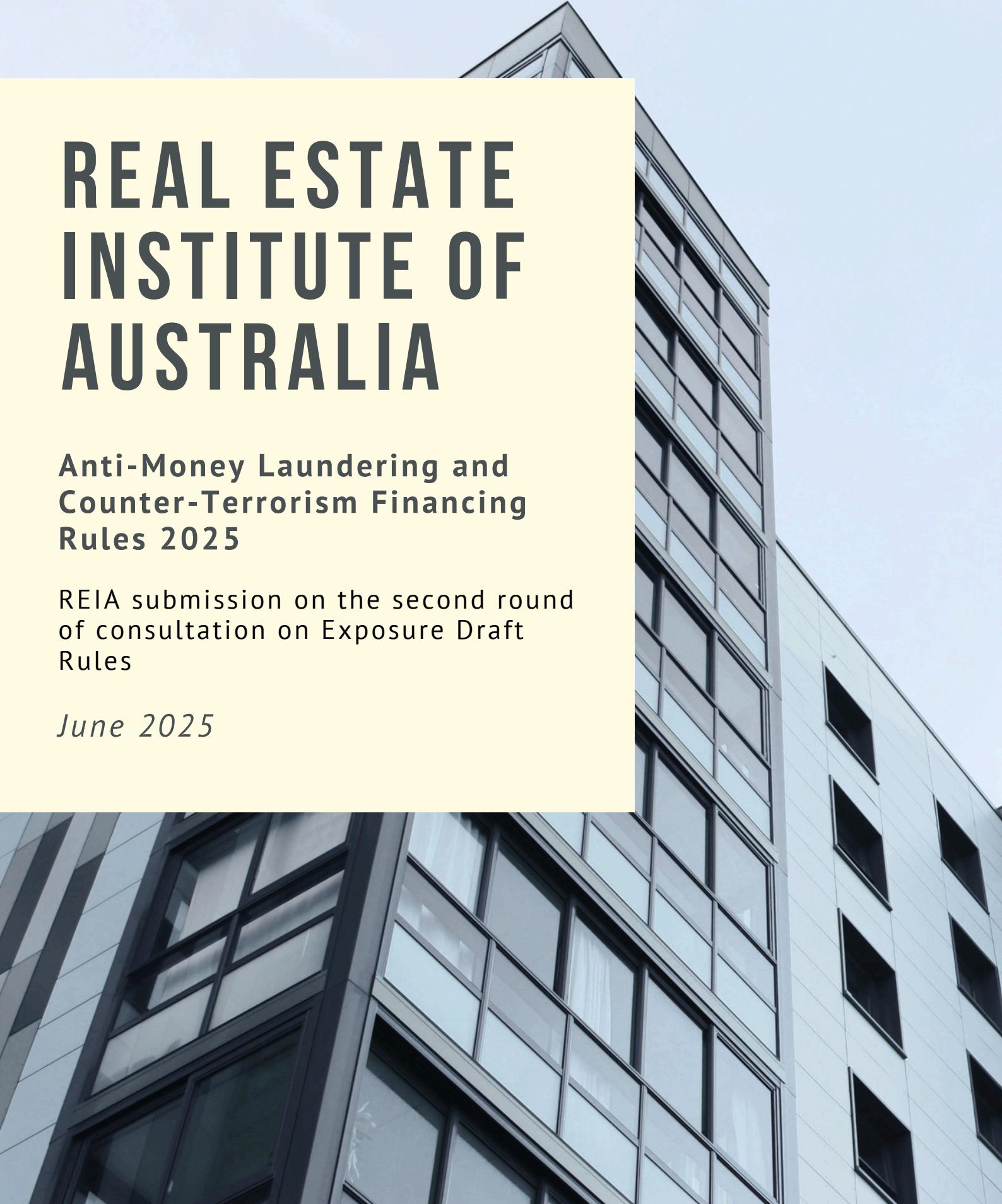


# REAL ESTATE INSTITUTE OF AUSTRALIA

## Anti-Money Laundering and Counter-Terrorism Financing Rules 2025

REIA submission on the second round  
of consultation on Exposure Draft  
Rules

*June 2025*



# ACKNOWLEDGEMENT OF COUNTRY

The Real Estate Institute of Australia (REIA)  
acknowledges the Traditional Owners of Country  
throughout Australia.

We pay our respect to them, their culture and their  
leaders, past, present and emerging.

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# INTRODUCTION

The Real Estate Institute of Australia (REIA) serves as the national peak body representing the real estate profession, advocating for policies that foster a prosperous and sustainable industry since 1924. Comprising the State and Territory Real Estate Institutes (REIs) as its members, REIA collectively represents approximately 85% of Australian real estate agencies, encompassing 46,793 businesses nationwide.

The rental, hiring, and real estate services sector ranks among Australia's top three industries with the highest proportion of small businesses, accounting for 11.5% of the nation's 2.59 million small businesses. Notably, 99% of real estate agencies are small businesses, typically employing fewer than 15 people.

As the leading voice for real estate professionals, REIA advances the interests of the sector through policy, advocacy, political engagement, media representation, market research, and industry leadership. REIA appreciates the opportunity provided by AUSTRAC to contribute to the second round of consultation on the proposed Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules ('the Rules') made under the Future Compilation of Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ('the Future Act').

In this submission, recommendations may extend beyond the immediate scope of the second Exposure Draft Rules and supplement the core guidance, offering practical insights for future AUSTRAC guidance and implementation considerations. REIA is dedicated to supporting regulations that effectively deter, detect and disrupt financial crimes while ensuring compliance obligations remain practical and proportionate, particularly for our small businesses.

REIA extends its gratitude to its State and Territory REI members for their valuable input in shaping this submission and to the Australian Transaction Reports and Analysis Centre (AUSTRAC) for implementing the suite of recommendations proposed in our initial submission.

# SUMMARY OF RECOMMENDATIONS

REIA thanks AUSTRAC for adopting key recommendations from our submission on the First Exposure Draft of the Rules ('First Submission'), which demonstrates a commitment to collaborative stakeholder engagement. These steps mark meaningful progress toward addressing critical issues that would impact the capability of the real estate sector to effectively respond and prevent financial crime in Australia.

However, we note that several important recommendations still require ongoing attention.

The unaddressed recommendations are included as follows:

- AUSTRAC considers the state and territory variances in real estate transactions when developing subsequent guidance.
- AUSTRAC to consult with the relevant state and territory regulators to ensure that KYC processes complement VOI obligations.
- That the Australian Government provide direct business offsets or subsidies to support the administrative and implementation costs of AML/CTF obligations.



1. Remove the requirement under Section 5-7(5) that the settlement of the sale, purchase or transfer of the real estate must be conditional on compliance with subsection 28(1) of the Act in relation to the customer.
- *In the first alternative (though not preferred):* Amend Section 5-7(5) to provide that the contract of sale must include a warning opposed to a condition. Say:  
“For the purposes of paragraph 29(f) of the Act, a requirement in each of the circumstances mentioned in subsections (1) to (3) is that the contract of sale, purchase or transfer of the real estate must contain a statement on compliance with subsection 28(1) of the Act in relation to the customer.”  
*or*
- *In the second alternative (though not preferred):* In the second alternative, remove the requirement under Section 5-7(5) that the settlement of the sale, purchase or transfer of the real estate must be conditional on compliance with subsection 28(1) of the Act in circumstances where the reporting entity intends to use the provision alongside Section 5-16.  
*and*  
AUSTRAC in the Sector-specific guidance explicitly outline what constitutes reasonable precautions and due diligence in meeting Section 5-7(5) of the Rules for the purposes of Section 236 of the Future Act.
2. AUSTRAC in the Sector-specific guidance explicitly outline what constitutes reasonable precautions and due diligence in meeting Section 5-7 of the Rules, in the scenario where the buyer fails to undertake CDD pre-settlement, for the purposes of Section 236 of the Future Act.
3. Paragraph 275 of the Explanatory Statement is amended to reference Section 5-16, not 5-15 in the first sentence.
4. Subsection 28(2)(f) of the Future Act be included in the scope of deemed compliance under Section 5-16.
5. That Sector-specific guidance should outline what “taken reasonable steps to establish that the customer is the person the customer claims” means in practical steps for the real estate sector. This includes outlining the ability to rely on identity document verification undertaken by the other reporting entity, i.e. conveyancer.
6. That industry-specific guidance includes a template Section 5-16 Arrangement as specified in 5-16(e) and (f).
7. Para 293 of the Explanatory Statement is amended to reflect the subsections of 28(2) of the Act as drafted in the Exposure Draft Rules.
8. That industry-specific guidance outlines practical scenarios where delayed verification would be applicable to real estate agents when engaging a customer whose ownership structure is a trust; the appropriate process to undertake; and supporting template policy.
9. Section 8-4(1)(d) of the Rules be amended to state “if the conditions in subparagraph 41(1)(f) (iii) of the Act are satisfied in respect of the matter— information on why the reporting entity suspects a matter may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory that is relevant to the matter”.
10. That Section 8-4(5)(b) of the rules be amended to state “estimated sale price of the property” instead of the “value of the property”.
11. That industry-specific guidance outlines who could be deemed a senior manager in the agency context.
12. AUSTRAC should ensure that industry specific guidance acknowledge that a licensed real estate agent will satisfy the personnel due diligence requirements stipulated at Section 4-5(2).
- *In the alternative (though not preferred):* AUSTRAC should ensure that industry specific guidance acknowledges that a licensed real estate agent will satisfy the personnel due diligence requirement stipulated at Section 4-5(2)(b).
13. AUSTRAC makes an explicit exemption for “Property Management Services” in the Rules under Section 247 of the Future Act to ensure the Act does not apply to all residential and commercial property management services, irrespective of whether the reporting entity is providing another designated service.

# KEY CONSIDERATIONS

## CUSTOMER DUE DILIGENCE

### **5-7 Delayed initial due diligence—real estate transactions**

REIA acknowledges and generally supports the addition of the new Section 5-7 in the Exposure Draft Rules in line with REIA's recommendation in our First Submission. The Section permits delayed initial Customer Due Diligence ('CDD') up until settlement for the sales, purchases or other transfers of real estate in some circumstances:

- the real estate agent acting for the seller or transferor of real estate may delay initial CDD in relation to the buyer/transferee,
- the real estate agent acting for the buyer or transferee may delay initial CDD in relation to the seller/transferor.

REIA supports the specified period outlined at Section 5-7(4), that being, initial CDD must be completed as soon as practicable but no later than the settlement of the sale, purchase or transfer of the real estate.

At Section 5-7(5), the Rules prescribe that to facilitate the delayed CDD, the settlement of the sale, purchase or transfer of the real estate must be conditional on completion of initial CDD in relation to the customer. REIA has concerns about the practical implementation of this requirement.

Real estate agents are not party to the sales contract themselves, as their primary role is to facilitate transactions between buyers and sellers. They do not have the power to instruct or enforce particular contract of sale clauses. The imposition of this requirement will be challenging for a real estate agent to action and provides little to no recourse for the reporting entity if the clause is not met by the customer.

If AUSTRAC is not amenable to the removal of Section 5-7(5), REIA's preferred alternative would be the inclusion of a warning statement in the contract of sale, opposed to a condition. This is a common approach used to manage ATO Clearance Certificate requirements.

These delayed verification provisions are intended to operate alongside Sections 5-16 of the Rules. In this case, Section 5-16 provides sufficient protections in itself that CDD on the customer will occur.

Due to the lack of control by the agent in regards to the contract of sale drafting and execution, if Section 5-7(5) remains, AUSTRAC should outline in the sector specific guidelines what constitutes reasonable precautions and due diligence in meeting Section 5-7(5) of the Rules for the purposes of Section 236 of the Future Act. REIA would suggest one such approach that would be sufficient is in the sales advice to seller's conveyancer, it is noted the agent is relying on Section 5-7 of the Rules and as such Section 5-7(5) needs to be considered in the contract of sale.



## ***Recommendations:***



Remove the requirement under Section 5-7(5) that the settlement of the sale, purchase or transfer of the real estate must be conditional on compliance with subsection 28(1) of the Act in relation to the customer.

- *In the first alternative (though not preferred):*  
Amend Section 5-7(5) to provide that the contract of sale must include a warning opposed to a condition. Say: “For the purposes of paragraph 29(f) of the Act, a requirement in each of the circumstances mentioned in subsections (1) to (3) is that the contract of sale, purchase or transfer of the real estate must contain a statement on compliance with subsection 28(1) of the Act in relation to the customer.”  
*or*
- *In the second alternative (though not preferred):*  
Remove the requirement under Section 5-7(5) that the settlement of the sale, purchase or transfer of the real estate must be conditional on compliance with subsection 28(1) of the Act in circumstances where the reporting entity intends to use the provision alongside Section 5-16.  
*and*  
AUSTRAC in the sector-specific guidance explicitly outline what constitutes reasonable precautions and due diligence in meeting Section 5-7(5) of the Rules for the purposes of Section 236 of the Future Act.



AUSTRAC in the Sector-specific guidance explicitly outline what constitutes reasonable precautions and due diligence in meeting Section 5-7 of the Rules, in the scenario where the buyer fails to undertake CDD pre settlement, for the purposes of Section 236 of the Future Act.

## ***Drafting note for Explanatory Statement:***



Paragraph 275 of the Explanatory Statement is amended to reference Section 5-16, not 5-15 in the first sentence.



## 5-16 Initial Customer Due Diligence – real estate transactions

REIA acknowledges and generally supports the addition of the new Section 5-16 in the Exposure Draft Rules in line with REIA's recommendation in our First Submission. Section 5-16 allows for forward-looking reliance between reporting entities of a real estate transaction under certain circumstances, which goes someway to reducing duplication of CDD across the residential transaction and in part reflects the spirit of the governing Act as outlined at para 322 of the Explanatory Memorandum of the AML/CTF Bill, which states:

*"To reduce regulatory burden, and avoid duplication where there are multiple real estate professionals (for example, in a multi-listing agreement) and other reporting entities involved in a real estate transaction, the AML/CTF Act already provides a flexible CDD reliance framework. This is set out in Sections 37A to 39 of the AML/CTF Act, in which one reporting entity may rely on CDD undertaken by another reporting entity in appropriate circumstances. New reporting entities, such as real estate agencies or conveyancers may rely upon CDD carried out by another reporting entity ..."*

However, REIA has concerns with the omission of subsection 28(2)(f) of the Future Act from deemed compliance under Section 5-16. REIA has concerns that the implication is real estate agents are unable to rely on source of wealth investigations conducted by other reporting entities in the real estate transaction process. This omission is counterintuitive to the spirit of the governing Act and this Section. Conveyancers are much better placed to undertake source of wealth investigations on the buyer if the need to undertake arises.

### **Recommendation:**

- Subsection 28(2)(f) of the Future Act be included in the scope of deemed compliance under Section 5-16.
- That industry-specific guidance should outline what "taken reasonable steps to establish that the customer is the person the customer claims" means in practical steps for the real estate sector. This includes outlining the ability to rely on identity document verification undertaken by the other reporting entity, i.e. conveyancer.
- That industry-specific guidance includes a template Section 5-16 Arrangement as specified in 5-16(e) and (f).

### **Drafting note for Explanatory Statement:**

- Para 293 of the Explanatory Statement is amended to reflect the subsections of 28(2) of the Act as drafted in the Exposure Draft Rules.

# OTHER DELAYED VERIFICATION CIRCUMSTANCES

## Section 5-6: Delayed verification for certain identification requirements—service provided in Australia

Addition of Section 5-6 in the Rules opens up delayed verification for all designated services provided in Australia in relation to beneficiaries of trusts (and equivalent persons in legal arrangements under foreign laws) and beneficial owners under certain circumstances. This may provide regulatory relief to agents when engaging a seller where the ownership structure is a trust. The agent can commence delivering service upon collection of KYC info and continue the verification process while progressing the listing of the property.

### *Recommendation:*

- That Sector-specific guidance outlines practical scenarios where delayed verification would be applicable to real estate agents when engaging a customer whose ownership structure is a trust; the appropriate process to undertake; and supporting template policy.



# SUSPICIOUS MATTER REPORTS

## Section 8: Reporting (Division 1 – Reports of suspicious matters)

Part 8 (Division 1) of the Rules provides detail in relation to various reporting obligations a reporting entity has under the Act for reports of suspicious matters.

Under Section 8-4(1)(d), if the conditions in subparagraph 41(1)(f)(iii) of the Act are satisfied in respect of the matter— a reporting entity must provide information on the offence against a law of the Commonwealth or of a State or Territory that is relevant to the matter.

Practically, an agent (and subsequently the AML Compliance Officer) may have an intuition that a transaction may be linked to an offence, but to expect them to identify specific legislation goes well beyond the requisite capabilities of the role.

Additionally, concerns have been raised regarding Section 8-4(b) on “the value associated with the transaction (in Australian dollars or a foreign currency as appropriate)”. In the case of a real estate transaction process, formal valuations are an independent and formal report on a property’s value, which is carried out by licensed valuers or lending institutions. More appropriate terminology would be “estimated sale price”.

### *Recommendations:*

- Section 8-4(1)(d) of the Rules be amended to state “if the conditions in subparagraph 41(1)(f)(iii) of the Act are satisfied in respect of the matter— information on why the reporting entity suspects a matter may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory that is relevant to the matter”.
- That Section 8-4(5)(b) of the rules be amended to state “estimated sale price of the property” instead of the “value of the property”.

# SENIOR MANAGER

## Amended AML/CTF Act – Definition of a senior manager of a reporting entity

‘Senior manager’ is defined under Section 6 of the Future Act. That being an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the reporting entity. The Future Act specifies several scenarios where Senior manager action is required, the Rules expand on these to include the approval of business relationships with certain PEPs and the approval of CDD reliance relationship.

The definition of ‘senior manager’ is not limited to individuals who make decisions that affect the whole of the real estate agency’s business. Instead, the definition also captures individuals who ‘participates in making decisions’ that ‘affect... a substantial part’ of the business. AUSTRAC also considers that ‘participating in making’ a decision does not mean that the individual needs to be the final decision-maker. This must be determined by reference to the person’s role in the reporting entity overall.

Whilst the question of whether someone is a ‘senior manager’ depends on the circumstances, the size of the reporting entity, its corporate and management structure and the role of the persons involved, the Starter Kits should ensure that these are made sufficiently clear for real estate agencies.

### *Recommendations:*

- That industry-specific guidance outlines who could be deemed a senior manager in the agency context.



# PERSONNEL DUE DILIGENCE

## Section 4-5 of the Act—Undertaking personnel due diligence

Paragraph 189 of the Exposure Draft Explanatory Statement to the Rules states that:

“Where persons employed, or otherwise engaged by a reporting entity are already subject to personnel due diligence by virtue of the profession in which the reporting entity operates, such protocols may be leveraged or used to supplement personnel due diligence checks for the purpose of fulfilling personnel due diligence requirements under the AML/CTF regime where the protocols are relevant to the reporting entity’s personnel due diligence obligations and they are adequately documented within the reporting entity’s AML/CTF policies. However, the type of due diligence required must be relevant to the person’s skills, knowledge and expertise relevant to the particular responsibilities of the person under the AML/CTF policies of the reporting entity.”

A real estate agent licence or certificate of registration can reasonably serve as evidence of a person’s skills, knowledge and expertise relevant to the particular responsibilities of the person under the AML/CTF policies and the person’s integrity under Section 4-5(2) of the Rules. A real estate agent’s licence is only granted to individuals who explicitly satisfy the experience and current education requirements, as per licensed agents legislation in each jurisdiction.

It is widely expected that real estate qualifications and/or CPD providers will integrate the Act’s provisions into their curriculum, ensuring that future and current real estate professionals are trained in compliance with Tranche 2 entities’ legal AML/CTF obligations, as such should satisfy Section 4-5(2)(a).

In addition, real estate agents are also already subject to integrity frameworks under state and territory licensing regimes. REIA is of the view these would meet the integrity obligations outlined under Section 4-5(2)(b) of the Rules. These have been noted in REIA’s First Submission to the initial round of consultation at page 16, in Appendix A.

### **Recommendations:**

AUSTRAC should ensure that industry specific guidance acknowledge that a licensed real estate agent will satisfy the personnel due diligence requirements stipulated at Section 4-5(2).

- *In the alternative (though not preferred):*  
AUSTRAC should ensure that industry specific guidance acknowledge that a licensed real estate agent will satisfy the personnel due diligence requirement stipulated at Section 4-5(2)(b).



# ADDITIONAL RULES REQUIRED

## Exemption required for Property Management Services

While paragraph 370 of the Explanatory Memorandum to the AML/CTF Bill 2024 states that the designated service relating to trust accounts would exclude ‘property management activity’, Item 3 of Table 6 – Professional Services under the Future Act does not contain an express or definitive exemption for property management services.

The only exemption contained in Section 6-5C of the Future Act creates uncertainty as to whether property management services are exempt from being considered a ‘designated service’. The drafting of this provision operates under the assumption that receiving, holding or controlling money, accounts or other property is incidental to the business of property management, and generalises the point that businesses ‘operating trust accounts will not be regulated under the AML/CTF regime purely for operating a trust account in the absence of any designated service’ (as noted in the Explanatory Memorandum paragraph 372).

The scope of what is incidental is subjective and a significant amount of uncertainty is introduced as the receipt and disbursement of funds from a trust account is an integral part of the services provided by a property management business. This ‘incidental’ exemption on which property managers would have to rely is only available to them if the business of which they are a part does not offer other designated services. For instance, specialist property managers that are ‘stand-alone’ would not be subject to the AML/CTF regime, while those that are part of a full-service real estate agency would. Notably, the majority of the real estate businesses in Australia provide both sales and property management services.

Property management is a high volume, low margin business where property managers maintain stable, long-term relationships with their clients. Imposing AML/CTF obligations would introduce disproportionate compliance costs, given that such services are not deemed a significant ML/TF risk by FATF.

### ***Recommendations:***

- AUSTRAC makes an explicit exemption for “Property Management Services” in the Rules Under Section 247 of the Future Act to ensure the Act does not apply to all residential and commercial property management services, irrespective of whether the reporting entity is providing another designated service.

# CONCLUSION



REIA supports the intent and core objectives of the AML/CTF regime in effectively combating financial crimes, meeting the Financial Action Task Force evaluations and safeguarding our economy.

It is essential that the Rules are fit for purpose and align with the spirit of the governing Act by ensuring that compliance obligations are practical and proportionate for businesses in the real estate sector, while also minimising opportunities for money laundering, terrorism financing, and proliferation financing.

We appreciate the opportunity provided by AUSTRAC to submit feedback on the proposed Second Exposure Draft Rules and welcome further collaborative engagement to shape a fair and balanced regulatory framework.

# REAL ESTATE INSTITUTE OF AUSTRALIA

## New Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules

REIA submission on the first round of consultation on  
Exposure Draft Rules

14 February 2025



# **ACKNOWLEDGEMENT OF COUNTRY**

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We pay our respect to them, their culture and their leaders, past, present and emerging.





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# INTRODUCTION

The Real Estate Institute of Australia (REIA) is the national body and voice for the real estate profession in Australia. REIA's primary function since 1924 has been advocacy for policies that support a successful real estate industry.

REIA's members are the State and Territory Real Estate Institutes (REIs) through which around 85% of Australian real estate agencies are collectively represented across 46,793 businesses.

The rental, hiring, and real estate services sector is among the top three industries in Australia with the highest percentage of small businesses. It accounts for 11.5% of the total 2.59 million small businesses in the country. Additionally, 99% of real estate agencies are predominantly operated by small businesses, each employing fewer than 20 people on average.

Today, REIA represents real estate practitioners and agencies through our work across policy and political action, media advocacy, market research and evidence, industry excellence and national leadership and networks.

REIA thanks AUSTRAC for providing the opportunity to participate in the consultation process regarding the new Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules ('the Rules'). We would note at various parts of the submission, recommendations may naturally extend beyond the Rules and into commentary around future AUSTRAC Guidance and implementation.

As the peak body representing the real estate sector, REIA is committed to supporting measures that enhance the integrity of the industry while ensuring compliance obligations are practical and proportionate, particularly for small businesses.

Thank you to the State and Territory REI Members who have informed and contributed to this submission.

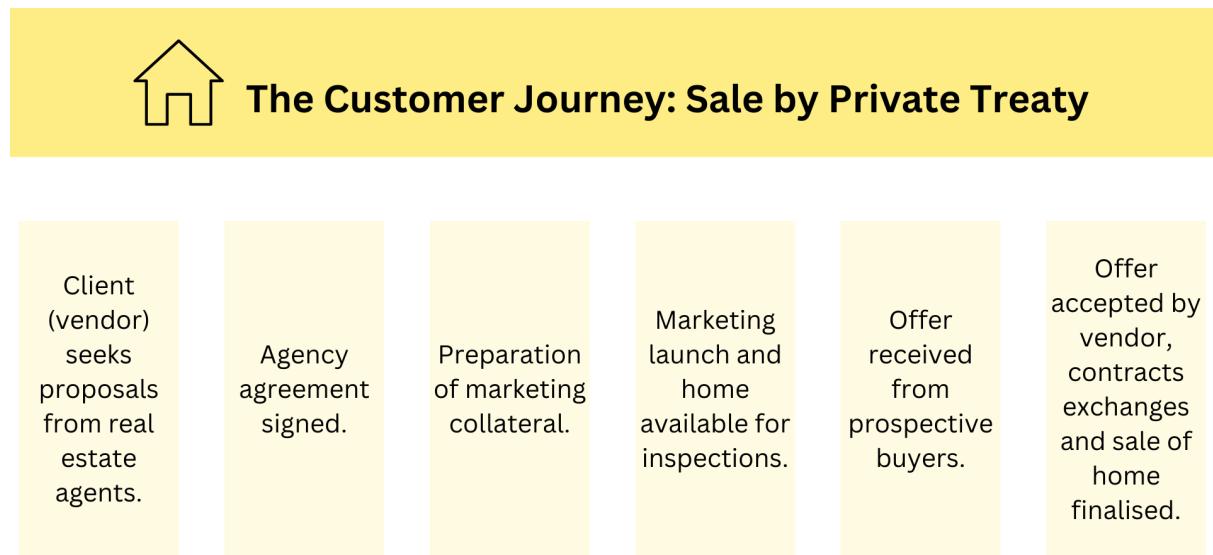
# SUMMARY OF RECOMMENDATIONS

1. AUSTRAC considers the state and territory variances in real estate transactions when developing subsequent guidance.
2. Regulation 45(c) and (d) of the Rules be redrafted to clarify that the intent is to have the ability to obtain the KYC information and not that you need to obtain it in every case.
3. In the circumstances where it is evident a buyer or vendor has already engaged a conveyancer or lender, and KYC and Initial CDD has been done on that transaction, then no further action is required by the real estate agent (subject to r45(b)).
4. Where a real estate agent is the first engagement with a buyer or a vendor as part of the real estate transaction, delayed CDD provisions should be available to allow for agents to utilise reliance provisions (as allowed for under Regulation 45(c)(i)).
5. AUSTRAC to consult with the relevant state and territory regulators to ensure that KYC processes complement VOI obligations.
6. Amend Regulation 13(2)(b) to provide clarity in line with the Future Act, that this regulation only applies to employees who will perform functions relevant to the reporting entity's obligations under the Future Act.
7. Amend Regulation 25(2) to remove the requirement that a reporting entity must collect and verify the customer's place of birth.
8. AUSTRAC continue to collaborate with industry stakeholders to assist small businesses meet their AML/ CTF obligations and encourage compliance without excessive administrative burdens.
9. That the Australian Government provide direct business offsets or subsidies to support administrative and implementation costs of AML/CTF obligations.
10. That it remains optional for registered entities to form a reporting group.
11. Delayed CDD be allowed for sales under Auction conditions.
12. CDD be delayed on the buyer until the contract has become unconditional, but at least 5 business day before the settlement date.

# KEY CONSIDERATIONS

## Real Estate Transaction Process Background

### Sale by Private Treaty



The real estate transaction process in Australia involves several key steps, which vary slightly depending on the jurisdiction and the type of sale (private sale or auction). As such, the multiple permutations of a residential sale must be considered in both the Rules and subsequent AUSTRAC Guidance development, particularly when considering Reliance Frameworks, delayed Customer Due Diligence ('CDD') and the interaction of State and Territory Verification of Identity ('VOI') obligations.

### 1. Preparation Phase

#### For Sellers

Sellers typically begin by engaging a licensed real estate agent to list their property. While the real estate agent is considered the first point of contact in the sale process, there is no required order of interaction, and a client can engage with a solicitor, conveyancer or banker at any point in the transaction process.

#### For Buyers

Buyers often start by securing pre-approval from a lender. Buyers research the property market, attend open inspections, and shortlist properties of interest. Buyers usually engage a solicitor or conveyancer early in the process to review contracts or provide legal advice.

### 2. Property Marketing

Once an agency agreement is signed, the real estate agent then assists the seller with marketing collateral, including online listings, open inspections, and advertising.

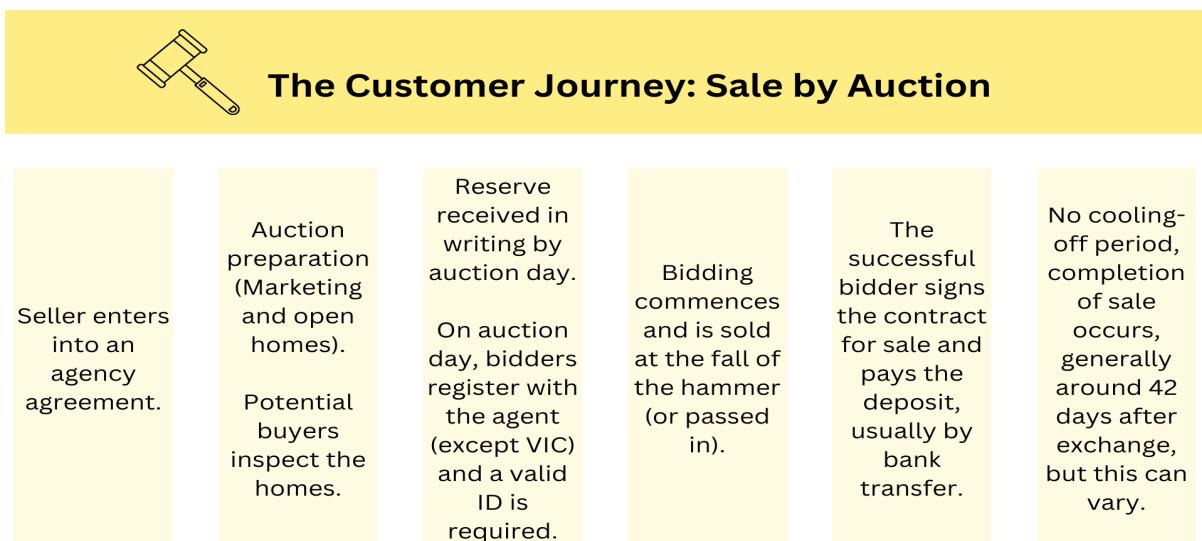
Buyers attend open homes for inspection, evaluate properties, and conduct due diligence, such as building and pest inspections and reviewing legal documents.

### 3. Contract of Sale

Offers are then received from prospective buyers, primarily through the agent. The vendor can accept, reject, or negotiate the offer with the buyer. Once both parties agree on the terms, they sign the contract of sale, and the buyer pays a deposit (usually 10% of the purchase price).

A cooling-off period may apply in some jurisdictions, allowing the buyer to withdraw from the contract within a specified timeframe with a small penalty.

## Auction



In an auction scenario, bidders usually register beforehand or on the day, providing the required personal information (where the VOI check is conducted), noting that this is not applicable in VIC.

### Verification of Identity

Verification of Identity (VOI) checks for sellers in property transactions are a critical component of the sale process, ensuring compliance with legal requirements and safeguarding against financial crime.

These checks typically occur when the seller engages a real estate agent to list the property and during the preparation of the contract of sale by the solicitor or conveyancer.

The responsibility for conducting VOI checks varies across jurisdictions, with real estate agents, solicitors, or conveyancers overseeing the process in accordance with state and territory regulations.

In most jurisdictions, clients are required to undergo VOI checks when they engage a real estate agent to list their property. However, there are jurisdictional variations as to the exact timing and requirements:

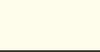
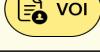
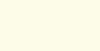
- In SA and WA, VOI checks are mandatory for sellers but not explicitly required for buyers.
- In the ACT, the seller's solicitor or conveyancer prepares the contract for sale and handles the VOI process before marketing begins and the property is listed. VOI is required to be sighted for registered bidders at auctions but not for sellers in private sales.
- In TAS, VOI checks are not legislated for sellers, but it may be handled by conveyancers or solicitors. There are no legislated requirements for VOI checks at auctions.
- In NT, there are no legislated requirements for VOI checks on sellers and buyers.
- In VIC, VOI is sighted and not retained for sellers, but not required for buyers. Bidder registration is not required for auctions.
- In NSW, VOI is conducted for sellers but not required for buyers and only a single document is required for verification purposes in an auction.

The auction verification process varies as VOI checks are not required on all registered bidders at an auction across most jurisdictions (SA, NT, ACT, NSW, QLD). However, at the exchange of



Note: The process charts that follow depict the general flow of the sales transaction process under each setting, though this can vary from transaction to transaction. In some transactions, first contact for a buyer will be a buyer's agent.

## Private Sales – Seller Engagement Flow

Australian Capital Territory	Agent  	Solicitor/Conveyancer  	Bank/Lender  
Victoria	Agent  	Solicitor/Conveyancer  	Bank/Lender  
New South Wales	Agent  	Solicitor/Conveyancer  	Bank/Lender  
South Australia	Agent  	Solicitor/Conveyancer  	Bank/Lender  
Western Australia	Agent  	Settlement Agent  	
Northern Territory	Agent  	Solicitor/Conveyancer  	Bank/Lender  
Tasmania	Solicitor  	Agent  	Bank/Lender  

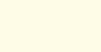
## Private Sales – Buyer Engagement Flow

Australian Capital Territory	Bank/Lender  	Solicitor/Conveyancer  	Agent 
Victoria	Bank/Lender  	Solicitor/Conveyancer  	Agent 
New South Wales	Bank/Lender  	Solicitor/Conveyancer  	Agent 
South Australia	Bank/Lender  	Agent 	Conveyancer  
Western Australia	Agent 	Bank/Lender  	Settlement Agent  
Northern Territory	Bank/Lender  	Agent 	Conveyancer  
Tasmania	Bank/Lender  	Agent 	Conveyancer  

## Auction – Seller Engagement Flow

Australian Capital Territory	Solicitor/Conveyancer  	Agent  	Bank/Lender  
Victoria	Agent  	Solicitor/Conveyancer  	Bank/Lender  
New South Wales	Solicitor/Conveyancer  	Agent  	Bank/Lender  
South Australia	Agent  	Conveyancer  	Bank/Lender  
Western Australia	Agent  	Settlement Agent  	
Northern Territory	Agent  	Conveyancer  	Bank/Lender  
Tasmania	Solicitor  	Agent  	Bank/Lender  

## Auction – Buyer Engagement Flow

Australian Capital Territory	Bank/Lender  	Solicitor/Conveyancer  	Agent  
Victoria	Bank/Lender  	Solicitor/Conveyancer  	Agent 
New South Wales	Bank/Lender  	Solicitor/Conveyancer  	Agent (Single Identity Document)  
South Australia	Bank/Lender  	Agent  	Conveyancer  
Western Australia	Agent  	Bank/Lender  	Settlement Agent  
Northern Territory	Bank/Lender  	Agent  	Conveyancer  
Tasmania	Bank/Lender  	Agent  	Solicitor  

## Reliance Provisions



“

The Explanatory Memorandum of the AML/CTF Bill sets the spirit of these provisions at para 322 which states:

“To reduce regulatory burden, and avoid duplication where there are multiple real estate professionals (for example, in a multi-listing agreement) and other reporting entities involved in a real estate transaction, the AML/CTF Act already provides a flexible CDD reliance framework. This is set out in sections 37A to 39 of the AML/CTF Act, in which one reporting entity may rely on CDD undertaken by another reporting entity in appropriate circumstances. New reporting entities, such as real estate agencies or conveyancers may rely upon CDD carried out by another reporting entity ...”

The reliance provisions under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ('The Future Act') allow reporting entities to rely on CDD conducted by other entities, such as conveyancers or lenders. Division 7 of the Draft Rules provides further guidance on the operation of reliance provisions within the Future Act. It is important that AUSTRAC allows for these provisions to operate in the spirit of the Future Act and ensure where possible vendors and buyers aren't engaging in multiple KYC processes throughout the discrete residential real estate transaction.

In addition, VOI obligations must complement KYC processes and not be duplicative i.e. whereby KYC has been undertaken in principle this should satisfy the various VOI requirements under the relevant state and territory obligations as outlined on page 7.

## **Recommendation 1**

AUSTRAC considers the state and territory variances in real estate transactions when developing subsequent guidance.

## **Recommendation 2**

Regulation 45(c) and (d) of the Rules be redrafted to clarify that the intent is to have the ability to obtain the KYC information and not that you need to obtain in every case.

## **Recommendation 3**

In the circumstances where it is evident a buyer or vendor has already engaged a conveyancer or lender, and KYC and Initial CDD has been done on that transaction, then no further action is required by the real estate agent (subject to r45(b)).

## **Recommendation 4**

Where a real estate agent is the first engagement with a buyer or a vendor as part of the real estate transaction, delayed CDD provisions should be available to allow for agents to utilise reliance provisions (as allowed for under Regulation 45(c)(i)).

## **Recommendation 5**

AUSTRAC to consult with the relevant state and territory regulators to ensure that KYC processes complement VOI obligations.

# Personnel Due Diligence

Real estate agents are already subject to integrity frameworks under state and territory licensing regimes. REIA is of the view these would meet the integrity obligations under Regulation 13(2)(b).

The current integrity checks performed on real estate agents are noted below:

Jurisdiction	Integrity Check
ACT	Police check required before registration and must be less than 2 months old (Agents Act 2003).
NSW	Eligibility criteria defined under the Property and Stock Act 2002, including probity and competency.
SA	National Police Certificate (less than 12 months old); compliance with the Land Agents Act 1994.
WA	Licensed agents must be of good character (Real Estate and Business Agents Act 1978).
TAS	National Police Check from Tasmania Police (issued within 3 months); insolvency check required.
NT	Police history check required under the Agents Licensing Act 1979. Applicants must be 18+ and complete competency-based training. REINT members follow a code of conduct; the Agents Licensing Board regulates conduct and handles complaints.
VIC	The right to be employed as an agent's representative or a licensed real estate agent is administered under the Estate Agents Act 1980, the Estate Agents (Professional Conduct) Regulations 2018, and the Estate Agents (Education) Regulations 2020.

## Recommendation 6

Amend Regulation 13(2)(b) to provide clarity in line with the Future Act, that this regulation only applies to employees who will perform functions relevant to the reporting entity's obligations under the Future Act.



## Place of Birth Verification

The requirement to verify place of birth presents significant challenges due to the limited availability of verifiable documents. Place of birth is typically recorded only on birth certificates and passports; however, with only 55% of Australians holding a passport, this requirement imposes an unreasonable burden on many transactions. This obligation may disproportionately affect vulnerable cohorts who may have difficulty accessing these documents.

Additionally, integrating this requirement into digital identity verification processes, such as online Verification of Identity (VOI) platforms, would be complex, particularly as most system relies on a single photo ID.

### Recommendation 7

Amend Regulation 25(2) to remove the requirement that a reporting entity must collect and verify the customer's place of birth.

# RESPONSE TO CONSULTATION QUESTIONS

In response to the first round of consultation on the Exposure Draft Rules, we have chosen to address only the questions that are directly relevant to the operations and challenges faced by the Australian real estate sector.

Our responses aim to provide constructive feedback, drawing on the experiences of our members, particularly small businesses, who form the backbone of the real estate industry. Noting some responses may have been covered in "Key Considerations" above.



# General

## **1. Do any aspects of the Exposure Draft Rules create unnecessary friction with existing approaches to risk mitigation in your business or sector? If so, what are they? Are there alternative approaches that could achieve the same regulatory outcomes?**

The Rules introduce several requirements that, while aimed at strengthening regulatory outcomes, may create unnecessary friction with existing approaches to risk mitigation in the real estate sector.

Below is a list of challenges posed, along with potential alternative approaches to achieve the same regulatory outcomes without imposing undue burdens on our small businesses in the real estate sector.

### **a. Compliance Costs and Administrative Burdens**

Agencies will face operational challenges in complying with the proposed AML/CTF regime. This will involve upgrading and developing technological solutions for record-keeping, documentation, and compliance monitoring. These system upgrades will come with significant costs that the industry must bear as this process is resource-intensive and requires expertise that many small businesses lack. The cost of hiring external consultants or dedicating internal staff to this task will be prohibitive for most small agencies in the sector.

### **b. Limited Staff and Resources**

Ensuring compliance with the AML/CTF regulations may lead to reduced operational efficiency, as businesses might need to divert resources from their core activities to focus on compliance-related tasks. Small businesses and sole traders may find themselves increasingly reliant on external consultants to navigate the complexities of AML/CTF regulations. While these consultants can provide valuable expertise, their services come at a premium, further driving up overall operational costs.

### **c. Capacity Constraints**

Developing strong AML/CTF frameworks typically necessitates significant investment in technology and infrastructure, making it financially challenging for small agencies to implement. As noted in (a), this will involve upgrading and developing technological solutions for record-keeping, documentation, and compliance monitoring. These system upgrades will come with significant costs that the industry will need to bear.

### **Recommendation 8**

AUSTRAC continue to collaborate with industry stakeholders to assist small businesses meet their AML/ CTF obligations and encourage compliance without excessive administrative burdens.

### **Recommendation 9**

That the Australian Government provide direct business offsets or subsidies to support administrative and implementation costs of AML/CTF obligations.

**2. Are any rules not sufficiently flexible to be scalable to specific circumstances of small businesses, sole traders or sole practitioners? Are there alternative approaches that could achieve the same regulatory outcomes?**

The rules may not be sufficiently flexible for small real estate businesses, particularly sole practitioners or micro agencies.

AUSTRAC's proposed starter kits, including educational materials and practical examples, will be critical in helping small businesses understand and meet their obligations. These kits should be tailored to the real estate sector and include guidance on identifying beneficial owners, managing risks, and conducting CDD efficiently. Therefore, AUSTRAC should expedite the development of sector-specific starter kits and ensure they are accessible to small businesses.

**3. Are any rules not sufficiently flexible to be scalable to specific circumstances of large or multinational businesses? Are there alternative approaches that could achieve the same regulatory outcomes?**

Franchisors will be compelled to develop, execute, and uphold a comprehensive anti-money laundering/counter-terrorism financing (AML/CTF) program that encompasses the entire business operations while ensuring the compliance of reporting entities. In contrast, franchisees may not possess the financial means to meet these obligations which raises the implications of non-compliance. SMEs lacking the support of franchisors will grapple with this financial burden in addition to their existing business outlays, which include but are not limited to investing in software systems to guarantee compliance, provide training, and cover operating expenditures.

## **AML/CTF Programs**

**4. What is a reasonable period of time for you to document updates made to your ML/TF risk assessment or AML/CTF policies?**

A reasonable period for documenting updates to ML/TF risk assessments or AML/CTF policies would be 30 days. This timeframe strikes a balance between ensuring timely compliance with regulatory requirements and allowing businesses to thoroughly review, approve, and implement changes without causing significant disruption to their operations.

## **Reporting Groups**

The formation of reporting groups, particularly within franchise networks requires a flexible and adaptable framework to accommodate the diverse structures and operational models of these entities, as noted in question 3.

Franchisors often act as lead entities, providing centralised compliance support to franchisees, which can streamline the AML/CTF efforts. However, the decision to form a reporting group should remain optional rather than mandatory, ensuring that businesses can tailor their compliance approach to their specific needs and circumstances.

## Recommendation 10

That it remains optional for registered entities to form a reporting group.

# Customer Due Diligence

**5. Are there practical implementation challenges you anticipate you may face in meeting the CDD obligations set out in the Exposure Draft Rules? If yes, what are they and do you have alternate suggestions as to how the same regulatory outcome can be achieved?**

Please see the Key Considerations section.

**6. Are there any additional circumstances (e.g. particular types of transactions that require the urgent provision of a designated service) in which your sector may need to delay aspects of initial CDD to prevent disruption of the ordinary course of business?**

### Auction Scenario

In the real estate sector, property auctions will require delaying aspects of initial CDD. Auction scenarios pose unique challenges, as contracts are signed immediately after the fall of the hammer. It is impractical to conduct KYC/CDD on all bidders.

## Recommendation 11

Delayed CDD be allowed for sales under Auction conditions.

### Private Sale

CDD on the buyer should be performed after the contract has become unconditional, ensuring that all preliminary conditions are satisfied, but ensuring it is done within a reasonable time frame before the settlement date to achieve the regulatory outcome (say 5 business days prior).

## Recommendation 12

CDD be delayed on the buyer until the contract has become unconditional, but at least 5 business day before the settlement date.

## Compliance Reports

**7. Does the 12-month reporting period of January – December, with a report lodgement period of the following January – March present significant challenges to your business due to conflicts with other Commonwealth, State or Territory reporting or lodgement requirements? What are these challenges?**

Yes, the current January–December reporting period, with lodgement required between January and March, presents challenges due to conflicts with other Commonwealth, State, and Territory reporting obligations.

**8. Is there a preferable reporting or lodgement period?**

A July–June reporting period, aligned with the financial year, would be preferable for the real estate sector. Aligning the reporting period with the financial year would improve efficiency, reduce administrative burdens, and streamline compliance processes for businesses operating within multiple regulatory frameworks.

## Keep Open Notices

**9. Is the information required to be provided in a keep open notice sufficient for you to determine if the customer to whom the notice applies, is a customer of yours?**

The information required in keep open notices is generally sufficient for real estate businesses to identify customers. However, additional guidance on handling incomplete or ambiguous information would be beneficial to ensure accurate identification.

**10. Are the explanations in the keep open notice and the keep open – extension notices easily understood by you?**

The explanations in the keep open notices are generally clear.

# ADDITIONAL CONSIDERATIONS



## Independent Evaluations

Further details are required on the independent evaluations mandated every three years, including:

- Anticipated costs for reporting entities.
- The level of independence required.
- Regulatory implications of adverse findings.

AUSTRAC should clarify the consequences of adverse findings from independent evaluations and whether they could trigger enforcement actions. Additionally, clear guidance on the scope, cost, and regulatory implications of independent evaluations would ensure that they are proportionate to the size and risk profile of the business.

# Understanding the Risk - Enforcement/Investigatory Examples

REIA would welcome AUSTRAC to provide by way of say AFP or ACIC, a suite of instances where had CDD and KYC obligations been in play on a real estate transaction, this would have assisted in an investigation. This is an important piece to understand the nature of the risk and what agencies are attempting to achieve, ultimately informing AML Risk Assessments and the broader AML program.

## Early Deposit Release

In specific circumstances, a vendor may seek early access to the deposit funds prior to the settlement date. For this to occur, the buyer is required to sign relevant legal forms that authorise the agent to release the deposit to the vendor. This process is initiated through the legal representatives of both the vendor and the buyer. The agent will receive directives regarding the appropriate account to which the deposit should be transferred. In principle, it does not impede the regulatory outcome of undertaking CDD prior settlement date but may add some complexities.

## Contact Withdrawals

If the buyer 'cools off' within the cooling-off period, the agency refunds the deposit to the buyer, typically withholding 0.2 per cent of the agreed-upon sale price. These transactions should not trigger suspicious activity mechanisms and as above CDD should be required until the contract is unconditional. Given its low-risk status, the Rules must allow the reimbursement process to occur seamlessly without additional compliance obligations.

## Role of Other Authorities and Participants

Real estate transactions engage important government authorities, including the State Revenue Office and SERV, as well as major organisations like PEXA. It may be beneficial to expand their roles to meet AML/CTF obligations and compliance requirements. These entities should take responsibility for verifying the buyers and vendors involved in property transactions whenever feasible.

# CONCLUSION

REIA is committed to supporting the implementation of effective AML/CTF measures in the real estate sector. However, it is critical that the rules are proportionate, flexible, and tailored to the unique characteristics of the industry, particularly for small businesses and sole practitioners.

We look forward to continuing our collaboration with AUSTRAC and welcome the opportunity to provide further input as the rules are finalised.

