

# Anti-Money Laundering Update

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PRESIDENT | LAW COUNCIL OF AUSTRALIA

ESSENTIALS SERIES: AUTUMN EDITION | THURSDAY 27 MARCH 2025

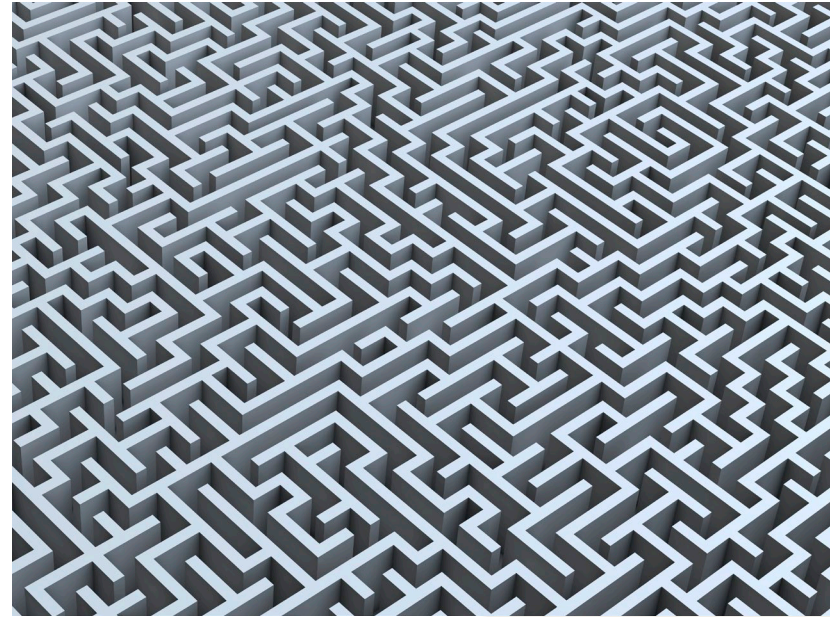
# Update on the Anti-Money Laundering Reforms



Law Council  
OF AUSTRALIA

# Overview

- Background
- Transition
- Designated Services
- Positive Obligations
- Prohibitions
- Investigative Powers
- Issues
- Questions



# Background

- AML Regulation first introduced in 2006
  - *Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth)* ('AML/CTF Act')
  - *Financial Transaction Reporting Act 1988 (Cth)* ('FTR')
- Tranche 1 = Finance (Banking / Gambling)
- Tranche 2 = Property / Legal Services
- Cash transactions exceeding \$10,000.
- Long transition 2006-2009
- Tranche 2 was never introduced.

# Background

- Financial Action Taskforce – Global non-government organisation behind an international regulatory model
- FATF reviewed Australia in 2015 and was highly critical – the prospect of “grey listing” was raised for the first time
- AUSTRAC initiated prosecutions...
  - TabCorp = \$45 million
    - *Chief Executive Officer of Australian Transaction Reports and Analysis Centre v TAB Limited (No 3)* [2017] FCA 1296
  - CBA = \$700 million
    - *Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Commonwealth Bank of Australia Limited* [2018] FCA 930
  - Westpac = \$1.3 billion
    - *Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation* [2020] FCA 1538

# Background

- Tranche 2 Reforms introduced via the *Anti-Money Laundering and Counter Terrorism Financing Amendment Act 2024* (Cth).
- Royal Assent: 10 December 2024.
- Integrates with the existing Act.
- Phased transition, ending on 1 July 2026.
- The penalty and investigations regime will apply to accountants, lawyers and real estate agents.
- Max Penalty: 100,000 pu corporations; 20,000pu individuals

# LCA's Position

- The LCA initially opposed all AML regulation for the profession, because we are already so highly regulated
- In 2023 the LCA commissioned a Vulnerabilities Analysis
  - Profession is uniformly risk averse.
  - Instances of misconduct are rare.
  - BUT highlighted insufficient understanding of AML risks
- Clear that Govt. was proceeding regardless, driven by FATF threat of grey listing, law enforcement pressure, and the election cycle
- LCA raised numerous concerns during the consultation and Senate Inquiry – many ignored, but some important exemptions

# Phased Transition

- **IMMEDIATE**
  - Schedule 9 Investigation powers
  - Repeal of the FTR
- **31 March 2025**
  - Tipping off offence
- **31 March 2026**
  - AML/CTF Programs
  - Client Due Diligence
  - Designated Service Provider Duties
- **1 July 2026**
  - Changes to Client Legal Privilege

## Note

There are also changes to banking and finance activities, such as services relating to virtual assets in the Act

**DSPs will need to enrol  
BEFORE 31 March 2026**

**AND**

**AML/CTF Programs will  
need to be developed**



# Designated Services

- The Act applies to practitioners and their firms where they provide a “designated service” in the ordinary course of business.
- The first obligation is to determine whether your practice is captured.
- **Key Question: Do I provide a designated service?**
  - If YES = AML Act applies to you.
  - If NO = AML Act does not apply to you.

# Designated Services

- **WHAT IS A DESIGNATED SERVICE?**

- New Table inserted into Section 6 of the Act.

- buying and selling of real estate
    - managing of client money, securities, or other assets
    - management of bank, savings or securities accounts
    - organisation of contributions for the creation, operation or management of companies
    - creation, operation or management of legal persons or arrangements, and buying and selling of business entities...

See Section 6 TABLE 6

# Designated Service

- **WHAT IS A DESIGNATED SERVICE?**

- acting as a formation agent of legal persons
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner or a partnership, or similar position in relation to other legal persons
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement, or
- acting as (or arranging for another person to act as) a nominee shareholder for another person.
- **NOTE EXTENDED OPERATION OF DEFINITION:** “assisting with the planning ..... or execution”

# Designated Services

- **EXEMPTIONS**

- There are some exemptions.
- S6(5C) exempts a limited range of services
  - Trust money is held for payment, disbursements and maintenance of property.
  - The transaction/receipt is in compliance with a court order.
  - The service is declared exempt by the AML Rules. (A lot of work is being done on this now).

# Designated Services

- Barristers
  - **Barristers** are exempt where they receive instructions from a solicitor (s6(6B)).
  - Direct access briefs are otherwise captured.
    - “Services provided by barristers on instructions of a solicitor
    - (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.”

# Positive Obligations

If you are captured by the AML/CTF Act you must....

- (1) **Enrol** with AUSTRAC.
- (2) Undertake **risk assessments** of clients
- (3) Develop, maintain and comply with an **AML/CTF program**.
- (3) Undertake **due diligence** before providing a designated service (unless exempt).
- (4) Make and retain **records** for 7 years.
- (5) **Report** cash transactions over \$10K.
- (6) **Report** 'suspicious matters.'
- (7) **Comply** with notices from AUSTRAC.

# What is the SMR Obligation?

- **Suspicious Matter Reporting**
  - S41
  - Where there is reasonable suspicion of certain matters, you must report to AUSTRAC within 3-5 business days of becoming aware of the matter.
    - Person's identity
    - Source of funds in crime
    - Person reasonably suspected of having committed a crime.
- **Exemption: LPP**
  - Ss242, 242A
  - Where whole basis of suspicion is privileged then no report
  - The AML/CTF recognises LPP – but introduces a reporting requirement
  - **Live Problem: Does this turn lawyers into covert informants for the state? (*Lawyer X*)**

# Tipping Off

- S123 is being replaced by the Amendment Act.
- S123 creates a “tipping off” offence.
- It is an offence to disclose to *anyone* other than an AUSTRAC official information involving a suspicious matter report or receipt of statutory notices to produce information where it could be reasonably expected to prejudice an investigation.
- Max penalty = 2yrs / 120pu.
- There are limited defences/exceptions (eg dissuading a client)



# Client Legal Privilege

- Section 242 recognises LPP.
- Unique problems arising:
  - Notice to produce cannot be disclosed to client
  - SMR cannot be disclosed
- = Privilege will need to be claimed without instructions
- The amendments introduce an LPP Reporting requirement – form sent to AUSTRAC identifying a claim for LPP

# What now?

- The LCA is currently developing and updating Guidance materials to be published in due course.
- AUSTRAC is busy engaging with the profession on trying to make the scheme fit for purpose and to minimise compliance costs.
- The Rules are currently being developed.
- First round of industry consultation closed.
- Submissions on proposed exemptions underway.

# Questions





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