**Consultation on the new AML/CTF Rules**

**December 2024**

**First round of consultation on Exposure Draft Rules**

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# Introduction

The Australian Institute of Criminology estimates that serious and organised crime cost the Australian community up to $60.1 billion in 2020-21, with illicit financing at the centre of most crime types.[[1]](#footnote-1) Illicit financing includes money laundering (ML) and terrorism financing (TF) activity which impacts the safety and wellbeing of Australians, and exploits and distorts legitimate markets and economic activity.[[2]](#footnote-2)

The [*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*](https://www.austrac.gov.au/business/legislation/amlctf-act)(**the AML/CTF Act**) currently regulates businesses that provide certain high-risk services (designated services) to help fight ML/TF. Regulated businesses have a range of obligations including, but not limited to:

* knowing who their customers are
* identifying and assessing their ML/TF risks
* mitigating and managing their ML/TF risks
* reporting certain transactions and suspicious matters to AUSTRAC.

The AML/CTF Act, as amended by the [*AML/CTF Amendment Act 2024*](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7243) (**the Amendment Act**), will form **the Amended AML/CTF Act**.

The basic concepts of the regime will remain substantively the same. The Amended AML/CTF Act will make the fundamental AML/CTF obligations clearer and simpler rather than relying on implication and deduction in sometimes opaque legislation.

The Amended AML/CTF Act also strengthens the AML/CTF regime by:

* expanding the regime to include high-risk services provided by certain lawyers, accountants, trust and company service providers, virtual asset service providers, real estate professionals, conveyancers and dealers in precious metals and stones, and
* modernising virtual asset and payments technology-related regulation.

For further information on the Amended AML/CTF Act, see AUSTRAC’s summaries for [new regulated entities](https://www.austrac.gov.au/about-us/amlctf-reform/summary-amlctf-obligations-new-regulated-entities) and [current regulated entities](https://www.austrac.gov.au/about-us/amlctf-reform/summary-changes-current-regulated-entities). To give effect to the Amended AML/CTF Act, AUSTRAC will create 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*](https://www.legislation.gov.au/F2007L01000/latest/text) (**the Current Rules**).

AUSTRAC is working closely with industry in developing the new rules. Consultation will occur through two rounds of exposure draft rules, with this paper initiating consultation on ‘Exposure Draft 1’ (**the Exposure Draft Rules**).

|  |  |
| --- | --- |
| **Consultation Round** | **To contain exposure draft rules on the following subjects**  |
|
| *Exposure Draft 1* | Reporting groups  |
| AML/CTF programs  |
| Customer due diligence |
| AML/CTF compliance officers |
| Keep open notices |
| Transfer of value (including the ‘travel rule’) |
| Correspondent banking  |
| Cross-border movement reports |
| Disclosure of AUSTRAC information to foreign counterparts |
| Compliance reporting |
| *Exposure Draft 2* | Those presented above, with amendments (as required) |
| Enrolment details  |
| Registration details |
| Reportable details for threshold transaction reports and suspicious matter reports |
| Any additional measures (as required) |
| Current rules-based exemptions subject to consequential amendment |

## 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](https://www.austrac.gov.au/business/consultation-industry/have-your-say-new-amlctf-rules). The closing date for submissions is 11:59PM Friday 14 February 2025.

Your feedback will assist AUSTRAC to determine whether measures in the Exposure Draft Rules require amendment, or whether additional rules are required. You will have an opportunity to comment on any reworked measures when Exposure Draft 2 is released for consultation in 2025.

# New AML/CTF Rules framework

The reforms will simplify the AML/CTF Rules in line with the findings of the 2016 Statutory Review of the AML/CTF regime (**the Statutory Review**).[[3]](#footnote-3)

The Statutory Review recommended that the current AML/CTF Rules be simplified and rationalised, employing plain language and publishing guidance materials to replace the lengthy prescriptions in the Current Rules.

## Establishing two rules instruments

AUSTRAC will amend the AML/CTF Rules framework by creating two separate instruments:

* Most rules would be included in a new instrument that will align with the Amended AML/CTF Act and would be named the *Anti-Money Laundering and Counter Terrorism Financing Rules 2025* (**new General Rules**). The Exposure Draft Rules accompanying this paper are a subset of the new General Rules.
* Some existing exemptions to the current AML/CTF Act would be retained (where appropriate) in the existing AML/CTF Rules, which will be renamed the *AML/CTF (Exemptions) Rules 2007* (**Exemption Rules**).

Separating the rules instrument in this way ensures that laws of general application are confined to a single instrument, while existing exemptions are separated for reporting entities they affect.

This also ensures that the existing rules-based exemptions that do not require significant amendments can be retained without the need to remake them. This ensures greater stability for existing exemptions going forward.

### Current Rules to become new Exemption Rules

Almost all chapters will be repealed from the Current Rules as they are either redundant due to the reforms in the Amendment Act, or will be rewritten in the new General Rules. For example, rules that prescribe methods of verification are no longer necessary as the central principle underpinning verification, that it is based on ‘reliable and independent data’, is now enshrined in paragraph 28(3)(d) of the Amended AML/CTF Act.

The only chapters to be preserved in the Current Rules are Chapters 21, 22, 28, 31, 42, 43, 45, 47, 48, 49 and 66. The second round of consultation will include an exposure draft version of the new Exemption Rules containing these chapters with necessary consequential amendments to fit in the reformed AML/CTF regime.

## Adopting an outcomes-based approach

The Current Rules are overly prescriptive, providing extensive mandatory steps to achieve the objectives of the current AML/CTF Act.

The Amended AML/CTF Act will establish a more outcomes-based system of compliance, outlining the outcome to be achieved while affording flexibility to meet this outcome.

Reforms to the Current Rules will facilitate this outcomes-based system by removing unnecessary prescriptive steps. Instead, the outcomes in the Amended AML/CTF Act and new General Rules will be supported by comprehensive guidance for reporting entities on how they can meet their AML/CTF compliance outcomes. For further information on upcoming guidance, see the about the reforms page on the [AUSTRAC website](https://www.austrac.gov.au/about-us/amlctf-reform).

**Summary of the outcomes-based approach**



To facilitate these changes, the Current Rules will be substantially reduced, with only specific legacy exemptions being retained.

## Scalability of obligations

AUSTRAC’s regulated population will cover a wide range of businesses of varying scale, from Australia’s largest financial institutions to sole traders operating small businesses in remote communities.

While the general obligations in the Amended AML/CTF Act and new General Rules apply equally to regulated entities, the steps required to fulfil each obligation will differ depending on the nature, size and complexity of the business. This is expressly recognised in the Amended AML/CTF Act.[[4]](#footnote-4)

The outcomes-based approach to the new General Rules, which avoids prescribing processes reporting entities must carry out, also supports the rules to be flexible and scalable to the diverse regulated population.

For example, references to a ‘governing body’ or ‘senior manager’ in the Act and Rules includes a sole trader or a sole director of a small company. Similarly, the AML/CTF compliance officer may also be a sole trader or the sole director of a body corporate, allowing all these roles to be discharged by a single person in sole practitioner businesses. The law is flexible enough to allow the roles to be carried out effectively in a variety of business types.

The Amended AML/CTF Act and new General Rules are also flexible enough to recognise certain existing processes can be leveraged by small businesses to fulfil obligations under the AML/CTF regime. This could include, for instance, professionally-mandated client identification requirements being leveraged to complete customer identification checks under the AML/CTF regime.

## Simplifying the structure

Due to the reactive and chronological way in which the Current Rules developed, they have become convoluted, disorganised, and difficult to follow.

The laws on customer identification procedures, for example, are spread across Chapters 4, 5, 6, 7, 28, 33, 35, 38, 39, 41, 46, 50, 66, 68, 77, 79 and 82 of the Current Rules.

The reforms would reorganise relevant Rules into ‘Parts’ as follows, organised thematically in the order in which a reporting entity would implement each obligation.

* Part 1: Preliminary
* Part 2: Enrolment
* Part 3: Registration
* Part 4: AML/CTF programs
* Part 5: Customer due diligence
* Part 6: Correspondent banking
* Part 7: Transfers of value
* Part 8: Reporting
* Part 9: Record-keeping
* Part 10: Secrecy and Access
* Part 11: Other matters
* Part 12: Application, saving and transitional provisions
* Schedule 1: Forms

# Exposure Draft AML/CTF Rules

The Exposure Draft Rules will support the Amended AML/CTF Act by:

* removing the majority of existing requirements in the Current Rules – these have either been absorbed into or rendered obsolete by the Amended AML/CTF Act, or will be incompatible with the outcomes-based approach
* including detail on fundamental AML/CTF concepts in the primary legislation – including an initial proposal about who must be the lead entity of a reporting group (which will be further developed throughout the consultation), the travel rule and new definitions for politically exposed persons (PEPs)
* including additional requirements to meet specific obligations – particularly for AML/CTF Programs, customer due diligence, AML/CTF compliance officers, keep open notices and the transfer of value
* rewriting existing measures that are not substantively changed in the Amendment Act – including correspondent banking and AML/CTF compliance reports requirements.

The Exposure Draft Rules also contain measures required to meet international minimum standards set by the Financial Action Task Force (FATF).

## AML/CTF programs

The Amended AML/CTF Act and the new General Rules will dovetail to set the full suite of obligations relating to AML/CTF programs.

The Amended AML/CTF Act will take the following general approach throughout Parts 1A (AML/CTF programs) and 2 (Customer Due Diligence):

* High-level principles about the outcome to be achieved apply to all designated services under the Amended AML/CTF Act. For example, the identification, assessment, mitigation or management of ML/TF risk. These principles are based on standards that are the foundation of AML/CTF regimes around the world.
* Specific obligations apply to designated services provided in Australia and not to those provided overseas. For example, factors to be considered in undertaking risk assessments, specific AML/CTF policies to be included in AML/CTF programs, and specific customer due diligence (CDD) requirements.
* Conferral of rule-making powers to the AUSTRAC CEO to make further specific rules to supplement obligations in the Amended AML/CTF Act.

### ML/TF risk assessments

The Amended AML/CTF Act sets out triggers for when a reporting entity must review and update its ML/TF risk assessment, and allows the AML/CTF Rules to provide further detail on other kinds of circumstances that trigger reviews of ML/TF risk assessments.[[5]](#footnote-5)

The Amended AML/CTF Act is largely self-contained in relation to ML/TF risk assessments and AUSTRAC does *not* envisage making significant rules prescribing further detail. Section 9 of the Exposure Draft Rules do, however, set out an additional trigger for review and update of a reporting entity’s ML/TF risk assessment, which will activate when there are adverse findings in an independent evaluation report in relation to the ML/TF risk assessment. It specifies that the review must be undertaken ‘as soon as practicable’ after the governing body of the reporting entity receives the evaluation report containing adverse findings.

### AML/CTF policies

The Amended AML/CTF Act requires a reporting entity to develop and maintain AML/CTF policies that achieve two outcomes:

1. manage and mitigate the ML/TF risks that the reporting entity may reasonably face in providing its designated services;[[6]](#footnote-6) and
2. internal compliance management to ensure the reporting entity complies with the AML/CTF Act, Rules, regulations and, by extension, the reporting entity’s own AML/CTF program.[[7]](#footnote-7)

The Amended AML/CTF Act includes a number of specific AML/CTF policies that are required within these two overarching categories. For example, customer due diligence is a fundamental ML/TF risk management and mitigation policy,[[8]](#footnote-8) while undertaking due diligence on personnel who carry out AML/CTF functions and providing them with appropriate training are important compliance management policies.[[9]](#footnote-9)

The AUSTRAC CEO has been empowered to make rules, including to: [[10]](#footnote-10)

* set out more detailed requirements for particular AML/CTF policies,
* set out additional specific AML/CTF policies within the two broad categories mentioned above that must be developed by a reporting entity.

The Exposure Draft Rules contain a number of proposed rules made under these powers and these are explored further below. All of the specific policies and requirements mentioned below must be read with the overarching requirement that policies must achieve the outcomes of managing and mitigating ML/TF risk and ensuring AML/CTF compliance.

The Exposure Draft contains the ‘default’ AML/CTF rules that will apply to reporting entities, but AUSTRAC is seeking views throughout the consultation about whether and how to adapt the requirements for AML/CTF policies to the specific circumstances of small businesses and sole traders or sole practitioners (e.g. to avoid requiring a sole trader to report to himself or herself).

Adapted rules for these circumstances, where appropriate, will be included in the Exposure Draft 2 in 2025. Under the Amended AML/CTF Act all AML/CTF policies must be appropriate to the nature, size and complexity of the reporting entity’s business.[[11]](#footnote-11) Practically this means that, for example, what is appropriate for a small accounting firm servicing wage earning customers will be simpler and therefore inappropriate for a multinational corporate bookmaker.

A reporting entity is required to comply with its AML/CTF policies in accordance with section 26G of the Amended AML/CTF Act.

### Additional AML/CTF policies for compliance management

The Exposure Draft Rules require reporting entities to develop the following additional AML/CTF policies that are focused on compliance management, in additional to those mentioned in the Amended AML/CTF Act:

* safeguards to prevent tipping off, i.e. the unlawful disclosure of suspicious matter reports and other sensitive information related to financial intelligence and law enforcement investigations—these AML/CTF policies will complement the move to the more flexible ‘harm prevention’ model for the tipping off offence, which only prohibits disclosures that would or could reasonably be expected to prejudice an investigation[[12]](#footnote-12)
* ensuring the reporting entity’s ‘governing body’ (e.g. its board) receives information to fulfil its strategic oversight and other responsibilities[[13]](#footnote-13)
* requiring the AML/CTF compliance officer to report regularly, and at least annually, to the governing body about the reporting entity’s compliance and the effectiveness of its policies in appropriately mitigating and managing the reporting entity’s ML/TF risk[[14]](#footnote-14)
* ensuring that information reported by the reporting entity under various reporting obligations (e.g. suspicious matter reporting) is complete, accurate and free from unauthorised change[[15]](#footnote-15)
* ensuring that reporting entities determine as soon as practicable whether they have formed a suspicion on reasonable grounds that would necessitate making a suspicious matter report —this will help ensure that reporting to AUSTRAC is not delayed due to overly long or unclear processes for determining whether to report a suspicious matter.[[16]](#footnote-16)

### Specific requirements for compliance management AML/CTF policies

The Exposure Draft Rules elaborate on the following compliance management AML/CTF policies mentioned in the Amended AML/CTF Act, providing greater detail about what must be done to achieve compliance:

* due diligence policies must be applied to personnel with AML/CTF functions before they are employed or engaged and must remain ongoing throughout their employment or engagement—for existing reporting entities these policies will replace what is currently referred to as the ‘employee due diligence program’ and extends to contractors and other individuals engaged in AML/CTF related functions[[17]](#footnote-17)
* training policies for personnel with AML/CTF functions must provide both initial and ongoing training throughout a person’s engagement or employment, and such training must be appropriate to the person and their responsibilities—for existing reporting entities these requirements will replace what is currently referred to as the ‘AML/CTF awareness training program’.[[18]](#footnote-18)

Some industries and professions already have protocols in place to ensure that employed personnel are appropriately skilled and act with integrity. For example, legal professionals are bound by the Australian Solicitors Conduct Rules, and accounting professionals are bound by the APES 110 Code of Ethics for Professional Accountants.

A reporting entity may elect to leverage existing protocols regarding a person’s integrity for the purpose of fulfilling personnel due diligence requirements under the AML/CTF regime. If existing protocols are adequate to cover a reporting entity’s obligations, they will still be required to adequately document these protocols in their AML/CTF policies and supplement them in cases where personnel are not subject to them (conveyancing paralegals, for example).

### Specific requirements for AML/CTF policies on independent evaluations

The Exposure Draft Rules include AML/CTF policy requirements on the conduct of independent evaluations of a reporting entity’s AML/CTF programs, and steps a reporting entity must include in its AML/CTF policies to respond to these evaluations:[[19]](#footnote-19)

* the policies must provide for the evaluation of steps taken to undertake and update ML/TF risk assessments, the design of AML/CTF policies, and the reporting entity’s compliance with its AML/CTF obligations
* the policies must provide for the independent evaluation to produce a written report that is provided to the governing body and relevant senior managers with AML/CTF responsibilities
* the policies must set out how the reporting entity will respond to independent evaluation reports—this is not a prescriptive requirement, instead reporting entities will develop their own policies on how to respond to these reports
* the policies must deal with reviewing and updating a reporting entity’s AML/CTF policies in response to adverse findings as part of an independent evaluation (this requirement mirrors the ML/TF risk assessment review trigger outlined above).

### Additional AML/CTF policies for value transfer services

Some additional AML/CTF policies focused on mitigating and managing ML/TF risk will be required for those reporting entities that provide value transfer services.[[20]](#footnote-20) Other reporting entities will not be required to develop and maintain these AML/CTF policies

These value transfer service-focused AML/CTF policies will document *how* relevant reporting entities services will fulfil their obligations under Part 5 of the Amended AML/CTF Act, which relates to value transfer transparency and is commonly referred to as the ‘travel rule’ including:

* for ordering and beneficiary institutions involved in virtual asset transfers—counterparty due diligence to understand the other institution (if any) involved in the transfer, and to undertake associated risk management and mitigation
* for intermediary institutions and beneficiary institutions involved in transfers of money, property or virtual assets—what reasonable steps the institution will take to monitor for the completeness of travel rule information received and what steps to mitigate and manage ML/TF risk the institution will take where it receives incomplete information
* for the beneficiary institution—what reasonable steps the institution will take to monitor for the accuracy of the information received about its customer, the payee, and what steps to mitigate and manage ML/TF risk the institution will take where it receives inaccurate information.

## AML/CTF compliance officer

The Amended AML/CTF Act requires the designation of an individual as the reporting entity’s AML/CTF compliance officer,[[21]](#footnote-21) and certain requirements which that individual must meet to be eligible for the role. Those requirements are that the individual:

* is resident in Australia (if the reporting entity provides its designated services at or through a permanent establishment in Australia)
* is a fit and proper person; and
* meets the requirements specified in the AML/CTF Rules. [[22]](#footnote-22)

Section 23 of the Exposure Draft Rules outlines what a reporting entity must consider when determining whether someone is a fit and proper person to be an AML/CTF compliance officer.

AUSTRAC’s operational experience has found that a reporting entity’s effective identification, mitigation and management of ML/TF risk relies heavily on the individual fulfilling the AML/CTF compliance officer role. The Amended AML/CTF Act reflects this finding and elevates the role of the AML/CTF compliance officer in the AML/CTF regime.

To support the Amended AML/CTF Act and the significance of the AML/CTF compliance officer role, the Exposure Draft Rules set out the matters reporting entities must consider when evaluating whether a proposed AML/CTF compliance officer is a fit and proper person.

A reporting entity must consider whether the person:

* has the competence, character, diligence, honesty, integrity and judgement to properly perform the duties of the role
* has been convicted of a serious offence or been subject to adverse findings or found to engage in serious misconduct by a regulatory body
* is a undischarged bankrupt or has executed a personal insolvency agreement
* has a conflict of interest that will create a material risk that they will fail to properly discharge their duties.

These considerations are consistent with other Commonwealth regulatory regime interpretations of fit and proper, and align with international best practice. However, like these other regimes it is important to note that competence, character, diligence, honesty, integrity and judgement must relate to the duties of the AML/CTF compliance officer.

These considerations are not exhaustive and, like all AML/CTF program obligations, reporting entities should consider additional criteria as may be appropriate to the nature, size and complexity of their business.

## Reporting groups

The existing concept of designated business groups will be replaced by the new concept of a ‘reporting group’ in Part 1 of the Amended AML/CTF Act.

The intention behind the new reporting group framework is to require the management of ML/TF risk at the group level, and to facilitate more efficient implementation of AML/CTF program obligations amongst group members. This is achieved by recognising traditional corporate group arrangements as found in the financial services sector and other sectors, as well as other non-corporate structures and franchise arrangements that may be found more commonly in new regulated industry sectors and professions.

Non-reporting entities are included in the concept—while they are not subject to AML/CTF regulation by AUSTRAC they often discharge AML/CTF obligations on behalf of reporting entities and the reforms are intended to facilitate this with appropriate safeguards.

The Amended AML/CTF Act will require the ‘lead entity’ of a ‘reporting group’, whether formed by election or by operation of law, to develop and maintain an AML/CTF program that identifies, assesses, mitigates and manages ML/TF risk and ensures AML/CTF compliance across the group. Members of the reporting group are given flexibility to satisfy each other’s AML/CTF obligations subject to conditions in the AML/CTF Rules.

The Amended AML/CTF Act provides the definition of ‘reporting group’ and specifies that a reporting group will be automatically formed if at least one person in the group provides a designated service and the conditions (if any) in the Rules are met.[[23]](#footnote-23)

This means that in most cases where there is a structure in which a business providing designated services is controlled by another entity (for example, it is a subsidiary), a reporting group will exist.

Given the flexibility offered by reporting groups, AUSTRAC is seeking to identify structures that operate collectively to provide an element of ‘control’ by which to exercise group-wide ML/TF risk mitigation, AML/CTF compliance management, and flexible information sharing. This could include networks of partnerships, central service companies, trust structures, franchise arrangements and so on.

Reporting groups will only be appropriate where members of the group are prepared to share customer and compliance information with each other for AML/CTF purposes.

AUSTRAC is also considering the conditions that will determine who is the ‘lead entity’ in a reporting group. Every reporting group must have a lead entity.

The Exposure Draft Rules provide, for a reporting group formed by operation of law, a business will be the ‘lead entity’ if it:

* is a resident of Australia
* provides a designated service, or
* is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*

and it controls all other businesses in the group that provide a designated service.[[24]](#footnote-24)

The Exposure Draft Rules further provide that, where a member of a reporting group who is not a reporting entity discharges an obligation of a member who is a reporting entity, the relevant person who discharged the obligation must have undergone appropriate due diligence checks and training that is equivalent to the due diligence and training required by the reporting entity’s AML/CTF policies.[[25]](#footnote-25) This ensures that unqualified or inappropriate people in reporting groups are not tasked with discharging AML/CTF obligations.

## Customer due diligence

The new Part 2 of the Amended AML/CTF Act will establish the initial customer due diligence (initial CDD) obligation, which replaces the concept of ‘Applicable Customer Identification Procedures’, and continues the concept of ongoing customer due diligence (ongoing CDD).

Part 2 of the Amended AML/CTF Act also sets out:

* the outcomes that initial CDD and ongoing CDD must achieve
* requirements for delayed customer due diligence (e.g. verifying information about the customer after commencing to provide a service), and
* reliance provisions.

Part 5 of the Exposure Draft Rules outline general requirements for initial and ongoing CDD, including:

* requirements for standard initial CDD for particular kinds of customers where services are provided through an Australian permanent establishment[[26]](#footnote-26)
* circumstances where delayed verification is permissible[[27]](#footnote-27)
* circumstances where alternative verification is permissible[[28]](#footnote-28)
* specific enhanced CDD requirements for foreign PEPs, high-risk domestic and international organisation PEPs,[[29]](#footnote-29) and designated services provided as part of nested services relationships[[30]](#footnote-30), consistent with international standards.

Rules relating to standard initial CDD generally set out specific requirements for establishing aspects of a customer’s identity and due diligence for related persons such as beneficial owners.[[31]](#footnote-31) These rules are supplementary to section 28 of the Amended AML/CTF Act and should be read together with that section.

The Exposure Draft Rules have been designed to maximise flexibility, allowing reporting entities to collect and verify information about the customer in a way that is appropriate to their ML/TF risk while achieving the outcomes that will be set in the Amended AML/CTF Act.

### CDD when providing services to individuals

There are no proposed generally applicable rules related to individual customers receiving designated services in a personal capacity.

Collection and verification of information about the customer should be completed in accordance with section 28 in the Amended AML/CTF Act, i.e. both collection and verification of information should be appropriate to ML/TF risk to achieve the outcome of ‘establishing on reasonable grounds’ the various matters required under subsection 28(2). Guidance will elaborate on examples of initial customer due diligence for individuals to assist reporting entities, particularly smaller businesses, in designing policies related to CDD for their AML/CTF programs.

This provides businesses with wide discretion in how to carry out initial customer due diligence in relation to individual customers, and reduces the possibility of conflicts with other applicable customer due diligence or verification of identity requirements under applicable regulations or standards. For example, a lawyer or conveyancer who verifies a customer’s identity in accordance with ARNECC verification of identity standard may continue to do so. However, where existing process are followed, supplementary steps may be required to meet the full requirements of section 28, e.g. undertaking enhanced customer due diligence where the ML/TF risk of the customer is high, establishing whether the customer is a PEP or listed for targeted financial sanctions, etc.

The Exposure Draft Rules require some specific ‘know your customer’ (KYC) information to be collected and verified where

* the customer is an individual
* the designated service they receive or propose to receive is in Australia and
* the designated service is an account-based or transfer of value designated service.[[32]](#footnote-32)

In these instances, a reporting entity must collect and verify the individual’s date and place of birth. This is to assist with the reporting entity meeting travel rule obligations, and to enhance intelligence value when reports are given to AUSTRAC regarding these services.

### CDD when providing services to businesses, bodies corporate, trusts etc.

For non-individual customers and customers that are sole traders, the rules set out specific requirements that elaborate on the requirements in section 28 of the Amended AML/CTF Act, that is:

* information that must be collected and verified about customers that are businesses — including the customer’s trading name, relevant identity numbers issued by a government body, address of the customer’s registered office, address of the customer’s principal place of operations.[[33]](#footnote-33) Information on the nature of the customer’s business is to be collected, but is not required to be verified.[[34]](#footnote-34)
* requirements in relation to beneficial owners of customers, persons on whose behalf the customer is receiving the designated service, persons acting on behalf of the customer (such as agents) and other specified persons associated with the customer.[[35]](#footnote-35)

### Circumstances in which delayed verification is permitted

The Exposure Draft Rules also set out circumstances in which initial customer due diligence verification may be delayed until *after* a reporting entity commences to provide a designated service, including:

* Where a financial institution opens an account and only accepts deposits—this continues existing delayed verification rules, but removes the mandated deadline for completing verification.[[36]](#footnote-36) No time frame for completing verification is specified meaning that it must be done ‘as soon as reasonably practicable’ under section 29 of the Amended AML/CTF Act.
* Where the service is the acquisition or disposal of a security, derivative or foreign exchange contract on a declared financial market that must be performed rapidly due to financial market conditions—this continues existing delayed verification rules.[[37]](#footnote-37)
* Where a reporting entity has established all of the matters in section 28 of the Amended AML/CTF Act about the customer, except in relation to whether the customer or associated person is a PEP or subject to targeted financial sanctions[[38]](#footnote-38)—this will allow PEP and sanctions screening to be delayed where the conditions in the new section 29 are met, including that the delay is essential to avoid interrupting the ordinary course of business and appropriate risk mitigations are implemented. In these circumstances, PEP and sanctions checks must be carried out as soon as reasonably practicable.
* Where the service is to be provided at or through a permanent establishment of the reporting entity in a foreign country and the law of that country gives effect to the FATF Recommendations which permits delayed verification, the reporting entity will be eligible for delayed verification when certain requirements are met.[[39]](#footnote-39) This is to reduce the possibility of a conflict of laws where a reporting entity or reporting group is regulated by several jurisdictions’ AML/CTF regimes.

AUSTRAC is seeking feedback on other delayed verification circumstances that should be considered, particularly for new regulated sectors.

### Simplified CDD requirements

The Amended AML/CTF Act allows simplified CDD measures to be applied where the ML/TF risk of the customer is low and the reporting entity complies with specified requirements in the AML/CTF Rules.[[40]](#footnote-40)

In line with the outcomes-based approach, the Exposure Draft Rules require only that for a reporting entity to apply simplified CDD measures, it must have in place AML/CTF policies that deal with the application of those measures.

### Mandated enhanced CDD requirements

In limited circumstances, the Exposure Draft Rules mandate that certain enhanced CDD measures that must be carried out. These rules implement the relevant FATF standards, particularly for Recommendation 12 (PEPs) and Recommendation 13 (relationships similar to correspondent relationships, i.e. nested services relationships).

* For all foreign PEPs and for high-risk domestic and international organisation PEPs, source of wealth and source of funds must be established.[[41]](#footnote-41) These enhanced CDD requirements should be read together with the AML/CTF program governance requirements which require policies to ensure senior management approval is obtained for services provided to such PEPs.
* For nested services relationships, a range of matters relating to the AML/CTF policies and compliance history of the customer are specified,[[42]](#footnote-42) given that the reporting entity will in effect be relying on its overseas customer to effectively mitigate ML/TF risks when providing nested services.

AUSTRAC also proposes that enhanced CDD measures are to be applied to a customer who seeks designated services that have no apparent economic or legal purpose, if the proposed provision of designated services would involve:

 (a) unusually complex or large transactions; or

 (b) an unusual pattern of transactions.[[43]](#footnote-43)

The particular enhanced CDD measures to be applied are not prescribed by the rules, though AUSTRAC’s expectation is that if such a transaction were to occur, the reporting entity would collect the requisite KYC information and information on the transaction to be capable of identifying and assessing the ML/TF risk of the customer receiving the designated service in those circumstances.

### Ongoing CDD - transaction monitoring

Obligations to monitor for unusual transactions and customer behaviours that may give rise to a suspicious matter reporting (SMR) obligation have been moved into section 30 of the Amended AML/CTF Act.

Section 39 of the Exposure Draft Rules focus transaction monitoring on money laundering, terrorism financing, proliferation financing, and serious money laundering predicate offences, rather than the current ‘all crimes’ approach to monitoring. This shift means transaction monitoring will be more closely aligned with global standards recommended by the FATF. Additionally, it concentrates transaction monitoring efforts on crime types that drive money laundering, terrorism financing and proliferation financing.

### Deemed compliance – ACIP previously carried out

The Exposure Draft Rules provide that a reporting entity is taken to have complied with each of the matters in subsection 28(2) of the Amended AML/CTF Act if the reporting entity has, before 31 March 2026, carried out relevant applicable customer identification procedures in respect of that customer.[[44]](#footnote-44) This means that reporting entities regulated before the commencement of the Amended AML/CTF Act are not required to collect or verify additional KYC information to existing customers just because of the reforms to the AML/CTF regime. This will only apply to reporting entities regulated under the current AML/CTF Act.

### Deemed compliance – passporting from foreign entities

The Exposure Draft Rules provide that a reporting entity is taken to have complied with each of the matters in subsection 28(2) of the Amended AML/CTF Act if the reporting entity or another member of its reporting group has applied foreign CDD measures which give effect to FATF recommendations relating to customer due diligence and record keeping, where certain requirements are met.[[45]](#footnote-45) This is intended to mitigate the burden of carrying over CDD applied to customers between different AML/CTF regimes, sometimes referred to as ‘passporting’.

### Customers who don’t have standard identification

To promote financial inclusion and assist customers who may have difficulty providing standard identification, the Exposure Draft Rules provide a lower standard of verification requirements which apply in certain circumstances.[[46]](#footnote-46)

Alternative verification may be relied upon if:

* a customer is an individual, and
* is unable to provide information or evidence of identity because:
	+ the customer is unable to obtain the information or evidence, or
	+ the customer is unable to access the information or evidence due to circumstances beyond the customer’s control.

These circumstances are intended to encompass customers who may not have access to standard verification methods, as they are:

* Aboriginal and Torres Strait Islander peoples
* people affected by natural disasters such as floods or bushfires
* people affected by family and domestic violence
* people experiencing periods of homelessness
* people who are or have recently been in prison
* refugees, asylum seekers and recent migrants to Australia (including people from culturally and linguistically diverse backgrounds)
* intersex, transgender and gender diverse people
* people who have difficulty providing identification due to health or ageing related reasons
* people who did not have their birth registered
* young people who have not established a social footprint in the community.

In these circumstances, the reporting entity may take reasonable steps to verify KYC information using data reasonably available to them. This permits reporting entities to rely on alternate data to verify a customer’s identity, such as referee statements, government correspondence, or a community ID or Indigenous organisation membership card for Aboriginal and Torres Strait Islander peoples. The reporting entity must also implement AML/CTF policies to mitigate and manage any additional ML/TF risk arising from the lack of information or evidence of the customer’s identity.

### CDD reliance arrangements

The Exposure Draft Rules set requirements for arrangements for reliance on other reporting entities, or foreign entities regulated for AML/CTF compliance in another jurisdiction.

Section 44 of the Exposure Draft Rules deal with ongoing, written agreements on reliance on collection and verification of KYC information undertaken by another regulated entity, whereas section 45 deals with ad-hoc reliance arrangements where there is no existing written agreement between the parties.

## Transfer of value (travel rule)

Part 5 of the Amended AML/CTF Act simplifies the concepts relating to transfers of value and international value transfer services, while introducing the updated travel rule obligations for financial institutions and new travel rule obligations for remitters and virtual asset service providers. Under the travel rule, information about the parties to a transaction must travel with the transfer of value. This provides payment transparency and aids preventative measures.

Parts 1 and 7 of the Exposure Draft Rules outline the relevant definitions and obligations associated with the new provisions in the Amended AML/CTF Act.

Definitions are included in the Exposure Draft Rules for the following terms:

* ordering institution[[47]](#footnote-47)
* beneficiary institution[[48]](#footnote-48)
* payer information[[49]](#footnote-49)
* payee information[[50]](#footnote-50)
* tracing information[[51]](#footnote-51)
* card-based pull payment[[52]](#footnote-52)
* domestic value transfer service[[53]](#footnote-53)

During Parliamentary consideration of the Amendment Act, the definitions of ‘ordering institution’ and ‘beneficiary institution’ were moved to the AML/CTF Rules to allow for greater flexibility to respond to changes in technology and possible changes to the FATF standards (currently under consideration).

The definitions are intended to cover:

* traditional transfers to or from financial institutions, either through bank accounts or over the counter (in particular, criteria (c) and (d) in both definitions)
* certain remitter models where the remitter deposits money into the customer’s bank account, but the bank otherwise has no active role in the value transfer (criterion (b) in the definition of beneficiary institution)
* certain financial technology and payment service provider transfer services (in particular, criterion (b) in the definition of ordering institution), and
* alternative remittance, hawala and other offsetting arrangements (criterion (a) in both definitions).

These criteria should be read together with the designated service in which:

* the ordering institution *accepts* the instruction from the payer (and thereby begins a value transfer chain), and
* the beneficiary institution *makes the transferred value available* to the payee (and thereby ends the value transfer chain).

The order of priority among the criteria in the ‘ordering institution’ and ‘beneficiary institution’ definitions are intended to resolve those relatively uncommon situations where more than one institution could be said to accept the instruction or make the transferred value available. AUSTRAC seeks views on whether there are ways to approach these definitions that would provide greater clarity.

AUSTRAC guidance will contain extensive example scenarios setting out different types of ‘value transfer chains’ and identifying the ordering institution, intermediary institutions and beneficiary institutions in each of them.

Part 7 of the Exposure Draft Rules also specify risk mitigation measures for the travel rule that are applicable to beneficiary and intermediary institutions.

Beneficiary institutions must:

* take reasonable steps to monitor for missing payer and payee information in a transfer of value
* verify the entity of a payee in a transfer of value to ensure the accuracy of information
* monitor if payee information is inaccurate
* determine what to do where the information is incomplete or inaccurate

Intermediary institutions are only required to:

* take reasonable steps to monitor for missing payer information
* determine what to do in the case such information is incomplete
* ensure that the required payer and payee information is retained with the transfer of value.

The Exposure Draft Rules also outline the information collection, verification and transmission obligations for the ordering, beneficiary, and intermediary institutions involved in transfers of value generally, as well as special provision for certain types of transfers.

## Keep open notices

Section 39B of the Amended AML/CTF Act provides for the issuing of a ‘keep open notice’ to a reporting entity where a senior member of a specified agency reasonably believes that the provision of a designated service by the reporting entity to a customer would assist in the investigation by the agency of a serious offence. Section 39B also prescribes definitions for ‘senior member’, ‘specified agency’ and ‘serious offence’ for the purpose of the keep open notice framework.

A keep open notice under section 39B of the Amended AML/CTF Act will replace the existing process prescribed in Chapter 75 of the current Rules which allows for the AUSTRAC CEO to issue exemption notices to reporting entities for the same purpose.

Where the legislative pre-conditions have been fulfilled, a specified agency may issue a keep open notice directly to a reporting entity, which will exempt the reporting entity from needing to undertake certain customer due diligence obligations in respect of the customer(s) specified in the keep open notice. AUSTRAC will no longer be the issuing agency but will retain an oversight function in relation to keep open notices.

A copy of the keep open notice must to be sent to AUSTRAC by the issuing agency at the same time as it is issued to the reporting entity. This will both inform AUSTRAC that the exemption applies to the reporting entity in respect of the customer, and provide an opportunity for the AUSTRAC CEO to disallow the notice if it is not validly made. As currently occurs with a Chapter 75 exemption notice, there is no obligation on the reporting entity to accept, and implement, the keep open notice.

A keep open notice may be extended by the specified agency, if required. After being issued, an extension notice will also need to be sent to both the reporting entity and AUSTRAC. A specified agency can extend the application of a keep open notice twice, before an application needs to be made to the AUSTRAC CEO for further extensions. A template application form is included in the Exposure Draft Rules.

Schedule 1 to the Exposure Draft Rules prescribe the forms to be used by when a prescribed issuing agency issues keep open notices, notices extending keep open notices, and application forms which agencies must use to apply to AUSTRAC CEO to for approval to issue further extensions. These forms have been drafted to contain what AUSTRAC anticipates is a sufficient amount of information for a reporting entity to identify the customer or customers to which the exemption applies, and promote a consistent manner of presenting information by issuing agencies to reporting entities and AUSTRAC..

## Minor amendments

Minor amendments have been made to generally align the following obligations to the relevant provisions of the Amended AML/CTF Act:

* Section 19 of the Exposure Draft Rules require that the AML/CTF policies of a reporting entity must ensure that senior managers give approval or are informed before commencing to provide a designated service in certain circumstances. These measures are additional to the requirement to perform enhanced customer due diligence pursuant to the circumstances mentioned in section 32 of the Amended AML/CTF Act. The rules take the approach of separating governance around management and mitigation of customer risk from CDD identification and verification requirements.
* Part 6 of the Exposure Draft Rules align correspondent banking requirements with the Amended AML/CTF Act, while maintaining the substance of Chapter 3 of the Current Rules.
* Division 4 of Part 8 of the Exposure Draft Rules specify the reporting period and lodgement period for compliance reports, which replace Chapter 11 of the Current Rules.
* Division 6 of Part 8 of the Exposure Draft Rules retain and relocate the existing cross border movement requirements in Chapter 24 of the Current Rules.
* Part 10 of the Exposure Draft Rules incorporate the list of agencies that can receive information under section 127(3) of the current AML/CTF Act, with minor amendments, into the Rules, noting that this list will be removed from the Amended AML/CTF Act.
* Obligations to conduct enhanced customer due diligence will be moved to section 32 of the Amended AML/CTF Act. Many of the prescriptive requirements in Chapter 15 of the Current Rules will be removed, as they will be made redundant by the amended Act.

# Questions

## General

1. Do any aspects of the Exposure Draft Rules create unnecessary friction with existing approaches to risk mitigation in your business or sector? If so, what are they? Are there alternative approaches that could achieve the same regulatory outcomes?
2. Are any rules not sufficiently flexible to be scalable to specific circumstances of small businesses, sole traders or sole practitioners? Are there alternative approaches that could achieve the same regulatory outcomes?
3. Are any rules not sufficiently flexible to be scalable to specific circumstances of large or multinational businesses? Are there alternative approaches that could achieve the same regulatory outcomes?

## AML/CTF programs

1. What is a reasonable period of time for you to document updates made to your ML/TF risk assessment or AML/CTF policies?

## Reporting groups

1. What are the structures in your industry by which businesses exercise control over one another (e.g. corporate structures, partnerships, joint ventures, franchises, trust arrangements, decentralised operations and platform-based operations etc.)?
2. Where you or your sector use group structures that do not involve ownership or control, what are these structures? Are there any impediments to sharing customer and compliance information within such groups for AML/CTF purposes?
3. Are there obvious lead entities in each of these structures? If so, what are their common characteristics?
4. What is the best way to implement a nomination model for a lead entity for structures that do not involve ownership or control of one group member over another?
5. Within reporting groups, what are the circumstances in which a reporting entity members of a reporting group would want a non-reporting entity to discharge an AML/CTF obligation? Would this extend to discharging reporting obligations (threshold transaction reports, suspicious matter reports etc.)? What benefits would this provide to you?
6. Are there circumstances where reporting groups formed automatically under law would want to combine with other reporting groups and/or reporting entities? Why?

## Customer due diligence

1. Are there practical implementation challenges you anticipate you may face in meeting the CDD obligations set out in the Exposure Draft Rules? If yes, what are they and do you have alternate suggestions as to how the same regulatory outcome can be achieved?
2. Are there any additional circumstances (e.g. particular types of transactions that require the urgent provision of a designated service) in which your sector may need to delay aspects of initial CDD to prevent disruption of the ordinary course of business?

## Compliance reports

1. Does the 12-month reporting period of January – December, with a report lodgement period of the following January – March present significant challenges to your business due to conflicts with other Commonwealth, State or Territory reporting or lodgement requirements? What are these challenges?
2. Is there a preferable reporting or lodgement period?

## Value transfer

1. Do the proposed criteria for identifying the ordering institution and beneficiary institution in a value transfer chain describe common scenarios in your industry? What gaps or uncertainty would remain that could not be resolved through example scenarios and other guidance?
2. Do the proposed requirements for the collection, verification and passing on of travel rule information create any friction other international travel rule obligations you may be required to comply with?
3. Can you identify any challenges you may perceive in establishing whether you are dealing with another virtual asset service provider or financial institution, and whether they are regulated, in relation to transfer of value involving virtual assets?

## Keep open notices

1. Is the information required to be provided in a keep open notice sufficient for you to determine if the customer to whom the notice applies, is a customer of yours?
2. Are the explanations in the keep open notice and the keep open – extension notices easily understood by you?
1. Russell Smith and Amelia Hickman, ‘Estimating the costs of serious and organised crime in Australia, 2020-2021’*, Australian Institute of Criminology* (Report, 4 April 2022) <https://www.aic.gov.au/publications/sr/sr38>. [↑](#footnote-ref-1)
2. Anthony Morgan, ‘Money laundering and the harm from organised crime: Results from a data linkage study’, *Australian Institute of Criminology* (Report, 9 September 2024)
<https://www.aic.gov.au/publications/special/special-18> [↑](#footnote-ref-2)
3. <https://www.austrac.gov.au/sites/default/files/2019-07/report-on-the-statutory-review-of-the-anti-money-laundering.pdf> [↑](#footnote-ref-3)
4. Section 26F(1)(c) of the Amended AML/CTF Act. [↑](#footnote-ref-4)
5. Section 26D of the Amended AML/CTF Act. [↑](#footnote-ref-5)
6. Paragraph 26F(1)(a) of the Amended AML/CTF Act. [↑](#footnote-ref-6)
7. Paragraph 26F(1)(b) of the Amended AML/CTF Act. [↑](#footnote-ref-7)
8. Paragraph 26F(3)(b) of the Amended AML/CTF Act. [↑](#footnote-ref-8)
9. Paragraphs 26F(4)(d) and (e) of the Amended AML/CTF Act. [↑](#footnote-ref-9)
10. Subsection 26F(7) of the Amended AML/CTF Act. [↑](#footnote-ref-10)
11. Paragraph 26F(1)(c) of the Amended AML/CTF Act. [↑](#footnote-ref-11)
12. Section 10 of the Exposure Draft Rules. [↑](#footnote-ref-12)
13. Section 11 of the Exposure Draft Rules. [↑](#footnote-ref-13)
14. Section 12 of the Exposure Draft Rules. [↑](#footnote-ref-14)
15. Section 17 of the Exposure Draft Rules. [↑](#footnote-ref-15)
16. Section 18 of the Exposure Draft Rules. [↑](#footnote-ref-16)
17. Section 13 of the Exposure Draft Rules. [↑](#footnote-ref-17)
18. Section 14 of the Exposure Draft Rules. [↑](#footnote-ref-18)
19. Sections 15 and 16 of the Exposure Draft Rules. [↑](#footnote-ref-19)
20. Sections 20, 21 and 22 of the Exposure Draft Rules. [↑](#footnote-ref-20)
21. Paragraph 26F(4)(b) of the Amended AML/CTF Act. [↑](#footnote-ref-21)
22. Subsection 26J(3) of the Amended AML/CTF Act. [↑](#footnote-ref-22)
23. Section 10A(1) of the Amended AML/CTF Act. [↑](#footnote-ref-23)
24. Section 8 of the Exposure Draft Rules. [↑](#footnote-ref-24)
25. Section 68 of the Exposure Draft Rules. [↑](#footnote-ref-25)
26. Division 1 of Part 5 of the Exposure Draft Rules. [↑](#footnote-ref-26)
27. Division 2 of Part 5 of the Exposure Draft Rules. [↑](#footnote-ref-27)
28. Section 38 of the Exposure Draft Rules. [↑](#footnote-ref-28)
29. Division 5 of Part 5 of the Exposure Draft Rules. [↑](#footnote-ref-29)
30. Division 6 of Part 5 of the Exposure Draft Rules. [↑](#footnote-ref-30)
31. Division 1 of Part 5 of the Exposure Draft Rules. [↑](#footnote-ref-31)
32. Section 25 of the Exposure Draft Rules. [↑](#footnote-ref-32)
33. Section 26 of the Exposure Draft Rules. [↑](#footnote-ref-33)
34. Subsection 27(2) of the Exposure Draft Rules. [↑](#footnote-ref-34)
35. Section 29 of the Exposure Draft Rules [↑](#footnote-ref-35)
36. Section 30 of the Exposure Draft Rules. [↑](#footnote-ref-36)
37. Section 31 of the Exposure Draft Rules. [↑](#footnote-ref-37)
38. Section 32 of the Exposure Draft Rules. [↑](#footnote-ref-38)
39. Section 33 of the Exposure Draft Rules. [↑](#footnote-ref-39)
40. Section 31 of the Amended AML/CTF Act. [↑](#footnote-ref-40)
41. Section 40 of the Exposure Draft Rules. [↑](#footnote-ref-41)
42. Division 6 of Part 5 of the Exposure Draft Rules. [↑](#footnote-ref-42)
43. Section 35 of the Exposure Draft Rules. [↑](#footnote-ref-43)
44. Section 36 of the Exposure Draft Rules. [↑](#footnote-ref-44)
45. Section 37 of the Exposure Draft Rules. [↑](#footnote-ref-45)
46. Section 38 of the Exposure Draft Rules. [↑](#footnote-ref-46)
47. Section 54 of the Exposure Draft Rules. [↑](#footnote-ref-47)
48. Section 55 of the Exposure Draft Rules. [↑](#footnote-ref-48)
49. Section 5 of the Exposure Draft Rules. [↑](#footnote-ref-49)
50. Section 5 of the Exposure Draft Rules. [↑](#footnote-ref-50)
51. Section 5 of the Exposure Draft Rules. [↑](#footnote-ref-51)
52. Section 5 of the Exposure Draft Rules. [↑](#footnote-ref-52)
53. Section 5 of the Exposure Draft Rules. [↑](#footnote-ref-53)