



Definition of 'bullion' under the AML/CTF Act

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Introduction

- 1.1 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is designed to assist in combating money laundering and the financing of terrorism. To achieve these aims, the AML/CTF Act places certain obligations on entities known as 'reporting entities' that provide 'designated services' (both defined in section 5 of the AML/CTF Act).
- 1.2 The tables in section 6 of the AML/CTF Act describe a range of activities which constitute the provision of 'designated services'. Designated services include buying or selling bullion in the course of carrying on a business. These are items 1 and 2 in table 2 set out in subsection 6(3) of the AML/CTF Act.
- 1.3 This guidance note provides assistance on what AUSTRAC considers is 'bullion' for the purposes of the AML/CTF Act.

2 Definition of 'bullion' under AML/CTF Act

- 2.1 The AML/CTF Act provides the following definition of 'bullion':

bullion includes anything that, under the regulations, is taken to be bullion for the purposes of this Act.

- 2.2 The *Replacement Explanatory Memorandum* for the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006* states that:

bullion includes anything, that under the regulations, is taken to be bullion for the purposes of the Bill. The term *bullion* therefore has its ordinary meaning and the words *is taken to be* are intended to extend the ordinary meaning. The definition is not affected by any other definition in the Bill.

- 2.3 No regulations have been made extending the meaning of 'bullion'. The term therefore retains its ordinary meaning.

3 Dictionary definitions of 'bullion'

- 3.1 The *Macquarie Dictionary Online* defines 'bullion' as being:

1. gold or silver in the mass. 2. gold or silver in the form of bars or ingots.

The *Australian Concise Oxford Dictionary* (2nd edition, 1992) states that 'bullion' is:

a metal (especially gold or silver) in bulk before coining, or valued by weight.

- 3.2 AUSTRAC considers the adoption of a 'popular' definition, such as those in the Macquarie and Oxford dictionaries, potentially problematic. The two dictionary definitions referred to are not consistent in the range of metals encapsulated by the term 'bullion' as used in the metal refining and distribution industry and do not encapsulate key elements found in commercial use of the term. It is AUSTRAC's view that the term is used in a commercial context in the AML/CTF Act.

4 Other definitions of 'bullion'

- 4.1 Australian courts have given little consideration to the term 'bullion' and what consideration has been given is passing at best.
- 4.2 A variety of market exchanges dealing in gold, silver and other precious metals have working definitions of 'bullion' tailored to their specific needs. Their definitions are restricted to the types of metals (e.g. gold or silver) traded on those exchanges, often with a requirement for specific grades of fineness and 'marking' (a mark of authenticity applied by an approved manufacturer by way of steel punches or laser marking). Although there are a number of countries which are parties to the Vienna Convention on the control of the fineness and the hallmarking of precious metal objects, there is no uniform international hallmarking system in place to equivalently compare fineness and stamping between various markets, especially those which are not parties to the Vienna Convention.
- 4.3 However, some key features common to each of these definitions can be distilled, including that 'bullion' refers to a substance that is:
- (a) principally composed of a small range of precious metals, being generally gold, silver or platinum
 - (b) held or traded for primarily investment purposes
 - (c) valued principally by reference to the quality (or fineness) and market price of the constituent metal which is authenticated by either hallmarking, stamping or the form of the item (e.g. for coins); and
 - (d) often in standardised forms and sizes.
- 4.4 It is clear that some items would not be 'bullion' on any of the definitions. These include:
- (a) collectable or proof coins which are traded based on their numismatic, commemorative or rarity value
 - (b) dore, which is insufficiently refined to constitute 'bullion'
 - (c) other 'platinum group metals' such as iridium, rhodium, osmium and ruthenium which are principally traded for their industrial value.

5 AUSTRAC's view – definition of 'bullion' for the purposes of the *Financial Transaction Reports Act 1988 (FTR Act)*

- 5.1 'Bullion' is not defined under the FTR Act. 'Bullion seller' is defined as meaning 'a person who carries on a business of selling bullion.'

- 5.2 In November 1997, AUSTRAC released *AUSTRAC Guideline No. 7 – Bullion Sellers* (formerly 'CTRA Guideline No.7') which provided the following definition of 'bullion':

Gold, silver, platinum group metals in the form of bars or ingots, granules of 24 carat, and bullion coins which does not include collector coins or proof coins.

"Collector coins" is a term deriving its ordinary commercial meaning.

"Proof coins" is a term deriving its ordinary commercial meaning.

"Bullion coins" is a term meaning coins of a precious metal purity of .9166 or above.

Bullion coins such as Krugerrands, Australian Gold Nugget coins*, Australian Koala coins*, Australian Kookaburra coins*, American Eagles, Canadian Maples, 'Taels' (Chinese ingots) which are tradable and bought and sold on the basis of quality, quantity and market price, are considered to be bullion.

*These coins may also be regarded as collector coins.

- 5.3 It is noted that 'platinum group metals' comprise platinum, palladium, iridium, rhodium, osmium and ruthenium.
- 5.4 It is AUSTRAC's understanding that this definition of 'bullion' is currently being used by industry on an informal basis.

6 Consideration of AUSTRAC Guideline No. 7 definition

- 6.1 AUSTRAC considers that the AUSTRAC Guideline No. 7 definition provides a sound base for the formulation of a definition specifically for the purposes of the AML/CTF Act, as:
- (a) the definition has been in use since 1997 and as a result it has provided continuity and certainty for industry
 - (b) the definition excludes 'collector' and 'proof' coins which is in keeping with the accepted industry understanding of 'bullion'.
- 6.2 AUSTRAC considers that re-wording of the definition of 'bullion' provided by AUSTRAC in Guideline No. 7 would assist industry understand the extent of the designated services set out in table 2 in subsection 6(3) of the AML/CTF Act.

7 Definition of 'bullion' for the purposes of the AML/CTF Act

- 7.1 AUSTRAC considers that the following definition of 'bullion' is appropriate for the purposes of the AML/CTF Act:

'Bullion' means gold, silver, platinum or palladium authenticated to a specified fineness in the form of:

- (a) bars, ingots, plates, wafers or other similar mass form; or
- (b) coins

which trade at a price determined by reference to the market value of the constituent metal and the authenticated fineness of the item.

'authentication of fineness' means commercially acceptable hallmark or stamping, or by means of the base form of an item, such as in the case of coins.

- 7.2 AUSTRAC considers that collector, proof or other coins which are traded on the basis of their numismatic, commemorative or rarity value are not bullion.
- 7.3 Granules have not been included as by definition granules are incapable of bearing a means of authentication as to fineness.
- 7.4 Other platinum group metals (besides platinum and palladium) comprising iridium, rhodium, osmium and ruthenium have not been included in the definition, as these metals are predominantly used for industrial purposes, rather than for trade-based investments.
- 7.5 AUSTRAC considers that it is the authentication of fineness (also known in the industry as 'assaying') and not the level of that fineness that defines 'bullion'; and does not consider that an ordinary meaning of 'bullion' should specify a minimum fineness. This is both because to do so is to arbitrarily tie the meaning of 'bullion' to that of a particular commodity exchange and because the level of fineness to which an item is authenticated is a commercial matter.
- 7.6 AUSTRAC considers it is unlikely that, whether by stamping or hallmarking, fineness of less than approximately .9166 (equal to 22 carat gold) will be authenticated or assayed, but this is a commercial matter which may vary over time.

Further information

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Help Desk via:

- email to help_desk@austrac.gov.au
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

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The information contained herein is current as at the date of this document.

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