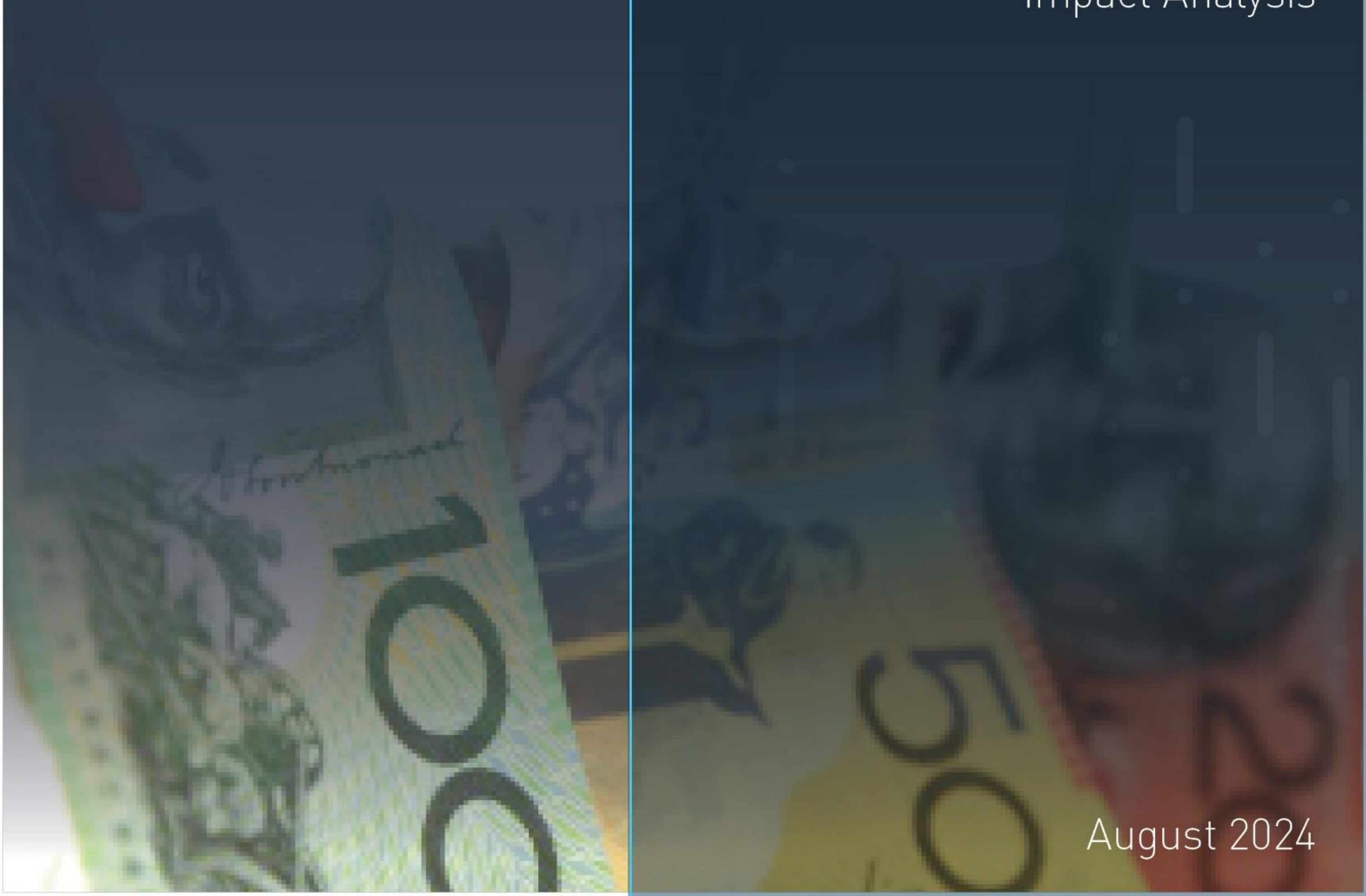
Australian Government

Attorney-General's Department

Reforming Australia's anti-money laundering and counter-terrorism financing regime

Impact Analysis



August 2024

Glossary

Term	Description
2022 Senate Inquiry	2022 Senate Inquiry into the adequacy and efficacy of Australia's AML/CTF regime
ACIC	Australian Criminal Intelligence Commission Australia's national criminal intelligence agency – tasked with strengthening the ability to respond to crime affecting Australia including serious and organised crime.
ACIP	Applicable customer identification procedures
AIC	Australian Institute of Criminology
AML/CTF	Anti-money laundering, counter-terrorism financing and/or counter-proliferation financing
AML/CTF Act	*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
AML/CTF regime	Australia's regime that encompasses the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* and relevant AUSTRAC guidance.
AFP	Australian Federal Police
AFSA	Australian Financial Security Authority
APG	Asia/Pacific Group on Money Laundering
AUSTRAC	Australian Transaction Reports and Analysis Centre Australia's financial intelligence unit and anti-money laundering and counter-terrorism financing regulator.
CAA	Confiscated Assets Account
CACT	Criminal Assets Confiscation Taskforce
Cash Dealers	FTR Act regulated population as defined as defined under section 3 of the FTR Act.
CDD	Customer due diligence
DCEPs	Digital currency exchange providers An individual, business or organisation that exchanges either money for digital currency and/or digital currency for money.
DNFBPs	Designated non-financial businesses and professions

	Includes casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers.
EGMs	Electronic gaming machines
FATF	Financial Action Taskforce The global inter-governmental body responsible for developing and monitoring the international AML/CTF standards.
FDI	Foreign Direct Investment
Financial crime	For the purposes of this report encompasses money laundering, terrorism financing and/or proliferation financing.
FIU	Financial Intelligence Unit
FSRB	FATF-style regional bodies
FTR Act	*Financial Transaction Reports Act 1988*
GDP	Gross domestic product The total market value of all goods and services produced in a given period of time.
Grey-list	A rating given to countries that are identified by the FATF to have weak AML/CTF systems.
IFTI	International fund transfer instruction
IFTI-E	IFTI reports specific to instructions to transfer money or property by a financial institution.
IFTI-DRA	IFTI reports specific to instructions to transfer money or property under a designated remittance arrangement.
IPEF	Indo-Pacific Economic Framework
KRA	Key Recommended Actions
KYC	Know your customer
MCA	Multi-Criteria Analysis
ML/TF	Money laundering and terrorism financing
NIC	National intelligence community Community of the 10 Australian intelligence and security agencies that work to protect and enhance Australia's security, prosperity and sovereignty. Includes ACIC, AFP, AGO, ASIO, ASIS, ASD, AUSTRAC, DIO, Department of Home Affairs and ONI.

NPP	New Payments Platform
NPV	Net-present value
NRA	National Risk Assessment
OECD	Organisation for Economic Co-operation and Development
OLGR	Queensland Office of Liquor and Gaming Regulation
OLSC	Office of the Legal Services Coordination
PEP	Politically exposed person Individuals who may hold, or have close relation to a person who may hold, a prominent public position or function in a government body or international organisation.
POCA	*Proceeds of Crime Act 2002*
PSMDs	Precious stones and metals dealers
Remittance service provider	An individual, business or organisation that accepts instructions from customers to transfer money or property to a recipient.
SMR	Suspicious matter report May also be referred to a suspicious transaction report (STR).
TAB	Totalisator agency board
The Act	The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
The Agreement	IPEF Fair Economy Agreement
The Committee	The Senate Legal and Constitutional Affairs Reference Committee
The Statutory Review	2016 Statutory Review of the Act and associated Rules and Regulations
The Rules	The *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*
TSOC	Transnational, serious and organised crime
TTR	Threshold transaction report
WMD	Weapons of mass destruction Includes nuclear, chemical and/or biological weapons and their related materials.
$	Australian dollars

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Executive Summary

Each year billions of dollars of illicit funds are generated from illegal and harmful activities such as drug trafficking, tax evasion, human trafficking, cybercrime and scams, arms trafficking and other illegal and corrupt practices. Illicit financing is also used to fund activities that harm Australia's national security and efforts to maintain an international rules-based order. The Australian Institute of Criminology (AIC) estimated serious and organised crime to cost the Australian community $60.1 billion in 2020-21. The true total cost of crime is likely much greater, given the illicit nature of the activities and the second order effects on the community and economy. While money laundering is a criminal activity in its own right, illicit financing is a key enabler of these serious crimes with profit being the primary motivation. Criminals must launder their proceeds of crime to enjoy the proceeds of their illegal activities or to reinvest illicit funds in further criminal activity without detection. The amount of money laundered in Australia has been indicatively estimated at up to 2.3 per cent of GDP.[1]

Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime establishes a regulatory framework for combatting money laundering, terrorism financing and other serious financial crimes. At its core, the AML/CTF regime is a partnership between the Australian Government and industry. Through the regulatory framework established by the AML/CTF regime, businesses play a vital role in effectively detecting and preventing misuse of their sectors and products by criminals seeking to launder money and fund terrorism.

There are a number of inefficiencies throughout Australia's AML/CTF regime that limit the effectiveness of Australia's response to transnational crime at large. Industry and government stakeholders have consistently called for reforms to key obligations of the AML/CTF regime due to unnecessary complexity.

Currently, businesses internationally recognised as providing high-risk services (including lawyers, accountants, trust and company service providers, real estate agents, and dealers in precious metals and stones) are not regulated as part of the AML/CTF regime. These sectors are known internationally as Designated Non-Financial Businesses and Professions (DNFBPs) or tranche two in the Australian context. Gaps in the regulated population leave legitimate businesses vulnerable to exploitation by opportunistic criminals seeking to obfuscate the origins of their illicit wealth from law enforcement.

These problems impact the quality and breadth of financial intelligence generated to support national security and law enforcement operations, inflate regulatory burden for currently regulated entities and do not adequately harden businesses most at risk of criminal exploitation.

[1] Joras Ferwerda, Alexander van Saase, Brigitte Unger and Michael Getzner, 'Estimating money laundering flows with a gravity model-based simulation' (2020) 10(18552) *Scientific Reports,* 6 <https://www.nature.com/articles/s41598-020-75653-x>.

Without reform to address these problems, the AML/CTF regime will become increasingly less effective and more wasteful over time. The costs of inaction are significant, and would likely increase over time with Australia falling further behind continually strengthened international standards set by the Financial Action Taskforce (FATF), heightening the risk of substantial reputational and economic damage and increasing criminal threats to Australia's financial systems and professional services. Without hardening Australia's AML/CTF regime in line with the FATF standards, criminals would continue to exploit legitimate Australian businesses left exposed. Further, currently regulated entities will continue to be subject to an overly complex regime that inflates regulatory costs, ultimately diminishing the extent to which they are able to holistically comply with the AML/CTF regime.

To address these challenges, the proposed reforms have three objectives:

- combatting crime
- improving FATF compliance
- minimising regulatory burden.

In line with the requirements set out in the Australian Government Guide to Policy Impact Analysis, administered by the Office of Impact Analysis (OIA), the Attorney-General's Department (the department) has conducted an impact analysis to assess and accompany proposed reforms to Australia's AML/CTF regime.

The department (with support from Nous Group) has provided a best effort at conducting a robust net benefit analysis. In accordance with OIA guidance, a multi-criteria analysis (MCA) was used as the preferred analytical tool to assess the available information and quantifiable data along with the unquantifiable but equally tangible benefits of the proposed reforms.

The department has identified and analysed four viable policy options to respond to the problems identified, including:

- **Option 1:** Maintain the status quo
- **Option 2:** Simplify, clarify and modernise existing legislation
- **Option 3:** Expand the reporting population to DNFPBs
- **Option 4:** Both simplify, clarify and modernise legislation, and expand the reporting population to DNFBPs

Under the analysis, Option 1 does not address the key challenges facing the regime or achieve the reform objectives. Option 2 provides some benefit to crime prevention outcomes and producing higher quality financial intelligence from assisting existing regulated entities to better comply with the regime. However, it does not reduce the risk of 'grey-listing' by the FATF as it does not address the regulation of tranche two sectors. Option 3 does address this issue, as well as supporting crime prevention outcomes and increasing the amount of financial intelligence by covering a larger proportion of the economic activity at risk of exploitation. The quantifiable benefits of this are estimated to be up to $13.1 billion over ten years. However, Option 3 also comes with largest estimated regulatory impact of $15.8 billion to business, as it does not include simplifying and clarifying measures.

Option 4 is assessed to best meet the objectives and showed the highest net benefit through the MCA, by providing the same quantifiable benefits as Option 3 while imposing a lower regulatory burden. Implementing Option 4 is expected to deliver the significant law enforcement benefits and reduction in community harm from the expansion of the regime to tranche two entities, with the additional benefit of improved compliance across regulated entities and tranche two entities due to the reforms to simplify the regime. This is estimated to provide benefits of up to $2.4 billion over ten years. Option 4 will also be most effective in minimising the likelihood of grey-listing and any associated economic and reputational damage, which may be up to $10.7 billion over 10 years. Implementing Option 4 is estimated to result in an additional regulatory burden to businesses of $13.9 billion over 10 years, which is lower than Option 3.

The department notes that there are inherent limitations to the impact analysis, including:

- Difficulty quantifying the value of money laundering globally and in Australia and the financial and societal impacts arising from money laundering. Estimates of benefits therefore reflect the best efforts and understanding of the department and portfolio agencies, supplemented with academic sources and international experience where possible.
- A lack of evidence in the Australian context of the likely impact these reforms will have on the amount of money laundered per year.
- The details of the reforms are not yet finalised as the AML/CTF Rules will build on the principles in the Act and provide further detail on how such obligations may be achieved. As such, the operational impact of the reforms is difficult to quantify, particularly for tranche two entities who have no experience with the AML/CTF regime. Estimates of regulatory burden therefore reflect the best efforts and understanding of the affected stakeholders.
    - The department notes there will be an additional public consultation process on the Rules to ensure the reforms are fit-for-purpose. This will provide a further opportunity to reduce regulatory burden through further refinement of the obligations and simplification of the regime.

Background

Defining money laundering, terrorism and proliferation financing

What is money laundering?

Article 3.1 of the United Nations Vienna Convention defines money-laundering as *'the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions*.'[2]

Put simply, money laundering is the process of disguising or concealing the origin of illicit funds to make it appear that the funds come from a legitimate source. Money laundering generally involves three steps: placement, layering and integration. Placement is the process of moving proceeds of criminal activity away from a direct association with crime. Layering refers to the process of disguising the trail to avoid pursuit by law enforcement. Finally, integration refers to making the proceeds available to be utilised by the criminal from what seems to be legitimate sources.[3]

For example, a criminal organisation may make structured cash transactions into bank accounts in order to avoid triggering mandatory reporting obligations of a certain threshold, before using a maze of complex transactions involving multiple banks and accounts, or corporations and trusts.[4] They may then invest these now distanced funds or assets in further criminal activity or legitimate business, or purchase high-value assets and luxury goods.[5] By this stage, the funds or assets will appear to have been legitimately acquired.

What is terrorism financing?

Terrorism financing encompasses the means and methods used by terrorist organisations to finance activities that pose a threat to national and international security.[6] The money that provides terrorist organisations with the capacity to carry out terrorist activities can be derived from both legitimate sources and criminal sources.[7]

[2] United Nations Office on Drugs and Crime, 'Money Laundering' *Money-Laundering Overview* (Web Page) <https://www.unodc.org/unodc/en/money-laundering/overview.html>. Note, under the Commonwealth Criminal Code, any dealing with the proceeds or instruments of crime is an offence, regardless of purpose.
[3] Ibid.
[4] Australian Transaction Reports and Analysis Centre, 'Money Laundering in Australia 2011' *Guidance and Resources* (Web Page, 5 April 2023) <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/money-laundering-australia-2011>.
[5] Ibid.
[6] United Nations Office on Drugs and Crime, 'Countering the Financing of Terrorism' *Expertise* (Web Page) <https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html>.
[7] Ibid.

Terrorism financing also supports the less violent or obvious aspects of a group's operations by paying for daily living expenses, travel, training, propaganda activities, organisational costs, and compensation for wounded fighters or the families and dependants of terrorists who have died.[8] Terrorism financing poses significant risks to any organisation involved in the activity, even if their involvement is unwitting. It can severely damage the reputation of financial institutions misused as part of the process, and the integrity and work of non-government organisations such as charities and humanitarian groups can be seriously undermined if they are misused as a cover for terrorism financing activity.[9]

What is proliferation financing?

Proliferation financing occurs when a person makes available an asset, provides a financial service, or conducts a financial transaction that is intended to, in whole or in part, facilitate the proliferation of weapons of mass destruction (WMDs), regardless of whether the activity occurs or is attempted.[10]

The specified activities that comprise WMD proliferation include:

a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transhipment or use of:
   i) nuclear weapons, or
   ii) chemical weapons, or
   iii) biological weapons, or
   iv) materials related to nuclear weapons, chemical weapons or biological weapons that are prescribed by Regulations, or

b) the provision of technical training, advice, service, brokering or assistance related to any of the activities in paragraph (a).[11]

[8] Australian Transaction Reports and Analysis Centre, 'Terrorism Financing in Australia 2014' *Guidance and Resources* (Web Page, 27 June 2023) <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/terrorism-financing-australia-2014>.

[9] Ibid.

[10] Paraphrased from Royal United Services Institute, 'Model Provisions to Combat the Financing of Proliferation of Weapons of Mass Destruction' *Supplementary Material for Guidance Paper* (Report, July 2018) <https://static.rusi.org/20181002_model_law_2nd_edition_final_for_web.pdf>.

[11] Australian Transaction Reports and Analysis Centre, 'Proliferation Financing in Australia National Risk Assessment' *National Risk Assessment* (Report, 2022) <https://www.austrac.gov.au/sites/default/files/2022-12/AUSTRAC_Proliferation_Financing_in_Australia-National_Risk_%20Assessment_Web.pdf>.

What are the associated costs?

Money is at the core of all crime, with criminal groups continually finding new ways to obfuscate the origins of their ill-gotten gains to enjoy the profits of their illicit activities or reinvest in future crimes. Transnational serious and organised crime (TSOC) was estimated to cost the Australian community $60.1 billion in 2020-21.[12] Fraud against the Australian Government impacts available funds for public goods and services, ultimately impacting Australian citizens. Internal fraud loss reported in 2022-23 was $2,947,279 and external fraud loss reported in 2022-23 totalled $158,085,466. [13] While these figures are not specific to money laundering, the profit generated from organised crime must be laundered if criminals wish to use their ill-gotten gains in the legitimate economy. Action to prevent money laundering represents an important tool in combatting this large-scale problem, and goes to the core of how these networks operate.

The Australian illicit drug market is a key driver of money laundering in Australia. AUSTRAC's 2024 money laundering in Australia national risk assessment (NRA) found the illicit drug market to be a high-risk predicate crime that is continuing to increase.[14] It found that despite ongoing law enforcement efforts, Australia's drug markets are entrenched, and levels of consumer demand are unlikely to experience a significant decline in the short to near term, generating vast volumes of criminal proceeds that will need to be laundered.[15]

The Australian Criminal Intelligence Commission (ACIC) operates a National Wastewater Drug Monitoring Program to measure and interpret drug use within national populations. As of March 2024, the estimated street value of the annual consumption of methylamphetamine, cocaine, MDMA and heroin was $12.4 billion,[16] which is illicit finance needing to be laundered. This is only one crime type. The AFP seized more than 26.8 tonnes of illicit drugs and precursors in the past financial year which equates to the prevention of $10.7 billion in community harm,[17] further highlighting the scale of the illicit market in Australia.

Figure 1 shows the steady increase in the street-value of the annual consumption of the 4 main drugs associated with organised crime over the 7 years of the ACIC wastewater monitoring program. Despite fluctuations in demand, there have been, and will continue to be, steady increases in these prices as street value continues to increase.

[12] 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>.

[13] Merran McAlister and Samantha Bricknell, 'Fraud against the Commonwealth 2022-23', *Australian Institute of Criminology* (Report, 4 July 2024) https://www.aic.gov.au/sites/default/files/2024-07/sb44_fraud_against_the_commonwealth_2022-23_0.pdf.

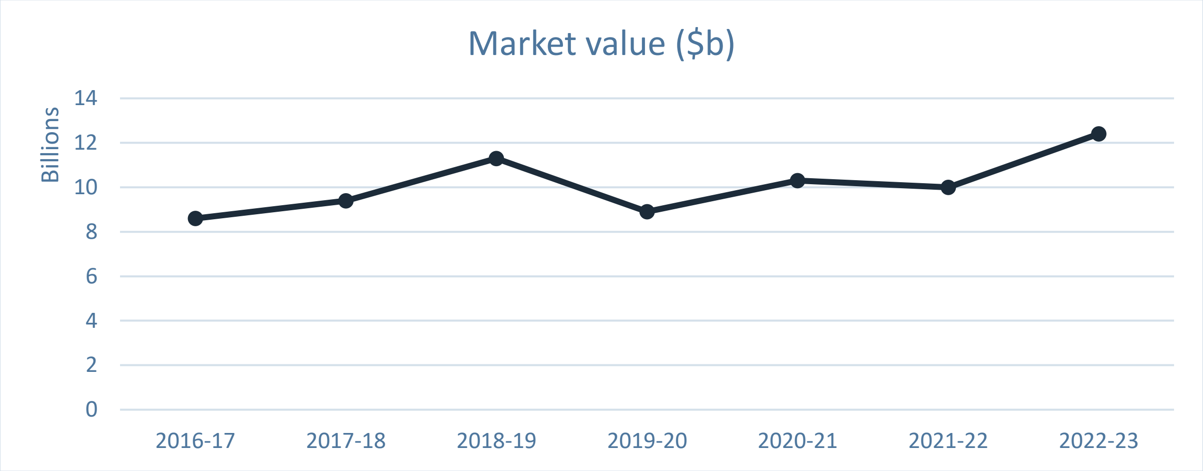
[14] Australian Transaction Reports and Analysis Centre, *Money Laundering in Australia National Risk Assessment* (Report, 9 July 2024) 6 <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.

[15] Ibid 25.

[16] Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program* (Report No 21, 13 March 2024) 10 <https://www.acic.gov.au/sites/default/files/2024-03/Wastewater>.

[17] Australian Federal Police, 'AFP seizes 26.8 tonnes of drugs, prevents $10.7 billion in harm in 2022-23' (Media Release, 23 December 2023) <https://www.afp.gov.au/news-centre/media-release/afp-seizes-268-tonnes-drugs-prevents-107-billion-harm-2022-23#:~:text=2023%2C%209%3A12am-,AFP%20seizes%2026.8%20tonnes%20of%20drugs%2C%20prevents%20%2410.7,in%20harm%20in%202022%2D23&text=The%20AFP%20has%20seized%20more,about%20%2410.7%20billion%20in%20harm>.

Figure 1 **| Estimated market value of annual consumption of methylamphetamine, cocaine, MDMA and heroin in Australia**[18]



Illegal tobacco consumption in Australia remains high, harming Australia's economy, fuelling criminal enterprise and resulting in billions of dollars in lost excise duty. Analysis from Oxford Economics in 2021 estimated that around $4.9 billion in revenue was lost by Australia's legal economy to the illicit economy by the illicit tobacco trade alone in 2019.[19] More recently, in 2021-22 the ATO estimated that a total of $2.3 billion in excise duty was evaded from illicit tobacco reaching the Australian market.[20] This included $1.9 billion evaded through illicit importation, and $0.4 billion evaded through illicit domestic production.[21] As with proceeds generated from the illicit drug market, this is a vast amount of illicit finance that must be laundered in order for criminals to enjoy their profits.

In 2023, Australians reported over $2.7 billion in combined annual losses to scams based on reports to Scamwatch, ReportCyber, IDCARE, AFCX and ASIC.[22] The criminals facilitating these scams will launder the entirety of these proceeds to make their source look legitimate. This also only accounts for reported scam losses. Many people do not make reports through these channels, either because they do not know they exist, or they are too embarrassed to make the report. Therefore, the true scale of scam losses, and amount of money to be laundered, is expected to be much higher.

[18] Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program* (Report No 21, 13 March 2024) 15 <https://www.acic.gov.au/sites/default/files/2024-03/Wastewater>.

[19] BIS Oxford Economics, *Economic Impact of Illicit Tobacco in Australia* (Report, November 2021) <https://treasury.gov.au/sites/default/files/2022-03/258735_british_american_tobacco_australia_supporting_document_1.pdf>.

[20] Australian Taxation Office, *Latest Estimates and Findings* (Web Page, October 2023) <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/tobacco-tax-gap/latest-estimates-and-findings>.

[21] Ibid.

[22] National Ant-Scam Centre, *Targeting scams: Report of the National Anti-Scam Centre on scams activity 2023* (Report, April 2024) 4 <https://www.scamwatch.gov.au/system/files/Targeting-scams-report-2023_0.pdf>.

International research has found Australia to be a prominent destination for money laundering, indicatively estimating the amount of domestic money laundered to be 1.7 per cent of Australia's gross domestic product (GDP), and when flowthroughs and laundering of foreign criminal money are added, up to 2.3 per cent of GDP. These figures equate to approximately $45 billion and nearly $60 billion, respectively.[23] This will only increase as criminal organisations continue to exploit legitimate businesses and innocent Australians without appropriate measures to address TSOC in Australia.

A study by an expert panel on money laundering in British Columbia real estate advised that illicit funds invested in real estate cause 'all real estate asset classes to rise above the level supported by local household incomes'.[24] While the study acknowledged the difficultly of estimating the exact level of money laundering taking place in the real estate sector, it estimated that almost 5 per cent of the value of real estate transactions in the province resulted from money laundering investment. While it is uncertain how this might apply in an Australian context, this impact in a comparable jurisdiction provides an indication of the extent to which money laundering can have an adverse effect on the housing market and could impact housing affordability. A similar experience in Australia would equate to an impact of approximately $30 billion on property transactions.[25]

Money laundering is not a victimless crime. Laundered money is often reinvested to fund further criminal activities, facilitating the continuation of serious crimes across the country. The key connection between these crimes, or predicate offences, and money laundering is the need for criminal organisations to obscure the origin of their illicit wealth through laundering operations, to then reinvest into future offending.

Money laundering can also distort the normal functioning of markets, affecting competition for regular, law-abiding businesses and inflating costs for services.

Australia's 2015 FATF mutual evaluation report (discussed below) highlighted the importance of law enforcement efforts to focus on the three key money laundering predicate offences of drug trafficking, fraud and tax evasion.[26] It noted that Australia convicted around 135,000 offenders annually for predicate offences.[27] This demonstrates the importance of a strong AML/CTF regime as a key pillar in combatting TSOC, as sophisticated criminal groups will seek diverse means to launder their illicit wealth and fund further criminal activity without detection.

[23] Joras Ferwerda, Alexander van Saase, Brigitte Unger and Michael Getzner, 'Estimating money laundering flows with a gravity model-based simulation' (2020) 10(18552) *Scientific Reports,* 6. Note, AUD figures have been calculated from USD figures in the report (USD 25 billion and USD 38 billion, respectively), using Australia's nominal GDP as at 31 Dec 2023 <https://www.nature.com/articles/s41598-020-75653-x>.

[24] Maureen Maloney, Tsur Somerville and Brigitte Unger, *Combatting Money Laundering in BC Real Estate* (Report, March 2019) <https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf>.

[25] Approximate calculation based on $603 billion spent on property in Australia in FY23. See Property Exchange Australia, 'Property Insights report FY23' <https://www.pexa-group.com/content-hub/property-insights-and-reports/property-settlements-suggest-market-recovery/>.

[26] Financial Action Taskforce, *Australia's measures to combat money laundering and terrorist financing* (Mutual Evaluation Report, April 2015) 8 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-Australia-2015.pdf.coredownload.inline.pdf>.

[27] Ibid 30.

In addition, autocratic regimes seek to exploit weaknesses in global financial systems to undermine democratic institutions and the rule of law. By engaging in international criminal activity such as corruption, elite capture, sanctions evasion and terrorism financing, their activities threaten the national security of countries like Australia.

Financial Action Task Force (FATF)

The FATF is an intergovernmental body established in 1989 to protect the global economy from the threats of money laundering, terrorism financing and proliferation financing. Its membership consists of 39 jurisdictions, including Australia and all G20 countries, and its global network of FATF-Style Regional Bodies (FSRBs) includes more than 160 additional jurisdictions. Operating by consensus, the FATF sets global standards for combatting financial crime, and promotes compliance and effective implementation of the standards through peer assessment mechanisms—known as mutual evaluations—and public listing of jurisdictions found to have weak AML/CTF systems.

As a founding member, Australia recognises the FATF's important global role and has committed to uphold its standards. As part of this commitment, Australia is subject to regular assessment of its AML/CTF system by the FATF.

In 1993, Australia established the Asia-Pacific Group on Money Laundering (APG) – a regional body under the FATF global network – based in Australia and Australia is a permanent co-chair. The APG assists countries in the region to enact laws to deal with the proceeds of crime, provides guidance in setting up systems for reporting and investigating suspicious transactions and helps in the establishment of financial intelligence units (FIUs).

FATF Standards

The FATF Standards set out a comprehensive and consistent framework of measures to combat money laundering, terrorist financing and proliferation financing. They comprise 40 Recommendations on the legal, regulatory and technical AML/CTF mechanisms countries are required to implement, 11 Immediate Outcomes that relate to the effectiveness of AML/CTF systems, and Interpretive Notes. These standards set an international benchmark for countries to implement and adapt to their legal, administrative and operational frameworks and financial systems.

The FATF Standards set out the essential measures that countries should have in place across their AML/CTF systems, including to:

- identify money laundering risks, and develop policies and domestic coordination mechanisms to address them,
- investigate and prosecute money laundering, terrorist financing and proliferation financing,
- apply preventative measures for the financial sector and other designated sectors,
- establish powers and responsibilities for competent authorities and
- facilitate international cooperation.

The FATF Standards are regularly revised to strengthen requirements and adapt to emerging crime trends and threats. Countries' implementation of the FATF Standards is regularly assessed through mutual evaluations and follow-up reporting processes.

Mutual evaluation process

The FATF mutual evaluation is an in-depth, comprehensive analysis of a country's AML/CTF measures. The FATF has recently increased the frequency of mutual evaluations from every ten years to every six years. Australia has undergone two mutual evaluations—in 2005 and 2015—with the next one scheduled for 2026-27. Follow-up reporting processes occur between mutual evaluation cycles.

The mutual evaluation assesses:

- **effectiveness**—how well the AML/CTF system performs in addressing risk and combatting money laundering, terrorism financing and proliferation financing—against the 11 Immediate Outcomes outlined in the FATF Methodology,[28] and
- **technical compliance**—whether the AML/CTF system complies with the legislative, regulatory and technical requirements described in the FATF Recommendations.[29]

The assessed country bears the onus of demonstrating that the required frameworks are in place and operating effectively. All claims must be supported by evidence.

Through FATF assessment processes, countries receive ratings for technical compliance against each Recommendation, and for effectiveness against each Immediate Outcome. The rating scales are outlined in Table 1.

Table 1 **| FATF rating scales for Technical Compliance and Effectivness**

	'Unsatisfactory'		**'Satisfactory'**	
Technical Compliance	Non-Compliant	Partially Compliant	Largely Compliant	Compliant
Effectiveness	Low level of effectiveness	Moderate level of effectiveness	Substantial level of effectiveness	High level of effectiveness

Note: the terms 'unsatisfactory' and 'satisfactory' are not used formally by the FATF in its methodology. However, they are used here to indicate those ratings ('unsatisfactory') that may lead to the FATF imposing more severe obligations on a country following assessment.

In 2022, FATF published its *Report on the State of Effectiveness and Compliance with the FATF Standards*. The report found that on average, countries had satisfactorily implemented (were rated Compliant or Largely compliant against) 76 per cent of the FATF's 40 Recommendations—a significant increase from 36 per cent in 2012.[30] This demonstrates the FATF's influence in raising global benchmarks for AML/CTF laws and regulation.

[28] Financial Action Taskforce, *FATF Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems* (Report, June 2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/methodology/FATF%20Methodology%2022%20Feb%202013.pdf.coredownload.pdf>.

[29] Financial Action Task Force, 'International Standards on Combating Money-Laundering and the Financing of Terrorism and Proliferation' *The FATF Recommendations* (Report, November 2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

[30] Financial Action Task Force, *Report on the State of Effectiveness and Compliance with the FATF Standards* (Report, April 2022) <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Report-on-the-State-of-Effectiveness-Compliance-with-FATF-Standards.pdf.coredownload.pdf>.

Australia's next mutual evaluation will occur from 2026-2027. It will involve several stages, including:

- submissions by Australia on its technical compliance and AML/CTF effectiveness, including statistics and case studies,
- an on-site visit by the FATF assessors, including meetings with stakeholders (from both government and the private sector) and requests for data and information,
- provision of the draft mutual evaluation report to Australia, with opportunities to meet face-to-face with the assessors and provide written comments and
- discussion and adoption of the final report by the FATF plenary.

The FATF will then publish the final mutual evaluation report and provide Australia with a Key Recommended Actions (KRA) Roadmap identifying actions to improve its AML/CTF system. Australia will be required to report back on its progress against the KRA Roadmap after three years. A poor mutual evaluation will result in more onerous reporting requirements and, as discussed below, will be factored into the global financial sector's assessment of the risks of dealing with Australia.

A mutual evaluation is a large undertaking and will require substantial, early investment of time and resources across the system to address current deficiencies through targeted policy and operational changes, demonstrate the effectiveness of those changes, and prepare Australia's case to the FATF.

Australia's previous mutual evaluation and current ratings

The upcoming mutual evaluation will comprehensively consider Australia's performance since its last mutual evaluation in 2015 (and follow-up reports in 2018 and 2024), including its progress in addressing identified deficiencies. The 2015 mutual evaluation concluded that Australia had a mature regime for combatting money laundering and terrorism financing (ML/TF), but that improvements were needed in key areas.[31]

Australia's most serious deficiency against the FATF standards is its long-standing failure to regulate DNFBPs, including lawyers, real estate professionals and accountants. Australia is an outlier in this area, as one of only five countries globally (along with Haiti, China, USA and Madagascar) rated Non-Compliant for all three relevant Recommendations (22, 23 and 28). This was emphasised in a recent horizontal review by the FATF, which found Australia (along with only China and USA) 0 per cent compliant with these Recommendations, against an average of 74 per cent compliant for FATF members.[32]

Other key thematic areas in which Australia is currently assessed as having deficiencies include:

- Regulation of virtual assets
- Understanding of money laundering, terrorist financing and proliferation financing risks
- Transparency of beneficial ownership of legal persons and arrangements
- Supervision by competent authorities (including supervision of UN Security Council sanctions compliance)
- ML/TF investigations.

[31] Financial Action Task Force, *Australia's measures to combat money laundering and terrorist financing* (Mutual Evaluation Report, April 2015) <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-Australia-2015.pdf.coredownload.inline.pdf>.

[32] Financial Action Task Force, *Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption* (Report, July 2024) <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/HRGTC.pdf.coredownload.inline.pdf>.

Table 2 shows the current number of Australia's 'unsatisfactory' and 'satisfactory' ratings for technical compliance (against the FATF's 40 Recommendations) and effectiveness (against the 11 Immediate Outcomes), compared with the averages for FATF members and all countries (including FATF and FSRB members). Australia's current technical compliance ratings are in line with the average for all countries but well below the average for FATF members, while its effectiveness ratings are in line with those for FATF members and above the global average.

Table 2 | Australia's current ratings against average ratings for FATF members and all countries

		Australia	FATF members (av.)	All countries (av.)
Technical compliance	'Unsatisfactory'	10	5	10
	'Satisfactory'	30	35	30
Effectiveness	'Unsatisfactory'	6	6	9
	'Satisfactory'	5	5	2

Source: Data for FATF members (n=36) and all countries (n=167) derived from FATF's 'Consolidated assessment ratings' <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html>.

Why does the mutual evaluation matter?

Mutual evaluations are the cornerstone of the FATF's approach to preventing abuse of the international financial system. They promote international best practice through peer review of countries' implementation and enforcement of AML/CTF measures, and focused recommendations to strengthen them.

Achieving the strongest possible mutual evaluation result matters to demonstrate Australia's effectiveness in fighting money laundering, terrorism financing and proliferation financing, and to send a powerful signal that criminals and other malign actors cannot easily exploit Australia's financial system. As a founding FATF member, Australia will be subject to high expectations to at least match the performance of other members to maintain its international credibility. Given the lack of major advances in Australia's system since the 2015 mutual evaluation and its remaining serious deficiencies, substantial effort will be required to mitigate the risk of Australia's ratings backsliding against other countries', particularly likeminded and comparable countries in the FATF that have improved their performance against progressively strengthened standards.

A poor mutual evaluation result could lead to Australia being publicly identified by the FATF—and potentially 'grey-listed'—as having a weak AML/CTF system.[33] This would carry serious consequences, including:

[33] Financial Action Taskforce, '"Black and grey" lists', *Financial Action Taskforce* (Web Page) <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>.

- economic impacts and decreased GDP based on reduced incoming capital flows,[34] increased business costs and potential loss of correspondent banking relationships, due to other countries considering Australia a risk for financial crime and imposing enhanced due diligence requirements when doing business with Australia
- increased threat of criminals seeking to exploit perceived weaknesses in Australia's system and engage in illicit financial activity—leading to an increased burden on law enforcement
- reduced influence and credibility as a regional AML/CTF leader assisting countries in Australia's neighbourhood to combat money laundering or terrorism financing threats, including through Australia's central role in the functioning and capacity of the APG
- damage to Australia's international standing, reputation and influence by becoming one of only a very small number of advanced economies to have ever been grey-listed by the FATF.

International Monetary Fund research suggests that total capital inflows decline on average by 7.6 per cent of GDP when a country is grey-listed.[35] The impacts on Australia would likely differ as this research focused on emerging and developing economies. However, this provides a clear indication of the potential extent of negative consequences of not meeting the FATF standards. Even a 1 per cent reduction in Australia's GDP, approximately $19.63 billion, would have significant whole-of-economy impacts.

A poor result will lead to more severe follow-up obligations. For example, if a country receives just one 'Low effectiveness' or 'Non-compliant' rating, it will be placed in enhanced follow-up.[36] This would involve stronger scrutiny by the FATF of Australia's progress reporting on its KRA Roadmap.

If a country is found to have strategic AML/CTF deficiencies and is grey-listed—which is a real risk due to Australia's long-standing failure to regulate DNFBPs—it will be subject to much more rigorous oversight by the FATF. The FATF could require it to take significant measures—such as enacting legislation, or substantially realigning or centralising investigation, prosecution and other processes—and demonstrating their effective implementation within limited timeframes.

Australia would have little scope to argue against such measures as the only way to end enhanced measures or grey-listing is to show through specified reporting processes that the country has addressed or largely addressed its KRAs.

[34] Mizuho Kida and Simon Paetzold, 'The Impact of Gray-Listing on Capital Flows: An Analysis Using Machine Learning' *International Monetary Fund* (Report, 27 May 2021) <https://www.imf.org/-/media/Files/Publications/WP/2021/English/wpiea2021153-print-pdf.ashx>.

[35] Ibid.

[36] Financial Action Task Force, *Procedures for the FATF AML/CFT/CPF Mutual Evaluations, Follow-Up and ICRG* (May 2024) <https://www.fatf-gafi.org/content/dam/fatf-gafi/methodology/Assessment-Follow-Up-ICRG-Procedures-2022.pdf.coredownload.inline.pdf>.

Australia's AML/CTF regime

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Act)*

In 2005, the FATF evaluated Australia's AML/CTF regime, while a domestic review was already underway. These processes led to passage of the Act in 2006.[37]

The Act was developed in close consultation with industry to design an appropriate, cost-effective framework that would meet the needs of industry, the public and law enforcement. Its implementation was staggered from 2006, with all provisions fully operational from 12 December 2008.

In 2006, the then Minister for Justice issued policy principles under section 213 of the Act. This gave effect to an Australian Government undertaking that the CEO of the Australian Transaction and Reports Analysis Centre (AUSTRAC) was not to take enforcement action unless a reporting entity had not taken reasonable steps towards compliance with its obligations during a 15-month period following commencement of the Act.[38]

The Act significantly expanded the operation and regulatory coverage of Australia's AML/CTF regime. From fewer than 4,000 cash dealers under the *Financial Transactions Reports Act 1988* (Cth) (the FTR Act), the regulated population expanded to over 14,040 reporting entities in the financial, remittance, gambling and bullion sectors. AUSTRAC was also given stronger compliance and enforcement powers to use in supervising the larger regulated population. The FTR Act remains in operation and contains residual reporting obligations for cash dealers.[39] If a service offered by a cash dealer under the FTR Act falls within the definition of a designated service under the Act, the FTR Act obligations do not apply in relation to that service.[40]

Key obligations and aims of the Act

The Act provides the means to help deter, detect and disrupt ML/TF. The reporting obligations under the Act provide financial intelligence to revenue, law enforcement and national security agencies. The Act aims to implement a risk-based approach to regulation and set out general principles and obligations for reporting entities to apply to their business.

The Act imposes 6 key obligations on regulated entities:

- **Enrolment and registration with AUSTRAC:** Regulated entities must enrol with AUSTRAC if they provide a designated service. In addition, remittance service providers and digital currency exchange providers (DCEPs) must also register with AUSTRAC to permit additional checks to ensure that criminals and their associates are kept out of these sectors.

[37] Attorney-General's Department, 'Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations' *Reports* (Report, April 2016) <https://www.homeaffairs.gov.au/how-to-engage-us-subsite/files/report-on-the-statutory-review-of-the-anti-money-laundering.pdf> 9 ('Report on the Statutory Review').

[38] Ibid 10.

[39] *Financial Transactions Report Act 1988* (Cth), s 3 <https://www.legislation.gov.au/C2004A03657/latest/text>.

[40] Report on the Statutory Review n 23, 10-11 <https://www.austrac.gov.au/sites/default/files/2019-07/report-on-the-statutory-review-of-the-anti-money-laundering.pdf>.

- **Developing and maintaining an AML/CTF Program:** Regulated entities must identify the money laundering, terrorism financing and proliferation financing (ML/TF) risks they face in providing designated services to customers and develop and maintain an AML/CTF program containing systems and controls to mitigate and manage those risks.
- **Conducting customer due diligence (CDD):** Regulated entities must verify a customer's identity before providing a designated service and understand the customer's risk profile.
- **Conducting ongoing due diligence:** Regulated entities must conduct ongoing CDD throughout the course of the business relationship, including transaction monitoring and enhanced CDD.
- **Reporting:** Regulated entities must report to AUSTRAC all 'suspicious matters', cash transactions of A$10,000 or more, all instructions for the transfer of value sent into or out of Australia, cross border movements of monetary instruments and annual compliance reports.
- **Record keeping:** Regulated entities must make and retain certain records that can assist with the investigation of financial crime or that are relevant to their compliance with the AML/CTF regime for 7 years, and ensure they are available to law enforcement, if required.

The Act is supported by the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (the Rules). The Rules are issued by the AUSTRAC CEO and provide the detail for the broader obligations set out in the Act. The Rules are an enforceable legal instrument, which can be disallowed by Parliament.

The AML/CTF regime aims for a risk-based approach. Reporting entities must identify the level of risk they face to determine the systems they have in place to mitigate those risks. The regime also employs a designated services model, in which regulation applies to businesses carrying out a service listed in section 6 of the Act, rather than to specific business types. If a reporting entity performs a range of services as part of its business, AML/CTF obligations only apply to those services listed in section 6. For example, a casino that also operates as a resort will only need to fulfil AML/CTF obligations when providing gambling services, which are designated, and not when providing hotel services. Services listed in section 6 currently relate to those provided by entities in the banking and financial sector, casinos and gambling service providers, bullion dealers, money remitters and some digital currency exchange services.

Key reviews of the regime

2016 Statutory Review of the Act and associated Rules and Regulations (the Statutory Review)

The Statutory Review examined the operation of the regime to determine the extent to which the policy objectives and provisions remain appropriate. A wide range of industry stakeholders and government agencies were consulted as part of this review. The report made 84 recommendations to enhance, modernise, streamline and simplify Australia's AML/CTF legal framework. It concluded that the AML/CTF regime remained relevant and appropriate, but that there was scope to strengthen the regime and achieve greater regulatory efficiencies.

Implementation of these recommendations has occurred in stages. Thirty-four of the 84 recommendations have been addressed through the passage of two key amendments to the Act; the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* and the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2020*. The remaining 50 recommendations relate to aspects of the regime that remain complex or opportunities to strengthen compliance with the FATF standards. The findings of the Statutory Review remain an important evidence base on the most significant challenges reporting entities face when interacting with the AML/CTF regime. An outline of the recommendations and their status is at Attachment A.

2022 Senate Inquiry into the adequacy and efficacy of Australia's AML/CTF regime (2022 Senate Inquiry)

On 23 June 2021, the Senate referred the adequacy and efficacy of Australia's AML/CTF regime to the Legal and Constitutional Affairs Reference Committee (the Committee). This inquiry investigated ways in which Australia's response to ML/TF could be strengthened. This included analysis on:

- the ability of the regime to prevent money laundering outside of the financial sector
- the attractiveness of Australia as a destination for proceeds of foreign crime and corruption
- Australia's compliance with the FATF Recommendations, and the associated risk of non-compliance, and
- the regulatory impact of extending AML/CTF reporting obligations to DNFBPs,[41] including lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones.

The inquiry received 52 submissions and heard from stakeholders including government and law enforcement agencies, peak bodies of both currently regulated entities and DNFBPs, AML/CTF compliance consultants and academic experts.

[41] Senate Standing Committee on Legal and Constitutional Affairs, *Terms of Reference* (2022) The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AUSTRAC>.

In determining the threat environment, the committee found Australia to be an attractive destination for TSOC, in part due to the demand for illicit drugs in Australia. The Australian Federal Police (AFP) told the committee that 'criminals engaged in money laundering continue to exploit vulnerabilities in a framework to advance broader organised crime ventures by developing new ways to obfuscate the movement of funds and property'.[42] ACIC reiterated this risk, asserting that 'Australia's stable financial markets and valuable real estate market make the country an attractive destination…to launder the proceeds of crime', and that 'tens of billions of dollars obtained through serious and organised crime are likely laundered in Australia each year'.[43] This highlights ML/TF as pervasive problems in Australia, and significant threats to all Australians due to their use to fund future crimes.

Australia has made limited progress in reforming the AML/CTF regime since these reviews. As mentioned above, the FATF has also continued to refine and strengthen its standards, and update its approach to key areas of risk, including emerging technologies like virtual assets. This presents challenges for ensuring the AML/CTF regime keeps pace with international practice and effectively protects Australia's institutions from criminal abuse.

Cross-cutting government priorities

Digital ID

The department continues to work closely with the Department of Finance to consider how changes to Australia's Digital Identity Framework might be leveraged by reporting entities to comply with certain CDD obligations under the AML/CTF regime, whilst also ensuring compliance with relevant FATF requirements. The AML/CTF regime is, and will remain, technology neutral, and allows the use of electronic data for customer identification and verification purposes, provided the data is reliable and independent. Given the technology neutral approach to the proposed reforms, and the intended flexibility for reporting entities about how they fulfil their CDD obligations commensurate to customer risk, this impact analysis will not consider the direct effect that Digital ID may have for businesses in complying with their AML/CTF obligations. More broadly, it could be observed that outsourcing to third party identity providers may further reduce regulatory impact for reporting entities.

[42] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, 49 (Ian McCartney, Deputy Commissioner, Investigations, Australian Federal Police) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F25287%2F0007;query=Id%3A%22committees%2Fcommsen%2F25287%2F0000%22>.

[43] Australian Criminal Intelligence Commission, Submission No 38 to Senate Standing Committee on Legal and Constitutional Affairs, *The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime,* (27 August 2021) 1 < https://www.aph.gov.au/DocumentStore.ashx?id=fca4afe3-2281-4e1e-a928-e59dc4286535&subId=716837> .

Beneficial Ownership Register

In 2022, the Government committed to establish a public beneficial ownership register. The Treasury is progressing implementation of this commitment, which aims, among other things, to improve Australia's compliance with FATF standards relating to transparency of beneficial ownership (Recommendations 24 and 25). The department continues to work closely with The Treasury to consider ways in which the proposed beneficial ownership register could be leveraged by reporting entities to comply with certain CDD obligations under the AML/CTF regime to provide regulatory savings to reporting entities. As these reforms are in progress, they have not been included as part of this impact analysis.

Reforms to the Privacy Act 1988

All reporting entities regulated under the AML/CTF regime are required to comply with the *Privacy Act 1988 (Cth)* (the Privacy Act). This impact analysis does not consider the impact of reforms to the Privacy Act as part of the net benefit analysis, as they remain subject to government decision.

Indo-Pacific Economic Framework Fair Economy Agreement

On 6 June 2024, Australia with 13 other Indo-Pacific Economic Framework (IPEF) countries signed the IPEF Fair Economy Agreement (the Agreement). Article 8 of the Agreement requires transparency in beneficial ownership and real estate transactions. By signing this agreement, Australia has committed to 'taking concrete actions in its territory to prevent corrupt actors from funnelling the proceeds of their corruption into its real estate markets, consistent with the FATF standards'.[44] The proposed reforms outlined in this impact analysis will directly impact Australia's implementation of the Agreement. The proposal outlined in Question 3 to extend AML/CTF regulation to DNFBPs will be significant 'concrete action' to acquit this requirement under Article 8. Conversely, not pursuing these reforms will have significant reputational impacts for Australia as a leader in the Asia-Pacific region, as it would undermine the commitment that has just been made to regional partners.

AUSTRAC Industry Contribution Levy

AUSTRAC operations are funded through an Industry Contribution Levy (Levy). The existing Levy applies to reporting entities with domestic earnings higher than $100 million per year or those with the highest proportion of International Funds Transfer Instruction (IFTI) reports. This accounts for 3.3 per cent of reporting entities. The Levy is reviewed annually, and changes such as those proposed in this impact analysis may require changes to AUSTRAC's funding model. However, as this is still subject to government consideration, it has not been considered as part of this impact analysis.

[44] *Indo-Pacific Economic Framework Fair Economy Agreement,* (signed and entered into force 6 June 2024) art 8.4 <https://edit.wti.org/document/show/2818a450-a761-4884-baef-f4e14bd8d705>.

Question 1: What is the policy problem you are trying to solve and what data is available?

What is the problem?

The intent of Australia's AML/CTF regime is to implement a regulatory framework that:

- minimises the risks and impacts of illicit financing on the Australian economy
- supports domestic and international efforts to combat serious and organised crime, terrorism financing and proliferation financing
- does not impose unnecessary burden on Australian business, and
- is consistent with international best practice in combating ML/TF.

Industry has a critically important role to play. The regime aims to assist businesses to prevent crime and report financial information. AUSTRAC analyses and enhances this financial information and disseminates intelligence to its law enforcement, national security, human and social services, and revenue partner agencies. This financial intelligence is crucial to the detection and investigation of serious and organised crime, national security threats, ML/TF and tax evasion.

However, the regime has flaws that limit its effectiveness, impacting law enforcement operations and national security, and inflating regulatory burden for industry.

Complexity—The regime is widely considered to be unduly complex and often poorly understood, leading to poor prevention practices and lower quality financial intelligence. It spans over 700 pages of legislation, plus published AUSTRAC guidance, with many detailed procedural requirements rather than a clear focus on the outcome of mitigating risk. Operational experience and stakeholder consultation have highlighted systemic problems that are largely attributed to this complexity.

Gaps in regulation—The regime does not extend to sectors internationally recognised as being at high risk of ML/TF, such as certain services provided by lawyers, accountants and real estate professionals. Additionally, regulation of digital currency exchange services, a key vector for illicit financing, has also not kept pace with international standards.

Complexity

There are a number of complexities throughout the AML/CTF regime that limit its effectiveness and inflate regulatory compliance costs.[45] Some elements of the regime focus on detailed procedural requirements that make compliance a tick-box exercise, rather than providing a framework for businesses to protect themselves by mitigating ML/TF risks. This does not allow entities to adapt and scale their efforts and resources to the level of risk they face or the nature of their business. This unnecessary complexity results in:

- increased regulatory burden on reporting entities due to a disproportionate amount of reporting entities' time and resources being dedicated to interpreting legal requirements[46]
- businesses being put at greater risk of exploitation because they are not able to effectively harden their operations against exploitation
- costs that are ultimately borne by each Australian, including through higher fees for relevant services, reduced return on investments, reduced innovation and/or higher levels of crime, and
- a reduction in actionable financial intelligence that assists partner agencies to detect and disrupt serious and organised crime and terrorism.[47]

These factors ultimately undermine the regime's ability to ensure a financial environment hostile to money laundering, terrorism financing, serious and organised crime and tax evasion.[48]

A needlessly complex regime requires businesses to invest disproportionate resources to understand their obligations. Some may seek legal advice to assist in interpreting basic requirements, which is costly and time consuming, particularly for small businesses. The Australian National University Law Reform and Social Justice Research Hub has pointed to non-compliance in the banking sector, stating that if industry giants cannot effectively comply with the AML/CTF regime, smaller businesses will require further assistance to abide by their obligations.[49]

In addition, there are a number of costs involved in engaging with AUSTRAC. AUSTRAC may grant exemptions from certain obligations that impose unintended restrictions or regulatory burden on industry. However, legal expertise is required to apply for these exemptions and entities without comprehensive internal legal resources will need to pay to seek external advice.

[45] Law Council of Australia, Submission No 30 to Senate Standing Committee on Legal and Constitutional Affairs, *The adequacy and efficacy of Australia's AML/CTF regime,* (15 September 2021) 36 [136] <https://www.aph.gov.au/DocumentStore.ashx?id=abfd9eb7-3d7a-42c4-a5e0-4874c70c096f&subId=716612>.

[46] Ashurst, Submission to Attorney-General's Department, *Modernising Australia's anti-money laundering and counter-terrorism financing regime,* (19 June 2023) <https://consultations.ag.gov.au/crime/aml-ctf/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&_q__text=ashurst&uuId=1022499231>.

[47] Report on the Statutory Review, 2 <https://www.austrac.gov.au/sites/default/files/2019-07/report-on-the-statutory-review-of-the-anti-money-laundering.pdf>.

[48] Ibid 1.

[49] Australian National University Law Reform and Social Justice Research Hub, Submission No 14 to Senate Standing Committee on Legal and Constitutional Affairs, *The adequacy and efficacy of Australia's AML/CTF regime,* (23 August 2021) 3 <https://www.aph.gov.au/DocumentStore.ashx?id=61c7b831-499f-4d02-bcec-80ba35f8bcc1&subId=712244>.

The Statutory Review found that the length, legalistic style and fragmented structure of the Act and the Rules make them inaccessible for reporting entities, particularly small businesses, which ultimately affects the ability of these entities to comply with their obligations.[50] AUSTRAC's experience demonstrates that the complexity of the regime impacts the quality of its financial intelligence. Reporting entities may not understand triggers for when they are obliged to submit reports to AUSTRAC. This can lead to both a failure of some entities in providing the necessary financial information, and other entities over-reporting in an attempt to minimise legal risk, leading to a large volume of low-value, un-actionable reporting.

This section outlines the key complexities of the regime, as highlighted by the Statutory Review, 2022 Senate Inquiry, subsequent stakeholder consultation and operational expertise from law enforcement and other agencies across the Commonwealth, states and territories.

AML/CTF Programs

The Act currently requires a reporting entity to adopt and maintain an AML/CTF program that outlines the ML/TF risks of its business and associated mitigations before it can provide a designated service. This obligation is key to the regime's risk-based approach, but there are a number of complexities that reduce its efficacy.

Currently, the AML/CTF program must have two parts. The purpose of Part A of the program is to identify, manage and mitigate the entity's risks, which includes allowing the entity to understand the types of clients it has, the services it provides, and how and where it provides those services. Part B sets out the entity's applicable customer identification procedures (ACIP). The requirements for Parts A and B are spread across the Act and Rules. This fragmentation is the key complexity of the obligation,[51] with small to medium sized businesses most significantly affected as they are more likely to require external assistance to understand their obligations.[52]

Further, the obligation is currently framed as a procedural requirement for reporting entities to 'have and comply with' a document that identifies risk and develop steps to address these risks, rather than focusing on the outcome of mitigating the risk. The Act currently does not clearly provide an express requirement that reporting entities should understand and mitigate the risks they may reasonably face in the provision of a designated service. This is inadequate to achieve the intent of the obligation, including in circumstances where reporting entities rely on external services to develop an AML/CTF program on their behalf, which then may not be embedded in day to day operations.

[50] Report on the Statutory Review n 23, 4 <https://www.austrac.gov.au/sites/default/files/2019-07/report-on-the-statutory-review-of-the-anti-money-laundering.pdf>.
[51] Ibid 84.
[52] Ibid 83.

Other AML/CTF program related mechanisms designed to reduce regulatory burden are no longer fit-for-purpose for modern business. In particular, the 'designated business group' framework allows a group of two or more related reporting entities to adopt a 'joint AML/CTF program'. This enables shared administration of some or all of their obligations under the Act, but does not facilitate appropriate information sharing. The designated business group framework does not align with global best practice and creates difficulties for some existing regulated entities, particularly multi-national groups comprised of large corporate structures and franchise arrangements, and those that include non-reporting entities that carry out AML/CTF functions on behalf of other members.[53] AUSTRAC receives a substantial number of applications for exemptions to information-sharing provisions to allow members of the same corporate group to appropriately share customer information.

The AML/CTF program obligations that apply to a reporting entity if its business includes foreign branches or subsidiaries are fragmented across the Act and Rules. The current provisions are ineffective and challenging for reporting entities to apply. The Act would benefit from clarity about the extent to which AML/CTF program obligations apply to offshore operations in order to reduce complexity and ensure that overseas branches and subsidiaries do not act as a back door for ML/TF to enter the Australian economy.

Customer Due Diligence

Another key obligation under the AML/CTF regime is the requirement to conduct CDD. This involves businesses verifying the identity of their customers, keeping up-to-date information on their customers, and carrying out ongoing due diligence measures. The overarching objective of CDD is for a reporting entity to be satisfied that the customer is who they claim to be, so that it can identify and understand the risks it may be exposed to through its customers. Currently, CDD obligations are overly detailed and complex, and are substantively contained in the Rules, despite being a core pillar of the AML/CTF regime.[54]

In some instances, the obligations are implied, such as understanding customer risk, which makes it difficult for reporting entities to understand and comply with their obligations, and for AUSTRAC to issue clear and legally accurate guidance. Additionally, the regime is comprised of distinct but interrelated concepts that are not clearly defined, creating confusion around what each obligation actually entails. For instance, stakeholder feedback has highlighted that the distinction between ongoing CDD and enhanced CDD is not clear. Some reporting entities have wrongly assumed that applying ongoing CDD measures is the same as applying enhanced measures, whereas they are actually separate but related obligations. Ongoing CDD may be enhanced, standard or simplified dependent on a reporting entity's assessment of its risks. Enhanced CDD measures are cross-cutting and can be applied to both initial CDD and ongoing CDD. Finally, the regime currently has a procedural focus on *how* a reporting entity should fulfil its CDD obligations rather than clearly outlining the purpose for such an obligation and the outcome to be achieved. For example, reporting entities are required to carry out the applicable customer identification procedure in respect of a customer, such as by collecting a range of identity documents, rather than actually *know* their customer, such as by linking an authenticated identity back to an actual person.

[53] Ibid 87.

[54] Ibid 58.

Table 3 outlines the existing approach to CDD and how the obligations are outlined in the Act and the Rules, demonstrating their complexity, fragmentation and overlaps.

Table 3 | Current AML/CTF regime obligations relating to CDD

Please note, this table is not a definitive list of CDD obligations

Obligation	Overview
Customer risk rating	Currently, there is no express, legislated requirement to undertake a customer risk rating. However, it is implied as a foundational concept in Part 4 of the Rules and is an expectation of AUSTRAC when supervising reporting entities. Part 4.1.3 and Part 4.2.5 of the Rules outline the various factors a reporting entity must consider when assessing its ML/TF risk, such as customer types, customers' sources of funds and wealth, and the types of services it provides as well as the need to consider risk-based systems and controls to determine whether more Know Your Customer (KYC) information is required.
KYC	KYC encompasses the processes and procedures a reporting entity uses to identify and verify the identity of a customer. The obligations are fragmented heavily across the Act and Rules. Key obligations include: • a reporting entity must carry out ACIP before commencement of a designated service as well as other obligations relating to the verification of a customer's identity, such as modifications for pre-commencement customers and third-party reliance (Part 2 of the Act) • actions that are required if a reporting entity deems a customer is not who they say they are or if there are doubts to the legitimacy of documents provided (Chapter 6 of the Rules) • specific ACIP for a range of customer types (including different procedures for individuals, companies, trusts, partnerships, incorporated or unincorporated associations, registered cooperatives and government bodies) are detailed in Chapter 4 of the Rules, and • special circumstances and conditions in which ACIP may be carried out after the provision of a designated service, such as the opening of a bank or gambling account (Chapter 46, 79 and 82 of the Rules).
Ongoing CDD	Ongoing CDD refers to a number of different obligations that are split across the Act and the Rules. This includes: • monitoring for unusual or suspicious transactions (defined in Section 36 of the Act and Chapter 15 of the Rules) • ensuring that KYC information is up to date and re-verified where necessary (outlined in Chapter 15 of the Rules but absent from the Act), and • updating the customer risk rating (specific obligation absent from both the Act and Rules).

Enhanced CDD	Enhanced CDD is not included as an explicit obligation in the Act. Parts 15.8 – 15.11 of the Rules outline the requirement for an enhanced CDD program. Reporting entities must have an enhanced CDD procedure under Part A of their AML/CTF program. Enhanced CDD must be applied when the entity's risk-based systems and controls determine the ML/TF risk is high, a suspicion under section 41 of the Act has arisen, or a politically exposed person (PEP) or a prescribed foreign country is involved in a transaction. Enhanced CDD is outlined as a purely reactive measure.
Simplified CDD/Safe harbour provisions	The term 'simplified CDD' is not used in the current regime. However, there are a number of provisions that provide reporting entities with the ability to apply reduced CDD measures in certain circumstances. This is currently permitted in three ways under the Rules through: • 'safe harbour' procedures for certain customers (dispersed through Chapter 4 of the Rules dependent on customer type) • reduced CDD obligations for specific types of customers such as a domestic listed company (Part 4.3.8 of the Rules), and • the ability to list low-risk designated services in the Rules (Sections 30 and 31 of the Act). In Australia's 2015 mutual evaluation, the FATF found that this approach is not underpinned by risk assessments and, in the case of individual customers, the safe harbour provisions applied simplified due diligence to medium risk customers. As such, these measures do not meet international standards.
Record keeping for CDD	Record-keeping requirements are split across Part 10 of the Act and Chapter 20 of the Rules and mainly use the ACIP terminology. They are applied inconsistently across each of the CDD obligations, and currently only explicitly attach to initial identification procedures.
Exemptions for CDD	The Rules provide numerous detailed exemptions to CDD obligations for reporting entities. These include, for example: • an exemption from the customer identification provisions for reporting entities who dispose of low-value parcels of shares. This is limited to transactions less than or equal to $10,000 (Chapter 38 of the Rules) • an exemption from identification procedures in Part 2 of the Act when providing compulsory or total transfer of business made under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Chapter 66 of the Rules), and • general exemptions relating to the provision of exempt designated services or to specified provisions (section 39 of the Act, with details found in various Chapters in the Rules, such as Chapter 4, 22, 31, 32, 35 – 41, 50).

Designated Remittance Arrangement

The Statutory Review noted that the definition of a 'designated remittance arrangement' in section 10 of the Act is broad and creates complexities for entities in determining what is considered a designated remittance arrangement.[55] The current framework is based on an outdated assumption that there is a difference in the way financial institutions (such as banks) and remittance services would transfer value across borders. The broad definition unintentionally means almost any arrangement for transferring money on behalf of another person may be regulated, creating a disproportionate burden for entities trying to determine both whether the Act applies to their services and what their obligations are. This has given rise to numerous applications for exemptions from or modification of obligations by businesses not within scope of the original policy intent.

International fund transfer instruction reports

An international fund transfer instruction (IFTI) is an instruction to transfer funds or property, either from Australia to another country, or to Australia from another country. IFTIs are a critical data source comprising some 98 per cent of AUSTRAC's financial intelligence holdings (190 million IFTI reports in 2022-23).[56]

Under the current framework, an IFTI is reported by the last institution that handles an instruction before it is sent out of Australia, or by the first Australian institution that receives an incoming instruction. This aims to address the complexities of value transfer chains that may involve several institutions (such as correspondent banks and remitters). The current framework often places the reporting obligation on intermediary institutions that have no direct connection to the customer at either end of the transaction.

For example, in 2014-15, the majority of the IFTI reporting was borne by one reporting entity.[57] As an intermediary, this entity may not have all information that is required in Australia on who is making the transaction, as they only have access to information that the overseas correspondent bank provides. This may undermine the usefulness of the repots for AUSTRAC and law enforcement.

Further, the IFTI framework has different reporting forms and information requirements for financial institutions and remitters. Financial institutions are required to report electronic IFTIs (IFTI-Es), and remitters are required to report IFTIs for designated remittance arrangements (IFTI-DRAs). This creates complexity when there is a financial institution at one end of a transfer, and a remitter at the other. It is unclear whether to treat such transfers as initiating a single transfer chain, as would occur in a chain of banks, or separate transfer chains where the customer for one chain is original payer, and the customer for the other is the remitter.

AUSTRAC has responded to this by developing Rules applying to specific major remittance networks but this has further complicated the framework.

[55] Ibid 75.

[56] Australian Transaction Reports and Analysis Centre, *AUSTRAC Annual Report 2022-23,* (Report, 18 September 2023) 6 <https://www.austrac.gov.au/sites/default/files/2023-10/AUSTRAC%20Annual%20Report%202023.pdf>.

[57] Report on the Statutory Review n 23, 72 <https://www.austrac.gov.au/sites/default/files/2019-07/report-on-the-statutory-review-of-the-anti-money-laundering.pdf>.

Financial Transaction Reports Act 1988 (FTR Act)

Before the introduction of the Act, the FTR Act was the key piece of legislation to combat money laundering. The FTR Act required cash dealers to submit cash transaction reports and suspect transaction reports to AUSTRAC. FTR Act reporting obligations no longer apply if the same service is captured under the Act as a designated service. This means most cash dealers no longer have reporting obligations under the FTR Act. Concurrent operation of both the Act and FTR Act is inefficient and has no demonstrable benefit for government, industry or the public.[58]

Furthermore, AUSTRAC is currently required to maintain IT systems and procedures that allow it to receive and process reports under the FTR Act, on top of systems designed to regulate designated services under the Act. In the 2022-23 financial year, only 6,819 reports were made under the FTR Act, compared to 192,717,324 reports made under the Act.[59] This creates substantial inefficiency for AUSTRAC, given the small remaining population of cash dealers subject to the FTR Act and the low intelligence value of the reports received.

Tipping off

Section 123 of the Act is an offence provision that prohibits a reporting entity from disclosing:

- that they have given or are required to give a suspicious matter report (SMR) under subsection 41(2)
- information from which it could be inferred that a SMR has been reported or is required to be reported
- that they are or have been required by a notice under subsection 49(1) to give information or produce a document
- that the information has been given or the document has been produced
- information from which it can be inferred that they have given information or produced a document or are required to.

This prohibition is designed to deter reporting entities from disclosing information that may reveal the existence of a SMR or section 49 notice, or 'tipping off' a customer who is the subject of an SMR or section 49 notice. Importantly, suspicion is not conclusive evidence that a customer is involved in wrongdoing, and preventing the disclosure of SMRs and section 49 related information protects the privacy and reputation of the customer while any investigation is undertaken. This is a vital protection to ensure law enforcement investigations are not affected by criminals taking additional steps to hide their activities. However, in practice, the operation of this prohibition can inhibit the appropriate sharing of financial intelligence which could otherwise assist in reducing the risk of criminal exploitation of businesses.

[58] Ibid 140.

[59] Australian Transaction Reports and Analysis Centre, *AUSTRAC Annual Report 2022-23,* (Report, 18 September 2023) 6 <https://www.austrac.gov.au/sites/default/files/2023-10/AUSTRAC%20Annual%20Report%202023.pdf>.

There are various exceptions to the tipping off offence, including disclosing SMR-related information to reporting entities that belong to the same designated business group in order to manage collective risks, and a bespoke exception for lawyers and accountants where information is disclosed for the purposes of dissuading a customer from engaging in criminal conduct. The offence and its exceptions aim to maintain the need to manage ML/TF risk and protect the integrity of investigations.

However, the broad scope of the offence can prevent disclosures of relevant information for legitimate purposes, including to manage shared ML/TF risks within corporate or designated business groups. The current exemptions-based approach is difficult for industry to understand, and exemptions have not kept pace with the increasingly complex business structures of reporting entities, the shift to moving risk management practices offshore and the use of third-party service hubs to support AML/CTF compliance. Consequently, AUSTRAC receives many exemption and modification applications relating to the tipping off offence, which are burdensome and expensive for both for the applicant and AUSTRAC.

Regulatory complexity: who is affected?

At 9 July 2024, there were 17,877 reporting entities enrolled with AUSTRAC.[60] For this analysis, reporting entities that do not provide designated services, are not AML/CTF-regulated, or have not been classed to specific industries have been excluded, resulting in a population of 16,744. The regulated population is diverse in terms of the sectors, the size of the entities within these sectors and the risks associated with each reporting entity. As outlined in the Background, the AML/CTF regime is risk-based and operates on a designated service framework. This influences how entities interact with the regime, as their AML/CTF obligations only apply with respect to their provision of services listed in section 6 of the Act.

Financial sector

Financial sector businesses include domestic and foreign banks, custodians, financial service intermediaries, and non-bank lenders, among other services. The 'Big Four' banks (ANZ, Commonwealth Bank, NAB and Westpac) recorded a combined annual profit of $33 billion in the 2022-23 financial year.[61] Entities in the banking and financial sector have some of the highest risk of unwittingly facilitating financial crime given their central role in the Australian economy.[62] Combined with the volume of services provided, they have the greatest proportional interaction with the AML/CTF regime. This also means that they experience the complexities across the whole regime on a day to day basis.

[60] The total number of reporting entities by industry was provided by AUSTRAC to Nous Group.

[61] Millie Muroi, 'Bank margins in focus as big four's profits tipped to hit $33b', *Sydney Morning Herald* (online, 6 November 2023) <https://www.smh.com.au/business/banking-and-finance/bank-margins-in-focus-as-big-four-s-profits-tipped-to-hit-33b-20231102-p5eh59.html>.

[62] Australian Transaction Reports and Analysis Centre, *Money Laundering in Australia National Risk Assessment* (Report, 9 July 2024) 50 <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.

Gambling service providers

Gambling service providers include casinos, totalisator agency boards (TABs), bookmakers, and pubs and clubs. The size of regulated businesses within this sector is extremely diverse, as are the risks within the sector. For example, casinos have been identified as high-risk as they continue to be exploited for large-scale money laundering, whereas pubs and clubs are medium risk, and on-course bookmakers low risk.[63]

AUSTRAC commenced a nationwide educational campaign in March 2022 to uplift understanding of, and compliance with AML/CTF obligations in pubs and clubs. A key takeaway from this campaign was that underlying complexity in the legislation imposes undue burden on small pubs and clubs, which ultimately deteriorates industry compliance. As discussed later in this section, these educational initiatives are an incomplete solution to a larger systemic problem, and the need to improve compliance in the gambling sector remains.

Digital Currency Exchange Providers

Under the current AML/CTF regime, a digital currency exchange is an individual, business or organisation that exchanges:

- money (Australian or foreign currency) for digital currency
- digital currency for money (Australian or foreign currency)

as part of operating a digital currency exchange business. In addition to the full suite of AML/CTF obligations, DCEPs must be registered with AUSTRAC. AUSTRAC retains the right to refuse, suspend or cancel registration as well as impose conditions on registration. DCEPs are an emerging and diverse sector in Australia that have been regulated under the AML/CTF regime since 2017.

Bullion dealers

Bullion dealers are subject to altered requirements under the Act and are exempt from conducting CDD for transactions where the retail value of the bullion is less than $5000. This exemption reduces the number of transactions on which they must conduct CDD and, therefore, their day to day interaction with the AML/CTF regime is less frequent.

AUSTRAC operational costs

The complexity of the Act and Rules impacts a number of operations across AUSTRAC. Complex legislation is difficult to interpret and apply, which can lead to delays in supervisory activities while complex legal advice is obtained.

Smaller regulated businesses tend to struggle to identify and understand their risks, and develop AML/CTF systems to manage and mitigate those risks. The regime's complexity hampers AUSTRAC's ability to educate reporting entities, respond to queries to the AUSTRAC contact centre, and provide guidance that is clear, accurate and succinct for all reporting entities from small businesses to multinational enterprises.

[63] Australian Transaction Reports and Analysis Centre, *Money Laundering in Australia National Risk Assessment* (Report, 9 July 2024) 94 <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.

Complex and indirectly expressed obligations also increase the burden for AUSTRAC when undertaking enforcement actions, due to the need to find ways to make the legislation suit the needs of the Australian context and reinforce the real-world ML/TF risk identification, management and mitigation outcomes that the AML/CTF regime is intended to achieve.

Furthermore, substantial resources and effort are dedicated to processing exemptions, developing guidance, and undertaking education and outreach programs. These processes to provide clarity for reporting entities are band-aid responses to systemic problems in the regime.

Unclear reporting obligations also lead to reporting entities submitting poor quality data to AUSTRAC. This can take the form of defensive reporting, or over-reporting, in which significant volumes of poor-quality data are submitted as part of a reporting entity's efforts to manage its legal risks. Managing this requires IT resources for AUSTRAC, and staff time to engage with reporting entities to resolve issues. In parallel, poorly framed reporting obligations can result in inaccurate or incomplete data being submitted, requiring solutions in some cases that are burdensome for both AUSTRAC and reporting entities.

AUSTRAC partner agencies

A number of agencies and departments across the Commonwealth have significant equities in Australia's AML/CTF regime. As a member of the National Intelligence Community (NIC), AUSTRAC partners with other national security, intelligence and law enforcement agencies such as ACIC and the AFP, who use AUSTRAC information regularly. These Commonwealth agencies also work closely with state and territory police who assist in law enforcement operations across Australia.

The complexity of the regime creates challenges for these agencies by impacting the effectiveness of law enforcement operations that rely on financial intelligence to connect criminals to their crimes. The difficulties reporting entities face in complying with their obligations limit the yield and quality of financial intelligence, as well as the timely and accurate identification and investigation of suspicious or criminal activity by law enforcement agencies.

Gaps in regulation

The AML/CTF regime was introduced to regulate financial institutions, such as banks and credit unions, as well as a small number of DNFBPs, including gambling service providers and bullion dealers. However, Australia does not regulate other services internationally recognised as being at high risk of ML/TF, such as certain services provided by lawyers, accountants and real estate professionals, as well as emerging digital currency exchange services. This leaves them vulnerable to TSOC groups seeking any means to exploit legitimate businesses because of gaps in regulation. It also limits the scope for effective protection of Australia's broader financial ecosystem, placing a heavy burden on currently regulated entities, particularly those in the financial sector.

As discussed in Background, Australia's failure to regulate DNFBPs is its most serious shortcoming against the FATF Standards, recently highlighted by the FATF reporting Australia as 0 per cent compliant in this area (Recommendations 22, 23 and 28).[64] Failure to address this long-standing deficiency would put Australia at real risk of grey-listing by the FATF at its upcoming 2026-27 mutual evaluation, which would have serious economic and reputational consequences. By publicly signalling weakness in the regime, it could also increase the threat of criminal exploitation of Australian businesses.

In addition, the limited scope of Australia's regulation of digital currency exchange services falls short of the requirements of FATF Recommendation 15, and deficiencies in travel rule requirements mean Australia does not meet the standard for Recommendation 16. Australia is rated only 'Partially Compliant' with both, reinforcing the need to address these gaps.

This section discusses how these regulatory gaps inhibit law enforcement activities and leave legitimate businesses vulnerable to criminal exploitation and emerging threats.

DNFBPs – Risks of Exploitation

DNFBPs, including lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones (also known as 'tranche two' entities), support a wide range of legitimate economic activity including by facilitating access to financial services and products. These tranche two entities are known as 'gatekeepers' because, either wittingly or unwittingly, they can provide an entry point for those seeking to misuse legitimate financial and corporate systems for money laundering.

[64] Financial Action Taskforce, *Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption* (Report, 8 July 2024) 11 <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Gatekeeper-TC-Corruption.html>.

The skillsets and expertise of DNFBPs were identified by the ACIC in the 2022 Senate Inquiry as particularly appealing for TSOC groups seeking to create the appearance of legitimacy in their efforts to undermine systems.[65] Further submissions noted that TSOC groups are adaptable and will exploit new methods to conceal their criminal activity, for example utilising legal professionals to create complex and seemingly legitimate legal structures. Some criminal groups may also believe that legal professional privilege or professional secrecy will delay, hamper or effectively prevent investigation or prosecution against them if they engage the services of legal professionals'.[66] The ACIC presented evidence to the Committee that one quarter of the individuals who are facilitating the activities of 16 current and/or former Australian Priority Organisation Targets (high-risk criminal targets) were lawyers, financial advisors, accountants or real estate agents.[67] Without regulatory supervision, these DNFBPs have been left exposed to TSOC, with limited guidance on hardening their practices against this exploitation.

A business that facilitates criminal activity such as money laundering or terrorism financing, either wittingly or unwittingly, is complicit in the crime. If a business or individual wittingly enables money laundering, they will immediately be complicit in the crime, and criminally liable for the offences, as seen in Case Study 1 and Case Study 2.

Case study 1—Lawyers, accountants and real estate agents facilitate money laundering organisation to move proceeds of crime globally[68]

In 2023 nine alleged members of a significant money laundering organisation were charged with offences including money laundering and conspiracy to deal in the proceeds of crime. The investigation into the organisation's activities revealed reliance on legal, accounting and migration professionals in enabling it to move hundreds of millions of dollars globally without detection. Members of the organisation also made significant purchases of Australian residential and commercial real estate.

An accountant was among the nine individuals arrested, and is suspected of providing the organisation with advice on avenues to circumvent attention from AUSTRAC and the Australian Taxation Office, including recommending fraudulent invoicing. A migration lawyer was also amongst the arrested individuals, suspected of providing advice relating to avoidance of detection by law enforcement, including inciting the destruction of evidence.

[65] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, 42 (Matt Rippon, Deputy CEO, Intelligence Operations, Australian Criminal Intelligence Commission) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F25287%2F0006;query=Id%3A%22committees%2Fcommsen%2F25287%2F0000%22>.

[66] Doron Goldbarsht, Submission No 1 to Senate Standing Committee on Legal and Constitutional Affairs, *The adequacy and efficacy of Australia's AML/CTF regime* (27 August 2021) 2 <https://www.aph.gov.au/DocumentStore.ashx?id=6e55cf6c-15e8-47cb-a68c-03939ed57ee3&subId=712174>

[67] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, answers to questions on notice received 10 December 2021, 2 (Matt Rippon, Deputy CEO, Intelligence Operations, Australian Criminal Intelligence Commission) <https://www.aph.gov.au/DocumentStore.ashx?id=cc591978-f2f1-43e6-afef-37d6358f26f8>.

[68] Australian Federal Police, 'Property and cash restrained as alleged money laundering group charged' (Media Release, 2 February 2023) <https://www.afp.gov.au/news-centre/media-release/property-and-cash-restrained-alleged-money-laundering-group-charged>.

Case study 2—Lawyer and accountant commit large-scale tax fraud and money laundering

Between 2006 and 2012 a former tax partner at a top tier accounting firm and a prominent lawyer turned property developer (the two main offenders) orchestrated a large-scale tax fraud scheme. Another accountant (among others) was also found to be involved in aspects of the scheme.

The two main offenders created a web of false identities and siphoned money from accounts in Australia through the United Kingdom, Hong Kong and the United Arab Emirates via fake domestic and international companies. They brought the funds back into Australia (often disguised as loans) to fund their lavish lifestyles, which included the purchase of luxury cars, boats, jewellery and property. After multiple trials, the orchestrators of the scheme received significant terms of imprisonment.

As a part of this investigation, the Criminal Assets Confiscation Taskforce traced over $9 million of proceeds of crime which was moved from bank accounts in Australia into overseas accounts, and then deposited back into a trust account of an Australian law firm (unconnected with the lawyer who was one of the main offenders). These deposits occurred over approximately 10 months. The funds were used to purchase real estate, including a shopping centre. The law firm completed the conveyancing transactions for the purchase of property.

Not all professional facilitation of crime through DNFBPs is undertaken deliberately. Businesses that are unwittingly exploited by opportunistic criminals may nonetheless be found complicit—potentially criminally complicit—and businesses or individuals may be punished for failing to conduct any level of professional due diligence.

Even if a business is not criminally complicit in a crime, it may facilitate crime occurring in the community through negligence. Unwittingly enabling criminals to obfuscate the origins of their illicit wealth allows them to reinvest in egregious crimes such as child exploitation, sex trafficking, drug trafficking, tax fraud and corruption.

Further, there are significant reputational risks for businesses. Being found complicit in money laundering or terrorism financing to any extent would greatly impact any business' professional legitimacy. Professional service providers such as law firms invest substantial resources into maximising their brand and reputation as high-performing and trusted services through corporate sponsorship activities, pro bono work, and promoting ethical work standards and practices.[69] This investment would be immediately threatened or lost if even a single lawyer at the firm was found to be complicit in facilitating criminal activity. This is a key risk for business in an increasingly competitive market environment and can be tied back to the lack of appropriate risk awareness and robust processes specifically designed to combat money laundering.

The lack of advice, guidance and regulatory oversight from AUSTRAC leaves these businesses largely unaware of the risks associated with their extensive skillsets, and unequipped to prevent TSOC from abusing them for illicit purposes, as evident in Case Study 3 and Case Study 4.

[69] Darcy Gannon, IBISWorld, *Legal Services in Australia* (Industry Report No M6931, February 2023) <https://www.ibisworld.com/au/industry/legal-services/560/>.

Case Study 3 – Law firm unwittingly launders $260,000 through trust account

An individual was alleged to have fraudulently obtained $260,000 from a United Kingdom (UK) bank account and used an Australian law firm to unwittingly launder the illicit funds.

An employee of the law firm received an email from a web-based email account referring to a previous conversation where it was agreed that the law firm would act on the individual's behalf to assist in the purchase of machinery in the UK and facilitate the transfer of $260,000 from the individual to a bank account in the UK.

Without undertaking reasonable checks to confirm the individual's identity, the employee provided details of the firm's trust account and confirmed that the firm would act on behalf of the individual.

After the $260,000 was transferred into the firm's trust account, the individual requested the money to be transferred as soon as possible to another bank account in the UK, after costs and transfer fees were deducted. The employee executed a subsequent transfer of $258,799.98 to the designated account as instructed, facilitating the laundering of the allegedly stolen funds.

The Australian-based Office of the Legal Services Commissioner (OLSC) received a complaint from the UK bank. The OLSC concluded that the law firm had failed to adequately establish the identity and contact details of the individual. This was particularly important given the individual was not an existing client of the law firm. Further, the law firm failed to demonstrate a reasonable standard of competence and diligence by not enquiring about the basis for a significant trust account transaction.[70]

While Australian lawyers are required to take reasonable steps to confirm the identity of their clients, AML/CTF obligations enshrine this requirement in law. Furthermore, under the AML/CTF regime, the law firm would have been required to submit a threshold transaction report (TTR) to AUSTRAC, regardless of the suspicion around the client, as the transaction was over the $10,000 designated threshold. Therefore, if the lawyer was a reporting entity, it is likely that they would be more acutely aware of their customer verification requirements under law, may have been more aware of the risks of their business and thus the suspicion around this client's activities, or at the very least sent a TTR to AUSTRAC to build a database of financial intelligence about this customer. Any one of these three alternate outcomes would likely contribute to earlier detection and conviction of criminal activity.

Case Study 4 – Unwitting facilitation by solicitor in real estate purchase

In 2011 the AFP commenced a criminal investigation into an organised crime syndicate involved in the importation of border-controlled drugs and money laundering. In a related proceeds of crime investigation, one of the suspects used international funds transfers to facilitate the movement of monies from overseas into Australia to enable the purchase of property.

[70] Australian Transaction Reports and Analysis Centre, *Strategic analysis brief: Money laundering through legal practitioners* (Report, 1 January 2015) 9.

The AFP identified that the suspect had purchased four separate parcels of land in a subdivision in south-east Melbourne, Victoria, totalling almost $1.8 million. The suspect also paid a deposit on three apartments and a boat berth in a development area, totalling $340,000.

Enquiries with AUSTRAC identified a series of international funds transfers into the bank account of a specialist property law practice in Melbourne. These transfers were identified because the overseas remitter had previously been identified remitting monies direct to bank accounts in the name of the suspect or family members of the suspect. The international funds transfers to the trust account totalled over $1,700,000 and included the oblique reference of "pay for goods".

Both the solicitor and accountant at the specialist property law practice asked the suspect what their occupation was, to which the suspect explained that they were an overseas property developer and that the source of the international funds transfers was the sale of property overseas. Neither the solicitor nor the accountant conducted any due diligence to confirm this claim. The suspect also caused a further $90,000 to be deposited into the trust account in amounts of under $10,000. The solicitor later admitted to the AFP that while they thought the source of the international funds transfers a "bit strange", they did not ask their client (the suspect) about the source of the money, nor did they ask why the $90,000 was paid into the account in a manner consistent with structuring. While the proceeds of crime investigation was successfully finalised, regulation of the DNFBPs involved would have enabled earlier detection of this suspicious activity.

International Examples

The lack of regulatory oversight by AUSTRAC of these sectors can make it challenging to identify the true extent and dimensions of the problem. The cases below provide international examples demonstrating different ways in which DNFBPs can both knowingly and unknowingly be exploited by criminals.

Case Study 5 – Trade in gems and precious metals (Singapore)

In March 2020, three precious stones and precious metals dealers ("PSMDs") – Companies P and G and Person T – were charged in court with offences under the Singapore Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chapter 65A ("CDSA").

This was in relation to a series of frauds perpetrated in 2019 by a criminal syndicate against a public agency, which resulted in total losses of SGD 40 million (approximately USD 30 million). In particular, two of the syndicate members were found to have used the criminal proceeds to purchase SGD 600,000 (approximately USD 452,123) worth of jewellery and gold bars from these three PSMDs using cash. These two syndicate members have been charged with money laundering offences, among others.

In Singapore, PSMDs who enter into cash transactions exceeding SGD 20,000 (approximately USD 15,070) are obligated to submit a cash transaction report to a Suspicious Transaction Reporting Officer within 15 business days. The three PSMDs in this case had failed to do so for the said purchases. Furthermore, Person T also failed to perform the requisite CDD which was a punishable offence under the CDSA. Between August and October 2020, Company P and G and Person T were sentenced to fines ranging from SGD 9,000 (approximately USD 6,781) to SGD 40,000 (approximately USD 30,141).[71]

In Australia, PSMDs are not reporting entities under the Act, therefore they are not required to submit TTR or SMRs at all, nor can they submit these reports to AUSTRAC even if they wanted to. Therefore, if this was to occur in Australia, the ability for law enforcement to charge this criminal syndicate with money laundering offences would be significantly limited. This demonstrates the harm of such gaps in regulation, as without effective supervision and oversight of at-risk sectors, criminals are able to launder their illicit profits with limited scope for timely detection.

Case Study 6 – Money Laundering through real estate transactions (Fiji)

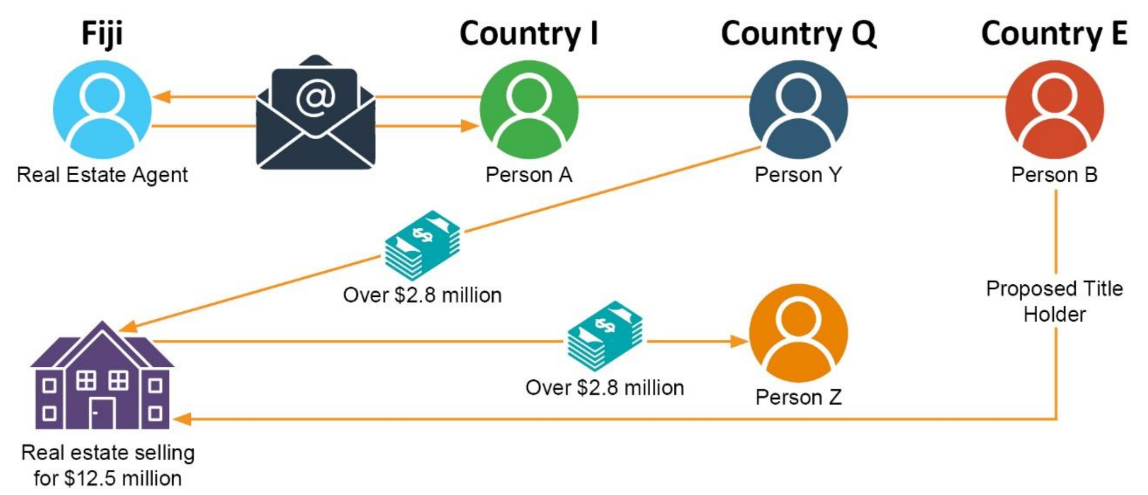
Persons A, B, Y and Z, who are foreign nationals, were reported to the Fijian FIU in a suspicious transaction report (STR) for a possible case of money laundering involving a real estate transaction of over FJD 2.8 million (approx. $1.9 million).

In December 2019, Person A attempted to purchase a high-end luxury property for FJD 12.5 million (approx. $8.5 million). Person A and another unknown individual met with the real estate agency regarding the property deal.

In January 2020, Person A arranged funding through Person Y in country Q, who transferred over FJD 2.8 million directly into the real estate agency's trust account as the deposit payment. Person A stated that Person B, who was his business partner in country E, would be listed as the owner of the property in the sale and purchase agreement. When the offer by Person A of FJD 10 million (approx. $6.8 million) was not accepted by the vendors of the property, he instructed the real estate agency to refund the deposit amount to another individual, Person Z in country Q. Fiji FIU analysis revealed that Person A was the only party communicating with the real estate agency through email and instant messaging applications, which did not include Persons B, Y and Z. It appeared that Person A was the main party in control of the real estate transaction.

Interestingly, Persons A, B and Y had never travelled to Fiji and it was noted that Persons Y and Z had the same dates of birth. Further checks with national and international law enforcement agencies revealed that Person A was allegedly working with an organised crime syndicate involved in illicit importations of drugs in country Y, and that Person B and Person Z are country Q nationals issued with country E citizenship through country E Government Development Support Program.

[71] Asia Pacific Group on Money Laundering, *APG Yearly Typologies Report: Methods and Trends of Money Laundering and Terrorism Financing* (Report, July 2021) 50 <https://apgml.org/includes/handlers/get-document.ashx?d=6bfd011b-8edd-40f4-93e4-f219e1c6d73e>.



Additionally, it was established that Person B was a red notice fugitive in country Q, who was using fake identification documents in Fiji. Person B was deported to country Q in January 2020.[72]

If this case were to take place in Australia, the real estate agent involved would not be able to submit a SMR to Australia's FIU in AUSTRAC, as real estate agents are not reporting entities. Further, Australian real estate agents may not have appropriate mitigations to identify and respond to the risks associated with their business. Therefore, these organised crime syndicate members may not have been detected in a timely fashion, as the real estate agent would not know how to recognise, nor would they be able to report, the suspicious activity. Therefore, these criminals would be able to continue in their illicit drug importation activities.

Digital Currency Exchange Providers

Regulation of DCEPs in Australia began in 2018 in response to the Statutory Review. This involved regulation of the exchange between money and digital currency. In 2019 the FATF revised its Standards and guidance to require the regulation of additional services provided by DCEPs that are not covered by Australia's regime, such as exchanges between digital currencies.

Digital currencies are increasingly popular among the general public and are increasingly utilised by criminal groups, particularly in scams and as a way of moving proceeds of crime. Criminals can move illicit wealth around a range of digital wallets on a peer-to-peer basis outside the regulated ecosystem, with little to no detection. The ability to transfer digital currencies across borders without oversight exacerbates this challenge, as there are few ways to track wealth coming into and out of Australia. Not only does this leave DCEPs vulnerable to exploitation, it creates a significant intelligence gap for law enforcement agencies in their efforts to investigate criminal financial flows.

[72] Ibid 48-49.

AUSTRAC's Terrorism Financing in Australia National Risk Assessment rated the movement of funds through digital currencies to be a high risk in both religious and ideologically motivated violent extremism.[73] Digital currency is an attractive method of fundraising for terrorism, as it is perceived to be a less detectable channel.

As with DNFBPs, criminal exploitation of DCEPs can make these businesses wittingly or unwittingly complicit in a number of crimes with far reaching impacts on society. An important consequence for DCEPs is the reputational damage and a perceived lack of legitimacy as a sector associated with facilitating crime. Many Australians do not understand how the sector operates or the services it provides, limiting the ability of this emerging industry to expand into new markets. The lack of regulatory oversight means there is limited scope to address the largely anonymous nature of digital currency and prevent criminal abuse of DCEPs.

A further consequence of this regulatory gap is that many DCEPs are perceived as risky, and are denied access to bank accounts and other regular financial services in a phenomenon known as 'de-banking'. The closing of accounts in entire industry sectors, including the DCEP sector, leads to de-banked businesses being less open about the nature of their business relationships with banks. This increases the difficulty in distinguishing lawful activity from unlawful activity, undermining law enforcement. It also requires de-banked businesses to change financial institutions frequently, which leads to banks having a less sophisticated understanding of expected transaction types and volume due to limited historic data.[74] The DCEP sector regularly raises this issue in its engagement with government, notably in representations made to the Senate Select Committee on Australia as a Technology and Financial Centre, which suggested experiences of de-banking stifle innovation and diversification in the growing DCEP sector.[75]

Travel Rule

The travel rule is a record keeping and data transmission requirement set by the FATF under Recommendation 16. The intention is to support end-to-end transparency of transactions for businesses in a value transfer chain to ultimately equip law enforcement and appropriate regulatory agencies with the ability to obtain information on the parties to value transfer transactions.

Australia's implementation of the travel rule does not meet current best practice FATF standards. Financial institutions are only required to transmit or receive information about the payer in a transaction, while the FATF requires information about both the payer and the payee to be transmitted and received. Further, remitters and DCEPs are currently not required to implement the travel rule, despite this being required by the FATF. These gaps in financial intelligence undermine the ability of Australian law enforcement agencies to 'follow the money'.

[73] Australian Transaction Reports and Analysis Centre, *Terrorism Financing in Australia National Risk Assessment* (Report, 9 July 2024) 8 <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Terrorism%20Financing%20NRA.pdf>.

[74] Australian Transaction Reports and Analysis Centre, 'AUSTRAC Statement 2021: Debanking' (Media release, October 2021) <https://www.austrac.gov.au/news-and-media/media-release/austrac-statement-2021-de-banking>.

[75] Senate Select Committee on Australia as a Technology and Financial Centre, Parliament of Australia, *Final Report* (Report, October 2021) <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2Fpdf>.

Gaps in regulation: who is affected?

DNFBPs

FATF Recommendations 22 and 23 require DNFPBs to be regulated because the roles they play as financial system facilitators and gatekeepers are appealing targets for criminal abuse.[76] This includes:

- real estate agents when they are involved in transactions for their client concerning the buying and selling of real estate
- dealers in precious metals and stones when they engage in any cash transaction with a customer equal to or above the designated threshold
- lawyers, notaries, other legal professionals and accountants when they prepare for or carry out transactions on behalf of their client for a range of activities, and
- trust and company service providers when they prepare for or carry out transactions for a client for a range of activities.

These services have been identified by the FATF and the global community as the services most at risk of criminal exploitation as they relate specifically to financial transactions.

FATF Recommendation 28 outlines that DNFBPs should have effective systems for monitoring and ensuring compliance with AML/CTF requirements commensurate to their risks.[77]

The legal sector in Australia has an industry revenue of $29.6 billion.[78] The services offered across the sector include:

- 34 per cent of the sector offers commercial law services
- 24.8 per cent personal legal and industrial relations services
- 8.5 per cent property law services
- 4.1 per cent criminal law services
- 4.2 per cent intellectual property law services
- 3.8 per cent community legal services, and
- 20.0 per cent administrative, constitutional and other law services.[79]

These services are provided by a range of top-tier, mid-tier, boutique and sole operator enterprises. The top six major companies hold approximately 19 per cent of the market share, employing thousands of Australians, and in most cases operating offices globally.[80]

[76] Financial Action Task Force, 'International Standards on Combating Money-Laundering and the Financing of Terrorism and Proliferation' *The FATF Recommendations* (Report, 2004) 19-21 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.
[77] Ibid 23-24.
[78] Darcy Gannon, IBISWorld, *Legal Services in Australia* (Industry Report No M6931, February 2023) 7 <https://www.ibisworld.com/au/industry/legal-services/560/>.
[79] Ibid 8.
[80] Ibid 28-30.

The real estate sector generated $29.6 billion in revenue in 2023.[81] 62.2 per cent of this revenue came from property sales, 11.2 per cent from property management, 11.5 per cent in property leasing and 15.2 per cent in other services.[82] Australia's real estate workforce employs approximately 130,000 Australians across 44,000 real estate businesses.[83] The sector is unique in that it is largely made up of self-employed firms selling or leasing properties in their local areas, making it challenging for large franchises to break into this market. This increases both the diversity and competition within the sector.

The accounting sector had an annual revenue of $27.1 billion in 2023, in which the big four accounting firms (PwC, EY, Deloitte and KPMG) occupied 20.5 per cent of the market share.[84] The sector employs 159,000 people across 36,903 businesses.[85] Audit and tax services are the key source of revenue for accounting firms. In recent years, firms have increasingly broadened their offerings to include consulting and digital services to further boost revenue.

Dealers in precious stones and metals include both jewellery manufacturers, who had an annual revenue of $3.6 billion in 2022,[86] and jewellery retailers, who had an annual revenue of $4.8 billion in 2023.[87] Fine jewellery that incorporates precious metals and stones is particularly attractive for consumers as it holds its value, and often appreciates, over time. The retailing industry in particular is highly fragmented, with most retailers either sole proprietors or boutique family-owned businesses.

[81] Katherine Tweedie, IBISWorld, *Real Estate Services in Australia* (Industry Report No L6720, March 2023) 7 <https://www.ibisworld.com/au/industry/real-estate-services/539/>.
[82] Ibid 8.
[83] Real Estate Institute of Australia, Submission to Attorney-General's Department, *Modernising Australia's anti-money laundering and counter-terrorism financing regime,* (30 June 2023) 4 <https://consultations.ag.gov.au/crime/aml-ctf/consultation/download_public_attachment?sqId=question-2022-01-06-6908678210-publishablefilesubquestion-1&uuId=480481875>.
[84] Ibid 27-31.
[85] Ibid 11.
[86] Matilda Reilly, IBISWorld, *Jewellery Manufacturing in Australia* (Industry Report No C2591, November 2022) 7 <https://www.ibisworld.com/au/industry/jewellery-manufacturing/293/>.
[87] Kayla Wheeler, IBISWorld, *Watch and Jewellery Retailing in Australia* (Industry Report No G4253, May 2023) 6 <https://www.ibisworld.com/au/industry/watch-jewellery-retailing/427/>.

DCEPs

The digital currency exchange sector is an emerging industry as the Australian public increasingly invests in digital currency. However, there have been a number of high-profile controversies that have damaged the reputation and legitimacy of the sector globally. These include the collapse of FTX Trading Ltd. in 2022,[88] and investigations by the United States Department of Justice into Binance Holdings Limited for violations of anti-money laundering, money transmitting registration and sanctions obligations in 2023.[89] These examples demonstrate how limited regulatory obligations to prevent and detect illegal activity, and vulnerability to criminal abuse can impact perceptions of the legitimacy of the sector and limit the scope for growth.

Current reporting entities

The current gaps in regulation mean that detecting suspicious transactions and preventing money laundering rests heavily with currently regulated entities, particularly those in the financial sector. Many high value transactions that are at high risk of money laundering pass through businesses in multiple sectors, for example, real estate transactions. Criminals seek to exploit any vulnerabilities, and without regulation of additional high-risk services, currently regulated entities will continue to carry the burden of protecting the broader financial ecosystem from abuse.

Law Enforcement

The purpose of the AML/CTF regime is to combat ML/TF and, in turn, predicate offences such as drug trafficking, human trafficking, fraud and tax evasion by draining TSOC groups of their illicit wealth. Robust and easily accessible financial intelligence, as well as a strong partnership between the supervisory regulator and law enforcement are vital in operations to better detect and prosecute criminal activity.[90] In Australia, the AUSTRAC CEO, as the head of the supervisory regulator and FIU, has authorised officers from 48 Commonwealth, State and Territory agencies to access AUSTRAC information to assist in law enforcement operations. In 2022-23, this information was used 10,043,569 times by 5,171 agents across 39 agencies to assist law enforcement investigations and operations.[91]

[88] United States Securities and Exchange Commission, 'SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Asset Trading Platform FTX', (Media Release, December 2022) <https://www.sec.gov/news/press-release/2022-219>

[89] Office of Public Affairs, United States Department of Justice, 'Binance and CEO Plead Guilty to Federal Charges in $4B Resolution', (Media release, November 2023) <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution#:~:text=%E2%80%9COur%20team%20of%20investigators%20uncovered,International%20Emergency%20Economic%20Powers%20Act>

[90] Financial Action Taskforce, *Guidance for a risk-based approach: effective supervision and enforcement by AML/CFT supervisors of the financial sector and law enforcement* (Report, October 2015) 3 <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-Effective-supervision-and-enforcement.pdf.coredownload.pdf>.

[91] Australian Transaction Reports and Analysis Centre, *AUSTRAC Annual Report 2022-23,* (Report, 18 September 2023) 6 <https://www.austrac.gov.au/sites/default/files/2023-10/AUSTRAC%20Annual%20Report%202023.pdf>.

However, the scope of financial information available to AUSTRAC is limited to that provided by current reporting entities. This restricts the ability of law enforcement to identify suspects and follow money trails through high risk sectors that are not currently regulated. The AFP submission to the 2022 Senate Inquiry argued that the lack of AUSTRAC oversight of DNFBPs means suspicious activity in these sectors remains largely invisible, significantly challenging the ability of law enforcement and intelligence agencies to ascertain a complete picture of Australia's ML/TF risks.[92] For example, while a transaction such as the purchase of property through a real estate agent will pass through financial institutions, such as banks, the ability to view transactions and suspicious customers from a range of angles will only enrich the intelligence gathered.[93] This intelligence would likely provide a new perspective on transactions and customers that could provide crucial links in detecting and prosecuting crime, and identifying persons and property that may be subject to proceeds of crime and asset confiscation. While there is a strong relationship between AUSTRAC and its partner agencies, the regulatory gaps in the regime limit the extent to which available financial intelligence can holistically disrupt criminal activity.

What is currently being done and why is this not effective?

AUSTRAC Guidance, Industry Education and Outreach

AUSTRAC publishes a range of guidance and other materials on its website to assist reporting entities in meeting their AML/CTF obligations.[94] While these guidance materials are valuable in assisting reporting entities to understand and comply with their obligations, the advice they provide is not legally binding. The guidance highlights good practices, identifies known and emerging financial crime risks and helps businesses understand how to achieve effective AML/CTF outcomes. This includes:

- intelligence guidance, including risk assessments, typology reports and financial crime guides, which provide reporting entities with information on ML/TF risks and indicators of criminal activities, and
- regulatory guidance, including core guidance, quick guides, detailed guidance and sector-specific guidance, which provides reporting entities with in-depth information to assist them in understanding and implementing their AML/CTF obligations.

While reporting entities are required to consider all relevant documentation, including AUSTRAC guidance, when developing their AML/CTF program, the substantial extent and volume of this material makes this obligation burdensome to meet.

[92] Australian Federal Police, Submission No 34 to Senate Standing Committee on Legal and Constitutional Affairs, *The adequacy and efficacy of Australia's AML/CTF regime,* (27 August 2021) 13 <https://www.aph.gov.au/DocumentStore.ashx?id=37ae9ab2-90da-43f4-813f-60af7321968e&subId=716618>.

[93] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, 62 (Peter Soros, Deputy CEO, Regulation, Education and Policy, Australian Transaction Reports and Analysis Centre) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F25287%2F0008;query=Id%3A%22committees%2Fcommsen%2F25287%2F0000%22>.

[94] Australian Transaction Reports and Analysis Centre, 'All guidance resources', *AUSTRAC,* (Web Page) <https://www.austrac.gov.au/business/industry-specific-guidance/all>.

AUSTRAC also provides a range of educational support to help reporting entities understand their obligations, including through induction sessions, eLearning, association presentations and products such as AML program guides, checklists and videos.

AUSTRAC adapts its guidance and educational priorities to address areas of non-compliance. As outlined above, from March 2023 to July 2023, AUSTRAC conducted a campaign involving 194 pubs and clubs licensed to operate electronic gaming machines (EGMs) by the Queensland Office of Liquor and Gaming Regulation (OLGR) that could not be linked to an AUSTRAC reporting entity enrolment. The aim was to engage with these entities to confirm their enrolment status, delivery of designated services, and where required, enrol them with AUSTRAC. The campaign was accompanied by the release of sector-specific guidance aimed at pubs and clubs with gaming machines.[95] AUSTRAC worked with OLGR and industry representative bodies to maximise the effectiveness of the campaign and achieved an enrolment outcome rate of 78 per cent, as follows:

- 115 entities enrolled with AUSTRAC, including 54 entities with 16 or more EGM entitlements.
- 38 entities were not required to be enrolled.

From August to November 2023, AUSTRAC engaged in a campaign in NSW to increase enrolment amongst pubs and clubs licensed to operate EGMs. The campaign was also successful, achieving an enrolment outcome rate of 80 per cent, as follows:

- 175 of the 225 targeted venues enrolled with AUSTRAC, including 57 entities with 16 or more EGM entitlements.
- 5 entities were not required to be enrolled.

While AUSTRAC's guidance, education and outreach provide important, targeted support to reporting entities, they are not an effective long-term solution to wider systemic problems in the regime that require legislative change to ensure reporting entities implement the controls necessary to manage and mitigate the risks associated with their business.

AUSTRAC Rules and Exemptions

AUSTRAC currently uses exemption powers to provide regulatory relief to reporting entities in limited circumstances, where it has been determined that the regulatory burden outweighs the benefit of their AML/CTF obligations. In some circumstances, exemptions have been created to address unintended consequences and complexity in the Act, but they are a temporary solution that does not address underlying legislative deficiencies.

Since 2008, 43 exemptions have been added to the Rules under section 247 of the Act. These exemptions are intended to clarify instances where the Act does not apply.

[95] Australian Transaction Reports and Analysis Centre, *Pubs and clubs with gaming machines* (Regulatory Guide) <https://www.austrac.gov.au/sites/default/files/2022-03/AUSTRAC_RegulatoryGuide_PubsAndClubs_web_0.pdf>.

Increasingly, reporting entities have applied for regulatory relief under section 248 of the Act either in the form of an exemption from, or modifications to, specified provisions. In recent years, a majority of applications have related to systemic issues in the Act, rather than unique circumstances warranting regulatory relief for individual reporting entities. For example, many applications seek relief from the tipping off offence (discussed above).

The exemption process itself generally increases the administrative burden for both industry and AUSTRAC. Businesses often engage external legal counsel or consultants to prepare an application on their behalf. Without amendments to address complexity and deficiencies in the Act, the cost to industry is likely to increase as more reporting entities apply for exemptions from the same provisions. Persistent applications will also create significant burden for AUSTRAC in assessing and determining exemptions and modifications, which is resource intensive and time consuming.

Exemptions by Rule are not an appropriate solution to address deficiencies in primary legislation. The Senate Committee for the Scrutiny of Delegated Legislation has previously raised concerns regarding the lack of cessation date in consideration of an AML/CTF Rules instrument, and has moved to disallow the instrument.

It is expected that through the current reform process, the Rules instrument will need to be repealed and remade. Consequently, any exemption that is not moved to the Act will need to be remade with a cessation period, meaning it will have to be regularly remade in order to be retained. This reduces the utility of Rule-based exemptions in addressing issues in the Act.

Chapter 75

Specified law enforcement agencies can apply to AUSTRAC under Chapter 75 of the Rules for a reporting entity to receive a 6-month exemption from specified provisions of the Act in respect of a customer, to assist the investigation of a serious offence. Such exemptions have become a standard investigative tool and the number of applications received has increased year-on-year, with approximately 160 applications received in 2023.

Given the increasing demand for Chapter 75 exemptions, the current case-by-case application process is inefficient, administratively burdensome, and no longer fit-for-purpose. AUSTRAC operates as the ‘middle man’ between law enforcement and reporting entities, performing a largely administrative role and adding limited value to the process. It is very rare that AUSTRAC refuses an exemption application. Enabling eligible law enforcement agencies to issue notices directly to reporting entities with oversight from AUSTRAC would create significant efficiencies for the investigation of serious offences.

AUSTRAC Enforcement

AUSTRAC uses a range of regulatory tools and powers to ensure compliance by reporting entities. These may include:

- issuing infringement notices
- issuing remedial directions, which require a reporting entity to take specified action to ensure compliance
- accepting enforceable undertakings detailing the specific actions a reporting entity will commence or cease in order to comply with the Act, and
- seeking injunctions and/or civil penalty orders in the Federal Court.

AUSTRAC's enforcement of non-compliance is commensurate to the level of risk posed by the entity and the level of non-compliance. Civil penalties are generally reserved for cases of systemic non-compliance with AML/CTF obligations by entities that pose the most significant risk to the community. AUSTRAC does not take enforcement action on the basis of good faith differences in interpreting AML/CTF obligations.

Enforcement operations may work to address the most significant breaches of the AML/CTF regime and potentially increase compliance to avoid such actions, but cannot be relied on to solve the broader problems of complexity and regulatory gaps in the regime.

What data is available?

This impact analysis considered a range of quantitative and qualitative sources, including existing financial intelligence and other data from AUSTRAC and other government agencies, as well as academic and policy literature, and international experiences of AML/CTF regulation. These are summarised below and referenced throughout the impact analysis. Careful consideration of the strength, reliability and robustness of analysis in each data source was undertaken, particularly secondary sources and research. Where these data sources have been used to inform this impact analysis, appropriate caveats and assumptions outlining how this data may apply in the Australian context have been included throughout.

Additionally, as detailed in Question 4, the department engaged Nous Group to support analysis of the net benefits of the proposed policy options, including through delivery of stakeholder surveys on the anticipated changes in regulatory cost associated with the proposed reforms.

Available data

Data on financial intelligence, combatting crime and costs of crime:

- AUSTRAC SMR, TTR and IFTI reporting data
- Information obtained from the AFP-led Criminal Assets Confiscation Taskforce (CACT)
- ATO data on tax liabilities and recovery through the Serious Financial Crime Taskforce (SFCT), and
- Analytical reports and publications by the AIC.

Data on the number of businesses that may be impacted by the reforms:

- Current AUSTRAC enrolment and reporting entity data
- ABS data on relevant sectors and services
- New Zealand data on current reporting entities and sectors, including DNFBPs, and
- Stakeholder consultation feedback and submissions.

Stakeholder consultation:

- Submissions to departmental consultation and outcomes of engagement with stakeholders on the proposed reforms, and
- Outcomes of previous Parliamentary inquiries, committees and reviews.

Contextual information:

- FATF documentation, guidance and reports

- International experience of AML/CTF regulation
- Domestic and international literature on the impact of ML/TF in Australia, and
- Research on the impact of AML/CTF policy.

Gaps

Due to the complex and inherently covert nature of money laundering, robust and extensive literature that attempts to quantify the scale of money laundering in Australia is scarce. The key impact of this gap is attaching a robust and reliable number to the costs of money laundering to compare against regulatory costs. Moreover, empirical evidence on the connection between the scale of money laundering and the impact and effectiveness of AML/CTF policy is limited, including international experience. A key aim of the AML/CTF regime is to combat financial crime, which is even more challenging to effectively quantify. The AIC has made some attempts in recent months, with their analysis drawn on by Nous Group to quantify the benefits of proposed reforms.

There are also significant gaps in understanding the full view of regulatory costs of compliance for reporting entities. The services provided by Nous Group have sought to fill this gap by surveying affected entities to provide quantifiable data on the anticipated changes in burden associated with the reforms. However, the full package of legislation is still under active development, with further opportunities for stakeholder consultation including on amendments to the Rules and associated AUSTRAC guidance. Stakeholders indicated the gap in available information made it challenging to accurately estimate the costs and savings of reform, resulting in an abundance of caution in the figures provided. Ultimately this affects the extent to which the accuracy of this primary data can be relied upon ahead of this further detail becoming available through future reforms to the Rules.

Due to the designated services model of the AML/CTF regime, accurate details on the population sizes of the proposed new reporting entities will not be known until all relevant businesses that provide these services have enrolled with AUSTRAC. This will also require sufficient time for AUSTRAC to conduct education and outreach activities to encourage further enrolment and compliance. Notably, the FATF requires regulation of trust and company service providers. However, this grouping as a sector separate from lawyers or accountants is less relevant in the Australian context, therefore accurate data on the scale of potential regulated population is limited. This data gap has the potential to inflate the regulatory burden outlined in Question 4, as it remains unclear how many businesses will be covered by the proposed reforms. To estimate the size of the newly regulated population, the department and Nous Group analysed ABS data on relevant sector sizes in Australia and the DNFBP regulated population following implementation of similar reforms in New Zealand.

Question 2: What are the objectives, why is government intervention needed to achieve them, and how will success be measured?

Government Objectives

The proposed reforms have three objectives:

- combatting crime
- improving FATF compliance
- minimising regulatory burden.

Combatting crime

The reforms aim to combat crime and prevent ML/TF by hardening Australian businesses against criminal abuse and bolstering law enforcement capabilities.

The proposed changes seek to strengthen businesses' ability to identify and prevent criminal exploitation of their services by replacing overly prescriptive requirements that are difficult to understand and no longer fit-for-purpose. By reducing complexity and simplifying AML/CTF obligations, entities will be able to more flexibly implement processes that align with their business practices and focus on the outcome of mitigating risks.

The reforms also aim to make it more difficult for criminal organisations to move illicit finance without detection, by extending regulation to currently unregulated tranche two entities and digital currency exchange services. These entities are identified in AUSTRAC's National Risk Assessments as facing high to very high ML/TF risks.[96] The goal is to close major gaps and vulnerabilities in Australia's AML/CTF system, and assist more legitimate businesses to protect the integrity of the services they provide to prevent them being targeted by criminals.

[96] Australian Transaction Reports and Analysis Centre, *Money Laundering in Australia National Risk Assessment* (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>; Australian Transaction Reports and Analysis Centre, *Terrorism Financing in Australia National Risk Assessment* (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Terrorism%20Financing%20NRA.pdf>.

By reducing complexity and closing gaps in regulation, the reforms aim to increase the quality and yield of actionable financial intelligence available to AUSTRAC and law enforcement agencies. Clarifying requirements for SMRs, threshold transaction reports (TTRs) and IFTI reports will help to reduce incomplete or over-reporting by entities, which currently results in a large proportion of low-quality information being submitted to AUSTRAC. The objective of implementing clearer reporting obligations for a substantially expanded reporting population is to provide a larger volume of financial intelligence that will enhance law enforcement capability to detect, deter and disrupt criminal activity. Expanding visibility of interconnected services through which criminal finance flows will provide a more holistic intelligence picture, allowing law enforcement to better 'follow the money'.

The key metrics for success of this objective will be the yield of actionable financial information generated by regulated entities that is then assessed by AUSTRAC, and passed on to law enforcement and intelligence agencies. For example, increases in the number of SMRs, TTRs and other reports submitted to AUSTRAC—and an understanding of which entities have submitted them—will indicate the extent to which reforms to close regulatory gaps have strengthened protection of the system across a broader range of high-risk services. In 2022-23, a total of 192,717,324 reports were made to AUSTRAC. This included 317,401 SMRs (8 per cent increase from 2021-22), 2,087,732 TTRs and 190,312,191 IFTIs (both 9 per cent increases).[97]

The department expects that it is almost certain that success will be achieved for this objective if the preferred option is implemented. Increased reporting resulting from the reforms would likely be influenced by the volume and nature of economic activity occurring within the expanded regulated population, the services they provide and the ML/TF risks they face. The improved quality of that reporting will depend on the effective implementation of the reforms and rollout of education and guidance, so will likely not be demonstrable until approximately 2027.

Increases in the reported positive impact of financial intelligence on law enforcement operations will help to measure how successful the reforms to simplify and clarify obligations have been in improving the quality of reporting. Increases in ML/TF investigations, prosecutions, convictions and criminal asset identification, restraint and confiscation assisted by AUSTRAC financial intelligence could also potentially indicate the success of the reforms in combatting crime, noting these types of outcomes are also impacted by a variety of factors, particularly in the case of matters which proceed to court. However, any such analysis could not definitively determine the impact on overall costs of crime, given the inherent limitations in empirically understanding the scale and nature of illicit finance, the evolving methods and services exploited by criminal organisations to avoid detection, and the complex interactions between money laundering and predicate crimes. These underlying issues also reflect operational challenges in combatting illicit finance, and barriers to successfully achieving this objective.

While reporting volume is the strongest metric for evaluating the success of policy options in achieving this particular objective, there are a number of additional metrics and data sources available that shed further light on the current threat environment to base the analysis on. This includes information from the CACT regarding asset restraint and confiscation, and broader law enforcement data about the reduction of illicit drug harm.

[97] Australian Transaction Reports and Analysis Centre, *AUSTRAC Annual Report 2022-23,* (Report, 18 September 2023) 6 <https://www.austrac.gov.au/sites/default/files/2023-10/AUSTRAC%20Annual%20Report%202023.pdf>.

As part of the CACT, AUSTRAC intelligence plays an important role in assisting the identification of suspected criminal assets and evidence to support the restraint and confiscation of these assets as proceeds, instruments or benefits of crime. Assets confiscated under the *Proceeds of Crime Act 2002* (POCA) are liquidated and deposited into the Confiscated Assets Account (CAA) administered by the Australian Financial Security Authority (AFSA).[98] The funds in the CAA are used to support community programs targeted towards crime prevention, intervention, diversion or other law enforcement and community initiatives. The CACT restrained over $998 million between 1 July 2018 and 30 June 2023, and confiscated $270 million over the same period.[99] This represents an average of $54 million of proceeds, instruments and benefits of crime confiscated each year by the Commonwealth government.

A substantial proportion of the criminal assets confiscated by the CACT under the POCA were identified in sectors not yet regulated by the AML/CTF regime. This is especially true for the real estate sector, with commercial and residential property accounting for 65.2 per cent of the CACT's total gross restraints for the 2022-2023 financial year, amounting to $220.71 million in total.[100] Extending the AML/CTF regime to cover additional sectors offering high-risk services would improve the likelihood that additional money laundering and proceeds of crime will be identified. This will greatly assist CACT investigations and litigation proceedings which might otherwise have been impaired by gaps in intelligence. However, outcomes in criminal investigations, prosecutions and asset restraint are influenced by a wide-range of factors outside the scope of the AML/CTF regime, which must all be considered when attempting to assess the extent to which expanded AML/CTF regulation will result in additional asset confiscation.

Of the costs of crime outlined above, money laundering is a significant enabler of illicit drug activity and its resultant damage to the community. The amount of money laundered within Australia each year has been estimated to fall between approximately $45 billion and $60 billion.[101] Additional AIC analysis on the characteristics of approximately 600 organised crime groups involved in illicit drug trafficking found that 49.7 per cent of the groups were involved in money laundering nine per cent of the groups laundered proceeds of crime through the real estate industry or other professional facilitators of money laundering.[102]

[98] Australian Federal Police. (n.d.). Criminal assets. Retrieved January 15, 2024, from Australian Federal Police website <https://www.afp.gov.au/crimes/serious-and-organised-crime/criminal-assets>.

[99] Australian Federal Police. (n.d.). Annual reports. Retrieved January 15, 2024, from Transparency Portal website <https://www.transparency.gov.au/portfolio-entities-companies/attorney-general-s/australian-federal-police#annual%20reports>.

[100] AFP 2023, AFP submission to Attorney-General's Department - Consultation paper on Modernising Australia's anti-money laundering and counter-terrorism financing regime <https://consultations.ag.gov.au/crime/aml-ctf/consultation/download_public_attachment?sqId=question-2022-01-06-6908678210-publishablefilesubquestion-1&uuId=968181792>.

[101] Joras Ferwerda, Alexander van Saase, Brigitte Unger and Michael Getzner, 'Estimating money laundering flows with a gravity model-based simulation' (2020) 10(18552) Scientific Reports, 6. Note: AUD figures have been calculated using Australia's nominal GDP as at 31 Dec 2023 <https://www.nature.com/articles/s41598-020-75653-x>.

[102] Morgan A & Dowling C 2023. Enablers of illicit drug trafficking by organised crime groups. Trends & issues in crime and criminal justice no. 665. Canberra: Australian Institute of Criminology <https://www.aic.gov.au/sites/default/files/2023-03/ti665_enablers_of_illicit_drug_trafficking_by_organised_crime_groups.pdf>.

The laundering of proceeds of crime has the potential to amplify the harm that illicit drug activity has on the community. AIC analysis of AUSTRAC and AIC data identifies a correlation whereby an increase in money laundering by an organised crime group preceded an increase in crime harm due to the reinvestment of illicit funds in future criminal activities. This supports a finding that laundering the proceeds of crime amplifies the harm that illicit drug activity has on the community. It was estimated that each individual group involved in reinvesting their criminal proceeds was on average responsible for $5.18 million of illicit drug harm each year ($5.3 million in 2023-24). AIC also found that one in 10 of these criminal groups diversified into other illicit commodities, showing how criminals use their criminal profits to reinvest into further illegal activity.[103] The analysis found that reducing money laundering by organised crime groups involved in illicit drug activity had the potential to significantly reduce the associated harm to the community. The analysis determined the proportional reduction in illicit drug harm that would occur under two scenarios where organised crime groups were restricted from laundering their proceeds of crime:

- A 33 per cent reduction when a group is prevented from laundering any money
- A 3.3 per cent reduction when a group continues to launder money, but the amount of money laundered is reduced by 50 per cent.[104]

By reducing opportunity for money laundering in high-risk industries such as real estate, as well as the other tranche two entities to be regulated, AML/CTF reform has the potential to reduce illicit drug harm.

FATF Compliance

As a founding member of the FATF, Australia is committed to upholding its internationally recognised standards. By addressing major regulatory gaps, the reforms aim to bring Australia into line with global best practice and improve compliance with the FATF standards in key areas where it is currently rated ‘non-compliant’ (regulation of tranche two entities) or ‘partially compliant’ (regulation of digital currency services and the travel rule).

Crucially, the reforms aim to prevent the significant risk of Australia being grey-listed by the FATF for its long-standing and heavily criticised inaction on tranche two regulation. Addressing this glaring deficiency is critical to avoid both the serious economic and reputational consequences that would flow from the FATF publicly declaring the extent of this weakness in Australia’s AML/CTF system, and the threat of emboldening criminal efforts to exploit vulnerable Australian businesses for illicit purposes.

By closing gaps to improve FATF compliance, the reforms aim to send a strong message that Australia’s AML/CTF system is integrated and protected, to bolster trust in Australian regulated entities and to make it easier for them to conduct business.

The measures of success will be improved technical compliance ratings for Australia against the following FATF Recommendations:

- 22, 23 and 28 (regulation of tranche two entities) from ‘non-compliant’ to ‘largely compliant’ or ‘compliant’

[103] Ibid.

[104] Internal analysis provided by AIC, drawing from Morgan (2024) Money laundering and the harm from organised crime: Results from a data linkage study. Report by the Australian Institute of Criminology’s Serious and Organised Crime Research Laboratory for the Australian Transaction Reports and Analysis Centre.

- 15 (digital currency exchange services) and 16 (travel rule) from ‘partially compliant’ to ‘largely compliant’ or ‘compliant’.

The department expects that it is likely that success will be achieved for this objective if the preferred option is implemented. However, the key barriers to success of this objective are the extended implementation period that will be required, given the complexity of the reforms, and the strict timing associated with FATF processes. The formal components of Australia’s upcoming mutual evaluation will commence in May 2026, when Australia must provide a written technical compliance submission to the FATF, and the on-site visit expected in December 2026. At a minimum, to achieve any improved technical compliance ratings, legislative and regulatory amendments need to be fully implemented before this on-site visit. This barrier will be mitigated through careful program management and industry engagement. The Government provided funding to the department and AUSTRAC in the 2023-24 Budget to support preparation for and participation in the evaluation of Australia’s regime against global standards by the FATF.

Even if Australia meets these timeframes, ongoing effort will be required to demonstrate continued improvement in technical compliance and effectiveness. As part of the mutual evaluation process, Australia will receive a KRA Roadmap and will be required to report on its progress against specified actions after three years. This will provide a further opportunity to measure the success of the reforms.

Failure to act now will create a perception that Australia lacks the political will to carry out its commitments as a FATF member. If Australia is grey-listed as a result, it will be subject to much more rigorous oversight by the FATF, and may be required to take significant measures such as enacting legislation and demonstrating effective implementation within limited timeframes. The proposed reforms aim to avoid such an outcome. This criticism and enhanced due diligence will extend to global regulators, financial capitals and multilateral businesses, having far reaching effects on the Australian economy.

Minimising Regulatory Burden

The Statutory Review highlighted key areas in which the regime can be simplified and clarified to minimise the administrative burden on the regulated population. The reforms aim to achieve this goal by reducing unnecessarily prescriptive and/or unclear requirements and allowing reporting entities greater flexibility to meet their obligations. While all entities will have the same core obligations, the way different businesses achieve the outcome of preventing ML/TF will differ vastly. The reforms will allow entities to scale their efforts and costs to the size and nature of their business and the level of risk they face.

Reforms to expand the regulated population to include tranche two entities and additional digital currency exchange services will necessarily involve additional regulatory costs as these businesses take on new obligations. Reforms to simplify and clarify the regime aim to minimise these burdens by providing flexibility for tranche two entities to leverage relevant existing processes and adapt their efforts to appropriately manage ML/TF risk. A key focus of the reforms is ensuring the outcome of minimising regulatory burden is achieved along with effectively combatting crime by hardening Australian businesses and economic institutions against exploitation and improving FATF compliance, to avoid the serious costs of inaction on all three objectives.

Practical implementation of the reforms following amendment of the Act will involve ongoing consultation with industry to identify further opportunities to clarify obligations and minimise regulatory burden. This includes through the development of the Rules, as well as the associated guidance and education provided by AUSTRAC. As the AML/CTF regulator, AUSTRAC has the ability to enforce AML/CTF compliance through mechanisms such as civil penalties. However, these measures tend to be reserved for instances of systemic non-compliance rather than businesses, particularly small businesses, misinterpreting legislative obligations. The objective of the reforms is not to penalise businesses where guidance and education can rectify shortcomings in their approaches to mitigating risk.

The reforms' success in minimising regulatory burden will be measured by the extent to which they achieve this outcome along with the objectives of combatting crime and improving FATF compliance to deliver the greatest net benefit. The best approach may not be the option with the least regulatory burden. The net benefit analysis in Question 4 provides estimates that may serve as baselines for future evaluation of the reforms, as outlined in Question 7. Challenges in measuring success include ongoing development of the operational details of the reforms through the legislative drafting process, as well as the measurement challenges identified under the combatting crime objective, above.

Why does government need to intervene?

The problems of complexity and regulatory gaps in the AML/CTF regime stem from inefficiencies and gaps in the underlying legislation. Government intervention is required to address these problems and drive a strong national approach to detecting, deterring and disrupting ML/TF. The Government is ultimately responsible for establishing and maintaining the AML/CTF regime, and will be held accountable for its success by industry, the community and international stakeholders, including the FATF.

The operation of the AML/CTF regime is a partnership between the Government and industry, with regulated businesses at the front line in combatting financial crime. Government intervention is needed to ensure the regime is fit-for-purpose, tailored to the Australian context and easily applied by industry. Regulation is required to set consistent and cohesive prevention practices for businesses to understand and mitigate the risks involved with services they provide and reduce their exposure to exploitation by criminal actors. This includes core requirements that entities can scale and adapt to the risks their businesses face, reducing their exposure to criminal activity and reputational damage. To this end, the Government has worked in close consultation with industry in developing the proposed reforms to the regime, and will continue to do so through their implementation.

Government is responsible for law enforcement, national security and protecting Australia from the social and economic harms caused by TSOC and terrorism. This is a whole-of-government endeavour that involves broad collaboration and cooperation across jurisdictions to respond to criminals and other actors that seek any means to exploit vulnerabilities and undermine Australia's institutions. Government needs to intervene to address systemic issues in the AML/CTF regime that limit the ability of law enforcement agencies to gain a complete financial intelligence picture and detect, deter and disrupt crime.

The Government also leads Australia’s contributions to the international order, including participation in FATF processes and international cooperation to contribute to stronger global efforts against ML/TF. As a founding and active member of the FATF, Australia is committed to upholding its standards. Australia also plays an important leadership role—including in the APG, part of the FATF’s global network—to support countries in the region to strengthen their AML/CTF systems. The Government needs to intervene to address deficiencies in Australia’s compliance with its FATF obligations, protect Australia’s credibility and reputation in international forums, and send a strong signal internationally that its financial system is hardened against criminal abuse.

Are there any viable alternatives?

Existing sector standards and regulation

Many of the tranche two businesses that are not currently regulated by AUSTRAC are subject to sectoral standards of practice legislated and/or implemented across the states. For example, the Legal Profession Uniform Law establishes admission requirements and practicing certificate renewal processes for participating jurisdictions. It also sets out obligations to undertake employee screening and re-screening. The Australian Registrars’ National Conveyancing Council (ARNECC) framework, which governs electronic conveyancing, establishes legally binding obligations upon participants to verify the identity of their clients. However, there is no industry regulation that applies to businesses offering trust and company services, nor to businesses that build and sell large volumes of residential or commercial property.

However, existing sector specific regulations are not directed at reducing money laundering, terrorism financing or proliferation financing risk. For example, they do not contain obligations for service providers to understand or mitigate these risks as required by the FATF Standards. Where character suitability requirements apply to some sectors, they typically do not extend as far as the AML/CTF regime or ensure criminals and their associates do not hold influential roles. Further, outside the AML/CTF regime, businesses are not, and cannot, be required to report suspicious matters to AUSTRAC to contribute to the financial intelligence picture.

Relying solely on existing industry standards and regulation is therefore not a viable alternative to achieve the objectives of AML/CTF regulation and would not be compliant with the FATF standards. However, under the proposed reforms, entities would be able to leverage existing practices and include them in their AML/CTF programs where appropriate. For example, legal practitioners could determine that a current practising certificate held by a prospective employee is sufficient to meet some employee due diligence requirements and may include this in their AML/CTF program.

International Regulation of DNFPBs

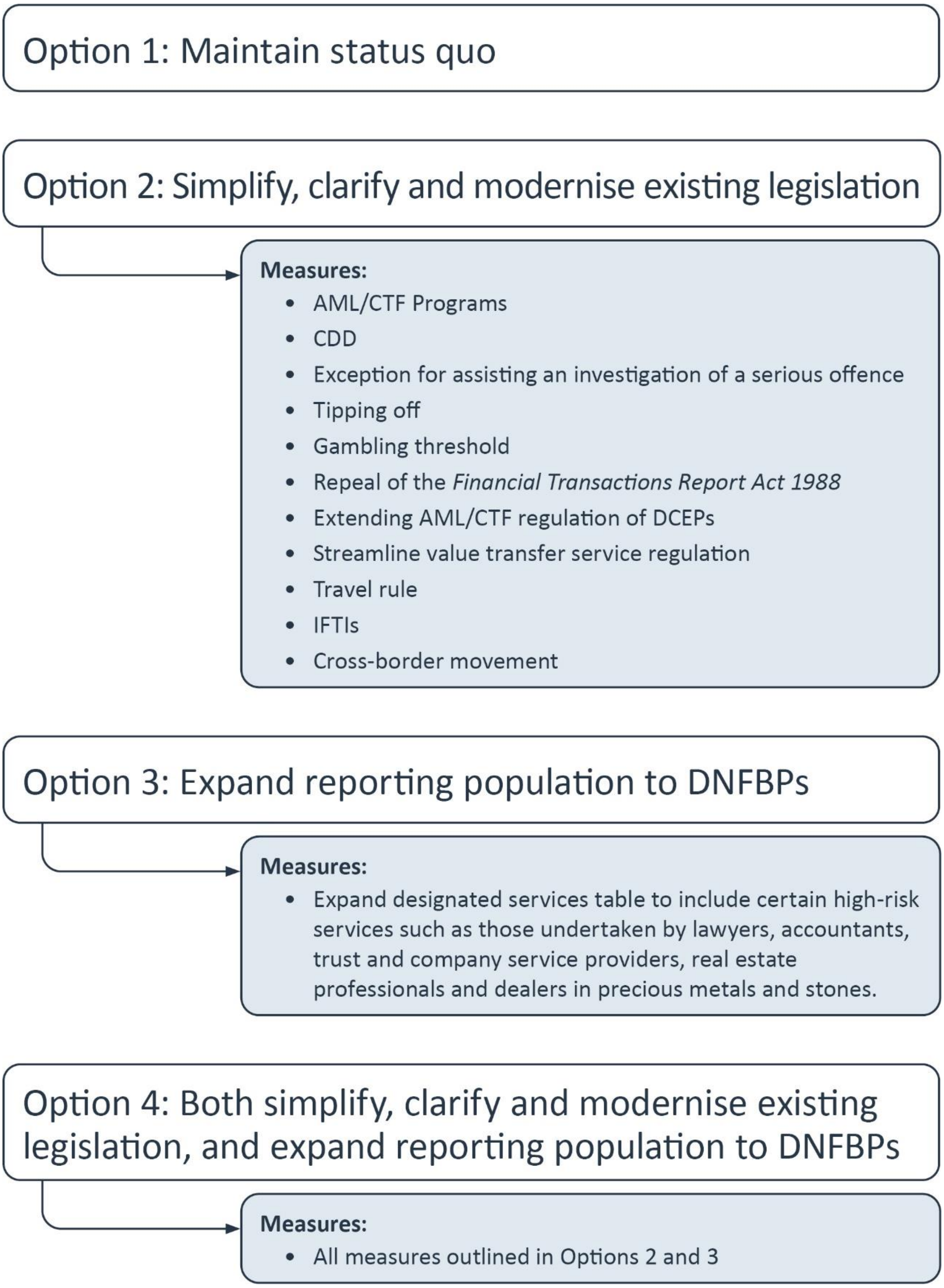
The UK has a regulatory model where entire sectors are regulated for AML/CTF purposes, as opposed to Australia's designated services model. This broad-brush approach imposes a regulatory burden on businesses that may not provide one of the services that are subject to FATF requirements, as it captures them based only on the fact they belong to a particular sector. This model has drawn criticism for not promoting a risk-based approach, as required by the FATF. Rather, it applies overly prescriptive obligations that are not adapted to the range and diversity of sectors and services regulated under the regime and the different risks they pose.[105]

New Zealand's framework is more closely aligned with Australia's, with the regulation of entities, including DNFBPs, based on a similar designated services model. However, particularly following the expansion of the regime to cover DNFBPs, there was considerable feedback that their regulatory model is 'one size fits all'.

The way in which legal professional privilege is managed globally as part of DNFBP regulation varies significantly. For example, the Federation of Law Societies of Canada successfully challenged the regulation of lawyers for AML/CTF purposes, arguing the requirement to collect and report client information to the FIU failed to respect the solicitor-client privilege protected under section 7 of the Canadian Charter of Rights and Freedoms. Australia does not have a similar charter that would specifically restrict the regulation of lawyers, and there are a number of exceptions to privilege, including for illegal purposes or statutory exclusions. Importantly, Australia intends to preserve, and not abrogate, legal professional privilege.

[105] Evidence to Senate Standing Committee on Legal and Constitutional Affairs on the adequacy and efficacy of Australia's AML/CTF regime, Parliament of Australia, Canberra, 9 November 2021, 5 (Senator Scarr) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F25284%2F0000%22>.

Question 3: What policy options are you considering?



Option 1: Maintain status quo

Option 2: Simplify, clarify and modernise existing legislation

Measures:

- AML/CTF Programs
- CDD
- Exception for assisting an investigation of a serious offence
- Tipping off
- Gambling threshold
- Repeal of the *Financial Transactions Report Act 1988*
- Extending AML/CTF regulation of DCEPs
- Streamline value transfer service regulation
- Travel rule
- IFTIs
- Cross-border movement

Option 3: Expand reporting population to DNFBPs

Measures:

- Expand designated services table to include certain high-risk services such as those undertaken by lawyers, accountants, trust and company service providers, real estate professionals and dealers in precious metals and stones.

Option 4: Both simplify, clarify and modernise existing legislation, and expand reporting population to DNFBPs

Measures:

- All measures outlined in Options 2 and 3

Overview

A number of options have been identified in developing the proposed reforms. The options focus on ways that the problems outlined in Question 1 can be addressed most effectively. In addition to addressing the problems that have been explicitly identified, these options also support the key objectives of bolstering law enforcement and combatting money laundering and associated crimes, addressing FATF standards, and minimising regulatory burden. Three viable options, in addition to maintaining the status quo, have been identified:

- **Option 1:** Maintain the status quo
- **Option 2:** Simplify, clarify and modernise existing legislation
- **Option 3:** Expand the reporting population to DNFPBs
- **Option 4:** Both simplify, clarify and modernise legislation, and expand reporting population to DNFBPs

Option 1: Maintain status quo

Option 1 would keep the existing AML/CTF regime in its current form as outlined in the background. Under this option, the key obligations would remain unchanged.

Under the status quo, only those entities currently regulated by AUSTRAC would have AML/CTF specific risk mitigation systems in place to respond to the threats of their sector. These regulated entities would remain limited to those in the financial sector such as banks and credit unions, casinos, money remitters and some digital currency exchange services. The obligations of these entities would not change, as the legislation would remain in force as it is currently drafted. The status quo would likely require AUSTRAC to draft further bespoke guidance to clarify legislative complexities, grant a number of exemptions to known deficiencies in the regime that unnecessarily inflate regulatory costs, and undertake further education and outreach to explain the complex regime. Under this option, the associated costs of money laundering outlined in the Background will remain unchecked, and likely be exacerbated as a result of the regime's unaddressed inefficiencies.

Option 2: Simplify, clarify and modernise existing legislation

This option would involve a number of legislative amendments with the intention of simplifying and clarifying the AML/CTF regime to increase compliance and reduce regulatory burden. This includes a substantial re-write of the two most significant of the six key obligations of the AML/CTF regime that have been identified as the most difficult for reporting entities to understand and comply with: AML/CTF Programs and CDD. Further to these amendments, there are a number of other obligations that would be amended to clarify known deficiencies in the regime, as well as a number of amendments that would align the AML/CTF regime with the reality of modern businesses. The basis for this option comes from the remaining 50 recommendations from the Statutory Review. Further detail on the proposed amendments under this option are outlined below in Table 4.

Table 4 | **Proposed measures to simplify, clarify and modernise the existing regime to be included in Option 2 and Option 4**

Simplification and Clarification Measures		
Measure	**Existing framework**	**Proposed changes**
AML/CTF Programs	• Section 81 of the Act requires reporting entities to develop and maintain a written AML/CTF program that sets out the risks a business may face and how those risks can be managed before providing a designated service. • The Act provides that AML/CTF programs should comprise two parts (Part A and Part B).	• Part 7 of the Act and the concepts of standard, joint and special AML/CTF programs would be replaced with a set of outcomes-focused obligations. • Risk assessment: reforms would establish a clear overarching requirement that a reporting entity must conduct a risk assessment to ensure their AML/CTF program is fit-for-purpose and effective. Reporting entities must consider the risk that their business may facilitate money laundering, terrorism financing and proliferation financing when providing a designated service. • Mitigating risk: shift the focus from adopting and maintaining the AML/CTF program to ensuring reporting entities appropriately mitigate risks by including an obligation that reporting entities develop and implement enterprise-wide policies proportionate to the nature, size and complexity of the business. • Internal controls: an express obligation in the Act that requires a reporting entity to ensure its risk control measures apply to their internal policies and practice. This would include the provision for board or equivalent senior management oversight of the entity's AML/CTF program as appropriate to the entity. The board or equivalent senior management would not be required to oversee or approve the implementation of measures that are operational in nature. A reporting entity's Compliance Officer would oversee operational measures and ensure these are approved by an individual in senior management (e.g. the Chief Risk Officer).

		• Group-wide risk management: replace the concept of forming a designated business group with a simplified ‘business group’ concept. The Act would be amended to provide that a group-wide program applies to all entities that provide designated services in Australia. • Foreign branches and subsidiaries: the Act will simplify and clarify requirements for reporting entities with foreign branches and subsidiaries. This will reduce complexity when Australian AML/CTF obligations interact with local laws in the host country.
Customer Due Diligence	• CDD obligations are detailed across the Act and Rules, resulting in confusing and overly procedural obligations. • The overarching objective of CDD is for a reporting entity to be reasonably satisfied that the customer is who they claim to be. However, the current obligations focus too much on how these obligations must be fulfilled instead of on the outcome. • For instance, reporting entities are required to carry out documented procedures, known as the ‘applicable customer identification procedures’, instead of ensuring they actually understand who their customer is and the ML/TF/PF risks they may be exposed to through that customer relationship.	• The core obligations of CDD would be clearly outlined. Those being: customer risk rating, initial CDD and ongoing CDD. • The customer risk rating would determine what type of initial CDD and ongoing CDD is required: standard, enhanced or simplified. • Customer risk rating: reporting entities would need to assign a risk rating to each customer relationship before commencing to provide a designated service and update this rating through ongoing CDD. The reporting entity would decide where each customer falls on their customer risk rating scale based on a number of different factors relevant to the business relationship.

		• Initial CDD: reporting entities would need to collect and verify information (KYC information) that identifies their customer and ensures that the customer is who they claim to be. This information would also support reporting entities when they undertake customer risk ratings. Information collected and verified must be reliable and independent, and in accordance with the minimum standards set out in the Rules. Ongoing CDD: reporting entities would need to apply ongoing CDD measures throughout the provision of designated services to a customer. This includes monitoring for unusual or suspicious transactions or behaviours, ensuring that KYC information is up to date and re-verified when needed, and updating the customer risk rating, where appropriate. • Enhanced CDD: reporting entities would need to apply enhanced CDD measures proportionate to the risk in certain circumstances, including when the customer is rated as high risk, there is a suspicion of illicit activity or the customer is a PEP. • Simplified CDD: reporting entities may be able to apply simplified CDD measures to customers rated as low ML/TF/PF risk and where none of the triggers for enhanced CDD apply. When justified, simplified CDD measures can be applied by reporting entities when undertaking initial CDD and ongoing CDD obligations. • The department is also proposing other additional amendments related to CDD. These are: ○ Record keeping for CDD: reporting entities would be required to keep records obtained through any of the CDD obligations outlined above, including records of analysis or decisions made. Currently, record keeping for ongoing CDD is absent from the Act and Rules.

		○ Pre-commencement customers: the department is proposing to transition all pre-commencement customers for new and existing regulated entities into the AML/CTF regime over a specified period of time. This would ensure the risks associated with this unverified cohort of customers can be identified and mitigated. ○ Defining ‘business relationship’ and ‘occasional transaction’: to create a clear distinction between what ongoing CDD measures should be undertaken and when, the department is proposing to define a business relationship as one that involves the provision of a designated service that has an element of duration. An occasional transaction would be defined as the provision of a designated service to a customer outside a business relationship.
Exception for assisting an investigation of a serious offence	• Chapter 75 of the Rules allows the AUSTRAC CEO to exempt reporting entities from particular sections of the Act where providing a designated service to a customer would assist the investigation of a serious offence.	• The exemption in chapter 75 of the Rules would be moved into the Act. • The Act would specify that eligible law enforcement agencies would be able to issue ‘keep open notices’ to reporting entities requesting them to keep an account open. • An agency would be able to issue such a notice, without requiring approval from AUSTRAC in circumstances where a senior delegate within the agency reasonably believes that maintaining the provision of a designated service to the customer would assist the agency’s investigation of a serious offence.

		• The Act would specify that a reporting entity would be permitted not to undertake CDD measures if they receive a ‘keep open notice’ from an eligible agency and the entity reasonably believes that a particular CDD measures would alert the customer to law enforcement interest. The Act would clarify that a reporting entity would be permitted not to undertake CDD measures where they have independently developed a suspicion of financial crimes and reasonably believe that undertaking a particular CDD measure would tip off a customer. • A notice would not compel the reporting entity to continue to provide designated services to the customer. ○ Rather, reporting entities would not be liable for the provision of a service when acting in accordance with a keep open notice. • Introduce safeguards to ensure that the quality of the process is upheld and to minimise regulatory impact on industry. • The current list of eligible agencies in chapter 75 of the Rules would also be amended to include the National Anti-Corruption Commission (NACC), which will improve operational outcomes.
Tipping off	• The tipping-off offence is designed to deter regulated entities from disclosing information that may reveal the existence of a SMR which could compromise a law enforcement investigation. • The tipping-off offence also prohibits disclosure of information provided in response to a notice issued under section 49 of the Act from AUSTRAC or its partner agencies.	• Section 123 of the Act would be amended to prohibit the disclosure of SMR and section 49 related information where it is likely to prejudice an investigation or potential investigation. • The offence would apply to a person who is or has been a reporting entity, or an employee of a reporting entity. • Reporting entities will be required to implement controls and protections around SMR and section 49 notice related disclosures as part of their internal AML/CTF controls and business processes.
Gambling threshold	• Chapter 10 of the Rules exempts regulated entities from performing CDD procedures when providing some gambling services which involve less than $10,000.	• The CDD threshold for gambling service providers outlined in Chapter 10 would be lowered from $10,000 to $5,000.

		• This would require gambling service providers to conduct CDD when they provide gambling services to customers involving $5,000 or more. • Conducting CDD on these customers would not necessarily mean that their transaction needs to be reported to AUSTRAC through a SMR or TTR. • This exemption would be moved from the Rules to the Act.
Repeal of the FTR Act	• While certain parts of the FTR Act were repealed or became inoperative in 2006, it continues to operate alongside the Act, imposing reporting obligations on 'cash dealers' and solicitors. • Cash dealers that did not have overriding obligations in the AML/CTF regime are: ○ businesses that buy and sell traveller's cheques ○ online remitters which do not provide designated services at or through a permanent establishment in Australia ○ motor vehicle dealers who act as insurance providers or intermediaries, and ○ solicitors.	• The FTR Act would be repealed to streamline and simplify obligations for industry. • Remaining cash dealers that do not provide a designated service under the Act would no longer be regulated by AUSTRAC.
Cross-border movement	• Under sections 53 and 54, all persons must report the cross-border movement of all monetary instruments with a cumulative value of $10,000 or more (or foreign equivalent) to AUSTRAC under a declaration system. This includes BNIs as well as physical currency, whether these are carried in person or sent/received by freight, courier or postal service.	• The bearer negotiable instrument definition in section 17 of the Act would be amended to clarify that it only covers instruments that are truly bearer negotiable in nature, being: ○ instruments that are in bearer form ○ endorsed without restriction ○ made out to a fictitious payee or ○ any incomplete monetary instrument signed but with the payee's name omitted, or

		- otherwise in such form that title passes to the recipient upon delivery.
Modernisation Measures		
Measure	**Existing framework**	**Proposed changes**
Extending AML/CTF regulation of DCEPs	- DCEPs are regulated when they engage in the exchange of digital currency (cryptocurrency) for fiat currency (AUD for example) or vice versa.	- Table 1 of the Act would be amended to include additional services provide by DCEPs including: ○ exchange between one or more forms of digital currency ○ transfer of digital currency ○ safekeeping and administration of digital currency or instruments enabling control over digital currency, and ○ participation in and provision of financial services related to an issuer's offer and/or sale of a digital currency. - The expansion of the regulation of DCEPs would require any provider of the exchange or making arrangements for the exchange of digital currency for money, digital currency for digital currency and administering digital currency on behalf of a person, to register with AUSTRAC as a digital currency business unless their business is a financial institution.
Amend definition of 'digital currency'	- Section 5 of the Act includes a definition of 'digital currency'	- Term 'virtual asset' would replace any reference to 'digital currency'. - Accompanying definition would be amended to close a number of regulatory gaps, including in relation to non-fungible tokens and stablecoins.
Streamline value transfer service regulation	- Obligations for the regulation around the transfer of value is split across 3 sections in the Act. - Sections 8 and 9 outline the relevant obligations for financial institutions. - Section 10 outlines the relevant obligations for remittances.	- The definitions of 'electronic funds transfer instruction' and 'designated remittance arrangement' in sections 8, 9 and 10 of the Act would be replaced with a single, simplified concept of 'value transfer service' that applies to remitters, DCEPs and financial institutions that provide remittance-type services as part of their core business.

		• The designated services in items 29, 30, 31 and 32 of Table 1 of the Act would be replaced with two unified value transfer designated services that apply to: ○ ordering institutions that accept an instruction to transfer value on behalf of a payer, and ○ beneficiary institutions making transferred value available to a payee. • The new designated services would be supported by an updated concept of a ‘value transfer chain’ which would define the terms ‘ordering institution’, ‘intermediary institution’ and ‘beneficiary institution’.
Travel rule	• The travel rule is a requirement to include information about the payer and the payee with a transfer of value as it is transmitted from one business to another through a payment chain. • It increases the end-to-end transparency of transactions, which supports regulated entities to identify, mitigate and manage the associated financial crime risk. • Only financial institutions such as banks are required to include payer information for electronic transfers of fiat currency, and they are not required to include payee information.	• Financial institutions, remitters and DCEPs would be required to comply with the travel rule for both domestic and cross-border transfers. • Reform would ensure that information about both the payer and the payee is transmitted or received. • The new legislation would also require payer information to be verified by the ordering institution.
IFTIs	• Section 46 of the Act sets out two types of IFTIs: electronic funds transfer instructions (IFTI-Es) and an international funds transfer instructions designated remittance arrangement (IFTI-DRA). • If an IFTI is accepted or received, then a report must be submitted to AUSTRAC.	• Reform would place the obligation to report IFTIs on Australian institutions that initiate the outgoing transaction on behalf of their customers or make the incoming payment available to their customers. • The distinction between IFTI-Es and IFTI-DRAs would be merged into a single IFTI report.

Option 3: Expand reporting population to DNFBPs

This option would expand the list of designated services to be regulated under the regime to include high-risk services provided by DNFBPs. This option would be limited to amending section 5 of the Act to include relevant definitions, amending the designated services in section 6 of the Act and updating the framework for managing legal professional privilege. The obligations for these newly regulated entities would apply as they do to currently regulated entities, and none of the measures to simplify, clarify and modernise existing legislation would be implemented.

Regulation in the AML/CTF regime is service specific. The services proposed for inclusion in the regime are based on FATF requirements and risks faced in the Australian context. The proposed designated services cover those provided by professional service providers,[106] real estate professionals and dealers in precious metals and stones. The proposed services are listed in more detail in Tables 5, 6 and 7.

***Table 5* | Professional Service Providers to be included under Option 3 and Option 4**

	Proposed Designated Service
1	assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to: (a) sell real estate; (b) buy real estate; or (c) transfer real estate (other than a transfer pursuant to, or resulting from, an order of a court or tribunal); in the course of carrying on a business
2	assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to: (a) sell a body corporate or legal arrangement; or (b) buy a body corporate or legal arrangement; or (c) transfer a body corporate or legal arrangement (other than a transfer pursuant to, or resulting from, an order of a court or tribunal)
3	receiving, holding and controlling (including disbursing) or managing a person's: (a) money; or (b) accounts; or (c) securities and securities accounts; or (d) virtual assets; or (e) other property; as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business (other than in a circumstance covered by subsection (5C)

[106] The term 'professional service provider' is a broad term intended to cover services provided by, but not limited to lawyers, accountants, conveyancers, and trust and company services providers.

4	assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to a body corporate or legal arrangement (or proposed body corporate or legal arrangement), in the course of carrying on a business
5	assisting a person to plan or execute the creation, restructuring, operation or management of a body corporate (other than a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*) or legal arrangement, in the course of carrying on a business
5A	acting for or on behalf of a person in creating, restructuring, operating or managing a body corporate (other than a corporation under the *Corporations* (*Aboriginal and Torres Strait Islander) Act 2006*) or legal arrangement, in the course of carrying on a business
6	acting as, or arranging for another person to act as, any of the following, on behalf of a person (the nominator), in the course of carrying on a business: (a) a director or secretary of a company; (b) a power of attorney of a body corporate or legal arrangement; (c) a partner in a partnership; (d) a trustee of an express trust; (e) a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above paragraphs; other than in the circumstances covered by subsection (5E)
7	acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the ***nominator***), in the course of carrying on a business
8	providing a registered office address or principal place of business address of a body corporate or legal arrangement, in the course of carrying on a business

Table 6 | Real Estate Sector

	Proposed Designated Service
1	brokering the sale, purchase or transfer of real estate on behalf of a buyer, seller, transferee or transferor, in the course of carrying on a business.
2	selling or transferring real estate in the course of carrying on a business selling real estate.

Table 7 | Dealers in Precious Metals and Stones

	Proposed Designated Service
1	buying or selling one or more of the following items in the course of carrying on a business, where the purchase involves the transfer of physical currency or virtual assets (or a combination of physical currency and virtual assets) with a total value of not less than $10,000, whether the purchase is made in a single transaction or in several transactions that are linked or appear to be linked: (a) precious metal; (b) precious stones; (c) precious products; (d) any combination of any 2 or more of the items referred to in paragraphs (a) to (c)

Legal Professional Privilege

Stakeholders have raised concerns with extending the AML/CTF regime to cover services provided by the legal sector on the grounds that it may create an irreconcilable tension between lawyers' ethical duties and AML/CTF obligations that would fundamentally change the nature of the lawyer/client relationship. The proposed approach aims to maintain the important doctrine of legal professional privilege while addressing the demonstrated high risk of legal professionals being exploited for ML/TF purposes.

Based on close consultation with the legal sector, the proposed framework to manage legal professional privilege would introduce tailored protections for privileged information that reporting entities may be privy to in order to ensure it is not inappropriately disclosed through AML/CTF reporting or compliance obligations.

It is proposed that the existing general protection for information covered by legal professional privilege in section 242 of the Act would be repealed and replaced with a more tailored and specific protection under the regime. A definition of 'legal professional privilege' would be introduced, referring to the applicable provisions of the Commonwealth *Evidence Act 1995*, while remaining expansive enough to encompass the common law. Information that is subject to legal professional privilege would be protected by including an additional provision establishing that nothing in the Act affects the right of a person to refuse to give information (including by answering a question) or produce a document if the information or document would be privileged from being produced on grounds of legal professional privilege. For clarity, there is no expectation or obligation that information that is privileged be disclosed to AUSTRAC under the AML/CTF Act.

Critically, a legal practitioner would still be required to comply with all obligations related to:

- enrolment with AUSTRAC
- conducting CDD
- ongoing CDD
- implementing an AML/CTF program
- record keeping, and
- monitoring and investigation by AUSTRAC in relation to the reporting entity's compliance with the Act.

Through consultation, stakeholders raised a number of concerns about the feasibility of timeframes set out in section 41 of the Act for suspicious matter reporting when assessing whether relevant information is legally privileged or not. In response to these concerns, the proposed framework would allow for a time period of no longer than five days for making this assessment and submitting a SMR. This extended timeframe aims to strike the appropriate balance between promoting compliance with FATF Recommendation 20 and maintaining the operational effectiveness and value of relevant information. Importantly, this extended timeframe would not apply to suspicions of terrorism financing due to national security concerns.

Should the above measures be implemented, circumstances may arise where legal professionals make an assertion of privilege and AUSTRAC disputes that assertion. It is proposed that procedures facilitating the resolution of disputes in relation to legal professional privilege be contained in guidelines created by the Minister, with the courts ultimately resolving such disputes.

Option 4: Both simplify, clarify and modernise existing legislation, and expand reporting population to DNFBPs

This option would be a combination of both Options 2 and 3. This includes all measures outlined in Option 2 aimed at simplifying particularly confusing aspects of the legislation, addressing known deficiencies and modernising the regime to keep pace both with modern business and the evolving threat environment. In addition, the reporting population would be expanded to regulate businesses providing services that are internationally recognised to be at high-risk of exploitation. This would include all proposed additional designated services outlined in Option 3, including services provided by lawyers, accountants, trust and company service providers, real estate service providers and dealers in precious metals and stones. Further, this would include consideration of implementing a framework for managing legal professional privilege as part of the regulation of legal services.

By incorporating the simplification measures under Option 2, this would minimise the regulatory burden for those entities that would be brought into the regime under Option 3 alone, as well as reducing complexity for current reporting entities.

Due to the difference in the expected costs and benefits associated with treating Options 2 and 3 either separately or in combination, it is most appropriate to treat this as a standalone option.

Other options not progressed

A number of other options have been considered as part of this reform project, but were deemed ultimately unviable as they did not adequately address the objectives outlined, nor adequately address the threats and risks associated with money laundering, terrorist financing or proliferation financing.

For example, consideration of rewriting the entire Act and Rules was not progressed. Due to the size and scope of these documents, a complete overhaul of legislation could not be feasibly completed in time to support substantive improvements in the implementation of the regime ahead of the FATF mutual evaluation in 2026-27, contrary to one of the key policy objectives.

As mentioned in Question 2, many stakeholders have suggested the possibility of relying on existing systems as opposed to full AML/CTF regulation. For example, the Law Council of Australia presented evidence to the 2022 Senate Inquiry that outlined the ways in which lawyers take steps to 'consider the true purpose of their client's activities',[107] and noted they cannot accept a client without taking steps to identify and verify their identity.[108] While these existing systems are beneficial and can be leveraged as part of the development of an entity's AML/CTF Program, the department has determined that this is ultimately not viable to wholly replace AML/CTF obligations because these existing processes are not specifically related to managing ML/TF risks and may not be fully FATF compliant. Furthermore, businesses that are not enrolled with AUSTRAC cannot submit SMRs or TTR, which are key forms of financial intelligence for AUSTRAC and its partners. While there are a number of mechanisms that can be leveraged for AML/CTF purposes, these are not sufficient to wholly replace the full suite of AML/CTF obligations. The lack of AML/CTF tailored mechanisms and the inability to submit suspicious matters to AUSTRAC renders this option not viable from the perspective of addressing money laundering specific crimes or compliance with the FATF standards, nor does it address the existing complexity in the regime.

Similarly, a model of self-regulation, where peak bodies are responsible for regulating their industries, was raised as a potential option through consultation. Adoption of this model globally has had varying results.

[107] Law Council of Australia, Submission No 30 to Senate Standing Committee on Legal and Constitutional Affairs, *The adequacy and efficacy of Australia's AML/CTF regime,* (15 September 2021) 10 <https://www.aph.gov.au/DocumentStore.ashx?id=abfd9eb7-3d7a-42c4-a5e0-4874c70c096f&subId=716612>.

[108] Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 November 2021, 34 (Steven Stevens, Law Council of Australia) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F25287%2F0005;query=Id%3A%22committees%2Fcommsen%2F25287%2F0000%22>.

International experience – UK model of supervision

The UK has implemented a model of supervision in which there are multiple supervisors for reporting entities including some professional body supervisors for the legal and accounting sectors. FATF guidance on supervisory frameworks note that there is not a specific way in which countries supervise regulated populations as long as the outcomes address risks. However, it also acknowledges that self-regulatory bodies are significantly constrained in their effectiveness when they lack the powers and tools of government supervisory agencies, have conflict of interest and independence-related issues, or human resources and other capacity constraints.[109]

HM Treasury in the UK conducted an open consultation on their model of sector specific consultation. The report highlighted key concerns in that the high number of supervisors increases inconsistency in the approach to supervision, as well as limits the capacity to share information between supervisors. For an AML/CTF regime to be effective in detecting and disrupting illicit financing, supervisors need to be able to timely and effectively share information to build an effective and dynamic system-wide risk picture. Further, professional body supervisors who provide supervision for legal and accountancy firms may not be fully independent of the sector that they supervise which may impact their development of policies and approach to licensing, compliance and enforcement.[110]

Given these concerns raised regarding the UK model, self-regulation is not deemed as a viable replacement for AUSTRAC oversight, nor solution for the problem outlined in Question 1. Self-regulation would result in significant fragmentation of obligations between businesses and industries. This would limit the ability for government and law enforcement to take a whole-of-government approach to addressing TSOC as the key systems established to deter, detect and disrupt money laundering would be inconsistent across sectors. Therefore, this model is not considered to be a viable option and has not been progressed.

As further outlined in Question 1, a non-regulatory option such as AUSTRAC providing further guidance material, education and outreach are ultimately inadequate solutions to wider systemic legislative problems. Continuing to rely on the current legislation to develop more detailed or bespoke guidance would only further complicate the AML/CTF regime and relevant obligations for reporting entities and the regime would ultimately become less effective and more wasteful over time. Therefore, this is not a viable option for this reform project as it would not address the root problems of the current regime, nor the objectives outlined in Question 2.

[109] Financial Action Taskforce, *Guidance for a risk-based approach: effective supervision and enforcement by AML/CFT supervisors of the financial sector and law enforcement* (Report, October 2015) 3 <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-Effective-supervision-and-enforcement.pdf.coredownload.pdf>.

[110] HM Treasury, *Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime* (Report, June 2023) <https://assets.publishing.service.gov.uk/media/649e92d2bb13dc000cb2e3bf/AML_Reform_Consultation_Document_-_FINAL.pdf>.

These systemic legislative problems do not mean a total repeal of the existing legislation is a viable option. While there are a number of complexities and gaps in the current legislative framework, including the division of obligations between the Act and the Rules, the regime still plays a vital role in Australia’s defence against TSOC. Money is at the core of organised crime and it is vital to have robust, effective institutions and legally enforceable systems to combat illicit finance and ML/TF. The AML/CTF regime works to strengthen Australia’s institutions and those businesses most at risk of exploitation, while providing avenues to support law enforcement responses to TSOC groups seeking to infiltrate these businesses. A total repeal of the legislation would leave financial institutions and businesses completely vulnerable and TSOC groups would flourish. This would have far reaching impacts on the Australian community, and markets exposed to significant distortion as illicit wealth is free to flow through different sectors.

In addition, failure to regulate AML/CTF obligations for entities in the relevant sectors would not address deficiencies in Australia’s compliance with the FATF standards. As such, it has been determined that a non-regulatory option is not possible for this reform project.

Question 4: What is the likely net benefit of each option?

Overview

The proposed reforms represent a significant and necessary change to Australia's AML/CTF regime. Each policy option will incur regulatory and other costs commensurate to the money laundering/terrorism financing risks of an individual business.[111] This section analyses the expected net benefit of each proposed policy option, and the impacts on key stakeholders. Each option is assessed based on the policy objectives:

- **Combatting crime** – The extent each option will improve compliance with AML/CTF laws and regulations, and assist law enforcement to detect, deter and disrupt TSOC. The proposed options are analysed in terms of their reduction of legislative complexity and their contribution to actionable financial intelligence.
- **FATF compliance** – How the option will address Australia's deficiencies against the relevant FATF Recommendations (15, 16, 22, 23 and 28) and strengthen its compliance with the global AML/CTF standards.
- **Minimising regulatory burden** –The extent to which the option is expected to minimise administrative and regulatory burden for reporting entities.

The department, with support from Nous Group, has undertaken an analysis to understand, and where possible, quantify the anticipated benefits and the regulatory and other costs associated with each option. The methodology (including limitations and assumptions) is discussed in this section, with additional detail provided in Attachment B.

Due to the complex and inherently covert nature of money laundering, it is not possible to definitively cost the full effect of AML/CTF reform on money laundering or the cost of serious and organised crime in Australia.

This analysis uses a mix of existing domestic and international academic literature, Australian Government financial crime data and AIC analysis of data on in illicit drug trafficking to quantify the benefits relating to combatting crime, including:

- reduction in illicit drug harm
- increased criminal asset identification, restraint and confiscations
- reduced crime harm associated with precluding re-investment of criminal proceeds due to confiscations, and

[111] AUSTRAC operations are funded through a Levy. The existing Levy applies to reporting entities with domestic earnings higher than $100 million per year or those with the highest proportion of IFTI reports. This accounts for 3.3 per cent of reporting entities, which equates to around 600 entities. The Levy is reviewed annually, and changes such as those proposed in this impact analysis may require changes to AUSTRAC's funding model. However, this is still subject to government consideration, therefore, will not be considered as part of this impact analysis.

- increased tax revenue through greater recovery of unpaid tax.

In addition, it is essential to note that the benefits that have been estimated quantitatively represent a limited subset of the broad range of areas in which money laundering enables criminal activity that causes serious harm to the Australian community and economy. This includes the conservative estimate that TSOC costs the Australian community up to $60.1 billion per year.[112] This comprises:

- $16.4 billion in prevention and response costs and
- $43.7 billion for the cost associated with criminal activity and serious organised crime:
    - $16.5 billion illicit drug activity
    - $4.9 billion illicit commodities
    - $9.4 billion organised fraud
    - $6.4 billion consequential serious and organised crime including violence and burglaries
    - $3.5 billion pure cybercrime
    - $2.3 billion crime enablers
    - $0.7 billion crimes against the person like human trafficking and child sexual abuse.

These costs relate only to crime enabled or associated with organised criminal activity. The true total cost of crime is likely much greater. Furthermore, the AIC estimated that 25 per cent of proceeds of crime may require the assistance of professional laundering, especially large-scale proceeds generated through drug trafficking and financial crime. It is estimated that the cost of commissions paid to these professional money launderers would range between $436.7 million to $829.6 million.

The impact analysis also considers the net benefit of reforms to improve Australia's FATF compliance by exploring:

- avoided reduction in FDI in Australia, and
- avoided reputational damage to Australia and certain Australian industries.

As mentioned, the FATF and its members (over 200 jurisdictions in its global network) may consider Australia to be a higher risk jurisdiction for financial crime if the globally accepted standards are not implemented. This could result in these countries imposing enhanced due diligence requirements when dealing with any Australian business, increasing their costs. However, these impacts would be dependent on the specific business decisions and measures imposed by other countries and cannot be quantified in this analysis.

Nous Group delivered a survey to existing regulated entities and tranche two entities to collect data and information on the current and expected future regulatory costs of compliance with current AML/CTF regime. A total of 109 completed responses across regulated and tranche two entities were analysed to develop the estimates of regulatory burden.

[112] 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>.

Nous Group also undertook targeted consultations with five businesses providing AML/CTF services to supplement the information provided by reporting entities in the surveys. These consultations assisted in understanding and validating the likely costs that businesses may face if they were to outsource specific components of their AML/CTF obligations, as well as other factors that would influence the implementation of the reforms. The analysis has also been informed by feedback received through consultation discussed further in Question 5.

The department and AUSTRAC provided supporting data to Nous Group on the current regulated population. The total current reporting population is 17,877, with this impact analysis estimating a total of 16,744 to be impacted by the proposed reforms.[113] Nous Group used ABS data and comparable data on the regulated population in New Zealand to estimate that regulation of tranche two entities will likely increase the total number of regulated entities by 89,557.[114] Nous Group also used ABS data to estimate that the tranche two reforms will increase the economic activity subject to AML/CTF monitoring by 192 per cent (detailed in Attachment B).[115]

There are inherent limitations to the impact analysis, including:

- the difficulty quantifying the value of money laundering globally and in Australia and the costs to society arising from money laundering and terrorism financing
    - estimates reflect the best efforts and understanding of the department and portfolio agencies, supplemented with academic sources and international experience where available
- the limited Australian (and international) evidence base on the likely impact these reforms will have on the amount of money laundered per year, and
- the limited understanding of some businesses of the operational details of the reforms, which were subject to consultation at the time the surveys were conducted
    - this is particularly important for tranche two entities who have no experience with the AML/CTF regime
    - estimates of regulatory burden reflect the best efforts and understanding of the affected stakeholders.

[113] Total number of current reporting entities as per data provided by AUSTRAC to Nous Group, 9 July 2024. As outlined in Question 1, reporting entities that do not provide designated services, are not AML/CTF-regulated, or have not been classed to specific industries have been excluded from this analysis.

[114] To estimate the total number of businesses in the relevant industries, Nous Group mapped each industry to the most relevant Australian and New Zealand Standard Industrial Classification classes. The proportion of each sector that would be captured as a reporting entity was assumed based on expert AUSTRAC advice and analysis of data on New Zealand's regulated entity population.

[115] ABS Input-Output Tables for detailed product items were used to estimate the total economic activity attributable to existing and proposed designated services. Final demand at purchasers' prices (2019-2020, most recent release to provide a breakdown by Input-Output Classification) was used as a proxy for total economic activity.

This impact analysis uses a multi-criteria analysis (MCA) tool to assess each of the options. This was deemed the most appropriate analysis tool to assess the net benefits of each policy option due to the difficulties in quantifying the costs and benefits of the proposed regulatory framework as outlined above. An MCA provides a structured, systematic, and transparent framework for assessing the net benefits of the considered policy options in addressing the policy objectives of the reforms. It assigns a score, on a scale from -10 to +10, to the extent to which each option meets the intended policy objectives relative to Option 1 (the status quo). The scores are applied to weighted criteria, as outlined below. The overall weighted scores are summarised in Question 6.

Criteria	Weight (per cent)
Combatting crime – Community and business	20
Combatting crime – Government	15
Strengthening FATF compliance	15
Business burden	40
Customer burden	5
Government costs	5

The option assigned the highest weighted score against the policy objectives is the preferred option.

- Option 1, maintaining the status quo, has the lowest MCA score which is not preferable.
- Options 2 and 3 only partly address the problem with negative flow-on impacts.
- Option 4 combines Options 2 and 3 in effect, and provides the greatest net benefit overall.

Option 4 is expected to deliver the significant law enforcement benefits and reduction in community harm expected from the expansion of the AML/CTF regime to tranche two entities, with the additional benefit of improved compliance across regulated entities and tranche two entities due to the reforms to simplify the AML/CTF program and CDD requirements.

This will likely increase the identification of criminal assets for restraint and confiscation, and reduce opportunities for criminals to reinvest illicit funds in further criminal activities. However, restraint and confiscation of assets is an inherently complex process and is subject to a variety of legal and operational factors unrelated to AML/CTF regulation.

Option 4 will also be most effective in minimising the likelihood of grey-listing and any associated economic and reputational damage.

Implementing Option 4 is estimated to result in an additional regulatory burden for businesses of $13.9 billion over 10 years. This includes estimates of costs for changes in staffing effort to implement or deliver on regulatory obligations, external advice, or investment in system costs. Impacts will vary depending on the industry and size of the business. It is anticipated that these costs will be reduced through further refinement of obligations and simplification of the regime through the development of the Rules, and the creation of significant AUSTRAC guidance and education materials, which will assist businesses to understand their new or changed obligations. The impact on customers is estimated at $209 million over 10 years.

The indicative cost to government of operating the AML/CTF regime will be $1.0 billion over 10 years. Further investment for ongoing administration of the reforms remains subject to future Government decisions.

The total estimated *quantifiable* benefits under Option 4 are up to $13.1 billion over 10 years. As outlined above, the full range of anticipated benefits, including those that cannot be quantified, are expected to represent a much higher value.

This figure includes up to $2.4 billion over 10 years in benefits for combatting crime, comprising:

- $200 million to $401 million of reduced illicit drug harm,
- $296 million in additional asset confiscations,
- $1.49 billion in reduced crime harm associated with avoided re-investment of criminal proceeds due to asset confiscations, and
- $221 million in increased tax revenue through greater recovery of unpaid tax.

It also includes benefits associated with improved compliance with the FATF standards to avoid the negative impacts on foreign investment in Australia that could arise from grey-listing, which may be up to $10.7 billion over 10 years.

Throughout the analysis, quantified costs and benefits are presented in accordance with OIA guidance, in either real terms, or in net-present value (NPV), which is more appropriate for describing overall effects where impacts occur across several years. These are indicated in tables and figures.

Combatting crime

The benefits of AML/CTF regulatory reform to combatting crime in Australia are significant and broad. Benefits would be shared among Australians, including businesses, the community and all levels of government.

Reform to AML/CTF regulation is expected to both deter criminal activity by equipping businesses with the tools to detect, prevent and report money laundering and terrorism funding, and support law enforcement with greater financial intelligence and data.

Limiting opportunities to launder money and increasing the effectiveness of money laundering investigations is expected to reduce the overall level of crime committed by making it more difficult for criminals to enjoy or use the proceeds of their crimes, and therefore reduce the cost of crime across the economy. This includes illicit drug activity and harm, the consequences of serious and organised crime, cybercrime, human trafficking and modern slavery, and child exploitation.

This analysis has assessed benefits associated with better law enforcement outcomes, and preventing and deterring laundering through high-risk industries. These benefits are largely derived from the greater volume and quality of intelligence from the inclusion of additional designated services and industries within the AML/CTF regime. This will help to close existing gaps that can be exploited by criminals.

This impact analysis uses a mix of domestic and international academic literature and Australian Government financial crime data to assess, and where possible quantify (as summarised in Table 9), the key benefits relating to combatting crime, including:

- increased actionable financial intelligence from simplifying and clarifying the reporting obligations of reporting entities
- reduced criminal activity and the associated cost of crime by reducing criminals' ability to profit from and invest in criminal activities

- greater identification of criminal assets and associated restraint and confiscation action
- increased tax revenue through greater recovery of unpaid tax
- reduced price inflation of certain goods, services or asset classes targeted by money laundering syndicates, and
- reduced harm from terrorism activity by reducing the probability of a terrorist incident occurring, and reduced loss of tourism activity by promoting a safer international image for Australia.

Option 1: Maintain status quo

Criteria	MCA score
Combatting crime – Community and business	0
Combatting crime - Government	0

Increase in actionable financial intelligence

Option 1 will not increase or improve available financial intelligence. It will not provide any benefit to law enforcement efforts to deter, detect and disrupt criminal activity and serious financial crime.

Option 1 will not address reporting entities' challenges in complying with their obligations due to the complexity of the regime. This will likely mean the quality of reporting to AUSTRAC and other law enforcement and intelligence agencies will remain mixed and highly dependent on the sophistication of the reporting entity or sector.

Increased criminal asset confiscations

Option 1 does not provide any benefit to the existing status quo of law enforcement investigations that involve or result in criminal asset confiscations.

Increased tax revenue through greater recovery of unpaid tax

Option 1 provides no benefit to address existing tax gaps, including those attributed to criminals operating business models outside regulatory systems and funding organised crime. The ATO most recently estimated that the overall Australian tax gap was $37.5 billion in 2020-21.[116]

Reduced criminal activity

Maintaining the status quo would provide no benefit for addressing the current $12.4 billion annual consumption of illicit drugs. These profits would continue to be reinvested into further criminal activity and criminals would continue to profit from the proceeds of their illegal activities. Further, the production and importation of illicit tobacco for Australia's growing market would continue to evade excise duty of $2.3 billion every year, and rising (see Background).[117]

[116] Australian Taxation Office, *Australian tax gaps – Tax gap program summary findings* (Web Page, 30 October 2023) <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/australian-tax-gaps-overview/tax-gap-program-summary-findings>.

[117] Australian Taxation Office, *Latest Estimates and Findings* (Web Page, October 2023) <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/tobacco-tax-gap/latest-estimates-and-findings>.

This option will not address the $60 billion (up to 2.3 per cent of GDP) that has been estimated as the amount of money laundered in Australia, and would potentially exacerbate existing operational challenges experienced by law enforcement when attempting to follow illicit profits both domestically and across borders. For example, as technological changes often outpace government regulation, there may be new and more opaque methods of moving virtual representations of value overseas and out of the reach of Australian law enforcement.

Avoided inflation for prices of goods and services targeted by criminal syndicates

Option 1 does not provide any benefit to hardening the financial system against criminal exploitation.

Reduced harm from terrorism activity

Option 1 does not provide any benefit for preventing terrorist organisations or networks from abusing Australian financial systems to fund terrorist activities.

Option 2: Simplify, clarify and modernise existing legislation

Criteria	MCA score
Combatting crime – Community and business	2
Combatting crime – Government	2
Summary: For both the government and community and business criteria, Option 2 has received a score of +2. It will provide AUSTRAC and therefore the ATO and law enforcement with additional and higher quality financial intelligence, which will support investigation of money laundering and terrorism financing, and may help to increase the confiscation of criminal assets and funds that would otherwise be reinvested in criminal activities. By reducing the ability of criminals to launder their proceeds it may also reduce damage to the community from crime. The benefits of Option 2 are moderate in comparison to Option 3 and 4 as the additional designated services to be included under the AML/CTF regime are much more limited. In addition, there is limited data to measure the scale of the expansion of the regime under Option 2 or the value of the benefits that can be expected from the reforms.	

Increase in actionable financial intelligence

Simplifying and clarifying the obligations for existing reporting entities is expected to provide benefits by contributing to an improvement in the quality of reports sent to AUSTRAC on unusual or suspicious transactions. For example, the reforms are intended to ensure reporting entities can better understand the detail they are expected to provide in their reports, which is expected to support an increase in actionable financial intelligence. This will assist law enforcement activity, including the investigation and prosecution of serious financial and other crimes.

Increased criminal asset confiscations

Option 2 will support improved investigation effectiveness and identification, restraint and confiscation of assets by improving the quality of financial information provided by reporting entities through the AML/CTF regime that can be used to identify proceeds of crime.

For example, by lowering the transaction threshold for performing CDD for gambling service providers from $10,000 to $5,000, this means that more gambling customers are subject to CDD requirements. This will improve the ability of these businesses to identify high-risk customers and monitor for suspicious activity, and provide AUSTRAC with additional financial information through TTRs and SMRs which can be shared with law enforcement. The additional information may support the AFP-led CACT to identify, restrain and confiscate illicit funds being laundered through gambling services.

Further, law enforcement agencies have identified an increase in criminals' use of digital currency to facilitate their offending and as a means to hold and distribute the benefits derived from their offending. Option 2 is likely to enhance the ability of law enforcement to identify, restrain and ultimately pursue confiscation of digital currency and prevent the dissipation of criminal proceeds, instruments and benefits.

Increased tax revenue through greater recovery of unpaid tax

Option 2 will support the identification and recovery of unpaid tax liabilities by improving the quantity and quality of intelligence that AUSTRAC is able to collect and provide to the ATO.

The simplification reforms will clarify the regulated entities' obligations under the AML/CTF regime, supporting them to comply with their obligations and to focus their efforts where the ML/TF risk is highest for their business. Similarly, the modernisation reforms will expand the regime to a range of virtual asset services that are at high risk of being used to facilitate tax evasion. By expanding monitoring to these services, AUSTRAC will be supplied with greater levels of information which the ATO can use to identify instances of tax evasion and effectively track individuals' assets to recover these unpaid liabilities.

Further, the travel rule information on payers and payees from all transfers of value will support the ATO to trace unpaid tax liabilities to specific individuals by data matching individuals' transactions to other tax information.

Reduced criminal activity

The proposed simplification and modernisation reforms will primarily support a reduction in criminal activity by improving existing reporting entities' compliance with the AML/CTF regime, and improving the quality of intelligence provided by regulated entities.

Digital currencies can provide a channel for criminals to transfer value anonymously and features in a growing range of crimes, particularly:

- financial frauds and scams
- ransomware
- trafficking in illicit commodities, and
- ML/TF.

Option 2 would also expand the range of digital currency-related services regulated under the regime, which would provide law enforcement agencies with greater visibility of and intelligence on the digital currency sector.

Avoided inflation for prices of goods and services targeted by criminal syndicates

The reform measures to simplify and modernise the regime may support a reduction in price inflation due to money laundering by improving the quality of intelligence provided by regulated entities, which can be used by law enforcement agencies to target money launderers' funds and assets.

As the modernisation reforms primarily target digital currency services (a high-risk sector according to AUSTRAC's national risk assessment), they may support a reduction in asset price inflation by providing financial intelligence that reduces money laundering across the economy. However, it is less clear whether targeting money laundering conducted using digital currencies will reduce money laundering through any specific asset class or sector that is at risk of inflation.

Reduced harm from terrorism activity

The benefits from implementing the simplification and modernisation reforms will include improved financial intelligence that will be available to AUSTRAC to track terrorism financing activity. The improved intelligence may enable AUSTRAC and other law enforcement agencies to monitor local and global terrorist networks and restrict their financing, reducing the likelihood that Australian systems will be exploited to fund terror attacks around the globe.

The modernisation reforms may yield more actionable intelligence of terrorism financing due to the expanded regulation of digital currency services, which are assessed as a high risk,[118] as well as the broadening of travel rule requirements to DCEPs and remitters and the expansion of IFTI reporting requirements to digital currency transfers. These reforms will provide AUSTRAC with greater oversight over international transfers in and out of Australia and more information regarding the identities of the parties involved. This intelligence may be beneficial for monitoring terrorism networks, particularly those based overseas with links to Australia.

Option 3: Expand Reporting Population to DNFBPs

Criteria	MCA score
Combatting crime – Community and business	9
Combatting crime - Government	9
Summary: Option 3 has received a score of +9 for both criteria as it represents an increase in total economic activity monitored under the AML/CTF regime of approximately 192 per cent. This will harden Australian businesses against criminal abuse and yield a significantly greater amount of financial intelligence that AUSTRAC and its partner agencies can use to investigate crimes. This is estimated to provide significant benefits for additional criminal asset confiscation and the recovery of tax liabilities. It is anticipated to deter criminal activity by reducing opportunities for criminals to launder money through tranche two sectors, resulting in reduced crime harm to the community (for example, through illicit drugs).	

[118] Australian Transaction Reports and Analysis Centre, *Terrorism Financing in Australia National Risk Assessment* (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Terrorism%20Financing%20NRA.pdf>.

Table 9 summarises the quantifiable benefits for combatting crime provided by both Option 3 and Option 4. These are estimated to total up to $2.4 billion (NPV) over 10 years. These benefits are explained in further detail below.

Increase in actionable financial intelligence

In 2022-23, AUSTRAC data and financial intelligence contributed to CACT's overall restraint of $352 million in gross restrained assets.[119] The removal of these assets from criminals or their networks prevent their reinvestment in further criminal activities, and ensures criminals cannot profit from or enjoy the proceeds of their illegal activities.

The extension of the AML/CTF regime to tranche two entities under both Option 3 and Option 4 (discussed below) would increase potential monitoring of total economic activity from 5.67 per cent to 16.55 per cent – an increase of approximately 192 per cent.[120] This will increase the amount of actionable financial information provided to AUSTRAC and in turn used as intelligence to support combatting crime as discussed below, including increased detection, deterrence and disruption, in part achieved by additional asset restraint and confiscation.

However, the expansion of potential monitoring under Option 3 would not include the additional virtual asset designated services that would be captured under the modernisation measures in Option 2. Additionally, without the simplification measures in Option 2, the quality of reporting provided by tranche two entities could be poor. This would limit the potential benefits.

Increased criminal asset confiscations

Option 3 will extend the range of sectors under the AML/CTF regime and increase the total economic activity subject to monitoring by 192 per cent. It will also expand potential monitoring across the stages of the money laundering process. For example, criminals wanting to launder illicit funds through fund placement in tranche two sectors such as real estate or precious metals and precious stones will now face checks and balances. This has the potential to increase the likelihood that proceeds and instruments of crime will be identified and subsequently restrained.

The benefits delivered by Australia's proceeds of crime regimes are substantial. The CACT alone restrained over $998m between 1 July 2018 and 30 June 2023, and confiscated $270m over the same period.[121] This represents an average of $54 million worth of proceeds of crime that are confiscated each year by the Commonwealth government. Additionally, NSW, Queensland and Victoria confiscated a combined $391 million between 1 July 2018 and 30 June 2023, at an average of $78 million per year.

[119] Australian Transaction Reports and Analysis Centre, *AUSTRAC Annual Report 2022-23* (Report, 18 September 2023) 90 <https://www.austrac.gov.au/sites/default/files/2023-10/AUSTRAC%20Annual%20Report%202023.pdf>.

[120] Nous Group Analysis using ABS Input-Output Tables. Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

[121] Australian Federal Police, *AFP Annual Report 2022/23* (Report, 14 September 2023) <https://www.afp.gov.au/sites/default/files/2023-10/AFPAnnualReport2022-2023.pdf>

A substantial proportion of the criminal assets confiscated by CACT action under the POCA were identified in sectors not yet covered by the AML/CTF regime. This is especially true for the real estate sector, with commercial and residential property accounting for 65.2 per cent of the CACT's total gross restraints for the 2022-2023 financial year, amounting to $220.71 million in total.[122] Specific data on the volume of assets restrained by the CACT based on AUSTRAC intelligence or use of AUSTRAC information in evidence in POCA proceedings is not available. However, the CACT has advised the department that it is likely any investigation refers to AUSTRAC information to some degree. To calculate the estimated increase in asset confiscation under Option 3, Nous Group assumed that 30 per cent of asset confiscations are attributable to intelligence gathered under the AML/CTF regime. If the increased monitoring was to result in a proportional increase in asset confiscations (192 per cent), based on an average of the previous five years this would be equivalent to an additional $76 million each year ($31 million by the CACT and $45 million by NSW, Queensland and Victoria, noting that this increase may take multiple years to materialise—it was assumed that an average of 3 years from implementation of the reforms would be required for these benefits to be 100 per cent realised each year). This would amount to $296 million (NPV) in proceeds from additional asset confiscations over ten years, as identified in Table 9, below.

However, any projected increase in the amount of asset restraint and confiscation will, in practice, be impacted by a wide variety of factors outside the scope of AML/CTF regulation. For example, the sophisticated methods used by many criminals to hide their illicit wealth, resourcing of asset confiscation police teams, operational complexity of the cases, availability of required evidential material and capacity of the judicial system.

Increased tax revenue through greater recovery of unpaid tax

Many services offered by tranche two sectors are often used to disguise the ownership of assets or income to evade tax liabilities or commit tax fraud.

The Serious Financial Crime Taskforce (SFCT) is an ATO-led multi-agency taskforce tasked with identifying and addressing the most serious and complex financial crimes. AUSTRAC contributes analysis and financial intelligence to the SFCT, which supports the ATO to identify and recover unpaid tax liabilities. Since the 2018-2019 financial year, AUSTRAC data has supported the SFCT to identify an average of $250 million of tax liabilities per year.[123] Over the same period, an average of $98 million was recouped per year from tax liabilities identified by the ATO.[124] Since the 2019-2020 financial year, ATO has used AUSTRAC data (separate from SFCT arrangements) to raise an additional $61 million of tax liabilities on average per year.[125]

[122] Australian Federal Police, Submission to Attorney-General's Department, *Modernising Australia's anti-money laundering and counter-terrorism financing regime,* (August 2023) <https://consultations.ag.gov.au/crime/aml-ctf/consultation/download_public_attachment?sqId=question-2022-01-06-6908678210-publishablefilesubquestion-1&uuId=968181792>.

[123] Australian Taxation Office (n.d.), Annual reports, Retrieved January 15, 2024, from Transparency Portal website <https://www.transparency.gov.au/portfolio-entities-companies/treasury/australian-taxation-office>.

[124] AUSTRAC Annual Report 2022-23, AUSTRAC <https://www.austrac.gov.au/sites/default/files/2023-10/AUSTRAC%20Annual%20Report%202023.pdf>. It is important to note that it can take considerable time for identified liabilities to be recouped, if at all, depending on the complexity of the investigation. As a result, the revenue recouped will not necessarily be from tax liabilities identified during the same period.

[125] AUSTRAC (n.d.), Annual reports, Retrieved January 15, 2024, from Transparency Portal website <https://www.transparency.gov.au/portfolio-entities-companies/attorney-general-s/australian-transaction-reports-and-analysis-centre-austrac>.

As mentioned, expanding the AML/CTF regime to tranche two entities would increase potential monitoring of total economic activity by 192 per cent. Such an expansion of the economy under regulation will enhance the level of actionable intelligence that AUSTRAC can collect and provide to the ATO on issues such as ownership of assets or income across multiple stages of the processes taken to evade tax or commit tax fraud. This information will support the ATO to identify and monitor individuals and companies engaging in tax evasion or fraud, including by better identifying undeclared sources of income, undeclared ownership of assets and other financial transactions that are not reported in lodgements that may indicate suspicious behaviour. This will enable the ATO to more effectively identify and trace undeclared tax liabilities, increasing the amount of the overall tax gap that the ATO is able to recover.

This analysis applies a similar approach and assumptions as those used to estimate increased asset confiscation,[126] above, to estimate that the increase in the volume of financial intelligence may yield $220 million (NPV) in additional recovered unpaid tax liabilities over 10 years.

Reduced criminal activity

Option 3 will support a reduction in criminal activity by expanding the proportion of total economic activity monitored under the AML/CTF regime. This will have a deterrent effect on criminal activity because making money laundering more difficult to conduct will presumably increase the cost of money laundering for criminals, reducing the incentive to engage in criminal activities for profit. In addition, the increased monitoring will increase the likelihood that criminals' assets are identified and confiscated, providing a further deterrent.

While the deterrence effect may have a significant impact on the occurrence of crime, the scale of this impact cannot be comprehensively quantified. However, research indicates that removing criminals' access to the proceeds of their illicit activities removes their ability to reinvest them into future criminal activities. This has the impact of reducing crime, particularly for serious and organised crime that requires greater levels of investment.

A study conducted in the Netherlands and reported by the United Nations Office of Drugs and Crime[127] found that criminals tend to reinvest 36 per cent of their income on criminal activities. Proceeds of crime reinvested into further criminal activities will have a multiplier effect on crime as a portion of the profits from the reinvested proceeds of crime will also be reinvested into future criminal activities. Research in the Netherlands in 2006 estimated the multiplier lies between 1.0 and 3.0, with a likely range of 1.1 to 1.25.[128] The size of the multiplier effect is dependent on the profitability of the criminal act in question, with proceeds of crime reinvested in more profitable activities such as drug trafficking having a significantly larger multiplier.

[126] These assumptions include that 30 per cent of tax recoveries are attributable to intelligence gathered under the AML/CTF regime, and, in the absence of data to estimate the time taken to recover unpaid tax liabilities, that an average of 3 years from implementation of the proposed reforms is required for the benefits to be 100 per cent realised every year.

[127] United Nations Office on Drugs and Crime, *Estimating Illicit Financial Flows Resulting From Drug Trafficking and Other Transnational Organised Crimes* (Research Report, October 2011) <https://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf>.

[128] Brigitte Unger et al, *The amounts and the effects of money laundering* (Utrecht School of Economics, 16 February 2006) 22 <https://www.maurizioturco.it/bddb/2006_02_16_the_amounts_and_.pdf>.

The Proceeds of Crime Drug Disruption Index (POCDDI) estimates, based on Australian data, that a reduction in criminal funds due to proceeds of crime action will have a medium-term (6-months) multiplier of 4.6 for funds set to be reinvested in any stage of the drug trafficking supply chain, with the multiplier increasing to 11.9 for funds reinvested in the more profitable activities of distribution, importation or production of illicit drugs[129]. The POCDDI also found that 26% of proceeds of crime confiscations made by the AFP were from drug-related crimes.

As it is not possible to determine what criminal activities any confiscated proceeds of crime would otherwise be invested in, this analysis assumes that on average, proceeds of crime confiscated would have been reinvested in the same criminal activities from which they were confiscated. Under this assumption, a weighted average of the above noted multipliers was calculated according to the proportion of confiscations attributable to each type of crime identified by the POCDDI. The POCDDI range of multipliers for drug crimes (4.6 to 11.9) was used for the drug-related proceeds of crime, while the range developed in the Netherlands (1.1 to 1.25) was used for confiscations attributable to other types of crimes. This yields a lower and upper bound estimate of the proceeds of crime multiplier of 2.0 and 4.0, respectively (with a midpoint of 3.0).

Using this conservative estimate for the multiplier effect, a potential total of $76.1 million per year in additional asset confiscations arising from expansion of the AML/CTF regime to tranche two entities (discussed above, and noting the caveats about practical matters which may impact the realisation of this additional asset confiscation) is estimated to result in a reduction in investment in criminal activities by between $152 million and $304 million each year (a midpoint of $228 million each year). This would result in avoided investment in crime of $1.49 billion (NPV) over 10 years (Table 9), in addition to the value of the criminal assets confiscated.

In addition, analysis conducted by the AIC as an input to Nous Group's analysis provided an estimate of the amount of illicit drug harm to the community that could be reduced by restricting money laundering through tranche two sectors. It was estimated that:

- 1,689 serious and organised groups involved in illicit drug trafficking were involved in laundering the proceeds of crime.
- 9 per cent of organised crime groups involved in illicit drug activity only laundered proceeds of crime through tranche two industries.[130]
- Each individual group was responsible for $5.2 million of illicit drug harm each year ($5.3 million in 2024-25).
- A 33 per cent reduction in illicit drug harm is achieved when a criminal group is prevented from laundering any money.[131]
- A 3.3 per cent reduction in illicit drug harm is achieved when the money laundered by a criminal group is reduced by 50 per cent.

[129] McFadden, Michael, Martin O'Flaherty, Paul Boreham, and Michele Haynes. Targeting the profits of illicit drug trafficking through proceeds of crime action (National Drug Law Enforcement Research Fund, 2014) <https://www.aic.gov.au/sites/default/files/2020-05/monograph-52.pdf>.

[130] Anthony Morgan & Christopher Dowling, *Enablers of illicit drug trafficking by organised crime groups* (Trends & issues in crime and criminal justice no. 665. Canberra Australian Institute of Criminology 2023) <https://doi.org/10.52922/ti78931>.

[131] Anthony Morgan, *Money laundering and the harm from organised crime: Results from a data linkage study* (Report prepared for the Australian Transaction Reports and Analysis Centre 2023).

By expanding the AML/CTF regime to tranche two entities, criminal groups engaged in laundering through these industries are likely to either reduce their money laundering activity, or cease money laundering entirely. Using the inputs above, three indicative scenarios of the proportion of organised crime groups expected to reduce their money laundering activity were considered in Table 8 below. These scenarios were adapted from findings of AIC research on money laundering through already regulated sectors to illustrate the potential impact that a reduction in money laundering by organised crime groups may have if the reforms are effective in reducing laundering through tranche two sectors. The likelihood of any scenario occurring is not known. Under the low scenario, it is estimated that around $200 million of illicit drug harm could be avoided if 10 per cent of the organised crime groups that only launder their proceeds of crime through tranche two sectors were to cease money laundering entirely, and a further 15 per cent reduced their money laundering by half. The avoided harm will increase substantially if higher proportions of groups are constrained in their money laundering due to the expansion of the regime, with a high estimate of $401 million achieved if 20 per cent of the relevant groups cease money laundering entirely and a further 30 per cent reduce their money laundering by half.

***Table 8* | Reduction in illicit drug harm by preventing money laundering in tranche two sectors**[132]

Scenario	Per cent of groups reduced ML by half	Per cent of groups that ceased ML	Annual reduction in harm ($m)	Ten-year impact ($m NPV)
Low	15	10	30.8	200
Medium	25	15	46.8	305
High	30	20	61.5	401

Notwithstanding these benefits, Option 3 does not include the additional virtual asset designated services that would be captured under the modernisation measures in Option 2, which would provide additional financial intelligence.

[132] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).

Avoided inflation for prices of goods and services targeted by criminal syndicates

Reducing money laundering across the economy through the expansion of AML/CTF regulation may reduce inflationary pressure on specific asset classes impacted by money laundering. This reduction is likely to be greater for assets traded in the tranche two sectors such as real estate, where increased monitoring and oversight is likely to deter money laundering activity to a greater extent than for assets traded under less scrutiny. As mentioned in the Background, a study of money laundering through real estate in British Columbia considered that illicit funds invested in real estate cause these asset classes to rise, and estimated an impact on house prices of approximately 5 per cent. Further detailed analysis would be required to determine the extent to which this would apply in the Australian context. However, as a comparable jurisdiction, if Australia experienced a similar impact, this would equate to an impact of approximately $30 billion on property transactions.[133] Option 3 may provide a benefit by minimising the effects of illicit financing on inflating real estate assets.

Option 3 may result in asset price inflation occurring for assets traded in other less regulated sectors as criminals pursue other avenues for money laundering, however there is insufficient information to predict these flows.

Reduced harm from terrorism activity

As mentioned, expanding the AML/CTF regime to tranche two entities will represent an approximately 192 per cent increase in total economic activity that can be monitored, adding to the intelligence picture for Australia. This will reduce areas of the financial ecosystem that are vulnerable to exploitation and increase the amount of actionable data provided to AUSTRAC. However, it is not clear whether the tranche two sectors are commonly used to facilitate terrorism financing (AUSTRAC’s terrorism financing risk ratings for relevant sectors—jewellers and gambling service providers—have remained low or very low),[134] meaning that the increase in actionable intelligence regarding terrorism financing may not be proportional to the increase in potential monitoring of total economic activity.

[133] Approximate calculation based on $603 billion spent on property in Australia in 2022-23. See Property Exchange Australia, ‘Property Insights report FY23’ <https://www.pexa-group.com/content-hub/property-insights-and-reports/property-settlements-suggest-market-recovery/>.

[134] Australian Transaction Reports and Analysis Centre, *Terrorism Financing in Australia National Risk Assessment* (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Terrorism%20Financing%20NRA.pdf>.

Option 4: Both simplify, clarify and modernise existing legislation, and expand reporting population to DNFBPs

Criteria	MCA score
Combatting crime – Community and business	10
Combatting crime - Government	10
Summary: Option 4 has received a score of +10 for both criteria as it yields the benefits of both Option 2 and Option 3 detailed above, while also supporting improved compliance and intelligence gathering from tranche two entities above what would be expected under Option 3.	

Table 9 summarises the quantifiable benefits for combatting crime provided by both Option 3 and Option 4. These are estimated to total up to $2.4 billion (NPV) over 10 years. In addition, Option 4 will include the benefits described under Option 2 and extend the benefits of simplification and clarification to the expansion of the regime to tranche two entities.

Increase in actionable financial intelligence

This option will have the combined impact of both Option 2 and Option 3 detailed above, with the additional benefit of improved compliance by tranche two entities due to the reforms to simplify the AML/CTF program and CDD requirements. As outlined under Option 2, reducing complexity in reporting entities' obligations is anticipated to improve their ability to comply with required AML/CTF measures, thereby strengthening the regime's overall efficacy. In addition, clarifying reporting obligations is anticipated to provide improved financial intelligence to support law enforcement action against financial crime. As described in Option 3, increasing the regulated population to include DNFBPs is expected both close gaps in the system that are vulnerable to criminal exploitation and result in a significantly increased volume of financial intelligence.

Increased criminal assets confiscation

Option 4 will have the combined impact of both Option 2 and Option 3 detailed above, with the additional benefits of expanding the Option 2 benefits to tranche two entities.

Increased tax revenue through greater recovery of unpaid tax

Implementing simplification, modernisation and tranche two reforms together will have the combined impact of both Option 2 and Option 3 detailed above, with the additional benefits of expanding the Option 2 benefits attributable to reforms to AML/CTF program, CDD and group risk management and information sharing obligations to tranche two entities.

These reforms will support tranche two entities to effectively comply with their obligations and provide them with more flexibility in conducting their transaction monitoring processes and sharing information within their groups. These changes would result in tranche two entities being able to provide higher quality intelligence to AUSTRAC than they would otherwise provide under Option 3. The improved intelligence would be used by the ATO to identify and recover more unpaid tax liabilities; however, the scale of this impact cannot be ascertained using existing data.

Reduced criminal activity

Further to the above, the reforms to information sharing and group risk management will support improved information sharing by tranche two entities that operate in a group, which will support better and more collaborative investigations of suspicious transactions and behaviours which may indicate money laundering. This will likely support the identification, restraint and confiscation of criminal assets.

Avoided inflation for prices of goods and services targeted by criminal syndicates

The benefits of stronger compliance with the AML/CTF regime by tranche two entities may be significant as it may further restrict money laundering flows through the real estate sector than would otherwise be achievable under Option 3. Supporting the real estate industry to enforce their AML/CTF programs and CDD requirements would reduce the industry's appeal as a destination for illicit money and minimize any potential inflation to property prices as a result.

Reduced harm from terrorism activity

Option 4 will provide the combined benefits of Option 2 and 3 above.

***Table 9* | Total estimated quantifiable benefits of combatting crime (Options 3 and 4)**[135]

Benefit	Ten-year impact ($m NPV)
Reduction in illicit drug harm through prevented money-laundering through tranche two sectors	*200 to 401*
*Increased identification, restraint and confiscation of assets from criminal networks**	*296*
*Reduced crime harm associated with precluding re-investment of criminal proceeds due to assets confiscation**	*1,487*
Increased tax revenue through greater recovery of unpaid tax	*221*
Total	**2,204 to 2,405**

**Subject to the caveats discussed on page 87*

[135] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

FATF compliance

The proposed reforms will assist in addressing the FATF recommendations with which Australia is non-compliant or partially compliant. The reforms would enable Australia to implement global best practice measures to detect and disrupt money laundering, terrorism financing and other crimes.

Becoming more compliant with the recommendations and demonstrating a continued commitment to tackling ML/TF is crucial to Australia not being added to the list of jurisdictions that are under increased monitoring by the FATF, colloquially known as the 'grey list'. In the absence of the proposed reforms, if Australia was 'grey-listed', this could carry serious potential consequences, including:

- Economic impacts, including a negative impact on GDP, based on reduced incoming capital flows, lowered credit rating, increased business costs and potential loss of correspondent banking relationships
- Increased threat of criminals seeking to exploit perceived weaknesses in Australia's system and engage in illicit financial activity—leading to an increased burden on law enforcement
- Reduced influence as a regional AML/CTF leader and capacity to assist countries in Australia's neighbourhood to combat ML/TF threats
- Damage to Australia's international standing, reputation and influence.

Literature review – economic impact of grey-listing

Various economic studies have attempted to quantify the economic impact of grey-listing on a country's economy. The results of such studies are varied and contested. A recent analysis conducted on a sample of 89 emerging and developing countries between 2000 and 2017 found that grey-listing had a large and statistically significant negative effect on capital inflows.[136] Specifically, the analysis found grey-listing was responsible for an average decline in capital inflows of 7.6 per cent.[137] For different types of foreign investment, this study observed that grey-listed emerging and developing countries experienced:

- FDI inflows declining by 3.0 per cent, and
- Portfolio investment (debt and equity) inflows declining by 2.9 per cent.

[136] Mizuho Kida and Simon Paetzold, 'The Impact of Gray-Listing on Capital Flows: An Analysis Using Machine Learning' *International Monetary Fund* (Report, 27 May 2021) <https://www.imf.org/-/media/Files/Publications/WP/2021/English/wpiea2021153-print-pdf.ashx>.

[137] The study measured outcomes for foreign investment as a share of GDP, to standardise results across economies of different sizes. For analysis used later in this report, it is important to note that, for example, a 3 per cent change in capital inflows for a country is equivalent (in amount of capital inflows) to a 3 per cent change in the share of capital inflows as a proportion of GDP.

The magnitude of the impact of grey-listing on Australia's foreign investment is also uncertain, and may be minor, as noted by the United Nations South Africa.[138] Furthermore, Balakina, D'Andrea and Masciandaro (2016) found no consistent effect of grey-listing on cross-border bank flows.[139] The findings of Kida and Paetzold (2021) may not be directly relevant to the Australian context as the analysis was only conducted on emerging and developing countries. This means that the observed reductions in foreign investment inflows to those countries may not be directly comparable to what Australia's economy would experience, at least in terms of magnitude, if it were to be grey-listed. Australia's economy is structurally different to the developing countries included in the study, which would likely mean any reduction in foreign investment due to grey-listing would likely occur to a lesser extent than was observed in those developing countries.

Based on this literature, the extent to which there would be a negative impact for Australia as a result of being 'grey-listed' and how long any negative impact would endure is challenging to quantify. The impacts are multi-faceted and are influenced by a range of factors, such as contextual and structural features of the country and its economy, interactions between the responses of regulators and financial and private sectors to the FATF's assessment, and the decisions taken to mitigate risks and impacts. However, the high-level political will and commitment consistently shown by countries to remove themselves from the grey-list (including at Prime Ministerial and Presidential levels, and progressing major measures such as constitutional change) demonstrates the significant impact a FATF grey listing can have on an economy.[140] The probability of Australia being grey-listed due to an adverse finding by the FATF cannot be determined, however it is a real and significant risk so long as Australia remains non-compliant with key FATF recommendations, particularly regarding the regulation of tranche two entities.

Avoided reduction in foreign investment

As of 31 December 2023, Australia had $1,180 billion in FDI, as well as portfolio investments of $858 billion in equity and $1,429 billion in debt from foreign sources of finance (Figure 2). The level of this investment has been driven by consistent capital inflows over many years, with FDI inflows into Australia averaging $44.6 billion per year since 2001, while portfolio investment inflows (both debt and equity) averaged $78.8 billion over the same period.[141] Any damage to Australia's reputation could risk reduced access to foreign capital and impact these levels of investment in the Australian economy.

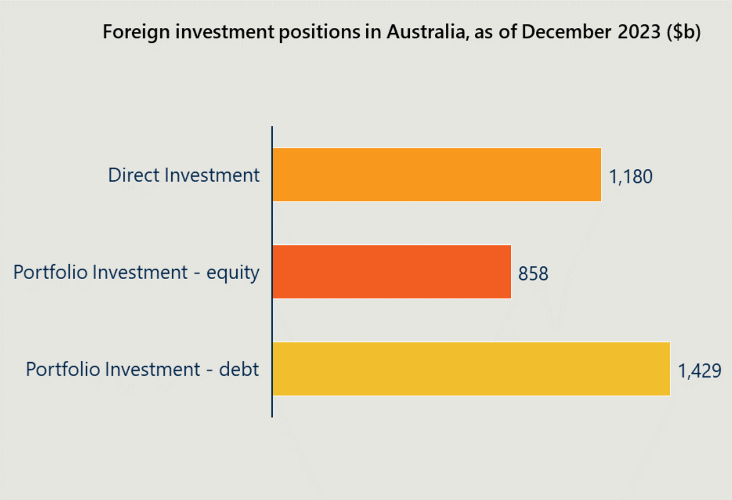
[138] United Nations South Africa, *Grey listing in South Africa: A note on possible socioeconomics implications* (Report, August 2023) <https://southafrica.un.org/sites/default/files/2023-09/Grey%20listing%20SA%20Report%20AUG2023%20%20%282%29.pdf>.

[139] Olga Balakina, Angelo D'Andrea and Donato Masciandaro, 'Bank secrecy in offshore centres and capital flows: Does blacklisting matter?', *Review of Financial Economics,* 32, 30-57 <https://doi.org/10.1016/j.rfe.2016.09.005>.

[140] Financial Action Taskforce, *Jurisdictions under Increased Monitoring – June 2024* (Web Page, 28 June 2024) <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/increased-monitoring-june-2024.html>.

[141] Australian Bureau of Statistics, *International Investment Position, Australia: Supplementary Statistics* (Catalogue No 5352.0, 1 May 2024) <https://www.abs.gov.au/statistics/economy/international-trade/international-investment-position-australia-supplementary-statistics/latest-release>.

Figure 2 | Foreign investment in Australia[142]


Foreign investment positions in Australia, as of December 2023 ($b)

Australia currently has over one trillion dollars in foreign direct investment but has received even greater benefit from access to foreign debt and equity through international financial markets.

Source: Australian Bureau of Statistics (2023), *International Investment Position, Australia: Supplementary Statistics*, ABS Website, accessed 5 May 2024.

This impact analysis has equated the total change in FDI to the total economic benefit, given the difficulty in estimating a causal effect (as per Iyer, Rambaldi and Tang 2009) and the mixed results in the literature of any multiplier effect on GDP.[143] Traditional investment logic suggests that investment has multiplier effects on economic activity. For example, the Organisation for Economic Co-operation and Development (OECD) estimates that an increase in public infrastructure investment in Australia is associated with a fiscal multiplier of between 1.1 and 1.3 after two years.[144] Alternatively, a Productivity Commission report in 2020 summarised studies on the effect of reductions in foreign investment on Australian economic outcomes.[145] Notably, Gali and Taplin (2012) undertook scenario modelling that identified that a permanent drop in foreign inflows by 1 per cent of GDP may result in a 0.6 per cent decline in Gross National Income.[146]

Based on the observed experience of other nations, it is possible that the damage to Australia's reputation could negatively impact the whole Australian economy through a loss of global investor confidence. This could lead to reduced foreign direct investment, and even cause investors to divest currently held assets. Furthermore, it is possible for foreign banks to restrict access for Australian banks to international financial markets due to the increased risk of ML/TF activity in Australia. This could restrict economic growth across nearly every sector in Australia.

Four indicative scenarios have been developed to provide an indication of the potential economic benefits of avoiding a reduction in foreign investment that could occur if Australia was grey-listed and did experience a resulting foreign investment impact. These scenarios are outlined in Table 10.

[142] Ibid.
[143] Kris Iyer, Alicia N. Rambaldi and Kam-Ki Tang, 'How trade and foreign investment affect the growth of a small but not so open economy: Australia?', *Applied Economics* (2009) 41(12), 1525-1532 <https://doi.org/10.1080/00036840601032177>.
[144] Organisation for Economic Co-operation and Development, *OECD Economic Outlook* (Interim Report, March 2009) 105-146.
[145] Productivity Commission, *Foreign Investment in Australia* (Research Paper, June 2020) <https://www.pc.gov.au/research/completed/foreign-investment>.
[146] Jyothi Gali and Bruce Taplin, 'The macroeconomic effects of lower capital inflow', *Treasury Economic Roundup* (3) 1-26 <https://treasury.gov.au/sites/default/files/2019-03/1-1.pdf>.

For completeness, the analysis also considered a case where Australia would not be grey-listed in the absence of the proposed reforms. In this scenario, Australia would not experience any reduction in foreign investment relative to the current situation. The relative likelihood of each scenario cannot be determined based on the available evidence.

Across scenarios 1 to 4, two possible reductions in foreign investment inflows are considered: 0.5 per cent and 1.5 per cent. These assumptions are conservative, significantly lower than the 3 per cent reduction identified in Kida and Paetzold (2021) to reflect the structural and reputational differences between Australia's economy and smaller developing economies. Also, as Australia's non-compliance with the FATF recommendations is primarily related to the lack of AML/CTF regulation of tranche two entities, it is assumed that 'grey-listing' would not have the same impact on foreign investment across the whole economy. As certain sectors, including financial services, are already regulated under the AML/CTF regime, foreign investors may not be deterred from continuing to invest in these industries given the continued strength of their AML/CTF requirements and compliance under the oversight of AUSTRAC and other financial regulators. This situation may not be the case in the smaller, developing economies considered in the literature.

In addition, for smaller developing and emerging markets that receive comparatively less foreign investment compared to Australia, 'grey-listing' may act as a stronger signal to foreign investors of the risks of investing in these countries than they would for Australia, which is a well-known, established international market for investment.

Given these differences, an assumed 1.5 per cent reduction in foreign investment was considered to provide a reasonable upper bound for this analysis, with an alternative assumption of a 0.5 per cent reduction designed to reflect the possibility of 'grey-listing' leading to a more moderate reduction in foreign investment inflows.

Two different durations of the impact were considered to reflect that non-regulatory responses may or may not occur within the Australian economy to offset or address any actual or anticipated reductions in foreign investment as a result of a 'grey-listing' decision by FATF. The two durations for reduced foreign investment inflows are a single year impact only or an eight-year impact (based on a FATF mutual evaluation outcome in 2027-28).

Table 10 | Scenario analysis – illustrative benefit of avoided reduction in foreign investment in Australia[147]

Scenario	Reduction in annual foreign investment inflows (per cent)	Period of impact	Reduction in foreign investment over ten years (NPV, $m)
1	0.5	FY27 only	560
2	1.5	FY27 only	1,680
3	0.5	FY27 – FY34	3,570
4	1.5	FY27 – FY34	10,720

[147] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

Based on these parameters, the estimated benefits from avoiding ‘grey-listing’ could range from $560 million to $10.7 billion in NPV over ten years. As shown in Table 10, if grey-listing were to lead to a small and enduring reduction in foreign investment inflows into Australia, it could cost the Australian economy significantly. A 0.5 per cent reduction in annual foreign investment inflows could result in approximately $3.6 billion loss over a sustained period to 2034 (Scenario 3; ten years for the purposes of this impact analysis), while a larger reduction of 1.5 per cent would cost the economy approximately $10.7 billion (Scenario 4). This reduction in foreign investment would have a direct impact on business investment and growth in output in Australia. These impacts would be felt throughout the economy, including by reducing the creation of jobs stimulated by foreign investment, and potentially reducing access to global markets for local businesses. This would have additional flow on effects including reduced tax revenue for the Government and reductions in the quality of life for the wider Australian community due to greater unemployment and poorer economic growth.

Alternatively, a temporary reduction of FDI in 2027 by either 0.5 per cent or 1.5 per cent could result in an economic cost between $0.6 billion or $2.2 billion. This demonstrates that in all of the possible scenarios, avoiding the economic consequences of grey-listing could be a significant benefit for Australia.

The broader impacts on Australia’s reputation from grey listing would not be directly quantifiable, however, its consequences would be evident across every international stage on which Australia engages. As discussed in the Background, Australia’s role as an influential regional leader in the Pacific would be impacted and may have flow-on effects for its relationships with, for example, Pacific Island nations. Likewise, the reputation of Australian regulated sectors would be equally unquantifiable. The FATF has issued detailed guidance and explanatory materials on the risks posed by the services provided by virtual asset exchanges and DNFBPs. This analysis considers how sectors that are globally recognised as being at a high risk of exploitation for money laundering and terrorist financing would benefit from regulation.

Option 1: Maintain status quo

Criteria	MCA score
Strengthening FATF compliance	0

Avoided reduction in foreign investment in Australia

This option does not address any of the key FATF Recommendations with which Australia is seeking to improve its compliance through the proposed reforms. Given the FATF’s ongoing strengthening of its standards, and countries’ continued efforts to improve their compliance, a lack of action by Australia is likely to result in its ratings backsliding in comparison to other countries. This option provides no benefits in this regard and would compromise Australia’s ability to demonstrate the robustness of its AML/CTF regime ahead of the upcoming FATF mutual evaluation.

New Zealand experienced enhanced follow-up after its assessment in 2021. New Zealand has been required to report to the FATF on the steps taken to meet the Recommendations for which it was rated as non-compliant or partially compliant. As Australia is already in enhanced follow-up and continues to be found non-compliant with the requirement to regulate DNFBPs, Australia would be more likely to be grey-listed following its next mutual evaluation if no action is taken.

Australia’s reputational damage from being grey-listed would be unquantifiable. However, its consequences would be evident across every international stage on which Australia engages. As discussed, maintaining the status quo and the risk of being grey listed could impact Australia’s role as an influential regional leader in the Pacific and on the world stage. Further, Option 1 poses the greatest risk of additional costs to business from grey listing. As mentioned, if grey listed, Australian business would likely be subject to greater enhanced due diligence checks from counterparties in other countries and need to increase efforts to demonstrate that they do not pose money laundering and terrorism financing risks.

Option 2: Simplify, clarify and modernise existing legislation

Criteria	MCA score
Strengthening FATF compliance	2
Summary: Option 2 received a score of +2 as it should support a satisfactory level of compliance with two FATF recommendations against which Australia is currently assessed as partially compliant, and may support improved compliance against one recommendation where Australia is currently non-compliant. This option will not reduce the risk of grey-listing by the FATF as it does not involve the regulation of high-risk services provided by DNFBPs. As a result, the value of the benefits of the strengthened compliance under Option 2 are limited, if not unknown.	

Avoided reduction in foreign investment in Australia

The reforms to simplify and modernise the regime only address compliance with two FATF recommendations, both of which Australia is currently partially compliant with. Option 2 does not address any of the three relevant FATF recommendations with which Australia is currently non-compliant, which carry the highest risk of grey-listing. As a result, Option 2 will have minimal to no impact on preventing grey-listing and will leave Australia exposed to the negative impacts on foreign investment from grey-listing.

Closer alignment with FATF standards for digital assets is likely to mean Australian DCEPs would experience an increase in positive public perception. A detracting characteristic of businesses dealing in cryptocurrencies and other virtual assets is their minimal regulatory oversight, their links to scams, and recognition that many of their services are exploited by criminals to move and obscure their dirty money.[148] Extending the regulation of digital assets as proposed in Option 2 would assist the public perception of Australian virtual asset service providers as a viable and legitimate alternative to fiat currency and improve their reputation through more holistic regulation. However, this positive increase in reputation is not expected to be quantifiable.

[148] Financial Action Taskforce, *Updated Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asst Service Providers* (Guidance, October 2021) <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Updated-Guidance-VA-VASP.pdf.coredownload.inline.pdf>.

Option 3: Expand Reporting Population to DNFBPs

<table>
<tr><th>Criteria</th><th>MCA score</th></tr>
<tr><td>Strengthening FATF compliance</td><td>9</td></tr>
<tr><td colspan="2">Summary: Option 3 received a score of +9 as it should support a satisfactory level of compliance with relevant FATF recommendations against which Australia is currently non-compliant. This will likely address the greatest risk of potential grey-listing by FATF. However, it will not address all in-scope FATF recommendations which elevates the risk of reputational damage to Australia. The benefits of avoiding grey-listing and reduced foreign investment may be up to $10.7 billion, depending on:
• the likelihood of grey-listing occurring if none of the reforms were undertaken
• the duration of any potential reduction in foreign investment inflows into Australia due to grey-listing, and
• the magnitude of the reduction in foreign investment inflows attributable to grey-listing.</td></tr>
</table>

Avoided reduction in foreign investment in Australia

Option 3 would address Australia's compliance with the three relevant FATF recommendations that are currently assessed as non-compliant. However, it will not fully address recommendation 22, which relies on the simplification reforms to lower the transaction threshold for performing CDD for gambling service providers. This would still be likely to result in an improved rating for recommendation 22, and would significantly reduce any likelihood of grey-listing from failure to regulate tranche two entities. Option 3 will not address Australia's partial compliance with recommendations 15 and 16, which are unlikely to lead to grey-listing, but does heighten the risk of a poor mutual evaluation result. While it will not improve compliance with all in-scope FATF recommendations, Option 3 will effectively minimise the likelihood of grey-listing and any associated reduction in foreign investment.

As mentioned in the Background, DNFBPs are internationally recognised as 'gatekeeper' professions[149] and 'professional facilitators'[150] for their role in (wittingly or unwittingly) facilitating money laundering and other serious financial crimes. By bringing these under the AML/CTF regulatory regime, these sectors would experience a positive shift in their reputation through closer regulatory oversight. These sectors would be included as part of the elaborate ecosystem of preventing and deterring serious financial crimes. As mentioned, this reputational shift is not expected to be quantifiable.

[149] Australian Transaction Reports and Analysis Centre, *Money Laundering in Australia National Risk Assessment* (Report, 9 July 2024) <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>.

[150] Australian Criminal Intelligence Commission, *Organised Crime in Australia 2017: Key Enablers* (Report, 2017) <https://www.acic.gov.au/sites/default/files/2020-08/oca_2017_key_enablers.pdf>.

Option 4: Both simplify, clarify and modernise existing legislation, and expand reporting population to DNFBPs

Criteria	MCA score
Strengthening FATF compliance	10
Summary: Option 4 received a score of +10 as it should support a satisfactory level of compliance with all three in-scope FATF recommendations against which Australia is currently non-compliant as well as against the two partially compliant recommendations addressed by Option 2. This will provide the greatest benefit for avoiding potential grey-listing by the FATF and will minimise the likelihood of reputational damage due to poor FATF compliance. As with Option 3, the benefits of improved compliance and avoided grey-listing may be up to $10.7 billion.	

Avoided reduction in foreign investment in Australia

Option 4 will address Australia's compliance with the three relevant FATF recommendations that are currently assessed as non-compliant. Option 4 will also address recommendations 15 and 16 as outlined in Option 2. Implementing Option 4 will be most effective in minimising the likelihood of grey-listing and any associated reduction in foreign investment in Australia.

Further, Option 4 has the combined benefits of Options 2 and 3 to positively impact Australia's reputation as a leader on the international stage, and the reputations of Australian virtual asset service providers and DNFBPs.

Minimising regulatory burden

The proposed AML/CTF reforms will impact both existing regulated entities and tranche two entities. These impacts could include changes in staffing effort to implement or deliver on AML/CTF regulatory obligations, commissioning of external advice or services, and/or investment in upgraded systems. Depending on the specific reform area and the industry and size of the business, the impact could be either an additional cost burden or a reduction in the existing cost burden.

Any significant reform to a mature regulatory regime such as the AML/CTF regime will incur a cost. These costs will be experienced by:

- Existing reporting entities
- Newly regulated entities brought under the regime through the tranche two reforms
- Customers of reporting entities, and
- Government.

The extent to which the options minimise these costs is addressed in the analysis in this section.

The intent of the simplification reform measures is to clarify reporting entities' obligations and ultimately reduce regulatory burden. In the short term, there will inevitably be an upfront cost to the existing reporting entity cohort. These businesses have mature AML/CTF policies, systems, procedures and controls. The department anticipates that these entities will need to familiarise themselves with the framework of the new regime and determine what elements of their policies, if any, will need to change as they transition to the new framework.

Modernisation of the regime refers to expanding the range of digital currency-related services regulated under the regime, as well as changes to the travel rule, IFTI reporting obligations and the framework for regulating transfers of value across borders (as outlined in Question 3).

In estimating the potential benefits or costs of the proposed reforms, it is important to note that tranche two businesses would not be 'starting from scratch'. That is, many already have existing processes and mechanisms (e.g. CDD and record keeping) which are relevant to AML/CTF regulatory obligations—as many industry stakeholders highlighted through consultation processes. This reduces the additional burden that would be placed on these businesses from being captured by the AML/CTF requirements. The analysis attempted to estimate the additional upfront and ongoing costs beyond the relevant activities already undertaken by tranche two entities, but these results do not reflect future work and consultation that will occur through development of the Rules and AUSTRAC guidance to identify opportunities to reduce costs further. Detail included in the Rules, guidance material, education and outreach will support the objective of simplifying and clarifying obligations to minimise the upfront costs for tranche two entities to meet obligations.

It is important to acknowledge the limitations of this analysis. Quantifying the estimated change in regulatory burden was heavily dependent on input from industry. Businesses, both existing and tranche two entities, noted that their estimations of changes in compliance effort and costs were not final, and could not be settled until further detail is provided by government on the reforms. While validation of businesses responses was undertaken, the impact analysis modelling is sensitive to the assumptions made by businesses. Another limitation relates to the number of tranche two entities to be regulated, which has been estimated from available ABS data and comparable data on the regulated population in New Zealand. While the impact analysis has estimated sector size based on these data sets, the exact number of tranche two entities will not be known until after implementation when these entities enrol with AUSTRAC.

The impact analysis considers estimates of the anticipated changes in regulatory burden (upfront and annual ongoing) based on responses provided by regulated and tranche two entities to surveys delivered by Nous Group. The analysis includes quantitative results of the change in burden in total, across all industries and business sizes. A summary is presented in Table 11.

***Table 11* | Estimated ten-year regulatory burden for businesses by option and financial year ($m NPV)**[151]

Option	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34	Total
Option 2: Simplify and modernise existing regime	350	-17	-16	-15	-14	-13	-12	-11	-10	-10	233
Option 3: Expand existing regime	1,823	1,998	1,867	1,745	1,631	1,524	1,424	1,331	1,244	1,163	15,751
Option 4: Simplify and expand regime	1,850	1,730	1,617	1,511	1,412	1,320	1,233	1,153	1,077	1,007	13,910

[151] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

The simplification and modernisation reforms (Option 2) are estimated to result in a regulatory burden of $233 million over ten years, while the tranche two reforms (Option 3) will result in approximately $15.8 billion of regulatory burden.

However, implementing the simplification and modernisation reforms together with an expansion of the regime to tranche two (Option 4) is estimated to result in a regulatory burden of approximately $13.9 billion over ten years, meaning simplification of the regime is estimated to result in a saving of approximately $1.9 billion compared to Option 3. This indicates a clear benefit to ensuring that new businesses to be regulated for AML/CTF can comply with a regime that has been simplified and modernised, rather than implementing the current prescriptive and complex requirements under the AML/CTF Act and Rules.

Table 12 provides a summary of the total estimated upfront and ongoing regulatory burden associated with each option.

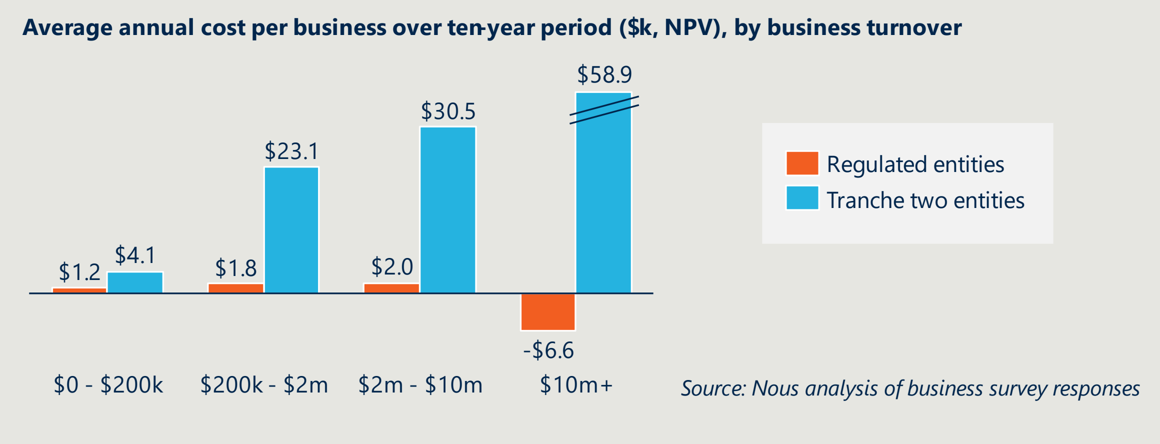
***Table 12* | Estimated total ten-year regulatory burden to businesses, by option and reform ($m NPV)[152]**

Reforms	Frequency	Option 2: Simplify and modernise existing regime	Option 3: Expand existing regime	Option 4: Simplify and expand regime
Simplification	Upfront	261	-	261
	Ongoing	-153	-	-153
Modernisation	Upfront	89	-	89
	Ongoing	36		36
Expanding the regime to tranche two	Upfront	-	1,823	1,500
	Ongoing	-	13,928	12,177
Ten-year total		**233**	**15,751**	**13,910**

Importantly, the estimated change in regulatory burden has been considered for different business sizes. Figure 3 shows the estimated average annual regulatory burden associated with implementing the full suite of proposed reforms (Option 4) per business by business turnover, for both regulated and tranche two entities. This includes all upfront and ongoing costs in NPV terms over a 10-year period. Smaller businesses who have lower risks of facilitating ML/TF would experience lower costs than larger businesses who offer a broader range of designated services to a larger number of customers.

[152] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

***Figure 3* | Average annual regulatory burden per business ($k, NPV) under Option 4, by turnover**[153]



Source: Nous analysis of business survey responses

Option 1: Maintain status quo

Criteria	MCA score
Business burden	0
Customer burden	0
Government costs	0

Minimised impact on existing reporting entities

This option would not relieve any regulatory burden on existing reporting entities. Under this option, the regime would remain unnecessarily complex and businesses would continue to require clarification of their obligations either by AUSTRAC or through external advice.

As shown in Option 2, this cost can be reduced significantly by introducing measures to simplify the regime. Maintaining the status quo makes no effort to reduce or minimise the existing regulatory burden of the AML/CTF regime.

Minimised impact on new reporting entities

This option would not impose any additional regulatory burden on currently unregulated entities.

Minimised impact on customers

This option has no impact on the customers of current reporting entities.

[153] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).

Costs to government

This option does not entail immediate additional costs to Government. However, it would not address existing inefficiencies and administrative burdens on government associated with managing unnecessary complexities in the regime (for example, the resources required by AUSTRAC to consider and administer exemptions and modification requests, as described in Question 1).

Inaction on reform would also likely result in Australia falling further behind international AML/CTF standards, increasing the likelihood of a poor FATF mutual evaluation result (and potential grey listing) and the consequences that could follow.

Option 2: Simplify, clarify and modernise existing legislation

Criteria	MCA score
Business burden	-2
Customer burden	0
Government costs	0
Summary: For business burden, Option 2 has received a score of -2 as it is estimated to result in an additional $233 million in regulatory burden in NPV terms to businesses over ten years, which is substantially less than the expected additional burden of Options 3 and 4. Overall, this burden is attributable to estimated upfront costs to update programs and processes, but in the longer term the simplification reforms will provide an overall reduction in ongoing costs, particularly for regulated entities with significant CDD programs. For customer burden, Option 2 has received a score of 0 as it is estimated to result in an additional $2 million in regulatory burden in NPV terms to customers over 10 years, which is negligible compared to Options 3 and 4. For government costs, Option 2 has received a score of 0 as the cost to government was assumed to be negligible as the change in ICT systems associated with Category 1 and 2 reforms cannot be quantified and would likely be minimal.	

Minimised impact on existing reporting entities

Option 2 removes complexity from the AML/CTF obligations and aligns the regime with modern business practices, thereby reducing the regulatory and administrative burdens associated with ongoing AML/CTF obligations. By changing the regime's focus from prescriptive requirements to achieving relevant outcomes, the reforms would allow reporting entities greater flexibility in compliance. This is the major anticipated benefit of this option as it aims to reduce the existing burden on the vast majority of currently regulated entities.

Implementing reform measures focused on simplifying the regime will see a reduction in ongoing compliance costs. For example, Option 2 is expected to result in a reduction in regulatory burden of $266,000 each year for the entire motor vehicle dealer sector as a result of repealing the FTR Act, equating to a total value of $1.7 million in NPV.

It is important to note that the reform measures to simplify and clarify the regime, while effective in the longer term, will result in an initial upfront cost for existing reporting entities. These upfront costs are predominantly driven by regulated entity staff time and external advisory services to understand the updated AML/CTF obligations and update CDD processes. After existing reporting entities have made the necessary changes to their compliance activities, the benefits of simplification and modernisation are expected to follow. The upfront regulatory burden for modernisation reforms includes the costs of updating international value transfer systems and regulating additional digital currency services.

The estimated additional upfront and ongoing regulatory burden to businesses of Option 2 over ten years is summarised, by industry, in Table 13 below.

***Table 13* | Option 2 Estimated total upfront and ongoing regulatory burden to businesses, by industry over 10 years ($m NPV)[154]**

Industry	Upfront	Ongoing	Total ten-year
Financial services	265	-181	**84**
Bullion traders	2	0	**2**
Gambling services	37	62	**99**
DCEPs	8	2	**10**
Remitters	38	2	**40**

Table 13 highlights the anticipated impact that simplifying and modernising the regime would have on the existing reporting entity population. Notably for the financial sector with its greater number of larger financial services businesses with large customer bases, these businesses are estimated to experience ongoing annual savings. This significant reduction in regulatory burden includes the savings from initial and ongoing CDD obligations.

Option 2 also includes reforms to information sharing requirements and restrictions between relevant reporting entities. Reporting entities would be able to more easily share information within their business group without seeking an exemption to avoid triggering the tipping off offence. Feedback has indicated that larger reporting entities that are likely to have larger business groups would experience an ongoing saving from the proposed measures to facilitate information sharing within business groups.

Nous Group's analysis considered the upfront and ongoing regulatory impacts by business turnover size.[155] The upfront costs to regulated entities for the simplification reforms range from an average of $8,880 to an average of $60,610 depending on the size of the business. These upfront costs are predominantly driven by regulated entity staff time and external advisory services to understand the updated AML/CTF obligations and update CDD processes.

[154] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).
[155] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

Ongoing average annual costs range from average savings of $600 per year (for businesses with $2 million - $10 million turnover) to $42,790 per year (for businesses with $10 million+ turnover), and average increases ranging from $420 per year (for smaller businesses with up to $200,000 turnover) to $2,110 per year (for businesses with $200,000 - $2 million turnover). This variation is driven by savings in undertaking initial CDD per customer, with a significantly larger impact for businesses with $10 million+ turnover due the scale of their customer bases who require upfront CDD.

Separate to these totals, decreases to the gambling threshold for CDD will only affect larger businesses in the gambling industry. Gambling businesses between $2 million to $10 million+ are expected to incur an upfront cost of $1,000 and an ongoing annual burden of $7,100.

The modernisation reforms under Option 2 are expected to impact on the financial services, DCEP and remitters industries, with the benefits and costs primarily borne by large businesses due to the upfront costs of updating international value transfer processes and travel rule requirements. Average upfront costs for businesses with $0 - $10 million in turnover are expected to range from $150 to $300 (including as a result of expanding regulation to additional digital currency services and travel rule updates), compared to $96,120 for businesses above $10 million.

Average ongoing costs associated with the modernisation reforms are comparatively low, and are estimated at $6,140 for businesses with $10 million+ turnover (consisting of $8,040 for ongoing implementation of updated travel rule requirements and modest savings of $1,900 arising from changes to streamline the framework for regulating transfers of value across borders). For smaller businesses, the ongoing costs are estimated to be negligible.

These simplification and modernisation measures intend to balance initial costs of systems uplift with measures that alleviate unnecessary regulatory burden arising from legislative complexities. This assists to minimise regulatory impact.

Minimised impact on new reporting entities

Option 2 does not impose any costs or regulatory requirements on tranche two sectors as they would not be captured under this option. However, as mentioned, these sectors may experience a negative public perception of their involvement and complicity in serious financial crimes. The effects of this perception are not quantifiable.

Minimised impact on customers

Option 2 is expected to result in an additional $2 million in regulatory burden in NPV to customers over 10 years (Table 14 refers). This is primarily driven by the decreased reporting threshold for gambling service providers, which will require certain regulated entities to conduct an increased volume of CDD procedures for new customers.

Table 14 | **Total regulatory burden to customers, by option over 10 years (NPV, $m)**[156]

Reform	Option 2: Simplify and modernise existing regime	Option 3: Expand existing regime	Option 4: Simplify and expand regime
Simplification	2	-	2
Modernisation	-	-	-
Expanding the regime to tranche two	-	379	207
Total	2	379	209

Costs to government

As the change to operate the regime under the simplification and modernisation reforms cannot be quantified and would likely be minimal, no known additional cost to Government is provided for Option 2.

Option 3: Expand Reporting Population to DNFBPs

Criteria	MCA score
Business burden	-10
Customer burden	-2
Government costs	-3

Summary: For business burden, Option 3 has received a score of -10 as it is estimated to result in an additional $15.8 billion in regulatory burden in NPV terms to businesses over ten years, which is the highest of all considered options.

For customer burden, Option 3 has received a score of -2 as it is estimated to result in an additional $379 million in regulatory burden in NPV terms to customers over 10 years, which is the highest estimated burden of all the options considered yet is still low compared to the other categories of regulatory burden assessed.

For government costs, Option 3 has received a score of -3 as it is estimated to cost the government $1.03 billion in NPV terms over 10 years. While this estimate is a significant cost, it is substantially lower than other categories of burden considered such as the additional regulatory burden to businesses.

[156] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).

Minimised impact on existing reporting entities

This option would not relieve any regulatory burden on existing reporting entities. Similar to Option 1, the regime would remain unnecessarily complex.

Minimised impact on new reporting entities

Option 3 imposes the most significant cost to new reporting entities. The unavoidable increase in regulatory burden that will be imposed on the tranche two cohort is expected to involve significant initial upfront costs for entities as they first engage with the AML/CTF regime, develop and implement their AML/CTF programs and establish appropriate policies, systems and controls.

The estimated regulatory burden attributable to Option 3 is $15.8 billion, with $1.8 billion in upfront regulatory burden in 2025-26 and approximately $14.0 billion in additional regulatory burden over ten years. This burden is expected to be varied across tranche two industries, with the amount of regulatory burden driven by the size of the industry and the services they provide (Table 15).

***Table 15* | Option 3 total upfront and ongoing regulatory burden to businesses, by industry over 10 years ($m, NPV)[157]**

Industry	Upfront[158]	Ongoing	Total ten-year
Accounting services	692	3,456	4,148
Legal services	510	2,845	3,355
Trust/company services	233	1,077	1,310
Real estate	1,204	5,638	6,843
Dealers in precious metals and stones	16	79	95

The upfront and annual burden (in real terms) for reforms to expand the regime to tranche two by business size is presented in Table 16. The average upfront burden is estimated to range from approximately $6,300 to $97,300 depending on business size, and the average ongoing annual burden is estimated to range from approximately $6,200 to $91,000.

[157] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).

[158] Upfront costs for tranche two entities includes the upfront costs for new businesses established during the ten-year period. These upfront costs therefore differ from the upfront cost estimated in 2024-25.

Table 16 | **Option 3 tranche two average upfront and ongoing (annual) regulatory burden per business ($, real), by reform and turnover**[159]

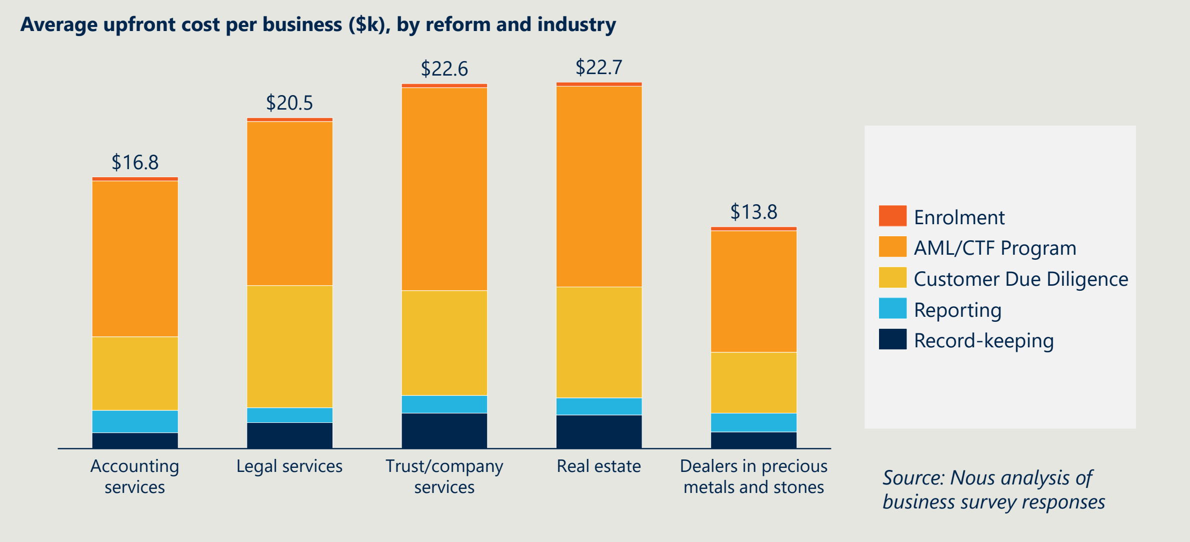
Reform area	Frequency	$0 - $200k	$200k - $2m	$2m - $10m	$10m+
Enrolment	Upfront	240	240	290	700
	Annual	-	-	-	60
AML/CTF Program	Upfront	5,210	16,530	22,600	48,760
	Annual	5,150	17,440	23,590	45,660
Customer Due Diligence	Upfront	560	12,140	15,380	23,050
	Annual	1,020	20,970	23,580	36,620
Reporting	Upfront	160	2,010	3,320	7,210
	Annual	30	410	860	2,890
Record-keeping	Upfront	110	3,030	4,040	17,550
	Annual	10	100	1,000	5,790
Total	Upfront	6,280	33,950	45,630	97,270
	Annual	6,210	38,920	49,030	91,020

Importantly, the tranche two entities would be limited in their ability to leverage existing processes under Option 3 due to the retention of complex and prescriptive obligations in the Act and Rules.

Figure 4 below shows the estimated average upfront cost per business by reform area and industry. The largest estimated upfront costs are associated with designing an AML/CTF program and revising CDD processes.

[159] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

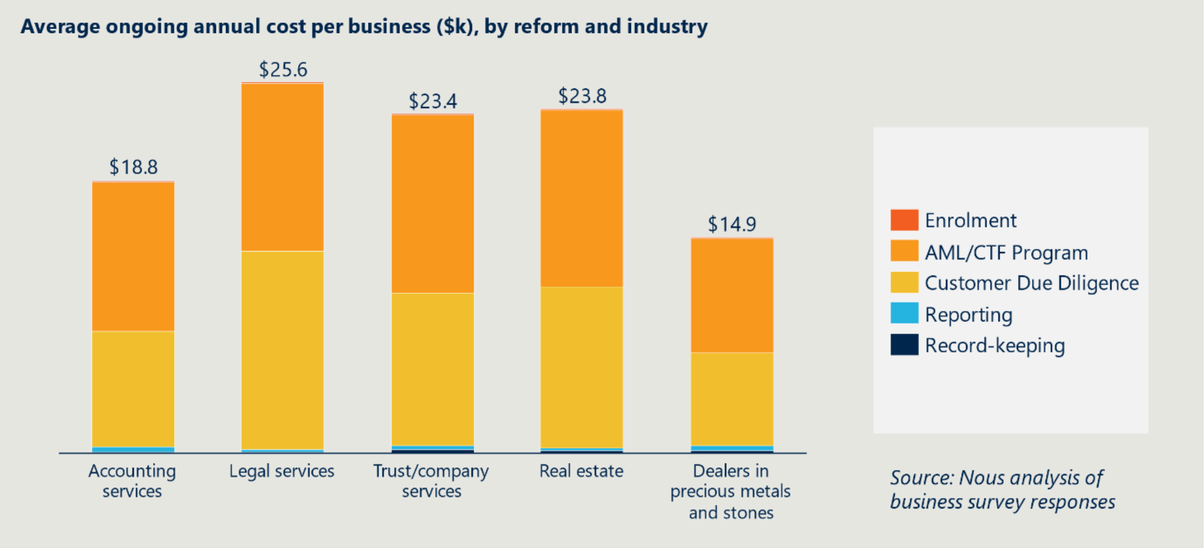
Figure 4 | Option 3 tranche two upfront regulatory burden per business ($k, real), by reform and industry[160]



Source: Nous analysis of business survey responses

Figure 5 presents the average annual ongoing cost per reporting entity by industry and reform area. The largest ongoing costs are associated with CDD, and the annual requirements associated with maintaining an AML/CTF program.

Figure 5 | Option 3 tranche two annual regulatory burden per business ($k, real), by reform and industry[161]



Source: Nous analysis of business survey responses

[160] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).
[161] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).

Table 17 presents the estimated total regulatory burden for tranche two industries by reform area.

***Table 17* | Estimated total Option 3 regulatory burden, by reform and industry over 10 years ($m, NPV)[162]**

Reform area	Frequency	Accounting services	Legal services	Trust company services	Real estate	Dealers in precious metals and stones
Enrolment	Upfront	10	6	3	13	0
	Ongoing	0	0	0	0	0
AML/CTF Program	Upfront	397	253	129	660	9
	Ongoing	1,897	1,283	564	2,903	42
Customer Due Diligence	Upfront	188	188	67	364	4
	Ongoing	1,477	1,528	487	2,642	34
Reporting	Upfront	57	23	11	56	1
	Ongoing	56	22	13	56	2
Record-keeping	Upfront	40	40	23	111	2
	Ongoing	26	12	13	37	1
Total	Upfront[163]	692	510	233	1,204	16
	Ongoing	3,456	2,845	1,077	5,638	79
	Ten-year	4,148	3,355	1,310	6,842	95

Minimised impact on customers

Option 3 is estimated to result in an additional $379 million in regulatory burden in NPV to customers over 10 years (see Table 14, above), which is the highest estimated burden of all the options considered. The increase is attributable to customers of tranche two entities being required to provide additional identification information to meet AML/CTF requirements. This estimate does not take account of cross-cutting government priorities outlined in the Background that may provide efficiencies by supporting more connected solutions to identification and CDD processes.

[162] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

[163] Upfront costs for tranche two entities includes the upfront costs for new businesses established during the ten-year period. These upfront costs therefore differ from the upfront cost estimated in 2024-25.

Costs to government

For the purposes of the impact analysis, data on anticipated costs of the reforms provided to Nous Group by the department and AUSTRAC has been used to develop a ten-year estimate for Option 3 and Option 4. This would result in a cost of $1.03 billion (NPV) over a ten-year period from 2025-26.

Option 4: Both simplify, clarify and modernise existing legislation, and expand reporting population to DNFBPs

Criteria	MCA score
Business burden	-9
Customer burden	-1
Government costs	-3
Summary: For business burden, Option 4 has received a score of -9 as it is estimated to result in an additional $13.9 billion in regulatory burden in NPV terms to businesses over ten years, which is slightly lower than Option 3 but substantially higher than Option 2. For customer burden, Option 4 has received a score of -1 as it is estimated to result in an additional $209 million in regulatory burden in NPV terms to customers over 10 years, which is substantially lower than Option 3 and negligible compared to other forms of regulatory burden assessed. For government costs, Option 4 has received a score of -3 as the reform package is expected to cost the same as Option 3 ($1.03 billion).	

The total regulatory burden created by reforms to expand the regime to tranche two entities, implemented alongside simplification and modernisation reforms, is estimated at $13.9 billion over 10 years, with approximately $1.85 billion in upfront cost and an additional ongoing regulatory burden estimated at approximately $12 billion over the ten-year period. This would be driven by the upfront and ongoing costs of implementing and maintaining an AML/CTF program and undertaking initial CDD.

A summary of the estimated change in regulatory costs by industry under Option 4 is provided in Table 18 below (excluding the change in the FTR act).

Table 18 **| Option 4 total upfront and ongoing regulatory burden to businesses, by industry ($m, NPV)**[164]

Industry	Upfront[165]	Ongoing	Ten-year total
Financial services	265	-181	84
Bullion traders	2	0	2
Gambling services	37	62	99
DCEPs	8	2	10
Remitters	38	2	40
Accounting services	562	3,120	3,682
Legal services	429	2,454	2,883
Trust & company services	191	945	1,136
Real estate	989	4,903	5,892
Dealers in precious metals and stones	13	71	84

Minimised impact on existing reporting entities

This option is expected to benefit existing reporting entities as the simplification and clarification measures discussed throughout this analysis are expected to reduce the costs they currently face in complying with their obligations.

The expected impact on currently regulated entities under Option 4 is estimated to be $233 million over ten years (including $108 million for simplification reforms and $125 million for modernisation reforms, see Table 12 above), which is the same as Option 2. This would be driven by additional upfront costs, with ongoing savings from simplification of the reformed regime. Upfront costs will be driven by reporting entity staff time and external advisory services to understand the updated AML/CTF obligations and update CDD processes. The flexibility provided to reporting entities in how they meet their obligations is also anticipated to provide benefits and regulatory savings over time. For example, reporting entities will be able to leverage new and emerging technology that could be used for AML/CTF compliance. However, these savings are not quantifiable at this time. As discussed in Option 2, the main cost driver associated with the modernisation reforms is expected to be the upfront and ongoing impact of the reforms to the travel rule on the financial services industry.

[164] Nous Group, ‘Impact analysis: Regulatory reforms to AML/CTF regime’ (Report, August 2024).
[165] Upfront costs for tranche two entities includes the upfront costs for new businesses established during the ten-year period. These upfront costs therefore differ from the upfront cost estimated in 2024-25.

Minimised impact on new reporting entities

Newly regulated reporting entities are expected to benefit most from this option, as it would provide a clearer, simpler AML/CTF regime, making it easier and less burdensome to understand and comply with their new obligations than Option 3. Under Option 4, the total regulatory burden on tranche two businesses is estimated at $13.7 billion over ten years (including $1.5 billion in upfront costs and $12.2 billion in ongoing costs, see Table 12). This compares to a total cost to tranche two businesses of $15.8 billion under Option 3 (discussed above), demonstrating the substantial benefits of incorporating the simplification and modernisation reforms under Option 4.

The average upfront and ongoing costs per tranche two business for each reform are presented by business size in Table 19, below. When compared to Table 16, which presents the same information for tranche two businesses under Option 3, this demonstrates that Option 4 will minimise the substantial regulatory costs to tranche two businesses of all sizes by bringing them into a simplified regime.

***Table 19* | Option 4 average upfront and ongoing (annual) burden per tranche two business ($, real terms), by reform and turnover**[166]

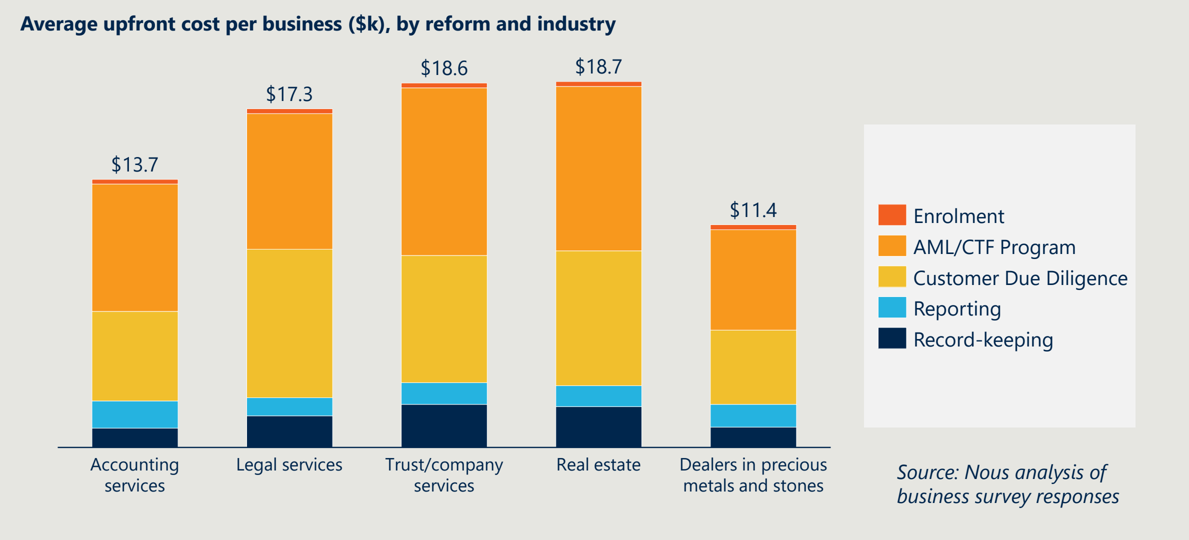
Reform	Frequency	$0 - $200k	$200k - $2m	$2m - $10m	$10m+
Enrolment	Upfront	230	230	290	700
	Annual	-	-	-	60
AML/CTF Program	Upfront	3,400	11,240	15,100	37,040
	Annual	5,180	17,550	23,840	46,500
Customer Due Diligence	Upfront	560	12,140	15,380	23,050
	Annual	800	15,170	18,050	27,420
Reporting	Upfront	160	2,010	3,320	7,210
	Annual	30	410	860	2,890
Record-keeping	Upfront	110	3,030	4,040	17,550
	Annual	10	100	1,000	5,790
Total	**Upfront**	**4,460**	**28,650**	**38,130**	**85,550**
	Annual	**6,020**	**33,230**	**43,750**	**82,660**

[166] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

These estimated costs are primarily associated with designing and implementing an AML/CTF program and CDD process. As mentioned, it is important to note that tranche two businesses would not be 'starting from scratch'. The department anticipates that many tranche two sectors will be able to leverage existing processes and mechanisms relevant to AML/CTF regime regulatory obligations. This reduces the additional burden that would be placed on these businesses. Estimation of the change in regulatory burden for tranche two entities recognises this and therefore estimates the additional upfront and ongoing costs. As noted earlier, however, these results do not reflect future work and consultation that will occur through development of the Rules and AUSTRAC guidance to identify opportunities to reduce costs further.

Figures 6 and 7 show the estimated average upfront and ongoing annual costs, respectively, per business by reform area and industry for Option 4. Again, the largest estimated costs are associated with CDD and AML/CTF program requirements (such as staff training, staff due diligence and reviews of the AML/CTF program). Figures 6 and 7 also show that although implementing systems and processes for reporting and recording keeping are anticipated to involve upfront costs, the ongoing annual costs for these obligations are low. Importantly, due to implementation of the simplification reforms as part of Option 4, the estimated average costs per business are substantially reduced when compared to Option 3 (see Figures 4 and 5, above).

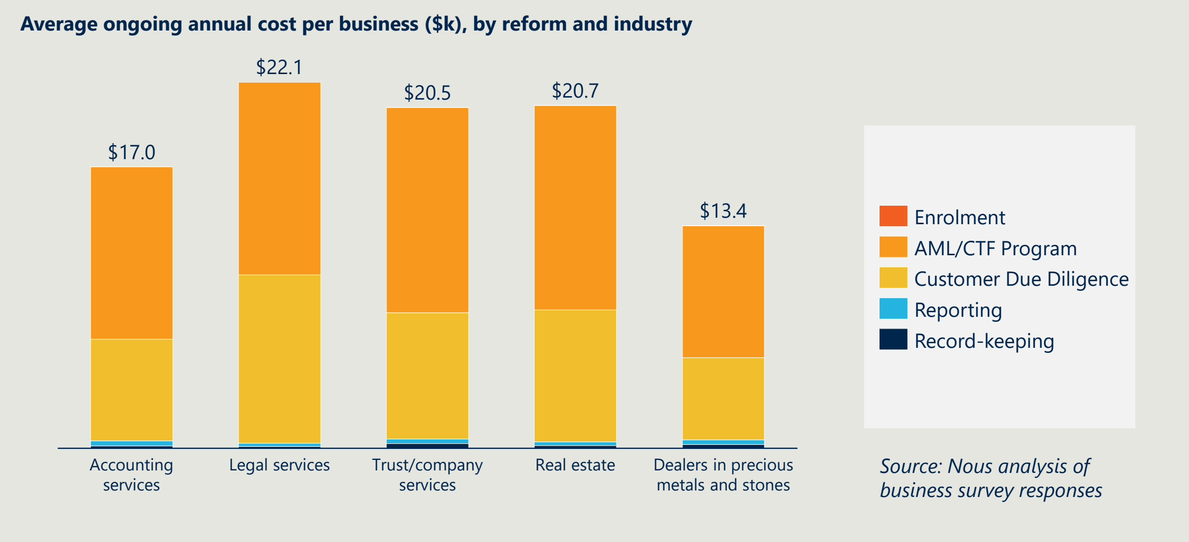
Figure 6 | Option 4 tranche two upfront regulatory burden per business ($k, real), by reform and industry[167]



Source: Nous analysis of business survey responses

[167] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

***Figure 7* | Option 4 tranche two annual regulatory burden per business ($k, real), by reform and industry**[168]



Source: Nous analysis of business survey responses

Table 20 presents the estimated total regulatory burden for tranche two industries by reform area. When compared with the estimated total burden under Option 3 (Table 17), it again demonstrates that the inclusion of simplification reforms will minimise the regulatory burden faced by the tranche two industries under Option 4.

[168] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

Table 20 **| Estimated total Option 4 regulatory burden, by reform and industry over 10 years ($m, NPV)**[169]

Reform area	Frequency	Accounting services	Legal services	Trust/ company services	Real estate	Dealers in precious metals and stones
Enrolment	Upfront	10	6	2	13	0
	Ongoing	0	0	0	0	0
AML/CTF Program	Upfront	267	172	88	445	6
	Ongoing	1,909	1,292	569	2,924	42
Customer Due Diligence	Upfront	188	188	67	364	5
	Ongoing	1,129	1,128	350	1,886	26
Reporting	Upfront	57	23	11	56	1
	Ongoing	56	22	13	56	2
Record-keeping	Upfront	40	40	23	111	1
	Ongoing	26	12	13	37	1
Total	Upfront[170]	562	429	191	989	13
	Ongoing	3,120	2,454	945	4,903	71
	Ten-year total	3,682	2,883	1,136	5,892	84

Option 4 is anticipated to provide the best possible benefit in minimising the unavoidable increased regulatory burden on newly regulated entities, while providing the best opportunity to achieve the proposed reforms' objectives. By combining the expansion of the regulatory regime with the proposed simplification and modernisation measures, this option is expected to best achieve all outcomes in implementing the proposed reforms.

Minimised impact on customers

Simplification of the regime that would be extended to tranche two entities would lead to a lower regulatory burden under Option 4 ($209 million), as compared to Option 3 (Table 14, above). As with Option 3, this estimate does not take account of cross-cutting government priorities outlined in the Background that may provide further efficiencies.

[169] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

[170] Upfront costs for tranche two entities includes the upfront costs for new businesses established during the ten-year period. These upfront costs therefore differ from the upfront cost estimated in FY25.

Costs to government

As discussed in Option 3, this option would result in a cost of $1.03 billion (NPV) over a ten-year period from 2025-26.

Average annual regulatory costs

Table 21 sets out the estimated average annual regulatory cost of each option. This is presented in real terms and combines both upfront and ongoing costs calculated over 10 years. As discussed above, Option 3 would impose the highest regulatory cost through the expansion of the AML/CTF regime to tranche two entities. By applying the simplification measures under Option 2 to the expansion of the regime, Option 4 will result in significantly lower annual regulatory costs to these businesses and their customers. There are no anticipated regulatory costs for community organisations arising from the proposed reforms.

***Table 21* | Average annual regulatory costs by sector (from business as usual) – change in costs ($m) real terms**

Option	Business	Community organisations	Individuals (i.e. customers)	Total change in costs
2	19	-	0	**19**
3	2,106	-	52	**2,159**
4	1,851	-	29	**1,880**

Question 5: Who did you consult and how did you incorporate their feedback?

Overview

Throughout consultation on reforms to the AML/CTF regime, the government has remained committed to close engagement with industry to ensure the AML/CTF regime is effective and fit-for-purpose. The purpose of consultation was to present industry with a series of proposals, with their feedback forming the basis of advice to government on the reforms. This section will outline the consultation that informed this analysis, including the key amendments to the proposals following stakeholder feedback, and key feedback not adopted by the department. While feedback received from industry throughout both stages of consultation did not substantively change the policy options outlined in Question 4, it contributed to the refinement of specific measures with regard to legislative drafting and practical implementation to enable reduction of impact on industry. This is explained in greater detail below.

Means of consultation

First stage of consultation

The Attorney-General announced the commencement of consultation on 20 April 2023. This announcement was accompanied by a consultation paper that outlined a number of key priority areas for reform. Part 1 of the paper proposed a number of ways to simplify and modernise the AML/CTF regime, largely through streamlining obligations as recommended in the Statutory Review. Part 2 of the paper outlined the case for the regulation of DNFBPs due to the risks associated with these sectors, followed by a proposal of what services would be covered if brought into the AML/CTF regime.

The department conducted 42 industry engagements and 15 government engagements. This included sector-specific roundtables in which the department, with assistance from AUSTRAC, outlined the proposed measures in further detail. This provided industry with an opportunity to ask questions directly to the department and express their early impressions of the reforms. The department also held one-on-one engagements with stakeholders as requested. Two inter-departmental committee meetings were held to bring together government stakeholders with equities in the proposed reform, as well as one-on-one engagements with government partners to ensure a whole-of-government approach to reform. A detailed breakdown of the engagements conducted in this round can be found at Attachment C. Following the 8-week consultation period, the department received 142 submissions.

The overarching intention of the first stage consultation process was to present key issues with the AML/CTF regime identified by the department and to elicit views from industry, government and law enforcement stakeholders on the proposed scope of the reforms. It also sought feedback on preliminary proposed solutions to these issues formulated by the department in collaboration with AUSTRAC. This consultation process also provided beneficial insights into how the AML/CTF regime could be improved to maintain pace with the emerging threat environment. This was key in informing the parameters of the options presented in this analysis. Further consultation was required to further test policy options and proposals with affected stakeholders to ensure they achieve the objectives of reforms. As part of this further round of consultation, specific efforts were made to quantify the proposed net benefit of each option to the best possible extent within the constraints of the policy problem.

Second stage of consultation

The Attorney-General announced the commencement of a second stage of consultation on 2 May 2024. This announcement was accompanied by a series of consultation papers that detailed a number of key priority areas for reform. In addition to an overview paper, four consultation papers were released covering reform measures specific to certain sectors, namely:

- real estate professionals,
- professional service providers (i.e. lawyers, accountants, conveyancers and trust and company service providers),
- dealers in precious metals and precious stones and
- digital currency exchange providers, remittance service providers and financial institutions.

A sixth paper was also released covering broader reforms to simplify, clarify and modernise the AML/CTF regime. The measures contained in this paper are relevant to all sectors.

The department conducted a total of 43 meetings, consisting of 27 industry, 5 state and territory government, 10 Commonwealth Government meetings, and 1 industry conference. As with the first stage of consultation, this included sector-specific roundtables in which the department and AUSTRAC outlined the proposed measures in greater detail and asked specific questions of industry. This also provided a forum for industry to ask questions directly to the department and express their views on the proposed measures. Consistent with the first stage of consultation, the department also held one-on-one engagements with stakeholders as requested. Following the 6-week consultation period, the department received 133 submissions. A detailed breakdown of the engagements conducted in both stages of consultation can be found at Attachment C.

With the scope of the reforms settled, the second stage of consultation was largely aimed at seeking targeted feedback from industry, government and law enforcement stakeholders on more detailed proposals developed by the department and AUSTRAC. This stage of consultation was informed by outcomes from the first stage of consultation. Submissions and feedback received through consultation holistically were used to shape the development of advice to government on the proposed policy option that will provide the greatest net benefit. Outcomes from the second stage of consultation informed the development of legislation for Parliamentary consideration once a policy option was selected for further progression.

Regulatory impact analysis services

The department also procured the services of Nous Group to support analysis of the net benefits of the proposed reforms (as discussed in Question 4). This included collection of stakeholder feedback through surveys of businesses on the anticipated costs of compliance with AML/CTF obligations to estimate the change in regulatory burden associated with the proposed reforms. It also included interviews with AML/CTF service providers about the nature, variety and costs of the services they offer, the characteristics of their clients, and the potential impacts of the proposed reforms on the delivery of these services.

Key points raised in consultation

Submissions across both stages of consultation were broadly supportive of the proposals to simplify and modernise the existing regime, highlighting CDD and AML/CTF program obligations as significant priorities for reform. Current reporting entities expressed support for the proposal to extend the regime to further high-risk services including DNFBPs and additional services provided by digital currency exchanges. Submissions to the first stage of consultation repeatedly requested further detail, definitions and examples of what would and would not be captured in the regime. Some of this detail was provided to stakeholders in the second stage of consultation through detailed proposals on the principles that will be outlined in the primary legislation. Stakeholders emphasised the importance of guidance in helping businesses to comprehensively understand their requirements under the regime. This will be a key aspect of implementation of the reforms, with AUSTRAC drafting and consulting on a series of guidance materials as part of their education and communications strategy. Further detail on the key issues discussed throughout both rounds of consultation is outlined below.

AML/CTF Programs

Stakeholders were generally receptive to the proposal to simplify the AML/CTF program requirements, including the streamlining of Parts A and B and the inclusion of high-level risk management obligations in the Act rather than the Rules. However, some stakeholders noted that the revised program obligations should not require a reporting entity’s board or equivalent senior management to approve additional elements of an AML/CTF program. The department addressed this concern by clarifying the roles and responsibilities of a reporting entity’s Compliance Officer and its board or equivalent senior management. The department proposes that a reporting entity’s board or senior management should focus its review on the strategic elements of a reporting entity’s AML/CTF program, rather than those that are operational in nature.

Many stakeholders, particularly those in the gambling sector, were supportive of the approach to update the concept of a business group to allow for greater cooperation and the ability to disperse regulatory burden across a number of entities. Stakeholders said this will particularly assist small businesses who can use their different group structures to acquit some AML/CTF obligations. However, some stakeholders raised concerns with the mandatory nature of the revised business group concept, which they said may cause complication for non-corporate group structures. The department addressed this by making the business group concept mandatory for corporate structures only, with other types of business able to elect to form a business group to take advantage of the group program and deemed compliance benefits.

CDD

The key change to the proposed reforms to the CDD obligations was a change in terminology to improve clarity. The original proposal was to use the term ‘customer risk assessment’ to describe the requirement to identify the risk of a particular customer before entering into a business relationship. Stakeholders found this wording to be confusing and raised concerns over the perceived compliance burden of undertaking such an obligation. To better reflect its purpose, the terminology was amended to ‘customer risk rating’ and it will be integrated into the initial CDD obligation as an obligation to ‘identify customer risk’. This change was also intended to reflect that reporting entities have to conduct a holistic risk assessment as part of their AML/CTF Programs obligation and so the customer risk rating process may, in most instances, simply involve assessing the customer and the designated service being provided against this broader risk assessment.

Many stakeholders expressed confusion around document retention and the verification of identity as part of KYC. This is despite the existing obligations around what is required to verify the identity of a customer and the associated record keeping requirements is not explicitly changing. However, the department and AUSTRAC will ensure that these requirements are as clear as possible, and supplemented through guidance to ensure entities are only holding records they are required to keep and reduce the need for entities to do substantively more than what is required due to a misunderstanding of the legislation.

Stakeholder feedback also expressed concern regarding the regulatory burden of undertaking customer risk rating for all pre-commencement customers, even if given a lenient timeframe. One stakeholder noted that it will not detect past, nor deter future, criminal activity, with the cost being disproportionate to any potential beneficial outcome. The department has proposed to remove this requirement but maintain the proposed trigger for undertaking initial CDD of pre-commencement customers where there is a material change in the nature and purpose of the business relationship resulting in it being considered medium or high ML/TF/PF risk. Retaining this measure will ensure that reporting entities can focus their efforts on customer relationships posing the greatest risk.

Exception for assisting an investigation of a serious offence

The first consultation paper proposed changing the process for issuing Chapter 75 exemptions by specifying in the Act that eligible law enforcement agencies can issue a ‘keep open notice’ directly to a reporting entity. Some submissions expressed support for this proposal, noting that the proposal would enhance flexibility and efficiency. However, some stakeholders expressed concerns about the regulatory impact associated with allowing eligible government agencies to issue notices directly to reporting entities, indicating a preference for ongoing AUSTRAC oversight over the administration of these notices to ensure their quality and appropriateness. Other submissions suggested particular safeguards be included in the framework, including that the Rules prescribe the form of such notice.

With industry concerns in mind, the department is proposing to include safeguards to ensure that the quality of the process is upheld and to minimise regulatory impact on industry. For example, the form of the ‘keep open notice’ would be prescribed in the Rules, ensuring consistency and giving reporting entities certainty about the validity of a notice. While eligible agencies would be able to issue notices directly to reporting entities under particular circumstances, notices must be copied to AUSTRAC when they are sent to reporting entities to allow AUSTRAC to maintain oversight of notices. Further, AUSTRAC would have the ability to revoke notices that are considered invalid or do not meet the requirements of the Act and Rules.

The department is also proposing to amend the current list of eligible agencies under the framework to include the NACC due to the current operational impact on NACC investigations.

Tipping off

Stakeholders noted through submissions that the current tipping off offence limits the ability for reporting entities to share information between entities to effectively identify, mitigate and manage risk. Stakeholders were generally supportive of the proposal to reframe and clarify parameters for sharing information about suspicious matters between entities and external bodies with entities interested in enabling private-to-private information sharing for more systemic risk management. A number of submissions recommended limiting the new offence to the disclosure of information where it is likely to prejudice an investigation only and not include ‘a potential investigation’. The department has adopted this approach. Some stakeholders highlighted a preference to include the intent to prejudice an investigation as per the Canadian model, but the department considers it is important to capture both intentional disclosures as well as reckless or negligent disclosures that may occur as a result of a reporting entity’s failure to develop, implement or maintain appropriate safeguards to prevent tipping off.

Gambling threshold

While most submissions to the first round of consultation largely understood the need to lower the threshold in the exemption for gambling service providers to conduct CDD, there were concerns regarding the regulatory burden associated with reducing the limit to $4,000. Some stakeholders provided evidence to suggest that the difference between the number of customers captured by a potential $4,000 threshold, as opposed to a $5,000 threshold was extensive. Further, a number of submissions suggested alignment with other state and territory-based legislation. Based on these suggestions, the department is proposing a $5,000 designated threshold for gambling service providers to conduct CDD.

Extending AML/CTF regulation of digital currency-related services

DCEPs were generally supportive of the proposals to expand the current regulation of the sector, citing the positive benefits regulation will have for the legitimacy of the sector. Stakeholders also supported a change in both definition and terminology for ‘digital currency’. The department has adopted industry suggestions to utilise the term ‘virtual asset’ over ‘digital currency’, ‘digital asset’ or ‘crypto asset’ in order to align most closely with the FATF.

A key overarching priority for the sector was the importance of taking a whole-of-government approach to reforms. As such, the department has worked closely with Treasury as they progress their own payments systems reforms to ensure requirements are streamlined.

Travel rule

Some reporting entities in the digital currency exchange sector raised the difficulties of implementing the travel rule for some digital currency transactions due to their opaque nature. However, there was general support amongst stakeholders for extending this record-keeping and information-sharing requirement to the digital currency exchange sector. Stakeholders have raised concerns about the technology available to facilitate travel rule reporting, particularly for digital currency exchanges. The department and AUSTRAC will consider implementation timeframes in order to address these concerns.

International Funds Transfer Instructions (IFTIs)

While not discussed in the first consultation paper, financial institutions provided feedback that simplification and modernisation of the IFTI reporting framework was a priority for reform. The department has developed further detail to inform discussions on IFTI reform in future consultation that clarifies the proposed responsibilities for reporting entities and how smaller entities can delegate obligations where necessary.

Some stakeholders raised concerns with the impost associated with extending IFTI reporting obligations to the DCEP and remittance sectors, and made suggestions around a transitional period for implementation. Some submissions recommended waiting to implement IFTI reporting obligations for DCEPs until after the travel rule had been implemented, and to then be subject to a threshold.

Cross-border movement

Submissions from the banking sector in response to the first consultation paper indicated that the current cross-border movement reporting framework for bearer negotiable instruments (BNIs) is burdensome, and a number of submissions put forward the view that the obligation should not apply to reporting entities or that the Act should revert to an earlier iteration of the framework that did not mandate the reporting of BNIs. Submissions further stated that the Act's definition of a BNI is unclear which may result in low-risk instruments that are 'non-bearer' or 'non-negotiable' being captured in the cross-border movement reporting framework.

The department proposes to amend the BNI definition in section 17 of the Act to clarify that it only covers instruments that are truly bearer negotiable in nature, that is instruments that are:

- in bearer form
- endorsed without restriction
- made out to a fictitious payee, or
- otherwise in such form that title passes to the recipient upon delivery.

The submission to the second stage of consultation from the Australian Banking Association (ABA) indicated that the department's proposed approach suitably addresses the sector's concerns. The ABA also noted that the ML/TF risks associated with BNIs should be considered as part of the next National Risk Assessment, and relief provided for low risk cases such as movements between financial institutions.

Expanding the regime to DNFBPs

The key feedback received by DNFBPs highlighted the importance of leveraging existing regulatory and professional obligations to limit regulatory duplication. The department has consulted with industry on this matter and has proposed that existing practices can be leveraged for AML/CTF purposes and included in entities' AML/CTF programs if and where appropriate.

Specific to dealers in precious metals and stones, the relevant designated service proposal has been clarified following consultation to specify that digital currency payments (in addition to cash payments) of $10,000 or above would be included in the proposed threshold for regulation. This position reflects feedback received from industry that some parts of the sector accept digital currency.

A further request from industry was the desire to better understand the proposals themselves through the inclusion of specific examples for each of designated service. This detail will be provided through consultation on amendments to the Rules and the development of AUSTRAC guidance. response to industry feedback, a number of services initially considered for regulation will be excluded from the regime, including:

- in-house services
- providing advice related to litigation or representing a client in a legal proceeding
- services provided within business groups by centralised legal or finance functions
- sums paid for feeds for professional services
- pure advisory work where there is no underlying client transaction involved, e.g. work undertaken by barristers, and
- services related to residential tenancies, property management, and leasing of commercial real estate.

A framework for managing legal professional privilege

The department has taken on board the majority of feedback regarding the desire for more specific protections for LPP in the Act. Submissions from the legal sector expressed concern about balancing professional obligations relating to LPP with the requirements of the AML/CTF regime. This includes the obligation to report suspicious matters to AUSTRAC. To address this concern, the proposed framework has been amended to extend the timeline for reporting suspicions of money laundering from three to five days if the reporting entity has been required to consider whether relevant information about a client is subject to legal professional privilege.

Stakeholders also noted the possibility that clients could withhold information from their legal practitioner for fear of it being used against them, thus making it more difficult for legal practitioners to provide complete and independent legal advice. The department proposes to establish that nothing in the Act affects the right of a person to refuse to give information (including by answering a question) or produce a document if the information or document would be privileged from being given or produced on grounds of LPP.

Feedback not adopted

AML/CTF Programs

Some stakeholders did not agree that the streamlining of Parts A and B into a single obligation would cause significant changes in regulatory burden and proposed to keep the two separated. This was not adopted, and the department has clarified that this streamlining will not require entities to revise their AML/CTF programs wholesale. Entities will be allowed to retain their program in its current form if it is effective, and may tailor it to the new requirements over time.

CDD

Some stakeholders suggested that the prescribed timing for when KYC checks need to be completed should be removed and timing should be based exclusively on ‘reasonability’. This proposal is insufficiently risk based and would not meet FATF requirements, and therefore has not been adopted.

Various stakeholders suggested removing the customer risk rating obligation, as operationally, you look at the actions taken and the risks of these actions, rather than the customer themselves. In particular, one stakeholder suggested treating all customers as high-risk until their actions proved otherwise. The department does not propose to implement this suggestion, as by treating all customers as high-risk, entities may end up imposing a greater burden onto low risk customers that do not require such due diligence. This suggestion would also undermine the risk-based nature of the regime. The customer risk rating obligation is intended to fit within the enterprise-wide risk assessment and ensure reporting entities are broadly aware of the risks posed by providing a specific designated service to a certain customer type. Moving away from this model would inflate regulatory burden and compliance costs significantly.

Some stakeholders proposed standardisation for risk rating methodology, as this will assist the smaller, less sophisticated entities subject to the regime. A key aspect of the AML/CTF regime is that it is a risk-based regime, largely due to the diversity of the regulated population. The risks of a big bank are substantially different to the risks of a sole-trader legal practitioner, therefore, the AML/CTF provides necessary flexibility to allow these entities to set their own programs based on the risks their business is most likely to face. While standardisation may suit some business structures, ensuring that certain obligations are always met, it would inadvertently increase regulatory burden and remove the intended flexibility of a risk-based approach. Therefore, the department did not adopt this suggestion.

Exception for assisting an investigation of a serious offence

The department notes that some stakeholders are concerned with the liability of keep open notices, as well as potential conflict between keep open notices under the Act and other legislative regimes. The department is proposing not to extend the liability safe harbour for criminal money laundering offences under the Criminal Code to the new framework. The department is proposing that a notice would not compel the reporting entity to continue to provide designated services to the customer. Rather, reporting entities would not be liable for the provision of a service when acting in accordance with a keep open notice.

Some Government stakeholders noted an interest in expanding the scope of eligible agencies. However, industry stakeholders raised concerns that the proposed model would increase the regulatory impact for reporting entities. The department does not agree that the volume of notices would increase if the current scope of eligible agencies were able to provide notices directly to the reporting entity. However, it is likely that the volume of notices could increase if the scope of eligible agencies was expanded. The department has considered the requests from Government agencies in light of industry concerns and is only proposing to amend the list to add one additional agency (the NACC), following concerns raised about current operational impacts on NACC investigations.

Tipping off

One stakeholder suggested that the revised tipping off offence should include a ‘mental element’ in disclosing information, in which *intent* to prejudice an investigation is the trigger for the offence. A model for this can be seen in the Canadian tipping off offence. The department does not propose to adopt this model, as there are significant challenges associated with proving intent. The amended tipping off offence will focus on the sharing of information that is *likely* to prejudice an investigation. The offence will include a test of negligence, which should protect against the examples raised by this stakeholder.

Gambling threshold

A number of submissions expressed concerns with the exploitation of the gambling sector and suggested that the transaction threshold should be even lower than the $4,000 initially proposed. While the department recognises these concerns, this proposal was ultimately not adopted as the risk of a service must be considered on balance with both regulatory burden and international standards. In this case, the FATF requires CDD to be conducted on transactions above a EUR/USD 3,000 threshold, with transactions below that threshold considered to be lower risk. Implementing a lower threshold than the global standard would significantly increase the number of transactions captured while providing potentially little additional benefit to law enforcement. In addition, the regulatory burden imposed would be too significant for affected businesses.

Extending AML/CTF regulation of digital currency-related services

Stakeholders requested that the new digital currency-related designated services align with licensing work being undertaken by Treasury, on the basis that some of the proposed designated services ought to be aligned with the 'financial service' definition under the *Corporations Act 2001*. It is not possible to achieve complete alignment with the work being progressed Treasury, as designated services must be specifically tailored to the AML/CTF context. For example, some services may pose a low risk to consumers, but pose a high financial crime risk.

Travel rule

Many industry stakeholders were opposed to the extension of travel rule obligations to the DCEP sector on the grounds that it would be challenging to comply with due to the inherently cross-border nature of DCEP activities and fractious implementation of the travel rule globally. More specifically, some stakeholders were opposed to the inclusion of payee information when transferring value on the grounds that this is at odds with the anonymity that is intrinsic to their business.

One of the core policy objectives of the AML/CTF regime is to effectively 'follow the money' to combat financial crime. As the travel rule fundamentally supports this objective, and applies to financial institutions, failing to apply it to other businesses providing designated services would leave an important regulatory gap. Further, FATF Recommendations 15 and 16 recognise the importance of recording and transmitting payer and payee information to effectively trace financial flows. As such, the department is not adopting the above feedback from industry.

International Funds Transfer Instructions

Feedback from industry stakeholders (namely the banking and financial sector as the only sector that currently reports IFTIs) expressed concern with the proposed approach to IFTI reform and its interoperability with the banks' movement towards the New Payments Platform (NPP).

Banks have advised that the transition from the existing bulk electronic clearance system (BECS) to the NPP will not be fully complete until 2030, and that introducing new IFTI requirements now would cause a duplication of effort as they will have to shortly transition them to the NPP.

The department engaged closely with the sector to understand the current issues of interoperability, and are considering options on how the IFTI reforms may be phased in so that they can work in tandem with the NPP initiative.

Similar to the abovementioned feedback on the travel rule, some DCEPs were opposed to the proposal for extending the IFTI reporting obligation to transfers of digital assets. However, the streamlined value transfer service (and therefore its linkages to travel rule and IFTI obligations) would be technology-neutral and ensure similar services experience similar regulation.

Cross-border movement

Prior to the passage of the AML/CTF Amendment Act, cross-border movement reporting was required for BNIs with a cumulative value of $10,000 or more only if requested by a police or Australian Border Force officer. The AML/CTF Amendment Act made changes to partially acquit Recommendation 12.1 of the Statutory Review, which stated:

> ‘The current cross-border reporting regime for physical currency and BNIs in the Act should be replaced with a consolidated requirement to report ‘cash’ of $10,000 or more. For the purposes of Part 4 of the Act, cash should be defined as:
>
> - physical currency
> - bearer negotiable instruments (using the extended definition in Recommendation 12.2)
> - bullion, and
> - an object or instrument specified in the Rules.’

All individuals and reporting entities must now report cross-border movements of monetary instruments in Australian or foreign currency if the combined value is $10,000 or more. BNIs, as monetary instruments for the purposes of the Act, are therefore captured. In addition to consolidating the previous framework, the changes were also intended to reflect the risk of criminals moving BNIs across borders to launder funds, pay for illicit goods, and complicate asset recovery. In particular, BNIs are an alternative method to cash for laundering money given they are less bulky and easier to conceal. The current cross-border movement reporting framework is also compliant with Recommendation 32 of the FATF standards.

For the reasons outlined above, the department is not proposing the Act revert to the cross-border movement reporting framework that was in place prior to the AML/CTF Amendment Act. Industry stakeholders have indicated that the alternate solution outlined earlier in this impact analysis is adequate in addressing their concerns.

Expanding the regime to DNFBPs

Some stakeholders from the real estate sector indicated that the profession should not be captured under proposed reforms to expand the regime to certain high-risk services, and have continued to seek further information on the specific risks of the sector. The Real Estate Institute of Australia has opposed the introduction of a blanket compliance approach, and noted that the legal transfer of property ultimately lies with state and territory Governments through their respective land registries, not real estate professionals. The department has engaged with stakeholders on these areas of concern (including on the risk profile of the sector), and note that the use of real estate is an established, well-known method of money laundering, internationally and in Australia. Regulation of real estate agents is also required under international standards set by the FATF. Australia is seen as an attractive destination for the investment of foreign proceeds of crime in real estate, particularly corruption-related proceeds. While there are other entities involved in real estate transactions, real estate professionals are the front door to buying and selling property. Real estate professionals have a different relationship with purchasers and sellers to other parties involved in a property transaction and can provide unique insights. Real estate professionals are experts in the local property market, so are uniquely placed to identify suspicious circumstances. Further, regulation of real estate agents is required under international standards set by the FATF.

Given the wide range of regulated entities, risk profiles and services, the department has not adopted the proposal to expressly embed or recognise existing professional obligations or practices within the legislation. However, entities may be able to leverage these existing practices as part of meeting their AML/CTF program requirements if and where appropriate in order to prevent unnecessary duplication of effort.

Stakeholders from the legal sector questioned the vulnerability of the profession to ML/TF exploitation, and suggested that existing regulatory mechanisms were sufficient to acquit any residual risk. As with the real estate sector, the department has engaged heavily on this area of concern, and notes that services provided by the sector are being exploited by Australian and overseas-based organised crime groups. In particular, the concealment of beneficial ownership through complex corporate and trust structures is recognised internationally as a key method through which criminals can engage in illicit financial transactions. Additionally, regulation of legal professionals is required under international standards set by the FATF.

Stakeholders from the legal sector suggested the carving out of entire practice groups and professions within the sector, including barristers and employment and family law practice. This does not align with the Act’s designated services model, and these practice areas will be captured by the regime if they offer any designated services. If they do not offer designated services in the usual course of their work, they will not be captured by the regime.

Stakeholders from the legal profession also suggested having existing professional obligations recognised in the primary legislation, in what would constitute a ‘safe harbour’ for the acquittal of a reporting entity’s AML/CTF obligations. The department will not be pursuing this approach as it does not align with the risk-based nature of the regime. Rather, as outlined above, existing obligations can be leveraged and included in entities’ AML/CTF programs, if and where appropriate.

A framework for managing legal professional privilege

The department has not adopted suggestions from some stakeholders that legal professionals be exempted from completing SMRs. The requirement to complete SMRs is a key AML/CTF obligation, and the information generated by SMRs plays a crucial role in identifying potential illegal activity and detecting and preventing the flow of illegal funds through Australia's financial system. The department also has not adopted suggestions from stakeholders that reporting entities should not be required to provide particulars to accompany an assertion of privilege. The department's position is that this is an important requirement that will enable AUSTRAC to scrutinise legal professional privilege forms they receive and will dissuade potentially spurious assertions. The department notes that reporting entities will never be expected or required to provide information to AUSTRAC that the reporting entity reasonably considers is subject to legal professional privilege.

The department also has not adopted suggestions to exempt confidential information from provision to AUSTRAC under AML/CTF obligations. This is consistent with established exceptions to the duty of confidentiality, which allow legal practitioners to disclose confidential information if compelled by law to do so. This approach also aligns with that of other common law countries, including the United Kingdom and New Zealand, and reflects the existing requirement for cash transaction reporting under the FTR Act*.*

Question 6: What is the best option from those you have considered and how will it be implemented?

Best option

Option 4 is recommended as the best option.

The net benefit analysis in Question 4 identified that Option 4 will deliver the significant law enforcement benefits anticipated from the expansion of the AML/CTF regime to tranche two entities, with the additional benefit of improved compliance across regulated entities and tranche two entities due to the reforms to simplify the AML/CTF program and CDD requirements. These benefits will likely increase the identification, restraint and confiscation of criminal assets and reduce opportunities for criminals to reinvest illicit funds into further criminal activities. Option 4 will also provide the greatest benefit for improving Australia's FATF compliance and minimising the likelihood of grey-listing and any associated reputational damage to Australia.

How the recommended option was determined

Consistent with the 'Australian Government Guide to Policy Impact Analysis', the department considered each option against the policy objectives of the proposed reforms in making best efforts to quantify the benefits and costs. Question 4 outlines the project's methodology and decision-making process, including the assumptions and caveats applied when assessing all options against the policy objectives.

The impact analysis used an MCA tool to determine that Option 4 provides the greatest net benefit to Australia. Question 4 provides analysis of each option and the MCA scores given for each criterion.

The MCA tested each option for the extent to which they assist with law enforcement efforts to combat serious and financial crime, meet international standards set by the FATF, and minimise regulatory burden for the reporting population. The MCA allows a decision to be made based on the weighted scores of options for each policy objective. The option assigned the highest weighted score is the preferred option. Each option is scored against each policy objective criterion using a scale from -10 to +10 for the benefit it provides relative to the status-quo outlined in Option 1.

Summary of MCA findings

Option 4 received the highest overall MCA score when assessed against each policy objective, and is therefore considered to provide the greatest net benefit.

Combatting crime

- As discussed in Question 4, Option 4 provides the greatest benefits for combatting crime. This was reflected in the MCA scores for this policy objective, which was split into two sub-categories of; community and business, and Government.

FATF compliance

- It is anticipated that Option 4 would provide the greatest improvement towards FATF compliance in Australia's next mutual evaluation, as it would address FATF Recommendations 15, 16, 22, 23 and 28. Further, as a result of including DNFBPs and a greater range of digital asset services in the regulatory regime, this option would go the furthest to provide an overall increase in the strength and resilience of Australia's financial systems.

Minimising regulatory burden

- Question 4 provided a comprehensive analysis of minimising regulatory burden, and considered possible burden on businesses, customers and the Government. From this analysis, it is evident that Option 4 carries a significant regulatory cost, however, unlike Option 3, Option 4 will minimise regulatory impact particularly for newly regulated entities because it incorporates the simplification and modernisation measures in Option 2.

Summary of MCA assessment

To assist the application of the decision tool, Nous Group applied weighted scores to each policy objective. The relative weighted scores of the policy objectives were set to reflect the relative importance and magnitude of the expected impacts (quantifiable and non-quantifiable) of each criterion across each policy objective. The impacts of combatting crime and strengthening FATF compliance were assigned a total weighting of 50 per cent, with minimising regulatory burden and cost to government also weighted at 50 per cent, to ensure appropriate overall weighting between criteria expected to result in costs and those expected to provide benefits. The overall breakdown of the weighted MCA scores can be seen in Table 22. This table applies the weightings to the overall MCA scores to provide a basis for ranking options and identifying the option with the greatest net-benefit.

Table 22 provides the overall weighted MCA scores received by each policy option.

Table 22 | **MCA option assessment**[171]

Policy objectives (criteria)	Weight (per cent)	Option 1: Status-quo	Option 2: Simplify and modernise existing regime	Option 3: Expand existing regime	Option 4: Simplify and expand regime
Combatting crime – community and business	20	0	2	9	10
Combatting crime – Government	15	0	2	9	10
Strengthening FATF Compliance	15	0	2	9	10
Business burden	40	0	-2	-10	-9
Customer burden (of regulated businesses)	5	0	0	-2	-1
Government costs	5	0	0	-3	-3
Total	**100**	**0**	**0.2**	**0.25**	**1.2**

As discussed in Question 4, this impact analysis considered a range of quantitative and qualitative data to best consider which policy option would provide the greatest net benefit. Table 23 provides a summary of the overall assessments made in determining Option 4 as the recommended option.

Table 23 | **Summary of assessments made for each policy option**[172]

Option	Assessment
Option 1: Maintain status quo	• This option does not address any of the key policy objectives. • It would not address any of Australia's relevant FATF deficiencies and involves no meaningful action to better address ML/TF. • The Act and Rules would remain burdensome in their complexity for industry, and critical regulatory gaps would remain for criminal groups to exploit. • The costs of inaction would increase over time with Australia falling further behind continually strengthened international standards, heightening the risk of grey listing by the FATF and criminal threats to Australia's financial systems.

[171] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).
[172] Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

Option 2: Simplify and modernise existing regime	• This option does not adequately address all key policy objectives. • It would provide some limited financial intelligence and law enforcement benefits. • It would only partially address the relevant deficiencies in Australia’s FATF compliance—it would not address the key regulatory gap in relation to DNFBPs. • This option would involve additional costs, but would provide considerable benefit to the existing regulated population by simplifying and clarifying the complexities of the regime.
Option 3: Expand existing regime	• This option does not adequately address all key policy objectives. • Expansion of the regulated population would support a higher volume of financial intelligence, but without simplifying AML/CTF obligations, the extent to which this intelligence would be actionable by law enforcement may be limited. • This option would address the most critical deficiencies in Australia’s compliance with the relevant FATF standards (DNFBP regulation), but would not address all relevant deficiencies within the reforms’ scope. • This option would fail to minimise the regime’s complexity or regulatory burden, and would provide no measures to minimise costs for newly regulated DNFBPs.
Option 4: Simplify and expand regime	• This option addresses all key policy objectives. • This option would also simplify the regime, making it easier for reporting entities to comply with their AML/CTF obligations, and potentially increasing the quality of financial intelligence available to support law enforcement activities. • It includes action to address Australia’s AML/CTF deficiencies against all relevant FATF standards in scope of the proposed reforms. • Expansion of the regulated population will address the critical gap in regulation of DNFBPs and result in a higher yield of financial intelligence. • This option best achieves the outcome of minimising the unavoidable regulatory burden inherent in expanding the AML/CTF regime.

Status of Impact Analysis

Table 24 outlines the status of the impact analysis at each major decision point to outline how consultation influenced the development of the analysis, as well as how it was used to ultimately inform government decision making on the proposed reforms. All options were considered when seeking authority to scope the proposed reforms and develop materials to support industry consultation. As Option 4 comprehensively represents the full suite of proposed reforms (incorporating all elements of Options 2 and 3), it provided the preferred framework for consultation and Government consideration of the reforms, given its inclusion of measures to address all three policy objectives (combatting crime, improving FATF compliance and minimising regulatory burden).

The Government announced and released consultation papers in two stages, which outlined proposed reforms to simplify, modernise and expand the AML/CTF regime. Stakeholder feedback from the first stage informed further refinement of the proposed reform options and the preparation of an early impact analysis, which preliminarily indicated Option 4 as the preferred option, subject to a full impact analysis. This informed the Government's decision to conduct a second stage consultation process (including consultation papers) to inform the progress of legislative amendments. At both stages, industry feedback supported a preference for the full suite of reforms. This impact analysis, which reflects the continued preference for Option 4, has been conducted to inform the final decision on the proposed legislative reforms.

Table 24 | Status of the Impact Analysis at each major decision point

Decision point/point in policy development	Timeframe	Status of the IA
Authority to begin scoping options for reform to Australia's AML/CTF regime.	October 2022	Undeveloped
Authority to develop materials to support a future consultation with industry.	January 2023	Undeveloped
Government announces the first stage of consultation on reforms to the AML/CTF regime.	April 2023	Preliminary work on Impact Analysis commenced. Consultation to inform development of early Impact Analysis.
Decision made to progress legislative amendments to the AML/CTF regime.	April 2024	Early Impact Analysis attached to support this decision.
Government announces a second stage of consultation, incorporating feedback from the first round of consultation.	May 2024	Stakeholder surveys conducted to inform the full Impact Analysis.
OIA 1st Pass Final assessment.	August 2024	First pass assessment Impact Analysis completed. OIA first pass assessment comments addressed and certification letter prepared for second pass.
OIA 2nd Pass Final assessment.	August 2024	Impact Analysis for second pass assessment presented to OIA.
Final policy decision to proceed with the proposal.	August 2024	To be informed by Impact Analysis that has been through final assessment by OIA.

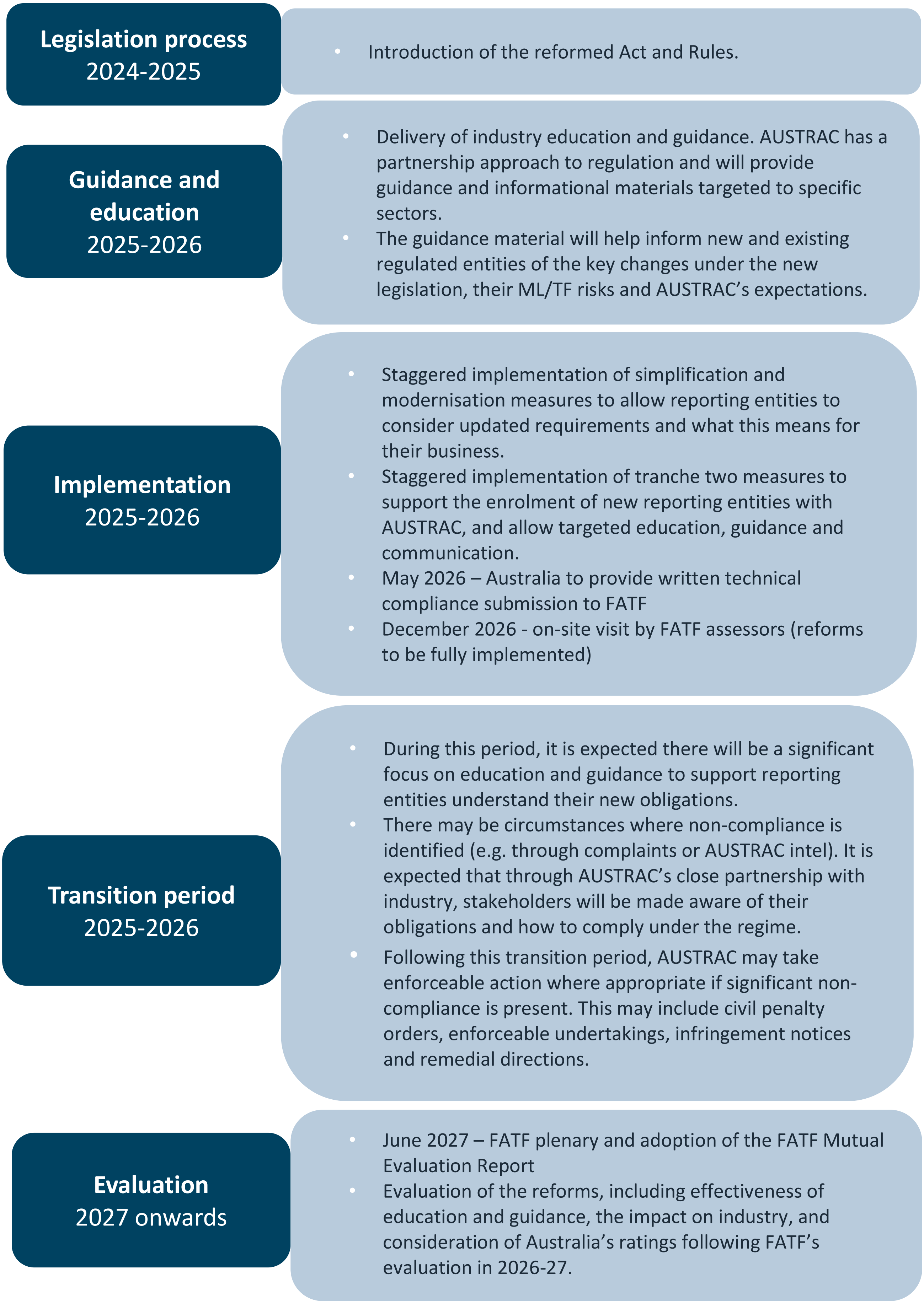
Implementation plan

When the Act was introduced in 2006, the commencement of obligations imposed on regulated businesses was phased over a period of time. This gave businesses time to understand their obligations and to develop cost effective policies and procedures to meet them.

The department intends to take a similar approach for these reforms. The implementation of option 4 is intended to occur from 2025 to 2026 to provide new and existing reporting entities with time to plan, prepare and transition to the new obligations.

Figure 8 outlines the main implementation stages.

Figure 8 | Stages of Implementation



Legislation process
2024-2025

- Introduction of the reformed Act and Rules.

Guidance and education
2025-2026

- Delivery of industry education and guidance. AUSTRAC has a partnership approach to regulation and will provide guidance and informational materials targeted to specific sectors.
- The guidance material will help inform new and existing regulated entities of the key changes under the new legislation, their ML/TF risks and AUSTRAC's expectations.

Implementation
2025-2026

- Staggered implementation of simplification and modernisation measures to allow reporting entities to consider updated requirements and what this means for their business.
- Staggered implementation of tranche two measures to support the enrolment of new reporting entities with AUSTRAC, and allow targeted education, guidance and communication.
- May 2026 – Australia to provide written technical compliance submission to FATF
- December 2026 - on-site visit by FATF assessors (reforms to be fully implemented)

Transition period
2025-2026

- During this period, it is expected there will be a significant focus on education and guidance to support reporting entities understand their new obligations.
- There may be circumstances where non-compliance is identified (e.g. through complaints or AUSTRAC intel). It is expected that through AUSTRAC's close partnership with industry, stakeholders will be made aware of their obligations and how to comply under the regime.
- Following this transition period, AUSTRAC may take enforceable action where appropriate if significant non-compliance is present. This may include civil penalty orders, enforceable undertakings, infringement notices and remedial directions.

Evaluation
2027 onwards

- June 2027 – FATF plenary and adoption of the FATF Mutual Evaluation Report
- Evaluation of the reforms, including effectiveness of education and guidance, the impact on industry, and consideration of Australia's ratings following FATF's evaluation in 2026-27.

Implementation challenges and risks

The department faces a range of implementation challenges and risks with the proposed AML/CTF reforms, including:

- New reporting entities may not be aware that they are captured under the new regulatory regime - this is considered to be unlikely given AUSTRAC's focus on education and guidance and the consequence of this risk is considered to be minor as, once identified, these entities would be able to be encouraged to enrol.
- New reporting entities may not understand their obligations under the AML/CTF regime – this is considered to be possible. The risk is considered to be minor/moderate as AUSTRAC will continue to work with industry to provide guidance and education to new and existing reporting entities which should in turn improve their understanding.
- Existing reporting entities may not understand changes to the AML/CTF regime and how this could affect their compliance – this is considered to be possible. The consequence of this risk is considered to be minor as existing reporting entities have been closely engaged in the consultation process and will have further opportunities to shape the regime through consultation on the Rules.
- Compressed timeframes for AUSTRAC to implement reforms (in order to best prepare for the FATF on-site visit in 2026) – this is considered to be possible. The consequence of this risk will depend on the final implementation schedule and other considerations such as regulatory burden and resourcing allocations. The risk will be mitigated through strong program governance mechanisms.
- Development and consultation on the Rules likely occurring after introduction of the Bill – this is considered to be almost certain to occur. The consequence is likely to depend on the issues raised, but it could range from minor to moderate.
- Regulation of tranche two entities will have a significant impact on AUSTRAC's regulatory activities and will necessitate a re-design of its approach to regulation and its broader operations and workforce. – this is considered to be almost certain to occur. The consequence is likely to be negligible as AUSTRAC received additional resources through the 2024-25 Budget.

In line with these identified challenges and risks, the department acknowledges that there are likely gaps in the analysis of potential impacts of the proposed reforms, many of which will not be identified until after implementation. Unresolved issues include:

- The exact timing of the passage of the Act, and subsequent legislative commencement timing
- The final content of the Act and Rules to inform:
    - The content included in AUSTRAC guidance and education products.
    - The design and delivery of AUSTRAC systems and process to enable industry engagement with AUSTRAC and to meet obligations
- Clarity on the final reform and implementation timeframes to inform change impacts for current and new reporting entities.
- The exact number of new reporting entities that will need to be enrolled with AUSTRAC noting the designated services model.

To mitigate these risks, AUSTRAC will deliver guidance and educational materials to support the upcoming reforms, along with an awareness raising campaign to ensure that reporting entities are aware of their obligations. It is AUSTRAC’s intention that these products will be targeted at assisting regulated entities to implement effective AML/CTF measures within their businesses.

Guidance products may include core guidance, model AML/CTF programs for micro and small businesses, and sector-specific guidance for regulated industries. The guidance will be accompanied by dedicated education products and a scaled-up call centre to address any questions raised by industry. The products will be informed by close consultation with industry through a new AUSTRAC Industry Engagement Forum and will incorporate best practice procedures gleaned through consultation with professional AML/CTF advisors. Throughout consultation there has been strong demand for guidance material, particularly because the reforms are principles-based. These resources will be a useful tool in ensuring any gaps in information is resolved, and support new and existing reporting entities to understand their obligations under the regime.

There will also be further opportunities to shape how the regime will work at a practical level, including managing regulatory impact. The department notes that the primary legislation will outline obligations in terms of the outcome to be achieved, whereas the Rules provide further detail on how such obligations may be achieved. There will be an additional public consultation process on the Rules to ensure the reforms are fit-for-purpose. The aim is for the consultation on the Rules to follow closely behind the primary legislation being made public.

Governance arrangements

In the 2024-25 Budget the government committed additional funds for AUSTRAC and AGD to support the implementation of the reforms. The department and AUSTRAC will work together with industry stakeholders to support the implementation period. Progress will be monitored through regular reporting through AUSTRAC’s governance and program management mechanisms. The department will engage with Australian government and industry stakeholders on preparations for the FATF Mutual Evaluation through a range of existing forums at senior and working levels, as well as establishing specific governance structures to provide oversight and strategic guidance on the preparations.

Transitional arrangements

The department has provided advice in relation to pre-commencement customers and leveraging of existing professional obligations, which will assist new and existing reporting entities.

Question 7: How will you evaluate your chosen option against the success metrics?

Evaluation

The success of the AML/CTF reforms will be measured against metrics that align with the desired objectives of the reforms: a predicted improvement of quality information generated by reports to AUSTRAC, improved technical compliance ratings at the next FATF mutual evaluation over 2026-27 and beyond, and the minimisation of regulatory burden.

The department will evaluate the reforms' success in line with the implementation plan outlined above, and in the years beyond. Evaluation will also be conducted with reference to the Commonwealth Evaluation Policy. Evaluation will consider the following questions related to the chosen success metrics:

- To what extent has reform of the AML/CTF regime improved the quality of financial intelligence to support effective law enforcement?
- To what extent has reform of the AML/CTF regime contributed to helping Australia comply with international standards related to AML/CTF?
- To what extent has reform of the AML/CTF regime minimised the regulatory burden for reporting entities?

Question 2 outlined appropriate metrics to measure the reform objectives. The following metrics will guide the evaluation:

- **Objective**: Combatting crime
    - Metric: Number of suspicious matter and TTR.
        - *Target*: Increase in numerical yield.
    - Metric: Percentage of stakeholders who rate the impact of AUSTRAC's financial intelligence to their work as having a positive impact.
        - *Target*: 75 per cent or greater.
    - **Data sources**: Reports from reporting entities and law enforcement partners.
- **Objective**: Increased FATF compliance
    - Metric: Technical compliance ratings in the 2026-27 mutual evaluation and in future FATF assessments.
        - *Target*: Improved ratings.
- **Objective**: Minimising regulatory burden
    - Metric: Analysis of qualitative and quantitative data to achieve the outcome of minimising regulatory burden along with achieving the first two objectives.
        - *Target*: Achieving all three objectives to the greatest extent possible.

Key outcome: combatting crime

The implementation of Option 4 is expected to significantly increase the yield of useful financial intelligence generated by the submission of reports by regulated entities to AUSTRAC. As such, the department intends that a key metric of the success of Option 4 will be whether this increase materialises and is passed on to other law enforcement and intelligence agencies, as well as the extent to which this financial intelligence assists law enforcement investigations.

Metrics

Option 4 would see AUSTRAC's reporting entity population increase from approximately 17,000 by approximately 90,000 entities. The department expects that this expansion will be accompanied by a rise in the number of suspicious matter and TTRs received by AUSTRAC. As noted in Question 2, greater reporting volumes as a result of implementing Option 4 would reflect crime that is already occurring rather than indicating that crime is worsening.

As a result of parallel reforms to simplify and modernise the AML/CTF regime, the department anticipates that the quality of the financial information generated by reporting entities will also be enhanced. With obligations being made easier to understand, reporting entities will be able to dedicate greater time and resources to creating more actionable suspicious matter and TTRs. Engagement with law enforcement and intelligence partners to survey whether the financial intelligence generated by the AML/CTF regime has an impact on their work will be a key assessment metric for this outcome.

Targets

The department considers that an increase in numerical yield of suspicious matter and transaction threshold reports received will indicate that this key outcome has been achieved. A further target will be the percentage of law enforcement and intelligence stakeholders who rate the impact of AUSTRAC's financial intelligence as having a positive impact on their work.

Key constraints

As noted above and in Question 2, there are inherent challenges in detecting and preventing organised criminal activity due to its covert nature. The department acknowledges that it will never be possible to detect all crime; however, increasing the yield and quality of financial intelligence through the reforms will ensure law enforcement and intelligence agencies are as equipped as possible to understand and respond to crime within this operating environment.

Key outcome: increased FATF compliance

The department has concluded that Option 4 presents the best pathway for achieving greater compliance with FATF Standards at the 2026-27 mutual evaluation. It is the department's intention that a key metric of the success of Option 4 will be the results of both Australia's next FATF mutual evaluation in 2026-27 and future assessments of Australia's AML/CTF regime by the FATF. This includes reporting on Australia's Key Recommended Actions Roadmap, which will be received as part of the mutual evaluation process.

Metrics

The department considers that if the implementation of Option 4 results in an upgrade of the relevant technical compliance ratings from 'unsatisfactory' (non-compliant or partially complaint) to 'satisfactory' (largely compliant or compliant), it will have succeeded to the greatest degree possible.

Should the implementation of Option 4 result in a minor upgrade in technical compliance ratings (from non-compliant to partially compliant), this will be taken as an indicator of partial success. Should Australia retain present ‘non-compliant’ ratings or be downgraded to ‘non-compliant’ in key areas covered by Option 4, then it will not be seen as successful in meeting this key metric.

Targets

The department is seeking improved technical compliance ratings with respect to the following FATF Recommendations:

Rec	Rating	Title	Deficiency and key actions to address compliance
R 15	PC	New technologies	Australia does not currently regulate all specified digital currency exchange services (including digital-to-digital, transfer of assets, safekeeping/administration of assets, provision of financial services related to sale of virtual assets).
R 16	PC	Wire transfers	Requirements for information accompanying transactions do not meet FATF standards and are not applied to digital currency services.
R 22	NC	DNFBPs: CDD	Australia does not regulate DNFBPs for AML/CTF purposes.
R 23	NC	DNFBPs: Other measures	Australia does not regulate DNFBPs for AML/CTF purposes.
R 28	NC	Regulation and supervision of DNFBPs	Australia does not regulate DNFBPs for AML/CTF purposes.

Key constraints

It is important to note that the FATF Standards themselves are subject to ongoing review and continuous strengthening. Therefore, it would not be possible to implement an option that would achieve certain ongoing compliance. As the agency holding policy responsibility for the Act, it will form part of the department’s ongoing responsibilities to remain engaged with the FATF and responsive to any changes to the Standards that may be implemented.

Further, as acknowledged in Question 2, the dates and precise nature of ongoing FATF assessment and reporting processes will not be known until after the mutual evaluation, so a specific time cannot be attached to this measure of success.

Key outcome: minimising regulatory burden on industry

A key element of Option 4 is the implementation of simplification and modernisation reforms, which will not only minimise regulatory burden on newly regulated entities but make the regime easier for existing regulated entities to comply with. Using the funding provided in the 2024-25 Budget, the department will evaluate the success of these measures over the course of several years following commencement.

Metrics

The department's key metric for this outcome is consideration of whether the outcomes of minimising regulatory burden and achieving the other key outcomes of combatting crime and increased FATF compliance have been holistically achieved to the greatest extent possible, as outlined in Question 4.

In the 2024-25 Budget, the Government provided $166.4 million over four years to implement the reforms, including $5.4 million and 8 ASL to boost the department's economic crime policy capabilities. This resourcing will be used to establish a dedicated implementation team, who will conduct the evaluation process in partnership with AUSTRAC and the department's Evaluation Insights Section. The department and AUSTRAC will monitor and evaluate the effectiveness of the implementation of the reforms in consultation with affected stakeholders, including industry, law enforcement and intelligence partners and government agencies.

An additional metric will be AUSTRAC's annual reporting obligations. This requires AUSTRAC, as an Australian Government agency, to communicate important aspects of how they operate and how well they are performing. This transparency helps foster trust, confidence and willing compliance from those regulated, and will serve as a further tool for evaluating whether this outcome has been achieved. AUSTRAC also conducts regular education campaigns and industry outreach, which is targeted at engaging directly with industry regarding the operation of the regime and how it impacts their businesses. The feedback received through this medium will be another key metric in assessing the effectiveness of Option 4.

Targets

The department considers that future analysis of data mentioned above will indicate that this key objective has been achieved. Data to be analysed includes feedback from both industry and law enforcement and intelligence partners, as well as the metrics for the first two objectives of reform, which is likely to result in a finding that regulatory burden has been minimised to the extent possible without compromising the effectiveness of the AML/CTF regime.

Key constraints

Due to the phased implementation approach that will be taken to the reforms, it will not be possible to assess the effectiveness of this key objective within a distinct time period. Rather, evaluation will take place over an extended period and will be an ongoing endeavour pursued by the department in its governance role, and AUSTRAC in its regulatory capacity.

Proposed consultation process with impacted stakeholders

As outlined above, the department will establish a dedicated implementation team to conduct the evaluation process collaboratively with AUSTRAC and the department's Evaluation Insights section. As indicated in the implementation plan set out at Question 6, this process will commence from 2027 once all reform measures are in force.

The detail of this evaluation process will be established by the department's implementation team well in advance of 2027 to ensure that the process can commence as soon as practicable. The department anticipates that, at a high level, this will consist of targeted engagement (e.g. roundtables, meetings, surveys) with affected industry stakeholders to seek feedback on how the reform measures have affected their compliance with the AML/CTF regime, as well as any impacts on their business operations. The department will also engage with government and law enforcement partners through established forums and communication channels to determine how successful the reforms have been in achieving the key outcome of combatting crime. Funding has been secured in the 2024-25 Budget to support this function within the department.

It is expected that feedback gathered through this evaluation process will enable the department to assess whether all key outcomes have been achieved, and inform future phases of reform as required. This evaluation process will also support the ongoing functionality and effectiveness of AUSTRAC's education and guidance functions insofar as they relate to reform measures progressed through this phase of reform.

Attachment A: Preliminary Analysis of the 2016 Statutory Review Recommendations

Number	Recommendation	Status
1	The AML/CTF Act should be simplified to enable reporting entities to better understand and comply with their AML/CTF obligations.	Ongoing
2	The AML/CTF Rules should be simplified, rationalised and presented in a user-friendly format to improve accessibility and understanding of obligations.	Ongoing
3	The AML/CTF Act and Rules should adopt the technology neutrality principle	Ongoing
4	AUSTRAC should consider further opportunities to provide greater guidance and publish feedback on compliance outcomes and the value of financial intelligence.	Ongoing
5	Reforms to the AML/CTF Act and Rules that have a regulatory impact should be co-designed by government and industry.	Ongoing
6	A government working group should be established to consider international developments in combating terrorism financing and consider the appropriateness of these measures for the Australian context	Complete
7	The AML/CTF Act should be amended to include objects that relate to the following concepts: • implementing measures to detect, deter and disrupt money laundering, the financing of terrorism, the proliferation of WMD and its financing and other serious crimes • responding to the threat posed by money laundering, the financing of terrorism, the proliferation of WMD and its financing and other serious crimes by providing regulatory, national security and law enforcement officials with the information they need to detect, deter and disrupt these crimes	Ongoing

	• supervision and monitoring of compliance by reporting entities with Australian sanction laws (subject to consideration in Chapter 15 of this report), and • promoting public confidence in the Australian financial system.	
8	The AML/CTF Act should be amended to insert general principles for the administration of the Act that provide for the following: • AML/CTF obligations under the AML/CTF Act, Rules and Regulations should be proportionate to the ML/TF risks faced by reporting entities • regulatory, national security and law enforcement agencies should have access to the information they need to detect, deter and disrupt money laundering, the financing of terrorism, the proliferation of WMD and its financing, contraventions of Australian sanction laws and other serious crimes (subject to consideration in Chapter 15 of this report), and • AML/CTF obligations under the AML/CTF Act, Rules and Regulations should be designed and implemented in a way that minimises and appropriately addresses the privacy risks and impacts associated with the handling of personal information.	Recommend not proceeding - Recommendation overlaps with a number of other recommendations (including recommendations 1-5 and those relating to sanctions supervision) and will therefore be addressed through these other recommendations.
9	The AML/CTF Act should be amended to delete the following from table 1 of section 6: • Item 51 (collecting physical currency, or holding physical currency from or on behalf of a person), and • Item 53 (delivering physical currency to a person).	Complete
10	AUSTRAC should conduct an assessment of the ML/TF risks posed by the issuing, selling and cashing/redeeming of traveller's cheques and whether these services should continue to be regulated under Australia's AML/CTF regime.	Complete
11	AUSTRAC should conduct an assessment of the ML/TF risks posed by stored value cards and the continued appropriateness of the thresholds in the stored value card designated services	Complete

12	AUSTRAC should conduct an assessment of the ML/TF risks posed by the services provided by 'cheque cashing facilities' with a view to regulating these services under the AML/CTF Act if they are determined to pose a high ML/TF risk.	Recommend not proceeding - Recommendation is of an operational nature, cannot be progressed through legislative change and is better progressed by agencies.
13	The use of the term ‘in the course of carrying on a business’ should be qualified for the activities currently within tables 2 and 3 of section 6 of the AML/CTF Act to ensure that only activities routinely or regularly provided by a reporting entity are captured under AML/CTF regulation.	Complete
14	The Attorney-General’s Department and AUSTRAC, in consultation with industry, should develop options for regulating lawyers, conveyancers, accountants, high-value dealers, real estate agents and trust and company service providers under the AML/CTF Act.	Complete
15	AUSTRAC should closely monitor the ML/TF risks associated with new payment types and systems (including front-end applications), to ensure gaps do not develop in Australia’s AML/CTF regime.	Outstanding
16	The AML/CTF Act should be amended to ensure that digital wallets are comprehensively captured by AML/CTF regulation.	Outstanding
17	The AML/CTF Act should be amended to expand the definition of e-currency to include convertible digital currencies not backed by a physical ‘thing’.	Complete
18	The AML/CTF Act should be amended to regulate activities relating to convertible digital currency, particularly activities undertaken by digital currency exchange providers.	Ongoing
19	AUSTRAC should identify designated services that pose a high ML/TF risk when provided to an Australian customer by an offshore-based business.	Outstanding
20	The Attorney-General’s Department, in partnership with AUSTRAC, should develop an appropriate model for applying AML/CTF obligations under the AML/CTF Act to high-risk designated services provided by offshore service providers.	Outstanding

21	AUSTRAC should monitor the ML/TF risks posed by designated services offered by offshore service providers that fall outside the scope of Australia's AML/CTF regime.	Outstanding
22	The AML/CTF Act should be simplified to explicitly require reporting entities to implement the core CDD obligations.	Outstanding
23	The AML/CTF Rules for CDD should be rationalised and simplified as a priority, using plain language to facilitate ease of use and supplemented by enhanced guidance.	Outstanding
24	AUSTRAC should consider and explore other reliable options, including those utilising new technologies, as alternatives to the existing minimum KYC requirements for individual customers.	Complete
25	The safe harbour and simplified verification procedures under the AML/CTF Rules should be rationalised into a single simplified CDD procedure.	Outstanding
26	AUSTRAC should consider expanding the availability of simplified CDD to designated services and customers that have a minimal or low ML/TF risk.	Outstanding
27	The AML/CTF Rules should explicitly allow for use of self-attestation to identify individual customers using a risk-based approach only as a measure of last resort where a customer's identity cannot otherwise be reasonably obtained or verified.	Complete
28	The AML/CTF Rules should allow reporting entities to accept disclosure certificates certified by an acceptable officer using a risk-based approach.	Complete
29	AUSTRAC and industry representatives should develop guidance to assist reporting entities to conduct CDD on customers that may experience difficulty accessing services provided by reporting entities because they are unable to comply with the more conventional methods for proving identity.	Complete
30	The AML/CTF Act should be amended to explicitly prohibit reporting entities from providing a regulated service if the applicable customer identification procedure cannot be carried out and require reporting entities to consider making a SMR in such situations.	Complete

31	AUSTRAC should conduct an ML/TF risk assessment on whether the CDD threshold for casinos and other gaming providers should change.	Outstanding
32	The AML/CTF Rules should be amended to require reporting entities to conduct specific enhanced CDD measures (in line with the FATF standards) at the time of pay out where the beneficiary or beneficial owner of a life insurance policy is a PEP and a higher ML/TF risk is identified.	Recommend not proceeding - Recommendation may not be necessary in light of enhancements to CDD obligations as part of previous phases of reform.
33	The AML/CTF Act should be amended to expand the ability of reporting entities to rely on customer identification procedures performed by a third party, subject to the following conditions: • where the third party agrees to being relied on, the relying business remains ultimately responsible for CDD measures, and • where the third party is outside of Australia, the third party is subject to appropriate regulation and similar customer identification requirements as are applicable in Australia.	Complete
34	AUSTRAC should permit access to the Reporting Entities Roll, subject to appropriate privacy restrictions, in a similar manner to the Remittance Sector Register.	Outstanding
35	AUSTRAC to conduct an assessment on the viability and impacts of changes to the international funds transfer instruction reporting regime to: • provide exemptions for international funds transfer instructions below a certain threshold, relating to specific low ML/TF risk designated services • include the reporting of transactions undertaken using credit/debit cards, and • expand the scope of information reported to AUSTRAC.	Ongoing
36	AUSTRAC should assess the ML/TF risks associated with international transactions that involve the withdrawal of cash from ATMs located in Australia using foreign issued cards.	Outstanding

37	The AML/CTF Act should be amended to better align the electronic funds transfer instructions requirements with the FATF standards for wire transfers.	Outstanding
38	The AML/CTF Act and Rules should be amended to simplify and streamline transaction reporting obligations and produce regulatory efficiencies. This process should include: • consideration of extending the funds transfer chain definition to providers of designated remittance arrangements • reviewing the value of requiring transaction reports to be submitted by two entities involved in the one transaction, and • allowing TTRs and international funds transfer instructions to be submitted as one report when they relate to the same transaction.	Outstanding
39	Changes to reporting requirements should occur concurrently with the proposed changes arising from AUSTRAC's Foreign Fighters Initiative.	Outstanding
40	AUSTRAC and the Attorney-General's Department should closely monitor the progress of the New Payments Platform and continue to engage with its primary participants.	Ongoing
41	Amend the Act and Rules to merge and streamline the Part A and Part B requirements for AML/CTF programs into a single requirement for reporting entities to develop, implement and maintain an AML/CTF program that is effective in identifying, mitigating and managing their ML/TF risks	Outstanding
42	Amend the Act to impose an obligation on reporting entities to report serious breaches of AML/CTF obligations to AUSTRAC in a timely manner	Outstanding
43	The AML/CTF Rules should be amended to require reporting entities to incorporate information provided by AUSTRAC or other relevant authorities on high ML/TF risks into their risk assessments	Complete
	The AML/CTF Rules should be amended to incorporate information provided by AUSTRAC or other relevant authorities on high ML/TF risks into their risk assessments	Complete

	The AML/CTF Rules should be amended to describe the roles and functions of an AML/CTF compliance officer and associated AML/CTF compliance arrangements	Outstanding
	The AML/CTF Rules should be amended to guarantee the independence of the reviewer of AML/CTF programs	Complete
	The AML/CTF Rules should be amended to require reporting entities to identify, mitigate and manage the ML/TF risks posed by new technologies.	Complete
44	AUSTRAC should develop guidance to assist reporting entities to assess their ML/TF risks and develop AML/CTF programs	Ongoing
	AUSTRAC should develop guidance to assist reporting entities to determine how often independent reviews of their AML/CTF programs should be conducted	Complete
45	The AML/CTF Act and Rules should be amended to replace the designated business group and joint AML/CTF program construct with a framework that allows an AML/CTF program to incorporate all reporting entities within a corporate group	Outstanding
46	The AML/CTF Act and Rules should be amended to require reporting entities to apply AML/CTF measures to its foreign branches and subsidiaries that are consistent with requirements under the AML/CTF Act where the AML/CTF measures in the other country are less strict than Australia's	Outstanding
	The AML/CTF Act and Rules should be amended to require reporting entities to inform AUSTRAC where the foreign host country of foreign branches and subsidiaries does not permit the proper implementation of these AML/CTF measures	Outstanding
47	The AML/CTF Rules should be amended to require reporting entities that operate branches or subsidiaries located in foreign countries to have the AML/CTF programs for these branches or subsidiaries reviewed by an independent auditor when required by AUSTRAC. The reporting entity should also be required to provide the audit report to AUSTRAC.	Outstanding

48	The AML/CTF Act should be amended to establish an explicit requirement that sufficient transaction records must be made and kept by reporting entities to enable reconstruction of individual transactions.	Outstanding
49	The AML/CTF Rules should be amended to establish an obligation that reporting entities maintain their AML/CTF records in a format that allows the records to be provided to AUSTRAC and partner agencies swiftly.	Outstanding
50	AUSTRAC should develop guidance to assist reporting entities to understand what records they should keep	Complete
51	AUSTRAC should develop, in consultation with industry, a new compliance reporting process that is relevant to the information needs of AUSTRAC and reduces unnecessary regulatory burden.	Complete
52	The AML/CTF Act and Rules should be amended to simplify and streamline the correspondent banking obligations commensurate with the FATF standards and establish a one-step process for conducting due diligence assessments on respondent financial institutions that is consistent with the FATF standards.	Complete
53	The AML/CTF Rules should be amended to require financial institutions to consider the quality of ML/TF supervision conducted in the country of the respondent institution as part of the due diligence assessment.	Complete
54	The AML/CTF Act should be amended to broaden the definition of correspondent banking in line with international approaches and consistent with the FATF standards	Complete
	The AML/CTF Act should be amended to require financial institutions to undertake specific due diligence in relation to payable-through accounts consistent with the FATF standards	Complete
	The AML/CTF Act should be amended to prohibit financial institutions from entering into a corresponding banking relationship with an institution that is able to enter into a correspondent banking relationship with a shell bank.	Complete

55	A government-industry working group should be established to develop options for strengthening regulatory oversight of remitters, including consideration of the existing enforcement power and penalty regimes, under the AML/CTF Act.	Outstanding
56	The definition of a designated remittance arrangement in the AML/CTF Act should be amended to ensure that non-remittance businesses are not unintentionally regulated as remitters under the AML/CTF Act.	Outstanding
57	The AML/CTF Act and Rules should be amended to explicitly require remittance network providers to monitor their affiliates' compliance and report to AUSTRAC on breaches and remedial action as required.	Outstanding
58	The AUSTRAC CEO should be allowed to deregister remitters that are not conducting remittance activities (as evidenced by a lack of reporting or other relevant activity)	Complete
	The AUSTRAC CEO should be allowed to ban individuals from involvement in the management or business of a remitter based on a demonstrated lack of suitability, fitness or propriety	Outstanding
	The AUSTRAC CEO should be allowed to publish refusals and notices detailing the circumstance of a cancellation of the registration of a remitter.	Complete
59	The current cross-border reporting regime for physical currency and BNIs in the AML/CTF Act should be replaced with a consolidated requirement to report 'cash' of $10,000 or more. For the purposes of Part 4 of the AML/CTF Act, cash should be defined as: • physical currency • bearer negotiable instruments (see Recommendation 12.2) • bullion, and • an object or instrument specified in the AML/CTF Rules.	Complete
60	The current definition of a bearer negotiable instrument under the AML/CTF Act should be amended to include: • gaming chips or tokens	Complete

	- plaques or letters of credit, and - an object or instrument specified in the AML/CTF Rules.	
61	The Attorney-General’s Department, AUSTRAC and the Department of Immigration and Border Protection should investigate the feasibility of establishing cross-border reporting obligations in relation to stored value cards.	Complete
62	The powers under sections 199 and 200 of the AML/CTF Act should be broadened to allow police and customs officers to search and seize ‘cash’ where there is: - a suspicion of money laundering, terrorism financing or other serious criminal offences, or - where there has been a breach of the cross-border reporting requirements under the AML/CTF Act.	Complete
63	The AML/CTF Act should be amended to increase the civil penalty available for failing to comply with the cross-border ‘cash’ reporting requirement in line with international standards.	Complete
64	Sections 199 and 200 of the AML/CTF Act should be amended to provide for a civil penalty for breach of these provisions.	Complete
65	The AML/CTF Act should be amended to allow the definition of ‘eligible place’ to be expanded to include other designated areas (for the purposes of the AML/CTF Act) by way of regulation.	Recommend not proceeding - Although this was requested by the then Australian Customs and Border Protection Service, this recommendation has since been assessed by the Australian Border Force as not operationally necessary
66	The Attorney-General’s Department, in partnership with AUSTRAC and in consultation with other government agencies, should develop a simplified model for sharing information collected under the AML/CTF Act that is:	Complete

	- responsive to the information needs of agencies tasked with combating ML/TF and other serious crimes - 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.	
67	Subject to appropriate controls and safeguards, the AML/CTF Act should be amended to permit reporting entities to disclose SMR-related information to foreign parent entities and external auditors [tipping off offence exceptions]	Complete
68	AUSTRAC and the Attorney-General's Department should explore options for expanding AUSTRAC's compliance testing tools in consultation with industry and government stakeholders.	Outstanding
69	The AML/CTF Act should be amended to adopt the model regulatory powers set out in the Regulatory Powers (Standard Provisions) Act 2014, while maintaining the existing powers in the AML/CTF Act relating to remedial directions, external audits, ML/TF risk assessments and statutory notices.	Outstanding
70	The AML/CTF Act should be amended to expand the remedial directions power to allow AUSTRAC to direct reporting entities to remedy past contraventions of AML/CTF reporting obligations.	Complete
71	The AML/CTF Act should be amended to expand the infringement notice provisions under subsection 184(1A) to include a wider range of minor offences established under the AML/CTF Act that are regulatory in nature.	Complete

72	The AML/CTF Act should be amended to give agencies that already have the power to issue notices to a person or reporting entity under sections 49 and 50 of the AML/CTF Act an additional power to issue infringement notices or apply for civil penalties if that person or entity fails to comply with such a notice.	Recommend not proceeding - Previous consultation with industry indicated that this requirement would be inefficient as industry may receive multiple, overlapping requests and receive overlapping fines. Operational benefits may also be limited.
73	AUSTRAC should create template section 49 and 50 notices for use by all relevant agencies.	Complete
74	The AML/CTF Act should be amended to clarify that sanctions for breaches of the AML/CTF Act or Rules by reporting entities can also apply to senior managers and directors in appropriate circumstances	Outstanding
75	AUSTRAC and the Department of Foreign Affairs and Trade should explore the feasibility of AUSTRAC monitoring and supervising compliance with Australian sanction laws.	Ongoing
76	The AML/CTF Act should be amended to give the AUSTRAC CEO the power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her duties, and	Complete
	The AML/CTF Act should be amended to expand the scope of the functions of the AUSTRAC CEO to include: • retaining, compiling and analysing AUSTRAC information • facilitating access to, and the sharing of, AUSTRAC information to support domestic and international efforts to combat money laundering, terrorism financing and other serious crimes, and • disseminating AUSTRAC information, where appropriate, to support government policy-making, industry education, public education and academic research.	Complete

77	The AML/CTF Act should be amended to set out the specific matters that the AUSTRAC CEO must take into account when determining exemptions, with the level of ML/TF risk posed being the prime consideration	Complete
78	AUSTRAC should adopt a more proactive approach to identifying opportunities to reduce unnecessary regulatory burden where the designated service, or the circumstances in which the designated service is provided, poses a low ML/ TF risk.	Ongoing
79	AUSTRAC should, in consultation with industry, simplify and streamline the application process for reporting entities seeking exemptions from AML/CTF obligations and develop guidance to assist reporting entities to navigate the new process.	Complete
80	AUSTRAC should amend its Exemption Policy to specify • time frames for AUSTRAC to determine exemption applications, and • time frames for reviewing the continued appropriateness of exemptions granted.	Complete
81	Repeal the FTR Act and Regulations and amend the AML/CTF Act and Rules to retain reporting requirements in relation to traveller's cheques, motor vehicle dealers	Outstanding
	Repeal the FTR Act and Regulations and amend the AML/CTF Act and Rules to address any transitional issues resulting from the repeal of the FTR Act and Regulations.	Outstanding
82	In the repeal of the FTR Act, insurance intermediaries and general insurance providers, apart from motor vehicle dealers, should not retain their reporting obligations.	Outstanding
	The AML/CTF Act should be amended to remove the list of accounts in the definition of 'account'	Outstanding
83	The AML/CTF Act should be amended to replace the 'control test' in the AML/CTF Act with a test based on the FATF's beneficial owner definition	Outstanding
	The AML/CTF Act should be amended to replace the definitions of 'credit card' and 'debit card' with definitions identical to those in section 39 of Schedule 2 of the Competition and Consumer Act 2010	Outstanding

	The AML/CTF Act should be amended to combine the ‘factoring’ and ‘forfeiting’ designated services and clarify whether it includes different types of factoring, such as reverse factoring	Outstanding
	The AML/CTF Act should be amended to redraft the definition of ‘loan’ to clarify what is included within the definition	Outstanding
	The AML/CTF Act should be amended to: redraft the definition of ‘signatory’ so that it more narrowly applies to persons with authority to authorise payment transactions and also include a power to make Rules to amend the definition	Complete
	The AML/CTF Act should be amended to redraft the definition of ‘stored value card’ to provide industry with greater guidance as to what a stored value card can include, while remaining broad, inclusive and sufficiently flexible to cover virtual cards.	Complete
84	The AML/CTF Rules should be amended to limit the application of the AML/CTF Act definitions of ‘derivative’ and ‘security’ so that they only apply to schemes intended to be covered by the AML/CTF Act	Outstanding
	The AML/CTF Rules should be amended to: (b) make the definitions of an ‘original primary photographic identification document’, an ‘original primary non-photographic identification document’, and an ‘original secondary identification document’ inclusive	Complete
	The AML/CTF Rules should be amended to: (c) include national identity cards issued by foreign countries that include unique identifiers rather than signatures (such as biometric identifiers) in the definition of ‘primary photographic identification document’	Complete
	The AML/CTF Rules should be amended to: (d) expand the definition of ‘certified copy’ to include foreign equivalents to the domestic list	Complete
	The AML/CTF Rules should be amended to: (e) redraft the definition of ‘managed investment scheme’ in the AML/CTF Rules so it applies only to schemes intended to be covered by the AML/CTF Act, and	Outstanding

	The AML/CTF Rules should be amended to: (f) expand the circumstances in which a reporting entity is related to its customer in Chapter 36 of the AML/CTF Rules to include partnerships where justified by the ML/TF risk.	Outstanding

Attachment B: Impact measurement methodology

The costs and benefits of the proposed reforms have been estimated based on assumptions of the number of businesses and the proportion of total economic activity that is subject to regulation under the existing regime and the proposed future regime. These estimates have been developed according to the designated services prescribed by the AML/CTF Act and the additional designated services proposed under the reforms (detailed in Question 3).[173]

Number of existing regulated entities

The total number of these regulated entities are separated by turnover size to allow the analysis to account for AML/CTF program complexity for larger businesses. The number of businesses in each cohort are presented in Table 25.

***Table 25* | Number of existing regulated entities by turnover size**

Industry	$0 - $200k	$200k - $2m	$2m - $10m	$10m+	Total
Financial services	3,997	2,398	489	351	7,235
Bullion traders	98	84	29	34	245
Gambling services	1,281	1,904	967	434	4,586
Digital currency exchange providers	190	116	17	6	329
Remitters	2,505	1,539	229	76	4,349
Total	**8,071**	**6,041**	**1,731**	**901**	**16,744**[174]

Estimation of number of tranche two businesses

The total number of businesses that will be newly regulated due to the expansion of the AML/CTF regime is dependent on the proportion of the targeted industries that provide the proposed designated services.

[173] Note: the content in this Attachment B has been extracted and adapted from Nous Group, 'Impact analysis: Regulatory reforms to AML/CTF regime' (Report, August 2024).

[174] The total number of reporting entities by industry was provided by AUSTRAC. For the purposes of this analysis, reporting entities that do not provide designated services, are not AML-regulated, or have not been classed to specific industries have been excluded.

To estimate the total number of businesses in the relevant industries, each industry is mapped to most relevant the Australian and New Zealand Standard Industrial Classification (ANZSIC) classes. ANZSIC classes are used by the ABS to group businesses into industries based on their predominant business activity. The total numbers of businesses per each industry have been estimated using ABS data on the number of businesses operating as of 30 June 2023.[175] These estimates were adjusted by the average annual growth rate in business numbers for comparable industries to estimate the population for the 2025 financial year.

Primary activities in some cases are broader than the designated services to be regulated. As not all businesses included in the ANZSIC classes will provide the proposed designated services (e.g. bookkeeping and tax agent services for accounting businesses), assumptions have been made as to the proportion of each sector that will be subject to the new regime (see Table 26). The proportions applied to each sector were informed by expert advice by AUSTRAC, the actual proportions of businesses regulated by the New Zealand AML regime, and assumptions adopted in the cost-benefit analysis of the New Zealand AML/CTF regime.[176]

The relatively low proportion applied to the ‘Trust and company services’ industry is due to the ‘Other Auxiliary Finance and Investment Services’ ANZSIC classification including many entities that are likely to be regulated under the existing regime. Similarly, the low proportion applied to the ‘Dealers in precious metals and stones’ industry is due to the ANZSIC classes covering all jewellery and watch manufacturers, wholesalers and retailers, many of which do not sell products that would constitute a designated service and since obligations would only apply to those who engage in transactions value at more than $10,000.

Table 26 **| Estimated population of tranche two businesses**

Industry	Total business population	Proportion of industry regulated [177]	Total regulated population
Accounting services	36,314	75%	28,223
Legal services	23,517	70%	17,059
Trust and company services	45,235	15%	7,057
Real estate	44,227	80%	36,408
Dealers in precious metals and stones	5,279	15%	812
Total	**154,572**		**89,557**

[175] Australian Bureau of Statistics. (2023). Counts of Australian Businesses, including Entries and Exits, July 2019 - June 2023. https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/jul2019-jun2023, accessed 02 July 2024

[176] New Zealand Ministry of Justice 2017, Cost Benefit Analysis: AML Phase 2, https://www.justice.govt.nz/assets/cost-benefit-analysis-aml-phase-2.pdf, accessed 02 June 2024

[177] AML/CTF regulation of the real estate industry relates only to businesses involved in the selling, purchasing or transferring of real property, and for dealers in precious metals and stones the regulations relates only to businesses accepting cash or digital currency payments equal to or above the $10,000 threshold.

Estimation of economic activity under monitoring due to reform

For the purposes of understanding the benefits of the expansion of the AML/CTF regime, it is necessary to measure the increase in the proportion of the economy subject to monitoring under the existing regime and the proposed future regime. As the regime focuses on designated services rather than specific industries, the ABS' Input-Output Tables for detailed product items[178] were used as a basis to estimate economic activity attributable to specific goods and services. This data presents information on supply and use of specific product items defined according to the Input-Output Product Classification (IOPC).

The IOPC classifies product items according to the ANZSIC classes of the industry from which they are primarily produced, with the eight-digit IOPC code consisting of the ANZSIC class followed by four digits representing the product number. The IOPC is used in the input-output tables to estimate the production and subsequent use of each good and service. This classification was used as a proxy for designated services under the AML/CTF regime. The IOPC categories that most closely matched the current and proposed designated services were mapped to the relevant industries to which the designated services were targeted (Table 28 and Table 29).

As the designated services for the existing regulated population were too narrowly defined to map directly to the IOPC classes, a conservative approach was taken. For the purposes of this analysis, all IOPC classes that may involve activities subject to AML/CTF regulation were included for the existing regime. This was especially the case for bullion dealers, as the industry is too small to be distinguished from other industries involved in the trading of gold and precious metals. In addition, classes that may meet the designated services targeting trust and company services providers under the tranche two reforms could not be distinguished from those that met the definition for designated services targeting financial services under the existing regime. In such cases, these IOPCs were only included for the existing regime. This method is likely to result in an overestimate of the proportion of total economic activity subject to monitoring under the existing regime, and as a result, an underestimate of the proportion under the proposed reforms.

Final demand at purchasers' prices was selected as the proxy for total economic activity. Purchasers' prices were used to more accurately capture how the money laundering process intersects with the economy, where launderers use illicit money to purchase goods and services or assets to disguise its origins, which would classify the launderer as a purchaser rather than a producer. Per Table 27 and Table 28,[179] the analysis suggests that expanding the AML/CTF regime to tranche two entities would increase total economic activity under monitoring from 5.67% to 16.55%, resulting in a 192% increase (10.88 percentage point increase).

[178] Australian Bureau of Statistics (2019-20). *Australian National Accounts: Input-Output Tables (Product Details)* <https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-input-output-tables-product-details/2019-20>.

[179] 2019-2020 was the most recent ABS release to provide a breakdown of final demand by Input-Output Product Classification (IOPC). This classification was used to more accurately identify the designated services that may be subject to regulation under the proposed reforms.

Table 27 | Proportion of total economic activity regulated under the current AML/CTF regime

Industry	% of total demand	IOPC Categories included
Financial Services	3.43%	Depository financing • 62000010 - Bank services - financial intermediation services indirectly measured • 62000020 - Bank services nec • 62220020 - Building society services nec • 62230020 - Credit union services nec • 62290010 - Other depository financial services (incl securitiser services) - financial intermediation services indirectly measured • 62290030 - Other depository financial services nec (incl money market and securitiser services) Other non-depository financing • 62300010 - Non-depository finance services - financial intermediation services indirectly measured • 62300020 - Non-depository finance services nec • 62400010 - Financial asset investors • 63100010 - Life insurance provision • 63300010 - Superannuation fund services • 64110010 - Financial asset broking services • 64190010 - Insurance fund management service • 64190020 - Auxiliary services to finance and investment nec • 64200010 - Services to insurance nec
Gambling services	0.57%	• 45000050 - Net losses from gambling - clubs, pubs, taverns and bars (hospitality) • 92010010 - Casinos operation • 92020010 - Lottery operation • 92090010 - Totalisator agency services • 92090020 - Gambling services nec
Bullion dealers	1.24%	Precious metal mining • 08040010 - Gold ores • 08070021 - Silver ores and concentrates • 08070022 - Zinc ores and concentrates (incl silver-lead-zinc combined concentrates) Non-ferrous metal manufacturing • 21330010 - Silver primary and secondary recovery (excl from purchased scrap) • 21330050 - Silver, copper (incl brass), lead and zinc recovery from purchased scrap • 21390010 - Platinum primary and secondary recovery (excl from purchased scrap) • 21390040 - Gold - primary and secondary (excl from purchased scrap) • 21391970 - Scrap waste from the smelting and refining of non-ferrous metals (incl precious) (2133-2139) • 21491970 - Scrap waste from the manufacture of non-ferrous metal products (incl precious) (2141-2149) • 25990190 - Metal ornaments and articles of precious metal (excl jewellery)
Total	**5.67%**	

Table 28 | **Proportion of total economic activity regulated under tranche two designated services**

Industry	% of total demand	IOPC categories included[180]
Real estate	10.4%	67110010 - Ownership of dwellings 67200010 - Real estate agent services
Professional services	0.33%	69000090 - Legal services 69000100 - Accounting services
Precious metal dealers	0.15%	25910100 - Jewellery and silverware
Total	**10.88%**	

Regulatory burden measurement – Overview

The regulatory burden measurement was conducted for every reform impact area. For each reform impact area, the current state cost, future state cost and transition cost have been estimated. This allowed for an upfront cost to be estimated for updating programs and procedures and an ongoing per annum cost to be identified for complying with the proposed reforms. The ongoing per annum costs are then discounted back into present-day values to estimate the entire regulatory impact of the proposed reforms. This is in line with guidelines on impact analysis and cost-benefit analysis from the Office of Impact Analysis, Department of Prime Minister and Cabinet.[181]

The following sections outline the approach to conducting the analysis, including the setting of economic parameters, the scenarios for analysis, the costs considered and the quantification of these costs across all impacted industries.

[180] This data cannot be disaggregated further to exclude leasing and renting which are not designated services, while there is no distinct category for precious stones.

[181] '*Guidance on Impact Analysis*', Office of Impact Analysis, Department of Prime Minister and Cabinet, 2024. Accessed on 5 July 2024 at <https://oia.pmc.gov.au/resources/guidance-impact-analysis>.

Economic parameters

The economic parameters for this analysis align with the requirements of the Office of Impact Analysis. These parameters are presented in Table 29.

***Table 29*| Economic parameters for burden measurement**

Parameter	Value	Rationale
Discount rate	7 per cent per year	The discount rate accounts for the time value of money. The Office of Impact Analysis requires that discount rates of 7 per cent per annum are used to calculate net present values.
Price year	2025 Financial Year	This is the time period closest to when the survey of businesses was conducted and aligns with the first year of the evaluation period. All costs in the analysis are real 2025 costs and do not include inflation.
Evaluation period	1 July 2024 to 30 June 2034	The reform options considered are evaluated in terms of their costs and benefits over a set evaluation period. The Office of Impact analysis does not require a specific timeframe. 10 years was selected to allow for any ongoing savings to be captured without over-estimating the ongoing benefits of the reforms beyond a reasonable time frame.

Data sources for quantification of inputs

Three primary data sources were used in the quantification of inputs:

- **A survey of existing reporting entities and tranche two entities** | Businesses were surveyed to understand both their current compliance costs and expected future compliance costs. This provided for a baseline estimate of the expected savings and additional burden across reforms that could then be refined through comparisons to the other data sources used in the analysis.
- **Engagement with AML Services providers** | AML services providers offer businesses AML/CTF services for a fee. These service providers gave a valuable external perspective on the cost of delivering these programs.
- **Reviews of International examples of similar reforms and regulatory regimes** | International examples of similar reforms and regulatory regimes were used to help confirm assumptions and the ongoing costs of compliance.

Survey of existing reporting entities and tranche two entities

Estimation of the current and future and therefore change in regulatory business and customer burden attributed to complying with AML/CTF regulation was estimated through the analysis of data collected by surveys of existing regulated entities and tranche two entities. The purpose, structure and data collected from the surveys is summarised in Table 30. This enabled estimation of the regulatory impost of the reforms across different business cohorts, including industry and business size. It is critical to note that at the time the surveys were conducted, the reforms remained subject to consultation, and the operational details are yet to be finalised. Further the AML/CTF Rules will build on the principles in the Act to provide further detail on how obligations may be met. As such, the operational impact of the reforms was difficult to quantify due to the limited understanding of some businesses of their expected obligations under the reforms, particularly for tranche two entities who have no experience with the AML/CTF regime. Therefore, estimates of regulatory burden reflect the best efforts and understanding of affected stakeholders.

Table 30 | **Summary of regulatory burden surveys**

	Regulated entity surveys	Tranche two entity surveys
Purpose	To explore how simplification and modernisation reforms (Option 2) would impact the regulatory burden for existing regulated entities.	To explore the impact that extending the AML/CTF regulatory regime would have on tranche two entities.
Population	Businesses currently regulated under the existing regime, including financial services providers, casinos, digital currency exchanges, remitters and bullion dealers.	Businesses proposed to be added to the regulatory regime, including lawyers, accountants, real estate professionals, dealers in precious metals and precious stones, and trust and company service providers.
Structure	For each Option 2 reform, respondents were asked questions on the level of upfront and ongoing burden that they expect will be necessary to understand and implement the reform.	For each of the six key regulatory obligations (Enrolment, AML/CTF program, CDD, Ongoing CDD, Reporting, Record-keeping), respondents were asked to estimate the expected upfront and ongoing burden that they expect will be necessary to understand and implement each requirement as they are proposed to exist under Option 4 (incorporating the Option 2 reforms).
Questions	• Burden of complying with current AML/CTF obligations, including: • Staffing effort • Outsourced costs for external professional advice. • System operating and data storage costs. • Expected one-off burden (per above categories) required to update policies, processes and systems to comply with the revised obligations. • Expected ongoing burden (per above categories) to comply with the revised obligations. • Number of customer relationships involving the provision of designated services, including customer types, and their risk profiles.	• Burden of complying with existing obligations similar to those contained in the proposed AML/CTF regime, including: • Staffing effort • Outsourced costs for external professional advice. • System operating and data storage costs. • Expected one-off burden (per above categories) required to update policies, processes and/or systems to comply with the proposed new AML/CTF obligations. • Number of customer relationships involving the provision of the proposed designated services, including customer types, and their risk profiles.

Across all surveys conducted, 109 entities completed survey responses were analysed, from a total of 180 submitted responses. This included:

- Already regulated entities – 52 responses
- Tranche two entities – 57 responses.

Engagement of AML service providers

Nous undertook targeted consultations with businesses providing AML/CTF services to supplement findings from the survey and understand the costs of outsourcing AML/CTF obligations and any potential impacts of the proposed reforms to the delivery of these services.

During interviews Nous asked service providers questions focusing on:

- the variety of AML/CTF services they offered
- the profile of the clients that they offered services to, including the types of businesses and the sectors in which they operated
- the approximate fees charged for AML/CTF services and how these prices were determined, including whether the pricing was influenced by client characteristics such as size, structure and sector.

Discussions helped to understand the likely costs different businesses would face if they were to outsource specific components of their AML/CTF obligations as well as other factors that would influence the implementation of the reforms. The data gathered was used as a secondary point of verification for estimates of outsourcing cost provided by survey respondents.

Reviews of International examples of similar reforms and regulatory regimes

The United Kingdom and New Zealand both underwent reforms to their AML/CTF regulations in the past 20 years.

- The United Kingdom expanded their regime to tranche 2 industries in 2007 thought the *Money Laundering Regulations 2007*.
- New Zealand's *Anti-Money Laundering and Counter Terrorism Financing Act* was passed in 2009 and expanded their regime to include Tranche 2 entities in the second phase of the Act.

Publicly available information on the cost benefit analysis, effectiveness and implementation success of the two regimes was considered when developing estimates of both the benefits and regulatory burdens of the proposed reforms in this analysis.

Quantification of industry costs across reform areas

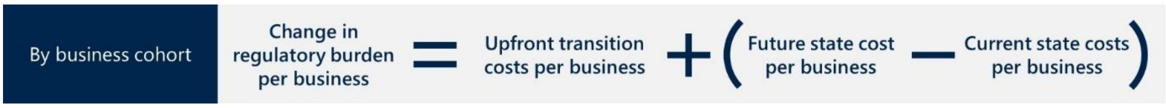
To estimate the change in regulatory burden for all impacted businesses, the average change in regulatory burden per business was estimated and then multiplied by the number of businesses estimated to be impacted by the proposed reforms.

This estimation of burden per business and multiplication was conducted by business cohort (on the basis of industry and business size groupings, described below). That is, the change in regulatory burden has been estimated for each six distinct business sizes within each industry and then summated to get the total regulatory burden estimate.

By business cohort | Total change in regulatory burden = Change in regulatory burden per business × Number of impacted businesses

A current state cost, future state cost and upfront transition cost methodology was used to estimate the average change in regulatory burden per business across both regulated and tranche two industries. This allowed the estimation of the upfront transition cost and change in ongoing compliance costs.

As noted above, estimates of regulatory burden per business were conducted for every business cohort. This means that for each industry and business size cohort, the current state, future state and upfront transition costs were estimated.



By business cohort: Change in regulatory burden per business = Upfront transition costs per business + (Future state cost per business − Current state costs per business)

The **current state** refers to the cost experienced by industry while operating under their existing regulatory requirements. These requirements vary by industry and business type. Some tranche two industries already operate under regulatory frameworks with similar requirements to those of the AML/CTF regime and this is considered in current state analysis.

- For regulated entities, this includes the costs of complying with the existing regime's requirements. An example is the cost of time spent conducting initial customer due diligence for new customers under the existing requirements.
- For tranche two entities, this includes the costs they already experience under their existing business processes. An example is the cost of time spent updating customer contact details due to a change in customer circumstances.

The **future state** refers to the cost expected to be experienced by industry when operating under the proposed reforms. The proposed reforms have different impacts on businesses in different industries and with different customer types.

- For regulated entities, this includes the costs of complying with the proposed requirements under the simplification and modernisation reforms identified in Option 2. An example is the cost of time spent conducting enhanced customer due diligence for new customers under the proposed reforms. The reforms in Option 2 clarify exactly when enhanced customer due diligence must be conducted.
- For tranche two entities, this includes the costs of complying with the proposed requirements that would apply under reforms to expand the regime. These requirements vary between Option 3 (which maintains the current requirements) and Option 4 (which includes the simplification and modernisation reforms under Option 2). An example is the cost of time spent updating customer risk ratings, as part of ongoing customer due diligence requirements, due to a change in customer circumstances.

The **upfront transition** cost refers to the costs required to design or update business processes and systems to comply with the proposed reforms. The costs associated with updating processes vary by business size and industry.

- For regulated entities, this includes the expected costs of updating their AML/CTF programs and processes to align with revised requirements under Option 2. An example is the external cost spent on lawyers to understand how the reforms impact their existing enhanced customer due diligence process and what updates they need to make to comply.
- For tranche two entities, this includes the expected costs of developing AML/CTF programs and processes to align with the regime's requirements that would apply under reforms to expand the regime. These requirements vary between reform Option 3 (which maintains the current requirements) and Option 4 (which includes the simplification and modernisation reforms under Option 2). An example is the expected cost of external advice to understand their business requirements for ongoing customer due diligence under the AML/CTF regime and the updates they must make to their existing processes and procedures.

Business cohorts

Regulatory burden for business will vary by industry and business size. This is due to the nature of the AML/CTF designated services and their interactions with specific industries and businesses sizes. Some industries, such as financial services, have relatively more designated services across their business than other industries such as gambling providers. There is not a direct correlation between the number of designated services a business provides and the complexity of their AML/CTF requirements. However, on average, businesses that have more designated services have a larger and more sophisticated AML/CTF program and additional reporting requirements.

Similarly, the cost of operating an AML/CTF program is also related to the size of the business operating the program. Large businesses with more customers will experience greater total costs for administering their program than smaller businesses.

Business size itself can be measured in multiple different ways. The model presented in this impact analysis uses data on business counts by ANZSIC classes. This data is collected and published by the Australian Bureau of Statistics (ABS).[182] The ABS publishes this data with two different identifiers of business size:

- Business turnover (Revenue) | Figures are reported with the following groupings: $0 - $50k, $50k - $200k, $200k - $2m, $2m - $5m, $5m - $10m and $10m+.
- Employee headcount (number of staff) | Figures are reported with the following groupings: Non employing, 1-4 Employees, 5-19 Employees, 20-199 Employees and 200+ Employees.

Both measures of business size present their own benefits and drawbacks for extrapolating cost across an entire industry. For the reasons introduced below, the average regulatory burden per business analysis was conducted by business turnover.

Business turnover (revenue) is generated through a combination of labour (FTE) and capital (machinery, computer systems, buildings) inputs. Businesses can choose distinct combinations of capital and labour in their own service production process. For example, one business could be relatively more labour intensive, with 10 employees and $1m spent on computer systems generating $10m in revenue each year. Meanwhile, another business might have decided to lever more computer technology in their business, and therefore choose to employee 4 senior employees and spend $4m on computing systems generating $10m in revenue each year. The interaction between capital and labour inputs in business output means that business turnover is the fulsome measure of business size, as it can account for different production decisions by businesses.

However, the current top grouping ($10m+) presented in ABS data creates a disadvantage when choosing business turnover as the grouping. The top turnover bucket is 10m+, meanwhile the top grouping for employee counts is 200+ employees. The business turnover measure does not capture detail on businesses in the higher business size groups. However, the business size by employee count suffers from a similar problem in the middle groupings. The ‘medium’ business size has the grouping of 20-199 employees, which includes a very diverse range of business sizes by turnover.

To allow for the fulsome capture of diverse business models and production mixes, the model in this report uses business count groups by revenue size. As highlighted above, both grouping approaches have clear benefits and drawbacks. However, only grouping by turnover allows for the diverse of production choices seen across tranche 2 entities to be accounted for accurately.

[182] Australian Bureau of Statistics. (2023). Counts of Australian Businesses, including Entries and Exits, July 2019 - June 2023. <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/jul2019-jun2023>, accessed 02 July 2024.

For these reasons, the average regulatory burden per business analysis was conducted for each of the business cohorts made up of an industry and business turnover size, presented in Table 31. These industries and turnover sizes align with ABS business reporting data.

Table 31 **| Business cohorts**

Industries considered in burden analysis	Business sizes considered in burden analysis
Financial services	Annual turnover of:
Bullion traders	$0 - $50k
Gambling services	$50k - $200k
Digital currency exchange providers	$200k - $2m
Remitters	$2m - $5m
Accounting services	$5m - $10m
Legal services	$10m +
Trust/company services	
Real estate	
Dealers in precious metals and stones	

Consideration of changes in number of regulated businesses

There are two different types of change in business numbers that must be considered when estimating regulatory burden. These include:

1. **The natural turnover of business entities across the regulated services** | For these cases, consideration needs to be given to the compliance costs facing these businesses when they enter the market and operate on an ongoing basis.
2. **Any change in business numbers caused by the reforms themselves** | For these cases, consideration need to be given to the structural impact of the reforms on businesses’ choice to enter and exit the market.

Consideration of these and their impact in the impact analysis is explained in detail below.

Natural turnover of entities

There is a natural turnover of businesses experienced in every industry that is driven through ongoing competition and innovation. This results in several new businesses each year and several businesses leaving the market.

Already regulated entities

For businesses offering designated services that are already regulated under the existing regime, analysis excludes any upfront burden for new entrants in each future year. This is due to the assumption that for all reform cases the upfront AML/CTF regulatory costs for starting a business under the existing regime and the regime with Option 2 reforms implemented are the same. This assumption is also used in the estimation of results for Option 3. This means that businesses that commence operations after the reforms have been implemented would experience the same upfront costs to establish their AML/CTF programs under the existing regime. Therefore, the difference in costs is zero between the base and reform case.

For businesses offering services that are already regulated under the existing regime, it is assumed that the ongoing burden for new entrants each year is transferred from exiting to these new entrants. For example, that is, the ongoing burden of doing Initial CDD for new customers and ongoing CDD is equal for the newly entering entities as it was for the entities that left the market. This means that there is no inclusion of additional ongoing business burden attached to the natural turnover of already regulated entities.

Tranche two entities

For tranche two entities, the approach estimated the upfront burden for new entrants into the market each year. New entrants would incur upfront costs to establish AML/CTF programs that they would not have had under the base case (remaining unregulated entities). This has been accounted for by applying a 7% entry rate per annum across the tranche two industries to represent new entrants having to experience the upfront regulatory burden each year. The entry rate was calculated as a weighted average of ABS entry rates for each tranche two industry, accounting for the number of businesses in each business size category. This entry rate was applied to the total upfront costs that businesses experience in year 1, as new entrants are expected to face the same upfront costs as existing tranche two entities.

For tranche two entities, we assume that the ongoing burden for new entrants each year is transferred over from old to new entrants. That is, the ongoing burden of doing Initial CDD for new customers and ongoing CDD is equal for the newly entering entities as it was for the entities that left the market. This means that there is no inclusion of additional ongoing business burden attached to the natural turnover of already regulated entities.

Change in number of businesses caused by the reforms

This analysis has assumed no structural change (increase or decrease in the natural turnover rate) in the number of regulated businesses across the ten-year time frame due to the impact of these reforms. This assumption is explained below.

Business exits

If the businesses already operating in the market are economically efficient, with zero real economic profits and operating in an economically efficient market, then they must either increases prices or cease operations in response to the implemented reforms.

- If they increase prices, then they continue to operate, and the future costs are incurred.
- If they choose to cease operations, then the cost of the reforms is never incurred. However, the businesses only made the decision to not operate due to foreseeable cost in future years. So, the foreseeable future cost existing leads to a decision that means the foreseeable future cost is never incurred.

To avoid this endogeneity issue with current businesses ceasing operations, the model assumes that all businesses choose to continue to operate and increase their prices.

New entrants

A similar endogeneity issue exists for new business entries. If the reforms increase the cost of operations, then some businesses planning to operate in the market can either increase their prices to account for the increased costs of operations, or they can choose to not operate in response to the implemented reforms.

- If they choose to enter the market, then they need to increase their prices enough to cover the additional upfront and ongoing costs to comply with their regulations. That is, to the price already offered by the businesses in the market.
- If they choose to not enter the market, then the cost of the reforms is never incurred. However, the businesses only made the decision to not operate due to foreseeable cost. So, the foreseeable future cost existing leads to a decision that means the foreseeable future cost is never incurred.

Because it is assumed that no business that is currently operating exits the market due to these reforms, there is currently no unmet demand for services and the market is already in equilibrium. Therefore, no new businesses would ever enter the market as there would be no excess demand to service in the market and they would not be able to offer prices below equilibrium profitably (because they face the same, or more, upfront and ongoing costs for regulations as existing businesses).

Together, this means that the model includes no changes to the number of businesses year-on-year due to the changes made by the reforms.

Average cost per business cohort

For each industry group and business size, and reform impact cost and time period, an average cost was calculated. Estimation followed a set process for different cost types within different reform groups:

Upfront costs:

- Staffing costs for designing and updating processes – Estimated based on a number of hours of work to update or design a process, multiplied by a staffing expense per hour.
- External support for designing and updating processes - Estimated based on an upfront dollar figure for external support for specific tasks, multiplied by the per cent of businesses who seek external support for this type of reform area.
- System and storage costs – Estimated as an upfront dollar figure for designing and implementing new systems and processes.

The current and future state costs:

- For all Customer Due Diligence related reform impacts:
  - Staffing costs for CDD processes – Estimated based on the number of hours of work required to complete CDD per customer each year, multiplied by the staffing expense per hour, multiplied by the number of customers for whom businesses are required to complete each CDD process.
  - External support for CDD programs - Estimated based on a dollar figure for external support per customer, multiplied by the number of customers for whom businesses are required to complete each CDD process each year, multiplied by the per cent of businesses who seek external support for this type of reform area.
  - System and storage costs – Estimated as a per annum dollar figure for maintaining systems and processes.
- Expansion of regime to tranche two businesses – Employee Due Diligence and AML/CTF training related reform impacts:

  - Staffing costs – Estimated based on the additional number of hours required per employee, multiplied by the number of employees impacted by the requirement each year, multiplied by the staffing expense per hour.
  - External support - Estimated based on a dollar figure for external support per employee, multiplied by the number of employees who are impacted by the requirement each year, multiplied by the per cent of businesses who seek external support for this type of reform area.
- For all other reform impacts:
  - Staffing costs – Estimated based on the number of hours of work required to comply with requirements each year, multiplied by the staffing expense per hour.
  - External support CDD programs - Estimated based on a dollar figure for external support required to comply with requirements each year, multiplied by the per cent of businesses who seek external support for this type of reform area.
  - System and storage costs – Estimated as a per annum dollar figure for maintaining systems and processes.

The inputs for each of the above average reform impact costs were developed input-by-input through consultation with AML/CTF service providers, consultation with AUSTRAC, surveys with businesses across both existing regulated entities and tranche two entities, a literature review of international AML/CTF requirements and Nous analysis of AML/CTF requirements. This has involved the removal of survey outlier data and fitting of results to reflect those from industries with more robust survey sample sizes, and a greater knowledge of AML/CTF regulatory obligations (i.e. applying impacts from currently regulated entities to tranche two entities for appropriate impacts). Initial estimates were then compared against international examples and service provider advice to further refine the assumptions.

After the specific reform costs were estimated for each business cohort, they were multiplied by the total number of businesses within each business grouping impacted by the related reforms to get the total regulatory burden for each reform.

Phasing of regulatory compliance by businesses

Estimated costs for businesses occur across two phases:

- Upfront costs all occur in Financial Year 2025 - It is assumed that businesses will work quickly to update their processes and programs to align with the proposed reforms to ensure they are compliant when the legislation comes into effect.
- Changes in ongoing costs (Future state less current state) occur from financial year 2026 until financial year 2034 – It is assumed that the new programs and processes commence from financial year when the legislation comes into effect.

It is assumed that the reforms will come into effect from the start of financial year 2026.

Staffing costs

To estimate staffing costs for reform impacts a staff wage needs to be assumed. As part of the survey, businesses were asked to provide the number of hours of effort for regime impacts and a staff level undertaking those hours. For these staff levels, they could choose from the following classifications[183]:

- Senior manager
- Managers
- Professionals
- Clerical and Administrative Workers
- Sales Workers

This survey data was used to determine the appropriate staff level for each reform impact. Hourly wages from ABS Series 6337 were used to determine the cost of this staffing time.

These hourly wages are from August 2023. They were adjusted to the financial year 2025 by applying a 4.1% adjustment rate. These hourly rates are presented in Table 32. These hourly wages were then multiplied by 1.7 to account for staff oncosts and expenses for businesses to align with Office of Impact Analysis guidelines on staffing expenses.

***Table 132* | Staff wages for regulatory burden estimation**

Occupation or Skill level	Employment type	Median hourly earnings (August 2023)	Adjustment rate	Median hourly earnings (July 2024)	Median hourly earnings (July 2024) plus oncosts
Managers	Full-time	$ 66.0	4.10%	$ 68.66	$ 120.16
Professionals	Full-time	$ 64.4	4.10%	$ 67.08	$ 117.38
Clerical and Administrative Workers	Full-time	$ 46.3	4.10%	$ 48.22	$ 84.38
Sales Workers	Full-time	$ 40.9	4.10%	$ 42.56	$ 74.47
Senior manager	Full-time	$ 79.2	4.10%	$ 82.40	$ 144.20

Quantification of customer costs

Average cost per customer

Estimation of average cost of additional effort per customer completing CDD

The average cost of additional effort was calculated according to OIA guidance for each customer type.

[183] All staffing classifications and full time hourly salary, except for “senior manager”, are drawn from ABS series 6337 (Employee earnings). Access on 7 July 2024 from <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings/latest-release>. Senior Manager is assumed to be 120% of the “Manager” hourly wages.

The cost of effort for individual customers was calculated using OIA's non-work-related labour rate of $37 per hour[184]. This assumed that individual customers would undergo the procedures for their own personal purposes rather than in the course of their work.

The cost of effort for entity customers was calculated using OIA's default work-related labour rate of $85.17 per hour. This rate was used assuming that business customers would require staff to undergo the CDD procedures as part of their ordinary operating procedures.

Estimation of average additional effort per customer completing CDD

The additional time taken for a customer to undergo the required CDD procedures (on top of existing processes) was estimated for each category of CDD and each customer type based on the efficient time taken to complete an industry standard process. These have been summarised in Table 33 below. Ongoing CDD was not included in this analysis as the process primarily involves effort from the reporting entity to monitor the customer.

***Table 33* | Estimated additional effort to complete CDD procedures**

Obligation (category of CDD)	Individual customer effort (minutes)	Entity customer effort (minutes)
Initial CDD	3	5
Enhanced CDD	10	30
Simplified CDD	1	0

Individual customers

The estimates for Initial CDD and Simplified CDD are estimated to require minimal effort on behalf of an individual customer, as the requirements can generally be met by providing identification documents or other readily available documents to support one's identity. For this reason, an average of 3 minutes is considered a reasonable expectation for completing Initial CDD, while 1 minute has been estimated for Simplified CDD to reflect the reduced evidence requirements. An average of 10 minutes of effort has been assumed for Enhanced CDD to reflect the greater level of supporting documentation that would be required to complete the necessary procedures. While it may take longer in more complex cases, much of the procedures required to verify the identity of high-risk customers, such as Politically Exposed Person (PEP) screening and sanctions checks would be conducted by the regulated entity.

[184] Office of Impact Analysis (2024), *Regulatory Burden Measurement Framework*, <https://oia.pmc.gov.au/sites/default/files/2024-02/regulatory-burden-measurement-framework.pdf>, accessed 05 July 2024

Business customers

The estimates for Initial CDD and Simplified CDD are estimated to require minor administrative effort on behalf of a business customer, including supplying information on the business, its registrations, its directors and its beneficial owners. This process has been estimated to take 5 minutes for a standard Initial CDD process, whilewhile no time requirement has been assumed for Simplified CDD as the information verification requirements fall entirely on the regulated entity under the simplified process. Enhanced CDD is expected to require an average of 30 minutes of effort due to the greater amount of documentation that may be required by the regulated entity, however as discussed above, much of the additional effort is expected to be conducted by the regulated entity.

Number of customers each year

Total customers completing CDD each year = Average no. of customers completing CDD per business × Number of impacted businesses

Estimation of change in customers completing CDD

Change in regulatory burden = Total customers completing CDD under the proposed reforms − Total customers completing CDD under the existing regime

The average change in regulatory burden across customers of regulated and tranche two industries was estimated by calculating the regulatory burden under the regime if the proposed reforms were implemented less the regulatory burden under the existing AML/CTF regime.

- For existing regulated entities, this represents the difference in number of customers that would be required to complete the necessary CDD procedures under the simplification and modernisation reforms compared to the existing regime.
- For tranche two entities, this represents the number of customers that would be required to complete the CDD procedures required by the AML/CTF regime if the reforms to expand the regime were implemented.

To account for the difference in effort required to complete CDD procedures depending on customer characteristic and the type of CDD required, customers were identified according to the following segments:

- Individuals: Representing individual people accessing designated services
- Entities: Representing businesses accessing designated services

In addition, regulatory burden was estimated for each category of CDD that requires customer inputs (listed below).

- Initial CDD: The standard process for conducting CDD where the customer does not exhibit heightened risk
- Enhanced CDD: The process for conducting CDD where the customer exhibits heightened risk
- Simplified CDD: The process for conducting CDD where the customer is rated as low risk

The average number of customers required to complete each CDD each year under both the existing regime and the proposed reforms was calculated using survey data for each customer type and CDD category. This average was then multiplied by the relevant business population to estimate the total number of customers that would be required to undergo each category of CDD procedure under the existing regime and under the proposed reforms.

Estimation of number of customers for Option 3

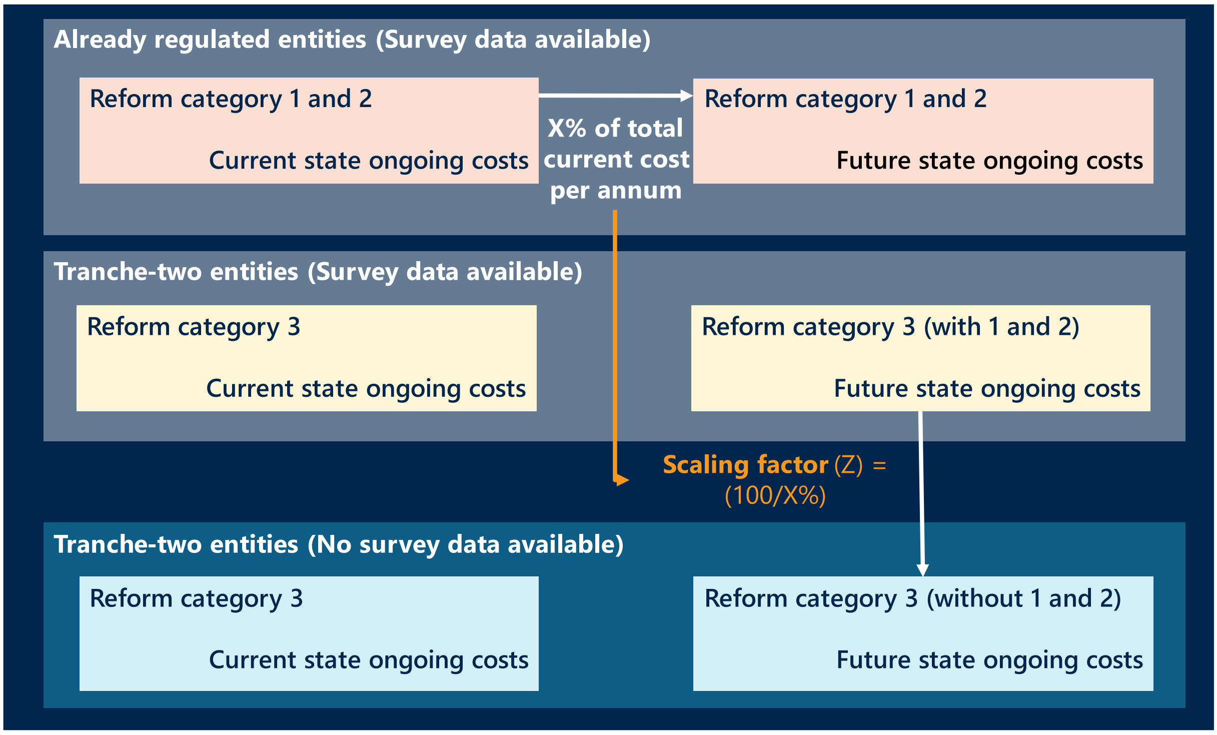
The number of customers required to complete each category of CDD procedure if the regime was expanded to tranche two entities may differ depending on whether the simplification reforms have been implemented (Option 4) or not (Option 3). To estimate this difference, results from the simplification reform analysis were used to estimate the percentage change in the number of customers completing CDD for the existing regulated entities from the existing regime to the new regime. This difference was then applied to tranche two entities to estimate the number of customers that would be completing CDD procedures under Option 3 compared to Option 4.

Scaling factors for Option 3

Option 3 does not include simplification and modernisation reforms from Option 2. Impact analysis therefore required estimating the costs of tranche two entities if they were regulated under both the existing regime (Option 3) and under a regime with Option 2 reforms (Option 4). To achieve this, results from the Option 2 reform analysis were used to estimate the costs for the existing regulated entities under both the existing regime and the new regime. This allows estimation of the percentage change (a scaling factor) in ongoing costs experienced when the Option 2 reforms are implemented, which is then applied to tranche two entities. Figure 9Figure illustrates this estimation method.

In addition, to estimate the additional costs that tranche two businesses would face implementing an AML/CTF Program under the existing regime (Option 3) compared to the simplified regime (Option 4), a 5% increase was added to the upfront costs associated with developing an AML/CTF Program. This assumption was considered reasonable due to the additional complexity of the existing AML/CTF program requirements compared to the proposed reforms.

Figure 9 | Overview of the methodology for determining scaling factors



Already regulated entities (Survey data available)

Reform category 1 and 2
Current state ongoing costs

X% of total current cost per annum

Reform category 1 and 2
Future state ongoing costs

Tranche-two entities (Survey data available)

Reform category 3
Current state ongoing costs

Reform category 3 (with 1 and 2)
Future state ongoing costs

Scaling factor (Z) = (100/X%)

Tranche-two entities (No survey data available)

Reform category 3
Current state ongoing costs

Reform category 3 (without 1 and 2)
Future state ongoing costs

The scaling factors used are presented in Table 34. A scaling factor greater than 1 means a cost is more expensive under Option 3 than it is under Option 4. A scaling factor less than 1 means a cost is cheaper under Option 3 than it is under Option 4. As CDD cost impacts are driven by customer numbers completing CDD processes, costs for Simplified CDD will appear higher under Option 4 than Option 3 as more customers are expected to be eligible for Simplified CDD. However, the cost impact for CDD overall will be lower than under Option 3.

Table 34 | **Model Reform option 3 scaling factors (Z)**

Reform area	Cost impact	Cost type	Scaling factor (Z) by business size and reform area					
			$0 - $50k	$50k - $200k	$200k - $2m	$2m - $5m	$5m - $10m	$10m +
AML/CTF Program	Review of AML/CTF program	External cost	1.00	1.00	1.00	1.00	0.96	0.93
AML/CTF Program	Review of AML/CTF program	Staffing cost	0.91	0.91	0.90	0.90	0.91	0.91
Customer Due Diligence	Understanding customer risk	Staffing effort	1.82	1.82	1.69	1.49	1.59	1.75
Customer Due Diligence	Understanding customer risk	External cost	1.00	1.00	0.96	0.93	0.92	0.98
Customer Due Diligence	Initial CDD	Staffing effort	1.82	1.82	1.69	1.49	1.59	1.75
Customer Due Diligence	Enhanced CDD	Staffing effort	1.00	1.00	1.32	1.32	1.35	1.32
Customer Due Diligence	Simplified CDD	Staffing effort	0.97	0.97	0.97	0.97	0.97	0.97

Sensitivity analysis of preferred option

Two sensitivity analyses were undertaken on Option 4 to assess the impact that a change in the discount rate used would have on the quantified benefits and costs. The two sensitivity analyses are differentiated by the wide range of the benefit of avoided reductions in foreign investment associated with grey-listing, as well as avoided drug harm through prevented money laundering through tranche two sectors

The first analysis included a scenario in which there was no impact on Australia's foreign investment associated with grey-listing, and the lower bound benefit of reductions in illicit drug harm by preventing money laundering through tranche two sectors. The second analysis used the upper bound benefit estimate ($10.7 billion) of avoided reductions in foreign investment associated with grey-listing and the upper bound benefit of reductions in illicit drug harm by preventing money laundering through tranche two sectors.

For the first sensitivity analysis, using the lower discount rate of 3% would increase the estimated regulatory burden by approximately $2.4 billion. This is due to the expected ongoing burden of the regime, with the burden expected to be incurred across the full ten years of this analysis. A higher discount rate of 10% decreases the estimated regulatory burden to $12.7 billion, as the higher level of discounting would lower the relative costs of ongoing burden incurred later in the ten-year period of analysis. The quantified benefits range between $1.93 billion and $2.68 billion under these adjusted discount rates.

***Table 35* | Sensitivity analysis of the preferred option (lower bound scenario) to discount rate ($m)**

Ten-year impact (NPV)	3%	7%	10%
Total estimated regulatory burden	16,513	14,120	12,695
Total cost to government	1,228	1,031	913
Total quantifiable benefits	2,675	2,205	1,926

For the second sensitivity analysis, using the lower discount rate of 3% would increase the quantified benefits by approximately $2.9 billion. This is due to the lower discounting of foreign investment benefits that would be realised over ten years. A higher discount rate of 10% decreased the quantified benefits to $11.4 billion, as the higher level of discounting would lower the relative benefits incurred later in the ten-year period of analysis.

Table 36 | Sensitivity analysis of the preferred option to discount rate (upper bound scenario) ($m)

Ten-year impact (NPV)	3%	7%	10%
Total estimated regulatory burden	16,513	14,120	12,695
Total cost to government	1,228	1,031	913
Total quantifiable benefits	16,002	13,122	11,417

Attachment C: Stakeholder Engagement

Date	Meeting/Event	Participants
15 May 2023	Legal Sector Roundtable	Law Council of Australia
17 May 2023	Banking and Finance Roundtable	Australian Banking Association and Australian Financial Markets Association members. Approx. 70 participants, including: AFMA ANZ Suncorp Westpac Commonwealth Bank Australia Macquarie BNP Paribas Bendigo and Adelaide Bank AMP Bank HSBC NAB Bank of Sydney ING J.P. Morgan Chase Bank of America
18 May 2023	1:1 with Westpac	Westpac
19 May 2023	Accounting Sector Roundtable	Certified Practising Accountants Australia Chartered Accountants Australia and New Zealand Institute of Public Accountants

23 May 2023	Auspaynet Economic Crime Forum	AUSPAYNET Treasury ACCC ASIC ACMA AFP State and territory police for NSW, NT, SA, TAS, VIC and WA ACIC AIC AUSTRAC ANZ Bank of Queensland Commonwealth Bank Cuscal HSBC Indue Macquarie National Australia Bank (NAB) Suncorp Westpac Australian Financial Crime Exchange (AFCX) ABA COBA DIGI Comms Alliance Optus IDCARE
24 May 2023	1:1 with Ashurst on UK experience of Tranche 2	Ashurst

26 May 2023	Keynote Address at ACAMS Australasia Conference	ACAMS
30 May 2023	1:1 with NAB	NAB
31 May 2023	Interdepartmental Committee Meeting	AFP ASIO Department of Home Affairs ASD ACIC ACCC RBA PM&C ACNC ACLEI ATO DFAT Services Australia OAIC Department of Industry, Science and Resources ABF
1 June 2023	Remittance Sector Roundtable	Australian Remittance and Currency Providers Association
6 June 2023	Financial Crime Symposium	Over 20 key industry attendees
6 June 2023	1:1 with COBA	COBA
7 June 2023	Dealers in Precious Stones and Metals Roundtable	Jewellers Association of Australia Nationwide Jewellers
7 June 2023	Real Estate Sector Roundtable	Real Estate Institute of Australia Property Council of Australia

8 June 2023	Digital Currency Exchange Sector Roundtable	Australian Bitcoin Blockchain Australia Hall&Willcox Coinbase Swyftx Holley Nethercote Fintech Australia Caleb&Brown Genesis Block Capital FrankieOne
13 June 2023	Legal Sector Roundtable	Law Council of Australia
13 June 2023	1:1 with ABA	ABA
14 June 2023	1:1 with Tax Practitioners Board	Tax Practitioner’s Board
15 June 2023	1:1 with TabCorp	TabCorp
15 June 2023	1:1 with Clubs Australia	Clubs Australia
16 June 2023	1:1 with Chartered Accountants ANZ	Chartered Accountants ANZ
19-20 June 2023	Australasian Conference for the Association of Certified AML Specialists Conference	300 industry and government representatives
22 June 2023	Real Estate Sector Roundtable	Real Estate Institute of Queensland
23 June 2023	Legal Sector Roundtable	Law Council of Australia
27 June 2023	1:1 with PEXA	PEXA
5 July 2023	1:1 with CAFBA	CAFBA
12 July 2023	1:1 with Commonwealth Bank	Commonwealth Bank

11 August 2023	Interdepartmental Committee Meeting	AFP ASIO Home Affairs ASD ACIC ACCC RBA PM&C ACNC ACLEI ATO DFAT Services Australia OAIC DISR ABF
14 August 2023	1:1 with ABA	ABA
14 August 2023	1:1 with TPB	TPB
21 August 2023	International Jewellery Fair	Gemmological Association of Australia Jeweller Magazine Independent Jewellers Collective Leading Edge Jewellers Group Nationwide Jewellers
21 August 2023	1:1 with Property Council	Property Council
29 August 2023	Transparency International Australia National Integrity Summit	Transparency International Australia members Over 40 external speakers
27 September 2023	1:1 with Financial Services Council	Financial Services Council
17 October 2023	1:1 with Law Council of Australia	Law Council of Australia

18 October 2023	1:1 with Lotus Law Group	Lotus Law Group
14 November 2023	1:1 with KordaMentha	KordaMentha
28 November 2023	1:1 with ABA	ABA
1 December 2023	Presentation at Institute of Public Accountants (IPA) centenary event	IPA members and prominent public accountants throughout Australia
18 January 2024	1:1 discussion on reform with ATO	ATO
10 April 2024	1:1 with Financial Services Council	Financial Services Council
15 April 2024	1:1 with NSW Fair Trading	NSW Fair Trading
10 May 2024	Banking and Finance Sector Roundtable	AMP Bank Australia Heritage Bank Australian Military Bank Association of Superannuation Funds of Australia SG Corporate and Investment Banking ANZ Caterpillar Financial Services Pepper Money Macquarie Bank Australian Banking Association Financial Advice Association Australia Standard Chartered Bank Beyond Bank Great Southern Bank Iress: Financial Services Afterpay NAB Insignia Financial HSBC

		Customer Owned Banking Association Bendigo Bank Australian Finance Industry Association Development Bank of Singapore Cuscal (Payments and regulated data services provider) Hall and Wilcox Challenger Ltd (investment management firm) Barclays Mercedes Benz Vanguard Suncorp My State Bank Commonwealth Bank China Construction Bank Bank of Communications Bank of America Westpac Citi Bank Mizuho Bank Northern Trust Corporation Herbert Smith Freehills Financial Services Council China Everbright Bank OFX: International Money Transfers TP ICAP: Financial services firm Barrenjoey Herbert Smith Freehills CLSA JP Morgan BNP Paribas

14 May 2024	1:1 with Stripe	Stripe
17 May 2024	Accounting Sector Roundtable	Chartered Accountants Australia and New Zealand Certified Practising Accountants Institute of Public Accountants
17 May 2024	1:1 with Business Council of Australia	Business Council of Australia
20 May 2024	Dealers in precious metals and precious stones sector roundtable	Jewellers Association of Australia ABC Refinery ABC Bullion Tiffany & Co
21 May 2024	Legal Sector Roundtable	Law Council of Australia
21 May 2024	Gambling Sector Roundtable	Clubs Australia Australian Hotels Association Tabcorp
23 May 2024	DCEPs and Remittance Sector Roundtable	Fintech Australia Swyftx Australian Bitcoin Industry Body Coinbase Mex Digital Blockchain Australia Australian Digital Financial Standards Advisory Council Chainalysis Financial Services Council Australian Remittance and Currency Providers Stripe Australia Western Union MoneyGram PayPal

31 May 2024	1:1 with King & Wood Mallesons	King & Wood Mallesons
3 June 2024	Professional Service Provider Regulator Roundtable	Victorian Legal Services Board + Commissioner Legal Services Commissioner of Queensland Legal Practitioners Conduct Commissioner of South Australia Legal Practice Board of Tasmania Northern Territory Law Society ACT Law Society Law Society of NSW Law Society of SA Tasmanian Law Society Queensland Law Society Law Council of Australia ARNECC RevenueNSW RevenueSA State Revenue Office Victoria Queensland Revenue Office State Revenue Office Tasmania Justice and Community General (ACT) Western Australian Treasury NT Department of Treasury and Finance
3 June 2024	Real Estate Regulator Roundtable	Department of Energy, Mines, Industry Regulation and Safety (WA) Department of Justice and Attorney-General (QLD) Property Agents Board of Tasmania Consumer Affairs and Business Services South Australia ACT Government

4 June 2024	1:1 with the Property Council of Australia	Property Council of Australia
4 June 2024	1:1 with the Australian Institute of Conveyancers	Australian Institute of Conveyancers
4 June 2024	1:1 with the ATO	Australian Taxation Office
4 June 2024	1:1 with KordaMentha	KordaMentha
4 June 2024	1:1 with Customer Owned Banking Association	Customer Owned Banking Association
5 June 2024	1:1 with Tabcorp	Tabcorp
5 June 2024	1:1 with AFMA	AFMA Barclays ANZ Barrenjoey Investment Bank
6 June 2024	1:1 Financial Services Council	Financial Services Council Vanguard Australia Perpetual Ltd Hall & Willcox Macquarie Bank
6 June 2024	Real Estate Sector Roundtable	Real Estate Institute of Australia Real Estate Institute of Queensland Property Council of Australia Stockland CBRE
7 June 2024	1:1 with Treasury	Treasury
7 June 2024	Legal Sector Roundtable	Law Council of Australia

11 June 2024	ATO Shadow Economy Taskforce	ATO ABF ACIC AFP AUSTRAC CDPP DEWR Home Affairs Services Australia Fair Work Ombudsman Treasury
11 June 2024	State and Territory Gambling Regulator Roundtable	NSW Independent Casino Commission Liquor and Gaming NSW Tasmania Liquor and Gaming Victorian Gambling and Casino Control Commission Licensing Northern Territory Consumer and Business Services South Australia QLD Office of Liquor and Gaming Regulation
11 June 2024	1:1 with Department of Government Services Victoria	Department of Government Services Victoria
11 June 2024	1:1 with Financial Advice Association Australia	Financial Advice Association Australia
12 June 2024	1:1 with AFP	AFP
14 June 2024	1:1 with RevenueWA	RevenueWA
14 June 2024	1:1 with Commonwealth Bank	Commonwealth Bank
17 June 2024	ACAMS Australasia Conference	Over 300 industry and government representatives
17 June 2024	1:1 with the Real Estate Institute of NSW	REINSW

18 June 2024	1:1 with Australian and Small Business and Family Enterprise Ombudsman	ASBFEO
19 June 2024	1:1 with PayPal	PayPal
19 June 2024	1:1 with AFP	AFP
20 June 2024	1:1 with ARITA	ARITA
21 June 2024	1:1 with Treasury	Treasury
21 June 2024	1:1 with NAB	NAB
21 June 2024	1:1 with DFAT	DFAT
25 June 2024	1:1 with ABA	ABA
27 June 2024	1:1 with Accounting Standards Bodies	Tax Practitioners Board Auditing and Assurance Standards Board
1 July 2024	1:1 with Accounting Professional and Ethical Standards Board	Accounting Professional and Ethical Standards Board
1 July 2024	1:1 with PEXA	PEXA
2 July 2024	1:1 with ABF	ABF
9 July 2024	1:1 with Coinbase	Coinbase
10 July 2024	1:1 with Crown Resorts	Crown Resorts

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