



Australian Government

Australian Transaction Reports  
and Analysis Centre

# Exemption policy

## Application

This policy sets out AUSTRAC's approach to all those seeking exemption from obligations under the [Financial Transaction Reports Act 1988](#) (FTR Act) and the [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#) (AML/CTF Act). Essentially this means cash dealers under section 3 of the FTR Act and reporting entities as defined in section 5 of the AML/CTF Act. Cash dealers and reporting entities are collectively referred to hereafter as 'regulated entities'.

## Purpose

This document outlines AUSTRAC's policy for the issuing of exemptions under both the FTR Act and the AML/CTF Act. It includes an overview of the objectives of the exemption policy, the exemptions available, our approach, and the factors the agency will consider in assessing exemption applications.

At the end of this document, we set out the expectations which regulated entities should have as to the way in which AUSTRAC considers their applications and also AUSTRAC's expectations about the way in which they will approach the making of an application.

## Policy objectives

AUSTRAC aims to create an environment of continuous voluntary compliance with the FTR Act and the AML/CTF Act. It is anticipated that most regulated entities will seek to comply with their responsibilities. However, there will be occasions when the requirements, as applied to individual situations, may appear excessive and to go beyond the intention of the legislation. Various exemption provisions have been included in both the FTR Act and the AML/CTF Act to accommodate such circumstances. The AUSTRAC CEO is vested with the power to make decisions regarding applications for exemption.

The purpose of exemptions is to relieve regulated entities from any unintended consequences of the legislation or in meeting compliance, while at the same time ensuring that the integrity of the law is maintained. Awareness of the need to strike this balance will guide AUSTRAC in its consideration of exemption applications. AUSTRAC will approve exemptions if it forms the view that they are relevant and necessary in the circumstances of a particular case. AUSTRAC believes that this will enable it to take a consistent approach to regulation while, at the same time, acknowledging differences in business practice and market circumstances when necessary.

Applications for exemptions will be assessed on a case-by-case basis. For instance, two applications for exemptions from the same provisions of the legislation may not be treated identically, as the circumstances surrounding each application and the consequences of granting an exemption may vary significantly between the two cases. In all cases, we will adhere to our *guiding principles* which aim to ensure that AUSTRAC achieves an equitable and effective regulatory environment with an efficient use of resources.

## Types of exemptions available

The AML/CTF Act contains various provisions for exemption from the effect of certain provisions. There are two means by which this can be achieved.

Section 229 enables the making of AML/CTF Rules. Various provisions within the AML/CTF Act<sup>1</sup> permit the AUSTRAC CEO, or the CEO's delegate, to make AML/CTF Rules exempting designated services from the Act or certain of its provisions.

Secondly, section 248 empowers the AUSTRAC CEO to exempt a specified person, by written instrument, from one or more specified provisions or to modify the operation of specified provisions in relation to a specified person.

The FTR Act contains some provisions for exemption from the effect of certain provisions. Subsection 17B(4) empowers the AUSTRAC CEO to exclude a particular cash dealer by notice in the Gazette from requirements as to the way and form in which cash dealers must generally send international funds transfer instruction reports to the CEO. Section 24B allows the AUSTRAC CEO to exempt all transactions, or a particular class of transactions, entered into by a particular bullion seller from the provisions of Part IIIA of the FTR Act.<sup>2</sup>

Although the AML/CTF Act and the FTR Act do not specifically provide for applications for exemption, in practice AUSTRAC will require a written application from any person seeking exemption under either Act. AUSTRAC's guidance note<sup>3</sup> on exemptions explains the application process and should be read in conjunction with this policy.

## Exemptions during concurrent application of the FTR Act and the AML/CTF Act

The AML/CTF Act will increasingly replace the FTR Act. The AML/CTF Act is being implemented in accordance with a staggered timetable and, as a result, various provisions of the FTR Act will remain in effect until such time as the AML/CTF Act has replaced them. During this period of transition exemptions may be sought under both Acts; applications will be assessed under the relevant legislation.

The FTR and AML/CTF Acts grant the power to issue exemptions to the AUSTRAC CEO. Decisions to issue exemptions may also be made by an authorised delegate on behalf of the AUSTRAC CEO.

## AUSTRAC's approach to issuing exemptions

Exemptions will only be issued where AUSTRAC is satisfied that it has the power to do so and that it will not compromise the integrity of Australia's AML/CTF or FTR program. In assessing applications and issuing exemptions, AUSTRAC will maintain its guiding principles of efficiency, equity, integrity and transparency.

AUSTRAC has adopted a risk-based approach to achieving its regulatory objectives. The AML/CTF Act recognises that a reporting entity is best placed to assess the risk that its business or products may be used for money laundering or terrorism financing. Where the burden imposed on business is likely to be greater than is warranted by the risk, AUSTRAC will consider the case for an exemption.

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<sup>1</sup> Sections 5, 30, 39, 42, 44, 67, 93, 118 and 247.

<sup>2</sup> In addition to the above, the FTR Act allows exemptions from significant cash transaction reporting under sections 9 to 13. Exemptions under these provisions apply to cash transactions engaged in by financial institutions and other cash dealers in specified circumstances and must be entered in an exemption register maintained by the financial institution. There is no requirement to seek AUSTRAC's approval for such an exemption but the AUSTRAC CEO may direct the institution to delete an exemption from the institution's exemption register or to amend an entry so that it no longer applies to transactions of a specified kind.

<sup>3</sup> Guidance notes are available on the AUSTRAC website.

Exemptions should not be considered as a way for regulated entities to avoid meeting their obligations. AUSTRAC will only make AML/CTF Rules granting an exemption where they are clearly required, or where practical experience reveals that it is necessary to do so to avoid an unintended consequence. Exemption by way of AML/CTF Rules will not generally be given in relation to an individual reporting entity.

Careful consideration will be given to issues of transparency, equity and competitive neutrality in issuing exemptions. AUSTRAC will assess potential advantages or disadvantages resulting from exemptions. We will aim to adopt a consistent approach, while at the same time taking account of the facts and circumstances particular to each case. In the interests of transparency and integrity, applicants seeking an exemption will be given the AUSTRAC decision and reasons in writing.

## Factors to be considered in AUSTRAC's assessment of applications

Decisions regarding the issuing of exemptions will be based upon the facts and circumstances of each application. Factors that may be considered by the CEO or his delegate in deciding whether to issue an exemption include:

- the nature of the exemption, including the impact it will have on the marketplace or the integrity of the AML/CTF and FTR Acts
- whether granting the exemption would be consistent with the intent and purpose of the FTR Act, AML/CTF Act and AML/CTF Rules
- the risk profile of the applicant, the designated service, or the circumstances in which the designated service is provided
- issues of competitive neutrality (i.e. whether the exemption would create unfair advantage for the applicant or disadvantage to third parties)
- the level of regulatory burden to which the applicant is being subjected.

In determining whether to issue an exemption, the CEO or his delegate may consider it necessary to consult as appropriate with:

- regulated entities or their representatives
- one or more of AUSTRAC's partner agencies (which includes designated and non-designated Commonwealth agencies)
- the Privacy Commissioner.

Other considerations for AUSTRAC in assessing exemption applications include any Ministerial directions or policy principles given under the AML/CTF Act by the Minister.

If an application for exemption by AML/CTF Rules is successful, draft Rules will be published on the AUSTRAC website for comment. AML/CTF Rules will also be subject to Parliamentary scrutiny and may be disallowed.

## Expectations

### You can expect that AUSTRAC will:

- abide by our Guiding Principles which are efficiency, equity, integrity and transparency as set out in our Supervisory Framework Policy
- use the power to issue exemptions responsibly and equitably
- abide by the processes outlined in the relevant guidance note, for example acknowledging receipt of applications

- inform you in writing of the outcome of your application, including an explanation of our decision if it was unsuccessful
- comply with the provisions in the FTR and AML/CTF Acts relevant to our conduct
- review this policy regularly to ensure it remains current as the AML/CTF Act is implemented.

**AUSTRAC expects that you will:**

- understand and comply with your obligations under the relevant Act
- make applications in good faith
- submit complete written applications to AUSTRAC as early as possible
- notify AUSTRAC in writing if any changes occur to your business activities that are directly or indirectly related to the business activities for which you were previously granted an exemption or where AUSTRAC is currently considering an application submitted by you.