



Australian Government

Australian Transaction Reports
and Analysis Centre

Guidance note 08/02

AML/CTF Compliance Officers

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 'reporting entities' (defined in section 5 of the Act).
- 1.2 Under section 229 of the AML/CTF Act, the Chief Executive Officer (CEO) of the Australian Transaction Reports and Analysis Centre (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 binding.
- 1.3 The purpose of this guidance note is to provide information and assistance to reporting entities regarding the requirement to designate an AML/CTF Compliance Officer under Chapters 8 and 9 of *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*. Chapters 8 and 9 are made for Part 7 of the AML/CTF Act. These AML/CTF Rules and Part 7 of the AML/CTF Act came into effect on 12 December 2007.

2 Legal requirements

- 2.1 Part 7 of the AML/CTF Act requires a reporting entity to have a written AML/CTF program comprising Part A (general) and Part B (customer identification). This guidance note focuses on Part A of the AML/CTF program, given that the obligation to designate an AML/CTF Compliance Officer falls under Part A.
- 2.2 Chapters 8 and 9 of the AML/CTF Rules relate to Part A of standard and joint AML/CTF programs respectively and set out the obligation upon reporting entities to designate an AML/CTF Compliance Officer. Parts 8.5 and 9.5 of Chapters 8 and 9 require Part A to provide for a reporting entity or designated business group to designate a person as the AML/CTF Compliance Officer, at the management level. The AML/CTF Rules provide that the AML/CTF Compliance Officer may have other duties.

3 Designating an AML/CTF Compliance Officer – what to consider

- 3.1 Although the AML/CTF Rules state that the AML/CTF Compliance Officer must be at the 'management level', given the differences in nature, size and complexity of businesses, 'management' may be interpreted broadly to mean a person who undertakes the handling, direction or control of AML/CTF compliance within a particular reporting entity. This is particularly relevant where the reporting entity is a small business.
- 3.2 The following may be relevant when designating who undertakes the role of the AML/CTF Compliance Officer:

- (a) independence
 - (b) seniority
 - (c) accountability
 - (d) reporting lines
 - (e) access to executive/board
 - (f) relevant skills and experience, including knowledge of the business and AML/CTF legislative obligations.
- 3.3 AML/CTF Compliance Officers should have the authority and resources to discharge their responsibilities, including access to all relevant areas of the reporting entity's operations, all relevant staff members (at any level) and the power to effect corrective action if applicable.
- 3.4 Reporting entities who are members of a designated business group must designate an AML/CTF Compliance Officer, at management level, from one of the members to represent the group. The AML/CTF Compliance Officer may also act as the Nominated Contact Officer for the designated business group. This arrangement is only applicable to members of designated business groups that have adopted a joint AML/CTF program. An AML/CTF Compliance Officer cannot perform the role of Nominated Contact Officer for more than one reporting entity, unless those entities are part of a designated business group and have adopted Part A of a joint AML/CTF program.
- 3.5 When conducting a compliance audit of a reporting entity or designated business group, AUSTRAC would consider, among other factors, the overall internal systems and controls of the reporting entity. This would include whether there is appropriate oversight by boards and senior management, independent review and appropriate appointment of an AML/CTF Compliance Officer. Considerations would include the effectiveness of the AML/CTF Compliance Officer in fulfilling their responsibilities as set out in the AML/CTF program or other documentation. The appointment of an AML/CTF Compliance Officer will be viewed in the wider context of how adequate a contribution it makes to the reporting entity or designated business group's efforts to identify, mitigate and manage the money laundering and terrorism financing (ML/TF) risks it may reasonably face.

4 Duties of an AML/CTF Compliance Officer

- 4.1 Chapters 8 and 9 of the AML/CTF Rules do not specify the duties to be undertaken by an AML/CTF Compliance Officer, but the following examples may be considered appropriate by the reporting entity or designated business group:
- (a) ensuring continuing compliance with the obligations of the AML/CTF Act and AML/CTF Rules, subject to the ongoing oversight of the reporting entity's board and senior management (or if the reporting entity does not have a board, by the chief executive officer or equivalent or, in the case of a designated business group, the ongoing oversight of the governing board or senior management of the main holding company of the group), including:
 - (i) AML/CTF risk awareness training for staff members
 - (ii) the employee due diligence program
 - (iii) liaison with senior management and/or board on AML/CTF issues
 - (iv) organisation of independent reviews of Part A of the AML/CTF program

- (v) consideration of any AUSTRAC feedback regarding the reporting entity's risk management performance
- (vi) if applicable, any obligations relating to permanent establishments in a foreign country
- (b) acting as the contact officer for AUSTRAC matters such as reporting suspicious matters, international funds transfer instructions and threshold transactions, urgent reporting, compliance audits, or requests for information or documents
- (c) contributing to the design, implementation and maintenance of internal AML/CTF compliance manuals, policies, procedures and systems, including, if applicable:
 - (i) procedures for granting approvals for new designated services or delivery channels
 - (ii) ensuring AML/CTF compliance is measured and if applicable, rewarded in the performance review process
 - (iii) processes to allow staff to report violations of the AML/CTF program confidentially to the AML/CTF Compliance Officer, with alternative arrangements undertaken if the AML/CTF Compliance Officer is implicated
- (d) updating corporate knowledge on ML/TF risks the reporting entity may reasonably face, including any relevant legislative developments and AML/CTF publications, for example from the Financial Action Task Force (www.fatf-gafi.org) or AUSTRAC
- (e) providing advice on transitional obligations from the *Financial Transaction Reports Act 1988* to the AML/CTF Act
- (f) providing leadership and contributing to a culture of AML/CTF compliance within the reporting entity
- (g) if relevant, conducting initial due diligence on and ongoing evaluation of any third party AML/CTF compliance-related service providers
- (h) acting as the Nominated Contact Officer if the reporting entity forms part of a designated business group
- (i) keeping relevant records in accordance with Part 10 of the AML/CTF Act
- (j) if appropriate, coordinating periodic internal reviews of AML/CTF compliance at branch offices or permanent establishments in a foreign country
- (k) overseeing the AML/CTF compliance and/or staff training program to ensure that the reporting entity or designated business group's staff are aware of any interaction between the reporting entity or designated business group's obligations under the *Privacy Act 1988* (Privacy Act) and those under the AML/CTF Act.

5 AML/CTF Compliance Officer – employee or independent contractor?

- 5.1 Chapters 8 and 9 of the AML/CTF Rules require that the AML/CTF Compliance Officer be at management level, but do not specify whether the AML/CTF Compliance Officer must be an employee of the reporting entity or may be an independent contractor.

- 5.2 It is noted that the definition of 'Nominated Contact Officer' in Chapter 2 of the AML/CTF Rules (concerning designated business groups) has the same meaning as the definition of 'officer' in the *Corporations Act 2001*. This definition includes a requirement that the officer be a person 'who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or...has the capacity to affect significantly the entity's financial standing'. Although this definition is not obligatory for an AML/CTF Compliance Officer, AUSTRAC considers it preferable that a person be appointed who has such a connection with the reporting entity or designated business group, rather than an independent contractor who may not have such a close relationship.
- 5.3 A reporting entity or designated business group may consider it appropriate to appoint an independent contractor when an internal appointment of an AML/CTF Compliance Officer role may potentially adversely affect the reporting entity's compliance with its AML/CTF obligations; for example, a person in an actual or perceived position of conflict of interest.
- 5.4 Reporting entities and designated business groups should note that contractors may handle personal information and the handling of this information should be consistent with relevant requirements under the Privacy Act. Further information on the role of contractors under the Privacy Act is available at www.privacy.gov.au.
- 5.5 In appointing an independent contractor, the reporting entity or designated business group should be mindful of the factors listed in paragraphs 3.2 and 3.3 above, among other relevant considerations.
- 5.6 Reporting entities or designated business groups must take into account their obligations under the AML/CTF Act and AML/CTF Rules when considering designating an independent contractor as the AML/CTF Compliance Officer. The requirements in sections 81 and 82 of the AML/CTF Act to adopt, maintain and comply with Part A of an AML/CTF program (including, in the AML/CTF Rules, the obligation to appoint an AML/CTF Compliance Officer), fall on the reporting entity or designated business group. The reporting entity may contract out these functions but this arrangement has no bearing on the entity's ultimate liability in law for the exercise of these functions.

6 Penalties

- 6.1 Under sections 81 and 82 of the AML/CTF Act, civil penalties may apply for breaches of the AML/CTF program provisions. Part 15, Division 2 of the AML/CTF Act provides for the enforcement of civil penalties.

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).

The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute, nor should it be treated as, legal advice or opinions. This document may contain statements of policy which reflect AUSTRAC's administration of the legislation in carrying out its statutory functions. The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication. AUSTRAC recommends that independent professional advice be sought.

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

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the *Privacy Act 1988*, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

April 2008

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