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Australia's new AML/CTF Regime—Implications for the legal profession

4 March 2026



Law Council
OF AUSTRALIA

About the Law Council of Australia

- The Law Council of Australia (LCA) represents the legal profession at the national level.
- Represents more than 110,000 Australian lawyers through constituent member Bar Associations and Law Societies ('constituent bodies').
- The Law Council represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

Law Council of Australia Constituent Bodies

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Victorian Bar
- Western Australian Bar Association
- Law Firms Australia

Overview—Australia’s AML/CTF Regime

- Core objective—detect, deter, and disrupt money laundering, terrorism financing, and the crimes they enable
- Addressing gaps in Australia’s AML/CTF framework
 - Original focus on traditional financial institutions and services, like banks
 - Need to align with international standards established by the Financial Action Task Force (**FATF**)
- November 2024 legislative reforms to the AML/CTF Act

Structure of the AML/CTF Regime

The Act: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**). Significantly amended in late 2024 by the *Anti-Money Laundering and Counter Terrorism Financing Amendment Act 2024* (Cth)—expanded the AML/CTF Act to ‘Tranche 2’ entities (lawyers, real estate agents, conveyancers)

The Rules: Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Rules), provide detail on the broader obligations in the AML/CTF Act

AUSTRAC Guidance: AUSTRAC has produced online guidance documents, including its Reforms Guidance, which—among other things—sets out AUSTRAC’s interpretation of the AML/CTF Act.

AUSTRAC Starter Kits: Customisable online compliance program for small reporting entities. Designed for reporting entities with 15 employees or less, but can be adapted for use by larger entities

The legislative framework—Implementation

Phased transition, ending on 1 July 2026

Already in force

- Schedule 9 Investigation and examination powers
- *Financial Transaction Reports Act 1988* repealed in January 2025

31 March 2026

- Enrolment commences for Tranche 2 (deadline 29 July 2026)
- Commencement of Regime for Tranche 1
- Tipping off offence

1 July 2026

- Commencement for Tranche 2 entities—BUT Transitional rules pending (including delaying commencement of independent review obligation)

Scope of application

- The Act regulates ‘reporting entities’
- A ‘reporting entity’ is a ‘person’ who provides ‘designated services’ to customers (clients)
 - Person = an individual, a company, a trust, a partnership, a corporation sole, a body politic (s 5)
 - Designated services are listed in section 6
- If you are a ‘person’ that provides ‘designated services’ to clients, the Regime applies to you in relation to the designated service/s you provide

So ... what are the designated services?

Designated services— FATF Recommendations

- The Regime is designed to give effect to the FATF Recommendations (which includes the Interpretative Notes), which establish standards to address ML/TF risks and proliferation financing
- Predicated on a ‘risk-based approach’, under which reporting entities first identify, assess and understand their ML/TF risks and then adopt appropriate mitigatory measures

Designated services—AML/CTF Act

- Section 6 of the AML/CTF Act contains tables setting out what a ‘designated service’ is in the context of specific industries, and who the ‘customer’ of the service is
- Section 6(5B) contains the newly regulated ‘professional services’ which are relevant to the legal profession
- Includes, in general terms: assisting in the planning or execution of transactions relating to conveyancing; entity structuring, ownership and control; management of money, securities, virtual assets and other property; and equity and debt financing

Designated services—AML/CTF Act

Table 6—Professional services		
Item	Provision of a designated service	Customer
1	<p>assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate, where:</p> <ul style="list-style-type: none"> (a) the service is provided <u>in the course of</u> carrying on a business; and (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal 	the person
2	<p>assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer a body corporate or legal arrangement, where:</p> <ul style="list-style-type: none"> (a) the service is provided <u>in the course of</u> carrying on a business; and (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal 	the person
3	<p>receiving, holding and controlling (including disbursing) or managing a <u>person's</u>:</p> <ul style="list-style-type: none"> (a) money; or (b) accounts; or (c) securities and securities accounts; or (d) virtual assets; or (e) other <u>property</u>; <p>as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, <u>in the course of</u> carrying on a business (other than in a circumstance covered by subsection (5C))</p>	the person

Designated services—AML/CTF Act

Table 6—Professional services		
Item	Provision of a designated service	Customer
4	<p>assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to:</p> <p>(a) a body corporate (or proposed body corporate); or (b) a legal arrangement (or proposed legal arrangement);</p> <p><u>in the course of carrying on a business</u></p>	the person
5	<p>selling or transferring a shelf company, <u>in the course of carrying on a business</u></p>	the buyer or transferee
6	<p>assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of:</p> <p>(a) a body corporate (other than a corporation under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>); or (b) a legal <u>arrangement</u>;</p> <p><u>in the course of carrying on a business</u></p>	<p>the person, <i>and</i>:</p> <p>(a) if the body corporate is a company and the service is creating the company—the beneficial owners and directors of the company; or (b) if the legal arrangement is an express trust and the service is creating the express trust—the trustee, settlor and beneficiaries of the trust</p>

Designated services—AML/CTF Act

Table 6—Professional services		
Item	Provision of a designated service	Customer
7	<p>acting as, or arranging for another person to act as, any of the following, on behalf of a person (the nominator), <u>in the course of</u> carrying on a business:</p> <ul style="list-style-type: none"> (a) a director or secretary of a <u>company</u>; (b) a power of attorney of a body corporate or legal <u>arrangement</u>; (c) a partner in a <u>partnership</u>; (d) a trustee of an express <u>trust</u>; (e) a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above <u>paragraphs</u>; <p>other than in a circumstance covered by subsection (5E)</p>	the nominator
8	acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the nominator), <u>in the course of</u> carrying on a business	the nominator
9	providing a registered office address or principal place of business address of a body corporate or legal arrangement, <u>in the course of</u> carrying on a business	the person to whom the service is provided

Designated services— Table 6 Carve outs and exclusions

- **Court order exclusion:** Items 1, 2, and 3 do not apply if the designated service occurs pursuant to, or resulting from, a court or tribunal order
- **Item 3 Carve outs:** section 6(5C) and (5D) list circumstances in which Item 3 does not apply (discussed shortly)

Designated services— Scope of application of Table 6

- Essentially: somewhat unclear
- Some words used in the Items are capable of an extremely wide interpretation, which—if applied—would catch activities with no or negligible ML/TF and have absurd results
 - ‘assisting a person’—could conceivably catch anyone who provides any legal assistance to a client that is related to a designated service
- Also exceeds the FATF recommendation
 - FATF refers to ‘*prepare for or carry out transactions...*’, and its Guidance says that advice work and work peripheral to a relevant transaction should not be caught
 - AML Act refers to ‘assisting in the planning or execution of a transaction.. or otherwise acting...for a person in a transaction...’
- Scope of the court order exclusion unclear
- Commencement of designated service unclear

Designated services— AUSTRAC Reforms Guidance

AUSTRAC has developed and published Reforms Guidance clarifying its interpretation of the reforms, which provides that:

- ‘Assisting’ is confined to ‘directly advancing’ a designated service, cf activities which merely ‘influence’ an outcome (ie, there must be a causative link to a transaction, etc.)
- ‘Assisting’, ‘planning’, ‘organising’ or ‘otherwise acting for on behalf of a person’ are only regulated when the action is sufficiently linked to the outcome of the designated service, and actions will only be sufficiently linked when the following principles are met:
 - **who**: a person whose assistance to a customer directly advances a designated service; merely influencing how the customer proceeds, providing general advice or ancillary services, isn’t sufficient.
 - **when**: a person starts to provide one of the designated services when they act on instructions in relation to a relevant transaction or the creation or restructure of a body corporate or a legal arrangement.

Designated services—Reconciling the legislation and AUSTRAC’s Guidance

- By confining ‘assisting’ to ‘directly advancing’ a transaction and distinguishing activities which merely ‘influence’ an outcome, the Items are construed as requiring a direct relationship between a service and an outcome (transaction) to be engaged.
- In due course the legislation should be amended for clarity, but in the interim—is there a basis for AUSTRAC’s more confined interpretation?
- Having regard to the text, context, and purpose of the legislation—to implement the FATF Recommendations (predicated on the risk-based approach), we think the better view is “yes”.
- Further, AUSTRAC is the enforcement body with extraordinarily wide powers. So, what AUSTRAC thinks carries great weight.

Designated services—What does it all mean?

- It's complicated!
- While some legal services are clearly covered, and some are not, the starting point will be for individual practitioners to assess the legal services they provide and determine whether those services may be 'designated services' in the circumstances in which they are provided
- The Reforms Guidance assists by providing generic examples some of which are applicable to financial planners and accountants, and which need to be tailored for application to lawyers, that shed light on which legal services, depending on the facts, are likely or unlikely to be designated services
- We will need more sector-specific guidance

Some examples of what's unlikely to be a designated service

- **Legal aid services:** Generally, legal aid services are unlikely to fall within the scope of designated services. Query CLCs.
- **ADR:** Alternative dispute resolution service providers are unlikely to be a designated service
- **Template legal documents:** Providing template legal documents to another (for example, an accountant) on a subscription basis, where the template is used by that other person in the course of their own separate business, including by tailoring them, with no additional input from the provider
- **Acting as:** a director in a personal capacity and not as a nominee of another; an executor under a will pursuant to a grant of probate; a Trustee for Sale appointed by Court, unlikely to be a designated service
- **Power of attorney:** Preparing a power of attorney for a natural person is unlikely to be a designated service

Designated services—Advisory Services

- Purely advisory services that do not **‘directly advance’** a transaction (etc) will not constitute a designated service; rather, will merely **‘influence’** an outcome.
- Advisory services that are ancillary to another service that does directly advance an outcome are not themselves covered
 - Ancillary advice example: a lawyer conducting a transaction in progress seeks external advice from an ancillary adviser (for example, a tax lawyer or an intellectual property lawyer) on a specific aspect of the matter, such as the terms of the agreement. While the lawyer is providing a designated service, the ancillary adviser is not (applying the principles in the Reforms Guidance)
- But—a question of degree, factually dependent

Designated services—Wills and estates

What's not a designated service

- Drafting a will, including a testamentary trust
- Obtaining grants of probate, letters of administration, and ancillary work obtaining them and administering deceased estates is unlikely to be a designated service where it involves a court order
- An in specie distribution of real estate made pursuant to a will covered by the court or tribunal order exception
- Transfers by survivorship (which happen by operation of law)
- Holding of estate monies in a lawyer's trust account pending distribution to beneficiaries unlikely to be a designated service *provided that* there is nothing else in the administration of the estate that would constitute a designated service (seeking confirmation from AUSTRAC)

Designated services—Wills and estates

What is covered

- Transfers inter vivos and creation of trusts for estate planning constitute designated services

Complexity

- Where a testator is the trustee of a family trust and the will specifies what is to happen in those arrangements when testator dies

Designated services—Family law

Divorce proceedings example (Reforms Guidance)

- Lawyer providing advice to husband in relation to the family home—not a designated service, as no real estate transaction being directly advanced
- After mediation, lawyer drafts a consent order to settle the proceedings including providing for transfer of property—not a designated service
- Court makes order, and property is transferred pursuant to this order—not a designated service because of the court order exemption

Binding financial agreement example (Reforms Guidance)

- Family lawyer provides work in drafting and executing a binding financial agreement in relation to transfer of property—not a designated service because not performed in connection to a transaction
- However, the conveyancer/lawyer's services to directly advance the transfer of the property pursuant to the agreement is a designated service

Designated services—Family law

Other Complexities

- If a pre- or post-separation agreement establishes a trust, then it will be a designated service

Further LCA guidance will be prepared

Designated services—Commercial lawyers

Commercial lawyers may provide designated services under Items:

- 1 (real estate)
- 2 (transferring body corporates or arrangements)
- 3 (holding money)
- 4 (debt financing)
- 5 (transferring shell companies)
- 6 (restructuring)
- 7 (nominating to certain positions)
- Also, potentially—though less likely—Items 8 and 9.

Designated services—Commercial lawyers

Issues

- **Item 2, transferring shareholdings:** Reforms Guidance refers to transferring the ‘controlling interest’, though the legislation only refers to ‘transfer a body corporate’ (Discussion underway with AUSTRAC)
- **Commencement:** Key issue is when a service commences
- Not much guidance regarding specialist advice being sought when a transaction is in progress and being directly advanced by another lawyer—will likely come down to a question of degree and the extent of the specialist advice being provided

Designated services— Tax advice and planning

Example: Sale of body corporate (Reforms Guidance)

- Accountant provides tax advice to a client on the implications of selling a body corporate. Though this may be potentially influential to the client deciding whether to sell the body corporate, it doesn't directly advance any related transaction and there isn't a transaction at this point—so no designated service is being provided.
- Once it is clear there is one buyer, and a lawyer is instructed to act for the client to sell the body corporate to a buyer, the lawyer commenced to provide a designated service begins from this point.
- If there are many potential buyers that have been identified, the designated service begins when negotiations begin with one or more potential buyers.

Designated services— Tax advice and planning

Once a designated service commences, preparatory steps taken to assist in the sale of the body corporate will be regulated as they directly advance the outcome of the Item 2 designated service. This includes:

- representing the customer in negotiations for the sale
- preparing or reviewing contracts for sale
- conducting due diligence, valuation of assets and liabilities in anticipation for the sale
- obtaining FIRB approvals, ASX and ASIC waivers
- preparing for financial settlement
- preparing documents to be provided to an authority (such as ASIC) for the transfer of the body corporate

However, ancillary advice provided to lawyer that is directly advancing transaction will probably not be a designated service (TBC by AUSTRAC)

Designated services—Conveyancing Lawyers



Conveyancing transactions are at the heart of the designated services

Relevant activities include typical steps taken in the conveyancing process to transfer real property from one person to another, such as:

- preparing, reviewing, lodging sale contracts & land transfer instruments
- researching property titles, strata documents, or land use specifications
- coordinating with financial institutions regarding payments and discharge of mortgage for the real estate transfer
- holding funds on behalf of a buyer and disbursing trust funds at settlement, or organising for release of deposit to the seller
- preparing for financial settlement
- preparing documents to be provided to a registry authority for transfer of real estate on behalf of a client

Whether an activity will be regulated depends on when ‘**directly advancing**’ threshold is met

Designated services—Conveyancing Lawyers



Real estate transactions

- A person starts providing the designated service when they act on instructions in relation to a transaction to buy, sell or transfer property and a relevant transaction exists.
- A transaction will typically exist when there is at least one buyer and one seller (do not need to be specifically identified) and when either:
 - in a private treaty or where an auction doesn't meet reserve, when a buyer and seller, verbally or in writing, agree to the sale price of the property prior to the payment of any deposit or the exchange of any contracts
 - in an auction that meets reserve, at the point a buyer is successful at auction

Designated services—Conveyancing Lawyers



Example: Conveyancing

- Lawyer provides a potential client with general advice on the process for buying real estate, then accepts instructions to act for the client and draws up a draft contract for sale. No designated service provided as there is no real estate transaction (at this point)
- The buyer is successful at an auction; at this point, the lawyer will start to provide a designated service
- Before settlement, buyer expresses regret and seeks further advice from:
 - an accountant for financial advice on the implications of withdrawing
 - another lawyer for advice on the legal consequences of withdrawing
- These further services may influence whether or not the transaction will proceed, but do not directly advance this transaction and are not regulated

Designated services—Trusts

Setting up a trust—what is and is not covered

- Designated service: Establishing a trust for a client (other than a testamentary trust) is a designated service
- Not a designated service: Providing a draft trust deed (e.g. SMSF) by subscription where other lawyers, accountants, etc, are acting on the establishment of the trust is likely not a designated service
- Not a designated service: A transfer, creation of a trust, etc, that arises by operation of law is not a transaction so unlikely to be a designated service

Designated services—Trusts

Operating Trust Accounts—what is and isn't covered

- Holding, controlling or managing a persons' money or property that passes through accounts or dealing with money or property on direction or instruction from a client in a transaction may be a designated service
- For example:
 - Managing sale or purchase funds held on escrow
 - Managing money or property prior to it being settled as trust property
- HOWEVER, sections 6(5C) and (5D) contain several carve outs which exclude certain services from the scope of Item 3

Designated services—Trusts

Carve outs for trust accounts—sections 6(5C) and (5D)

Item 3 does not apply in relation to ...

- Money, etc., being held or managed is payment by the person for the provision of goods or services by the business
 - For example, fees and disbursements, and money placed in trust for a solicitor or conveyancer for the purposes of funding conveyancing services for the sale of property (Reforms Guidance)
- Holding/controlling money or property, where the holding of that money or property is incidental to the provision of non-designated services, in circumstances where no other designated services are provided
 - For example, holding a client's money in a trust account for paying a barrister's fees in a criminal matter (Reforms Guidance)

Designated services—Trusts

Carve outs for trust accounts—sections 6(5C) and (5D)

- Money received or payable under an order of a court or tribunal (e.g. judgment sums, bail payments)
 - For example, using a trust account to receive a judgment sum from the opposing party to send to a client's bank account (Reforms Guidance)
- Money or property received or disbursed to or from a government body (for eg, the ATO), a public international organisation, insurer

Unresolved queries

- Extent to which estate monies can be held in trust account pending distribution to beneficiaries
- Whether a solicitor, acting for a vendor, who holds the purchasers deposit in their trust account is providing a designated service to the purchaser (probably not covered)

Designated services—Personal injury law

- Litigation services are unlikely to constitute a designated service
- The receipt of settlement monies for distribution to the client also unlikely to constitute a designated service where it falls within the carveouts in sections 6(5C) and 6(5D)
 - The Reforms Guidance states that a personal injury practitioner receiving payment from an insurer to pay their client's insurance claim will be not be a designated service
- However, it is unclear if settlement monies received into trust other than from an insurer or pursuant to court order will be covered (being considered by AUSTRAC)

Designated services— Insolvency Practitioners

- AUSTRAC’s Reforms Guidance says ‘If you’re a lawyer, accountant, conveyancer, insolvency practitioner, financial adviser or other business that provides professional services, learn what new designated services we’ll regulate’—presumably, whether an activity will be regulated depends on when ‘**directly advancing**’ threshold is met
- Designated service: drafting, reviewing and negotiating corporate agreements and business documents, including personal insolvency agreements, are within scope (Reforms Guidance)
- Designated service: an insolvency practitioner changing a company limited by guarantee into a company limited by shares, splitting one body corporate up into several or merging bodies corporate (Reforms Guidance)
- Not a designated service: an insolvency practitioner assisting a body corporate to restructure internal governance and business operations, for eg, staffing levels, productivity (Reforms Guidance)

Designated services—Criminal practice

- Most criminal legal services will not be designated services as they (a) generally do not directly advance a transaction; and (b) generally only relate to matters that have already occurred
- However, some may be—for example:
 - Lawyers acting in bail proceedings called on to advise about conditions involving sale or transfer of assets
 - Criminal confiscation and forfeiture proceedings may involve transfers of property (albeit with approval of the relevant proceeds authority)
 - Representing litigants in ADVO proceedings may involve consideration of property arrangements between the parties and prospective dealings affected by ADVOS

Designated services— Dispute resolution and legal aid

- Legal dispute resolution services are generally not caught as (a) they do not directly advance a transaction and (b) they generally only relate to matters that have already occurred
- Drafting a consent order to settle ongoing litigation, including an order providing for the transfer of real estate, is not caught as it does not directly advance a transaction but only influences a possible conveyancing process (which would directly advance a transaction)
- AUSTRAC considers that the court order exception in items 1 and 2 only applies to services carried out after the court order is made
- Legal Aid: AUSTRAC CEO has confirmed to Chair of National Legal Aid that work done by legal practitioners at legal aid commissions, or law firms undertaking work under a grant of legal aid, do not trigger AML/CTF obligations

Barristers

Services provided by barristers on instructions of a solicitor are not designated services per section 6(6B)

Despite anything in this section, a service is not a designated service if the service is provided by a person in the course of legal practice as a barrister on the instructions of a solicitor, if the instructions are given in connection with the provision of a designated service

This does not include all services provided by barristers:

- Direct briefs: Does not apply to apply to direct briefs, including where received from commercial entities, even if instructed by an in-house solicitor, or pro bono direct briefs pro bono (eg court referrals)—unless a solicitor is also involved, or if the litigation work is not a designated service

Barristers—Table 6 services and litigation

What Items in Table 6 might be relevant for barristers?

- **Item 1:** Transaction to sell, buy or otherwise transfer real estate
- **Item 2:** Transaction to sell, buy or otherwise transfer a body corporate or legal arrangement.
- **Item 4:** Transaction for equity or debt financing relating to a body corporate or legal arrangement (including a proposed body corporate or legal arrangement)
- **Item 6:** Creation or restructuring of a body corporate or legal arrangement

Barristers—Table 6 services and litigation

What kinds of work might engage Table 6 designated services?

- Drafting, negotiation, and advice work in relation to the proposed terms of real estate transactions (Item 1) or transfers of interests in joint ventures, partnerships, companies and trusts (Item 2)
- This may extend to settlement agreements and family law agreements not recorded in court orders (Items 1 and 2)
- Drafting, negotiation and advice work in relation to the creation of interests in joint ventures, partnerships, companies and trusts (Item 6)
- Drafting, negotiation, advice work and litigation work in relation to schemes of arrangement, corporate reconstructions and insurance portfolio transfers (Items 4 and 6)

Barristers—Government work

Potential carve out for government work direct briefs

Exposure draft rule proposed to be included in the *Anti-Money Laundering and Counter-Terrorism Financing (Class Exemptions and Other Matters) Rules* (not yet in force, subject to consultation)

Rule 7.1—AML/CTF Act does not apply to services in certain circumstances

For the purposes of subsection 247(3) of the AML/CTF Act, that Act does not apply to a designated service if:

- (a) the service is covered by an item of table 6 in section 6 of that Act; and*
- (b) the service is provided by a person in the course of legal practice as a barrister; and*
- (c) the service is provided to an Australian government body*

What is a government body?

- Section 5 definition: Australian government body means the Commonwealth, a State or Territory, or an agency or authority of the above
- Draft explanatory statement to the Exposure Draft Rules:
 - Cth: all Non-Corporate Commonwealth Entities, Corporate Commonwealth Entities, and Government Business Enterprises
 - State/Territory: government departments, agencies, offices, entities and local government councils/authorities (Legal Aid – statutory corporation)
 - BUT: Companies, trusts, partnerships or other associated entities created by **council or councillors** for the exercise of council functions or activities are not within the scope of the proposed Rule

Preparing to comply

Your obligations under the AML/CTF Act

- **Enrolment:** Enrol with AUSTRAC by 29 July 2026 latest, available from 31 March 2026
- **AML/CTF Program:** Develop, maintain and comply with an AML/CTF program, comprising AML/CTF policies and risk assessment
- **Initial and ongoing client due diligence**
 - Pre-existing customers carve out
- **Reporting obligations:** suspicious matter reporting, threshold transaction reports
- **Appointing AML/CTF staff and training**
- **Record keeping:** Make and retain records for 7 years

SMRs and notice obligations

- Section 41, Reports of suspicious matters—essentially provides that if an SMR obligation arises, you must make a report to AUSTRAC
- SMR obligation arises where a reporting entity suspects on reasonable grounds that ... (not exhaustive list)
 - Client/their agent is not who they say they are
 - they have information concerning the provision, or prospective provision, of a designated service that may be relevant to the investigation of tax evasion, any offence, or the enforcement of the Proceeds of Crime Act
 - The provision of the service is preparatory to the commission of financing of terrorism, money laundering, etc
- Section 49 and 49B Notices: Requires reporting entities to respond to notices issued to them to obtain information or documents in certain circumstances

SMRs and notice obligations— Client legal privilege

- AML/CTF Act affords protection to client legal privilege

Section 242 Legal professional privilege

(1) Nothing in this Act affects the right of a person to refuse to give information (including by answering a question) or produce a document:

- (a) the information would be privileged from being given on the ground of legal professional privilege; or*
- (b) the document would be privileged from being produced on the ground of legal professional privilege.*

(2) The fact that a person has provided a description of information or documents that may be or are privileged from being given or produced on the ground of legal professional privilege does not, of itself, amount to a waiver of the privilege.

SMRs and notice obligations— Client legal privilege

Privilege and making an SMR/responding to a notice

- There is no obligation to make SMR if all of the information that forms the basis of the reasonable suspicion is privileged (s 41(2A))
- If only some of the information the subject of a SMR is privileged, or a NTP is issued, must report/produce but submit an LPP form setting out the basis of the privilege claim: (ss 41(3), 43(3)(aa), 49(4), 49B(4), 167(5))
- Claims to be determined by a process to be set out in guidelines published by the Minister for Home Affairs: s 242(a) (not yet finalised)

Navigating SMRs— Tipping off, ethical duties, privilege

Unique problems arise for lawyers in navigating making an SMR

Tipping off

- Section 123 makes it an offence to disclose information regarding an SMR, section 49 Notice, or Section 49B Notice, where the disclosure would or could be reasonably expected to prejudice an investigation. Penalty is imprisonment for 2 years or 120 penalty units
- Some exceptions: disclosures to a lawyer for the purposes of obtaining legal advice about making an SMR are permissible, as are disclosures made in good faith for the purpose of dissuading a client from engaging in conduct that constitutes, or could constitute, an offence (very limited exception)

Ethical duties and professional responsibilities

- Legal professional responsibilities and ethical duties are incompatible with continuing to act for the client after making an SMR—termination necessary

Navigating SMRs— Tipping off, ethical duties, privilege

Privilege

- How can you make a privilege claim on behalf of a client without instructions?
- How to resolve infringement of client's common law right?
- Who is going to pay lawyers to make claims?
- Is informal dispute resolution realistic?
- Review of LPP in Commonwealth investigations
- Submissions to review: must it go to Court?

Privacy Act obligations

- Most small businesses (businesses with an annual turnover of \$3 million or less) are not covered by the *Privacy Act 1988* (Cth) (**Privacy Act**)
- However, regardless of turnover, the Privacy Act covers any business that is a reporting entity for the purposes of the AML/CTF Act
- This means that on 31 March 2026, when practices that provide a designated service become an AUSTRAC reporting entity, they will also become an ‘APP entity’ under the Privacy Act
- [OAIC Guidance available online](#)

Objectives

Some key objects of the Privacy Act are to:

- Promote the protection of the privacy of individuals
- Recognise that the protection of privacy for individuals is balanced with the interests of entities carrying out their functions or activities; and
- promote responsible and transparent handling of personal information by entities (Privacy Act, ss 2A(a) and (d))

In contrast, two principal objects of the AML/CTF Act are to provide:

- for measures to detect, deter and disrupt money laundering, the financing of terrorism, and other serious financial crimes, and
- relevant Australian government bodies and their international counterparts with the information they need to investigate and prosecute money laundering offences, offences constituted by the financing of terrorism, and other serious crimes (AML/CTF Act, ss 3(1)(aa) and (ab))

Three key points to assist with preparing to comply with the Privacy Act

1. The Privacy Act does not stop you from adhering to your AML obligations, but you will need to navigate your obligations carefully

- Consider whether the collection and retention of personal information is ‘reasonably necessary’

2. Have a privacy policy and collection notice

- The object of having a privacy policy is to help ensure your practice is managing personal information in an open and transparent way, so it is recommended that your privacy policy be written plainly and made available upon request
- Consider the OAIC’s guide to developing an APP privacy policy (available on their website)

Three key points to assist with preparing to comply with the Privacy Act

3. Take reasonable steps to keep your information secure

- Consider the OAIC's guide to assist entities to prepare a data breach response plan (available on their website)
- The NSW Law Society and Lawcover have created freely available resources to assist practitioners, available online here:
<https://www.lawsociety.com.au/legal-technology/cyber-security-resources>

AUSTRAC supports and regulatory approach

- **AUSTRAC guidance materials and support documents**
 - Sector specific program kits
 - Reforms Guidance
 - Webinars, e-learning modules, factsheets
- **AUSTRAC regulatory expectations and priorities for 2025/2026**

Conduct Rule Changes

- LCA is in the process of developing rule changes to the Australian Solicitors Conduct Rules (**ASCR**) to enable solicitors to cease to act after lodging an SMR with AUSTRAC and to clarify what can be said to the client so that the tipping off provisions are not enlivened
- Uniform Law States: Process for changing rules involves extensive consultation with local regulatory authorities and a variety of other stakeholders. Consultation will commence shortly and if successful, will result in a proposal to the Standing Committee of Attorneys General for the Uniform Law States by the Legal Services Council
- Non-Uniform Law jurisdictions: Similar but separate mechanisms for rule changes exist. Law Council consultation will commence shortly



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