

2019

# **Regulation Impact Statement**

## **Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019**

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## Executive Summary

This regulatory impact statement (RIS) examines proposed reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act) and the money laundering offences in the *Criminal Code 1995*.

Comprehensive domestic and international reviews of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime have highlighted a range of difficulties and opportunities for better regulation. The Government is implementing the recommendations of these reviews in phases and the first phase of amendments was implemented in 2017. The next phase is being implemented through the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019. This bill contains a range of reforms including:

- expanding the circumstances in which reporting entities can rely on customer due diligence (CDD) conducted by a third party
- clarifying the prohibition on 'tipping off' to allow designated business groups and corporate groups to better manage their ML/TF risks
- simplifying the provisions governing the secrecy and access of AUSTRAC information
- simplifying and consolidating cross border movement reporting requirements
- strengthening the money laundering offences in the *Criminal Code 1995*, and
- measures to improve Australia's compliance with international standards in relation to correspondent banking<sup>1</sup> and CDD.<sup>2</sup>

The proposed reforms in this bill address feedback from industry that the current regime is too complex and therefore frustrates compliance with AML/CTF obligations. In addressing this feedback, the proposed reforms also focus on streamlining obligations, lowering the regulatory burden where possible and improving compliance with international standards.

### *Regulatory impact*

The AML/CTF Act requires reporting entities to identify and verify their customers through CDD procedures, which represents a major component of AML/CTF compliance costs. The preferred option for reform outlined in this RIS (Option 3) will provide reporting entities with further options to rely on CDD procedures undertaken by a third party. As projected, these options could reduce the time involved in identifying each customer by 66 percent and the cost of verifying each customer by 80 percent. This is expected to deliver a very significant reduction in regulatory burden for reporting entities under the AML/CTF Act, leading to significantly reduced compliance costs and an estimated saving of **\$3,106,996,010** over ten years.

The other proposed measures in the bill have either a neutral or low regulatory impact.

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<sup>1</sup> FATF recommendation 13 refers.

<sup>2</sup> FATF recommendation 10 refers.

# 1. The Problem

Globally, money laundering is a key enabler of transnational, serious and organised crime. Every year, criminals generate huge amounts of funds from illicit activities, including among other things, drug trafficking, tax evasion, theft, fraud and corruption. In order to identify and combat these threats, in 2006 Australia established an anti-money laundering and counter-terrorism financing (AML/CTF) regulatory regime in consultation with industry. This regime is based on the Financial Action Task Force's (FATF)<sup>3</sup> international AML/CTF standards and establishes a strong regulatory regime for combating money laundering and terrorism financing (ML/TF), as well as other serious crimes. This provides for the collection of valuable information from the private sector about the movement of money and other assets to the Australian Transaction Reports and Analysis Centre (AUSTRAC). AML/CTF regulation imposes a necessary regulatory cost to businesses in order to harden Australia's financial system against threats to our national security. However, it is important that such regulation strike the right balance of achieving AML/CTF objectives while minimising the impact on business.

The pursuit of illicit profits comes at a significant cost to the Australian economy. In 2014, the Australian Criminal Intelligence Commission estimated that serious and organised crime costs Australia \$36 billion per year. Additionally, funds for terrorism can come from a range of sources, legitimate and illegitimate, and can have similar characteristics to that observed in money laundering. Relatively small amounts of money placed in the hands of terrorists and terrorist organisations can have catastrophic consequences, funding attacks on Australian soil or supporting terrorist activities overseas.

In response to these significant threats, the primary objectives in updating Australia's AML/CTF system is to balance imperatives such as better prevention, disruption and detection of ML/TF in Australia, with complementary regulatory efficiencies while enhancing compliance with the FATF's international standards.

## *The statutory review*

Section 251 of the AML/CTF Act required a review of the operation of the regulatory regime to commence before the end of the period of seven years after the commencement of that provision. The review commenced in December 2013 and involved an extensive consultation process with industry and government agencies. The review was completed in 2016.

As well as taking into account feedback from industry, it also considered the findings of 2015 FATF 'mutual evaluation' of Australia's AML/CTF regime<sup>4</sup>. The mutual evaluation identified a number of deficiencies and made a series of recommendations to strengthen compliance with the FATF standards and the effectiveness of Australia's AML/CTF regime.<sup>5</sup>

In April 2016 the then-Minister for Justice tabled the report of the statutory review in Parliament with 84 recommendations to strengthen, modernise, streamline and simplify Australia's AML/CTF regime, and enhance Australia's compliance with the FATF standards.<sup>6</sup> It also contained guiding principles for reform which included the need to minimise the regulatory burden on regulated businesses, while maintaining a regime that is an appropriate, efficient and effective means of achieving government objectives.

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<sup>3</sup> The FATF is an intergovernmental body that sets global policy for combating ML/TF. Australia is a founding member of the FATF. The FATF 40 Recommendations can be accessed at the following link: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardscombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>

<sup>4</sup> As a member of the FATF, Australia periodically undergoes a mutual evaluation for the purposes of assessing compliance with the FATF's international standards and the effectiveness of AML/CTF measures.

<sup>5</sup> Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures, Australia: Mutual Evaluation Report, April 2015*: <http://www.fatf-gafi.org/documents/documents/mer-australia-2015.html>.

<sup>6</sup> The report on the review is available at: <https://www.homeaffairs.gov.au/how-to-engage-us-subsite/files/report-on-the-statutory-review-of-the-anti-money-laundering.pdf>. The Department of Home Affairs is now the lead agency for progressing AML/CTF reform having received policy and administrative responsibility from the Attorney-General's Department through a Machinery of Government change in December 2017.

The Government committed to implementing the recommendations of the statutory review in phases. The first legislative reforms were included in the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017*. The Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019 represents the next phase of reform and progresses the following prioritised initiatives:

- expanding the circumstances regulated businesses may rely upon customer due diligence conducted by a third party (customer due diligence reliance)
- streamlining and simplifying the provisions governing the secrecy and access of AUSTRAC information
- clarifying the prohibition on ‘tipping off’ to allow ML/TF risk to be better managed at the designated business group and corporate group-level<sup>7</sup>
- consolidating and enhancing cross border currency reporting requirements
- enhancing correspondent banking requirements in line with international best practice
- explicitly clarifying the prohibition on providing designated services without customer identification (CDD procedure requirements),<sup>8</sup> and
- strengthening the money laundering offences in the *Criminal Code 1995*.

The CDD reliance and tipping off reforms will provide regulatory efficiencies for industry.

Other measures are expected to have neutral or a low regulatory impact. The correspondent banking reforms is assessed as having a low impact as the amendments largely reflect existing industry practice in line with global best practice. These amendments are necessary to enhance Australia’s compliance with FATF standards and improve our global reputation. Reforms to the CDD procedure requirements make clear an already existing requirement. Any costs to bring industry practice into line are therefore not a direct result of this legislative change.

## Customer Due Diligence reliance

Broadly, the primary components of the AML/CTF regime require regulated businesses, known as reporting entities, to:

- establish, implement and maintain an AML/CTF compliance program
- conduct CDD to identify and verify customers
- keep records, and
- lodge specified transaction and suspicious matter reports with AUSTRAC.

Reporting entities must obtain a range of information from customers and use independent and reliable information to ensure they meet the obligation to ‘Know-Your-Customer’. They are also required to keep up to date information on their customers so they know if there has been any change in circumstances or business activities. These obligations enable reporting entities to better understand their customers and their financial dealings so that they can determine the ML/TF risk posed by each customer and efficiently manage this risk.

Given the intensive and ongoing nature of these obligations, CDD represents a major component of AML/CTF compliance costs.

Breaches of the obligation to undertake CDD procedures prior to providing a ‘designated service’ under the Act attract a civil penalty (section 32). Reporting entities therefore are concerned to ensure the CDD procedures are carried out in accordance with the Act.

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<sup>7</sup> Tipping off refers to the disclosure that a suspicious matter report, or related information, is being filed such that it ‘tips off’ the relevant person.

<sup>8</sup> Defined in section 6 AML/CTF Act.

Reforms are proposed to provide greater options for reporting entities to rely on CDD procedures (including equivalent procedures required under a foreign law) undertaken by a third party based in Australia or offshore. The costs incurred by a business to rely on a CDD procedure that has already been carried out on a customer are expected to be significantly less than undertaking the CDD.

These options include reliance on a CDD procedure performed by:

1. an agent
2. another reporting entities (eg. a foreign equivalent)
3. parties to a 'CDD arrangement'.

Liability for breaches of CDD will remain with the relying party in 1 and 2, but generally shift for 3. These options are expected to provide reporting entities with opportunities to reduce a significant amount of administrative cost by effectively reducing the pool of new customers that require CDD procedures to be undertaken. This will provide efficiencies and greater flexibility for reporting entities to rely on CDD procedures undertaken by other reporting entities within Australia and a range of foreign entities, providing certain safeguards are met.

There are also linkages with the Review into Open Banking in Australia<sup>9</sup> (Open Banking review), which will give customers a right to direct that the information they already share with their bank be safely shared with others they trust. The Open Banking review recommends that the outcomes of a CDD procedure required by the AML/CTF Act should be shared as part of Open Banking. The CDD reliance reforms will facilitate this recommendation of the Open Banking review by requiring reporting entities to obtain information collected in carrying out to the CDD from the relied on entity prior to the provision of the service.

#### *CDD arrangements*

The proposed amendments will allow reporting entities to enter into CDD arrangements with other regulated businesses in Australia and overseas, which will provide a greater range of circumstances where reliance can be applied between parties, and address some industry concerns around liability for CDD procedure breaches.

For illustration, under current arrangements, should a person have bank accounts with multiple lenders it is expected that each of those lenders will have undertaken CDD procedures on that person and absorbed the administrative cost associated with performing those procedures. Broadly speaking, under the proposed reform, should a relevant lender be party to a CDD arrangement, then CDD procedures need not be performed on an individual for the opening of subsequent accounts.

To ensure that the proposed CDD arrangements are adopted by industry, and thus realising the full deregulation potential, the reform is designed to give reporting entities a 'safe harbour' from liability for CDD breaches under section 32 of the AML/CTF Act. This addresses industry concerns about exposure to liability that stems from relying on the CDD procedure undertaken by third parties. More specifically, where the reporting entity has entered into the CDD arrangement, conducted due diligence on the arrangement and can show that it was appropriate to rely on the third party, the relying party would not be held liable for isolated breaches of compliance with the CDD requirements by the third party. However, where there are systemic breaches that indicate due diligence on the CDD arrangement was insufficient, the reporting entity relying on the third party's CDD procedure would be liable for breaches.

#### *Reliance under the current regime - Members of a Designated Business Group (DBG) and licensed financial advisers*

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<sup>9</sup> The Review into Open Banking in Australia was commissioned by the Hon Scott Morrison MP on 20 July 2017 to recommend the most appropriate model for open banking in Australia. The Review's final report was published in December 2017. <https://treasury.gov.au/consultation/c2018-t247313/>

Currently, there are only limited circumstances in which reporting entities can rely on a CDD procedure performed by a third party. This includes where the CDD procedure has been undertaken by another entity within their DBG. Despite the fact that a DBG may include offshore entities, the current provisions only allow reliance within a DBG where the other reporting entity is a domestic reporting entity.<sup>10</sup> This is set out in section 38 of the AML/CTF Act and chapter 7 of the AML/CTF Rules.

The other circumstance where reliance is permissible is where a licensed financial adviser who is also a reporting entity arranges for a customer to receive a service listed in the Act from a second reporting entity. For example, where a financial adviser refers a customer to a bank, the bank can rely on the CDD carried out by the adviser.

In both of the above cases, liability for a breach of the CDD procedure rests with the relying party.

Under current provisions, a reporting entity is unable to rely on CDD procedures conducted by a member of the DBG outside Australia unless the AUSTRAC CEO provides the reporting entity with an exemption. A limited exemption was provided in 2009 that permits reporting entities to rely on CDD conducted in a foreign country where:

- the CDD procedure is carried out by an Australian reporting entity or a subsidiary of an Australian reporting entity, and
- the reporting entity determines on a risk-basis that the CDD procedure is comparable to that required under Australia's AML/CTF legislation.

Feedback from industry has indicated that the availability of additional options would enable them to fulfil their CDD obligations in a more cost efficient way. Some have suggested reliance would be more widely used if liability did not remain with the relying party in all instances, and that the conditions that apply under section 38 of the AML/CTF Act are too restrictive. Some businesses are less concerned about liability and more concerned with having the ability to rely more broadly within their corporate structures.

Reform is therefore proposed to introduce CDD arrangements that either shift liability for isolated breaches would shift when an agreement is in place, or will retain liability for the relying entity when no agreement is in place.

## **Secrecy and access of AUSTRAC information**

The provisions in the AML/CTF Act governing the secrecy and access of AUSTRAC information ensure that the sensitive information under AUSTRAC's control is secure and protected from unauthorised access, use and disclosure. However, a key finding in the report of the statutory review is that these provisions are unduly complex and impede the sharing of AUSTRAC information to support a modern, collaborative approaches to combating and disrupting ML/TF and other serious crimes. The review report recommends the development of a simplified model for sharing information collected under the AML/CTF Act that is:

- responsive to the information needs of agencies tasked with combating ML/TF and other serious crimes commensurate with the changing threat environment (ensuring that information can be exchanged in a timely manner)
- supports collaborative approaches to combating ML/TF and other serious crime at the national and international level, and
- establishes appropriate safeguards and controls that are readily understood and consistently applied.

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<sup>10</sup> Designated Business Group is defined in chapter 2 of the AML/CTF Rules.

The report also makes related recommendations to improve information sharing and collaboration with the private sector and provide the AUSTRAC CEO with new functions to facilitate a more effective information sharing framework.

The proposed amendments to Part 11 of the AML/CTF Act will simplify and streamline the provisions, and ensure that the legislation facilitates timely, efficient and effective sharing of AUSTRAC information with relevant partner agencies and the private sector<sup>11</sup>. For the purposes of this RIS, relevant key measures include:

- allowing the AUSTRAC CEO to disclose AUSTRAC information in a manner consistent with the CEO's function and powers<sup>12</sup>
- streamlining the process for disclosing AUSTRAC information to international bodies and the private sector (including with the Fintel Alliance<sup>13</sup>), and
- revising the current strict limitations on disclosure of suspicious-matter report (SMR)-related information to ensure that the 'tipping off' provisions do not unnecessarily impede action being taken by government agencies and reporting entities to combat ML/TF and other serious crimes.

These reforms will enable industry to better manage ML/TF in delivering their services by allowing greater sharing of information about known or suspected risks which is crucial to combat and disrupt ML/TF.

The reforms also support the Government's agenda of having our national security, law enforcement and regulatory agencies joined up and provided with timely access to vital financial intelligence.

## **Consolidating cross border currency reporting**

Currently, cross-border movements of physical currency of \$10,000 or more (or foreign currency equivalent) must be reported to AUSTRAC, a police or a customs officer (a 'CBM-PC' report). This requirement also captures the carrying, mailing or shipping of physical currency. However, a traveler need only disclose that they are carrying bearer negotiable instruments (BNIs), such as travelers cheques, when requested by a police or customs officer (a 'CBM-BNI' report).

The report of the statutory review recommends the consolidation of these dual reporting regimes and the expansion of the range of reportable monetary instruments to simplify and strengthen the cross-border reporting regime. The proposed amendments will amend Part 4 of the AML/CTF Act to consolidate physical currency and BNI reporting requirements and establish an obligation to report the movement of a "monetary instrument" equal to or more than \$10,000.

This measure will be further supported by a provision in the Bill for additional items to be prescribed by regulation to ensure the legislation is "future proofed", for example, when stored value card readers become available then such items can be made declarable at the border.

In addition, the review recommended an increase in the penalties available for failing to comply with the reporting requirements to align with comparable regimes internationally. The proposed amendments increase the current penalty amounts to deter the undeclared movement of monetary instruments across the border, particularly the bulk smuggling of cash.

This will increase the penalties that can be imposed, by way of an infringement notice, for failing to comply with the relevant cross-border reporting requirements and ensure penalties are consistent with other infringement notices that can be issued under the AML/CTF Act.

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<sup>11</sup> Personal information held by AUSTRAC will continue to be accessed, used and disclosed in accordance with the Privacy Act 1988 and the accompanying Australian Privacy Principles, and include other proportionate safeguards and controls necessary to protect the confidentiality of sensitive AUSTRAC information.

<sup>12</sup> These include to provide access to and to share AUSTRAC information to support efforts to combat ML/TF and other serious crimes.

<sup>13</sup> The Fintel Alliance, launched by AUSTRAC, is a world-first alliance between the public and private sector which enhances information sharing to combat money laundering and terrorism financing.



The proposed amendments will also provide additional flexibility regarding the timing of CBM reports by moving the 'timing rule' from the primary legislation into the regulations. This will allow the timing rule to easily be amended in the future once technology is introduced that enables travellers to make a report prior to arriving at an airport.

## **Correspondent banking**

Reforms are proposed to implement the remaining recommendations from the report of the statutory review on strengthening correspondent banking obligations. These reforms will simplify and streamline the correspondent banking obligations to establish a one-step process for conducting due diligence assessments on correspondent financial institutions, and prohibit financial institutions from entering into a corresponding banking relationship with an institution that permits its accounts to be used by a shell bank.

Although the AML/CTF Act already prohibits correspondent banking arrangements with shell banks, it currently does not explicitly prohibit a bank from entering into or continuing a correspondent banking relationship with a respondent institution that permits their accounts to be used by shell banks. The proposed reforms would provide a civil penalty provision that would prohibit entering into, or continuing, correspondent banking arrangements with a bank that permits their accounts to be used by shell banks. Banks would also be required to terminate arrangements if they became aware that a respondent bank is a shell bank or permits accounts to be used by shell banks.

The reforms will also require financial institutions to obtain senior official approval to continue a correspondent banking relationship following a regular due diligence assessment. This is similar to the requirement that currently exists to obtain senior official approval before entering a correspondent banking relationship.

The proposed amendments will largely mirror existing industry and international banking practice and are expected to have a minor cost to banks. They represent an important step in enhancing compliance with relevant international standards set by the FATF.

## **CDD procedure requirements (service prohibition where CDD not completed)**

In addition to the CCD reliance reform discussed above, reforms are proposed to implement a statutory review recommendation to explicitly prohibit reporting entities from providing a designated service in circumstances where the CDD procedure cannot be carried out, and require reporting entities to consider making a suspicious matter report if such circumstances arise.

This explicit prohibition will deter reporting entities from providing designated services to a customer that cannot be identified in accordance with the requirements of the AML/CTF regime and provide for the reporting of information to AUSTRAC when an inability to complete the CDD occurs in suspicious circumstances. This reform is to make clear an already existing requirement under s32.

The proposed reform will address a deficiency identified in the FATF mutual evaluation of Australia's AML/CTF regime in 2015 and strengthen CDD measures.

The proposal to require reporting entities to consider making a suspicious matter report when the CDD cannot be completed is likely to have a low regulatory impact, as this type of reporting is consistent with existing requirements to generally report suspicious matters associated with the provision of a designated service.

## **Money laundering offences**

Reforms are proposed to amend the money laundering offences contained in Division 400 of the Criminal Code. These amendments will strengthen the offences by addressing a number of practical issues identified through prosecutorial experience of the Commonwealth Director of Public Prosecutions (CDPP).

These issues include difficulties in establishing that a money laundering offence is related to a possible instrument of crime. In these instances, the CDPP has been required to re-frame the prosecution or not proceed with an instrument of crime offence. Proposed amendments to the Criminal Code will therefore clarify that only one circumstance connected to a Commonwealth head of power and not two circumstances is required when establishing that a person was dealing with money or property that is, or is at risk of, becoming an instrument of crime.

A second issue relates to situations where law enforcement agencies use undercover law enforcement officers posing as criminals seeking the services of a syndicate to launder large sums of cash to gather evidence to support complex money laundering investigations. The CDPP has advised that where these operations occur, the money or property provided by the undercover law enforcement officers and dealt with by the syndicate is not actually the proceeds of crime, so no money laundering offence can be proved under Division 400 of the Criminal Code. In these circumstances, the CDPP is forced to rely on an extension of criminal responsibility under Division 11 of the Criminal Code, such as conspiracy or attempt. However, prosecutions under Division 11 are significantly more complex and difficult to successfully prosecute.

An amendment is therefore proposed to the Criminal Code that provides that the money supplied in an undercover operation by a law enforcement participant, or civilian participant acting in accordance with the instructions of a law enforcement officer, is the proceeds of crime and therefore is not required to be proved to be proceeds of crime by the CDPP.

### 3. Policy Options

A number of options have been considered in developing the proposed reforms. For the purpose of the RIS, the focus is on the reforms that are most likely to have a regulatory impact on industry – CDD reliance, CDD procedure requirements reforms, and correspondent banking.

- **Option 1: Maintain the status quo.** This would involve making no changes.
- **Option 2: Minimal changes to the existing AML/CTF requirements.** Under this option, reforms to CDD reliance would retain the current reliance framework but broaden the parties that can be relied upon with liability remaining with the relying party. Under option 2, changes to correspondent banking, and other CDD procedure requirements (service prohibition where CDD not completed) would also not be pursued.
- **Option 3 (preferred): Detailed reform.** In addition to the reform under option 2, this option would include an additional option permitting reporting entities to enter into 'CDD arrangements' for reliance to occur. This offers greater opportunity for regulatory efficiency, with liability linked to the relying party undertaking due diligence on the third parties' CDD processes, rather than being liable for each case of inadequate CDD that may arise.

Comparative detail concerning these options can be found at **Attachment A**.

### Impacts

#### Option 1 – Maintain the status quo

Option 1 would not address the recommendations of the statutory review, and therefore would not address stakeholder concerns about undue complexity, regulatory burden or address deficiencies in compliance with international standards identified by the FATF.

#### ***CDD – reliance***

The AML/CTF Act and Rules currently allow a reporting entity to rely on customer identification and verification procedures carried out by another reporting entity in limited circumstances. A reporting entity is unable to rely

on customer identification conducted outside of Australia unless the AUSTRAC CEO provides the reporting entity with an exemption.

Outside of the licenced financial advisors options, Industry stakeholders have indicated that the reliance provisions under the AML/CTF Act are rarely used, as they lack clarity and certainty, are too restrictive and reporting entities are reluctant to expose themselves to the risk of being held accountable for a breach of CDD requirements performed by a third party.

Due to the restrictive nature of the reliance provision and limited uptake from industry, reporting entities generally complete CDD for every customer they on-board. CDD is a major aspect of AML/CTF compliance and carries a substantial cost. With the current structure, this cost can be duplicated where customers adopt multiple designated services offered by different reporting entities.

Based on the comprehensive consultation process conducted during the course of the review and through the development of the current phase of legislative amendments, industry generally does not support the option of maintaining the status quo. Doing so would fail to provide flexibility to industry to meet their AML/CTF obligations in a more efficient way and would not be in line with the broader 'Open Banking' reforms.

#### ***CDD procedure requirements – service prohibition where CDD not completed***

The FATF identified in Australia's mutual evaluation that the CDD identification provision does not explicitly prohibit reporting entities from providing a designated service in circumstances where the CDD cannot be carried out, and does not require reporting entities to consider making a suspicious matter report in such circumstances. Maintaining the status would not address the FATF deficiency.

#### ***Correspondent banking***

Correspondent banking relationships are vulnerable to ML/TF as they involve a financial institution carrying out transactions on behalf of another financial institution's customers where information on those customers is very limited. The ML/TF risks are particularly high where a respondent institution permits their accounts to be used by shell banks. As shell banks do not have an actual place of business in any country, it is difficult to regulate them or ensure they are not violating anti-money laundering regulations. As a result, the FATF standards contain a prohibition on the use of shell banks.

Australia's AML/CTF regime recognises this threat and prohibits regulated financial institutions from entering correspondent banking relationships with another financial institution that has a correspondent banking relationship with a shell bank. Financial institutions must also terminate a correspondent banking relationship if they become aware that a respondent bank has a correspondent banking relationship with a shell bank.

However, the FATF has identified a deficiency in Australia's AML/CTF regime as financial institutions are not required to satisfy themselves that a respondent financial institution that they are entering into a correspondent banking relationship with does not permit its accounts to be used by shell banks. This exposes Australian financial institutions to unnecessary risk that they may be misused by shell banks for ML/TF purposes. If the status quo is maintained, the FATF deficiency and associated risks will remain.

#### **Option 2 – Minimal changes to the existing AML/CTF requirements**

Option 2 would reform the CDD reliance regime by expanding the parties (both domestically and internationally) that a reporting entity may rely upon when conducting CDD but maintaining liability for all breaches with the relying party (a civil penalty provision).

The expansion of the parties that a reporting entity may rely upon when conducting CDD will address one of the key concerns for industry regarding the restrictive nature of the reliance provisions under the current regime. Under this option, while reporting entities may rely on a broader range of businesses, the ultimate

liability for one off individual breaches of the CDD requirements will remain with the relying party, thus making reliance less attractive.

During consultation with industry, some expressed concerns that the CDD reliance would continue to be under-utilised if this option was pursued alone due to issues around liability for breaches and tolerance for risk. Reporting entities indicated option 2 would not adequately address liability for one off breaches of the CDD requirements by a third party.

Under Option 2, reforms to correspondent banking would not be pursued, and as such, impacts outlined above would remain relevant.

### **Option 3 – Comprehensive reform**

Option 3 would involve more comprehensive reforms of the CDD reliance, clarification of CDD requirements, and correspondent banking arrangements. This approach would best address both industry feedback and FATF deficiencies. This is the preferred option.

#### ***CDD – reliance and service prohibition where CDD cannot be completed***

Given that CDD is currently a major aspect of a business' AML/CTF compliance costs, this option will provide industry with greater flexibility by allowing increased options for CDD reliance. It will also deliver significant regulatory savings.

Proposed reforms will allow reporting entities to enter into a 'CDD arrangement' with a third party which provides a framework for relying on a CDD performed by the third party. As part of entering into the CDD arrangement, the reporting entity will be required to conduct due diligence on the third party's CDD processes and procedures to ensure they are compliant with the FATF standards and that it is reasonable to rely in the circumstances.

Under this proposal, where a reporting entity has relied on the CDD performed by a the third party pursuant to a CDD arrangement, and there is a breach of identification requirements, the relying entity will not be liable for a one-off breach if it is able to show it was reasonable to have relied upon the CDD in circumstances having conducted robust due diligence on the third party's CDD processes.

Where there are more systemic breaches of CDD requirements by the third party, and the relying reporting entity has relied on this CDD in the absence of conducting adequate due diligence on the third party's CDD processes (including ongoing diligence), the relying party will be ultimately responsible for the individual breaches and liable to the civil penalty provision.

Reporting entities that choose to use the CDD arrangements model will face an initial increase in regulatory costs to establish the arrangements and undertake due diligence on a third party's CDD procedures. However, after this initial phase, the proposal is expected to significantly reduce costs and regulatory burden for users. It is noted that the uptake of this measure will be dependent on a range of factors including company structure, type of service and customer, and ability to broker CDD arrangements with other entities. Allowing a reporting entity to rely on another entity's CDD processes will reduce duplication of effort across regulated business and reduce the requirements on customers to provide identity documentation at the on-boarding stage for various services. The proposal will also be consistent with the reforms of the Review into Open Banking in Australia.

Estimating the regulatory costs and savings of this option across the spectrum of reporting entities is difficult as they service a customer base that includes natural persons, non-individuals and beneficial owners of varying type, size and complexity. Based on AUSTRAC engagement with industry, it is assumed that CDD activities

currently require a minimum of approximately three hours to complete for a new customer, and cost approximately \$15 per new customer in third-party service provider and database search fees. It is expected that CDD obligations under the new model will reduce the time costs to approximately 1 hour for basic information verification for natural person customers, and will reduce the third-party costs to approximately \$2.50 - \$3.00 for identity verification searches.

This reduction, when applied across the anticipated 1,630 effected reporting entities with the number of new customers (which ranges from 50 up to 25,000 per entity), is expected to result in an average regulatory saving of **\$310,722,924** each year for ten years.

To maximise the potential of this option, it establishes a regulatory environment whereby a significant saving of effort can be achieved through encouraging cooperation between reporting entities. Further, it is expected that through the process of establishing agreements, that parties through a natural evaluation process of each other's CDD procedures, will drive a higher overall standard of AML/CTF compliance.

The proposal will also prohibit reporting entities from providing a designated service in circumstances where the CDD cannot be carried out, and require reporting entities to consider making a suspicious matter report in such circumstances. This reform will address a further deficiency identified by the FATF.

During consultation with industry, stakeholders agreed that this option presented the greatest opportunity for reducing burden while strengthening Australia's compliance with FATF standards and international reputation.

### ***Correspondent banking***

The reforms would extend the civil penalty provision that prohibits reporting entities from entering into, or continuing correspondent banking relationships with a shell bank, to banks that permits their accounts to be used by a shell bank. The reforms would also explicitly clarify that banks must conduct due diligence and have appropriate senior management approvals prior to entering or continuing correspondent banking arrangements.

The reforms will address the remaining deficiencies identified by the FATF in relation to Australia's correspondent banking regime and will mitigate any risks that Australia financial institutions are misused by shell banks for ML/TF purposes.

The proposed changes reflect a codification of existing practices and are expected to carry a low regulatory cost to reporting entities.

## **4. Impact Analysis**

The groups likely to be affected, directly or indirectly, by Options 2 and 3 are:

- reporting entities – financial institutions, bullion and gambling sectors
- AUSTRAC and partner government agencies, and
- consumers.

The impact of Option 1 is not addressed in detail in this RIS because it does not impose any regulatory obligations on reporting entities.

## Compliance costs

A summary of the estimated overall annualised cost and savings over 10 years of the regulatory impacts/offsets identified in the previous section, as well as the assumptions used to estimate the cost/offsets can be found at **Attachment B**.

Regulatory savings will arise under both options 2 and 3 and will outweigh the costs in both cases.

## Costs excluded from the Regulatory Burden Measurement framework

### Non-compliance and enforcement costs

There may be costs for businesses under Options 2 and 3.

### Indirect costs

Businesses that incur compliance costs as a result of regulation under Option 2 or 3 are expected to pass part of these costs to consumers.

## 5. Consultation

Throughout 2014-15, the Attorney-General's Department, in consultation with AUSTRAC, conducted extensive consultation with industry and government agencies as part of the statutory review of the AML/CTF regime. Over 75 submissions were received from industry, government agencies and other interested parties (see **Attachment C** for a list of entities providing a submission). A series of roundtable meetings were also held with the cash-in-transit, gaming, remittance, not-for-profit, banking and finance sectors in late 2014 and early 2015.

A roundtable meeting with government agencies was held in late January 2015.

A list of industry and government agencies that participated in round-table discussions is at **Attachment D**.

Input provided by industry and government during the lengthy consultation was considered in developing the review recommendations.

The Department of Home Affairs then undertook consultation on the detail of the review recommendations for implementation in this Bill which commenced in mid-2017 with the release of consultation papers and a workshop with industry representatives on the CDD reliance reforms. Attendance at the workshop was facilitated by the Australian Bankers Association and the Australian Financial Markets Authority.

Meetings were held with government agencies in 2017 and 2018 on the secrecy and access reforms. Consultation with industry has also occurred through the Fintel Alliance.

Throughout these engagements, industry feedback in relation to the proposed amendments has been positive, often providing constructive input resulting in incremental improvements in Australia's AML/CTF regime.

Further consultation will occur during 2019, including targeted consultation with industry sectors and further meetings or workshops if required. The Department will also consult with industry about an appropriate implementation period.

If the Bill is passed by Parliament, the Department of Home Affairs, in partnership with AUSTRAC, will continue to engage with industry and government on implementation issues and consider opportunities for targeted education and guidance to both regulated and non-regulated sectors.

## 6. Implementation and review

### *Delayed commencement*

It is proposed that measures in the Bill would commence 6-12 months from the date of Royal Assent to enable industry time to make any changes to systems. After a suitable time has elapsed to allow consideration on whether these reforms are operating as intended, AUSTRAC and the Department of Home Affairs will seek industry feedback.

### *AUSTRAC support and guidance*

AUSTRAC will consult closely with industry about the reforms and consider opportunities for targeted education and guidance to regulated and non-regulated sectors.

## Attachment A: Comparative summary of Options

The following is a summary of the options considered in this RIS:

<b>CUSTOMER DUE DILIGENCE (CDD) RELIANCE</b>			
	<b>OPTION 1: MAINTAIN THE STATUS QUO</b>	<b>OPTION 2: MINIMAL CHANGES TO THE AML/CTF REQUIREMENTS</b>	<b>OPTION 3: DETAILED REFORM</b>
<b>SUMMARY</b>	No change to the current reliance provisions.	Expand parties (domestically and internationally) that a reporting entity may rely upon when conducting CDD but liability will remain with the relying for individual breaches of CDD.	<p>Expand parties (domestically and internationally) that a reporting entity may rely upon when conducting CDD.</p> <p>Clarify that where a reporting entity relies on a third party, they remain responsible if a breach of CDD requirements occurs.</p> <p>Allow reporting entities to enter CDD arrangements with other regulated business, which will enable the entity to show it was reasonable for it to rely upon CDD undertaken by the third party and not be held responsible for a one off breach of CDD requirements.</p>



<b>CUSTOMER DUE DILIGENCE (CDD) RELIANCE</b>			
<b>RESOURCE IMPLICATIONS</b>	No change to resource implications.	Minor reduction in compliance costs for regulated business.	Initial increase in compliance costs for regulated business, followed by a significant reduction in compliance costs over longer period.
<b>ADVANTAGES</b>	No advantages.	Expands the parties that a reporting entity may rely upon both domestically and internationally.	Expands the parties that a reporting entity may rely upon both domestically and internationally.  Addresses key deterrent for reporting entities to adopt CDD reliance provisions.  Potential for significantly reduced compliance costs.
<b>DISADVANTAGES</b>	Provisions remain unused by reporting entities.  No reduction of compliance costs for reporting entities.	Provisions may remain unused by reporting entities.  No reduction of compliance costs for reporting entities.	Possibility that provisions remain unused by reporting entities.

<b>CORRESPONDENT BANKING</b>			
	<b>OPTION 1: MAINTAIN THE STATUS QUO</b>	<b>OPTION 2: MINIMAL CHANGES TO THE AML/CTF REQUIREMENTS</b>	<b>OPTION 3: DETAILED REFORM</b>
<b>SUMMARY</b>	No change to the current correspondent banking provisions.	No change to the current correspondent banking provisions.	Provide a civil penalty provision that prohibits entering into, or continuing a correspondent banking relationship with a shell bank or bank that permits their accounts to be used by shell banks.  Require banks to conduct CDD and have appropriate approvals prior to entering into and continuing a correspondent banking relationship.
<b>RESOURCE IMPLICATIONS</b>	No resource implications.	No resource implications.	Minimal compliance costs for regulated business. Proposed reforms largely mirror current industry practice.
<b>ADVANTAGES</b>	No advantages.	No advantages.	Addresses remaining correspondent banking deficiencies identified by the FATF.
<b>DISADVANTAGES</b>	Deficiencies of corresponding banking framework as identified by the FATF mutual evaluation of Australia's AML/CTF regime remain.  Australian banks may enter/carry on correspondent banking relationships with respondent institutions that permit their accounts to be used by shell banks (carrying higher ML/TF risks).	Deficiencies of corresponding banking framework as identified by the FATF mutual evaluation of Australia's AML/CTF regime remain.  Australian banks may enter/carry on correspondent banking relationships with respondent institutions that permit their accounts to be used by shell banks (carrying higher ML/TF risks).	Minimal compliance costs for regulated business.

<b>CDD REQUIREMENTS – SERVICE PROHIBITION WHERE IDENTIFICATION INCOMPLETE</b>			
	<b>OPTION 1: MAINTAIN THE STATUS QUO</b>	<b>OPTION 2: MINIMAL CHANGES TO THE AML/CTF REQUIREMENTS</b>	<b>OPTION 3: DETAILED REFORM</b>
<b>SUMMARY</b>	No changes to the customer identification regime.	No changes to the customer identification regime.	Explicitly prohibit reporting entities from providing a designated service in circumstances where the applicable customer identification procedure cannot be carried out.  Require reporting entities to make a suspicious matter report in the above circumstances.
<b>RESOURCE IMPLICATIONS</b>	No resource implications.	No resource implications.	Minimal compliance costs for regulated business. Proposed reforms largely mirror current industry practice.
<b>ADVANTAGES</b>	No advantages.	No advantages.	Address deficiency identified during the FATF mutual evaluation of Australia’s AML/CTF regime.
<b>DISADVANTAGES</b>	Deficiencies of customer identification framework as identified by the FATF mutual evaluation of Australia’s AML/CTF regime remain.  Risk exists where business that offers a designated service do not have capability to undertake necessary customer identification processes.	Deficiencies of customer identification framework as identified by the FATF mutual evaluation of Australia’s AML/CTF regime remain.  Risk exists where business that offers a designated service do not have capability to undertake necessary customer identification processes.	Minimal compliance costs for regulated business.

## Attachment B - Indicative Costings and Assumptions

### Regulatory costs and offsets

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$) <sup>14</sup>				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
Customer Due Diligence (CDD) -Reliance	1	Unchanged	Unchanged	Unchanged	Unchanged	There is no proposed change to the current regime under Option 1.
	2	\$2,395,523	(\$104,475,332)	(\$104,235,780)	(\$1,042,357,797 )	See Assumptions below
	3	\$5,362,793	(\$311,259,204)	(\$310,722,924)	(\$3,107,229,243 )	See Assumptions below
Correspondent Banking	1, 2	Unchanged	Unchanged	Unchanged	Unchanged	There is no proposed change to the current regime with options 1 and 2.
	3	\$6,927	Nil	\$693	\$6,927	The proposed amendments to correspondent banking obligations are

<sup>14</sup>Timings are indicative. Positive figures are costs. Figures in brackets are savings.

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						<p>primarily technical in nature and should have neutral costs and impacts. The amendments reflect current global and best practice and provide reporting entities with clarity and certainty around their obligations.</p> <p>Under this proposal we have assumed, based on our compliance activity, that no more than 45 domestic and foreign banks have correspondent banking relationships and that the majority of those correspondent banking relationships are with well-respected institutions with head offices in mainstream jurisdictions in the US, UK, Europe or large Asian cities.</p> <p>Accordingly, given that the processes align with current global practices, we</p>

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						estimate that there should only be a one-off cost associated with time taken to understand the amended legislative requirements. For the purposes of this impact assessment, we have assumed that each of the 45 affected reporting entities will require approximately two hours to understand the new requirements.
CDD Procedure requirements– Service Prohibition where CDD not completed	1, 2	Unchanged	Unchanged	Unchanged	Unchanged	There are no proposed changes to the current regime with options 1 and 2.
	3	Nil	Nil	Nil	Nil	This new requirement is formalising an existing business practice for a majority of reporting entities who already comply with this requirement when the applicable customer

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						identification procedures (ACIP) cannot be carried out.
Cross Border Movement (CBM/BNI) Reporting	1, 2	Unchanged	Unchanged	Unchanged	Unchanged	There are no proposed changes to the current regime with options 1 and 2.
	3	Nil	Nil	Nil	Nil	<p>There is no existing or future impost on reporting entities for CBM reporting.</p> <p>CBM reporting impacts:</p> <ul style="list-style-type: none"> <li>• Travellers, flight and ship crews for providing details about themselves, their travel and the physical currency and/or bearer negotiable instruments (BNIs) they are carrying</li> <li>• Department of Home Affairs (Immigration and Border Protection) and Australian Federal Police (AFP) are</li> </ul>

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						<p>responsible for collecting and handling CBM reports from travellers and issuing infringement notices, if required</p> <p>There is a negligible time factor of less than five seconds for travellers, flight and ship crews to confirm whether they are carrying physical currency of \$10,000 or more (or foreign equivalent) on passenger cards. And if carrying that amount of physical currency or declaring BNIs when asked, on average the time taken to complete a CBM form is less than five minutes.</p> <p>Consolidating the existing CBM reporting requirements will impose a small but incalculable regulatory impact on travellers and crews. This is</p>



Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						because the change might require a small number of people to mandatorily report that may currently have been requested to report by an officer. However, through the use of SmartGates and other technology at the border to facilitate the processing of people there is expected to be a reduction in time filling out CBM forms, manual handling by DIBP and AFP staff, delivery of forms and data entry of those forms by AUSTRAC staff.
Secrecy and Access	1, 2	Unchanged	Unchanged	Unchanged	Unchanged	There is no proposed change to the current regime with options 1 and 2.
	3	\$226,298	Nil	\$22,630	\$226,298	The intention is to overhaul Part 11 of the AML/CTF Act to:

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						<ul style="list-style-type: none"> <li>• Provide greater flexibility of the use and disclosure of AUSTRAC information to a range of government and industry stakeholders with appropriate privacy safeguards</li> <li>• Improve information sharing and collaboration within the private sector</li> </ul> <p>In effect the new requirement will be a cost saving rather than a cost as currently reporting entities cannot share SMR information within their corporate group (see also the reforms contained under Phase 1) or with government bodies other than AUSTRAC.</p> <p>As not all reporting entities will be authorised to share SMR information due to the fact that they do not meet</p>

Obligation imposed or removed	Options: 1 – Maintain the status quo 2 – Minimal changes 3 – Detailed reform	Impact (\$)¹⁴				Assumptions and Comments
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years	
						the requirements of being part of a corporate group, the affected population for this initiative has been reduced to 696. It is anticipated that each affected entity will spend three hours understanding the new legislative provisions, and an additional one hour updating business rules to allow for the new provisions.

# Assumptions

## Reliance Option 2 – No CDD Arrangements

Obligation imposed or removed	Option	Impact (\$) <sup>15</sup>			
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years
Customer Due Diligence (CDD) - Reliance	2 Minimal	\$2,395,523	(\$104,475,332)	(\$104,235,780)	(\$1,042,357,797)

The assumptions for Reliance Option 2 are based on those for Option 3 (below).

In comparison to the full model in Option 3, we have assumed that all assumptions remain the same with the exception of the following:

- Reporting entities who choose to use reliance will not be required to prove that they have conducted due diligence on the institution they are relying on, as they will maintain the liability of the CDD activities at all times. This reduces the time associated with establishing reliance agreements, and removes the need for annual reviews of their partner institutions.
- Reporting entities will not be required to enter into formal agreements with other institutions in order to undertake reliance activities. This will reduce the time associated with commencing reliance arrangements.
- The number of reporting entities that will utilise the reliance provisions will drop significantly. This is due to the fact that the provisions will require every reporting entity to maintain liability for conducting due diligence on their customers, regardless of whether they have relied on the due diligence of another

<sup>15</sup>Timings are indicative. Positive figures are costs. Figures in brackets are savings.

institution. This situation could pose too high a business risk for most reporting entities, and feedback received from industry indicates that domestic banks would be largely unwilling to consider reliance options.

- It is expected that foreign banks will be the primary users of the reliance provisions under this option. Some remitters and financial services intermediaries are also expected to utilise the provisions. Only approximately 695 reporting entities are expected to utilise the provisions under this model.

## Calculations for Reliance Option 2

Sector	Sub-Sector	Population	Impacted Population (IP)	Understand requirements (hours x pop.)	Implement business processes (hours x IP)	Implement Agreements (hours x IP)	Analyse CDD of partner institutions (hours x IP)	Suitable Customers per IP per annum	Old CDD requirements (hours x Cust. x IP)	Old CDD Requirements (\$Cost x Cust. x IP)	Reliance model (hours x Cust. x IP)	Reliance model (\$cost x Cust. x IP)
<b>Financial Services</b>												
Banks Domestic	Small	94	-	2	10	-	-	25,000	3	15	1	2.5
	Large	5	-	2	10	-	-	25,000	3	15	1	2.5
Banks Foreign	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	50	20	2	10	-	-	25,000	3	15	1	2.5
Remittance Dealers	Small	5,050	150	2	5	-	-	500	3	15	1	3
	Large	50	5	2	10	-	-	5,000	3	15	1	2.5
Custodians	Small	108	-	2	5	-	-	250	3	15	1	3
	Large	20	-	2	5	-	-	500	3	15	1	3
Digital Currency Exchanges	Small	115	-	2	5	-	-	25	3	15	1	3
	Large	5	-	2	5	-	-	100	3	15	1	3
Financial Service Intermediaries	Small	1,426	500	2	5	-	-	50	3	15	1	3
	Large	50	20	2	5	-	-	150	3	15	1	3

Sector	Sub-Sector	Population	Impacted Population (IP)	Understand requirements (hours x pop.)	Implement business processes (hours x IP)	Implement Agreements (hours x IP)	Analyse CDD of partner institutions (hours x IP)	Suitable Customers per IP per annum	Old CDD requirements (hours x Cust. x IP)	Old CDD Requirements (\$Cost x Cust. x IP)	Reliance model (hours x Cust. x IP)	Reliance model (\$cost x Cust. x IP)
Foreign Exchange Providers	Small	89	-	2	5	-	-	250	3	15	1	3
	Large	20	-	2	5	-	-	500	3	15	1	3
Insurance Product Issuers	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	38	-	2	5	-	-	1000	3	15	1	3
Non-Bank Lenders & Financiers	Small	1,119	-	2	5	-	-	10,000	3	15	1	3
	Large	50	-	2	5	-	-	25,000	3	15	1	
Non-Bank Wealth Creation Groups	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	1	-	2	5	-	-	500	3	15	1	3
Payment Systems & Service Providers	Small	2	-	2	5	-	-	5,000	3	15	1	3
	Large	3	-	2	5	-	-	25,000	3	15	1	3
Stockbrokers	Small	467	-	2	5	-	-	500	3	15	1	3

Sector	Sub-Sector	Population	Impacted Population (IP)	Understand requirements (hours x pop.)	Implement business processes (hours x IP)	Implement Agreements (hours x IP)	Analyse CDD of partner institutions (hours x IP)	Suitable Customers per IP per annum	Old CDD requirements (hours x Cust. x IP)	Old CDD Requirements (\$Cost x Cust. x IP)	Reliance model (hours x Cust. x IP)	Reliance model (\$cost x Cust. x IP)
	Large	50	-	2	10	-	-	2,500	3	15	1	3
Superannuation Fund Trustees	Small	50	-	2	5	-	-	25,000	3	15	1	3
	Large	10	-	2	10	-	-	50,000	3	15	1	3
Trustees of Managed Investment Schemes	Small	440	-	2	5	-	-	50	3	15	1	3
	Large	350	-	2	10	-	-	500	3	15	1	3
<b>Gambling Services</b>												
Betting Agencies/TABs	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	13	-	2	10	-	-	2,500	3	15	1	3
Bookmakers	Small	313	-	2	5	-	-	50	3	15	1	3
	Large	-	-	-	-	-	-	-	-	-	-	-
Casinos	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	13	-	2	10	-	-	5,000	3	15	1	3
Pubs and Clubs	Small	3,655	-	2	5	-	-	50	3	15	1	3
	Large	-	-	-	-	-	-	-	-	-	-	-



Sector	Sub-Sector	Population	Impacted Population (IP)	Understand requirements (hours x pop.)	Implement business processes (hours x IP)	Implement Agreements (hours x IP)	Analyse CDD of partner institutions (hours x IP)	Suitable Customers per IP per annum	Old CDD requirements (hours x Cust. x IP)	Old CDD Requirements (\$Cost x Cust. x IP)	Reliance model (hours x Cust. x IP)	Reliance model (\$cost x Cust. x IP)
<b>Bullion Services</b>												
Precious Metal Dealers	Small	100	-	2	-	-	-	50	3	15	1	3
	Large	5	-	2	-	-	-	100	3	15	1	3
<b>TOTAL</b>												

## Reliance Option 3 – with CDD Arrangements

Obligation imposed or removed	Option	Impact (\$) <sup>16</sup>			
		Annualised one-off cost	Annualised ongoing cost	Average cost per year	Total cost over 10 years
Customer Due Diligence (CDD) -Reliance	3 Detailed	\$5,362,793	(\$311,259,204)	(\$310,722,924)	(\$3,107,229,243)

We have assumed that all reporting entities will be required to consider the new regulatory provisions in the first instance to determine whether they suit their business model, business relationships, and customer base. All reporting entities will therefore require approximately 2 hours to interpret and consider the new provisions.

As part of our assessment, we have assumed that because the take up of reliance is not mandatory, its uptake will vary considerably between industry sectors. On this basis, we have assumed that it is:

- Likely for banks (also in the context of the Government’s Open Banking initiative) and other financial service providers, but unlikely to be utilised by small credit unions and building societies<sup>17</sup> other than on a customer-by-customer basis
- Unlikely for casinos due to competition for high value or commission-based customers who are primarily domiciled overseas. Casinos do not have any corporate customers, they are all natural persons.
- Unlikely that businesses that operate in a (near-to) exclusively on-line environment, as their technology systems (including CDD) are likely to be highly automated and have minimal personal involvement.

The uptake and application of reliance depends on the size and structure of businesses, e.g.:

<sup>16</sup>Timings are indicative. Positive figures are costs. Figures in brackets are savings.

<sup>17</sup> Community based banking typically has a local focus and customers tend not to use the products and services of larger financial institutions

- Likely with global companies, corporate groups, businesses with foreign relationships and designated business groups
- Likely with businesses that have extensive existing relationships with other regulated businesses for the provision of services to common customers
- Likely with businesses that have large customer bases and customer turnover, and in particular, have a large number of corporate customers
- Likely with financial institutions that are participating in the New Payments Platform or impacted by the Government's open-banking initiative
- Unlikely with small businesses and independent operators where customers are not required to open or maintain an account

It is assumed that some businesses will not enter into a formal reliance agreement with other regulated businesses, preferring to use reliance as and when required.

This will be influenced by the size and scale of the entities involved. For example, it is assessed that the largest five banking institutions will enter into formal reliance arrangements, whereas 20 out of the remaining 94 banks may enter into these arrangements. The remainder are considered unlikely to enter into these arrangements, but may still use the expanded reliance measure as and when required. Similarly, just over half of the foreign and investment banking sector might enter into formal reliance arrangements. The assumptions recognise that some businesses will already have or are working towards having reliance style mechanisms in place through the New Payments Platform (NPP) arrangements. Under the NPP, those financial institutions that are currently using the platform for domestic transactions have agreed to trust one another in regards to the standards of CDD undertaken in regards to customers.

The estimated proportion of businesses in other cohorts in the financial sector that will adopt formal reliance arrangements is variable. For example, it is expected that no digital currency exchanges will enter into formal reliance arrangements because of the online nature of their businesses and the higher ML/TF risk of the sector. However, in the financial intermediary cohort (Financial Planners, etc.), it is expected that more than two-thirds of businesses in this sector will adopt formal reliance arrangements. These entities already have informal arrangements in place.

We have assumed an overall uptake of approximately 1630 reporting entities.

For those reporting entities who opt to utilise reliance provisions, each entity will be required to implement business processes, analyse the CDD activities of other reporting entities, and establish agreements with other reporting entities. The time required to prepare these reliance agreements and business processes will vary between reporting entities, from 5 – 20 hours, depending on the size, nature and risk profile of the sector. These would also need to be reviewed at least once every two years. It is likely that this review process would take approximately two hours.

Not all customers will be suitable for the use of reliance as part of the CDD process due to a range of factors, including the individual customer's risk profile, or the fact that they are not customers of an institution with which a reliance agreement is in place. Reliance is also dependent on customer consent during the on-boarding process or when an existing customer takes on additional services or products. The estimated number of "suitable customers" ranges from 50,000 to 25 per reporting entity.

Cost savings have been difficult to estimate due to the gaps in understanding the effort required to verify natural persons, non-individuals and beneficial ownership, having regards to the customer base and type, size of business, frequency or volume of use, and the nature of initial customer due diligence conducted by each cohort in the regulated sector. It is assumed that CDD activities currently require a minimum of approximately three hours to complete for a new customer, and cost approximately \$15 per new customer in third-party service provider fees and database search fees. It is expected that CDD obligations under the new model will reduce the time costs to approximately 1 hour for basic information verification for natural person customers, and will reduce the third-party costs to approximately \$2.50 - \$3.00 for ID searches.

Therefore, it is expected that each affected entity will save approximately 2 hours in labour and \$12.00 in third-party fees per new customer under this reliance model. When amplified by the number of affected reporting entities (1,630) and the number of new customers per affected reporting entity (which ranges from 50 up to 25,000 per entity), the cost savings from this initiative could be significant. It is important to note that the assumption used in this RIS are conservative, as the uptake could be higher than expected, resulting in additional affected entities and customers, and current compliance costs could be higher, resulting in higher savings per instance.

# Calculations for Reliance Option 3

Sector	Sub-Sector	Population	Impacted Population (IP)	Understand requirements (hours x pop.)	Implement business processes (hours x IP)	Implement Agreements (hours x IP)	Analyse CDD of partner institutions (hours x IP)	Suitable Customers per IP per annum	Old CDD requirements (hours x Cust. x IP)	Old CDD Requirements (\$Cost x Cust. x IP)	Reliance model (hours x Cust. x IP)	Reliance model (\$Cost x Cust. x IP)
<b>Financial Services</b>												
Banks Domestic	Small	94	20	2	10	20	20	25,000	3	15	1	2.5
	Large	5	5	2	10	20	20	25,000	3	15	1	2.5
Banks Foreign	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	50	30	2	10	10	10	25,000	3	15	1	2.5
Remittance Dealers	Small	5,050	500	2	5	10	10	500	3	15	1	3
	Large	50	20	2	10	20	20	5,000	3	15	1	2.5
Custodians	Small	108	-	2	5	10	10	250	3	15	1	3
	Large	20	2	2	5	10	10	500	3	15	1	3
Digital Currency Exchanges	Small	115	-	2	5	10	10	25	3	15	1	3
	Large	5	-	2	5	10	10	100	3	15	1	3
Financial Service Intermediaries	Small	1,426	1000	2	5	10	10	50	3	15	1	3
	Large	50	40	2	5	10	10	150	3	15	1	3
Foreign Exchange Providers	Small	89	-	2	5	10	10	250	3	15	1	3
	Large	20	5	2	5	10	10	500	3	15	1	3

Insurance Product Issuers	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	38	-	2	5	10	10	1000	3	15	1	3
Non-Bank Lenders & Financiers	Small	1,119	-	2	5	10	10	10,000	3	15	1	3
	Large	50	-	2	5	10	10	25,000	3	15	1	
Non-Bank Wealth Creation Groups	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	1	-	2	5	10	10	500	3	15	1	3
Payment Systems & Service Providers	Small	2	-	2	5	10	10	5,000	3	15	1	3
	Large	3	3	2	5	10	10	25,000	3	15	1	3
Stockbrokers	Small	467	-	2	5	10	10	500	3	15	1	3
	Large	50	5	2	10	20	20	2,500	3	15	1	3
Superannuation Fund Trustees	Small	50	-	2	5	10	10	25,000	3	15	1	3
	Large	10	-	2	10	10	10	50,000	3	15	1	3
Trustees of Managed Investment Schemes	Small	440	-	2	5	10	10	50	3	15	1	3
	Large	350	-	2	10	10	10	500	3	15	1	3
<b>Gambling Services</b>												
Betting Agencies/TABs	Small	-	-	-	-	-	-	-	-	-	-	-

	Large	13	-	2	10	10	10	2,500	3	15	1	3
Bookmakers	Small	313	-	2	5	10	10	50	3	15	1	3
	Large	-	-	-	-	-	-	-	-	-	-	-
Casinos	Small	-	-	-	-	-	-	-	-	-	-	-
	Large	13	-	2	10	10	10	5,000	3	15	1	3
Pubs and Clubs	Small	3,655	-	2	5	10	10	50	3	15	1	3
	Large	-	-	-	-	-	-	-	-	-	-	-
<b>Bullion Services</b>												
Precious Metal Dealers	Small	100	-	2		10	10	50	3	15	1	3
	Large	5	-	2		10	10	100	3	15	1	3
<b>TOTAL</b>			<b>1630</b>									

## Attachment C: List of submissions to AML/CTF Review

<p><b>Accounting</b> Australian Auditing and Accounting Public Policy Committee</p> <p><b>AML compliance</b> AML Master GRC Institute</p> <p><b>Banking</b> Australian Bankers Association Australian Finance Conference Australian Financial Markets Association Customer Owned Banking Association HSBC Australia Limited 1 confidential submission</p> <p><b>Cash-in-transit</b> Australian Security Industry Association Limited Mr Rick &amp; Ms Anna Biela Security Specialists Australia 2 confidential submissions SNP Security</p> <p><b>Individuals and academia</b> Ms Anne Imobersteg Harvey One confidential submission Mr Douglas Allen Faculty of Law, University of New South Wales Mr Michael Robson Professor Louis de Koker and Mr Kayne Harwood</p> <p><b>Legal</b> Financial Services Committee, Law Council of Australia One confidential submission Law Council of Australia</p> <p><b>Remitters</b> Capital Money Exchange Pty Ltd (confidential) Eastern &amp; Allied Pty Ltd/Hai Ha Money Transfer Kapruka Pty Ltd MoneyGram Payment Systems Inc. Western Union</p> <p><b>Salary packaging</b> McMillan Shakespeare Group</p> <p><b>Superannuation</b> Association of Superannuation Funds of Australia Limited Australian Institute of Superannuation Trustees Financial Services Council</p> <p><b>Technology providers</b> iSignthis Ltd (White Paper confidential) One confidential submission</p>	<p><b>Financial planners</b> Mr Ashok Sherwal Financial Planning Association of Australia <b>Gaming services industry</b> Australian Bookmakers' Association Pty Ltd Australian Hotel Association Australian Wagering Council Casinos and Resorts Australasia Clubs NSW/Clubs Australia Mercury Group Victoria Inc Peter Shepherd One confidential submission</p> <p><b>Government (confidential)</b> Australian Crime Commission (two submissions) Australian Customs and Border Protection Service Australian Federal Police Australian Security intelligence Organisation Australian Taxation Office (two submissions) Cyber &amp; Identity Security Policy Branch, Attorney-General's Department Department of Foreign Affairs and Trade Department of Human Services Inspector General of Intelligence and Security NSW Crime Commission NSW Police Integrity Commission Office of the Australian information Commissioner Treasury</p> <p><b>Lenders</b> Capricorn Society Limited Mortgage &amp; Finance Association of Australia National Financial Services Federation Ltd SP AusNET</p> <p><b>Managed investment schemes</b> Fawkner Property Pty Ltd Fundhost Limited</p> <p><b>New payment methods</b> Mr Kevin Beck (three submissions) PayPal Australia Pty Ltd (appendices confidential) Universal Gift Cards Pty Ltd</p> <p><b>NGOs</b> Australian Privacy Foundation and Privacy International Transparency International Australia Uniting Church in Australia Synod of Victoria and Tasmania</p>
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## Attachment D: Stakeholder Engagement

ROUNDTABLE DATE	PARTICIPANTS
<b>19 September 2015</b>	
<b>NGO sector</b>	Uniting Church in Australia, Synod of Victoria and Tasmania Transparency International Australia Australian Council for International Development OXFAM
<b>24 September 2015</b>	
<b>Gaming sector: Gaming machines</b>	Australian Hotels Association ClubsNSW Mercury Group Victoria Inc ALH Group Pty Ltd
<b>Gaming sector: Casinos</b>	Casinos and Resorts Australasia
<b>Gaming sector: Wagering</b>	Australian Wagering Council Australian Bookmakers Association Limited TattsGroup
<b>Cash-in-transit sector</b>	Australian Security Industry Association Limited Linfox Armaguard Prosegur
<b>25 September 2015</b>	
<b>Remittance sector: Large remitters</b>	Western Union
<b>Remittance sector: Small/medium remitters</b>	UAE Exchange Hai Ha MoneyGram OzForex Group RIA
<b>26 September 2015</b>	
<b>AML compliance sector</b>	AML Master
<b>2 October 2015</b>	
<b>AML compliance sector</b>	Yarra Valley Associates
<b>25 November 2015</b>	
<b>Banking sector: Australian Finance Conference</b>	Australian Finance Conference Toyota Finance Australia Limited Pepper Group Marubeni Equipment Finance
<b>Banking sector: Australian Banking Association</b>	Australian Bankers' Association Commonwealth Bank of Australia Macquarie Westpac ANZ ING Direct HSBC
<b>19 November 2014</b>	
<b>Banking sector: Australian Financial Markets Association</b>	Australian Financial Markets Association Western Union Bank of America Merrill Lynch Westpac Morgan Stanley ANZ NAB UBS AMP
<b>Banking sector: Financial Services Council</b>	Financial Services Council

ROUNDTABLE DATE	PARTICIPANTS
	BT Financial Group HWL Ebsworth K&L Gates Schroders Perpetual Commonwealth Bank Minter Ellison Lawyers Bell Asset Management Vanguard KPMG
<b>Banking sector: Customer Owned Banking Association</b>	Customer Owned Banking Association Teachers Mutual Bank Maritime, Mining & Power Credit Union Heritage Bank Community First Credit Union Greater Building Society The University Credit Society People’s Choice Credit Union Bankmecu Beyond Bank Victoria Teachers Mutual Bank
<b>17 December 2015</b>	
<b>New payment methods</b>	<b>PayPal</b>
<b>28 January 2015</b>	
<b>Government agencies</b>	Australian Crime Commission Australian Federal Police Attorney-General’s Department Australian Security and Intelligence Organisation Australian Taxation Office Australian Transaction Reports and Analysis Centre Department of Foreign Affairs and Trade Department of Human Services Department of Immigration and Border Protection Australian Customs and Border Protection Service Inspector-General of Intelligence and Security Office of the Australian Information Commissioner Treasury NSW Crime Commission