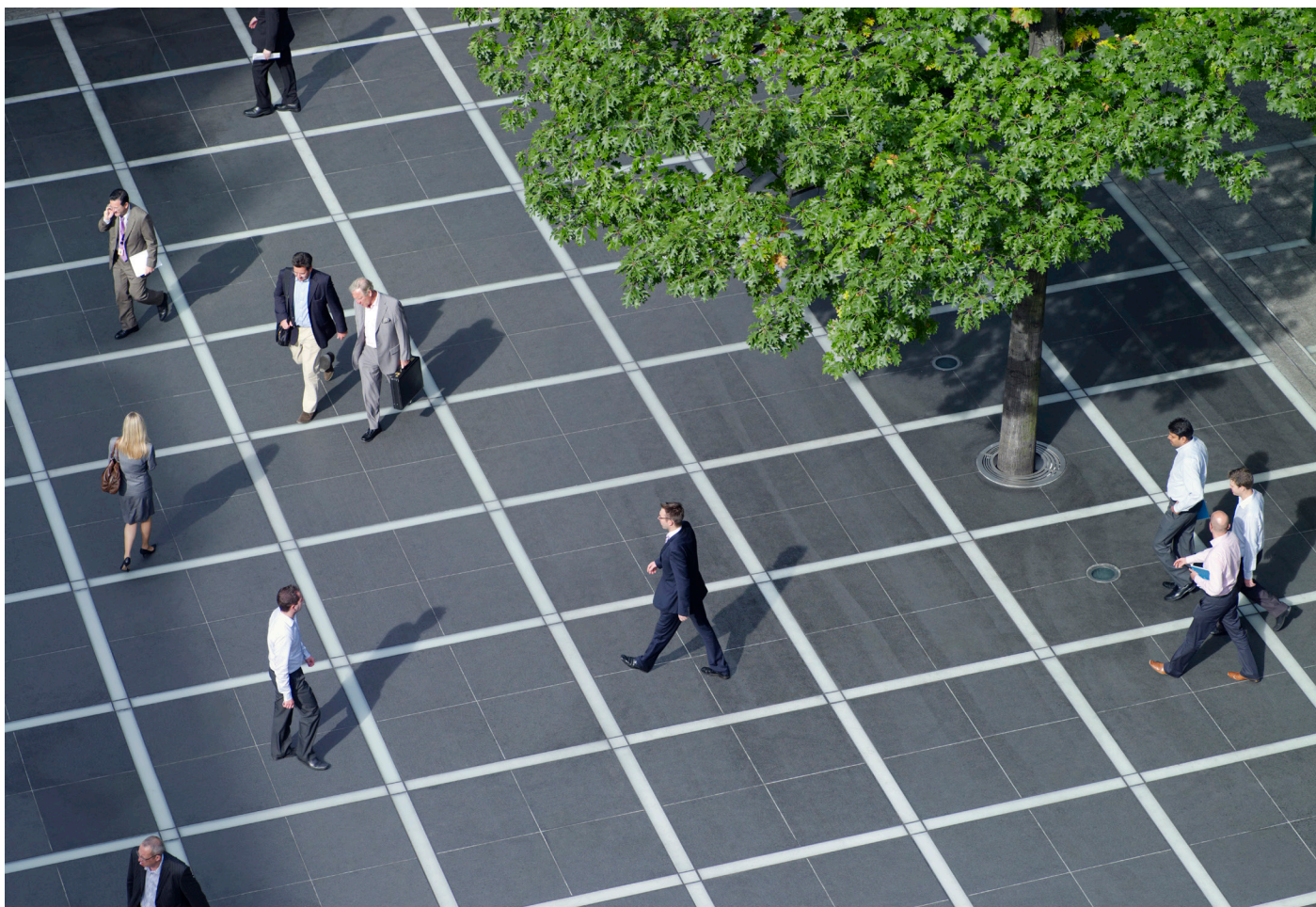


June 2017

# ***Don't get blindsided by new regulations***

What 'tranche two' means for your business



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### *The Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

(AML/CTF Act) regulates bullion, gambling, financial and remittance services, where the conversion and transfer of physical and electronic forms of money are vulnerable to money laundering and terrorism financing. In November 2016, the Australian Government launched a feasibility study into broadening the AML/CTF Act to a number of additional industries, informally referred to as 'tranche two'.

Tranche two would extend the regulations to Designated Non-Financial Businesses and Professions with similar vulnerabilities to the financial sector. This would likely include the real estate industry and dealers in high-value items (e.g. jewellery, fine art and precious stones) where large transactions are involved.

Tranche two may also include 'gatekeeper' industries such as lawyers, accountants and trust services, which can provide an entry point for those seeking to misuse legitimate financial and corporate systems.

The rationale behind the implementation of tranche two includes:

- meeting global standards in combating money laundering and terrorism financing
- more equitably sharing the regulatory burden of combating money laundering and terrorism financing
- closing a regulatory and intelligence gap
- enhancing national security
- boosting the reputation of the Australian financial system.

# *PwC's view: what to expect*

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The Australian Government's feasibility study is expected to be completed by June 2017, with obligations likely to be announced in 2018. We expect that implementation will be gradual and staggered, due to the perceived regulatory impact and the likely lobbying of professional bodies. Real estate agents and high-value dealers are anticipated to be the first of tranche two to be required to comply with the AML/CTF obligations, followed by accountants in the medium term. Given the more complex issues in regulating legal practitioners and trust and

company service providers, compliance for these sectors will likely come into effect only in the longer term. It is unlikely that the entire regime of AML/CTF obligations will be extended to tranche two industries; however, core obligations are likely to be applied in order to mitigate the money laundering and terrorism financing risks specific to these business and professions.

## *Current obligations under the AML/CTF Act*

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Reporting entities currently have a number of obligations, including:

- enrolling with AUSTRAC\* and registering any remittance services
- implementing and maintaining an AML/CTF compliance program
- conducting Customer Due Diligence
- lodging Threshold Transaction Reports, International Funds Transfer Instructions and Suspicious Matter Reports
- complying with various AML/CTF record-keeping obligations.

Customer Due Diligence, also known as 'Know Your Customer', is a core obligation and includes:

- assessing the money laundering and terrorism financing risk posed by each customer
- collecting prescribed information on clients and identifying who owns and controls clients
- verifying information where necessary
- performing Ongoing Customer Due Diligence procedures such as transaction monitoring.

\*AUSTRAC (the Australian Transaction Reports and Analysis Centre) is the government's financial intelligence agency. It oversees the implementation of the AML/CTF Act and the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1) (AML/CTF Rules).



# Real estate and high-value dealers

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The stable Australian economy, the availability of high-value properties, and the absence of AML/CTF regulation of the real estate sector has made it tempting for criminals to launder funds through the purchase of property in Australia. As well as supporting criminal activities, this can lead to inflation of property prices, as criminals may be willing to purchase above market value to secure a safe and legitimate investment.

Similarly, lack of regulation on high-value goods such as jewellery, precious stones, antiques and collectibles, fine art, yachts and luxury motor vehicles allows large sums of cash to be disguised and enjoyed anonymously. Building, bathroom and kitchen supplies are also considered to be high-value goods as criminals often use illicit funds to purchase renovation supplies along with real estate.

The AML/CTF regulation of real estate and high-value dealers aims to reduce the criminal exploitation of these services. It would also prompt professionals in these industries to fully consider the identity and the source of funds of their clients, and provide intelligence to AUSTRAC and other law enforcement agencies of potentially suspicious transactions.





# ***Legal practitioners, conveyancers, accountants and trust and company service providers***

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While transaction-service type activities are directly vulnerable to money laundering and terrorism financing, there are other services that can act as a gateway to property markets and financial institutions. These ‘gatekeepers’ provide financial and business services that can be abused to disguise beneficial ownership, conceal the origins and purposes of financial transactions, facilitate tax evasion and launder the proceeds of crime. Lawyers and trust and company service providers in particular can assist in the creation, operation and management of corporate and trust structures.

Operating through gatekeepers can provide a layer of legitimacy to disguise criminal activity. These services facilitate the establishment of complex corporate structures, and can be used to create distance between criminals and their illicit wealth. Without AML/CTF awareness and compliance, gatekeepers may not realise that their services are being exploited by criminals, or may be ‘wilfully blind’ to this misuse, as they are not obliged to fully understand the identity and source of funds of their client. A recent example of this was the leaked release of the so-called ‘Panama Papers’, which uncovered documents detailing financial and attorney-client information, and involved over 1000 Australian entities. Complex structures, fake shareholders and other suspicious methods were used to disguise ultimate account owners and evade tax.

The AML/CTF regulation of gatekeepers would enable a greater sharing of responsibility of the regulatory burden, currently borne by financial institutions who have to investigate and document clients with complex structures and obscured sources of funds. It would also reduce the attractiveness of using gatekeepers in Australia for illegitimate purposes, as well as increase the awareness of money laundering and terrorism financing risks within these industries. Professionals would be required to consider the identity and the source of funds of their clients, and the reporting of suspicious matters and transactions would provide additional intelligence to AUSTRAC and other law enforcement agencies.



# Industry impact

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Compliance with the AML/CTF regulations requires time, skilled resources and money. The initial response to the broadening of these regulations has therefore been somewhat mixed. While there is a general understanding of the importance of combating money laundering and terrorism financing, there are concerns about the burden of compliance, particularly for small businesses and sole proprietors, which make up a significant portion of the affected business and professions.

Legal practitioners were also particularly concerned that compliance with AML/CTF obligations would impact legal professional privilege, which protects the disclosure of communications between a legal practitioner and a client for the purpose of seeking legal advice, and for use in existing or anticipated proceedings. Legal practitioners foresee challenges in balancing their professional obligations with AML/CTF obligations, particularly in the filing of Suspicious Matter Reports.

The government has suggested several measures to mitigate the impact of AML/CTF compliance on affected businesses.

These included;



'Simplified Customer Due Diligence' measures for low-risk entities/services



Non-acceptance of cash for certain transactions



The application of a risk-based approach where controls would be proportionate to the types of money laundering and terrorism financing risk faced by the reporting entity.



# What will you have to do?

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Once the AML/CTF Act expansion is rolled out, if you are a real estate professional, high-value dealer, legal practitioner, conveyancer, accountant or trust and company service provider, you will likely be required to:

- ✓ understand the AML/CTF Act and AML/CTF Rules, and their impact on business operations
- ✓ enrol with AUSTRAC by submitting an AUSTRAC Business Profile Form
- ✓ implement processes to identify transactions that require submission of Threshold Transaction Reports and International Funds Transfer Instructions to AUSTRAC Online
- ✓ implement processes for identifying suspicious transactions and customers and submitting Suspicious Matter Reports to AUSTRAC Online
- ✓ implement Customer Due Diligence processes to collect and verify customer information. This includes identity information for individuals, corporate and ultimate beneficial owner details for entities
- ✓ ensure adequate Enhanced Customer Due Diligence is performed on customers with a high level of money laundering and terrorism financing risk, such as 'Politically Exposed Persons' and foreign 'Ultimate Beneficial Owners'.

Other AML/CTF obligations that you may be subject to include:

- ✓ appointing an AML/CTF compliance officer to handle reporting under the Act
- ✓ ensuring staff undergo training to ensure awareness of money laundering and terrorism financing risks, red flags and compliance obligations
- ✓ ensuring that the AML/CTF processes are independently reviewed at regular intervals.

Tranche two of the AML/CTF regulations is a natural extension to non-financial industries vulnerable to money laundering and terrorism financing. Australia would be able to close a regulatory and intelligence gap, enhance national security and more equitably share the responsibility of combating money laundering and terrorism financing. However, there are significant compliance costs, particularly for small businesses and sole proprietors. It is therefore incumbent on the government to strike the right balance between implementing controls sufficient to fight crime and terrorism, and not placing an undue compliance burden on reporting entities.

# Further Reading

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Attorney-General's Department: AML/CTF statutory review implementation:

<https://www.ag.gov.au/Consultations/Pages/amlctf-statutory-review-implementation.aspx>

PwC Australia, Building Transparent Businesses

<http://www.pwc.com.au/btbnetwork>

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