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Submission to AUSTRAC: Second Consultation on new AML/CTF Rules

Our organisations welcome the opportunity to provide feedback on the proposed changes to the AUSTRAC Anti-Money Laundering / Counter-Terrorism Financing (AML/CTF) Rules (**the Rules**). This is a joint submission made on behalf of:

- Consumer Action Law Centre
- Indigenous Consumer Assistance Network
- Super Consumers Australia
- Financial Counselling Australia
- Mob Strong Debt Help

We are a group of consumer advocacy organisations that support people experiencing varying degrees of vulnerability and financial exclusion across a broad range of financial services and products. We are concerned that the proposed Rule changes risk undoing the positive strides made toward financial inclusion, particularly for people experiencing vulnerability, that were achieved through recent enhancements to AUSTRAC's *Assisting customers who don't have standard forms of identification* Guidance (**the Guide**).

This response continues on from our previous joint submission to the [AUSTRAC Guidance on assisting customers who do not have standard identification](#). In this submission, we raise concerns about the prescriptive language of the new rules that we feel are likely to exclude more people experiencing vulnerability, and recommend that AUSTRAC imposes an obligation on Financial Services Providers (**FSPs**) to support financial inclusion in Rule 5-17 and associated explanatory materials. This will go some way to reducing the exclusion from financial services for people experiencing vulnerability due to an inconsistent and overly conservative, standardised approach to risk management. To put it simply – the new wording of Rule 5-17 will create more barriers to people experiencing vulnerability trying to access financial services. A person experiencing vulnerability, including remote First Nations customers, not only may not know or understand an FSP's particular requirements for accepting alternative

identification when requested over the phone or online, but would also have a great degree of difficulty in obtaining the required information to verify who they are and could be cut off from their FSP.

Our submission opens with general comments, including the perspectives of people experiencing vulnerability and their support workers, particularly since the release of the updated Guide. We then provide commentary and a response to key pieces of the revised Rules and consultation questions.

General comments

Financial inclusion is critical for reducing inequality, closing the financial gap for First Nations people and protecting and empowering people experiencing vulnerability. While acknowledging the importance of preventing harms caused by scams, fraud, and money laundering, it is our view that FSPs' AML/CTF policies are not adequately preventing harm from scams or supporting financial inclusion for people experiencing vulnerability. Caseworkers report that their clients without standard identification are being treated as 'high-risk' under these policies, which is not reflective of their actual characteristics and circumstance. The policies which see scam/fraud prevention and people experiencing vulnerability being assessed according to the same level of risk need to be reconsidered if FSPs are to support economic participation for the whole community.

Our clients, many of whom are experiencing vulnerability, are being denied access to the money held in their bank and superannuation accounts. They are too often turned away from basic banking services that are essential for escaping family violence, or rebuilding after a natural disaster. In our view, this is frequently due to the overly inflexible and standardized application of the Rules, related internal risk matrices and Know Your Customer (KYC) Policies that FSPs closely guard from public scrutiny.

Our organisations continue to support the purpose of reforming the Rules to improve financial inclusion for people experiencing vulnerability. However, we believe that the new wording of Rule 5-17 will encourage a narrower interpretation of the Rules, ultimately resulting in less people being able to access the essential financial services they need to be able to participate in the economy.

Case Study – Glenda*

Glenda is an Aboriginal woman who has been experiencing homelessness for many years and struggles with significant mental health issues including an acquired brain injury.

Glenda has been supported by a Social Worker on numerous occasions to obtain a new bank card, when Glenda's card had gotten lost. Glenda's bank unfortunately recently closed all of its branches in Victoria, which means Glenda is no longer able to attend a branch in order to prove her identity.

The Social Worker historically could call the bank on Glenda's behalf and request the replacement card over the phone, however the bank has recently required Glenda verify her own ID over the phone to do this. Glenda has difficulty answering the ID questions, and although the Social Worker has attempted to request alternative ways to verify Glenda's ID (including video calling e.g.), the bank has continued to refuse and the issue has remained unresolved for a number of months.

During this time, Glenda has not had access to her money including her Disability Support Payment and is not able to open a new bank account because she is unable to meet the ID requirements.

RECOMMENDATION 1. AUSTRAC should require FSPs to maintain policies to accept alternative forms of identification and make reasonable attempts to onboard people who do not have standard identification. FSPs should be required to clearly signpost the avenue for people to provide alternative identification and resource this team adequately.

The current wording of Rule 4.15 is permissive and principles-based and reliant on industry to determine the best approach to identifying their customer and managing the ML/TF risk. As outlined in our previous submission¹ and as highlighted in ASIC's recent death benefits report², this is already being interpreted to varying degrees based on the FSPs' internal policies, resulting in the exclusion of people experiencing vulnerability.

The new Rule 5-17 is more prescriptive, and adds a number of additional obligations (discussed below) onto FSPs before they can accept alternative ID. We believe this will result in further tightening of approaches and result in the financial exclusion of more people experiencing vulnerability.

An alternative approach

In contrast, New Zealand's [Amended Identity Verification Code of Practice 2013](#) provides a positive obligation:

*In order to comply with this code, the reporting entity must have appropriate exception handling procedures in place, for circumstances when a customer demonstrates that they are unable to satisfy the requirements in 1 to 3 above.*³ (emphasis added)

Requirements 1-3 refer to identification documents. While the Code is not binding, it provides a safe harbour in that full compliance with the Code constitutes compliance with relevant parts of the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (New Zealand). Entities that opt out of the Code must adopt practices that are 'equally effective'.

The stronger language requiring a procedure for alternative identification means that people experiencing vulnerability in New Zealand are more likely to be appropriately on-boarded by banks and FSPs.

RECOMMENDATION 2. We recommend that AUSTRAC revise the language in Rule 5-17 to impose a positive obligation on reporting FSPs to make reasonable efforts to accept alternative forms of ID. This could include wording such as "must accept alternative forms of ID where reasonably available", and a requirement for FSPs to have a documented policy outlining how this is implemented.

RECOMMENDATION 3. The wording of Rule 5-17 and Item 299 of the Explanatory Statement should be strengthened to be in line with a positive duty to support people experiencing vulnerability in achieving financial inclusion, whereby they must accept alternative forms of identification that is reasonably available.

¹ [AUSTRAC Guidance on assisting customers who don't have standard identification](#)

² [ASIC REP806 - Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve](#)

³ [Amended Identity Verification Code of Practice 2013](#), para 4.

'Circumstances beyond the person's control' likely to be interpreted as obligation to investigate responsibility for loss of documents

The previous rule referred to a person who 'does not possess, and is unable to obtain, the necessary information', whereas the new rule refers to a person who is 'unable to access the information or evidence due to circumstances beyond the person's control'. This rewording could be interpreted by FSPs to a much higher standard, specifically as an obligation to investigate whether the person was at fault for not being able to provide standard ID.

For example, a person living in regional or remote Australia may have lost their identification documents and not yet replaced them due to challenges obtaining new ID (e.g. very limited access to postal services, the need to travel great distances to obtain certified documents etc). A victim survivor of family violence may be denied access to their identification documents by a perpetrator. A newly arrived asylum seeker may not be able to access their identification documents from a hostile government. The cost of replacing documents can be prohibitive for people experiencing financial hardship.

FSPs may determine that in these types of circumstances, the lack of ID was not *beyond the person's control* because they are 'at fault' for losing their documents. It should not be necessary to assign blame under the Rule. Rather, FSPs should only need to establish that the documents cannot reasonably be obtained or accessed. Financial services are essential services, and a very careful and nuanced approach needs to be taken to FSPs denying a person access to the financial system. Proving that a person's circumstance is wholly 'beyond their control' could introduce an insurmountable barrier to accessing essential banking and financial services and create unjustified and unfair challenges for people experiencing vulnerability.

RECOMMENDATION 4. Remove the wording 'due to circumstances beyond the persons control' from the Rule 5-17(b)(ii), and / or retain the current wording being 'does not possess, and is unable to obtain, the necessary information'.

Reasonableness obligations are vague and likely to result in conservative policies

The new Rule proposes to introduce 'reasonable steps' obligations to identify a customer. Rather than encouraging or requiring an FSP to offer alternative ID, it prohibits FSPs from offering alternative ID unless the FSP has taken reasonable steps to establish the person is who they claim to be. FSPs have struggled to understand and properly implement other reasonable steps obligations (such as the ones contained in the design and distribution obligations under the Corporations Act 2001). In circumstances where FSPs face significant penalties for breaching their AML/CTF obligations, we are concerned that some FSPs may struggle to understand what reasonable steps means in practice, with the result that some FSPs may decide it is simply easier to stop offering alternative ID entirely. This would be a terrible result for Australians.

RECOMMENDATION 5. Remove the reasonable steps obligation from Rule 5-17.

Complex interplay between fraud and scam protection and the need to support financial inclusion of people experiencing vulnerability

It is important to acknowledge the complex interaction between the AML/CTF Rules and other key pieces of legislation and codes for FSPs including the Guide, Life Insurance Code of Practice and the Australian Banking Association's Banking Code of Practice (**ABA Code**), as well as the critical need to balance both increased consumer protections from fraud and scams with improving financial inclusion for people experiencing vulnerability.

Our organisations have long supported creating additional friction in the banking sector, to make it harder for scammers to create mule accounts used to funnel scammed funds into offshore accounts. We are however concerned that an inflexible, standardized approach to identity verification for people experiencing vulnerability will result in the exclusion of these people from essential services.

It is appropriate for FSPs to scrutinize the ML/TF risk for people who cannot verify their identification using standard forms, however it is wholly inappropriate to apply a blanket refusal on the grounds of risk (particularly where the FSP rates that risk as low). It is also inappropriate to make the process to use non-standard identification so onerous that in practice it is rarely used.

Making financial services inaccessible to people without standard identification is also very unlikely to substantively counteract the proliferation of mule accounts in the banking system. The banking industry has repeatedly claimed that short term visitors like international students⁴ are selling their Australian bank accounts online to scammers, as has AUSTRAC in 2024.⁵ These international visitors presumably had appropriate identification, given the proliferation of accounts, but the banks have failed to monitor or implement measures to prevent these accounts being used to funnel proceeds of crime. As well, data breaches are responsible for widespread account compromises⁶ – another scenario entirely out of our clients' control.

Case Study – Robin*

Robin is an elderly person receiving mental health treatment, who receives a Centrelink payment as their only form of income. While in the hospital, Robin had difficulty accessing their bank account and asked the Social Worker to assist.

The Social Worker called Robins bank with them in the room and explained the situation, however the bank staff refused to provide the Social Worker or Robin with any information, as Robin had difficulty recalling passwords and ID information. Instead requiring Robin to attend a branch in person.

After a phone call that lasted over 1 hour, the Bank instead stated that as the client was unable to identify themselves, the account would be blocked until such time as Robin can present to a branch in person, therefore making it even more difficult for Robin to access their own funds.

⁴ See, for example, the Australian Banking Association's submission to the Senate Economics Legislative Committee Inquiry into the Scams Prevention Framework.

⁵ [New guidance released to help combat the use of foreign students as money mules | AUSTRAC](#)

⁶ [Notifiable Data Breaches Report: January to June 2024 | OAIC](#)

The Scams Prevention Framework (SPF) is introducing significant obligations on designated businesses to prevent scams, which should be more effective in reducing fraud through mule accounts. Real time reporting of scams intelligence between industry and the ACCC ought to increase visibility of mule accounts. Banks could implement the SPF obligations and other proportionate measures like friction and transaction monitoring to identify and respond to ML/TF risk. Other FSPs, even if not yet subject to SPF obligations, could also implement such measures. We also note that transaction monitoring is specifically contemplated in the AUSTRAC Guide as a measure to counteract ML/TF risk.⁷

The voluntary nature of the alternative identification process is a significant gap that many people experiencing vulnerability, including those assisted by our services, are falling through. The ABA Code commits subscribers to assisting customers to meet identification requirements by following AUSTRAC's guidance on alternative identification, but only for customers who have self-disclosed that they are Aboriginal and/or Torres Strait Islander.⁸

We regularly see First Nations customers not provided with such assistance, such as Glenda's case study above. There are many more people who do not disclose their First Nations identity to their bank, or who are not First Nations but are experiencing circumstances specifically contemplated in the guidance, who are not assisted to meet identification requirements.

ACON advised us that accessing banking services can be incredibly difficult for trans and gender diverse people, unless they have already gone through the process of updating their passport or birth certificate to reflect their current name and gender. That process itself is often a major hurdle. For ACON's client cohort the interview and a letter from a medical professional (for passports), can be very difficult to navigate without support. The cost of replacing birth certificates is a significant barrier, particularly for people who are already facing financial hardship.

ACON provided an example of a trans person who had updated their birth certificate and passport, however they had kept an old bank account that was connected to their family. Their family was not accepting or affirming of their gender status. For safety reasons, the trans person kept the account in the old name to avoid conflict/risk. Now, this person is in a situation where the bank account doesn't match their legal identification, and puts them at risk of being flagged as high risk by their bank or even losing access to their own money.

Bank and FSPs' conservative interpretation due to increased Scams and Fraud protections

In our 2024 submission we outlined how, contrary to the intended purpose of the AUSTRAC Guide, we observed customer-facing representatives of FSPs continuing to apply the Guide with a very narrow lens.

Similarly, in its death benefits review, ASIC found that many trustees take a "check box" approach to alternative ID rather than implementing the Guide in the spirit in which it was intended.⁹

⁷ [Assisting customers who don't have standard forms of identification | AUSTRAC](#)

⁸ Banking Code of Practice 2025 para 48.

⁹ ASIC REP806 - Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve

Explanatory statement

The exposure draft explanatory statement to the AML/CTF Rules 2025, Item 299. Section 5-17 – Initial customer due diligence – individual cannot provide satisfactory evidence, states:

Section 5-17 allows for alternative verification requirements for customers if:

- the customer is an individual, and
- is unable to provide information or evidence of identity because:
 - the customer is unable to obtain the information or evidence, or
 - the customer is unable to access the information or evidence due to circumstances beyond the customer's control.

The use of 'allows for' is in contrast to language used at item 301 which states 'the reporting entity *must* also implement AML/CTF policies to mitigate and manage any additional ML/TF risk arising from the lack of information or evidence of the customer's identity'. If the language around the use of non-standard identification is not strengthened, it is very unlikely that banks and FSPs will take their responsibility to people experiencing vulnerability sufficiently seriously.

New content in the second exposure draft rules

Date and place of birth

We support the removal of 'place of birth' for AML/CTF checks from the previous exposure draft rules. However, we are concerned by the requirement to verify date of birth 'in accordance with global standards', which still includes place of birth, for purposes of the 'travel rule' under Part 5 of the Amended AML/CTF Act. As we understand it, this will require place of birth verification for people to be able to transfer money to other accounts.

As noted in the consultation paper, collection of place of birth information effectively requires a person to provide their passport or birth certificate. We have already discussed why these documents are not easily obtained for many people experiencing vulnerability and why they may contradict other identification for gender diverse people.

Many living First Nations people were arbitrarily assigned a birth date by government officials. First Nations people have significantly low birth registration rates¹⁰ and face additional difficulties in obtaining formal identification documents.¹¹ The requirement to have a registered place of birth can also be traumatising for First Nations people who were removed from their families under Child Welfare and Aboriginal Protection laws. This often results in people having different dates and places of birth across their various forms of ID. First Nations people are also reported to be less likely to hold drivers licences than non-First Nations people, due to various systemic barriers.¹² The need for date of birth to be verified in accordance with global standard, and therefore requiring place of birth

¹⁰ [Making Indigenous Australians 'Disappear' - Paula Gerber, 2009](#). Alternative Law Journal Volume 34, Issue 3.

¹¹ Indigenous Law Bulletin, Vol. 7, No. 8, Sept/Oct 2008: 14-17

¹² [Driving when unlicensed | ALRC](#) [12.133].

information, is contradictory to the purpose of the AUSTRAC Guide and may see First Nations peoples facing further challenges in accessing banking and financial services.

Where a proper ML/TF risk assessment process has been followed and assessed a person without 'place of birth' information as low risk, it should not be required in order to meet the travel rule requirements.

We are concerned that compliance with the global standard may require 'place of birth' information, which would have negative impacts on people experiencing vulnerability. We recommend that AUSTRAC consider how they can ensure that FSPs can otherwise comply with the travel rule for people without place of birth verification.

RECOMMENDATION 6. . Reconsider the requirement to verify 'place of birth' when complying with the travel rule and refer to the AUSTRAC Guide requirements instead.

Consultation questions:

1. Are there any rules within ED2 Rules where you don't understand what outcome AUSTRAC is trying to achieve?

N/A

2. What aspects of the ED2 Rules would most benefit from increased explanation in the explanatory statement, or in AUSTRAC regulatory guidance?

N/A

6. Feedback on the ED1 Rules expressed some interest in opening up alternate identification and verification under section 5-17 of ED2 Rules) to non-individuals. If you are a current reporting entity, what are the circumstances that you currently apply alternate identification procedures to businesses and trusts, and what do you do to mitigate ML/TF risk in those circumstances?

Our organisations do not support the opening up alternate identification and verification under section 5-17 of ED Rule 2 to non-individuals. These rules are specifically to support financial inclusion for people experiencing vulnerability and it is not appropriate to extend to non-individuals. We fear that doing so may result in the rules being used less for the clients we support.

Please contact Policy Officers Shelley Hartle and/or Rose Bruce-Smith at **Consumer Action Law Centre** on 03 9670 5088 or at shelley@consumeraction.org.au, rose@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

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Jillian Williams | Operations Manager
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Mark Holden | Senior Solicitor and Policy Advocate
Mob Strong Debt Help

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A summary of recommendations is available at **Appendix A**.

APPENDIX A - SUMMARY OF RECOMMENDATION

RECOMMENDATION 1. AUSTRAC should require FSPs to maintain policies to accept alternative forms of identification and make reasonable attempts to onboard people who do not have standard identification. FSPs should be required to clearly signpost the avenue for people to provide alternative identification and resource this team adequately.

RECOMMENDATION 2. We recommend that AUSTRAC revise the language in Rule 5-17 to impose a positive obligation on reporting FSPs to make reasonable efforts to accept alternative forms of ID. This could include wording such as “must accept alternative forms of ID where reasonably available”, and a requirement for FSPs to have a documented policy outlining how this is implemented.

RECOMMENDATION 3. The wording of Rule 5-17 and Item 299 of the Explanatory Statement should be strengthened to be in line with a positive duty to support people experiencing vulnerability people in achieving financial inclusion, whereby they must accept alternative forms of identification that is reasonably available.

RECOMMENDATION 4. Remove the wording ‘due to circumstances beyond the persons control’ from the Rule 5-17(b)(ii), and / or retain the current wording being ‘does not possess, and is unable to obtain, the necessary information’.

RECOMMENDATION 5. Remove the reasonable steps obligation from Rule 5-17.

RECOMMENDATION 6. Reconsider the requirement to verify ‘place of birth’ when complying with the travel rule and refer to the AUSTRAC Guide requirements instead.

Appendix B - About our organisations

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

ICAN

ICAN provides consumer education, advocacy, and financial counselling services to Aboriginal and Torres Strait Islander peoples across North and Far North Queensland, with a vision of "Empowering Indigenous Consumers". We also provide our services to non-Indigenous peoples across the region.

The people our services work with are strong, resilient, and knowledgeable about their lives and communities. However, structural barriers and an uncompetitive marketplace in remote and regional communities create conditions in which exploitation occurs. The cost of living is unacceptably high, with basic food and necessities costing significantly more than in cities and large regional centres. Employment is limited, and regional centres are susceptible to significant events such as pandemics, industry downturns and extreme weather. Housing is limited and costly, and the consequent rate of homelessness and overcrowding is unacceptably high. Cars are essential items in the family home as they are the only form of transport and pose a significant upfront and ongoing expense.

Against this backdrop, we regularly support people who experience barriers to accessing and engaging with financial services because they do not have traditional forms of identification.

Financial Counselling Australia

Financial Counselling Australia Financial Counselling Australia (FCA) is the national voice for the financial counselling profession in Australia. We are a not-for-profit organisation which provides resources and support for financial counsellors and wish to raise awareness about the availability and value of financial counselling. FCA advocates for a fairer marketplace for consumers and aims to improve hardship processes for people in financial difficulty. We coordinate the National Debt Helpline and manage the Small Business Debt Helpline. Our vision is for an Australia with fewer people in financial hardship.

Super Consumers Australia

Super Consumers Australia is the advocate for people on low and middle incomes in Australia's superannuation system. We were founded to fight for an accountable and fair super system that delivers great service and great financial outcomes in retirement. Formed in 2013, we are an independent, not-for-profit organisation and a leading voice for consumers of superannuation products and services.

Mob Strong Debt Help

Mob Strong Debt Help is a free nationwide legal advice and financial counselling service for Aboriginal and Torres Strait Islander people. The service specialises in consumer finance (such as credit cards, pay day loans and car loans), banking, debt recovery and insurance (including car, home, life and funeral insurance). We're here to help – since 2016 Mob Strong Debt Help has been guided, developed and operated by Aboriginal and Torres Strait Islander staff, supported by all our colleagues at Financial Rights. Our team is small but dedicated, and includes solicitors, policy advocates, and financial counsellors. This team brings years of experience to lead the work of Mob Strong Debt Help. They are backed up by the larger team of solicitors and financial counsellors in Financial Rights, who share the caseload.