GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

AUSTRALIA

2017 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Australia 2017 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit www.oecd.org/tax/transparency.

Abbreviations, acronyms and definitions

AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
ABN	Australian Business Number
ABN Act	A New Tax System (Australian Business Number) Act 1999
ABR	Australian Business Register
ACIP	Applicable Customer Identification Procedures
ADI	Authorised Deposit-taking Institutions
AGSVA	Australian Government Security Vetting Agency
AML/CTF Act	Anti-Money Laundering and Counter-Terrorism Financing Act 2006
AML/CTF Rules	Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)
AMLRO	Anti-Money Laundering Reporting Officer
ANAO	Australian National Audit Office
APPs	Australian Privacy Principles
ARBN	Australian Registered Body Number
ASIC	Australian Securities and Investments Commission
APRA	Australian Prudential Regulatory Authority
AUSTRAC	Australian Transaction Reports and Analysis Centre
Corporations Act	Corporations Act 2001
CDD	Customer Due Diligence

Designated Entities	Designated Entities are defined for the purpose of this report as domestic companies, foreign companies with sufficient nexus which have a relationship with an AML obligated service provider that is relevant for the purposes of EOIR in Australia, domestic partnerships and foreign partnerships that carry on business in Australia or have taxable income therein.
Designated Services	All designated services are set out in section 6, AML/CTF Act, and includes three main categories (i) financial services (e.g. account/deposit-taking services, cash carrying/payroll services, currency exchange services, factoring a receivable, life insurance services, loan services, and securities derivatives market(s)/investment services); (ii) bullion and (iii) gambling services.
DTC	Double Tax Convention
DIBP	Department of Immigration and Border Protection
EOIR	Exchange of information on request
FOI	Freedom of Information
FOI Act	Freedom of Information Act 1982
FTR Act	Financial Transaction Reports Act 1988
GST	Goods and Services Tax
ITAA 1936	Income Tax Assessment Act 1936
ITAA 1997	Income Tax Assessment Act 1997
JSCOT	Joint Standing Committee on Treaties
Major Reporters	Major Reporters are Reporting Entities which hold significant market share and position, with high degrees of business or product complexity.
MER	Mutual Evaluation Report
MIT	Managed Investment Trust
Multilateral Convention (MAAC)	OECD Convention on Mutual Administrative Assistance in Tax Matters
PAYG	Pay As You Go
Privacy Act	Privacy Act 1988

Prudential Standard	A Prudential Standard is a legislative instrument made under the Banking Act 1959. The APRA establishes and enforces prudential standards, which ADIs are required to comply with.
Reporting Entity	A Reporting Entity under the AML/CTF Act must be a "person" and must provide a Designated Service. Reporting entities include financial institutions, bullion dealers and entities that provide gaming or gambling activities. A "person" is an individual (that is, a natural person), a company (for example, private company, public company, public and listed company or a foreign company), a trust (for example, discretionary family or unit), a partnership (incorporated and unincorporated), an incorporated or unincorporated association, a corporation sole and a body politic.
SMSF	Self-managed superannuation funds
TAA 1953	Taxation Administration Act 1953
TIEA	Tax Information Exchange Agreement
TFN	Tax File Number
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015

Executive summary

1. In 2010 the Global Forum evaluated Australia in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. The ratings of each element and the overall rating of the 2010 Report were given by the Peer Review Group in October 2013 and approved by the Global Forum in November 2013, with the conclusion that Australia was rated Compliant overall. This report analyses the implementation of the EOIR standard by Australia in respect of EOI requests processed during the period of 1 April 2013-31 March 2016 against the 2016 Terms of Reference. This report concludes that Australia is rated Largely Compliant overall.

2. The following table shows the comparison with the results from Australia's most recent peer review report:

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report	Second Round Report
A.1	Availability of ownership and identity information	C	PC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	LC
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of requests and responses	C	C
	OVERALL RATING	C	LC

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. The 2010 Report made recommendations in respect of three essential elements, one regarding nominees under element A.1, one regarding the monitoring of the accountants' concession under element C.4 and one recommendation regarding status updates in relation to exchange of information in element C.5. Australia has addressed the recommendations under elements C.4 and C.5.

Key recommendation(s)

4. Since the 2010 Report, Australia continues to be compliant in all elements except elements A.1 and A.3. In respect of the new aspects of the 2016 ToR, Australia's main deficiencies relate to the new requirements on beneficial ownership, both under element A.1 and element A.3.

5. The recommendations regarding the legal and regulatory framework in element A.1 and element A.3 are mostly concentrated on the issue of availability of beneficial ownership; both regarding legal entities and trusts.

6. Specifically, under the new recommendations under element A.1 (availability of legal and beneficial ownership information), Australia is recommended to ensure that information is maintained on beneficial owners of Designated Entities[1] and trust arrangements in all cases.

7. Regarding element A.3 (availability of banking information (including beneficial ownership of bank accounts), introduced business obligations set out in the AML/CTF Act and Rules do not explicitly state that the Reporting Entity relying on a third party remains ultimately responsible for CDD measures. Australia should ensure that accurate and update beneficial ownership information on bank account holders is available in all cases.

8. Regarding the deficiencies identified in the implementation of EOI in practice for both elements A.1 and A.3, the new legislation on CDD introduced in June 2014 was fully applicable only after a transitional period of 18 months (i.e. not until the end of 2015). During that period, and up to the time of the review, only a small portion of the total Reporting Entities population has been monitored regarding the implementation of the new rules; however it covered a broad cross-section of industries including financial

1. Designated Entities are defined for the purpose of this report as domestic companies, foreign companies with sufficient nexus which have a relationship with an AML obligated service provider that is relevant for the purposes of EOIR in Australia, domestic partnerships and foreign partnerships that carry on business in Australia or have taxable income therein.

institutions (both foreign, investment and domestic), remitters, stockbrokers and custodians. As a consequence, Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out.

Overall rating

9. Although element A.1 is rated partially compliant and element A.3 is rated largely compliant, elements A.2, B.1, B.2, C.1, C.2, C.3, C.4 and C.5 are rated compliant. As a result, **the overall rating is largely compliant**. A follow up report on the steps undertaken by Australia to address the recommendations made in this report should be provided to the PRG no later than 30 June 2018 and thereafter in accordance with the procedure set out under the 2016 Methodology.

10. The table below reproduces the recommendations made in this report, namely only in respect of elements A.1, A.2 and A.3.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Element A.1 Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities.		
Legal and regulatory framework determination: **The element is in place, but certain aspects of the legal implementation of the element need improvement.**		

Legal and regulatory framework determination: **The element is in place, but certain aspects of the legal implementation of the element need improvement.** *(continued)*	Although certain information relevant for identification of beneficial owners is required to be available mainly based on tax and company law obligations, only financial institutions (and other Reporting Entities under the AML/CTF Act, which are irrelevant for EOI purposes, such as those in the gaming and bullion sector) are required to identify beneficial owners of Designated Entities, in line with the standard in all cases. Since 2007, Reporting Entities must identify beneficial owners of most forms of companies (except incorporated partnerships and associations). Since 1 June 2014, Reporting Entities are required to identify and verify the beneficial ownership and control of all their customers, including companies, partnerships, trusts and other legal arrangements. Finally, although most Designated Entities are likely to have a bank account in Australia, these Designated Entities are not legally required to engage a financial institution in Australia in all cases.	Australia should ensure that beneficial owners of all Designated Entities are required to be identified in line with the standard.

Legal and regulatory framework determination: **The element is in place, but certain aspects of the legal implementation of the element need improvement.** *(continued)*	Although Australia has some identity information on trusts under the tax laws and the common law (namely, the identity of the trustee, settlor and direct beneficiary(ies)), the scope of these requirements does not cover the beneficial ownership requirements under the 2016 Terms of Reference in all cases, especially in respect of "any other natural person exercising ultimate effective control over the trust". The identification of beneficial owners of trusts is nevertheless required under the AML/CFT rules (which commenced in June 2014), but only where a trustee is provided a service (prescribed in section 6 of the AML/CTF Act) by a Reporting Entities; that is mostly where the trust has a bank account in Australia. Consequently, there may be instances where information on beneficial owners is not available in respect of all express trusts administered in Australia or in respect of which a trustee is resident in Australia, unless these trusts have a bank account in Australia.	Australia should ensure that information on beneficial ownership information in respect of all express trusts administered in Australia or with a trustee resident in Australia is available as required under the standard.

EOIR rating: **Partially Compliant**	Australia introduced enhancements to CDD obligations, which came into effect on 1 June 2014, accompanied by a transitional period of 18 months to enable Reporting Entities to achieve full compliance. During that period, and up to the end of the review period, only a small portion of the Reporting Entities has been monitored regarding the implementation of the 2014 CDD rules. In addition, due to the short period of time since the full application of the 2014 Rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out.
Element A.2 Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: **Compliant**		
Element A.3 Banking information and beneficial ownership information should be available for all account-holders		
Legal and regulatory framework determination: **The element is in place, but certain aspects of the legal implementation of the element need improvement.**	Introduced business obligations set out in the AML/CTF Rules do not explicitly state that the bank relying on a third party remains ultimately responsible for CDD measures performed on their customers, and notably beneficial ownership information.	Australia should ensure that accurate and update beneficial ownership information on bank account holders is available in all cases

EOIR rating: **Largely Compliant**	Australia introduced enhancements to CDD obligations, which came into effect on 1 June 2014, accompanied by a transitional period of 18 months to enable Reporting Entities to achieve full compliance. During that period, and up to the end of the review period, only a small portion of the Reporting Entities has been monitored regarding the implementation of the new rules. In addition, due to the short period of time since the full application of the 2014 CDD Rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		

Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	**The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the implementation of EOIR in practice.**	
EOIR rating: Compliant		

Preface

11. This report is the second review of Australia conducted by the Global Forum. Australia previously underwent an EOIR Combined review in 2010 of both its legal and regulatory framework and the implementation of that framework in practice. The report containing the conclusions of the Combined review was first published in September 2010 (reflecting the legal and regulatory framework in place as of August 2010) (the 2010 Report).

12. The Combined review was conducted according to the ToR approved by the GF in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The 2010 Report was published without rating of the individual essential elements or any overall rating, as the Global Forum waited until a representative subset of reviews from across a range of Global Forum members had been completed in 2013 to assign and publish ratings for each of those reviews. Australia's 2010 Report was part of this group of reports. Accordingly, the 2010 Report was republished in 2013 to reflect the ratings for each element and the overall rating for Australia.

13. This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 24 May 2017, Australia's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2013 to 31 March 2016, Australia's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Australia's authorities during the on-site visit that took place from 22 to 24 November 2016 in Canberra, Australia.

14. The evaluation was conducted by an assessment team consisting of two expert assessors and one representative of the GF Secretariat: Mr. Rob Gray, Director of International Tax Policy, Guernsey; Peter Deblon, Deputy Head of Division IV B 6, German Federal Ministry of Finance; and Séverine Baranger from the Global Forum Secretariat.

15. The report was approved by the PRG at its meeting on 20 July 2017and was adopted by the GF on [date].

16. For the sake of brevity, on those topics where there has not been any material change in the situation in Australia or in the requirements of the GF ToR since the 2010 Report, this evaluation does not repeat the analysis conducted in the previous evaluation, but summarises the conclusions and includes a cross-reference to the detailed analysis in the previous reports.

17. Information on each of Australia's reviews is listed in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Combined report	Ms. Ruedah Karim, Director, International Affairs and EOI Division, Inland Revenue Board Malaysia; Ms. Sarita De Geus, Senior Policy Advisor International Tax Law at the Directorate-General for the Tax and Customs Administration of the Netherlands Ministry of Finance; and Mr. Dónal Godfrey from the Global Forum Secretariat.	1 January 2007 to 31 December 2009	June 2010	September 2010
EOIR report (Second Round)	**Mr. Rob Gray,** Director of International Tax Policy, Guernsey; **Peter Deblon**, Deputy Head of Division IV B 6, German Federal Ministry of Finance; and **Séverine Baranger** from the Global Forum Secretariat.	**1 April 2013 to 31 March 2016**	26 May 2017	[**June 2017**]

Brief on 2016 ToR and methodology

18. The 2016 ToR were adopted by the Global Forum in October 2015. The 2016 ToR break down the standard of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Australia's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects.

19. In respect of each essential element (except element C.5 *Exchanging Information*, which uniquely involves only aspects of practice) a determination is made regarding Australia's legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. In addition, to assess Australia's EOIR effectiveness

in practice, a rating is assigned to each element of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant. These determinations and ratings are accompanied by recommendations for improvement where appropriate. An overall rating is also assigned to reflect Australia's overall level of compliance with the EOIR standard.

20. In comparison with the 2010 ToR, the 2016 ToR includes new aspects or clarification of existing principles with respect to:

- the availability of and access to beneficial ownership information;
- explicit reference to the existence of enforcement measures and record retention periods for ownership, accounting and banking information;
- clarifying the standard for the availability of ownership and accounting information for foreign companies;
- rights and safeguards;
- incorporating the 2012 update to Article 26 of the OECD Model Tax Convention and its Commentary (particularly with reference to the standard on group requests); and
- completeness and quality of EOI requests and responses.

21. Each of these new requirements are analysed in detail in this report.

Brief on consideration of FATF evaluations and ratings

22. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

23. The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as that definition applies to the standard set out in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

24. While on a case-by-case basis, an EOIR assessment may refer to some of the findings made by the FATF, the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership for tax purposes; for example because mechanisms other than based on AML/CTF exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

25. These differences in the scope of reviews and in the approach used may result in differing outcomes.

Overview of Australia

26. This overview provides some basic information about Australia that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Australia's legal, commercial or regulatory systems.

Legal system

27. The Australian Constitution established a federal system of government under which powers are distributed between the Federal Government and the States and Territories. It defines exclusive powers (investing the Federal Government with the exclusive power to make laws on matters such as trade and commerce, taxation, defence, external affairs, and immigration and citizenship) and concurrent powers (where both tiers of government are able to enact laws). The States and Territories have independent legislative power in all matters not specifically assigned to the Federal Government. Where there is any inconsistency between Federal and State or Territory laws, federal laws prevail. Federal laws apply to the whole of Australia. Australia also has a system of local government (e.g. city and shire councils).

28. In effect, Australia has nine legal systems – the eight State and Territory systems and one federal system. Each of the federal and state/territory systems incorporates three separate branches of government – legislative, executive and judicial. Parliaments make the laws, the executive government administers the laws, and the judiciary independently interprets and applies them.

29. The High Court of Australia (Australia's Supreme Court) interprets and applies the law of Australia, decides cases of special federal significance, including challenges to the constitutional validity of laws, and hears appeals (by special leave) from the Federal, State and Territory courts. It is the highest court of appeal on all matters, whether decided in the Federal or State/Territory jurisdictions.

30. According to section 4 of the International Tax Agreements Act 1953, any tax treaty enacted as a Schedule to that Act (and therefore given the force of law in Australia) will prevail over anything inconsistent in other Australian domestic tax law. All the Acts and legislation referred to in this report apply at a federal level, unless otherwise specifically indicated.

Tax system

31. The tax system in Australia is administered by the Australian Taxation Office (ATO). The ATO is the Australian Government's main revenue collection agency (the ATO collected 88.25% of the Australian government's revenue in the 2014/15 financial year). The Taxation Administration Act 1953 (TAA 1953), and the Regulations made under it, contain provisions dealing with the administration of the tax laws by, and the powers of the ATO.

32. Australia's tax system operates on a system of self-assessment where taxpayers are responsible for assessing their tax liability. The main source of revenue is from income tax (under which capital gains are also taxed) and other taxes, such as the fringe benefits tax. The income tax rate for individual taxpayers is a progressive scale up to 45% for higher income earners. The company tax rate is 30%. A goods and services tax (GST) applies at a rate of 10% on the supply of goods and services in Australia and on goods imported into Australia.

33. Residents are taxed on their worldwide income while non-residents are normally liable to tax only in respect of Australian source income.

Financial services sector

34. The section below provides an overview of the financial sector and its supervision.

Overview of the financial services sector

35. The Australian financial sector includes banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies and the superannuation industry. Australian financial intermediaries currently manage assets of around AUD 2.3 trillion, which is equivalent to about 250% of GDP of Australia.

36. Authorised Deposit-taking Institutions (ADIs) are corporations which are authorised to take deposits from customers under the Banking Act 1959. ADIs include banks, building societies and credit unions. All ADIs are subject to the same Prudential Standards. The main difference between banks, building societies and credit unions is their capital and ownership structure,

and the use of the names “bank”, “building society” and “credit union” is subject to corporations meeting certain criteria listed under the Banking Act 1959. The Australian Prudential Regulation Authority (APRA) authorises ADIs in Australia to provide banking services (including taking money on deposit) under the Banking Act 1959. APRA establishes and enforces prudential standards, which ADIs are required to comply with. A Prudential Standard[2] is a legislative instrument made under the Banking Act 1959.

37. In Australia banks are financial institutions authorised to carry on banking business under the Banking Act 1959 or under State or Territory legislation. There are currently 80 banks operating in Australia which hold total assets of AUD 3 489.226 billion, but Australia’s banking sector is dominated by four major banks. They account for about two thirds of the total assets held in the Australian banking system.

38. Banks play a central role in the Australian financial system by providing a wide range of financial services to all sectors of the economy, including offering savings and cheque accounts, making loans, and offering fund management and insurance services. Foreign banks must be approved by the APRA to carry on a banking business in Australia under the Banking Act 1959. Foreign banks can either operate as a wholesale bank through an Australian branch, or to conduct banking business through an Australian-incorporated subsidiary.

39. The Australian financial sector landscape is also composed of:

- nine building societies, holding total assets of AUD 23.3 billion;
- 85 credit unions, holding total assets of around AUD 41 billion. Credit Union and building societies together account for about 2% of Australian financial system assets;
- 16 money market operations, holding total assets of around AUD 39.3 billion;
- 63 finance companies (including general financiers and pastoral finance companies),holding total assets of around AUD 109 billion;
- 28 life insurance companies, holding total assets of around AUD 200.761 billion, 113 general insurance companies holding total assets of around AUD 111.401 billion, and 3 041 Superannuation and approved deposit funds holding total assets of around AUD 1 538.1 billion; and
- 12 friendly societies.

2. Prudential Standards for ADIs can be found at the following APRA web page: www.apra.gov.au/adi/prudentialframework/pages/adi-prudential-standards-and-guidance-notes.aspx.

Supervision of the financial services sector

40. The Australian Prudential Regulatory Authority (APRA) oversees the finance services industries, including banks, credit unions, and building societies. APRA is responsible for the licensing and prudential supervision of Authorised Deposit-taking Institutions (ADIs), life and general insurance companies and superannuation funds.

41. APRA issues capital adequacy guidelines for banks which are consistent with the Basel II guidelines. All financial institutions regulated by APRA are required to report on a periodic basis to APRA. Certain financial intermediaries, such as investment banks (which do not otherwise operate as ADIs) are neither licensed nor regulated under the Banking Act 1959 and are not subject to the prudential supervision of APRA. They may be required to obtain licences under the Corporations Act 2001 or other Commonwealth or State/Territory legislation, depending on the nature of their business activities in Australia. All banks, irrespective of the type of license, are subject to the AML/CFT legislation (see below).

42. Money market corporations and finance companies are not supervised by APRA, but are subject to the same conduct and disclosure regulation that the Australian Securities and Investments Commission (ASIC) applies to the non-financial corporate sector. Money market corporations use short-term finance loans to fund the financial and business sector as well as to fund investments.

43. Banks and other service providers are also subject to obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 as "Reporting Entities". They are required to identify and monitor customers using a risk-based approach, develop and maintain an Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) programme, and report to the Australian Transaction Reports and Analysis Centre (AUSTRAC) suspicious matters, certain cash transactions and international funds transfer instructions and file annual compliance reports.

Overview of the AML/CFT framework

44. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) broadly regulates the financial, gambling, remittance and bullion sectors or any entity that provides Designated Services listed in the AML/CTF Act ("Reporting Entities") and establishes their principal compliance and reporting obligations. A Reporting Entity under the AML/CTF Act must be a "person" and must provide a "Designated Service".[3] Reporting entities include financial institutions, bullion dealers and entities that provide gaming or gambling activities.

45. The AML/CTF Act enables Reporting Entities to adopt a risk-based approach to meeting regulatory obligations and sets out the general principles and obligations of Australia's AML/CTF regime. Details of how these obligations are to be carried out are set out in the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules).

46. AUSTRAC is both Australia's AML/CFT regulator and specialist financial intelligence unit. AUSTRAC is responsible for:

- supervising compliance with the requirements of Australia's AML/CTF regime;
- collecting and analysing information obtained through the reporting obligations and augments the information into actionable financial intelligence; and
- disseminating that actionable intelligence for investigation by law enforcement, national security, revenue protection and regulatory agencies, as well as international counterparts.

3. All Designated Services are set out in section 6, AML/CTF Act, and includes three main categories (i) financial services (e.g. account/deposit-taking services, cash carrying/payroll services, currency exchange services, factoring a receivable, life insurance services, loan services, and securities derivatives market(s)/investment services); (ii) bullion and (iii) gambling services.

47. AUSTRAC supervises all Reporting Entities in Australia for compliance with Australia's AML/CFT regime. One of AUSTRAC's key regulatory goals is to develop Reporting Entities understanding of money laundering and terrorist financing risks and to strengthen their AML/CTF programmes through educating and monitoring Reporting Entities, as well as working with Reporting Entities to improve compliance in order to ultimately combat and disrupt money laundering and terrorist financing. AUSTRAC conducts a range of supervisory activities to improve and promote compliance with AML/CTF obligations.

48. There have been additional reforms to Australia's AML/CTF laws since Australia's last Global Forum evaluation. In June 2014, enhanced AML/CTF Rules (2014 CDD Rules) came into force that introduced more stringent CDD requirements and improved Australia's compliance with the 2012 revised FATF standards. These rules are set out in section A.3. Availability of Banking Information

FATF evaluation and consideration of the FATF report

49. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

50. The FATF adopted Australia's fourth round Mutual Evaluation Report (MER) on 27 February 2015, which was published on 21 April 2015. The MER evaluated Australia's technical compliance with the FATF's revised 2012 standards and assessed the effectiveness of Australia's AML/CTF regime. Australia was one of the first countries in the world to be assessed against the FATF's revised standards.

51. The MER identified deficiencies in respect of the availability of beneficial ownership information on legal entities and legal arrangements, which will be discussed in sections A.1 and A.3 on the availability of beneficial ownership information.

52. Australia provided the FATF with a first follow-up report in April 2016 to provide an initial update on Australia's strategy to address the issues identified in the MER. The report outlines action already taken since the completion of the MER and priorities for coming years to improve compliance with the FATF Recommendations by 2018 and improved effectiveness by 2020.

Other EOI Activities carried out by Australia

53. The ATO carried out other forms of EOI as described below:

- **Spontaneous EOI.** The ATO conducts spontaneous exchanges with all countries that have a Double Tax Convention (DTC) with Australia. During the three year period of the review, the ATO had 226 incoming spontaneous cases, and 125 outgoing spontaneous cases.
- **Automatic EOI**. Each year the ATO sends automatic data sets to its treaty partners containing in total approximately 2 million records relating to income paid to non-residents for interest, dividend, pensions, unit trust distributions and foreign resident withholding payments and variations. Similarly, the ATO receives approximately 300 000 records from around half of its treaty partners containing various types of income derived by Australian residents.
- **Assistance in Collection**. Australia has assistance in collection (AiC) in force, and MOUs in place, with Denmark, Iceland, Japan, the Netherlands, New Zealand, Norway, South Africa and Sweden, under the provisions of the relevant DTC or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention).
- **Service of Documents**. Due to the provision in the Multilateral Convention, Australia has received four requests relating to the Service of Documents, but has not yet made any requests to other countries.
- **Exchange of Rulings**. Effective from 4 December 2014, the ATO is required to exchange private rulings that relate to preferential tax regimes and other cross-border dealings with other countries under the OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative for the spontaneous compulsory exchange of private rulings. The requirement for Australia to exchange these private rulings is limited to other OECD and G20 countries and only to those countries which have a comprehensive tax treaty with Australia, or are signatories to the Multilateral Convention. Australia has sent information relating to 12 rulings during the period of the review since this provision entered into force.
- **Country by country (CbC) reporting**. Australia has implemented the recommendations arising from Action 13 of the OECD/G20 BEPS initiative. This means that, for income years commencing on or after 1 January 2016, Australia requires multinational entities with an annual global income of AUD 1 billion or more to provide the ATO with a CbC report within 12 months after the end of

their income tax year. The ATO will exchange CbC reports on an automatic basis where the exchange is supported by a Competent Authority Agreement for the relevant reporting period under either the Multilateral Convention or a comprehensive tax treaty with Australia. The first batch of CbC reports will be due in Australia by the end of December 2017; the first CbC reports will be exchanged with other jurisdictions by mid-2018.

Recent developments

54. Since the adoption of the MER in April 2016, Australia has made progress to address the deficiencies in its AML/CFT regime. Regarding beneficial ownership, Australia indicated that progress includes requiring full compliance with Australia's strengthened CDD, and beneficial ownership requirements by 1 January 2016, following the expiry of a transition period for Reporting Entities.

55. Notwithstanding the transitional period, Australia's major financial institutions have already completed the ongoing and enhanced CDD requirements in respect of all account holders having regard to beneficial ownership information. Subsequent to the review period, AUSTRAC has confirmed that the key financial institutions (which represent 90% of total transaction reporting) have now taken appropriate steps to assure AUSTRAC that accounts of all the customers opened prior to June 2014 are compliant and good practices are being adopted by the industry. The AML/CTF regime will be further strengthened in 2018 with amendments to clarify that financial institutions remain liable for the accuracy and completeness of relevant beneficial ownership and identification information obtained from third parties.

56. Australia has also progressed public consultation on extending the scope of the AML/CTF regime to include DNFBPs and also consulted in relation to the collection of beneficial ownership information for companies.

Part A: Availability of information

57. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

58. The 2010 Report found that A.1 was determined to be "in place" and rated Compliant. A recommendation was made for Australia to take necessary measures to ensure that an obligation is established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person. To date, this recommendation has not been addressed by Australia and therefore remains.

59. No issues were identified in the 2010 Report with respect to the availability of ownership and identity information in practice. The 2010 Report did not include the exact number of requests received but indicated that Australia received hundreds of requests annually.

60. In respect of those aspects of the 2016 ToR that were not evaluated in the 2010 Report, particularly with respect to the availability of beneficial ownership information, gaps have been identified and two recommendations on the legal framework and one monitoring recommendation have been made. Beneficial ownership information is available in Australia for companies, partnerships, trusts and other legal arrangements in case they hold a bank account with a Reporting Entity or receive a service from a Reporting Entity of the type described under section 6 of the AML/CTF Act. Since 2007, Reporting Entities must identify beneficial owners of most forms of companies (except incorporated partnerships and associations), but the requirements to identify beneficial owners did not apply to trust arrangements. Since 1 June 2014, Reporting Entities are required to identify and verify the beneficial ownership and control of all their customers, including

companies, partnerships, trusts and other legal arrangements. The AML/CTF Rules allows for certain exemptions for certain types of customer types. In addition, all accounts are subject to ongoing due diligence rules.

61. During the current peer review period Australia received 596 EOI requests. Australia does not record information on the type of information requested or the type of entity involved in each request. Whilst peers indicated that their EOI requests included various types of information, including legal and beneficial ownership information and accounting records, its main EOI partner indicated that no legal and beneficial ownership information was requested in the 282 EOI requests sent to the ATO during the peer review period, and explained that legal ownership information was easily available from public sources.

62. Australia indicated that during the peer review period, they have received EOI requests concerning ownership information and in relation to companies, partnerships and trusts. Australia also indicated that they received 10 EOI requests for beneficial ownership information, and they were able to obtain and provide this information to their treaty partners in all cases.

63. The new table of determinations and ratings for the second round of reviews begins on the next page.

Determination on the Legal and Regulatory EOIR Framework		
The element is in place, but certain aspects of the legal implementation of the element need improvement.		
	Factors underlying recommendations	**Recommendation(s)**
Deficiencies identified in the legal and regulatory EOIR framework	Although certain information relevant for identification of beneficial owners is required to be available mainly based on tax and company law obligations, only financial institutions (and other Reporting Entities under the AML/CTF Act, which are irrelevant for EOI purposes, such as those in the gaming and bullion sector) are required to identify beneficial owners of Designated Entities, in line with the standard in all cases. Since 2007, Reporting Entities must identify beneficial owners of most forms of companies (except incorporated partnerships and associations). Since 1 June 2014, Reporting Entities are required to identify and verify the beneficial ownership and control of all their customers, including companies, partnerships, trusts and other legal arrangements. Finally, although most Designated Entities are likely to have a bank account in Australia, these Designated Entities are not legally required to engage a financial institution in Australia in all cases.	Australia should ensure that beneficial owners of all Designated Entities are required to be identified in line with the standard.

Determination on the Legal and Regulatory EOIR Framework		
The element is in place, but certain aspects of the legal implementation of the element need improvement.		
	Factors underlying recommendations	**Recommendation(s)**
	Although Australia has some identity information on trusts under the tax laws and the common law (namely, the identity of the trustee, settlor and direct beneficiary(ies)), the scope of these requirements does not cover the beneficial ownership requirements under the 2016 Terms of Reference in all cases, especially in respect of "any other natural person exercising ultimate effective control over the trust". The identification of beneficial owners of trusts is nevertheless required under the AML/CFT rules (which commenced in June 2014), but only where a trustee is provided a service (prescribed in section 6 of the AML/CTF Act) by a Reporting Entity; that is mostly where the trust has a bank account in Australia. Consequently, there may be instances where the identification of beneficial owners is not required in respect of all express trusts administered in Australia or in respect of which a trustee is resident in Australia unless these trusts have a bank account in Australia.	Australia should ensure that information on beneficial ownership information in respect of all express trusts administered in Australia or with a trustee resident in Australia is available as required under the standard.

Practical Implementation of the EOIR Standard		
	Factors underlying recommendations	**Recommendation(s)**
Deficiencies identified in the implementation of EOI in practice	Australia introduced enhancements to CDD obligations, which came into effect on 1 June 2014, accompanied by a transitional period of 18 months to enable Reporting Entities to achieve full compliance. During that period, and up to the end of the review period, only a small portion of the Reporting Entities has been monitored regarding the implementation of the 2014 CDD rules. In addition, due to the short period of time since the full application of the 2014 Rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out.
Rating of element A.1	**PARTIALLY COMPLIANT**	

A.1.1. Availability of legal and beneficial ownership information for companies

64. The rules with respect to company formation in Australia are the same as were reported in the 2010 Report (see paras. 34-36). Briefly, most companies in Australia are formed pursuant to the *Corporations Act*, and are required to register with the Australian Securities and Investment Commission (ASIC) and with the ATO. Upon incorporation, the identity of each member is known, as well as the identity of the directors.

65. There are 2 types of companies in Australia, which can either be limited or unlimited by share capital[4]:

4. An unlimited company is defined as a company whose members have no limit placed on their liability. Both a company limited by shares and a company unlimited with share capital issue shares to their members. The significant difference between the two is that the liability of members that hold shares in a company limited by shares is limited to the amount unpaid on their shares.

- Proprietary companies, which may be limited by shares or unlimited by share capital and are generally used by small and medium businesses. As at 30 June 2016, there were 2 349 382 proprietary companies registered with ASIC. As at 31 March 2016, there were 1 750 789 proprietary companies registered on the Australian Business Register (ABR) with the ATO. The difference in the number of registration is explained by the following factors: (i) proprietary companies are registered with ASIC under the Corporations Act, which provides the legal existence of the company (see s119 Corporations Act), whereas the ABR does not register companies, it registers businesses and issues a business identifier to entities including companies, being the Australian Business Number (ABN); and (ii) it is not a legal requirement that all proprietary companies have an ABN and registration on the ABR
- Public companies, which may be limited by shares, limited by guarantee, or unlimited by share capital, or may be a no liability company. These are generally used by large businesses. As at 31 March 2016, there were 28 858 public companies registered on the ABR with the ATO. As at 30 June 2016, there were 23 047 public companies registered with ASIC. For the same reason mentioned for proprietary companies, registration with ASIC gives the company its legal existence as a body corporate and a public company. The ATO, through the ABR, issues entities with a unique identifier (an ABN) by registering the entity in the ABR. The entity, including companies, must make an application for it to be registered in the ABR. The difference in the numbers is also partly due to the dates the figures were compiled (30 June 2016 for ASIC and 31 March 2016 for ATO) as the ATO may not yet have taken businesses off the ABR that were no longer registered.

66. It is also possible for a foreign company to carry out business in Australia, in which case they need to register with both ASIC and the ATO. As at 30 June 2016, there were 3 652 foreign companies registered with ASIC. The ATO data warehouse indicates 3 293 companies registered as a foreign company in Australia (as at 31 March 2016). The difference in the ATO and ASIC figures is partly due to the dates the figures were compiled (30 June 2016 for ASIC and 31 March 2016 for ATO). Also as stated in paragraph 68, it is not a requirement of the Corporations Act or the ABN Act for an entity registered with ASIC to register on the ABR. Therefore as not all foreign companies registered with ASIC are required to be registered on the ABR the ATO figure may be lower. Because company registrations with ASIC and ATO are separate processes administered by different government agencies (and not all companies necessarily register for an ABN and TFN at the same time), there may be a time lag between registration applications by the

company resulting in the differing numbers at a point in time. Finally, where ASIC deregisters a foreign company for not meeting certain obligations, there may be a delay between the ASIC deregistration and the date of cancellation in the ABR.

Legal ownership and identity information requirements

67. As described in paragraphs 31-54 of the 2010 Report, legal ownership and identity requirements for companies are mainly found in Australia's company law and the tax law.

68. The following characteristics apply to Australian public or private companies:

- They come into existence under the Corporations Act 2001;
- They must apply for registration with the ASIC; and
- They are issued an identifier (the Australian Company Number – ACN);
- They have certain company details held in ASIC registers; and
- They are required to hold a register of members.

69. The company entity may choose to apply to the Registrar of the ABR for an ABN, which is maintained by the ATO. Entities that are not carrying on an enterprise, such as shelf companies, corporate trustees, and holding companies may choose not to apply for an ABN. Those entities that carry out a trade or a business are likely to apply. As such. the ABN will make it easier for the company to identify itself to government and apply for other registrations such as GST, in order to meet other reporting obligations. However, companies are not required by law to apply for an ABN or be registered in the ABR, however if it is registered for GST, the GST registration number, the status of the GST registration, and the date of effect of the registration will be recorded in the ABR and made publicly available via ABN lookup. The following table[5] shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

5. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

Legislation regulating ownership information of companies

Type	Company law	Tax law
Proprietary companies	All	Some
Public companies	All	Some
Foreign companies	Some	Some (more than 10% shareholding)

Company law requirements

70. This section deals with the obligations for companies (i) to maintain ownership information and to notify authorities of the change in ownership information and (ii) maintain records for a limited period of time.

71. **General rules**. The Corporations Act requires all companies to maintain a register of all shareholders recording changes in ownership of company shares. Failure to do so constitutes an offence under section168 Corporations Act (requirement to maintain a register of members). The share register of an unlisted company must indicate any shares that a member does not hold beneficially (subsection 169(5A) of the Corporations Act). This is facilitated by notices that are required to be provided by transferees under section 1072H of the Corporations Act and answers to tracing notices. These registers are required to be made available for public inspection. It is an offence for the transferee to fail to indicate that they will hold shares in a non-beneficial capacity when lodging an instrument of transfer with a company (section 1072H). Holding the share non-beneficially would typically be, for example, where it is held by a person as trustee, nominee or on account of another person.

72. Changes in ownership of proprietary companies are required to be disclosed to ASIC but only for the 20 members with the largest holdings. With respect to the other shareholders, the information is still available in the shareholder register that the company is obligated to maintain. Failure to comply is an offence under section 173(9A) Corporations Act.

73. **Nominees.** In Australia, the legal ownership of shares is reflected prima facie in the share register (which establishes rights to dividends, voting rights etc.). In the case of a transfer of shares, it is also a requirement that it be declared whether the shares are held beneficially or non-beneficially. For the purpose of ownership of shares, a legal person holds a share "beneficially" if the person holds the share for the benefit of that person. A legal person holds a share "non-beneficially" if they hold the share for the benefit of another person, that is, not for the holder's benefit. Accordingly, information is available to ASIC to determine whether a share is held in a non-beneficial capacity, but there is no recording of the identity of the beneficial owner. In addition, AML/CTF requirements do not apply to Designated Non-Financial

Business and Professions (DNFBPs). As noted in the 2010 Report, nominees that were not financial service licensees were not required to maintain ownership and identity information in respect of all persons for whom they acted as legal owners.It was therefore recommended that Australia establish an obligation for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person. The Australian authorities have clarified however that persons (including individuals[6]) that provide nominee services in the course of a financial services business are required to hold an Australian Financial Services Licence, unless they fall into an exemption category. These categories are limited and include situations where the nominee operates under another entity's licence or is a wholly owned subsidiary of the client (Australian Corporations Regulations 2001 – Reg 7.6.01). Such entities acting as nominees would also then be subject to AML/CFT requirements on beneficial ownership.

74. In addition, any person acting as nominee, including those not acting in a professional capacity, would be considered under common law to be acting in a fiduciary capacity. In the event that the nominee has derived income (for example dividends or interest), it would be obliged to file an Australian tax return (trust return) where it would need to disclose the identity of the beneficiaries entitled to trust income, unless relieved of the obligation to do so (in the case of bare trusts).

75. In addition to any tax obligations, the nominee would nevertheless have a fiduciary obligation to hold information in respect of the identity of its beneficiaries (although Australian authorities could take no enforcement action if it was in fact not retained).

76. In light of this information, the recommendation on nominees contained in the 2010 Report is removed, as identity information is available in the case of nominees of companies.

77. **Foreign companies**. Foreign companies carrying on business in Australia must first register with ASIC as a foreign company under Section 601CM of the Corporations Act and must appoint a local agent who must ensure compliance with the requirements of the Corporations Act applying to the foreign body. There is no requirement to disclose ownership information for foreign companies carrying on business in Australia under the registration requirements of the Corporations Act. However, a shareholder register must be kept in the same manner as required for an Australian company and in such a case ASIC must be notified as to where the register is kept. Section 601CM of the Corporations Act provides that if a member of a registered foreign company resides in Australia and requests the foreign company to register the member's shares in a branch register kept in Australia,

6. Section.

then the foreign company must keep a branch register and register any shares held by the member in the branch register. Accordingly, ASIC is not required to be notified of the members. ASIC must be notified if a branch register is to be kept or discontinued and the address where the branch register is kept.

78. In addition, foreign resident companies that derive Australian source income are required to submit a company tax return (see below *Tax law requirements*); however, the return does not routinely require the identification of all legal or beneficial owners of shares.

79. **Record keeping requirements (including liquidated companies) under company law**. A company is required to retain ownership information in relation to shareholders who have ceased to be members within the last seven years (section 169(7) Corporations Act).

80. Where a company has been wound up the liquidator must keep the company's records including ownership information for a period of 5 years, unless approval for early destruction is given by a court or ASIC (section Schedule 2 section 70-35 Corporations Act). Prior to legislative reforms implemented on 1 March 2017, the application to destroy books and records was required to be made to the Court (and not to ASIC) in the case where the Court ordered the company be wound up. The courts have permitted the early destruction of books following the winding up of a company's affairs by a liquidator. Since 1 March 2017, ASIC has issued a guidance on considering such applications, which is set out in ASIC Regulatory Guide 81. This stipulates that ASIC will consider whether there are any investigations pending, whether ASIC has received complaints or reports of potential breaches of the law, whether the liquidator has received requests to access the books, the funds remaining in the administration, the cost of storage of the books, the surplus or deficiency of funds in the administration, the length of time between the final meeting of creditors and the date the books would be destroyed and whether the winding up is a creditor or member winding up.

81. Under the corporations law, companies can only be voluntarily de-registered in limited circumstances. In all other cases, a liquidator is required to be appointed in accordance with the "winding up" procedure. These conditions precedent to deregistration are, that the company must:

- have agreement from all members of the company to de-register it;
- not be carrying on a business;
- have assets valued at less than USD 1 000;
- have no outstanding liabilities (including fees and penalties); and
- not being involved in any legal proceedings.

82. In addition to voluntary de-registration, ASIC may itself initiate de-registration of a company. This generally occurs where the company has been remiss in meeting its obligations to ASIC (e.g. payment of fees, lodgement of documents, etc.) and is commonly undertaken after two years of non-payment.

83. Where the company is de-registered, its records, including the register of members, must be kept by the company directors for three years after the de-registration, and by the liquidator (if appointed by law) for a five-year period after de-registration. In case there is no liquidator appointed (case of voluntary de-registration with ASIC and compulsory de-registration by ASIC), the three-year retention period applicable to company directors is not in line with the standard, which requires a minimum five-year retention period. However, the ASIC confirmed that the deregistration of companies due to failure to pay fees is only initiated after a minimum period of 12 months from the due date (by law). ASIC indicated that most of the deregistrations thus far were carried out because the companies had not paid their annual fees for at least two years. Accordingly, although the gap is limited, Australia should ensure that legal and beneficial ownership information for the de-registered companies is kept for a minimum period of 5 years in all cases.

84. ASIC is subject to an obligation to “store” information given to it under the laws it administers. This obligation is not subject to a time limit.

85. The corporations law requirements to retain documentation are supplemented by the requirement to hold information relevant to the company’s tax affairs (which generally include accounting and ownership information) for a period of 5 years following lodgement of the tax return. This requirement exists for all taxpayers (including companies) that derive income in Australia and, in the case of companies, the obligation to retain records vests in the Public Officer of the company (a natural person ordinarily resident in Australia).

Tax law requirements

86. The ATO holds ownership information through two means (i) the annual tax return of the company and (ii) the Australian Business Number (ABN), as detailed below.

87. **Annual tax return.** Every resident company that derives Australian source income or foreign income and every non-resident company that derives Australian source income is required to register with the ATO and to lodge a tax return with the ATO. The compliance with the obligations to file a tax return and the information to be included into the tax returns is monitored

by the ATO through the tax audits (see A.2. *Oversight and Enforcement Activities carried out by the ATO*).

88. Domestic companies and foreign companies with taxable income in Australia are also required to lodge reports that identify the name, address, date of birth, gender and Tax File Number (TFN) or Australian Business Number of all shareholders to whom dividends have been paid during the year of income. The compliance with these obligations is reviewed during tax audits (see A.2. *Oversight and Enforcement Activities carried out by the ATO*).

89. For foreign companies, the company tax return requires companies to identify their ultimate parent company and indicate the percentage of foreign shareholding, where this is not less than 10%. A failure to provide this information constitutes an offence under section 8C of the TAA 1953. Non-resident companies must also appoint a resident Public Officer, who can be compelled to produce information on behalf of the company. A resident Public Officer needs to be at least 18 years of age, to ordinarily reside in Australia and to be capable of understanding the nature of the person's appointment as the public officer of the company. The Public Officer is not subject to AML/CFT requirements. This information is available with the ABR if the foreign company is registered with the ABR. Accordingly, together with the requirements under corporate law, legal ownership information on foreign companies is available in conformity with the Standard in Australia.

90. **Australian Business Register.** The ATO maintains a register, the Australian Business Register (ABR), of the businesses (i.e. any type of legal persons and arrangements) holding an Australian Business Number (ABN). The ABR provides a tool to the public to check if the entity (including company) exists, is registered for GST purposes, and is active or cancelled.

91. The Commissioner of Taxation is the Registrar. The ABR contains information on individuals, companies, government agencies, partnerships and superannuation funds that have applied for an ABN. Entities are not required to register in the ABR but may choose to apply for an ABN. The ABN will make it easier for the entity to identify itself to government and apply for other registrations such as Goods and Services Tax (GST) or an AUSkey, in order to meet other reporting obligations.

92. The application is subject to some verification, notably the enterprise test[7] (except for companies). When an entity applies to be registered in the ABR, the Registrar must be satisfied that the identity of the entity and the

7. Some entities have an automatic entitlement to an ABN due to the nature of the entity, for example Corporations Act companies. For other entities, for example

identity of the entity's associates have been established before an ABN is issued. The type and number of associates to be identified will vary depending on factors such as the entity type and the residency status.

93. The ABR collects the following identity and ownership information:

- For companies, the identity of the directors, the public officer (and where applicable the company secretary), and the top-20 shareholders;
- For "other incorporated and unincorporated entities", the identity of the office bearers (e.g. president, treasurer, public officer, secretary).
- For partnerships, the identity of all partners.

94. From December 2013, the information collected was expanded to include:

- private and public company secretaries, where they are authorised to make decisions and commitments on behalf of the company without reference to the company directors;
- top 20 shareholders of private and unlisted public companies; and
- top 20 beneficiaries of closely held trusts.

95. Where an entity does apply to be registered in the ABR, and is so registered, the entity has an obligation to notify the Registrar of any changes to the details in the ABR that it provided to the Registrar; within 28 days of becoming aware of the change (s14 ABN Act). Failure to comply with the requirements to provide an update to the ABR within 28 days constitutes an offence against Section 8C of the Taxation Administration Act 1953. The Registrar undertakes campaigns to encourage ABN holders to update details held on the ABR. These strategies are targeted at data fields the Registrar knows are incomplete or present a high risk of being out of date.

96. Where the Registrar requests, in writing, information about the details entered in the ABR from the entity, the entity has an obligation to provide those details (s15 ABN Act).

97. Finally, an entity is required to cancel their ABN registration (in accordance with section 18 of the ABN Act) if they are no longer entitled to an ABN under section 8 of the ABN Act. The Registrar uses section 8 to underpin compliance activities on existing ABN holders to ensure that entities (including companies) with active registrations are in fact carrying on an enterprise.

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partnerships, the entitlement to an ABN requires that the entity is carrying on an enterprise. This test is explained at length in Ruling MT 2006/1.

Availability of legal ownership information in Practice

98. During the current peer review period Australia received a total of 596 EOI requests. The ATO indicated that 69 out of 569 (approximately 11%) EOI requests received included aspects regarding ownership and identity information. All peers confirmed they were satisfied with the information received in all cases.

99. Similar to the outcomes found in the 2010 Report, the positive results in obtaining legal ownership information for EOI purposes confirm the adequacy of the enforcement and monitoring carried out by ASIC and the ATO, respectively.

Enforcement and monitoring activities by ASIC

100. The 2010 Report found that the penalties for failure to maintain or report information were dissuasive, but the Report did not cover the issue of oversight by the ASIC. In the current review period, it can be concluded that there is sufficient enforcement oversight and enforcement by the ASIC in respect of the maintenance of legal ownership information.

101. In practice, ASIC must give every company an Extract of Particulars (which is the information in the register relating to it, including shareholder information) each year (s346A) within 2 months of its review date. The review date is typically the registration date. A company must respond to an Extract of Particulars that it receives if any particular set out in the extract is not correct as at the date of receipt (s346C). In addition, every company must pay an annual fee and pass a solvency resolution within 2 months of its review date. This process is referred to as the "annual review" and ensures the information held by ASIC is reviewed at least annually. Where a company fails to pay their annual fee, ASIC may, and usually does, initiate de-registration (s601AB(1)(a)).

102. The ASIC registry administers more than 30 legal registers, which contain the details of more than 2.3 million companies. In 2015-16, ASIC collected fees amounting to AUD 876 million.

103. ASIC indicated that, in practice, most companies in Australia are registered by company incorporators or registered agents (lawyers or accountants). ASIC operates a validation check to ensure that the registration file is complete. In addition, 97% of applications for registration are carried out online.

104. The ASIC Register is available to the public and can be searched. Company summaries are free and include the Australian company number, the company name, the registration date and the next company review date, the status and type of company, the locality of the registered office and a list

of publicly available documents. In contrast, the current company extract is a paid for search product which includes the registered office, the principal place of business and contact addresses, officeholder details, external administrator and appointed auditor details (if applicable), ultimate holding company, share structure and member details and a list of publicly available documents lodged by the company.

105. ASIC indicated that work has been carried out to ensure the integrity of the data held by ASIC as follows:

- Integrity of the data is ensured by the sending of annual reviews, for which companies are required to check their details. If the company does not reply to the requests from the ASIC to check/update the company details, the sanction is the de-registration of the company (see below).
- ASIC initiated Compliance Programs, under which ASIC manages non-compliance with legal requirements, which may result in ASIC-initiated de-registration of the company. Under the Compliance Programs, ASIC generated, sent and stored compliance notifications to non-compliant entities. Subsequently, ASIC published notices on its Published Notices website and finally updated the register to cease registration or to refer the entity to ASIC Regulatory section for enforcement action, where appropriate. This compliance programme does not monitor the obligation to maintain a share register.

106. In the year 2015-16, ASIC initiated the de-registration of 50 908 companies on one or more of the following grounds:

- The company’s annual fee has not been paid in full at least 12 months after the due date for payment; or
- If the three following conditions are met:
  - The response to an Extract of Particulars given to a company is at least six months late; and
  - The company has not lodged any other documents required under the Corporations Act in the last 18 months; and
  - ASIC has no reason to believe that the company is carrying on business.

107. ASIC indicated that most of the de-registrations thus far were carried out because the companies had not paid their annual fees for at least two years. For the year ending 30 June 2016, ASIC deregistered 50 908 companies following a failure to pay the review fee from a total of 123 050 companies deregistered. In practice, de-registered companies can apply for re-registration

but they must pay all the outstanding liability. If a company is deregistered voluntarily (see conditions mentioned previously in paragraph 81) or following the initiation of ASIC, ASIC may reinstate the company if the company should not have been deregistered. The directors of the company immediately before deregistration must keep the company's books for 3 years after deregistration (section 601AD(5)) unless a liquidator is appointed (see section A.1.1 *Record keeping requirements (including liquidated companies) under company law).*

108. ASIC indicated that 4.2 million members hold the shares of 2.3 million proprietary companies; amongst them 604 000 members hold the shares non-beneficially. Shares held non-beneficially indicate that the shareholder is holding the shares on behalf of another person, organisation or trust.

Enforcement and monitoring activities by ATO

109. In practice, the application for an ABN is mostly carried out electronically (97%). Under the current process, anyone can apply on behalf of someone else. There is no identity check on the person who files the application. However, there are pre-registration checks (e.g. whether there is true entitlement to get the ABN), and risk analysis post-registration to prevent GST fraud through the use of the ABN.

110. The Registrar indicated that it recently undertook a programme of compliance activities to manage risks to the ABR, which does not per se include the compliance with ownership information maintenance requirements). The Registrar does however collect the details of certain associates. Since 2013 this has also included the details of the top 20 shareholders of private and unlisted companies. These details are provided by the entity applying for an ABN. There is no cross reference with other ATO or ASIC data. These efforts aim, amongst others, to avoid GST frauds through the use of the ABN.

111. These activities can be categorised into three types of work:

I. **The manual processing of ABN applications** where a particular risk has been identified at the point of application. In the period 01/04/2013 to 31/03/2016, the Registrar has manually assessed 672 434 ABN applications, which led to 28 919 manual refusals actioned in the ABR for the peer review period (1 April 2013 until 31 March 2016).

II. **Entitlement reviews of existing ABN holders** to ensure the entity is entitled to hold their ABN registration – Reviews of active ABN registrations comprise of both manual and automated programmes of work. Manual reviews are undertaken by telephone contact with the ABN holder. The Registrar also engages employers as part of efforts

to ensure payers are engaging their workers appropriately; this is often done with field visits with payer.

The compliance programme actioned during the peer review period (01/04/2013 to 31/03/2016) resulted in:

- 141 159 manual entitlement reviews leading to 94 851 ABN cancellations;
- 1 822 170 ABN cancellations as part of a bulk cancellation strategy; and
- 250 252 ABN cancellations for de-registered companies
- 462 928 ABNs cancellations at the request of the ABN holder; known as Client Initiated Cancellations (CIC).

III. **Client Information Reviews (CIR)** to ensure the data held on the register is up to date and accurate, the Registrar uses email and letter correspondence campaigns to encourage ABN holders to update their details on the ABR. During the peer review period, there were 1 390 991 CIR contacts including both emails and letters. This campaign resulted in 67 597 updates to the ABR. A total of 1 000 000 letters and emails have been planned for July 2016-June 2017.

112. The ABR displays publicly the ABN status as either “Active”, or “Cancelled”. Internally, there are more features, including cancelled, refused, on hold. The terms “active” and “cancelled” relate to the registration status of an entity in the ABR. Cancelled ABNs remain on the ABR as an historical record should this information be required after the ABN is cancelled. The ABR shares active ABNs and information about refused applications with ASIC when an ABN application also includes an application for a Registered Business Name processed by ASIC.

113. The count of “active” and “cancelled” entities on the ABR at the end of the peer review period (31 March 2016) was:

Entity type	Active	Cancelled	Total (by entity)
Company	1 763 229	876 254	2 639 483
Government	12 237	3 191	15 428
Sole trader	3 136 039	2 958 216	6 094 255
Partnership	744 624	546 177	1 290 801
Super fund	588 041	120 755	708 796
Trust	1 009 652	304 939	1 314 591
Total	**7 253 822**	**4 809 532**	**12 063 354**

Availability of beneficial ownership information

114. Under the 2016 ToR, beneficial ownership on companies should be available.

115. Under the Corporations Act, beneficial ownership information is available in those cases where the legal owners are also the beneficial owners. In other cases, information on beneficial ownership of companies is only available with:

- banks and other entities regulated under the AML/CTF Act which have CDD obligations under the AML/CTF legal framework. Regulated entities have an obligation to monitor their customers in accordance with their perceived ML/TF risk. Since 2007, Reporting Entities must identify beneficial owners of most forms of companies (except incorporated partnerships and associations). ; and
- with listed companies, which are obliged to keep beneficial ownership information under corporate law.

116. Apart from the above-mentioned requirements, there are no obligations on companies or Designated Non-Financial Businesses and Professions (DNFBPs) (i.e. trust and corporate service providers (TCSPs), lawyers) to maintain beneficial ownership information.

117. Although certain information relevant for identification of beneficial owners is required to be available mainly based on tax and company law obligations, only financial institutions (and other Reporting Entities under the AML/CTF Act such as those in the gaming and bullion sector, which are not relevant for EOIR purposes) are required to identify beneficial owners of Designated Entities, in line with the standard in all cases. As a consequence, beneficial ownership information on Designated Entities is available with financial institutions where they hold a bank account. However, these Designated Entities are not legally required to engage a financial institution in Australia in all cases. The Australian authorities have indicated that in practice most Designated Entities would have a bank account with an Australian bank if they are incorporated in Australia or carry out a business in Australia. Australia should ensure that beneficial owners of all Designated Entities are required to be identified in line with the standard.

118. In terms of **effectiveness of the legal and regulatory framework in practice**, Australia introduced enhanced CDD obligations under the AML/CTF Rules which apply as from 1 June 2014, but for which a transitional period of 18 months was introduced for full compliance. During that period, and up to the time of the review, only a small portion of the total Reporting Entity population (36 of a total population of around 14 000 during the review period) was subject to targeted compliance review by AUSTRAC. Due to the concentrated nature of Australia's financial system (which is dominated by

the four major banks), the inclusion of these institutions in the sample tested by AUSTRAC resulted in compliance activities achieving coverage in excess of 90% of all transactions undertaken in Australia. Subsequent to the review period, AUSTRAC has confirmed that the key financial institutions have now taken appropriate steps to assure AUSTRAC all accounts are compliant and good practices are being adopted by the industry. Due to the short period of time since the full application of the 2014 Rules, the adequacy of the oversight in practice could not be fully assessed. Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out. The analysis regarding the supervision and enforcement of the above-mentioned requirements applicable to banks are set out in element A.3 *Availability of beneficial ownership of bank accounts under AML/CTF legislation*).

119. Despite the gaps identified in the Australian legal framework, Australia has received 10 EOI requests for beneficial ownership information of companies and could provide the requested information in all cases. This was confirmed by peer input.

Beneficial ownership requirements under corporate law

120. Listed public companies must maintain beneficial ownership information under corporate law. There are no obligations under corporate law for other companies to maintain beneficial ownership information.

Beneficial ownership requirements under tax law

121. All companies (domestic and foreign companies taxable in Australia) must provide to the ATO the identity of their ultimate holding company in their annual tax return. The "ultimate holding company" is defined as "the company in a group of companies that has majority ownership of or controlling interests in the other companies in the group." The supervision and the enforcement measures applicable and applied during the peer review period for failure to complete a tax return or for missing information are described in section A.2 *Oversight and enforcement of requirements to maintain accounting records.*

Beneficial ownership requirements under AML/CTF Legislation

122. Banks are required to identify and verify the beneficial owners of all of its customers, These obligations were strengthened and enhanced with effect from June 2014 through an increase in the scope of entities and arrangements subject to identification and verification activities, as well as strengthened and clarified ongoing and enhanced CDD obligations for Reporting Entities.

Prior to this period, banks were required to identify the beneficial ownership of most forms of companies from December 2007. This means that beneficial ownership information on companies that have opened a bank account with an Australian bank should be available with that bank, including beneficial ownership information collected prior to 2014 (see A.3 *Beneficial Ownership information on bank accounts* for more details). I

123. There are no requirements for DNFBPs to maintain beneficial ownership information over their customers, such that beneficial ownership information under the AML/CTF rules is only available with banks (and other reporting entities providing prescribed services under section 6 of the AML/CTF Act, but which are not relevant for EOIR purposes) under the conditions mentioned in the above paragraph.

124. The ATO and the AUSTRAC have confirmed that most taxpayers and entities registered with ASIC have an Australian bank account.

125. From a legal perspective, there is no specific requirement within the Corporations Act 2001 which mandates the opening or maintenance of an Australian bank account for Australian registered companies or for registered foreign companies that carry on business in Australia. However, the regulatory framework relating to the business of Australian registered companies or registered foreign companies that carry on business in Australia contains requirements to maintain an Australian bank account in certain cases. In practice, most entities and arrangements operating in Australia will maintain an Australian bank account as this simplifies their business affairs and assists in helping them manage certain risks (e.g. forex) and regulatory obligations. These relevant tax and corporate law requirements pertaining to the maintenance of bank accounts are as follows:

- Section 8AAZLH of the Taxation Administration Act 1953 requires an entity to nominate their Australian financial institution account in the approved form to enable the Commissioner to make refunds of Running Balance Account surpluses or credits, or the Commissioner may retain the refund.
  - This account must be maintained at a branch or office of the institution that is in Australia.
  - The account must be held by either the entity, the entity and some other entity, the entity's registered tax agent or BAS agent, or a legal practitioner as trustee or executor for the entity
  - If an entity has not provided the bank account details to which refunds are to be paid and the Commissioner has not directed that any such refunds be paid in a different way, the Commissioner is not obliged to refund any amount to the entity until the entity provides its bank account details.

- An account with an Australian financial institution is a requirement for businesses registered for Goods and Services Tax (GST).
- The ATO will only pay electronic refunds to an Australian Financial Institution Account (FIA). Institutions that are listed as eligible for creating and running an Australian FIA are those that APRA has endorsed as an Authorised Deposit-taking Institution (ADI).
- Part 7.8 of the Corporations Act 2001 requires a financial services licensee, which may be an Australian registered company, to ensure that money that is paid into an account by a client for the provision of financial services is an account that is an Australian ADI.
- In the case of receivership – Section 421 of the Corporation Act requires managing controllers of the property of a company to open and maintain a bank account for with an Australian authorised deposit institution.
- Section 98(2) of the National Credit Code Protection Act 2009 requires a credit licensee who provides credit services to clients and receives money from clients on trust must keep a separate trust bank account with an Australian ADI.

126. The supervision of the AML/CFT obligations applicable to banks are described in element A.3 *Implementation of the 2014 CDD Rules*.

Availability of beneficial ownership information in practice (Peer experience)

127. Closely-held companies constituted over 85% of companies registered with ATO and account for virtually all of the companies that were the subject of exchange-of-information requests with ATO for the period 2007-09. For the period under review, the ATO did a manual search of their database and found that 10 EOI requests also included beneficial ownership information. Peers have generally been satisfied with the answer provided by Australia.

128. Five peers indicated they sent a total of ten requests regarding beneficial ownership information on legal entities and arrangements, one of which concerned the beneficial ownership of a trust (see A.1.4) and the remainder related to companies. All peers were satisfied with the information received from the ATO.

129. The ATO indicated that EOI requests for beneficial ownership are not common, probably due to the fact that Australia is not used as a holding company jurisdiction. It confirmed that the deficiencies identified in the legal framework of Australia regarding availability of beneficial ownership information did not result in hindrance to EOI in practice, which is supported by peer input.

ToR A.1.2: Bearer shares

130. Australian law does not allow for the issuance of bearer shares.

ToR A.1.3: Partnerships

131. In Australia a partnership is a relationship which subsists between persons carrying on a business in common with a view of profit. Partners may be individuals, bodies corporate or other partnerships.

132. There are three types of partnerships in Australia: general partnerships, limited partnerships and incorporated limited partnerships. A limited partnership is one where the liability of one or more partners for the debts and obligations of the business is limited. A limited partnership consists of one or more general partners (whose liability is unlimited) and one or more limited partners. Registration confirms each limited partner's investment and liability. An incorporated limited partnership is a separate legal entity and is generally only permitted in venture capital arrangements. Federal law recognises three types of limited partnerships – venture capital limited partnerships (VCLPs), Australian venture capital fund of funds (AFOFs) and venture capital management partnerships (VCMPs), but treats them as ordinary partnerships for tax purposes. Any other limited partnerships and incorporated limited partnerships are treated as companies for tax purposes.

133. The 2010 Report (see paras. 81-97) concluded that information on the identity of the partners in a domestic and foreign partnership were available due to tax obligations, to the extent it has to file a tax return. This obligation applied where the partnership operated a business in Australia. Generally, updates on the changes of partners were required to be reported to the ATO on an annual basis in the tax return. Each of the partners was also required to file an annual tax return in respect of their interest in the partnership.

134. Since the 2010 Report there have been no changes to the legal framework. For the oversight enforcement measures applied by the ATO during the peer review period, see A.1.1 *Enforcement and monitoring activities by the ATO*.

135. Regarding the availability of beneficial ownership information, the AML/CTF Rules requires banks to identify the beneficial owner(s) of each partner of a partnership (domestic or foreign) that is a customer (see A.3 *Availability of beneficial ownership information*). Although certain information relevant for identification of beneficial owners is required to be available mainly based on tax and company law obligations, only financial institutions (and other Reporting Entities under the AML/CTF Act such as those in the gaming and bullion sector, that are not relevant for EOI purposes) are required to identify beneficial owners of partnerships, in line

with the standard in all cases. In addition, domestic partnerships and foreign partnerships that have their effective management in Australia are not legally required to engage a financial institution in Australia in all cases. These financial institutions are required to identify and verify the beneficial owners of all of its customers since June 2014 as part of the enhanced CDD obligations under the AML/CTF Rules and since 2007 for most forms of companies. Beneficial ownership information is also required to be maintained for customers in accordance with a financial institution's risk-based ongoing customer due diligence procedures. The enhanced and ongoing customer due diligence procedures adopted by financial institutions can apply to all customers based on high ML/TF risk regardless of the obligations introduced in 2014. This may include the assessment of beneficial owner information about a customer. Australia should ensure that beneficial owners of partnerships are required to be identified in line with the standard.

136. For the period now under review (April 2013-March 2016), the ATO confirmed that they received 16 requests on partnerships and they could provide the identity of the partners in all cases. The ATO also indicated that, as a trend, the number of partnerships is decreasing, since business in Australia is more commonly carried out through a company, rather than partnerships.

ToR A.1.4: Trusts

137. As Australia is a common law jurisdiction, the concept of a trust is part of Australian law. A trust is an equitable obligation binding a person (a trustee) to deal with property over which he or she has control (the trust property) for the benefit of persons (beneficiaries) of whom he or she may be one, and any one of whom may enforce the obligation. Federal tax law has jurisdiction over the taxation of trusts. The 2010 Report found that identity information on trusts was available under the tax law requirements and the submission of tax returns, which must stipulate who the trustee(s) and the beneficiaries are and the share of income for each beneficiary.

138. As described below, Australia has some identity information on trusts under the tax laws and common law; that is the identity of the trustee and the direct beneficiaries in certain cases. However, the scope of these tax law and fiduciary obligations does not cover the scope of the beneficial ownership requirements under the 2016 Terms of Reference in all cases; that is to say the natural person exercising the ultimate effective control over the trust where a chain of ownership exists. The identification of beneficial owners of trusts is also required based on AML/CFT obligations since June 2014. Although financial institutions (and other Reporting Entities under the AML/CTF Act such as those in the gaming and bullion sector, which are not relevant for EOI purposes) must identify beneficial owners of trusts, acting as a trustee does not in itself trigger such AML/CFT obligations. The

identification of beneficial owners is not required in respect of all express trusts administered in Australia or in respect of which a trustee is resident in Australia unless the trustee is provided a service (as prescribed in section 6 of the AML/CTF Act) by a Reporting Entity. Trusts not subject to AML/CTF requirements would be limited to those which do not receive services from an Australian licenced financial institution. At a practical level, statistics are not available as to the number of such trusts, however the Australian Authorities indicated that they do not expect this would be a significant portion of the population. This would typically be the case of a trust having a bank account in Australia. Australia should ensure that information on beneficial ownership information in respect of all express trusts administered in Australia or with a trustee resident in Australia is available as required under the standard.

Legal Requirements

139. No all trusts governed by Australian law have to be registered. Under Australian law, there is no legislative federal obligation on the trustee to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust.

140. However, specific requirements apply to managed investment schemes (unit trusts offered to the general public), which are regulated under the Corporations Act and are required to be registered with ASIC. Registered Managed Investment Schemes must keep a register of members, including name and address, interest held by each member and amounts paid on the interests (section 168 and 169 of the Corporations Act 2001).

Fiduciary duties under the Common Law

141. Under the common law, and in case of a discretionary trust, the trustee's duties include a duty to become acquainted with[8] and to carry out the terms[9] of the trust. The trustee is required to exercise its powers with due consideration for the purpose for which it was conferred and, before making a decision, ensure that he is informed of matters which are relevant to his decision. The trustee also has the duty to act impartially between beneficiaries, particularly in the matters of distribution of capital and income, unless otherwise authorised by the trust. The trustee's duty is to act in good faith, responsibly and reasonably.[10]

8. *Hallows v Lloyd* (1888) 39 Ch D 686 at 691),.
9. AG v Downing (1767)Wilm 1 at 23.
10. *Scott v National Trust for Places of Historic Interest or Natural Beauty*[1998]2 All ER 705 per Robert Walker J at 717.

142. The above-mentioned duties include the obligation to know who the beneficiaries are. However, although the beneficiaries of a trust must be identified with sufficient certainty for the trust to be validly constituted, when a beneficiary is not a natural person the trustee has no obligation at law (and indeed may not in fact be able to trace through a chain of beneficial interests) to identify the ultimate recipient of a distribution it makes to a non-natural person beneficiary.

Tax law requirements

143. Any trust with a trustee resident in Australia and any foreign trusts receiving income from Australia must file an Australian tax return (unless exempted by the Commissioner from this requirement). In the tax return, the trustee must disclose to the Commissioner the beneficiaries' entitlements to trust income. There are penalties which apply if a trustee fails to lodge a return as required, or makes false or misleading statements in a return. Registration is also required with the Commissioner of Taxation in the case of charitable trusts and when income is derived by the trust.

144. The trust needs to register the trust or partnership in the tax system by applying for a Tax File Number (TFN) and, if relevant, an Australian Business Number (ABN). The description of the oversight and enforcement activities carried out by the ABR is set out in section A.1.1 *Enforcement and Monitoring Activities by the ATO*.

145. From a tax perspective, trusts are generally treated as transparent, such that income derived from a trust is taxed at beneficiary level in case of a distribution, or at the level of the trustee. The ATO has the identity information of the trustee in all cases, and the identity of the beneficiaries in case of distributions.

146. The 2010 Report concluded that the extensive tax filing and anti-money laundering requirements in Australia ensure the availability of information on trusts. A total of 838 126 trust tax returns were lodged for the 2012-13 tax year, 849 027 for the 2013-14 tax year and 823 448 to date in respect of the 2014-15 tax year. There were no requests for information on trusts during the period 2007-09. In the current review period, Australia received 9 EOI requests regarding trusts, to which Australia responded satisfactorily.

AML/CTF Law requirements

147. Generally, there is no legal requirement for involvement of a service provider or a financial institution in the creation or the running of the trust arrangement. Professionals may be engaged to assist with setting up and

running the trust, for example, a legal practitioner can assist with the preparation and maintenance of the trust deed, and an accountant can assist with the preparation of the trust returns. However, at this time no identification or CDD obligations apply to these service providers under the Australian AML/CTF Act.

148. Since 2007, identity information has been available if the trustee opens a bank account in Australia on behalf of the trust. Since 1 June 2014, beneficial ownership information is also available with the Australian banks, being Reporting Entities under the AML/CTF Act. These are required to carry out KYC procedures for new services to identify the settlor(s), the trustee(s), the beneficiary(ies) and the protector(s) (if any). All bank accounts (including trust accounts opened prior to 1 June 2014), are subject to ongoing CDD which back-captures beneficial ownership information. Enhanced CDD supplements this process and is undertaken on a risk basis.

149. Trust Company and Service Providers are not subject to obligations under the AML/CTF Act and therefore would not be a reporting entity subject to the beneficial ownership requirements.

150. Two peers indicated that they each sent one request for beneficial ownership of trusts during the peer review period. In both cases, the peers were satisfied with the quality of the beneficial ownership information received.

ToR A.1.5: Foundations

151. Australian law does not allow for the creation of foundations.

Other relevant entities and arrangements

152. The 2010 Report identified a number of entities other than companies, trusts and partnerships as relevant for EOIR purposes (see paragraphs 127 to 129 of the 2010 Report). These are building societies, credit unions and friendly societies. The 2010 Report stated that "there are no indications that these are relevant for exchange of information purposes." The same AML/CFT rules apply to these entities. The ATO's powers to obtain information would apply should a request for exchange of information be made.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

153. The 2010 Report concluded that all entities and arrangements were required to maintain adequate accounting records, including underlying documentation for at least 5 to 7 years depending on whether the obligations were under commercial law or tax law (see 2010 Report, paras. 131-156). Element A.2 was determined to be in place and Compliant and no recommendations were made. The requirements to maintain accounting records were found in both the company law, common law (with respect to trusts) and tax law.

154. There were no issues with respect to the availability of accounting information in practice during the period 2007-09. The supervision by the ASIC and the ATO regarding the maintenance of accounting records is adequate and ensures that accounting information is available. During the current review period Australia received 596 EOI requests and 50 of these related to accounting information (approximately 8%). Peers were satisfied with the accounting information provided by Australia during the Peer Review Period.

155. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework
The element is in place.

Practical Implementation of the EOIR Standard	
Rating of element A.2	**COMPLIANT**

ToR A.2.1: General requirements

156. There are general requirements under company law and under tax law.

Requirements under Company, Partnership and Trust laws

157. The 2010 Report noted that financial records that correctly record and explain a company's transactions, financial position and performance are required to be kept; and would enable true and fair financial statements to be prepared and audited. The document retention period under the company law is seven years. A failure to keep records under section 286 of the Corporations Act is an offence of strict liability. An incorporated limited

partnership is also required to keep records for seven years under Australian corporations' legislation.

158. Section 319 of the Corporations Act requires Australian companies, registered schemes or disclosing entities that must prepare or obtain a report for a financial year to lodge the report with ASIC within four months after the end of the financial year. Section 601CK of the Corporations Act requires registered foreign companies to lodge balance sheets, profit and loss statements, cash flow statements and other documents with ASIC at least once every calendar year and at intervals of not more than 15 months.

159. For wound-up companies, the liquidator must keep the company's records that were relevant to the liquidation process, and records of the liquidator that are relevant to affairs of the company at or subsequent to the commencement of the winding up of the company for a period of 5 years unless approval for early destruction is given by a court or ASIC (Schedule 2 section 70-35 Corporations Act). For liquidated companies, the company's directors must keep the companies books and records for three years (unless they are required to be kept by a liquidator). In addition, all companies to be wound up must have a liquidator appointed initially. If the liquidator resigns, a replacement is appointed by ASIC, the Court or the creditors or members. Pursuant to law which commenced 1 March 2017, if books are transferred to ASIC when a person ceases to be a liquidator, and ASIC is not otherwise required to transfer the books, ASIC must retain the books for 2 years (Schedule 2 section 70-31(8) Corporations Act).

160. There are no particular record-keeping requirements for partnerships under Australian partnership law. However partners must make full disclosure to one another on all matters affecting the partnership. The Partnership Acts under each of Australia's States and Territories give disclosure of accounting information between the partners the force of law (see for example section 28 of the NSW Partnership Act1892).

161. In the case of trusts, the 2010 Report noted that under trust law, the trustee must keep an account of receipts and payments of trust monies and this would usually be supported by documentary evidence. Australian common law places a requirement on all trustees to maintain records, if they are to properly discharge their trustee duties.

Record keeping requirements (including liquidated companies) under Company law.

162. Where a company has been wound up the liquidator must keep the company's records including ownership information for a period of 5 years, unless approval for early destruction is given by a court or ASIC (section Schedule 2 section 70-35 Corporations Act).

163. A liquidator must be an individual (a company cannot be a liquidator) and must be registered with ASIC. Liquidators may be deregistered. Once an administration is finalised, a liquidator has an ongoing obligation to retain the books (new law Schedule 2, section 70-35 Corporations Act). Liquidators are registered on a separate register to companies called the Register of Liquidators. A liquidator must be an individual, not a company, and comply with the Insolvency Practice Rules and the conditions of their registration, if any. Registration may be cancelled if the person voluntarily cancels, the person becomes insolvent under administration, the person dies, is convicted of an offence involving fraud or dishonesty, is disqualified, or ceases to have adequate insurances (Corporations Act Schedule 2, sections 40-20 and 40-25).

164. A company may be de-registered with ASIC on the following grounds (see A.1.1 *Record keeping requirements (including liquidated companies) under company law*):

- Voluntary de-registration, subject to specific condition (in which case, no mandatory liquidator is appointed);
- Winding up a solvent company (in which case a mandatory liquidator is appointed);
- Winding up an insolvent company (in which case a mandatory liquidator is appointed); and
- ASIC-initiated de-registration (in which case, no mandatory liquidator is appointed).

165. When a company is de-registered with ASIC, any property still owned by the company (excluding trust property, if the company is a corporate trustee) is vested in ASIC. Former officeholders lose any right to deal in the property that has been vested.

166. In case the company is wound-up, it is mandatory for the directors of the company to appoint a liquidator. The liquidator will be subject to record-keeping requirements for at least 5 years after the liquidation of the company.

167. If the company is de-registered due to granted voluntary de-registration or ASIC-initiated de-registration, no liquidator needs to be appointed. However, the company's directors must keep the company's books and records for three years after de-registration (Section 601AD(5) of the Corporations Act). For the year ending 30 June 2016, ASIC deregistered 118 422 companies for either voluntary applications to deregister a company or failure to pay the annual review fee. In these cases where no liquidator is appointed, the record-keeping requirements of three years by the directors of the company are not in line with the standards which require a five-year retention period. However, the ASIC confirmed that the deregistration of companies due to

failure of fee payments is only initiated after a minimum period of 12 months from the due date (by law). ASIC indicated that most of the deregistrations thus far were carried out because the companies had not paid their annual fees for at least two years. Accordingly, although the gap is limited, Australia should ensure that accounting information for the de-registered companies is kept for a minimum period of 5 years in all cases.

Requirements under tax law

168. The tax law requires every taxpayer (including a company, partnership or trust) carrying on a business to keep records that record and explain all transactions and other acts engaged in by the taxpayer that are relevant for tax purposes (s. 262 A ITAA 1936).

169. Australian resident trustees of foreign trusts which do not derive Australian-source income and do not have Australian-resident beneficiaries are not required to file a tax return in Australia for the account of the foreign trusts. There is no other requirement to maintain accounting records for the foreign trusts under the Corporation Act or the AML legislation, the latter coverage of which does not apply to DNFPBs. However, the Australian-resident trustee is subject to fiduciary duties under the common law. Notably, Australian-resident trustees are obliged to keep records of the dealings of the trust (being foreign or Australian), which must be produced to the beneficiaries when called for (Spellson v George (1987) 11 NSWLR 300 at 315-6). Trustees are also obliged to allow beneficiaries to inspect trust accounts and documents (Byrnes v Kendle (2011) 243 CLR 253 at 270-1 (Byrnes v Kendle [2011] HCA 26). Finally, accounts must be kept up to date and be accurate (Hancock v Rinehart [2015] NSWSC 646 at [339]).

170. The document retention period under tax law is 5 years from the date on which the record was prepared or obtained or from the time the relevant transaction or act was completed, whichever is the later. This obligation applies to all taxpayers. The penalty for failure to maintain such records is 20 penalty units (currently, 20 units equals AUD 3 600). This penalty may be remitted (partially or fully) if the taxpayer is considered to be acting in good faith. However, if there is no attempt to keep records, or the taxpayer deliberately destroys them, there will likely be no remission of penalty.

171. There is no requirement that accounting records be kept in Australia but a taxpayer must be able to produce those records as and when required by the Commissioner of Taxation. The Australian authorities indicated that no issue ever arose in respect of accounting records being held outside of Australia.

ToR A.2.2: Underlying documentation

172. Company law, trust law (including the common law) and tax law require that underlying documents be maintained to support the accounting records. In respect of partnerships, the Partnership Acts under each of Australia's States and Territories give disclosure of accounting information (including underlying documentation) between the partners the force of law (see for example section 28 of the NSW Partnership Act 1892).

Oversight and enforcement of requirements to maintain accounting records

173. The 2010 Report did not raise any issue regarding the oversight and enforcement measures carried out by ASIC and the ATO to maintain accounting information. During the peer review period, the oversight activities and enforcement measures carried out by ATO were adequate to ensure effective compliance with accounting record-keeping requirements under tax law.

Oversight activities carried out by the ASIC

174. The oversight and enforcement activities carried out by the ASIC as described in section A.1.1 *Enforcement and monitoring activities by ASIC*, which reviews whether the required accounting documents have been filed, have increased at the end of the peer review period with a struck-off company campaign and the imposition of penalties for late registration of compulsory documents. Together with the ATO, which carried out an active oversight programme (see below), the oversight and enforcement activities carried out by the ASIC appear adequate to ensure availability of accounting information.

Oversight activities carried out by the ATO

175. One of the main oversight activities carried out by the ATO is ensuring compliance with the obligation to file tax returns in a timely manner. The compliance rate of filing income tax returns on time has improved overall since 2010. By way of example, the income tax returns lodged by large taxpayers[11] showed an improvement of more than 10 percentage points since 2010, as illustrated in the table on the next page.

11. A taxpayer is defined as a "large taxpayer" if the total business income of the taxpayer is AUD 100 million or more in an income year. If the taxpayer has business income of AUD 250 million or more in an income year, the taxpayer is a "very large taxpayer".

Income tax returns lodged on time

	2010-11	2011-12	2012-13	2013-14	2014-15
Large taxpayers	69.7%	76.7%	80.3%	80.5%	79.3%

176. The 2015-16 statistics shows the percentage of large taxpayers to the total number of taxpayers is 0.01838%.The percentage has slightly increased over the last 5 years (0.01812% in 2013-14 and 0.01777% in 2012-13).

177. As accounting records are the data on which tax returns are based, ensuring that taxpayers comply with their tax return obligations is critical to determining whether there may have been a failure to comply with accounting record requirements, at the beginning of an audit process.

178. In this respect, the ATO is active in applying enforcement measures on late lodgement of tax returns. Failure to Lodge penalties for income tax returns are applied when an obligation is outstanding as part of the correspondence and telephony strategies. It can also be imposed automatically by the system when a return is lodged late providing the client previously lodged late and had received a warning letter.

179. In 2015-16, the following penalties were imposed for outstanding or late income tax returns:

Statistics on fines imposed

2015-16	Current amount (amount of FTL less remissions and cancellations)	Original amount (amount of FTL originally imposed)
Imposed automatically by the system following late lodgement	AUD 50 487 454	AUD 75 795 310
Imposed via a telephony strategy	AUD 4 192 383	AUD 6 294 136
Imposed via bulk correspondence strategy	AUD 184 865 221	AUD 250 494 040
Total	AUD 239 545 058	AUD 332 583 486

180. The ATO carries out a strong audit programme based on transparency, risk and behaviour of taxpayer. Compliance liabilities raised and collected as a result of compliance audits, reviews and other checks have risen during the peer review period.

Performance measures	Results		
	2013-14	2014-15	2015-16
Number of compliance audits, reviews and other checks undertaken	5.3 million	4.7 million	3.8 million
Value of compliance liabilities raised* and collected** as a result of compliance audits, reviews and other checks	AUD 15.2 billion* AUD 9.4 billion**	AUD 13.5 billion* AUD 9.6 billion**	AUD 13.8 billion* AUD 9.6 billion**
Value of penalties and interest collected	AUD 3.0 billion	AUD 2.4 billion	AUD 2.4 billion

The above figures are as reported in the ATO 2015/16 Annual report: https://annualreport.ato.gov.au/04-appendixes/appendix-13-reporting-on-activities-outputs/revenue-assurance.

181. Each year the ATO reports on prosecution outcomes in the Annual Report. The ATO prosecutes a range of matters relating to tax administration offences itself, including non-compliance with lodgement obligations, making false or misleading claims on ATO forms, keeping false accounting records and failing to respond to questions when required to do so.

182. In 2015-16, the ATO prosecuted over 1 300 individuals and 400 companies. Of those cases, around 880 related to GST, and 1 030 to income tax. Fines, costs and reparation orders totalling over USD 11.6 million were imposed.

183. In 2014-15, the ATO prosecuted over 1 200 individuals and 300 companies. Of those cases, around 600 related to GST, 1 400 to income tax and one related to superannuation. Fines, costs and reparation orders totalling over USD 9.8 million were imposed.

184. In 2013-14, the ATO prosecuted 1 400 individuals and 330 companies. Of those cases, 900 matters related to GST, 800 related to income tax and 2 related to superannuation. Fines, costs and reparation orders totalling more than USD 13.3 million were imposed.

Availability of accounting information in practice

185. No issues arose during the period 2007-09 with respect to the availability of accounting information. In the current review period Australia received a total of 596 EOI requests, 50 of which deal with accounting information. Out of 20 peer inputs received, more than 10 peers indicated that they requested accounting information. They also confirmed that the requested accounting information was provided in all cases and that the quality of the data exchanged was good.

A.3. Banking information

> Banking information and beneficial ownership information should be available for all account-holders.

186. The 2010 Report concluded that element A.3 was in place and Compliant. All requests for banking information had been answered. During the period under review, all EOI requests regarding banking information were adequately answered by Australia. In addition, the bank supervision by AUSTRAC remained adequate in respect of record-keeping requirements by banks.

187. However, the EOIR standard since 2016 requires that beneficial ownership information in respect of account holders be available, the requirement of which was not assessed in the 2010 Report. As mentioned in element A.1, since 2007, Reporting Entities must identify beneficial owners of most forms of companies (except incorporated partnerships and associations). In addition, Australia introduced CDD requirements (2014 CDD Rules) on Reporting Entities (including banks) with effect from 1 June 2014 for all the customers (including trust arrangements). Reporting Entities under the Policy (Additional Customer Due Diligence Requirements) Principles 2014, the Minister for Justice approved of a transition period to enable Reporting Entities under the AML/CTF Act to implement a transition plan to meet these new requirements and achieve full compliance with the relevant provisions by 1 January 2016. The Policy Principles outline the obligations and expectations of Reporting Entities during this transition period.

188. Banks are required to identify and verify the beneficial owners of all of its customers following the enhancements to the AML/CTF Rules which took effect from 1 June 2014. These AML/CTF Rules apply notably to bank accounts opened since 1 June 2014. Prior to this period, banks were required to identify the beneficial ownership of most forms of companies. In addition, beneficial ownership information on bank accounts opened prior to 1 June 2014 with respect to entities (incorporated partnerships and associations) and trusts which were not clearly subject to beneficial ownership requirement prior to 1 June 2014, is also subject to ongoing and enhanced customer due diligence obligations. As a consequence, beneficial ownership information on bank accounts of all Designated Entities (see A.1 for definition) and trusts should be available in Australia in line with the standard.

189. Introduced business obligations set out in the AML/CTF Act and Rules do not require Reporting Entities do not explicitly state that the Reporting Entity relying on a third party remains ultimately responsible for CDD measures. Australia should ensure that accurate and update beneficial ownership information on bank account holders is available in all cases.

190. Finally, given the rather recent introduction of the 2014 CDD Rules, this report recommends that Australia continues to monitor the implementation of the 2014 CDD Rules.

191. Australia committed to Automatic Exchange of Information on Financial Accounts under the Common Reporting Standard (CRS) with first exchanges in 2018. Given that the implementation legislation will have effect from 1 July 2017, the CRS reporting obligations did not alter the deficiencies identified above during the period under review (1 April 2013 until 31 March 2016). Nevertheless, from 1 July 2017, the implementation of the CRS by Australian Reporting Financial Entities (RFIs) will add to the CDD requirements carried out by the banks under the 2014 AML/CTF Rules (see A.3.1. *Implementation of the Common Reporting Standard in Australia*).

192. In considering the rating of element A.3 the following aspects should be considered:

- Element A.3 covers a variety of information, and not only that of beneficial ownership of bank accounts. Australia has a large database of financial transaction reports available which records all transactions reported to AUSTRAC by Australian banks and other regulated entities. This database is accessible to the ATO and provides up-to-date information. Furthermore, the ATO is empowered under the AML/CTF Act to issue notices to a Reporting Entity or any other person requesting information specified in the notice concerning a transaction report submitted to AUSTRAC, including information and documentation on the beneficial ownership and control of a customer.
- Australia could answer all the EOI requests received regarding banking information.
- Regarding the gap identified in respect of the application of the 2014 CDD Rules (first recommendation on the legal and regulatory EOIR framework), it is clear that the number of bank accounts that have not been subject to CDD will be reduced over time due to the ongoing due diligence requirements (see further paragraph 55).
- Regarding the deficiencies identified on the introduced business rules, AUSTRAC has indicated that most introduced business is carried out by the subsidiaries of the four major Australian domestic banks.

193. In light of the above considerations, element A.3 is determined to be in place, but certain aspects of the legal implementation of the element need improvement and rated largely compliant.

194. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework		
The element is in place, but certain aspects of the legal implementation of the element need improvement.		
	Factors underlying recommendations	**Recommendation(s)**
Deficiencies Identified in the Legal and Regulatory EOIR Framework	Introduced business obligations set out in the AML/CTF Rules do not explicitly state that the banks relying on a third party remains ultimately responsible for CDD measures performed on their customers, and notably beneficial ownership information.	Australia should ensure that accurate and update beneficial ownership information on bank account holders is available in all cases.

Practical Implementation of the EOIR Standard		
	Factors underlying recommendations	**Recommendation(s)**
Deficiencies Identified in the Implementation of EOI in Practice	Australia introduced enhancements to CDD obligations, which came into effect on 1 June 2014, accompanied by a transitional period of 18 months to enable Reporting Entities to achieve full compliance. During that period, and up to the end of the review period, only a small portion of the Reporting Entities has been monitored regarding the implementation of the 2014 CDD rules. In addition, due to the short period of time since the full application of the 2014 Rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out.
Rating of element A.3	**LARGELY COMPLIANT**	

ToR A.3.1: Record-keeping requirements

195. The 2010 Report found Australia fully compliant with the record-keeping requirements applicable for banks under the 2010 Terms of Reference. In particular, paragraphs 157 to 160 noted that Australian AML/CFT Act requires that Reporting Entities retain documents and other records in relation to services and transactions. Customer due diligence records must be kept for the life of the customer relationship and for seven years after the Reporting Entity ceases to provide Designated Services to the customer. If a Reporting Entity creates a transaction record that relates to providing a Designated Service to a customer, the entity must retain the transaction record (or a copy or extract of the record) for seven years after making the record.

196. Under section 107 of the AML/CTF Act obliges a Reporting Entity to retain a record (or copy or extract of a record) for 7 years after the record was made (see s107(2)). According to Australia's interpretation of the AML/CTF Act, it is irrelevant that the Reporting Entity ceased to be a Reporting Entity within the 7-year retention period; for example due to its liquidation.

197. As mentioned in the 2010 Report, the penalties for failure to maintain these records are sufficient to ensure compliance with the rules – namely up to AUD 18 million for body corporates, and AUD 3.6 million for any other persons. The AML/CTF Act also contains a number of criminal offences which apply in case of false or misleading information and false and misleading documents. The penalty is 10 years imprisonment or 10 000 penalty units (USD 1.8 million fine). AUSTRAC confirmed that there have not been any penalties imposed under the record-keeping obligations of the AML/CTF Act during the peer review period.

ToR A.3.1: Beneficial ownership information on account holders

198. This section focuses on the newly introduced requirement regarding the availability of beneficial ownership information on bank account holders. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. Reporting Entities Under the AML/CTF Act, all Reporting Entities (including banks) are required to undertake customer due diligence on all account-holders and any other customer receiving a Designated Service.

199. Although Reporting Entities had a clear obligation to identify and verify the beneficial ownership and control of most companies (see paragraph 202 for the definition) since the commencement of the AML/CTF Rules on 12 December 2007, in order to address identified deficiencies in Australia's compliance with the 2012 FATF standards, enhanced AML/CTF

Rules came into force effective from June 2014. These reforms to the CDD obligations in the AML/CFT rules included:

- expanding the scope of the beneficial ownership definition
- creating a general obligation to identify and verify the identity of beneficial owners (where appropriate);
- requiring Reporting Entities to take a range of enhanced CDD measures in high-risk situations;
- requiring Reporting Entities to perform enhanced CDD in relation to foreign politically exposed persons (PEPs), and
- changes to requirements to collect, update and verify CDD information, including in high-risk situations.

200. These enhanced CDD obligations are applicable to bank accounts opened prior to 1 June 2014 where the bank conducts ongoing customer due diligence on the account-holder, the account falls within a high-risk category set out in the Reporting Entities' AML/CTF programme or is subject to a suspicion of ML/TF.

201. The 2014 enhanced CDD Rules in relation to settlors, beneficial owners and politically exposed persons only apply to persons who became customers of a Reporting Entity after 1 June 2014 and any customer who is subject to the ongoing customer due diligence and enhanced customer due diligence obligations under Chapter 15 of the AML/CTF Rules.

202. Under the Policy (Additional Customer Due Diligence Requirements) Principles 2014, the Minister for Justice approved of a transition period to enable Reporting Entities under the AML/CTF Act to implement a transition plan to meet these enhanced requirements and achieve full compliance with the relevant provisions by 1 January 2016. The Policy Principles outline the obligations and expectations of Reporting Entities during this transition period.

203. This section will analyse (i) the legal requirements applicable to banks in respect of beneficial ownership information on bank accounts, (ii) the oversight and enforcement activities carried out by AUSTRAC and (iii) the availability of beneficial ownership information on bank accounts in practice.

Legal requirements on beneficial ownership information on account holders

204. The following aspects of the 2014 CDD Rules are explained below: (i) the scope of the 2014 CDD Rules, (ii) the definition of beneficial owner, (iii) the CDD requirements and (iv) the introduced business rules.

Scope of the 2014 CDD Rules

205. The AML/CTF Act mainly places obligations on the financial institutions.[12] In addition, Reporting Entities include bullion businesses, and gaming providers (including casinos, bookmaking and wagering businesses, and electronic gaming machine venues (including pubs and clubs).

206. The 2014 CDD Rules replaced Chapter 4 of the AML/CTF Act with a new Chapter 4 introducing the obligation for Reporting Entities to obtain beneficial ownership information from customers opening an account from 1 June 2014. New Section 4.1.2 specifically provides that "*the new Chapter 4 does not apply to (i) a pre commencement customer* (i.e. a customer having opened an account before 1 June 2014) *or a customer who receives a Designated Service covered by item 40, 42 or 44 of table 1 in section 6 of the AML/CTF Act* (i.e. pension and retirement savings accounts under certain conditions)".

207. More specifically, section 4.1.6 provides that Reporting Entities are only required to apply the beneficial ownership requirements (part 4.12) to new customers after 1 June 2014. However, chapter 15 which deals with ongoing due diligence does not exclude pre-commencement accounts (those opened before 1 June 2014) from the scope of application. AUSTRAC confirmed that it interprets the 2014 CDD Rules such that ongoing customer due diligence applies to all customer accounts regardless of whether they have been opened before or after 1 June 2014. These obligations require reporting entities to have appropriate risk-based systems and controls to enable them to determine in what circumstances further CDD information or beneficial owner information should be collected or verified in respect of all of its customers or beneficial owners of customers to enable the review and update of CDD information and beneficial owner information for ongoing CDD purposes (paragraph 15.2 of the AML/CTF Rules). Reporting entities are also required to undertake reasonable measures to keep, update and review the documents, data or information collected during the CDD (particularly in relation to high risk customers) and the beneficial owner identification processes (paragraph 15.3 of the AML/CTF Rules). The ongoing CDD requirements create a de facto obligation for reporting entities to monitor changes in ownership. 208.Prior to the introduction of the enhanced 2014 CDD Rules, all Reporting Entities had an obligation to identify the beneficial

12. These include authorised deposit-taking institutions, banks, building societies, credit unions, loan, lease and hire-purchase businesses, factoring and forfaiting businesses, stored value card, travellers cheque, money order and postal order issuers, remitters, securities and derivatives markets/investment services, superannuation and pension providers, life insurance services, currency exchange businesses, and financial planners.

owners of most companies since the commencement of the AML/CTF Rules on 12 December 2007.[13] These companies were:

- a proprietary or private company (other than a proprietary company that is licensed and subject to the regulatory oversight of a Commonwealth, State and Territory statutory regulator in relation to its activities as a company);
- a foreign public company;
- a domestic unlisted public company; and
- a company that is licensed and subject to the regulatory oversight of a Commonwealth, State or Territory statutory regulator in relation to its activities as a company.

208. At a high level, prior to the amendments made in June 2014, the AML/CTF Rules required Reporting Entities to adopt risk-based processes to identify and verify each beneficial owner (if any) of:

- a proprietary or private company (other than a proprietary company that is licensed and subject to the regulatory oversight of a Commonwealth, State and Territory statutory regulator in relation to its activities as a company)
- a foreign public company
- a domestic unlisted public company
- a company that is licensed and subject to the regulatory oversight of a Commonwealth, State or Territory statutory regulator in relation to its activities as a company.

209. Reporting Entities were also required to have risk-based processes to identify and verify the beneficial owners of foreign government entities.

Definition of beneficial owner

210. Under the 2014 CDD Rules, the beneficial owner is defined as follows:

1. [beneficial owner] of a person who is a Reporting Entity, means an individual who owns or controls (directly or indirectly) the Reporting Entity;
2. [beneficial owner] of a person who is a customer of a Reporting Entity, means an individual who ultimately owns or controls (directly or indirectly) the customer;

13. The AML/CTF Rules Instrument which was in force from December 2007 until it was amended to reflect the enhanced CDD requirements in June 2014 is available via the following link: https://www.legislation.gov.au/Details/F2007C00537.

3. In this definition: control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to determine decisions about financial and operating policies; and

4. In this definition: owns means ownership (either directly or indirectly) of 25% or more of a person.

211. As mentioned in the Explanatory Statements to the 2014 CDD Rules, the definition of beneficial ownership was amended to conform to the FATF definition of beneficial owner. AUSTRAC's guidelines indicate that if a Reporting Entity is unable to determine the beneficial owner of a customer, e.g. where no person owns 25% or more of the customer or where there is not an individual exercising control of the customer; the Reporting Entity is required to identify and take reasonable steps to verify an alternative individual (also refer to paragraph 4.12.9 of the AML/CTF Rules). This guideline is not a regulatory instrument and reporting entities and other stakeholders must always refer to the AML/CTF Act, Rules and regulations to clarify an obligation. This guideline provides explanatory and practical information regarding the legislative obligation that exists in AML/CTF Rules 4.12(9). AUSTRAC's regulatory responsibilities are the means through which the application by individual reporting entities with the requirement to identify the beneficial owner of the customer is being applied.

212. The determination of an alternative individual is as follows:

1. If the customer is a company or a partnership, a Reporting Entity should attempt to identify an alternative individual in the following order:

   a. an individual who can exercise 25% or more of the voting rights, including the power to veto. The power to exercise voting rights may be direct or indirect, including where the individual is entrusted with, or has significant influence over, the exercise of the voting rights; or

   b. if the Reporting Entity cannot identify the above individual:, any individual who holds the position of senior managing official (or equivalent).

2. If the customer is a trust, the Reporting Entity should attempt to identify any individual who holds the power to appoint or remove the trustees of the trust. This role is usually described as the appointor, but may also be called the "custodian" or "principal", and should be noted in the trust deed.

213. In its Guidelines, AUSTRAC indicates that to identify the beneficial owner of a customer, a Reporting Entity should establish and understand the ownership or control structure of the customer.

Customer identification and beneficial ownership requirements

214. A Reporting Entity must have an AML/CTF programme which includes appropriate systems and controls for the Reporting Entity to determine the beneficial owner of each customer. Either before the provision of a Designated Service to the customer, or as soon as practicable after the Designated Service has been provided, the Reporting Entity must collect from the customer and take reasonable measures to verify:

- each beneficial owner's full name, and
- the beneficial owner's date of birth, or
- the beneficial owner's full residential address.

215. Verification must be based on reliable and independent documentation, reliable and independent electronic data, or a combination of both.

216. The 2014 CDD Rules introduces the following beneficial ownership identification rules:

- **Companies.** In addition to identification information and KYC procedures set out in Chapter 4.3 of the AML/CFT Rules, a Reporting Entity is required, for proprietary or private companies, to identify the name and address of any beneficial owner (4.3.2, 4.3.10-4.3.16). For a foreign public company, domestic unlisted public company or a company that is licensed and subject to regulatory oversight, a Reporting Entity must determine whether to collect and/or verify the name and address of each beneficial owner (4.3.13). A Reporting Entity is also required to have appropriate systems and controls to determine whether and to what extent beneficial ownership information should be verified (4.3.11).
- **Trusts** (section 4.4 of the AML/CTF Rules). The identification information include inter alia the name of the settlor(s), the name and the address of the trustee(s), the full name of each beneficiary, or details regarding the class of beneficiaries. If any of the trustees is a company, it is required to identify the beneficial owner(s) of the company.
- **Partnerships.** In addition to the customer identification requirements set out in Chapter 4.5 of the AML/CTF Rules, Reporting Entities must identify the beneficial owners of each partner. The rules are the same as for companies where the partnership is a body corporate.

217. **Ongoing CDD Requirements**. Chapter 15 of the AML/CTF Rules sets out the ongoing CDD requirements applicable to Reporting Entities on all bank accounts. The ongoing CDD rules have:

- **CDD Policy aspects.** Reporting Entities must have appropriate risk-based systems and controls to enable them to determine in what circumstances further CDD information or beneficial owner information should be collected or verified in respect of customers or beneficial owners of customers to enable the review and update of CDD information and beneficial owner information for ongoing CDD purposes (paragraph 15.2 of the AML/CTF Rules).
- **CDD practical aspects.** Reporting Entities must undertake reasonable measures to keep, update and review the documents, data or information collected during the CDD (particularly in relation to high risk customers) and the beneficial owner identification processes (paragraph 15.3 of the AML/CTF Rules).

218. As mentioned above, paragraph 15.3 of the AML/CTF Rules requires Reporting Entities to undertake *reasonable measures* to keep, update and review the documents, data or information collected under the 2014 AML/CFT Rules (particularly in relation to high risk customers) and relating to the beneficial owner. According to AUSTRAC, "reasonable measures" means, appropriate measures which are commensurate with the money laundering or terrorist financing risks.

219. The ongoing CDD rules refer mainly to two types of programmes:

- The Transaction Monitoring Program to introduce appropriate risk-based systems and controls to monitor customer suspicious transactions; and
- Enhanced CDD programme for high-risk customers. In relation to beneficial ownership information, the Reporting Entity must clarify or update beneficial ownership information already collected from the customer, undertake a more detailed analysis of customer's KYC information and beneficial ownership information, and verify or re-verify beneficial ownership information in accordance with Chapter 4.

220. **Retention period**. The general minimum retention period for records required to be kept under the AML/CTF Act is seven years. CDD records are required to be kept for the life of the customer relationship and for seven years after the Reporting Entity ceases to provide all Designated Services to the customer (e.g. seven years after the closure of a bank account by a customer).

221. **Enforcement measures**. The AML/CTF Act contains a number of sanctions applicable for non-compliance with the AML/CTF Act by

Reporting Entities. Civil penalties are applicable in case of breach in identification and verification requirements (sections 29, 31, 32, 34 and 35), and ongoing CDD requirements (sections 36). The maximum pecuniary penalty available for a civil penalty under the Act is AUD 18 million for body corporate and AUD 3.6 million for any other persons.

Introduced business rules

222. There are some deficiencies in the AML/CTF Rules regarding introduced business rules.

223. The 2016 Terms of Reference require that beneficial ownership on bank accounts is available in a timely manner, which is it accurate and up-to-date, this should also be the case if the customer was introduced by a domestic or foreign third party introducer.

224. Section 38 of the AML/CTF Act sets out the conditions in which a Reporting Entity may rely on the CDD measures performed by a third party. The third party must be a Reporting Entity and have performed CDD consistent with the AML/CTF Act and Rules. Section 38(d) further provides that other conditions set out in the AML/CTF Rules must be satisfied. Chapter 7 of the AML/CTF Rules sets conditions in relation to two types of Reporting Entities which can be relied upon:

- holders of an Australian Financial Service Licence (AFSL) providing Designated Service within item 54 of table 1 of section 6 of the AML/CTF Act (i.e. licenced financial advisors), and
- another Reporting Entity which is a member of the same “designated business group”.

225. To rely on a licensed financial advisor, the following conditions must be met:

- the advisor must make arrangements for the customer to receive a Designated Service from the Reporting Entity;
- the Reporting Entity must obtain a copy of the CDD conducted by the advisor or have access to the CDD record under an agreement in place for the management of identification or other records. The AML/CTF Rules allow this information to be obtained as soon as practicable; and
- the Reporting Entity must determine that it is appropriate to rely on the CDD carried out by the advisor having regard to the ML/TF risk faced by the advisor relevant to the provision of the Designated Service to the customer.

226. The law does not explicitly state that the Reporting Entity relying on a third party remains ultimately responsible for CDD measures. It is recommended that Australia introduces relevant provisions to ensure that beneficial ownership information on bank account holders that are introduced is available in all instances.

Implementation of the Common Reporting Standard

227. Australia committed to automatic exchange of information on financial accounts, in accordance with the Common Reporting Standard (CRS), with first exchange in 2018. The implementing CRS legislation received Royal Assent on 18 March 2016 and will take effect on 1 July 2017. Regarding the due diligence procedures, the legislation refers to Sections II through VII of the CRS. A full legislative assessment of the implementation of the CRS into Australian domestic law will be carried out by the Global Forum at the end of 2017/first half of 2018.

Enforcement provisions to ensure availability of banking information

228. In Australia, banks and other regulated entities are supervised by AUSTRAC, which monitors compliance with the AML/CTF Act by financial institutions (and other Reporting Entities under the AML/CTF Act such as those in the gaming and bullion sector, which are not relevant for EOI purposes) in respect to customer account details, including accurate information concerning the beneficial owners of customers. This information is ascertained at the point of customer on-boarding and further updated using ongoing customer due diligence procedures. Both procedures are mandatory under the AML/CTF Act and Rules and must be clearly set out within the bank's AML/CTF Program.

229. This section is organised in two parts: (i) the description of the organisation and resources of AUSTRAC and its oversight activities during the peer review period and (ii) the oversight activities of AUSTRAC during (a) the transitional period from 1 June 2014 until 31 December 2015 and (b) from 1 January 2016.

Organisation, resources and oversight activities of AUSTRAC

230. As at 30 September 2016,AUSTRAC had a total of 324 employees, 71 of which deal solely with compliance. Initially, the focus was on tax evasion rather than money laundering and terrorist financing. This is why there is a close relationship with the ATO. As at 30 September 2016, there were 14 144 Reporting Entities enrolled with AUSTRAC. These include mostly financial institutions, gambling and bullion dealers. AUSTRAC indicated that within

the international co-operation framework, they seldom receive requests for beneficial ownership from other jurisdictions.

231. AUSTRAC has three compliance assessment (front-line) teams which carry out onsite assessments and desk reviews:

i. Major Reporter's team – has responsibility for the supervision of 363 Reporting Entities including 18 designated business groups[14] (**DBG**'s). These Major Reporters are Reporting Entities which hold significant market share and position, with high degrees of business or product complexity.

ii. Compliance Remitters team – has responsibility for the supervision of AUSTRAC's alternate remittance sector.

iii. National Compliance team – supervises all entities that are not Remitters or Major Reporters. Industry types include financial services, gambling, superannuation, bullion and stored value card providers.

232. Compliance assessment activities include on-site inspections to review applicable customer identification policies and enhanced customer due diligence procedures for all customer types including high risk customers, inspection of records of identification procedures such as customer application forms and verification documents, and review of electronic verification systems and supporting IT systems.

233. Prior to 1 January 2016, which was the effective implementation date of the new Customer Due Diligence Rules, and during the peer review period (1 April 2013 until 31 March 2016), AUSTRAC carried out ongoing supervisory activities in relation to customer due diligence with respect to banks. The following is a statistical breakdown of the results:

- Conducted 313 desk reviews or on-site assessments;
- Issued 152 compliance assessment reports (CARs) where breaches of Part 2 of the Customer Identification Procedures of the AML/CTF Act were identified;
- Made 220 Findings directing Reporting Entities to address deficiencies in their customer identification procedures, including beneficial ownership (104 of these findings related to deficiencies related to ongoing CDD); and

14. A "designated business group" enables associated business entities to share the administration of certain obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTF Act**). The AML/CTF Act allows any member of a DBG to fulfil certain obligations on behalf of other members of the group. Alternatively, Reporting Entities that are members of a DBG may still choose to fulfil their own AML/CTF obligations.

- Made 12 findings relating to record keeping obligations associated with customer identification procedures (section 112 of the AML/CTF Act).

Implementation of the 2014 CDD Rules

234. During the transition period (1 June 2014 to 31 December 2015), AUSTRAC's resources were allocated to assist Reporting Entities with the implementation of the 2014 CDD Rules, whereas after the transition period, the focus shifted to overseeing whether the 2014 CDD Rules have been effectively implemented, as described below.

Transition period from 1 June 2014 to 31 December 2015

235. From 1 June 2014, Reporting Entities were required to strengthen their AML/CTF programmes and CDD procedures.

236. To ensure full compliance by the banks as at 31 December 2015, AUSTRAC assessed the transition plans of Reporting Entities in the Major Reporters category. The transition plans, required by law, set out the actions required to meet the new CDD requirements and achieve full compliance by 31 December 2015.

237. Between November 2014 and February 2015, the Major Reporters team conducted an assessment of all except one (the Reserve Bank of Australia) of the Reporting Entities in the Major Reporters category (comprising in total 363 banks). The responses to AUSTRAC's assessment enquiries included the transition plans, resourcing, that there was an appropriate approval authority and that progress with the plan was being regularly reported on to the entity's board or appropriate authority. AUSTRAC then monitored the on-going progress with the Reporting Entities in the Major Reporters Group on a regular basis (quarterly meetings.)

238. AUSTRAC found that all Major Reporters had taken reasonable measures to put into place a transition plan and satisfied the policy principles. The assessment of the policy principles included whether the Reporting Entities:

a. complied with the relevant provisions as soon as practicable, in respect of any person who became a customer between 1 June 2014 and 1 January 2016 who was assessed by the Reporting Entity to be of high risk of money laundering or terrorism financing (ML/TF) risk;

b. established a transition plan before 1 November 2014 which included actions and timeframes to:

    i. ensure compliance with the obligation in paragraph (a); and

    ii. achieve full compliance with the relevant provisions prior to 1 January 2016;

c. obtained approval for the transition plan from the Board or similar governing body (the "Board"), or where no Board existed, the Chief Executive Officer or equivalent (the "CEO") of the Reporting Entity. In the case of a Designated Business Group (DGB), this approval had to be obtained from the Board or CEO of each entity in the DBG, or from a person or Board with written authority from each entity in the DBG to approve the transition plan, to receive and consider the monitoring reports referred to in subparagraph (e) below and to report to each entity in the DBG on the implementation of the transition plan and on any matters referred to in the monitoring reports;

d. sufficiently resourced the implementation of the transition plan to enable the 1 January 2016 timeframe to be met;

e. regularly monitored and reported to the party which approved the transition plan under paragraph (c) above (that is, either the Board, or the CEO of the Reporting Entity or of each entity in the DBG or the person or Board with written authority from each entity in the DBG) on the implementation of the transition plan and, as necessary, took appropriate action to ensure timeframes do not unreasonably deviate from those set out in the approved plan;

f. on request, provided AUSTRAC with a copy of the transition plan, information on progress against that plan and a copy of the written approval described in (c) and, in addition, in the case of a DBG, a copy of the written authority from each entity in the DBG (if applicable);

g. complied with the relevant provisions, in respect of the whole or part of the provision of Designated Services, as soon as can be reasonably accommodated through existing operations.

239. AUSTRAC indicated that the monitoring activities regarding some of the banks continued with most large banks due to finish remediation of their high risk customers by the end of 2016, that is to say with one year delay. AUSTRAC indicated that the major banks have confirmed that as at April 2017 they were fully compliant. AUSTRAC requires all of its regulated population to complete an annual compliance report. The report for 2016 was scheduled to be submitted by no later than 31 March 2017. This report includes a question on compliance with the enhanced CDD obligations. The responses to this question will be analysed and it will determine the next steps in addressing any non-compliance across the complete regulated population.

Supervisory activity post 1 January 2016

240. From February to June 2016, AUSTRAC conducted a focussed compliance campaign to coincide with the end of the transition period. The campaign aimed to (i) monitor how Reporting Entities had implemented the CDD obligations, (ii) assess the implementation of the CDD changes and (iii) determine what further guidance and support was needed to assist industry.

241. AUSTRAC indicated that the CDD campaign was targeted specifically on the new requirements in relation to beneficial owners and how well industry had responded to adopting the new rules. It targeted those Reporting Entities having customer bases that included large numbers of businesses and trusts. The campaign aimed to:

- Determine whether the selected Reporting Entities have implemented the CDD Rules changes relating to beneficial ownership;
- Determine whether those that have implemented are meeting the new obligations;
- For those that have not implemented, determine why they have not;
- Improve compliance with beneficial ownership obligations for all entities assessed;
- Improve AUSTRAC's understanding of how entities are interpreting and implementing the rule changes;
- Use information gathered to inform feedback/guidance documents and subsequent campaigns; and
- Identify and disseminate any relevant intelligence to AUSTRAC's Intelligence Branch and any relevant partner agencies.

242. The scope of the campaign focused on (i) risk assessment – consideration of the risks associated with the beneficial ownership of customers and any changes to beneficial ownership, (ii) ongoing customer due diligence – including enhanced customer due diligence and (iii) applicable customer identification procedures. The assessments also included a review of the entity's Transition Plan to determine whether this had an impact on the level of compliance exhibited.

243. Only Reporting Entities who claimed to have fully implemented the new Rules were subject to an onsite assessment. The desk reviews are conducted in a very similar way to the onsite except the compliance team does not visit the entity and there is no sampling of customer files. The focus is on reviewing the Reporting Entity's policies and procedures to ensure that they addressed the new beneficial ownership requirements.

244. To determine the sample of Reporting Entities, AUSTRAC used a selection method based on customer types; e.g. those only having non-individual customers, those having customers sending funds to financial centres, etc.

245. Out of 39 Reporting Entities identified for assessment, 29 met expectations, whereas 10 (i.e. around 25% of the sample) did not meet expectations. The 25% non-compliance rate is quite high, and AUSTRAC indicated that these 10 non-compliant Reporting Entities will enter into an enhanced follow-up to ensure that they remedy the identified deficiencies in a timely manner.

246. AUSTRAC carried out 28 onsite assessments and 11 desk reviews. As a result, 888 customer files sampled at the onsite assessments were reviewed, which led to 16 compliance assessment reports issued to Reporting Entities (including 26 recommendations and 32 findings, which are binding) and to 23 letters sent to confirm compliance by the Reporting Entity with the 2014 CDD rules.

247. AUSTRAC has commenced an oversight and enforcement programme, however, due to the short period of time since the full application of the 2014 Rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.Australia should monitor the effective implementation of the 2014 CDD rules by Reporting Entities, notably by ensuring that adequate oversight and enforcement activities are carried out.

ToR A.3. Availability of bank information in practice

248. The 2010 Report found that Australia had successfully responded to all of its requests for bank information in the period 2007-09. In the current review period, Australia received and responded to 205 EOIR requests for bank information (approximately 34% of the total EOI requests during the peer review period). Australia introduced new CDD requirements on banks with effect from 1 June 2014, effective implementation of which by banks is supervised by AUSTRAC (see *Oversight and enforcement activities by AUSTRAC.*) In practice, the ATO answered all EOI requests on banking information received during the peer review period. However, the ATO never received an EOI request on beneficial ownership information of bank accounts (see availability of bank information in practice).

Part B: Access to information

249. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI. Each section begins with a short description of the main issues found in the 2010 Report and the changes made since that report and then a brief summary of the EOI practice during the review period. This is completed by a table of recommendations made in this report.

250. The section then analyses Australia's compliance with each of the enumerated aspects of the element, beginning with a summary of the legal and regulatory framework where this remains unchanged from the 2010 Report and an analysis of any changes made since that report. Similarly, the measures in place to ensure the ability to access the requested information in practice are also described, with an analysis of any changes in those measures that address recommendations made in the 2010 Report and an update of the oversight activity during the review period.

251. Finally, each section evaluates the access to information in the context of EOIR in practice, including an analysis of any issues raised by peers and, if relevant, the access to the information in a domestic context.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

252. The 2010 Report found that the ATO had broad and specific powers to access information that expressly contemplate responding to a request for information in relation to a liability for foreign tax. During the previous review period, the ATO used its information gathering powers in order to

obtain bank information, but all other information requested during that time period was either in its possession, publicly available (through ASIC or land registry databases), or was voluntarily provided by the person in possession of it.

253. In the interim, there have been no changes to the information gathering powers in Australia, apart from a technical merging of the access provisions into the Income Tax Act. There are no specific access powers regarding obtaining beneficial ownership information and it is confirmed by the Australian authorities that the current provisions are used to access beneficial ownership information for tax purposes.

254. In the current review period, Australia received 596 EOI requests, which could be answered with the general access powers available to the ATO.

255. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework
The element is in place.

Practical Implementation of the EOIR Standard	
Rating of element B.1	**COMPLIANT**

ToR B.1.1: Access to Legal and Beneficial Ownership and Bank Information

256. The 2010 Report described two situations: (i) where the information is available with the ATO or available to the EOI Unit through the access it has to the databases maintained by AUSTRAC, ASIC and DIBP the Department of Immigration and Border Protection (DIPB), and (ii) where the information was not immediately held or accessible by the ATO, e.g. information held by another Australian agency, other third parties or the taxpayer. In the latter case, a formal access request could be made to the record holder in Australia using statutory access powers which were far reaching. The same rules continue to apply (see 2010 Report, paras. 184-185 for more detail)].

257. There were no changes made to the legal framework apart from a technical merge of the provisions for access, which previously were in the income tax and GST Acts. This has been combined into one single provision.

258. In addition to what is mentioned in the 2010 Report, the ATO is able to obtain information that is required to be held for anti-money laundering purposes (see below).

259. During the period 2007-09 the ATO did not have any difficulty obtaining information, either from financial institutions or otherwise. During the period under review (1 April 2013- 31 March 2016), the EOI Unit either had the requested information available with the ATO or other accessible databases (for example, approximately one third of requests are related to the collection of tax debt, for which the ATO could assist using information immediately available), or could obtain such information from a third party, irrespective of the type of information requested. Peer inputs received raised no issues in respect of the ability of the ATO to access information of any kind.

Information directly or indirectly available with the ATO

260. The majority of EOI requests that Australia receives can be responded to from information already contained within the ATO, or from information available to the EOI Unit through the access it has to the databases maintained by AUSTRAC, ASIC and DIPB. Timelines for obtaining this type of information are short. Information held by another Federal, State or Territory governments or agencies can also be quickly retrieved.

261. Regarding legal ownership information, the ATO will usually use its own database and that of AUSTRAC. AUSTRAC accesses ASIC Registers and foreign public registers to source legal ownership information in relation to a Reporting Entity, or its customers that are companies. Chapter 4 of the AML/CTF Rules requires regulated entities to verify customer information from ASIC records. AUSTRAC also uses in-house information databases.

262. For trusts, partnerships, associations and co-operatives, AUSTRAC has powers to request a copy of the Reporting Entity's record of the primary documentation or agreement establishing the entity – such as trust deeds, partnership agreements and articles of association or constitution. The ATO would use its formal information gathering powers under sections 353-15 and 353-10 of the TAA to obtain the information directly from the entity.

Information available with third parties (taxpayers, service providers and banks)

263. For information that is not already held by the ATO, or readily accessible, the Commissioner of Taxation is able to use his access powers to obtain ownership, identity and accounting information. Section 23 of the International Tax Agreements Act 1953 permits the Commissioner of Taxation to use any or all of his formal access powers for the purpose of responding to a specific request for EOI in tax matters. In practice, the EOI unit uses the "353 Notice" to require production of the information. In these cases, 28 days is the usual period set to respond. The ATO indicated that

many responses are received earlier than the 28 day maximum time period allowed, and that some responses may be permitted after the 28-day period if requested and substantiated by the third party.

264. AUSTRAC hold a database with all the transaction and suspicious matter reports submitted by Reporting Entities under the AML/CTF Act, which is searchable by date, name or other search criteria. This is a useful database for the ATO to find out the bank account number and the name of the bank. In practice, the ATO has adequate powers to ensure that it could always get the requested banking information from banks. For example, the ATO is also empowered under the AML/CTF Act to issue notices to a Reporting Entity or any other person requesting information specified in the notice concerning a transaction report submitted to AUSTRAC, including information and documentation on the beneficial ownership and control of a customer.

Information held by a taxpayer

265. Where information is in the possession of a taxpayer, the request will generally be referred to a compliance area of the ATO to obtain the information needed. The EOI Unit has nominated "gatekeepers" for each area of the ATO with which it deals regularly, and these gatekeepers assist the EOI Unit in referring a request to the team that is most suitable to gather the information which the EOI Unit requires to respond to a requesting EOI partner. The gatekeepers also help to ensure that the information that is provided by the compliance area is in a format which can be readily sent to the requesting EOI partner.

266. Where a taxpayer asserts they are not in possession or control of the information the ATO would use its formal information gathering powers under sections 353-15 and 353-10 of the TAA to compel the production of the information (using a 353 Notice)

267. Where a taxpayer asserts that he or she is not in possession or control of information as this information is located outside of Australia (including information required to be maintained under Australian law), the Commissioner may serve what is known as an "offshore information notice" request under section 264A of the ITAA 1936. The Australian authorities accepted that enforcement of an "offshore information notice" was difficult, however they advised that the ATO would vigorously test the assertion that such records are genuinely located outside of Australia and therefore not under the custody and control of the Australian parties.

Information held by third parties, including banks

268. Where information is in the possession of a third party, such as a service provider or a bank, satisfying a request will generally require the use of formal information gathering powers. The EOI unit will generally send the formal notice directly, without involving a compliance area, and would request a reply within 28 days. More time may be allowed depending on the complexity of the request.

269. Regarding bank information, there are no specific procedures to obtain information held by banks or other financial institutions – the general powers of formal access given to the Commissioner of Taxation are used. The ATO maintains a close relationship with all Australian banks and to facilitate such requests each of the banks has established a designated contact whose sole purpose is to provide banking information to Australian Government law enforcement and regulatory authorities.

270. The Australian competent authority generally requires as much information as possible from the requesting authority to accurately identify the account holder. If known, such information would include the name of the bank, the holder of the bank account, the date of birth of the holder of the account (in the case of an individual), the address of the account holder, and the account number. The ATO has access to AUSTRAC data and this system can also be used to identify bank accounts that might be relevant to the foreign competent authority.

271. Some delays can be encountered before the information is provided, depending on the bank and volume/type of information requested. Whilst that has a contact point in each Australian bank that is responsible for providing this type of information to the ATO, the ATO indicated that these contacts can sometimes become overwhelmed with requests for information, or experience a shortage of staff, which can cause slight delays. However, the requested information is generally provided within 28 days, although at times such requests can take a little longer to be fulfilled. Peers indicated they were generally satisfied with the timeliness of the responses provided by the ATO, and indicated that delays were only occurring at times for complex requests involving large amount of requested documentation, such as transfer pricing cases.

Access to beneficial ownership information

272. The ATO can use its regular access powers to access beneficial ownership information depending on where the source of the information is (i.e. with the ATO or with third parties (taxpayers, service providers and banks)). There is no distinction made in respect of the type of information

requested by the ATO, such that the access power provisions allow the ATO to obtain beneficial ownership information.

ToR B.1.2: Accounting records

273. Accounting information, sought in a request, may already be available within the ATO. However, the powers described in section B.1.1. can be used to obtain accounting information, whether from a third party or from the taxpayer. There are no particular rules that apply to accounting records that would impede the use of these powers.

274. During the current review period ATO has received 50 requests for accounting information. The ATO replied to all the EOI requests.

ToR B.1.3: Use of information gathering measures absent domestic tax interest

275. The ATO's powers are not curtailed by any requirement that the power may only be exercised where there is a domestic tax interest. Consequently, the issue of a domestic tax interest does not arise. There were no issues in this regard during the period 2007-09 and no such issues have arisen in the current review period.

ToR B.1.4: Effective enforcement provisions to compel the production of information

276. With respect to the access powers from the ATO, failure to comply with a request for information from the ATO constitutes an offence under section 8C of the TAA 1953, which is punishable on conviction by a fine or imprisonment (dependent on the nature of the offence). The court may also order payment of a further amount where failure was held to be due to an attempt to avoid an amount of a tax liability by the convicted person or another person.

277. There were no cases during the period 2007-09, nor during the current peer review period (1 April 2013 until 31 March 2016), that required the ATO to resort to such measures in order to obtain information.

ToR B.1.5. Secrecy provisions

Bank secrecy

278. The 2010 Report noted that there were no statutory bank secrecy rules in Australian law, rather bank information is subject to a duty of confidentiality and in any event the powers granted to the ATO operate notwithstanding any other rules or laws regarding secrecy. This continues to be the case.

Professional secrecy

279. The 2010 Report, in paras 189 to 198, noted that Australia is not obliged to supply information in response to an EOI request under a treaty when the requested information would disclose a confidential communication protected by attorney-client privilege or legal professional privilege (LPP). The concept of LPP has been extended administratively in Australia, for tax purposes, by what is called the "accountants' concession". While recognising that the Commissioner has the statutory power to access most documents, it has been accepted that there is a class of documents which should, in all but exceptional circumstances, remain confidential to taxpayers and their professional accounting advisors (see paras 193 to 198 of the 2010 Report).[15]

280. The concession applies only to documents prepared by external professional accounting advisors who are independent of the taxpayer and generally only to "non-source" documents, but may apply to "source" documents in certain cases. The 2010 Report introduced a recommendation in element C.4 to monitor the application of this "accountants' concession" in preventing effective exchange of information for tax purposes (see element C.4). The Australian authorities have advised that no such cases have arisen in the current review period, in connection with an EOI request. More details are presented in element C.4.

B.2. Notification requirements, rights and safeguards

> The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

281. The 2010 Report found that there were no notification requirements or appeal rights and the element was determined to be In Place and rated Compliant. There have been no relevant changes to the legal framework. No

15. See Guidelines to Accessing Professional Accounting Advisors Papers (full text available at www.ato.gov.au).

issues were raised in practice, by peers, for the period 2007-09, nor during the current review period.

282. The 2016 ToR have introduced a new requirement where an exception to notification has been granted – in those cases there must also be an exception from time-specific post-notification. As Australia's law does not require notification, this new requirement does not need to be assessed.

283. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework
The element is in place.

Practical Implementation of the EOIR Standard	
Rating of element B.1	**COMPLIANT**

ToR B.2.1: Rights and safeguards should not unduly prevent or delay effective exchange of information

284. Rights and safeguards should not unduly prevent or delay effective exchange of information.

Notification

285. The 2010 Report noted, and it remains the case, that the ATO has a variety of powers at its disposal to require the production of information (paras 201 to 205 of the 2010 Report). The basic provision to produce records that may be relevant to an EOI request does not require notification of the taxpayer being investigated.

Other rights and safeguards

286. Australia's law does not provide appeal rights to the person who is the object of a request for information, nor to the person who holds the information and who is required to produce the information.

Part C: Exchanging information

287. Sections C.1 to C.5 evaluates the effectiveness of Australia's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Australia could provide the information requested in an effective manner. Each section begins with a brief summary of the EOI practice during the review period and a short description of the main issues found in the 2010 Report and the changes made since that report. This is completed by a table of recommendations made in this report, showing the changes from the 2010 Report, where applicable.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

288. During the current review period none of the peers have raised issues regarding ATO's application of the foreseeable relevance standard.

289. The 2010 Report concluded that Australia's network of EOI mechanisms was In Place and was rated Compliant. In 2010, Australia had 44 DTCs and 25 TIEAs. All of these agreements met the standard except for the DTC with Switzerland that did not meet the standard due to limitations on exchange of information in the partner jurisdiction. Since then, the DTC with Switzerland that did not meet the standard has been renegotiated to meet the international standard. An amending Protocol was signed on the 30th of July 2013 and entered into force on 14 October 2014.

290. Australia currently has 46 DTCs and 36 TIEAs. As of 5 May 2017, with the application of the Multilateral Convention, Australia has in total 126 EOI relationships.

291. The new table of determinations and ratings is as follows:

<table>
<tr><th colspan="3">Determination on the Legal and Regulatory EOIR Framework</th></tr>
<tr><td colspan="3">Determination: In Place</td></tr>
<tr><th></th><th>Underlying Factor</th><th>Recommendation</th></tr>
<tr><td>Significant Deficiencies Identified in the Implementation of EOI in Practice</td><td></td><td></td></tr>
<tr><th colspan="3">Practical Implementation of the EOIR Standard</th></tr>
<tr><td>EOIR Rating</td><td colspan="2">COMPLIANT</td></tr>
</table>

ToR C.1.1: Foreseeably relevant standard

292. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2010 Report found that Australia's network of DTCs follow the *OECD Model Tax Convention* and are applied consistent with the Commentary on foreseeable relevance. Similarly, Australia's TIEAs follow the *2002 Model Agreement on Exchange of Information on Tax Matters*.

Compatibility of the EOI network with the Terms of Reference

293. The EOI network of Australia expanded its EOI network by signing and ratifying the Multilateral Convention which entered into force on 1 December 2012. In the 2010 Report, it was determined that all but the 1980 DTC with Switzerland in line with the 2010 Terms of Reference. To address this recommendation, Australia has renegotiated its DTC with Switzerland. It was signed on the 30 July 2013 and entered into force on 14 October 2014. Article 25 of this new DTC complies with the international standard.

Interpretation and application of the foreseeable relevance standard

294. Australia continues to interpret and apply its DTCs and TIEAs consistent with these principles of foreseeable relevance, as embedded in the commentary to article 26 of the OECD Model Convention.

295. The ATO indicated that the following information is looked at to assist in determining the foreseeable relevance of the request:

- reference to the legal basis upon which the request is based;
- identity and details of the person under investigation;

- relevant background information including the tax purpose for which the information is sought, the origin of the enquiry, reasons for the request, grounds for believing that the information is held in the other jurisdiction;
- how the requested information might aid a specific investigation or audit (there must be a nexus to an open inquiry or investigation);
- a statement that all domestic means has been pursued to obtain the information;
- a statement that the request is in conformity with the laws and administrative practices of the requesting jurisdiction, that they could obtain the information if it was within their jurisdiction and the request is in conformity with the legal instrument on which it is based; and/or
- the taxes concerned ensuring that these are within the scope of the legal instrument being used.

296. The ATO confirmed that it never declined a request on the basis of lack of foreseeable relevance. Where there is a lack of clarity or insufficient detail is provided, the ATO indicated they would seek clarification and/or provide as much information as possible that in the view of the Competent Authority is seen as being relevant to the request.

297. Peers have not raised concerns regarding the interpretation by the ATO of the foreseeable standard. Peers mentioned that requests for clarification were usually made by the ATO in case of complex EOI requests (for example complex transfer pricing cases) and were always justified.

Group requests

298. None of Australia's EOI agreements exclude the possibility of replying to a group request. Australia interprets its domestic law and its EOI agreements such that it can reply to a group request to the extent that the request meets the foreseeable relevance as described in the 2012 Update to the commentary on Article 26 of the OECD Model Convention.

299. Australia is yet to receive or make a group request. In replying to or preparing a group request, ATO indicated it would verify that the foreseeable relevance standard is met, notably by requiring a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant. In addition the ATO would require clarification on how the requested information would assist in determining compliance by the taxpayers in the group.

ToR C.1.2: Provide for exchange of information in respect of all persons

300. The 2010 Report found that none of Australia's EOI agreements restrict the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. No issues arose in the period 2007-09 in this regard.

301. The additional agreements (see element C.2 *Exchange of information network*) that Australia has entered into since then 2010 are in compliance with the international standard in this respect. Peers have not raised any issues in practice during the current review period.

ToR C.1.3: Obligation to exchange all types of information

302. The 2010 Report did not identify any issues with Australia's network of agreements in terms of ensuring that all types of information could be exchanged and no issues arose in practice.

303. The additional agreements that Australia has entered into since 2010 do not restrict the types of information to be exchanged (see element C.2 Exchange of information network). Peers have not raised any issues in practice during the current review period.

ToR C.1.4: Absence of domestic tax interest

304. The 2010 Report did not identify any issues with Australia's network of agreements regarding a domestic tax interest and no issues arose in practice.

305. The additional agreements that Australia has entered into since 2010 do not restrict the types of information to be exchanged (see element C.2 Exchange of information network). Peers have not raised any issues in practice during the current review period.

ToR C.1.5: Absence of dual criminality principles

306. The 2010 Report did not identify any issues with Australia's network of agreements in respect of dual criminality and no issues arose in practice.

307. The additional agreements that Australia has entered into since 2010 do not restrict the types of information to be exchanged (see element C.2 Exchange of information network). Peers have not raised any issues in practice during the current review period.

ToR C.1.6: Exchange information relating to both civil and criminal tax matters

308. The 2010 Report found that Australia's network of agreements provided for exchange in both civil and criminal matters and no issues arose in practice.

309. The additional agreements that Australia has entered into since 2010 do not restrict the types of information to be exchanged (see element C.2 Exchange of information network). Peers have not raised any issues in practice during the current review period.

ToR C.1.7: Provide information in specific form requested

310. The 2010 Report noted that the ATO applies its EOI mechanisms consistent with the OECD Model and so is prepared to provide information in the specific form requested to the extent such form is known or permitted under Australian law or administrative practice. The 2010 Report noted positive experience with this in the period 2007-09. During the current review period, no peers raised concerns regarding the form in which information is requested. The ATO indicated that they would accommodate the requesting jurisdictions in respect of the specific form requested.

ToR C.1.8: Signed agreements should be in force

311. The 2010 Report noted that 14 of Australia's EOI mechanisms were not in force and Australia was recommended to bring its EOI agreements into force as quickly as possible. However, the 2010 Report did not identify any particular issue with the process through which Australia ratifies its international agreements.

312. The agreements entered into since the 2010 Report have been, on average, ratified within a 12 month period.

Bilateral EOI mechanisms

A	Total number of DTCs/TIEAS	A = B+C	82
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force	B = D+E	1
C	Number of DTCs/TIEAs signed and in force	C = F+G	81
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	D	1
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	81
G	Number of DTCs/TIEAs in force and not to the Standard	G	0

313. In addition to Australia's bilateral mechanisms Australia signed the Multilateral Convention on 3 November 2011. The Multilateral Convention entered into force on 1st December 2012.

314. The 2010 Report included a recommendation under which Australia should renegotiate the DTC with Switzerland which was not in line with the international standard. As Australia has concluded a new DTC with Switzerland which is in line with the standard, the recommendation included in the 2010 Report is removed.

ToR C.1.9: Be given effect through domestic law

315. Australia has in place the legal and regulatory framework to give effect to its EOI mechanisms. No issues were raised in the 2010 Report in this regard, and no issue arose during the current peer review period (1 April 2013 until 31 March 2016.)

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

316. The 2010 Report found that element C.2 was In Place and rated Compliant. No peers have raised any issues regarding Australia entering into an EOI mechanism. As of 5 May 2017, Australia has a bilateral EOI agreement with 82 jurisdictions and an EOI relationship with a total of 126 EOI partners due to the application of the Multilateral Convention.

317. Since 2010, Australia has carried out further expansion of its EOI network or updated its EOI agreement network with Belgium, Italy, India, Turkey and Switzerland. The Australian Government signed a new tax treaty with Germany on 13 November 2015, which entered into force on 7 December 2016. Ratification and domestic legislation processes are underway. Australia started tax treaty negotiations with Israel in September 2015.

318. In addition, since 2010, Australia signed TIEAs with eight jurisdictions, as illustrated in the table below:

Jurisdiction	Type of agreement	Date of signature	Entry into force
Andorra	TIEA	24-Sep-11	03-Dec-12
Bahrain	TIEA	15-Dec-11	15-Dec-12
Brunei Darussalam	TIEA	06-Aug-13	25-Feb-16
Costa Rica	TIEA	01-Jul-11	04-Feb-13
Guatemala	TIEA	26-Sep-13	Not yet in force
Liberia	TIEA	11-Aug-11	23-May-12
Liechtenstein	TIEA	21-Jun-11	21-Jun-12
Macao (China)	TIEA	17-Jul-11	18-May-12

319. Regarding the TIEA between Australia and Guatemala, Australia has completed the domestic ratification process and has sent a diplomatic note to that effect. Australia is currently waiting for Guatemala's domestic ratification process to be finalised before the TIEA comes into effect. In total, Australia has concluded 46 DTCs and 36 TIEAs, totalling 82 bilateral EOI agreements which are in line with the international standard. In addition, Australia has 110 EOI relationships under the Multilateral Convention. In total, Australia has 126 EOI relationships. Australia should continue to develop its EOI network with all relevant partners.

320. Regarding EOI agreement policies, the Australian authorities indicated that they do now encourage jurisdictions to sign the MAC rather than initiate the negotiation of a TIEA. They also indicated that the ratification process takes approximately 6 to 12 months.

321. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework	
Determination	**In Place**
Practical Implementation of the EOIR Standard	
EOIR rating	**COMPLIANT**

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

322. The 2010 Report found that Australia was fully compliant regarding the confidentiality of information received (see paras 252 to 266 of the 2010 Report). In addition, Australia's CRS Confidentiality and Data Safeguards Report were adopted by the Global Forum in 2016 with "no recommendations" for further action.

323. Since 2010, the ATO has continued to update and improve its confidentiality procedures and policies, as described in section C.3.1 below, which is fully in line with the international standard.

324. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework	
Determination	**In Place**
Practical Implementation of the EOIR Standard	
EOIR Rating	**COMPLIANT**

ToR C.3.1: Information received: disclosure, use and safeguards

325. As mentioned in the 2010 Report, all DTCs and TIEAs concluded by Australia meet the confidentiality requirements embedded in Article 26(2) of the OECD Model Taxation Convention on Income and on Capital, Article 8 of the OECD Model TIEA, and Article 22 of the Convention on Mutual Administrative Assistance in Tax Matters respectively. In addition, sanctions are provided for in the law in case of breach of confidentiality.

326. This section sets out the possibility for disclosure of confidential information (for example during a court proceeding) and the application of the confidentiality principles in practice.

Disclosure of confidential information

327. The Freedom of Information Act 1982 (FOI Act) provides a legally enforceable right of access to documents (other than exempt documents). The FOI Act does not contain an exemption for taxation information as a class. However, there are exemptions in the FOI Act which apply to some documents held by the ATO. The most relevant exemptions in the FOI Act for EOI documents are the exemptions for documents which, if disclosed, may prejudice the investigation of breaches of taxation law (section 37 of the FOI Act) and for documents which, if disclosed, may cause damage to international relations or divulge confidential communications from foreign governments (section 33 of the FOI Act). The FOI Act does not prohibit or prevent the ATO from disclosing exempt documents where disclosure would otherwise be permitted by all other relevant laws. However, the ATO relies on these exemptions when refusing FOI applications which seek information obtained under tax treaty provisions.

328. The ATO has exempted access to EOI documents obtained under a treaty, and requested by FOI applications, on several occasions. A recent example in the public domain is Re Chemical Trustee Ltd v Commissioner of Taxation (2013) 138 ALD 658. This was a decision in the Commonwealth Administrative Appeals Tribunal (AAT) where the ATO exempted access to EOI documents provided under a taxation treaty. The AAT held that the documents provided under an EOI provision in the taxation treaty were exempt under section 33 of the FOI Act.

329. The ATO considers FOI applications on a case-by-case basis. Consistent with paragraph 12 of the OECD Commentary on Article 26 (exchange of information) of the Model Tax Convention, Australia’s international tax agreements permit the ATO to disclose exchanged information to the relevant taxpayer or their proxy. Therefore, if the relevant taxpayer applied for access to EOI documents under FOI, it is possible that the ATO would grant access to the requested documents. However, if the information

requested under FOI could prejudice the investigation of breaches of taxation law, cause damage to international relations or divulge confidential communications from foreign governments, then the ATO would likely refuse access to EOI documents under the FOI Act – as it has done so previously. This would include communications between the jurisdictions (such as covering letters).

330. There have been some instances where information has been disclosed under the FOI Act. These disclosures have been granted only after the partner jurisdiction has been contacted and given their approval for the information to be disclosed.

Confidentiality in practice

331. In practice, the information received is treated as secret. Information received from a treaty partner is only used for the purposes provided for in the treaty. Therefore information cannot be used to assess taxes not covered by the treaty.

332. All EOI tasks are centralised within a single EOI Unit, the officers in which are trained on confidentiality principles. Exchanged information may be disclosed only to the person or entity concerned with the exchange. The information may also be disclosed in public court proceedings or in judicial decisions. However, current practice requires Australia's Competent Authority to advise the other treaty partner before disclosing information to the taxpayer concerned.

333. Human resources management regarding the confidentiality principles covers the aspects described below.

Hiring process and departure policies

334. Under the Australian Government's *Personnel security management core policy*, all potential employees, contractors and consultants that might have access to official information and resources, including treaty information, undergo ATO employment screening through a Pre-Engagement Integrity Check conducted by the ATO Security Vetting Team.

335. The ATO carries out two levels of Pre-Engagement Integrity Checks:

- A "standard" check for all Australian Public Service (APS) employee levels, volunteers and contractors that includes checking the identity and criminal records of the person, and signing of a secrecy declaration;
- An "enhanced" check for all Executive Level and above, or where the position involves increased risks, including checks on academic qualifications and employment history.

336. The ATO reviews positions that require a security clearance, including the level of clearance required, at least once a year or when there are triggers such as the creation of new positions or variation in the scope of duties to existing positions. All security clearance holders are to be subjected to an annual check during which they will confirm with their managers their personal circumstances. They are also to report to the ATO Security Vetting Team if there is any significant change in their personal circumstances (including financial and criminal).

337. The ATO has a range of internal policies, instructions and procedures to ensure access to confidential information is terminated for departing employees and contractors. These policies are reviewed on an annual basis or when an emerging or escalating potential security risk is identified.

Training

338. Initial training for ATO employees is mandatory and includes privacy and fraud. All staff and contractors receive training and/or policies in security fundamentals, including key messages in relation to information security (e.g. need-to-know principle and password policy), physical security (e.g. access control, pass-wearing policy) privacy, and fraud and personnel security.

339. For managers, there is additional training named Security Awareness-Security Essentials to be completed within 3 months of commencing duties and every 2 years thereafter. This course is designed to provide awareness of a manager's role in ensuring that appropriate security measures are employed. Participants are tested during the training to assess their understanding of the content and their responsibilities.

340. There is also mandatory information security training for contractors handling official ATO records. Contractors are provided with a security training CD and, upon completion of the courses and an assessment, are given a certificate of completion

Physical and electronic security

341. All EOI information received in paper form is scanned. The electronic data is stored in the EOI share drive and the papers are either sent to the relevant ATO compliance officer, when required for the purposes of legal proceedings or, due to their size, are shredded in the ATO office. In practice, the maintenance of paper records is kept as minimal as possible.

342. The current ATO practice for EOI information received on CD is for the providing Competent Authority to encrypt the CD and send a password for decryption. The information in the CD is transferred to the EOI share drive by using an enabled CD drive or an encrypted thumb drive

and uploaded onto ATO systems for compliance use, prior to the CD being destroyed. All treaty information is stored and managed by the EOI Unit in a centralised EOI share drive folder to which only authorised EOI Officers have access, on a "need to know" basis. The release of information is also confined to a small number of tax officers.

343. In the case of electronically exchanged information through online facilities, such as the Data Transfer Facility (a secure web-based user interface), only authorised EOI officers have access to the secure mailbox. Transactional information is only kept for a limited time and files that are uploaded are purged within 21 days if they are not downloaded.

344. In terms of physical access, the ATO has a range of internal policies, instructions and procedures for access to ATO premises by employees, contractors and visitors. These core documents are published internally on the ATO SharePoint and are included in a range of mandatory security training packages for staff and contractors. These policies are reviewed on an annual basis or when an emerging or escalating potential security risk is identified. The ATO uses an electronic access control system (EACS) and site-based security guards to control access to its sites. Authorised individuals have proximity ("prox") cards enabled for access. Visitors who have not been security cleared are issued with photographic building passes and prox cards and are escorted at all times by ATO employees or authorised and appropriately security cleared contractors. The visitor, escort, and issuing guard jointly complete the access register including identification information and reason for the visit. In addition to this general security, all main ATO sites have rooms housing data servers and secured electronic information which only authorised personnel can enter. To obtain key or passcode access to these rooms, in addition to a demonstrated business requirement, approved users must be security cleared.

345. Data centres are managed under a service provider contract. They are highly controlled sites with systems access, physical access controls, visitor control, movement of goods inward and outward and controlled access to internal areas that are all compliant with ISM and PSPF requirements for physical and information security for storage of data, hardware and physical assets up to and including "protected" level.

Information disposal policy

346. The ATO's disposal process includes review and approval stages from both the owning business area and the ATO's Records Management Team, which is responsible for the oversight and advice of records disposal and destruction of paper and electronic records. The retention period varies from 3 to 20 years depending on the type and nature of the records involved. EOI data is not treated separately. For instance, compliance case records which involve investigations relating to serious non-compliance (such as deliberate

fraud or evasion), and joint investigations with treaty partners, are destroyed after 20 years. Simpler compliance case records are kept for 5 years.

Policy monitoring confidentiality breaches

347. Division 355 of Schedule 1 to the Taxation Administration Act 1953 restricts current and former tax officers against disclosing protected information, which includes information obtained under a treaty. Section 355-25 of Schedule 1 to the TAA creates a criminal offence of unauthorised disclosure of protected information punishable by imprisonment for two years. The confidentiality provisions, including the offence and penalty, also apply to contractors and other individuals employed by or performing services for the Australian Government (section 355-15). On-disclosure of unlawfully disclosed information that is protected by the taxpayer confidentiality provisions is prohibited and sanctioned under section 355-265. In addition, on-disclosure of lawfully disclosed confidential information for an unauthorised purpose is prohibited and criminally sanctioned under section 355-155. It is also a separate offence under the federal Crimes Act 1914, punishable by two years imprisonment, for an Australian Government officer to unduly disclose information (the offences cannot be cumulated).

348. The obligations in the Privacy Act 1988 apply to the ATO as an agency, rather than to individual ATO officers. It creates criminal offences only in some limited situations which the Australian authorities consider as highly unlikely to be relevant to the ATO's handling of treaty-sourced information. However, the Privacy Act 1988 does provide for the imposition of civil penalties on agencies. For example, under section 13G, if an agency does an act, or engages in a practice, that is a serious or repeated interference with privacy, a civil penalty of up to AUD 220 000 (EUR 141 500) may apply.

349. The Australian Public Service (APS) Act 1999 provides a framework of expectations of public servants' conduct, which must be aligned with the APS Values and Code of Conduct. This includes the duty not to disclose confidential information and the ATO has a Fraud Prevention and Internal Investigations Unit available for investigation and enforcement of relevant breaches. Section 13 of the APS Act prohibits unauthorised access to, or disclosure of, confidential information. The Commissioner of Taxation is able to impose a range of penalties for these breaches, including termination of employment, reduction in classification from level to level, re-assignment of duties, reduction in annual salary and deductions from salary, by way of fine and a reprimand.

350. There have been no known cases in Australia of breach of confidentiality related to information received by the Competent Authority from an EOI partner. The ATO has physical, IT and procedural systems in place to prevent potential unauthorised disclosure and processes in place to address any instances that do occur. These processes include examination of any incidents

to mitigate the breach and also identify actions that can then be taken to prevent any future similar breaches. Instances of unauthorised access are addressed jointly by IT, Information Security, Legal and Corporate ATO teams.

ToR C.3.2: Confidentiality of other information

351. The confidentiality provisions in Australian domestic law set out in C.3.1 apply equally to protect the request for information itself and include background documents provided by a requesting jurisdiction, as well as any other information relation to the request such as communications between the EOI partners in respect of the request.

C.4. Rights and safeguards of taxpayers and third parties

> The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

352. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. The 2010 Report found that the legal framework and the EOI agreements of Australia were in full conformity with the international standard (see paras 268 to 274 of the 2010 Report).

353. However, the 2010 Report included a recommendation regarding the “accountants’ concession” mentioned in C.4.1. below. As no subsequent EOI cases have involved this concession, in practice, the monitoring obligation, set out in the 2010 Report recommendation, is removed from the box.

354. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework
The element is in place.

Practical Implementation of the EOIR Standard		
	Factors underlying recommendations	**Recommendation(s)**
Deficiencies Identified in the Practical Implementation of the EOIR Standard		
Rating of element C.4	**COMPLIANT**	

ToR C.4.1: Exceptions to provide information

355. The 2010 Report concluded that the limits on information which must be exchanged under Australia's EOI agreements mirror those provided for in the international standard. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

356. The 2010 Report introduced an in-box recommendation regarding "the accountants' concession". In Australia, the concept of attorney client privilege has been extended to certain advice and advice papers prepared by external professional accounting advisors who are independent of the taxpayer. As this privilege has never been invoked in practice, it is unclear on which documents the accountants' concession would apply. The 2010 Report noted that the extension of the attorney client privilege to accountants did not raise any problems in practice. Nevertheless, it was recommended that the EOI unit maintain a record of all EOI cases in which the accountants' concession is claimed together with an analysis of its effect in each case of the EOI Unit's ability to provide the information requested.

357. Australia explained that this concession has been extended only administratively and is not embedded in the law. The concession guidelines explain that source documents (such as those relating to an organisation's history, structure, chain of command, accounts, constitution, etc.) are not covered by the concession. In practice, therefore,it is unlikely that any matter covered by the concession will be relevant to an EOI request. Nevertheless, if in exceptional circumstances that did occur, the concession can be lifted with the approval of an appropriate senior ATO officer. Whilst this has not been necessary in any EOI request, Australia has confirmed that the concession has been disapplied in some domestic tax situations.

358. The EOI Unit created a spreadsheet to monitor the EOI cases for which the information could not be gathered due to the accountants' concession. The ATO has confirmed that, since 2010, no EOI cases have involved the accountants' concession. Because of the limited scope of the concession, and the existence of a mechanism to access documents otherwise shielded by it in appropriate cases, it is not expected to be a barrier to effective EOI in the future. Accordingly, the monitoring recommendation from the 2010 Report is removed from the box of recommendations.

C.5. Requesting and providing information in an effective manner

> The jurisdiction should request and provide information under its network of agreements in an effective manner.

359. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions

360. The 2010 Report of Australia concluded that the procedures and practices in place to respond to EOI requests were adequate and ensure effective and timely exchange of information. Nevertheless a recommendation was introduced regarding the lack of status updates. This new report reviews in addition the EOI practice of Australia in respect of the sending of requests. It concludes that the procedures and practices of the ATO are adequate and ensure a good quality of EOI requests. This analysis is confirmed by peer input. Regarding status updates, the EOI Unit has put in place a reminder system which is followed by the staff in most cases. However, two peers indicated that they did not receive status updates in all cases. In light of the progress made by the EOI Unit on the issue, the recommendation is deleted from the box and moved to the text of the report as a point of attention to monitor.

361. Taking all the above-mentioned elements into account and in particular noting the EOI procedures and practices in place to ensure the good quality of EOI requests sent by the ATO, as confirmed by peers, the rating for element C.5 remains Compliant.

362. The new table of determinations and ratings is as follows:

Determination on the Legal and Regulatory EOIR Framework
Not applicable

Practical Implementation of the EOIR Standard		
Significant deficiencies identified in the implementation of EOI in practice	**Underlying Factor**	**Recommendation**
EOIR Rating	**COMPLIANT**	

ToR C.5.1: Timeliness of responses to requests for information

363. Over the period under review (1 April 2013-31 March 2016), Australia received a total of 596 requests for information. For these years, the number of requests where Australia answered within 90 days, 180 days, one year or more than one year, are tabulated below.

Statistics on response time

	2014		2015		2016		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	179	30	178	30	239	40	596	100
Full response: ≤ 90 days	125	**70**	114	**64**	155	**65**	394	**66**
≤ 180 days (cumulative)	150	**84**	153	**86**	200	**84**	503	**84**
≤ 1 year (cumulative)	172	**96**	172	**97**	237	**99**	581	**97**
> 1 year	7	**4**	6	**3**	2	**1**	15	**3**
Declined for valid reasons								
Status update provided within 90 days (for responses sent after 90 days)	--[1]		--		--		--	
Requests withdrawn by requesting jurisdiction	0		0		0		0	
Failure to obtain and provide information requested	N/A		N/A		N/A		N/A	
Requests still pending at date of review	0	0	0	0	0	0	0	0

Australia counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

Note: 1. The ATO did not keep track of this information during the peer review period.

364. The response times in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued. For requests received by paper, the date received in Australia (rather than the date it was sent by the requesting jurisdiction) was used as the start of the request, due to postal delays in receiving the request.

365. **Counting of requests.** A request is counted as one case starting from the first letter initiating the matter until the request has been fully satisfied. Before January 2015, each letter was treated as one request regardless of the number of taxpayers. However, since moving onto the SIEBEL system in January 2015, where a request includes unrelated taxpayers, these will be treated as separate requests due to the requirement to register each taxpayer on the system separately and due to privacy issues.

366. **Major EOI Partners**. New Zealand is identified as a major EOI partner with the ATO due to substantial movements of people and transactions between the two countries. During the peer review period Australia received 282 incoming requests (of 596 total) from New Zealand, accounting for 47% of the total incoming requests.

367. The United Kingdom, United States, Canada and Japan are also considered significant EOI partners due to the many personal and commercial links between the countries. These countries have remained Australia's major EOI partners for many years.

368. **Timeliness of responding to requests**. The timeliness of responding to requests is slightly less positive than what was reported in the 2010 Report in respect of the previous review period. However, at the time, Australia had received a limited amount of EOI requests. In addition, the ATO indicated that the EOI requests received during the new peer review period included more that were complex in nature. For the present review period an overall 66% of requests have been answered within 90 days, and 97% of all the requests within one year.

369. **Status updates.** The 2010 Report included a recommendation that Australia should ensure that the new system put in place, to provide updates to EOI partners after 90 days in those cases where it is not possible to provide a substantive response within that timeframe, operates effectively. The systems were subsequently improved to ensure that status updates are provided, but a number of peers stated that no status update was provided in some cases. The ATO indicated that this issue has been stressed within the EOI team, but it may have happened that no status updates were provided if the EOI Unit knows that information will be provided shortly thereafter. The ATO indicated, as confirmed by peer input, that the situation regarding status updates has improved during the peer review period, and guidelines have been put in place.

370. The recommendation is removed from the box because the ATO has put in place a system to alert the case worker of the 90-day deadline, such that status updates were provided in most cases during the peer review period. However, as confirmed by some peer inputs, the EOI Unit has not provided a status update in all cases during the peer review period, such that the

recommendation remains in the text of this report and listed in Annex 5 *List of in-text recommendations*. It is recommended that Australia ensures that status updates to EOI partners after 90 days are provided in all those cases where it is not possible to provide a substantive response within that timeframe.

Issues covered under other essential elements

371. The timeliness or the handling of requests may be affected by aspects of a jurisdiction's system other than the organisation of the EOI function itself that are dealt with in this essential element C.5. Where this is the case, then these issues are analysed under the appropriate heading. In particular, section B.1. *Access to Information* analyses the access to information generally. Section B.2 on *Rights and Safeguards* analyses issues arising in respect of notification rules or appeal rights. In addition, section C.3 *Confidentiality* deals with the storage and handling of requests and related information as well as an assessment of whether disclosure of information to the holder of the information is in conformity with the standard.

372. No issues were identified under these sections that have an impact on element C.5 and elements B.1, B.3 and C.4 have been rated Compliant.

ToR C.5.2: Organisational processes and resources

373. The 2010 Report found no issues regarding organisational processes and resources. During the peer review period, the organisational processes and resources were adequate to ensure timeliness and quality of EOI request responses by Australia.

374. For the purposes of Australia's DTCs, TIEAs and the Multilateral Convention, the Competent Authority is the Commissioner of Taxation or an authorised representative. This authorisation also extends to senior officers engaged in international exchange of information. For practical purposes the Competent Authority function has been delegated to the EOI area for the administration of exchange with Australian's EOI partners.

375. The EOI team comprises a Director, two Assistant Directors and seven EOI officers. The team is responsible for:

- administering Australia's Competent Authority arrangements;
- managing the workflow of specific, spontaneous and automatic exchanges of information;
- co-ordinating the ATO's overall participation in the international information exchange environment;
- negotiating TIEAs with other countries; and
- managing participation in the Global Forum's Peer Review process.

376. The Director oversees all functions of the EOI team and is the Competent Authority in relation to all day to day exchange of information matters. One Assistant Director oversees all EOI (incoming and outgoing EOIR, spontaneous EOI and the JITSIC network). All seven personnel are involved in this type of work (one officer is responsible for the JITSIC network). One Assistant Director is currently responsible for AEOI, FATCA and CRS. Two of the above personnel also assist in this area.

377. The personnel available to the EOI Unit are extended by the relationship the Unit has with other teams throughout the ATO which it deals with regularly (mainly in compliance business lines but occasionally law areas such as the International Centre of Expertise). Compliance Officers are also available in the business lines to assist with case work in order to action an EOI request.

378. The ATO indicated that with the expected increase in workloads emerging from FATCA, CRS, Country by Country Reporting (CbCR) and the Exchange of Rulings initiatives, they are in the process of increasing staff resources in the transparency and EOI teams. Early in 2017, the ATO has established a number of dedicated teams with requisite skill sets to design, test and implement the effective use of automated data (AEOI). Two teams are directly engaged with the planning and design of revised risk assessment approaches for the optimised use of FATCA, CbCR, CRS, Rulings and existing AEOI data sets:

- 9 full-time equivalent staff (FTE) with a focus on the delivery of a coherent strategy of ongoing data discovery and utilisation. This team will develop intelligence and knowledge around internationally exchanged datasets, work with ATO's Smarter Data teams around receiving, storing and analysing data, and will engage with potential users of the data – business line compliance and audit teams, risk managers, researchers/analysts.
- The Smarter Data team: 8 FTE with a focus on the better use of intelligence and metrics for risk detection and treatment. Developing an enhanced analytics/intelligence function that will allow incoming and outgoing data to be evaluated more effectively and used more strategically. Supporting global peer reviews and other monitoring/review requirements under the OECD's new BEPS Inclusive Framework, and facilitating closer collaboration and assistance across jurisdictions.

379. These teams are now working closely with ATO's transparency project teams. The project teams are the primary connection points to OECD forums and the international initiatives now underway with all jurisdictions regarding risk assessment and the effective use of data.

Incoming requests

380. The process for managing EOI requests applied by the EOI Unit is described in paragraphs 290 to 294 of the 2010 Phase Report and was found to be adequate and efficient.

381. **EOI database.** Since 2015, the ATO has switched to a new database system called SIEBEL. All incoming requests are registered as cases on SIEBEL, which is a case management system used by the majority of compliance areas within the ATO. This system provides the benefit of making the case management of EOI more electronic. It also facilitates faster referrals and transfer of information between the EOI Unit and other areas of the ATO. All EOI requests are also monitored on an Excel spreadsheet.

382. Each step of these procedures is logged in the project management software, which provides notices to the officer of impending deadlines. All communications to the requesting competent authority are reviewed and validated by the head of the EOI unit (Competent Authority) and sent out under his signature.

383. **Requests for clarification.** Where there is any lack of clarity or insufficient detail is provided in an incoming request, the ATO indicated (and this was confirmed by peers) that it will always seek clarification and/or provide as much information as possible that in the view of the Competent Authority is seen as being relevant to the efficient execution of the request. Requests for clarification take the form of an email or letter back to the requesting jurisdiction, or in some instances a phone call to their Competent Authority to resolve the matter more quickly. In cases where the EOI Unit has requested clarification but has not received a response, the ATO indicated the EOI Unit will follow up with the jurisdiction involved before closing the case.

Outgoing requests

384. The 2016 ToR includes an additional requirement to ensure the quality of requests made by assessed jurisdictions. The EOI manual provides rules for handling outgoing requests, establishing procedures to ensure the quality of the EOI requests. The quality of EOI requests sent by Australia was confirmed by the positive comments received from peers.

385. **Process.** All outgoing requests are made through a centralised EOI Unit and follow standard procedures to ensure consistency which are contained in the EOI Manual. These procedures are in line with the OECD EOI Manual. Regarding the methods of transmission, Australia actively encourages its EOI partners to use encrypted electronic exchange. However, Australia will send its EOI request via mail if the EOI partner does not use encrypted emails for EOI purposes.

386. **Quality checks**. When processing outgoing requests, the EOI Unit uses template letters, as far as possible, and the letter is then reviewed by the business line gatekeepers. A third check is ensured by the ultimate approval and signature is undertaken by the EOI Unit Director (Competent Authority). The EOI Unit Director confirmed that he checks all outgoing EOI requests before their sending to the EOI partner.

387. **Template.** The EOI Unit has been using a new template. During the peer review period, the EOI Unit used a checklist that EOI staff followed in processing outgoing EOI requests.

388. **EOI Outgoing requests during the peer review period.** Australia sent 286 EOI requests in 2014, 172 in 2015 and 187 in 2016. The EOI Unit did not track the number of requests for clarifications received, but indicated that these were rare and usually dealt with complex requests. The ATO indicated there is no specific procedure to deal with requests for clarification. However, the EOI Unit Officer responsible for the request would provide clarification in consultation with the case/audit officer making the initial request. This is then reviewed by the Competent Authority prior to being sent back to the other jurisdiction. In terms of timeliness, replies to requests for clarification usually take place within a week of receiving the request for clarification.

Training

389. Training has been provided both to the EOI officers in the EOI unit as well as to local officers with respect to the application of the EOI manual generally. This has included an intense five day training course for the EOI officers as well as two day training for local offices and for officers in the central tax authority.

390. In addition, members of the EOI unit attend Global Forum Competent Authority meetings and have been made available as expert assessors for peer reviews. In this latter context, the head of the EOI Unit as well as two of the EOI officers have attended assessor training courses provided by the Global Forum.

ToR C.5.3: Unreasonable, disproportionate or unduly restrictive conditions for EOI

391. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: Jurisdiction's response to the review report[16]

Australia has a long and established history of supporting and promoting the exchange of information for tax purposes, and contributing to improving global tax transparency.

The Australian Government continues to take decisive action to strengthen and enhance the enforcement and scope of existing domestic tax laws, counter multinational tax avoidance, and promote greater tax transparency. For example, since the last peer review in 2010, Australia has signed the MAAC and implemented FATCA, the Common Reporting Standard and Country-by-Country reporting.

Consistent with our commitment to a number of global transparency initiatives, Australia supports the role of the Global Forum and its peer review processes in assisting and assessing jurisdictions' implementation of the international tax transparency standards.

Australia appreciates the diligent work undertaken by the assessment team in evaluating Australia against the revised EOIR Standard. We are also grateful for the detailed consideration and insightful comments and observations provided by the Peer Review Group.

Australia is pleased that our second peer review has again highlighted our robust frameworks and real-world practice in relation to the access of tax information, rights and safeguards, confidentiality, quality and timeliness of requests and responses, as well as our extensive international EOI network. Australia considers that these arrangements are central to promoting public confidence in the effectiveness and fairness of the tax system.

Consistent with the findings of the report, Australia recognises that there are opportunities through which we can further strengthen the availability of beneficial ownership information in light of the new requirements under the EOIR standard. This is notwithstanding that Australia already has a wide range of beneficial ownership information available (which includes

16. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

information available through our AML/CTF, taxation, corporations law, common law fiduciary duties and other legal frameworks).

In assessing countries against the revised criteria for the EOIR standard, Australia recognises the Peer Review Group's desire to ensure that issues pertaining to horizontal equity are appropriately taken into consideration as part of the evaluation process. This necessarily includes neutrality with respect to the consideration of both civil and common law legal systems in objectively evaluating the adequacy of beneficial ownership frameworks, and with a focus on whether the relevant information to be exchanged is available, accessible and can be provided on request.

Australia is proud that, as confirmed in the report, we have been able to provide full beneficial ownership information whenever requested. That is, we are fully effective in practice.

Australia thanks the Peer Review Group for this report.

Annex 2: List of jurisdiction's EOI mechanisms

1. Bilateral international agreements for the exchange of information

EOI partner	Type of agreement	Date signed	Date entered into force
Andorra	TIEA	24-Sep-11	03-Dec-12
Anguilla	TIEA	20-Mar-10	17-Feb-11
Antigua and Barbuda	TIEA	30-Jan-07	14-Dec-09
Argentina	DTA	29-Aug-99	30-Dec-99
Aruba	TIEA	16-Dec-09	17-Aug-11
Austria	DTA	08-Jul-86	01-Sep-88
Bahamas	TIEA	30-Mar-10	11-Jan-11
Bahrain	TIEA	15-Dec-11	15-Dec-12
Belgium	DTA	20-Mar-84	20-Sep-86
Belize	TIEA	31-Mar-10	11-Jan-11
Bermuda	TIEA	10-Nov-05	20-Sep-07
British Virgin Islands	TIEA	27-Oct-08	12-Apr-10
Brunei Darussalam	TIEA	06-Aug-13	25-Feb-16
Canada	DTC	21-May-80	29-Apr-81
Cayman Islands	TIEA	30-Mar-10	12-Feb-11
Chile	DTA	10-Mar-10	08-Feb-13
China (People's Republic of)	DTA	17-Nov-88	28-Dec-90
Cook Islands	TIEA	28-Oct-09	02-Sep-11
Costa Rica	TIEA	01-Jul-11	04-Feb-13
Curaçao	TIEA	01-Mar-07	04-Apr-08
Czech Republic	DTA	28-Mar-95	27-Nov-95
Denmark	DTA	01-Apr-81	27-Oct-81

EOI partner	Type of agreement	Date signed	Date entered into force
Dominica	TIEA	31-Mar-10	08-Dec-11
Fiji	DTA	15-Oct-90	28-Dec-90
Finland	DTC	20-Nov-06	10-Nov-07
France	DTC	20-Jun-06	01-Jul-09
Germany	DTA	24-Nov-72	15-Feb-75
Germany	DTA	12-Nov-15	7-12-16
Gibraltar	TIEA	25-Aug-09	26-Jul-10
Grenada	TIEA	30-Mar-10	09-Jan-12
Guatemala	TIEA	26-Sep-13	Not yet in force
Guernsey	TIEA	09-Oct-09	27-Jul-10
Hungary	DTA	29-Nov-90	10-Apr-92
India	DTA	25-Jul-91	30-Dec-91
Indonesia	DTA	22-Apr-92	14-Dec-92
Ireland	DTA	31-May-83	21-Dec-83
Isle of Man	TIEA	29-Jan-09	05-Jan-10
Italy	DTC	14-Dec-82	05-Nov-85
Japan	DTC	31-Jan-08	03-Dec-08
Jersey	TIEA	10-Jun-09	05-Jan-10
Kiribati	DTA	23-Mar-91	28-Jun-91
Korea	DTC	12-Jul-82	01-Jan-84
Liberia	TIEA	11-Aug-11	23-May-12
Liechtenstein	TIEA	21-Jun-11	21-Jun-12
Macao (China)	TIEA	17-Jul-11	18-May-12
Malaysia	DTA	20-Aug-80	26-Jun-81
Malta	DTA	09-May-84	20-May-85
Marshall Islands	TIEA	12-May-10	25-Nov-11
Mauritius	TIEA	08-Dec-10	25-Nov-11
Mexico	DTA	09-Sep-02	31-Dec-03
Monaco	TIEA	01-Apr-10	13-Jan-11
Montserrat	TIEA	23-Nov-10	25-Nov-11
Netherlands	DTC	17-Mar-76	27-Sep-76
New Zealand	DTC	26-Jun-09	19-Mar-10
Norway	DTC	08-Aug-06	12-Sep-07

EOI partner	Type of agreement	Date signed	Date entered into force
Papua New Guinea	DTA	24-May-89	29-Dec-89
Philippines	DTA	11-May-79	17-Jun-80
Poland	DTA	07-May-91	04-Mar-92
Romania	DTA	02-Feb-00	11-Apr-01
Russia	DTA	07-Sep-00	17-Dec-03
Samoa	TIEA	16-Dec-09	24-Feb-12
San Marino	TIEA	05-Mar-10	11-Jan-11
Saint Vincent and the Grenadines	TIEA	20-Mar-10	11-Jan-11
Singapore	DTA	11-Feb-69	04-Jun-69
Sint Maarten	TIEA	01-Mar-07	04-Apr-08
Slovak Republic	DTA	24-Aug-99	22-Dec-99
South Africa	DTC	01-Jul-99	21-Dec-99
Spain	DTA	24-Mar-92	10-Dec-92
Sri Lanka	DTA	18-Dec-89	21-Oct-91
Saint Kitts and Nevis	TIEA	05-Mar-10	11-Jan-11
Saint. Lucia	TIEA	30-Mar-10	10-Feb-11
Sweden	DTA	14-Jan-81	04-Sep-81
Switzerland	DTA	28-Feb-80	13-Feb-81
Switzerland	DTC	30-Jul-13	14-Oct-14
Chinese Taipei	DTA	29-May-96	21-Oct-96
Thailand	DTC	31-Aug-89	27-Dec-89
Turkey	DTA	29-Apr-10	05-Jun-13
Turks and Caicos Islands	TIEA	30-Mar-10	25-Jan-11
United Kingdom	DTC	21-Aug-03	17-Dec-03
United States	DTC	06-Aug-82	31-Oct-83
Uruguay	TIEA	30-Mar-10	01-Jul-14
Vanuatu	TIEA	21-Apr-10	01-Sep-11
Viet Nam	DTC	13-Apr-92	10-Dec-92
Total DTC	**46**		
Total TIEA	**36**		
Total DTC+ TIEA	**82**		

2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention).[17] The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Convention was opened for signature on 1st June 2011.

Australia signed the amended Convention on 1 June 2011. It deposited its instrument of ratification with the Depositary on 30 August 2012 and the Convention entered into force for Australia on 1 December 2012. Currently, the amended Convention is in force in respect of the following jurisdictions[1]:

17. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters

Status – 12 May 2017

	Country/jurisdiction*	Original convention			Protocol (P)/amended convention (AC)		
		Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
1	Albania				01-03-2013 (AC)	08-08-2013	01-12-2013
2	Andorra				05-11-2013 (AC)	25-08-2016	01-12-2016
3	Anguilla[1]						01-03-2014
4	Argentina				03-11-2011 (AC)	13-09-2012	01-01-2013
5	Aruba[2]			01-02-1997			01-09-2013
6	Australia				03-11-2011 (AC)	30-08-2012	01-12-2012
7	Austria				29-05-2013 (AC)	28-08-2014	01-12-2014
8	Azerbaijan	26-03-2003	03-06-2004	01-10-2004	23-05-2014 (P)	29-05-2015	01-09-2015
9	Barbados				28-10-2015 (AC)	04-07-2016	01-11-2016
10	Belgium	07-02-1992	01-08-2000	01-12-2000	04-04-2011 (P)	08-12-2014	01-04-2015
11	Belize				29-05-2013 (AC)	29-05-2013	01-09-2013
12	Bermuda[3]						01-03-2014
13	Brazil				03-11-2011 (AC)	01-06-2016	01-10-2016
14	British Virgin Islands[4]						01-03-2014
15	Bulgaria	26-10-2015			26-10-2015 (P)	14-03-2016	01-07-2016
16	Burkina Faso				25-08-2016 (AC)		
17	Cameroon				25-06-2014 (AC)	30-06-2015	01-10-2015
18	Canada	28-04-2004			03-11-2011 (P)	21-11-2013	01-03-2014
19	Cayman Islands[5]						01-01-2014
20	Chile				24-10-2013 (AC)	07-07-2016	01-11-2016
21	China (People's Republic of)				27-08-2013 (AC)	16-10-2015	01-02-2016
22	Colombia				23-05-2012 (AC)	19-03-2014	01-07-2014
23	Cook Islands				28-10-2016 (AC)		

	Country/jurisdiction*	Original convention			Protocol (P)/amended convention (AC)		
		Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
24	Costa Rica				01-03-2012 (AC)	05-04-2013	01-08-2013
25	Croatia				11-10-2013 (AC)	28-02-2014	01-06-2014
26	Curaçao[6]			10-10-2010			01-09-2013
27	Cyprus[7]	10-07-2014	19-12-2014	01-04-2015	10-07-2014 (P)	19-12-2014	01-04-2015
28	Czech Republic				26-10-2012 (AC)	11-10-2013	01-02-2014
29	Denmark	16-07-1992	16-07-1992	01-04-1995	27-05-2010 (P)	28-01-2011	01-06-2011
30	Dominican Republic				28-06-2016 (AC)		
31	El Salvador				01-06-2015 (AC)		
32	Estonia				29-05-2013 (AC)	08-07-2014	01-11-2014
33	Faroe Islands[8]			01-01-2007			01 06 2011
34	Finland	11-12-1989	15-12-1994	01-04-1995	27-05-2010 (P)	21-12-2010	01-06-2011
35	France	17-09-2003	25-05-2005	01-09-2005	27-05-2010 (P)	13-12-2011	01-04-2012
36	Gabon				03-07-2014 (AC)		
37	Georgia	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
38	Germany	17-04-2008	28-08-2015	01-12-2015	03-11-2011 (P)	28-08-2015	01-12-2015
39	Ghana				10-07-2012 (AC)	29-05-2013	01-09-2013
40	Gibraltar[9]						01-03-2014
41	Greece	21-02-2012	29-05-2013	01-09-2013	21-02-2012 (P)	29-05-2013	01-09-2013
42	Greenland[10]			01-04-1995			01-06-2011
43	Guatemala				05-12-2012 (AC)		
44	Guernsey[11]						01-08-2014
45	Hungary	12-11-2013	07-11-2014	01-03-2015	12-11-2013 (P)	07-11-2014	01-03-2015
46	Iceland	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
47	India				26-01-2012 (AC)	21-02-2012	01-06-2012
48	Indonesia				03-11-2011 (AC)	21-01-2015	01-05-2015
49	Ireland				30-06-2011 (AC)	29-05-2013	01-09-2013
50	Isle of Man[12]						01-03-2014
51	Israel				24-11-2015 (AC)	31-08-2016	01-12-2016
52	Italy	31-01-2006	31-01-2006	01-05-2006	27-05-2010 (P)	17-01-2012	01-05-2012

	Country/jurisdiction*	Original convention			Protocol (P)/amended convention (AC)		
		Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
53	Jamaica				01-06-2016 (AC)		
54	Japan	03-11-2011	28-06-2013	01-10-2013	03-11-2011 (P)	28-06-2013	01-10-2013
55	Jersey[13]						01-06-2014
56	Kazakhstan				23-12-2013 (AC)	08-04-2015	01-08-2015
57	Kenya				08-02-2016 (AC)		
58	Korea	27-05-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
59	Kuwait				05-05-2017 (AC)		
60	Latvia				29-05-2013 (AC)	15-07-2014	01-11-2014
61	Lebanon				12-05-2017 (AC)	12-05-2017	01-09-2017
62	Liechtenstein				21-11-2013 (AC)	22-08-2016	01-12-2016
63	Lithuania	07-03-2013	04-02-2014	01-06-2014	07-03-2013 (P)	04-02-2014	01-06-2014
64	Luxembourg	29-05-2013	11-07-2014	01-11-2014	29-05-2013 (P)	11-07-2014	01-11-2014
65	Malaysia				25-08-2016 (AC)	03-01-2017	01-05-2017
66	Malta				26-10-2012 (AC)	29-05-2013	01-09-2013
67	Marshall Islands				22-12-2016 (AC)	22-12-2016	01-04-2017
68	Mauritius				23-06-2015 (AC)	31-08-2015	01-12-2015
69	Mexico	27-05-2010	23-05-2012	01-09-2012	27-05-2010 (P)	23-05-2012	01-09-2012
70	Moldova	27-01-2011	24-11-2011	01-03-2012	27-01-2011 (P)	24-11-2011	01-03-2012
71	Monaco				13-10-2014 (AC)	14-12-2016	01-04-2017
72	Montserrat[14]						01-10-2013
73	Morocco				21-05-2013 (AC)		
74	Nauru				28-06-2016 (AC)	28-06-2016	01-10-2016
75	Netherlands	25-09-1990	15-10-1996	01-02-1997	27-05-2010 (P)	29-05-2013	01-09-2013
76	New Zealand				26-10-2012 (AC)	21-11-2013	01-03-2014
77	Nigeria				29-05-2013 (AC)	29-05-2015	01-09-2015
78	Niue				27-11-2015 (AC)	06-06-2016	01-10-2016
79	Norway	05-05-1989	13-06-1989	01-04-1995	27-05-2010 (P)	18-02-2011	01-06-2011
80	Pakistan				14-09-2016 (AC)	14-12-2016	01-04-2017
81	Panama				27-10-2016 (AC)	16-03-2017	01-07-2017

	Country/jurisdiction*	Original convention			Protocol (P)/amended convention (AC)		
		Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
82	Philippines				26-09-2014 (AC)		
83	Poland	19-03-1996	25-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011
84	Portugal	27-05-2010			27-05-2010 (P)	17-11-2014	01-03-2015
85	Romania	15-10-2012	11-07-2014	01-11-2014	15-10-2012 (P)	11-07-2014	01-11-2014
86	Russia				03-11-2011 (AC)	04-03-2015	01-07-2015
87	Saint Kitts and Nevis				25-08-2016 (AC)	25-08-2016	01-12-2016
88	Saint Lucia				21-11-2016 (AC)		
89	Saint Vincent and the Grenadines				25-08-2016 (AC)	31-08-2016	01-12-2016
90	Samoa				25-08-2016 (AC)	31-08-2016	01-12-2016
91	San Marino				21-11-2013 (AC)	28-08-2015	01-12-2015
92	Saudi Arabia				29-05-2013 (AC)	17-12-2015	01-04-2016
93	Senegal				04-02-2016 (AC)	25-08-2016	01-12-2016
94	Seychelles				24-02-2015 (AC)	25-06-2015	01-10-2015
95	Singapore				29-05-2013 (AC)	20-01-2016	01-05-2016
96	Sint Maarten[15]			10-10-2010			01-09-2013
97	Slovak Republic				29-05-2013 (AC)	21-11-2013	01-03-2014
98	Slovenia	27-05-2010	31-01-2011	01-05-2011	27-05-2010 (P)	31-01-2011	01-06-2011
99	South Africa				03-11-2011 (AC)	21-11-2013	01-03-2014
100	Spain	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)	28-09-2012	01-01-2013
101	Sweden	20-04-1989	04-07-1990	01-04-1995	27-05-2010 (P)	27-05-2011	01-09-2011
102	Switzerland				15-10-2013 (AC)	26-09-2016	01-01-2017
103	Tunisia				16-07-2012 (AC)	31-10-2013	01-02-2014
104	Turkey				03-11-2011 (AC)		
105	Turks and Caicos Islands[16]						01-12-2013
106	Uganda				04-11-2015 (AC)	26-05-2016	01-09-2016
107	Ukraine	20-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)	22-05-2013	01-09-2013
108	United Arab Emirates				21-04-2017 (AC)		
109	United Kingdom	24-05-2007	24-01-2008	01-05-2008	27-05-2010 (P)	30-06-2011	01-10-2011
110	United States	28-06-1989	13-02-1991	01-04-1995	27-05-2010 (P)		

	Country/jurisdiction*	Original convention			Protocol (P)/amended convention (AC)		
		Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry into force	Signature (opened on 27-05-2010)	Deposit of instrument of ratification, acceptance or approval	Entry into force
111	Uruguay				01-06-2016 (AC)	31-08-2016	01-12-2016

Notes: * This table includes State Parties to the Convention as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

1. Extension by the United Kingdom.
2. Extension by the Kingdom of the Netherlands.
3. Extension by the United Kingdom.
4. Extension by the United Kingdom.
5. Extension by the United Kingdom.
6. Extension by the Kingdom of the Netherlands. Curacao used to be a constituent of the “Netherlands Antilles”, to which the original Convention applied as from 01-02-1997.
7. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

   Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
8. Extension by the Kingdom of Denmark.
9. Extension by the United Kingdom.
10. Extension by the Kingdom of Denmark.
11. Extension by the United Kingdom.
12. Extension by the United Kingdom.
13. Extension by the United Kingdom.
14. Extension by the United Kingdom.
15. Extension by the Kingdom of the Netherlands. Sint Maarten used to be a constituent of the “Netherlands Antilles”, to which the original Convention applied as from 01-02-1997.
16. Extension by the United Kingdom.

3. Other Multilateral EOI agreements

Australia is not party to other Multilateral EOI agreements.

Annex 3: List of laws, regulations and other material received

Tax law, regulations and other material

Income Tax Assessment Act 1936

Tax Administration Act 1953

Income Tax Assessment Act 1997

Practice Statement PS LA 2007/13 (Exchange of Information with foreign revenue authorities in relation to goods and services tax, under international tax agreements)

Practice Statement PS LA 2006/9 (Referral of work to International Strategy and Operations)

Practice Statement PS LA 2006/3(The types of information that can be exchanged under Article 19 of the Australia-Singapore tax treaty)

Practice Statement PS LA 2005/2 (Penalty for failure to keep or retain records)

Taxation Ruling 96/7 (Income tax: record keeping – section 262A – general principles)

Taxation Ruling TR 2005/9 (Income tax: record keeping – electronic records)

Taxation Determination TD 2002/16 (obligations under the Income Tax Assessment Act 1936 where a business chooses to keep some of its records as encrypted information)

ATO Guidelines to Accessing Professional Accounting advisor's Papers

ANAO Audit Report (The Management and Use of Double Taxation Agreement Information Collected through Automatic Exchange)

Specification for Annual Investment Income Reports

ATO Guide to Information Security

Company Tax Return

Anti-money laundering law

Policy (Additional Customer Due Diligence Requirements) Principles 2014

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The Financial Transactions Reporting Act 1998

Commercial law, regulations and other material

Banking Act 1959

Corporations Act 2001

Australian Capital Territory – Partnership Act 1963

New South Wales – Commons Management Act 1989

New South Wales – Partnership Act 1892

New South Wales – Trustee Act 1925

Northern Territory – Partnership Act 1997

Queensland – Partnership Act 1891

Queensland – Partnership (Limited Liability) Act 1988

Queensland – Trust Accounts Act 1973

South Australia – Partnership Act 1891

South Australia – Trustee Regulations 1996

Tasmania – Partnership Act 1891

Tasmania – Trustee Companies Act 1953

Victoria – Partnership Act 1958

Victoria – Unclaimed Money Act 2008

Victoria – Trustee Act 1958

Western Australia – Limited Partnership Act 1905

Western Australia – Partnership Act 1895

Western Australia – Trustee Act 1962

Western Australia – Trustee Companies Act 1987

Other legislation and regulations

International Tax Agreements Act 1953

Annex 4: Authorities interviewed during on-site visit

Australian Tax Office

Acting Deputy Commissioner, Large Business and International

Deputy Commissioner, Case Leadership, Small and Medium Enterprises

Assistant Commissioner – International Relations

Manager, EOI Unit

Senior Technical Specialist, EOI Unit

Members – EOI Unit

Auditors Responsible for executing EOI requests

Audit Manager

Australian Securities and Investment Commission (ASIC)

Counsel, Registry Services and Licensing

Senior Manager, Major Fraud and International

Senior Manager, International Cooperation Requests

Australian Transaction Reports and Analysis Centre (AUSTRAC)

Annex 5: List of in-text recommendations

- Element A.1. Although the gap is limited, Australia should ensure that legal and beneficial ownership information for the de-registered companies is kept for a minimum period of 5 years in all cases.
- Element A.2. Although the gap is limited, Australia should ensure that accounting information for the de-registered companies is kept for a minimum period of 5 years in all cases.
- Element C.2: Australia should continue to develop its EOI network with all relevant partners.
- Element C.5: Status updates – It is recommended that Australia ensures that status updates to EOI partners after 90 days are provided in all those cases where it is not possible to provide a substantive response within that timeframe.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request AUSTRALIA 2017 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

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