

via email: reform@austrac.gov.au

Consultation on the new AML/CTF Rules: First round of consultation on Exposure Draft Rules

Key points:

- The Australian Public Policy Committee (APPC) members welcome the opportunity to respond to the public consultation on the new AML/CTF Rules, and are committed to contributing to a robust system to prevent criminals from using Australia for illegal activities.
- APPC members consider that clearer guidance is required on whether all accountancy firms, no matter their size, can leverage APES 110 *Code of Ethics for Professional Accountants* for ongoing due diligence policies for AML/CTF officers. In addition, where industry specific guidance is released that refers to existing professional and regulatory obligations, expectations for large and small firms should be clarified. We also understand that the timing for the finalisation of the industry guidance is currently planned for late 2025, which may not allow members sufficient time to develop their programs in time for the 30 June 2026 commencement date.
- Some APPC member firms are currently regulated under tranche one. For example, some firms offer DS 54 or another service under the current regime and in this circumstance this program, along with other tranche one obligations, need to be in place by 31 March 2026. Tranche two obligations currently have a commencement date of 30 June 2026. This creates significant difficulty for already regulated entities who will have to uplift for tranche two by 30 June 2026 and also their existing program by 31 March 2026. It would be beneficial to streamline these requirements by aligning the dates or offering a period of safe harbour while firms uplift their programs for the 30 June 2026 commencement date.
- In relation to Customer Due Diligence (CDD), APPC members consider that additional guidance is needed on what would be required to verify CDD information for tranche one businesses. In addition, clarity is required on what constitutes 'simplified CDD' and when customers are considered low risk and eligible for simplified CDD. It would be useful to provide confirmation that the requirements for individuals in the Act stands, which is to 'take reasonable steps to establish that the customer is the person the customer claims to be'.

The APPC appreciates the opportunity to respond to the public consultation on new AML/CTF Rules (the consultation). APPC members support the government's initiative to combat money laundering and terrorism financing and recognise the importance of Australia meeting its obligations as a member of the Financial Action Task Force (FATF). The AML/CTF Rules provide current and future reporting entities with detail on their obligations and are an important part of the regime.

About the APPC

The APPC comprises the six largest professional services firms in Australia being BDO, Deloitte, EY, Grant Thornton, KPMG and PwC (APPC member firms) as well as the professional accounting bodies being Chartered Accountants Australia and New Zealand and CPA Australia. Our objective is to promote positive public policy outcomes in respect of audit, accounting and related regulated services.

APPC Response

Advisory services

APPC member firms consider that there may be challenges associated with aligning broad advisory services to the activity based designated services applicable to professional services firms. Unlike tranche one products and

services, which are generally pre-defined to enable proactive AML/CTF risk management, professional advisory services are fluid and there is a potential for a professional service, perhaps incidentally, to trigger designated services. This could lead to unintended regulatory and operational consequences for an accounting firm that also provides advisory services.

APPC member firms will need to potentially designate a much broader category of services to control for this risk, or alternatively provide very detailed training to our people so that they can identify when a non-designated advisory service moves to a designated service after the client engagement commences. While APPC members appreciate that the designated services are now legislated, there may need to be a period of safe harbour while firms navigate through the initial rollout of their compliance programs.

Existing designated services

Some APPC firms already provide designated services that are captured under tranche one, examples include designated service 54 (DS 54) and 33 (DS 33) and special programs are in place.

DS 54 providers are AFSL holders who arrange for a person to receive a designated service. An example would be where you do not issue financial products but organise for your client to acquire a financial product from another service provider that is a Reporting Entity.

If member firms offer DS 54 or another service then it, along with other tranche one obligations, need to be in place by 31 March 2026. Tranche two obligations currently have a deadline of 30 June 2026. This creates significant difficulty for already regulated entities who will have to uplift for tranche two by 30 June 2026 and also their existing program by 31 March 2026. It would be beneficial to streamline these requirements by aligning the dates for those tranche two entities also caught by a tranche one designated service.

Definitions of business and reporting group

We note that the existing concept of designated business groups will be replaced by the new concept of a 'reporting group' in Part 1 of the Amended AML/CTF Act. APPC members submit that there is confusion around the use of the two terms, and that further clarification or simplification of the definitions is necessary to ensure consistency and clarity, particularly as it applies to partnerships.

While expectations for partnerships are captured under the current regulations, further guidance and clarity is needed given the complex structure of large firms and the fact that many more partnerships will be entering the AML/CTF scheme under tranche two.

Collection of date of birth and place of birth

The proposed Rules require the collection of both date of birth and place of birth for CDD, which would necessitate the use of passports instead of driver's licences. The requirement for place of birth would require a different process than what firms currently employ for tax clients, who typically provide driver's licence details. We note that Rule 25(1)(b) narrows when this is required to a small number of designated services. If the collection of place of birth information only applies to four designated services, this should be made explicitly clear in the industry guidance. In addition, it would be useful to provide confirmation that the required CDD of individuals in the Act stand, which is to 'take reasonable steps to establish that the customer is the person the customer claims to be'.

Compliance of existing KYC processes for pre-commencement customers

The APPC understands that the intention is that firms will not be required to undertake CDD for pre-commencement customers unless a compulsory trigger occurs, for example for high-risk customers, however it would be beneficial to make this explicitly clear in the rules and guidance.

Guidance for businesses of different sizes and timing of guidance

The consultation refers to different expectations for various business sizes, such as a "multinational corporate bookmaker" compared to a "small accounting firm servicing wage-earning customers." Clear guidance tailored

to businesses of different sizes is necessary to ensure the regulators expectations are met. We also understand that the timing for the finalisation of the industry guidance is currently planned for late 2025, which may not allow members sufficient time to develop their programs in time for the 30 June 2026 commencement date.

Leveraging APES 110 for ongoing due diligence

Clearer guidance is needed on whether firms can leverage APES 110 *Code of Ethics for Professional Accountants* for ongoing due diligence policies for AML/CTF officers. This will ensure that firms can integrate their existing ethical standards with the new AML/CTF requirements.

Verification of CDD information for tranche one businesses

Additional guidance is needed on what would be required to 'verify' CDD information for tranche one businesses. For example, what is considered an acceptable form of verification for source of funds/wealth. This will help businesses understand the specific steps they need to take to comply with the verification requirements.

Simplified CDD

There is a need for clarity on what constitutes 'simplified CDD.' The Act refers to the Rules, and the Rules refer back to the Act, providing no detailed explanation. Clear and detailed guidance on simplified CDD is essential for proper implementation.

In addition, the Amended AML/CTF Act allows simplified CDD measures where "the ML/TF risk of the customer is low". Further clarity on what is considered a low-risk customer through AUSTRAC guidance would be beneficial.

Delays in conducting CDD

In relation to Question 12, there may be circumstances where another regulatory requirement may mean a service has to be provided urgently, thus necessitating delaying aspects of initial CDD to prevent disruption of the ordinary course of business. For example, this may occur in the delivery of turnaround and restructuring services, especially where registered liquidators are court appointed. However, we note that, registered liquidators (under the Corporations Act) are considered officers of the company they are appointed to, therefore are not 'assisting' but acting as the company. AUSTRAC should consider clarifying this in core and sector guidance. In other cases, an engagement could have occurred and a designated service may be requested after the engagement has already commenced, this would require services to be halted while CDD is undertaken.

Compliance reporting

APPC members request that AUSTRAC consider a four-month lodgement period following year-end. We note that January is often a shut-down month for many professionals, a four-month reporting period would account for this.

AML/CTF compliance officer

The Amended AML/CTF Act requires that reporting entities designate an individual as the AML/CTF compliance officer, who should be at 'management level'. The Rules should include further information on how management level should be defined, as this can vary significantly between organisations.

Thank you again for the opportunity to provide our views. Should you have any further questions on our submission, please do not hesitate to reach out.

Shaun Kendrigan

Chair of the APPC