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AML/CTF reforms

RULES TAKE SHAPE WITH FURTHER CONSULTATION

Contents

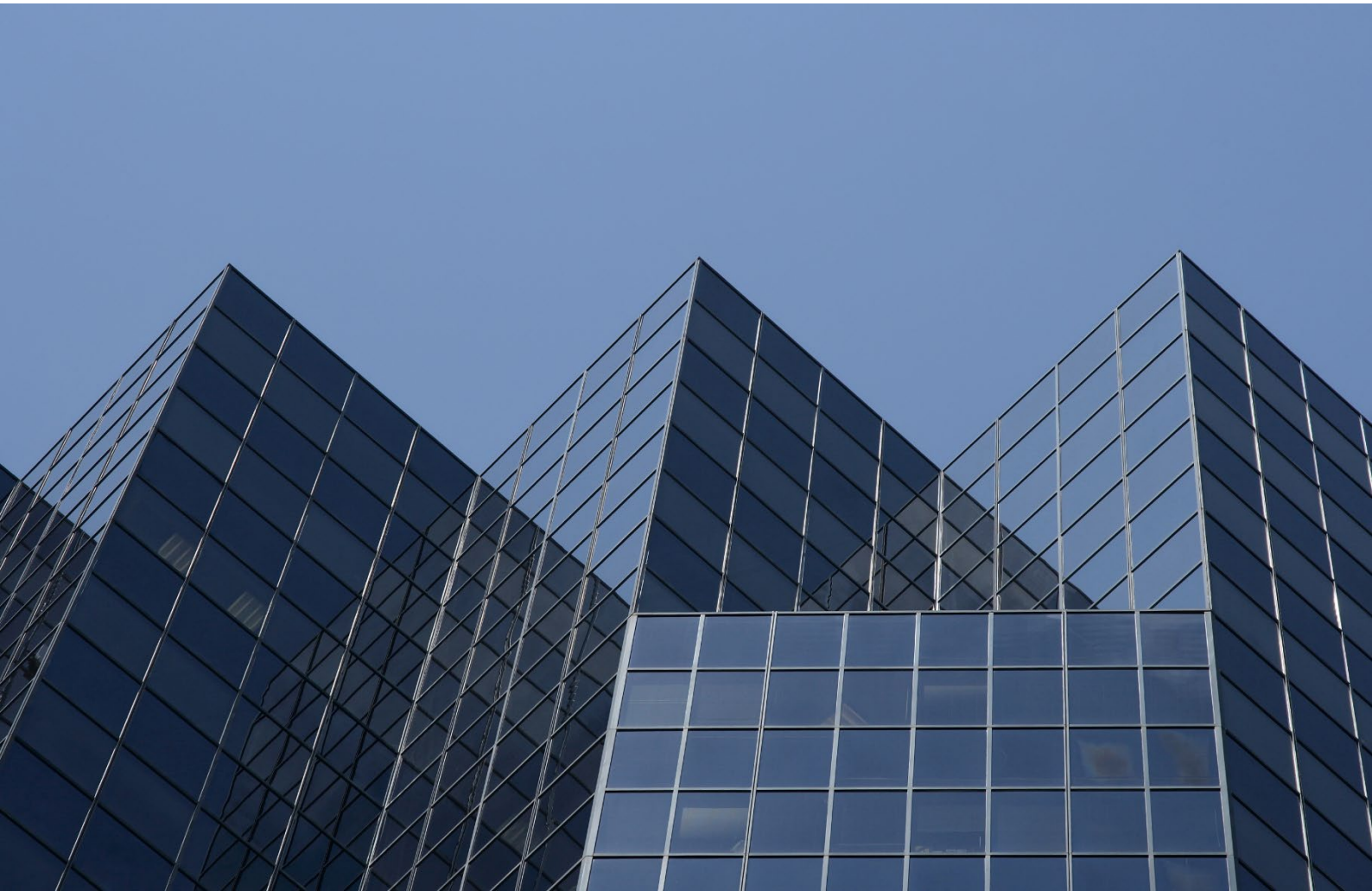
AML/CTF Rules take shape with further Consultation

AUSTRAC has released its second-round consultation on Rules (**Draft Rules**) to accompany the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) as amended by the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth) (the **Amended AML/CTF Act**).

This second round of consultation (**Current Consultation**) and updated Draft Rules include material changes to the Draft Rules released in December 2024 (**First Consultation**).

While this article does not attempt to include a description or analysis of all aspects of the Draft Rules, we have identified areas that are likely to require careful consideration by existing reporting entities moving ahead to 31 March 2026.

AUSTRAC's consultation is open until 27 June 2025.



Reporting groups and lead entities

A quick recap on reforms affecting reporting entities

The Amended AML/CTF Act removed the concept of "designated business groups" and replaced this with "reporting group". The concept of "reporting group" means that, if relevant control exists, a "reporting group" will be automatically formed. There is also the ability to elect to form a reporting group. However, this does not allow an automatic reporting group to be displaced.

Every reporting group, whether automatic or by election, must have a lead entity. This means that wherever there is an entity providing a designated service in a business group, there will also be a lead entity regulated under the Amended AML/CTF Act. Importantly, the lead entity does not itself need to provide designated services.

What is proposed in the Draft Rules?

Under the First Consultation, the lead entity was described as the entity that controls all other members of the group that provide a designated service. The criteria for a lead entity has changed under the updated Draft Rules. The First Consultation on the Draft Rules also left a placeholder for the situation where no person satisfied the lead entity criteria or where groups are formed by election. This has now been covered as part of the Current Consultation.

Under the Current Consultation, members of a reporting group may agree on a lead entity that is:

- not controlled by another member in the group that provides designated services;
- has capacity to determine outcome of decisions about AML/CTF policies of the other members of the group; and
- has the requisite Australian connection.

If no agreement is reached by the members, the lead entity is the Australian-based member controlling the largest number of members who provide designated services. Where two or more members meet this test equally, tie-breakers consider who most directly controls those members, or if still equal, which controlling member has the most employees. Certain positions (like insolvency practitioners) cannot become lead entities solely by virtue of their role.

If a reporting entity is formed by **election**, members must consist of reporting entities or persons discharging obligations under the AML/CTF framework. The lead entity must satisfy substantially the same requirements as outlined above.

For reporting groups formed by election, new members may only join with the lead entity's consent, and members or the lead entity can leave by giving written notice to prescribed persons. A reporting group cannot operate without a lead entity for more than 28 days. During any gap, members must follow the AML/CTF policies of the most recent lead entity. These provisions ensure clear control, compliance, and continuity within elected reporting groups.

Key considerations in implementing reporting groups and lead entities

Implementation consideration	Insights
Determining the lead entity	The new test under the Draft Rules provides greater flexibility for members of a reporting group to decide on the most suitable entity within their group to perform the lead entity function (as long as, amongst other things, that proposed person is not also under the control of another member). Therefore, it does not need to be the member that most directly controls the other members of the group (which was the previously proposed restrictive definition). The Current Consultation also confirms that a non-operating holding company (which does not have employees and is not providing designated services) can perform the role of a lead entity provided it satisfies the criteria. Such a lead entity would need to consider how this is implemented in practice, such as by leveraging employees in the reporting group more generally. However, ultimately, liability will rest with the lead entity.
Compliance framework of the lead entity, discharge of a member's obligations	Once the lead entity has been identified, steps will need to be taken to ensure that a compliance framework that meets the requirements of the Amended AML/CTF Act is implemented by the lead entity. However, the Amended AML/CTF Act permits another member of the reporting group (whether or not it is a reporting entity in its own right) to discharge the obligations of other reporting entities in the group or of a lead entity (for example where the lead entity is a holding company and does not provide designated services or have employees). This is helpful where the centralised AML/CTF compliance function is currently housed in another group member- provided that appropriate controls are in place that member could continue to perform this function on behalf of the group, The Current Consultation then goes on to remind us that a lead entity is liable, not only in respect of its own obligations as a reporting entity, but for all of the obligations of each reporting entity within the group under s 236B of the Amended AML/CTF Act. Therefore, in implementing arrangements to share compliance within a group structure: • the lead entity will need to ensure that has developed the appropriate lead entity AML/CTF policies to manage the arrangement in accordance with section 26F of the Amended AML/CTF Act; • any reporting entity in a reporting group that is relying on another member of the business group to discharge the obligation, must be comfortable with this arrangement having regard to the due diligence and training expectations set out in Draft Rule 10-3; and • the lead entity will need to be comfortable with the arrangements within the reporting group given that the lead entity will be directly liable for any failings of other members of the reporting group under section 236B(6) of the Amended AML/CTF Act.
Enrolment of non-reporting member of groups	The Current Consultation makes it clear that only reporting entities providing designated services and lead entities are required to apply for enrolment with AUSTRAC. Therefore, if a member does not satisfy either of this criterion, it is not required to be enrolled. It will be granted access to the AUSTRAC system if it is responsible for discharging reporting obligations on behalf of a reporting entity.

Additional Rules proposed in connection with AML/CTF Policies

A quick recap on AML/CTF Policies

The Amended AML/CTF Act will implement a new approach relating to AML/CTF Programs, including making a reporting entity's money laundering, terrorism financing and proliferation financing policies, procedures, system and controls (**AML/CTF Policies**) a part of its AML/CTF Program.

At a high level, the Amended AML/CTF Act requires AML/CTF Policies to:

- appropriately manage and mitigate the risks of ML/TF that the reporting entity may reasonably face in providing its designated services (**ML/TF Risk Management Policies**); and
- ensure that the reporting entity complies with the obligations imposed by the Act, the regulations and AML/CTF Rules which apply (**Compliance Management Policies**).

Reporting entities will be considering their existing AML/CTF Program and how their existing framework interacts with the AML/CTF Policy reforms. This will require consideration of where the perimeter of AML/CTF Policies lies and how "policies, procedures, systems and controls" will be overseen under the Amended AML/CTF Act's governance framework.

What is proposed in the Draft Rules?

In our article on the First Consultation on the Draft Rules, available here, we summarised the matters which the Draft Rules set out as necessary content for reporting entities' AML/CTF Policies. In the following section, we focus on the amendments and new provisions introduced in the current exposure Draft Rules.

Independent evaluations

The Draft Rules released as part of the First Consultation set out the matters which must be covered as part of an independent evaluation. The current Draft Rules introduce a further requirement for the conduct of an independent evaluation whereby AML/CTF Policies must also require the testing and evaluation of whether the reporting entity is appropriately identifying, assessing, managing and mitigating the ML/TF risks.

This additional requirement is intended to ensure that an independent evaluation examines not only the compliance of the reporting entity but also whether the AML/CTF Program is effectively achieving the intended outcomes with regard with ML/TF risk mitigation and management.

Sanctions

As described separately in this article, the AML/CTF Policies must ensure that the reporting entities do not breach sanctions requirements.

Record keeping by the lead entity

The Amended AML/CTF Act requires that the lead entity must have AML/CTF Policies which include matters in addition to those applying to other reporting entities (including in connection with group risk and compliance arrangements). The Draft Rules expand on this and require that the AML/CTF Policies of the lead entity also cover keeping of up-to-date records about the membership of the reporting group, including records of:

- changes to the membership of the reporting group;
- the agreement of a lead entity and formation of a reporting group by election; and
- any member of the reporting group proposing to leave.

Key considerations in implementing the Rules for AML/CTF Policies

Implementation consideration	Insights
Definition and scope of independent evaluations	Feedback provided on the First Consultation sought clarification on who can undertake an independent evaluation. The Current Consultation has confirmed that as the Amended AML/CTF Act does not define "independent" or "independent evaluator", these terms should be interpreted with regard to the ordinary meaning of the words. AUSTRAC indicated that in all cases the reporting entity should be satisfied and able to demonstrate that the person completing the evaluation is adequately independent from the area of the reporting entity that is responsible for its AML/CTF Program. Further guidance from AUSTRAC on this topic is expected. Feedback also proposed an exemption from the requirement to undertake independent evaluations for small businesses. AUSTRAC responded stating that it does not consider that an exemption would be appropriate noting the importance of independent evaluations in ensuring effective AML/CTF Programs. The response indicated, however, that like all AML/CTF Policies, the independent evaluation requirement is subject to the requirement that the policy is "*appropriate to the nature, size and complexity of the reporting entity's business*".
Record-keeping by lead entity	Section 4-17 of the Draft Rules introduces a requirement that the AML/CTF Policies of the lead entity of a reporting group must deal with keeping up-to-date records about the membership of the reporting group. As part of developing the AML/CTF Policies for the lead entity, regard must be had to the additional matters that are prescribed in the Draft Rules

Sanctions compliance comes into AML/CTF policies

A quick recap on sanctions under the AML/CTF regime

Australia's sanctions regime seeks to address areas of international concern by imposing measures that are intended to restrict the trade of goods and services, prohibit engagement in certain commercial activities, and prohibit dealings with designated persons and entities through targeted financial sanctions.

Although a different legislative framework, many entities subject to the AML/CTF regime often administer their sanctions compliance processes alongside AML/CTF onboarding and monitoring. However, compliance with financial sanctions do not currently form part of the AML/CTF Act.

The Amended AML/CTF Act changed this position – as part of CDD, reporting entities will be required to establish, on reasonable grounds, whether a customer is designated for targeted financial sanctions. This also applies to a customer's beneficial owners, any person on whose behalf the customer is receiving the designated service, or any person acting on behalf of the customer.

Financial sanctions are also contemplated as part of "proliferation financing" which will need to form part of the ML/TF risk assessment of reporting entities.

What is proposed in the Draft Rules?

Sanctions as part of customer due diligence

While the Amended AML/CTF Act would require confirmation of sanctions status to be confirmed before providing a designated service, the Draft Rules would allow this to be delayed provided that certain steps are satisfied in respect of risk management and business disruptions. We have discussed this delayed due diligence in our CDD section.

Sanctions as part of AML/CTF policies

The Draft Rules propose that a reporting entity's AML/CTF policies must "deal with ensuring" that, in providing designated services, the reporting entity:

> *(a) does not make any money, property or virtual assets available to, or available for the benefit of, a person designated for targeted financial sanctions, in contravention of the Autonomous Sanctions Act 2011 or the Charter of the United Nations Act 1945; and*
>
> *(b) does not use or deal with, or allow or facilitate the use of or dealing with, any money, property or virtual assets owned or controlled (directly or indirectly) by a person designated for targeted financial sanctions, in contravention of either of those Acts.*

This means that policies that would ordinarily not form part of an AML/CTF Program under the existing AML/CTF regime, will fall within the ambit of AML/CTF policies going forward.

Key considerations in implementing sanctions policy updates

Implementation consideration	Insights
Breach of sanctions policies a civil penalty provision	The inclusion of sanctions policies as part of AML/CTF policies has significant regulatory implications. In particular: • a failure to have sanctions policies as prescribed by the Draft Rules will be a breach of the requirement to develop and maintain AML/CTF policies under section 26F of the Amended AML/CTF Act; and • a failure to comply with those sanctions policies will be a breach of section 26G of the Amended AML/CTF Act as the AML/CTF policies of the reporting entity are not complied with. Both of these provisions are civil penalty provisions attracting a potential civil penalty of up to $33 million per breach for body corporates. This is a marked shift from the role that sanctions policies ordinarily play for entities. Typically, sanctions policies are a way of managing compliance with their obligations under the sanctions regime – they are not a compliance measure that is itself prescribed by legislation.
Drafting your sanctions policies	The Draft Rules require that the sanctions policies "deal with ensuring" that targeted financial sanctions are not breached. While many sanctions offences are strict liability offences, sanctions laws do not impose positive obligations on entities regarding their approach to sanctions compliance. Typically, entities adopt a risk-based approach to sanctions compliance as part of their sanctions policies. In practice, entities would likely need to consider a number of complex matters when drafting sanctions policies to meet the proposed requirements in the Draft Rules.
Governance of sanctions policies	As they will form part of a reporting entity's AML/CTF policies, sanctions policies must be considered as part of the overall governance of the AML/CTF framework. This means ensuring that the AML/CTF Compliance Officer is exercising the appropriate day to day oversight of these, that the senior manager(s) is comfortable in approving updates to the policies and that the governing body is exercising appropriate ongoing oversight of the arrangements.

More detail on customer due diligence

A quick recap on customer due diligence reforms

The Amended AML/CTF Act has largely replaced the customer due diligence (**CDD**) provisions contained in Part 2 of the current AML/CTF Act. As part of these changes, the concept of 'applicable customer due diligence' (**ACIP**) has been removed and 'initial customer due diligence' has been introduced.

The updated provisions under the Amended AML/CTF Act are intended to make the CDD process more focused on outcomes, allowing greater flexibility for reporting entities to determine the steps that they should take to know their customers.

What is proposed in the Draft Rules?

Among other proposals, the First Consultation on the Draft Rules included a requirement to establish "place of birth" when providing certain designated services. This caused particular concern among reporting entities questioning how this could be practically implemented. This proposed requirement has been removed from the Draft Rules as part of the Current Consultation.

Among other updates the Draft Rules would:

- clarify some previous drafting around business and trustee CDD requirements;
- provide for delayed CDD processes in certain circumstances; and
- include updated provisions in connection with beneficial ownership checks for certain customer types.

Key considerations in implementing customer due diligence reforms

Implementation consideration	Insights
PEPs and sanctions – delayed initial due diligence	The Amended AML/CTF Act requires that, as part of initial CDD, a designated service not be provided unless the reporting entity has established a customer's PEP status and whether they are subject to targeted financial sanctions. This includes understanding the status of the customer's agents, beneficial owners and persons on whose behalf the customer is receiving the service. A key topic of discussion as part of the First Consultation was how this would be implemented, noting that many reporting entities do not undertake "day 0" screening. This has been addressed in the updated Draft Rules but is subject to parameters that reporting entities must consider. **Delayed initial due diligence** Draft Rule 5-9 would allow a designated service to be provided to customers without undertaking sanctions and PEP screening where the service is to be provided at or through a permanent establishment of the reporting entity in Australia. As the Draft Rule is made under section 29(a) of the Amended AML/CTF Act, the requirements of that section must also be met. This includes having controls in policies in place, assessing the ML/TF risk and making a determination that the approach is essential to avoid interrupting the ordinary course of business. Therefore, while reporting entities may currently undertake these screening steps subsequent to the designated service being provided, this practice can only continue in the circumstances prescribed by the Draft Rules and the Amended AML/CTF Act. Whether it is appropriate to continue this approach should be considered in light of these provisions. Any reporting entity relying on the delayed verification proposed under the Draft Rules will need to document its consideration of the requirements to demonstrate the appropriateness of this approach.

Implementation consideration	Insights
	Delayed SOW and SOF If the customer is a foreign politically exposed person (**PEP**) or a high risk domestic or international organisation PEP, the Draft Rules require that the person's source of wealth and source of funds must be established prior to providing the designated service. However, the Draft Rules provide that the designated service can be provided without establishing these matters if the service is to be provided at or through a permanent establishment of the reporting entity in Australia and the matters in section 29 of the Amended AML/CTF Act are satisfied. Therefore, even if the customer's PEP status has demonstrated a high-risk or foreign PEP, the SOW and SOF of the customer can be established after providing the designated service in the circumstances prescribed by the Draft Rules and the Amended AML/CTF Act. Again, whether it is appropriate to continue this approach should be considered in light of these provisions and the assessment should be documented by the reporting entity. **Senior manager approval** We had previously identified that the first round of Draft Rules would require senior manager approval for commencing to provide a designated service to certain PEPs. This would be inconsistent with the ability to delay screening until after the designated service has been provided. The Draft Rules have been updated to clarify that senior manager approval is required where the reporting entity has established the relevant PEP status. This means that senior manager approval must be obtained to continue that relationship. Reporting entities will need to ensure that, as well as undertaking the screening for PEP status, it is able to escalate approval to continue that relationship to a senior manager if the customer (or a relevant person) is identified as having a relevant PEP status.
CDD in respect of trust arrangements	The Amended AML/CTF Act requires that, before a designated service is provided to a customer, the identity of any person on whose behalf the customer is receiving the designated service, must be established. This concept, in section 28(1)(b) of the Amended AML/CTF Act, raised questions around the potentially broad scope of this requirement. In response, new Draft Rule 5-14 has been proposed. This Draft Rule limits the scope of section 28(1)(b) to persons connected with trusts and other equivalent arrangements. While this change is welcome, a potentially onerous requirement in the Draft Rules remains. Under the current AML/CTF Rules, ACIP requires that the name of each beneficiary of the trust is collected or, if the terms of the trust identify the beneficiaries by reference to member of a class – "details of the class". Under the Current Consultation, the Draft AML/CTF Rules would require that a "*description of each class of beneficiary*" is an option if "*it is not possible to identify each beneficiary*". This raises practical issues of determining when it is "not possible" to identify each beneficiary. It may be that a trust is established by reference to membership of a class of beneficiary and, while it would be possible to identify who falls within this class, it may be practically difficult to do so. Or that to do so would be disproportionate with the risk that the customer poses.
Finding the beneficial owner	Reporting entities need to establish, on reasonable grounds, the identity of any beneficial owner of a customer. While the Amended AML/CTF Act includes a definition of beneficial owner that refers to ownership and control, circumstances may arise where no individual falls within the definition. In these circumstances, the Draft Rule 5-2 would allow the reporting entity to look to the identity of any individual, or individuals, with "*primary responsibility for the governance and executive decisions of the customer*". Reporting entities should build this concept into their CDD processes for identifying beneficial owners. It is likely to

Implementation consideration	Insights
	be of use for particularly unique structures where no individual is able to be identified as having the capacity to determine the outcome of financial and operating policies of a customer (and therefore have “control”).
Previous compliance in a foreign country	The Draft Rules have the potential for real benefits to reporting entities that provide services in foreign jurisdictions or are part of a reporting group that does so. Some updates have been made to Draft Rule 5-13 to provide greater effectiveness to the Draft Rule. We recommend that any reporting entity that is operating as part of a reporting group providing services outside of Australia consider how it can leverage this flexibility going forward.

Governance – senior managers and compliance officers

A quick recap on the role of senior managers and compliance officers

The Amended AML/CTF Act introduces a new layer of governance through the addition of the role of "senior manager" and includes a new level of expectation in connection with the role of the AML/CTF Compliance Officer.

What has changed in the Draft Rules following the First Consultation?

While there are slight updates made to the senior manager and AML/CTF Compliance Officer requirements in the Draft Rules, the Current Consultation provides further details on AUSTRAC's expectations in connection with these roles. In particular:

- AUSTRAC has provided commentary on its expectations of the position of senior manager;
- some updates have been made to the fit and proper test for the AML/CTF Compliance Officer; and
- a sole trader exemption has been introduced in connection with AML/CTF Compliance Officer reporting.

Key considerations of these governance-related changes in the Draft Rules?

Implementation consideration	Insights
Who is a senior manager?	In the consultation paper accompanying the Draft Rules (the **Consultation Paper**), AUSTRAC has provided guidance on the definition of "senior manager". The Consultation Paper notes that: *"'participating in making' a decision does not mean that the individual needs to be the final decision maker".* Accordingly, a senior manager does not need to be the individual who makes the final decision on matters that affect the whole or a substantial part of the reporting entity's business. Further, AUSTRAC has indicated whether an individual is a "senior manager" depends on *"the circumstances, the size of the reporting entity, its corporate and management structure and role of the persons involved"*. Reporting entities should consider the particular circumstances of their business when selecting who will be classified as senior managers.
No ability to delegate responsibilities of senior manager	A range of matters must be subject to the approval of the senior manager. This includes in connection with certain PEPs, nested services and reliance arrangements. A point of concern raised in the First Consultation was the practicalities of a senior person making these approvals in a time sensitive context. In particular, whether it would be commercially feasible for their decisions to be escalated to such a senior role, especially in large organisations. However, in response to these concerns AUSTRAC has confirmed that a senior manager cannot delegate any approval decision-making. Reporting entities should therefore consider having more than one, and potentially multiple, senior managers responsible for different AML/CTF functions, to ensure commercial matters are not delayed due to approval requirements.

Implementation consideration	Insights
Requirement of ensuring the governing body receives *reports* from the AML/CTF Compliance Officer	The AML/CTF Compliance Officer is required to undertake reporting to the governing body of the reporting entity. The updated Draft Rules replaces the terminology of "reporting" with "reports". This has been explained in the Consultation materials to clarify that the AML/CTF Compliance Officer does not need to report to the governing body in the organisational and management structure.
Whether an individual is "a fit and proper person" to be an AML/CTF Compliance Officer	**Determining whether someone is "a fit and proper person"** The Consultation Paper has provided guidance on determining whether an individual is a fit and proper person to be an AML/CTF Compliance Officer. AUSTRAC has emphasised that the importance of each factor listed in the Draft Rules to make this determination, will change depending on the specific circumstances, including the nature of the individual AML/CTF Compliance Officer's role. **All serious offences must be considered** AUSTRAC has made it clear that reporting entities should ensure they consider all serious offences when assessing whether someone is a fit and proper person to be an ATM/CTF Compliance Officer **not** just those that relate to economic crime: *"one key element of consideration of whether a person is fit and proper is a demonstrated lack of willingness to comply with legal obligations, regardless of the nature of the conduct".*

Refinement of transfers of value

A quick recap on the regulation of transfers of value

The current AML/CTF Act distinguishes between transfers of value undertaken by financial institutions and those undertaken by remittance service providers. In addition, current regulations have not kept pace with transferring value in non-fiat products such as virtual assets.

The Amended AML/CTF Act removes this distinction and streamlines the services provided by financial institutions, remittance service providers and virtual asset service providers into three designated services connected to the 'transfer of value' (see new designated services in items 29, 30 and 31). These designated services are connected to whether the providing entity is an:

- 'ordering institution';
- 'beneficiary institution'; or
- 'intermediary institution'.

Further detail on the Amended AML/CTF Act is set out in our client alert available here.

What has changed in the Draft Rules following consultation on the first exposure draft?

Determining who is an 'ordering institution' and 'beneficiary institution'

The Amended AML/CTF Act provides that, whether a person is an 'ordering institution' and 'beneficiary institution', will be determined in accordance with the AML/CTF Rules.

In the first draft iteration of the Draft Rules, the rules for the determination of who is an ordering institution or beneficiary institution included a 'priority' concept in relation to the value transfer chain. This 'priority' concept was that a person would be an ordering institution or beneficiary institution if:

- it was the first person to satisfy one of the prescribed criteria for an ordering institution or beneficiary institution in relation to a transfer of value; and
- the criterion satisfied had a higher priority than any other prescribed criterion (which was listed in descending order of priority).

Following feedback from the First Consultation, which requested guidance or further explanation of a how a reporting entity was to utilise the 'priority' concept in the prescribed criteria, the Draft Rules for determining who is an ordering institution or beneficiary institution no longer includes the 'priority' concept. This is a significant shift in the draft definitions.

In the second exposure Draft Rules, the rules for determining who is an 'ordering institution' and 'beneficiary institution are now as follows:

Term	Definition
Ordering institution	A person is an ordering institution if: a) the person accepts an instruction for a transfer of value on behalf of a payer; and b) the person does so in the course of carrying on a business.
Beneficiary institution	A person is a beneficiary institution if: a) the person, in relation to a transfer of value, makes the value transferred available to a payee; and b) the person does so in the course of carrying on a business.

Note: the Amended AML/CTF Act defines a 'transfer of value' as '*a transfer of money, virtual assets or property*.'

The Draft Rules' definitions need to be read alongside the Amended AML/CTF Act, as the Amended AML/CTF Act provides that a person is not an ordering institution or beneficiary institution if the provision of the service (ie transferring value or making available of the value) is reasonably incidental to the provision of another service, subject to certain exemptions.

The Draft Rules now also set out non-exhaustive circumstances in which a person may be an ordering institution or beneficiary institution (see paragraphs 7-1(3)(a) – (d) and 7-2(3)(a) – (d) of the Draft Rules). However, the Draft Rules make it clear that the fundamental requirement will be that a person must satisfy the prescribed definition.

The accompanying exposure draft explanatory statement to the Draft Rules provides non-exhaustive examples of where a reporting entity may fall within one of the non-exhaustive circumstances in the Draft Rules of where a person may be an 'ordering institution' or 'beneficiary institution'. These examples are illustrative of how AUSTRAC intends the draft definitions to work.

Key considerations in navigating the transfer of value reforms

Implementation consideration	Insights
Definition of 'ordering institution', 'beneficiary institution' and related definitions	Entities should review the revised definition of 'ordering institution' and 'beneficiary institution' carefully against their business operations. In doing so, entities should note the preliminary guidance AUSTRAC has issued within the accompanying Consultation Paper and the exposure draft explanatory statement which are relevant to the definition of 'ordering institution', 'beneficiary institution' and related definitions. These materials also provide AUSTRAC's views as to the meaning of *'accepts an instruction'*, *'makes the value transferred available'* and *'incidental'*. This will be particularly insightful for businesses who are considering: • whether they would fall within the new transfer of value designated services; and • whether the transfers of value it may undertake in the course of business are incidental. Entities should also note the non-exhaustive examples in the exposure draft explanatory statement of where a person may be an 'ordering institution' or 'beneficiary institution'.
Customer due diligence and travel rule considerations	In addition to satisfying the customer due diligence processes in providing an item 29 designated service, ordering institutions will need to implement processes to collect and verify information as required under Draft Rule 7-3 (which are made for the purpose of implementing the "travel rule"). This means that ordering institutions will need to ensure that their processes are sufficient to meet the customer due diligence requirements under sections 28 and 30 of the Amended AML/CTF Act, as well as collecting and verifying information as prescribed for the purpose of the travel rule requirements under the Draft Rules.

Entities should provide any feedback on the changes to the Draft Rules so that AUSTRAC can take those into account. AUSTRAC wants entities to highlight where the Draft Rules:

- do not provide sufficient clarity as to what outcome AUSTRAC is trying to achieve; and
- what aspects would most benefit from increased explanation in the explanatory statement or in AUSTRAC regulatory guidance.

As the Draft Rules progress to being finalised, entities should also monitor developments in AUSTRAC's regulatory guidance which will be insightful to the interpretation of 'ordering institution' and 'beneficiary institution' for entities. AUSTRAC has promised its regulatory guidance will cover:

- examples of how an instruction might be accepted through example scenarios;
- a range of scenarios to assist reporting entities in determining whether they are an ordering institution, intermediary institution or beneficiary institution; and
- examples of when transfer of value would be incidental to another service.

Communicating with AUSTRAC – enrolment, registration and reporting

Communicating with AUSTRAC – status of reforms

The First Consultation on the Draft Rules left holding places for details of enrolment and registration provisions to be included. These have now been proposed as part of the Current Consultation.

Consistent with the current AML/CTF Act, the Draft Rules would retain a distinction between enrolment and registration, with a more onerous application process being required for providers of virtual asset services and remittance providers.

In addition, the Draft Rules have prescribed new levels of detail in connection with suspicious matter reports and threshold transactions.

Key considerations in implementing communications with AUSTRAC

Implementation consideration	Insights
Public registers	AUSTRAC currently maintains a register of remittance service providers that is publicly available to be searched through AUSTRAC's website. The Draft Rules specifically provide that a register will be published on AUSTRAC's website which contains details in connection with those registered under the Remittance Sector Register and Virtual Asset Service Provider Register. This is a change for providers of digital currency exchange services. While they must register with AUSTRAC, there is currently no publicly available register of these service providers.
Additional scrutiny on registration applications	The Draft Rules embed matters that must be provided as part of a registration on the Remittance Sector Register and Virtual Asset Service Provider Register. This includes detailed information about the applicant, their key personnel, information relating to ML/TF risks and AML/CTF Policies and the applicants bank account. While some of this information is already required when registering with AUSTRAC, the Consultation Paper notes that this is intended to provide for an increased level of information to AUSTRAC and is reflective of the high-risk nature of these activities.
SMRs and threshold transaction reports	The suspicious matter report and threshold transaction reporting obligations have been updated under the Draft Rules, including prescribing new levels of information that must be contained in those reports. We expect that reporting entities will need to review their processes for managing the reporting process to ensure that, to the extent that information is known and is prescribed by the Draft Rules, these are included in the relevant reports. For example, the Draft Rules would require information on place of birth, residence for tax purposes, and gender to be reported if the information is known.

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