

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006

WHAT IS THE IMPACT FOR BUSINESS?

DOES YOUR BUSINESS INVOLVE THE FOLLOWING:

- transferring real property?
- buying and selling of coins, gold bullion and other collectibles?
- placing and accepting bets?
- making and guaranteeing loans?
- any large dealings in cash?

If your business involves any of the above or similar activities, you may be caught by the operation of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

The Commonwealth's new *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF)* came into force on 12 December 2006. The Act aims to achieve two objectives:

1. to protect the Australian financial sector from exploitation by criminals and terrorists; and
2. to enable Australian businesses to compete internationally by maintaining the reputation of the individual businesses themselves, and that of the Australian financial market sector.

The AML/CTF is seen as the first part of a series of legislative instruments designed to target industry sectors that are of potential use for criminals and terrorists to move ill-gotten gains. A second piece of legislation is anticipated later in 2007 which will address dealings in cash by businesses such as real estate agents and jewellers.

The AML/CTF establishes a large number of new obligations on businesses engaged in activities within the scope of the Act. There are essentially **two** aspects to the obligations: **increased reporting requirements** and **increased customer identification requirements**

There are three pieces of legislation businesses should be aware of:

- The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006*; and
- the *Anti-Money Laundering and Counter-Terrorism Financing Rules*.

BUSINESS ALERT

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What does the new Act apply to?

The AML/CTF applies to businesses which provide *designated services*. This covers businesses operating in the financial and gambling sectors, bullion dealers, and other persons or businesses which provide *designated services*.

Section 6 provides tables which define what constitutes a designated service for the purpose of the Act. The tables are extensive and *include* activities such as:

1. For a bank or lending/financial institution or similar:

- opening an account and allowing transactions associated with that account;
- accepting a deposit;
- providing a loan or credit and allowing transactions associated with that loan;
- issuing a promissory note and allowing cheques to be drawn;
- issuing a debit card or a stored value card to a person;
- issuing a traveller's cheque, postal or money order to a person;
- supplying goods by way of lease to a business and allowing transactions associated with that lease;
- accepting money or property from a transferor entity to be transferred under a designated remittance arrangement;
- making money or property available to an ultimate transferee entity as a result of a transfer under a designated remittance arrangement;
- guaranteeing a loan where the guarantee is given in the course of a business of guaranteeing loans.

2. For casinos and bookies:

- accepting or placing a bet in the course of carrying on a business;
- accepting or placing a bet on behalf of someone;
- introducing a person who wishes to make a bet to someone willing to accept the bet, where such introduction is made in the course of carrying on a business;
- accepting entry of a person into a game where the game is played for money or anything else of value;

3. For coin and bullion dealers:

- the buying and selling of bullion in the course of carrying on a business;
- collecting or holding physical currency where the service is provided in the course of carrying on a business of such and where the currency is not consideration for other goods and/or services.

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Who enforces compliance with the Act?

The regulatory body responsible for enforcing the Act is the Australian Transaction Reports and Analysis Centre (AUSTRAC). AUSTRAC currently oversees compliance with the reporting requirements imposed under the *Financial Transaction Reports Act 1988*. Many businesses whose activities will be covered under the AML/CTF will already be involved with reporting to AUSTRAC as part of their legislative compliance programs.

When does the Act apply?

The Act came into force on 12 December 2006. The obligations imposed are to be phased into effect over a period of two years however a significant number of the requirements are effective from 13 December 2006. The federal Government has agreed to provide a 15 month 'prosecution-free' period. Businesses must be aware that AUSTRAC will be able to prosecute during this period IF it is apparent that the business has not made a genuine effort to comply with the requirements. It is inappropriate for businesses to operate under an assumption that they have 15 months to start implementing a reporting program. The compliance procedures need to start now.

Specific requirements now in force

The following Parts of the Act are now in force and require certain reporting :

Parts 4 to 6 inclusive:

- Movement of physical currency greater than the threshold \$10,000.00 out of the country must be reported to AUSTRAC;
- Electronic funds transfer instructions must include information about the origins of the transferred money;
- Persons providing a registrable designated remittance service must be named on the Register of Providers of Designated Remittance Services.

Part 9:

The Act empowers the Governor-General to make regulations prohibiting or regulating Australian businesses entering into transactions with residents of certain foreign countries. No regulations of this nature have been made at this time.

Part 10 (Divisions 1, 2, 4 and 7):

This Part requires consideration of the AML/CTF Rules, which may provide that businesses must make a record of a designated service provided and keep the record for a period of 7 years. Additionally, if a customer provides a document relating to the provision of a designated service to a business, then the business must retain that document for a period of 7 years.

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As yet, no provision has been made in the Rules requiring recording of designated services, but this will change over time as the new Act's operation increases.

Parts 11 to 18 inclusive:

These Parts relate to the powers of AUSTRAC and provisions dealing with enforcement and offences. AUSTRAC is empowered to conduct audits of business records, obtain information and documents and issue infringement notices.

Part 12 deals with offences. Under the Act, it is an offence to provide false or misleading information or documents or to forge documents. It is also an offence to structure a transaction so as to avoid a reporting obligation.

How should businesses approach their obligations?

The aim and cornerstone of the AML/CTF legislative regime is that businesses know their customers and be aware of transactions that may involve illegitimate funds. The legislation is intended to protect Australian businesses and the Australian financial sector from exploitation, as well as curtailing the opportunities for terrorists and organised crime cartels. The Australian financial sector has a deservedly fine reputation and the legislation is designed to ensure international companies continue to feel confident about dealing in the Australian economy.

Businesses should consider the various services and transactions they provide and evaluate whether their activities fall within the definitions of *designated services*. Due to the aims of the legislation, it is likely that any dealings in cash on a large scale will be intended to fall within the Act's operation. Once the relevant services have been identified, businesses should determine the exact nature of their reporting obligations and then aim to implement a compliance program. The legislative approach is essentially *risk-based*, so that compliance programs will vary among businesses, depending on factors such as business size and customer nature.

AUSTRAC is briefed to assist businesses to ensure compliance in the prosecution-free period and to focus on education.

Businesses with any concerns or queries about the Act and the new obligations should call Brock Miller on 3223 6400. Brock and his team will provide expert guidance on this and other Commercial matters.

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