

Overview of the exposure Anti-Money Laundering and Counter-Terrorism Financing Bill

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What would the exposure Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 do?

The exposure Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 (the exposure Bill) forms part of a package of reforms consisting of legislation, regulation and rules, which is eventually intended to replace the *Financial Transaction Reports Act 1988* (the FTR Act) and the *Financial Transaction Reports Regulations 1990*.

This package of reforms would improve and strengthen Australia's current anti-money laundering and counter-terrorism financing (AML/CTF) system, in line with international standards issued by the Financial Action Task Force on Money Laundering (FATF).

The exposure Bill sets out the first tranche of AML/CTF reforms, covering a specified range of services primarily provided by the financial sector, gambling sector and bullion dealers. Businesses and professionals in other sectors would also be subject to the proposed reforms, but only to the extent that they provide specified financial or gambling services or deal in bullion. For example, a lawyer or an accountant who provides a financial service in direct competition with the financial sector would be subject to the proposed reforms in relation to those financial services, but not when providing other services.

Once the first tranche of reforms is implemented, the Government will consider a second tranche of reforms covering designated services provided by other industry sectors, such as real estate agents, jewellers and professionals, such as accountants and lawyers, when they provide specific non-financial services.

The exposure Bill sets out a proposed framework for Australia's AML/CTF system under which primary obligations would be contained in principles based legislation, with operational details to be set out in AML/CTF Rules.

AML/CTF Rules, being developed by the Australian Transaction Reports and Analysis Centre (AUSTRAC) in consultation with industry, would establish standards and set out specific requirements for matters such as customer identification procedures, the monitoring of customer activity, reporting suspicious matters, and the development of AML/CTF Programs.

What would the role of AUSTRAC be under the new system?

AUSTRAC would continue to be Australia's financial intelligence unit (FIU) and AML/CTF regulator. AUSTRAC would regulate reporting entities covered under the exposure Bill and continue to collect, retain, analyse and disseminate financial intelligence to designated law enforcement, revenue, national security, social justice and other regulatory agencies. AUSTRAC's vision is to make a valued contribution to a financial environment hostile to money laundering and the financing of terrorism. AUSTRAC would also have an enhanced enforcement and monitoring role under the exposure Bill.

Who would be covered by the exposure Bill?

The exposure Bill lists the types of activities ('designated services') that are considered vulnerable to money laundering or terrorism financing. The designated services, which are listed in tables 1 and 2 in section 6 of the exposure Bill, include a range of financial services, gambling services and the buying and selling of bullion. Businesses providing designated services are referred to in the exposure Bill as 'reporting entities'.

A service would not be a designated service under the exposure Bill unless:

- the service is provided at, or through a permanent establishment of the service provider in Australia, or
- the service provider is an Australian resident or a subsidiary of a company that is a resident of Australia and the service is provided at or through a permanent establishment of the service provider in a foreign country.

Who would not be covered by the exposure Bill?

The exposure Bill only covers businesses that provide designated services. Lawyers and accountants for example would have obligations under the exposure Bill only to the extent that they offer financial services in direct competition with the financial sector. However, separate to the exposure Bill, the current obligations of lawyers and accountants under the FTR Act will continue.

The ordinary business activities of real estate agents and jewellers are not designated services under the first tranche of reforms set out in the exposure Bill, and therefore these activities would not trigger obligations under the exposure Bill.

What obligations would reporting entities have under the exposure Bill?

Under the exposure Bill, reporting entities would have a range of customer due diligence, recording-keeping and reporting obligations as well as obligations to develop, maintain and comply with AML/CTF Programs.

Customer due diligence

When would reporting entities need to identify customers?

Under the exposure Bill, reporting entities would in most cases be required to identify new customers before providing them with a designated service. However, in special circumstances the exposure Bill would allow for customers to be identified after the provision of the designated service. Such special circumstances would be if identifying the customer before the provision of the designated service would disrupt the ordinary course of business, and the service is specified in AML/CTF Rules and:

- is not provided on a face-to-face basis, or
- consists of acquiring or disposing of a security or derivative on behalf of a customer, or
- consists of issuing or undertaking liability as the insurer under a life policy or a sinking fund policy.

Additionally, in limited circumstances, reporting entities would not have to identify customers before providing certain low-risk services. These services would be set out in AML/CTF Rules.

There would be no general requirement under the exposure Bill for reporting entities to re-verify the identity of all existing customers. However, existing customers would be subject to ongoing due diligence obligations, and businesses may need to re-verify the identity of existing customers on the basis of risk triggers to be set out in AML/CTF Rules.

The exposure Bill would further require reporting entities to identify the beneficial owners of funds and take reasonable measures to understand the ownership and control structure of customers that are legal entities or arrangements, such as companies, trusts and partnerships. The procedure for identifying these types of customers would be set out in AML/CTF Rules.

What procedure(s) would reporting entities use to identify customers?

The exposure Bill incorporates a technology neutral, flexible approach to customer identification, which allows for the use of a range of options, including face-to-face, third-party and electronic verification procedures. Identity verification standards and/or methods would be set out in AML/CTF Rules. Subject to the operation of AML/CTF Rules, reporting entities would be free to choose the customer identification procedure appropriate to the particular customer relationship.

The exposure Bill also allows reporting entities to authorise (in writing) third parties who are either an agent of the primary reporting entity, another reporting entity themselves, or accredited under

AML/CTF Rules to carry out an initial customer identification procedure on their behalf. This would cover situations where a customer may receive a number of services in relation to a single end product from a chain of reporting entities. For example, where a person engages the services of a financial adviser to arrange their superannuation affairs, the superannuation provider could rely on the financial adviser to carry out a customer identification procedure on its behalf. The responsibility for ensuring the adequacy of the third party identification procedure would remain with the primary reporting entity.

Would reporting entities have to do anything else in relation to customer due diligence?

The exposure Bill would require individual businesses to develop, maintain and comply with AML/CTF Programs to ensure that the business monitors customers and their transactions and activities throughout the course of the business relationship. This would enable the quick identification and mitigation of potential money laundering and terrorism financing risks. AML/CTF Programs to be established by businesses in accordance with AML/CTF Rules would identify appropriate monitoring mechanisms based on risk factors. Ongoing due diligence requirements would extend to all customers, including existing customers.

Record-keeping

The exposure Bill would require reporting entities to keep a record of a customer identification procedure. These records would need to be kept for a set period from the end of the business relationship or, for one-off advices or services, the date on which the advice or service is provided.

If a third party identifies the customer on behalf of the reporting entity, the third party would be required to give a record of the identification procedure to the reporting entity. The reporting entity would have to retain the record for a set period after the end of the business relationship.

Record keeping requirements would also extend to all records relating to the provision of a designated service. This requirement would apply both to records generated by the reporting entity and to documents given to the reporting entity by the customer in relation to a designated service. These records would need to be retained for a set period.

The Government seeks public and industry comment on the appropriate period for which records should be kept.

Reporting to AUSTRAC

Under the exposure Bill, reporting entities would be required to provide to AUSTRAC:

- reports of suspicious matters
- reports of specified threshold transactions relating to designated services, and
- reports of international funds transfer instructions.

AML/CTF Rules would outline the details required in these reports.

Suspicious matters

A reporting entity would be required to make a report to AUSTRAC if it has reasonable grounds to suspect information it has about the provision, or prospective provision, of a designated service:

- may be:
 - relevant to the investigation of an evasion, or attempted evasion, of a taxation law, or
 - relevant to the investigation of, or prosecution of a person for, an offence against a Commonwealth or Territory law, or
 - of assistance in the enforcement of the *Proceeds of Crime Act 2002*, or
- is preparatory to the commission of a financing of terrorism offence, or
- may be relevant to the investigation of, or prosecution of a person for, a financing of terrorism offence.

Matters to be taken into account in determining whether to report a suspicious matter would be set out in AML/CTF Rules, and may include whether a transaction was complex, unusual or large, or whether it involves a resident of a particular foreign country. This would be supplemented by guidance from AUSTRAC covering specific issues and indicators of suspicious activity for particular industry sectors.

Reporting entities would not be permitted to alert a customer that they have reported a suspicious matter to AUSTRAC.

Threshold transactions

A reporting entity would be required to make a report to AUSTRAC of transactions involving cash or 'e-currency' where the total amount of the transaction amounts to \$10,000 or more (or the foreign equivalent), and where the transaction involves provision of a designated service. The detailed requirements of these reports to AUSTRAC would be set in a generic AML/CTF Rule. The \$10,000 threshold could be varied by Regulation.

International funds transfer instructions

A reporting entity would be required to make a report to AUSTRAC about international funds transfer instructions involving provision of a designated service. The detailed requirements of these reports to AUSTRAC would be set in a generic AML/CTF Rule.

AML/CTF Programs

The exposure Bill would require reporting entities to develop, maintain and comply with AML/CTF Programs. The Programs would mitigate the risk that providing a designated service might involve money laundering or the financing of terrorism.

AML/CTF Programs would be required to outline a framework for identifying risks and include: policies, procedures and controls for customer due diligence; compliance management and employee screening; an ongoing employee training program; and an audit of the program. The minimum requirements for AML/CTF Programs would be set out in AML/CTF Rules.

Are there any other changes proposed under the exposure Bill?

Correspondent banking and shell banks

Under the exposure Bill, a financial institution would not be permitted to enter into a correspondent banking relationship with another financial institution overseas unless the respective rights, obligations and responsibilities of the parties were set out in a written agreement.

Before entering into a correspondent banking relationship, the exposure Bill would require a financial institution to carry out a due diligence assessment of the other financial institution.

The exposure Bill would require a financial institution to carry out a due diligence assessment of the other financial institution before entering into a correspondent banking relationship and periodically throughout the correspondent banking relationship.

The exposure Bill would prohibit financial institutions from entering into correspondent banking relationships with shell banks or other financial institutions that allow shell banks to hold accounts with them.

Overseas branches and subsidiaries

Under the exposure Bill, all foreign/overseas branches and subsidiaries would have to comply with the principles of Australian AML/CTF requirements to the extent possible under local laws. This would be achieved by requiring foreign/overseas branches and subsidiaries to comply with AML/CTF Programs developed for this purpose.

Remittance service providers

Remittance service providers have reporting obligations under the FTR Act. Recent amendments to the FTR Act require AUSTRAC to maintain a register of providers of remittance services where the provider is not an authorised deposit-taking institution (ADI) or bank or building society. The exposure Bill will continue the requirement for AUSTRAC to maintain a register of providers of remittance services.

Money remitters, including alternative remitters, would need to notify AUSTRAC of their name and business details within a specified period.

Funds transfer instructions

The exposure Bill would maintain and expand recent changes to the FTR Act, by requiring reporting entities to include the customer's name, address and account number (where money is transferred from an account, otherwise a unique transaction identification number) in an international funds transfer instruction. The exposure Bill would also require reporting entities to verify this customer information and include an account number (where money is transferred from an account, otherwise a unique transaction identification number) in domestic funds transfer instructions.

Where a reporting entity receives a pattern of incoming funds transfer instructions from an overseas counterpart that do not include appropriate originator information, it would not be required to block payment. In these circumstances, AUSTRAC may direct the reporting entity to request their

overseas counterpart to include appropriate originator information in all future funds transfer instructions and to report to AUSTRAC on the response or lack of response. The responsibility for taking further action would rest with AUSTRAC.

Reports about transfers of currency and bearer negotiable instruments

The exposure Bill would continue the requirement for people to report to AUSTRAC when they bring or receive into Australia from overseas, or take out of Australia, including by mail, cash of \$10,000 or more (or the foreign equivalent).

The exposure Bill would also maintain recent changes to the FTR Act, that require people to disclose, if required by a customs or police officer, any bearer negotiable instruments they bring into or take out Australia and provide a report to AUSTRAC.

How would existing obligations under the FTR Act interact with the obligations proposed under the exposure Bill?

Some of the businesses that would be covered by the exposure Bill are already subject to obligations under the FTR Act. These businesses include banks, credit unions, building societies, insurance providers, securities or derivatives dealers, finance corporations, casinos, bookmakers, money remittance services and bullion dealers. For these businesses, the exposure Bill would extend the existing regulatory regime under which they currently operate.

Other businesses, that would not be covered by the exposure Bill, or that would have a limited coverage, are also subject to obligations under the FTR Act. For example, solicitors and insurance service providers have existing reporting obligations under the FTR Act. These obligations would not be changed by the exposure Bill and would continue to exist under the FTR Act (i.e. none of the existing obligations under the FTR Act would be wound back by the exposure Bill).

Need more information about the exposure Bill or AML/CTF Rules?

Additional information about the exposure Bill and the consultation process is available on the Anti-Money Laundering Reform Online website of the Attorney-General's Department at <<http://www.ag.gov.au/aml>> or by emailing aml.reform@ag.gov.au.

Additional information about the AML/CTF Rules and the consultation process is available on AUSTRAC's website at <<http://www.austrac.gov.au>> or by emailing aml_ctf_rules@austrac.gov.au.

Want to comment on the exposure Bill or AML/CTF Rules?

Comments on the exposure Bill and AML/CTF Rules are most welcome. Comments and submissions on the exposure Bill can be emailed to aml.reform@ag.gov.au or sent to:

Assistant Secretary
Criminal Law Branch
Attorney-General's Department
Robert Garran Offices

National Circuit
BARTON ACT 2600

Submissions received by the Attorney-General's Department will be published on the Anti-Money Laundering Reform Online website, unless specifically marked as confidential.

Comments and submissions on AML/CTF Rules can be emailed to aml_ctf_rules@austrac.gov.au or sent to:

Deputy Director
AML Reform
AUSTRAC
PO Box 5516
WEST CHATSWOOD NSW 1515

All comments on the exposure Bill and AML/CTF Rules must be received by **13 April 2006**.