



Australian Government

Australian Transaction Reports  
and Analysis Centre

## Overview of the AML/CTF Act

### Objectives

In this module we will address the following questions:

- Why does Australia need AML/CTF legislation?
- What is the purpose of the AML/CTF Act?
- How much flexibility do businesses have under the AML/CTF Act?
- Who administers the AML/CTF Act?
- To whom does the AML/CTF Act apply?
- What are the key requirements of the AML/CTF Act?
- What are the AML/CTF Rules?
- What is a designated business group (DBG)?
- How does AUSTRAC promote compliance with the legislation?

### Why does Australia need AML/CTF legislation?

During the 1970s and 1980s, a number of Royal Commissions exposed links between criminals who engaged in activities such as major tax evasion, fraud, organised crime and drug trafficking, and money laundering techniques. These links were not unique to Australia and there was growing concern in government and law enforcement circles about the size of the problem globally. The *Financial Transaction Reports Act 1988* (FTR Act) received Royal Assent on 15 June 1988. While the FTR Act was very effective for many years, globalisation and rapid technological changes meant reforms were necessary to bring Australia's regulatory regime into line with international best practice to deter money laundering and terrorism financing (ML/TF).

### What is the purpose of the AML/CTF Act?

In 2005 the Australian Government agreed to recommendations of the Financial Action Task Force (FATF) and to implement the recommendations in the form of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The AML/CTF Act is being implemented in two tranches. The first tranche, relating to 'designated services' in the financial and gambling sectors and bullion dealers, was implemented over the two years ending 12 December 2008. The second tranche proposes to extend AML/CTF obligations to real estate agents, jewellers and professionals such as accountants and lawyers.



The FTR Act has not been repealed. A small number of cash dealers that are not captured under the AML/CTF Act will continue to have obligations under the FTR Act.

## **How much flexibility do businesses have under the AML/CTF Act?**

The AML/CTF Act is principles-based legislation that sets out broad obligations which reporting entities must meet, but leaves the reporting entity to determine the manner of meeting these obligations based on the level of risk of being used for money laundering or terrorism financing that their business faces. This is in contrast to the FTR Act which prescribed AML processes irrespective of the level of ML/TF risk.

The principles-based approach to AML/CTF accepts that businesses are best placed to know their products, operating structures and business environment. They are also best placed to assess the risks that their business will be used for money laundering or terrorism financing purposes and thus tailor appropriate mitigation strategies.

Principles-based legislation establishes a responsive regulatory environment that can remain relevant and effective in a rapidly-changing, sophisticated, global business environment. It allows businesses to adjust their processes and strategies to respond to new and changing levels of ML/TF risk relevant to the changing environments in which they operate.

## **Who administers the AML/CTF Act?**

AUSTRAC, which was established under the FTR Act, continues in existence under the AML/CTF Act and is Australia's AML/CTF regulator and specialist financial intelligence unit. Certain enforcement powers are also conferred upon Customs and police officers allowing them to question, search and arrest in relation to cross-border movements of physical currency and bearer negotiable instruments.

## **To whom does the AML/CTF Act apply?**

The AML/CTF Act imposes obligations on any person or entity that provides one or more of the 'designated services' set out in section 6 of the Act. These include financial, bullion and gambling services. The public is also affected, as any person who moves physical cash of AUD10,000 or more (or the foreign equivalent) or bearer negotiable instruments (of any amount) has certain reporting obligations. These are discussed in more detail in the Reporting Obligations module.

## **What are the key requirements of the AML/CTF Act?**

Persons who provide one or more designated services to a customer are 'reporting entities' who incur various obligations under the AML/CTF Act. These obligations include the following major categories:

## Identification and verification

Reporting entities must verify a customer's identity before providing the customer with a designated service. In limited circumstances, the applicable identification and verification procedures may be carried out after beginning to provide the designated service.

## What are the key know your customer (KYC) obligations?

A reporting entity must develop a procedure to collect KYC information and verify a customer's identity before providing the customer with a designated service, with certain exceptions listed in the AML/CTF Rules. If a pre-existing ('pre-commencement') customer received a designated service from the reporting entity prior to 12 December 2007, the reporting entity is not required to carry out initial KYC procedures on that customer. However, where a suspicious matter reporting obligation arises in relation to a pre-commencement customer, the reporting entity is required to carry out KYC on that customer.

The collection of KYC information is determined by Part B of the reporting entity's AML/CTF program. For medium and lower risk individuals, Chapter 4 of the AML/CTF Rules provides for 'safe harbour' provisions. Chapter 4 of the AML/CTF Rules also allows for simplified verification procedures for companies and trustees.

## Ongoing customer due diligence (OCDD)

As discussed in the 'Know Your Customer' module (module 6), as of 12 December 2008 reporting entities now have OCDD obligations under the AML/CTF Act and AML/CTF Rules. These obligations relate to monitoring customers in relation to ML/TF risk.

There are three mandatory components of OCDD:

- KYC information
- a transaction monitoring program
- an enhanced customer due diligence program.

Reporting entities need to determine when and in what circumstances additional KYC information should be collected, updated or verified.

## Correspondent banking due diligence

Before a financial institution enters into a correspondent banking relationship with an overseas financial institution, it must carry out an assessment of the risk of money laundering or terrorism financing posed by the relationship. Based on the results of the risk assessment, a more detailed assessment may be required. The AML/CTF Rules set the matters to be assessed. After a financial institution has entered into a correspondent banking relationship, it must carry out regular risk assessments, with more detailed assessments undertaken if necessary.

## Reporting

Reporting entities must report to AUSTRAC suspicious matters, transactions above a certain threshold and international funds transfer instructions. They also need to render AML/CTF compliance reports to AUSTRAC as and when required and in the prescribed form.

The AML/CTF Act also imposes reporting obligations on persons (most commonly these are members of the public) who move physical currency of AUD10,000 or more (or the foreign equivalent) into or out of Australia. There is also an obligation to report the movement of bearer negotiable instruments into or out of Australia, when required to do so by a Customs or police officer.

Reporting entities are required to submit AML/CTF compliance reports to AUSTRAC. An AML/CTF compliance report provides AUSTRAC with information about reporting entities' compliance with the AML/CTF Act, the regulations and the AML/CTF Rules. This obligation came into effect on 12 June 2007.

Civil penalties may apply for failure to provide an AML/CTF compliance report.

This topic is covered in more detail in the Reporting Obligations module of this course. AUSTRAC has also developed an AML/CTF Reporting Requirements e-learning course that may be accessed by reporting entities from within [AUSTRAC Online](#).

## AML/CTF programs

Reporting entities must have and comply with AML/CTF programs, which are designed to identify, mitigate and manage ML/TF risks the reporting entities may reasonably face. Members of a designated business group may enter into a joint AML/CTF program with other members of that group.

Further details about AML/CTF programs can be found in the AML/CTF programs module of this course and the AUSTRAC 'AML/CTF programs' e-learning course available at [www.austrac.gov.au/elearning\\_amlctf\\_programcourse/mod1/module\\_1\\_fundamentals.html](http://www.austrac.gov.au/elearning_amlctf_programcourse/mod1/module_1_fundamentals.html).

## Record keeping

The AML/CTF Act imposes a number of record-keeping obligations on reporting entities, including:

- designated services provided
- customer transactions
- applicable customer identification procedures
- electronic funds transfer instructions
- AML/CTF programs
- correspondent banking due diligence assessments.

In most cases reporting entities must make and retain records (and other documents given to them by customers) for seven years.

Refer to Part 10 of the AML/CTF Act for record-keeping provisions and the AUSTRAC guidance note 08/04 *Record-keeping requirements* available from the AUSTRAC website at [www.austrac.gov.au/guidance\\_notes.html](http://www.austrac.gov.au/guidance_notes.html).

## What are electronic funds transfer instructions?

Under the AML/CTF Act, electronic funds transfer instructions (EFTIs) must include certain information about the origin of the transferred money. The EFTI provisions commenced on 13 December 2006.

EFTIs can involve two or more institutions, or transfers within one institution. Transfers can be from one person to another, but can also involve only one person - for example, an individual transferring funds between their own accounts. There are four combinations known as:

- (a) multiple-institution person-to-person EFTI (i.e. more than one institution and more than one person)
- (b) same-institution person-to-person EFTI (i.e. only one institution, but more than one person)
- (c) multiple-institution same-person EFTI (i.e. more than one institution, but only one person)
- (d) same-institution same-person EFTI (i.e. one institution and one person).

Both domestic and international transfers are covered by the EFTI provisions in the AML/CTF Act. EFTIs are not reportable to AUSTRAC; however the AUSTRAC Chief Executive Officer (CEO) can request certain EFTI information to be provided by a reporting entity to the CEO.

This might be done, for example, to assist AUSTRAC in measuring a reporting entity's compliance with the AML/CTF Act.

## What are the AML/CTF Rules?

Under the AML/CTF Act, the CEO of AUSTRAC may, in writing, make Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules). The AML/CTF Rules are legislative instruments and are therefore legally binding.

The AML/CTF Rules help to clarify the obligations of reporting entities (such as expanding definitions given in the AML/CTF Act) and can set obligations such as the required details for reports, specify exemptions from the legislation or add certain types of designated services to be captured by the AML/CTF Act.

Some major provisions covered by the AML/CTF Rules include:

- Register of Providers of Designated Remittance Services required details
- correspondent banking due diligence
- minimum KYC requirements
- AML/CTF programs (including customer identification procedures)
- gambling services (including customer identification and record keeping)
- AML/CTF compliance reports (reporting and lodgement periods)

AML/CTF Rules are registered with the Australian Government and tabled in Parliament. Prior to registration, AUSTRAC consults with industry and relevant government departments and publishes draft AML/CTF Rules on the AUSTRAC website for public comment.

## What is a designated business group (DBG)?

A DBG comprises two or more persons where:

- each member of the group has elected in writing to be a member of the group and the election is in force
- members are related to each other as per section 50 of the *Corporations Act 2001* (that is, each member is a holding company, subsidiary, or subsidiary of a holding company of another member)
- each member is a reporting entity (or a company in a foreign country which would be a reporting entity if it resided in Australia) or
- each member is a party to a joint venture agreement and is providing a designated service under that agreement.

Certain obligations under the AML/CTF Act may be discharged by a member of the DBG for other members of the DBG. AUSTRAC has published a guidance note, *Designated business groups*, available at [http://www.austrac.gov.au/guidance\\_notes.html](http://www.austrac.gov.au/guidance_notes.html).

## How does AUSTRAC promote compliance with the legislation?

AUSTRAC's preference is to promote an environment of continuous voluntary compliance with the AML/CTF Act and the related regulations and AML/CTF Rules. It is anticipated that most entities will seek to comply with their obligations. However, there may be some who do not comply with the law either through ignorance, failure of their systems, lack of effort or even, on occasion, wilful or dishonest intention.

As the regulator, AUSTRAC promotes compliance with the legislation. In addition, AUSTRAC has certain powers to monitor the level of compliance being achieved by regulated entities. Entities assessed as being higher risk than others are generally supervised with more intensity than those assessed as lower risk.

In cases of non-compliance, AUSTRAC can choose from several alternatives of action to achieve the desired regulatory outcome in each case. This includes identifying the level and extent of non-compliance to formulate an appropriate rectification plan. This in turn helps to uphold the integrity of the AML/CTF Act.

AUSTRAC endeavours to resolve compliance issues in a cooperative manner through negotiation and guidance. If this approach is not successful, it may be necessary to escalate the regulatory action taken and use more coercive powers against the non-complying entity, especially where there is a clear history of deliberate and serious non-compliance.

The enforcement powers available to AUSTRAC under the FTR Act are limited to criminal penalties and injunctions. Under the AML/CTF Act the powers are broadened to include imposing civil penalties. This provides greater flexibility in taking compliance and enforcement action.

AUSTRAC's *Enforcement policy* describes the issues taken into account when formulating appropriate enforcement action. This policy can be viewed at [http://www.austrac.gov.au/enforcement\\_policy.html](http://www.austrac.gov.au/enforcement_policy.html).

## Summary

The AML/CTF Act is part of the legislative package to reform Australia's AML/CTF regulatory regime. The reforms achieve a major step in bringing Australia into line with international best practice to deter money laundering and terrorism financing. The staggered implementation of the first tranche of the AML/CTF Act is complete on 12 December 2008.

Reporting entities have various regulatory obligations under the AML/CTF Act. These include:

- implementing an AML/CTF program
- identification and verification of customer identities
- lodging International Funds Transfer Instruction (IFTI) Reports, Threshold Transaction Reports (TTRs), Suspicious Matter Reports (SMRs) and AML/CTF compliance reports to AUSTRAC
- due diligence when entering into relationships with correspondent banks
- ongoing customer due diligence
- record-keeping requirements.

AUSTRAC as a regulator prefers to promote voluntary compliance with the AML/CTF Act. While AUSTRAC will endeavour to resolve incidents of non-compliance in a cooperative manner, a range of enforcement powers are available to deal with serious non-compliance.

The FTR Act continues to form part of Australia's AML/CTF legislative framework. Although the majority of cash dealers who had obligations under the FTR Act are now captured as reporting entities under the AML/CTF Act, a small number of cash dealers continue to have FTR obligations. Entities that continue to report under the FTR Act are recommended to read the e-learning materials about the FTR Act.

Entities that continue to report under the FTR Act are encouraged to review the reporting obligations and transitional reporting table that can be found within the 'Overview of the FTR Act' component of this e-learning course.

## Overview of the AML/CTF Act quiz

This quiz will test your understanding of the AML/CTF Act.

### Question 1

Select the **incorrect** response from the alternatives given below.

The implementation of the first tranche of the AML/CTF Act was completed on 12 December 2008. The AML/CTF Act was implemented because:

- a) it is principles based and provides the best approach for regulated industries to remain relevant and effective in a rapidly-changing environment.
- b) AUSTRAC will no longer regulate the FTR Act.
- c) it brings Australia in line with international standards to deter money laundering and terrorism financing.
- d) more designated services have been incorporated into this Act.

### Question 2

Select the single correct answer.

An AML/CTF program is a key requirement under the AML/CTF Act. This means that:

- a) Reporting entities have the option to participate in a program.
- b) All reporting entities are required to adopt, maintain and comply with an AML/CTF program.

### Question 3

Select the single **incorrect** answer.

Ongoing customer due diligence (OCDD) requirements came into effect on 12 December 2008. This means that:

- a) Reporting entities must incorporate the KYC component of OCDD
- b) pre-commencement customers are exempt from OCDD requirements
- c) enhanced customer due diligence must be applied if lodgement of an SMR is warranted
- d) a transaction monitoring program must be included in Part A of the AML/CTF program

#### Question 4

Select the single correct answer.

AML/CTF Rules help clarify reporting obligations set in the AML/CTF Act and:

- a) can be updated or changed as required.
- b) cannot be updated or changed.

#### Question 5

Select the **incorrect** response from the alternatives below.

A designated business group comprises two or more members. Each member is:

- a) a reporting entity or a company overseas which would be a reporting entity if resident in Australia.
- b) related to each other.
- c) chosen by other members of the group.

#### Question 6

Select the single correct response.

In the case of non-compliance:

- a) AUSTRAC can choose from several alternative courses of action to achieve the desired regulatory outcome in each case.
- b) AUSTRAC will use financial penalties to achieve the desired regulatory outcome in every case.

### **Answers - Overview of the Acts Quiz**

1. b) Correct. AUSTRAC will continue to regulate the FTR Act.
2. b) Correct. The AML/CTF Act requires all reporting entities to adopt, maintain and comply with an AML/CTF program.
3. b) Correct. Pre-commencement customers are exempt from initial KYC but are not exempt from OCDD.
4. a) Correct.
5. c) Correct. Each member elects in writing to be a member.
6. a) Correct. This includes identifying the level and extent of non-compliance to formulate an appropriate rectification plan.

AUSTRAC intends to maintain its Introduction to AML/CTF e-learning application as an evolving resource to reflect changing patterns of behaviour, legislative development and the broader Anti-Money Laundering environment. Should you require further information on the e-learning application, AUSTRAC's operations, the *Financial Transaction Reports Act 1988* (FTR Act) or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), please contact:

**AUSTRAC Help Desk via:**

[help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au) or Telephone 1300 021 037.

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