
New anti-money laundering and counter-terrorism financing laws

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In brief

Federal Parliament has made changes to Australia's anti-money laundering and counter-terrorism financing laws by enacting the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* (AML/CTF Amendment Act). The AML/CTF Amendment Act:

- Increases the powers and functions of the Australian Transaction Reports and Analysis Centre's (AUSTRAC) CEO.
- Subjects digital currency providers to Australia's anti-money laundering and counter-terrorism regulations.
- Provides industry with some regulatory relief from the current regime.

The AML/CTF Amendment Act is expected to take effect on 1 April 2018. This LegalTalk Alert outlines the key legislative changes and their likely impact on Australian businesses.

In detail

The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* (AML/CTF Amendment Act) was passed by both Houses of Parliament on 7 December 2017, and received Royal Assent on 13 December 2017. The Proclamation date (and thus commencement date) is expected to be 1 April 2018.

The AML/CTF Amendment Act amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

The AML/CTF Amendment Act introduces three key changes:

- Greater regulatory powers and functions for the AUSTRAC CEO.
- Digital currency exchange providers are now subjected to the AML/CTF regime.
- Some regulatory relief for industry.

Each of these changes are detailed below.

Expanded powers and functions of AUSTRAC CEO

AUSTRAC is Australia's financial intelligence agency with regulatory responsibility for preventing and detecting money laundering and terrorism financing.

The Federal Government is seeking to increase the level of compliance of reporting entities with the AML/CTF Act and rules by expanding the AUSTRAC CEO's powers and functions.

Prior to the AML/CTF Amendment Act, the CEO of AUSTRAC had only limited powers to issue infringement notices and remedial directions. The table below illustrates how these powers have been expanded.

Expanded powers of AUSTRAC CEO

New law	Current law
AUSTRAC CEO is able to issue infringement notices for a greater range of offences, including for non-compliance with know your customer (KYC) reporting and record keeping procedures.	Infringement notices can only be issued by the AUSTRAC CEO for a narrow range of offences, such as for failure to enrol on the Reporting Entities Roll. For all other offences, the AUSTRAC CEO must apply for a civil penalty order through the Federal Court, which is both a costly and time-consuming process.
AUSTRAC CEO is able to issue a remedial direction to a reporting entity to retrospectively comply with a breached obligation.	No power
AUSTRAC CEO is able to perform any tasks that are necessary or incidental to his or her functions.	No power
Police and Customs officers to be given general search and seizure powers at Australian borders.	Police and Customs officers' search and seizure powers only relate to breaches of the current reporting requirements for physical currency and bearer negotiable instruments (BNIs).

Impact of amendments

Once enacted, the new regime will empower the AUSTRAC CEO to issue infringement notices for a greater number of regulatory offences. Organisations which provide designated services will be exposed to the risk of infringement notices and fines in respect of any non-compliance with customer identification procedures, reporting obligations, record-keeping obligations and the provision of requested information. Under the current law, these areas of non-compliance require Federal Court proceedings to impose a civil penalty. The AUSTRAC CEO's ability to issue infringement notices for these types of breaches will allow AUSTRAC to promote compliance with the AML/CTF Act more efficiently. Accordingly, reporting entities should ensure strict compliance with the AML/CTF Act and rules, particularly with respect to infringement notice powers.

The amendments will also broaden the AUSTRAC CEO's power to issue remedial directions requiring reporting entities to rectify past breaches of civil penalty provisions (for example, a reporting requirement). However, the AUSTRAC CEO can only issue a remedial direction relating to a past breach occurring up to two years from the date of that breach, and if it is an appropriate and proportionate response to that breach. It is anticipated that this power will allow AUSTRAC to more effectively ensure reporting entity compliance and diminish financial intelligence gaps.

The AUSTRAC CEO's investigative and enforcement powers will also be strengthened as police and Customs officers will receive broadened powers to search and seize physical currency and bearer negotiable instruments (BNIs) where there is a suspicion of money laundering, terrorism financing or other serious criminal offences. They will also be able to issue infringement penalties for failure to comply with questioning and search obligations.

The AUSTRAC CEO's rule-making powers will be expanded to include a variety of additional areas (particularly the impending regulation of digital currency exchange providers). Overall, the scope of the AUSTRAC CEO's functions will be significantly expanded, with the inclusion of a power for the CEO to do all things necessary or convenient for the fulfilment of his or her duties.

Regulating digital currency exchange providers

Digital currency exchange providers do not presently fall within the ambit of the AML/CTF Act. Under the current regime, the AML/CTF Act only applies to e-currency, which is supported by a physical thing, and excludes convertible digital currencies (e.g. Bitcoin), which are supported by an intangible cryptographic algorithm.

Although digital currencies offer the potential for cheaper, more efficient and faster payments, these new currencies pose greater money laundering and terrorism financing risks. These risks arise due to greater anonymity in comparison with non-cash payment methods, and little transparency as transactions are made on a peer-to-peer basis often outside the regulated financial system. Also, different parts of a digital currency system may be located in more than one country and thus fall under varying degrees of AML/CTF oversight.

The Federal Government's move to regulate digital currency exchange providers aims to close a major regulatory gap with respect to businesses involved in providing digital currency exchange services, ultimately reducing the money laundering and terrorism financing risks attached to this particular sector. Effectively regulating digital currency exchange providers could positively impact the reputation and public perception of the digital currency sector's legitimacy; currently, some businesses are opting not to use or accept this form of payment due solely to concerns about the risks attached to using digital currency. Prolonged non-regulation of this sector may inhibit the development or use of digital currencies in the future.

Regulation of digital currency providers

New law	Current law
Digital currency exchange providers to be regulated by the AML/CTF Act.	Digital currency exchange providers do not fall within the ambit of the AML/CTF Act.

Impact of amendments

The new regime will apply AML/CTF regulation to businesses which exchange digital currencies for money (e.g. Bitcoin exchanges). More specifically, digital currency exchange providers will be required to:

- Enrol and register on the Digital Currency Exchange Register maintained by AUSTRAC, and provide prescribed registration details. Failure to register before providing digital currency exchange services may result in imprisonment for two years or a AUD105,000 fine, or both.
- Establish and maintain an AML/CTF program to identify, mitigate and manage the money laundering and terrorism financing risks they may encounter.
- Identify and verify customer identities.
- Report suspicious activities and transactions involving physical currency that exceeds AUD10,000 or more (or foreign equivalent) to AUSTRAC.
- Keep particular records relating to transactions, customer identification and their AML/CTF program for seven years.

Businesses which provide digital currency exchange services will be obliged to ensure the strict collection and storage of personal information and report certain suspicious or unusual transactions to AUSTRAC. This reporting procedure will proceed in accordance with the existing requirements articulated in the AML/CTF Act. Some of this information may then be compiled, analysed and disseminated by AUSTRAC to authorised government agencies and international counterparts to assist in ongoing efforts to combat money laundering and terrorism financing, and other serious crimes.

Regulatory relief for low risk sectors

The AML/CTF Bill makes a number of amendments to bring regulatory relief to industry.

Areas of relief

New law	Current law
De-regulation of cash-in-transit sector, insurance intermediaries and general insurance providers.	Cash-in-transit sector, insurance intermediaries and general insurance providers are regulated by the AML/CTF Act.
Compliance obligations can be shared through a 'corporate group'.	Compliance obligations can only be shared through a 'designated business group'.
Broadened definition of 'correspondent banking relationship'.	Narrow definition of 'correspondent banking relationship'.

Impact of amendments

The new regime will de-regulate the cash-in-transit sector, insurance intermediaries (entities that facilitate the placement and purchase of insurance and provide services to insurance companies and consumers that complement that insurance placement process) and general insurance providers. This de-regulation has come about due to the low money laundering and terrorism financing risk these areas pose (save for motor vehicle dealers who act as insurers or insurance intermediaries).

The new regime will broaden the definition of a correspondent banking relationship so as to recognise that Australian financial institutions often enter into correspondent banking relationships with foreign financial service providers who do not necessarily fit in with the definition of a financial institution under the Act, thereby providing regulatory relief to the financial sector.

Currently, the AML/CTF Act defines a correspondent banking relationship as 'a relationship that involves the provision by a financial institution of banking services to another financial institution'. The limited definition of a 'correspondent banking relationship' under the legislation is the result of the narrow definition of a 'financial institution' under the Act; for example, Part 8 of the legislation, which contemplates matters relating to correspondent banking, does not acknowledge certain correspondent banking arrangements between financial institutions and foreign entities, where those foreign entities are not viewed as financial institutions under the Act. As a result, financial institutions which take part in correspondent banking relationships with foreign entities that are not considered financial institutions must conduct a stringent due diligence assessment of the services provided to each customer under the relationship, as opposed to only conducting a customer due diligence assessment of the foreign entity itself.

The AML/CTF Bill will introduce the notion of a 'corporate group' alongside the notion of a 'designated business group' (which is already incorporated in the legislation). Under the current legislation, two or more related reporting entities may share certain obligations through a 'designated business group'; for example, a designated business group may have a joint AML/CTF program and its members may share information about suspicious matter reports without violating the secrecy provisions of the Act. However, the designated business group structure does not coincide with how businesses currently structure themselves into 'corporate groups', particularly multinational corporate groups. For example, where one large Australian financial institution has two designated business groups within its corporate group, this restricts the ability of the institution to achieve regulatory efficiencies, share suspicious matter reports

across the corporate group, and mitigate its money laundering and terrorism financing risk at the corporate group level. Accordingly, the introduction of a 'corporate group' into the legislation will increase regulatory and compliance efficiencies.

The takeaway

Given the expanded powers of the AUSTRAC CEO, and the increased risk of infringement notices and penalties, companies that are subject to the AML/CTF Act should ensure that their AML/CTF programs strictly comply with the AML/CTF Act and the associated rules and regulations.

Digital currency exchange providers should ensure that they enrol and register on the Digital Currency Exchange Register and establish a stringent AML/CTF program to identify, mitigate and manage any money laundering and terrorism financing risks by 1 April 2018.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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