

Anti-Money Laundering and Counter Terrorism Financing

Proposed Tranche 2 and modernization
Reforms

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Agenda

- Australia: from leader to laggard
- The proposals to extend and modernise the regime
 - New players
 - Real estate and other gatekeepers
 - Digital asset service providers
 - New rules
 - Risk Assessments
 - Customer due diligence
 - Payments
 - Other changes

From leader to laggard

- Cash Transaction Reports Act 1988
 - focus on ‘cash dealers’ and stopping tax evasion
- Financial Action Task Force founded - G7 + 8 additional countries (including Australia) 1989
- FATF 40 Recommendations 1990
 - Australia Mutual Evaluations in 1992, 1996, 2005, 2015 (and proposed for 2026/7)
- AML/CTF Act 2006 (Tranche 1 response to MER)
- First consultation for Tranche 2 followed but was shelved

A turning point

- March 2024 4th follow up report – Australia STILL non-compliant with 4 out of 30 recommendations
 - 3 of these relate to ‘Tranche 2 entities’ – Australia is one of only 5 non-compliant countries in this respect
 - 1 relates to a register of beneficial ownership
- Australia risks being treated as high ML/TF risk
- Nine years after the 2015 MER required action, the Albanese Government has committed to legislating in 2024

What is tranche 2

- Designated Non-Financial Businesses and Professions
 - Real estate professionals
 - Professional Service Providers: Lawyers, Accountants, Trust and Company Service Providers,
 - Dealers in precious stones and metals
 - long recognised as susceptible to money laundering - to be brought into the AML/CTF regime

New designated services

- Buying and selling real estate for a client
 - Buyers agents
 - Sellers agents
 - Direct sales (eg developers)
- includes contractual rights that are not land
 - personal rights to be granted an interest in land,
 - contractual rights over land
- Professional service providers
 - only specified activities
 - transfer of real property or a legal entity (in the course of a business)
 - controlling disbursement of money or accounts, securities or securities accounts, digital or other assets or property
 - facilitating capital raising and debt financing transactions
 - formation or restructuring of legal entities

New Designated Services

- Professional Service Providers
 - nominee director, trustee, partner, poa, or shareholder
 - providing a business or mailing address
- Dealers in precious metals or stones
 - accept or pay \$10,000 or more for sale/purchase of precious metals or stones
- Digital Currency Exchange Providers
 - exchange of digital currency for fiat currency is within the AML/CTF Regime. This is to be extended to other digital assets transactions:
 - exchanges between different types of digital assets
 - transfers, safekeeping and administration
 - provision of financial services relating to offer or sale
 - Broader definition of digital assets

Special problems of privilege for the legal profession

- Legal professional privilege protects confidential communications and confidential documents between a lawyer and a client made for the dominant purpose of providing legal advice or professional legal services to the client, or for use in current or anticipated litigation.
- Protecting Privilege
 - It will still be possible to claim privilege over information or documents that would otherwise be subject to the regime
- Suspicious Matter Reporting
 - the 1 - 3 day time period allowed is not sufficient to assess claims of privilege
 - 3 – 5 days allowed when RE reasonably considers it needs to determine when relevant information may be subject to LPP (but justification must be supplied)

Payments issues

- Remittance Services
 - replacing complex arrangements for electronic funds transfer instructions and designated remittance arrangements with the concept of a '**value transfer service**'
- Travel Rule
 - In payments, information about the payer and the payee must 'travel' with the transfer of value (payment)
 - Currently only applies to financial institutions
 - to be extended to remittance providers and digital asset service providers

Payments Issues

- IFTI Reports
 - focus on the institution with the direct payer/payee relationship: makes the incoming payment available or initiates the outgoing transaction
 - triggered by sending/receipt of 'value' rather than of the 'instruction'
 - extended to digital asset transfers
 - clarification of scope
- Nested Services relationships
 - enhanced due diligence to be required where an Australian entity provides services to a foreign counterparty remittance or digital asset service provider which in turn provides services to its own customers (akin to correspondent banking relationships)

Reforms to the current regime

- Risk Assessment and proportionate risk mitigation measures
 - Board oversight
- AMLCo – ‘fit and proper’
- ‘business groups’
- foreign branches and subsidiaries
- Tipping off offence
 - prevent disclosure of SMR information where likely to prejudice an investigation
- ‘Keep open’ notices
- Customer due diligence
 - Individual customer risk ratings
 - Initial CDD
 - before providing a service
 - Ongoing CDD
- Three levels
 - Simplified CDD for low risk customers
 - Standard CDD
 - Enhanced CDD for higher risk customers

Compliance Obligations

- Enrol with AUSTRAC
- Develop and maintain a **tailored** AML/CTF Program
 - Customer due diligence (KYC)
 - Ongoing customer due diligence
- Reporting
- Record keeping

Transition for new REs

- 2006 transition arrangements are a model
 - pre - commencement customers
 - – in ‘a business relationship with a reporting entity’
 - › a continuing element (more than an occasional transaction)
 - No KYC for existing or new designated service unless triggered by SMR or change in risk profile
 - Ongoing Customer Due Diligence applies

Implementation Issues

- Governance and the bigger picture
 - Trend towards increased board accountability
 - ASIC prosecution of 11 current and former directors of Star Casino
 - AUSTRAC statements that it may join individuals to proceedings
 - Accountability under FAR
 - Review in response to new obligation to establish internal controls to ensure Board is reasonably satisfied the reporting entity is effectively identifying mitigating and managing ML/TF risk

Implementation Issues

- New entrants
 - decisions as to how to treat designated services – treat all clients as subject to the regime or build in checkpoints
 - systems to identify and track pre-commencement customers and maintain ongoing due diligence
 - Keep records from the beginning
- AML/CTF Programs
 - Redraft and review risk assessments and risk based approach with a new focus on controls and mitigation measures

Implementation Issues

- CDD
 - Risk rating of each customer before providing a designated service – query if the current flexibility will be retained
- AML Compliance officer
 - subject to new standards. Training?
- reconsideration of grouping arrangements
 - more flexible business group provisions (but beware the Industry Levy)
- Review application to overseas operations

Implementation Issues

- Implementation of the wider application of the 'travel rule'. Will require industry co-operation
- Tipping off offence changes – training and awareness

Questions



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