

FATF



Anti-money laundering and
counter-terrorist financing
measures

Australia

3rd Enhanced Follow-up Report &
Technical Compliance Re-Rating

November 2018



Report
Follow-up



The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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AUSTRALIA: 3rd ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

The mutual evaluation report (MER) of Australia was adopted in February 2015. This follow-up report analyses Australia's progress in addressing the technical compliance deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses Australia's progress in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: R.5, 7, 8, 18 and 21. Overall, the expectation is that countries will have addressed most if not all technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Australia has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. FINDINGS OF THE MUTUAL EVALUATION REPORT

The MER rated Australia as follows for technical compliance:

Table 1. Technical compliance ratings, February 2015¹

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	C	C	LC	C	C	NC	C	PC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	NC	LC	LC	PC	PC	PC	PC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	NC	NC	PC	NC	PC	PC	NC	C	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	LC	LC	PC	LC	C	C	C	C

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Australia Mutual Evaluation Report, April 2015, www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf.

Given these results and Australia's level of effectiveness, the FATF placed Australia in enhanced follow-up.¹ The following experts assessed Australia's request for technical compliance re-rating and prepared this report:

- Ms. Anne Mette Wadman, Public Prosecutor, National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway- ØKOKRIM
- Mr. Wayne Walsh, Legal Advisor, Department of Justice of Hong Kong, China

Section 3 of this report summarises Australia's progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

This section summarises Australia's progress to improve its technical compliance by:

- a) Addressing the technical compliance deficiencies identified in the MER, and
- b) Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.5, 7, 8, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER

Australia has made progress to address the technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- R.19, originally rated PC, and
- R.15, 30, 32 and 36, originally rated LC.

As a result of this progress, Australia has been re-rated on all of these Recommendations: R.15, 19, 30, 32 and 36.

3.1.1. Recommendation 15 (originally rated LC)

In its 4th MER, Australia was rated LC with R.15. The technical deficiency related to the lack of a specific obligation for reporting entities to manage and mitigate the ML/TF risks posed by new technologies. In January 2018, Australia amended its Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) Rules to require reporting entities' AML/CFT program to mitigate and manage identified ML/TF risks posed by new services, methods, and technologies. The Rules sit under the AML/CFT Act and are binding and enforceable. **Australia has therefore addressed this deficiency, and on this basis, is re-rated as compliant with R.15.**

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the FATF's traditional policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process of follow-up.

3.1.2. Recommendation 19 (originally rated PC)

In its 4th MER, Australia was rated PC with R.19. The main technical deficiencies were that: reporting entities were not required to apply enhanced due diligence to their relationships and transactions with DPRK; and some of the measures for enhanced due diligence listed in the AML/CFT rules addressed normal due diligence rather than enhanced due diligence. Since the MER, Australia has enacted the *AML/CFT (Prescribed Foreign Countries) Regulation 2016* which identifies DPRK as a ‘prescribed foreign country’ (s.6).² This requires reporting entities to apply enhanced due diligence to their relationships and transactions involving DPRK (AML/CFT Rules, chpt.15). However, the enhanced due diligence measures listed in the AML/CFT rules still include normal CDD measures (e.g. the clarification and updating of KYC information).³ **In light of this progress, Australia is re-rated to LC with R.19.**

3.1.3. Recommendation 30 (originally rated LC)

In its 4th MER, Australia was rated LC with R.30. The identified technical deficiency related to a requirement in Queensland for ML prosecutions to be authorised by the Queensland Attorney General. In 2016, the Queensland Parliament passed the *Serious and Organised Crime Legislation Amendment Act 2016* (Qld) which repealed the requirement for Attorney General authorisation of ML prosecutions (s.156). **This deficiency has therefore been addressed and Australia is re-rated as compliant with R.30.**

3.1.4. Recommendation 32 (originally rated LC)

In its 4th MER, Australia was rated LC with R.32. The main technical deficiency was a lack of dissuasive or proportionate sanctions for cash couriers. The MER identified two tiers of available penalties: infringement notices of up to AUD 850 for failure to report; and criminal penalties of 2 years’ imprisonment and/or AUD 85 000 for failure to report, or up to 10 years’ imprisonment or a fine of AUD 1.7 million for a false declaration (AML/CFT Act, ss.53, 59, 186). These financial penalties have increased slightly since the MER as a result of Australia’s regular penalty increases.⁴ In addition, Australia has drawn attention to a third tier of penalty: civil penalties of up to AUD 21 million for a company or AUD 4.2 million for individuals (AML/CFT Act, ss.53, 59, 175). A court will take into account the surrounding circumstances and any mitigating factors in determining an appropriate penalty. These penalties are dissuasive. In terms of proportionality, the criminal imprisonment penalty for making a false declaration is very high, but the infringement notices and civil penalties appear proportionate. **On this basis, Australia is re-rated as compliant with R.32.**

² This regulation ceased to have effect pursuant to its sunset provision and was re-made in identical terms in April 2018 (*Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulations 2018*).

³ This is an ongoing transitional measure to support the management of customers that reporting entities provided services to prior to the commencement of the AML/CFT Act in 2006. Enhanced due diligence must be ‘appropriate to those circumstances’, meaning further measures beyond standard due diligence should be taken in higher-risk situations.

⁴ The financial penalties now available are: infringement notices of up to AUD 1 050 for failure to report; and criminal fines of AUD 105 000 for failure to report.

3.1.5. Recommendation 36 (originally rated LC)

In its 4th MER, Australia was rated LC with R.36. The main technical deficiencies related to issues with R.5. As discussed below, these have been addressed. **Australia is therefore re-rated as compliant with R.36.**

3.2. Progress on Recommendations which have changed since adoption of the MER

Since the adoption of Australia's MER, the FATF has amended Recommendations 5, 7, 8, 18 and 21. This section considers Australia's compliance with the new requirements.

3.2.1. Recommendation 5 (originally rated LC)

In February 2016, R.5 was amended to require countries to criminalise the financing of the travel of foreign terrorist fighters (FTFs). Australia complies with this new requirement through the *Criminal Code 1995* which criminalises the financing of FTFs with the possibility of life imprisonment (s.119.5).

In its 4th MER, Australia was rated LC with R.5. The main technical deficiencies identified in the MER were: the definition of 'terrorist act' was too narrow and the offence did not cover the provision of funds to be used by an individual terrorist for any purpose. Australia has demonstrated that these aspects of the Recommendation are met through a combination of its criminal law concepts of complicity and recklessness, and its targeted financial sanctions regime. **On this basis, Australia is re-rated as compliant with R.5.**

3.2.2. Recommendation 7 (originally rated C)

In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs.

Australia continues to implement targeted financial sanctions under UNSCR 1718 and its successor resolutions. Designations under these Resolutions have automatic legal effect under Australian law. The Foreign Minister may also designate DPRK individuals or entities. Following the adoption of UNSCR 2231, Australia introduced the *Charter of the United Nations (Sanctions – Iran) Regulations 2016* which provide for designations under UNSCR 2231 to be automatically incorporated under Australian law. **On this basis, Australia remains compliant with R.7.**

3.2.3. Recommendation 8 (originally rated NC)

In June 2016, R.8 and its Interpretive Note were significantly revised rendering the analysis of R.8 in Australia's MER obsolete.

Since its MER, Australia has undertaken a comprehensive risk assessment of its NPO sector.⁵ This assessment focused on a subset of organisations falling within the FATF definition of NPOs: all charities and NPOs that have formed a legal entity in Australia.

⁵ An unclassified version of Australia's NPO sector is available online at: <http://www.austrac.gov.au/sites/default/files/npo-risk-assessment-FINAL-web.pdf>

Unincorporated associations were considered to a lesser extent due to factors pointing to a lesser TF risk (e.g. the inability to hold a bank account, and requirements to register with State/Territory authorities should they wish to fundraise). The assessment identified the features and types of NPOs likely to be at risk of TF abuse, namely legal entities that are incorporated, have a low annual turnover, are primarily based in New South Wales, are recently established, are relatively new, are service-oriented, and undertake transactions with high-risk TF countries.

The risk assessment identified the main threats to NPOs, including the diversion of legitimate funds by senior NPO personnel to finance offshore terrorist activity, attempts to infiltrate NPOs by terrorist groups, and the use of online platforms to solicit funds for terrorist purposes. Overall, the risk assessment assessed NPOs as posing a medium risk of TF. This assessment was lower than the previous assessment, which reflects the shift in Australia's TF environment and a move to smaller-scale activity (e.g. lone actors, small cells, self-funding, low value attacks).

Australia has recently concluded a review of the main NPO legislation, the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012*. The government has also announced an intention to update the NPO regulatory framework to increase oversight of charities operating abroad, strengthen the role of the ACNC, and strengthen governance requirements. To aid in ongoing risk assessment, a multi-agency NPO-Risk Working Group has been established to monitor and address the risks posed by higher-risk NPOs. The ACNC also chairs a Charity Compliance and Information Forum which assists in the early identification of high-risk NPOs.

Certain NPOs (e.g. incorporated or registered entities) are subject to general accountability and integrity requirements through licencing, registration, record-keeping, and financial reporting obligations.⁶ Specific NPO-based requirements are imposed on the 20% of charities in Australia registered with ACNC. Australia has conducted extensive outreach with the NPO sector to increase awareness of TF risk. The ACNC has conducted sector briefings on TF risks and worked with the NPO sector to develop a checklist to help prevent TF abuse and provide guidance for charities operating overseas.⁷ There is room for the development of further TF-specific best practices.

NPOs in Australia may be subject to general reporting obligations through their status as: an incorporated association (which must be registered at the State/Territory level); a company (which must register at a Federal level); a cooperative (which must be registered at the State/Territory level); or a fundraiser (which must be licenced at the State/Territory level). Registration with the ACNC or Australia Tax Office (ATO) is voluntary, but provides

⁶ E.g. Entities in NSW (identified as a higher-risk region) must lodge an annual financial summary with the Department of Fair Trading (Fair Trading) under the *Fair Trading Act 1987 (NSW)*. Similar requirements exist in other states: the *Associations Incorporation Reform Act 2012 (Victoria)*, administered by Consumer Affairs Victoria; the *Associations Incorporation Act 1981 (Queensland)*, administered by Fair Trading Queensland, and the *Associations Incorporation Act 1985 (South Australia)*, administered by Consumer and Business Services.

⁷ The checklist to prevent TF abuse is available at: www.acnc.gov.au/ProtectTFChecklist. The advice for charities operating overseas is available at: www.acnc.gov.au/ACNC/FTS/Charities_operating_overseas.aspx

added benefits, such as legitimacy and access to tax concessions. NPOs seeking funding from the Department of Foreign Affairs and Trade (DFAT) must meet stringent accreditation requirements. Unregistered entities are generally subject to other requirements that may prevent TF abuse. For example, they may be unable to hold assets or open a bank account, and any person sending money overseas on their behalf must report the transfer to AUSTRAC regardless of value. Nonetheless, there are concerns that some smaller charities, which are identified as potentially higher risk, are not subject to adequate monitoring to demonstrate the effective application of risk-based measures to prevent TF abuse.

Depending on their status, NPOs may be subject to monitoring and supervision by a range of agencies.⁸ Failure to comply with general reporting obligations is subject to sanction. If a NPO is registered with the ATO or receiving funding from DFAT, it may be subject to removal or benefits or loss of funding where it does not comply with reporting requirements. However, as this registration is voluntary, available sanctions for unregistered entities outside a criminal case are limited.

Information on NPOs that fundraise or are incorporated as associations or companies is publicly available and agencies which may hold information on NPOs are able to share this with relevant law enforcement and security agencies. Where TF abuse is suspected, the ACNC and ATO have information-gathering powers for entities under their supervision. Otherwise, the Australian Federal Police (AFP) has access to investigative capabilities and expertise in this area. This includes executing search of document-gathering powers to access information on the administration and management of an NPO where this information is held by an NPO. The NPO-Risk Working Group, which includes members from the ACNC, the ATO, AUSTRAC, and the AFP, provides a mechanism for the sharing of suspicions. The membership of the Group means that suspicions on NPOs outside the supervision of the ACNC and the ATO may be less likely to be raised.

For international cooperation requests relating to NPOs, Australia utilises its general procedures, including exchange mechanisms established by financial intelligence, law enforcement, and national security agencies, and the formal MLA process.

Australia has significantly improved its compliance with R.8. Only minor deficiencies remain. Australia has identified higher-risk NPOs, but remains in the early stages of reviewing the legislative framework and conducting ongoing risk assessment. There is room for more TF-specific best practice and there are concerns that some smaller charities, which are identified as potentially higher-risk, are not subject to adequate monitoring. Available sanctions outside a criminal case are limited. The NPO-Risk Working Group is a useful mechanism for information-sharing, but its membership means that suspicions on NPOs outside the supervision of the ACNC and the ATO may be less likely to be raised. **On this basis, Australia is re-rated as largely compliant with R.8.**

⁸ E.g. At a Federal level, regulators include: the Australian Securities and Investments Commission (fundraising regulator), the Australia Competition and Consumer Commission (monitors for misleading or deceptive conduct), and the Australian Taxation Office (which provides charity tax concessions).

3.2.4. Recommendation 18 (originally rated PC)

In November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements. Australia's AML/CFT Act does not prohibit the sharing of sensitive information, including STR-related information about a customer, across a group for the purpose of informing other reporting entities about the risks of a certain customer (s.123). In April 2018, changes to Australia's AML/CFT Act extended the types of reporting entities that can form a group (s.123). Nonetheless, there remain a range of other technical compliance deficiencies related to R.18 which Australia has yet to address. These include: few obligations for compliance management arrangements at the group or reporting entity level beyond the nomination of a compliance officer; limited audit obligations at the group or reporting entity level; no obligation for financial institution branches and subsidiaries abroad to apply the highest available standard; and no obligation to manage ML/TF risks or inform AUSTRAC where the host country does not permit the proper implementation of AML/CFT measures. Australia intends to address these deficiencies as part of legislative reforms to be introduced in 2019. **As this has not yet occurred, Australia remains partially compliant with R.18.**

3.2.5. Recommendation 21 (originally rated C)

In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18. Australia's tipping off provisions do not inhibit information-sharing. There is a clear exemption to the tipping off offence where information is shared amongst a business group for the purpose of sharing risk information (AML/CFT Act, s.123(7)). From 3 April 2018, the definition of a designated business group of reporting entities was extended (AML/CFT Act, s.123). **Australia remains compliant with R.21.**

3.3. Brief overview of progress on other recommendations rated NC/PC

Australia also reported progress on R.1 (PC), 10 (PC), 13 (NC), 16 (PC), 17 (PC), 22 (NC), 23 (NC), 24 (PC), 26 (PC), 27 (PC), 28 (NC), and 35 (PC):

- a) Recommendations from an April 2016 statutory review are being implemented in three stages. The first stage of AML/CFT reform included:
 - a. Amending the AML/CFT Act to: simplify exemption processes and ensure the primary consideration is ML/TF risk (R.1, 10); expand the regime to cover digital currency exchange providers (R.26); and extend the sanctions regime to a wider range of AML/CFT breaches (R.27, 35).
 - b. Enacting new AML/CFT Rules to require reporting entities to take into account AUSTRAC guidance in developing or updating their AML/CFT programs (R.1).
 - c. Commencing a program of risk assessments by AUSTRAC and completing assessments on financial crime, the securities sector, stored value cards, and remittance corridors (R.1).
 - d. Undertaking work to refine AUSTRAC's supervisory model with a plan to implement the new supervision model in mid-2018(R.26).

- e. Passing legislation to give the banking regulator the power to revoke licences on the basis of breaches of laws specified in regulations. This provides a mechanism to prescribe AML/CFT laws in the regulation (R.27).
- b) The second stage of the reform is intended for introduction in the second half of 2018 (subject to the Parliamentary schedule). This stage will seek to: clarify aspects of CDD requirements (R.10); improve compliance with correspondent banking requirements (R.13); and expand circumstances when third parties may rely on CDD measures performed (R.17). The Australian Government intends to introduce further phases of reform aimed at simplifying and streamlining the AML/CTT prior to expanding the scope of the AML/CFT regime to include certain high-risk sectors (R.1, 22, 23, 28, 35).
- c) Australia also completed a consultation on increasing the transparency of legal persons in February 2017 and the Government is currently considering next steps (R.24).

Australia did not report any progress on R.25 (NC) and considers its existing common law obligations remain sufficient to meet the recommendation.

4. CONCLUSION

Overall, Australia has made some progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on seven Recommendations. However, 14 Recommendations remain non-compliant or partially compliant.

As Australia has addressed the deficiencies in respect of R.5, 15, 30, 32, and 36 these Recommendations are now re-rated as C. Good progress has been made to rectify the issues relating to R.19 such that only minor shortcomings remain and this Recommendation is re-rated as LC. Australia complies with the updated requirements of R.7 and R.21, and maintains its rating of C for these Recommendations. Many steps have been taken to comply with the new requirements of R.8 leaving only minor shortcomings, so this Recommendation is re-rated as LC. While Australia complies with the revised requirement of R.18, outstanding deficiencies remain, meaning Australia remains PC.

In light of Australia's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, February 2015¹

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	C	C	C	C	C	LC	C	PC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	NC	LC	C	PC	PC	PC	LC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	NC	NC	PC	NC	PC	PC	NC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	C	LC	LC	PC	C	C	C	C	C

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).


While Australia has been re-rated on seven Recommendations, there remain 14 Recommendations rated non-compliant or partially compliant, including R.10. On this basis, Australia will remain in enhanced follow-up (FATF Procedures, para. 79(a)(ii)). According to the enhanced follow-up process, Australia will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.

The FATF logo is located in the top right corner. It consists of the letters "FATF" in a white, bold, sans-serif font, positioned above a stylized white graphic of three overlapping leaf-like shapes. The entire logo is set against a red, rounded rectangular background.

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The background of the lower half of the page is a photograph of the Sydney skyline at sunset. The Sydney Opera House is prominent on the left, and the city's skyscrapers are visible in the distance. The sky is filled with soft, colorful clouds in shades of orange, pink, and blue. The water of the harbor is in the foreground, reflecting the light from the buildings and the sky.

**Anti-money laundering and counter-terrorist financing
measures in Australia**

**3rd Enhanced Follow-up Report &
Technical Compliance Re-Rating**

This report analyses Australia's progress in addressing the technical compliance deficiencies identified in the FATF assessment of their measures to combat money laundering and terrorist financing of April 2015.

The report also looks at whether Australia has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2015 assessment.

Follow-up report