



**Australian Government**

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**Australian Transaction Reports  
and Analysis Centre**

**Productivity Commission Study:  
Draft Report - Regulator Engagement with Small Business**

**Australian Transaction Reports and Analysis Centre**

## **Introduction**

1. In its regulatory role, AUSTRAC oversees compliance by a wide range of reporting entities and cash dealers with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules), and the *Financial Transaction Reports Act 1988* (FTR Act).

## **Understanding the regulated population**

2. The businesses regulated by AUSTRAC range from large sophisticated and well-resourced global corporations, such as the large domestic and foreign banks to small sole proprietor businesses. AUSTRAC estimates that of the total regulated population (approximately 13,657 reporting entities<sup>1</sup>) approximately 70 per cent is classified as small business, that is, with 20 or less employees. The primary types of small businesses regulated by AUSTRAC include alternative remittance dealers, on-course bookmakers, hotels (which operate electronic gaming machines), trustees of managed investment schemes and financial service intermediaries (for example, financial planners).
3. AUSTRAC recognises the challenges that some small businesses face in understanding and complying with their obligations under the AML/CTF Act. AUSTRAC provides a comprehensive framework of rules and guidance to assist businesses in understanding and implementing their AML/CTF obligations under the AML/CTF regulatory regime and consults widely in respect of any proposed changes to that regime. In addition to its small business checklist, AUSTRAC has developed tailored AML/CTF guidance for specific industry sectors.

## **Risk-based approach to regulation**

4. The AML/CTF Act is principles-based legislation which enables AUSTRAC's regulated population to apply a risk-based approach to achieving AML/CTF compliance. The AML/CTF Act sets out the obligations for reporting entities and, where appropriate, this is complemented by more comprehensive AML/CTF Rules and guidance. The risk-based approach provides individual businesses with a degree of flexibility to determine how these obligations can be implemented and enables reporting entities to tailor their AML/CTF practices to meet the specific features and characteristics of their particular business operations. Reporting entities can develop procedures and policies appropriate and proportionate to the individual business specific risks identified in their AML/CTF programs.
5. Because of the size and diversity of its regulated population in terms of resourcing and sophistication, AUSTRAC notes that a tension can arise between those entities which favour a risk-based approach and those who would prefer detailed prescription concerning how they meet their obligations. The demand for increased prescription by certain reporting entities under the AML/CTF framework is in part a desire to ensure certainty and clarity, and to manage 'interpretative or regulatory risk'. This expectation is largely driven by small businesses which have obligations under the AML/CTF regime. In order to address this issue, AUSTRAC has increased its focus on ensuring that its published guidance meets the needs of its different industry sectors. In particular, AUSTRAC has developed industry-specific guidance for a number of these sectors.

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<sup>1</sup> The completed survey for the Productivity Commission cited a total of 13,290 reporting entities. The number in this submission is accurate and up to date as of 30 June 2013.

To date, AUSTRAC has published AML/CTF compliance guides for on-course bookmakers and independent remittance dealers. A guide for hotels and clubs which operate electronic gaming machines is currently being finalised.

6. AUSTRAC also applies a risk-based approach to the supervision of the entities it regulates. Under this approach, AUSTRAC applies relatively higher levels of regulatory effort towards supervising entities or groups of related entities which provide services and products identified as having a higher exposure and vulnerability to money-laundering and terrorism-financing (ML/TF) risk.
7. Four factors are taken into account in determining the ML/TF risk profile of the entities AUSTRAC regulates:
  - Whether an entity (or group of related entities) operates in an industry sector which has been identified as a major channel for money laundering as set out in Australia's national money laundering threat assessment<sup>2</sup>.
  - The exposure of an entity (or group of related entities) to ML/TF risk is determined by the reporting entity's (or groups of entities) exposure to ML/TF activities. Factors which are taken into account in determining an entity's exposure to ML/TF are its size, scope, number of customers, number of distribution channels, complexity of products offered and the jurisdictions in which it operates. In general terms, larger entities are more exposed to ML/TF risk than smaller entities because of the scale and scope of their operations.
  - Whether an entity (or group of related entities) is of specific interest to AUSTRAC's intelligence operations or its partner agencies.
  - Whether an entity or group of related entities is large in comparison to their industry peers.
8. AUSTRAC would like to clarify the reference on page 101 of the draft report which states that AUSTRAC '... exempts small businesses with fewer than five employees, and otherwise only regulates small business undertaking higher risk activities, including micro lending businesses.' AUSTRAC does not automatically exempt small businesses with fewer than five employees from the obligations under the AML/CTF Act. AUSTRAC's supervisory oversight of small businesses with less than five employees is commensurate with their assessed level of money laundering and terrorism financing risk. In relation to the above reference in the draft report, the following extract from AUSTRAC's earlier submission in May 2013 is relevant:

*Entities that have been granted an exemption from the requirement to have a Part A AML/CTF Program (such as entities that operate less than 15 gaming machines as noted above) have also been made exempt from the obligation to pay the AUSTRAC supervisory levy. This is a further reduction of the impact of the AML/CTF regime on these entities, which are typically small pubs and clubs. Other entities that are also exempt from the obligation to pay the AUSTRAC supervisory levy include micro businesses (entities who employ 5 people or less), which number around 2,800 entities, and remitters that are "affiliates" of remittance network providers, which*

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<sup>2</sup> The public version of Australia's money laundering threat assessment is available from the AUSTRAC website: [Money laundering in Australia 2011](#)

*tend to also be smaller businesses, and number around 4,500 entities.* (Paragraph 28, p. 7)

9. As noted in this earlier submission, the AUSTRAC Chief Executive Officer has the regulatory capacity (under an exemption instrument or using the AML/CTF Rules) to exempt an entity or an industry sector from specified or all obligations under the AML/CTF Act and the FTR Act. In so doing, AUSTRAC considers cases for exemption where the regulatory burden imposed on the business is likely to be greater than is warranted by the level of potential or existing money laundering and terrorism financing risks. AUSTRAC takes into account a range of factors when assessing exemptions including the integrity of the financial system, the intent and purpose of the AML/CTF Act, crime reduction, competitive neutrality and regulatory consistency.

#### **Communication and engagement strategies**

10. AUSTRAC is committed to providing tailored guidance and education to industry sectors, particularly small businesses. AUSTRAC has published a [Service Charter](#) which outlines the service standards reporting entities and the community can expect from AUSTRAC.
11. AUSTRAC regards consultation as an essential component of regulatory design and actively engages with affected businesses when developing proposed changes to the AML/CTF Rules. This engagement includes the release of Regulation Impact Statements to analyse the costs and benefits of proposed regulatory changes.
12. AUSTRAC is committed to streamlining reporting and provides online portals and interactive forms to simplify reporting processes. AUSTRAC also offers alternative options, such as paper-based reporting, for businesses that do not have the technology to report electronically. As is set out in the [agency multicultural plan](#), which is available on the AUSTRAC website, it is AUSTRAC's vision to have an open, responsive and flexible approach to its engagement and communication with culturally and linguistically diverse stakeholders who have obligations under the AML/CTF Act.

#### **Flexibility of the AML/CTF regime**

13. The AML/CTF Act, with its combination of rule-making, exemption and modification powers, provides an effective and efficient set of tools which enable the AUSTRAC CEO to provide regulatory relief to low risk reporting entities while maintaining the integrity of the AML/CTF Act.
14. The tools available under the AML/CTF Act (described in detail in AUSTRAC's earlier submission to the Productivity Commission) provide the AUSTRAC CEO with the flexibility to regulate this diverse population while minimising the regulatory burden. AUSTRAC encourages voluntary compliance, prepares guidance and education materials to assist businesses to understand their obligations, and engages in consultation through various avenues, directly with businesses as well as through industry associations and peak bodies.

#### **Performance monitoring and reporting**

15. As noted in AUSTRAC's submission of 23 May 2013, in 2014 the international inter-governmental body which sets the global standards for combating money laundering, terrorism financing and proliferation financing for weapons of mass-destruction, the

Financial Action Task Force (FATF)<sup>3</sup>, will undertake a mutual evaluation of Australia's compliance with these standards.

16. The outcome of this mutual evaluation by FATF, together with the forthcoming statutory review of the AML/CTF Act, Regulations and the AML/CTF Rules which is due to commence in December 2013, will provide a framework to facilitate the on-going evaluation of the performance of Australia's AML/CTF regime, including AUSTRAC.
17. In 2013, FATF published its *Methodology for assessing technical compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems* (Methodology) which outlines how it will determine whether a country is compliant with the Recommendations and whether its AML/CTF regime is effective in fighting money laundering and the financing of terrorism. The Methodology comprises two inter-linked components:
  - *Technical compliance assessment* - addresses the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities.
  - *Effectiveness assessment* - assesses the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CTF system and analyses the extent to which a country's legal and institutional framework is producing the expected results.
18. The Terms of Reference for the forthcoming statutory review are currently being developed. Section 251 of the AML/CTF Act provides that the review must consider the operations of the AML/CTF Act, the Regulations and the AML/CTF Rules. The review will provide AUSTRAC's stakeholders, including small businesses, with an opportunity to engage with government regarding the operation of Australia's AML/CTF regime.

**AUSTRAC Comments: Chapter 6 of the Draft Report – 'Driving better regulator performance'**

19. AUSTRAC has considered the draft recommendations contained in Chapter 6 and how these recommendations relate to its engagement with small business.

*Draft Recommendation 6.2 – Addressing gaps in staff skills and capacities*

20. AUSTRAC functions as Australia's combined financial intelligence unit and AML/CTF regulator. The nature of AUSTRAC's dual functions requires the employment and training of persons with unique and specialised skill sets. The size, scale and diversity of the regulated population has also required AUSTRAC to focus on strategies aimed at capacity building and staff retention to ensure the agency has the appropriate skill sets to meet its regulatory challenges.
21. By way of illustration, these initiatives include the following:
  - AUSTRAC is committed to recruiting personnel with a range of skills and from diverse employment backgrounds including from industry and other regulators. In addition, a recent amendment to the AML/CTF Act enables AUSTRAC to engage secondees from the private sector.

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<sup>3</sup> The website of the Financial Action Task Force can be found at the following link: <http://www.fatf-gafi.org/>

- AUSTRAC also has seconded personnel with particular skills from other regulators, for example, personnel from ASIC.
- AUSTRAC is committed to the on-going professional development of its staff. This commitment includes the following:
  - the provision of study leave and financial assistance for approved external education programs
  - the provision of a range of internal training programs and regular forums on matters pertinent to the functions of the agency. AUSTRAC's internal education and training team has developed specific training programs related to industry sectors such as gaming machine venues, non-bank lenders and remittance service providers.
- Agency staff are encouraged to participate in industry consultative forums and conferences. This engagement assists in giving AUSTRAC staff an appreciation of the issues and concerns of industry in meeting their AML/CTF obligations.
- AUSTRAC works cooperatively with other regulators through the sharing of knowledge and resources. For example, AUSTRAC meets at regular intervals with ASIC, APRA and state gaming regulators. Through this engagement with other regulators, AUSTRAC is able to share its experiences and to draw on other regulatory approaches to achieve best practice outcomes.

*Draft Recommendation 6.3 – Transparency and Accountability*

22. AUSTRAC is committed to transparency and accountability in its decision-making. This is particularly pertinent in the context of AUSTRAC's dual functions as a financial intelligence unit and as a regulator. In this context:

- AUSTRAC publishes the following three key strategies at regular intervals to provide the regulated population with an overview of AUSTRAC's priorities including its compliance and enforcement approach:
  - Supervision Strategy
  - Enforcement Strategy
  - Intelligence Strategy
- The AUSTRAC website includes a range of information relating to the operations and functions of AUSTRAC including information on:
  - key decisions affecting industry, such as modifications and exemptions, industry consultation on major policy matters or draft AML/CTF Rules
  - enforcement decisions
  - guidance on the processes and procedures for requesting exemptions and modifications under the AML/CTF Act
  - guidance on the processes and procedures for internal or external review of certain decisions.

- AUSTRAC has published an AUSTRAC Service Charter which outlines the standards of service which stakeholders can expect from the agency, with the aim of promoting an open and transparent approach to AUSTRAC's service delivery.
- It should also be noted that AUSTRAC has recently been brought under the jurisdiction of the Australian Law Enforcement and Integrity Commission (ACLEI) which is responsible for preventing, detecting and investigating serious and systemic corruption issues in a range of Commonwealth agencies.

*Draft Recommendation 6.4 – Continuous improvement best practice regulation*

23. AUSTRAC is committed to the Government's better regulation principles. The AML/CTF Act promotes the application of the risk-based approach enabling reporting entities to determine how they will meet their regulatory obligations in a manner which is proportionate to their levels of AML/CTF risk.
24. In meeting the requirements of the Office of Best Practice Regulation (OBPR), AUSTRAC publishes an Annual Regulatory Plan which outlines AUSTRAC's regulatory activities and opportunities for stakeholder consultation. AUSTRAC also complies with the OBPR requirements in considering regulatory impacts arising from proposed new or amended AML/CTF Rules.
25. AUSTRAC's performance criteria and outcomes are examined each year in its Annual Report.
26. In addition, Australia and AUSTRAC is assessed periodically at the international level by the FATF against the international standards for anti-money laundering and the financing of terrorism. As detailed in our previous submission and at paragraph 17 above, the FATF assessment criteria includes consideration of the performance and effectiveness of the regime.
27. As also noted in this submission, the operation of the AML/CTF Act, the Regulations and the AML/CTF Rules is subject to a statutory review which is to commence later this year.

**Conclusion**

28. As a regulator, AUSTRAC considers that one of its primary roles is to educate, monitor and work with reporting entities to improve their compliance with the requirements of the AML/CTF Act and FTR Act. AUSTRAC is committed to assisting small businesses to comply with the AML/CTF Act and Rules to mitigate money laundering and terrorism financing risks in the most efficient and effective manner.