entity to apply ongoing CDD measures which may involve making further enquiries with the customer about the nature of their use of designated services.</p>
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Part 7 – Transfers of value

#	Feedback provided	AUSTRAC response
57.	<p>Card-based pull payment</p> <p>Section 56 and 57 of ED1 Rules prescribes obligations of ordering and beneficiary institutions (respectively) for collecting, verifying and passing on information in a transfer of value in the table. ‘Card-based pull payment’ is utilised in Items 5 and 6 in the table under section 56 and 57 of ED1 Rules. Submissions requested explanation of what is meant by ‘card-based pull payment’ as it has not been previously defined, and examples of the type of payments this term is intended to cover.</p>	<p>Section 5 of ED1 Rules (now section 1-4 of ED2 Rules) defines ‘card-based pull payment’. A transfer of value is a card-based pull payment if:</p> <ul style="list-style-type: none"> • the value transferred is money; and • the transfer arises from the use of any of the following: <ul style="list-style-type: none"> ○ a credit card; ○ a debit card; ○ a stored value card; and • the ordering institution issued that card; and • the beneficiary institution initiates the transfer by sending the payer’s instruction for the transfer to the ordering institution; and • the beneficiary institution pays, or accepts liability to pay, the payee the money; and • in giving effect to the transfer, the money is transferred from the ordering institution to the beneficiary institution. <p>A card-based pull payment fundamentally works by requiring the payer to provide consent for the merchant acquirer to pull a specified value from the payer’s nominated account with the card issuer. Typically, the merchant acquirer will convey the payer/card-holder’s instruction to the card issuer which will then determine whether to ‘accept’ the instruction (as the ordering institution). Card-based pull payments are typically used to pay for goods and services purchased from merchants, or to make donations to charities etc.</p>
58.	<p>‘Payer Information’ definition</p> <p>Section 17 of ED1 Rules requires reporting entities ensure information reported is "complete, accurate and free from unauthorised change". Some submissions sought to clarify how this requirement extends to the reporting of payer information required under section 56 of ED1 Rules.</p>	<p>Section 17 of ED1 Rules (now section 4-9 of ED2 Rules) prescribes that information reported by the entity under sections 41, 43, 46 and 46A of the Amended AML/CTF Act must be complete, accurate and free from unauthorised change. It does not apply to ‘travel rule’ obligations under Part 5 of the Amended AML/CTF Act as these are not reporting obligations.</p> <p>The content and requirements for International Value Transfer Reports and Unverified Self-Hosted Wallet Reports will be addressed in future AML/CTF Rules that will be subject to consultation at a later date. This will include consideration of any appropriate qualifications for reporting field, e.g.</p>

	Specifically, does the payer information that is reported require to be 'complete and accurate', and if so, how would completeness and accuracy be expected to be determined by the reporting entity.	'if known', 'as appears in the transfer message' etc.
59.	<p>Interpretation and application of 'offsetting arrangement'</p> <p>Submissions sought clarification of the meaning of 'offsetting arrangement' used in ED1 Rules. It was noted that the term was expressed as including hawala type payments, however, the term is not limited to that type.</p>	<p>Offsetting arrangements must be understood in the context of the Amended AML/CTF Act definition of 'transfer', which 'includes any act or thing, or any series or combination of acts or things, that may reasonably be regarded as the economic equivalent of a transfer (for example, debiting an amount from a person's account and crediting an equivalent amount to another person's account)'.</p> <p>Offsetting is a method of value transfer using reciprocal debit and credit arrangements between businesses (see AUSTRAC Independent Remittance Dealers in Australia Risk Assessment at p 7). Traditional and informal remittance methods often use offsetting arrangements—in some cases neither the ordering institution nor the beneficiary institution will hold the value being transferred at any point, but instead arrange for a combination of payments between third parties which result in the desired transfers of value.</p> <p>For example, remitters can arrange for two cross-border transfers of value in which they neither hold the value at any point nor does the value physically or electronically cross the border. This is done by arranging for customer A to transfer \$100 to customer B both in Australia, and customer C to transfer \$100 to customer D both in a foreign country—this offsetting arrangement results in two effective cross-border transfers of \$100, one from A to D and another from C to B).</p>
60.	<p>Interpretation and application of 'accept an instruction'</p> <p>Submissions sought clarification as to the meaning of 'accept an instruction' as used in ED1 Rules, noting that it is unclear what real-world action would constitute an acceptance (e.g. simply receiving it, or the review the instruction, or the first act in carrying out the instruction).</p>	<p>Section 54 of ED1 Rules (now section 7-1 of ED2 Rules) specifies that an ordering institution must accept an instruction for the transfer of value. Acceptance of an instruction is distinguished by the ordering institution having the capacity and capability to give effect to the instruction. Examples of how an instruction might be accepted will be covered through example scenarios in guidance.</p>

61.	<p>'Another source'</p> <p>Submissions sought clarification of the meaning of 'another source' used in paragraph 54(3)(b) of ED1 Rules.</p>	<p>Section 54 of ED1 Rules (now section 7-1 of ED2 Rules) has been amended so that it no longer refers to 'another source'. The rule has been clarified to refer to a third-party deposit taker or credit provider.</p>
62.	<p>Interpretation of the 'ordering institution', 'beneficiary institution' and 'intermediary institution' definitions</p> <p>Division 1 of Part 7 of ED1 Rules prescribes criteria relating to a reporting entity's determination of who an ordering or beneficiary institution is. Some submissions requested guidance or further explanation of how a reporting entity is to:</p> <ul style="list-style-type: none"> • utilise the 'priority' concept in the prescribed criteria; and • determine who is an ordering, beneficiary and/or intermediary when multiple entities are involved in the value chain. <p>Submissions also sought clarification on whether the definitions inadvertently captured software providers, suggesting that the AML/CTF Rules should not capture software providers.</p>	<p>Division 1 of Part 7 of ED1/ED2 Rules has been amended and no longer includes the 'priority' concept in the prescribed criteria for determination of who is an ordering or beneficiary institution.</p> <p>In the ED2 Rules, it is expected that an entity determines if it is an ordering or beneficiary institution in the following manner:</p> <ul style="list-style-type: none"> • Identify if it is providing a designated service under item 29 or 30 of table 1 in section 6 of the Amended AML/CTF Act; • If the entity is providing a designated service item 29 or 30 of table 1 in section 6 of the Amended AML/CTF Act, determine if it is fulfilling any of the circumstances prescribed in the criteria under subsection 54(2) and 55(2) of ED1 Rules (now subsections 7-1(2) and 7-2(2) of ED2 Rules). <p>Determining who the ordering institution in any value transfer chain is will depend on which institution 'accepts' the instruction from the payer. Acceptance of an instruction requires more than merely receiving an instruction and passing it on with no expectation that the person passing on the instruction will begin to carry out the instruction – the ordering institution must have some capacity to determine whether to give effect to the instruction.</p> <p>A beneficiary institution in the value chain is primarily dependent on which institution is making the value available to the payee. The value may be made available to the payee in any of the circumstances prescribed under subsection 55(2) of ED1 Rules (now subsection 7-2(2) of ED2 Rules), but the beneficiary institution ultimately controls whether the value is to be made available to the payee.</p> <p>Institutions that pass on the instruction through the funds transfer chain are referred to as intermediary institutions. An intermediary institution need not be a financial institution—any person can be an intermediary institution if it passes on the instruction. However, passing on an instruction is distinct from simply providing a communications network to permit an instruction to</p>

		<p>be sent. Instruction messaging services like Swift or the NPP and the operators of card schemes will generally not be intermediary institutions, but institutions using those services will be if they 'pass on' instructions through these messaging services.</p> <p>Guidance will illustrate a range of different scenarios to assist reporting entities in determining whether they are an ordering institution, intermediary institution or beneficiary institution.</p>
63.	<p>Interpretation and application of 'reasonable steps to monitor'</p> <p>Submissions sought clarification of the meaning of 'reasonable steps to monitor' as used in sections 57 and 58 of ED1 Rules.</p>	<p>The Amended AML/CTF Act requires that a beneficiary institution take reasonable steps to monitor whether it has received required travel rule information (section 57 of ED1 Rules, now section 7-4 of ED2 Rules) and whether the information about the payee (its customer) is accurate. Section 21 of ED1 Rules (now section 4-14 of ED2 Rules) requires that a beneficiary institution's AML/CTF policies deal with how the beneficiary institution will meet these requirements. These AML/CTF policies sit under paragraph 26F(3)(a) of the Amended AML/CTF Act and must therefore manage and mitigate the ML/TF risks the beneficiary institution reasonably faces providing designated services as a beneficiary institution. Such AML/CTF policies must also be appropriate to the nature, size and complexity of the beneficiary institution's business.</p> <p>The AML/CTF Rules also require that an intermediary institution take reasonable steps to monitor whether it has received such information as prescribed in the table (section 58 of ED1 Rules, now section 7-5 of ED2 Rules). The intermediary institution, not having a direct customer relationship with either the payer or payee, is not required to monitor information for accuracy, although it is required to monitor for possible SMRs (obviously fictitious names identified through monitoring may trigger an SMR, for example).</p> <p>What will constitute reasonable steps to monitor will therefore be determined by what is appropriate to mitigate the ML/TF risk and the nature, size and complexity of the reporting entity's business. A small remitter with few transactions per month may be able to manually review each transfer real time, while a major bank processing high volumes of transactions may instead use sampling and quality assurance on a periodic basis (with appropriate follow-up for systemic issues).</p> <p>This approach implements FATF recommendation as detailed in the FATF methodology 16.3 (beneficiary institutions) and 16.11 (intermediary institutions).</p>

64.	<p>Practical implications from requirements to collect payer and payee information</p> <p>Sections 56-58 of ED1 Rules prescribe obligations on ordering, beneficiary and intermediary institutions with regards to handling of information:</p> <ul style="list-style-type: none"> • Section 56 of ED1 Rules prescribes that an ordering institution is required to collect, verify, and/or pass on information in particular circumstances specified in the table. • Section 57 of ED1 Rules prescribes that a beneficiary institution is required to monitor for information in the circumstances specified in the table. • Section 58 of ED1 Rules prescribes that an intermediary is required to monitor and/or pass on information in the circumstances specified in the table. <p>Some submissions sought additional information on how a reporting entity is expected to verify payer information. Specifically, several submissions raised concerns that information collection and verification in virtual asset value transfer chains will be more difficult and subject to delays.</p> <p>Additionally, submissions expressed concerns that the drafting may cause duplications in information collection.</p>	<p>The drafting in the AML/CTF Rules 2007 does not create duplications in information collection due to each party in the value transfer chain having a distinct role in information handling. Specifically, only the one ordering institution in the value transfer chain should be collecting and verifying (where applicable) information prior to passing it on to an intermediary or beneficiary institution.</p> <p>The ordering institution is required to verify payer information, that is, information about its own customer as set out in the designated service in item 29 of table 1 in section 6 of the Amended AML/CTF Act. Therefore, an ordering institution will always have undertaken some verification of the payer as part of CDD. However, depending on the payer information that the ordering institution proposes to include in the transfer message, the ordering institution may need to verify additional KYC information. There is no requirement for the ordering institution to verify payee information.</p> <p>The beneficiary institution and any intermediary institution are not required to verify payer information.</p>
65.	<p>Scope of bank-to-bank transfer exemptions</p> <p>Subsection 59(2) of ED1 Rules prescribes that Part 5 of the Amended AML/CTF Act – that is, obligations relating to transfers of value – does not apply to a transfer of value if</p>	<p>AUSTRAC will develop and consult about rules related to International Value Transfer Service reporting in future.</p>

	<p>the payer and payee are financial institutions or acting on their own behalf. Additionally, paragraph 59(2)(b) of ED1 Rules prescribes that Part 5 of the Amended AML/CTF Act does not apply to a transfer of value if the payer and payee are supervised financial institutions within the meaning of the document titled SWIFT Corporate Rules. These prescribed conditions could include 'bank-to-bank' transfers of value. The submissions sought to clarify whether or not such 'bank-to-bank' transfers of value covered under subsections 59(2)-(3) of ED1 Rules were intended to be exempted from reports of international value transfer services prescribed under section 46 of the Amended AML/CTF Act.</p>	
66.	<p>Sunrise issue</p> <p>Submissions observed that, as part of the AML/CTF regime reforms in Australia, the 'travel rule' requirements have been aligned to FATF Recommendations 15 and 16. Submissions also noted that, at this stage, not all jurisdictions who are cooperative with the FATF Recommendations have aligned their respective domestic regimes to align with Recommendation 15 and 16. As a result, discrepancies between jurisdictions may create practical difficulties for reporting entities in complying with ED1 Rules, specifically regarding:</p> <ul style="list-style-type: none"> • Requiring information to accompany a transfer of value under the Australian regime which is not required and therefore provided in another jurisdiction • A reporting entity being required to fulfil various roles and/or obligations in the value transfer chain 	<p>The Amended AML/CTF Act and Rules clearly prescribe the expectations for Australian reporting entities regarding the transfer of value. The definitions of ordering, intermediary and beneficiary institutions under the Amended AML/CTF Act align with the global FATF standards. If requirements prescribed in the legislation regarding a transfer of value are unable to be met, the reporting entity must not commence to provide, or must cease providing, the designated service.</p> <p>To address the sunrise issue which affects virtual asset transfers, some flexibility has been offered in subsections 66A(9) and (10) of the Amended AML/CTF Act – the exception to the requirement to pass on or receive travel rule information is triggered where an Australian reporting entity establishes on reasonable grounds that an institution in the value transfer chain is not capable of complying with the travel rule securely. This is an objective test and the reason underpinning the use of this exception must be documented. This consideration goes to capability, and not mere unwillingness or inconvenience in complying. We consider that this exception is highly unlikely to be relevant when a counterparty VASP or financial institution (engaged in virtual asset transfers) operates in a jurisdiction that has legislated a requirement to comply with the travel rule.</p> <p>Subsection 66A(10) of the Amended AML/CTF Act also includes an exception to the requirement to pass on travel rule information where the ordering institution reasonably believes that there is a risk that the beneficiary institution is not capable of safeguarding the confidentiality of the</p>

	<p>dependent on jurisdiction definitions of ordering and/or beneficiary institutions (or other institution types for that matter)</p> <ul style="list-style-type: none"> Determining if counterparties in the value transfer chain are regulated (especially for VASPs) 	<p>information. As above, this is an objective test and the reason for the belief must be documented.</p> <p>The Australian application of the travel rule does not include a <i>de minimis</i> threshold given the serious consequences that can arise from low value transfers (e.g. terrorism financing, child exploitation offences, etc.). Travel rule solution providers will generally build in such jurisdictional requirements to the tools they offer, to ensure counterparty VASPs or financial institutions (engaged in virtual asset transfers) in jurisdictions with <i>de minimis</i> thresholds know to provide travel rule information for all transfers.</p>
67.	<p>Risk of breach of privacy laws</p> <p>Sections 56-58 of ED1 Rules prescribe obligations on ordering, beneficiary and intermediary institutions with regards to information concerning the payer and/or payee in a transfer of value. Some submissions identified that collection or transmission of particular payer/payee information may be in breach of domestic privacy laws, particularly where payer/payee data is transmitted to a third-party without the payer/payees permission. Submissions additionally identified that the GDPR in the EU places strict limits on personal data sharing.</p>	<p>The collection and passing on of information for the purposes of the travel rule is ‘required or authorised by or under an Australian law’, namely the Amended AML/CTF Act and Rules. The <i>Privacy Act 1988</i> does not, therefore, prevent compliance with the travel rule as set out in the Amended AML/CTF Act.</p> <p>The European Union has itself implemented FATF Recommendations 15 and 16 as they relate to the travel rule for both financial institutions and ‘crypto-asset service providers’, including under the Markets in Crypto-assets Regulation.</p> <p>As stated in item 23 above, for transfers of virtual assets, subsection 66A(10) of the Amended AML/CTF Act provides an exception to the requirement to pass on travel rule information where an Australian ordering institution reasonably believes that there is a risk that the beneficiary institution is not capable of safeguarding the confidentiality of the information. This will provide a safeguard in exceptional cases.</p>
68.	<p>Incidental exemptions</p> <p>Paragraph 63A(4)(a) of the Amended AML/CTF Act provides that a person who transfers value incidental to the provision of another service is not an ordering institution, unless otherwise identified in subparagraphs 63A(4)(a)(i)-(iii) of the Amended AML/CTF Act. Submissions sought clarification on the intended scope of the exemption in paragraph 63A(4)(a) of the Amended AML/CTF Act and real-world examples of where transfers</p>	<p>The Explanatory Memorandum states as follows:</p> <p>‘When considering if a transfer is incidental to the provision of another service, the question to consider is whether the other service is a type of value transfer service, in which case it is irrelevant to consider whether the value transfer is incidental. However, if the other service is of a different nature (for example, managing a fleet of cars), then the transfer of value will be excluded.’</p> <p>Further examples will be considered in guidance.</p>

	of value are incidental to another service.	
69.	<p>Technology agnostic AML/CTF regime</p> <p>Submissions noted that it considered the Amended AML/CTF Act prior to reform to be technology agnostic (i.e. that is, not identifying platforms). This is generally reflected in the reformed AML/CTF regime, however, it does recognise payment systems. Some submissions queried if AUSTRAC intended to provide a list of approved/recognised third-party payment systems.</p> <p>The submissions also sought greater clarity on the obligations of Financial Technology (FinTech) in transfers of value, and how deficiencies caused by current payment platforms (i.e. BECS) will be managed.</p>	<p>The Part 5 of the Amended AML/CTF Act prior to reforms were neither technology neutral nor payment system neutral. It applied only to financial institutions carrying out transfers of money by means of electronic communications. The Part 5 of the Amended AML/CTF Act now applies to all transfers of value carried out by those in the business of transferring value, regardless of whether the value transferred is money, property or virtual assets.</p> <p>Some special provisions continue to be made for certain value transfers, consistent with the section 67 of the Amended AML/CTF Act prior to the reforms. These reflect the global FATF standards that recognise that technical limitations in messaging formats used for legacy domestic payment systems, and certain payments through card schemes, may prevent full compliance with the travel rule. The new AML/CTF Rules are designed to simplify the previous section 67 of the Amended AML/CTF Act by removing a number of double negatives by restating some obligations in the positive.</p> <p>ED2 Rules contemplates legacy domestic payment systems in Australia (such as BECS) to ensure that only information capable of being transmitted through the relevant messaging format is required to be passed on. Conversely, rules for managing IVTS reporting obligations for incoming international value transfers involving a domestic leg through a legacy domestic payment system will be developed and consulted about in future.</p> <p>FinTech businesses that meet the definitions of ordering institution, intermediary institution or beneficiary institution will be regulated as any other reporting entity providing the relevant designated services. Such businesses almost certainly already meet the threshold for regulation under the AML/CTF Act due to being involved in ‘designated remittance arrangements’ (which applies more broadly than the reformed legislation), or due to acting as an ‘interposed institution’ under the Part 5 of the AML/CTF Act.</p>

General feedback

#	Feedback provided	AUSTRAC response
70.	<p>Request for notes within the AML/CTF Rules</p> <p>Submissions have noted concern that language used in ED1 Rules (such as ‘governing body’) makes it challenging for new reporting entities to relate to the circumstances and understand the AML/CTF regime. This concern was noted as particularly relevant to reporting entities that are sole traders, small and micro practices. Submissions requested for explanations to be noted throughout the new AML/CTF Rules to aid understanding and clarification. For example:</p> <p>Section 7 of ED1 Rules contains a list of who is a domestic PEP. Submissions proposed a note to be included under the rule to make clear that reporting entities should consider all elements of the domestic PEP definition under section 5 of the Amended AML/CTF Act, and not just section 7 of ED1 Rules.</p> <p>Section 13 of ED1 Rules requires AML/CTF policies that deal with the due diligence of employees, but does not reflect that existing protocols can be leveraged. Submissions proposed the inclusion of a note to clarify this.</p>	<p>AUSTRAC considers that it would not be appropriate to address these issues using notes within the AML/CTF Rules – in many cases, this approach could undermine the policy intent of the reforms, leading to unintended interpretations being taken by a court.</p> <p>These issues are more appropriately dealt with in guidance. AUSTRAC will produce guidance outlining how governance obligations that apply to ‘governing bodies’ ‘AML/CTF Compliance Officers’ and ‘senior managers’ can be met by one person in small businesses.</p> <p>AUSTRAC will also seek to recognise existing protocols that can be leveraged for due diligence in its guidance, including in starter program kits for tranche 2 small businesses.</p>