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Anti-Money Laundering

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1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at the national level?

The Criminal Code Act 1995 (Criminal Code), which applies to federal and Commonwealth offences, includes several money laundering offences. Chapter 10, Part 10.2, Division 400 of the Criminal Code defines and captures 19 money laundering offences.

The federal Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) and its related Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (AML/CTF Rules) also include money laundering offences.

The Commonwealth Director of Public Prosecutions (CDPP) is the primary government agency responsible for the prosecution of federal criminal offences, including proceeds of crime offences.

Other government departments may assist the CDDP in proceeds of crime prosecutions, this includes the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Federal Police (AFP) and other Commonwealth and state departments and agencies.

Australian states and territories' criminal laws also contain money laundering offence provisions. Each state and territory's public prosecution office is responsible for prosecuting money laundering offences that breach state or territory laws.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

The Criminal Code defines money laundering offences in terms of "dealing" with "money or other property" reasonably believed to be the proceeds of crime. There are different tiers of money laundering offences depending on the value of the money or property in question. Under the code, "dealing" occurs when a person receives, possesses, conceals, disposes, imports, exports or engages in a banking transaction relating to money or other property.

The CDPP must, first, prove the existence of physical elements that create the offence, relevant to establishing guilt. Second, with respect to each physical element for which a fault element is required, one of the fault elements for the physical element must also be proven.

In 2021, the Crimes Legislation Amendment (Economic Disruption) Bill 2020 amended the Criminal Code and introduced a new category for the proceeds of general crime offences with a lower threshold. The new category's offences target controllers of money laundering networks who do not deal with the money or property directly.

Under the new general proceeds of crime offence, the prosecution does not have to show that the money or property in question is derived from a particular offence or even a general type of offence.

While the Criminal Code does not specify offences that predicate money laundering offences, predicate offences in Australia usually involve drugs and narcotics trafficking, fraud, theft and identity theft, tax evasion, people smuggling, arms trafficking and corruption offences. Criminal breaches of state and territory laws as well as foreign laws can also be predicate offences.

Australia's legislative references to tax "evasion" do not refer to a criminal offence. However, tax evasion may give rise to possible predicate offences for money laundering purposes. For example, the offence of "dealing with property reasonably suspected of being proceeds of crime, etc." in section 400.9, Division 400 of the Criminal Code.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

Yes. The money laundering offences defined by the Criminal Code apply extraterritorially where the conduct occurs "wholly or partly in Australia" or "wholly or partly on board an Australian aircraft or ship".

For conduct occurring wholly outside Australia, this applies where:

- the money or property is, is likely to become, or is at risk of becoming proceeds of crime as a result of violations of Commonwealth, state or territory indictable offences;
- the person is an Australian citizen, resident or corporation; and
- the offence is an ancillary offence, and the primary offence relevant to the ancillary offence occurred or was intended to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or ship.

Yes, in Australia, laundering money obtained from foreign crimes is punishable by law. The term "proceeds of crime" refers to any money or property that is fully or partially acquired or derived, directly or indirectly, by an individual as a result of committing a crime that violates either Australian

law or the laws of a foreign country, where such a crime is considered serious enough to be treated as an indictable offence. The AML/CTF Act, along with the Criminal Code, makes it a criminal offence to handle money or property that is known to be the proceeds of any criminal activities, irrespective of whether those activities occurred within Australia or in another country.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

Agencies tasked with investigating money laundering include the Australian Criminal Intelligence Commission (ACIC), the AFP, the Australian Taxation Office (ATO), AUSTRAC and the Australian Securities and Investments Commission (ASIC). State and territory law enforcement agencies and police may also investigate violations of money laundering laws.

At the national level, the CDPP is the primary government agency that is responsible for the prosecution of money laundering offences. The CDPP's remit includes prosecuting money laundering offences that are criminalised under the Criminal Code.

The CDPP is assisted by AUSTRAC, the AFP and the Department of Home Affairs in prosecuting money laundering offences.

At the state and territory level, the respective state or territory's public prosecutions office is responsible for prosecuting money laundering offences that breach state or territory laws.

1.5 Is there corporate criminal liability or only liability for natural persons?

Yes. The Criminal Code applies equally to bodies corporate as well as individuals and includes 19 offences related to money laundering.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

The Criminal Code provides varying penalties for money laundering offences, with the penalty that is applicable for a criminal violation depending on the value of the money or property that has been dealt with and the offender's degree of knowledge.

For individuals, the maximum penalty is life imprisonment or a fine of 2,000 penalty units (A$6.66 million). However, this is only for money or property worth A$10 million or more. At the lower range of value, for money or property worth less than A$10,000, the maximum penalty is either 12 or six months imprisonment or 30 penalty units (A$9,900), or both (the maximum penalty of imprisonment will depend on the offender's knowledge).

For corporations, the maximum penalty is a fine of 10,000 penalty units (A$3.3 million). The Criminal Code does not provide a specific fine, therefore as stated by section 4B of the Crimes Act 1914, the fine would be an amount not exceeding an amount equal to five times the amount of the maximum penalty unit that would be imposed by the court on a natural person convicted of the same offence.

One penalty unit is currently A$330, since 7 November 2024 (section 4AA of the Crimes Act 1914).

1.7 What is the statute of limitations for money laundering crimes?

The Criminal Code does not provide a specific time limit for prosecutions of money laundering offences. However, there is a time limit for the CDPP to bring proceedings, one year after the commission of a money laundering offence, if the penalty for an individual is a maximum term of six months imprisonment or for a body corporate is 150 penalty units or less.

At the state and territory level, the prosecution of money laundering offences also has time limits. For example, in New South Wales (NSW), there are summary offences of dealing with property suspected of being the proceeds of crime that require proceedings to be commenced no later than six and 12 months, respectively, after the offence was alleged to have been committed.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

At the national level, the CDPP is the primary government agency that is responsible for the prosecution of money laundering offences. The CDPP's remit includes prosecuting money laundering offences that are criminalised under the Criminal Code.

The CDPP is assisted by AUSTRAC, the AFP and the Department of Home Affairs in prosecuting money laundering offences.

At the state and territory level, the respective state or territory's public prosecutions office is responsible for prosecuting money laundering offences that breach state or territory laws.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

Australia's AML regime includes legislation that seeks to recover assets that were obtained through money laundering. At the Commonwealth level, the Proceeds of Crime Act 2002 (POC Act) enables law enforcement to pursue the recovery of assets linked to offences after a conviction. The POC Act contains the unexplained wealth provisions in Part 2-6, where targets of these orders must prove on the balance of probabilities that their wealth was not derived from an offence against a law of the Commonwealth, a foreign indictable offence or a state offence that has a federal aspect. This legislation has a broad definition of asset which includes any money, real property and personal property, tangible or intangible, located in Australia or elsewhere.

Further, each Australian state and territory also has asset recovery legislation for funds generated by offences at a state or territory level.

The National Cooperative Scheme on Unexplained Wealth was created in 2018 to enhance the ability of Commonwealth and state/territory law enforcement agencies to trace, identify and seize assets that cannot be connected to a lawful source. The scheme currently applies to NSW, the Australian Capital Territory and the Northern Territory. As required by the Scheme's legislation, on 12 October 2023, the Australian Attorney-General's Department announced the appointment of Mr Andrew Cappie-Wood AO to independently

review the Scheme's effectiveness and whether it has facilitated greater cooperation.[1]

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

Yes, there have been instances where banks and other regulated financial institutions, as well as their directors, officers or employees, have been convicted of money laundering.

A prominent example involves the Commonwealth Bank of Australia (CBA), which agreed to a A$700 million fine with AUSTRAC. AUSTRAC found that CBA had contravened the AML/CTF Act on 53,750 occasions. The contraventions included that CBA had:[2]

- failed to carry out an appropriate assessment of the money laundering and terrorism financing (ML/TF) risks of its Intelligent Deposit Machines (IDMs) prior to October 2017;
- failed to provide 53,506 threshold transaction reports (TTRs) to AUSTRAC on time for cash transactions of A$10,000 or more through IDMs from November 2012 to September 2015, having a total value of about A$625 million; and
- for a period of three years, not complied with the requirements of its AML/CTF programme relating to monitoring transactions on 778,370 accounts.

AUTRAC's investigation had commenced after being alerted by the AFP, in late 2015, about CBA accounts implicated in serious crimes, including drug importation and unlawful money processing. The bank allegedly allowed these accounts to remain active, facilitating further illicit transactions. This situation led to the charging of eight individuals with proceeds of crime offences, with six of them being convicted.

According to a media report in February 2023, the AFP has charged nine members of an international money laundering organisation. Amongst these, eight had been charged with multiple money laundering and proceeds of crime offences, allegedly carried out in support of the organisation's extensive activities.[3]

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

In cases where money laundering activities intersect with breaches of financial regulations, Australian financial regulatory bodies like ASIC and AUSTRAC may impose civil penalties or administrative actions. These can include fines, disqualification of directors, or orders requiring the institution to undertake specific compliance measures. Settlements of civil actions are generally public, and regulatory bodies often issue press releases detailing the terms of the settlements, though detailed terms may sometimes remain confidential.

1.12 Describe anti-money laundering enforcement priorities or areas of particular focus for enforcement.

In recent years, AUSTRAC has achieved landmark decisions in its enforcement actions against the casino and gambling industry.

On 30 May 2023, AUSTRAC and Crown Resorts Limited, Australia's largest gambling and entertainment group, agreed to a A$450 million fine over money laundering breaches.[4] This was the result of AUSTRAC's "Operation Slalom", by which AUSTRAC brought enhanced compliance investigations and enforcement actions against casino and gambling industries, for the high ML/TF risks faced by these industries.

In March 2022, AUSTRAC announced proceedings in the Federal Court of Australia against Crown Melbourne and Crown Perth for alleged serious and systemic non-compliance with Australia's AML/CTF laws. These proceedings were settled for a A$450 million fine, which is the third-largest fine in Australian corporate history.[5]

In February 2024, the New Zealand casino operator SkyCity also announced that it had agreed upon a penalty with AUSTRAC, following the regulator's investigation into alleged breaches of AML/CTF laws by SkyCity's Adelaide casino. The parties submitted a penalty of A$73 million for the Federal Court's approval.[6]

In December 2024, AUSTRAC commenced civil proceedings in the Federal Court against Entain Group Pty Ltd., which operates online betting sites including Ladbrokes and Neds. AUSTRAC alleged that Entain did not develop and maintain a compliant AML programme and failed to identify and assess the risks of criminal exploitation.[7] It also alleged that Entain's board and senior management did not have appropriate oversight of its AML/CTF programme, which limited its ability to identify the ML/TF risks it faced and its vulnerability to criminal exploitation, and further, that Entain did not conduct appropriate checks on 17 higher-risk customers.[8]

2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

Australia's AML compliance framework operates on a federal level, with the AML/CTF Act serving as the key legislation for establishing requirements on financial institutions and other businesses.

The AML/CTF Act and the related regulations impose obligations on entities that provide "designated services" and have the required connection to Australia.

If a business or person provides one or more such "designated services", they are considered a reporting entity.

Reporting entities are obligated to report certain transactions and suspicious activities to detect and prevent money laundering.[9] Under the AML/CTF Act, there are five types of report that must be furnished to AUSTRAC:

Report Type	Required where/for	Deadline
TTRs	Cash transfers of A$10,000 or more (or the foreign currency equivalent).	Within 10 business days of the transaction occurring.
International Funds Transfer Instruction Reports (IFTIs)	Fund transfers, regardless of value, into or out of Australia, conducted electronically or through designated remittance arrangements.	Within 10 business days of sending or receiving the transfer instruction.

Suspicious Matter Reports (SMRs)	The entity suspects the customer or transaction is linked to criminal activity.	With 24 hours for terrorism financing suspicions. Within three business days for other suspicions.
AUSTRAC Compliance Reports	These reports demonstrate your adherence to the AML/CFT Act, Regulations and AML/CTF Rules.	When requested by AUSTRAC.
Cross-Border Movement (CBM) Reports	CBMs of physical currency exceeding A$10,000 (or the foreign currency equivalent) when carrying, mailing or shipping money into or out of Australia.	It depends, but generally before the cash's departure or arrival, or else within five business days of receipt from overseas.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

Most professional associations and organisations are regulated only by the federal regime in respect of AML requirements.

However, some industries incorporate federal requirements into their internal policies, for example, the Banking Code of Practice for the Australian Banking Association, advises that it will help customers of Aboriginal and Torres Strait Islander heritage meet identification requirements, by following AUSTRAC's guidance.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

No, professional associations and organisations are not responsible for compliance and enforcement against their members.

2.4 Are there requirements only at national level?

Supplementary criminal money laundering offences exist within each Australian state and territory criminal code; however, there is no state-based regime for AML requirements on financial institutions and other businesses.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

AUSTRAC is the primary authority responsible for examination for compliance and enforcement of AML requirements.

Other government agencies such as the AFP, Australian Border Force (ABF), ACIC and the ATO are also involved in the identification, investigation and litigation of federal money laundering matters.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

Yes. AUSTRAC functions as Australia's Financial Intelligence Unit and AML/CTF regulator. It is responsible for analysing information reported under Australia's AML rules. AUSTRAC is one of several international, national and state law enforcement task forces, and provides specialist financial intelligence to these taskforces to assist in combatting serious financial crimes including money laundering and terrorism financing.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

While there is no statute of limitations for most enforcement actions, AUSTRAC must apply to the Federal Court for a civil penalty order within six years of the date of contravention.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

The maximum penalty for breach of a civil penalty provision under the AMLC/CTF Act is:

- for individuals, 20,000 penalty units (which, at the time of writing, was A$6.6 million) per breach; and
- for corporations, 100,000 penalty units (which, at the time of writing, was A$33 million) per breach.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

To pursue compliance with the AML/CTF regime, AUSTRAC has a range of enforcement actions at its disposal, including:

- **Civil penalty orders (a court-imposed fine)**: AUSTRAC can apply for a civil penalty order from the Federal Court for certain breaches of the AML/CTF regime. The maximum penalties are set out in section III.H.
- **Enforceable undertakings**: this is a written document in which a person/company commits to or refrains from taking specific actions in compliance with the AML/CTF Act. It is a binding promise, which can be enforced by the courts if not complied with.
- **Infringement notices**: this is a document notifying a person/company that they are in breach of the AML/CTF Act. A fine usually accompanies the infringement notice, which can range from A$16,200 for a corporation to A$3,300 for an individual.
- **Remedial directions**: these are formal instructions by AUSTRAC directing an entity to take a specific action to avoid contravening the AML/CTF Act. This could include, for example, ordering an entity to undertake an AML/CTF risk assessment.
- **Appoint an external auditor**: AUSTRAC can require a reporting entity to appoint an external auditor as part of an infringement notice, remedial direction or enforceable undertaking. AUSTRAC will specify what must be audited and what information must be included in the final report.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

Violations of the AML/CFT Act can result in criminal sanctions, primarily for conduct that involves an element of dishonesty or fraud. This includes:

- producing false or misleading information;
- producing a false or misleading document;
- forging a document for use in an applicable customer identification procedure (CIDP);
- having provided or received a designated service using either a false customer name or customer anonymity; or
- structuring a transaction to avoid a reporting obligation under the AML/CFT Act.

Some of these offences attract maximum penalties of imprisonment for 10 years, 10,000 penalty units, or both.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

Part 7A of the AML/CFT Act sets out the procedure for the review of certain decisions by delegates of the AUSTRAC CEO. Such "reviewable decisions" may be appealed internally, by way of an application for reconsideration by the AUSTRAC CEO. The applicant must make the application within 30 days of being informed of the decision.

After an internal review has been undertaken, the decision may be appealed externally to the Australian Review Tribunal (ART).

The ART may affirm, vary, set aside or substitute the decision and/or direct the matter back to AUSTRAC for reconsideration with directions or recommendations on the issue.

Both an internal review and an ART review consider the decisions on their merits. The ART's role in conducting merits review is to substitute the "correct" or "preferable" decision for that of the AUSTRAC CEO. In doing so, the AAT will stand in the shoes of the AUSTRAC CEO and conduct a fresh consideration of the matter in issue.

As civil penalty orders are imposed through the Federal Court, they can be appealed to the Full Federal Court.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and non-financial businesses and professions are subject to anti-money laundering requirements? Describe any differences in the anti-money laundering requirements that each of them are subject to.

The AML/CTF Act applies to entities that provide a "designated service" and have a certain connection with Australia, including services provided in Australia through a permanent establishment outside Australia.

Under the AML/CTF Act, designated services include a range of business activities in the following sectors:

- financial services;
- bullion dealing;
- gambling; and
- digital currency exchange.

A "person", either an "individual" or "entity" that provides one or more designated services and satisfies the geographical link test, is a reporting entity (see the response to question 2.1 above).

Under the AML/CTF Rules, certain designated service providers are exempt from obligations under the AML/CTF Act. For example, Chapter 23 of the AML/CTF Rules exempts persons carrying on a law practice from certain conditions regarding providing remittance.

The entities covered by the AML/CTF are set to expand with the passing of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024 (The 2024 Amendment Act) on 29 November 2024. The 2024 Amendment Act expands the AML/CTF regime to "Tranche 2 Entities", which includes real estate professionals, lawyers, accountants, trust and company service providers, and dealers in precious metals and stones. These entities will be required to comply with the AML/CTF Act starting from 1 July 2026.

3.2 Describe the types of payments or money transmission activities that are subject to anti-money laundering requirements, including any exceptions.

The AML/CTF Act captures a number of payment or money transmission activities, including transactions within Australia, and transactions either coming into or leaving Australia.

Certain designated services may only be provided by authorised deposit-taking institutions (ADIs), banks, building societies and credit unions, including account and deposit-taking services, issuing cheque books and debit cards, accepting electronic funds transfer instructions and making funds available as a result of such transfer instructions.

A "person" that is not an ADI, bank, building society or credit union will be providing a designated service if they:

- accept instructions from a customer to transfer money/property under an arrangement for the transfer of said money/property; or
- under an arrangement, they make or arrange to make money/property available as a result of the transfer.

These services are expressed broadly to capture a range of activities.

Other designated services relating to payments include:

- making a loan, where the loan is made during the course of carrying on a loans business;
- in the capacity of issuer of a bearer bond, redeeming a bearer bond;
- guaranteeing a loan, where the guarantee is given during the course of carrying on a business of guaranteeing loans; or
- paying out winnings or awarding a prize, in respect of a game, where the game is played for money or anything else of value.

Persons providing payment or money transmission services may also be required to submit reports on international funds transfers, or the movement of physical currency of A$10,000 or more (or the foreign currency equivalent) into and out of Australia.

3.3 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry? Describe the types of cryptocurrency-related businesses and activities that are subject to those requirements.

The AML/CTF Act expressly captures "digital currency". The Act defines "digital currency" broadly, as digital representation

of value that: "functions as a medium of exchange, a store of economic value, or a unit of account; [is] not issued by or under the authority of a government body; [is] interchangeable with money and may be used as consideration for the supply of goods or services; and [is] generally available to members of the public, without any restriction on its use as consideration."

Part 6A of the AML/CTF Act obliges digital currency service providers to comply with the AML/CTF Act when they engage in the exchanging of digital currencies to fiat currencies and *vice versa*.

Under Part 6A, digital currency service providers must register on AUSTRAC's Digital Currency Exchange Register to legally provide digital currency exchange services in Australia.

Under the 2024 Amendment Act, as of 31 March 2026, the existing definition of "digital currency" will be replaced with the concept of "virtual assets". A virtual asset is defined as a digital representation of value that functions as any of the following:

- a medium of exchange;
- a store of economic value;
- a unit of account; and
- an investment.

A virtual asset is not issued by or under the authority of a government body, and may be transferred, stored or traded electronically.

Furthermore, the ambit of the AML/CTF regime will be extended to cover additional designated services from the virtual assets sector.

3.4 To what extent do anti-money laundering requirements apply to non-fungible tokens ("NFTs")?

Under the AML/CTF Act, non-fungible tokens (NFTs) are captured under the definition of "digital currency". Thus, persons engaging in NFT-related activities are required to comply with the same obligations as a digital currency service provider (see the response to question 3.3 above).

3.5 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

Yes. The AML/CTF programme consists of two parts, Part A and Part B, and must address matters prescribed by the AML/CTF Act and AML/CTF Rules.

Under Part A, reporting entities must tailor their programme to identify, mitigate and manage risk of being used for money laundering or terrorism financing. This part can be satisfied by steps including risk assessment frameworks, having an AML/CTF compliance officer at management level to manage compliance, and training programmes for employees.

Under Part B, reporting entities' programmes must focus on identifying customers and beneficial owners including politically exposed persons. This part must include the steps for "know your customer" checks and identifying their beneficial owners, as well as their risks for money laundering or terrorism financing. Applicable CIDPs include:

- the collection and verification of customer identification information through "know your customer" procedures; and
- identifying and verifying the beneficial owner/s of a customer.

3.6 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

A reporting entity that provides a designated service that involves the transfer of physical currency of A$10,000 or more (or the foreign currency equivalent) must submit a TTR to AUSTRAC. This report must be made within 10 business days, and records must be retained for seven years from the date they are created.

3.7 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

Yes. AUSTRAC requires companies to report:

- IFTIs; and
- suspicious matters (see the response to question 3.11 below).

Under IFTIs, reporting entities are required to report any transfers, of any amount, that involve either:

- an instruction, accepted in Australia, for money/property to be made available in another country; or
- an instruction, accepted in another country, for money/property to be made available in Australia.

Reporting entities must also report the transfer of A$10,000 in physical currency (see the response to question 3.6 above).

3.8 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

See the response to question 3.7 above.

3.9 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

AUSTRAC requires reporting entities to document CID in Part B of their AML/CTF programme. A reporting entity cannot provide a designated service to a customer unless the applicable CIDPs have been carried out.

AUSTRAC requires reporting entities to apply enhanced due diligence in high-risk situations, including if the self-assessed risk of ML/TF is high, or a customer's suspicious activity or behaviour meets the threshold for an SMR.

In this high-risk situation, AUSTRAC requires reporting entities to take a range of measures to address the situation, such as gathering more information, verifying the customer's information and monitoring of transactions. AUSTRAC also stresses the importance of maintaining an auditable trail of decision making.

3.10 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

The AML/CTF Act, under section 95, prohibits ways in which financial institutions enter into a correspondent banking

relationship with a shell bank, or the ways in which a financial institution deals with shell banks.

Financial institutions are prohibited, with no exception, from entering into relationships with shell banks, financial institutions that have correspondent banking relationships with shell banks and financial institutions that allow their accounts to be used by shell banks.

Financial institutions that become aware of having such a relationship must terminate their relationship within 20 days.

3.11 What is the criteria for reporting suspicious activity?

AUSTRAC requires reporting entities to submit SMRs, if the reporting entity suspects a person or entity is linked to a crime, is not who they claim to be, or could be the victim of a crime. The crimes include money laundering, terrorism financing, tax evasion, proceeds of crime and general criminal offences.

The SMRs must be reported only to AUSTRAC, and either within:

- 24 hours if the suspicion is related to terrorism financing; or
- three business days if the suspicion is related to other matters such as money laundering.

The reporting entity must not disclose any information about the SMRs, including information from which it could be reasonably inferred that an SMR was submitted. This conduct, known as "tipping off", is a criminal offence with a penalty of up to two years imprisonment, 120 penalty units, or both.

The AML/CTF Act includes an exception to the condition that SMRs should be to AUSTRAC. An amendment in 2021 allows SMRs and related information to be shared with:

- external auditors; and
- foreign members of the same corporate/designated business group, if sharing a customer, but only if the foreign members are regulated by laws of a foreign country that give effect to some or all of the Financial Action Task Force (FATF) recommendations.

The existing concept of a "designated business group" will be replaced with a simplified "reporting group" concept under the 2024 Amendment Act. This enables entities which are under common control to form a reporting group.

3.12 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

The Fintel Alliance, headed by AUSTRAC, is a public-private partnership between 29 entities, including major banks, remittance service providers and gambling operators, as well as law enforcement and security agencies from Australia and overseas. Fintel partners work together on two streams:

(1) operations, which focuses on current financial intelligence; and

(2) innovation, which focuses on new technology solutions that assist in gathering and analysing financial intelligence at an operational level.

The Australian Financial Crimes Exchange (AFCX) is an independent, non-profit entity that includes the "big 4" banks, the Department of Home Affairs and several smaller banks and financial institutions. Members upload financial crime information or data (based on agreed standards) into a secure IT portal which other members can access in real time. In addition to data accumulation and aggregation, the AFCX is a nexus for communication about financial and cybercrime.

3.13 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

Australia does not currently have a beneficial ownership register, or any similar framework for the collection, access or verification of such information. However, the Australian government has proposed the creation of a public register of beneficial ownership, which would bring Australia in line with the FATF recommendations.

In furtherance of this, the Treasury released a consultation paper seeking comments on a public register of beneficial ownership on 7 November 2022, and in the 2023 Federal budget allocated A$1.9 million to establishing a public registry of beneficial ownership of companies and other legal vehicles, including trusts. In the latest development, on 14 November 2024, the Treasury Laws Amendment Bill 2024: Enhanced Disclosure of Ownership of Listed Entities (Cth) (Exposure Draft), was released for public consultation. Ongoing refinement and further consultations are to be expected over the next 12 months.

3.14 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions? Describe any other payment transparency requirements for funds transfers, including any differences depending on role and domestic versus cross-border transactions.

The AML/CTF Act requires banks to obtain information about all parties involved in a funds transfer.

This information must include details about the payer, the ordering institution, the sender (if the sender is not the ordering institution), the beneficiary institution and the payee. Information must also be recorded about any intermediary institutions.

A beneficiary institution may give a written notice to an ordering institution, requesting certain information about the payer.

The ordering institutions must comply with a written notice within three business days of the day on which the request was given, or within 10 business days if the request was given more than six months after the transfer was originally accepted.

International funds transfers must be reported to AUSTRAC within 10 business days.

3.15 Is ownership of legal entities in the form of bearer shares permitted?

Bearer shares are not permitted under Australian law. The Corporations Act 2001 (Cth) prohibits Australian companies from issuing bearer shares.

The exception is if a company has transferred its registration to Australia from a jurisdiction where bearer shares are legal. Here, the bearer shareholder will have the option to surrender their bearer share. They must then cancel the bearer share and include the bearer's name on their register of members.

3.16 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

See the response to question 3.1 above. Further requirements are expected to be imposed on non-financial institution businesses, after an impending amendment of the AML/CTF Act and framework.

3.17 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

No. AML/CTF requirements are generally applicable with respect to customers who receive designated services from the reporting entity.

Some obligations only apply if a person is connected to a prescribed foreign country, which currently includes the Democratic People's Republic of Korea and Iran.

3.18 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

Any government initiatives and discussions underway stem from the statutory review discussed in the response to question 4.1 below.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

The rollout of the Tranche 2 reforms of the Australian AML/CTF regime remain an ongoing focus of lawmakers and regulators in Australia, to bring Australia's regime in line with the FATF standards.

Starting 31 March 2026, under the 2024 Amendment Act, Tranche 2 services and entities will come under AUSTRAC regulation for the first time – approximately 90,000 new reporting entities are expected under the reforms.[10]

AUSTRAC has advised that they intend to provide further guidance including on the scope of the new regulated services and the core obligations, and how they can be practically implemented in 2025. The guidance will be developed in close consultation with industry-peak bodies and will be released for public consultation in mid-2025.[11]

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

The FATF evaluated Australia's AML/CTF regime between 2014 and 2015, releasing its mutual evaluation report (MER) in April 2015. The FATF identified deficiencies in Australia's compliance with FATF recommendations,[12] and recommended that Australia:

- focus more on identifying ML/TF risks, with a particular emphasis on the not-for-profit sector;
- substantially improve the mechanisms for ascertaining and recording beneficial owners in the context of customer due diligence, especially in the context of trustee information retention;
- take an active role in investigating and prosecuting money laundering offences; and
- extend the AML/CTF regime to Designated Non-Financial Businesses and Professions (see the response to question 4.1 above).

The report is available on the FATF's website at: https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-australia-2015.html

In March 2024, the FATF published a follow-up report, noting improvements in Australia's technical compliance across various deficiencies identified in the 2015 MER. Ongoing deficiencies identified by FATF in the follow-up report included the following:

- An absence of an overarching national AML/CFT strategy.
- Limited available sanctions outside a criminal case.
- Reporting entities not being legally required to ensure that the records are available to all competent authorities.
- Australia relying exclusively on ASIC to trace beneficial ownership of shares, which only deals with public listed companies – no such mechanism exists for private companies, or legal persons established under State/Territory legislation.

This report is available on its website at: https://www.fatf-gafi.org/en/publications/Mutualevaluations/Australia-fur-2024.html

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

See response to 4.2 above.

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

The AML/CTF Act and related legislation are published on the website at: https://www.legislation.gov.au/C2006A00169/latest/text. AUSTRAC publishes guidance on its website at: https://www.austrac.gov.au

Endnotes

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